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**APPENDIX B: Yolo County Surface Mining Reclamation Ordinance**

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ORDINANCE 1191

**AN ORDINANCE OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YOLO  
AMENDING THE YOLO COUNTY CODE  
TO MODIFY CHAPTER 5, TITLE 10  
ENTITLED SURFACE MINING RECLAMATION ORDINANCE**

**WHEREAS**, the Board of Supervisors of the County of Yolo is desirous of adopting an amendment to the Yolo County Code to modify the Chapter 5 of Title 10 entitled Surface Mining Reclamation Ordinance, in order to implement the Off-Channel Mining Plan; and

**WHEREAS**, an environmental impact report (SCH# 95113034) prepared by the County of Yolo analyzing the Off-Channel Mining Plan and its implementing ordinances, including the amendments to the Surface Mining Reclamation Ordinance, has been certified by the Board of Supervisors; and

**WHEREAS**, the Planning Commission and Board of Supervisors held seven workshops and/or hearings, after proper notice, for the purposes of hearing public testimony and comment regarding the Off-Channel Mining Plan and its implementing ordinances, including the proposed Surface Mining Reclamation Ordinance; and

**WHEREAS**, the Board of Supervisors has determined that the proposed action is in the best interests of the residents of the County of Yolo;

**WHEREAS**, subject to other actions required of the Board of Supervisors, the proposed amendments to the Surface Mining Reclamation Ordinance are consistent with the General Plan, and in compliance with all other applicable plans and codes of the County of Yolo;

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Supervisors of the County of Yolo that:

1. Adopt the Surface Mining Reclamation Ordinance, as modified (attached), in order to provide a regulatory framework for reclamation plans in accordance with the Off-Channel Mining Plan, the Surface Mining and Reclamation Act, and the State Mining and Geology Board Reclamation Regulations.
2. This Ordinance shall take effect thirty (30) days after its adoption and within 15 days after its passage, shall be published at least once in a paper of general circulation published and circulated within the County of Yolo.

3. This Ordinance shall be repealed if the "Initiative Regulating Commercial Mining" is approved by the voters. In the event that the Off-Channel Mining Plan (OCMP) and the Cache Creek Resources Management Plan (CCRMP) are placed on the ballot by the County, and both the Initiative Regulating Commercial Mining and the OCMP/CCRMP pass, this ordinance shall be repealed only if the OCMP/CCRMP receive less votes than the Initiative Regulating Commercial Mining.

**PASSED AND ADOPTED BY TITLE** at the regular meeting of the Board of Supervisors on this 6th day of August 1996 by the following vote:

AYES: Marchand, McGowan, Stallard, Thomson, Siefertman

NOES: None.

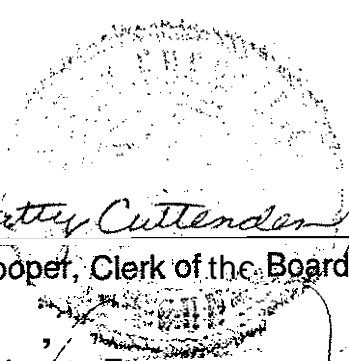
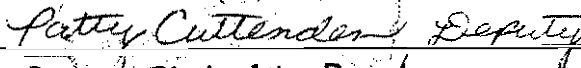
ABSENT: None

ABSTAIN: None



Tom Stallard, Chairman

Attest:

Paula Cooper, Clerk of the Board

Approved as to Form:

  
Charles Mack, County Counsel

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## CHAPTER 5. SURFACE **MINING** RECLAMATION ORDINANCE

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### Article 1. Title, Authority, and Purpose

#### **Sec. 10-5.101.** Title.

This chapter shall be known as the "The Surface Mining Reclamation Ordinance of Yolo County."

#### **Sec. 10-5.102.** Authority.

This chapter is enacted pursuant to the authority granted by the California Surface Mining and Reclamation Act of 1975, Chapter 9 of Division 2 of the Public Resources Code of the State, commencing with Section 2710; the State Mining and Geology Board Reclamation Regulations, Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, commencing with Section 3500; and pursuant to the powers of the County to protect the public health, safety, and welfare pursuant to Section 7 of Article XI of the Constitution of the State.

#### **Sec. 10-5.103.** Purposes.

The purposes of this chapter are as follows:

(a) The reclamation of mined lands is necessary to prevent or minimize the adverse effects of mining on the environment and to protect the public health and safety;

(b) The reclamation of mined lands shall provide for the protection and subsequent beneficial use of mined lands. However, mining takes place in diverse areas, with significantly different geologic, topographic, climatic, biological, and social conditions, so that the methods and operations of reclamation plans may vary accordingly to provide for the most beneficial reclamation of mined lands;

(c) In order to provide for reclamation plans that are specifically adapted to the requirements of particular mined lands; and to ensure that mined land is reclaimed to end uses such as agriculture, habitat, groundwater recharge, flood control, and channel stabilization in a consistent manner to maximize their overall management: this chapter imposes performance standards by which reclamation methods and operations shall be measured;

(d) The continued protection of agriculture and open-space uses is essential. As such, all off-channel, prime agricultural land ~~and/or~~ off-channel lands zoned Agricultural Preserve (A-P) and within a Williamson Act contract at the time that mining commences shall be reclaimed to an agriculturally productive state equal to or greater than that which existed before mining commenced. Prime agricultural land that is within the A-P Zone and is not within a Williamson Act contract shall be reclaimed to those uses which are declared by the County to be compatible with agricultural activities. Such uses include, but are not limited to, the following:

- (1) Agriculture and range land;
- (2) Groundwater storage and recharge areas;
- (3) Fish, wildlife, and plant habitat;
- (4) Watercourses and flood control basins; and,

- (5) Recreational or open space lands;
- (e) Non-prime agricultural land shall be similarly reclaimed to one of the alternate uses described above; and
- (f) Reclamation plans shall be designed to integrate with the long-term goals of encouraging agriculture, habitat, recreation, and the riparian corridor. Provisions shall be made to continue monitoring and maintenance activities after reclamation is completed, where appropriate, in order to ensure that reclaimed uses remain compatible with and enhance local resource management.

## **Article 2. Definitions**

### **Sec. 10-5.201. Scope.**

The definitions set forth in section 2725 et seq. of the Act and 3500 et seq. of the Regulations shall apply throughout this chapter. In addition, the definitions set forth in this article shall also govern the interpretation of this chapter.

### **Sec. 10-5.202. Abandon: Abandonment.**

"Abandon" or "abandonment" shall mean to cease surface mining or reclamation with the intention of not resuming or reclaiming. Operations that have an approved interim management plan shall not be considered abandoned, unless the operator is financially incapable of performing reclamation or has failed to observe an order to comply. However, any surface mining operation that is idle for twelve (12) consecutive months or longer shall be considered abandoned.

### **Sec. 10-5.203. Act.**

"Act" shall mean the Surface Mining and Reclamation Act of 1975, specifically referring to Chapter 9 of Division 2 of the State Public Resources Code, Sections 2710 et seq.

### **Sec. 10-5.204. Agency.**

"Agency" shall mean the Community Development Agency of the County.

### **Sec. 10-5.205. Board.**

"Board" shall mean the Board of Supervisors of the County.

### **Sec. 10-5.206. CEQA.**

"CEQA" shall mean the California Environmental Quality Act set forth in Sections 21000 et seq. of Division 13 of the Public Resources Code of California.

### **Sec. 10-5.207. Commission.**

"Commission" shall mean the Planning Commission of the County, or its successor in function.

**Sec. 10-5.208. County.**

"County" shall mean the County of Yolo. "Director" shall mean the Director of the County Community Development Agency, a designee chosen by the Director, or the Director's successor in function.

**Sec. 10-5.209. Department.**

"Department" shall mean the State Department of Conservation, or its successor in function with regards to surface mining and reclamation regulation.

**Sec. 10-5.210. Director.**

"Director" shall mean the Director of the County Community Development Agency, a designee chosen by the Director, or the Director's successor in function.

**Sec. 10-5.211. Financial Assurances.**

"Financial assurances" shall mean monetary funds, securities, or other instruments provided by the operator to ensure that surface mining operations are reclaimed according to the approved reclamation plan, should the operator abandon the mine site.

**Sec. 10-5.212. Haul road.**

"Haul road" shall mean a road along which material is transported from the area of excavation to the processing plant or stock pile area of the surface mining operation.

**Sec. 10-5.213. Idle.**

"Idle" shall mean those surface mining operations where production has been reduced by more than 90 percent of the operation's previous maximum annual mineral production, for a period of one year or more, with the intent to resume operations at a later date.

**Sec. 10-5.214. Interim Management Plan.**

"Interim management plan" shall mean an amendment to the approved reclamation plan to provide measures for maintaining an idle mine site until operations are resumed.

**Sec. 10-5.215. Irrevocable Letter of Credit.**

"Irrevocable letter of credit" shall mean a form of financial assurance whereby a bank authorized to do business in the State of California submits a letter granting credit on behalf of the mine operator.

**Sec. 10-5.216. Mined lands.**

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

**Sec. 10-5.217.** Mining waste.

"Mining waste" shall mean the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations.

**Sec. 10-5.218.** Minor Modification.

"Minor modification" shall mean a change in the approved reclamation plan that does not substantially alter the intent or the conditions of the reclamation plan.

**Sec. 10-5.219.** Operator.

"Operator" shall mean any person who is engaged in surface mining operations, or who contracts with others to conduct operations on their behalf, except a person who is engaged in surface mining operations as an employee with wages as their sole compensation.

**Sec. 10-5.220.** Overburden.

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

**Sec. 10-5.221.** Prime Agricultural Land.

"Prime agricultural land" shall mean all land zoned Agricultural Preserve (A-P) and all land which meets the definition of prime agricultural land set forth in Section 51201 of the Government Code of the State as administered by the County in the administration of its agricultural preserve program.

**Sec. 10-5.222.** Reclamation.

"Reclamation" shall mean the process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, threats to public health or safety, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.

**Sec. 10-5.223.** Reclamation Plan.

"Reclamation plan" shall mean the operator's completed and approved plan for reclaiming lands affected by any surface mining operations conducted after January 1, 1976, as required by Section 2772 of the Public Resources Code of the State.

**Sec. 10-5.224.** Regulations.

"Regulations" shall mean the State Mining and Geology Board Reclamation Regulations, specifically referring to Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations.

**Sec. 10-5.225.** Responsible Agency.  
"Responsible agency" shall mean all public agencies other than the County which have discretionary approval power over the project.

**Sec. 10-5.226.** Slope.  
"Slope" shall mean the angle of the groundsurface, expressed as a ratio of the horizontal distance to the vertical distance.

**Sec. 10-5.227.** State CEQA Guidelines.  
"State CEQA guidelines" shall mean those regulations set forth in Sections 15000 et. seq. of Chapter 3 of Title 14 of the California Code of Regulations.

**Sec. 10-5.228.** Surety Bond.  
"Surety bond" shall mean a form of financial assurance whereby an indemnity agreement is executed in a certain amount, either by the mine operator as principal and surety, or by a surety firm authorized to do business in the State of California.

**Sec. 10-5.229.** Surface mining operations.  
"Surface mining operations" shall mean all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incidental to an underground mine. Surface mining operations shall include, but are not limited to: in-place distillation or retorting or leaching; the production and disposal of mining waste; and prospecting and exploratory activities.

**Sec. 10-5.230.** Trustee Agency.  
"Trustee agency" shall mean a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California.

**Sec. 10-5.231.** Trust Fund.  
"Trust fund" shall mean a form of financial assurance, including: cash deposited in a federally insured account; negotiable bonds "held in escrow" by a political subdivision and endorsed by the operator, and rated "A or better" by a nationally recognized bond rating organization; or negotiable certificates of deposit in a federally insured depository.

### Article 3. Scope and Exemptions

**Sec. 10-5.301.** Incorporation by reference.  
The provisions of the Act and the Regulations, as those provisions and regulations may be amended from time to time, are made a part of this chapter by reference with the same force and effect as if the provisions therein were specifically and fully set out herein, excepting that when the provisions of this chapter are more restrictive than corresponding state provisions, this chapter shall prevail.



**Sec. 10-5.302. Scope of regulations.**

Unless otherwise provided in this article, no person shall conduct surface mining operations within the unincorporated area of the County unless a reclamation plan has been approved and adequate financial assurances have been submitted, in accordance with this chapter. Nothing in this chapter shall be interpreted as requiring the filing of a reclamation plan or financial assurances for, or the reclamation of, mined lands where surface mining operations were completed prior to January 1, 1976.

No reclamation plan application is required if the operator can provide evidence of a reclamation plan for the site approved by the County prior to January 1, 1976, and if the operator has accepted responsibility for reclaiming the mined lands in accordance with the approved reclamation plan.

**Sec. 10-5.303. Scope: Area defined.**

This chapter shall apply only to the area located within the boundaries of the Cache Creek Area Plan of the Yolo County General Plan.

**Sec. 10-5.304. Exemptions: Defined.**

The provisions of this chapter shall not apply to those activities and operations which are exempted by Sections 2714 and 2776 of the Act. Any exemption granted from the provisions of this chapter shall not, in and of itself, exempt a project or activity from the application of other applicable regulations and requirements.

**Sec. 10-5.305. Exemptions: Applications.**

Applications for exemptions shall be submitted to the Director for review and determination as to completeness. If the application is determined incomplete, the Director shall notify the applicant in writing within thirty (30) days, specifically describing the information necessary to complete the application. Upon receipt of a completed application, the Director shall determine whether the operation is exempt or is subject to the provisions of this chapter. Any person with standing may appeal the Director's decision to the Commission, pursuant to Article 11 of this chapter.

**Sec. 10-5.306. Severability.**

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of this chapter.

**Sec. 10-4.307. Effective date.**

This chapter shall take effect thirty (30) days following its adoption.

**Article 4. Minimum Reclamation Standards: In-Channel Operations**

(Not Used)

Article 5. Minimum Reclamation Performance Standards  
Off-Channel Operations

**Sec. 10-5.501.** Reclamation Standards: Scope.

The general standard for the reclamation of mined lands is to restore the site to a usable condition which is readily adaptable for alternate land uses consistent with the policies of the County expressed in Article 1 of this chapter and in the General Plan, specific plans, and zoning laws.

This article sets forth minimum acceptable practices to be followed in reclamation operations to implement this general standard. These minimum acceptable standards shall be considered and discussed in every reclamation plan approved pursuant to this chapter. In addition, the minimum statewide reclamation practices and standards set forth in the Regulations shall also be considered and discussed in every reclamation plan approved pursuant to this chapter. These standards shall be followed in addition to any other conditions of approval or regulations imposed on the surface mining permit.

**Sec. 10-5.502.** Aesthetics.

Means of improving the appearance of the landscape after mining has been completed shall be assessed based on site-specific visual characteristics, site lines, and view corridors. The use and placement of berms, vegetative screens, special plant materials, grading slopes, and contouring the sides and top surfaces of modified landforms to mimic surrounding landforms, or other measures, shall be incorporated into the mine reclamation plan as appropriate.

**Sec. 10-5.503.** Backfilled excavations: Groundwater flow impacts.

The area of backfilled off-channel excavations extending below the groundwater table shall be minimized in order to reduce changes to groundwater levels and flow. Backfilled pits shall be oriented with regard to the direction of groundwater flow to prevent localized obstructions. If a backfilled off-channel excavation is proposed to penetrate either fifty (50) feet or one-half (112) into the saturated thickness of the shallow aquifer, then at least six months prior to the commencement of excavation below the average high groundwater level, the applicant shall demonstrate in a manner consistent with the Technical Studies that the pit design will not adversely affect active off-site wells within one-thousand (1,000) feet of the proposed pit boundary. If the application includes a series of backfilled pits, then the applicant shall also demonstrate that the cumulative effects of the multiple backfilled pits will not adversely affect groundwater flow, if there are any active off-site wells within one-thousand (1,000) feet of the pit boundaries.

The applicant shall demonstrate, using MODFLOW (or a similar model of equal capability and proven reliability, as approved by the Yolo County Community Development Director), that the proposed pit design would not adversely impact active off-site wells within one-thousand (1000) feet of the proposed pit boundary or result in well failure. Average, historic low groundwater levels, which represent the condition of maximum threat to water levels in the subject well, shall be used for this simulation. If an adverse impact is identified by the MODFLOW (or other approved model) simulation, the mining and reclamation plan shall be modified or the applicant shall submit a written agreement

that the well owner has agreed to relocate or redesign the well, or accept the potential impact (at no expense to the County).

Site-specific aquifer testing shall be conducted, if needed, to determine aquifer properties for the required modeling.

**Sec. 10-5.504. Backfilled excavations: Improvements.**

Improvements, including the construction of buildings, roadways, or other public facilities proposed for construction in reclaimed mining pits shall require a geotechnical investigation of the stability of fills conducted by a Licensed Geotechnical Engineer or a Registered Civil Engineer. A report on the results and recommendations of the investigation shall be submitted to the Yolo County Community Development Agency prior to the issuance of building permits. The recommendations of the geotechnical investigations shall be fully implemented by the applicant.

**Sec. 10-5.505. Backfilled excavations: Inspections.**

Backfilled mining areas and slopes shall be inspected by the Yolo County Community Development Agency following strong seismic shaking events. **Observable** damage shall be reported to the landowner. If the YCCDA determines that the damage requires repair to meet the intended use of the reclaimed land, the landowner shall perform the required repairs.

**Sec. 10-5.506. Bank stabilization maintenance.**

Financial assurances for off-channel mining operations which include mining within seven-hundred (700) feet of the active channel of Cache Creek shall include adequate funding for maintenance during the mining and reclamation period of any bank stabilization features approved for the mining permit. Maintenance of the bank stabilization features following the completion of reclamation shall be the responsibility of the property owners under the Cache Creek Resource Management Plan.

The condition of flood protection structures and the integrity of the land within the approved setback zone separating the mining areas and the stream channel shall be inspected annually by a Registered Civil Engineer and reported to the Yolo County Community Development Agency. The annual report shall include recommendations for remedial action for identified erosion problems. Following reclamation, the YCCDA shall inspect the land separating the mining areas and creek channel **every** five (5) years. Observable damage shall be reported to the property owner. If the YCCDA determines that damage requires repair to meet the intended performance of the separator, the property owner shall perform the required repairs.

**Sec. 10-5.507. Drainage.**

Upon the completion of operations, grading and revegetation shall minimize erosion and convey storm water runoff from reclaimed mining areas to natural outlets or interior basins. The condition of the land shall allow sufficient drainage to prevent water pockets or undue erosion. Natural and stormwater drainage shall be designed so as to prevent flooding on surrounding properties and County rights-of-way.

Drainage and detention facilities within the proposed mining areas and vicinity shall be designed to prevent discharges to the wet pits and surface water conveyances (i.e.,

creeks and sloughs) from the 20-year/1-hour storm or less. For events greater than the 20-year/1-hour storm, runoff from around the perimeter of the mining areas shall be directed into surface water conveyances. Runoff from within the lowered mining area shall be directed away from wet pits to detention/infiltration areas. Drainage plans shall not rely solely on ditches and berms to direct runoff away from the wet pit. Without proper maintenance, berms and ditches may deteriorate with time and become ineffective. Drainage plans shall emphasize the grading of disturbed areas that results in broad gently slopes that drain away from the pits. Grading plans shall be reviewed by the County to evaluate compliance with drainage plan objectives prior to project approval.

In addition, a restriction shall be recorded on the deed that requires berms and ditches to be permanently maintained in a condition consistent with the final approval. The deed restriction shall require an inspection easement which allows County staff or other authorized personnel access for the inspection of berms and ditches. If the County determines that evidence of damage to those facilities exist, the County shall require that the owner have an inspection report for the property prepared by a Registered Geologist or Registered Civil Engineer. The inspection report including recommendations for corrective action, if needed, shall be submitted to the Yolo County Community Development Agency. The property owner shall be required to implement recommended corrective action, if any.

**Sec. 10-5.508. Erosion control.**

The grading of final slopes, the replacement of soil, and associated erosion control measures shall take place prior to November 1 in areas where mining has been completed. To minimize erosion, the finish grading of mining pit slopes above the average seasonal high groundwater level, with the exception of the location of designated haul roads, shall be performed as soon as practical after the mining of overburden and unsaturated aggregate resources has been completed. A drought-tolerant, weed-free mix of native and non-native grass species shall be established on slopes prior to November 1 or alternate erosion control (mulch or netting) shall be placed on exposed soil on the slopes prior to this date. Phasing of mining to minimize the length of exposed mining slopes during the rainy season is encouraged.

**Sec. 10-5.509. Fence row habitat.**

Where fence row or field margin habitat previously existed, reestablish similar habitat as part of reclamation to agricultural use to replace and improve the wildlife habitat value of agricultural lands, allowing for the reestablishment of scattered native trees, shrubs, and ground covers along the margins of reclaimed fields. Reestablished habitat can be located in areas other than where it occurred originally. Restoration plans shall specify ultimate fence row or field margin locations, identify planting densities for trees and shrubs, and include provisions for monitoring and maintenance to ensure establishment.

**Sec. 10-5.510. Fencing.**

Open wet pits shall be fenced with a forty-two (42) inch minimum, four (4) strand barbed wire fence or the equivalent (e.g., welded square "hog" fencing), prior to the commencement of excavation, during excavation, and during reclamation. Fencing may

enclose the property of which mining is a part, the mining site, or both. In addition, signs shall be installed at the project site boundaries and access road, indicating that the excavation area is restricted. Additional security (e.g., gates with protected locks and wing fences to prevent drive-arounds) shall be provided at all vehicular routes. The fencing and gates shall be maintained throughout the mining and reclamation period after completion of reclamation. A requirement shall be recorded on the deed of the property which requires the landowner to maintain fences.

**Sec. 10-5.511.** Field drainage.

Reclaimed agricultural surfaces shall be graded to provide adequate field gradients to allow surface/furrow irrigation of crops and allow for adequate storm water drainage.

**Sec. 10-5.512.** Field releveling.

The operator shall retain a Licensed Land Surveyor or Registered Civil Engineer to resurvey any areas reclaimed to agricultural usage after the first two (2) crop seasons have been completed. Any areas where settling has occurred shall be relevelled to the field grade specified in the approved reclamation plan.

**Sec. 10-5.513.** Floodplain development.

New development proposed within the reclamation plan (such as buildings, levees, or dikes) located within the floodplain shall conform to all applicable requirements of the Yolo County Flood Ordinance, the Federal Emergency Management Agency (FEMA), and the State Reclamation Board.

**Sec. 10-5.514.** Habitat management plan compliance.

All reclamation plans shall complement the preservation and enhancement measures in the Yolo County Habitat Conservation Plan (HCP). Mining operators with lands designated as having a moderate to high potential for use as mitigation areas in the HCP shall be encouraged to participate in the Developer HCP Participation Options, including use of lands as mitigation sites.

**Sec. 10-5.515.** Habitat plan referral.

Proposed habitat restoration or mitigation plans for lands within the OCMP plan area shall be sent to the California Department of Fish and Game, U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and other interested parties for review and comment to ensure that the projects do not conflict with other existing habitat enhancement efforts.

**Sec. 10-5.516.** Lowered elevations for reclaimed agricultural fields.

The final distance between lowered surfaces reclaimed to agriculture and the average high groundwater shall not be less than five (5) feet. The average high groundwater level shall be established for each proposed mining area. The degree of groundwater level fluctuation varies with location throughout the basin and within relatively small areas (proposed mining sites). The determination of the average high groundwater level shall be conducted by a Registered Civil Engineer or Certified Hydrogeologist and shall be based on wet season water level elevation data collected at the proposed site

or adjacent areas with similar hydrogeological conditions. Water level records prior to 1977 shall not be used since they would reflect conditions prior to the installation of the Indian Valley Dam. The dam caused a significant change in hydrology of the basin and data collected before its installation shall not be used in estimating current average high groundwater levels. The wells shall be adequately distributed throughout the proposed mining site to reflect spatial variation in groundwater levels and fluctuations.

**Sec. 10-5.517. Mercury bioaccumulation in wildlife.**

Prior to the approval of reclamation of aggregate mining areas to permanent lakes, the County shall commission a sampling and analysis program, to be implemented in one existing wet pit mining area within the OCMP planning area, to evaluate the potential for increased methylmercury production associated with wet pit mining and reclamation of mining areas to permanent lakes. The program shall include the sampling of water and sediments from the bottom of the existing pit and analysis of the samples for organic content; pH; dissolved oxygen content; dissolved carbon content; and total mercury. In addition, samples of predatory fish (preferably largemouth bass) shall be collected and analyzed for mercury and methylmercury content. If the initial sampling indicates either of the following conditions, the County shall perform verification sampling:

- (a) Average concentrations of total mercury in excess of 0.000012 milligrams per liter (mg/l) in the water; and
- (b) Average mercury levels in fish samples in excess of 0.5 milligrams per kilogram (mg/kg).

If verification sampling indicates exceedance of these mercury criteria, the County shall approve the reclamation of mining areas to permanent lakes only if the average level of mercury in fish collected from the existing mining pits is shown to be equal to or less than ambient (background) mercury levels determined from a representative sample of similar species of fish (of similar size) collected in the Cache Creek channel within the planning area. The determination of the ambient mercury level shall be performed by the County prior to the excavation of any new wet pit mine and at years 10, 20, and 30 in the permit time period, and shall be paid for by the mining permit operators on a fair-share basis. The County shall evaluate available data to determine any significant change in ambient concentrations of mercury in fish within the Cache Creek channel.

In the event of approval of reclamation of mined areas to permanent lakes, each mining area to be reclaimed to a permanent lake as part of each approved long-range mining plan shall be evaluated annually by the operator for five years after creation of the lake for conditions that could result in significant methylmercury production. An additional ten years of biennial monitoring shall be performed after reclamation of each lake has been completed. The evaluations shall be conducted by a qualified aquatic biologist or limnologist acceptable to the County and shall include the following analyses:

- (c) Lake condition profiling during the period of June through September, including measurements of pH; eH (or redox potential); temperature; dissolved oxygen; and total dissolved carbon.

- (d) Collection of a representative sample of fish specimens (including a minimum of five (5) predator fish if available) and analysis of the specimens for mercury content. Sampling and analysis shall be conducted using methodologies which are

consistent with the California State Water Resources Control Board Toxic Substances Monitoring Program procedures, or more stringent procedures.

(e) The results of the evaluation shall be summarized in a report and submitted to the County. The report shall include a comparison of the site specific data to available data on the background concentrations of mercury in fish within the Cache Creek watershed. The County shall be responsible for submitting the data on mercury levels in fish to the California Department of Fish and Game and the Office of Environmental Health Hazard Assessment for a determination of whether a fish advisory should be issued.

(f) If a fish advisory is issued, the owner/operator shall be required to post warnings on fences surrounding the mining pit lakes which prohibit fishing in the lakes and describe the fish advisory.

If the average fish specimen mercury content exceeds the statistically verified ambient mercury concentrations for comparable fish species (of similar size) collected within the CCRMP planning area for two (2) consecutive years, wet pit mining on property controlled by the mining operator/owner shall be suspended and the owner/operator shall either:

(g) Present a revised reclamation plan to the Yolo County Community Development Agency which provides for filling the reclaimed lake to a level five (5) feet above the average seasonal high groundwater level with a suitable backfill material; or

(h) Present a mitigation plan to the Yolo County Community Development Agency which provides a feasible and reliable method for reducing methylmercury production or exposure to elevated mercury levels. Potential mitigation could include permanent aeration of the bottom levels of the lake, alteration of the water chemistry (increasing pH or dissolved organic carbon levels), control of anaerobic bacteria populations, or removal and replacement of affected fish populations. The mitigation plan would require review by the Regional Water Quality Control Board, California Department of Fish and Game, and the Yolo County Department of Environmental Health. (The removal and replacement of fish is not intended to be a long-term solution.)

The reclamation plan shall be modified such that the mitigation approved for methylmercury reduction shall be applied to all mining areas proposed for reclamation to permanent lakes within the reclamation plan.

**Sec. 10-5.518.** Mining in reclaimed lands.

Once the reclamation plan or any portion thereof has been completed, no further surface mining operations shall be allowed within reclaimed lands, without approval of an amendment to the surface mining permit and reclamation plan.

**Sec. 10-5.519.** Motorized watercraft prohibition.

The use of motorized watercraft on any pond, lake or other body of water created as a part of the approved reclamation plan is prohibited.

**Sec. 10-5.520.** Operational areas.

Operational areas and haul roads that are not required for future use of the site shall be ripped, resoiled, and prepared accordingly, to allow for replanting.

**Sec. 10-5.521.** Permanent stockpiles.

There shall be no permanent piles of mine waste and/or overburden. Berms established for visual screening and noise abatement shall be contoured to conform visually with the surrounding topography.

**Sec. 10-5.522.** Phasing plans.

All proposed mining and reclamation plans shall present a phasing plan for mining and reclamation activities. The phasing plan shall be structured to minimize the area of disturbed agricultural lands during each mining phase, and encourage the early completion of the reclamation of agricultural land.

**Sec. 10-5.523.** Planting plans.

Site-specific planting plans shall be developed by a qualified biologist for proposed habitat reclamation projects. Restoration components of reclamation plans shall include provisions to enhance habitat for special-status species, where feasible.

**Sec. 10-5.524.** Post-reclamation groundwater monitoring.

Monitoring during the mining and reclamation period shall be a condition of the permit. The applicant shall ensure that the groundwater monitoring of wet pit mining continues for (10) years after the completion of reclamation.

**Sec. 10-5.525.** Prime farmland conversion.

All mining permit applications that include "prime farmlands" as defined by the provisions of the Williamson Act shall identify the location and acreage of "prime farmlands," which, as a result of reclamation, would be permanently converted to non-agricultural uses. For each acre of "prime farmland" that would be converted to non-agricultural use, the reclamation plan shall present provisions to offset (at a 1:1 ratio) the conversion of these lands. The potential offsets can included, but not be limited to, one or more of the following options:

(a) Identification of improvements by a qualified soil scientist to the agricultural capability of non-prime lands within or outside the project site that convert non-prime to prime agricultural conditions. These improvements can include permanent improvement of soil capability through soil amendments, reduction of soil limitations (such as excessive levels of toxins), or improvements in drainage for areas limited by flooding or low permeability soils.

(b) Placement of permanent conservation easements on land meeting the Williamson Act definition of "prime farmland." The operator shall be encouraged to target property "at risk" of conversion to non-agricultural uses in selecting areas for the offset. Prior to approval of the conservation easement, the operator shall consult with the County and/or an appropriate non-profit agency to determine the relative risk of conversion, to which the proposed property might otherwise be subject.

(c) Demonstration of the ability to provide irrigation to non-prime lands limited only by the lack of an irrigation water supply. The identified water supply cannot be provided at the expense of "prime farmlands" currently using the same water supply.



**Sec. 10-5.526.** Repair of damage due to natural disaster.

The cost of implementing recommendations for repair of reclaimed land caused during earthquakes or other natural events shall be met through application of contingency costs provided for by the project's financial assurances as required by SMARA.

**Sec. 10-5.527.** Recreational and habitat uses of permanent wet pits.

If any permanent wet pit is proposed to be reclaimed for recreational uses and/or riparian habitat, the design shall account for fluctuations in the groundwater table.

**Sec. 10-5.528.** Sewage storage prohibition.

The use of off-channel wet pits for the storage and treatment of sewage effluent, or for landfill purposes, is prohibited.

**Sec. 10-5.529.** Shallow depths.

All permanent wet pits shall be reclaimed to include valuable wildlife habitat as a beneficial use of the water lost from wet pits due to evaporation.

**Sec. 10-5.530.** Slopes.

All final reclaimed slopes shall have a minimum safety factor equal to or greater than the critical gradient as determined by an engineering analysis of the slope stability. Final slopes less than five (5) feet below the average summer low groundwater level shall be designed in accordance with the reclaimed use and shall not be steeper than 2:1 (horizontal:vertical). Reclaimed wet pit slopes located five (5) feet or more below the average summer low groundwater level shall not be steeper than 1:1 (horizontal:vertical), in order to minimize the effects of sedimentation and biological clogging on groundwater flow, to prevent stagnation, and to protect the public health.

The maximum slope angle for all final reclaimed slopes shall be determined by slope stability analysis performed by a Licensed Geotechnical Engineer or Registered Civil Engineer and submitted with any mining and reclamation application for review by the Yolo County Community Development Agency. The slope stability analysis shall conform with industry standard methodologies regarding rotational slope failures under static and pseudostatic (seismic) conditions. The minimum factor of safety for all design reclamation slopes located adjacent to levees or below existing structures shall not be less than 1.5 for static and 1.1 for pseudostatic (seismic) conditions. Other reclamation slopes shall meet a minimum factor of safety that is consistent with the post-reclamation use proposed for the mining area.

**Sec. 10-5.531.** Soil ripping.

Where areas are to be reclaimed to agricultural usage, all A and B horizon soil shall be ripped to a depth of three (3) feet after every two (2) foot layer of soil is laid down, in order to minimize compaction.

**Sec. 10-5.532.** Use of overburden and fine sediments in reclamation.

Sediment fines associated with processed in-channel aggregate deposits (excavated as a result of maintenance activities performed in compliance with the CCIP)

shall not be used in the backfill or reclamation of off-channel permanent lakes. Fines that result from the processing of in-channel sand and gravel shall be used for in-channel habitat restoration efforts or as soil amendments in agricultural fields.

Overburden and processing fines shall be used whenever possible to support reclamation activities around reclaimed wet pits. These materials may be used in reclamation activities without testing for agricultural chemicals. If topsoil (A-horizon soil), formerly in agricultural production, is proposed for use within the drainage area of a wet pit, the soils must be sampled prior to placement and analyzed for pesticides and herbicides (EPA 8140 and 8150). Samples shall be collected and analyzed in accordance with EPA Test Methods for Evaluating Solid Waste Physical/Chemical Methods, SW-846, Third Edition (as updated). Topsoil that contains pesticides or herbicides above the Maximum Contaminant Levels for primary drinking water (California Code of Regulations) shall not be placed in areas that drain to the wet pits.

**Sec. 10-5.533. Wetland habitat.**

Off-channel excavations that are proposed to be reclaimed to permanent lakes shall include wetland habitat. The creation of wetland habitat along the perimeter of permanent lakes shall include appropriate features such as: scalloped basin perimeters with extended peninsulas, islands, and stepped benches of various widths at approximately three (3) foot vertical intervals both above and below the groundwater level. Where wetlands are not proposed, either grassland and/or woodland habitat, or agricultural fields separated from the lake by a berm, shall be established in order to provide continuous habitat value around the permanent lakes.

**Sec. 10-5.534. Exceptions.**

Where an operator demonstrates to the lead agency that an exception to the standards specified in this article is necessary, the Commission may approve an alternative standard for inclusion in the approved reclamation plan. Exceptions shall only be approved where the strict application of the off-channel reclamation standards would deprive the operator of privileges enjoyed by other mining operators in the vicinity, due to special circumstances associated with the subject site, including size, shape, topography, location, or surroundings. Although the Commission may set alternative standards, in no case may the Commission set any standard which does not meet or exceed the policy objectives set forth in the OCMP.

## **Article 6. Reclamation Plan Approval Process**

**Sec. 10-5.601. Applications: Contents.**

Except as provided for in Section 10-5.602 of this article, all documentation for the reclamation plan shall be submitted to the Director at one time. Ten (10) complete copies of the application shall be provided to the County. An executive summary and a table of contents for the reclamation plan shall be submitted with each application. Applications for proposed reclamation plan shall include, but shall not be limited to, the following:

(a) A narrative description of the proposed use of mined lands after reclamation has been completed and the manner in which reclamation will be accomplished, including the following information:

(1) The consistency of the proposed reclaimed use with this chapter, the General Plan, zoning, and applicable specific plans;

(2) The manner by which contamination will be controlled in the reclaimed use;

(3) The manner in which affected streambed channels and streambanks will be rehabilitated to a condition minimizing erosion;

(4) The effect that proposed reclamation will have on future mining, both on-site and in the surrounding area;

(5) A time schedule of reclamation activities, showing the beginning date, completion dates for each proposed phase, and the final completion date, supported by a statement indicating that reclamation will be initiated at the earliest possible time on those portions of the site that will not be subject to further disturbance by mining;

(6) Separate sections demonstrating compliance of the proposal with each minimum performance standard set forth in the Regulations and Article 5 of this chapter;

(7) A signed statement that the person submitting the application accepts responsibility for implementing the approved reclamation plan;

(8) The acreages of proposed reclaimed uses, such as agriculture, wetlands, groundwater recharge, etc.;

(9) The methods to be used for on-site and off-site surface water drainage and erosion control after reclamation has been completed, including provisions for ensuring flood protection of the site for the one-hundred (100) year event;

(10) A discussion of the maximum amount of mined lands to be disturbed at any one time;

(11) A description of whether any portion of the project site is currently under a Land Conservation Contract (Williamson Act) and/or Agricultural Preserve, including any lands for which a Notice of Nonrenewal has been filed and the date of expiration. Proposed mined lands that meet the definition of "prime farmlands" as defined under the Williamson Act shall also be identified;

(b) A narrative description of the type of surface mining proposed to be employed, including the following information:

(1) The name and address of the proposed surface mine operator and the names and addresses of any persons designated by the operator to act as an agent for the applicant through the permit process;

(2) The anticipated quantity and type of minerals for which the proposed surface mining operation will be conducted, including the estimated maximum annual production with calculations presented in both tons mined and in tons sold;

(3) The proposed dates for the initiation and termination of the proposed surface mining operation;

(4) The maximum anticipated depth of the proposed surface mining operation;

(5) Evidence that all owners of a possessory interest in the lands included in the application have given authority to the applicant to conduct surface mining as proposed and to implement the reclamation plan as proposed;

(6) The acreage of the lands that will be affected by the surface mining operations (separately identifying buffer and setback areas), as well as acreages and legal descriptions of the original parcels;

(7) A description of the general geology of the region, including a detailed description of the geology of the area in which surface mining is to be conducted;

(8) The names and addresses of the owners of all surface interests and mineral interest in the lands to be mined;

(c) Site-specific technical studies, performed by qualified professionals in the appropriate area of expertise, shall provide specific proposals for inclusion in the reclamation plan to address the following potential environmental impacts:

(1) A biological analysis to evaluate the feasibility of proposed revegetation efforts, including detailed plans describing planting methods, appropriate planting times, species to be used, irrigation requirements, erosion control, weed control, and proposed success rates for plant cover and density. The analysis shall also include cross-sections for those areas proposed to be revegetated, including slopes, visual screens, and wildlife habitat;

(2) If the proposed reclamation plan includes agriculture as an end use, then a soil analysis shall be submitted to evaluate the methods and feasibility of restoring those portions of the mined site to agricultural productivity, including discussions of current and reclaimed soil conditions and classifications, the types of crops grown on the lands proposed for reclamation and their historic yields for a minimum of five (5) years, and projected production of reclaimed agricultural lands. The analysis shall also include detailed plans for the removal and replacement of topsoil and overburden, including cross-sections of the areas to be reclaimed to agriculture, the depth of soils replaced, field irrigation slope grades, detention basins, and the relationship between finished field elevations and the groundwater level for the site; and

(3) A geotechnical study to evaluate the proposed final slopes to ensure that they will be stable once mining has been completed and that the slopes possess an adequate factor of safety. Measures shall be included within the study to ensure slope stability and maintenance.

(d) A site plan submitted in the form prescribed by the Planning Director, including all property proposed to be included in the reclamation plan, drawn to a scale of one inch equals one-hundred feet (1" = 100'), or other scale acceptable to the Director for larger holdings. Small-scale, reproducible copies shall be provided along with all site plans submitted. Site plans shall show the following information:

(1) All property lines, including the boundaries of all parcels proposed for mining and reclamation; the boundaries of any ownerships, leases, and/or other entitlements vested in the surface mining operator which allow surface mining and reclamation to be conducted on-site; and all Assessor parcel numbers for properties included in the application;

(2) The location of all streams, roads, railroads, and utility facilities within, or adjacent to, the lands to be reclaimed;

(3) The location and condition of any previously mined areas within the site, specifically designating those portions of the site, if any, where mining was completed prior to January 1, 1976, and which is claimed to be exempt from the requirements of this chapter;

(4) The existing and proposed topography of all reclaimed lands, including the location of the control cross-sections submitted pursuant to subsection (e) of this section;

(5) The location of all development proposed as a part of the reclaimed end use, including settling basins, drainage conveyances, equipment, fences, and other man-made structures;

(6) The depiction of separate reclamation phases;

(7) The locations for the permanent storage of overburden and waste material in any proposed berms;

(8) The proposed points of ingress and egress, access roads, driveways, and parking areas proposed as a part of the reclaimed end use; and

(9) The extent of any borrow areas, where topsoil and overburden material are excavated to be used in the reclamation of mined lands.

(e) Graphic depictions of control cross-sections located as follows and including the following information:

(1) At least three (3) control cross-sections within the area to be reclaimed, with two (2) of the cross-sections perpendicular to one another;

(2) In no event may the interval between the control cross-sections exceed twelve-hundred (1,200) feet; and

(3) The cross-sections shall identify both the existing and proposed reclaimed elevations, and shall identify the angle of reclaimed slopes.

(f) A certificate from a licensed land surveyor or registered civil engineer certifying that the site plans and control cross-sections were prepared by or under the direct supervision of the surveyor or engineer;

(g) An estimate of the financial assurances necessary to implement the proposed reclamation plan, or phases thereof, prepared in accordance with Article 7 of this title and including the following information:

(1) An estimate of the equipment usage and manhours necessary to complete reclamation. Estimates for equipment usage shall be substantiated (e.g. the Caterpillar Performance Handbook or similar reference document) and labor requirements explained;

(2) An estimate of indirect costs, such as supervision, contingency, mobilization, profit, and overhead;

(3) The acreages of each type of area proposed in the reclamation plan (e.g., agriculture, slopes, roads, habitat, etc.), referenced to a site plan; and,

(4) An estimate of the amounts of soil, subsoil, wash sediments, and overburden to be used in reclamation, including the average distance from the soil stockpiles to the areas being reclaimed.

(h) A Land Survey or Record of Survey for all parcels included in the application which has a basis of bearing in the California Coordinate System (NAD 27 or NAD 83);

- (i) An initial environmental assessment describing the potential impacts of approving the proposed reclamation plan; and,
- (j) A list of all other applicable discretionary permits required by other public agencies.

In addition to the foregoing, the Director may require such other and further information relevant to the project as needed to determine whether the proposal may affect the public health and safety.

**Sec. 10-5.602. Applications: Waiver of Information.**

The Director may temporarily waive any of the items of information required in Section 10-5.601. of this Article, if the following conditions apply:

- (a) The gathering of such information is precluded by physical conditions existing on the site on the date of the application; and
- (b) The operator has provided a statement describing the reasons for the delay, including the date by which the information required in the application will be submitted. If granted, the Director shall notify the operator in writing, specifically describing the information which is being waived and specifying the date by which the operator shall provide the necessary information. If all other information required pursuant to this chapter has been submitted and the appropriate fees have been paid, then the Director shall receive the application for filing.

**Sec. 10-5.603. Applications: Confidentiality.**

Any information in the reclamation plan application which is considered by the applicant to be confidential, as provided in Article 9 of Chapter 4 of this title, shall be submitted under separate cover and shall be so marked by the Director. The proposed confidential information shall be accompanied by a statement citing the legal authority supporting the applicant's claim of confidentiality. The request for confidentiality shall be reviewed by the Director and either approved or denied.

The decision of the Director to reject or accept the claim of confidentiality shall be mailed and posted in accordance with Section 10-5.607 of this chapter. Any request for confidentiality approved by the Director shall become final within fifteen (15) days, unless appealed to the Commission, as provided in Article 11 of this chapter. The appellate hearing shall be conducted such that the information remains confidential until a decision is reached.

If the request is approved, then the confidential information shall be filed under separate cover. The contents of the confidential file shall be made available only to the Director and those persons authorized in writing by the operator and by the property owner. If the request is denied, the applicant may withdraw the information and include it with the application as a public document. Failure to submit any necessary information may result in an incomplete application.

**Sec. 10-5.604. Applications: Filing.**

Applications for reclamation plans shall be submitted to the Director for review and determination as to completeness. If the application is determined to be incomplete, the Director shall notify the applicant in writing within thirty (30) days of receipt of the application. The written notice shall specifically describe the information necessary to

complete the application. The application shall not be processed until the Director has determined it to be complete and the appropriate fees have been paid, as required under Article 10 of this chapter.

Once the application has been determined to be complete and the appropriate fees have been paid, the application shall be processed by the Director, who shall set it for a hearing pursuant to Section 10-5.605 of this article.

**Sec. 10-5.605.** Applications: Review.

The Director shall notify the Department in writing of any application for a reclamation plan within thirty (30) days of its being filed. The application shall also be circulated to all other agencies of jurisdiction for their review and comments in accordance with CEQA, or other applicable regulatory requirements. In addition, a notice of the filing of a reclamation plan shall be mailed to any other person with an interest in the application, who has deposited a self-addressed, stamped envelope with the Agency for the purpose of receiving a notice of the filing.

**Sec. 10-5.606.** Applications: Public hearing.

Once the application has been processed, the Director shall set a public hearing before the Commission to consider the proposed reclamation plan. Said hearing shall be held within six (6) months after the completion of the final EIR or within three (3) months after the completion of the negative declaration.

**Sec. 10-5.607.** Public hearing: Notice.

The Director shall mail notices of the public hearing to the applicant and to all property owners and property occupants located within three-hundred (300) feet of the exterior boundaries of the property containing the proposed site. Notices shall be mailed to said property owners at the addresses shown on the latest equalized County assessment roll, as well as the occupants at the situs addresses. In addition, the Director shall publish a notice of the public hearing at least once in a newspaper of general circulation, published and circulated in the area of the proposal. All notices shall be mailed and published at least ten (10) days prior to the public hearing. The Director shall also provide such other notice as may be appropriate in the circumstances of the project.

Notices of public hearing shall state the date, time, and place set for the commencement of the hearing; shall identify the property included within the proposal; and shall generally describe the subject matter of the hearing. A metes and bounds legal description of the subject property shall not be required. Notices required by this chapter may describe the subject property using landmarks, Assessor parcel numbers, and/or similar identifying information.

Failure to mail or to receive such notice, as a result of mistake or inadvertence, shall not affect the validity of the hearing or the decision rendered.

**Sec. 10-5.608.** Public hearing: Review.

Prior to the hearing, the Director shall submit copies of the following to the Department for a thirty (30) day review period:

- (a) A copy of the proposed reclamation plan;

(b) A copy of the environmental document for the reclamation plan, prepared in accordance with CEQA; and

(c) Other related documentation, as appropriate.

No reclamation plan may be approved until the Department has completed its review, or the thirty (30) day period has expired. The Director shall prepare a written response to any written comments received from the Department regarding the reclamation plan submitted. If applicable, the Director's response shall specifically address, in detail, why any comments or suggestions submitted by the Department were not accepted. The Director shall forward copies of both the Department's comments and the Director's response to the applicant.

**Sec. 10-5.609.** Public hearing: Conflict of comments.

If there is a conflict between comments submitted by a trustee or responsible agency and the comments of other reviewing agencies received during circulation of the reclamation plan, as required by CEQA, the Commission or Board shall only consider the comments of the trustee or responsible agency.

**Sec. 10-5.610.** Public hearing: Findings for approval.

The Commission or, on appeal, the Board may approve a reclamation plan pursuant to this chapter only if all of the following findings can be made:

(a) That the proposed reclamation plan and financial assurances comply with the Act, the Regulations, and this chapter;

(b) That the proposed mining shall be conducted pursuant to a surface mining permit granted in accordance with this title, or that the operator has vested rights to conduct surface mining pursuant to Section 2776 of the Act;

(c) That the site, during and after reclamation, will not be detrimental to the public health and safety, giving consideration to the degree and type of present and probable future exposure of the public to the site;

(d) That the proposed reclaimed use is consistent with the General Plan, any applicable specific plans, and the zoning of the site;

(e) That the proposed reclaimed use is compatible with the existing and probable future uses of surrounding lands, as designated in the General Plan;

(f) That the site is physically suitable for the proposed use of the land in its reclaimed condition, giving consideration, but not limited to, such factors as on-site soil conditions, local groundwater conditions, surface water flow, surrounding habitat areas, and public access to the proposed site;

(g) That the estimated financial assurances reasonably approximate the probable costs of carrying out the proposed reclamation plan; and,

(h) That a written response to the State Department of Conservation has been prepared and considered, describing the disposition of major issues raised by the Department.

**Sec. 10-5.611.** Public hearing: Decision.

After considering the evidence in the public hearing, the Commission or Board shall approve, conditionally approve, or deny the application by a written decision setting forth the findings supporting the action. Approval may be granted subject to any relevant



condition which the Commission may deem necessary to effectuate the purposes of the Act, the Regulations, and this chapter. Such conditions may address any or all of the findings required by Section 10-5.610 of this article. If the application is conditionally approved, the conditions shall be specified in writing.

Within ten (10) days after the decision of the Commission or Board, the Director shall mail a copy of the decision to the applicant. Copies of the decision shall also be mailed to any other person with an interest in the application, who has deposited a self-addressed, stamped envelope with the Agency for the purpose of receiving a copy of the decision.

## Article 7. Financial Assurances

### **Sec. 10-5.701.** Financial assurances: Scope.

Prior to the commencement of any mining activities, all new and existing surface mining operations conducted within the unincorporated territory of the County shall submit sufficient financial assurances to ensure the faithful performance of the reclamation plan approved pursuant to this chapter.

### **Sec. 10-5.702.** Financial assurances: Form.

Surface mining operations that are not undertaken by governmental agencies shall provide financial assurances in any one or a combination of the following forms:

- (a) Surety bonds;
- (b) Trust funds;
- (c) Irrevocable letters of credit; **and/or**,
- (d) Such other forms of financial assurances as the State Mining and Geology Board may adopt.

In addition those listed above, governmental agencies undertaking surface mining operations may provide financial assurances in the following forms:

- (e) Pledges of revenue; **and/or**,
- (f) Budget set asides.

Financial assurances shall be issued by a corporate surety authorized to do conduct surety business in the State of California and shall be made payable to the "County of Yolo or the Department of Conservation." Financial assurances that were approved by the County prior to January 1, 1993, and were made payable to the State Geologist shall be considered payable to the Department for the purposes of this chapter.

The form of such financial assurance instruments shall be subject to the approval of the County Counsel who may require such additional provisions as are necessary to ensure the performance of the obligations.

### **Sec. 10-5.703.** Financial assurances: Pledges of revenue.

The action approving a pledge of revenue shall take the form of a resolution or other appropriate document from the governing body of the agency responsible for reclamation. The resolution or document shall remain in effect continuously until the approved reclamation plan has been determined to be completed by the Director, pursuant to this chapter. The pledge of revenue shall consist of the following items:

- (a) The resolution or document establishing the pledge of revenue;
- (b) The types and sources of pledged revenue;
- (c) The period of time that each source of revenue is pledged to be available;
- (d) The estimated amount of financial assurances necessary to complete the approved reclamation plan; and,
- (e) An authorization for the County or the Department to use the proceeds of the pledge to complete reclamation, if the operator is incapable of performing reclamation, as determined in Article 9 of this chapter.

The government agency may pledge the following types of revenue that it controls, as long as the revenue is available in a timely manner to perform the necessary reclamation work:

- (f) Fees, rents, or other charges;
- (g) Tax revenues within statutory limitations; **and/or**
- (h) Other guaranteed revenues that are acceptable to the lead agency and the State Mining and Geology Board.

If the government agency ceases at any time to retain control of its ability to allocate pledged revenue to complete reclamation, the governing body of the agency shall notify both the lead agency and the Department within sixty (60) days after control lapses.

**Sec. 10-5.704.** Financial assurances: Budget set asides.

Government agencies may also submit financial assurances in the form of a specific fund or line item set aside to provide funds for reclamation. The budget set aside shall remain in effect continuously until the approved reclamation plan has been determined to be completed by the Director, pursuant to this chapter. The budget set aside shall consist of the following items:

- (a) A resolution or other appropriate document establishing the set aside or line item including proof of approval by the governing body or appropriate official of the government agency;
- (b) The types and sources of specific funds;
- (c) The period of time that each funding source is to be available;
- (d) The estimated amount of financial assurances necessary to complete the approved reclamation plan; and,
- (e) The authorization for the County or the Department to use the funds to complete reclamation, if the operator is incapable of performing reclamation, as determined in Article 9 of this chapter.

**Sec. 10-5.705.** Financial assurances: Term.

Financial assurances shall remain in effect until the County has determined that the reclamation plan has been completed as approved. Financial assurances may be made renewable for periods of at least one year. However, the failure of an operator to renew any financial assurance before its expiration date shall be considered a violation of this chapter. New or renewed financial assurances shall be submitted to the County prior to the expiration date of the existing financial assurances.

**Sec. 10-5.706.** Financial assurances: Calculations.

The amount of the financial assurances shall be equal to one-hundred percent (100%) of the estimated cost of implementing the approved reclamation plan. The estimated cost of reclamation shall be calculated by the operator and shall be based on the following factors:

- (a) An analysis of the physical activities and materials necessary to implement the approved reclamation plan;
- (b) The lead agency's unit costs for each of the specified activities, or the unit costs for a third party contract, if applicable. When calculating the unit costs of reclamation activities, prevailing wage rates shall not be used;
- (c) The number of units for each of the specified activities; and,
- (d) An amount to cover contingency costs, not to exceed ten percent (10%) of the reclamation costs estimated above.

The costs associated with the completion of permitted mining shall not be used in the calculation of financial assurances.

The salvage value of buildings and equipment left on-site as a result of abandonment by the operator may be included to offset the costs of reclamation in the calculation of financial assurances.

**Sec. 10-5.707.** Financial assurances: Phasing.

If a phased reclamation plan is approved, the initial amount of the financial assurances shall be no less than one-hundred percent (100%) of the total cost of all reclamation work to be done in the first approved phase. Before mining commences in the any subsequent phase, additional financial assurances shall be submitted in an amount equal to one-hundred percent (100%) of the total cost of reclamation for that phase.

**Sec. 10-5.708.** Financial Assurances: Annual Adjustments.

As a part of the annual report, each operator shall submit a revised estimate of financial assurances for the following year. Financial assurances may be adjusted annually by the Planning Commission to account for any of the following factors:

- (a) The addition of new permitted lands to be mined in the following year;
- (b) Previously mined lands which have been completely reclaimed in accordance with the approved reclamation plan; and,
- (c) The increased labor **and/or** material costs of reclamation.

Any decision to either increase or decrease financial assurances shall become final within fifteen (15) days, unless appealed to the Board of Supervisors within that fifteen (15) day period, as provided in Article 11 of this chapter.

The review of existing financial assurances shall not be considered a project within the meaning of CEQA, pursuant to the exemption granted under Section 2770(c) of the Act.

**Sec. 10-5.709.** Financial assurances: Review.

The Director shall submit a copy of all new and revised financial assurance estimates and any supporting documentation to the Department for a forty-five (45) day review period. No financial assurances may be approved until the Department has

completed its review. The Director shall prepare a written response to any written comments received from the Department regarding the financial assurances submitted. If applicable, the Director's response shall specifically address, in detail, why any comments or suggestions submitted by the Department were not accepted. The Director shall forward copies of both the Department's comments and the Director's response to the operator.

**Sec. 10-5.710.** Financial assurances: Transfer.

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

**Sec. 10-5.711.** Financial assurances: Release.

The mining operator shall notify the Director in writing when all or any portion of the required reclamation work is completed. Within sixty (60) days after notification to the County by the operator, the Director shall inspect the site in order to determine whether the site or the portion thereof complies with the approved reclamation plan. If it is determined that reclamation has not been completed pursuant to the approved reclamation plan, then the Director shall notify the operator in writing, specifically describing the remedial steps required for compliance. If it is determined that reclamation has been completed as approved, then the Director shall place the matter on the agenda of the Planning Commission for action within thirty (30) days. The Planning Commission may release all or a portion of the financial assurances, as appropriate. The Director shall send written notification of the proposed release of financial assurances to both the operator and the Department prior to the Planning Commission action.

**Sec. 10-5.712.** Financial Assurances: Disasters.

Prior to final approval of reclamation by the County and the release of financial assurances, if a reclaimed site or any reclaimed phases thereof have been adversely affected by a disaster, such as flood, earthquake, or other natural occurrence beyond the operator's control, then the Director shall take the following factors into account in determining the operator's responsibility:

- (a) The extent to which the operator had completed reclamation prior to the natural occurrence;
- (b) The extent to which the reclamation work has been destroyed by the natural occurrence;
- (c) The effect of the natural occurrence on the public health and safety;
- (d) The degree to which the site can be reclaimed naturally without human intervention;
- (e) The specific reasons a particular monitoring period was established for reclamation; and,
- (f) The site characteristics, reclamation program, and the proposed end use.

The operator may not be held responsible for the adverse impacts caused by a natural occurrence if the reclamation has been approved and the financial assurances released by the County.

## Article 8. Amendments and Modifications to Approved Reclamation Plans

### **Sec. 10-5.801.** Amendments and modifications: Purpose.

The purpose of this article is to provide procedures for changing the conditions of approval or project description (as described in the application and accompanying analyses) to account for unanticipated changes in the reclamation, site characteristics, regulations, or other aspects of the approved reclamation plan.

### **Sec. 10-5.802.** Amendments: Applications.

Applications for amendments to of previously approved reclamation plans shall be submitted to the Director, on forms provided by the Agency, and shall be accompanied by the appropriate fees, as determined in Article 10 of this chapter. Such applications shall be processed pursuant to the procedures set forth in Article 6 of this chapter.

### **Sec. 10-5.803.** Amendments: Exceptions and changes.

Proposed exceptions to the reclamation standards may not be included as part of any application for a minor modification. Any changes in the conditions of approval or the amount of surface area and/or depth to be disturbed shall also be treated as a substantial deviation from the approved plan. Such changes and exceptions shall be processed as an amendment to the reclamation plan.

### **Sec. 10-5.804.** Minor modifications.

The Director may approve minor modifications of reclamation plans approved by the Commission pursuant to this chapter. Minor modifications may only be approved if it is found that such changes would be consistent with the conclusions of the EIR or other applicable environmental document, and that such changes will not have a significantly adverse effect on the successful achievement of the approved reclamation plan. Such modifications shall be noted on the approved plans and shall be initialed by the Director.

The decision of the Director shall be mailed and posted in accordance with Section 10-5.607 of this chapter. Any minor modification approved by the Director shall become final within fifteen (15) days, unless appealed to the Board, as provided in Article 11 of this chapter.

### **Sec. 10-5.805.** Interim management plans: Scope.

Anytime that the annual production of a surface mining operation is reduced by more than ninety percent (90%) for a period of one year or more, then the operator shall submit an interim management plan to provide measures for maintaining the site until normal production is resumed. The interim management plan shall be considered an amendment to the approved reclamation plan, but not just cause to re-examine an

approved reclamation plan and/or cause the plan to be subsequently amended. An interim management plan shall not be considered a project within the meaning of CEQA, pursuant to the exemption granted under Section 2770 of the Act.

**Sec. 10-5.806. Interim management plans: Application.**

Within ninety (90) days of a surface mining operation becoming idle, the operator shall submit an application for an interim management plan to the County. A proposed interim management plan shall be reviewed by the Director within thirty (30) days of receipt to determine whether the application complies with the requirements of this article. If the application is complete, then within sixty (60) days of the receipt of the application, a public hearing shall be held before the Commission to approve or deny the interim management plan in accordance with the procedures set forth in Article 6 of this chapter.

The interim management plan application shall include, at a minimum, the following:

- (a) A statement describing why the mining operation is idle, include a description of those conditions necessary to reactivate the operation;
- (b) The requested duration of the interim management plan (not to exceed five (5) years);
- (c) A description of the measures to be taken to maintain site security;
- (d) An analysis prepared by a Registered Civil Engineer describing interim slope angles, slope stability, and erosion control measures to be implemented during the interim period;
- (e) A description of the equipment to be retained on the site;
- (f) A plan prepared by a qualified biologist describing how revegetation efforts would be maintained in the interim period; and
- (g) A plan showing the extent of mined areas, areas where reclamation has not yet been completed, internal haul roads and parking areas, stockpile locations, and equipment storage.

In addition to the foregoing, the Director may require such other and further information relevant to the project as needed to determine whether the proposal may affect the public health and safety.

**Sec. 10-5.807. Interim management plans: Incomplete.**

If the application does not comply with the requirements of this article, then the Director shall notify the applicant in writing, describing any deficiencies in the plan. The applicant shall have thirty (30) days to submit a revised plan correcting the deficiencies noted by the Director. If the revised application is complete, then within sixty (60) days of the receipt of the revised application, a public hearing shall be held before the Commission to approve or deny the interim management plan in accordance with the procedures set forth in Article 6 of this chapter.

**Sec. 10-5.808. Interim management plans: Review.**

The Director shall submit a copy of the interim management plan to the Department for a 45-day review period. No interim management plan may be approved until the Department has completed its review. The Director shall prepare a written response to any written comments received from the Department regarding the interim

management plan. If applicable, the Director's response shall specifically address, in detail, why any comments or suggestions submitted by the Department were not accepted. The Director shall forward copies of both the Department's comments and the Director's response to the operator.

**Sec. 10-5.809.** Interim management plans: Appeal.

The decision of the Commission may be appealed to the Board of Supervisors within fifteen (15) days of the date of the decision, pursuant to Article 11 of this chapter.

**Sec. 10-5.810.** Interim management plans: Term.

Approved interim management plans shall remain in effect for a period not to exceed five (5) years. Prior to the expiration of the interim management plan, the Commission shall take one of the following actions:

(a) If the operator has fully complied with the terms of the interim management plan, then the Commission may renew the plan for another period, not to exceed five (5) years; or

(b) If the operator has not complied with the terms of the interim management plan, then the surface mining operation shall be considered to be in violation and the Director shall carry out the procedures described in Article 12 of this chapter.

The operator shall notify the Director in writing prior to the reactivation of the surface mining operation.

**Sec. 10-5.811.** Interim management plans: Financial assurances.

Financial assurances shall remain in effect during the term of the interim management plan and any extensions granted thereto.

**Sec. 10-5.812.** Interim management plans: Abandonment.

Unless the operation has a pending or approved interim management plan, or an appeal of the interim management plan is pending before the Board of Supervisors, any surface mining operation which remains idle for more than one year shall be considered abandoned. All abandoned mining operations shall commence and complete reclamation in accordance with the approved reclamation plan, pursuant to Article 9 of this chapter.

**Sec. 10-5.813.** Interim management plans: Conditions.

All applicable conditions of approval shall remain in effect during the interim period. The Commission may impose additional conditions of approval necessary to safeguard the environment and the public health and safety.

**Sec. 10-5.814.** Interim permit review.

Every ten years after a reclamation plan has been approved, the Commission shall hold a public hearing in accordance with Article 5 of this chapter, for the purpose of amending the plan to bring it into conformance with applicable future environmental regulations and statutory changes. An additional public hearing may be held fifteen (15) years after a reclamation plan has been approved, at the discretion of the Commission. The Commission shall evaluate the plan to determine if there have been any subsequently adopted environmental regulations or statutory provisions which should be

made applicable to the reclamation plan, even if such laws themselves are not made retroactive to affect the plan. For the purposes of this article, an environmental regulation or statutory provision is one that is promulgated by a responsible or trustee agency that has authority for a particular natural resource (e.g., Yolo-Solano Air Quality Management District, California Department of Fish and Game, California Department of Conservation, Regional Water Quality Control Board, State Lands Commission, State Reclamation Board, etc.), including the County of Yolo.

As a part of this review, the Commission shall also consider whether per-ton fees to which the permit is subject, reasonably reflect actual costs. The fees shall be adjusted up or down accordingly.

Should the Commission decide to incorporate into the reclamation plan new regulatory or statutory provisions that were not available at the time of project approval, said provisions shall be applied as an amendment to the plan and processed in accordance with Article 6 of this chapter. The decision of the Commission may be appealed, in accordance with Article 10 of this chapter.

## **Article 9. Abandonment**

### **Sec. 10-5.901. Abandonment: Hearing.**

If at any time, the Director determines that the operator is financially incapable of performing the required reclamation, or has abandoned the surface mining operation without completing the approved reclamation plan, or has failed to observe an order to comply, then a public hearing shall be held before the Commission as provided for in Article 6 of this chapter.

### **Sec. 10-5.902. Abandonment: Notice.**

If the Commission determines that the operator is financially incapable of performing the required reclamation, or has abandoned the surface mining operation without completing the approved reclamation plan, or has failed to observe an order to comply, then the Director shall provide written notification to the operator by personal service or certified mail that the County intends to forfeit the financial assurances. The written notification shall include the specific reasons for the forfeiture.

### **Sec. 10-5.903. Abandonment: Forfeit of financial assurances.**

The operator shall be allowed sixty (60) days to commence reclamation in accordance with the approved reclamation plan. Reclamation shall be completed within the time specified in the approved reclamation plan, or at a time mutually agreed to by the Director and the operator.

If the operator fails to begin reclamation within the sixty (60) days after notification, or otherwise fails to complete the approved reclamation plan within the time specified, then the Director may demand performance of any surety company issuing the financial assurances and commence reclamation of the site.



**Sec. 10-5.904.** Abandonment: Reclamation.

The following persons may enter the mine site and any adjacent property of the operators to plan or conduct all or any of the work described in the approved reclamation plan:

- (a) Officers, employees, and agents of the County;
- (b) Contractors hired by the County, as well as their subcontractors and agents; and
- (c) Surveyors, engineers, and other consultants retained by the County.

These persons may bring onto the site and use thereon any and all equipment and machines necessary for completing the reclamation plan, and may use any equipment, supplies, earth, or other materials abandoned by the operator to perform required reclamation work.

The County shall follow the approved reclamation plan and all applicable permit conditions of approval in completing reclamation work.

**Sec. 10-5.905.** Abandonment: Use of financial assurances.

All or any portion of the financial assurances shall be deposited into a separate fund held by the County for the costs and reasonable expenses and fees associated with completing the approved reclamation plan. In no event shall the financial assurances be used for any other purpose.

If, after the Director has determined that the approved reclamation plan has been completed and all costs incurred by the County in performing such work have been accounted for, then any remaining monies from the financial assurances shall be refunded to the operator or the surety company, as their interests may appear, in accordance with Section 10-5.711 of this chapter. The operator shall be held responsible for all costs incurred by the County in completing the reclamation plan which exceed the amount of the forfeited financial assurances. Costs accrued by the County which exceed the amount of financial assurances shall be paid according to a schedule agreed to by the operator and the Director.

## Article 10. Fees

**Sec. 10-5.1001.** Fees: Applications.

Each application for a reclamation plan and/or approval of financial assurances or any amendments and modifications thereto shall be accompanied by the appropriate fee as determined by the Master Fee Resolution adopted by the Board.

**Sec. 10-5.1002.** Annual reviews.

The operator shall be responsible for the payment of fees to cover the costs incurred by the County in annually inspecting each mine site, pursuant to Section 10-5.1203 of this chapter, as determined by the Master Fee Resolution adopted by the Board. Said fee shall be due within thirty (30) days of written notification by the Director. This fee shall also cover the costs of the annual review required under Section 12-5.1203 of this chapter.

In addition, each operator shall participate in a cost-sharing agreement among the individual surface mining companies to reimburse the County for any costs associated with administering the Act and this chapter, not otherwise covered by the fees listed above. The amount shall be reviewed and agreed to by both the County and the mining companies on an annual basis, prior to July 1 of each year. Payments shall be made according to a mutually agreed upon schedule and shall be placed in a separate account of the General Fund that is used solely for the purpose of administering the Act and this chapter.

Failure to pay the above fees in a timely manner shall be considered a violation and may be enforced under the provisions of Article 12 of this chapter.

## **Article 11. Appeals**

### **Sec. 10-5.1101. Appeals: Planning Commission.**

The action of the Director on any decision made pursuant to this chapter shall be final unless, within fifteen (15) days after such action, any person with appropriate legal standing files a written appeal, and pays the appropriate fee to the clerk of the Commission. The timely filing of an appeal shall stay the Director's decision, which shall serve as a recommendation to the Commission. All such appeals shall reference the decision of the Director and shall specifically describe the grounds for the appeal.

### **Sec. 10-5.1102. Planning Commission: Hearings.**

The hearing on an appeal of a decision by the Director shall be scheduled within sixty (60) days from when the appeal was filed. The Director shall provide notice of the appeal hearing, pursuant to Section 10-5.607 of this chapter. Upon hearing the appeal, the Commission shall either affirm, reverse, or modify the appealed decision, or refer the matter back to the Director for further action .

A decision of the Commission may be appealed to the Board, pursuant to this article. The appeal rights under this section shall be exercised prior to filing an appeal pursuant to Section 10-5.1107 of this chapter.

### **Sec. 10-5.1103. Appeals: Board of Supervisors.**

The action of the Commission on any decision made pursuant to this chapter shall be final unless, within fifteen (15) days after such action, any person with appropriate legal standing files a written appeal, and pays the appropriate fee, to the Clerk of the Board. The timely filing of an appeal shall stay the Commission's decision, which shall serve as a recommendation to the Board. All such appeals shall reference the decision of the Commission and specifically describe the grounds for the appeal.

### **Sec. 10-5.1104. Board of Supervisors: Hearing.**

The hearing on an appeal of a decision by the Commission shall be scheduled within sixty (60) days from when the appeal was filed. The Clerk of the Board shall provide notice of the hearing pursuant to Section 10-5.607 of this chapter. Upon hearing the appeal, the Board may either affirm, reverse, or modify the appealed decision, or refer the matter back to the Commission for further action. The appeal rights under this

section shall be exercised prior to filing an appeal pursuant to Section 10-5.1107 of this chapter.

If the Board fails to take one of the above actions, the appeal shall be considered denied without prejudice. Appeals that are denied without prejudice may be reconsidered at a new public hearing, noticed in accordance with Section 10-5.605 of this chapter.

**Sec. 10-5.1105.** Appeals: Scope.

Any appeal of a decision or action shall serve only as an appeal of the specific action or issue identified, based on the grounds and issues described in the appeal. The appellate body shall consider the record of the decision being appealed. New evidence not previously introduced in the record of the decision may not be presented at the hearing regarding the appeal.

**Sec. 10-5.1106.** Appeals: Withdrawal.

Appeals to either the Commission or the Board may be withdrawn at any time.

**Sec. 10-5.1107.** Appeals: State Mining and Geology Board.

An appeal of a decision by the Board may be filed with the State Mining and Geology Board, if the appellant can substantiate, based on the record, that the County has failed to take any of the following actions:

- (a) Act according to due process;
- (b) Consider the specific applicable requirements of Sections 2772, 2773, and 2773.1 of the Act or this chapter in the denial of a reclamation plan or financial assurances;
- (c) Act within a reasonable time after receiving a completed application; or
- (d) Review and approve reclamation plans or financial assurances pursuant to Sections 2770(c) and 2770(d) of the Act.

If the State Mining and Geology Board remands a decision pursuant to this section, then the Board shall reconsider their decision in accordance with the procedures described in this article.

**Sec. 10-5.1108.** Appeals: Judicial Review.

When giving notice to the applicant of its decision to deny, the Board shall notify the applicant that the time within which judicial review must be sought is governed by Section 1094.6 of the State Code of Civil Procedure.

## Article 12. Inspections: Notices of Violations

**Sec. 10-5.1201.** Inspections: Purpose.

The Director shall make such necessary inspections and investigations of all surface mining reclamation activities within the unincorporated portion of the County in order to accomplish any of the following purposes:

- (a) To determine compliance with this chapter and the Act;
- (b) To determine compliance with the conditions of reclamation plan approved pursuant to this chapter;

(c) To investigate the environmental effects which reclamation work may be causing to the surrounding area; and,

(d) To verify the information submitted in any application or any annual report submitted pursuant to this title.

**Sec. 10-5.1202. Inspections: Annual.**

At least once every year, the Director shall conduct an inspection of each surface mining operation to determine whether the operator is in compliance with the Act, the Regulations, and this chapter. Each inspection shall be conducted within six (6) months after receipt by the County of the operation's annual report, submitted pursuant to Section 2207 of the Public Resources Code, and may be combined with other site inspections, as appropriate. The Director shall notify the Department within thirty (30) days of the completion of the inspection, and shall forward a copy of said inspection notice and any supporting documentation to the operator.

**Sec. 10-5.1203. Annual Inspections: Notification.**

All annual inspections shall be documented using forms adopted by the Department. The Director shall notify the Department of the inspection within thirty (30) days after it has been completed. Said notice shall include the following:

(a) A statement regarding whether the operation is in compliance with the Act and this chapter. Any violations of either the Act or this chapter shall be specifically described;

(b) The completed inspection forms;

(c) A description of any pending reviews or appeals of surface mining permits, reclamation plans, financial assurances, amendments or modifications thereto, or interim management plans pertaining to the operation; and,

(d) Any supporting documentation.

Copies of the notice shall also be provided to the operator.

**Sec. 10-5.1204. Inspections; Designee.**

Inspections shall be conducted by a state-registered geologist, state-registered civil engineer, state-licensed landscape architect, state-registered forester, County staff, or other designee as determined by the Director, who is experienced in mined land reclamation and who has not been employed by the mining operation in any capacity during the previous twelve (12) months.

**Sec. 10-5.1205. Annual compliance review.**

An annual report of reclamation operations shall be filed by each operator and reviewed by the Commission in a public hearing in order to determine compliance with the approved reclamation plan, in accordance with Article 7 of Chapter 4 of this title.

**Sec. 10-5.1206. Violations: Notice.**

Whenever the Director has reasonable cause to believe that mining reclamation activities are in violation of the Act, the Regulations, this chapter, or any terms or conditions of a reclamation plan issued pursuant to this chapter, a written notice of violation shall be served to the operator. The notice shall specifically describe both the

violation(s) and the remedial steps required for compliance. Said notice shall be served by certified mail and a copy shall be sent to the Department. In the event that the notice is returned unreceived, a copy of the notice shall be posted in a conspicuous place within the surface mining site.

**Sec. 10-5.1207.** Violations: Order to comply.

If the violation continues after thirty (30) days from the date of notification, then the Director shall issue an order requiring compliance. Said order shall be served upon the operator by certified mail, with a copy sent to the Department. The order shall specify a time by which compliance must be completed, as determined by the Director. A reasonable amount of time shall be allowed to bring the operation into compliance, taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

The order shall also state the date, time, and place set for a hearing before the Commission regarding the notice of violation. The hearing shall be conducted no sooner than thirty (30) days and no later than sixty (60) days after the service of the order upon the operator. Public notice of such hearing shall be given as set forth in Section 10-5.607 of this chapter.

**Sec. 10-5.1208.** Violations: Hearing.

At the time and place described in the order of compliance, the Commission shall conduct a public hearing to consider the violation. Before the close of the hearing, the Commission shall take one of the following actions:

- (a) Approve the order of the Director;
- (b) Remove any of the violations and approve the order as modified; or,
- (c) Decline to approve the order of the Director.

If the order of the Director is approved, the Commission's decision shall become final and the approved order will take effect fifteen (15) days after the decision, unless an appeal is filed with the Board, pursuant to Article 11 of this chapter.

**Sec. 10-5.1209.** Violations: Abandonment.

If an operator fails to observe an order of compliance, then the mining reclamation activities shall be considered abandoned and the Director shall initiate procedures to forfeit the operator's financial assurances in accordance with Article 9 of this chapter.

**Sec. 10-5.1210.** Violations: Administrative penalties.

If the operator fails to comply with an effective order, issued pursuant to this article, the Commission may issue an order imposing administrative penalties of not more than five thousand dollars (\$5,000) per day, retroactive to the original date of noncompliance. When determining the amount of the penalty, the Commission shall consider, but may not be limited to, the following factors:

- (a) The nature, circumstances, extent, and gravity of the violation(s);
- (b) Any prior history of violations; and,
- (c) The degree of culpability by the operator.

The order establishing administrative penalties shall be served by certified mail to the operator. Any such order shall become effective upon issuance and the penalties

imposed therein shall be paid to the Director within thirty (30) days, unless the order imposing administrative penalties is appealed to the Board, pursuant to Article 11 of this chapter. If no writ petition is filed, then the order setting administrative penalties shall not be subject to review by any court or agency.

Any decision by the Board to order administrative penalties shall become effective within thirty (30) days, unless the operator files a petition for writ of mandate in the superior court for review of the order. If no appeal is filed, then the order setting administrative penalties shall not be subject to review by any court or agency. The order establishing administrative penalties shall be **served** by certified mail to the operator.

Payment of the administrative penalties shall be made by the operator to the County within thirty (30) days of receipt of the order. However, if a petition for review has been filed, the payment shall be held in an interest bearing impound account until the matter has been resolved. Penalties collected by the Director shall only be used to cover the reasonable costs incurred by the County in administering either the Act or Chapters 3, 4, and 5 of Title 10 of this Code.

**Sec. 10-5.1211.                      Violations: Public nuisance.**

Any mining reclamation activities in violation of this title, or in violation of any reclamation plan **and/or** financial assurances approved pursuant to this title, shall be considered a public nuisance. If the operator fails to comply with an effective order, issued pursuant to this article, the Director may refer the violation to the District Attorney for criminal remedies.

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