

ORDINANCE NO. \_\_\_\_ C.S.

**AN ORDINANCE OF THE CITY OF TRACY, CALIFORNIA,  
AMENDING ARTICLE 37, SURFACE MINING AND RECLAMATION,  
AND AMENDING ARTICLE 38, AGGREGATE MINERAL OVERLAY ZONE,  
OF TITLE 10 (PLANNING AND ZONING) OF THE TRACY MUNICIPAL CODE**

The City Council of the City of Tracy, California, DOES ORDAIN as follows:

**SECTION 1.** Article 37, Surface Mining and Reclamation, of Title 10 (Planning and Zoning) of the Tracy Municipal Code, is amended to read as set forth in Exhibit A, attached.

**SECTION 2. ARTICLE 38 AMENDMENT.** Section 10.08.4870, Development standards for surface mining operations, of Title 10 (Planning and Zoning) of the Tracy Municipal Code is amended by amending subsection (l) and adding a new subsection (t) to read as follows:

"(l) Slopes of excavations. No surface mining operation from an open pit quarry shall be permitted which creates a final average slope steeper than two (2') feet horizontal to one foot vertical; provided, however, that a steeper slope may be permitted where the soil content or material is such that greater slope construction excavation is safe in the opinion of a *state-licensed engineer or state-licensed geologist, registered soils engineer who shall submit a report to that effect shall be prepared and submitted to the Division of Industrial Safety, Department of Industrial Relations of the State of California and the City Engineer for approval of both agencies. A copy of the engineer's or geologist's report shall also be submitted to the Department of Conservation.*"

"(t) State reclamation standards. The applicant shall comply with the reclamation standards on the State Mining and Geology Board as set forth in California Code of Regulations sections 3500 and following and 3700 and following".

**SECTION 3. ENVIRONMENTAL REVIEW.** The adoption of this ordinance is exempt from the California Environmental Quality Act (CEQA), under CEQA Guidelines section 15061(b)(3). The adoption of this ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question [adoption of the ordinance] may have a significant effect on the environment, the activity is not subject to CEQA.

The determination that Section 15061(b)(3) applies is based on the facts that: the City already has a Surface Mining and Reclamation ordinance in effect; the proposed changes to that ordinance are proposed only to comply with the State Surface Mining and Reclamation Act (SMARA, Public Resources Code section 2710 and following); the proposed changes to the ordinance are primarily procedural and not substantive; and any specific mining activity which may be considered in the City will itself be subject to environmental review.

**SECTION 4. EFFECTIVE DATE.** This ordinance shall take effect 30 days after its adoption.

**SECTION 5. PUBLICATION.** A summary of this ordinance shall be published and a certified copy of the full text posted in the office of the City Clerk at least five days before the City Council meeting at which the proposed ordinance is to be adopted. Within 15 days after adoption, the City Clerk shall publish a summary, and shall post in her office a certified copy, of the ordinance with the names of those Council Members voting for and against the ordinance. (Government Code section 36933(c)(1).)

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The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Tracy held on \_\_\_\_\_, 2000, and was finally adopted by the Council at the regular meeting held on \_\_\_\_\_, 2000 by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor, City of Tracy

Attest:

\_\_\_\_\_  
City Clerk

*Attach Article 37 as Exhibit A*

ORDINANCE NO. \_\_\_\_ C.S.

**AN URGENCY ORDINANCE OF THE CITY OF TRACY, CALIFORNIA,  
AMENDING ARTICLE 37, SURFACE MINING AND RECLAMATION,  
AND AMENDING ARTICLE 38, AGGREGATE MINERAL OVERLAY ZONE,  
OF TITLE 10 (PLANNING AND ZONING) OF THE TRACY MUNICIPAL CODE**

The City Council of the City of Tracy, California, DOES ORDAIN as follows:

**SECTION 1. DECLARATION OF URGENCY.**

A. Government Code sections 36934 and 36937 authorize a city council to adopt an urgency ordinance, which takes effect immediately upon introduction, by a four-fifths vote of the council. Such an ordinance may be passed for the immediate preservation of the public peace, health or safety and must contain a declaration of the facts constituting the urgency.

B. The facts constituting the urgency are these. Teichert Aggregates obtained a use permit and reclamation plan approval for operations at its Pereira property in the City of Tracy in 1991. The property is properly zoned for mining operations and is listed as a site of regional significance for mining resources by the State Department of Mines and Geology. Teichert postponed the beginning of mining operations at the Pereira property due to the absence of enough demand for aggregate material (sand and gravel) from that site. Since 1991, it has been able to meet demands for aggregate material from other locations in the immediate area. Recently, however, the local need for aggregate material has increased and, as a result, aggregate material from the Pereira site is now needed for ongoing construction of roads, highways, homes, commercial sites, industrial sites, and public facilities.

Teichert intended to begin operations at the Pereira property in October, 2000, believing that its 1991 use permit and reclamation plan were still in effect. The City has concluded those entitlements are not in effect and Teichert (although reserving its rights) has cooperated by submitting a new use permit and reclamation plan application with the City. This application will be considered by the Planning Commission in the near future. The City staff had agreed to expedite the process so Teichert could begin operations as soon as possible.

In 1975, the State Legislature enacted the Surface Mining and Reclamation Act (SMARA, (SMARA, Public Resources Code section 2710 and following). SMARA was enacted to address the need for a continuing supply of mineral resources, and to prevent or minimize the negative impacts of surface mining. In so doing, the Legislature declared in part: "the extraction of minerals is essential to the continued economic well-being of the state and to the needs of society...." SMARA is administered by the State Mines and Geology Board, which has the authority, among other things, to designate areas of regional or statewide significance, to review and certify the mining and reclamation ordinances and procedures of local agencies, including cities, and to approve reclamation plans.

The City has just recently learned that the State Mines and Geology *Board (SMGB)*

considers the City's Surface Mining and Reclamation ordinance to be out of compliance with the current State Surface Mining and Reclamation Act. Furthermore, the SMGB has advised the City that, unless the City amends its Surface Mining and Reclamation ordinance to conform with SMARA, the City has no authority to approve a mining permit and reclamation plan. Neither the need for an ordinance amendment nor the SMGB's position regarding the City's lack of power to approve mining permits and reclamation plans were known by the City or Teichert until very recently.

Were the City to amend the Surface Mining and Reclamation ordinance under regular (non-urgency) procedures, the starting time for Teichert's Pereira operation would be substantially delayed. This delay is unnecessary since the attached proposed amendments are not substantive from the City's point of view. Instead, the proposed amendments merely codify the requirements of SMARA.

Teichert is nearly finished mining its other properties in the area and needs to move immediately to the Pereira property. Thus, if these amendments are not adopted on an urgency basis, the delays to Teichert's Pereira project would result in shortages of aggregate material for ongoing commercial and residential development, City public works projects, and highway improvement projects. Additionally, the delays will inhibit Teichert's ability to meet its contractual obligations to supply aggregate material to its many customers. The delays will also cause Teichert to lay off some employees, many of whom live in the local community. The City has an interest in not having projects in the City unfinished because of the lack of aggregate materials and in unnecessarily having local residents laid off work.

On November 9, 2000, this ordinance will be considered for certification by the Policy Committee and the State Mining and Geology Board at their respective meetings.

Based on the foregoing, the City Council finds that the adoption of this urgency ordinance is necessary for the immediate preservation of the public peace, health and safety.

**SECTION 2. ADOPTION OF AMENDMENT.** Article 37, Surface Mining and Reclamation, Of Title 10 (Planning and Zoning) of the Tracy Municipal Code, is amended to read as set forth in Exhibit A, attached.

**SECTION 3. ARTICLE 38 AMENDMENT.** Section 10.08.4870, Development standards for surface mining operations, of Title 10 (Planning and Zoning) of the Tracy Municipal Code is amended by amending subsection (l) and adding a new subsection (t) to read as follows:

"(l) Slopes of excavations. No surface mining operation from an open pit quarry shall be permitted which creates a final average slope steeper than two (2') feet horizontal to one foot vertical; provided, however, that a steeper slope may be permitted where the soil content or material is such that greater slope construction excavation is safe in the opinion of a *state-licensed engineer or state-licensed geologist, registered soils engineer who shall submit a report to that effect shall be prepared and submitted to the Division of Industrial Safety, Department of Industrial Relations of the State of California and the City Engineer for approval of both agencies. A copy of the engineer's or geologist's report shall also be submitted to the Department of Conservation.*"

"(t) State reclamation standards. The applicant shall comply with the reclamation standards on the State Mining and Geology Board as set forth in California Code of Regulations sections 3500 and following and 3700 and following".

**SECTION 4. ENVIRONMENTAL REVIEW.** The adoption of this ordinance is exempt from the California Environmental Quality Act (CEQA), under CEQA Guidelines section 15061(b)(3). The adoption of this ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question [adoption of the ordinance] may have a significant effect on the environment, the activity is not subject to CEQA.

The determination that Section 15061(b)(3) applies is based on the facts that: the City already has a Surface Mining and Reclamation ordinance in effect; the proposed changes to that ordinance are proposed only to comply with the State Surface Mining and Reclamation Act (SMARA, Public Resources Code section 2710 and following); the proposed changes to the ordinance are primarily procedural and not substantive; and any specific mining activity which may be considered in the City will itself be subject to environmental review.

**SECTION 5. EFFECTIVE DATE.** This ordinance takes effect immediately. (Government Code sections 36934 and 36937.)

**SECTION 6. PUBLICATION.** Within 15 days after adoption, the city clerk shall publish this ordinance in a newspaper of general circulation. (Government Code section 36933.)

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The foregoing ordinance was introduced and adopted as an urgency measure by at least a four-fifths vote at a regular meeting of the City Council of the City of Tracy held on November 8, 2000, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

\_\_\_\_\_  
Mayor, City of Tracy

Attest:

\_\_\_\_\_  
City Clerk

*Attach Article 37 as Exhibit A*

City of Tracy  
Exhibit A to Ordinance No. \_\_\_\_

Article 37, Surface Mining and Reclamation, of Title 10 (Planning and Zoning) of the Tracy Municipal Code, is amended to read as follows:

**"ARTICLE 37. SURFACE MINING AND RECLAMATION**

**Section 10.08.4700 Purpose and intent.**

- (a) The ordinance codified in this article is adopted pursuant to the California Surface Mining and Reclamation Act of 1975, Chapter 9, Public Resources Code.
- (b) The Council hereby finds and declares that the extraction of minerals is essential to the continued economic well-being of the City 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 Council further finds that the reclamation of mined lands as provided in this article will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.
- (d) The Council further finds 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.
- (e) The Council further finds that lands utilized for mining will be compatible with surrounding industrial land uses and not interfere with non-mining uses due to being buffered by major roadway industrial uses and/or open space between lands available for mining and non-mining lands.

**Section 10.08.4710 Definitions.**

For the purposes of this article, unless otherwise apparent from the context, certain words and phrases used in this article are defined as follows:

- (a) "Exploration" or "prospecting" means the search for minerals by geological, geophysical, geochemical, or 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.
- (b) "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 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.

- (c) "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, and bituminous rock, aggregate minerals, but excluding geothermal resources, natural gas, and petroleum.
- (d) "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.
- (e) "Operator" *means* any person who is engaged in surface mining operations, himself, or who contracts with others to conduct operations on his behalf.
- (f) "Overburden" *means* soil, rock, or other materials that lie above a natural mineral deposit or in between deposits, before or after their removal, by surface mining operations.
- (g) "Permit" *means* any formal authorization from, or approved by, the City, the absence of which would preclude surface mining operations.
- (h) "Person" *means* any individual, firm, association, corporation, organization, or partnership, or any city, county, district or the state or any department or agency thereof.
- (i) "Reclamation" *means* the 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.
- (j) "State Board" *means the* State Mining and Geology Board, in the Department of Conservation, State of California.
- (k) "*Surface Mining and Reclamation Act*" or "*Act*" *means the Surface Mining and Reclamation Act of 1975, at Public Resources Code section 2710 and following.*  
~~"State Geologist": Individual holding office as structured in Section 677 of Article 3, Chapter 2 of Division 1 of the Public Resources Code.~~
- (l) "Surface mining operations" *means* all or any part of the process involved in the mining of minerals on mined lands by removing over burden 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 shall include, but are not limited to: (1) in place distillation, retorting or leaching; (2) the production and disposal of mining waste; (3) prospecting and exploratory activities.

**Section 10.08.4720 Scope.**

- (a) The provisions of this chapter shall apply to the incorporated areas of the City where consistent with the City General Plan and permitted by zoning.
- (b) The provisions of this chapter are not applicable to *any activity that is excepted from the requirements of the California Surface Mining and Reclamation Act of 1975 under Public Resources Code Section 2714.*
  - ~~(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) Such other mining operations that the City determines to be of an infrequent nature, and which involve only minor surface disturbances and are categorically identified (no such identifications made as of the effective date of these regulations) by the State Board pursuant to Section 2714 (d) and 2758 (c): California Surface Mining and Reclamation Act of 1975.~~

**Section 10.08.4730 Permit and reclamation plan requirement.**

- (a) Any person, ~~except as provided in Section 2776, California Surface Mining and Reclamation Act of 1975;~~ who proposes to engage in surface mining operations as defined in this chapter shall, prior to the commencement of such operations, obtain from the City, (1) a permit to mine, and (2) approval of a reclamation plan, in accordance with the provisions set forth in the chapter and as further provided in Article 5, California Surface Mining and Reclamation Act of 1975. A fee as established for applications by Resolution of the City Council shall be paid to the City at the time of filing. All applications for a reclamation plan for surface mining operations shall be made on forms provided by the City and as called for by Section 2772 of California Surface Mining and Reclamation Act of 1975.
- (b) *(not used)*

~~No person who has obtained a vested right to conduct a surface mining operation prior to January 1, 1976, shall be required to secure a permit pursuant to the provisions of this chapter as long as such vested right continues, provided that no substantial change is made in that operation except in accordance with the provisions of this chapter. A person shall be deemed to have such vested rights if, prior to January 1, 1976, he has in good faith and in reliance upon a permit or other authorization, if such permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issues of a permit shall not be deemed liabilities for work or materials.~~

~~A person who has obtained a vested right to conduct surface mining operations prior to or since January 1, 1976, shall submit to the City Community Development Director and receive, within a period of three (3) months, approval of a reclamation plan for operations to be conducted after January 1, 1976, unless a reclamation plan was approved by the County San Joaquin or the City prior to or since January 1, 1976, and the~~

~~person submitting that plan has accepted responsibility for reclaiming the mined lands in accordance with that plan. Nothing in this article shall be construed as requiring the filing of a reclamation plan for or the reclamation of, mined lands on which surface mining operations were conducted prior to, but not after, January 1, 1976.~~

- (c) ~~The Director, Department of Conservation State Geologist~~ shall be notified of the filing of a permit applications *within 30 days after the application is accepted as complete.*
- (d) The ordinance codified in this article shall be continuously reviewed and revised, as necessary, in order to ensure that it is in accordance with the State policy for mined lands reclamation.
- (e) The reclamation plan shall be filed with the *Director of Development and Engineering Services* on a form provided by the City by any person who owns, leases, or otherwise controls or operates on all, or any portion of any, mined lands, and who plans to conduct surface mining operations thereon. The reclamation plan shall include the following information and documents:
  - (1) The names and addresses of the operator and the names and addresses of any persons designated by him as his agents for the service of process;
  - (2) The anticipated quality and type of minerals for which the surface mining operation is to be conducted;
  - (3) The proposed dates for the initiation and termination of such operation;
  - (4) The maximum anticipated depth of the surface mining operation;
  - (5) The size and legal description of the lands that will be affected by such operation, a map that includes the boundaries and topographic details of such lands, a description of the general geology of the area, a detailed description of the geology of the area in which surface mining is to be conducted, the location of all streams, roads, railroads, and utility facilities within, or adjacent to, such lands, the location of all proposed access roads to be constructed in conducting such operation, and the names and addresses of the owners of all surface and mineral interests of such lands;
  - (6) A description of and plan for the type of surface mining to be employed and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation;
  - (7) A description of the proposed use or potential uses of the land after reclamation and evidence that all owners of a possessor interest in the land have been notified of the proposed use or potential uses;
  - (8) A description of the manner in which reclamation, adequate for the proposed use or potential uses will be accomplished including:

- (i) A description of the manner in which contaminants will be controlled, monitor and mining waste will be disposed,
  - (ii) A description of the manner in which rehabilitation of affected streambed channels and streambanks to a condition minimizing erosion and sedimentation will occur,
  - (iii) A time schedule that will provide for the completion of the reclamation plan on each segment of the mined lands;
- (9) An assessment of the effect of implementation of the reclamation plan on future mining in the area;
  - (10) A statement that the person submitting the plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan;
  - (11) Any other information which the City may require by ordinance.
- (f) The reclamation plan shall be applicable to a specific piece of property or properties, and shall be based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, and principal mineral commodities.

**Section 10.08.4740 Review procedure.**

- (a) *After receiving an application for a permit and reclamation plan required by Section 10.08.4730(a) and forwarding that application to the Director of the Department of Conservation, the Director of Development and Engineering Services shall forward the proposed reclamation plan to the City Engineer. The City Engineer shall then select a consultant and/or qualified government agency to review the reclamation plan. The applicant is responsible for the costs, and the review may not occur until the applicant has paid all the City's expenses for conducting the review.*
- (b) *The Department of Development and Engineering Services shall process the application for the mining permit and reclamation plan including environmental review pursuant to the California Environmental Quality Act.*
- (c) *Based upon the review under subsection (a), the City Engineer shall determine whether the proposed reclamation plan complies with the regulations of the State Mining and Geology Board (Article 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations) effective at the time the proposed reclamation plan was submitted. If a proposed reclamation plan does not comply with all the State Mining and Geology Board regulations, the City Engineer may amend the reclamation plan or add conditions to ensure its compliance. When the City Engineer has determined that the proposed reclamation plan complies with all the State Mining and Geology Board regulations, or would comply with all the regulations as amended, the City Engineer shall forward the reclamation plan and any amendments to the Director of Development and Engineering Services with a statement that the proposed reclamation plan is satisfactory and a*

*recommendation that it be forwarded to the Planning Commission for approval.*

- (d) After the City Engineer has determined that the proposed reclamation plan is satisfactory, the Planning Commission shall hold a public hearing within a reasonable time. At the conclusion of the hearing, the Planning Commission shall determine whether the proposed reclamation plan complies with the regulations of the State Mining and Geology Board and whether the applicant has provided adequate financial assurances pursuant to Section 10.08.4750.*
- (e) If, at the conclusion of the hearing required by subsection (d), the Planning Commission determines that a proposed reclamation plan complies with the regulations of the State Mines and Geology Board and that the applicant has provided adequate financial assurances, the Planning Commission shall submit the reclamation plan, financial assurances, and any other documents required by Public Resources Code section 2774(c) to the Director, Department of Conservation. The Planning Commission shall also certify to the Director that the proposed reclamation plan complies with the regulations of the State Mining and Geology Board effective at the time the proposed reclamation plan was submitted. The Commission may conceptually approve the reclamation plan.*
- (f) After the Director of the Department of Conservation has completed the required review under Public Resources Code section 2774(d), or, if necessary, the Planning Commission has responded to the Director of Conservation's review under that section, the Planning Commission shall hold a public hearing to consider final approval of the proposed permit and reclamation plan. At the conclusion of the hearing, the Planning Commission may approve the permit and reclamation plan only if it finds that:
  - (1) The reclamation plan complies with the regulations of the State Mining and Geology Board (Article 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations) effective at the time the proposed reclamation plan was submitted;*
  - (2) The permit and reclamation plan have been reviewed pursuant to the California Environmental Quality Act;*
  - (3) Where mining of the specific piece of property or properties is a permitted use under the zoning ordinance, the reclamation plan minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion and other adverse effects of the mining and that the reclamation of the site is compatible with the ultimate use of the land;*
  - (4) Where mining is a conditional use under the zoning ordinance, the findings for a use permit are met. (See Sections 10.08.4880 and 10.08.4860(b).)**

~~————The City Engineer shall select a consultant and/or qualified government agency to review the permit application and reclamation plan. When the permit application and reclamation plan have been determined to be complete by the City, a public hearing shall be scheduled within a reasonable time. Such public hearing shall be held by the Planning Commission for the purpose of consideration of approving, conditionally approving, or denying the permit and the reclamation plan.~~

~~Where mining of the specific piece of property or properties is a permitted use under the zoning ordinance, the purpose of the Planning Commission's review is limited to assurance that the reclamation plan minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion and other adverse effects of the mining and that the reclamation of the site is compatible with the ultimate use of the land.~~

~~The applicant shall pay the expenses incurred by the City in advance of the reclamation plan being reviewed by a consultant chosen by the City.~~

~~Mitigations recommended by the reclamation plan shall be to the satisfaction of the City. Upon completion of a satisfactory review and amendments to the proposed reclamation plan as required by the City Engineer, the City Engineer shall forward the reclamation plan to the Community Development Department Director, stating in writing that the proposed reclamation plan is satisfactory to the City Engineer and recommend it to be forwarded to the Planning Commission for approval.~~

#### **Section 10.08.4750 Performance bond *Financial Assurances.***

- (a) *The Planning Commission may not approve an application for a permit and reclamation plan unless it determines that the applicant has provided financial assurances that will ensure reclamation in accord with the proposed reclamation plan.*
- (b) *Financial assurances are subject to the following requirements:*
  - (1) *The financial assurances may take the form of a surety bond executed by an admitted surety, an irrevocable letter of credit from an accredited financial institution, or other method acceptable to the City and the State Mining and Geology Board as specified in the state regulations.*
  - (2) *The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.*
  - (3) *The amount of financial assurances 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.*
  - (4) *The financial assurances shall be made payable to the lead agency and the Department of Conservation.*

~~Upon a finding by the Planning Commission that a supplemental guarantee for the reclamation of the mined land is necessary, and upon the determination of the cost of the reclamation of the mined land according to the reclamation plan, a surety bond, lien, or other security guarantee satisfactory to the City conditioned upon the faithful performance of the reclamation plan shall be filed with the City. Such surety shall be executed in favor of the City and reviewed and revised, as necessary, biannually. Such surety shall be maintained in an amount equal to the cost of completing the remaining reclamation of the site having been mined as prescribed in the approved or amended reclamation plan until reclamation~~

work is accepted by the City per subsection 10.08.4730(e) of this article.

#### **Section 10.08.4760 Public records.**

Reclamation plans, reports, applications, and other documents submitted pursuant to this chapter are public records unless it can be demonstrated to the satisfaction of the City that the release of such information, or part thereof, would reveal production, reserves, in and termed propriety information, entitled to protection as propriety information. The City shall identify such proprietary information as a separate part of each application. A copy of all permits, reclamation plans, reports, applications, and other documents submitted pursuant to this chapter, including proprietary information, shall be furnished to the ~~District Geologist of the State Division of Mines (and Geology)~~ Director, Department of Conservation by the City.

Proprietary information shall be made available to persons other than the ~~State Geologist Director, Department of Conservation~~ only when authorized by the mine operator and by the mine owner in accordance with Section 2778, California Surface Mining and Reclamation Act of 1975.

Approved reclamation plans shall be recorded with the County as part of the title to the land.

#### **Section 10.08.4770 *Periodic review Annual Report Requirements and Inspections.***

- (a) *Surface mining operators shall forward an annual surface mining report to the State Department of Conservation and to the City Department of Development and Engineering Services on a date established by the Department of Conservation, upon forms furnished by the State Mining and Geology Board. New mining operations shall file an initial surface mining report and any applicable filing fees with the State Department of Conservation 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 State Department of Conservation at the time of filing the annual surface mining report.*
- (b) *The Department of Development and Engineering Services shall arrange for inspection of a surface mining operation within six months of receipt of the Annual Report required in subsection (a) to determine whether the surface mining operation is in compliance with the approved reclamation plan, approved financial assurances, and State regulations. At least one inspection shall be conducted in each calendar year. The inspection 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 Director of Development and Engineering Services. All inspections shall be conducted using a form approved and provided by the State Mining and Geology Board.*

————— As a condition of approval for the permit and reclamation plan, a schedule for periodic inspections, no more frequent than every six (6) months, of the site shall be established to evaluate continuing compliance with the mining permit and the reclamation plan. Inspection shall be done by the City or at City's option by a consultant chosen by the City and actual costs incurred by the

City shall be paid for by the applicant:

~~As a condition of approval for the permit and reclamation plan, the City may inspect any time the City receives information alleging a violation of law, the permit and/or reclamation plan by the applicant:~~

~~If the applicant is not in compliance and fails to correct the deficiencies within thirty (30) days of City's given written notice of said deficiencies, City may after a noticed public hearing suspend the permit until applicant is in compliance with the Mining Permit and Reclamation Plan.~~

#### **Section 10.08.4780 Amendments; *Interim Management Plans*.**

Amendments to an approved reclamation plan may be submitted to the City at any time, 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 City.

Amendments to an approved reclamation plan shall be approved by the same procedure as is prescribed for approval of a reclamation plan.

If determined to be insignificant by the *Director of Development and Engineering Services* the amendment may be granted by the Director and the reclamation and/or mining permit so amended. If determined to be significant by the *Director of Development and Engineering Services* the amendment must be reviewed by the Planning Commission.

*Within 90 days of a surface mining operation becoming idle, the operator shall submit to the Department of Development and Engineering Services a proposed Interim Management Plan (IMP). The proposed IMP shall fully comply with the requirements of the Surface Mining and Reclamation Act, particularly Public Resources Code section 2770(h). The City shall review and approve the plan in compliance with that section.*

#### **Section 10.08.4790 Alternative uses.**

Lands designated and/or classified for mineral resources by the State Mining and Geology Board shall be placed in an Aggregate Minerals Overlay Zone, *under Article 38 of this Title 10.* ~~as described by Figure 1, attached to the ordinance codified in this article.~~

Permitted uses for lands within the Aggregate Minerals Overlay Zone *are* described by Section 10.08.4860, Permitted Uses of the Aggregate Minerals Overlay Zone of the Tracy Municipal Code.

#### **Section 10.08.4800 Enforcement.**

The provision of this chapter shall be enforced by the *Director of Development and Engineering Services* or his or her designee.

#### **Section 10.08.4810 Appeal.**

Any person aggrieved by an act or determination of the *Director of Development and*

*Engineering Services or City Engineer* in the exercise of the authority granted herein shall have the right to appeal to the Planning Commission. *A decision of the Planning Commission may be appealed to and the City Council under Section 10.08.4330.* Any appeal must be filed on forms provided within 15 days after the rendition, in writing, of the decision.

#### **Section 10.08.4820 Exploration.**

Exploration is any activity whose primary purpose is to discover, or verify the existence of, resources which may be mined at a future time. Such activity *is subject to the permit and reclamation plan requirements of subsection (a) of Section 10.08.4730 if it will* ~~may not~~ cover more than one acre of land or disturb more than 1,000 cubic yards of earth.

*An administrative permit is required for exploration if the bore and core operations create a hollow greater than seven inches in diameter or below the water table. Except for bore and core exploration operations creating a hollow no larger than seven (7") inches in diameter, and above the water table, an administrative permit is required for exploration. Exploration activity creating less than a seven (7") inch diameter hole requires no permit.*

~~Except as exempted above, any person who proposed to conduct exploration that is not subject to the permit and reclamation plan requirements of subsection (a) of Section 10.08.4730~~ For an administrative permit, a person shall first file with the City the following information on a form provided by the City:

- (a) The location of the proposed exploration activity;
- (b) A description of the manner or method of exploration, including a calendar of the exploration work from a start date to a completion date;
- (c) The number of yards of earth which are likely to be disturbed;
- (d) A description of the method(s) proposed to restore the earth to a condition that is similar to the preexploration condition;
- (e) Obtain an exploration permit from the *City Engineer*;
- (f) Post *financial assurances* ~~bond~~ in favor of the City *and* in an amount satisfactory to the City *and the Department of Conservation*, to be used as security for ~~applicants~~ restoring the earth following exploration *activity*. ~~being completed.~~

After exploration, the person conducting the exploration shall, within 15 days, restore the earth to a condition as similar to that which existed prior to exploration activities and shall notify the City of the completion of such restoration so as to schedule the site of exploration for inspection by the City. ~~The Said~~ inspection shall be paid for by the applicant.

The location of exploratory activities permitted by the City shall be proprietary information and not released by the City without the applicant's consent.

**Section 10.08.4830 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."

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