

**TITLE 10, CHAPTER 4
OFF-CHANNEL SURFACE MINING ORDINANCE**

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Article 1. Title, Authority, and Purposes

Sec. 10-4.101. Title.

This chapter shall be known as "The Off-Channel Surface Mining Ordinance of Yolo County" or "Mining Ordinance."

Sec. 10-4.102. 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; 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. 10-4.103. Purposes.

The purposes of this chapter are as follows:

(a) The extraction of sand and gravel is essential to the continued economic well-being of the state and to the needs of society. Although the County encourages the production of sand and gravel, consideration must also be balanced by other societal values, including but not limited to recreation, water resources, wildlife, agriculture, and aesthetics;

(b) The potential environmental impacts, operational methods, and reclaimed end uses of in-channel surface excavation are significantly different from those associated with off-channel surface mining. Thus, it is appropriate to provide separate performance standards and findings for both in-channel and off-channel activities, so that regulations contained within this title are sensitive to the specific issues involved in each of the two types of operations;

(c) Due to concerns about the impacts of excavation within the channel to structures, property, and riparian habitat, in-stream surface excavation will be minimized and will only be permitted for: maintenance of flood flow capacity; protection of existing structures, infrastructure, and/or farmland; erosion control; implementation of the Channel Form Template; enhancement of creek stability; establishment of riparian vegetation; recreation and

open space uses consistent with the Parkway Plan; and similar channel maintenance activities. Therefore, in order to provide the aggregate necessary for the County's needs, off-channel mining will be encouraged;

(d) Off-channel surface mining must be carefully monitored, in order to eliminate residual hazards to the public health and safety, and to maximize the benefits to the County from surface mining operations; and

(e) Off-channel surface mining takes place in diverse areas, where the geologic, climatic, biological, and social conditions are significantly different. Surface mining permits must be specifically adapted to the requirements of the particular land being mined. Therefore, this chapter imposes general performance standards, by which off-channel surface mining operations shall be measured in order to ensure that resources and infrastructure are managed in a consistent manner to maximize their overall benefit.

Article 2. Definitions

Sec. 10-4.201. Scope.

The definitions set forth in Article 2 of Chapter 5 of this title shall apply throughout this chapter.

Sec. 10-4.202. Abandon: Abandonment.

"Abandon" or "abandonment" shall mean to cease surface mining or reclamation with the intention of not resuming. 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. 10-4.203. 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. 10-4.204. Agency.

"Agency" shall mean the County Administrator. (§ 1, Ord. 1190, eff. September 5, 1996, as amended by § 3, Ord. 1407, eff. April 28, 2011)

Sec. 10-4.205. Board.

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

Sec. 10-4.206. 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. 10-4.207. Commission.

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

Sec. 10-4.208. County.

"County" shall mean the County of Yolo.

Sec. 10-4.209. Department.

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

Sec. 10-4.210. Director.

"Director" shall mean the County Administrator, or a designee chosen by the Administrator. (§ 1, Ord. 1190, eff. September 5, 1996, as amended by § 3, Ord. 1407, eff. April 28, 2011)

Sec. 10-4.211. 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. 10-4.212. Haul Road.

"Haul road" or "route" shall mean: 1) 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; and/or 2) the designated route aggregate trucks are authorized to take pursuant to Section 10-4.419.

Sec. 10-4.213. Idle.

"Idle" shall mean that an operator of a surface mining operation has curtailed production at the surface mining operation, with the intent to resume the surface mining operation at a future date, for a period of one year or more by more than 90 percent of its maximum annual mineral production within any of the last five years during which an interim management plan has not been approved.

Sec. 10-4.214. 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. 10-4.215. 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. 10-4.216. 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. 10-4.217. Minor Modification.

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

Sec. 10-4.218. 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. 10-4.219. Overburden.

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

Sec. 10-4.220. Prime Agricultural Land.

"Prime agricultural land" shall mean 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. 10-4.221. Reclamation.

"Reclamation" shall mean the combined 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. 10-4.222. 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. 10-4.223. 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. 10-4.224. Responsible Agency.

"Responsible agency" shall mean all public agencies other than the County which have discretionary approval power over the project.

Sec. 10-4.225. Slope.

"Slope" shall mean the angle of the ground surface, expressed as a ratio of the horizontal distance to the vertical distance.

Sec. 10-4.226. 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. 10-4.227. 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. 10-4.228. 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.

Article 3. Scope and Exemptions

Sec. 10-4.301. 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. 10-4.302. Scope of Regulations.

Unless otherwise provided in this article, no person shall conduct off-channel surface mining operations unless a surface mining permit has been approved in accordance with this chapter. Nothing in this chapter shall be interpreted as requiring the filing of a surface mining permit application for lands where surface mining operations were completed prior to January 1, 1976.

Sec. 10-4.303. Scope: Area Defined.

This chapter shall apply only to the area located within the boundary of the Off-Channel Mining Plan of the Yolo County General Plan. The conduct of excavation within the channel of

Cache Creek is regulated by Chapter 3 of this title and shall not be subject to the provisions of this chapter.

Sec. 10-4.304. 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. 10-4.305. 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 operator 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.

Article 4. Off-Channel Mining Standards

Sec. 10-4.401. Scope.

The general standard for the operation of surface mines is to ensure that the public health and safety and environment are protected. This article sets forth minimum acceptable off-channel mining standards to implement this general standard. These minimum acceptable standards shall be considered and discussed in every surface mining permit approved pursuant to this chapter. In addition, the minimum practices and standards set forth in the Act shall also be considered and discussed in every surface mining permit 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. 10-4.402. Access Roads.

The first one-hundred (100) feet of access road intersecting a County-maintained road shall be surfaced in a manner approved by the Public Works Department, with an approach constructed to County standards. Traffic control and warning signs shall be installed as required by the Public Works Department.

Sec. 10-4.403. Accident Reporting.

The operator shall immediately notify the Director of any events such as fires, explosions, spills, land or slope failures, or other conditions at the site which could pose a hazard to life or property. Action shall be immediately undertaken to alleviate the hazard. The operator 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. Failure to provide this report shall initiate violation

proceedings pursuant to Article 11. This condition does not supersede nor replace any requirement of any other governmental entity for reporting incidents.

Sec. 10-4.404. Aesthetics.

The visibility of mining operations, facilities, and landform alterations from public areas, viewpoints, and nearby residences shall be minimized, based on an assessment of site-specific visual characteristics and viewing conditions. The use of berms, vegetative screens, seeding, special plant materials and contouring the sides and top surfaces of modified landforms, or other measures, shall be incorporated into the individual mine and reclamation plans as appropriate.

Sec. 10-4.405. Annual Production Limits.

Each surface mine shall operate within the limits of the annual production level established in the use permit. Annual aggregate production may not exceed the established annual level, except to meet temporary market demand. Individual producers may exceed their maximum annual allocation by up to 20 percent in any one calendar year, so long as their running ten-year average does not exceed the maximum level. Aggregate sold in excess of the established annual level shall be subject to a \$0.10/ton surcharge. Monies generated by the surcharge shall be divided evenly between the CCIP fund and the Maintenance and Remediation Fund. The maximum cumulative amount of aggregate sold annually shall not exceed 5.97 million tons, plus the 20 percent market demand exception allowed by permits issued under the OCOMP. Waste concrete and asphalt that is processed as recycled materials for use in construction shall not be counted as part of an operation's maximum annual production.

Sec. 10-4.406. Benches.

During mining operations, a series of benches may be excavated in a slope provided that the excavations are made in compliance with the requirements of the state Mine Safety Orders (California Code of Regulations, Title 8, Subchapter 17). The vertical height and slope of the benches constructed for permanent reclaimed slopes shall not exceed maximum standards for the specific soil types presented in the California Code of Regulations, Title 8, Article 6. In general, vertical cutslopes between benches shall not exceed four (4) feet in height in topsoil and overburden sediments. Benching shall be allowed in cohesive soil (clay, sandy or silty clay, clayey silt) only. Slopes above the elevation of groundwater (determined at the time of the excavation by the level of exposed water in the excavation) that exceed the maximum vertical height shall be excavated and maintained at slopes not steeper than 2:1 (horizontal:vertical). Slopes located five (5) feet or less below the average summer low groundwater level shall not be steeper than 2:1 (horizontal:vertical). Slopes located more than five (5) feet below the average summer low groundwater level shall not be steeper than 1:1 (horizontal to vertical).

Vertical cutslopes in excess of four (4) feet in height may be approved for the development of special habitat (e.g., bank swallows) if a site-specific slope stability analysis, performed by a licensed engineer, indicates that the slope does not exceed critical height for the on-site soil conditions. Projects proposing such slopes shall submit a long-term maintenance plan to ensure that the function of the slopes as habitat is met.

Sec. 10-4.407. Conveyor Systems.

Wherever practical and economically feasible, portable or movable conveyor systems shall be used to transport raw materials and overburden.

Sec. 10-4.408 County Road Improvements.

It is the intent of this program that each operator shall pay for any road improvements determined to be necessary to support their operation consistent with County and CCAP standards, and for ongoing operations and maintenance. Each operator shall pay its fair share toward improvements required to maintain a structural capacity (traffic index) sufficient for the project traffic and to maintain operations on County roads and on State Highways within the OCOMP planning area consistent with applicable General Plan policies related to LOS and applicable State policy related to VMT. Fair share mitigation shall also be required to improve existing operational as well as structural deficiencies of the transportation system. Specific locations shall be identified through the project-specific environmental review process for each operator's long-term mining permit application. Each operator shall participate in a funding program operated by the County which is designed to ensure that all improvements are made in a timely manner and that a reimbursement mechanism is in place to ensure repayment of any costs contributed in excess of fair share amounts. The program shall be initiated upon the approval of the long-term mining permits and shall be updated biennially by the County to ensure any new or modified impacts or funding sources are being addressed.

Each operator shall have the option to complete the work at their expense without triggering the competitive bid process, as long as they comply with the applicable legal requirements of the County. If the operator declines the option, the County shall utilize the competitive bid process.

Sec. 10-4.409. County Road Maintenance.

The operator shall agree to assume joint pavement maintenance responsibility with the County (or shared with another producer using the same roadway) for all County roads along a designated haul route from the access point of the surface mining operation to an appropriate State Highway. The County will provide maintenance of the county-maintained roadside drainage ditches, traffic signs, and striping. By May 15 of each year, the operator shall submit to the County an annual evaluation report documenting the structural integrity of the pavement structural section and the PCI of the roads maintained by the operator. The annual report shall be signed and sealed by a civil engineer licensed in the State of California. The report shall contain a proposed action plan for pavement maintenance and pavement improvements to maintain safe and efficient traffic operation on the roads, and a PCI of 70 or more, unless otherwise agreed by the County, as defined by American Society for Testing and Materials (ASTM) Method D6433 (Standard Practice for Roads and Parking Lots Pavement Condition Index Survey), for each upcoming year. Within 30 days, the County will review the report and recommend revisions if necessary. Following acceptance of the report by the County, the operator shall secure a County encroachment permit specific to the action plan (at no cost to the operator) and complete the proposed pavement maintenance and improvement activities prior to the submittal of the annual report. Striping may be provided by the County if County striping equipment and material are available. Otherwise striping will be provided by the operator. Once the work is completed, the

operator will resubmit the annual evaluation report by November 1 each year, and include the scope and dates that work was completed.

If minor emergency asphalt repairs (work requiring a single County Public Works maintenance pick-up truck with asphalt patching material) are identified within the maintenance areas of the hauling routes after the Applicant's yearly maintenance has been completed, county crews will perform the minor asphalt repair maintenance once in a sixty (60) consecutive day period. The types of asphalt pavement failures requiring repairs include, but are not limited to, cracking, pot holes, depressions, rutting, shoving, upheaval, and raveling and any other pavement damage or failures requiring immediate repair by the county.

If major emergency roadway repairs associated with the permitted activities (work requiring more than a single County Public Works maintenance pick-up truck with asphalt patching material, or minor asphalt repairs occurring in less than the sixty (60) consecutive day period) are identified after the Applicant's yearly maintenance has been completed, the Applicant shall obtain a County encroachment permit (at no cost to Applicant) and complete the major roadway repairs. If major roadway repairs that are the Applicant's fair share obligation are not completed by the Applicant in a timely manner as determined by the County, and the County must make repairs when the public's safety is considered at risk by the County Engineer, then the Applicant will be billed for the County's major roadway repair work on a time and materials basis. An applicant may coordinate with the County to have the County complete required improvements, and in such case, must fully fund the County's costs to do so. The operator does not assume the liability for the roadway, except for cases where the operator has not fulfilled its maintenance obligations.

If a subsequent mining operation utilizes a road previously required to be improved pursuant to this subsection, then the subsequent operator shall be responsible for compliance with the agreements and requirements of the previous operator.

Sec. 10-4.410. 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 on cultural resources shall be avoided whenever possible. If avoidance is not feasible, the importance of the site shall be evaluated by a qualified professional (either an archaeologist or geologist, depending on the resource type) prior to the commencement of mining operations. If a cultural resource or unique geologic resources 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 plan shall explain the importance of the resource, describe the proposed approach to mitigate 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 excavation, 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 of, with appropriate dignity, the remains and associated grave goods shall be developed.

If any cultural resources, such as chipped or ground stone, historic debris, building foundations, or paleontological materials are encountered during excavation, then all work within seventy-five (75) feet shall immediately stop and the Director shall be notified at once. The find must be recorded by a qualified archaeologist or paleontologist using relevant professional protocols and a report fully recording the find submitted to the County. This report shall include recommendations for appropriate removal and preservation of the artifact. The County encourages the donation of the find to the County for public display at the Cache Creek Nature Preserve or other appropriate venue.

Sec. 10-4.411. Dam Requirements.

An application for construction shall be filed with the California Division of Safety for Dams and approved prior to the start of construction for any new dam that falls under the State jurisdiction for safety.

Sec.10-4.411.1 Depth of Mining

This ordinance regulates the size of the footprint of the mining operation, and establishes no regulatory depth limit for off-channel mining. Unless an environmental analysis concludes that unacceptable environmental impacts will result, mining operations shall be encouraged to excavate the full depth of available resources at any particular mining site. In conjunction with a minimize mining footprint, this will ensure efficiency in resource extraction, help minimize impacts to agriculture by containing the area of surface disturbance of any individual mining operation, and minimize impacts of water loss associated with evaporation from reclaimed lakes.

Sec. 10-4.412. Dewatering.

“Dewatering” shall mean lowering the water level in a wet pit by pumping water from the pit, regardless of the purpose of the pumping. Water generated from dewatering activities must be beneficially used and discharged on-site. Pumps systems used to dewater the wet pits shall be powered by electricity (i.e., through connection to power lines) or solar power. This ordinance does not permit water generated from dewatering activities to be used or discharged off-site. No off-channel excavation shall use dewatering as a part of surface mining operations, unless site-specific technical analysis performed by a qualified Professional Engineer or Professional Geologist with experience in hydrogeology demonstrates that the proposed dewatering will not adversely affect off-site wells with respect to groundwater level and quality. The Professional Engineer or Professional Geologist shall demonstrate, using appropriate hydrogeologic analysis (i.e., using data-supported empirical, analytical, and/or numerical investigative tools), that the proposed dewatering activity will not adversely impact active off-site wells or other water resources (e.g., creeks and wetlands) within 1,000 feet of the proposed dewatering pit boundary. Average historic low groundwater levels in the subject well, shall be used for the analysis. Site-specific aquifer testing shall be conducted, if needed, to determine aquifer properties for the analysis. Consistent with the OCMP EIR, an effect shall be considered adverse if the reduction in simulated groundwater levels exceeds two (2) feet at any well located within 1,000 feet of the pit boundary or results in well failure.

The hydrogeologic analysis shall be submitted to the County for review and approval prior to implementation of any dewatering activities. If an adverse impact is identified by the analysis (either impacts to existing wells or other water resources, including creeks and wetlands), dewatering activities will be modified to eliminate any adverse impacts, and/or the applicant shall otherwise mitigate adverse impacts to the satisfaction of the County.

Approval to dewater requires Planning Commission approval pursuant to 10-4.506 and 10-4.602.

Prior to and for the duration of dewatering activities, the applicant shall: 1) monitor water levels in the wet pit(s), and nearby monitoring wells on a quarterly basis; and 2) quantify the amount of water pumped from and returned to the wet pit(s). This monitoring data shall be reviewed by the applicant's Professional Engineer or Professional Geologist to determine whether any adverse impacts are occurring. Documentation of the monitoring and data evaluation shall be submitted the County annually. If adverse impacts are found to be occurring, dewatering activities will be modified to eliminate adverse impacts, or the applicant shall otherwise mitigate impacts to the satisfaction of the County. Any measures designed to mitigate adverse impacts identified after implementation of dewatering activities shall be approved by the Planning Commission at a regularly scheduled meeting, with written notice of the adverse impact and proposed mitigation measures given by mail to all property owners within 1,000 feet of the pit boundary, in addition to any notice otherwise required by law.

For purposes of this section, mitigation measures of adverse impacts may include, but are not limited to well modification, well relocation, compensation of well owners for increased pumping cost, or providing an alternative water supply. Such mitigation measures shall be paid for by the mining operator, with sufficient financial security to ensure completion of the measures.

Pumping of water from the wet pit in lieu of pumping of groundwater from a well shall not require predictive impact analysis in addition to analysis provided in the approved, site-specific CEQA document, unless the total annual water demand, as set forth in the CEQA document, is exceeded. This does not remove the requirement for monitoring and reporting activities described above.

Sec. 10-4.413. Drainage.

Surface water may be allowed to enter mined areas, through either perimeter berms or ditches and grading, when designed and engineered pursuant to an approved reclamation plan and where effective best management practices (BMPs) to trap sediment and prohibit contamination are included. Appropriate erosion control measures shall be incorporated into all surface water drainage systems. Stormwater drainage systems shall be designed to connect with natural drainages so as to prevent flooding on surrounding properties and County rights-of-way. Storm water runoff from mining areas shall be conveyed to lowered areas (detention basins) to provide detention of runoff generated during a 20-year, one-hour storm event. All drainage conveyance channels or pipes (including spillways for detention areas) shall be designed to ensure positive drainage and minimize erosion. The drainage conveyance system and storm water detention areas shall be designed and maintained in accordance with Best Management Practices for the reduction of pollutants associated with runoff from mined areas. The design and maintenance procedures shall be documented in the Storm Water Pollution Prevention Plan

required for mining operations. The drainage system shall be inspected annually by a Registered Civil Engineer, Registered Geologist, or Certified Erosion and Sediment Control Specialist to ensure that the drainage system is functioning effectively and that adverse erosion and sedimentation are not occurring. The annual inspection shall be documented in the Annual Mining and Reclamation Report. If the system is found to be functioning ineffectively, the operator shall promptly implement the recommendations of the engineer.

Sec. 10-4.414. Dust Control.

Unless superseded by newer more effective standards, the following measures shall be implemented in order to control fugitive dust:

(a) All stockpiled soils shall be enclosed, covered, or have sufficient moisture to control fugitive dust at all times. Inactive soil stockpiles should be vegetated or adequately watered to create an erosion-resistant outer crust.

(b) During operating hours, all disturbed soil and unpaved roads shall be adequately watered to keep soil moist.

(c) All disturbed but inactive portions of the site shall either be seeded or watered until vegetation is grown or shall be stabilized using methods such as chemical soil binders, jute netting, or other Yolo-Solano Air Quality Management District approved methods.

Sec. 10-4.414.1. Energy.

Wherever practical and feasible, aggregate facilities shall use clean electric energy from the grid or install alternative on-site electricity generation systems to replace diesel equipment and reduce criteria pollutant emissions.

Sec. 10-4.415. Equipment Maintenance.

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 fuel. No vehicles or equipment shall be left idling for a period of longer than is required by law, recommended by the Air District, or ten (10) minutes, whichever is shorter.

Fueling and maintenance activities of heavy equipment (except draglines and floating suction dredges) are prohibited within one-hundred (100) feet of open bodies of water during mining and reclamation. All Storm Water Pollution Prevention Plans shall include provisions for releases of fuels during fueling activities for draglines and floating suction dredges.

Sec. 10-4.416. Flood Protection.

All off-channel surface mining operations shall be provided with a minimum one-hundred (100) year flood protection. Off-channel excavations shall be designed to minimize the potential for levee breaching and/or pit capture. In addition, excavations shall be designed to prevent overtopping of channel banks or levees along Cache Creek and all tributaries and drainage channels (including, but not limited to, Willow Slough and Lamb Valley Slough).

The flood protection upgrades shall be designed and constructed to provide the necessary 100-year protection without creating a net increase of in upstream or downstream flooding elevations. Upstream flooding could be increased if additional levee construction serves to confine flows to a narrow width, thereby increasing the water surface elevation. Downstream

flooding could be increased if floodplain storage areas were removed from the drainage system by constructing levees in areas where they did not exist before (or raising levees that are overtopped in floods up to the 100-year event). Where feasible, alternative or non-structural flood management designs (potentially using detention basins, infiltration galleries, and/or floodplain storage in noncritical areas) shall be incorporated. New development (such as buildings, levees, or dikes) located within the floodplain shall conform to all applicable requirements of the Yolo County Flood Protection Ordinance and the Federal Emergency Management Agency (FEMA).

Sec. 10-4.417. Groundwater Monitoring Programs.

All surface mining operations that propose off-channel excavations extending below the groundwater level shall develop and maintain a groundwater monitoring program consisting of two components: water level measurements and water quality testing. A groundwater level monitoring program shall be initiated at least six months prior to the removal of overburden. At a minimum, the groundwater level monitoring program shall consist of three monitoring wells, with at least one well upgradient of the wet pit and one well downgradient of the wet pit. Monitoring programs for proposed mining areas exceeding one-hundred (100) acres (total proposed mining area over the life of the project) shall include one additional well for each one-hundred (100) acres of wet pit mining. Therefore, wet pit mining areas of 1 to 99 acres would require three (3) wells, 100 to 199 acres would require four (4) wells, 200 to 299 acres would require five (5) wells, and so on. These wells shall be distributed through the vicinity of the wet pit mining area and used for groundwater level measurements. Groundwater levels shall be collected from the monitoring wells on a quarterly basis for six (6) months prior to mining and for the duration of the mining period. All wellheads shall be surveyed with horizontal and vertical control to allow calculation of groundwater elevations and development of groundwater contour maps. Groundwater levels shall be measured with an accuracy of plus or minus 0.01 foot, at minimum.

Water quality in the vicinity of each active wet pit mining location shall be evaluated by analyzing samples from selected monitoring wells (one upgradient and one downgradient) and wet pit surface water sampling locations. Since mining may be conducted in phases over a relatively long period of time, pit boundaries may change with time. Selection, and installation if necessary, of downgradient monitoring wells, which would be critical to adequately characterize the groundwater quality in the vicinity of the wet pits, shall be submitted by the operator for review and approval by the County. The selected monitoring wells shall be installed and sampled at least six (6) months prior to the removal of overburden. The downgradient wells shall be located as near to the active wet pit mining areas as is practical. The upgradient wells shall be located an adequate distance from the proposed mining area to ensure that the effect of the wet pit on water quality in the well would be negligible. The water samples from the wet pit shall be collected in a manner so as to ensure that they are representative of water quality within the wet pit. The minimum sampling schedule and required analyses are described below.

(a) Groundwater level and pit water surface level measurements shall be performed quarterly in all wells for the duration of mining and reclamation.

(b) For monitoring the groundwater quality of proposed wet pit mining, sample collection and analysis of physical, chemical, and biological constituents shall be conducted according to the following specifications:

(1) Prior to the removal of overburden – one upgradient and one downgradient well shall be sampled at least six (6) months prior to the removal of overburden and again at the start of excavation. The samples shall, at minimum, be analyzed for general minerals; inorganics; nitrates; total petroleum hydrocarbons (TPH) as diesel and motor oil, benzene, toluene, ethylbenzene, and xylenes (BTEX); pesticides (EPA 8140 and 8150); and coliform (with E. coli confirmation).

(2) During wet pit mining and active reclamation – the wet pit shall be sampled semi-annually for the duration of mining and active reclamation. The samples shall, at minimum, be analyzed for general minerals; inorganics; nitrates; TPH as diesel and motor oil, BTEX; pesticides (EPA 8140 and 8150); and coliform (with E. coli confirmation).

One upgradient and one downgradient well shall be analyzed, at minimum, for general minerals; inorganics; nitrates; TPH as diesel and motor oil, BTEX; pesticides (EPA 8140 and 8150); and coliform (with E. coli confirmation). The wells shall be sampled according to the following schedule: semi-annually for the first two years, and annually every year thereafter.

(3) After active reclamation – one (1) year after all heavy equipment work has been completed in the vicinity of the pit, the TPH and BTEX analyses may be discontinued. The wet pit and one upgradient and one downgradient well shall be sampled and analyzed for pH; temperature; nutrients (phosphorous and nitrogen); total dissolved solids; total coliform (with E. coli confirmation); and biological oxygen demand. This monitoring shall be conducted every two (2) years for a ten (10) year period after completion of reclamation.

A report to the Agency and Department of Environmental Health shall be submitted within thirty (30) days of the required groundwater testing.

Additional tests and analysis shall be required only if a new condition is recognized that may threaten water quality or if the results of previous tests fall outside allowable ranges. If at any time during the monitoring period, testing results indicate that sampling parameters exceed Maximum Contaminant Levels (MCLs), as reported in the California Code of Regulations, or established background levels, a qualified professional shall evaluate potential sources of the contaminants. The evaluation shall determine the source and process of migration (surface or subsurface) of the contaminants. A report shall be submitted to the regulatory agencies (the Agency, Yolo County Department of Environmental Health, the Central Valley Regional Water Quality Control Board, and the U.S. Environmental Protection Agency) which identified the source of the detected contaminants and specifies remedial actions to be implemented by the operator for corrective action. If it is determined that the source of water quality degradation is off-site, and the County and the RWQCB are in agreement with this conclusion, the operator shall not be responsible for corrective action.

If corrective action is ineffective or infeasible, the responsible party must provide reparation to affected well owners, either by treatment of water at the wellhead or by procurement of an alternate water supply.

If, at the completion of the mining and reclamation period, water quality has not been impacted, all monitoring wells shall be destroyed in accordance with the California Department of Water Resources Well Standards. If the County, landowner, or other agency wishes to maintain

the wells for future water resources evaluation, selected wells may be preserved for this use. Monitoring wells may remain useful for post-mining land uses.

The County may retain appropriate staff or a contract consultant to provide third party critical review of all hydrologic reports related to monitoring.

Sec. 10-4.418. Habitat Conservation Plan Compliance.

All surface mining operations shall be consistent with applicable components of the Yolo Habitat Conservation Plan/ Natural Community Conservation Plan (HCP/NCCP).

Sec. 10-4.419. Haul Roads.

Trucks accessing a mining site to pick up a load, or leaving a mining site to deliver a load, are restricted to the approved/designated haul routes identified in the operator's permit which applies to the route taken from the mining site access/driveway to a state /federal highway. If a truck subsequently exists the state/federal highway while within Yolo County, this too may only occur on an approved/designate haul route. This applies to all truck trips serving the mining site, unless making a local delivery. Those portions of designated truck haul routes that include County-maintained roads shall be posted as such, in accordance with the Public Works Department, to facilitate law enforcement and public safety. Private truck haul routes or conveyors shall be used to transport material within the mining site, in order to reduce impacts to public roads.

Sec. 10-4.419.1. Hazardous Materials Storage

Prior to handling threshold quantities of hazardous materials (55 gallons, 500 pounds, or 200 cubic feet of compressed gas) or generating any amount of hazardous waste on site, a Hazardous Materials Business Plan must be completed and submitted to Yolo County Environmental Health by the operator through the California Environmental Reporting System (CERS). In addition, prior to above ground storage tanks (AST) or containers with cumulative storage capacity greater than 1,320 gallons of petroleum products being present at the facility, a Spill Prevention Countermeasure Contingency (SPCC) Plan must be prepared, implemented, and retained on site.

Sec. 10-4.420. Lighting.

All lighting shall be arranged and controlled so as not to illuminate public rights-of-way or adjacent properties.

Sec.10-4.420.1 Mercury Bioaccumulation in Fish.

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 the pit fills with groundwater with an intensive fish mercury monitoring program described in Section 10-5.517 of the Reclamation Ordinance.

Sec. 10-4.421. Noise: General Standard.

From 6:00 a.m. to 6:00 p.m., noise levels shall not exceed an average noise level equivalent (Leq) of eighty (80) decibels (dBA) measured at the property boundaries of the site.

However, noise levels shall not exceed an average noise level equivalent (Leq) of sixty (60) decibels (dba) for any nearby off-site residences or other noise-sensitive land uses.

From 6:00 p.m. to 6:00 a.m., noise levels shall not exceed an average noise level equivalent (Leq) of sixty-five (65) decibels (dba) measured at the property boundaries of the site.

At no time shall noise levels exceed a community noise equivalent (CNEL) of sixty (60) decibels (dba) for any existing residence or other noise-sensitive land use. An existing residence shall be considered the property line of any residentially zoned area or, in the case of agricultural land, any occupied off-site residential structures. Achieving the noise standards may involve setbacks, the use of quieter equipment adjacent to residences, the construction of landscaped berms between mining activities and residences, or other appropriate measures.

Sec. 10-4.422. Noise: Sonic Safety Devices.

If mining occurs within fifteen-hundred (1500) feet of residences, equipment used during nighttime activities shall be equipped with non-sonic warning devices (e.g. infrared) consistent with the California Office of Safety Hazard Administration (Cal OSHA) regulations. This may include fencing of the area to avoid pedestrian traffic, adequate lighting of the area, and placing an observer in clear view of the equipment operator to direct backing operations. If appropriate, prior to commencement of operations without sonic warning devices, operators shall file a variance request with the California OSHA Standards Board showing that the proposed operation would provide equivalent safety to adopted safety procedures, including sonic devices. This regulation applies to all sonic safety devices in use at the mining site, including sonic warnings on conveyors.

Sec. 10-4.423. Noise: Traffic.

Operators shall provide acoustical analysis for future truck and traffic noise associated with the individual operations along County roadways identified as experiencing significant impacts due to increased traffic noise. The study shall identify noise levels at adjacent noise-sensitive receptors and ways to control the noise to the "normally acceptable" goal of a CNEL of sixty (60) dB and reduce the increase over existing conditions to five (5) dBA or less. Typical measures that can be employed include the construction of noise barriers (wood or masonry), earthen berms, or re-routing of truck traffic.

Sec. 10-4.424. Other Agency Approvals.

Operators shall obtain any and all permits and approvals required by other agencies having jurisdiction over the proposed mining operations and shall provide copies to the County.

Sec. 10-4.425. Parking.

All operations shall provide sufficient off-street parking to accommodate customers, employees, and all mining equipment.

Sec. 10-4.426. Permit Life.

Surface mining permits and permits for aggregate processing facilities shall be approved for a maximum of thirty (30) years. Extensions of the permits, for up to twenty years, may be granted, subject to further environmental review and discretionary approval by the County. All

surface mining permits shall be subject to annual reporting requirements, as well as review by the County every ten (10) years, to account for changing regulatory requirements.

Sec. 10-4.427. Protection of Nearby Drinking Water Wells.

If any off-channel excavation proposes to extend below the level of seasonal high groundwater, then six months prior to the commencement of excavation below the average high groundwater level, the operator shall identify and locate all off-site municipal wells within one-thousand (1,000) feet and all domestic wells within five hundred (500) feet of the proposed wet pit mining boundary. If active wells are identified, well characteristics (pumping rate, depth, and locations of screens) shall be determined. If wells are not located within one-thousand (1,000) feet, the pre-mining impact evaluation shall be considered complete.

If wet pit mining is proposed within one-thousand (1,000) feet of a municipal water supply or within five-hundred (500) feet of a domestic water supply well, a capture zone analysis shall be conducted using the U.S. Environmental Protection Agency model WHPA (or a similar model of equal capability and proven reliability, as approved by the Director). The simulation shall assume thirty (30) days of continuous pumping of the water supply well (at its maximum probable yield) under analysis. A mining setback shall be established so that the capture zone and the pit do not coincide. Alternatively, the operator 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). The analysis shall be prepared and signed by a Registered Civil Engineer or Certified Hydrogeologist and submitted to the County for review and approved at least six months prior to the commencement of excavation below the seasonal high groundwater level.

Any new drinking water wells proposed for installation within one-thousand (1,000) feet of an approved wet pit mining area shall be subject to review by the Yolo County Environmental Health Department. The County shall determine, based on site-specific hydrogeology and available water quality data, whether to approve the proposed well installation. Analysis of environmental impact for projects in the vicinity of the wet pits shall include consideration of potential water quality impacts on the open water bodies.

The County may retain appropriate staff or a contract consultant to provide third party critical review of all hydrogeologic reports related to mining applications.

Sec. 10-4.428. Sanitary Facilities.

At least one toilet shall be provided for each off-channel mining operation. Chemical toilets shall be properly maintained and serviced regularly. Permanent toilets shall be properly engineered, and the design approved by the Yolo County Building Official and the Environmental Health Division, prior to installation. All on-site water storage facilities shall be labeled "potable" or "non-potable."

Sec. 10-4.429. Setbacks.

All off-channel surface mining operations shall comply with the following setbacks:

(a) New processing plants and material stockpiles shall be located a minimum of one-thousand (1,000) feet from public rights-of-way, public recreation areas, and/or off-site residences, unless alternate measures to reduce potential noise, dust, and aesthetic impacts are developed and implemented;

(b) Soil stockpiles shall be located a minimum of five-hundred (500) feet from public rights-of-way, public recreation areas, and off-site residences, unless alternate measures to reduce potential dust and aesthetic impacts are developed and implemented;

(c) Off-channel excavations shall maintain a minimum one-thousand (1,000) foot setback from public rights-of-way and adjacent property lines of off-site residences, unless a landscaped buffer is provided or site-specific characteristics reduce potential aesthetic impacts. Where landscaped buffers are proposed, the setback for off-channel excavations may be reduced to a minimum of fifty (50) feet from either the property line or the adjoining right-of-way, whichever is greater. Where mining occurs within one-thousand (1,000) feet of a public right-of-way, operators shall phase mining such that no more than fifty (50) acres of the area that lies within one-thousand (1,000) feet of the right-of-way would be actively disturbed at any time, except where operations are adequately screened from public view. Where adequate screening exists in the form of mature vegetation and/or constructed berms that effectively block public views, the area of active disturbance within one-thousand (1,000) feet of the right-of-way shall not exceed the area that is screened by more than fifty (50) acres at any one time. Actively disturbed areas are defined as those on which mining operations of any kind, or the implementation of reclamation such as grading, seeding, or installation of plant material are taking place.

(d) Off-channel excavations shall provide a minimum 50-foot setback from the neighboring property line to allow for access around the pit during mining and after reclamation for maintenance, safety, and other purposes.

(e) Proposed off-channel excavations located within the streamway influence zone shall be set back a minimum of seven-hundred (700) feet from the existing channel bank, unless it is demonstrated that a smaller distance will not adversely affect channel stability. Under no circumstances should off-channel excavations be located within 200 feet of the existing channel bank. Evaluations of proposed off-channel excavations within 700 feet of the channel bank shall demonstrate, at a minimum, the following:

(1) The two-hundred (200) foot setback area does not include portions of the historically active channel.

(2) The two-hundred (200) foot setback area does not include formerly mined lands separated from the active channel by levees or unmined areas less than two-hundred (200) feet wide (measured perpendicular to the active channel).

(3) Acceptable channel hydraulic conditions (based on existing or site-specific hydraulic models) for the Cache Creek channel adjacent to the site and extending not less than one-thousand (1,000) feet upstream and downstream of the site.

(4) Acceptable level of erosion potential of the channel bank adjacent to the site based on predicted stream flow velocity and shear stress on bank materials during a 100-year flow and historical patterns of erosion.

(5) Acceptable level of stability of the slopes separating the mining area from the creek channel based on an analytical slope stability analysis in conformance with Sections 10-4.426 and 10-5.517 of this title that includes evaluation of stability conditions during 100-year peak flows in the channel.

(6) Appropriate bank stabilization designs, if needed, consistent with channel design recommendations of the Cache Creek Resource Management Plan or approved by the Technical Advisory Committee.

(7) The condition of flood protection structures and the integrity of the land within the approved setback zone separating the mining areas and the channel shall be inspected annually by a Registered Civil Engineer and reported to the Director. The annual report shall include recommendations for remedial action for identified erosion problems (see also Reclamation Ordinance Section 10-5.506).

Approval of any off-channel mining project located within seven-hundred (700) feet of the existing channel bank shall be contingent upon an enforceable agreement which requires the project operator to participate in the completion of identified channel improvement projects along the frontage of their property, consistent with the CCRMP and CCIP, including implementation of the Channel Form Template. The agreement shall require that the operator provide a bond or other financial instrument for maintenance during the mining and reclamation period of any bank stabilization features required of the mining project. The agreement shall also require that a deed restriction be placed on the underlying property which requires maintenance of the streambank protection by future owners of the property. Maintenance of the bank stabilization features following completion of reclamation shall be the responsibility of the property owner.

(f) Off-channel excavations shall be set back a minimum of twenty-five (25) feet from riparian vegetation; and

(g) Recreational facilities shall be located a minimum of one-hundred and fifty (150) feet from private dwellings, with a landscaped buffer provided to reduce noise and maintain privacy, unless the dwelling is proposed to be an integral component of the recreational facility.

(h) No mining activities shall occur within two-thousand (2,000) feet of the community boundaries of Capay, Esparto, Madison, Woodland, and/or Yolo. This setback may be reduced by up to five-hundred (500) feet when existing mature vegetation, proposed landscape buffers of a sufficient height and density to create a visual buffer (consisting of native species and fence-row habitat appropriate to the area), or other site-specific characteristics reduce potential incompatibilities between urban land uses and mining. Commercial mining shall not take place east of County Road 96.

Sec. 10-4.430. Site Maintenance.

During operations, the site shall be kept free of debris and maintained in a neat and orderly manner so as not to create any hazardous or unsightly conditions. All overburden shall be stockpiled and all stumps, brush, or other debris resulting from excavation and/or processing shall be properly disposed.

Sec. 10-4.431. Slopes.

Except where benches are used, all banks above groundwater level shall be sloped no steeper than 2:1 (horizontal:vertical). Proposed steeper slopes shall be evaluated by a slope stability study, prepared by a Registered Civil Engineer, Certified Engineering Geologist, or Professional Geologist. Slopes below the groundwater level shall be no steeper than 1:1 (horizontal:vertical). Slopes located five (5) feet or less below the summer low groundwater level

shall not be steeper than 2:1 (horizontal:vertical). This section applies only to final/reclaimed slopes and not to active mining faces.

Sec. 10-4.432. Soil Removal.

Soil shall be cut in maximum depths in order to minimize traffic and limit compaction. The handling and transportation of soil shall be minimized. To the extent feasible, all handling of topsoil shall be accomplished when the soil is dry in order to avoid undue compaction.

Sec. 10-4.433. Soil Stockpiles.

Topsoil, subsoil, and subgrade materials in stockpiles shall not exceed forty (40) feet in height, with slopes no steeper than 2:1 (horizontal:vertical). Stockpiles, other than aggregate stockpiles, shall be seeded with a native vegetative cover to prevent erosion and leaching. The use of topsoil for purposes other than reclamation shall not be allowed without the prior approval of the Director.

Slopes on stockpiled soils shall be graded to 2:1 (horizontal:vertical) for long-term storage to prevent use by bank swallows. At no time during the active breeding season (May 1 through July 31) shall slopes on stockpiles exceed a slope of 1:1, even on a temporary basis. Stockpiles shall be graded to a minimum 1:1 slope at the end of each work day where stockpiles have been disturbed during the active breeding season.

Sec. 10-4.434. Technical Report Recommendations.

The recommendations contained within each technical report submitted with a surface mining permit application shall be consistent with the OCMP and with all other technical reports submitted. The recommendations of all technical reports shall be implemented.

Sec. 10-4.435. Transfer of Allocation.

If a property is sold or transferred, the allocation attributed to the property transfers as well. If the transferred tonnage is still processed at the original plant site pursuant to the original permit approval, no additional environmental assessment or permits are required. If that transferred tonnage is processed elsewhere, additional analysis and approval shall be required. The new operator shall submit a signed statement of responsibility for reclamation of the site and post financial assurances with the Agency prior to commencement.

Sec. 10-4.436. Vegetation Protection.

Existing vegetation and habitat to be retained shall be enclosed by temporary fencing to restrict access, protect against damage and/or provide buffers to reduce the impact of dust. Temporary fencing shall be a minimum of four (4) feet high. The disturbance of riparian forest or oak woodland vegetation, including identified off-channel vegetation, should be avoided if possible. Replacement habitat and plantings shall be established where complete avoidance is not possible, according to a habitat restoration plan prepared by a qualified biologist, consistent with the goals of this plan.

Sec. 10-4.437. Wastewater Discharge.

No wastewater shall be directly discharged to Cache Creek. Sediment fines generated by aggregate processing shall either be used for agricultural soil enhancement, habitat restoration sites, or shall be placed in settling ponds, designed and operated in accordance with all applicable regulations, and used for backfill materials in off-channel excavations. Agricultural tailwater shall be diverted to catchment basins prior to its release to the creek.

Sec. 10-4.438. Watercraft.

Only motorized dredges and draglines shall be allowed on the wet pit lakes. All other fuel-powered (gasoline or diesel) watercraft shall not be used on the wet pit lakes. Fuel-powered watercraft may be allowed for mercury sampling or bathometric measurements, as necessary, to fulfill requirements this chapter. Electric-powered or non-motorized boats shall be permissible.

Sec. 10-4.439. Wetlands.

Existing jurisdictional wetlands shall be retained to the extent possible. Impacts to existing wetlands shall be mitigated where complete avoidance is not possible according to a habitat restoration plan prepared by a qualified wetland specialist and approved by any required jurisdictional agencies, ensuring no net loss of wetland acreage or habitat value.

Sec. 10-4.440. Wildlife Habitat.

Avoid disturbance to important wildlife habitat features such as bird nesting trees, colonial breeding locations, elderberry host plants for Valley Elderberry Longhorn Beetle, and mature riparian forest and oak woodland habitat. This shall include sensitive siting of haul roads, trails, and recreational facilities away from these features. Suitable habitat for special-status species shall be protected and enhanced, or replaced as a part of mitigation plans prepared by a qualified biologist where necessary, and through compliance with the Yolo HCP/NCCP for special-status species covered by that Plan. Mining and reclamation activities shall be performed in accordance with the State Fish and Wildlife Code, Migratory Bird Treaty Act, and other applicable regulations to protect bird nests when in active use.

Native-planted hedgerows and/or other vegetated buffers shall be included between restored habitat areas and adjoining farmland, in order to minimize the potential for riparian areas to serve as harbors for predators and insect pests. These buffers will also reduce the noise, dust, and spraying generated by agricultural operations, in addition to providing valuable pollinator resources that in turn could enhance agricultural production.

Sec. 10-4.441 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 surface mining permit. Exceptions shall only be approved where the strict application of the off-channel mining 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 5. Surface Mining Permit Approval Process

Sec. 10-4.501. Zoning Requirements.

Off-channel surface mining operations shall only be permitted within the Sand and Gravel Overlay (SG-O) Zone defined in Article 9 of Chapter 2 of Title 8 of the Yolo County Code.

Sec. 10-4.502. Applications: Contents.

Except as provided for in Section 10-4.503 of this article, all documentation for the surface mining permit shall be submitted to the Director at one time. Ten (10) complete paper copies of the application, and one electronic version, shall be provided to the County. An executive summary and a table of contents shall be submitted with each application. Applications for proposed surface mining permit shall include, but shall not be limited to, the following:

(a) A narrative description of the proposed surface mining operations, including the following information:

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

(2) The manner in which waste generated by the surface mining operation will be disposed and the methods by which contamination will be controlled during surface mining;

(3) The methods to be used for on-site and off-site surface water drainage and erosion control during surface mining operations, including provisions for ensuring flood protection of the site for the one-hundred (100) year event;

(4) The proposed hours of operation, including the estimated number of nights when surface mining operations may be necessary;

(5) The results of all soil test borings performed within the mined area, to provide information on soil quality and slope stability;

(6) 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;

(7) A summary table showing the following information, listed by phases for the proposed surface mining project: the length of time for both mining and reclamation, acreage proposed for mining, acreages proposed for appropriate reclaimed uses, projected mineral reserves (both mined and sold), and Williamson Act contracted acreage.

(b) Site-specific technical reports, performed by qualified professionals in the appropriate area of expertise, shall provide specific proposals for inclusion in the surface mining permit to address the following potential environmental impacts:

(1) A biological inventory and analysis to evaluate the on-site habitat value of the proposed mined area, as well as the potential impacts to special-status species and sensitive natural communities, both on-site and within the immediate area. The analysis shall propose appropriate measures to reduce any potential adverse impacts to special-status species or significant suitable habitat, and shall ensure compliance with the Yolo HCP/NCCP, California Fish and Game Code, Migratory Bird Treaty Act, and other applicable regulations, plans and programs. The analysis shall also include a wetland delineation study for any potential on-site wetlands, and shall provide adequate mitigation and appropriate authorizations from regulatory agencies, where required. If landscaping is proposed to screen the surface mining operations from

adjoining public rights-of-way or public and private lands, the biological analysis shall include an evaluation of the feasibility of the species, weed control, and irrigation methods to be used;

(2) If the maximum depth of proposed mining will exceed the average high groundwater level for the site, and the proposed pit boundaries are within one-thousand (1,000) feet of an active off-site well, a groundwater analysis shall be submitted to evaluate the effect of the proposed mining plan on the groundwater levels and quality of the off-site active wells. The analysis shall be consistent with the procedures described in Section 10-4.427 of this chapter. A detailed groundwater monitoring program shall be prepared in conformance with 10-4.417 of this chapter, including maps and hydrographs of the wells to be used in the monitoring network and their respective groundwater measurements. A well survey shall be conducted and all wells within one-thousand (1,000) feet of the limits of mining plotted on a scaled map. Each property owner owning parcels within one-thousand (1,000) feet of the proposed limits of wet pit mining shall be contacted and queried about wells that may be located near the wet pit mining area. Measures to reduce the potential for contamination shall be included within the analysis;

(3) A noise analysis to evaluate the impacts of surface mining operations on adjoining land uses and sensitive receptors (i.e. residences) within the immediate area. The analysis shall include a map of projected noise contours generated by the mine, for both daytime and nighttime operations, with appropriate measures to reduce excessive noise levels. The analysis shall be performed in accordance with Sections 10-4.421 through 10-4.423 of this chapter;

(4) A transportation impact analysis to evaluate the impacts of the proposed operation on haul routes and other impacted county roads (if any) pursuant to Secs. 10-4.408 and 10-4.409 of the Mining Ordinance, and the County General Plan. The analysis shall evaluate operations, safety, and truck and vehicle VMT (as required to ensure compliance with the CCAP and County General Plan). The analysis shall satisfy the requirements of the County's Transportation Impact Study Guidelines and shall include an evaluation of existing road conditions for those routes to be used, as well as any other information necessary to demonstrate compliance with applicable county and State standards. The analysis shall also specify the projected number of average truck trips per year, average truck trips per day, estimated maximum truck trips on peak days, estimated number of peak days per year, and estimated months in which peak days will occur. The analysis shall identify mitigation measures such as capital improvements and maintenance to be undertaken by the applicant to reduce direct and indirect significant adverse impacts to traffic flow and/or safety to acceptable levels consistent with applicable LOS, VMT, pavement condition, and other thresholds in the Yolo County General Plan and County Transportation Impact Study Guidelines; and

(5) A geotechnical study to evaluate any proposed operational slopes steeper than a 2:1 (horizontal:vertical) ratio to ensure that they will be stable while mining is being conducted and that the slopes possess an adequate factor of safety. The study shall include an evaluation of any slopes proposed to provide flood protection from Cache Creek and shall indicate what measures are proposed to prevent breaching or pit capture. Measures shall be included within the study to ensure slope stability and maintenance;

(6) 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;

(7) An engineering analysis to evaluate any off-channel excavations located within the streamway influence boundary, which are proposed within seven-hundred (700) feet of the existing channel bank. The analysis shall be performed in accordance with Section 10-4.429 of this chapter. Measures shall be included to reduce adverse impacts to streamflow characteristics resulting from the proposed mining operations; and

(8) An engineering analysis of the potential for a 100-year flood event to affect the proposed mining site. Measures shall be included to provide necessary flood protection for the site, in conformance with Section 10-4.416 of this chapter.

(c) A site plan submitted in the form prescribed by the Planning Director, including all property proposed to be included in the mined area, 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, residences, roads, railroads, and utility facilities within, or adjacent to, the lands to be mined;

(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 the Act;

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

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

(6) The locations for the storage of overburden and topsoil material in any proposed stockpiles;

(7) The proposed points of ingress and egress, access roads, driveways, haul roads, and parking areas proposed as a part of the surface mining operation;

(8) The location of existing vegetation, including areas where vegetation is proposed to be removed; and

(d) Graphical 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 mined, 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 mining elevations, and shall identify the angle of operational slopes.

(e) All maps, diagrams, or calculations that require preparation in accordance with the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the

Business and Professions Code), the Geologist and Geophysicist Act (Chapter 12.5 (commencing with Section 7800) of Division 3 of the Business and Professions Code), or the Professional Land Surveyors' Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) shall be prepared by a California-licensed professional, shall include his or her license number and name, and shall bear the signature and seal of the licensee;

(f) 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);

(g) An initial environmental assessment describing the potential impacts of approving the surface mining permit;

(h) A list of all other applicable discretionary permits required by other public agencies;

(i) A proposal for providing a "net gain" to the County, as determined by the following criteria:

(1) Reclamation to multiple or conjunctive uses:

(2) Enhancement and enrichment of existing resources; and/or

(3) Restoration of past sites where the requirements of reclamation at the time no longer meet community expectations in terms of good stewardship of the land.

(4) Provision of new dedications and easements to supplement/benefit the Cache Creek Parkway including reclaimed mining sites, restored habitat, trail connections, and related enhancements.

"Net gain" may include participation in an established program whose goals are consistent with the above criteria. Benefits included in the technical studies submitted with each application which serve as mitigation measures for potentially adverse environmental impacts created by the project may not be included as a "net gain;" and,

(j) A set of completed application forms provided by the Agency, and all pertinent information required therein.

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. 10-4.503. Applications: Waiver of Information.

The Director may temporarily waive any of the items of information required in Section 10-4.502 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. 10-4.504. Applications: Filing.

Applications for surface mining permits 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 operator 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 8 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 10-4.506 of this article.

Sec. 10-4.505. Applications: Review.

The Director shall notify the Department in writing of any application for a surface mining permit 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. 10-4.506. Applications: Public Hearing.

Once the application has been processed, the Director shall set a public hearing before the Commission to consider the proposed surface mining permit. 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. 10-4.507. Public Hearing: Notice.

The Director shall mail notices of the public hearing to the operator 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 site 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, as well as on the County website. 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. 10-4.508. 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 surface mining permit;
- (b) A copy of the environmental document for the reclamation plan, prepared in accordance with CEQA; and
- (c) Other related documentation, as appropriate.

No surface mining permit may be approved until the Department has completed its review, or the thirty (30) day review period has expired. The Director shall prepare a written response to any written comments received from the Department regarding the surface mining permit 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.

If proposed surface mining operations are located within the 100-year floodplain of any stream, as shown in Zone A of the Flood Insurance Rate Maps issued by the Federal Emergency Management Agency, and within one (1) mile of any County or State maintained bridge, then the Director shall mail a copy of the proposed surface mining permit to the State Department of Transportation for a forty-five (45) day review period. No surface mining permit may be approved until the Department of Transportation has completed its review or the forty-five (45) day period has expired.

Sec. 10-4.509. Public Hearing: Findings for Approval.

The Commission or, on appeal, the Board may approve a surface mining permit pursuant to this chapter only if all of the following findings are made:

- (a) That the proposed surface mining permit complies with the Act and this chapter;
- (b) That surface mining shall be conducted pursuant to a reclamation plan approved in accordance with Chapter 5 of this title;
- (c) That surface mining will not be detrimental to the public health and safety;
- (d) That the surface mining permit is consistent with the General Plan, any applicable specific plans, and the zoning of the site;
- (e) That surface mining is compatible with the existing uses of surrounding lands;
- (f) That the site is physically suitable for surface mining, giving consideration, but not limited to such factors as local groundwater conditions, flood protection, drainage, habitat, and aesthetics;
- (g) That the surface mining operation includes provisions for a "net gain" to the County;
- (h) That the environmental document for the proposed surface mining permit was prepared in accordance with the provisions of CEQA and the State CEQA Guidelines; and,
- (i) 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. 10-4.510. 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 or Board 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 10-4.509 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 operator. 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 6. Amendments and Modifications to
Approved Surface Mining Permits**

Sec. 10-4.601. 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 surface mining operation, site characteristics, regulations, or other aspects of the approved surface mining permit.

Sec. 10-4.602. Amendments: Applications.

Applications for amendments to previously approved surface mining permits shall be submitted to the Director, on forms provided by the Agency, 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. 10-4.603. Amendments: Exceptions.

Proposed exceptions to the off-channel mining 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 surface mining permit.

Sec. 10-4.604. Minor Modifications.

The Director may approve minor modifications of surface mining permits 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 certified EIR or other applicable environmental document, and that such changes will not have a significantly adverse effect on the public health and safety. 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 10-4.507 of this chapter. Any minor modification approved by the Director shall become final within fifteen (15) days, unless appealed to the Commission, as provided in Article 10 of this chapter.

Sec. 10-4.605. Interim Permit Review.

Every ten years after a surface mining permit has been approved, the Commission shall hold a public hearing in accordance with Article 5 of this chapter, for the purpose of amending the permit to bring it into conformance with applicable future environmental regulations and statutory changes. The Commission shall evaluate the permit to determine if there have been any subsequently adopted environmental regulations or statutory provisions which should be made applicable to the mining operation, even if such laws themselves are not made retroactive to affect the permit. 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 Wildlife, 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 permit 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 permit 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 7. Annual Reports

Sec. 10-4.701. Annual Reports: Contents.

Every surface mining operator shall submit an annual report of surface mining operations no later than November 1 of each year, describing the activities of the previous twelve (12) months. Annual reports shall no longer be required, once final reclamation has been completed and financial assurances have been released. Operators shall submit one hard copy and one electronic copy to the County. Such reports shall contain the following information:

(a) A site plan submitted in the form prescribed by the 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, and showing the following information:

- (1) Property boundaries and the boundaries of permitted mining areas, including the depiction of separate mining phases;
- (2) The existing contours;
- (3) Contours which show the areas and depth of mining which have occurred since the previous annual report;

(4) Identification of any significant changes in the topography, such as bank failures, levee breaches, extensive erosion, etc. which have occurred since the previous annual report;

(5) Identification of erosion control structures, levees, berms, stockpiles, haul roads, settling ponds, habitat avoidance areas, and processing facilities;

(6) The extent of areas reclaimed since the previous annual report;

(7) The extent of any borrow areas, where topsoil and overburden are excavated for use in the reclamation of mined lands; and

(8) Updated graphic depictions of the control cross-sections approved in the surface mining permit application.

The site plan shall include a certificate from a licensed land surveyor or registered civil engineer certifying that the site plan and cross-sections were prepared by or under the direct supervision of the surveyor or engineer;

(b) A statement of the total amount of minerals produced since the date of the initial permit approval and since the date of the preceding annual report. Such information shall be consistent with the data submitted to the Department, as required in Section 2207 et seq. of Chapter 2 of Division 2 of the Public Resources Code of California. Production information shall be considered confidential under Section 10-4.901 of this chapter. Such reports shall be submitted as a declaration under penalty of perjury;

(c) A statement of the total amount of concrete and asphalt materials recycled since the date of the preceding annual report, and a statement of the total amount of aggregate removed from Cache Creek as a result of channel maintenance and reshaping activities in accordance with the CCRMP;

(d) A report prepared by a qualified hydrologist describing the data obtained from the on-site groundwater monitoring program, prepared in accordance with Section 10-4.417. The report shall recommend appropriate remedial measures if contamination in exceedance of established thresholds is indicated;

(e) A report describing the previous year's crop yields on any land in the process of being reclaimed to agriculture in accordance with the approved reclamation plan. The report shall include a soil analysis and appropriate remedial measures prepared by a qualified agronomist if crop yields do not meet the production standards set forth in the approved reclamation plan;

(f) A report prepared by a qualified biologist describing the density, coverage, and species-richness of any on-site areas that are being revegetated with plants other than agricultural crops in accordance with the approved reclamation plan. The report shall compare the observed data with the performance standards set forth in the approved reclamation plan and shall recommend remedial measures if the previous year's revegetation efforts have not been successful;

(g) A report prepared by a Registered Geologist, a Licensed Geotechnical Engineer, or a Registered Civil Engineer describing the remedial measures necessary to remediate any slope failures, levee breaches, or other topographical problems referred to in the site plan above;

(h) A report describing the extent of mining carried out over the previous year and the conformance of the operation with the approved reclamation timetable and/or phasing plan.

Said report shall also describe the proposed extent of operations to be carried out over the following year;

(i) A report describing the compliance of the surface mining operation with the approved conditions of approval;

(j) A table, matrix, or report identifying all adopted CEQA mitigation measures by number and text, and describing compliance with these measures, pursuant to the Mitigation Monitoring Program adopted for the project; and

(k) A statement describing the status of any permits or approval issued by other agencies of jurisdiction; and

(l) A report describing the compliance with the applicable terms of the approved Development Agreement.

Sec. 10-4.702. Annual Reports: Filing.

Annual reports shall be submitted to the Director for review and determination as to completeness. If the annual report is determined to be incomplete, the Director shall notify the operator in writing within thirty (30) days of receipt of the annual report. The written notice shall specifically describe the information necessary to complete the annual report. The annual report 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.

Once the annual report has been determined to be complete and the appropriate fees have been paid, the annual report shall be filed by the Director and made available for public review.

Sec. 10-4.703. Annual Reports: Hearing.

Every year, the Planning Commission shall hold a public hearing, in accordance with Article 5 of this chapter, regarding the compliance status of each surface mining operation permitted pursuant to this title. After considering the evidence in the public hearing, the Commission shall find that the operation either complies or does not comply with the Act, this chapter, and the conditions of approval for the surface mining permit. If the Commission finds that the operation is not in compliance, then the Director shall commence Notice of Violation proceedings, pursuant to Article 11 of this chapter.

Within ten (10) days after the decision of the Commission, the Director shall mail a copy of the decision to the operator. 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. The decision of the Commission may be appealed, in accordance with Article 10 of this chapter.

Article 8. Fees

Sec. 10-4.801. Fees: Applications.

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

Sec. 10-4.802. Fees: Inspections and Administrative.

Each operator, individually, shall be responsible for the payment of fees to cover the costs incurred by the County in annually inspecting the facilities of that operation, pursuant to Section 10-4.1103 of this chapter, as determined by the Master Fee Resolution adopted by the Board and any and all costs associated with the administration of Article 11. 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 compliance review required under Article 7 of this chapter.

In addition, each operator shall participate in a funding mechanism to reimburse the County for any costs associated with administering the Act and this chapter, not otherwise covered by the fees listed above. Administrative fees 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.

Sec. 10-4.803. Fees: Maintenance and Remediation Fund.

Each operator shall pay an annual surcharge of \$0.02 per ton (sold) to be placed into a maintenance and remediation fund to be used solely for purposes directly related to the protection and restoration of the lower Cache Creek watershed. This surcharge shall be imposed in addition to the surcharge required for the CCRMP and CCIP. The maintenance and remediation fund shall be held by the County in a separate trust account, segregated from any other revenues.

No expenditures may be drawn from this fund for thirty (30) years. After 2026, interest derived from the maintenance and remediation fund shall be made available for the following activities: remediation of problems related to mercury bioaccumulation in wildlife; remediation of hazardous materials contamination; environmental monitoring; and/or ongoing site maintenance (e.g., fencing, berms, drainage, levees, or permanent lakes). After 2046, the County shall determine whether the fund is still merited. If it is determined that monitoring, maintenance, and/or remediation is no longer required, then the entire fund shall be made available for implementation of the goals of the OCMP and/or CCRMP, such as the restoration or creation of habitat, the creation of open space and passive recreation opportunities, and restoration and stabilization of Cache Creek.

Any disbursement of money from the maintenance and remediation fund shall require approval by the Board of Supervisors. Use of this fund for any purposes other than those specified above is prohibited.

Sec. 10-4.804. Fees: Delinquent Payment.

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 9. Confidentiality of Records

Sec. 10-4.901. Confidentiality of Records.

Any proprietary information submitted in a surface mining permit application, a report, or other document required by this chapter, which is considered by the operator to be confidential shall be submitted under separate cover and shall be so marked by the Director. Proprietary information shall include, but may not be limited to, the following:

- (a) Annual production figures, reserves, or rates of depletion of the aggregate resource being mined, pursuant to Section 2778.(a) of the Act;
- (b) Well log information; and
- (c) The location and extent of sensitive archaeological sites.

The proposed confidential information shall be accompanied by a statement citing the legal authority supporting the operator's claim of confidentiality. The request for confidentiality shall be reviewed by the Director and either approved or denied.

The decision to reject or accept the claim of confidentiality by the Director shall be mailed and posted in accordance with Section 10-4.507 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 10 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 operator may withdraw the information and include it with the application or report as a public document. Failure to submit any necessary information may result in an incomplete application or report.

Article 10. Appeals

Sec. 10-4.1001. 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 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. 10-4.1002. Planning Commission Appeals: 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 10-4.507 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 10-4.1007 of this chapter.

Sec. 10-4.1003. 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. 10-4.1004. 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 10-4.507 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 10-4.1007 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 10-4.505 of this chapter.

Sec. 10-4.1005. 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. 10-4.1006. Appeals: Withdrawal.

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

Sec. 10-4.1007. 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 act within a reasonable time after receiving a completed application. 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.

Article 11. Inspections: Notices of Violations

Sec. 10-4.1101. Inspections: Purpose.

The Director shall make such necessary inspections and investigations of all surface mining 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 surface mining permit approved pursuant to this chapter;
- (c) To investigate the environmental effects which the surface mining 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. 10-4.1102. 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.

Sec. 10-4.1103. 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 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 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;
 - (d) Aspects of the surface mining 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 surface mining 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 aspects of the surface mining 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 operator.

Sec. 10-4.1104. 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 experienced in mined land reclamation (as described in the Act and related regulations) and experienced in activities governed by the Act, and who has not been employed by the mining operation in any capacity during the previous twelve (12) months.

Sec. 10-4.1105. Violations: Notice.

Whenever the Director has reasonable cause to believe that a surface mining operation is in violation of the Act or the Regulations; this chapter; any term or condition of a surface mining permit; or development agreement ("violation"), the following procedure shall be followed:

- (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 10-4.1106 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 10-4.1106. 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 10-4.1106.

Sec. 10-4.1106. Violations: Order to Comply.

If the violation continues after the timeframes specified in Section 10-4.1105, 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 at a public hearing within 45 days of the filing of the appeal or a longer period as may be mutually agreed upon by the operator and the County. Public notice of such hearing shall be given as set forth in Section 10-4.507 of this chapter.

Sec. 10-4.1107. Violations: Hearing.

Upon the filing of an appeal pursuant to Section 10-4.1106, the Planning 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) 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 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. 10-4.1108. Violations: Revocation.

If an operator fails to abide by the requirements of an order to comply, the Director shall initiate procedures to revoke the operator's permit(s) and forfeit the operator's financial assurances in accordance with Article 11 of this chapter

Sec. 10-4.1109. Violations: Administrative Penalties.

If the operator fails to comply with an order to comply issued pursuant to this article, the Commission 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 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 fifteen (15) days. If the order imposing administrative penalties is appealed to the Board, the operator 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 Board must be filed with the Clerk of the Board within fifteen (15) days after the order is first mailed. The Board shall hear the appeal de novo.

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 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 operator.

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. 10-4.1110. Violations: Public Nuisance.

Any surface mining operation in violation of this title, or in violation of any surface mining permit or order to comply issued pursuant to this chapter, shall be considered a public nuisance. If the operator 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.