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Receive a presentation and provide comments on proposed amendments to Solano County Code Chapter 29 - Surface Mining and Reclamation

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Published Notice Required? Yes No

Public Hearing Required? Yes No

DEPARTMENTAL RECOMMENDATION:

It is recommended that the Planning Commission receive a presentation and provide comments on proposed updates to Solano County Code Chapter 29 - Surface Mining and Reclamation

EXECUTIVE SUMMARY:

Staff will provide an informational update to the Planning Commission regarding proposed amendments to Solano County Code, Chapter 29 - Surface Mining and Reclamation, to obtain general comments from commissioners and the public, including mine operators. Comments received may result in modifications to some of the proposed amendments and will be included as part of the public record to the Board of Supervisors as they consider whether to adopt the proposed amendments. No action is required by the Planning Commission at this meeting. Input is requested as the Planning Commission has authority over individual mining projects through review and approval of use permits and reclamation plans and is charged with implementing the County's Surface Mining and Reclamation (Chapter 29 of the Solano County Code) within the unincorporated areas of the County consistent with State statutes.

Solano County Code, Chapter 29 - Surface Mining and Reclamation requirements were adopted in 1992 and certified by the State Mining and Geology Board (SMGB) in 1993. Since that time, the State's Surface Mining and Reclamation Regulations (SMARA) have had significant changes in 2008, 2013 and 2017 regarding financial assurances, inspections, idle mines, and addressing violations. Due to recent changes to the state statute (PRC 2710 et seq.), the County's current ordinance must be amended to be in conformance with SMARA.

The Department, through its contractor Land Logistics Inc, prepared proposed Code amendments and performed stakeholder outreach with local mining operators on August 27, 2021. Staff recommended new administrative procedures for minor modifications to Reclamation Plans. Local mining operators were supportive of the effort and no further comments were received. SMGB was offered early opportunity to review the updated ordinance and their comments are incorporated into the proposed amendments. Once adopted, County staff will initiate the SMGB certification process. A comparison table or summary of key changes to Chapter 29 and the proposed ordinance, clean and redlined versions are attached (Attachments A1 and A2).

FINANCIAL IMPACT:

Costs for preparation of these ordinance amendments are included in the Department of Resource Management's approved Budget for FY2021/2022.

DISCUSSION:

In general, the proposed amendments contain a variety of changes to be in conformance with state laws that have changed since 1993, required by the State Legislature. Examples include

clarifying contents for reclamation plans, added definitions, standards for reclamation, specific exemptions from SMARA, clarifying the type of financial assurances, requirements and responsibilities for various reviews and inspection, and recordation of Notice of Mining Approvals on the property.

In order to streamline application processing, staff recommends a new administrative procedure for minor modifications to reclamation plans. Currently, changes to reclamation plans are subject to the California Environmental Quality Act (CEQA), public hearings and Planning Commission approval. The proposed ordinance establishes criteria for minor modifications to be administrative actions by the Director of Resource Management. Major modifications remain subject to CEQA and Planning Commission approval. In addition, complaints and enforcement are proposed to be implemented at the Director of Resource Management level rather than by Planning Commission. Staff will be available during and after the presentation for questions.

A summary of the current code and proposed amendments are included in Attachment B.

Solano County currently has eight (8) existing surface mines within its SMARA authority, where the County oversees the required annual inspections, and reviews financial assurance cost estimates (FACE) and financial assurance mechanism for each of the mines. The location and status of each mine is shown on Attachment C. Of the eight mines, Parish Pit is closed and Asta Construction mine was recently reclaimed as determined by the State Division of Mine Reclamation on April 15, 2022. This will now leave six (6) mines in the County that will be subject to the new ordinance. Additionally, if any new mines are to be permitted within the County, they too would also be subject to the provisions of Chapter 29.

General Plan Consistency:

The proposed ordinance is consistent with 2008 Solano County General Plan in the proposed changes to Chapter 29 will ensure that mineral extraction operations are performed in a manner compatible with land uses on the site and surrounding area, do not adversely affect the environment and restored to conform with SMARA requirements.

Public Outreach:

On August 27, 2021, the Department of Resource Management, Planning Division held a stakeholder meeting (virtual & in person) with the County's mine operators to discuss why the County was updating its Surface Mining Ordinance, process for updating the ordinance, benefits of an updated ordinance and also solicited input regarding a new administrative procedure for minor modifications to reclamation plans. Overall, there was support by the mine operators as the biggest concern expressed was the ability for the County to retain local control of its SMARA authority, including its permitting authority for new and existing mines. Based on the input received, staff subsequently commenced the drafting of the ordinance update. In November of 2021, staff initiated an early consultation review process with SMGB staff, whereby a copy of the draft ordinance was submitted to the SMGB staff for review and comment.

In January of this year, SMGB staff provided its comments to the draft ordinance, which have been incorporated into the final draft, which now facilitates its certification by the SMGB, provided there are no substantive changes to the ordinance.

On April 7, 2022, the ordinance was referred to the County's Land Use and Transportation Committee for review. The Committee was supportive of the proposed changes and, expressed no concerns and without specific recommendations.

PUBLIC HEARING NOTICE:

A noticed public hearing is not required for an informational item. However, a public meeting notice was placed in the Daily Republic in accordance with the Brown Act, and local mining operators are invited to the meeting.

OTHER AGENCY INVOLVEMENT:

State of California Mining and Geology Board was consulted regarding the proposed amendments to Chapter 29.

ATTACHMENTS:

[Attachment A1: Draft Ordinance](#)

[Attachment A2: Draft Ordinance Redline](#)

[Attachment B: Summary of Key Changes/Comparison Table](#)

[Attachment C: Solano County Mine Operations and Status](#)

ORDINANCE NO. 2022 – _____

**AN ORDINANCE REPEALING AND READOPTING
CHAPTER 29 OF THE SOLANO COUNTY CODE
RELATING TO SURFACE MINING AND RECLAMATION**

The Board of Supervisors of the County of Solano ordains as follows:

SECTION I

Chapter 29 is being updated to address recent changes to the Surface Mining and Reclamation Act of 1975 (Public Resources Code, § 2710 et. seq.) and the implementing regulations promulgated by the State Mining and Geology Board (California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1, § 3500 et. seq.).

SECTION II

Chapter 29 of the Solano County Code is repealed.

SECTION III

Chapter 29 is added to the Solano County Code as follows:

ARTICLE I. GENERAL

- 29-10. Purpose and Intent
- 29-11. Incorporation of SMARA and State Regulations
- 29-12. Definitions
- 29-13. Scope

ARTICLE II. PLANS AND OPERATIONS

- 29-20. Permit and Reclamation Plan Requirements
- 29-21. Financial Assurances
- 29-22. Review Procedure
- 29-23. Standards for Reclamation
- 29-24. Statement of Responsibility
- 29-25. Findings for Approval
- 29-26. Notice of Reclamation Plan Approval
- 29-27. Public Records
- 29-28. Periodic Review
- 29-29. Amendments
- 29-30. Idle Operations
- 29-31. Annual Inspections

ARTICLE III. REVIEW AND ENFORCEMENT

29-32	Enforcement and Penalties
29-33	Revocation or Suspension of Surface Mining Permit
29-34	Appeal
29-35	Severability
29-36	Mineral Resource Protection

Sec. 29-10. Purpose and Intent

- (a) The Surface Mining and Reclamation Act, in Division 2, Chapter 9 of the Public Resources Code, authorizes and directs local agencies to adopt ordinances establishing procedures for the review and approval of reclamation plans and the issuance of permits to conduct mining operations. This chapter is adopted to comply with the directive and fulfill various purposes of the Act.
- (b) The Board of Supervisors hereby finds and declares that the extraction of minerals is essential to the continued economic well-being of the County and to the needs of society, and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.
- (c) The Board further finds that the reclamation of mined lands, as provided in this chapter, will permit the continued mining of materials and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.
- (d) The Board further finds that surface mining takes place in diverse areas where geologic, topographic, climatic, geological and social conditions are significantly different and that reclamation operations and the specifications may vary accordingly.

(Ord. No. 1036, §1; Ord. No. 1415, §1)

Sec.29-11 Incorporation of SMARA and State Regulations

The provisions of this Chapter are intended to impose requirements on surface mining operations and operator that are equivalent to, or more restrictive than correlative provisions of SMARA and related state regulations, this Chapter shall prevail.

- (a) In the event that the State amends SMARA to the extent that it adds to or conflicts with this Chapter, State law shall prevail.

Sec. 29-12 Definitions

As used in this chapter, the following definitions shall apply:

Areas of regional significance means an area designated by the State Mining and Geology Board pursuant to Public Resources Code Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be in a particular regions of the state within which the minerals are located and which, if prematurely developed for

alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local significance.

Areas of statewide significance means an area designated by the State Mining and Geology Board pursuant to Public Resources Code Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the state and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are more than local or regional significance.

Berm means an elongated earthen structure which acts as a barrier, to make it difficult for a vehicle to cross, or to reduce the flow of water.

Bench means a relatively level step excavated into earth material on which fill is to be placed.

CEQA means the California Environmental Quality Act, Public Resources Code Section 21000 et. seq.

Compatible land use means land uses inherently compatible with mining and/or that require a minimum public or private investment in structures, land improvements, and which may allow mining because of the relative economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, very low density residential, geographically extensive but low impact industrial, recreational, agricultural, silvicultural, grazing and open space.

County means the County of Solano, State of California

Director means the Director of the Solano County Department of Resource Management or his/her designee.

Excavation means the mechanical removal of earthen material.

Exploration or prospecting means the search for minerals by geological, geophysical, geochemical and other techniques including, but not limited to, sampling, assaying, drilling, or any surface or underground works needed to determine the type, extent or quantity of minerals present.

Farming means the management and/or cultivation of land for the production of crops or livestock.

Financial Assurances means a current approved financial assurance cost estimate and financial assurance mechanism that is at least equal to the current approved financial assurance cost estimate.

Financial Assurances Cost Estimate (FACE) means an estimate that is prepared and reviewed on an annual basis by the County, which is based on a mining operation's existing conditions, performance standards of the approved reclamation plan and the methods, efforts, and direct and indirect expenses anticipated to achieve the performances standards and end use of the approved reclamation plan. The estimate shall also account for all materials, labor, annual inflation, and administrative costs that

would be associated with the County or the Department of Conservation managing the performance of reclamation by a third party. The estimate shall serve as the basis for the financial assurance mechanism, which shall also be adjusted annually based on the outcome of the FACE.

Haul road means an internal road along which material is transported from the area of excavation to the processing plant or stock pile area of the surface mining operation.

Haul route means an external road along which previously excavated, processed or stockpiled material is transported to an off-site area.

Highwall means the unexcavated face of exposed overburden and ore in a surface mine.

Idle means 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 (1) year or 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.

Incompatible land uses means land uses inherently incompatible with mining and/or that require public or private investment in structures, land improvements, and landscaping and that may prevent mining because of the greater economic value of the land and its improvements. Example of such uses may include, but not limited to, high density residential, low density residential with high unit value, public facilities, geographically limited but impact intensive industrial, and commercial.

Interim Management Plan (IMP) means an amendment to the approved reclamation plan that describes the measures the operator will implement during the mining operations idle status to maintain the site in compliance with the provisions of the Surface Mining and Reclamation Act (SMARA), including, but not limited to, all permit conditions. For purposes of CEQA, an IMP is not considered a project under CEQA.

Mine includes all mineral bearing properties of whatever kind of character, whether underground, or in a quarry or pit, or any other source from which any mineral substance is or may be obtained, but excludes the recycling of materials such as asphalt and concrete and does not include backfilling operations, such as those typically associated with sanitary landfills or backfilling of material usually through the issuance of a grading permit.

Mined lands includes 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 wastes, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in areas in which surface mining operations are located.

Minerals means any naturally occurring chemical element or compound or groups of elements and compounds formed from inorganic processes and organic substances including but not limited to, coal, peat, bituminous rock, but excluding geothermal resources, natural gas and petroleum.

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

Non-Substantial Deviation means an amendment to a reclamation plan involving insignificant changes and does not require review under CEQA.

On-Site Construction means the construction of buildings, roads or other improvements including landscaping, excavation and grading required to prepare a site for construction of structures, landscaping or other land improvements, and which is beneficially modified by such construction, is not deemed to be a surface mining operation. Additionally, all required permits for the construction, landscaping, or related land improvements must be obtained from the County in accordance with applicable provisions of State law and locally adopted plans and ordinances.

Operator means any person who is engaged in surface mining operations, or who contracts with others to conduct operations on the operator's behalf, but does not include a person engaged in surface mining operations as an employee with wages as the person's sole compensation.

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

Permit means any authorization from or approval by the County, the absence of which would preclude surface mining operations.

Person includes any individual, firm, association, corporation, organization or partnership, or any city, county, district, or the state, or any department or agency thereof.

Reclamation means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion 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 to alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization or other measures.

Reclamation plan means the plan approved by the County of Solano, and as required, by the Surface Mining and Reclamation Act of 1975, which meets all the requirements of section 2772 of the Public Resources Code, administrative guidelines and regulations adopted pursuant thereto, and ordinances and resolutions of Solano County adopted in accordance therewith. A reclamation plan shall include, but not limited to, environmental setting of the site, effect that possible alternate reclaimed site conditions may have upon existing and future uses of surrounding lands, the designed steepness and proposed treatment of mined lands, such as final slopes, physical properties of slope material, maximum water content, landscaping requirements, slope stability, backfilling and grading, disposition of equipment, stream or water course diversions, roads, building sites, or other improvements sensitive to settlement, compaction of fill materials in conformance with good engineering practice, as well as other factors applicable to the site as further described in Section 29-23 of this Chapter.

Reclamation Plan Amendment is defined as an amendment to the approved reclamation plan. The amendment may be considered by the Planning Commission of the Director of Resource Management based on authorization and jurisdiction as defined within this chapter.

Riparian Vegetation means vegetation situated on the bank of a stream, river, or other body of water.

SMARA means the Surface Mining and Reclamation Act of 1975, Public Resources Code Section 2710 et. seq.

State Board means the State Mining and Geology Board in the Department of Conservation, State of California.

State geologist means the individual holding office created by section 677 of the Public Resources Code.

Substantial Deviation means a change or deviation from the originally approved reclamation plan, as determined by the Director of Resource Management, that could include a change in the end use, slope configurations, new stream or watercourse diversions that were not contained in the original plan, increase in quantities of materials to be mined or displaced as well as a change in the time periods for the completion of mining and reclamation, change in mining boundaries as an example, as well as the following factors outlined in CCR §3502 (d), which include but not limited to: (1) A substantial increase in the disturbance of a surface area or in the maximum depth of mining; (2) A substantial extension of the termination date of the mining operation as set out in an approved reclamation plan; (3) Changes that would substantially affect the approved end use of the site as established by the reclamation plan; (4) The consistency of any proposed change to the operation with the previously adopted environmental determinations; and (5) Any other changes that the County deems substantial deviations as defined in this subsection, and shall not be undertaken until such time as an amendment to the reclamation plan has been filed with, and approved by the Planning Commission.

Surface Mining Operations means 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 auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

- (a) In place distillation or retorting or leaching;
- (b) The production and disposal of mining waste;
- (c) Prospecting and exploratory activities;
- (d) Gravel extraction operation;
- (e) Borrow pits;
- (f) Segregation and stockpiling of mined materials (and recovery of same)

Terrace means a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.

Topsoil means the upper part of the soil profile that is relatively rich in humus, which is typically known as the “A-horizon” of the soil profile.

Turbidity means a condition where water is cloudy or muddy due to the presence of suspended matter such as clay, silt, finely divided organic and inorganic matter, plankton, and other microscopic organisms.

Vested right. A person shall be deemed to have vested rights if prior to January 1, 1976, the person has, in good faith and in reliance upon a permit or other authorization if such permit or other authorization was required and was in compliance with county regulations, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit, shall not be deemed liabilities for work or materials.

(Ord. No. 1036, §1; Ord. No. 1415, §1)

Sec. 29-13 Scope

- (a) The provisions of this Chapter shall apply to surface mining operations and reclamation of mined lands within unincorporated areas of Solano County. The provisions of this Chapter have been designed to encompass borrow pits, dredging operations, quarry operations and other surface mining operations conducted in Solano County.
- (b) The provisions of this chapter are not applicable to:
 - (1) Excavations or grading conducted for farming or on-site construction, or for the purpose of restoring land following a flood or natural disaster.
 - (2) Prospecting and exploration for minerals of commercial value where less than one thousand cubic yards of overburden is removed in any one location of one acre or less.
 - (3) Any surface mining operation that does not involve either the removal of a total of more than one thousand cubic yards of minerals, ores, and overburden, or involve more than one acre in any one location.
 - (4) Surface mining operations that are required by federal law in order to protect a mining claim, if such operation are conducted solely for that purpose.
 - (5) Reclamation of lands mined prior to, but not after January 1, 1976.
 - (6) Such other mining operations that the County determines to be of an infrequent nature and which involve only minor surface disturbances, and are categorically identified by the State Board pursuant to section 2714(d) and 2758(c), California Surface Mining and Reclamation Act.
 - (7) On-site excavation and on-site earthmoving activities which are an integral and necessary part of a construction project that are undertaken to prepare a site for

- construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:
- (a) All required permits for the construction, grading, landscaping, or related land improvements must be obtained in accordance with applicable provisions of State law and County adopted plans and ordinances, including, but not limited to the California Environmental Quality Act (CEQA).
 - (b) The County approval of the construction project included consideration of the on-site excavation and on-site earthmoving activities pursuant to CEQA.
 - (c) The approved construction project is consistent with the General Plan or zoning of the site.
 - (d) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.
- (8) Surface mining operations and emergency excavations and grading conducted by the California Department of Water Resources or the Reclamation Board.
 - (9) Surface mining operations that are required by Federal law in order to protect a mining claim, if such operations are conducted solely for that purpose.
 - (10) Such other surface mining operations which the State Board determines to be of an infrequent nature, and which involve only minor surface disturbances.
 - (11) The solar evaporation of sea water or bay water for the production of salt and related minerals.
 - (12) An exemption under this Ordinance does not automatically exempt a project or activity from the application of CEQA, the requirement of use permits, grading permits, or other permits, or the imposition of monitoring fees or excavations as may be permitted by law.
 - (13) Any person desiring a determination of exemption from this chapter may request such a written determination by submitting a complete written description of the proposed project or activity and its location together with a filing fee to the Solano County Department of Resource Management.

(Ord. No. 1036, §1; Ord. No. 1415, §1)

ARTICLE II. PLANS AND OPERATIONS

Sec. 29-20. Permit and Reclamation Plan Requirements

- (a) Any person, except as provided in section 29-13 of this code and section 2776 of SMARA, who proposes to engage in surface mining operations, or to make any changes which are determined to be substantial by the zoning administrator in an existing operation in which such existing operation the person has a vested right shall, prior to the commencement of operations, obtain: (1) a use permit from the planning commission, pursuant to section 28-106 of this code; and (2) approval by the Planning Commission of a reclamation plan, in accordance with the provisions set forth in this chapter and as further provided in SMARA.
- (b) Any person who obtained, prior to January 1, 1976, and continues to hold a vested right to conduct surface mining operations shall obtain the approval of the planning commission of a reclamation plan for operations conducted after January 1, 1976, but such person shall not be required to obtain a use permit for such operations except in accordance with the provisions of this chapter. The reclamation plan shall provide for the reclamation of portions of the site mined after January 1, 1976. A reclamation plan prepared pursuant to this chapter need not be prepared, filed or approved for reclamation of lands mined prior to, but not later than January 1, 1976.
- (c) The commencement of any surface mining operation after a period of nonoperation shall not require the obtaining of a use permit if: (1) the operator has either [a] a vested right in said operation, or [b] a previously obtained use permit as required by this chapter when such use permit expressly prescribes periodic nonoperation; and (2) no substantial changes in the operation are made. Periodic nonoperation after January 1, 1976, of a surface operation in which the operator has a vested right shall not by itself cause the lapse of such vested right so long as the nonoperation: (1) is consistent with the historic periodicity of such operation; and (2) does not extend substantially longer than previous periods of nonoperation.

(Ord. No. 1036, §1; Ord. No. 1415, §1)

Sec. 29-21 Financial Assurances

- (a) Any person who is operating or intends to conduct a surface mining operation, whether that person has existing vested rights or not, shall submit for approval a financial assurances cost estimate for review by the County. This cost estimate must be submitted and approved prior to any new operation being initiated. Any existing operation must submit a financial assurances pursuant to provisions of Public Resources Code § 2773.1. The following is applicable to the financial assurances:
 - (b) A financial assurance mechanism may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurance mechanisms specified by the State Board pursuant to

- subdivision (e) that the County of Solano reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.
- (c) Financial assurance shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.
 - (d) The amount of the financial assurance cost estimate required of a surface mining operation for any one year shall be reviewed and, if necessary, adjusted once each calendar year to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan. An operator shall be required to replace an approved financial assurance mechanism to bond for the reclamation of the surface mining operation only if the financial cost estimate identifies a need to increase the amount of the financial assurance mechanism.
 - (e) Financial assurance cost estimates shall be submitted to the County for review on a form developed by the Department of Conservation and approved by the SMGB.
 - (f) Each financial assurance mechanism shall be made payable to the County and the Department of Conservation. A financial assurance mechanism shall not be released without the consent of the County and the Department of Conservation. A financial assurance mechanism that was approved by the County prior to January 1, 1993, and was made payable to the State Geologist shall be considered payable to the Department of Conservation for purposes of this chapter. However, if a surface mining operation has received approval of its financial assurance cost estimate from a public agency other than the County, the County shall deem those financial cost estimates adequate for the purposes of this section, or shall credit them toward fulfillment of the financial cost estimate required by this section, if they are made payable to the public agency, the County, and the Department of Conservation and otherwise meet the requirements of this section. In any event, if the County and one more public agencies exercise jurisdiction over a surface mining operation, the total amount of financial assurances required by the County and the public agencies for any one year shall not exceed that amount that is necessary to perform reclamation of lands remaining disturbed. For purposes of this paragraph, "a public agency" may include a federal agency.
 - (g) If the County has evidence that an operator may be financially incapable of completing reclamation in accordance with its approved reclamation plan or that an operator may have abandoned the surface mining operation without completing reclamation, the County shall conduct a public hearing to determine whether the operator is financially capable of completing reclamation in accordance with the approved reclamation plan or has abandoned the surface_mining operation. The hearing shall be noticed to the operator and the Department of Conservation at least 30 days prior to the hearing.
 - (h) If the County, following the public hearing conducted pursuant to Section 29-21(6) above, determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan or has abandoned

its surface mining operation without completing reclamation, either the County or the Department of Conservation shall do all of the following:

- (1) Notify the operator by personal service or certified mail that the County or the Department of Conservation intends to take appropriate action to forfeit the financial assurances and specify the reason for doing so.
 - (2) Proceed to take appropriate action to require forfeiture of the financial assurance mechanism.
 - (3) Use the proceeds from the forfeited financial assurance mechanism to conduct and complete reclamation in accordance with the approved reclamation plan. If the surface mining operation cannot be reclaimed in accordance with its approved reclamation plan, or the financial assurance mechanisms are inadequate to reclaim in accordance with its approved reclamation plan, the County or the Department of Conservation may use forfeited financial assurance mechanisms to reclaim or remediate mining disturbances as appropriate for the site conditions as determined by both the County and the Department of Conservation. The financial assurance mechanisms shall not be used for any other purpose. The operator is responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan or a remediation plan developed pursuant to this section as determined appropriate by both the County and the Department of Conservation that are in excess of the proceeds from the forfeited financial assurance mechanisms.
- (i) Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon the written concurrence of the County and the Department of Conservation, which shall be forwarded to the operator and the institutions providing or holding the financial assurance mechanism, that reclamation has been completed in accordance with the approved reclamation plan.
 - (j) If a surface mining operation is sold or ownership is transferred to another person, the existing financial assurance mechanisms shall remain in force and shall not be released by the County and the Department of Conservation until new financial assurance mechanisms are secured from the new owner and have been approved by the County. Within 90 days of the sale or transfer of a surface mining operation, the new operator shall submit an appropriate financial assurance mechanism, which may be the existing mechanism if the existing mechanism is payable in the event of the new operator's financial incapability or abandonment of the surface mining operation, that is subject to review by the County and the Department of Conservation. Within 15 days of the sale or transfer of a surface mining operation, the new operator shall sign a new statement of reclamation responsibility.
 - (k) The County shall have primary responsibility to seek forfeiture of the financial assurance mechanisms and reclaim the mine sites pursuant to this section. However, the Department of Conservation may act to seek forfeiture of the financial assurance mechanisms and reclaim the mine sites pursuant to section (f) above only if both of the following occur:

- (1) The financial incapability of the operator or the abandonment of the surface mining operation has come to the attention of the Department of Conservation.
- (2) The County has been notified in writing by the Department of Conservation of the financial incapability of the operator or the abandonment of the surface mining operation for at least 15 days, the County has not taken appropriate measures to seek forfeiture of the financial assurance mechanisms and reclaim the mine site, and one of the following has occurred:
 - (A) The County has been notified in writing by the Department of Conservation that failure to appropriate measures to seek forfeiture of the financial assurance mechanisms or to reclaim the mine site shall result in the Department of Conservation taking action to exercise the County's powers under SMARA to seek forfeiture of the financial assurances.
 - (B) The Department of Conservation determines that there is a violation that amounts to an imminent and substantial endangerment to the public health, safety, or to the environment.
 - (C) The County notifies the Department of Conservation in writing that its good faith attempts to seek forfeiture of the financial assurance mechanisms have not been successful.
- (l) Review and approval of financial assurances shall be conducted in accordance with the following procedures:
 - (1) Prior to approving the financial assurance cost estimate for new reclamation plan or adjustments to the financial assurance cost estimate based on an amendment to a reclamation plan, the County shall submit the financial assurance cost estimate to the Department of Conservation for review.
 - (2) The County of Solano shall provide the Department of Conservation with a determination that the financial assurance cost estimate submitted is adequate, complete, and consistent with SMARA and State Board Regulations.
 - (3) All documents submitted to the Department of Conservation pursuant to this section shall be submitted at one time.
- (m) The Department of Conservation shall have 45 days from the date of receipt of a complete financial assurance cost estimate to prepare written comments if the Department of Conservation chooses. The County shall evaluate written comments received from the Department of Conservation relating to the financial assurance cost estimate within a reasonable amount of time. The County shall prepare a written response to the Department of Conservation's comments describing the disposition of the major issues raised by the Department of Conservation's comments. The County shall submit its proposed response to the Department of Conservation at least 30 days prior to approval of the financial assurance cost estimate. The County's response shall include either of the following:

- (1) A description of how the County proposes to adopt the Department of Conservation's comments to the financial assurance cost estimate.
 - (2) A detailed description of the reasons why the County proposes to not adopt the Department of Conservation's comments.
 - (3) Copies of any written comments received and responses prepared by the County shall be forwarded to the operator.
- (n) Within 30 days of an annual inspection being conducted pursuant to section 29-31, an operator shall provide an annual financial assurance cost estimate to the County for review. Within 60 days of receiving an operator's financial assurance cost estimate, the County shall do one of the following:
- (1) Deny the financial assurance cost estimate and provide the operator with a description of the inadequacies of the financial assurance cost estimate. The County shall further specify the reasons for denial and the operator shall make corrections and resubmit to the County the corrected financial assurance cost estimate review.
 - (2) Submit the financial assurance cost estimate to the Department of Conservation for review. The County shall provide the Department of Conservation with a determination that the annual financial assurance cost estimate submitted is adequate, complete, and consistent with SMARA and State Board regulations. All documents shall be submitted at one time.
- (o) Following the 45 day comment period by the Department Conservation, if no comments are received by the County or if concurrence of the County's concurrence of determination of adequacy is received from the Department of Conservation, the County shall provide written notice to the Department of Conservation that the County intends to approve the financial assurance cost estimate within 30 days and a copy of the final financial assurance cost estimate shall be submitted to the Department of Conservation.
- (p) Within 30 days of the County's approval of the financial assurance cost estimate pursuant to this chapter, the operator shall provide both the County and the Department with an appropriate financial assurance mechanism.
- (q) Within 15 days of receiving a financial assurance mechanism, the County and the Department of Conservation shall concurrently review the financial assurance mechanism to determine if the type of mechanism, including the release instructions, meets the requirements of SMARA. Financial assurance mechanisms determined to be noncompliant with the provisions of SMARA shall be returned to the operator with instructions on how to correct the type or release instructions of the financial assurance mechanism.
- (r) The review and approval of financial assurances pursuant to this chapter shall not be considered a project for the purposes of the CEQA.

Sec. 29-22 Review Procedures

- (a) All applications for approval of either a Land Use Permit, Reclamation Plan or Financial Assurances for surface mining or land reclamation projects shall be made on forms provided by the Solano County Department of Resource Management. The forms for Reclamation Plan applications shall require, at minimum, each of the elements required by SMARA and State Board regulations, and any other requirements deemed necessary to facilitate an expeditious and fair evaluation of the proposed Reclamation Plan, to be established at the discretion of the Director of Resource Management. As many copies of the site approval/reclamation plan application as may be required by the Director shall be submitted to the Department of Resource Management. Applications shall include all required environmental review forms and information prescribed by the Director. Said application shall be accompanied by a filing fee as determined by the Solano County Board of Supervisors, which may be adjusted periodically to sufficiently cover the reasonable cost of the application.
- (b) Within thirty (30) days of acceptance of an application for a Land Use Permit for surface mining operations and/or a Reclamation Plan as complete, the Department of Resource Management shall notify the Department of Conservation of the filing of the application(s). Whenever mining operations are proposed in 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 (FEMA), and within one mile, of or any state highway bridge, the Department of Resource Management shall also notify the State Department of Transportation (Caltrans) that the application has been received.
- (c) The Department of Resource Management shall prepare an environmental review for any surface mining permit and /or reclamation plan application pursuant to CEQA and the County's environmental review guidelines.
- (d) Subsequent to the appropriate environmental review, the Department of Resource Management shall prepare a staff analysis with recommendations for consideration by the Planning Commission.
- (e) The Solano County Planning Commission shall hold a noticed public hearing on the surface mining permit and/or reclamation plan consistent with the Public Notice Requirements specified in Section 28.04 of the County Code (Zoning Regulations). Upon completion of the environmental review procedure and filing of all documents required by the Director of the Department of Resource Management, consideration of the surface mining permit and/or reclamation plan for the proposed or existing surface mine shall be completed at the public hearing before the Planning Commission shall take action at the hearing to approve, conditionally approve, or deny the surface mining permit and/or reclamation plan, and to approve the financial assurances pursuant to Section 29-21.
- (f) Prior to approval of a Reclamation Plan, financial assurances (as provided in this chapter), or any amendments to the Reclamation Plan or existing financial assurances, the Department of Resource Management shall certify to the Department of Conservation that the Reclamation Plan and/or financial assurance complies with the applicable requirements of State law, and submit the plan,

- assurances, or amendments to the Department of Conservation for review. The Planning Commission may defer action on the Land Use Permit until taking action on the Reclamation Plan and financial assurances. If necessary to comply with permit processing deadlines, the Planning Commission may conditionally approve the Land Use Permit with the condition that the Department of Resource Management shall not issue the Land Use Permit for the mining operations until cost estimates for financial assurances have been reviewed by the Department of Conservation and final action has been taken on the Reclamation Plan and financial assurances.
- (g) The Department of Conservation shall be given thirty (30) days to review and comment on the Reclamation Plan and 45 days to review and comment on the financial assurance cost estimate. The County shall prepare a written response to the Department of Conservation's comments describing the disposition of the major issues raised by the Department of Conservation's comments, and submit the County's proposed response to the Department of Conservation at least 30 days prior to approval of the reclamation plan, plan amendment, or financial assurance. The County's response to the Department of Conservation's comments shall describe whether the County proposes to adopt the Department of Conservation's comments to the reclamation plan, plan amendment, or financial assurance. If the County does not propose to adopt to the Department of Conservation's comments, the County shall specify, in detail, why the County proposes not to adopt the comments. Copies of any written comments received and responses prepared by the County shall be forwarded to the operator. The County shall also give the Department of Conservation at least 30 days' notice of the time, place, and date of the hearing before the County at which time the reclamation plan, plan amendment, or financial assurance is scheduled to be approved by the County. If no hearing is required by this chapter, or by the local ordinance or state law, then the County shall provide 30 days' notice to the Department of Conservation that it intends to approve the reclamation plan, plan amendment, or financial assurance. The County shall send the Department of Conservation its final response from the Department of Resource Management's comments within 30 days following its approval of the reclamation plan, plan amendment, or financial assurance during which the Department retains all powers, duties, and authorities of this chapter. Copies of any written comments received and responses prepared by the Planning Commission shall be promptly forwarded to the applicant/operator.
- (h) The Planning Commission shall then take action to approve, conditionally approve or deny the Land Use Permit and/or Reclamation Plan, and approve the financial assurances.
- (i) The Department of Resource Management shall forward a copy of each approved Land Use Permit for mining operations and/or Reclamation Plan, and a copy of the approved financial assurances to the Department of Conservation. By July 1 of each year, the Department of Resource Management shall submit to the Department of Conservation for each active or idle mining operation a copy of the Land Use Permit approval of Reclamation Plan amendments, as applicable, or a statement that there have been no changes during the previous year.

Sec. 29-23 Standards for Reclamation

- (a) All Reclamation Plans shall comply with the provisions of SMARA and State Board regulations. Reclamation Plans approved after January 15, 1993, Reclamation Plans for proposed new mining operations, and any substantial amendments to previously approved Reclamation Plans, shall also comply with the requirements for reclamation performance standards as established by the State Board including but not limited to wildlife habitat, backfilling, revegetation, drainage, agricultural land reclamation, equipment removal, stream protection, topsoil salvage and waste management.
- (b) The County may impose additional performance standards as developed either in review of individual projects, as warranted, or through the formulation and adoption of County-wide performance standards.
- (c) Reclamation activities shall be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance. Interim reclamation may also be required for mined lands that have been disturbed and that may be disturbed again in future operations. Reclamation may be done on an annual basis, in stages compatible with continuing operations, or completion of all excavation, removal, or fill, as approved by Solano County.

Each phase of reclamation shall be specifically described in the Reclamation Plan and shall include (a) the beginning and expected ending dates for each phase; (b) all reclamation activities required; (c) criteria for measuring completion of specific reclamation activities; and (d) estimated costs for completion of each phase of reclamation.

Sec. 29-24 Statement of Responsibility

The person submitting the Reclamation Plan shall sign a statement accepting responsibility for reclaiming the mined lands in accordance with the Reclamation Plan. Said statement shall be kept by the Department of Resource Management in the mining operation's permanent record. Upon sale or transfer of the operation, the new operator shall submit a signed statement of responsibility to the Department of Resource Management for placement in the permanent record.

Section 29-25 Findings for Approval

- (a) Site Approvals. In addition to any findings required by the Solano County Code, Site Approvals for surface mining operations shall include a finding that the project complies with the provisions of SMARA and State Board Regulations.
- (b) Reclamation Plans. For Reclamation Plans, the following findings shall be required:
 - (1) That the Reclamation Plan complies with SMARA, and any other applicable provisions.
 - (2) That the Reclamation Plan complies with applicable requirements of State Board regulations.

- (3) That the Reclamation Plan and potential use of reclaimed land pursuant to the plan are consistent with this Chapter and the Solano County General Plan and any applicable resource plan or element.
- (4) That the Reclamation Plan has been reviewed pursuant to CEQA and the County's environmental review guidelines, and all significant adverse impacts from reclamation of the surface mining operations are mitigated to the maximum extent.
- (5) That the land and/or resources such as water bodies to be reclaimed will be restored to a condition that is compatible with, and blends in with, the surrounding natural environment, topography, and other resources, or that suitable off-site development will compensate for related disturbance to resource values.
- (6) That the Reclamation Plan will restore the mined lands to a usable condition which is readily adaptable for alternative land uses consistent with the General Plan and applicable resource plan.
- (7) That a written response to the Department of Conservation has been prepared, describing the disposition of major issues raised by the Department of Conservation. Where the County's position is at variance with recommendations and objections raised by the Department of Conservation, said response shall address, in detail, why specific comments and suggestions were not accepted.

Sec. 29-26 Notice of Reclamation Approval

- (a) The County, upon approval of a reclamation plan or an amendment to a reclamation plan, shall record a "Notice of Reclamation Plan Approval" with the County Recorder. The notice shall read: "Mining operations conducted on the hereinafter described real property are subject to a reclamation plan approved by the County of Solano, a copy of which is on file with the Department of Resource Management, 675 West Texas Street, Suite 5500, Fairfield, CA 94533"
- (b) In addition to the information require by Subdivision (a), the notice shall also include the name of the owner of record of the mine operation, and the acknowledged signature of the County's representative.

Sec. 29-27. Periodic Review

As a condition of approval and/or the permit of the reclamation plan, or both, a schedule for periodic inspections by the County of the site shall be established to evaluate continuing compliance with the permit and reclamation plan. A scheduled inspection shall occur within six months of the start of operations at a site, and at least annually thereafter. The operator shall be solely responsible for the reasonable cost of the inspection. An inspection fee shall be set and adjusted from time to time by resolution of the Board of Supervisors as provided by section 1-18 of the Solano County Code. The fee shall be

payable by the operator to the Department of Resource Management. A report of the results of the inspection shall be completed on a form to be provided by the state, and a copy of the inspection report shall be provided to the Department of Conservation.

(Ord. No. 1036, §1; Ord. No. 1415, §1)

Sec. 29-28 Amendments

- (A) Amendments to an approved reclamation plan may be submitted detailing proposed changes from the original plan. Substantial deviations from the original plan shall not be undertaken until such amendment has been filed with and approved by the planning commission. A proposed amendment to a reclamation plan shall be processed in the same manner, and the applicant shall have the same rights and pay the same fee as established herein for an original application. Any amendments to a Permit and/or Reclamation Plan, unless determined to be a minor modification as described below, may be approved by the same procedure as is prescribed for approval of a Permit and/or Reclamation Plan.
- (B) Non-Substantial Deviations to a Permit and/or Reclamation Plan may be allowed by the Director of Resource Management upon a written finding that the requested modification is necessary to achieve the prescribed or higher post mining use of the reclaimed land, that the change does not increase the area or volume of materials to be mined by more than ten (10) percent, and that the change is consistent with the intent of the conditions of approval and environmental clearance of the Permit and/or Reclamation Plan. These findings shall be supported by substantial evidence in the record. A minor modification to a Reclamation Plan may be approved only if it meets the following standards:
- (1) To allow the minor recontouring of final topography affecting no, more than ten (10) percent of the site, provided that slope stability is maintained and documentation provided.
 - (2) To allow minor modifications to existing on-site roads and encroachments directly from the site to a public road, but not including new off-site roads.
 - (3) To allow a minor substitution in the reclamation plan such as a substitution in the type and/or number of plant species, minor change in topsoil treatment, etc., provided it does not substantially alter the intended end-use described in the approved reclamation plan.
 - (4) To allow minor technological or administrative changes in methods used to achieve reclamation.
 - (5) To allow measures to be taken which will ensure or maintain public safety (e.g., fences, gates, signs, or hazard removal), provided such measures do not substantially alter the intended end-use described in the approved reclamation plan.
 - (6) To allow minor modifications to a previously approved phasing plan.

- (7) To allow compliance with requirements of other public agencies, provided the requirements are not inconsistent with the approved conditional use permit.
- (8) A minor modification shall not include changing the end-use of the land.
- (C) Applications for a minor modification shall be made on a form provided by and filed with the Department of Resource Management, together with the appropriate fee.
- (D) Prior to approval of a minor modification, the Director of Resource Management shall make the following written findings which shall include the reasons for the findings:
 - (1) The minor modification is consistent with the approved conditional use permit and or the approved reclamation plan and does not represent a significant change to the approved reclamation plan for the subject surface mining operations.
 - (2) The minor modification is not subject to CEQA.
- (E) The Director of Resource Management shall approve, conditionally approve, or disapprove an application for a minor modification within forty-five (45) days to accepting the application as complete, and give notice by mail of the decision, including any conditions of approval, to the applicant and any interested parties that have formally requested such notice in writing.
- (F) The decision of the Resource Management Director regarding the minor modification of a Land Use Permit shall be appealable to the Planning Commission within ten (10) days of said decision. The decision of the Planning Commission regarding the appeal shall be appealable to the Board of Supervisors within ten (10) calendar days of said decision. Appeals must be in writing together with the appropriate appeal fee.
- (G) Within thirty (30) days of final action, the Resource Management Director shall send a copy of an approved minor modification to the Department of Conservation.

Sec. 29-29. Idle operations

- (1) Within 90 days of a surface mining operation becoming idle, as defined in Section 2771.1 of the Public Resources Code, the operator shall file an application for an Interim Management Plan with the Director of Resource Management in accordance with the provisions of this ordinance. Said application shall include:
 - (a) All information required under this ordinance for filing of a new application for a permit, unless the requirement is waived by the Director of Resource Management.
 - (b) A statement explaining that the surface mining operation is idle as defined in this chapter.
 - (c) An Interim Management Plan which includes measures the operator will implement to maintain the site in accordance with the approved mining plan, the approved reclamation plan and the permit conditions.
 - (d) A filing fee for review if the Interim Management Plan which shall be the same amount as the filing fees for a reclamation plan.

- (e) Such additional information as shall be required by the Director of Resource Management.
- (2) Within 60 days of the receipt of a complete application for an Interim Management Plan, the Director of Resource Management shall review and approve the application provided the Interim Management Plan complies with the requirements specified in subsection 1, and give notice by mail of the approval to the operator and any other person who has filed for written notice. Otherwise, the Director of Resource Management shall notify the operator in writing of any deficiencies in the plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the Director of Resource Management, to submit a revised plan. The Director of Resource Management shall approved or deny approval of the revised Interim Management Plan within 60 days of receipt. If the Director of Resource Management denies approval of the revised Interim Management Plan, the operator may appeal that action to the Planning Commission, which shall schedule a public hearing within 45 days of the filing of the appeal. An application for an Interim Management Plan shall not require a public hearing.
- (3) The Interim Management Plan may remain in effect for a period not to exceed 5 years, at which time the Director of Resource Management shall do one of the following:
 - (a) Renew approval of the Interim Management Plan for another period not to exceed 5 years, if the Director of Resource Management finds that the operator has fully complied with the provisions of the Interim Management Plan.
 - (b) Require the operator to commence reclamation in accordance with its approved reclamation plan. The determination by the Director of Resource Management to extend the term of the Interim Management Plan or to require reclamation shall not require a public hearing. If the surface mining operation is still idle after expiration of its Interim Management Plan, the surface mining operation shall commence reclamation in accordance with its approved reclamation plan.
- (4) Any financial assurance required in conjunction with approval of the permit shall remain in effect during the period the surface mining operation is idle and until such time as reclamation is completed.
- (5) Unless review of an Interim Management Plan is pending before the Director of Resource Management, or an appeal is pending before the Board of Supervisors, a surface mining operation which remains idle for over 1 year after becoming idle as defined in this chapter, without obtaining approval of an Interim Management Plan, shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.

Sec. 29-30 Annual Inspections

- (1) The Department of Resource Management shall conduct an inspection of the surface mining operation within six (6) months of receipt of the operator's annual report to determine whether the surface mining operation is in compliance with the approved Conditional Use Permit and Mining and Reclamation Plan, approved Financial Assurances, and State Regulations. At least one (1) inspection shall be

conducted in each calendar year. Said inspections may be made by a State-registered Geologist, State-registered civil engineer, State-licensed landscape architect, State-registered forester, who is experienced in land reclamation and who has not been employed by the mining operation in any capacity during the previous twelve (12) months, or other qualified specialists, such as those certified in the DMR training program pursuant to PRC Section 2774(d)(3) as selected by the Director of Resource Management. All inspectors shall have on file with the County and the Division of Mine Reclamation a Certificate of Completion of an inspection workshop. All inspections shall be conducted in accordance with State Board regulations. The annual inspection shall be conducted using a form approved and provided by the State Board. The Department of Resource Management shall submit the completed inspection form, a copy of the acceptable financial assurance cost estimate to the Department of Conservation within ninety (90) days of the date of completion of the inspection along with a notice of completion of inspection which contains statements on compliance with SMARA, any amendments, or financial assurances, including any supporting documentation that substantiates the County's findings. Copies shall also be sent to the operator. The operator shall be responsible for the reasonable cost of the inspection.

- (2) The Department of Resource Management shall annually review and update, as necessary, the Financial Assurances of each surface mining operation based on annual adjustment data submitted by the operator pursuant to Section 29-21.

Sec. 29-31 Public Records

Mining and Reclamation Plans, reports, applications, and other documents submitted to the County are public records unless it can be demonstrated to the satisfaction of the County that release of such information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The County shall identify such proprietary information as a separate part of the application. A copy of all permits, Mining and Reclamation Plans, reports, applications, and other documents submitted pursuant to this Section, including proprietary information, shall be forwarded to the Department of Conservation by the Department of Resource Management. Proprietary information shall be made available to persons other than the Department of Conservation Director only when authorized by the mine operator and by the mine owner.

ARTICLE III. REVIEW AND ENFORCEMENT

Sec. 29-32 Enforcement and Penalties

- (A) If after conducting the inspections required by Section 29-30, other inspections that may be undertaken, or upon the receipt of a verified complaint by an interested person, the Director of Resource Management finds that the mining operation is not in substantial compliance with this Chapter, the surface mining permit issued, the reclamation plan, or the provisions of SMARA, the operator and owner shall each be sent a Notice of Violation, and given a reasonable time to substantially comply, not to exceed thirty (30) days.

- (B) If a violation continues beyond thirty (30) days after the date of issuance of the Notice of Violation, the Director of Resource Management may issue an order by personal service or certified mail requesting compliance or, if the operator does not have an approved reclamation plan, to cease all further mining activities.
- (C) The permittee may appeal the determination of the Director to the Planning Commission within ten (10) days of receipt of the initial Notice of Violation. If not appealed, the decision of the Director shall be final. The decision of the Planning Commission may be appealed within ten (10) days to the Board of Supervisors.
- (D) Any operator who fails to comply with an order issued by the Director after the order's effective date, or who fails to submit a report to the Director of the Department of Conservation or the County as required by PRC Section 2207, shall be subject to an order by the Director of Resource Management imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of the Director's Notice of Violation or non-compliance with PRC section 2207. County and Department of Conservation penalties shall not exceed five thousand dollars (\$5,000) per day by each agency.
- (E) In determining the amount of the administrative penalty, the Director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation, and any other matters justice may require. An order imposing an administrative penalty shall become effective upon issuance and payment shall be made to the County within thirty (30) days, unless the operator appeals to the Board of Supervisors for review of the order.
- (F) If the operator appeals to the Board of Supervisors for review of the order imposing an administrative penalty, the operator shall be notified by certified mail when the matter has been set for public hearing. The Board of Supervisors may affirm, or set aside, in whole or in part, by its own order of the director imposing an administrative penalty. Any order of the Board of Supervisors shall become effective upon issuance thereof and shall be served by certified mail upon the operator. Payment of an administrative penalty specified in the Board of Supervisors order shall be made to the County with thirty (30) days of service of the order.

Sec. 29-33 Revocation or Suspension of Surface Mining Permit

Any surface mining permit granted under the provisions of this chapter shall be subject to revocation or suspension by the Planning Commission, for cause, shall be subject to the revocations procedures set forth in Section 28.106 (i) and in the following matter:

- (A) Appeal of the action by Planning Commission may be made according to the provisions of Section 28-112 of County Code (Zoning Regulations) and Board of Supervisors. Where appropriate, a further appeal may be taken by the permittee to the State Mining and Geology Board.

Sec. 29-34. Appeal

Any person aggrieved by an act or determination of the zoning administrator or planning commission in the exercise of the authority granted herein shall have the right to appeal to the planning commission or the board of supervisors, whichever is the next higher authority. Any appeal must be filed, in writing, within ten days of the decision creating the grievance. Any operator who is aggrieved by an order of the board of supervisors may obtain review of the order by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the decision, pursuant to Public Resources Code § 2774.2(e).

(Ord. No. 1036, §1; Ord. No. 1415, §1)

Sec. 29-35. Severability

(a) Whenever any surface mining operation or portion of an operation subject to this ordinance is sold, assigned, conveyed, exchanged, or otherwise transferred, the successor in interest shall be bound by the provisions of this ordinance and shall notify the Department of Resource Management in writing of such transfer of ownership. Any existing financial assurance shall remain in force and shall not be released until new financial assurances are secured from the new successor in interest and approved in accordance with Section 2770 of the Public Resources Code and Section 29-21 of this Ordinance.

(b) If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality, of the remaining portions of this ordinance, it being expressly declared that this ordinance and each section, subsection, paragraph, sentence, clause and phrase thereof would have been adopted, irrespective of the fact that one or more other section, subsection, paragraph, sentence, clause or phrase be declared invalid or unconstitutional.

ARTICLE IV. MINERAL RESOURCE PROTECTION**Sec. 29-36 Mineral Resources Protection**

Mine development is encouraged in compatible areas before encroachment of conflicting uses. Mineral resource areas that have been classified by the State Department of Conservation's California Geological Survey or designated by the State Board, as well as existing surface mining operations that remain in compliance with the provisions of this chapter, shall be protected from intrusion by incompatible land uses that may impede or preclude mineral extraction or processing, to the extent possible for consistency with the County's General Plan.

The County's General Plan and resource maps will be prepared to reflect mineral information (classification and/or designation reports) within 12 months of receipt from the State Board of such information. Land use decisions within the County of Solano will be guided by information provided on the location of identified mineral resources of statewide and regional significance. Conservation and potential development of identified mineral resource areas will be considered and encouraged. Recordation on property titles of the presence of important mineral resources within the identified mineral resource areas may be encouraged as a condition of approval of any development project in the impacted

area. Proposed amendments to the Mineral Resources Management Policies shall require review and comment by the State Board.

Prior to approving a use that would otherwise be incompatible with mineral resource protection, a statement specifying its reason for permitting an incompatible use shall be forwarded to the State Geologist and State Board for review. Prior to approving a use that would otherwise be incompatible with mineral resource protection, conditions of approval may also be applied to encroaching development projects to minimize potential conflicts. County land use decisions involving areas designated as being regional significance shall be 1) be in accordance with the County's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of these minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction, and 2) consider the importance of the mineral resource to the state and nation as a whole.

Mineral Resources Management Policies must include, but not limited to, a) A summary of the information provided by the classification and/or designation reports, or incorporation of PRC Sections 2710 et seq., and state policy by reference, together with maps of identified mineral deposits or incorporation by reference of the classification and/or designation maps provided by the State Board, b) Statements of policy in accordance with the provisions of PRC Section 2762(a), and c) implementation measures.

SECTION III

This ordinance will be effective thirty (30) days after its adoption.

SECTION VI

If any provision of this ordinance or the application of it to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of the interim ordinance are declared to be severable.

SECTION V

A summary of this ordinance will be published once within fifteen (15) days after its adoption in the Fairfield Daily Republic, a newspaper of general circulation.

Passed and adopted by the Solano County Board of Supervisors at its regular meeting on _____ by the following vote:

AYES: Supervisors _____

NOES: Supervisors _____

EXCUSED: Supervisors _____

JOHN VASQUEZ, Chair
Solano County Board of Supervisors

ATTEST:
Bill Emlen, Clerk
Board of Supervisors

By: _____
Alicia Draves, Chief Deputy Clerk

ORDINANCE NO. 2022 – _____

**AN ORDINANCE REPEALING AND READOPTING
CHAPTER 29 OF THE SOLANO COUNTY CODE
RELATING TO SURFACE MINING AND RECLAMATION**

Therefore, The Board of Supervisors of the County of Solano ordains as follows:

SECTION I

Chapter 29 is being updated to address recent changes to the Surface Mining and Reclamation Act of 1975 (Public Resources Code, § 2710 et. seq.). and the implementing regulations promulgated by the State Mining and Geology Board (California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1, § 3500 et. seq.).

SECTION II

Chapter 29 of the Solano County Code is repealed.

SECTION III

Chapter 29 is added to the Solano County Code as follows:

ARTICLE I. GENERAL

- 29-10. Purpose and Intent
- 29-11. Definitions Incorporation of SMARA and State Regulations
- 29-12. Scope Definitions
- 29-13. Scope

ARTICLE II. PLANS AND OPERATIONS

- 29-20. Permit and Reclamation Plan Requirements
- 29-21. Financial Assurances
- 29-22. Review Procedure
- 29-23. Public records Standards for Reclamation
- 29-24. Periodic Review Statement of Responsibility
- 29-25. Amendments Findings for Approval
- 29-26. Idle Operations Notice of Reclamation Plan Approval
- 29-27. Public Records
- 29-28. Periodic Review
- 29-29. Amendments
- 29-30. Idle Operations
- 29-31. Annual Inspections

ARTICLE III. REVIEW AND ENFORCEMENT

29-30	<u>32</u>	Enforcement <u>and Penalties</u>
29-33		<u>Revocation or Suspension of Surface Mining Permit</u>
29-31.		Penalties
29-32	<u>34.</u>	Appeal
29-33	<u>35</u>	Severability
29-36		<u>Mineral Resource Protection</u>

Sec. 29-10. Purpose and Intent

- (a) The Surface Mining and Reclamation Act, in Division 2, Chapter 9 of the Public Resources Code, authorizes and directs local agencies to adopt ordinances establishing procedures for the review and approval of reclamation plans and the issuance of permits to conduct mining operations. This chapter is adopted to comply with the directive and fulfill various purposes of the Act.
- (b) The Board of Supervisors hereby finds and declares that the extraction of minerals is essential to the continued economic well-being of the County and to the needs of society, and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.
- (c) The Board further finds that the reclamation of mined lands, as provided in this chapter, will permit the continued mining of materials and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.
- (d) The Board further finds that surface mining takes place in diverse areas where geologic, topographic, climatic, geological and social conditions are significantly different and that reclamation operations and the specifications may vary accordingly.

(Ord. No. 1036, §1; Ord. No. 1415, §1)

Sec.29-11 Incorporation of SMARA and State Regulations

The provisions of this Chapter are intended to impose requirements on surface mining operations and operator that are equivalent to, or more restrictive than correlative provisions of SMARA and related state regulations, this Chapter shall prevail.

- (a) In the event that the State amends SMARA to the extent that it adds to or conflicts with this Chapter, State law shall prevail.

Sec. 29-112 Definitions

As used in this chapter, the following definitions shall apply:

Areas of regional significance means an area designated by the State Mining and Geology Board pursuant to Public Resources Code Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be in a particular

regions of the state within which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local significance.

Areas of statewide significance means an area designated by the State Mining and Geology Board pursuant to Public Resources Code Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the state and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are more than local or regional significance.

Berm means an elongated earthen structure which acts as a barrier, to make it difficult for a vehicle to cross, or to reduce the flow of water.

Bench means a relatively level step excavated into earth material on which fill is to be placed.

CEQA means the California Environmental Quality Act, Public Resources Code Section 21000 et. seq.

Compatible land use means land uses inherently compatible with mining and/or that require a minimum public or private investment in structures, land improvements, and which may allow mining because of the relative economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, very low density residential, geographically extensive but low impact industrial, recreational, agricultural, silvicultural, grazing and open space.

County means the County of Solano, State of California

Director means the Director of the Solano County Department of Resource Management or his/her designee.

Excavation means the mechanical removal of earthen material.

Exploration or prospecting means the search for minerals by geological, geophysical, geochemical and other techniques including, but not limited to, sampling, assaying, drilling, or any surface or underground works needed to determine the type, extent or quantity of minerals present.

Farming means the management and/or cultivation of land for the production of crops or livestock.

Financial Assurances means a current approved financial assurance cost estimate and financial assurance mechanism that is at least equal to the current approved financial assurance cost estimate.

Financial Assurances Cost Estimate (FACE) means an estimate that is prepared and reviewed on an annual basis by the County, which is based on a mining operation's existing conditions, performance standards of the approved reclamation plan and the methods, efforts, and direct and indirect expenses anticipated to achieve the performances standards and end use of the approved reclamation plan. The estimate

shall also account for all materials, labor, annual inflation, and administrative costs that would be associated with the County or the Department of Conservation managing the performance of reclamation by a third party. The estimate shall serve as the basis for the financial assurance mechanism, which shall also be adjusted annually based on the outcome of the FACE.

Haul road means an internal road along which material is transported from the area of excavation to the processing plant or stock pile area of the surface mining operation.

Haul route means an external road along which previously excavated, processed or stockpiled material is transported to an off-site area.

Highwall means the unexcavated face of exposed overburden and ore in a surface mine.

~~Idle means to curtail for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.~~ means 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 (1) year or 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.

Incompatible land uses means land uses inherently incompatible with mining and/or that require public or private investment in structures, land improvements, and landscaping and that may prevent mining because of the greater economic value of the land and its improvements. Example of such uses may include, but not limited to, high density residential, low density residential with high unit value, public facilities, geographically limited but impact intensive industrial, and commercial.

Interim Management Plan (IMP) means an amendment to the approved reclamation plan that describes the measures the operator will implement during the mining operations idle status to maintain the site in compliance with the provisions of the Surface Mining and Reclamation Act (SMARA), including, but not limited to, all permit conditions. For purposes of CEQA, an IMP is not considered a project under CEQA.

~~**Lead agency** means the Solano County Planning Commission which has the principal responsibility for approving a surface mining operation pursuant to this ordinance.~~

Mine includes all mineral bearing properties of whatever kind of character, whether underground, or in a quarry or pit, or any other source from which any mineral substance is or may be obtained, but excludes the recycling of materials such as asphalt and concrete and does not include backfilling operations, such as those typically associated with sanitary landfills or backfilling of material usually through the issuance of a grading permit.

Mined lands includes 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 wastes, and areas in which structures, facilities, equipment, machines, tools, or other

materials or property which result from, or are used in areas in which surface mining operations are located.

Minerals means any naturally occurring chemical element or compound or groups of elements and compounds formed from inorganic processes and organic substances including but not limited to, coal, peat, bituminous rock, but excluding geothermal resources, natural gas and petroleum.

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

Non-Substantial Deviation means an amendment to a reclamation plan involving insignificant changes and does not require review under CEQA.

On-Site Construction means the construction of buildings, roads or other improvements including landscaping, excavation and grading required to prepare a site for construction of structures, landscaping or other land improvements, and which is beneficially modified by such construction, is not deemed to be a surface mining operation. Additionally, all required permits for the construction, landscaping, or related land improvements must be obtained from the County in accordance with applicable provisions of State law and locally adopted plans and ordinances.

Operator means any person who is engaged in surface mining operations, or who contracts with others to conduct operations on the operator's behalf, but does not include a person engaged in surface mining operations as an employee with wages as the person's sole compensation.

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

Permit means any authorization from or approval by, ~~a lead agency,~~ the County, the absence of which would preclude surface mining operations.

Person includes any individual, firm, association, corporation, organization or partnership, or any city, county, district, or the state, or any department or agency thereof.

Reclamation means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion 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 to alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization or other measures.

Reclamation plan means the plan approved by the County of Solano, and as required, by the Surface Mining and Reclamation Act of 1975, which meets all the requirements of section 2772 of the Public Resources Code, administrative guidelines and regulations adopted pursuant thereto, and ordinances and resolutions of Solano County adopted in

accordance therewith. A reclamation plan shall include, but not limited to, environmental setting of the site, effect that possible alternate reclaimed site conditions may have upon existing and future uses of surrounding lands, the designed steepness and proposed treatment of mined lands, such as final slopes, physical properties of slope material, maximum water content, landscaping requirements, slope stability, backfilling and grading, disposition of equipment, stream or water course diversions, roads, building sites, or other improvements sensitive to settlement, compaction of fill materials in conformance with good engineering practice, as well as other factors applicable to the site as further described in Section 29-23 of this Chapter.

Reclamation Plan Amendment is defined as an amendment to the approved reclamation plan. The amendment may be considered by the Planning Commission or the Director of Resource Management based on authorization and jurisdiction as defined within this chapter.

Riparian Vegetation means vegetation situated on the bank of a stream, river, or other body of water.

SMARA means the Surface Mining and Reclamation Act of 1975, Public Resources Code Section 2710 et. seq.

State Board board means the State Mining and Geology Board in the Department of Conservation, State of California.

State geologist means the individual holding office created by section 677 of the Public Resources Code.

Substantial Deviation means a change or deviation from the originally approved reclamation plan, as determined by the Director of Resource Management, that could include a change in the end use, slope configurations, new stream or watercourse diversions that were not contained in the original plan, increase in quantities of materials to be mined or displaced as well as a change in the time periods for the completion of mining and reclamation, change in mining boundaries as an example, as well as the following factors outlined in CCR §3502 (d), which include but not limited to: (1) A substantial increase in the disturbance of a surface area or in the maximum depth of mining; (2) A substantial extension of the termination date of the mining operation as set out in an approved reclamation plan; (3) Changes that would substantially affect the approved end use of the site as established by the reclamation plan; (4) The consistency of any proposed change to the operation with the previously adopted environmental determinations; and (5) Any other changes that the County deems substantial deviations as defined in this subsection, and shall not be undertaken until such time as an amendment to the reclamation plan has been filed with, and approved by the Planning Commission.

Surface Mining Operations means 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 auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

- (a) In place distillation or retorting or leaching;

- (b) The production and disposal of mining waste;
- (c) Prospecting and exploratory activities;
- (d) Gravel extraction operation;
- (e) Borrow pits;
- (f) Segregation and stockpiling of mined materials (and recovery of same)

Terrace means a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.

Topsoil means the upper part of the soil profile that is relatively rich in humus, which is typically known as the "A-horizon" of the soil profile.

Turbidity means a condition where water is cloudy or muddy due to the presence of suspended matter such as clay, silt, finely divided organic and inorganic matter, plankton, and other microscopic organisms.

Vested right. A person shall be deemed to have vested rights if prior to January 1, 1976, the person has, in good faith and in reliance upon a permit or other authorization if such permit or other authorization was required and was in compliance with county regulations, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit, shall not be deemed liabilities for work or materials.

(Ord. No. 1036, §1; Ord. No. 1415, §1)

Sec. 29-1213 Scope

- (a) ~~The provisions of this chapter shall apply to the unincorporated areas of Solano County.~~ The provisions of this Chapter shall apply to surface mining operations and reclamation of mined lands within unincorporated areas of Solano County. The provisions of this Chapter have been designed to encompass borrow pits, dredging operations, quarry operations and other surface mining operations conducted in Solano County.
- (b) The provisions of this chapter are not applicable to:
 - (1) Excavations or grading conducted for farming or on-site construction, or for the purpose of restoring land following a flood or natural disaster.
 - (2) Prospecting and exploration for minerals of commercial value where less than one thousand cubic yards of overburden is removed in any one location of one acre or less.
 - (3) Any surface mining operation that does not involve either the removal of a total of more than one thousand cubic yards of minerals, ores, and overburden, or involve more than one acre in any one location.
 - (4) Surface mining operations that are required by federal law in order to protect a mining claim, if such operation are conducted solely for that purpose.

- (5) Reclamation of lands mined prior to, but not after January 1, 1976.
- (6) Such other mining operations that the County determines to be of an infrequent nature and which involve only minor surface disturbances, and are categorically identified by the State Board pursuant to section 2714(d) and 2758(c), California Surface Mining and Reclamation Act.
- (7) On-site excavation and on-site earthmoving activities which are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:
 - (a) All required permits for the construction, grading, landscaping, or related land improvements must be obtained in accordance with applicable provisions of State law and County adopted plans and ordinances, including, but not limited to the California Environmental Quality Act (CEQA).
 - (b) The County approval of the construction project included consideration of the on-site excavation and on-site earthmoving activities pursuant to CEQA.
 - (c) The approved construction project is consistent with the General Plan or zoning of the site.
 - (d) Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.
- (8) Surface mining operations and emergency excavations and grading conducted by the California Department of Water Resources or the Reclamation Board.
- (9) Surface mining operations that are required by Federal law in order to protect a mining claim, if such operations are conducted solely for that purpose.
- (10) Such other surface mining operations which the State Board determines to be of an infrequent nature, and which involve only minor surface disturbances.
- (11) The solar evaporation of sea water or bay water for the production of salt and related minerals.
- (12) An exemption under this Ordinance does not automatically exempt a project or activity from the application of CEQA, the requirement of use permits, grading permits, or other permits, or the imposition of monitoring fees or excavations as may be permitted by law.

(13) Any person desiring a determination of exemption from this chapter may request such a written determination by submitting a complete written description of the proposed project or activity and its location together with a filing fee to the Solano County Department of Resource Management.

(Ord. No. 1036, §1; Ord. No. 1415, §1)

ARTICLE II. PLANS AND OPERATIONS

Sec. 29-20. Permit and ~~r~~Reclamation ~~p~~Plan ~~r~~Requirements

- (a) Any person, except as provided in section 29-12~~13~~ of this ~~C~~code and section 2776 of ~~SMARA~~ the California Surface Mining and Reclamation Act of 1975, who proposes to engage in surface mining operations, or to make any changes which are determined to be substantial by the zoning administrator in an existing operation in which such existing operation the person has a vested right shall, prior to the commencement of operations, obtain: (1) a use permit from the planning commission, pursuant to section 28-54 ~~28-106~~ of this ~~C~~code; and (2) approval by the ~~planning commission~~ Planning Commission of a reclamation plan, in accordance with the provisions set forth in this chapter and as further provided in ~~SMARA~~, article 5, California Surface Mining and Reclamation Act of 1975, commencing with section 2770 of the California Public Resources Code.
- (b) Any person who obtained, prior to January 1, 1976, and continues to hold a vested right to conduct surface mining operations shall obtain the approval of the planning commission of a reclamation plan for operations conducted after January 1, 1976, but such person shall not be required to obtain a use permit for such operations except in accordance with the provisions of this chapter. The reclamation plan shall provide for the reclamation of portions of the site mined after January 1, 1976. A reclamation plan prepared pursuant to this chapter need not be prepared, filed or approved for reclamation of lands mined prior to, but not later than January 1, 1976.
- (c) The commencement of any surface mining operation after a period of nonoperation shall not require the obtaining of a use permit if: (1) the operator has either [a] a vested right in said operation, or [b] a previously obtained use permit as required by this chapter when such use permit expressly prescribes periodic nonoperation; and (2) no substantial changes in the operation are made. Periodic nonoperation after January 1, 1976, of a surface operation in which the operator has a vested right shall not by itself cause the lapse of such vested right so long as the nonoperation: (1) is consistent with the historic periodicity of such operation; and (2) does not extend substantially longer than previous periods of nonoperation.

(Ord. No. 1036, §1; Ord. No. 1415, §1)

Sec. 29-21 Financial assurances

- (a) Any person who is operating or intends to conduct a surface mining operation, whether that person has existing vested rights or not, shall submit for approval a financial assurances cost estimate plan for review by the County lead agency. This cost estimate plan must be submitted and approved prior to any new operation being initiated. Any existing operation must submit a financial assurances s plan pursuant to provisions of Public Resources Code § 2773.1. The following is applicable to the financial assurances:
- (b) A financial assurance mechanism may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurance mechanisms specified by the State Board pursuant to subdivision (e) that the County of Solano reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.
- (c) Financial assurance shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.
- (d) The amount of the financial assurance cost estimate required of a surface mining operation for any one year shall be reviewed and, if necessary, adjusted once each calendar year to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan. An operator shall be required to replace an approved financial assurance mechanism to bond for the reclamation of the surface mining operation only if the financial cost estimate identifies a need to increase the amount of the financial assurance mechanism.
- (e) Financial assurance cost estimates shall be submitted to the County for review on a form developed by the Department of Conservation and approved by the SMGB.
- (f) Each financial assurance mechanism shall be made payable to the County and the Department of Conservation. A financial assurance mechanism shall not be released without the consent of the County and the Department of Conservation. A financial assurance mechanism that was approved by the County prior to January 1, 1993, and was made payable to the State Geologist shall be considered payable to the Department of Conservation for purposes of this chapter. However, if a surface mining operation has received approval of its financial assurance cost estimate from a public agency other than the County, the County shall deem those financial cost estimates adequate for the purposes of this section, or shall credit them toward fulfillment of the financial cost estimate required by this section, if they are made payable to the public agency, the County, and the Department of Conservation and otherwise meet the requirements of this section. In any event, if the County and one more public agencies exercise jurisdiction over a surface mining operation, the total amount of financial assurances required by the County and the public agencies for any one year shall not exceed that amount that is necessary to perform reclamation

of lands remaining disturbed. For purposes of this paragraph, "a public agency" may include a federal agency.

- (g) If the County has evidence that an operator may be financially incapable of completing reclamation in accordance with its approved reclamation plan or that an operator may have abandoned the surface mining operation without completing reclamation, the County shall conduct a public hearing to determine whether the operator is financially capable of completing reclamation in accordance with the approved reclamation plan or has abandoned the surface mining operation. The hearing shall be noticed to the operator and the Department of Conservation at least 30 days prior to the hearing.
- (h) If the County, following the public hearing conducted pursuant to Section 29-21(6) above, determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan or has abandoned its surface mining operation without completing reclamation, either the County or the Department of Conservation shall do all of the following:
- (1) Notify the operator by personal service or certified mail that the County or the Department of Conservation intends to take appropriate action to forfeit the financial assurances and specify the reason for doing so.
 - (2) Proceed to take appropriate action to require forfeiture of the financial assurance mechanism.
 - (3) Use the proceeds from the forfeited financial assurance mechanism to conduct and complete reclamation in accordance with the approved reclamation plan. If the surface mining operation cannot be reclaimed in accordance with its approved reclamation plan, or the financial assurance mechanisms are inadequate to reclaim in accordance with its approved reclamation plan, the County or the Department of Conservation may use forfeited financial assurance mechanisms to reclaim or remediate mining disturbances as appropriate for the site conditions as determined by both the County and the Department of Conservation. The financial assurance mechanisms shall not be used for any other purpose. The operator is responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan or a remediation plan developed pursuant to this section as determined appropriate by both the County and the Department of Conservation that are in excess of the proceeds from the forfeited financial assurance mechanisms.
- (i) Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon the written concurrence of the County and the Department of Conservation, which shall be forwarded to the operator and the institutions providing or holding the financial assurance mechanism, that reclamation has been completed in accordance with the approved reclamation plan.
- (j) If a surface mining operation is sold or ownership is transferred to another person, the existing financial assurance mechanisms shall remain in force and

- shall not be released by the County and the Department of Conservation until new financial assurance mechanisms are secured from the new owner and have been approved by the County. Within 90 days of the sale or transfer of a surface mining operation, the new operator shall submit an appropriate financial assurance mechanism, which may be the existing mechanism if the existing mechanism is payable in the event of the new operator's financial incapability or abandonment of the surface mining operation, that is subject to review by the County and the Department of Conservation. Within 15 days of the sale or transfer of a surface mining operation, the new operator shall sign a new statement of reclamation responsibility.
- (k) The County shall have primary responsibility to seek forfeiture of the financial assurance mechanisms and reclaim the mine sites pursuant to this section. However, the Department of Conservation may act to seek forfeiture of the financial assurance mechanisms and reclaim the mine sites pursuant to section (f) above only if both of the following occur:
- (1) The financial incapability of the operator or the abandonment of the surface mining operation has come to the attention of the Department of Conservation.
 - (2) The County has been notified in writing by the Department of Conservation of the financial incapability of the operator or the abandonment of the surface mining operation for at least 15 days, the County has not taken appropriate measures to seek forfeiture of the financial assurance mechanisms and reclaim the mine site, and one of the following has occurred:
 - (A) The County has been notified in writing by the Department of Conservation that failure to appropriate measures to seek forfeiture of the financial assurance mechanisms or to reclaim the mine site shall result in the Department of Conservation taking action to exercise the County's powers under SMARA to seek forfeiture of the financial assurances.
 - (B) The Department of Conservation determines that there is a violation that amounts to an imminent and substantial endangerment to the public health, safety, or to the environment.
 - (C) The County notifies the Department of Conservation in writing that its good faith attempts to seek forfeiture of the financial assurance mechanisms have not been successful.
- (l) Review and approval of financial assurances shall be conducted in accordance with the following procedures:
- (1) Prior to approving the financial assurance cost estimate for new reclamation plan or adjustments to the financial assurance cost estimate based on an amendment to a reclamation plan, the County shall submit the financial assurance cost estimate to the Department of Conservation for review.
 - (2) The County of Solano shall provide the Department of Conservation with a determination that the financial assurance cost estimate submitted is

adequate, complete, and consistent with SMARA and State Board Regulations.

- (3) All documents submitted to the Department of Conservation pursuant to this section shall be submitted at one time.
- (m) The Department of Conservation shall have 45 days from the date of receipt of a complete financial assurance cost estimate to prepare written comments if the Department of Conservation chooses. The County shall evaluate written comments received from the Department of Conservation relating to the financial assurance cost estimate within a reasonable amount of time. The County shall prepare a written response to the Department of Conservation's comments describing the disposition of the major issues raised by the Department of Conservation's comments. The County shall submit its proposed response to the Department of Conservation at least 30 days prior to approval of the financial assurance cost estimate. The County's response shall include either of the following:
 - (1) A description of how the County proposes to adopt the Department of Conservation's comments to the financial assurance cost estimate.
 - (2) A detailed description of the reasons why the County proposes to not adopt the Department of Conservation's comments.
 - (3) Copies of any written comments received and responses prepared by the County shall be forwarded to the operator.
- (n) Within 30 days of an annual inspection being conducted pursuant to section 29-31, an operator shall provide an annual financial assurance cost estimate to the County for review. Within 60 of receiving an operator's financial assurance cost estimate, the County shall do one of the following:
 - (1) Deny the financial assurance cost estimate and provide the operator with a description of the inadequacies of the financial assurance cost estimate. The County shall further specify the reasons for denial and the operator shall make corrections and resubmit to the County the corrected financial assurance cost estimate review.
 - (2) Submit the financial assurance cost estimate to the Department of Conservation for review. The County shall provide the Department of Conservation with a determination that the annual financial assurance cost estimate submitted is adequate, complete, and consistent with SMARA and State Board regulations. All documents shall be submitted at one time.
- (o) Following the 45 day comment period by the Department Conservation, if no comments are received by the County or if concurrence of the County's concurrence of determination of adequacy is received from the Department of Conservation, the County shall provide written notice to the Department of Conservation that the County intends to approve the financial assurance cost estimate within 30 days and a copy of the final financial assurance cost estimate shall be submitted to the Department of Conservation.

- (p) Within 30 days of the County's approval of the financial assurance cost estimate pursuant to this chapter, the operator shall provide both the County and the Department with an appropriate financial assurance mechanism.
- (q) Within 15 days of receiving a financial assurance mechanism, the County and the Department of Conservation shall concurrently review the financial assurance mechanism to determine if the type of mechanism, including the release instructions, meets the requirements of SMARA. Financial assurance mechanisms determined to be noncompliant with the provisions of SMARA shall be returned to the operator with instructions on how to correct the type or release instructions of the financial assurance mechanism.
- (r) The review and approval of financial assurances pursuant to this chapter shall not be considered a project for the purposes of the CEQA.
- ~~(s) Financial assurances may take the form of surety bonds, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the lead agency which the lead agency reasonably determines are adequate to perform reclamation in accordance with surface mining operator's approved reclamation plan.~~
- ~~(t) The financial assurance shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is complete.~~
- ~~(u) The amount of financial assurances required of a surface mining operator for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.~~
- ~~(v) Financial assurances shall be made payable to the lead agency and the State Geologist. However, if the operator has received approval of its financial assurances from a public agency other than the lead agency, the lead agency shall deem those financial assurances adequate for purposes of this requirement, or shall credit them toward fulfillment of the financial assurances required. If more than one public agency exercises control over the surface mining operation, the financial assurances required shall not exceed the amount reasonably necessary to perform reclamation of lands remaining disturbed.~~
- (b) If the lead agency, following a public hearing, determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its operation without commencing reclamation, either the lead agency or the State Geologist shall do all of the following:
 - (1) Notify the operator by personal service or certified mail that the lead agency, or the state, intends to take appropriate action to forfeit the financial assurances and specify the reasons for so doing.

- ~~(2) Allow the operator 60 days to commence or cause the commencement of reclamation in accordance with its approved reclamation plan and require that reclamation be completed within the time limits specified in the approved reclamation plan or some other time period mutually agreed upon by the lead agency or the State Geologist and the operator.~~
- ~~(3) Proceed to take appropriate action to require forfeiture of the financial assurances if the operator does not substantially comply with paragraph (2), immediately above.~~
- ~~(4) Use proceeds from the forfeited financial assurances to conduct and complete reclamation in accordance with the approved reclamation plan. In no event shall the financial assurances be used for any other purpose. The operator is responsible for the cost of conducting and completing reclamation in accordance with the approved reclamation plan which are in excess of the proceeds from the forfeited financial assurances.~~
- ~~(c) Financial assurances shall no longer be required of a surface mining operation, and shall be released, upon written notification by the lead agency, which shall be forwarded to the operator and the State Geologist, that reclamation has been completed in accordance with the approved reclamation plan.~~
- ~~(d) The lead agency shall have primary responsibility to seek forfeiture of financial assurances and to reclaim mine sites under subdivision (b), above. However, as specified in Public Resources Code § 2773.1(d), the State Geologist may act to seek forfeiture of financial assurances if both the following conditions exist:~~
- ~~(1) The financial responsibility of the operator or the abandonment of the mining operation has come to the attention of the State Geologist.~~
- ~~(2) The lead agency has been notified in writing by the State Geologist of the financial incapability of the operator or the abandonment of the mining operation for at least 15 days, and has not taken appropriate measures to seek forfeiture of the financial assurances and reclaim the mine site; and one of the following occurred:~~
- ~~(A) The lead agency has been notified in writing by the State Geologist that failure to take appropriate measures to seek forfeiture of the financial assurances or to reclaim the mine site shall result in actions being taken against the lead agency under the Public Resources Code.~~
- ~~(B) The State Geologist determines that there is a violation which amounts to an imminent and substantial endangerment to the public health, safety, or to the environment.~~
- ~~(C) The lead agency notifies the State Geologist in writing that its good faith attempts to seek forfeiture of the financial assurances have not been successful.~~

~~(Ord. No. 1415, §1)~~

Sec. 29-22 Review pProcedures

- (a) All applications for approval of either a Land Use Permit, ~~reclamation plan or financial assurances~~ Reclamation Plan or Financial Assurances for surface mining or land reclamation projects shall be made on forms provided by the office of the county environmental management department Solano County Department of Resource Management, and as provided for by the California Surface Mining and Reclamation Act of 1975, and any amendment or state policy subsequently adopted. A filing fee of three hundred fifty dollars at the time of filing the reclamation plan, or five hundred dollars at the time of concurrent filing of the reclamation plan and the required use permit application shall be paid to the county. Such fee may, from time to time, be modified or adjusted by resolution of the board of supervisors, as provided in section 1-18 of this code. The forms for Reclamation Plan applications shall require, at minimum, each of the elements required by SMARA and State Board regulations, and any other requirements deemed necessary to facilitate an expeditious and fair evaluation of the proposed Reclamation Plan, to be established at the discretion of the Director of Resource Management. As many copies of the site approval/reclamation plan application as may be required by the Director shall be submitted to the Department of Resource Management. Applications shall include all required environmental review forms and information prescribed by the Director. Said application shall be accompanied by a filing fee as determined by the Solano County Board of Supervisors, which may be adjusted periodically to sufficiently cover the reasonable cost of the application.
- (b) ~~Prior to approval by the planning commission of any application for a use permit and/or any reclamation plan, financial assurances or amendment thereto, at least one public hearing shall be held by the planning commission.~~
- (c) ~~Notice of such public hearing shall be given at least ten days prior to such hearing, pursuant to section 28-65(b) of this code. Any such public hearing may be held in conjunction and simultaneously with any other public hearing required by this chapter, the California Environmental Quality Act, or other applicable statute or ordinance.~~
- (d) ~~The State Geologist shall be provided with a copy of any filing of any application for a permit to conduct surface mining operations, or the filing of any reclamation plan or financial assurances, or amendments thereto, pursuant to section 2774 of the California Surface Mining and Reclamation Act of 1975 for review and approval. The lead agency shall certify to the State Geologist that the submitted documentation complies with applicable state law.~~
- (b) Within thirty (30) days of acceptance of an application for a Land Use Permit for surface mining operations and/or a Reclamation Plan as complete, the Department of Resource Management shall notify the Department of Conservation of the filing of the application(s). Whenever mining operations are proposed in 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 (FEMA), and within one mile, of or any state highway bridge, the Department of Resource Management shall also notify the State Department of Transportation (Caltrans) that the application has been received.

- (c) The Department of Resource Management shall prepare an environmental review for any surface mining permit and /or reclamation plan application pursuant to CEQA and the County's environmental review guidelines.
- (d) Subsequent to the appropriate environmental review, the Department of Resource Management shall prepare a staff analysis with recommendations for consideration by the Planning Commission.
- (e) The Solano County Planning Commission shall hold a noticed public hearing on the surface mining permit and/or reclamation plan consistent with the Public Notice Requirements specified in Section 28.04 of the County Code (Zoning Regulations. Upon completion of the environmental review procedure and filing of all documents required by the Director of the Department of Resource Management, consideration of the surface mining permit and/or reclamation plan for the proposed or existing surface mine shall be completed at the public hearing before the Planning Commission shall take action at the hearing to approve, conditionally approve, or deny the surface mining permit and/or reclamation pan, and to approve the financial assurances pursuant to Section 29-21.
- (f) Prior to approval of a Reclamation Plan, financial assurances (as provided in this chapter), or any amendments to the Reclamation Plan or existing financial assurances, the Department of Resource Management shall certify to the Department of Conservation that the Reclamation Plan and/or financial assurance complies with the applicable requirements of State law, and submit the plan, assurances, or amendments to the Department of Conservation for review. The Planning Commission may defer action on the Land Use Permit until taking action on the Reclamation Plan and financial assurances. If necessary to comply with permit processing deadlines, the Planning Commission may conditionally approve the Land Use Permit with the condition that the Department of Resource Management shall not issue the Land Use Permit for the mining operations until cost estimates for financial assurances have been reviewed by the Department of Conservation and final action has been taken on the Reclamation Plan and financial assurances.
- (g) The Department of Conservation shall be given thirty (30) days to review and comment on the Reclamation Plan and 45 days to review and comment on the financial assurance cost estimate. The County shall prepare a written response to the Department of Conservation's comments describing the disposition of the major issues raised by the Department of Conservation's comments, and submit the County's proposed response to the Department of Conservation at least 30 days prior to approval of the reclamation plan, plan amendment, or financial assurance. The County's response to the Department of Conservation's comments shall describe whether the County proposes to adopt the Department of Conservation's comments to the reclamation plan, plan amendment, or financial assurance. If the County does not propose to adopt to the Department of Conservation's comments, the County shall specify, in detail, why the County proposes not to adopt the comments. Copies of any written comments received and responses prepared by the County shall be forwarded to the operator. The

- County shall also give the Department of Conservation at least 30 days' notice of the time, place, and date of the hearing before the County at which time the reclamation plan, plan amendment, or financial assurance is scheduled to be approved by the County. If no hearing is required by this chapter, or by the local ordinance or state law, then the County shall provide 30 days' notice to the Department of Conservation that it intends to approve the reclamation plan, plan amendment, or financial assurance. The County shall send the Department of Conservation its final response from the Department of Resource Management's comments within 30 days following its approval of the reclamation plan, plan amendment, or financial assurance during which the Department retains all powers, duties, and authorities of this chapter. Copies of any written comments received and responses prepared by the Planning Commission shall be promptly forwarded to the applicant/operator.
- (h) The Planning Commission shall then take action to approve, conditionally approve or deny the Land Use Permit and/or Reclamation Plan, and approve the financial assurances.
- (i) The Department of Resource Management shall forward a copy of each approved Land Use Permit for mining operations and/or Reclamation Plan, and a copy of the approved financial assurances to the Department of Conservation. By July 1 of each year, the Department of Resource Management shall submit to the Department of Conservation for each active or idle mining operation a copy of the Land Use Permit approval of Reclamation Plan amendments, as applicable, or a statement that there have been no changes during the previous year.

(Ord. No. 1036, §; Ord. No. 1415, §1)

Sec. 29-23 Standards for Reclamation

- (a) All Reclamation Plans shall comply with the provisions of SMARA and State Board regulations. Reclamation Plans approved after January 15, 1993, Reclamation Plans for proposed new mining operations, and any substantial amendments to previously approved Reclamation Plans, shall also comply with the requirements for reclamation performance standards as established by the State Board including but not limited to wildlife habitat, backfilling, revegetation, drainage, agricultural land reclamation, equipment removal, stream protection, topsoil salvage and waste management.
- (b) The County may impose additional performance standards as developed either in review of individual projects, as warranted, or through the formulation and adoption of County-wide performance standards.
- (c) Reclamation activities shall be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance. Interim reclamation may also be required for mined lands that have been disturbed and that may be disturbed again in future operations. Reclamation may be done on an annual basis, in stages compatible with continuing operations, or completion of all excavation, removal, or fill, as approved by Solano County.

Each phase of reclamation shall be specifically described in the Reclamation Plan and shall include (a) the beginning and expected ending dates for each phase; (b) all reclamation activities required; (c) criteria for measuring completion of specific reclamation activities; and (d) estimated costs for completion of each phase of reclamation.

Sec. 29-24 Statement of Responsibility

The person submitting the Reclamation Plan shall sign a statement accepting responsibility for reclaiming the mined lands in accordance with the Reclamation Plan. Said statement shall be kept by the Department of Resource Management in the mining operation's permanent record. Upon sale or transfer of the operation, the new operator shall submit a signed statement or responsibility to the Department of Resource Management for placement in the permanent record.

Section 29-25 Findings for Approval

- (a) Site Approvals. In addition to any findings required by the Solano County Code, Site Approvals for surface mining operations shall include a finding that the project complies with the provisions of SMARA and State Board Regulations.
- (b) Reclamation Plans. For Reclamation Plans, the following findings shall be required:
 - (1) That the Reclamation Plan complies with SMARA, and any other applicable provisions.
 - (2) That the Reclamation Plan complies with applicable requirements of State Board regulations.
 - (3) That the Reclamation Plan and potential use of reclaimed land pursuant to the plan are consistent with this Chapter and the Solano County General Plan and any applicable resource plan or element.
 - (4) That the Reclamation Plan has been reviewed pursuant to CEQA and the County's environmental review guidelines, and all significant adverse impacts from reclamation of the surface mining operations are mitigated to the maximum extent.
 - (5) That the land and/or resources such as water bodies to be reclaimed will be restored to a condition that is compatible with, and blends in with, the surrounding natural environment, topography, and other resources, or that suitable off-site development will compensate for related disturbance to resource values.
 - (6) That the Reclamation Plan will restore the mined lands to a usable condition which is readily adaptable for alternative land uses consistent with the General Plan and applicable resource plan.
 - (7) That a written response to the Department of Conservation has been prepared, describing the disposition of major issues raised by the Department

of Conservation. Where the County's position is at variance with recommendations and objections raised by the Department of Conservation, said response shall address, in detail, why specific comments and suggestions were not accepted.

Sec. 29-26 Notice of Reclamation Approval

- (a) The County, upon approval of a reclamation plan or an amendment to a reclamation plan, shall record a "Notice of Reclamation Plan Approval" with the County Recorder. The notice shall read: "Mining operations conducted on the hereinafter described real property are subject to a reclamation plan approved by the County of Solano, a copy of which is on file with the Department of Resource Management, 675 West Texas Street, Suite 5500, Fairfield, CA 94533
- (b) In addition to the information require by Subdivision (a), the notice shall also include the name of the owner of record of the mine operation, and the acknowledged signature of the County's representative.

Sec. 29-23. Public records

- (a) ~~Reclamation plans, reports, applications and other documents submitted pursuant to this chapter are public records unless it can be documented to the satisfaction of the County that the release of such information or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The County shall identify such proprietary information as a separate part of the application. Proprietary information shall be made available only to the State Geologist and to persons authorized, in writing, by the operator and by the owner.~~
- (b) ~~A copy of all reclamation plans, reports, applications, and other documents submitted pursuant to this chapter shall be furnished to the State Geologist on request.~~

(Ord. No. 1036; §1; Ord. No. 1415, §1)

Sec. 29-2427. Periodic rReview

As a condition of approval for and/or the permit of the reclamation plan, or both, a schedule for periodic inspections by the eCounty of the site shall be established to evaluate continuing compliance with the permit and reclamation plan. A scheduled inspection shall occur within six months of the start of operations at a site, and at least annually thereafter. The operator shall be solely responsible for the reasonable cost of the inspection. An inspection fee shall be set and adjusted from time to time by resolution of the bBoard of sSupervisors as provided by section 1-18 of the Solano County Code. The fee shall be payable by the operator to the Department of Resource Management. A report of the results of the inspection shall be completed on a form to be provided by the state, and a copy of the inspection report shall be provided to the ~~State Geologist~~ Department of Conservation.

(Ord. No. 1036, §1; Ord. No. 1415, §1)

Sec. 29-2528 **Amendments**

- (A) Amendments to an approved reclamation plan may be submitted detailing proposed changes from the original plan. Substantial deviations from the original plan shall not be undertaken until such amendment has been filed with and approved by the planning commission. A proposed amendment to a reclamation plan shall be processed in the same manner, and the applicant shall have the same rights and pay the same fee as established herein for an original application. Any amendments to a Permit and/or Reclamation Plan, unless determined to be a minor modification as described below, may be approved by the same procedure as is prescribed for approval of a Permit and/or Reclamation Plan.
- (B) Non-Substantial Deviations to a Permit and/or Reclamation Plan may be allowed by the Director of Resource Management upon a written finding that the requested modification is necessary to achieve the prescribed or higher post mining use of the reclaimed land, that the change does not increase the area or volume of materials to be mined by more than ten (10) percent, and that the change is consistent with the intent of the conditions of approval and environmental clearance of the Permit and/or Reclamation Plan. These findings shall be supported by substantial evidence in the record. A minor modification to a Reclamation Plan may be approved only if it meets the following standards:
- (1) To allow the minor recontouring of final topography affecting no, more than ten (10) percent of the site, provided that slope stability is maintained and documentation provided.
 - (2) To allow minor modifications to existing on-site roads and encroachments directly from the site to a public road, but not including new off-site roads.
 - (3) To allow a minor substitution in the reclamation plan such as a substitution in the type and/or number of plant species, minor change in topsoil treatment, etc., provided it does not substantially alter the intended end-use described in the approved reclamation plan.
 - (4) To allow minor technological or administrative changes in methods used to achieve reclamation.
 - (5) To allow measures to be taken which will ensure or maintain public safety (e.g., fences, gates, signs, or hazard removal), provided such measures do not substantially alter the intended end-use described in the approved reclamation plan.
 - (6) To allow minor modifications to a previously approved phasing plan.
 - (7) To allow compliance with requirements of other public agencies, provided the requirements are not inconsistent with the approved conditional use permit.
 - (8) A minor modification shall not include changing the end-use of the land.

- (C) Applications for a minor modification shall be made on a form provided by and filed with the Department of Resource Management, together with the appropriate fee.
- (D) Prior to approval of a minor modification, the Director of Resource Management shall make the following written findings which shall include the reasons for the findings:
- (1) The minor modification is consistent with the approved conditional use permit and or the approved reclamation plan and does not represent a significant change to the approved reclamation plan for the subject surface mining operations.
 - (2) The minor modification is not subject to CEQA.
- (E) The Director of Resource Management shall approve, conditionally approve, or disapprove an application for a minor modification within forty-five (45) days to accepting the application as complete, and give notice by mail of the decision, including any conditions of approval, to the applicant and any interested parties that have formally requested such notice in writing.
- (F) The decision of the Resource Management Director regarding the minor modification of a Land Use Permit shall be appealable to the Planning Commission within ten (10) days of said decision. The decision of the Planning Commission regarding the appeal shall be appealable to the Board of Supervisors within ten (10) calendar days of said decision. Appeals must be in writing together with the appropriate appeal fee.
- (G) Within thirty (30) days of final action, the Resource Management Director shall send a copy of an approved minor modification to the Department of Conservation.

(Ord. No. 1036, §1; Ord. No. 1415, §1)

Sec. 29-2629. Idle operations

~~Within 90 days of a surface mining operation becoming idle, as defined herein above, the operator shall submit to the lead agency for review and approval, an interim management plan. The review and approval of an interim management plan shall not be considered a project within the meaning of the California Environmental Quality Act (CEQA) Public Resources Code §§ 21000 and following. The approved interim management plan shall be considered an amendment to the surface mining operators approved reclamation plan, for purposes of this ordinance. The interim management plan shall provide measures the operator will implement to maintain the site in compliance with this ordinance, including, but not limited to, all permit conditions.~~

~~The interim management plan may remain in effect for a period not to exceed five (5) years, at which time the lead agency shall do one of the following:~~

- ~~(a) Renew the interim management plan for another period not to exceed five years, if the lead agency finds that the surface mining operator has complied fully within the interim management plan.~~

~~(b) Require the surface mining operator to commence reclamation in accordance with the approved reclamation plan.~~

~~In any event, financial assurances required under §29-21, above shall remain in effect during the period the surface mining operation is idle. If the surface mining operation is still idle after expiration of its interim management plan, the surface mining operator shall commence reclamation in accordance with its approved reclamation plan.~~

~~With 60 days of the receipt of the interim management plan, or a longer period mutually agreed upon by the lead agency and the operator, the lead agency shall review and approve the plan in accordance with its ordinance adopted pursuant to §29-20, above, so long as the plan satisfied the requirements above in this paragraph, and so notify the operator in writing. Otherwise, the lead agency shall notify the operator in writing of any deficiencies in the plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the lead agency, to submit a revised plan.~~

~~The lead agency shall approve or deny approval of the revised interim management plan within 60 days of receipt. If the lead agency denies approval of the revised interim management plan, the operator may appeal that action to the board of supervisors, which shall schedule a public hearing within 45 days of the filing of the appeal, or any longer period mutually agreed upon by the operator and the board of supervisors.~~

~~Unless review of an interim management plan is pending before the lead agency, or an appeal is pending before the board of supervisors, a surface mining operation which remains idle for over one year after becoming idle as herein defined without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.~~

~~(Ord. No. 1415, §1)~~

(1) Within 90 days of a surface mining operation becoming idle, as defined in Section 2771.1 of the Public Resources Code, the operator shall file an application for an Interim Management Plan with the Director of Resource Management in accordance with the provisions of this ordinance. Said application shall include:

(a) All information required under this ordinance for filing of a new application for a permit, unless the requirement is waived by the Director of Resource Management.

(b) A statement explaining that the surface mining operation is idle as defined in this chapter.

(c) An Interim Management Plan which includes measures the operator will implement to maintain the site in accordance with the approved mining plan, the approved reclamation plan and the permit conditions.

- (d) A filing fee for review of the Interim Management Plan which shall be the same amount as the filing fees for a reclamation plan.
- (e) Such additional information as shall be required by the Director of Resource Management.
- (2) Within 60 days of the receipt of a complete application for an Interim Management Plan, the Director of Resource Management shall review and approve the application provided the Interim Management Plan complies with the requirements specified in subsection 1, and give notice by mail of the approval to the operator and any other person who has filed for written notice. Otherwise, the Director of Resource Management shall notify the operator in writing of any deficiencies in the plan. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the Director of Resource Management, to submit a revised plan. The Director of Resource Management shall approved or deny approval of the revised Interim Management Plan within 60 days of receipt. If the Director of Resource Management denies approval of the revised Interim Management Plan, the operator may appeal that action to the Planning Commission, which shall schedule a public hearing within 45 days of the filing of the appeal. An application for an Interim Management Plan shall not require a public hearing.
- (3) The Interim Management Plan may remain in effect for a period not to exceed 5 years, at which time the Director of Resource Management shall do one of the following:
 - (a) Renew approval of the Interim Management Plan for another period not to exceed 5 years, if the Director of Resource Management finds that the operator has fully complied with the provisions of the Interim Management Plan.
 - (b) Require the operator to commence reclamation in accordance with its approved reclamation plan. The determination by the Director of Resource Management to extend the term of the Interim Management Plan or to require reclamation shall not require a public hearing. If the surface mining operation is still idle after expiration of its Interim Management Plan, the surface mining operation shall commence reclamation in accordance with its approved reclamation plan.
- (4) Any financial assurance required in conjunction with approval of the permit shall remain in effect during the period the surface mining operation is idle and until such time as reclamation is completed.
- (5) Unless review of an Interim Management Plan is pending before the Director of Resource Management, or an appeal is pending before the Board of Supervisors, a surface mining operation which remains idle for over 1 year after becoming idle as defined in this chapter, without obtaining approval of an Interim Management Plan, shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan.

Sec. 29-30 Annual Inspections

- (1) The Department of Resource Management shall conduct an inspection of the surface mining operation within six (6) months of receipt of the operator's annual report to determine whether the surface mining operation is in compliance with the approved Conditional Use Permit and Mining and Reclamation Plan, approved Financial Assurances, and State Regulations. At least one (1) inspection shall be conducted in each calendar year. Said inspections may be made by a State-registered Geologist, State-registered civil engineer, State-licensed landscape architect, State-registered forester, who is experienced in land reclamation and who has not been employed by the mining operation in any capacity during the previous twelve (12) months, or other qualified specialists, such as those certified in the DMR training program by the Department of Conservation, as selected by the Director of Resource Management. All inspectors shall have on file with the County and the Division of Mine Reclamation a Certificate of Completion of an inspection workshop. All inspections shall be conducted in accordance with State Board regulations. The annual inspection shall be conducted using a form approved and provided by the State Board. The Department of Resource Management shall submit the completed inspection form, a copy of the acceptable financial assurance cost estimate to the Department of Conservation within ninety (90) days of the date of completion of the inspection along with a notice of completion of inspection which contains statements on compliance with SMARA, any amendments, or financial assurances, including any supporting documentation that substantiates the County's findings. Copies shall also be sent to the operator. The operator shall be responsible for the reasonable cost of the inspection.
- (2) The Department of Resource Management shall annually review and update, as necessary, the Financial Assurances of each surface mining operation based on annual adjustment data submitted by the operator pursuant to Section 29-21.

Sec. 29-31 Public Records

Mining and Reclamation Plans, reports, applications, and other documents submitted to the County are public records unless it can be demonstrated to the satisfaction of the County that release of such information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The County shall identify such proprietary information as a separate part of the application. A copy of all permits, Mining and Reclamation Plans, reports, applications, and other documents submitted pursuant to this Section, including proprietary information, shall be forwarded to the Department of Conservation by the Department of Resource Management. Proprietary information shall be made available to persons other than the DOC Director only when authorized by the mine operator and by the mine owner.

ARTICLE III. REVIEW AND ENFORCEMENT

Sec. 29-30 Enforcement

- (a) ~~Alleged violations of this chapter shall be heard by the planning commission of the County of Solano in order for the commission to determine and recommend proper remedies.~~
- (b) ~~If the lead agency determines that the operator is not in compliance with statutory provisions of the provisions of this ordinance, the lead agency may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's notification, the lead agency may issue an order by personal services or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan, cease all further mining activities.~~
- (c) ~~An order issued under subdivision (b) shall not take effect until the operator has been provided a hearing before the lead agency concerning the alleged violation. Any order issued under subdivision (a) shall specify which aspects of the surface mine's activities or operations are inconsistent with this chapter, shall specify a time for compliance which the lead agency determines is reasonable, taking into account the seriousness of the violation and any good faith effort to comply with applicable requirements, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.~~
- (d) ~~The conducting of any surface mining operation which requires a reclamation plan and/or use permit pursuant to this chapter without such an approved reclamation plan and/or use permit shall be unlawful and constitute a public nuisance, and an action or proceeding for abatement, removal or injunction may be commenced as set forth in section 28-66 of this Code.~~
- (e) ~~Notwithstanding the foregoing, a violation of this chapter may be enforced by the County of Solano by the use of any legal or equitable remedy; such county may have.~~
- (Ord. No. 1036, §1; Ord. No. 1415, §1)

Sec. 29-32 Enforcement and Penalties

- (A) If after conducting the inspections required by Section 29-30, other inspections that may be undertaken, or upon the receipt of a verified complaint by an interested person, the Director of Resource Management finds that the mining operation is not in substantial compliance with this Chapter, the surface mining permit issued, the reclamation plan, or the provisions of SMARA, the operator and owner shall each be sent a Notice of Violation, and given a reasonable time to substantially comply, not to exceed thirty (30) days.
- (B) If a violation continues beyond thirty (30) days after the date of issuance of the Notice of Violation, the Director of Resource Management may issue an order by

- personal service or certified mail requesting compliance or, if the operator does not have an approved reclamation plan, to cease all further mining activities.
- (C) The permittee may appeal the determination of the Director to the Planning Commission within ten (10) days of receipt of the initial Notice of Violation. If not appealed, the decision of the Director shall be final. The decision of the Planning Commission may be appealed within ten (10) days to the Board of Supervisors.
- (D) Any operator who fails to comply with an order issued by the Director after the order's effective date, or who fails to submit a report to the Director of the Department of Conservation or the County as required by PRC Section 2207, shall be subject to an order by the Director of Resource Management imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of the Director's Notice of Violation or non-compliance with PRC section 2207. County and Department of Conservation penalties shall not exceed five thousand dollars (\$5,000) per day by each agency.
- (E) In determining the amount of the administrative penalty, the Director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation, and any other matters justice may require. An order imposing an administrative penalty shall become effective upon issuance and payment shall be made to the County within thirty (30) days, unless the operator appeals to the Board of Supervisors for review of the order.
- (F) If the operator appeals to the Board of Supervisors for review of the order imposing an administrative penalty, the operator shall be notified by certified mail when the matter has been set for public hearing. The Board of Supervisors may affirm, or set aside, in whole or in part, by its own order of the director imposing an administrative penalty. Any order of the Board of Supervisors shall become effective upon issuance thereof and shall be served by certified mail upon the operator. Payment of an administrative penalty specified in the Board of Supervisors order shall be made to the County with thirty (30) days of service of the order.

Sec. 29-33 Revocation or Suspension of Surface Mining Permit

Any surface mining permit granted under the provisions of this chapter shall be subject to revocation or suspension by the Planning Commission, for cause, shall be subject to the revocations procedures set forth in Section 28.106 (i) and in the following matter:

- (A) Appeal of the action by Planning Commission may be made according to the provisions of Section 28-112 of County Code (Zoning Regulations) and Board of Supervisors. Where appropriate, a further appeal may be taken by the permittee to the State Mining and Geology Board.

Sec. 29-31. Penalties

~~Any operator who violates or fails to comply with an order issued under the enforcement provisions of this ordinance after the order's effective date, as provided for herein, or~~

~~who fails to submit a report to the State Geologist or lead agency as required by the Public Resources Code § 2207, shall be subject to an order by the lead agency imposing an administrative penalty of not more than five thousand dollars (\$5,000) per day, assessed from the original date of noncompliance. The penalty may be imposed administratively by the lead agency. In determining the amount of the administrative penalty, the lead agency shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require. Order setting administrative penalties shall become effective upon issuance thereof and payment shall be made to the lead agency within 30 days, unless the operator petitions the board of supervisors or the superior court for review. Any order shall be served by personal service or by certified mail upon the operator.~~

~~(Ord. No. 1415, §1)~~

Sec. 29-3234. Appeal

Any person aggrieved by an act or determination of the zoning administrator or planning commission in the exercise of the authority granted herein shall have the right to appeal to the planning commission or the board of supervisors, whichever is the next higher authority. Any appeal must be filed, in writing, within ten days of the decision creating the grievance. Any operator who is aggrieved by an order of the board of supervisors may obtain review of the order by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the decision, pursuant to Public Resources Code § 2774.2(e).

(Ord. No. 1036, §1; Ord. No. 1415, §1)

Sec. 29-3335. Severability

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

(Ord. No. 1036, §1; Ord. No. 1415, §1)

(a) Whenever any surface mining operation or portion of an operation subject to this ordinance is sold, assigned, conveyed, exchanged, or otherwise transferred, the successor in interest shall be bound by the provisions of this ordinance and shall notify the Department of Resource Management in writing of such transfer of ownership. Any existing financial assurance shall remain in force and shall not be released until new financial assurances are secured from the new successor in interest and approved in accordance with Section 2770 of the Public Resources Code and Section 29-21 of this Ordinance.

(b) If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality, of the remaining portions of this ordinance, it being expressly declared that this ordinance and each section, subsection, paragraph, sentence, clause and phrase thereof would have been adopted, , irrespective of the fact that one or more other section, subsection, paragraph, sentence, clause or phrase be declared invalid or unconstitutional.

ARTICLE IV. MINERAL RESOURCE PROTECTION

Sec. 29-36 Mineral Resources Protection

Mine development is encouraged in compatible areas before encroachment of conflicting uses. Mineral resource areas that have been classified by the State Department of Conservation's California Geological Survey or designated by the State Board, as well as existing surface mining operations that remain in compliance with the provisions of this chapter, shall be protected from intrusion by incompatible land uses that may impede or preclude mineral extraction or processing, to the extent possible for consistency with the County's General Plan.

The County's General Plan and resource maps will be prepared to reflect mineral information (classification and/or designation reports) within 12 months of receipt from the State Board of such information. Land use decisions within the County of Solano will be guided by information provided on the location of identified mineral resources of statewide and regional significance. Conservation and potential development of identified mineral resource areas will be considered and encouraged. Recordation on property titles of the presence of important mineral resources within the identified mineral resource areas may be encouraged as a condition of approval of any development project in the impacted area. Proposed amendments to the Mineral Resources Management Policies shall require review and comment by the State Board. Prior to approving a use that would otherwise be incompatible with mineral resource protection, a statement specifying its reason for permitting an incompatible use shall be forwarded to the State Geologist and State Board for review. Prior to approving a use that would otherwise be incompatible with mineral resource protection, conditions of approval may also be applied to encroaching development projects to minimize potential conflicts. County land use decisions involving areas designated as being regional significance shall be 1) be in accordance with the County's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of these minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction, and 2) consider the importance of the mineral resource to the state and nation as a whole.

Mineral Resources Management Policies must include, but not limited to, a) A summary of the information provided by the classification and/or designation reports, or incorporation of PRC Sections 2710 et seq., and state policy by reference, together with maps of identified mineral deposits or incorporation by reference of the classification and/or designation maps provided by the State Board, b) Statements of policy in accordance with the provisions of PRC Section 2762(a), and c) implementation measures.

SECTION III

This ordinance will be effective thirty (30) days after its adoption.

SECTION VI

If any provision of this ordinance or the application of it to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the

ordinance which can be given effect without the invalid provision or application, and to this end the provisions of the interim ordinance are declared to be severable.

SECTION V

A summary of this ordinance will be published once within fifteen (15) days after its adoption in the Fairfield Daily Republic, a newspaper of general circulation.

Passed and adopted by the Solano County Board of Supervisors at its regular meeting on _____ by the following vote:

AYES: Supervisors _____

NOES: Supervisors _____

EXCUSED: Supervisors _____

JOHN VASQUEZ, Chair
Solano County Board of Supervisors

ATTEST:
Bill Emlen, Clerk
Board of Supervisors

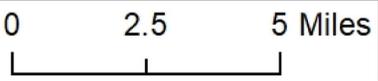
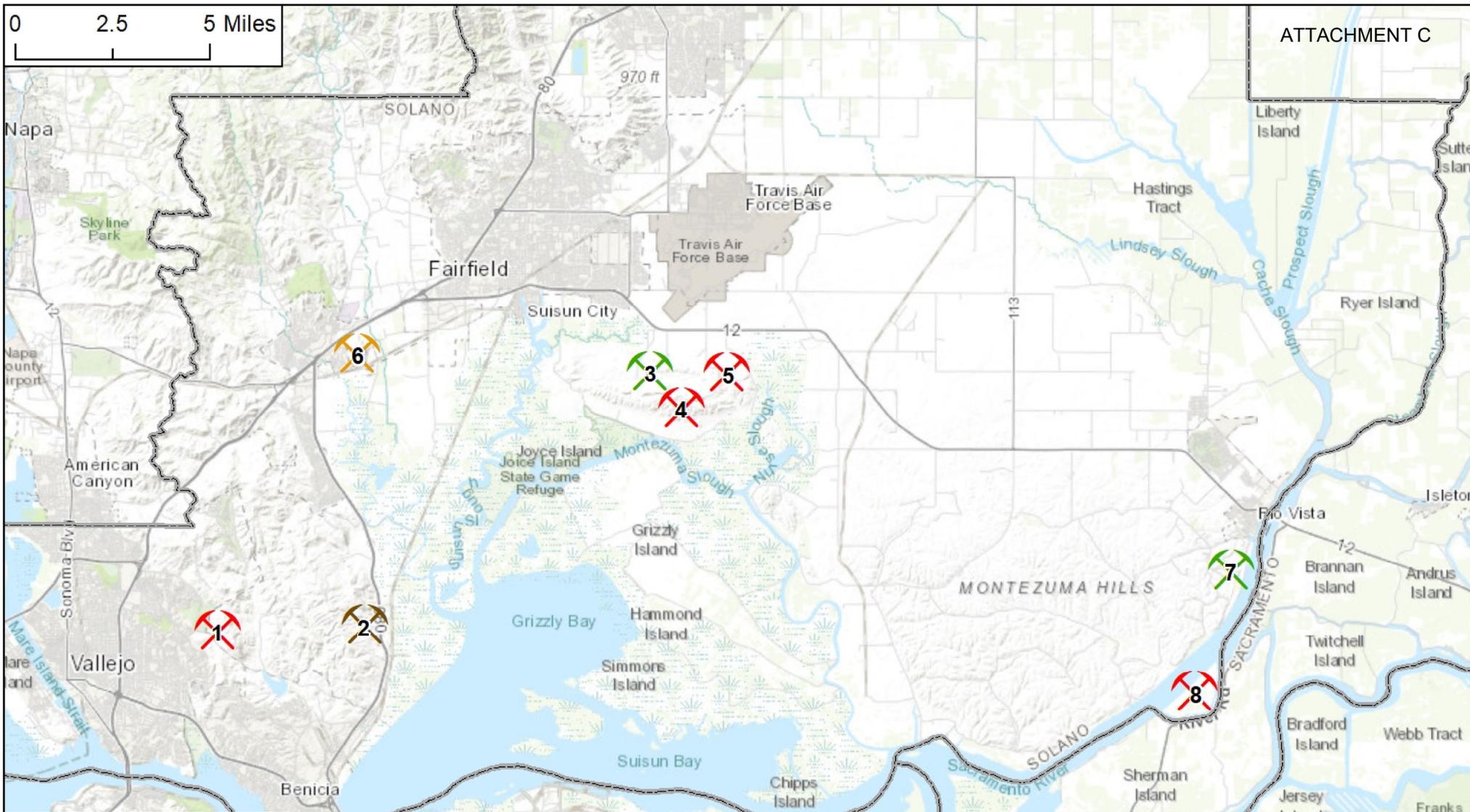
By: _____
Alicia Draves, Chief Deputy Clerk

SURFACE MINING AND RECLAMATION (SMARA) UPDATE – Chapter 29, Solano County Code

Section No.:	Topic	Current Code	Proposed	Outcome
29-11	Incorporation of SMARA & State Regulations	None	Statement that if local code conflicts with State law, State law prevails	County commits to comply with SMARA when new rules are adopted.
29-12	Definitions	Various additions and edits	Various – see redline	Clarifies common terminology and adds new such as Financial Assurance Cost Estimate (FACE), substantial deviation etc.
29-13	Scope	Limited exemptions	Add new exemption for onsite exaction for project site preparation; emergency operations required by DWR. Reclamation Board or Federal Law; infrequent and minor solar evaporation of sea water or bay water; and allows person to apply for determination	Incorporates and clarifies recent State decisions, consistent with SMARA.
29-21	Financial Assurances	Requires financial assurances plan; Review by State Geologist	Requires Financial Assurance Cost Estimate (FACE); establish processing time and review by Department of Conservation and County.	Consistent with SMARA statutes and regulations.
29-22	Review procedures for Reclamation Plan and Financial Assurances	Processing times undefined	Clarifies review processing timelines and responsibilities between County and Department of Conservation.	Consistent with SMARA statutes and regulations.
29-23	Standards for Reclamation	None	Refers to compliance with standards consistent with SMARA (PRC 2773(b))	Sets clear standards for review and approval of Reclamation Plan by County and Division of Mine Reclamation. Consistent with SMARA statutes and regulations.
29-24	Statement of Responsibility	None	Requires person submitting Reclamation Plan to sign	Clarifies responsible person/mining operator.
29-25	Findings for Approval	None	Defines findings/standards for approval	Sets clear standards for approval.
29-26	Notice of Reclamation Approval	None	Requires County to record Notice of Reclamation Plan Approval on property	Allows buyer awareness. Full disclosure to adjacent properties.

SURFACE MINING AND RECLAMATION (SMARA) UPDATE – Chapter 29, Solano County Code

Section No.:	Topic	Current Code	Proposed	Outcome
29-29	Amendments	Limited to substantial deviations and subject to Planning Commission approval	Allows for Administrative approval by Director for minor modifications to Reclamation plans (for example: change in vegetation, minor grading), 45-day review period and appealable to Planning Commission. Substantial deviations remain at Planning Commission level	Reduce processing times and allows for ministerial action for minor modifications.
29-30	Idle Operations	Interim Management Plan limited to 5 years	Extends Interim Management Plan approvals for period of 5 years and renewal for period of 5 years not to exceed 15 years. Idle mines without approved Interim plans for more than 1 year are considered abandoned and Reclamation process must begin	Consistent with SMARA statutes and regulation.
29-31	Annual Inspections	None	Inspection within 6 months of operator annual report (MRRC -2) and at least 1 inspection per year by licensed professional or Division of Mining and Reclamation (DMR) certified individual. Report and financial assurances submitted within 90 days to DMR.	Consistent with SMARA statutes and regulations.
29-32	Enforcement and Penalties	Complaints & remedies by Planning Commission	Complaints verified at Director level. If violation continues beyond 30 days, Director issues Notice of Violation, appealable to Planning Commission then Board of Supervisors (BOS). Director may impose fine up to \$5000/day	Responsibilities by Director of Resource Management rather than hearing bodies. Reduced fines may be considered by Board of Supervisors.
29-33	Revocation or Suspension	None	Revocation subject to Planning Commission and appealable to Board of Supervisors (BOS)	Clarifies process.
29-36	Mineral Resource Protection	None	Statement that County will update General Plan policies and resource maps within 12 months of State Mining & Geology Board (SMGB) updates.	County commits to updating General Plan policy when State information specific to Solano County is available, consistent with SMARA statutes and regulations.



DMR Mines
Mine Status

-  Active
-  Idle
-  Reclaimed
-  Closed no intent to resume

California Department of Mining and Reclamation Mines in Solano County

Number	Name	RP Number	Permit Number	Mine ID	Mine Status
1	Lake Herman Quarry	RP-08-01	U-08-09	91-48-0002	Active
2	Parish Pit	RP-79-04	U-80-06/MD-80-04	91-48-0005	Closed no intent to resume
3	Potrero Hills Landfill	RP-84-02	U-88-33/MD-88-09	91-48-0003	Reclaimed
4	Tule Vista Livestock Company	RP-83-01	U-83-37/MD-83-05	91-48-0006	Active
5	Potrero Hills Quarry	RP-78-01	MD-80-08/IMP 2012	91-48-0004	Active
6	Nelson Hill Quarry	RP-97-02	IMP 2013	91-48-0001	Idle
7	Asta Sand Pit	RP-94-01	U-94-13	91-48-0009	Reclaimed
8	Decker Island	RP-09-01	U-09-08	91-48-0007	Active

