

AN ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO

INTRODUCED BY COUNCILMEMBER Bredefeld

SECONDED BY COUNCILMEMBER Boyajian

BILL NO. B-40

ORDINANCE NO. 99-37

AN ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, AMENDING THE TEXT OF CHAPTER 12 OF THE FRESNO MUNICIPAL CODE BY AMENDING SUBSECTION 12-105-Q AND ADDING SUBSECTION 12-105-S-36.1, PROVIDING FOR DEFINITIONS OF SURFACE MINING-RELATED ACTIVITIES; REPEALING EXISTING SUBSECTION 12-204.3-B-4, ADDING A NEW SUBSECTION 12-204.3-B-4 AND ADDING SUBSECTION 12-204.13-B-15.1, TO SPECIFY MINING USES CONDITIONALLY PERMITTED IN THE OPEN CONSERVATION AND EXCLUSIVE TWENTY-ACRE AGRICULTURAL DISTRICTS; AMENDING ARTICLE 3 BY REPEALING SECTION 12-322 RELATING TO SURFACE MINING AND RECLAMATION; AND ADDING ARTICLE 5.5 TO UPDATE THE CITY OF FRESNO SURFACE MINING AND RECLAMATION ORDINANCE

SECTION 1: Subsection 12-105-Q of the Fresno Municipal Code is amended to read as follows:

Q. [1.] QUARRY shall mean ~~any premises~~ [a surface mining operation] from which rock, sand, gravel and similar resources are being removed or are intended to be removed.

SECTION 2: Subsection 12-105-S-36.1 is added to the Fresno Municipal Code to read as follows:

S. [36.1.] SURFACE MINING OPERATION shall mean any part of the process involved in the excavation of minerals

Adopted 6-8-99
Approved 6-21-99
Effective See Sect 8

99-37

and reclaiming of mined lands, as more completely
defined in, and regulated by, Article 5.5 of this Code.]

SECTION 3: Subsection 12-204.3-B-4 (specifying uses conditionally permitted in the O/Open Conservation District) of the Fresno Municipal Code is hereby repealed.

SECTION 4: A new Subsection 12-204.3-B-4 (specifying uses conditionally permitted in the O/Open Conservation District) is added to the Fresno Municipal Code to read as follows:

4. [Surface mining operations.]

SECTION 5: Subsection 12-204.13-B-15.1 (specifying uses conditionally permitted in the AE-20/Exclusive Twenty-Acre Agricultural District) is added to read as follows:

[15.1 Surface mining operations.]

SECTION 6: Section 12-322 of the Fresno Municipal Code (relating to Surface Mining and Reclamation) is hereby repealed. (See, now, Article 5.5.)

SECTION 7: Article 5.5 is added to Chapter 12 of the Fresno Municipal Code (the Fresno Zoning Ordinance), to read as follows:

[ARTICLE 5.5

SURFACE MINING AND RECLAMATION

<u>Section</u>	<u>Title.</u>
<u>12-5.501.</u>	<u>Legislative Findings.</u>
<u>12-5.502.</u>	<u>Definitions.</u>
<u>12-5.503.</u>	<u>Incorporation By Reference.</u>

- 12-5.505. Scope and Applicability
- 12-5.506 Vested Rights of Legally Nonconforming Surface Mining Operations and Annexed Surface Mining Operations.
- 12-5.507. Process for Mining Permits, Reclamation Plans, and Interim Management Plans.
- 12-5.508 Plan Consistency Requirements.
- 12-5.509. Application Requirements.
- 12-5.510. Standards for Surface Mining Operations and Reclamation.
- 12-5.511. Reporting, Inspections, Enforcement, and Appeals of Enforcement Actions.
- 12-5.512. Public Records.
- 12-5.513. Provisions for Revising This Ordinance.

12-5.501. TITLE. This Article shall be known as the "City of Fresno Surface Mining and Reclamation Ordinance."

12-5.502. LEGISLATIVE FINDINGS AND PURPOSE

A. The Council finds as follows:

1. Certain areas within the City of Fresno and its Sphere of Influence, and in areas adjacent to the City and its Sphere of Influence, are classified by the State Geologist as containing regionally significant deposits of Portland Cement Concrete aggregate minerals. Such

classified mineral resource areas are reflected in maps

incorporated into the City's General and Community Plans.

2. State law declares that protection and recovery of these mineral deposits is essential to the continued economic well-being of the City and to the needs of society. Land uses which are incompatible with mining and associated activities must be planned, located, and developed so as to minimize potential conflicts. The City's General Plan Mineral Resources Element, as well as other City policies, must incorporate these principals.
3. Over time, Fresno's urbanized area has extended closer to classified mineral resource areas. This urbanization has caused land uses which are generally incompatible with surface mining and associated mineral processing activities to threaten opportunities for mineral extraction and processing.
4. Mining and associated on-site mineral processing activities, although vital to the economy, can have substantial adverse environmental impacts. Thorough analysis of mining proposals and mitigation measures are needed to prevent or lessen such impacts.

5. Proper reclamation of mined land is essential to protect the public health and safety. Inadequate reclamation plans and insufficient financial assurance for reclamation can lead to environmental damage.
6. The task confronting the City on the general issue of surface mining is to maximize recovery of mineral resources while minimizing threats to the public health and safety, potential environmental damage, and nuisance effects of mining and related mineral processing activities.
7. The subject of surface mining has been a matter of statewide concern, and any City regulation of the same is subject to the Surface Mining and Reclamation Act of 1975 (hereinafter, "SMARA," Public Resources Code Sections 2710 *et seq.*) and related State Mining and Geology Board regulations promulgated pursuant thereto (hereinafter, "SMARA Regulations," California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1, Sections 3500 *et seq.*). The City, as a local SMARA Lead Agency, is responsible for incorporating and adopting mineral resource planning policies into the Resources Element of its General Plan; for reviewing development projects which may affect surface mining activities; and for administering SMARA and adopted local

regulations for mining and reclamation activities. Pursuant to its certified Surface Mining and Reclamation Ordinance, the City must respect the mandates of SMARA while exercising local jurisdiction.

- B. The purpose of this Article is to establish comprehensive and orderly procedures and standards to regulate the extraction of mineral resources and subsequent rehabilitation of mined lands, and to protect mineral resource areas with significant deposits of mineral resources. This Surface Mining and Reclamation Ordinance shall be administered in order to ensure that production and conservation of minerals are encouraged and mined lands are reclaimed to a usable condition which is readily adaptable for appropriate uses as designated by the General Plan, while (1) preventing or minimizing mining-related hazards to the public health and safety; (2) preventing or minimizing adverse environmental effects of mining; and (3) giving consideration to planned land uses in mineral resource areas and to values relating to recreation, watershed, wildlife, agricultural uses, and aesthetic enjoyment.

12-5.503. DEFINITIONS.

- A. Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this Section shall govern the construction, meaning, and application of words and phrases used in this Article and, except to the extent that a particular word or phrase is

otherwise specifically defined in this Section, the definitions and provisions contained in Article 3 (commencing with Section 1-301) of Chapter 1 and in Article 1 (commencing with Section 12-101) of Chapter 12 of this Code, shall also govern the construction, meaning, and application of words and phrases used in this Article. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase which is derivative from it, or from which it is a derivative, as the case may be.

B. For purposes of administering this Article, the following terms are so defined:

1. ANNEXED MINED LANDS shall mean the sites of existing or former surface mining operations which were approved pursuant to SMARA by another lead agency lying outside the City's jurisdiction, and which subsequently became annexed to the City of Fresno.
2. AREA OF REGIONAL SIGNIFICANCE shall mean an area, as designated by the SMGB pursuant to SMARA Section 2790, classified by the State Geologist as containing a deposit of minerals, the extraction of which is judged by the State Geologist to be of importance in meeting future needs for minerals in the region. These areas are classified as Mineral Resource Zone 2 (MRZ-2).

on maps published by the State Geologist and reflected on maps in the Mineral Resources section of the City's General Plan Resources Element.

3. AREA OF UNKNOWN SIGNIFICANCE shall mean an area containing mineral deposits where the State Geologist cannot evaluate the significance of mineral deposits from available data. These areas are classified as Mineral Resource Zone 3 (MRZ-3) on maps published by the State Geologist.
4. AREA WHERE THERE ARE NO SIGNIFICANT MINERAL RESOURCES shall mean an area where the State Geologist has determined that no significant mineral deposits are present, or has judged that little likelihood exists for their presence. These areas are classified as Mineral Resource Zone 1 (MRZ-1) on maps published by the State Geologist, and reflected on maps in the Mineral Resources section of the City's General Plan Resources Element.
5. BORROW PIT shall mean a type of surface mining consisting of an excavation of rock, unconsolidated geologic deposits or soil to provide material (borrow) for use on property other than on the mined lands involved in the surface mining operation where the borrow pit is located.

6. CEQA shall mean the California Environmental Quality Act, Public Resources Code Division 13, Sections 21000 et seq., and the California Environmental Quality Act Guidelines, California Code of Regulations Title 14, Chapter 2, Sections 15000 et seq.
7. DESIGNATED FLOODWAY shall mean an area delineated as such by the State of California Board of Reclamation.
8. DOC shall mean the California Department of Conservation.
9. DOC DIRECTOR shall mean the Director of the California Department of Conservation.
10. EXPLORATION or PROSPECTING shall mean the search for minerals by geological, geochemical or other techniques, including but not limited to sampling, assaying, drilling, or any surface or underground work needed to determine the type, extent or quantity of minerals present.
11. HAUL ROAD shall mean a non-public road along which material is transported from an area of excavation on mined lands to a stockpile, processing plant, or public roadway.
12. IDLE MINING OPERATION shall mean a surface mining operation that has been curtailed for a period of one year or more to the point of producing less than 10 percent of its previous maximum annual mineral production, where the operator has an intent to resume

more active surface mining operations at a future date. The operator of an idle mining operation who has an approved Interim Management Plan for the operation, and remains in conformance with it, shall not be construed as having terminated his rights to mine and reclaim property under subsection 12-405-D-2 of this Code. Idled periods shall not automatically extend the sunset date of an approved mining permit; extension of sunset dates requires an amended conditional use permit or a new conditional use permit for mining.

13. MINED LANDS shall mean a parcel or parcels of land upon or in which surface mining operations will be, are being, or have been conducted, including: surface and subsurface of the area; surface and groundwater located upon and beneath such area; private ways, roads, haul roads, and other easements and rights-of-way appurtenant to any such area; excavations, stockpiles of minerals and overburden, levees and berms, workings, and mining waste; and areas with structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations and any related mineral processing.
14. MINERAL shall mean 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, sand, gravel, and other construction aggregate materials, clay, metal ores, decorative or structural stone, coal, peat, and bituminous rock; but excluding geothermal resources, natural gas, and petroleum.

15. MINING-INCOMPATIBLE USE OF LAND shall mean a use or development that is inherently incompatible with mining, and/or a use having or requiring public or private investment in structures and land improvements, which may prevent mining because of the relatively greater economic value of the improved land and its fixtures as compared with the value of mining uses. Examples of such uses may include, but shall not be limited to, urban density residential, low or rural density residential with high unit value, industrial uses not related to mining or mineral processing, non-mining commercial uses, and public facilities not related to a mining-compatible land use.
16. MINING PERMIT shall mean a component of a conditional use permit issued by the City, or by the County prior to annexation to the City, by which surface mining operations have been reviewed and conditionally approved.

17. MINING WASTE shall mean the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools or other materials or property directly resulting from, or displaced by, surface mining operations.
18. ONE HUNDRED YEAR (100 -YEAR) FLOOD PLAIN shall mean the area delineated on maps of the National Flood Insurance Program, as designated by the Federal Emergency Management Agency (FEMA), as maps of such area shall be amended from time to time by FEMA.
19. OPERATOR shall mean any person who is engaged in surface mining operations, or who contracts with others to conduct operations on his behalf, except a person who is engaged in surface mining operations as an employee with wages as his sole compensation.
20. OVERBURDEN shall mean soil, rock, or other materials that lie above natural mineral deposits, or in between natural mineral deposits, before removal of minerals by surface mining operations.
21. RECLAMATION shall mean 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 assured of being left in a usable condition which is readily adaptable for alternate land uses consistent with applicable General Plan land use designations and policies and which will create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, erosion control, revegetation, soil compaction, stabilization, or other measures.

22. RECLAMATION PLAN shall mean a component of a conditional use permit issued by the City, or by the County prior to annexation to the City, which sets forth requirements and standards for reclaiming mined lands.
23. SMGB shall mean the State Mining and Geology Board.
24. STATE GEOLOGIST shall mean the individual holding office pursuant to PRC Division 1, Chapter 2, Article 3, Section 677, or his/her designee appointed for purposes of administering SMARA and SMARA Regulations.
25. STREAM BED SKIMMING shall mean surface mining by excavation of sand and gravel from stream bed deposits above the mean summer water level or stream bottom, whichever is higher.

26. SURFACE MINING AND RECLAMATION ACT (SMARA) shall mean the California Surface Mining and Reclamation Act of 1975, as amended, set forth in PRC Division 2, Chapter 9, Section 2710 *et seq.* and including PRC Section 2207 relating to annual reporting requirements for mine operators.
27. SURFACE MINING AND RECLAMATION ACT (SMARA) REGULATIONS shall mean SMGB regulations for surface mining and reclamation practice, as set forth in CCR Title 14, Division 2, Chapter 8, Subchapter 1, Sections 3500 *et seq.*
28. SURFACE MINING OPERATION shall mean all, or any part of, the process involved in the mining and recovery of minerals by removing overburden to access mineral deposits; and/or the excavation or extraction of minerals by open pit excavation, augering, quarrying, dredging, sluicing, hydraulic force, or other method; or surface work incident to an underground mine; excepting those activities excluded under subsection 12-5.505-E of this Code. Surface mining operations include, but are not limited to, the following activities:
- a. Borrow pitting.
 - b. On-site loading, washing, segregating, sorting, screening, and stockpiling of minerals and recovery of same.

- c. Stream bed skimming.
- d. In-place distillation, retorting, or leaching;
- e. The production and disposal of mining waste;
- f. Exploration or prospecting activities.

Industrial or commercial mineral processing activities such as installation and use of equipment or apparatus for crushing ore or rock, formulating minerals into compounds (e.g., operation of batch plants to produce Portland Cement or asphaltic concrete), or dispensing/packaging formulated mineral products may be permitted as part of a surface mining operation pursuant to an approved conditional use permit.

12-5.504. INCORPORATION BY REFERENCE. The provisions of SMARA and SMARA Regulations, as the same 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.

12-5.505. SCOPE AND APPLICABILITY.

- A. The provisions of this Article shall apply to all lands, publicly and privately owned, within the incorporated boundary of the City. Surface mining

activities on any State or Federal land within the City of Fresno shall be jointly regulated pursuant to agreements between the City and the State or Federal agencies administering those lands.

- B. When mined lands lie partly within the incorporated City of Fresno and partly outside City boundaries, the applicability of this Article and the jurisdiction of the City of Fresno as Lead Agency shall be determined by the SMGB pursuant to SMARA Section 2771.
- C. Except as provided in subsection 12-5.505-E of this Code, any person who proposes to engage in surface mining operations shall, prior to the commencement of such operations, obtain pursuant to this Code either a conditional use permit that includes a Mining Permit; or shall obtain from the Development Director a determination that the proposed surface mining operations are a legal nonconforming use. Prior to the commencement or continuation of surface mining operations, all operators or proposed operators shall, pursuant to this Code, obtain a conditional use permit from the City that includes a Reclamation Plan with adequate financial security. A single conditional use permit should contain both Mining Permit and Reclamation Plan components, except in those instances when a Reclamation Plan is proposed with no further mining of a site.

- D. Pursuant to SMARA Section 2770(h)(1), an operator shall submit to the Development Department a proposed Interim Management Plan within ninety (90) days of a surface mining operation becoming idle. Interim Management Plans shall be processed as an amended Reclamation Plans (amended conditional use permits), except that they are exempt from requirements of CEQA, pursuant to the abovementioned section of SMARA.
- E. EXCEPTIONS. The provisions of this Article shall not apply to any of the activities covered under statutory SMARA exceptions, including, but not limited to: mineral processing not associated with, or on the same site with, a surface mining operation; on-site excavation which does not involve moving excavated materials off-site; and any earth moving or grading lawfully conducted in connection with permitted construction activities or bona fide agricultural operations. Emergency excavations shall also be excepted, provided they are authorized by the California Department of Water Resources or the California Reclamation Board. Other emergency excavations conducted by a public agency to ameliorate threats to life and property are subject to Reclamation Plan application and financial assurance requirements of this Code, and will require that a conditional use permit with a Reclamation Plan component be applied for as soon as possible by the agency which conducted the excavation(s).

12-5.506 VESTED RIGHTS OF LEGALLY NONCONFORMING SURFACE MINING OPERATIONS AND ANNEXED MINING OPERATIONS. A person shall have a vested right to continue to conduct pre-existing, lawfully operating surface mining operations and reclamation, and the City shall recognize these activities as legal nonconforming mining uses, subject to the following:

- A. It shall be the burden of the operator to establish by a preponderance of the evidence that the specific mining and related activities and uses proposed to be continued were lawfully commenced, have been operated continuously lawfully, are in conformance with SMARA and the conditions of the conditional use permit which authorized the operation, have not substantially changed, and have not been interrupted or idled voluntarily for a period of longer than two years, with a valid an interim management plan in place for any such operation which has been idled for more than one year. Notwithstanding unrecovered mineral resources that may remain on the mined lands, voluntary idle periods and interruptions of mining activity beyond the control of the operator shall not extend or obviate any express sunset date approved as part of the conditions of the mining permit. A sunset date may only be extended by amending the conditional use permit for an operation, or by obtaining a new conditional use permit for the surface mining operation, with the appropriate level of CEQA review as determined by the Development Director.

Notwithstanding any unrecovered minerals which remained at the time of cessation of mining, after being idled for a period greater than two years plus one day, any re-initiation of operations shall require a new or amended conditional use permit application and an appropriate level of CEQA analysis, as may determined by the Development Director.

- B. In order to obtain a determination of legal nonconforming use, the operator shall file for a non-zoning inquiry determination in a form to be prescribed by the Development Director and pay any required fee therefor as prescribed in the City's Master Fee Schedule. Any determination of legal nonconforming use shall be appealable to the Planning Commission.
- C. Upon annexation of property which has, or had, a surface mining operation permitted under County jurisdiction, those mined lands shall be considered annexed mined lands, and the City shall succeed the County as Lead Agency for surface mining operations and reclamation activities on those mined lands. Within thirty (30) days of the Board of Equalization filing of the approved annexation encompassing the mined lands, operators must post with the City of Fresno any financial assurance (as required by SMARA and the approved Fresno County mining permit/reclamation plan authorizing the surface mining operation) in order to be in compliance with SMARA and in order to be considered as having an approved Reclamation Plan in place. The Development Department

shall process the financial security documents as a minor revised exhibit to a conditional use permit, to establish a file of record with the City regarding the mining permit and reclamation plan for the operation.

- D. Deviations from an approved Mining Permit or Reclamation Plan shall not be undertaken until the appropriate application to alter the conditional use permit has been filed with the City and approved by the Planning Commission. Proposals to change approved Mining Permits and/or Reclamation Plans may be submitted as applications for amended conditional use permits or revised exhibits to conditional use permits, whichever level of application is deemed appropriate by Development Department policy or the determination of the Development Director.

12-5.507. PROCESS FOR MINING PERMITS, RECLAMATION PLANS, AND INTERIM MANAGEMENT PLANS.

- A. Applications for Mining Permits and Reclamation Plans shall be processed by the City as conditional use permit applications. Any related entitlement applications required for the proposed surface mining operation (e.g., a variance application, if required) shall be submitted and processed concurrently. Standard special permit review processes pursuant to this Code shall apply to review of conditional use permit and related entitlement application(s) for new or amended Mining Permits and Reclamation Plans, but the following modifications to process shall apply:

1. Upon receipt of an application, it shall be routed to the following agencies for comment and initial study: DOC Office of Mine Reclamation; California Board of Reclamation; Regional Water Quality Control Board; California Department of Fish & Game; State Lands Commission; San Joaquin River Conservancy; U. S. Army Corps of Engineers; U. S. Fish & Wildlife Service; San Joaquin Valley Unified Air Pollution Control District; Fresno Metropolitan Flood Control District; Fresno County Environmental Health; the applicable mosquito and vector control district; Fresno County Public Works & Development Services Department; and, if the project is in the San Joaquin Riverbottom, Madera County Planning. The application shall also be routed to other responsible and trustee agencies as appropriate.
2. Completed applications, including any proprietary information as described in Section 12-5.512-A of this Code and the completed environmental assessment of the application, shall be routed to the DOC Director or his/her designee no later than thirty (30) days from receipt or completion. Pursuant to SMARA Section 2774(d), the DOC shall be afforded a thirty- (30-) day review period to comment

on proposed Reclamation Plans and Interim Management Plans, and a forty-five (45) day review period to comment on proposed financial assurance documents.

3. If mining operations or related mineral processing are proposed within the 100-year flood plain or are within one mile upstream or downstream of any state highway bridge, the California Department of Transportation shall be routed a copy of the application(s) for review.
4. Copies of recommendations made and/or objections raised by the DOC and other responsible and trustee agencies shall be promptly forwarded to the applicant/operator.
5. After receiving copies of comments and objections, the applicant has sixty (60) days to submit revisions to the proposed Mining Permit, Reclamation Plan, and/or Interim Management Plan to address requirements noted or objections lodged pursuant to reviews of the conditional use permit application by the City, the DOC, and other responsible and trustee agencies, per SMARA Section 2770(d).

6. Pursuant to SMARA Section 2774(d)(2), the Development Department shall prepare a detailed written response to the DOC Director's comments, and shall forward a copy of this response to the applicant.
7. Within sixty (60) days of the applicant's submittal of all documents and other information required in connection with the conditional use permit application (or amended application), related entitlement application(s) and completion of the environmental assessment, a public hearing on the applications shall be set before the Planning Commission pursuant to Section 12-401-B of this Code and noticed pursuant to subsection 12-401-C-2 of this Code. The Development Department shall prepare a staff report with recommendations to the Planning Commission on the environmental assessment, conditional use permit application, and any related application(s).
8. Pursuant to SMARA Section 2774 and Section 12-401-D of this Code, the Planning Commission shall hold at least one noticed public hearing on the environmental assessment, conditional use permit application and related application(s), and shall then take one of the following actions:

- a. Give final approval to the mining and reclamation plan, if financial assurance for reclamation is included in the agenda for the public hearing.
- b. Give conceptual approval, pending Commission review and hearing of financial assurance for reclamation:
- c. Defer conceptual approval, until financial assurance has been submitted for Commission review and hearing;
- d. Require amended or augmented environmental findings or mitigation measures, changes in project conditions, changes in the Mining Permit, changes in the Reclamation Plan, and/or changes in the proposed financial assurance to be submitted for subsequent Commission review and hearing;
- e. Refer all or part of the applications back to the Development Department for further processing;
- f. Deny the mining permit portion of the application, pursuant to findings made under subsection 12-5.507-E of this Code, but approve/affirm, and require implementation of, a reclamation for any previously-mined portions of the site.
- g. Deny the entire application, pursuant to findings made under subsection 12-5.507-E of this Code.

B. FINDINGS FOR APPROVAL OF MINING PERMITS AND

RECLAMATION PLANS. In connection with approving a conditional use permit (Mining Permit, Reclamation Plan) or any amendments thereto, and any related entitlement application, the Planning Commission shall do all the following:

1. Make all findings required under this Code for the environmental assessment, conditional use permits, and related entitlements;
2. Find that the conditional use permit is consistent with this Article and with the provisions of SMARA and SMARA Regulations;
3. Find that the post-mining end use of the site as stated in the Reclamation Plan is consistent with the General Plan, community plan, and/or specific plan land use designation(s) and policies applicable to the subject property;
4. Find that the reclamation activities set forth in the Reclamation Plan will restore the mined lands to a condition usable or adaptable for use(s) consistent with the General Plan, community plan, and/or specific plan land use designation and policies;
5. Find that the mined land and/or site resources such as water bodies will be reclaimed to a condition that is compatible with, and blends in with, the surrounding natural environment, topography,

and other resources; or, that on-site and/or off-site resource enhancement will compensate for any disturbance to resource values; and

6. Find that it has been reasonably determined that the amount of the proposed financial security is adequate to perform reclamation activities as set forth in the approved Reclamation Plan.

- C. PLANNING COMMISSION DECISIONS IN CONFLICT WITH DEPARTMENT OF CONSERVATION POSITIONS. If the Planning Commission's approved position is in conflict with one or more positions of the DOC Director (objections stated, or recommendations made, by the DOC Director), the Commission must find that issues relating to such discrepancies were addressed by a substantive written response to the DOC Director and a copy of this response was forwarded to the applicant and any interested person.
- D. The Development Department shall furnish the DOC Director with a complete copy of all approved Conditional Use Permits for mining and reclamation, including any proprietary information as described in Section 12-5.512-A of this Code.

E. FINDINGS FOR DENIAL OF MINING PERMITS AND RECLAMATION

PLANS. In order to deny a Mining Permit and/or Reclamation Plan, the Planning Commission must make the following findings, pursuant to SMARA Section 2770(e):

1. The City acted on the surface mining application(s) according to due process, this Code, and SMARA and SMARA Regulations.
2. In its denial, the City has not relied on considerations other than those relating to the Applicant's satisfaction of substantive requirements for applications, Reclamation Plans, and financial assurance, as the same are set forth in the specific requirements of SMARA Sections 2772, 2773, and 2773.1, CEQA, and this Code.
3. The basis of any denial shall be stated on the record prior to the close of the hearing. In the event that the Superior Court overturns a denial, the City reserves the right to rehear the matter.

F. APPEALS. Planning Commission decisions may be reviewed by the City Council pursuant to Section 12-406-I of this Code. The City's final decisions on Reclamation Plans are subject to appeal to the SMGB as provided in SMARA Section 2775, provided that the applicant or other appellant has first exhausted their avenues of appeal under the City's processes, including (in any case not involving a rezone or a plan amendment), a petition to the Councilmember of situs or Mayor for a

hearing before the Council. If the SMGB grants the appellant a hearing, the recommendation resulting from the hearing before the SMGB shall be presented to the Planning Commission and City Council for their consideration or reconsideration.

12-5.508 PLAN CONSISTENCY AND CITY LAND USE ACTIONS AFFECTING

SURFACE MINING ACTIVITIES All land uses actions taken by the City on lands classified as containing significant mineral deposits protected under this Code, or on property adjacent to such classified mineral resource land, shall be supported by an express finding of consistency with plans, policies, and this ordinance.

- A. Within twelve (12) months of receipt of revised mineral resource mapping information from the State Geologist or SMGB, the City shall adopt corresponding amendments to the General Plan Resources Element (Mineral Resource maps), and shall amend the applicable community plans and specific plans, to reflect revisions in the classification or designation of mineral resources within the City's Sphere of Influence.
- B. Any proposed land use action which has been determined by the Development Director to be inconsistent with the Mineral Resource Element or this ordinance shall not be approved until such time as the inconsistency is resolved through reclassification of the mineral resource area, or until such time as notifications and additional findings have been made as required under Public Resources Code Sections 2762 and 2763.

- C. In connection with determining consistency, the Development Director shall expressly determine both of the following:
1. Whether the proposed project site is within, or adjacent to, an area of regional significance, as defined in Section 12-5.503-B of this Code; and,
 2. Whether the proposed project would directly or indirectly result in a mining-incompatible zone district or land use as defined in Section 12-5.503-B of this Code. A planning or zoning action affecting a site within, or adjacent to, an area of significance shall normally be deemed consistent where it reclassifies the site to a district which conditionally permits surface mining and associated activities. No action affecting a site within, or adjacent, to areas of significance shall be found consistent where the project will enable development of a mining-incompatible use.
- D. A plan amendment application shall be required in order to change the mineral resource classification of an area of significance or area of potential significance. Such plan amendment applications shall be supported by documentation from a Registered Geologist or equivalent, and shall be submitted to the State Geologist for consideration. The

Development Department shall not continue to process the plan amendment application until the State Geologist's determination on the proposed mineral resource reclassification has been received.

E. If the State Geologist does not reclassify the land, consistency may be found, and the rezoning and/or land use action may be approved, only after the following have occurred:

1. A detailed environmental analysis has been completed, including analysis of the proposed project's potential impacts upon, and from, mineral resources and recovery thereof; and a Mitigated Negative Declaration (with mitigation monitoring program) is adopted, or an EIR (with mitigation monitoring program) is certified, to mitigate significant environmental effects potentially arising from the incompatibility the rezoning and/or land use;
2. All noticing of agencies has been conducted pursuant to CEQA and Public Resources Code Section 2762;
 - a. All findings required by Public Resources Code Sections 2762 and 2763 have been made; and,
 - b. Notification is provided to all owners of the land in areas of significance and areas of potential significance lying within one mile of the boundaries of the proposed project site.

12-5.509. APPLICATION REQUIREMENTS FOR SURFACE MINING AND RECLAMATION ACTIVITIES.

- A. Each application for a conditional use permit comprised of a Mining Permit and Reclamation Plan (or a Reclamation Plan for previously mined lands) and for the environmental analysis thereof shall be made on a form provided by the Development Department, as required by Section 2772 of SMARA. The application shall not be deemed complete until submission of all elements required by this Section and all information needed to comply with the performance standards set forth in this Article, excepting that financial assurance documents may be submitted for Planning Commission review after said Commission gives conceptual approval to the conditional use permit.
- B. FEES. Application filing fees shall be paid pursuant to Section 12-410 of this Code, and no application shall be deemed complete or acted upon until all required filing fees are received by the Development Department.
- C. Mining Permit and amended Mining Permit components of the conditional use permit application shall include, without limitation, the following:
1. A legal description of the entire site upon which the operator seeks to engage in surface mining, related on-site mineral processing, and reclamation;

2. The names, addresses, and contact telephone numbers of the owners of all surface interests and mineral interests in the lands;
3. Proof that the applicant is the owner of said property or has authorization from the property owner (and from the proposed surface mine operator, if the proposed operator is not also the owner) to execute the application for a Mining Permit and Reclamation Plan;
4. A business location address for the operator, a mailing address for the operator, a business telephone number for the operator, and an after-hours emergency contact or message telephone number for the operator;
5. Site plans depicting the existing and proposed locations of:
 - a. Areas and sub-areas to be mined, with phased mining areas delineated so that no phase is over eighty (80) acres in size or encompasses more than twenty-five percent (25%) of the mined lands.
 - b. Elevations, ground contours and cross sections before and after mining activity;
 - c. Stockpiled minerals, overburden, and mine waste;
 - d. Mineral processing equipment and all structures;

- e. Access routes to and within the site, including temporary and permanent bridges, causeways, and other overcrossings.
- f. On-site parking and equipment storage areas;
- g. Roads, trails, railroads, access easements, and rights-of-way on and adjacent to the site;
- h. Utility facilities and utility easements, including but not limited to electrical substations, overhead and underground power transmission lines, communications cables, and pipelines;
- i. Signage required for mine sites and on-site traffic control;
- j. Fencing/walls, including the location of gates;
- k. Areas of critical and sensitive habitat and mature riparian forest on, and adjacent to, the site;
- l. The 100-year flood plain, and any changes to flood zones which would be caused by mining activity;
- m. Designated Floodways of rivers or streams located on, or adjacent to, the mined lands;
- n. Bodies of surface water and exposed groundwater that would be affected and/or created by mining;
- o. Existing and proposed water wells;

- p. Existing and proposed drainage courses and ponding basins on and adjacent to the site; and
 - q. Such other features, improvements, notations, and corrections deemed necessary by the Development Department, Planning Commission, and/or City Council in its review of the application;
6. Landscape plans depicting perimeter landscape screening and irrigation for such perimeter plantings;
7. An operational statement describing the following:
- a. The environmental setting of the site and surrounding areas, including:
 - (1) Established and approved land uses on and around the site;
 - (2) A description of the geology in the vicinity of the mined lands and on the mined lands themselves; and
 - (3) An assessment of biological resources on the site and in the vicinity, including flora and fauna to be found, any critical or sensitive habitat areas, any mature forest areas; and any special-status species found or expected to be found. Whenever possible, pre-existing native vegetation shall be documented in baseline

studies carried out prior to formulation of the Reclamation Plan and prior to mining activity or site clearance;

- b. Details on the proposed surface mining activity and any related processing operations, including:

 - (1) The type of material to be mined;
 - (2) The estimated quantity of material to be recovered;
 - (3) The extent of mining excavation (area and volume);
 - (4) The maximum depth of excavation; and
 - (5) A graphic representation of, and schedule for, ordered phasing of mineral extraction on sub-areas of the site;
- c. Beginning and ending dates of the entire surface mining operation, defining the life of the mining permit and establishing the ending date as the sunset date for the mining activity;
- d. Days and hours of operation;
- e. Numbers of employees;
- f. A description and analysis of the expected vehicular traffic related to mining and any on-site processing, including all heavy truck traffic;

- g. Equipment to be employed in mining and any related processing activities;
- h. A description and analysis of noise which would be generated by mining and related activities, including heavy truck transport of mining and mineral products; and noise control measures to be employed;
- i. A description of expected air pollutants, and air pollution control measures to be employed;
- j. A listing of potentially hazardous materials which will be stored or used on the site, hazardous waste which will require disposal, and the hazard containment/abatement measures, pollution control measures, and disposal provisions needed to properly handle said hazardous materials; and
- k. Such other information, notations, corrections, restrictions and measures, deemed necessary by the Development Department, Planning Commission, and/or City Council in its review of the application;

8. A listing of permitting needed from, and notifications required by, federal, state, regional, and local agencies which regulate activities incident to surface mining, related mineral processing, and other related activities on the site;
 9. A description of any historic resources (including archaeological and/or paleontological materials) known to be present or expected to be present on the site, and proposed measures for research recovery of the resources, relocation of the resources, and/or protection of the resources *in situ*. The exact locations of archaeological and paleontological sites shall not be disclosed or depicted in the portions of the Mining Permit which are of public record;
 10. Measures to address each of the standards for surface mining operations as set forth below in Section 12-5.510-B of this Code;
and
 11. A completed Reclamation Plan application, as set forth in this Article.
- D. The Reclamation Plan/amended Reclamation Plan component of a mining-related conditional use permit application shall include, without limitation, the following:

1. Measures to address each of the Reclamation Plan standards set forth in this Article;
2. A statement of the end use(s) for the site after conclusion of surface mining operations and reclamation, including:
 - a. A statement of how the end use(s) is/are consistent with the applicable General Plan, community plan, and/or specific plan land use designation(s) and policies applicable to the site; and
 - b. An operational statement describing any activities associated with the stated end use(s) of the reclaimed mined lands;
3. Evidence that all owners of a possessory interest in the mined lands have been notified of the proposed end use and reclamation plan.
4. An explanation of the impact of reclamation and post-reclamation use(s) on public health and safety (e.g., traffic impacts, noise, air quality, disease vectors such as mosquitos);
5. An explanation of the impact of reclamation and post-reclamation use(s) on flora and fauna on the site and in the area;

6. A description of the effects that reclamation and the post-reclamation end use(s) may have on the site's remaining unmined resources and mineral resources of adjacent lands;
7. A description of the manner in which reclamation will be accomplished, including days and hours of operation for heavy equipment to be used in reclamation;
8. A description of erosion control measures to be employed on various portions of the site;
9. A definition of the type(s) and source(s) of any refill material or topsoil, including location(s) of the source(s);
10. Site plans depicting the details of the reclamation proposal, including without limitation:
 - a. Grading plans showing finished earth forms, including berms and piles that will remain after reclamation, and the elevations and contours of the site, including cross-sections;
 - b. Structures and any equipment related to the post-mining end use of the reclaimed site;
 - c. Water wells that will remain after mining and reclamation;
 - d. Ingress/egress routes and on-site parking that will remain after mining and reclamation;

- e. Roads, trails, access easements, rights-of-way, and related uses and improvements on and adjacent to the site, including:
 - (1) Haul roads and street encroachments to remain after reclamation;
 - (2) Public access easements or trail routes;
 - (3) Parking areas to remain after reclamation;
 - (4) Bridges, causeways, and other overcrossings that will remain and be incorporated into a trail or road network;
and
 - (5) Watercraft put-in or take-out areas;
- f. Utilities and utility rights-of-way on and adjacent to the site;
- g. Signage required for on-site traffic control;
- h. Fencing/walls, including the location of gates;
- i. The 100-year flood plain, and any changes to flood zones which were caused by mining activity;
- j. Designated Floodways of rivers or streams located on, or adjacent to, the site;
- k. Bodies of surface water and exposed groundwater that will remain on and adjacent to the site after reclamation,

- including on-site ponding areas, with detail as to shoreline, islands, and depth contours of such bodies of water;
- l. Existing and proposed drainage courses and any culverts or other erosion control structures; and
 - m. Such other details and information as may be required by the Development Department or the DOC.
11. A revegetation plan shall be part of the reclamation plan, unless revegetation is not consistent with the stated end use of the property. Revegetation plans shall contain the following detail:
- a. Landscape plans for the site, showing permanent plantings (including the landscape screening that was installed for mining operations) and temporary erosion control and/or stockpile stabilization plantings;
 - b. Irrigation systems for revegetating the site, including the source of water and any backflow protection, whether irrigation distribution lines will be permanent or temporary, and whether irrigation distribution lines will be buried or laid on the surface;
 - c. A listing of plant species to be used in revegetation, including species name and the source of seeds, cuttings, or root divisions;

- d. Pre-planting site assessment procedures, including a survey of native plant communities on the site or in the area, testing of soil and soil amendments, and any assessment of compaction that will require ripping or discing to loosen dirt in the root zone;
 - e. Procedures and safeguards for adding soil amendments (including fertilizers) only as needed and beneficial, so that such soil amendments do not affect wildlife, desirable plants, surface or groundwater; and
 - f. Procedures for weed control, including safeguards for using herbicides in a manner that does not harm public health, safety of worker or site visitors, wildlife, or the quality of surface or groundwater;
12. When the reclamation end use involves habitat, the reclamation plan shall include a site-specific habitat improvement plan for appropriate enhancement of the mined lands to support wildlife and fisheries;
13. A description of any historic resources (including archaeological and/or paleontological materials) which will remain on the site after mining, and proposed measures for research recovery of the resources, relocation of the resources, and/or protection of the

resources in situ. The exact locations of archaeological and paleontological sites shall not be disclosed or depicted in the Reclamation Plan unless the Plan includes measures for ongoing adequate site security to prevent theft or vandalism of the resources;

14. A monitoring plan with specific evaluation criteria for measuring phase-by-phase completion of, and at least five years of maintenance of, planned reclamation activities. The monitoring plan shall include target standards for revegetation that measure plant density and species diversity, weed control, and ground coverage/canopy coverage. Adequate financial assurance for reclamation and at least five years of post-reclamation maintenance for the site, meeting the requirements of subsection 12-5.510-C-13 of this Code;
15. A monitoring plan with specific evaluation criteria for determining the completion of revegetation, and for evaluating the success of revegetation for the five-year post-reclamation maintenance of reclaimed areas. The monitoring plan shall include standards for revegetation that determine success of revegetation by evaluating plant density/ground coverage, appropriateness of plant species mix observed, and effectiveness of weed control;

16. Documentation of cost estimates for financial assurance meeting the requirements of subsection 12-5.510-C-13 of this Code.
17. Provisions for periodic inspections by the City and the DOC to evaluate compliance with the Reclamation Plan; and
18. Any other information and documents required by SMARA or SMARA Regulations, or by the Development Department, Planning Commission, or City Council pursuant to review of the application.

12-5.510. STANDARDS FOR SURFACE MINING OPERATIONS AND

RECLAMATION. Each conditional use permit issued pursuant to this Article shall require the applicant to comply with all of the following conditions, without limitation:

- A. STATEMENT OF RESPONSIBILITY. Before commencement of an approved mining operation or before commencing reclamation work under an approved Reclamation Plan, a statement, prepared in the form of a Covenant to run with the land, shall be signed by the applicant and the property owner, and shall be notarized to attest that the signatories are the owners of the subject property and have owner authorization to apply for and implement the Reclamation Plan, and that the signatories and their successors in interest accept responsibility for reclaiming and maintaining the mined lands in accordance with the approved Reclamation Plan. After final approval of the Reclamation Plan, this statement shall be recorded at the Fresno County Recorder's Office,

together with a copy of the applicable Planning Commission or City Council Resolution approving the Reclamation Plan and any Mining Permit for the subject property.

B. Standards for surface mining operations:

1. Extraction operations shall comply with all applicable regulations issued by the local, regional, state, and federal agencies. The operator shall file any notices, and obtain any permits, required by local, regional, state, and federal agencies which regulate activities incident to surface mining, mineral processing, and related activities on the site.
2. Surface mining operations and related mineral processing shall not be conducted less than:
 - a. Fifty feet (50') from any vehicular or pedestrian right-of-way, from the San Joaquin Bluff Toe, or from the property line of any residential use, recreational use (including golf course), or land approved for public assemblage use; or
 - b. Twenty-five feet (25') from the property line of any adjacent land having uses other than those listed in subparagraph (a) above.
3. Final slopes of excavated or filled areas shall not be steeper than 2:1 (two feet horizontal to one foot vertical) for areas that will not be

associated with future public access to open water bodies, and shall not be steeper than 3:1 for areas that will be associated with future public access to open water bodies. The measurement of slopes shall commence at the setback specified above in subparagraph (b) and shall extend to a depth of at least five feet (5') below the estimated average water level of any ponds. Steeper slopes may be created in the conduct of excavation for limited periods prior to backfilling to final slope requirements, but no temporary slope shall be steeper than one foot horizontal to one foot vertical.

4. Ground or fill beneath any structures, equipment, or roadways shall have sufficient compaction to support the structures, equipment, or vehicles.
5. Critical and sensitive habitat areas shall be preserved and separated from extraction, processing, and stockpiling activities, and from haul roads, by at least one hundred feet (100').
6. All reasonable and practical measures shall be taken to protect fish and wildlife and to preserve wildlife corridors.
7. Mature forest plant communities, as delineated in the biological assessment submitted pursuant to subsection 12-5.509-C-7.a(3) of this Code, shall be preserved. Extraction, processing, haul roads,

and stockpiling activities conducted adjacent to such forest areas shall be set back twice the drip line distance from tree trunks, or a minimum of twenty-five feet (25'), whichever is greater.

8. Disturbance of vegetation and overburden in advance of mining activities shall be minimized.
9. Topsoil, as defined in Section 3501 of SMARA Regulations, shall not be sold from the site. Topsoil and other overburden shall be stockpiled, protected from erosion, and utilized to implement the site's approved Reclamation Plan.
10. Piles of overburden, stockpiled minerals, and mining waste shall be stabilized against erosion. Berms and swales of this material shall not be constructed perpendicular to the flow of a river or stream, but shall be generally parallel or angled toward the direction of downstream flow.
11. No liquid waste, putrescible or non-putrescible solid waste (such as trash, refuse, construction waste), hazardous material, or toxic material may be disposed of on mined lands, buried on mined lands, or used as fill material on mined lands, whether or not it constitutes mining waste as defined in Section 12-5.503-B of this

Code. This subsection shall not prohibit the use of compost for revegetation, if such use is approved as part of the reclamation plan.

12. All mining operations shall comply with the City's flood hazard regulations.
13. Mining operations, including construction of bridges, causeways, and other access routes, shall not be allowed within Designated Floodways, unless specifically authorized by the appropriate State agencies such as the California Board of Reclamation and the State Lands Commission. Full disclosure of permit terms and restrictions related to such work shall be included in the Mining Permit.
14. Mining shall not be permitted within flowing streams. Temporary stream or watershed diversions may be allowed through permits issued by the U. S. Army Corps of Engineers and the California Department of Fish & Game. Specific mitigating measures shall be implemented to prevent erosion and to maintain passages for fish and wildlife. Any such temporary diversions shall be restored, in a manner consistent with the Reclamation Plan as soon as practicable.

15. Mining operations conducted adjacent to any flowing stream shall be separated from the stream by closed dikes able to hold back normal seasonal flows of the stream.
16. All water utilized in mining operations and mineral processing, and all runoff from the mine site, shall be contained behind a closed dike so as not to impair water quality in any river, stream, or pond. Such retention and mine waste disposal shall conform to the requirements of local, regional, state, and federal agencies.
17. Ponds (other than those being used to dispose of mining waste) which are created by mining shall be separated from the Designated Floodway. Where feasible and advisable, such ponds may be connected to flowing water (a stream or river) in order to provide circulation and prevent eutrophication, pursuant to an approved water rights application. Pond connections to a stream or river shall not conflict with floodplain management objectives, fisheries resource management objectives, or other water management objectives as established by responsible and trustee agencies. Any fish barriers installed in pond connections shall require hydrological and biological studies to document efficacy and assure avoidance of adverse effects.

18. All reasonable and practical measures shall be employed to protect groundwater quality.
19. Roadside and perimeter vegetation and setbacks shall be maintained sufficient to obscure mining operations and stockpiled overburden and minerals from public view at grade level of the site perimeter.
20. All access to surface mining operations shall only be allowed via public streets that are rated for the truck weights associated with surface mining and related activities.
21. Access roads to and within the site shall be located in a manner that minimizes traffic impacts on surrounding streets and land uses.
22. Access roads to and within the site shall be constructed and maintained so as to control the generation of dust, pursuant to Air Pollution Control District regulations. Dust control measures include frequent watering, wet sweeping, paving, or use of a sealant approved by the Air Pollution Control District, Regional Water Quality Control Board, and the Department of Fish & Game for use at the mine site.
23. Equipment used for surface mining operations and related mineral processing activities shall, as far as practicable, be located and

- constructed so as to eliminate dust, noise, vibration and visual blight which would affect residential uses in the vicinity.
24. The hours of operation for mining and mineral processing activity shall be limited as necessary to conform to the City's Noise Ordinance, shall conform to subsection 12-5.510-B-30 of this Code, and may be further restricted to minimize impacts on surrounding land uses and public rights-of-way.
25. Within ninety (90) days after final approval of the Mining Permit, and continuously thereafter, the perimeter of mined lands shall be posted with signs not less than three hundred feet (300') apart and posted at each change of direction of the perimeter line, to give notice in letters not less than four inches in height, that the site is a "SURFACE MINING AREA," and stating in letters not less than two inches in height, "WARNING: This is a DANGEROUS excavation site. Heavy equipment, unstable slopes, loose piles of earth, noise, and dust may present hazards." The operator may add "No Trespassing" language to these signs, in accordance with laws regarding trespass.
26. All night lighting shall be arranged and controlled on the property so as to not illuminate nearby vegetation, public rights-of-way or adjacent properties.

27. Security fencing shall be erected and maintained around extraction sites as necessary to minimize to the greatest extent practicable any attractive nuisance hazards. At least one main gate of mined lands shall be equipped with a lock that provides for emergency fire and police access.
28. Any traffic control or warning signs or devices required by the Department through the special permit conditions or note on approved site plans shall be installed and maintained by the operator.
29. Mining, mineral processing, and hauling operations shall conform to the City's General Plan Noise Element and Noise Ordinance, Chapter 8, Article 3 of this Code.
30. If located within five hundred feet (500') of the property lines of land with residential uses, mineral processing equipment shall only be operated between the hours of 7:00 a.m. and 7:00 p.m., or during more restricted hours as set by the conditional use permit. Otherwise, mineral processing equipment may be operated between 5:00 a.m. and 10:00 p.m..
31. REPORTING. The Mining Permit shall include the express requirement that operators file the following reports with the DOC Director or his/her designee and a copy of the report to the City.

- a. Reports shall be made on the form(s) furnished or prescribed by the SMGB.
 - b. Reports shall be accompanied by the applicable filing fee and a copy of the City's annual inspection report, as specified in SMARA Section 2207.
 - c. New mining operations shall file an initial report with the DOC Director or his/her designee within thirty (30) days of final conditional use permit approval or before commencement of operations, whichever is sooner.
 - d. All operators shall file an annual report on or before the date established by the DOC.
32. The conditional use permit shall include provisions for providing access to mined lands by the City and DOC personnel, for periodic and other inspections of the site.
- C. Standards for Reclamation and Interim Management Plans:
1. Reclamation Plans shall comply with SMARA and SMARA Regulations.
 2. End uses of reclaimed mine sites shall be consistent with adopted City of Fresno plans and policies.

- a. End uses shall be consistent with the General Plan, community plan, and specific plan land use designation(s) and policies applicable to the site.
 - b. End uses shall not preclude approved uses of adjacent property including the extraction of minerals from such property. End uses shall reflect terms and conditions of pre-existing entitlements and applicable previously approved mitigation programs.
 - c. Whenever possible, reclamation should be planned to have multiple benefits, in it should support the stated end use of the property, while enhancing or complementing the natural resources of the area and/or allowing for recreational opportunities. It shall be recognized that habitat enhancement, scenic value improvement, and recreational use, should complement, not prohibit, permitted end uses of reclaimed lands.
 - d. End uses shall be consistent with flood control and safety regulations and objectives.
3. Reclamation activities shall be initiated at the earliest possible time on those portions of mined lands that will not be subject to further disturbance. Reclamation of mined lands or a delineated phase of

mining shall not begin later than six months after the cessation of mining on those mined lands or delineated phase area.

4. Reclamation activity shall be coordinated with seasonal weather patterns in order to prevent erosion and maximize success of revegetation.
5. Final slopes of excavated or filled areas shall not be steeper than 2:1 (two feet horizontal to one foot vertical) at any point for areas that will not be associated with future public access to open water bodies, and shall not be steeper than 3:1 at any point for areas that will be associated with future public access to open water bodies. These limits on slopes shall extend to a depth of at least five feet (5') below the estimated average water level of any ponds created by mining activity.
6. Grading, erosion control measures, and revegetation plantings shall be designed to prevent excessive erosion or subsidence, and designed to control surface runoff according to:

 - a. The City's drainage regulations as set forth in Section 13-120.3315 et seq. of this Code;
 - b. Compaction standards adequate to support any new structures or roads/access routes to be constructed as part of reclamation; and

- c. Applicable best management practices for stormwater management.
7. Piles or dumps of mining waste and overburden shall be stabilized to prevent erosion, and all toxic materials shall be removed or rendered inert to prevent leaching.
8. Access roads, haul roads, and parking areas shall be removed unless the Reclamation Plan specifically authorizes their retention to implement or support the end use of the mined lands. In order to erase the roads, concrete, asphalt, wood and metal parts shall be removed and recycled; road beds shall be ripped to reverse compaction; topsoil or other suitable growing medium shall be placed on the road bed; and the area shall be revegetated.
9. Bridges, causeways, or other overcrossings may be retained for incorporation into a trail or road network as authorized by area plans, if all necessary approvals to retain such structures are obtained.
10. Bridge structures, causeways, and other overcrossing structures that are not to remain to support the approved reclamation use(s) of the property, that present a hazard to River users, or that impede

flood waters, shall be removed as soon as possible after their use in mining operations has ceased. All portions of the structures shall be removed, including culvert pipes and fill.

11. Water features that are created by mining activities and will remain as part of the site's reclaimed use shall be designed with the following criteria:

a. The margins of water features shall have stepped benches with level areas of varying widths at intervals of a few feet below and above the expected water level. The slope between benches shall not exceed criteria set forth in this Article or the approved plan.

b. Shorelines shall be scalloped to form an irregular land/water interface;

c. Extended peninsulas and islands should be created whenever feasible; and

12. Ponds may be (or may remain) connected to a stream or river, provided the provisions of subsection 12-5.10-B-17 of this Code are complied with.

13. Revegetation shall be consistent with the designated end use of the mined lands and shall be designed to maximize success of the plantings.

- a. Where the specified end use does not call for certain plantings, revegetation shall employ native species endemic to the vicinity.
- b. For mined lands whose end use(s) involve habitat improvement, revegetation shall make the site more useful for supporting wildlife by providing cover and food.
- c. Vegetative species-richness, density, and canopy/cover for areas being restored with native plants shall be similar to naturally-occurring vegetation on the site prior to mining or in surrounding undisturbed areas with similar terrain and water availability.
- d. Where possible and feasible, propagules (seeds, cuttings, root divisions) of native plants to be used for revegetation should be gathered from the site or from adjacent lands. Any required permits and permissions shall be obtained for the collection of source plants. Collection efforts shall not destroy or materially injure sources of native plants.
- e. In riparian areas, plantings should be generally designed to provide multiple, braided bands of cover parallel to the adjacent stream or river, with some clumps for diversity and denser cover.

- f. Establishment of native vegetation for habitat on mined lands shall be planned and designed to eventually be self-supporting and to have self-regeneration and ecological succession capability without continued dependence on irrigation or other intensive management practices.
- g. Where the prospective success of a proposed revegetation plan cannot be documented by previous experience or assured by professional advice, test plots may be required by the Development Department and/or DOC. Results obtained from test plots may be employed to alter the specifications of the revegetation plan.
- h. The Reclamation Plan and financial assurance shall provide for maintaining and replacing revegetation plantings throughout the establishment and post-reclamation maintenance period, until the plantings become well enough established to survive.
- i. Planting periods shall relate to the species and the type of propagule being used. Flexibility will be allowed in planting schedules for suitability of precipitation and temperature, in order to provide for optimal establishment of plants; however, erosion control goals shall also be considered.

i. The revegetation plan schedule, objectives, and success benchmarks shall be consistent with the Reclamation Plan revegetation evaluation criteria as set forth in the monitoring plan required under subsection 12-5.509-D-14 of this Code.

13. FINANCIAL ASSURANCE. To ensure that reclamation will proceed in accordance with the approved Reclamation Plan, the City shall require security which will be released upon satisfactory performance and the expiration of any maintenance periods. Final approval of a Reclamation Plan and, therefore, of a Mining Permit, requires acceptance and approval of financial assurance as specified below.

a. Financial assurance will be required to ensure compliance with elements of the Reclamation Plan, including but not limited to:

- (1) Grading and stabilization of slopes and piles, erosion control, and drainage improvements;
- (2) Removal of equipment, structures, haul roads, access roads, bridges, causeways, and other improvements;
- (3) Restoration and preservation of water bodies, including contouring;
- (4) Protection of surface and ground water quality;

- (5) Revegetation and landscaping, including soil amendment, installation and operation of irrigation systems, and maintenance of plantings;
- (6) Restoration or improvement of aquatic or wildlife habitat;
- (7) Securing of the site to prevent unauthorized entry;
- (8) Two years of inspection fees for the entire site;
- (9) Disposal of any hazardous materials; and
- (10) Other measures and site improvements, as necessary to implement the approved Reclamation Plan.

b. The amount of the financial assurance shall be arrived at pursuant to the following guidelines:

- (1) Cost estimates should be prepared by a California registered Professional Engineer, Registered Geologist, and/or other similarly licensed and/or qualified professional retained by the operator.
- (2) 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, plus actual administrative costs.

- (3) Financial assurance for 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, mobilization of equipment, supplies and materials, disposal costs including those related to any hazardous materials, administration (including two years of City inspection fees), and reasonable profit for a licensed contractor other than the operator to do the work. In projecting the costs of financial assurance, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by the operator and, consequently, the City or DOC may need to contract with a third party commercial company for reclamation of the site.
- (4) A contingency factor of ten percent (10%) shall be added to the cost of financial assurance.

- (5) The financial assurance shall cover the cost of reclaiming existing disturbed areas, any required interim reclamation, and reclamation of those areas subject to anticipated activities for the next calendar year, excepting that the operator may not claim credit for reclamation scheduled or anticipated to be completed during the coming year.
- (6) Cost estimates for reclamation of a phase of mining shall take into account the concomitant disturbance on other portions of mined lands. It shall be based upon mining, on-site processing, and reclamation activities associated with that phase of mining as delineated in the approved mining permit and Reclamation Plan, and shall include required maintenance of reclaimed areas. Cost estimates are subject to adjustment for the actual cost of reclaiming lands to be disturbed by surface mining activities in the upcoming year.
- (7) The amount of financial assurance required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, any interim reclamation

activities, inflation, and reclamation already accomplished in accordance with the approved Reclamation Plan.

(8) Revisions to financial assurance shall be submitted to the Development Department each year prior to the anniversary date for approval of the financial assurance. If revisions to the financial assurance are not required, the operator shall explain, in writing, why revisions are not required.

c. Cost estimates for the financial assurance shall be submitted to the Development Department for review and approval prior to the applicant/operator preparing or securing financial assurance instruments.

d. The Development Department shall forward a copy of the cost estimates, any documentation received supporting the amount of the cost estimates, and a copy of the proposed or conceptually approved Reclamation Plan, to the DOC Director for review. If the DOC Director does not comment within forty-five (45) days of receipt of these estimates.

it shall be assumed that the cost estimates are adequate, unless the City has reason to determine that additional costs may be incurred.

- e. Once the cost estimates for reclamation are approved, the applicant/operator may pose security in the form of a cash deposit, certificate of deposit, trust fund, surety bond from a bonding company approved by the City, irrevocable letter of credit from an accredited financial institution, or alternate method and form as may be acceptable to the City Attorney and to the SMGB and DOC as specified in State regulations. The financial security shall be in an amount equal to the estimated cost of completing reclamation activity pursuant to the approved Reclamation Plan (within a reasonable time period, as determined by the Development Department) plus the cost of post-reclamation maintenance and related administrative needs such as inspections. Financial security instruments shall be made payable to the "City of Fresno" and the "California Department of Conservation."
- f. Financial assurance for each phase of reclamation shall remain in effect for the duration of the surface mining operation and any additional time, until that phase of

reclamation is completed and accepted as complete by the City and there have been at least five years of post-reclamation maintenance of that completed and accepted phase of reclamation.

- g. Financial assurance shall be maintained for idle surface mining operations as though the operations were active.

14. Interim Management Plans shall have the following requirements:

- a. The Interim Management Plan shall provide measures the operator will implement to maintain the site in a secure and stable condition with regard to public health and safety.

- b. The Interim Management Plan shall provide measures the operator will implement to maintain the site in compliance with SMARA, SMARA Regulations, and this Article.

- c. Financial assurance shall be maintained as through the surface mining operation were active.

- d. The Interim Management Plan may be approved to remain in effect for a period not to exceed five years, at which time the following actions shall be taken:

- (1) The Development Department shall determine, based on inspections, whether the operator has complied fully with the Interim Management Plan;

- (2) Upon application by the operator, the Planning Commission may renew the Interim Management Plan for another period not to exceed five years; unless the operator does not apply for an extension, or there is evidence that the Interim Management Plan has not been implemented by the operator, in which cases the Planning Commission shall require the operator to commence reclamation in accordance with the approved Reclamation Plan for the site.
- e. At the expiration of a renewed Interim Management Plan, the operator shall be required to commence reclamation pursuant to the approved Reclamation Plan.
- f. Nothing in this Section shall preclude the City or the DOC from taking enforcement action against the operator and/or property owner to require reclamation of, or to reclaim, an idled mine site or abandoned mine site if inspections reveal that interim management is not protecting public health and safety, not securing the site, not stabilizing the site, or if the operator is not complying with reporting and/or financial security requirements.

12-5.511. REPORTING, INSPECTIONS, ENFORCEMENT ACTIONS, AND APPEALS OF ENFORCEMENT ACTIONS.

A. REPORTING. Operators shall file initial and annual reports, as may apply, with the DOC Director and shall send copies to the Development Department. Operators shall pay filing fees to the DOC as prescribed in SMARA Section 2207 and as elsewhere required pursuant to this Code. The Development Department shall furnish to the DOC Director complete copies of all initial/annual reports, including any proprietary information as described in Section 12-5.512-A of this Code.

B. INSPECTIONS.

1. Within six months of receipt of the annual or initial report, the Development Department shall conduct an inspection of the mined lands and surface mining operation to determine whether the surface mining operation and associated reclamation is in compliance with SMARA and SMARA Regulations, its Mining Permit, and its Reclamation Plan, including financial assurance.
2. Inspections shall be conducted by a Registered Geologist, Registered Civil Engineer, Licensed Landscape Architect, Registered Forester, or other qualified specialist as designated by the Development Director. The inspector(s) shall not have been employed by the mining industry or concrete/asphalt products

industry in any capacity during the twelve months prior to conducting any inspection, including as an independent contractor or consultant.

3. Inspections shall be performed as often as necessary to implement the monitoring plan element of the Reclamation Plan and to ensure that required corrections have been done pursuant to any correction notices arising out of inspections. At least one inspection shall be conducted in any calendar year, until the end of the post-reclamation monitoring period of completed and accepted reclamation activity.
4. All inspections shall be documented using a form approved by the SMGB and DOC. Additional documentation may be attached to that form, at the discretion of the Development Director.
5. Within thirty (30) days of completing each inspection, and no later than July 1 of each year, the Development Department shall forward to the DOC Director and the surface mine operator a copy of the inspection report and any notice of deficiency.
6. The operator shall be solely responsible for the reasonable costs of periodic site inspections and reinspections required to gain compliance. Within thirty (30) days of notification by the City that an inspection fee is due, the operator shall pay the appropriate

fees as set forth in the City's Master Fee Schedule and the notification. Failure to pay an inspection fee is grounds for revocation of a Mining Permit, and the City may also take collection actions including, but not limited to, drawing on the financial assurance posted for reclamation of the surface mining operation, and seeking reimbursement from the owner of the mined lands.

7. Inspections of the site may be conducted in response to complaints received by the City. The operator or property owner shall not be responsible for costs of initial complaint inspections or a first reinspections needed to ascertain correction of a violation noted on a complaint inspection. The City reserves the right to require the operator and/or property owner to pay the costs of multiple reinspections if compliance is not promptly attained.
8. The operator and property owner shall permit the City, the DOC and other federal, state, regional, or local law enforcement and regulatory agencies to conduct any necessary inspections of mined lands.

C. ENFORCEMENT ACTIONS.

1. Based on results of inspections of the mined lands and surface mining operation, the Development Department shall make a

- determination whether an operator is conforming to SMARA, SMARA Regulations, and the terms and conditions of the approved Mining Permit and Reclamation Plan for the site.
2. If the operator does not commence reclamation as required by a an approved reclamation plan, interim management plan, or SMARA, the operator shall be subject to enforcement action.
 3. If the Development Department makes a finding that an operator is not in compliance with a Mining Permit and/or Reclamation Plan, the City shall follow the procedures set forth in SMARA Sections 2774.1 and 2774.2 concerning violations and penalties.
 4. As deemed appropriate and necessary, and when such actions are not pre-empted by SMARA, the City may also exercise its authority to revoke a Mining Permit and/or Reclamation Plan, and to abate public safety hazards and nuisances, pursuant to subsections 12-411-A and 12-411-B of this Code.
 5. Pursuant to SMARA Section 2770(i), enforcement action against an idle mining operation shall be held in abeyance pending submission of an Interim Management Plan within ninety (90) days of the site becoming idle, and, if the Interim Management Plan is submitted timely, shall be further held in abeyance pending review and approval of the Interim Management Plan.

D. APPEALS OF ENFORCEMENT ACTIONS. Any person aggrieved by an act or determination of the Development Department in its exercise of the authority granted by this Section shall have the right to appeal to the Planning Commission.

1. Any appeal must be filed within fifteen (15) calendar days after the operator receives the written rendition of a decision.
2. Upon receipt of an appeal, the matter shall be scheduled and noticed for public hearing at the next available meeting date of the Planning Commission.
3. Decisions of the Planning Commission on appealed enforcement actions may subsequently be reviewed by the City Council pursuant to subsection 12-406-I of this Code.
4. Nothing in this Section shall preclude representatives of the City, the DOC, or other federal, state, regional, or local law enforcement or regulatory agency from exercising their respective police powers in order to enforce federal, state, regional, or local laws and regulations, and conditions of permits, under such agencies' jurisdictions.

12-5.512. PUBLIC RECORDS.

- A. Permit applications and supporting studies (excepting archaeological/paleontological site investigations), Mining Permits,

Reclamation Plans, environmental assessments, inspection reports, and other documents prepared pursuant to this Article are deemed to be public records in their entirety, unless it can be demonstrated to the satisfaction of the Development Director that the release of such information, or part thereof, would reveal proprietary information entitled to protection. Such proprietary information may include quantities of mineral reserves, the rate of depletion of reserves, the quantities of minerals or formulated compounds produced or sold by an operation, or driller's logs. Such information may be required by the Development Department for consideration of applications, but the operator may request that it not be placed in the public domain.

- B. If an applicant seeks to protect information on the grounds that it is proprietary, the applicant must identify the pages or sections of pages containing this information and separate it in the conditional use permit application and supporting documentation and in any initial and annual reports.
- C. Proprietary Information shall be made available to persons other than the DOC Director only when authorized in writing by the mine operator in accordance with SMARA Section 2778.

12-5.513. PROVISIONS FOR REVISING THIS ORDINANCE.

- A. In order to ensure that the City of Fresno Surface Mining and Reclamation Ordinance remains consistent with SMARA, the Development Director shall periodically review this Ordinance and initiate text amendments as necessary. The Development Director shall also initiate text amendments to update this Ordinance as may be directed by the SMGB from time to time.
- B. The SMGB shall be afforded sixty (60) days to review proposed amendments to this Ordinance. After the SMGB comments on proposed revisions to this Ordinance, the City shall have ninety (90) days to complete its environmental review, public hearings, and adoption of the Ordinance. A copy of the adopted Ordinance shall be promptly forwarded to the SMGB.
- C. Adopted revisions of the City of Fresno Surface Mining and Reclamation Ordinance shall not be effective until the SMGB certifies the revised Ordinance.
- D. During preparation of text amendments to revise this Ordinance, the City shall consult with Madera County and Fresno County with the goal of unifying standards for surface mining and reclamation in the San Joaquin River mineral resource areas.]

SECTION 7: SEVERABILITY. The provisions of this Ordinance are severable. If any section, subsection, sentence, clause, phrase or other portion of this Ordinance is held to be invalid or unconstitutional for any reason, the remaining portions of the Ordinance shall not be affected.

SECTION 8: EFFECTIVE DATE. This Ordinance shall be in full force and effect on the thirty-first day following its adoption by the City Council, or upon its certification by the California State Mining and Geology Board, whichever date is later.

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the 8th day of JUNE, 1999, by the following vote:

AYES : Boyajian, Bredefeld, Perea, Quintero, Ronquillo, Steitz
NOES : None
ABSENT : Mathys
ABSTAIN : None

Mayor Approval: 6/21, 1999
Mayor Approval/No Return: N/A, 1999
Mayor Veto: N/A, 1999
Council Override Vote: N/A, 1999

REBECCA E. KLISCH
City Clerk

BY: Rebecca E. Klisch
Deputy

APPROVED AS TO FORM:
HILDA CANTÚ MONTOY
City Attorney

BY: [Signature]
Deputy