STATE MINING AND GEOLOGY BOARD

MODEL SMARA ORDINANCE

For use by City and County "lead agencies"

(Adopted May 9, 1996; Amended February 21, 2014)

This *Model Ordinance* was developed by the State Mining and Geology Board (SMGB) with the cooperation of the Department of Conservation's California Geological Survey. This document recognizes that the extraction of minerals is essential to the continued economic well-being of the City/County and to the needs of society. Pursuant to the Surface Mining and Reclamation Act (SMARA), Public Resources Code (PRC) Section 2774(a) every lead agency is required to adopt ordinances in accordance with state policy which establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations. However, any lead agency without an active surface mining operation in its jurisdiction may defer adopting and implementing a mining ordinance until the filing of a permit application.

A mining ordinance establishes procedures which require at least one public hearing and is periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinance continues to be in accordance with state policy. PRC Section 2774.3 requires that the SMGB review lead agency ordinances which establish permit and reclamation procedures to determine whether each ordinance is in accordance with state policy. The SMGB also certifies the ordinance as being in accordance with state policy if it adequately meets, or imposes requirements more stringent than, the California surface mining and reclamation policies and procedures established by the SMGB. The process for review of mining ordinances for certification consideration is illustrated in Figure 1.

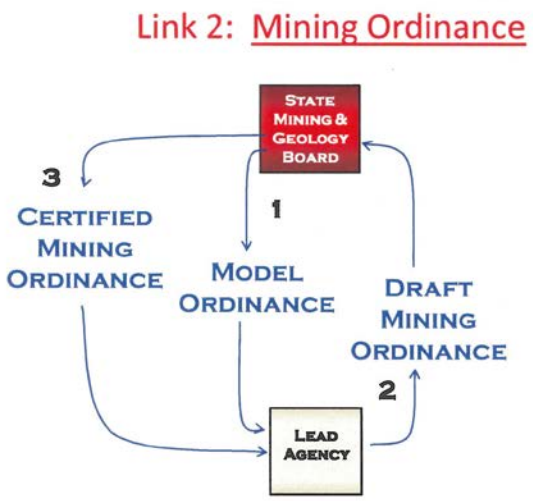

Figure 1. Flow diagram showing the review process for the review of mining ordinances, the second link in the chain (from SMGB Information Report 2007-03).

Chapter _____

Surface Mining and Reclamation Ordinance

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NOTE: This model was adopted by the State Mining and Geology Board on May 9, 1996, and last updated on January 14, 1999, and is intended for use by City and County lead agencies desiring assistance in developing their SMARA ordinances. While this model contains each of the elements required to be in a SMARA ordinance, as well as some additional elements common to ordinances in use statewide, it should be appropriately modified to reflect local conditions and practices. Some provisions may not be applicable to some lead agencies. The use of this model by a lead agency is discretionary, and its form is not mandated by law.

1.0 Purpose and Intent

The *City/County* of _____ recognizes that the extraction of minerals is essential to the continued economic well-being of the *City/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. The *City/County* also recognizes that surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and the specifications therefore may vary accordingly.

The purpose and intent of this Chapter is to ensure the continued availability of important mineral resources, while regulating surface mining operations as required by California's Surface Mining and Reclamation Act of 1975 (Public Resources Code [PRC] Section 2710 et seq.), as amended, hereinafter referred to as "SMARA", PRC Section 2207 (relating to annual reporting requirements), and State Mining and Geology Board regulations (hereinafter referred to as "State regulations") for surface mining and reclamation practice (California Code of Regulations [CCR], Title 14, Division 2, Chapter 8, Subchapter 1, Section 3500 et seq.), to ensure that:

(a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.

(b) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.

(c) Residual hazards to the public health and safety are eliminated.

2.0 Definitions

The definitions set forth in this section shall govern the construction of this chapter.

Area of Regional Significance. An area designated by the SMGB 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 a particular region of the State within which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the premature loss of minerals that are of more than local significance.

Area of Statewide Significance. An area designated by the SMGB 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 of more than local or regional significance.

Borrow Pits. Excavations created by the surface mining of rock, unconsolidated geologic deposits or soil to provide material (borrow) for fill elsewhere.

Compatible Land Uses. 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.

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

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

Incompatible Land Uses. 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. Examples of such uses may include, but shall not be limited to, high density residential, low density residential with high unit value, public facilities, geographically limited but impact intensive industrial, and commercial.

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

Minerals. 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, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

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

Operator. Any person who is engaged in surface mining operations, or who contracts with others to conduct operations on his/her behalf, except a person who is engaged in surface mining operations as an employee with wages as his/her sole compensation.

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

Reclamation. 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 for 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.

Stream Bed Skimming. Excavation of sand and gravel from stream bed deposits above the mean summer water level or stream bottom, whichever is higher.

Surface Mining Operations. All, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations include, but are not limited to, inplace distillation or retorting or leaching, the production and disposal of mining waste, prospecting and exploratory activities, borrow pitting, streambed skimming, and segregation and stockpiling of mined materials (and recovery of same).

Vested Rights. 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 the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations. 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.

3.0 Incorporation by Reference

The provisions of SMARA (PRC Section 2710 et seq.), PRC Section 2207, and State regulations CCR Section 3500 et seq., as those provisions and regulations may be amended from time to time, are made a part of this Chapter by reference with the same force and effect as if the provisions therein were specifically and fully set out herein, excepting that when the provisions of this Chapter are more restrictive than correlative State provisions, this Chapter shall prevail.

4.0 Scope

Except as provided in this Chapter, no person shall conduct surface mining operations unless a permit, Reclamation Plan, and financial assurances for reclamation have first been approved by the *City/County*. Any applicable exemption from this requirement does not automatically exempt a project or activity from the application of other regulations, ordinances or policies of the *City/County*, including but not limited to, the application of the California Environmental Quality Act ("CEQA", PRC, Division 13, Section 21000 et seq.), the requirement of Site Approvals or other permits, the payment of development impact fees, or the imposition of other dedications and exactions as may be permitted under the law. The provisions of this Chapter shall apply to all lands within the *City/County,* public and private.

This Chapter shall not apply to the following activities, subject to the above-referenced exceptions:

(a) Excavations or grading conducted for farming.

(b) Onsite excavation and onsite 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:

(1) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, CEQA.

(2) The *City/County's* approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to CEQA.

(3) The approved construction project is consistent with the general plan or zoning of the site.

(4) 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.

(c) Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, subject to all of the following conditions:

(1) The plant site is located on lands designated for industrial or commercial uses in the *City/County's* general plan.

(2) The plant site is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the *City/County*.

(3) None of the minerals being processed is being extracted onsite.

(4) All reclamation work has been completed pursuant to the approved Reclamation Plan for any mineral extraction activities that occurred onsite after January 1, 1976.

(d) Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less.

(e) Surface mining operations that are required by federal law in order to protect a mining claim, if those operations are conducted solely for that purpose.

(f) Any other surface mining operations that the SMGB determines to be of an infrequent nature and which involve only minor surface disturbances.

(g) The solar evaporation of sea water or bay water for the production of salt and related minerals.

(h) Emergency excavations or grading conducted by the Department of Water Resources (DWR) or the Reclamation Board for the purpose of averting, alleviating,

repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.

(i) (1) Surface mining operations conducted on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the DWR for the purpose of the State Water Resources Development System or flood control, and surface mining operations on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Reclamation Board for the purpose of flood control, if the DWR adopts, after submission to and consultation with, the State Department of Conservation (DOC), a reclamation plan for lands affected by these activities, and those lands are reclaimed in conformance with the standards specified in regulations of the board adopted pursuant to this chapter. The DWR shall provide an annual report to the DOC by the date specified by the DOC on these mining activities.

(2) Nothing in this subdivision shall require the DWR or the Reclamation Board to obtain a permit or secure approval of a reclamation plan from any city or county in order to conduct surface mining operations specified in paragraph (1). Nothing in this subdivision shall preclude the bringing of an enforcement action pursuant to Section 2774.1, if it is determined that a surface mine operator, acting under contract with the DWR or the Reclamation Board on lands other than those owned or leased, or upon which easements or rights-of-way have been obtained, by the DWR or the Reclamation Board, is otherwise not in compliance with this chapter.

(j) (1) Excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity. This exemption is limited to excavation and grading that is conducted adjacent to timber operation or forest management roads and shall not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavation for materials that are, or have been, sold for commercial purposes.

(2) This exemption shall be available only if slope stability and erosion are controlled in accordance with CCR Sections 3704(f) and 3706(d) and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and post-closure uses in consultation with the Department of Forestry and Fire Protection.

(k) Excavations, grading, or other earthmoving activities in an oil or gas field that are integral to, and necessary for, ongoing operations for the extraction of oil or gas that comply with all of the following conditions:

(1) The operations are being conducted in accordance with Division 3 (commencing with Section 3000).

(2) The operations are consistent with any general plan or zoning applicable to the site.

(3) The earthmoving activities are within oil or gas field properties under a common owner or operator.

(4) No excavated materials are sold for commercial purposes.

(l) (1) The immediate excavation or grading of lands affected by a natural disaster for the purpose of restoring those lands to their prior condition.

(2) The immediate removal of material deposited by a flood onto lands being farmed for the purpose of restoring those lands to their prior condition.

5.0 Vested Rights

No person who obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit to mine, so long as the vested right continues and as long as no substantial changes have been made in the operation except in accordance with SMARA, State regulations, and this Chapter. Where a person with vested rights has continued surface mining in the same area subsequent to January 1, 1976, he shall obtain *City/County* approval of a Reclamation Plan covering the mined lands disturbed by such subsequent surface mining. In those cases where an overlap exists (in the horizontal and/or vertical sense) between pre- and post-Act mining, the Reclamation Plan shall call for reclamation proportional to that disturbance caused by the mining after the effective date of the Act (January 1, 1976).

All other requirements of State law and this Chapter shall apply to vested mining operations.

(Note: Section 5.0 may be eliminated in jurisdictions processing only post-Act mining operation applications.)

6.0 Process

(a) Applications for a Site Approval or Reclamation Plan for surface mining or land reclamation projects shall be made on forms provided by the Planning Department. Said application shall be filed in accord with this Chapter and procedures to be established by the Planning Director. The forms for Reclamation Plan applications shall require, at a minimum, each of the elements required by SMARA (Sections 2772-2773) and State 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 Planning Director. As many copies of the Site Approval application as may be required by the Planning Director shall be submitted to the Planning Department.

(b) As many copies of a Reclamation Plan application as may be required shall be submitted in conjunction with all applications for Site Approvals for surface mining operations. For surface mining operations that are exempt from a Site Approval pursuant to this Chapter, the Reclamation Plan application shall include information concerning the mining operation that is required for processing the Reclamation Plan. All documentation for the Reclamation Plan shall be submitted to the *City/County* at one time.

(c) Applications shall include all required environmental review forms and information prescribed by the Planning Director.

(d) Upon completion of the environmental review procedure and filing of all documents required by the Planning Director, consideration of the Site Approval or Reclamation Plan for the proposed or existing surface mine shall be completed pursuant to Section _____ of the _____ Code at a public hearing before the Planning Commission, and pursuant to PRC Section 2774.

(e) Within thirty (30) days of acceptance of an application for a Site Approval for surface mining operations and/or a Reclamation Plan as complete, the Planning Department shall notify the DOC of the filing of the application(s). Whenever mining operations are proposed in the 100-year flood plain of any stream, as shown in Zone A of the Flood Insurance Rate Maps issued by the Federal Emergency Management Agency, and within one mile, upstream or downstream, of any state highway bridge, the Planning Department shall also notify the State Department of Transportation that the application has been received.

(f) The Planning Department shall process the application(s) through environmental review pursuant to CEQA and the *City's/County's* environmental review guidelines.

(g) Subsequent to the appropriate environmental review, the Planning Department shall prepare a staff report with recommendations for consideration by the Planning Commission.

(h) The Planning Commission shall hold at least one noticed public hearing on the Site Approval and/or Reclamation Plan.

(i) Prior to final approval of a Reclamation Plan, financial assurances (as provided in this Chapter), or any amendments to the Reclamation Plan or existing financial assurances, the Planning Commission shall certify to the DOC that the Reclamation Plan and/or financial assurance complies with the applicable requirements of State law, and submit the plan, assurance, or amendments to the DOC for review. The Planning Commission may conceptually approve the Reclamation Plan and financial assurance before submittal to the DOC. If a Site Approval is being processed concurrently with the Reclamation Plan, the Planning Commission may simultaneously also conceptually approve the Site Approval. However, the Planning Commission may defer action on the Site Approval until taking final action on the Reclamation Plan and financial assurances. If necessary to comply with permit processing deadlines, the Planning Commission may conditionally approve the Site Approval with the condition that the Planning Department shall not issue the Site Approval for the mining operations until cost estimates for financial assurances have been reviewed by the DOC and final action has been taken on the Reclamation Plan and financial assurances.

Pursuant to PRC Section 2774(d), the DOC shall be given 30 days to review and comment on the Reclamation Plan and 45 days to review and comment on the financial assurance. The lead agency shall prepare a written response to the director's comments describing the disposition of the major issues raised by the director's comments, and submit the lead agency's proposed response to the director at least 30 days prior to approval of the reclamation plan, plan amendment, or financial assurance. The lead agency's response to the director's comments shall describe whether the lead agency proposes to adopt the director's comments to the reclamation plan, plan amendment, or financial assurance. If the lead agency does not propose to adopt the director's comments, the lead agency shall specify, in detail, why the lead agency proposes not to adopt the comments. Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator. The lead agency shall also give the director at least 30 days' notice of the time, place, and date of the hearing before the lead agency at which time the reclamation plan, plan amendment, or financial assurance is scheduled to be approved by the lead agency. If no hearing is required by this chapter, or by the local ordinance, or other state law, then the lead agency shall provide 30 days' notice to the director that it intends to approve the reclamation plan, plan amendment, or financial assurance. The lead agency shall send to the director its final response to the director's comments within 30 days

following its approval of the reclamation plan, plan amendment, or financial assurance during which period 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 operator/applicant.

(j) The Planning Commission shall then take action to approve, conditionally approve, or deny the Site Approval and/or Reclamation Plan, and to approve the financial assurances pursuant to PRC Section 2770(d).

(k) The Planning Department shall forward a copy of each approved Site Approval for mining operations and/or approved Reclamation Plan, and a copy of the approved financial assurances to the DOC. By July 1 of each year, the Planning Department shall submit to the DOC for each active or idle mining operation a copy of the Site Approval or Reclamation Plan amendments, as applicable, or a statement that there have been no changes during the previous year.

7.0 Standards for Reclamation

(a) All Reclamation Plans shall comply with the provisions of SMARA (Sections 2772-2773) and State regulations (CCR Sections 3500-3505). 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 (CCR Sections 3700-3713).

(b) The *City/County* may impose additional performance standards as developed either in review of individual projects, as warranted, or through the formulation and adoption of *Citywide/Countywide* 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 on completion of all excavation, removal, or fill, as approved by the *City/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.

8.0 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 Planning Department 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 Planning Department for placement in the permanent record.

9.0 Findings for Approval

(a) Site Approvals. In addition to any findings required by the *City/County* _____ Code, Site Approvals for surface mining operations shall include a finding that the project complies with the provisions of SMARA and State regulations.

(b) Reclamation Plans. For Reclamation Plans, the following findings shall be required:

(1) That the Reclamation Plan complies with SMARA (Sections 2772-2773), and any other applicable provisions;

(2) That the Reclamation Plan complies with applicable requirements of State regulations (CCR Sections 3500-3505, and Sections 3700-3713).

(3) That the Reclamation Plan and potential use of reclaimed land pursuant to the plan are consistent with this Chapter and the *City's/County's* General Plan and any applicable resource plan or element.

(4) That the Reclamation Plan has been reviewed pursuant to CEQA and the City's/County's environmental review guidelines, and all significant adverse impacts from reclamation of the surface mining operations are mitigated to the maximum extent feasible.

(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 DOC has been prepared, describing the disposition of major issues raised by that Department. Where the City's/County's position is at variance with the recommendations and objections raised by the DOC, said response shall address, in detail, why specific comments and suggestions were not accepted.

(8) A lead agency, 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 (lead agency), a copy of which is on file with the ____."

(b) In addition to the information required by subdivision (a), the notice shall also include the name of the owner of record of the mine operation, the name of the lead agency, and the acknowledged signature of the lead agency representative. (SMARA Section 2772.7)

10.0 Financial Assurances

(a) To ensure that reclamation will proceed in accordance with the approved Reclamation Plan, the *City/County* shall require as a condition of approval security which will be released upon satisfactory performance. The applicant may pose security in the form of a surety bond, trust fund, irrevocable letter of credit from an accredited financial institution, or other method acceptable to the *City/County* and the SMGB as specified in State regulations, and which the *City/County* reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved Reclamation Plan. Financial assurances shall be made payable to the *City/County* of _____ and the DOC.

(b) Financial assurances will be required to ensure compliance with elements of the Reclamation Plan, including but not limited to, revegetation and landscaping requirements, restoration of aquatic or wildlife habitat, restoration of water bodies and water quality, slope stability and erosion and drainage control, disposal of hazardous materials, and other measures, if necessary.

(c) Cost estimates for the financial assurance shall be submitted to the Planning Department for review and approval prior to the operator securing financial assurances. The Planning Director shall forward a copy of the cost estimates, together with any documentation received supporting the amount of the cost estimates, to the DOC for review. If the DOC does not comment within 45 days of receipt of these estimates, it shall be assumed that the cost estimates are adequate, unless the *City/County* has reason to determine that additional costs may be incurred. The Planning Director shall have the discretion to approve the financial assurance if it meets the requirements of this Chapter, SMARA, and State regulations.

(d) The amount of the financial assurance shall be based upon the estimated costs of reclamation for the years or phases stipulated in the approved Reclamation Plan, including any maintenance of reclaimed areas as may be required, subject to adjustment for the actual amount required to reclaim lands disturbed by surface mining activities in the upcoming year. Cost estimates should be prepared by a California registered Professional Engineer and/or other similarly licensed and qualified professionals retained by the operator and approved by the Planning Director. The estimated amount of the financial assurance shall be based on an analysis of physical activities necessary to implement the approved Reclamation Plan, the unit costs for each of these activities, the number of units of each of these activities, and the actual administrative costs. Financial assurances to ensure compliance with revegetation, restoration of water bodies, restoration of aquatic or wildlife habitat, and any other applicable element of the approved Reclamation Plan shall be based upon cost estimates that include but may not be limited to labor, equipment, materials, mobilization of equipment, administration, and reasonable profit by a commercial operator other than the permittee. A contingency factor of ten percent (10%) shall be added to the cost of financial assurances.

(e) In projecting the costs of financial assurances, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by the operator and, consequently, the *City/County* or DOC may need to contract with a third party commercial company for reclamation of the site.

(f) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed (including any maintenance required).

(g) The amount of financial assurances required of a surface mining operation 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. The financial assurances shall include estimates to cover reclamation for existing conditions and anticipated activities during the upcoming year, excepting that the permittee may not claim credit for reclamation scheduled for completion during the coming year.

(h) Revisions to financial assurances shall be submitted to the Planning Director each year prior to the anniversary date for approval of the financial assurances. The financial assurance shall cover the cost of existing disturbance and anticipated activities for the next calendar year, including any required interim reclamation. If revisions to the financial assurances are not required, the operator shall explain, in writing, why revisions are not required.

11.0 Interim Management Plans

(a) Within 90 days of a surface mining operation becoming idle, the operator shall submit to the Planning Department a proposed Interim Management Plan (IMP). The proposed IMP shall fully comply with the requirements of SMARA, including but not limited to all Site Approval conditions, and shall provide measures the operator will implement to maintain the site in a stable condition, taking into consideration public health and safety. The proposed IMP shall be submitted on forms provided by the Planning Department, and shall be processed as an amendment to the Reclamation Plan. IMPs shall not be considered a project for the purposes of environmental review.

(b) Financial assurances for idle operations shall be maintained as though the operation were active.

(c) Upon receipt of a complete proposed IMP, the Planning Department shall forward the IMP to the DOC for review. The IMP shall be submitted to the DOC at least thirty (30) days prior to approval by the Planning Commission.

(d) Within sixty (60) days of receipt of the proposed IMP, or a longer period mutually agreed upon by the Planning Director and the operator, the Planning Commission shall review and approve or deny the IMP in accordance with this Chapter. The operator shall have 30 days, or a longer period mutually agreed upon by the operator and the Planning Director, to submit a revised IMP. The Planning Commission shall approve or deny the revised IMP within 60 days of receipt. If the Planning Commission denies the revised IMP, the operator may appeal that action to the *City Council / Board of Supervisors.*

(e) The IMP may remain in effect for a period not to exceed five years, at which time the Planning Commission may renew the IMP for another period not to exceed five years, or require the surface mining operator to commence reclamation in accordance with its approved Reclamation Plan.

12.0 Annual Report Requirements

Surface mining operators shall forward an annual surface mining report to the DOC and to the *City/County* Planning Department on a date established by the DOC, upon forms furnished by the SMGB. New mining operations shall file an initial surface mining report and any applicable filing fees with the DOC within 30 days of permit approval, or before commencement of operations, whichever is sooner. Any applicable fees, together with a copy of the annual inspection report, shall be forwarded to the DOC at the time of filing the annual surface mining report.

13.0 Inspections

The Planning Department shall arrange for inspection of a surface mining operation within six months of receipt of the Annual Report required in Section 12, to determine whether the surface mining operation is in compliance with the approved Site Approval and/or Reclamation Plan, approved financial assurances, and State regulations. In no event shall less than one inspection be conducted in any calendar year. Said inspections may be made by a state-registered geologist, state-registered civil engineer, state - licensed landscape architect, or 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 12 months, or other qualified specialists, as selected by the Planning Director. All inspections shall be conducted using a form approved and provided by the SMGB.

The Planning Department shall notify the DOC within 30 days of completion of the inspection that said inspection has been conducted, and shall forward a copy of said inspection notice and any supporting documentation to the mining operator. The operator shall be solely responsible for the reasonable cost of such inspection.

14.0 Violations and Penalties

If the Planning Director, based upon an annual inspection or otherwise confirmed by an inspection of the mining operation, determines that a surface mining operation is not in compliance with this Chapter, the applicable Site Approval, any required permit and/or the Reclamation Plan, the *City/County* shall follow the procedures set forth in PRC Sections 2774.1–2774.2 concerning violations and penalties, as well as those provisions of the *City/County* Development Code for revocation and/or abandonment of a Site Approval which are not preempted by SMARA.

15.0 Appeals

Any person aggrieved by an act or determination of the Planning Department in the exercise of the authority granted herein, shall have the right to appeal to the Planning Commission or the *City Council / Board of Supervisors*, whichever is the next higher authority. An appeal shall be filed on forms provided, within fifteen (15) calendar days after the rendition, in writing, of the appealed decision.

(Note: Section 15.0 should be appropriately modified to reflect local appeal procedures. This language has been provided only as a "placeholder" for such provisions.)

16.0 Fees

The *City/County* shall establish such fees as it deems necessary to cover the reasonable costs incurred in implementing this Chapter and the State regulations, including but not limited to, processing of applications, annual reports, inspections, monitoring, enforcement and compliance. Such fees shall be paid by the operator, as required by the *City/County*, at the time of filing of the Site Approval application,

Reclamation Plan application, and at such other times as are determined by the *City/County* to be appropriate in order to ensure that all reasonable costs of implementing this Chapter are borne by the mining operator.

17.0 Mineral Resource 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 SMGB, 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 *City's/County's* General Plan.

In accordance with PRC Section 2762, the *City's/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 SMGB of such information. Land use decisions within the *City/County* 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. Prior to approving a use that would otherwise be incompatible with mineral resource protection, conditions of approval may be applied to encroaching development projects to minimize potential conflicts.

18.0 Severability

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

19.0 Effective Date

This Chapter shall take effect 30 days following its adoption.