



V. CONSERVATION ELEMENT

Conservation is the planned management, preservation, and wise utilization of natural resources. Conservation is one of the most important strategies for managing the County of San Bernardino's resources. Resources include, but are not limited to, water, energy, land, biodiversity, minerals, natural materials, recyclables, view sheds and air.

A. PURPOSE OF THE CONSERVATION ELEMENT

The Conservation Element provides direction regarding the conservation, development, and utilization of the County of San Bernardino's natural resources. Its objective is to prevent the wasteful exploitation, destruction and neglect of resources. The Conservation Element is distinguished by being primarily oriented toward natural resources. Population growth and development continually require the use of both renewable and nonrenewable resources. One role of the Conservation Element is to establish policies that reconcile conflicting demands on those resources. The Conservation Element involves both identification of a community's natural resources and adoption of policies for their preservation, development, and wise use. The discussion of water in the Conservation Element must be prepared in coordination with water suppliers and include any information on water supply and demand prepared pursuant to §65352.5 of the California Government Code.

1. RELATIONSHIP TO OTHER ELEMENTS OF THE GENERAL PLAN

The Conservation Element is interconnected, in varying degrees, with other elements of the General Plan. The Conservation Element is greatly connected to the Land Use and Open Space Elements. For example, open space for the preservation of natural resources is directly related to the Conservation Element. The Land Use and Safety Elements preserve natural resources that may be affected by hazards.

2. INPUT FROM PUBLIC PARTICIPATION PROGRAM

Through a public outreach process in preparation for the drafting of the County of San Bernardino's General Plan, the public identified the following issues that directly relate to the Conservation Element:

- A large number of respondents called for the maintenance of clean air and the mitigation of poor air quality in the County.

- A significant number of respondents were concerned about water quality and supply. One respondent added that the County could “become a water conservation model.”
- A significant number of respondents advocated cleaner neighborhoods by having the County support and enforce the clean-up of neglected or abandoned properties.
- A significant number of respondents felt the County should protect habitats, national parks, and natural environments when planning for growth.
- A small number of respondents were concerned with light and noise pollution controls in less dense areas.

3. RECOGNIZED IMPORTANT BIOLOGICAL AREAS



A number of sensitive plant and animal species, and their habitats, occur within San Bernardino County. Sensitive biological features are floral or faunal species of rare and/or endangered status, depleted or declining species, and species and habitat types of unique or limited distribution. Sensitive habitats are those that are considered rare or valuable within the region, support sensitive plants or animals, support

large numbers of individuals, unique associations, or exhibit particularly high diversity. The physical diversity of an area promotes biological diversity and habitat quality. Topographical differences, for example, can result in vegetation differences, temporary surface water, burrowing and nesting opportunities in canyons and ravine walls, and variable thermal and moisture gradients on or directly adjacent to the area.

In addition to the areas listed above that are protected by particular agencies, there are other areas of the County that are also of biological importance. These include alkali wet meadows, pebble plains, limestone substrate, walnut woodland, Joshua tree woodland, perennial springs, and riparian woodlands. These areas are important biologically as they support flora or fauna that are limited in their distribution, or require or tolerate unusual conditions that occur there. These areas are discussed in the sections below for the Valley, Mountain, and Desert Regions of the County.



the Pacific Flyway. Within the Mountain Region, waterfowl have been observed at Baldwin Lake and Big Bear Lake. The lake areas also provide wintering habitat for the bald eagle, and both Lake Arrowhead and Lake Big Bear are therefore recognized by the CDFG as ASBIs. The Mountain Region of the County includes the headwater, upper reaches of the Santa Ana River watershed. Examples of intact, riverine resources are the South Fork of the Santa Ana River, a permanently flooded riverine wetland, and Vivian Creek, a permanently flooded montane wetland (Ferren et al., 1996). Deep Creek and Bear Creek are CDFG-designated wild trout streams, and contain high quality riparian resources.

Also within the Mountain Region, the USFS manages both the Cucamonga Wilderness Area (8,580 acres) and the San Geronio Wilderness Area (56,749 acres). The latter is the largest established wilderness area in southern California and one of the most publicly used within the nation (USDA 1999). Aside from ASBIs, the CDFG has an established ecological preserve at Baldwin Lake that totals 125 acres, and the Nature Conservancy has four preserves in the Mountain Region — Baldwin Lake Preserve, Castle Glen Bald Eagle Sanctuary, the Sugarloaf Biota Bank, and the Big Bear Valley Preserve. In addition to these designated acreages, other areas also recognized for the value of their resources, occur within the mountains and remain important areas to be preserved. These include alkali wet meadow, pebble plains, limestone substrate, and wetlands.

3. DESERT REGION HABITAT



Encompassing the great majority of San Bernardino County, approximately 93% of the County land area, the Desert Region includes a great diversity of biological resources in one of the most fragile ecosystems in the Country. The Desert Region includes land at elevations ranging from near sea level to desert valleys between 1000 and 4000 feet and mountain ranges exceeding 8,000 feet above sea level. Soils are predominantly sandy gravel with high runoff coefficients and fast percolation. The mountain ranges support exposed bedrock, mineral deposits in granite rock. Unique soil types include major dune formation, desert pavement, and dry alkaline lake beds. The entire Region is crossed by expansive alluvial wash deposits. The dominant habitat is Desert Scrub, but discrete areas of other habitat types also occur within this Region. Appendix H in the Conservation Background Reports show vegetation types associated with the various communities in the Desert Region. Three desert geomorphic regions are found within the County including the

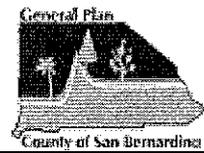


Mojave, Great Basin, and Colorado and are differentiated by the respective biomes, rainfall patterns and elevations. The Conservation Background Report (Appendix H) lists the state and federal sensitive or protected plant and animal species that have the potential to occur in the Desert Region. Many of these species may also range, occupy overlapping habitat, or migrate to the other planning Regions of the County as indicated.

The Desert Region is predominantly federal land including land managed by the BLM, and the National Park Service. The U.S. Department of Defense, BLM, National Park Service, and CDFG recognize Areas of Critical Environmental Concern (ACEC), Critical Habitat, Desert Wildlife Management Areas (DWMS) with the state and region. The management of these areas is under the jurisdiction of the respective federal agencies.

The National Park Service (NPS) manages one National Park and one National Preserve within the Desert Region of the San Bernardino County.

- Joshua Tree National Park. In 1994 the Desert Protection Act designated 825,000 acres as a National Park. Two deserts, two large ecosystems whose characteristics are determined primarily by elevation, come together at Joshua Tree National Park. Below 3,000 feet, the Colorado Desert encompasses the eastern part of the park and features natural gardens of creosote bush, ocotillo, and cholla cactus. The higher, moister, and slightly cooler Mojave Desert is the special habitat of the Joshua tree. In addition to Joshua tree forests, the western part of the park also includes some of the most interesting geologic displays found in California's deserts. Five fan palm oases also dot the park, indicating those few areas where water occurs naturally.
- Mojave National Preserve. The Desert Protection Act created the 1.4 million acre Mojave National Preserve in the heart of the Mojave Desert. This act transferred the lands known as the East Mojave National Scenic Area from the Bureau of Land Management to the National Park Service. The desert in the Mojave National Preserve ranges in elevation from less than 1000 feet to almost 8000 feet. Wildlife is abundant and over 300 different species of animals including desert bighorn sheep, mule deer, coyotes and desert tortoises roam the area. Desert plants are especially adapted to living in this arid climate. Many have small leaves with waxy coverings to minimize moisture loss, while cacti store large volumes of water. Other plants, such as the creosote, have developed extensive or deep root systems that enable them to gather the precious water. Common plants include yucca, creosote and the Joshua tree.



- The BLM has designated locations within three desert biomes as Area of Critical Environmental Concern (ACEC) and Special Areas. By designating areas as ACEC the BLM can develop special management programs for specific resources. These management programs are site-specific and include patrolling, fencing, and signage implemented by the BLM. The programs also recommend actions that the BLM does not have direct authority to implement. There are 11 designated biological ACECs in the Desert Region of San Bernardino County. These include:
 - Dark Mountain;
 - Amargosa River;
 - Salt Creek;
 - Cronese Lake;
 - Fort Soda;
 - Upper Johnson Valley;
 - Soggy Dry Lake;
 - North Harper Dry Lake;
 - South Harper Dry Lake;
 - Afton Canyon; and
 - Big Morongo Canyon.

Three Special Areas, designated by BLM within the Desert Region, are the Kelso Dunes, designated as a National Natural Landmark; The Granite Mountains, a Research Natural Area; and the East Mojave, designated as a National Scenic Area.

The CDFG recognizes numerous ASBIs within the Desert Region of San Bernardino County that support various important biological resources. These include, but are not limited to, areas of deer, bighorn sheep, and desert tortoise habitat. The Nature Conservancy also recognizes areas for protection and has designated the Morongo Valley area as the Big Morongo Canyon Preserve.



6. MINERALS

GOAL CO 7. The County will protect the current and future extraction of mineral resources that are important to the County's economy while minimizing impacts of this use on the public and the environment.

POLICIES

CO 7.1 In areas containing valuable mineral resources, establish and implement conditions, criteria, and standards that are designed to protect the access to, and economic use of, these resources, provided that the mineral extraction does not result in significant adverse environmental effects and that open space uses have been considered for the area once mining operations cease.

Programs

1. Solicit, coordinate, and acknowledge lands designated by the State Mining and Geology Board and classified by the state Geologist.
2. Incorporate the mineral classification or designation information, including the maps, when they are completed by the State Mining and Geology Board and the Division of Mines and Geology, including new and updated information.
3. Recognize and protect areas within San Bernardino County that show or have proven to have significant mineral resources and protect their access.
4. Maintain and coordinate files and records to be kept with the Land Use Services Department.

CO 7.2 Implement the state Mineral Resource Zone (MRZ) designations to establish a system that identifies mineral potential and economically viable reserves.

- a. MRZ-1: Adequate information indicates that no significant mineral deposits are present, or where it is judged that little likelihood exists for their presence. This designation will be applied where well-developed lines of reasoning, based upon economic geologic principles and adequate data, demonstrate that the likelihood for occurrence of significant mineral deposits is nil or slight.



- b. MRZ-2: Adequate information indicates that significant mineral deposits are present or where it is judged that a high likelihood for their presence exists. This designation will be applied to known mineral deposits or where well-developed lines of reasoning, based upon economic geologic principles and adequate data, demonstrate that the likelihood for occurrence of significant mineral deposits is high.
 - c. MRZ-3: Contains deposits whose significance cannot be evaluated from available data.
 - d. MRZ-4: Available information is inadequate for assignment to any other MRZ zone.
 - e. SZ: Areas containing unique or rare occurrences of rocks, minerals, or fossils that are of outstanding scientific significance will be classified in this zone.
 - f. IRA: San Bernardino County or State Division of Mines and Geology Identified Areas where adequate production and information indicates that significant minerals are present.
- CO 7.3** Mining operators/owners will provide buffers between mineral resources (including access routes) and abutting incompatible land uses. New mineral and non-mineral development in these zones will be designed and reviewed according to the compatibility criteria specified in this policy.
- CO 7.4** Review land development and mining proposals near potentially incompatible land uses with the goal of achieving land use compatibility between potentially incompatible uses.
- CO 7.5** Protect existing mining access routes by giving them priority over proposed alterations to the land, or by accommodating the mining operations with as good or better alternate access, provided the alternate access does not adversely impact proposed open space areas or trail alignment.
- CO 7.6** Provide for the monitoring of mining operations for compliance with the established operating guidelines, conditions of approval and the reclamation plan.



Table OS-1. Types of Open Space Uses

Open Space Category	Potential Multiple Uses
Preservation of Natural Resources	<p>Strong potential for multiple use as scenic areas, particularly if preservation of natural resources requires large areas of open land visible from urban areas, roadways, or trails. Strong potential for multiple uses as watershed area. Strong potential for use as part of a coordinated flood control system that utilizes open areas or watercourses to detain or direct storm flows.</p> <p>Some potential for use as timber or grazing land, if protected resources can withstand this type of harvest.</p> <p>Slight or no potential for multiple uses for surface mining or other uses that destroy or substantially alter natural features. Slight or No potential for farming that involves clearing of the land, the introduction of non-native plant or animal species, or the use of irrigation. Slight or No potential for residential use, except at very low densities and where clearing and fencing of individual properties is prohibited.</p>
Managed Production of Resources	<p>If used for low-intensity grazing or similar use, Some potential for multiple use to preserve natural resources (see discussion above).</p> <p>If surface mined, Some potential for multiple use as scenic open space, if resource extraction does not visibly damage natural features. If surface mined, No potential for immediate use for other open space uses (with the exception of public health and safety protection; Some potential for joint use in this situation if mining occurs within flood control basins or channels). If surface mined, Some potential for long-term (post-closure) use as natural or recreational open space, provided that mine closure is properly planned.</p> <p>If land is held in reserve (as for future mining or farming), Some potential for short-term use as natural resource preservation or recreation area until mining, farming, or other extractive use begins.</p> <p>If farmed with field crops or orchards, No potential for use of farmed land for natural resource protection. If intensively farmed, Slight or No potential for recreational use, although trails may pass through farmed areas. If intensively farmed, Some potential for scenic qualities, depending on type of farming.</p>
Open Space for Recreation	<p>In general, Strong potential for multiple use as scenic open space, especially in urbanized areas.</p> <p>Strong potential for multiple uses as open space to protect public health and safety, such as trail systems adjacent to or within flood control facilities.</p> <p>Some potential for multiple uses to protect natural resources provided human presence does not damage protected features (such as threatened or endangered species).</p> <p>Slight or No potential for multiple use for resource extraction, unless: (1) extraction involves very low-intensity use, such as grazing of forage, or (2) sufficient distance can be placed within a resource extraction site to protect public from hazards and provide a pleasurable recreation experience.</p>
Open Space for Scenic Resources	<p>Strong potential for multiple uses as natural open space, if preservation of scenic features involves protecting natural vegetation and topography.</p> <p>Some potential for multiple uses as open space for recreation, if scenic lands are open to the public.</p> <p>Some potential for multiple use as lands for resource extraction (see discussion above) if extraction is low-intensity and does not diminish scenic character or if resource use involves farming of a type that contains scenic worth.</p>
Open Space for Health and Safety	<p>Strong potential for multiple use as recreational open space, provided no immediate threat to safety exists that would preclude this use.</p> <p>Strong potential for use as scenic open space, especially if protection of health and safety involves use of open lands (such as for flood control facilities) or provides open areas in urban settings (such as pipeline rights-of-way or fault zones).</p> <p>Some potential for multiple uses to preserve natural resources, if health and safety uses maintain or replace natural habitat values.</p> <p>Some potential for multiple use as resource extraction (mining), if this use occurs in conjunction with health and safety purpose.</p> <p>Some potential for multiple uses for farming, if this use can take place in areas subject to safety hazards.</p>

Source: San Bernardino County General Plan, 1989, Section II – Planning Issues, Natural Resources, Open Space/Recreation/Scenic, pg. II-B1-7.

CHAPTER 88.03 SURFACE MINING AND LAND RECLAMATION

Sections:

- 88.03.010 Purpose
- 88.03.020 Incorporation of SMARA and State Regulations
- 88.03.030 Applicability
- 88.03.040 Permit, Plan, And Financial Assurance Requirements
- 88.03.050 Vested Rights
- 88.03.060 Application Filing, Processing, and Review
- 88.03.070 Additional Conditions Of Approval
- 88.03.080 Financial Assurances
- 88.03.090 Reclamation Standards
- 88.03.100 Interim Management Plans
- 88.03.110 Annual Report
- 88.03.120 Inspections
- 88.03.130 Violations and Penalties
- 88.03.140 Post-Approval Procedures

88.03.010 Purpose

- (a) **Extraction of minerals essential to County economic well-being.** The County recognizes that the extraction of minerals is essential to the continued economic well-being of the County and its residents and to societal needs and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.
- (b) **Surface mining in diverse areas.** The County also recognizes that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and their related specifications may vary accordingly.
- (c) **Purpose and intent.** The purpose and intent of this Chapter is to ensure the continued availability of important mineral resources, while regulating surface mining operations as required by:
 - (1) California's Surface Mining and Reclamation Act of 1975 (Public Resources Code Sections 2710 et seq.) (SMARA).
 - (2) Public Resources Code Section 2207 (relating to annual reporting requirements).

- (3) State Mining and Geology Board regulations ("State regulations") for surface mining and reclamation practice (California Code of Regulations Sections 3500 et seq.) to ensure that:
 - (A) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition that is readily adaptable for alternative land uses.
 - (B) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.
 - (C) Residual hazards to the public health and safety are eliminated.

Adopted Ordinance 4011 (2007)

88.03.020 Incorporation of SMARA and State Regulations

- (a) **Incorporation of SMARA and State Regulations.** The provisions of the California Surface Mining and Reclamation Act of 1975 (Public Resources Code Section 2710 et seq.), Public Resources Code Section 2207, and the regulations implementing the act (California Code of Regulations Section 3500 et seq.) ("State Regulations") are made a part of this Chapter by reference with the same force and effect as if the provisions were specifically and fully contained in this Chapter; except that when the provisions of this Chapter are more restrictive than correlative State provisions, this Chapter shall prevail.
- (b) **Amendments to SMARA.** In the event that the State amends SMARA to the extent that it adds to or conflicts with this Chapter, State law shall prevail.

Adopted Ordinance 4011 (2007)

88.03.030 Applicability

The provisions of this Chapter shall apply to all public and private property in the unincorporated areas of the County.

Adopted Ordinance 4011 (2007)

88.03.040 Permit, Plan, And Financial Assurance Requirements

- (a) **Approval of Conditional Use Permit, Reclamation Plan, and financial assurance required.** Unless exempted by SMARA, State Regulations, or Subsection (b) (Exemptions), below, any person who proposes to engage in surface mining operations

shall, before the commencement of the operation, obtain County approval of a Conditional Use Permit, Reclamation Plan, and financial assurances for reclamation in compliance with this Chapter. An exemption from these approval requirements shall not automatically exempt a project or activity from the application of other County regulations, ordinances, or policies (e.g., the application of CEQA; the requirements of Conditional Use Permits or other permits; the payment of development impact fees; the imposition of other dedications and exactions as may be allowed under the law; etc.).

(b) Exemptions. This Chapter shall not apply to the following activities, subject to the exceptions noted in Subsection (a), above:

- (1) Excavations or grading conducted for farming or for the purpose of restoring land following a flood or natural disaster.
- (2) Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project and that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:
 - (A) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in compliance with applicable provisions of State law and locally adopted plans and ordinances, including the California Environmental Quality Act (CEQA).
 - (B) The County's approval of the construction project:
 - (I) Is consistent with the General Plan.
 - (II) Included consideration of the onsite excavation and onsite earthmoving activities in compliance with CEQA.
 - (C) Surplus materials shall not be exported from the site unless and until the site accepting the surplus materials has also been approved for development according to the appropriate procedures of the agency having land use jurisdiction.
 - (D) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.
- (3) Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite

stockpiling and onsite recovery of mined materials, subject to all of the following conditions:

- (A) The plant site is located on lands with an appropriate land use zoning district designation commensurate with the activity according to the General Plan (e.g., Regional Industrial (IR), Special Development (SD), etc.).
 - (B) None of the minerals being processed are being extracted onsite.
 - (C) Reclamation work has been completed in compliance with the approved Reclamation Plan for mineral extraction activities that occurred onsite after January 1, 1976.
- (4) Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less.
 - (5) Limited surface mining operations that are required by Federal law in order to protect a mining claim, if those operations are conducted solely for that purpose (otherwise known as "assessment work.")
 - (6) Other surface mining operations that the State Mining and Geology Board determines to be of an infrequent nature and that involve only minor surface disturbances.
 - (7) Emergency excavations or grading conducted by the Department of Water Resources or the Reclamation Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.
 - (8) Road construction and maintenance for timber or forest operations, if the land is owned by the same person or entity and if the excavation is conducted adjacent to timber or forest operation roads. This exemption shall only be available if slope stability and erosion are controlled in compliance with State Mining and Geology Board Reclamation Regulations and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and post-closure uses in consultation with the Department of Forestry and Fire Protection. This exemption shall not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavations for materials that are, or have been, sold for commercial purposes.

Adopted Ordinance 4011 (2007)

88.03.050 Vested Rights

- (a) **Pre-SMARA and post-SMARA right to conduct surface mining operations.** A Conditional Use Permit shall not be required for any person who has obtained a vested right to conduct surface mining operations before January 1, 1976, as long as the vested right continues and as long as no substantial changes have been made in the operation except in compliance with SMARA, State regulations, and this Chapter. Where a person with vested rights has continued surface mining in the same area subsequent to January 1, 1976, the person shall obtain County approval of a Reclamation Plan covering the mined lands disturbed by the subsequent surface mining. In those cases where an overlap exists (in the horizontal and/or vertical sense) between pre-SMARA and post-SMARA mining, the Reclamation Plan shall require reclamation proportional to that disturbance caused by the mining after January 1, 1976 (i.e., the effective date of SMARA).
- (b) **Other requirements applicable to vested mining operations.** All other requirements of State law and this Chapter shall apply to vested mining operations.

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88.03.060 Application Filing, Processing, and Review

- (a) **Application filing.**
 - (1) Applications for a Conditional Use Permit and/or Reclamation Plan for surface mining or land reclamation projects shall be made on forms provided by the Department and filed in compliance with Chapter 85.03 (Application Procedures).
 - (2) The forms for Reclamation Plan applications shall require, at a minimum, each of the elements required by SMARA (Public Resources Code Sections 2772-2773) and other State regulations, and any other requirements deemed necessary to facilitate an expeditious and fair evaluation of the proposed Reclamation Plan, to be established at the discretion of the Director. For surface mining operations that are exempt from a Conditional Use Permit in compliance with this Chapter, the Reclamation Plan application shall include information concerning the mining operation that is required for processing the Reclamation Plan. All documentation for the Reclamation Plan shall be submitted to the County at one time.
 - (3) As many copies of the Conditional Use Permit application and the Reclamation Plan application as may be required by the Director shall be submitted to the Department.

- (4) Applications shall include all required environmental review forms and information prescribed by the Director.

(b) Fees.

- (1) **Establishment of fees.** The County shall establish processing fees that it deems necessary to cover the reasonable costs incurred in implementing this Chapter and the State regulations, (e.g., costs of processing of applications, annual reports, inspections, monitoring, enforcement, compliance etc.). The fees shall be included in the Planning Fee Schedule.
- (2) **Payment of fees.** The fees shall be paid by the operator, as required by the County, at the time of filing of the Conditional Use Permit application, Reclamation Plan application, and at other times that are determined by the County to be appropriate in order to ensure that reasonable costs of implementing this Chapter are borne by the mining operator.

(c) Processing.

- (1) Within 30 days of acceptance of an application for a Conditional Use Permit for surface mining operations and/or a Reclamation Plan as complete, the Department shall notify the State Department of Conservation of the filing of the application(s).
- (2) Whenever mining operations are proposed in the 100-year flood plain of any stream, as shown in Zone A of the Flood Insurance Rate Maps issued by the Federal Emergency Management Agency, and within one mile, upstream or downstream, of any State highway bridge, the Department shall also notify the State Department of Transportation that the application has been received.
- (3) The Department shall process the application(s) through environmental review in compliance with the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) and the County's Environmental Review Guidelines.
- (4) Subsequent to the appropriate environmental review, the Department shall prepare a staff report with recommendations for consideration by the Commission.
- (5) Before final approval of a Reclamation Plan and financial assurances (as required in this Chapter), or any amendments to the Reclamation Plan or existing financial assurances, the Director shall:

- (A) Certify to the State Department of Conservation that the Reclamation Plan and/or financial assurance complies with the applicable requirements of State law, and
 - (B) Submit the Reclamation Plan, financial assurances, or amendments to the State Department of Conservation for review.
- (d) Review by Commission and State.**
- (1) In compliance with Public Resources Code Section 2774(d), the State Department of Conservation (DOC) shall be given:
 - (I) Thirty days to review and comment on the Reclamation Plan; and
 - (II) Forty-five days to review and comment on the financial assurance.
 - (2) The Commission shall evaluate written comments received, if any, from the DOC during the comment periods.
 - (3) Staff shall prepare a written response describing the disposition of the major issues raised by the State for the Commission's approval. In particular, when the Commission's position is at variance with the recommendations and objections raised in the State's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted. The Commission staff report including the staff prepared responses to the DOC, along with the minutes of the hearing, shall constitute the written response to the State.
- (e) Public hearing.** Upon completion of the environmental review procedure and filing of documents required by the Director, a public hearing before the Commission shall be held to consider approval of the Conditional Use Permit or Reclamation Plan for the proposed or existing surface mine in compliance with Public Resources Code Section 2774.
- (f) Action by Commission.** The Commission shall then take action to approve, conditionally approve, or deny the Conditional Use Permit and/or Reclamation Plan, and to approve the financial assurances in compliance with Public Resources Code Section 2770(d).
- (g) Conditional approval.** If a Conditional Use Permit is being processed concurrently with the Reclamation Plan and it becomes necessary to comply with permit processing deadlines, the Commission may conditionally approve the Conditional Use Permit with the condition that the Department shall not issue the Conditional Use Permit for the mining operations until cost estimates for financial assurances have been reviewed

by the State Department of Conservation and final action has been taken on the Reclamation Plan and financial assurances.

- (h) **Approved Conditional Use Permit and Reclamation Plan copies provided to State.** The Department shall forward a copy of each approved Conditional Use Permit for mining operations and/or approved Reclamation Plan, and a copy of the approved financial assurances to the State Department of Conservation within 30 days of approval.
- (i) **Statement of Responsibility.** Before commencing mining operations, the property owner and/or mining operator shall sign a Statement of Responsibility accepting responsibility for reclaiming mined lands in compliance with the Reclamation Plan. The Department shall retain the Statement of Responsibility in the mining operation's permanent record. Upon sale or transfer of the operation, the new operator shall submit a new Statement of Responsibility in compliance with Subsection (j) (Transfer of ownership), below.
- (j) **Transfer of Ownership.** Upon sale or transfer of a mining operation and for the purpose of documenting a transfer of ownership of an approved Conditional Use Permit or Reclamation Plan, a new property owner and/or mining operator of a mining operation shall submit the following documents before taking over a mining operation:
 - (1) The new operator of a mining operation shall file a Transfer of Ownership application with the Department. The Director shall approve the application and the Transfer of Ownership form shall be placed in the Department's permanent record.
 - (2) The new property owner and/or mining operator of a mining operation shall file a new Statement of Responsibility with the Department. The Director shall approve the Statement of Responsibility and the new Statement of Responsibility shall be placed in the Department's permanent record.
- (k) **Findings for approval of permits and plans.**
 - (1) **Conditional Use Permits.** In addition to the findings required by Chapter 85.06 (Conditional Use Permits/Minor Use Permits), Conditional Use Permits for surface mining operations shall include a finding that the project complies with the provisions of SMARA and State regulations.
 - (2) **Reclamation Plans.** In order to approve Reclamation Plans, all of the following findings shall be made in the affirmative:
 - (A) The Reclamation Plan complies with SMARA (Public Resources Code Sections 2772-2773 and any other applicable provisions).

- (B) The Reclamation Plan complies with applicable requirements of State regulations (California Code of Regulations Sections 3500-3505 and 3700-3713).
- (C) The Reclamation Plan and potential use of land reclaimed in compliance with the Plan are consistent with this Chapter and the General Plan and any applicable resource plan or element.
- (D) The Reclamation Plan has been reviewed in compliance with CEQA and the County's environmental review guidelines, and all significant adverse impacts from reclamation of the surface mining operations are mitigated below a level of significance or to the maximum extent feasible.
- (E) The land and/or resources, such as water, will be reclaimed to a condition that is compatible with, and blends in with, the surrounding natural environment, topography, and other resources, or suitable off-site development will compensate for related disturbance to resource values.
- (F) The Reclamation Plan will reclaim the mined lands to a usable condition which is readily adaptable for alternative land uses consistent with the General Plan and applicable resource plan.
- (G) A written response to the State Department of Conservation has been prepared, describing the disposition of major issues raised by that Department. Where the County's position is at variance with the recommendations and objections raised by the State Department of Conservation, the response shall address, in detail, why specific comments and suggestions were not accepted.

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88.03.070 Additional Conditions of Approval

- (a) **Protection of mines from incompatible uses.** Mine development is encouraged in compatible areas before encroachment of conflicting uses. Mineral resource areas that have been classified by the State Department of Conservation's Division of Mines and Geology or designated by the State Mining and Geology Board as Mineral Resource Zones (MRZ), as well as existing surface mining operations that remain in compliance with the provisions of this Chapter, shall be protected from intrusion by incompatible land uses that may impede or preclude mineral extraction or processing, to the extent possible for consistency with the General Plan. Before approving a use that would otherwise be incompatible with mineral resource protection, conditions of approval may be applied to encroaching development projects to minimize potential conflicts.

- (b) **Mapping of identified resource areas.** In compliance with Public Resources Code Section 2762, the General Plan and resource maps shall be updated to reflect mineral information (classification and/or designation reports) within 12 months of receipt from the State Mining and Geology Board of the information. Land use decisions within the County shall be guided by information provided on the location of identified mineral resources of regional significance. Conservation and potential development of identified mineral resource areas shall be considered and encouraged. Recordation on property titles of the presence of important mineral resources within the identified mineral resource areas may be encouraged as a condition of approval of any development project in the impacted area.

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88.03.080 Financial Assurances

- (a) **Security required as condition of approval.** To ensure that reclamation will proceed in compliance with the approved Reclamation Plan, the County shall require as a condition of approval security that will be released upon satisfactory performance.
- (1) **Acceptable types of security.** The applicant may post security in the form of a surety bond, trust fund, irrevocable letter of credit from an accredited financial institution, or other method acceptable to the County and the State Mining and Geology Board as specified in State regulations, and that the County reasonably determines are adequate to perform reclamation in compliance with the surface mining operation's approved Reclamation Plan.
 - (2) **Required payees.** Financial assurances shall be made payable to the County and the State Department of Conservation. In the case where the approved Reclamation Plan involves unpatented land under the control of the Bureau of Land Management (BLM), National Park Service, or U. S. Forest Service, the appropriate agency shall also be added as a third payee.
- (b) **Purpose of security.** Financial assurances shall be required to ensure compliance with elements of the Reclamation Plan, including the following:
- (1) Revegetation and landscaping requirements.
 - (2) Reclamation of aquatic or wildlife habitat.
 - (3) Reclamation of water bodies and water quality.
 - (4) Slope stability and erosion and drainage control.
 - (5) Disposal of hazardous materials.

- (6) Removal of equipment and buildings that are not part of an approved end use.
- (7) Other measures, if necessary.

(c) Cost estimates for security.

- (1) Cost estimates for the financial assurance shall be submitted to the Department for review and approval before the operator actually obtains financial assurances.
- (2) The Director shall forward a copy of the cost estimates, together with supporting documentation, to the State Department of Conservation for review.
- (3) If the State Department of Conservation does not comment within 45 days of receipt of these estimates, it shall be assumed that the cost estimates are adequate, unless the County has reason to determine that additional costs may be incurred.
- (4) The Director shall have the discretion to approve the financial assurance if it meets the requirements of this Chapter, SMARA, and State regulations.

(d) Cost estimates to determine amount of security required.

- (1) The amount of the financial assurance shall be based upon the estimated costs of reclamation stipulated in the approved Reclamation Plan, including any maintenance of reclaimed areas as may be required, subject to adjustment for the actual amount required to reclaim lands disturbed by surface mining activities since January 1, 1976, and new lands to be disturbed by surface mining activities in the upcoming year.
- (2) Cost estimates shall be prepared by the mine operator, a licensed engineer, or other professional experienced in the reclamation of mined lands.
- (3) The estimated amount of the financial assurance shall be based on the following:
 - (A) An analysis of physical activities necessary to implement the approved Reclamation Plan.
 - (B) The unit costs for each of the physical activities.
 - (C) The number of units of each of the physical activities.
 - (D) The actual administrative costs.

- (4) Financial assurances to ensure compliance with revegetation, reclamation of water bodies, reclamation of aquatic or wildlife habitat, and other elements of the approved Reclamation Plan shall be based upon cost estimates that include:
 - (A) Labor.
 - (B) Equipment.
 - (C) Materials.
 - (D) Mobilization of equipment.
 - (E) Administration.
 - (F) Reasonable profit by a commercial operator other than the permittee.
- (5) A contingency factor of 10 percent shall be added to the cost of financial assurances to cover the County's reasonable expenses for the administrative and legal fees required to foreclose on the financial assurance instrument.
- (6) In projecting the costs of financial assurances, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by the operator and, consequently, the County or State Department of Conservation may need to contract with a third party commercial company for reclamation of the site.
- (e) Time period that security required to remain in effect.** The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period specified in the Reclamation Plan for the purpose of monitoring until reclamation is completed (including any maintenance required).
- (f) Annual adjustment in amount of security.** The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and giving credit for reclamation of lands accomplished in compliance with the approved Reclamation Plan. The financial assurances shall include estimates to cover reclamation for existing conditions and anticipated activities during the upcoming year, excepting that the permittee may not claim credit for reclamation scheduled for completion during the coming year. The annual SMARA inspection by the County shall, in most cases, be used to validate the submitted estimate.
- (g) Submittal of revised security figures.** Revisions to financial assurances shall be submitted to the Director each year before the anniversary date for approval of the financial assurances. The financial assurance shall cover the cost of existing

disturbance and anticipated activities for the next calendar year, including any required interim reclamation. If revisions to the financial assurances are not required, the operator shall explain, in writing, why revisions are not required.

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88.03.090 Reclamation Standards

(a) Applicable State law.

- (1) Reclamation Plans shall comply with the provisions of SMARA (Public Resources Code Sections 2772-2773) and State reclamation regulations (California Code of Regulations Sections 3500-3505).
- (2) Reclamation Plans approved after January 15, 1993, Reclamation Plans for proposed new mining operations and any substantial amendments to previously approved Reclamation Plans shall also comply with the reclamation standards in California Code of Regulations Sections 3700-3713.

(b) Additional performance standards. The performance standards in Division 3 (Countywide Development Standards) shall apply to Reclamation Plans. In addition, the applicable Review Authority may impose additional performance standards as developed in review of individual projects, as warranted.

(c) Phasing of reclamation.

- (1) Reclamation activities shall be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance. Interim reclamation may also be required for mined lands that have been disturbed and that may be disturbed again in future operations. Reclamation may be done on an annual basis, in stages compatible with continuing operations, or on completion of all excavation, removal, or fill, as approved by the County.
- (2) Each phase of reclamation shall be specifically described in the Reclamation Plan and shall include all of the following information:
 - (A) The beginning and expected ending dates for each phase.
 - (B) All reclamation activities required.
 - (C) Criteria for measuring completion of specific reclamation activities.
 - (D) Estimated costs for completion of each phase of reclamation.

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88.03.100 Interim Management Plans

- (a) **Deadline for submittal of Interim Management Plan (IMP).** Within 90 days of a surface mining operation becoming idle, the operator shall submit to the Department a proposed Interim Management Plan (IMP).
- (b) **IMP submittal requirements.**
 - (1) The proposed IMP shall fully comply with the requirements of SMARA and all Conditional Use Permit conditions and shall provide measures the operator will implement to maintain the site in a stable condition, taking into consideration public health and safety.
 - (2) The proposed IMP shall be submitted on forms provided by the Department and shall be processed as an amendment to the Reclamation Plan.
 - (3) An IMP shall not be considered a project for the purposes of environmental review.
- (c) **Continuation of security required.** Financial assurances for idle operations shall be maintained as though the operation were active, or as otherwise approved through the idle mine's IMP.
- (d) **State Department of Conservation review.** Upon receipt of a complete proposed IMP, the Department shall forward the IMP to the State Department of Conservation for review. The IMP shall be submitted to the State Department of Conservation at least 30 days before approval by the Director.
- (e) **Director's action on IMP.** Within 60 days of receipt of the proposed IMP, or a longer period mutually agreed upon by the Director and the operator, the Director shall review and approve or deny the IMP in compliance with this Chapter. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the Director, to submit a revised IMP. The Director shall approve or deny the revised IMP within 60 days of receipt. If the Director denies the revised IMP, the operator may appeal that action in compliance with Chapter 86.08 (Appeals).
- (f) **Duration of approved IMP.** The IMP may remain in effect for a period not to exceed five years, at which time the Director may renew the IMP for another period not to exceed five years, or require the surface mining operator to commence reclamation in compliance with its approved Reclamation Plan.

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88.03.110 Annual Report

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

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88.03.120 Inspections

- (a) **Inspection within 6 months of Annual Report.** The Department shall arrange for inspection of a surface mining operation within six months of receipt of the Annual Report required in Section 88.13.110 (Annual Report), to determine whether the surface mining operation is in compliance with the approved Conditional Use Permit and/or Reclamation Plan, approved financial assurances, and State regulations.
- (b) **Minimum 1 inspection per calendar year.** In no event shall less than one inspection be conducted in any calendar year.
- (c) **Eligible inspectors.** The inspections may be made by a State registered geologist, State registered civil engineer, State licensed landscape architect, or State registered forester, who is experienced in land reclamation and who has not been employed by the mining operation in any capacity during the previous 12 months, or other qualified specialists, as selected by the Director.
- (d) **Inspection forms.** Inspections shall be conducted using a form approved and provided by the State Mining and Geology Board.
- (e) **Notification of inspection to State.** The Department shall notify the State Department of Conservation within 30 days of completion of the inspection that the inspection has been conducted, and shall forward a copy of the inspection notice and any supporting documentation to the mining operator.
- (f) **Payment for inspection.** The operator shall be solely responsible for the reasonable cost of the inspection.

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88.03.130 Violations and Penalties

If the Director, based upon an annual inspection or otherwise confirmed by an inspection of the mining operation, determines that a surface mining operation is not in compliance with this Chapter, the applicable Conditional Use Permit, and/or the Reclamation Plan, the County shall follow the procedures outlined in Public Resources Code, Sections 2774.1 and 2774.2 concerning violations and penalties, as well as the provisions of Chapter 86.09 (Enforcement) for initiating enforcement action, which could include the revocation of a Conditional Use Permit.

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88.03.140 Post-Approval Procedures

- (a) **Transfer of Ownership and Statement of Responsibility.** See Subsection 88.03.060(i) (Statement of Responsibility) and Subsection 88.03.060(j) (Transfer of Ownership), above, for provisions governing ongoing post-approval responsibilities and evidence of transfer of property ownership.
- (b) **Other post-approval procedures.** The procedures and requirements in Division 6 (Development Code Administration), related to permit implementation, time limits, extensions, appeals, and revocations, shall apply following the decisions on Conditional Use Permits and Reclamation Plans.

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