

**TITLE 10, CHAPTER 3
CACHE CREEK AREA PLAN IN-CHANNEL ORDINANCE**

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Article 1. Title, Authority, and Purpose

Sec. 10-3.101. Title.

This chapter shall be known as the "Cache Creek Area Plan In-Channel Ordinance of Yolo County" or "In-Channel Ordinance." It replaces the "Interim In-Channel Surface Mining Regulations of Yolo County."

Sec. 10-3.102. Authority.

This chapter is enacted pursuant to the authority granted by the California Surface Mining and Reclamation Act (SMARA) of 1975, Chapter 9 of Division 2 of the Public Resources Code of the State, commencing with Section 2710; 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. 10-3.103. Purpose.

(a) The purpose of this chapter is to implement the provisions of the Cache Creek Area Plan (CCAP) as related to allowed in-channel activities. Limited material removal activities related to channel stabilization, maintenance of flood flow capacity, erosion protection, protection of existing structures and infrastructure, riparian restoration, and implementation of the Channel Form Template may be performed pursuant to the Cache Creek Resources Management Plan (CCRMP) and the Cache Creek Improvement Program (CCIP). This material removal is necessary and required in order to allow landowners to protect structures, infrastructure and land uses along the creek and downstream, from damage from natural creek forces (scour, erosion, deposition, washout, etc.). This chapter establishes the regulations applicable to all material removal allowed to occur within Cache Creek, within the boundaries of the CCAP.

(b) Stabilizing the channel banks and profiles pursuant to the CCRMP/CCIP will result in reduced erosion, increased in-channel recharge, and additional riparian habitat opportunities.

Article 2. Definitions

Sec. 10-3.201. Scope.

The definitions set forth in Article 2 of Chapters 4 and 5 of Title 10 of the County Code shall apply throughout this chapter.

Sec.10-3.202. Act.

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

Sec. 10-3.203. Commercial Mining.

“Commercial mining” shall mean mining undertaken for the sole and/or primary purpose of commercial gain. Pursuant to the CCAP, commercial in-channel mining is precluded within Cache Creek.

Sec. 10-3.204. Director.

As used within this Chapter, “Director” shall refer to the County Administrator, or a designee chosen by the County Administrator (as amended by § 2, Ord. 1407, eff. April 28, 2011).

Sec. 10-3.205. Excavation.

As used within this Chapter, “excavation” shall be synonymous with “material removal” as defined below.

Sec. 10-3.206. In-Channel.

“In-Channel” shall mean that portion of Cache Creek (approximately 5,109 acres in total) depicted in Figure 1 of the CCRMP as falling within the creek channel boundary.

Sec. 10-3.207. Material Removal.

“Material removal” also referred to as “maintenance mining” shall mean excavation or fill undertaken for the sole and/or primary purpose of channel stabilization, maintenance of flood flow capacity, erosion protection, protection of existing structures and infrastructure, riparian restoration, and implementation of the Channel Form Template as described in the CCIP and consistent with the CCRMP.

Sec. 10-3.208. Off-Channel.

“Off-Channel” shall mean that portion of the lower Cache Creek basin depicted in Figure 2 of the CCRMP as falling outside of the creek channel boundary.

Sec. 10-3.209. Site Specific Plan.

"Site specific plan" shall mean an individual project plan for which a Flood Hazard Development Permit (FHDP) is approved by the Director that is consistent with the CCRMP (Public Res. Code Section 2715.5(d)). Site specific plans shall, at a minimum, include the information required by Section 2715.5(d) of the Act and such additional information as may be required pursuant to this chapter. Pursuant to Section 103.506 an approved application for a FHDP shall constitute a site specific plan.

Sec. 10-3.210. Technical Advisory Committee.

"Technical Advisory Committee" shall be as defined in the CCRMP/CCIP and shall also be known as the "TAC". The TAC is established to provide scientific and technical review for all projects conducted under the CCIP. Members of the TAC may be contracted by the County Administrator. The TAC is comprised of members with technical expertise in river systems, including hydraulic engineering, fluvial geomorphology, biology, and riparian restoration (as amended by § 2, Ord. 1407, eff. April 28, 2011).

Article 3. Scope and Exemptions

Sec. 10-3.301. Scope of Regulations.

Unless otherwise provided in this article, no person or entity shall conduct in-channel material removal operations unless a FHDP has been approved in accordance with Chapter 4 of Title 8 of the County Code (commencing with Section 8-4.404) and a Site-Specific Plan and financial assurances as described in the Act (Public Res. Code Section 2715.5) have been approved in accordance with this chapter.

Sec. 10-3.302. Scope: Area Defined.

This chapter shall apply only to material removal activities that occur within the area located within the boundary of Cache Creek as defined in the Cache Creek Area Plan of the Yolo County General Plan. The conduct of mining outside of the channel of Cache Creek is regulated by Chapter 4 of this title and shall not be subject to the provisions of this chapter.

Sec. 10-3.303. Exemptions: Defined.

The provisions of this chapter shall not apply to those activities and operations, which are exempted by Sections 2714 (e.g. farming, construction projects, etc.) and 2776 (vested rights) 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. 10-3.304. 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 Planning Commission pursuant to Article 10 of Chapter 4 or Title 10.

Article 4. In-Channel Standards

Sec. 10-3.401. Access Roads.

(a) All unpaved roads used during in-channel material removal operations shall be adequately watered to keep soil moist at all times, in order to control fugitive dust.

(b) Upon cessation of use, operational areas and haul roads that are not required for future use of the site shall be ripped and prepared to prevent compaction and allow for revegetation.

(c) In-channel haul roads shall be located along the toe of the streambank, in order to provide additional bank stabilization and to minimize disturbance of the low-flow channel. In areas where the low-flow channel is immediately adjacent to the toe of the streambank, in-channel haul roads shall be designed to protect the low flow channel. This design shall be submitted to the TAC for review and comment. Each operation may have no more than two (2) haul roads at one time that cross the low-flow channel. Construction of the haul roads shall not result in excavation of the toe of the streambank, and shall be designed to avoid existing or restored riparian habitat

(d) No new haul roads shall be constructed through established native riparian vegetation. Haul roads shall be realigned or redesigned to avoid established habitat.

(e) Haul roads shall comply with all applicable requirements and conditions of approval.

Sec. 10-3.402. Adherence to CCRMP/CCIP.

The general standard for material removal or fill within the creek shall be to ensure that the CCRMP and CCIP are strictly followed. This article sets forth minimum acceptable in-channel material removal standards to implement this general standard.

Sec. 10-3.403. Agency Approvals.

All work within the channel shall comply with the requirements of all agencies of jurisdiction, including but not limited to: Yolo County Building Division (engineered plans for dams or sills), Yolo County CCRMP and CCIP (all applicable standards), the State Department of Conservation (SMARA compliance), the State Department of Fish and Wildlife (Section 1601 Streambed Alteration Agreement), the State Regional Water Quality Control Board (Section 401 and stormwater discharge), Caltrans (protection of bridges and highways), the U.S. Army Corps of Engineers (Section 404), the U.S. Fish and Wildlife Services (Endangered Species Act), and the Federal Emergency Management Agency (Flood Hazard Development Permit). These

requirements may take the form of programmatic (“general”) permits issued for the entire CCRMP/CCIP for a multi-year period if proposed activities are deemed consistent with the provisions of those permits by the Director.

Sec.10-3.404. Cultural Resources.

(a) All resource records shall be checked for the presence of and the potential for prehistoric and historic sites, paleontological resources, and unique geologic features. Damaging effects to cultural resources shall be avoided whenever possible. If avoidance is not feasible, the importance of the site shall be evaluated by a qualified professional (e.g. archeologist, paleontologist, or geologist, depending on the resource type) prior to the commencement of operations. If a cultural or unique geological resource is determined not to be important, both the resource and the effect on it shall be reported to the County, and the resource need not be considered further. If avoidance of an important cultural, paleontological, or unique geologic resource is not feasible, a mitigation plan shall be prepared and implemented. The mitigation destruction or damage to the site, and demonstrate how the proposed mitigation would serve the public interest.

(b) If human skeletal remains are encountered during material removal, all work within seventy-five (75) feet shall immediately stop, and the County Coroner shall be notified within twenty-four (24) hours. If the remains are of Native American origin, the appropriate Native American community identified by the Native American Heritage Commission shall be contacted, and an agreement for treating or disposing, with appropriate dignity, of the remains and associated grave goods shall be developed.

(c) If any cultural resources, such as chipped or ground stone, historic debris, building foundations, or paleontological materials are encountered during material removal, then all work within seventy-five feet shall immediately stop and the Director shall be notified at once. Any cultural or paleontological resources found on the site shall be recorded by a qualified archaeologist or paleontologist using relevant professional protocols and a report fully recording the find shall be submitted to the County. This report shall include recommendations for appropriate treatment of the resource/artifact. The County encourages the donation of resources, other than tribal cultural resources, to the County for public display at the Cache Creek Nature Preserve or other appropriate venue.

Sec. 10-3-405. Design Guidelines.

All in-channel activities shall be consistent with and fully implement the design guidelines for channel stabilization and maintenance contained in Chapter 5.0 of the CCIP. Where feasible and appropriate, as recommended by the TAC, the Channel Form Template shall be implemented as a part of the in-channel work.

Sec. 10-3-406. Exceptions.

Where an applicant demonstrates to the lead agency that an exception to the standards specified in this article is necessary, the TAC may recommend an alternative standard for

inclusion in the FHDP. Exceptions will be considered by the Director only where necessary due to special circumstances associated with the subject site, including size, shape, topography, location, or surroundings. Although the TAC may recommend alternative standards, in all cases the alternative standard must meet or exceed the policy objectives, technical requirements, and/or environmental thresholds set forth in the OCMP, as determined by the Director (see Article 5).

Sec. 10-3.406.1. Habitat Conservation Plan Compliance.

All in-channel activities performed under the CCRMP and CCIP shall be consistent with applicable components of the Yolo County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP).

Sec. 10-3.407. Hazards and Hazardous Materials.

(a) All heavy equipment used for channel improvement projects shall be kept in good working order to reduce emissions and preclude the leakage of oils, fuels, and other substances that may adversely affect property, the environment, or human health and safety. Fueling and maintenance activities shall not occur within one-hundred (100) feet of the Channel Form Template boundary or active channel, whichever is wider. All procedures for handling, storage, and disposal of hazardous materials shall be described in a Storm Water Pollution Prevention Plan if required for the projects. Any long-term project (e.g., extensive erosion control, gravel removal) shall have a chemical spill prevention and emergency plan filed and approved by the appropriate local agency. The plan must include training of the equipment operator and workers in spill reporting and how to minimize environmental damage.

(b) Firms or individuals performing work within the channel shall immediately notify the Director and/or the Yolo County Office of Emergency Services of any events such as fires, explosions, spills, land or slope failures, or other conditions at the site which could pose a risk to property, the environment, or human health and safety outside the permitted area. Upon request by any County agency, the firm or individual shall provide a written report of any such event, within thirty (30) days, which shall include, but not be limited to, a description of the facts of the event, the corrective measures used, and the steps taken to prevent a recurrence of the incident. This condition does not supersede nor replace any requirement of any other government agency for reporting incidents.

(c) A Hazardous Materials Plan and the Spill Prevention Countermeasure Contingency Plan, if required, shall be filed with the Yolo County Environmental Health Division, prior to the commencement of work within the channel.

(d) Wastewater from in-channel projects shall not be directly discharged to Cache Creek. Measures such as berms, silt fences, sediment ponds, hay bales, and/or revegetation shall be used to control erosion. Agricultural tailwater shall be diverted to catchment basins prior to release to the creek.

(e) Sediment fines generated by processing of in-channel sand and gravel shall not be used for agricultural soil enhancement or creek revegetation projects. In-channel sediment fines

shall only be used as backfill material in off-channel habitat restoration if it can be demonstrated that sediment quality is acceptable based on applicable regulations and standards.

(f) All internal combustion engine driven equipment and vehicles shall be kept tuned according to the manufacturer's specifications and properly maintained to minimize the leakage of oils and fuels. No vehicles or equipment shall be left idling for a period of longer than ten (10) minutes.

(g) For bank repair projects using fill, appropriate leaching tests on fill materials shall be conducted to determine if it contains leachable constituents at concentrations of potential concern. If potential fill material is found to contain constituents at levels exceeding applicable thresholds, that fill materials shall not be used.

Sec. 10-3.408. Hours of Operation.

All in-channel operations shall be limited to the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, unless emergency conditions require otherwise as determined by the Director.

Sec. 10-3.409. Limitations on Removal of Material.

(a) Where gravel bars are to be removed, there shall be minimal disturbance of established, mature riparian vegetation and there shall be preservation of geomorphic controls on channel gradient where they exist. Complete removal of gravel bars may be recommended by the TAC and approved by the Director only if hydraulic conditions related to the bar are recognized to threaten structures and property.

(b) Aggregate material to be removed from the streambed or streambank under approved in-channel projects shall be removed as soon as is practicable after deposition, prior to the establishment of vegetation. No stockpiles shall be left within the channel after material removal has been completed.

(c) The amount of aggregate removed from the channel shall be limited to the average annual amount of sand and gravel (and associated fines) deposited since the last prior year of in-channel material removal as estimated by the TAC based on channel topography and bathymetry, not to exceed 690,800 tons annually on average over a ten-year period, except where bank widening is necessary as a part of implementing the Channel Form Template, or where potential erosion and flooding problems exist. The amount and location of in-channel aggregate material removal shall be carried out according to the ongoing recommendations of the TAC and any related County approvals, with the voluntary cooperation of the landowners.

(d) Aggregate material removed pursuant to this ordinance may be sold (CCRMP, Section 6.1, para. 5). This material is excluded from the tonnage allocation assigned to each off-channel operator pursuant to an approved FHDP (CCRMP, Section 6.1, para. 7).

(e) The volume of aggregate material removed pursuant to this ordinance shall be reported to the County on an annual and total-per-permit basis.

(f) Unless a subsequent environmental impact assessment is completed or a determination is made that a subsequent environmental impact assessment is not necessary, the combined volume of aggregate material removed from in-channel and off-channel sources that

is transported on the County roadway network in any given year shall not exceed the annual allocation assigned to the applicable off-channel operator (as specified in their approved mining permit).

Sec. 10-3.410. Location.

Removal of in-channel aggregate materials shall only occur pursuant to this chapter and pursuant to the requirements of the CCRMP/CCIP. Removal of in-channel aggregate materials shall be restricted to locations within the Cache Creek channel that fall within the boundaries of the CCAP.

Sec. 10-3.411. Noise.

Noise levels shall not exceed an average noise level equivalent (Leq) of eighty (80) decibels (dBA) measured at the outermost boundaries of the parcel being excavated. However, noise levels may not exceed an average noise level equivalent (Leq) of sixty (60) decibels (dBA) at any nearby residences or other noise-sensitive land uses, unless emergency conditions require otherwise as determined by the Director.

Sec. 10-3.412. Permit Life.

FHDPs shall be approved for the period of time identified by the Director as necessary to complete the proposed in-channel activity, up to a maximum period of two years. A permit may be extended for an additional two years, subject to further review and approval by the Director. All FHDPs shall be subject to annual adjustment by the Director to address the amount of materials that can be extracted from the site based on data obtained through the annual monitoring program.

Sec. 10-3.413. Processing Prohibition.

Processing of in-channel material shall occur only at approved off-channel plant facilities. No new plant facilities shall be established for the purposes of processing in-channel materials.

Sec. 10-3.414. Regrading.

Streambed regrading after material removal, if required, shall leave behind an undulating surface topography outside of the low-flow channel as similar to naturally formed topography in the project area as possible, so that the resulting surface depressions expose the shallow water table and maximize potential for colonization by riparian trees. Features such as channels and pools maximize the diversity of environmental conditions for the establishment of riparian habitat, and are therefore encouraged.

Sec. 10-3.414.1 Restoration.

(a) Restoration plans shall be reviewed by the TAC prior to implementation. Restoration projects shall include a minimum of three years of post-implementation monitoring to ensure establishment of native species. Longer monitoring periods are encouraged as relevant

to the species. Two years of monitoring following irrigation removal should be considered if merited based on species and site conditions. Monitoring need not be restricted to a contractor obligation and may be partially satisfied through observations conducted during the annual creek walk. Pursuant to the CCRMP (Action 4.4-6) projects that establish native woody vegetation shall be favored over emergent wetlands in appropriate areas within the planning area.

(b) Design and develop habitat restoration projects so that they do not adversely impact the agricultural productivity of nearby farmland.

(c) Restoration projects may be coordinated with agricultural drainage structures that empty into Cache Creek or previously mined areas separated from the creek, so that the sediment deposited can provide additional topsoil and so that riparian species requiring a more steady supply of water can be established.

(d) Vegetated buffers should be placed between restored habitat areas and adjoining farmland in order to minimize the potential for riparian areas to serve as reservoirs for predators and insect pests. Said buffers will also reduce the effects of noise, dust, and spraying generated by agricultural operations on wildlife and riparian vegetation.

(e) Species and water features included in habitat areas should be designed to discourage the intrusion of wildlife, insect pests, and weeds that would impair local crops.

(f) Trees that are suitable for wildlife perching near agricultural fields dedicated to row crop production should be incorporated into habitat design in order to provide foraging habitat for Swainson's hawks and other birds of prey.

(g) All habitat restoration, creation, or enhancement plans proposed within the CCRMP channel boundary shall be reviewed by the County Agricultural Commissioner if requested by proponents of channel modification projects. The Agricultural Commissioner shall identify and recommend appropriate vegetative buffers between habitat areas and agricultural fields and effective management of site water resources (including appropriate integration of agricultural drainage features into habitat planning). Buffers that would result in partial or secondary loss of agricultural land shall not be recommended by the Agricultural Commissioner.

(h) Incorporate agriculturally related features, such as agricultural forage areas and drainage systems, into the design of habitat planning.

Sec. 10-3.415. Revegetation.

(a) Approved projects that result in the removal of material from channel banks and/or removal of riparian vegetation shall be required to restore the project area consistent with the following standards, and the CCIP:

(1) Native oaks, drought-tolerant shrubs, and drought-tolerant understory species shall be planted on upper slopes, terraces, and other areas where groundwater is deep and soil moisture from flows is minimal.

(2) Shallow terraces may be created along the banks of the low-flow channel from I-505 to the Capay Bridge, with cottonwood and willow pole cuttings planted on the benches. Optional methods include a) digging short trenches diagonally to the low-flow channel (angled downstream), with pre-rooted willow and cottonwood cuttings planted on the upstream

edge of the trench; and b) creating in-channel riparian plots along this reach to trap bed materials to aid in creating the shallow terraces. These measures would allow for the development of a ribbon of vegetation to establish along the low-flow channel in this area, thereby helping to connect the riparian corridor.

(3) Planting shall be conducted immediately after grading, or other site preparation, before invasive vegetation has become established. If undesirable vegetation does become established, it should be removed by mechanical means and approved herbicides, under the supervision of a licensed applicator.

(4) Dense native vegetation shall be emphasized along the streambank to create a distribution of velocities within the channel, with the highest velocities occurring within the low-flow channel. To ensure adequate water supply for new plantings, secure irrigation systems should be installed for revegetation projects within the planning area as needed.

(5) Habitat areas located next to grazing lands shall be fenced in order to prevent vegetation disturbance. Signage shall be installed indicating the area is undergoing habitat restoration.

(6) Fertilizer shall not generally be used because its application favors non-native vegetation. Where appropriate, however, trees and shrubs may be planted with a slow-release fertilizer.

(7) Native seeds, plants, and cuttings used for reclamation and restoration activities shall be ecotypes of Cache Creek Watershed genetic origin, including areas outside of Yolo County, and of Yolo County genetic origin when materials are used that originate from outside of the Cache Creek Watershed. Cottonwood cuttings shall be collected and contract grown at a nursery with staff experienced in the propagation of native plants. Alternatively, cottonwood and/or willow cuttings can be harvested from vegetation in the project vicinity and planted within the same day. If storage of cuttings is necessary, it should occur within the creek or in a bucket of cool water. Other woody riparian species shall be collected and contract-grown from local seed by a qualified native plant nursery.

(8) Planting shall be initiated in the fall after the first soaking rains. Container plants shall be planted in holes at least twice as deep and wide as the plant container. The rootball should be thoroughly dampened before planting and the planting holes deeply irrigated prior to planting. After planting, the holes should be backfilled with native substrate material (with no mulch added) and thoroughly tamped to remove air pockets. Willow cuttings may be planted in clusters in planting holes prepared and backfilled in a similar manner. Trees, shrubs, and willow cutting clusters shall be located in randomly spaced, naturally clumped patterns. More regular planting patterns may be considered for larger sites, in order to allow for mechanized equipment used to maintain the site. Herbaceous seed mix (if used) should be planted via broadcast seeding (including raking in), drill seeding (preferred method for flatter areas), or hydroseeded (without hydromulch) over the planting area. If hydroseeding is used, the area shall then be covered with blown rice straw meeting State "weed-free" standards at one ton per acre. Soil stabilizer or tackifier, such as Ecology Controls M-Binder, shall then be included at 150 pounds per acre.

Hydromulching is not recommended because of a history of poor results with native seedlings. Herbaceous species may also be planted via plugs as appropriate.

(9) Existing hydraulic conditions shall be assumed for all proposed biotic reclamation activities. The County shall work with the Yolo County Flood Control and Water Conservation District to explore opportunities for increasing surface flows during spring and summer. The TAC would be responsible for identifying and implementing new restoration opportunities resulting from the increased water availability. All plantings should be carefully selected based on the existing hydrology and water availability of the reclamation area.

Irrigation of tree and shrub plantings may be necessary for the first two or three summers in drier sites to allow the roots to develop sufficiently to tap into the summer ground water level. Irrigation may be necessary at least twice per month during dry periods for the first three years. Water requirements of young plantings should be evaluated as part of routine monitoring, with adjustments to the frequency and duration of irrigation made in response to indications of stress.

(10) The site shall be closely monitored for competing nonnative and invasive vegetation, especially priority invasive species on the list maintained by the Cache Creek Conservancy. Non-native species shall be sprayed or removed by hand as necessary to attain the success criteria, as defined in each site specific plan. For sites with substantial presence of nonnative species, an additional year of treatment shall be conducted to deplete the seed bank and prepare the site for planting.

(11) All planted sites shall be monitored for native plant establishment and growth for a minimum of three years. Longer monitoring periods are encouraged as relevant to the species. Two years of monitoring following irrigation removal should be considered if merited based on species and site conditions. Monitoring need not be restricted to a contractor obligation and may be partially satisfied through observations conducted during the annual creek walk. If understory species are planted, monitoring shall include standard understory assessments (e.g., percent cover by species at peak standing biomass). Monitoring data shall be made available to the County and the Cache Creek Conservancy, and stored in a centralized database.

(12) The following guidelines shall be followed when developing wetland habitat areas, with refinements and adjustments made based on current professional practice where recommended by a qualified biologist, subject to review by the TAC:

(A) Limit dense stands of aquatic vegetation in shallow areas to lower mosquito harborage and enhance wave action. This will also serve as substrate for mosquito predators.

(B) The banks of areas that retain water after June 1 (the beginning of the optimal mosquito breeding season) shall be steep enough to prevent isolated pooling as the water level recedes, to allow for wave action and to provide access by mosquito predators. Shorelines shall be configured so as not to isolate small channels or shallow ponding areas from the main body of water, to provide continuous access by predators, especially mosquito fish.

(C) Seasonal marshes shall be designed to have at least four months of soil saturation or shallow inundation. Water depths shall not exceed two (2) feet of water.

(D) Marsh species shall be planted every six (6) feet using plugs salvaged from marshes in the immediate vicinity or obtained from a nursery. Transplanting shall take place within twelve (12) hours after salvage and the root masses shall be kept continuously inundated from the time of transplanting.

(E) Wetland areas shall cover a minimum of one (1) acre. Side slopes shall be no steeper than 3:1 (horizontal:vertical). Small islands and complex shorelines shall be provided to create a diverse environment. Wetland designs shall include provisions for the wetlands to be partially drained periodically, in order to allow for the reseeding of aquatic plants and to promote the decay of built up organic debris.

(F) Pit bottoms shall be recontoured to create areas for waterfowl nesting and depressions to provide a more permanent water feature. Islands should generally be located on the upwind side of the water body to minimize exposure to the prevailing winds. Island slopes above the water level should be no steeper than 2:1 (horizontal:vertical). Emergent vegetation shall be placed around the edges of islands to reduce wave-related erosion. Shrubs shall be widely spaced. Trees and tall shrubs shall not be planted on the islands, since predators perch in them to prey on waterfowl.

(G) Appropriate species and densities for marsh restoration may include the following:

<u>Species (scientific name)</u>	<u>Species (common name)</u>	<u>Density (plugs per acre)</u>
<i>Eleocharis radicans</i>	Creeping spikerush	200
<i>Juncus balticus</i>	Baltic rush	100
<i>Schoenoplectus acutus var. occidentalis</i>	Tule	100
<i>Schoenoplectus californicus</i>	Bulrush	100
<i>Schoenoplectus pungens</i>	Three-square	10
<i>Carex rostrata</i>	Beaked sedge	5
<i>Equisetum hyemale</i>	Scouring rush	5
<i>Cephalanthus occidentalis</i>	Buttonbush	5

(13) The following guidelines shall be followed when developing riparian woodland habitat areas, with refinements and adjustments made based on current professional practice where recommended by a qualified biologist, subject to review by the TAC:

(A) Riparian woodland shall be established only where there are coarse slopes containing soil types such as cobbly loam, gravelly loam, or other loamy textures. Where slopes contain significant clay layers, open woodlands (e.g., oak savannas) or grasslands shall be restored instead.

(B) Native trees and shrubs shall be planted in clusters to create alternate patterns of open and enclosed spaces. Site specific characteristics may require alternative planting patterns.

(C) Native understory species should be planted whenever possible to reduce soil erosion, resist nonnative species establishment, and to enhance habitat for wildlife and pollinators.

(D) Appropriate species and densities for riparian woodland restoration may include the following:

<u>Species (scientific name)</u>	<u>Species (common name)</u>	<u>Density (# or lbs./acre)</u>
<i>Rosa californica</i>	Wild rose	36
<i>Quercus lobata</i>	Valley oak	33
<i>Populus fremontii</i>	Fremont cottonwood	26
<i>Salix gooddingii</i>	Black willow	23
<i>Salix laevigata</i>	Red willow	23
<i>Salix lasiolepis</i>	Arroyo willow	23
<i>Salix exigua</i>	Sandbar willow	23
<i>Salix gooddingii</i>	Gooding's black willow	23
<i>Rubus ursinus</i>	California blackberry	19
<i>Acer negundo</i>	Box elder	18
<i>Vitis californica</i>	Wild grape	16
<i>Cornus sericea</i>	Dogwood	16
<i>Fraxinus latifolia</i>	Oregon ash	16
<i>Platanus racemosa</i>	Western sycamore	16
<i>Sambucus nigra ssp. caerulea</i>	Blue elderberry	12
<i>Ceanothus cuneatus</i>	Buckbrush	12
<i>Artemisia douglasiana</i>	Mugwort	10
<i>Baccharis salicifolia</i>	Mule fat	6
<i>Atriplex lentiformis</i>	Quailbush	6
<i>Elymus glaucus</i>	Blue wildrye	16 lbs.
<i>Hordeum brachyantherum</i>	Meadow barley	16 lbs.
<i>Elymus triticoides</i>	Creeping wildrye	16 lbs.

Additional understory species, especially native forbs that provide pollinator resources (e.g., milkweeds, native clovers, lupines, California poppy) should also be considered.

(14) The following guidelines shall be followed when developing oak woodland habitat areas, with refinements and adjustments made based on current professional practice where recommended by a qualified biologist, subject to review by the TAC:

(A) Oaks should generally be widely spaced (e.g. 50 ft. spacing), and shrubs should generally be planted in mixed-species clusters (e.g. 25 ft. spacing). Native grasses and forbs should be densely planted in-between woody vegetation.

(B) Appropriate species and densities for oak woodland/savanna restoration may include the following:

<u>Species (scientific name)</u>	<u>Species (common name)</u>	<u>Density (# or lbs./acre)</u>
<i>Quercus lobata</i>	Valley oak	20
<i>Rosa californica</i>	Wild rose	15
<i>Sambucus nigra</i> ssp. <i>caerulea</i>	Blue elderberry	10
<i>Baccharis pilularis</i>	Coyote brush	10
<i>Heteromeles arbutifolia</i>	Toyon	10
<i>Cercis occidentalis</i>	Redbud	10
<i>Frangula californica</i>	Coffeeberry	10
<i>Rubus ursinus</i>	California blackberry	8
<i>Quercus wislizeni</i>	Interior live oak	6
<i>Aesculus californica</i>	California buckeye	5
<i>Elymus triticoides</i>	Creeping wildrye	16
<i>Bromus carinatus</i>	California brome	10
<i>Hordeum brachyantherum</i> ssp. <i>californicum</i>	California barley	5 lbs.
<i>Poa secunda</i>	Pine bluegrass	5 lbs.
<i>Stipa pulchra</i>	Purple needlegrass	5 lbs.
<i>Elymus trachycaulus</i>	Slender wheatgrass	5 lbs.

Additional understory species, especially native forbs that provide pollinator resources (e.g., milkweeds, native clovers, lupines, California poppy) should also be considered.

(15) The following guidelines shall be followed when creating habitat areas within previously mined areas outside of the active channel, with refinements and adjustments made based on current professional practice where recommended by a qualified biologist, subject to review by the TAC:

(A) Basins that have floors close to the groundwater level should be restored to seasonal marsh and riparian wetlands. Those that are permeable, dominated by sand and gravel, should promote woodland habitat.

(B) Pit floors shall have sufficient topsoil and overburden to support the proposed habitat. Overburden and soil may be obtained from the diversion of agricultural tailwater, aggregate processing wash fines, of deposition by the creek. Areas to be planted shall be appropriately prepared prior to planting. If necessary, soils may be tested after preparation has occurred in order to determine the need for soil amendments.

(C) Pits should then be planted and irrigated until the plants have established. Agricultural tailwater is encouraged as an irrigation source. It would provide a valuable source of water for revegetation projects, and would also provide bio-filtering for the sediment and residue pesticides contained within the tailwater.

(D) Pits should be monitored closely for invasive plants species, and invasive species should be removed if found.

(E) Areas that will not be planted may be graded to create steep, barren slopes to provide habitat for the bank swallow.

(F) Except in important recharge areas, levees may be removed, breached at the downstream end, or a culvert installed at the downstream end to allow for dynamic interaction with the variable water level in the creek. Natural flooding will provide additional water, increase the diversity of tree species through colonization, and allow for the accumulation of organic nutrients and sediment.

(G) Habitat plans shall take into account the range of expected water level fluctuations and shall adjust the siting and design of the pit accordingly.

(H) In areas where fluctuating groundwater levels may affect revegetation plots at wet pit sites, consult with the TAC hydrogeologist and biologist to develop a viable, site-specific planting area.

(16) Topsoil and vegetation removed from the streambed shall be salvaged for use in restoration planting within the channel.

(17) Where the low-flow channel is creating excessive bank erosion problems and its relocation becomes necessary, grading within the low-flow channel shall provide topographic conditions that will ensure the safe passage of fish and prevent them from becoming trapped in isolated pockets of water.

(18) Low weirs may be installed, outside of the low-flow channel, to provide shallow pools for encouraging the establishment of riparian vegetation. When establishing shallow pools out of the low-flow channel, but within the floodplain of Cache Creek, the County shall coordinate with the TAC and the California Department of Fish and Wildlife to minimize the potential for native fish species mortality due to potential impediments to fish migrations.

(19) Site-scaled treatment of priority species shall begin within the first year after any ground disturbance using best available methods and optimal timing as appropriate for the species present (e.g., herbicide spraying, cut/stump, mechanical removal). All chemical spraying must be performed by, or under the supervision of, a Qualified Applicator Licensee and reflect input from a Pest Control Advisor. All cut plants shall either be disposed of or burned to reduce debris and prevent resprouts. All treatments shall be implemented in accordance with the Migratory Bird Treaty Act, the Yolo HCP/NCCP, as other regulations as appropriate. Monitoring of treated areas shall be implemented in order to determine if or when retreatment is necessary to ensure complete removal of the target species.

(20) Where riparian restoration is proposed in streambed areas located outside of the low-flow channel, cottonwood and willow cuttings should be placed within existing swales and other naturally occurring low-elevation areas in order to provide them with sufficient soil moisture to survive the summer months.

(21) The TAC shall evaluate the vegetative cover within the CCRMP on an annual basis. At a minimum of once every five years, the existing hydraulic model of the Cache Creek channel shall be updated based on current conditions, including topography and estimation of channel roughness based on vegetation conditions. Based on these updates, the TAC shall determine whether changes in topography and vegetation are decreasing channel flood capacity and recommend actions for consideration by landowners and agencies that could alleviate such a loss of capacity if deemed appropriate.

(b) Vegetated buffers comprised of native species should be placed between restored habitat areas and adjoining farmland, in order to minimize the potential for riparian areas to serve as reservoirs for agricultural pests. Said buffers will also reduce the effects of noise, dust, and spraying generated by agricultural operations on wildlife and riparian vegetation.

(c) Native species and water features included in habitat areas should be designed to discourage the proliferation of agricultural pests and weeds that would impair local crops.

(d) Native species shall be selected to encourage the biological control of agricultural and native habitat pests and weeds.

(e) Native trees that are suitable for wildlife perching near agricultural fields dedicated to row crop production should be incorporated into habitat design, in order to provide foraging habitat for Swainson's hawks and other birds of prey.

(f) As an alternative to on-site revegetation where such cannot be feasibly and successfully implemented, habitat restoration or creation at a suitable off-site location and/or non-native removal and other habitat enhancement at a suitable off-site location will be required.

Sec. 10-3.416. Seasonal Restrictions.

Pursuant to the CCIP, the deadline for submittal of applications for an FHDP in the Cache Creek channel is May 31st. The deadline for completion of approved in-channel work is November 1st, unless an extended period for completion is recommended by the TAC, consistent with applicable general permit conditions imposed by other agencies of jurisdiction (see Section 103.403), and approved by the Director.

Sec. 10-3.417. Setbacks.

(a) No material removal shall take place within one-hundred and fifty (150) feet of the centerline of the low-flow channel, where the creek is contained within a single channel, except at the upstream and downstream ends of the removal site where it connects to the existing channel. Where the creek is braided or contains multiple active channels, no material removal shall take place within one-hundred and twenty-five (125) feet of each channel, except at the upstream and downstream ends of the removal site where it connects to existing channels.

(b) No material removal shall take place within twenty-five (25) feet of any mature trees to be retained within the channel, unless approved by TAC Biologist.

(c) For the purposes of this Section and CCRMP Performance Standard 6.5-8, channel stabilization and/or restoration activities that are otherwise consistent with the CCRMP and CCIP, but would encroach within these setbacks, are allowed subject to the review of the TAC and approval by the Director.

Sec. 10-3.418. Slopes.

(a) Final slopes for in-channel material removal shall conform to the channel slope and sinuosity guidelines shown in Table 1 of the CCIP. Material removal shall be sloped in a

downstream direction, towards the low-flow channel. When recommended by the TAC, alternate grading plans may be approved by the Director.

(b) In-channel material removal shall generally conform to the conceptual in-channel cross-section shown in Figure 3 of the CCIP. When recommended by the TAC, alternate grading plans may be approved by the Director.

Sec. 10-3-419. Surveys.

The applicant shall ensure that completed projects are surveyed to provide a record of as-built conditions. This survey shall be completed in a form acceptable to the TAC, and shall be submitted to the TAC within thirty days of completion of the project as determined by the Director.

Article 5. In-Channel Approval Process

Sec. 10-3.501. Applications: Contents.

Except as provided for in Section 10-3.502 of this article, all project application documentation shall be submitted to the Director at one time. Three (3) complete copies of the application shall be provided to the County. Applications for proposed in-channel activities shall include, but shall not be limited to, the following:

(a) Completed Flood Hazard Development Permit (FHDP) application forms;

(b) A narrative description of the proposed activity;

(c) Site specific technical reports requested by the TAC (if not already on file) such as a biological resources analysis and revegetation program; a hydrology analysis; a geotechnical analysis; an engineered material removal plan.

(d) A biological database search (e.g., California Natural Diversity Data Base) shall be completed prior to implementation of projects. The database search shall compile existing information on occurrences of special-status species and areas supporting sensitive natural communities that should be considered for preservation. In addition, the database search shall be supplemented by reconnaissance-level field surveys to confirm the presence or absence of populations of special-status species, location of elderberry shrubs, active bird nests and colonies, and extent of sensitive natural communities along the creek segment. Essential habitat for special-status species and sensitive natural communities shall be protected and enhanced as part of restoration efforts or replaced as part of mitigation plans prepared by a qualified biologist and reviewed by the TAC. Compliance with the Yolo HCP/NCCP will ensure mitigation for activities and species covered under that Plan.

(e) A cultural resources survey of the proposed mining area, in order to evaluate the potential for historic and/or prehistoric artifacts. A survey may not be required if a preliminary investigation from the Northwest Information Center indicates that the likelihood of archaeological resources is low for the proposed site.

(f) A site plan showing property lines, assessor's parcel numbers, on-site and adjoining land uses, topography, access, and vegetation.

(g) A description of the potential effects of the proposed project on hydraulic conditions upstream and downstream of the proposed project site.

(h) A chemical spill prevention and emergency plan (or its equivalent) files and approved by the appropriate lead agency for all long-term projects that involve the use of heavy equipment.

(i) Channel stabilization projects, as opposed to annual channel maintenance activities, may be required to submit refined hydraulic and sediment transport models for specific creek reaches to develop design parameters. The County will make available flow and sediment discharge data, current versions of hydraulic and sediment transport models, and information on channel stability trends in the vicinity of the proposed project. This information shall be used to prepare the application.

(j) An estimate of the financial assurances necessary to implement the proposed reclamation and/or restoration components of the permit, prepared in accordance with Chapter 5, 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 site-specific plan (e.g., 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 or restoration.

(k) 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, to evaluate the potential environmental effects of the proposal, or for such other good cause as determined by the Director in his or her sole discretion.

Sec. 10-3.502. Applications: Waiver of Information.

The Director may waive any of the items of information required in Section 10-3.501 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 applicant 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 applicant in writing, specifically describing the information which is being waived and specifying the date by which the applicant 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; or

(c) The County or TAC is acting as the applicant; or

(d) The information (or an acceptable equivalent) is already on file.

Sec. 10-3.503. Applications: Filing.

Applications shall be submitted to the Director no later than May 31st. TAC review and comment, review by the Director, and final action of the FHDP shall occur no later than June 30th. However, 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 8 of this chapter.

Sec. 10-3.504. Applications: Review.

The application shall be reviewed by the TAC and Director for consistency with the CCRMP, CCIP, and all applicable terms of the permits issued by other agencies of jurisdiction (see Section 10-3.403).

Once the application has been accepted, the Director shall submit the application package to the TAC for review and recommendation as soon as possible. Pursuant to the CCIP the role of the TAC is provide scientific and technical review and recommendations.

Sec. 10-3.505. Findings for Permit Approval.

The Director may approve a FHDP pursuant to this chapter (and Section 8-4.404 of the County Code) only if all of the following findings are made:

(a) The proposed in-channel activity is consistent with any County-administered general permits from other agencies of jurisdiction (see Section 10-3.403); or alternatively, that all other state and federal permits have been obtained.

(b) Any sand and gravel removed from the channel is a result of the proposed in-channel activity is necessary for one or more of the following reasons:

- (1) to maintain flood flow capacity
- (2) to protect existing structures, infrastructure, and/or farmland
- (3) to minimize bank erosion
- (4) to implement the Channel Form Template

(c) The proposed in-channel activity will protect sensitive biological resources.

(d) The proposed in-channel activity is consistent with the requirements of both the CCRMP and the CCIP, and with the requirements of Section 8-4.404 of County Code.

(e) Existing flooding problems are not exacerbated by the proposed in-channel activity.

Sec. 10-3.506. Decision.

After considering the application materials and the recommendations of the TAC, Director 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 Director may deem necessary to effectuate the purposes of the Act and this chapter. Such conditions may address any or all of the findings required by Section 10-3.505 of this article. If the application is conditionally approved, the conditions shall be specified in writing. Conditions of the permit will require that completed projects be surveyed to provide a record of as-built conditions.

The approved application shall satisfy the requirements for a “site specific plan” under Public Resources Code Section 2715.5(d).

Sec. 10-3.507. Appeals.

The decision of the Director shall become final within fifteen (15) days, unless appealed. The decision of the Director may be appealed pursuant to Section 8-4.405 of the County Code, upon submittal of a properly filed appeal form and appeal fee.

**Article 6. Amendments and Minor Modifications to
Approved Flood Hazard Development Permits**

Sec. 10-3.601. Amendments and Minor 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 proposed activity, site characteristics, regulations, or other aspects of the approved FHDP. Such changes may constitute either an amendment or minor modification of a permit, as described further below.

Sec. 10-3.602. Amendments: Applications.

Applications for amendments to previously approved FHDPs shall be submitted to the Director, on forms provided by the County, and shall be accompanied by the appropriate fees, as determined in Article 8 of this chapter. Such applications shall be processed pursuant to the procedures set forth in Article 5 of this chapter.

Sec. 10-3.603. Amendments: Exceptions.

Proposed exceptions to the in-channel standards for material removal constitute an amendment, and 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, and shall be processed as an amendment to the FHDP.

Sec. 10-3.604. Minor Modifications.

The Director may approve minor modifications of FHDPs pursuant to this chapter. A minor modification may only be approved if the Findings for Permit Approval in Section 10-3.504 can be made. If these criteria are not satisfied, an amendment must be pursued instead. Such modifications shall be noted on the approved plans and shall be initialed by the Director.

Sec. 10-3.605. Amendments and Modifications.

Amendments shall be acted upon by the County pursuant to the procedures identified in Article 5 of this chapter, as supplemented by this article.

Article 7. Annual Reports

Sec. 10-3.701. Cache Creek Monitoring Program.

The TAC shall implement a creek monitoring program pursuant to Chapter 6.0 of the CCIP, consisting of periodic collection of stream discharge and sediment transport data and annual analysis of changes in channel morphology and riparian vegetation. All data and analysis shall be summarized in an annual report submitted to the Board of Supervisors.

Sec. 10-3.702. Channel Improvement Projects.

The TAC will annually identify priority channel improvement projects on the basis of the results of the Cache Creek Monitoring Program. The annual report will describe the need for and purpose of identified priority projects. The report will describe the specific location of the projects and the general aspects of the improvements. Pursuant to the CCIP, the Director will coordinate with property owners to implement the projects.

Article 8. Fees

Sec. 10-3.801. Fees: Applications.

Each application for a FHDP or any amendments and modifications thereto shall be accompanied by the appropriate fee as determined in the Master Fee Resolution adopted by the Board of Supervisors.

Article 9. Confidentiality of Records

Sec. 10-3.901. Confidentiality of Records.

Any proprietary information submitted in a permit application, a report, or other document required by this chapter, which is considered by the applicant to be confidential shall be submitted under separate cover and shall be so marked by the applicant. Proprietary information shall include, but may not be limited to, the following: annual production figures, reserves, or rates of depletion of the aggregate resource being mined, pursuant to Section 2778(a) of the Act; well log information; and the location and extent of sensitive archaeological sites.

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, in consultation with the Office of the County Counsel if necessary, and shall either approved or denied. The information at issue shall be maintained in a confidential manner by the County until the Director reaches a decision.

The decision to approve or deny the claim of confidentiality by the Director shall be made in writing. If the claim of confidentiality is denied, the applicant may request the return of the information at issue. The Director's action on a claim of confidentiality is final, and may not be appealed to the Planning Commission or the Board of Supervisors. In any subsequent judicial

action or proceeding where the proprietary, confidential nature of the information is contested, the applicant shall reimburse the County for any legal fees and other costs reasonably incurred in defending against the disclosure of such information, regardless of whether the County prevails.

If the request is approved, then the confidential information shall be maintained under separate cover and shall be marked "confidential," "trade secret," or otherwise stamped to indicate its confidential status. The contents of the confidential file shall be made available only to the Director and those persons authorized in writing by the applicant and by the property owner. If the request is denied, the applicant may withdraw the information and include it with the application or report as a public document. Failure to submit any necessary information, or the applicant's decision to withdraw such information if a claim of confidentiality is denied, may result in an incomplete application or report.

Article 10. Inspections: Notices of Violations

Sec. 10-3.1001. Inspections: Purpose.

The Director shall make such necessary inspections and investigations of all in-channel operations 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 any permit approved pursuant to this chapter;
- (c) To investigate the environmental effects which the operations 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 chapter.

Sec. 10-3.1002. Inspections: Annual

During the life of the permit and any required monitoring, the Director shall conduct an inspection or inspections not less than once in any calendar year (consistent with the requirements of Pub. Resources Code Section 2774) of each in-channel operation to determine whether the applicant is in compliance with the Act, the Regulations, this chapter, and any permits or other approvals, and/or whether all authorized work has been properly completed.

Sec. 10-3.1003. Annual Inspections: Notification.

All inspections shall be documented using forms adopted by the State Department of Conservation. The Director shall notify the Department of the inspection within ninety (90) 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 of this chapter shall be specifically described;
- (b) The completed inspection forms;

- (c) A description of any pending reviews or appeals of permits, financial assurances, amendments or modifications thereto;
- (d) Aspects of the operation, if any, that were found to be inconsistent with the Act but were corrected before the submission of the inspection form to the Department.
- (e) Aspects of the operation, if any, that were found to be inconsistent with the Act but were not corrected before the submission of the inspection form to the Department.
- (f) A statement describing the County's intended response to any of the operation found to be inconsistent with the Act but were not corrected before the submission of the inspection form to the Department; and
- (g) Any supporting documentation. Copies of the notice shall also be provided to the applicant.

Sec. 10-3.1004. Inspections: Designee.

Inspections shall be conducted by a state-licensed geologist, state-licensed civil engineer, state-licensed landscape architect, state-licensed forester, or a qualified County employee who is familiar with land reclamation issues (as described in the Act and related regulations) and experienced in activities governed by the Act, and who has not been employed by the applicant in any capacity during the previous twelve (12) months.

Sec. 10-3.1005. Violations: Notice.

The following procedure shall be followed whenever the Director has reasonable cause to believe that an in-channel operation is in violation of the Act or the Regulations; this chapter; any terms or conditions of a permit issued pursuant to this chapter; or development agreement:

(a) In the event of a violation of the Act or Regulations, or a violation that in the sole discretion of the Director poses an imminent and substantial endangerment to the public health, safety, or the environment, the following procedures shall be followed:

(1) The Director shall provide a written notice to the operator at the time of inspection or as soon thereafter as the violation is made known. The operator shall be provided 30 days to correct. If correction is not or cannot be achieved within 30 days, the operator and the County may enter into a stipulated order to comply, with notice sent to the Department. A stipulated order to comply shall include a schedule and time for compliance that the County determines is reasonable after taking into account the actions and legal processes required to correct the violation.

(2) If the operator does not comply with a notice issued pursuant to (a)(1), above, within 30 days of being served the notice, the County may issue an Order to Comply, pursuant to Section 10-3.1106 of this Chapter.

(b) If the Director determines that a violation other than a violation of the Act, does not pose an imminent and substantial endangerment to public health, safety, or the environment, the following procedure shall be followed:

(1) The Director shall provide written notice to the operator documenting the potential violation ("condition of concern"). The Director may request additional information

from the operator to assess the site conditions and determine if a violation exists. The operator shall be provided 30 days to respond to this initial notice. If the requested information is not received within 30 days, the Director shall proceed with an Order to Comply as set forth in Section 10-3.1106. An extension of time may be requested by the applicant in cases where compilation of the information may take longer, but such extension shall not exceed 60 days.

(2) If the operator resolves the condition of concern within the timeframe set in (b)(1) above, the Director shall verify by conducting a site inspection or review of information provided by the operator, whichever is appropriate. The Director shall notify the operator in writing that the condition of concern has been satisfactorily resolved.

(3) If the Director determines the condition of concern is still active after the timeframe described in 3(b)(1), the Director shall submit a notice to the operator requiring submittal of a Correction Plan. The Correction Plan to be provided by the operator shall at a minimum describe in detail the sequence, methods, and timeline necessary for each step to correct the conditions of concern identified by the Director. The Correction Plan must be received within 30 days from the date of notification. The Director shall review and accept or request changes to the Correction Plan within 30 days of receipt. If changes or clarification is requested, the operator shall then be provided another 30 days to finalize and submit the final Correction Plan and commence implementation. Implementation must begin immediately (unless mutually agreed upon and documented in the Correction Plan) and must be fully completed no later than one year from the date of submission of the final Correction Plan.

Once the Correction Plan is finalized, the Director shall forward the Correction Plan to the Planning Commission as an informational/correspondence item with next the Planning Commission agenda packet. No formal action shall be taken by the Planning Commission on the Correction Plan.

(4) In the event that the procedure set forth above does not result in correction of a violation, an order to comply shall be served to the operator pursuant to Section 10-3.1106.

Sec. 10-3.1006. Violations: Order to Comply.

If the violation continues after the timeframes specified in Section 10-3.1005, the Director shall issue an order to comply requiring that the violation be corrected or abated and that the operator come into compliance with the applicable law, regulation, or requirement. The order to comply shall be delivered by personal service or certified mail, with a copy sent to the Department. An order to comply issued pursuant to this Section shall take effect 30 days following the service of the order to comply unless within those 30 days the operator appeals the order and requests a hearing before the Planning Commission. The order shall specifically describe both the violation(s) and the remedial steps required for compliance. 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, the potential harm to public health, safety, and the environment, and any good faith efforts to comply with the applicable requirements. An appeal

filed pursuant to this Section shall be noticed and heard pursuant to Section 82.225 of the County Code.

Sec. 10-3.1007. Violations: Hearing.

Upon the filing of an appeal pursuant to Section 10-3.1106, the Planning Commission shall conduct a public hearing to consider the violation. Upon the close of the hearing, the Commission shall take one of the following actions:

- (a) Affirm the order to comply of the Director;
- (b) Remove any of the violations or remedy steps required for compliance and affirm the order as modified; or
- (c) Vacate the order to comply.

If the order of the Director is affirmed, the Planning Commission's decision shall become final, unless an appeal is filed with the Board within fifteen (15) days after the decision, pursuant to Article 10 of this chapter.

Sec. 10-3.1008. Violations: Revocation.

If an applicant fails to abide by the requirements of an order to comply following the final decision of the Planning Commission pursuant to Section 10-3.1107 above, then the FHDP shall be considered revoked and the Director shall initiate procedures to revoke the applicant's permit(s) and forfeit the financial assurances in accordance with Article 11 of this chapter.

Sec. 10-3.1009. Violations: Administrative Penalties.

If the applicant fails to comply with an order to comply issued pursuant to this article, the Director may issue an order imposing administrative penalties of up to, but not more than, five thousand dollars (\$5,000) per day for noncompliance with this article in addition to noncompliance with any other article or chapter, retroactive to the original date of noncompliance. When determining the amount of the penalty, the Director 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 applicant.

The order establishing administrative penalties shall be served by certified mail to the applicant. Any such order shall become effective upon issuance and the penalties imposed therein shall be paid to the Director within fifteen (15) days. If the order imposing administrative penalties is appealed to the Planning Commission, the applicant shall deposit any amounts due pursuant to Section 10-11.10 with the County Treasury in an account earning interest at the County pooled rate. Any appeal to the Planning Commission must be filed within fifteen (15) days after the order if first mailed. The Planning Commission shall hear the appeal de novo.

Any decision to order administrative penalties shall become effective within thirty (30) days of the exhaustion of the administrative remedies provided in this chapter, unless the applicant files a petition for writ of mandate in the superior court for review of the order. If no

writ petition 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 applicant.

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. 10-3.1010. Violations: Public Nuisance.

Any in-channel activity in violation of this title, or in violation of any permit or order of to comply issued pursuant to this chapter, shall be considered a public nuisance. If the applicant fails to comply with an order to comply, issued pursuant to this article, the Director may refer the violation to County Counsel for abatement or the District Attorney for criminal remedies.