



AMADOR COUNTY COMMUNITY DEVELOPMENT AGENCY  
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MEMO

TO: LAND USE COMMITTEE  
FROM: CHUCK BEATTY, PLANNING DIRECTOR   
DATE: OCTOBER 21, 2021  
RE: SURFACE MINE INTERIM MANAGEMENT PLAN TERM LENGTH

BACKGROUND: The Surface Mining and Reclamation Act (SMARA) allows for mines to enter into idle status through the approval of an Interim Management Plan. An IMP allows a mine to remain in idle status without being declared abandoned and without having to begin formal reclamation of the site. While it would not be practicable to reclaim areas that will be re-disturbed in the near future, an IMP is a temporary plan to address public health, safety, and environmental issues relevant to the site in question, e.g., drainage, erosion control, temporary fencing, etc.

SMARA allows IMPs to have terms up to five years, which can be renewed for two successive five-year periods, for a total of 15 years per Public Resources Code Section 2774.h(2), attached. The County Code language for IMPs, Section 7.36.185(E), allows for a single five-year renewal period, for a total of 10 years. The County's IMP language was adopted in 1996, and subsequent changes to SMARA allowed for the additional five-year renewal period.

REQUESTED ACTION: Direct staff to either:

- 1) Prepare an amendment to County Code Section 7.36.185(E), Interim Management Plans, to allow three successive five-year terms for IMPs, consistent with the Surface Mining and Reclamation Act; or
- 2) Administer County Code Section 7.36.185(E), Interim Management Plans, in its current form with two successive five-year terms for IMPs.


### **7.36.185 Interim management plans.**

A. Within ninety days after a surface mining operation which is required by law to have an approved reclamation plan becomes idle, the operator shall submit to the planning department a proposed interim management plan (IMP). The proposed IMP shall fully comply with the requirements of SMARA, including but not limited to all 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. The proposed IMP shall be processed as an amendment to the reclamation plan. IMP's shall not be considered a project for the purposes of environmental review.

B. Financial assurances for idle operations shall be maintained as though the operation were active, or as otherwise approved through the idle mine's IMP.

C. Upon receipt of a complete proposed IMP, the planning 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 thirty days prior to approval by the planning commission.

D. Within sixty days of receipt of the proposed IMP, or a longer period mutually agreed upon by the planning department and the operator, the planning commission shall review and approve or deny the IMP in accordance with this chapter. The operator shall have thirty days, or a longer period mutually agreed upon by the operator and the planning director, to submit a revised IMP. The planning commission shall approve or deny the revised IMP within sixty days of receipt. If the planning commission denies the revised IMP, the operator may appeal that action to the board of supervisors.

 E. The IMP may remain in effect for a period not to exceed five years, at which time the planning commission may renew the IMP for another period not to exceed five years, or require the surface mining operator to commence reclamation in accordance with its approved reclamation plan. (Ord. 1426(part), 1996).

**State of California**

**PUBLIC RESOURCES CODE**

**Section 2770**

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2770. (a) Except as provided in this section, a person shall not conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency for the operation pursuant to this article.

(b) A person with an existing surface mining operation who has vested rights pursuant to Section 2776 and who does not have an approved reclamation plan shall submit a reclamation plan to the lead agency not later than March 31, 1988. If a reclamation plan application is not on file by March 31, 1988, the continuation of the surface mining operation is prohibited until a reclamation plan is submitted to the lead agency. For the purposes of this subdivision, a reclamation plan existing prior to January 1, 2017, may consist of all or the appropriate sections of any plans or written agreements previously approved by the lead agency or another agency, together with any additional documents needed to substantially meet the requirements of Sections 2772 and 2773 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774, provided that all documents, which together were proposed to serve as the reclamation plan, are submitted for approval to the lead agency in accordance with this chapter.

(c) [Reserved]

(d) [Reserved]

(e) (1) A person who can substantiate, based on the evidence of the record, that a lead agency has either (A) failed to act according to due process or has relied on considerations not related to the specific applicable requirements of Sections 2772, 2772.1, 2773, 2773.1, 2773.3, and 2773.4 and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of Section 2774 in reaching a decision to deny approval of a reclamation plan or financial assurances for reclamation, or (B) failed to act within a reasonable time of receipt of a completed application may appeal that action or inaction to the board.

(2) The supervisor may appeal a lead agency's approval of a financial assurance cost estimate to the board if the supervisor has commented pursuant to Section 2773.4 that the financial assurance cost estimate is inadequate based on consideration of the following:

(A) Section 2773.1.

(B) Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations.

(C) The board's financial assurance guidelines adopted pursuant to subdivision (f) of Section 2773.1.

(3) If the approved financial assurance cost estimate applies to a reclamation plan approved for a new surface mining operation, an expanded surface mining operation, or an interim financial assurance cost estimate due to an order to comply, stipulated or otherwise, the operator shall provide a financial assurance mechanism pursuant to subdivision (e) of Section 2773.4 in the amount of the approved financial assurance cost estimate, notwithstanding an appeal filed pursuant to this subdivision and subject to modification pending the outcome of the appeal.

(4) If the approved financial assurance cost estimate is an update to an existing approved financial assurance cost estimate, the existing financial assurance mechanism shall remain in place and shall not be adjusted until a final determination by the board on the appeal filed pursuant to this subdivision.

(f) (1) The board may decline to hear an appeal if it determines that the appeal raises no substantial issues related to the lead agency's decision to deny the approval of a reclamation plan or financial assurance, or the timeliness in reviewing a completed application. Appeals filed by the supervisor shall be heard by the board.

(2) If the board takes up an appeal, the appeal shall be scheduled and heard at a public hearing within 45 days of the board's receipt of a complete administrative record, or a longer period as may be mutually agreed to by the board, the appellant, and the operator, or, if the appeal is filed by the supervisor, by the board, the supervisor, and the operator.

(g) (1) (A) When hearing an appeal filed pursuant to paragraph (1) or (2) of subdivision (e), the board shall determine whether the reclamation plan or the financial assurance cost estimate substantially meets the applicable requirements of Sections 2772, 2772.1, 2773, 2773.1, 2773.3, and 2773.4; Article 1 (commencing with Section 3500), Article 9 (commencing with Section 3700), and Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations; and the lead agency's surface mining ordinance adopted pursuant to subdivision (a) of Section 2774. The board shall approve or uphold a reclamation plan or financial assurance cost estimate determined to meet those applicable requirements. In any event, financial assurances for reclamation shall be sufficient to perform reclamation of lands remaining disturbed.

(B) For purposes of this subdivision, "substantially" means actual compliance in respect to the substance and form requirements essential to the objectives of this chapter.

(2) (A) A reclamation plan determined not to meet the applicable requirements of Sections 2772, 2772.1, 2773, 2773.1, 2773.3, and 2773.4; Article 1 (commencing with Section 3500), Article 9 (commencing with Section 3700), and Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations; and the lead agency's surface mining ordinance adopted pursuant to subdivision (a) of Section 2774 shall be returned to the operator with a notice of deficiencies. The operator shall be granted, once only, a period of 30 days or a longer period mutually agreed upon by the operator and the board to do both of the following:

(i) Correct the noted deficiencies.

(ii) Submit the revised reclamation plan to the lead agency for review and approval.

(B) Within 10 days of the hearing, the board shall provide notice via certified mail to the lead agency, the operator, and the Division of Mine Reclamation of the board's determination. The notice shall include instructions to the operator to submit to the lead agency for approval a revised reclamation plan consistent with the board's determination.

(3) (A) If the board determines the lead agency's approved financial assurance cost estimate does not meet the requirements of Sections 2773.1 and 2773.4, Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and the board's financial assurance guidelines adopted pursuant to subdivision (f) of Section 2773.1, the board shall note the deficiencies and, based on the record, include adequate cost estimates for each noted deficiency.


(B) Within 10 days of the hearing, the board shall provide notice via certified mail to the lead agency, the operator, and the Division of Mine Reclamation of the board's determination with instructions to the operator to submit to the lead agency for approval a revised financial assurance cost estimate consistent with the board's determination. The instructions shall include a reasonable submission deadline of not less than 30 days.

(C) The lead agency shall approve the revised financial assurance cost estimate. That approval shall supersede and void the prior approved financial assurance cost estimate.

(D) A financial assurance mechanism shall be established by the operator pursuant to subdivision (e) of Section 2773.4 following the approval of the financial assurance cost estimate.

(E) The failure of the operator to submit to the lead agency a revised financial assurance cost estimate consistent with the board's determination and deadline may be grounds for the issuance of an order to comply pursuant to subdivision (a) of Section 2774.1.

(h) (1) Within 90 days of a surface mining operation becoming idle, as defined in Section 2727.1, the operator shall submit an interim management plan to the lead agency for review. The review and approval of an interim management plan shall not be considered a project for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000)). The approved interim management plan shall be considered an amendment to the surface mining operation's approved reclamation plan for purposes of this chapter. The interim management plan shall only provide for necessary measures the operator will implement during its idle status to maintain the site in compliance with this chapter, including, but not limited to, all permit conditions.

 (2) The interim management plan may remain in effect for a period not to exceed five years, at which time the lead agency shall do one of the following:

(A) Renew the interim management plan for an additional period not to exceed five years, which may be renewed for one additional five-year renewal period at the

expiration of the first five-year renewal period, if the lead agency finds that the surface mining operator has complied fully with the interim management plan.

(B) Require the operator to commence reclamation in accordance with its approved reclamation plan.

(3) The financial assurances required by Section 2773.1 shall remain in effect during the period that the surface mining operation is idle. If the surface mining operation is still idle after the expiration of its interim management plan, the operator shall commence reclamation in accordance with its approved reclamation plan.

(4) (A) Within 45 days of the receipt of the interim management plan, the lead agency shall review the interim management plan in accordance with its ordinance adopted pursuant to subdivision (a) of Section 2774, and if the interim management plan satisfies the requirements of this section, forward the plan to the supervisor for comment. Otherwise, the lead agency shall notify the operator in writing of any deficiencies in the interim management plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the lead agency, to submit a revised interim management plan.

(B) The lead agency shall submit the interim management plan, including a revised interim management plan, to the supervisor for review and certify to the supervisor that the interim management plan is a complete submission and complies with all of the following requirements:

(i) The applicable requirements of this chapter.

(ii) Article 1 (commencing with Section 3500) and Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, as applicable.

(iii) The lead agency's surface mining ordinance in effect at the time that the interim management plan is submitted to the supervisor for review, except if the board is the lead agency.

(C) After receipt of the certified complete interim management plan, the supervisor shall have 30 days to prepare written comments on the interim management plan, if he or she elects to do so.

(D) The lead agency shall review and evaluate written comments received from the supervisor relating to the interim management plan within a reasonable amount of time.

(E) The lead agency shall prepare a written response to the supervisor's comments received pursuant to subparagraph (C) describing the disposition of the major issues raised by the comments. The lead agency shall submit its response to the supervisor and the operator at least 30 days prior to the intended approval of the interim management plan. The lead agency's response shall include either of the following:

(i) A description of how the lead agency proposes to adopt the supervisor's comments to the interim management plan.

(ii) A detailed description of the reasons why the lead agency proposes not to adopt the supervisor's comments.

(F) Where the supervisor has commented, the lead agency shall give the supervisor at least 30 days' written notice of the time, place, and date of the hearing at which

the interim management plan is scheduled to be approved by the lead agency, or, if no hearing is required by this chapter, the local ordinance, or other law, the lead agency shall provide 30 days' written notice to the supervisor that the lead agency intends to approve the interim management plan.

(G) Within 30 days following the approval of the interim management plan, the lead agency shall provide the supervisor notice of the approval and a copy of the approved interim management plan.

(5) The lead agency shall approve or deny approval of the interim management plan within 60 days of receipt of the supervisor's comments or within 90 days of submitting the interim management plan to the supervisor if no comments are received from the supervisor. If the lead agency denies approval of the interim management plan, the operator may appeal that action to the lead agency's governing body, which shall schedule a public hearing within 45 days of the filing of the appeal or a longer period mutually agreed upon by the operator and the governing body.

(6) Unless review of an interim management plan is pending before the lead agency or an appeal is pending before the lead agency's governing body, a surface mining operation that remains idle for over one year after becoming idle, as defined in Section 2727.1, without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.

(i) An enforcement action that may be brought against a surface mining operation for operating without an approved reclamation plan, financial assurance, or interim management plan shall be held in abeyance pending review pursuant to subdivision (b) or (h), or the resolution of an appeal filed with the board pursuant to subdivision (e), or with a lead agency governing body pursuant to subdivision (h).

(Amended by Stats. 2018, Ch. 349, Sec. 2. (AB 3257) Effective January 1, 2019.)