



**Siskiyou County
Planning Commission Staff Report
October 20, 2021**

**New Business Agenda Item No. 1
Surface Mining and Reclamation Ordinance Update (Z-21-09)**

Applicant: Siskiyou County, Planning Division

Project Summary: The project is proposing a comprehensive update to amend the County's Surface Mining and Reclamation Ordinance in order to be consistent with the Surface Mining and Reclamation Act (Public Resources Code Sections 2710 et seq.)

Location: The project encompasses all parcels in the unincorporated area of Siskiyou County, California. The project area (i.e., unincorporated Siskiyou County) is roughly centered on Section 17 of Township 44 North, Range 7 West of the Mount Diablo Meridian.

General Plan: All

Zoning: All

Exhibits: A. Draft Resolution PC-2021-023
A Resolution of the Planning Commission of the County of Siskiyou, State of California Recommending the Board of Supervisors Adopt the Proposed Ordinance Amending Chapter 5 of Title 10 of the Siskiyou County Code Regarding the County's Surface Mining and Reclamation Ordinance (Z-21-09)

Exhibit A-1. Draft Board of Supervisors Ordinance
Amending Chapter 5 of Title 10 of the Siskiyou
County Code Regarding the County's Surface
Mining and Reclamation Ordinance

Background

The California Surface Mining and Reclamation Act of 1975, Public Resources Code Sections 2710 et seq., referred hereafter as “SMARA”, was enacted by the California Legislature to address the need for a continuing supply of mineral resources, and to prevent or minimize the negative impacts of surface mining to public health, property, and the environment. SMARA is intended to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:

1. Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.
2. The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.
3. Residual hazards to the public health and safety are eliminated.

Under SMARA, local governments are required to adopt ordinances for land use permitting and reclamation procedures, which provide the regulatory framework under which local mining and reclamation activities are conducted.

The County’s current Surface Mining and Reclamation Ordinance (Chapter 5 of Title 10 of the Siskiyou County Code) was adopted on May 12, 2015. However, since the County’s adoption, the State has passed legislation further amending and updating SMARA. County Planning staff has determined that updates are needed to the County’s Surface Mining and Reclamation Ordinance to ensure consistency with SMARA.

Analysis

Discussion

September 15, 2021 Planning Commission Meeting

During the September 15, 2021, Planning Commission meeting, the Commission expressed concerns relating to staff’s proposed amendments to update County Code Section 10-5.117 relating to enforcement of surface mining and reclamation activities. Specifically, the Commission felt it was important to maintain the appeal procedures within the current version of the County’s Surface Mining and Reclamation Ordinance, which stipulates the Planning Commission as the review authority should a mine operator wish to appeal the Planning Director’s order to comply relating to violations of a surface mining operation that is not in compliance with the approved reclamation plan, the provisions of the County’s Surface Mining and Reclamation Ordinance, or SMARA. The Planning Commission outlined that the Commission is the review authority in approving Use Permits and Reclamation Plans for surface mining operations. Due to

**Planning Commission Staff Report
October 20, 2021**

this, the Commission has extensive knowledge of surfacing mining and reclamation activities, and should be the review authority when reviewing appeals of orders to comply. The Commission continued the public hearing to October 20, 2021, and directed staff to revise the proposed amendments to maintain the Commission's role reviewing appeals of orders to comply.

Staff moved forward with the Commission's direction, including extensive review of SMARA, and determined that additional updates to the County's Surface Mining and Reclamation Ordinance were warranted. As a result, staff moved forward with a comprehensive update of the County's Surface Mining and Reclamation Ordinance, which is being presented to the Commission for review and consideration and is included as Exhibit A to Resolution PC-2021-023. Due to the significant changes from the Commission's direction provided in the September 15, 2021, Planning Commission meeting, staff re-noticed the public hearing pursuant to County Code Section 10-6.2805 et. seq. in order to provide the public notice of the additional updates to the Ordinance.

As previously mentioned, the State has passed additional legislation amending SMARA following the County's adoption of our Surface Mining and Reclamation Ordinance in 2015. As a result of the State's amendments, the County's Surface Mining and Reclamation Ordinance does not fully comply with the requirements of SMARA. The proposed updates to the County's Surface Mining and Reclamation Ordinance would amend the following sections:

- Section 10-5.101. Purpose and intent
- Section 10-5.102. Applicability and exemptions
- Section 10-5.103. Definitions
- Section 10-5.108. Reclamation plans
- Section 10-5.109 Modifications to reclamation plans
- Section 10-5.110. Interim management plans
- Section 10-5.111. Financial assurances
- Section 10-5.113. State review of reclamation plans, interim management plans, financial assurances and amendments
- Section 10-5.115. Annual inspections and reports
- Section 10-5.116. Record keeping
- Section 10-5.117. Enforcement

The proposed amendments to the County's Surface Mining and Reclamation Ordinance

**Planning Commission Staff Report
October 20, 2021**

are minor and in line with the provisions of SMARA. For example, the “Department of Conservation” has been replaced with the “Supervisor of Mine Reclamation” as the review authority for the State, which is included in the proposed updates. In addition, the state’s changes to SMARA have also revised timeframes relating to local governments’ review of interim management plans and financial assurances, and timeframes relating to the state’s review and comment period for reclamation plans, reclamation plan amendments, and financial assurances. The proposed amendments to the County’s Surface Mining and Reclamation Ordinance only include the provisions currently prescribed in SMARA and do not include any amendments that would be more restrictive than the State. The proposed amendments are the minimum necessary to ensure the County’s Surface Mining and Reclamation Ordinance is consistent with SMARA.

To specifically address the Commission’s concerns raised during the September 15, 2021, Planning Commission meeting, staff has revised the proposed updates to Siskiyou County Code Section 10-5.117 (Enforcement) and would now stipulate that a mine operator may appeal the Planning Director’s order to comply within 30 days following the service of the order to the Planning Commission. A Planning Commission hearing would be scheduled within 45 days of filing the appeal, unless a longer period is mutually agreed to by the operator and Planning Director. The Planning Commission shall determine whether or not the operator is complying with the approved reclamation plan, the County’s Surface Mining and Reclamation Ordinance, or SMARA, and may affirm, modify or set aside the order issued by the Planning Director. The decision of the Planning Commission may be appealed within ten (10) calendar days to the Board of Supervisors. However, SMARA (at Public Resources Code Section 2774.2(a)) states that any order imposing administrative fines shall be heard by the legislative body of the lead agency, thus an appeal of an order with fines must proceed directly to the Board of Supervisors.

Environmental Review

Staff recommends that the proposed Ordinance (Z-21-09), which would amend the County’s Surface Mining and Reclamation Ordinance Enforcement Section to be consistent with Public Resources Code, be determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) and Section 15307. It can be seen with certainty that there is no possibility of a significant effect on the environment from the adoption of this Ordinance amending the County’s Surface Mining and Reclamation ordinance, as this project updates the County’s Surface Mining and Reclamation ordinance to be consistent with the State’s Surface Mining and Reclamation Act (Public Resources Code Sections 2710 et seq). Where it can be seen with certainty that there is no possibility that the activity in

**Planning Commission Staff Report
October 20, 2021**

question may have a significant effect on the environment, the activity is not subject to CEQA. In addition, staff recommends the Board of Supervisors determine the proposed Ordinance to be exempt for CEQA pursuant to Class 7 Categorical Exemption, 14 CCR § 15307, which consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of a natural resources.

The Planning Commission must consider the proposed CEQA exemption together with any comments received during the public review process, which would be included in the Commission's recommendation to the Board of Supervisors. Further, the exemptions can only be approved if the Board of Supervisors finds, based on the whole record before it, that there is not substantial evidence that there are unusual circumstances (including future activities), which might reasonably result in the project having a significant effect on the environment.

Planning Staff Recommendations

- Adopt Resolution PC-2021-023 taking the following actions:
 - Recommend the Board of Supervisors adopt the proposed amendments to the County's Surface Mining and Reclamation Ordinance (Z-21-09); and
 - Recommend the Board of Supervisors determine the project exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15061(b)(3) and Section 15307.

Suggested Motion

I move that we adopt Resolution PC-2021-023, A Resolution of the Planning Commission of the County of Siskiyou, State of California, recommending the Board of Supervisors adopt the proposed Ordinance amending Chapter 5 of Title 10 of the Siskiyou County Code regarding the County's Surface Mining and Reclamation Ordinance.

Preparation

Prepared by the Siskiyou County Planning Division.

For project specific information or to obtain copies for your review, please contact:

Bernadette Cizin, Assistant Planner
Siskiyou County Planning Division
806 S. Main Street
Yreka, California 96097

Resolution PC 2021-023

A Resolution of the Planning Commission of the County of Siskiyou, State of California Recommending the Board of Supervisors Adopt the Proposed Ordinance Amending Chapter 5 of Title 10 of the Siskiyou County Code Regarding the County's Surface Mining and Reclamation Ordinance

Whereas, the California Surface Mining and Reclamation Act of 1975, Public Resources Code Section 2710 et seq., referred hereafter as "SMARA" declares that the extraction of minerals is essential to the continued economic well-being of the state and to the needs of the 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; and

Whereas, SMARA requires local governments to adopt surface mining and reclamation ordinances consistent with the provisions of Public Resources Code Section 2710 et seq., as amended from time to time; and

Whereas, Siskiyou County adopted its current Surface Mining and Reclamation Ordinance (Chapter 5 of Title 10 of the Siskiyou County Code) on May 12, 2015; and

Whereas, the State legislature amended SMARA following the passage of County's most recent Surface Mining and Reclamation Ordinance adopted on May 12, 2015; and

Whereas, Planning staff has determined the County's Surface Mining and Reclamation Ordinance needs to be updated for consistency with SMARA pertaining to the State's amendments; and

Whereas, the Planning Division presented its oral and written staff report on the proposed amendments to the County's Surface Mining and Reclamation Ordinance at the Planning Commission's regularly scheduled meeting on October 20, 2021; and

Whereas, the Planning Division recommended the proposed amendments to the County's Surface Mining and Reclamation Ordinance (Z-21-09) be determined categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) and Section 15307 of the CEQA Guidelines because it can be seen with certainty that there would not be any significant impacts to the environment resulting from the project; and

Whereas, the Planning Division recommended approval of the proposed amendments to the County's Surface Mining and Reclamation Ordinance (Z-21-09) set forth in Exhibit A of this Resolution referenced hereto and incorporated herein; and

Whereas, a Notice of Public Hearing was published in the Siskiyou Daily News on October 6, 2021; and

Whereas, hearing notices were posted pursuant to Siskiyou County Code Section 10-6.2805 *et seq.*; and

Whereas, on October 20, 2021, the Chair of the Planning Commission opened the duly noticed public hearing on the proposed amendments to the County’s Surface Mining and Reclamation Ordinance (Z-21-09) to receive testimony, both oral and written, following which the Chair closed the public hearing and the Commission discussed the proposed amendments to the County’s Surface Mining and Reclamation Ordinance (Z-21-09) prior to reaching its decision.

Now, therefore be it resolved that the Planning Commission recommends the Board of Supervisors determine the project to be categorically exempt from CEQA pursuant to Section 15061(b)(3) and Section 15307 and that the Board of Supervisors adopt the proposed amendments to the County’s Surface Mining and Reclamation Ordinance (Z-21-09) set forth in Exhibit A of this Resolution referenced hereto and incorporated herein; and

It is hereby certified that the foregoing Resolution PC-2021-023 was duly adopted on a motion by Commissioner _____ and seconded by Commissioner _____, at a regular meeting of the Siskiyou County Planning Commission held on the 20th day of October 2021, by the following voice vote:

Ayes:

Noes:

Absent:

Abstain:

Siskiyou County Planning Commission

Tony Melo, Chair

Witness, my hand and seal this 20th day of October, 2021.

Richard J. Dean, Secretary of the Commission

Exhibit A-1: Draft Board of Supervisors Ordinance Amending Chapter 5 of Title 10 of the Siskiyou County Code Regarding the County’s Surface Mining and Reclamation Ordinance

An Ordinance of the County of Siskiyou, Amending Chapter 5 of Title 10 of the Siskiyou County Code Regarding the County's Surface Mining and Reclamation Ordinance

The Board of Supervisors of the County of Siskiyou Ordains as Follows:

Section I: Chapter 5 of Title 10 is hereby amended to read as follows, additions are shown in underline italics and deletions are shown in ~~strikethrough~~:

Chapter 5. Surface Mining and Reclamation

Sec. 10-5.101. Purpose and intent.

- (a) The purpose of this chapter is to implement and supplement the Surface Mining and Reclamation Act (SMARA) (PRC Section 2710 et seq.) and to that end the Board of Supervisors finds and declares that:
- (1) The extraction of minerals is essential to the continued economic well-being of the County and to the needs of society, and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.
 - (2) The reclamation of mined lands as provided in this chapter will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.
 - (3) 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 (PRC Section ~~2774~~ 2711 (a)).
- (b) It is the intent of the Board of Supervisors to create and maintain an effective and comprehensive surface mining and reclamation policy to assure that:
- (1) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.
 - (2) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.
 - (3) Residual hazards to the public health and safety are eliminated (PRC Sections 2711 and 2712).
 - (4) Surface mining operations that comply with applicable ordinances and policies are recognized and protected.

Sec. 10-5.102. Applicability and exemptions.

- (a) This chapter shall apply to all surface mining operations in Siskiyou County, except as exempted in subsection (b) of this section.
- (b) This chapter does not apply to any of the following activities:
 - (1) Excavations or grading conducted for farming or on-site construction or for the purpose of restoring land following a flood or natural disaster as declared by the Board of Supervisors or State of California;
 - (2) On-site excavation and earthmoving activities which are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, provided all required permits for the improvements have been approved by the County in accordance with applicable provisions of State law and County plans and ordinances, including, but not limited to, the California Environmental Quality Act (CEQA);
 - (3) Operation of a mineral processing site, including associated on-site structures, equipment, machines, tools, or other materials, including the onsite stockpiling, crushing, screening, batching, and on-site recovery of mined materials, subject to all of the following conditions:
 - (i) The plant site is located on lands appropriately zoned for mineral processing,
 - (ii) None of the minerals being processed are extracted on-site,
 - (iii) All reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred on-site after January 1, 1976;
 - (4) Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less (14 CCR Section 3505 (a));
 - (5) Surface mining operations that are required by federal law in order to protect a mining claim, if those operations are conducted solely for that purpose;
 - (6) Any other surface mining operations that the State Mining and Geology Board determines to be of an infrequent nature and which involve only minor surface disturbances;
 - (7) Surface mining operations and emergency excavations or grading conducted by the Department of Water Resources or the Reclamation Board as specified in PRC Section 2714;
 - ~~(8) An exemption under this section does not automatically exempt a project or activity from the application of other regulations, ordinances or policies of the County, including, but not limited to, CEQA (Public Resources Code Sections 21000 et seq.), the requirement of use permits or other permits, or the payment of development impact fees or the imposition of other deductions and exactions as may be permitted under the law.~~
 - (8) Excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity. This exemption is limited to excavation and grading that is conducted adjacent to timber operation or

forest management roads and shall not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavation for materials that are, or have been, sold for commercial purposes;

(i) This exemption shall be available only if slope stability and erosion are controlled in accordance with subdivision (f) of Section 3704 and subdivision (d) of Section 3706 of Title 14 of the California Code of Regulations and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and post closure uses in consultation with the Department of Forestry and Fire Protection;

(9) Excavations, grading, or other earthmoving activities in an oil or gas field that are integral to and necessary for ongoing operations for the extraction of oil or gas as specified in PRC Section 2714;

(10) An exemption under this section does not automatically exempt a project or activity from the application of other regulations, ordinances or policies of the County, including, but not limited to, CEQA (Public Resources Code Sections 21000 et seq.), the requirement of use permits or other permits, or the payment of development impact fees or the imposition of other deductions and exactions as may be permitted under the law.

Sec. 10-5.103. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Borrow pit" means an excavation created by the surface mining of rock, unconsolidated geologic deposits, or soil to provide material (borrow) for fill elsewhere.

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

"CCR" means the California Code of Regulations.

"County" means the County of Siskiyou, State of California.

"Farming" means agriculture as defined in Section 10-6.3601(e) of the Siskiyou County Code.

"Financial assurances" means a current approved financial assurance cost estimate and a financial assurance mechanism that is at least equal to the current approved financial assurance cost estimate (PRC Section 2736).

"Idle" means that an operator of a surface mining operation has curtailed production at the surface mining operation, with the intent to resume the surface mining operation at a future date, for a period of one year or more by more than ninety (90) percent of its maximum annual mineral production within any of the last five (5) years during which an interim management plan has not been approved (PRC Section 2727.1).

"Interim management plan" means an amendment to an approved reclamation plan designed to prevent or minimize environmental effects from an idle mine and to protect the public health and safety from the residual hazards associated with idle mines.

"Lead agency" means the County of Siskiyou, as the lead agency for the purposes of this chapter, and has the primary responsibility for enforcing SMARA (PRC Section 2774.1(f)).

"Mined lands" include 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 (PRC Section 2729).

"Mineral" 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, but excluding geothermal resources, natural gas, and petroleum (14 CCR Section 3501). For the purpose of this chapter, minerals shall also include, but not be limited to, sand, gravel, aggregate, cinders, diatomaceous earth, shale, limestone, flagstone, decorative stone, precious metals, and rip-rap.

"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 (PRC Section 2730).

"Minor modification" means a minor revision of a reclamation plan that is either not a "project," or if a project, is one that is ministerial, presents no possible significant environmental effects, or is statutorily or categorically exempt, pursuant to CEQA.

"On-site construction" means a construction activity authorized by a County building or grading permit, located on the same parcel as the excavation or grading.

"Operator" means any person who is engaged in surface mining operations, or who contracts with others to conduct operations on their behalf, except a person who is engaged in surface mining operations as an employee with wages as their sole compensation (PRC Section 2731). Operator also means any person who permits others to conduct surface mining operations on their property and who receives a financial benefit therefrom.

"Overburden" means soil, rock, or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after their removal by surface mining operations (PRC Section 2732).

"Permit" means any authorization from, or approval by, the County, the absence of which would preclude surface mining operations (PRC Section 2732.5).

"Person" means any individual, firm, association, corporation, organization, or partnership, or any city, county, district of the State or any department or agency thereof (14CCR Section 3501).

"PRC" means the State of California Public Resources Code.

"Reclamation" means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and creates no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, re-soiling, revegetation, soil compaction, stabilization, or other measures (PRC Section 2733).

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

"Supervisor of Mine Reclamation" or "Supervisor" means the individual directing the Division of Mine Reclamation established pursuant to subdivision (d) of PRC Section 607.

"Streambed skimming" means excavation of sand and gravel from streambed deposits above the mean summer water level or stream bottom, whichever is higher.

"Surface mining operations" means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incidental to an underground mine. Surface mining operations shall include, but are not limited to: in-place distillation or retorting or leaching, the production and disposal of mining waste, prospecting and exploratory activities (PRC Section 2735). In addition to the provisions of PRC Section 2735 of the Act, surface mining operations shall include borrow pitting (14 CCR 3501), streambed skimming (14 CCR 3501), segregation and stockpiling of mined materials (and recovery of same) unless specifically excluded under PRC Section 2714 or PRC Section 3505.

Surface mining operations shall also include the creation of borrow pits, streambed skimming, segregation and stockpiling of mined materials (and recovery of same) (14 CCR Section 3501).

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

All definitions within in California Surface Mining and Reclamation Act of 1975 (PRC, Division 2, Chapter 9, Section 2710 et seq.), PRC, Division 2, Chapter 9, Section 2207, and the California Code of Regulations implementing the act (CCR Title 14, Division 2, Chapter 8, Subchapter 1, Article 1, Article 6, Sections 3675 and 3676, Article 9 and Article 11) not specified in this section, and as those definitions may be amended from time to time, are incorporated by reference.

Sec. 10-5.104. Incorporation of SMARA and other state regulations.

The provisions of the California Surface Mining and Reclamation Act of 1975 (PRC, Division 2, Chapter 9, Section 2710 et seq.), PRC, Division 2, Chapter 9, Section 2207, and the California Code of Regulations implementing the act (CCR Title 14, Division 2, Chapter 8, Subchapter 1, Article 1, Article 6, Sections 3675 and 3676, Article 9 and Article 11) as those provisions 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.

Sec. 10-5.105. Mineral resource management policies.

PRC Sections 2762, 2763 and 2764 and Chapter 14 California Code of Regulations Section 3676, and subsequent amendments regarding mineral classification studies and general plan resource management policies are incorporated into this chapter.

Sec. 10-5.106. Vested mining operations.

- (a) No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a use permit pursuant to this chapter as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter. Any person claiming a vested right to conduct surface mining operations must establish such claim in a public hearing proceeding as required in this chapter. In such a proceeding the claimant shall assume the burden of proof.
- (b) A person shall be deemed to have vested rights if, prior to January 1, 1976, he or she has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required and obtained, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or in obtaining the issuance of a permit shall not be deemed liabilities for work or materials.
- (c) A right to surface mine may be vested as to the area of the mine, the depth of the mine, the nature of the mining activity and/ or the nature of the material extracted. This list is not exclusive. To the extent that the diminishing asset doctrine is applicable it may be vested beyond the area and depth mined prior to January 1, 1976 based on available extractable material.
- (d) Where a person with vested rights as defined herein continues surface mining operations in the same area pursuant to such vested rights subsequent to January 1, 1976, a reclamation plan and financial assurance are required under Section 2770 of the PRC and this chapter for those operations conducted after January 1, 1976, or to be conducted. Expansion of surface mining operations after January 1, 1976 may be recognized as a vested nonconforming use under the doctrine of "diminishing assets."
- (e) In those cases where an overlap exists (in the horizontal and/or vertical sense) between pre- and post-January 1, 1976 mining, the reclamation plan shall call for reclamation caused by the mining after the effective date of the Surface Mining and Reclamation Act of 1975 (hereafter SMARA) as best determined by the evidence contained in the administrative record.
- (f) Nothing in this chapter 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 January 1, 1976, and which lands have not since been disturbed.
- (g) County Determination of Vested Rights.
 - (1) Any person who claims to have a vested right to conduct surface mining operations pursuant to this chapter shall file a Claim of Vested Rights with the Community Development Department, Planning Division to determine the status of such vested right claim. The burden of proving the existence and extent of the vested right shall be on the claimant.
 - (2) Any person who has received a written determination from the County, prior to the effective date of this section confirming a vested right to conduct surface mining operations shall not be required to file a Claim of Vested Rights under this section provided that the scope of said operation has not expanded beyond that for which said previous determination had been made.

- (3) The Claim of Vested Rights shall be on a form furnished by the County and shall contain information that the claimant wishes to have considered as part of the evaluation of the vested rights claim which shall include, but not be limited to:
- (i) Name, address, and telephone number of the following persons:
 - a. The claimant, and of any agent for contact or service of notice, if different;
 - b. Other owner(s) of interest of record, if different than the claimant;
 - c. Any lessee, lien holder, or other potential claimant to the vested right(s) asserted;
 - d. The owners of all properties adjacent to the property upon which vested rights are being claimed to the best of the applicant's knowledge; and
 - e. Any governmental agency or entity having jurisdiction over the property or the surface mining operations on the property that may be affected by a determination of vested rights to the best of the applicant's knowledge.
 - (ii) A map of the entire property which clearly depicts the exact area on the property upon which vested rights are claimed. In addition, other useful mapping information may include:
 - a. Any area that was mined before and not after January 1, 1976;
 - b. Any area that was mined before and after January 1, 1976;
 - c. Any area that was mined only after January 1, 1976; and
 - d. Any area not mined before January 1, 1976, but which a vesting claim is being asserted.
 - (iii) Grant deed, including legal description, for the property upon which the vested rights are claimed;
 - (iv) Copies of all documents which the claimant asserts establish title to such property;
 - (v) Copies of all permits, or authorizations, or entitlements, both existing and prior, permitting claimant to conduct surface mining operations upon such property.
 - (vi) A written statement, accompanied by a declaration or affidavit attesting to its truth and accuracy, indicating the basis for and the scope or scale of the Claim of Vested Rights. The claimant may submit with this statement any documentation manifesting such intent and supporting the claim, including, but not limited to:
 - a. Evidence of the period of time, the scope or the scale of the mining operations previously conducted, including, but not limited to, aerial photographs that provide evidence of the area upon which vested rights are claimed;
 - b. Evidence of any expenses or financial liabilities incurred for work and materials to conduct surface mining operations of the scope or scale claimed;
 - c. Evidence of compliance with all local land use or mining or ordinances, regulations, permits, authorizations and entitlements, both existing and prior, which govern or have governed the conduct of surface mining operations upon such property; and

- d. With respect to areas not mined prior to January 1, 1976, for which a vested right is being claimed under the "diminishing assets doctrine", any and all objective evidence or other documentation showing an intention was established prior to January 1, 1976, to mine these areas.
- (4) The filing of a Claim of Vested Right shall be accompanied by a filing fee determined pursuant to the manner specified in County Code Section 10-6-1601(z). No application for a Claim of Vested Right shall be determined to be complete and ready for consideration by the Hearing Body until such fee is paid.
 - (5) Whenever any of the claimed vested rights are in the 100-year flood plain for any stream and within one mile, upstream or downstream, of any state highway bridge, the Planning Division shall, pursuant to PRC Section 2770.5, notify the State Department of Transportation that the Claim has been received.
- (h) County Hearing Body/Official Review and Hearing.
 - (1) The Planning Commission of the County of Siskiyou shall be the Hearing Body for vested rights determinations under this Chapter, unless, at the time of application, the applicant requests in writing to use and pay for a neutral, third party administrative hearing official, selected by the Board of Supervisors, to act as the Hearing Official. The term Hearing Official as used herein may be a single individual or multiple individuals which form a panel. The process to select the Hearing Official, which may include contracting with the Office of Administrative Hearings of the State of California pursuant to Government Code 27727, and the establishment of the hearing procedure shall be adopted by resolution of the Board of Supervisors. Prior to the vesting rights application being deemed complete and processed, the applicant shall submit a deposit in the amount of 100 percent of the estimated cost for the third party Hearing Official to conduct the vested mining rights determination. This cost shall be in addition to any other application fee that may be required by this section. At the conclusion of the vested rights determination, a complete accounting shall be conducted and any remaining balance on applicant's deposit shall be returned to the applicant or the applicant shall pay to the County any outstanding balance within thirty (30) days.
 - (2) Upon determination by the Planning Director that the Claim of Vested Right application has been completed as detailed in this section, including the payment of all required applications fees and/ or deposits, the Claim of Vested Rights application shall be scheduled for a public hearing before the Hearing Body or Official.
 - (3) Written notice for said hearing shall be mailed to all property owners within 300 feet of the boundary of the property and to all other persons and entities listed in the Application, and noticed in any newspaper of general circulation that covers the area in question.
 - (4) The Planning Division shall prepare a staff report with any recommendation(s) for consideration by the Hearing Body or Official. In preparing the report, the Planning Director shall attempt, but is not required, to provide a draft of the report to the Applicant at least seven (7) days in advance of its finalization to allow the Applicant to provide input on the facts presented in the report. In finalizing the report, the Planning Director shall consider any Applicant input received prior to the finalization for the report on the facts in the draft report but is not required to change the draft report as a result of said input. The finalized report shall be made available for public review no later than seven (7) days before the scheduled hearing date. Any applicant or public

input received after the finalization of the report shall be forwarded to the Hearing Body or Official for consideration during the hearing process.

- (5) The Hearing Body or Official shall hold at least one noticed public hearing, or as many public hearings as the Hearing Body Official determines necessary to fully evaluate and consider all evidence for the Claim of Vested Rights Application.
 - (6) Relevant evidence of a Claim of Vested Rights shall be written or oral evidentiary statements or material demonstrating or delimiting the existence, nature and scope of the claimed vested rights. Such evidence shall include, but is not limited to, evidence of any permit or authorization to conduct mining operation on the property in question prior to January 1, 1976, evidence of mining activity commenced or pursued pursuant to such permit or authorization, and evidence of any zoning or land use restrictions applicable to the property in question prior to January 1, 1976. As to any land for which Claimant asserts a vested right for expansion of operations, Claimant shall produce evidence demonstrating that the Claimant clearly intended to expand into such areas. Such evidence shall be measured by objective manifestations and not subjective intent at the time of passage of the law, or laws, affecting Claimant's right to continue surface mining operations without a permit.
 - (7) At the conclusion of the hearing, the Hearing Body or Official, on the basis of evidence submitted at the hearing and upon findings made based upon said evidence, shall identify upon what specific property the vested rights are established and the scope and nature of surface mining operations included within the established vested right or rights.
 - (8) A final determination recognizing that vested rights exist shall constitute acknowledgment that the specific surface mining operation identified upon the specific property or properties does not require a use permit pursuant to the County Code as long as the vested right continues and as long as no substantial changes are made in the operation except in accordance with this chapter. The elimination of a use permit requirement does not eliminate any other County, State, or Federal requirement that may be nonetheless applicable; such as approval of a reclamation plan and/or financial assurance. If any recognized vested rights are waived or abandoned, the vested mining operations identified shall become subject to the use permit requirements of the County Code and SMARA.
- (i) Right of Appeal of County Determination.
- (1) The determination of the Hearing Body or Official shall be final unless a written appeal, along with appeal fee, is filed in the same manner as provided for appeals of use permits and variances to the Board of Supervisors detailed in Title 10, Chapter 6 of the County Code.

Sec. 10-5.107. Use permits.

Pursuant to County Code, a use permit shall be required for a surface mining operation which is not determined to be vested. A use permit shall also be required for the expansion of a surface mining operation beyond the boundaries of the vested area.

Sec. 10-5.108. Reclamation plans.

- (a) Except as provided in this chapter, no person shall conduct surface mining operations unless a use permit is obtained from, a reclamation plan has been submitted to and

approved by, and financial assurances for reclamation have been approved by, the County for the operation pursuant to this chapter (PRC Section 2770 (a)).

- (b) The County's review of reclamation plans is limited to whether the plan substantially meets the applicable requirements of PRC Sections 2772, and 2773, 2773.3, and Article 1 (commencing with Section 3500), Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, as applicable, and the County Surface Mining Ordinance adopted pursuant to subdivision (a) of PRC Section 2774. Reclamation plans determined to substantially meet these requirements shall be approved by the County for purposes of this chapter.
- (c) The following standards shall apply to all reclamation plans:
 - (1) The reclamation plan shall be applicable to a specific piece of property or properties, 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, and reclamation plan, including topography, revegetation, and sediment and erosion control (PRC Section 2773 (a)).
 - (2) All reclamation plans shall be subject to the reclamation performance standards in 14 CCR Sections 3700 through 3713. These standards shall apply to each mining operation, but only to the extent that they are consistent with the planned or actual subsequent use or uses of the mining site (PRC Section 2773 (b)).
 - (3) The County shall employ standards in compliance with State policy. The County may impose additional performance standards (conditions) developed either in review of individual projects, as warranted, or through the adoption of County-wide performance standards.
- (d) The reclamation plan shall be filed with the County on a form provided by the County, 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 information and documents required under PRC Sections 2772, 2773, 2773.3, and Article 1 (commencing with Section 3500), Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, as applicable and ~~14 CCR Section 3502~~. The application shall also include environmental review information required under CEQA as prescribed by the Planning Director.
 - (1) Professional reports, documents, calculations, plans, specifications, maps, cross sections, boring or trench logs, and diagrams (documents hereafter) which must, under applicable law, regulation, or code, be prepared by or under the supervision of licensed professionals will not be accepted or considered unless at least one copy of said document bears an original signature, stamp impression or seal, and date affixed by the author in accordance with applicable law and regulation.
 - (2) Unless otherwise directed or agreed in advance, all professionally prepared documents included in any application package submitted for formal decision maker action are to be in final form and must be signed, stamped or sealed, and dated in accordance with applicable law and regulation.
- (e) Reclamation plans shall be approved, conditionally approved, or denied in accordance with County Code, including a public hearing, except where preempted by the PRC.
 - (1) Reclamation plans determined not to substantially meet the requirements of PRC Sections 2772, and 2773, 2773.3, and Article 1 (commencing with Section 3500),

Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, as applicable, and the County Surface Mining Ordinance adopted pursuant to subdivision (a) of PRC Section 2774, shall be returned to the operator within sixty (60) days. The operator has sixty (60) days to revise the plan to address identified deficiencies, at which time the revised plan shall be returned to the County for review and approval of completeness (PRC Section 2770(d)).

- (2) Prior to County approval, reclamation plans shall be forwarded to the Supervisor of Mine Reclamation Department of Conservation and other State agencies, as required under SMARA (PRC Section 2772.1) 2774(e) through (e)). The County shall certify to the Supervisor of Mine Reclamation Department of Conservation that the reclamation plan complies with the applicable requirements of PRC Sections 2772, 2773, 2773.3, and Article 1 (commencing with Section 3500), Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations ~~Article 1 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, as in effect at the time the reclamation plan is submitted to the Supervisor of Mine Reclamation Department of Conservation for review (PRC Section 2772.1 -2774(e)).~~
- (f) The decision on a reclamation plan may be appealed in accordance with Section 10-5.112.
- (g) Prior to approving a reclamation plan, the approving body shall make the following findings:
 - (1) The project has been reviewed pursuant to CEQA, all adverse impacts related to the reclamation plan have been mitigated by the plan and/ or the recommended condition of approval, and the appropriate environmental determination has been adopted.
 - (2) The reclamation plan complies with the requirements of the State Surface Mining and Reclamation Act of 1975 (SMARA), specifically PRC Code Sections 2772 and 2773, and the Reclamation Standards specified in California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1, Article 9, Sections 3700 through 3713.
 - (3) The reclamation plan has been forwarded to the ~~Department of Conservation~~ Supervisor of Mine Reclamation as prescribed by this chapter and in accordance with PRC Section 2772.1, including all applicable documentation required for submission as outlined in PRC Section 2772.1.
 - (4) The reclamation plan complies with the purpose, intent, and requirements of this chapter.
 - (5) The proposed goal of reclamation is consistent with the General Plan policies and zoning for the area.
- (h) If the surface mining operation for which a reclamation plan has been approved is not commenced within two (2) years of the approval date of the reclamation plan, the reclamation plan shall be null and void. An extension of time for an additional year may be granted by the original approving body provided the operator submits a request prior to the expiration of the reclamation plan. Extension of time shall not be granted to extend the date of completion of the reclamation plan.

Sec. 10-5.109. Modifications to reclamation plans.

Any person having an approved reclamation plan may file for an amendment of that reclamation plan as specified herein. Amendment applications shall be in the form specified by the Community Development Department. An amendment to an approved reclamation plan will

be considered major or minor based on whether there is a substantial deviation from the approved reclamation plan. All proposed reclamation plan amendments shall be submitted to the Supervisor of Mine Reclamation ~~Department of Conservation~~ for concurrence that an amendment is a minor, non-substantial deviation from the approved plan, or for compliance review of a major, substantial deviation plan amendment. A major amendment shall be subject to the standard reclamation plan application fee and a minor amendment shall be subject to the minor amendment application fee.

- (a) Major, Substantial Deviation Reclamation Plan Amendments. A major reclamation plan amendment is any reclamation plan amendment that constitutes a substantial deviation from the existing, approved reclamation plan under this Section and SMARA. A substantial deviation shall be defined as a change or expansion to a surface mining operation that substantially affects the completion of the previously approved reclamation plan, or that changes the end use of the approved plan to the extent that the scope of the reclamation required for the surface mining operation is substantially changed. In determining whether a change or expansion constitutes a substantial deviation, the lead agency shall take into consideration the following factors:
- (1) A substantial increase in the disturbance of a surface area or in the maximum depth of mining;
 - (2) A substantial extension of the termination date of the mining operation as set out in the approved reclamation plan;
 - (3) Changes that would substantially affect the approved end use of the site as established in the reclamation plan;
 - (4) The consistency of any proposed change to the operation with the previously adopted environmental determinations and one that would trigger a new environmental document;
 - (5) Whether the change would trigger an substantial amendment to any approved use permit applicable to the mining activity; and/or
 - (6) Any other changes that the lead agency deems substantial deviations as defined in this subsection.

The Planning Commission is the decision-making body for substantial deviation reclamation plan amendments. The Planning Commission's decision may be appealed to the Board of Supervisors in accordance with Section 10-5.112.

- (b) Minor, Non-Substantial Deviation Reclamation Plan Amendments. Minor reclamation plan amendments may include any of the following if the Planning Director and the Department of Conservation determine the amendment does not constitute a substantial deviation from the approved reclamation plan:
- (1) Modifications that involve minor changes, such as those that improve drainage, improve slope designs within the reclamation plan boundaries or improve re-vegetation success;
 - (2) Modifications that adjust the reclamation boundaries to incorporate areas disturbed prior to January 1, 1976, or existing components of the mining operation that were established in accordance with all other County requirements;
 - (3) Approval of interim management plans for idle mines pursuant to this Chapter; or

- (4) Other modifications that the Planning Director determines do not constitute a substantial deviation from the approved reclamation plan upon concurrence from the Department of Conservation.

The Planning Director is the decision-making authority for non-substantial reclamation plan amendments. The Planning Director's decision may be appealed to the Planning Commission, and the Planning Commission's decision may be appealed to the Board of Supervisors each in accordance with Section ~~40-5.14~~ 10-5.112.

Sec. 10-5.110. Interim management plans.

- (a) Within ninety (90) days of a surface mining operation becoming idle, the operator shall submit to the Planning Department for review and approval, an interim management plan. The review and approval of an interim management plan shall not be considered a project for purposes of CEQA. The approved interim management plan shall be considered an amendment to the surface mining operation's approved reclamation plan. The interim management plan shall provide the measures that the operator will implement to maintain the site in compliance with SMARA, including all conditions of any applicable Use Permit and/or Reclamation Plan (PRC Section 2770 (h)(1)).
- (b) Prior to County approval, interim management plans shall be submitted for review by the Supervisor of Mine Reclamation ~~Department of Conservation~~ pursuant to Section ~~405.112~~ 105.113 (PRC Section ~~2770~~ 2774 (c) through (e)).
- (c) The Planning Director may approve an interim management plan without public notice or a public hearing if the Planning Director determines that the interim management plan does not require any changes to the reclamation plan or conditions of approval and adequately describes the measures that will be implemented to maintain the mine in idle status while complying with SMARA and any applicable permit conditions. The decision of the Planning Director may be appealed in accordance with Section 10-5.112.
- (d) The interim management plan may remain in effect for a period not to exceed five (5) years, at which time the County shall do one of the following:
 - (1) Renew the interim management plan for another period not to exceed five (5) years, if the County finds that the surface mining operator has complied fully with the interim management plan;
 - (2) Require the operator to commence reclamation in accordance with the approved reclamation plan (PRC Section 2770 (h)(2) ~~(h)(2)~~).
- (e) The financial assurances shall remain in effect during the period that the surface mining operation is idle. If the operation remains idle after the expiration of its interim management plan, reclamation shall commence in accordance with the approved reclamation plan (PRC Section 2770 (h)(3)).
- (f) Within forty-five (45) ~~sixty (60)~~ days of the receipt of the interim management plan, or a longer period mutually agreed upon by the County and the operator, the County shall review the interim management plan in accordance with its ordinance adopted pursuant to subdivision (a) of Section 2774, and if the interim management plan satisfies the requirements of this section, forward the plan to the Supervisor of Mine Reclamation for comment. ~~and approve the plan, so long as the plan satisfies the requirements of this chapter, and so notify the operator in writing.~~ Otherwise, the County shall notify the operator in writing of any deficiencies in the plan. The operator shall have thirty (30) days,

or a longer period mutually agreed upon by the operator and the County, to submit a revised plan (PRC Section 2770 ~~(h)(4)(A)~~ (h)(4)).

(g) The County shall submit the interim management plan, including a revised interim management plan, to the Supervisor of Mine Reclamation for review, and certify to the Supervisor that the interim management plan is a complete submission and complies with the applicable requirements of PRC, Division 2, Chapter 9, Section 2710 et seq., Article 1 (commencing with Section 3500) and Article 9 (commencing with Section 3700) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and the County's Surface Mining Ordinance adopted pursuant to subdivision (a) of PRC Section 2774.

(1) The County shall review and evaluate written comments received from the Supervisor of Mine Reclamation relating to the interim management plan within a reasonable amount of time, and respond to the Supervisor of Mine Reclamation in accordance with PRC Section 2770, including, but not limited to, providing the Supervisor of Mine Reclamation notice of an intended approval of the interim management plan.

(h) The County shall approve or deny the revised interim management plan within sixty (60) days of receipt of the Supervisor of Mine Reclamation's comments or within 90 days of submitting the interim management plan to the Supervisor of Mine Reclamation if no comments are received from the Supervisor. If the County denies the revised interim management plan, the operator may appeal that action to the Planning Commission, which shall schedule a public hearing within forty-five (45) days of the filing of the appeal, or any longer period mutually agreed upon by the operator and the Planning Commission (PRC Section 2770 (h)(5)). The action of the Planning Commission may be appealed in accordance with Section 10-5.112

(i) Unless review of an interim management plan is pending before the County, or an appeal is pending before the Planning Commission or the Board of Supervisors, a surface mining operation which remains idle for over one year after becoming idle as defined in Section 2727.1 without obtaining approval of an interim management plan shall be considered abandoned and the operator shall commence and complete reclamation in accordance with the approved reclamation plan (PRC Section 2770 (h)(6)).

(j) Any enforcement action which may be brought against a person for operating without an approved reclamation plan, financial assurance, or interim management plan, shall be held in abeyance pending review pursuant to PRC Section 2770 subdivision (b) or (h), or the resolution of an appeal filed with the State Mining and Geology Board pursuant to subdivision (e), or with the Planning Commission pursuant to subdivision (h) (PRC Section 2770(h)(1) through (6)). The action of the Planning Commission may be appealed to the Board of Supervisors within ten (10) days of said action.

Sec. 10-5.111. Financial assurances.

(a) The County's review of financial assurances is limited to whether the financial assurances substantially meet the applicable requirements of PRC Section 2773.1, Article 11 (commencing with Section 3800) of Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, and this chapter. Financial assurances for reclamation shall be sufficient to perform reclamation of lands remaining disturbed. Financial assurances determined to substantially meet these requirements shall be approved by the County for purposes of this chapter. Except as specified in PRC Section 2770(e), an appeal pursuant to PRC Section 2770(e) with regard to non-approval of financial assurances, and that appeal is pending before the State Mining and Geology Board, the

continuation of the surface mining operation is prohibited until financial assurances for reclamation are approved by the County.

- (b) The County shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:
- (1) Financial assurances may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the State Mining and Geology Board pursuant to PRC Section 2773.1(e), which the County reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.
 - (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 cost estimate required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan. An operator shall be required to replace an approved financial assurance mechanism to bond for the reclamation of the surface mining operation only if the financial assurance cost estimate identifies a need to increase the amount of the financial assurance mechanism.
 - (4) Financial assurance cost estimates shall be submitted to the County for review on a form developed by the Supervisor of Mine Reclamation and approved by the State Mining and Geology Board.
 - (5) The financial assurances shall be made payable to the County and the Department of Conservation. A financial assurance mechanism shall not be released without the consent of the County and the Supervisor. Financial assurances that were approved by the County prior to January 1, 1993, and were made payable to the State Geologist shall be considered payable to the Department of Conservation for purposes of this chapter. However, if a surface mining operation has received approval of its financial assurances from a public agency other than the County, the County shall deem those financial assurances adequate for purposes of this section, or shall credit them toward fulfillment of the financial assurances required by this section, if they are made payable to the public agency, the County, and the Department of Conservation and otherwise meet the requirements of this section. In any event, if the County and one or more public agencies exercise jurisdiction over a surface mining operation, the total amount of financial assurances required by the County and the public agencies for any one year shall not exceed that amount which is necessary to perform reclamation of lands remaining disturbed. For purposes of this paragraph, a "public agency" may include a federal agency (PRC Section 2773.1(a)(5) ~~2773.1(a)~~).
 - (6) Estimates for financial assurances shall include descriptions of the tasks to be performed, identification of equipment, labor and materials requirements, definition of units costs, total cost per task, total direct cost of reclamation, and administrative costs including costs of supervision, profit and overhead, contingencies and mobilization. Additional required information may include a site plan showing the

present limits of the disturbed area to be reclaimed, and other information necessary to verify the estimate.

In projecting the costs of financial assurances, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by the operator and, consequently, the County or State may need to contract with a third party for reclamation of the site.

- (c) Financial assurances determined not to substantially meet the requirements of PRC Section 2773.1 shall be returned to the operator within sixty (60) days. The operator has sixty (60) days to revise the financial assurances to address identified deficiencies, at which time the revised financial assurances shall be returned to the County for review and approval of completeness (PRC Section 2770(d)).
- (d) Prior to County approval, financial assurances shall be forwarded to the Supervisor of Mine Reclamation Department of Conservation pursuant to Section 10-5.112 10-5.113 and PRC Section 2773.4, (PRC Section 2774(c) through (e)).
- (e) The decision to approve financial assurances, both with respect to the form and amount thereof, shall be made by the Planning Director. The financial assurance estimates shall be based on an approved reclamation plan. The Planning Director's decision may be appealed in accordance with Section 10-5.112.
- (f) Financial assurances are not required of a surface mining operation, and shall be released, upon written notification by the County and the Supervisor of Mine Reclamation, which shall be forwarded to the operator and the institutions providing or holding the financial assurance mechanism Department of Conservation, when reclamation has been completed in accordance with the approved reclamation plan. If a mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in force and shall not be released by the County and the Supervisor of Mine Reclamation until new financial assurances are secured from the new owner and have been approved by the County in accordance with Section 2770, 2773.1, and 2773.4. Within 90 days of the sale or transfer of a surface mining operation, the new operator shall submit an appropriate financial assurance mechanism, which may be the existing mechanism if the existing mechanism is payable in the event of the new operator's financial incapability or abandonment of the surface mining operation, that is subject to review by the County and the Supervisor pursuant to subdivision (e) of Section 2773.4. Within 15 days of the sale or transfer of a surface mining operation, the new operator shall sign a new statement of reclamation responsibility in accordance with paragraph (10) of subdivision (c) of Section 2772. (PRC Section 2773.1(c)).
- (g) If The County shall conduct following a public hearing, to determines that if the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without completing reclamation., The County shall provide notice of the public hearing to the operator and the Supervisor of Mine Reclamation at least 30 days prior to the hearing.
- (h) If the County, following a public hearing, determines that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without completing reclamation, the Planning Director shall do all of the following:
 - (1) Notify the operator by personal service or certified mail that the County intends to take appropriate action to forfeit the financial assurances and specify the reasons for so doing;

- (2) Allow the operator sixty (60) days to commence or cause the commencement of reclamation in accordance with its approved reclamation plan and require that reclamation be completed within the time limits specified in the approved reclamation plan or some other time period mutually agreed upon by the County and the operator;
- (3) Proceed to take appropriate action to require forfeiture of the financial assurances if the operator does not substantially comply with subsection (h)(2) ~~(g)(2)~~ of this section; and
- (4) Use the proceeds from the forfeited financial assurances to conduct and complete reclamation in accordance with the approved reclamation plan. If the surface mining operation cannot be reclaimed in accordance with its approved reclamation plan, or the financial assurance mechanisms are inadequate to reclaim in accordance with its approved reclamation plan, the County or Supervisor may use forfeited financial assurance mechanisms to reclaim or remediate mining disturbances as appropriate for the site conditions as determined by both the County and the Supervisor. In no event shall the financial assurances be used for any other purpose. The operator is responsible for the costs of conducting and completing reclamation in accordance with the approved reclamation plan which are in excess of the proceeds from the forfeited financial assurances (PRC Section 2773.1(b)(1) through (2) ~~(4)~~).

Sec. 10-5.112. Appeals.

The decision of the Planning Director may be appealed to the Planning Commission within ten (10) calendar days of the decision by filing a notice of appeal with the clerk of the Planning Commission. The decision of the Planning Commission may be appealed to the Board of Supervisors within ten (10) calendar days of the decision by filing a notice of appeal with the County Clerk.

Sec. 10-5.113. State review of reclamation plans, interim management plans, financial assurances and amendments.

- (a) Prior to approving a surface mining operation's reclamation plan, interim management plan, financial assurances, including existing financial assurances reviewed by the County pursuant to PRC Section 2773.4 subdivision (c) of ~~Section 2770~~, or any amendments, the County shall submit the plan, assurances, or amendments to the Supervisor of Mine Reclamation ~~Department of Conservation~~ for review (~~PRC Section 2774(c)~~).
- (b) Pursuant to PRC Section 2772.1 and PRC Section 2773.4(b) ~~PRC Section 2774(d)~~, the Supervisor of Mine Reclamation ~~State Department of Conservation~~ shall be given thirty (30) days to review and comment on the Reclamation Plan and fifteen (15) ~~forty-five (45)~~ days to review and comment on the financial assurance, including any amendments, for completeness. Following the receipt of a complete Reclamation Plan submission, including any amendments, the Supervisor shall be given thirty (30) days to comment. Following the receipt of a complete financial assurance submission, including any amendments, the Supervisor shall be given forty-five (45) days to comment. For an interim management plan, the Supervisor shall be given 30 days to comment pursuant to PRC Section 2770(h)(4)(C). The lead agency shall prepare a written response to the director's comments describing the disposition of the major issues raised by the director's comments, and submit the lead agency's proposed response to the Supervisor ~~director~~ at least thirty (30) days prior to approval of the reclamation plan, plan amendment, interim management plan, or financial assurance, or financial assurance amendment. The lead agency's response to the director's comments shall describe whether the lead agency proposes to

adopt the director's comments to the reclamation plan, plan amendment, interim management plan or financial assurance, or financial assurance amendment. If the lead agency does not propose to adopt the Supervisor's director's comments, the lead agency shall specify, in detail, why the lead agency proposes not to adopt the comments. Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator. The lead agency shall also give the Supervisor director at least thirty (30) days' notice of the time, place, and date of the hearing before the lead agency at which time the reclamation plan, plan amendment, or financial assurance, or financial assurance amendment is scheduled to be approved by the lead agency. If no hearing is required by this chapter, or by the local ordinance, or other state law, then the lead agency shall provide thirty (30) days' notice to the Supervisor director that it intends to approve the reclamation plan, plan amendment, interim management plan or financial assurance, or financial assurance amendment. Within 30 days following the approval of the reclamation plan or plan amendment, the lead agency shall provide the Supervisor notice of the approval. The lead agency shall provide, as soon as practicable but no later than 60 days after approval of the reclamation plan or plan amendment, certified copies of all maps, diagrams, or calculations, signed and sealed in accordance with PRC Section 2772.1(b)(7)(A) and PRC Section 2772.1(b)(7)(B), including all required documentation as outlined in said sections. The lead agency shall send to the Supervisor director its final response to the Supervisor's director's comments within thirty (30) days following its approval of the ~~reclamation plan, plan amendment, or financial assurance~~ or amendment during which period the department retains all powers, duties, and authorities of this chapter.

- (c) The County shall notify the Supervisor of Mine Reclamation ~~Department of Conservation~~ of the filing of an application for a permit to conduct surface mining operations within thirty (30) days of such an application being filed (and determined complete) with the County. ~~By July 1st of each year, the County shall submit to the Department of Conservation for each active or idle mining operation a copy of any permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year.~~
- (d) Whenever surface mining operations are proposed in the 100-year flood plain for any stream, as shown in Zone A of Flood Insurance Rate Maps issued by the Federal Emergency Management Agency, and within one mile, upstream or downstream, of any State highway bridge, the County receiving the application for the issuance or renewal of a permit to conduct the surface mining operations shall notify the Department of Transportation that the application has been received. The Department of Transportation shall have a period of not more than forty-five (45) days to review and comment on the proposed surface mining operations with respect to any potential damage to the state highway bridge from the proposed surface mining operations. The County shall not issue or renew the permit until the Department of Transportation has submitted its comments or until forty-five (45) days from the date the application for the permit was submitted, whichever occurs first (PRC Section 2770.5).
- (e) The County shall comply with the procedures and timeframes prescribed in PRC Section 2774.2.5 when submitting to the Supervisor of Mine Reclamation for state review. If there is any conflict between the requirements of this section and SMARA, the requirements of SMARA shall govern.

Sec. 10-5.114. Transferability.

- (a) Whenever one operator succeeds to the interest of another in any uncompleted surface mining operation by sale, assignment, transfer, conveyance, exchange, or other means,

the successor shall be bound by the provisions of the approved reclamation plan and the provisions of this chapter (PRC Section 2779).

- (b) Financial assurances provided by the operator's successor to the County and the Department of Conservation shall have been approved, and the financial assurance mechanism shall be in place prior to the continuation of surface mining operations.

Sec. 10-5.115. Annual inspections and reports.

- (a) Surface mining operators shall forward an annual status report to the Supervisor of Mine Reclamation ~~Department of Conservation~~ and to the County on a date established by the Supervisor ~~Department of Conservation~~ upon forms furnished by the State Mining and Geology Board (PRC Section 2207(a) through (h) ~~(g)~~).
- (b) The County shall conduct an inspection of a surface mining operation in intervals of no more than twelve (12) months ~~within six (6) months of receipt by the County of the surface mining operation's report~~, solely to determine whether the surface mining operation is in compliance with this chapter. In no event shall the County inspect a surface mining operation less than once in any calendar year. The County may cause such an inspection to be conducted by a State-registered geologist, State-registered civil engineer, State-licensed landscape architect, ~~or State-registered forester~~, or a qualified lead agency employee experienced in land reclamation and not previously employed by the mining operation in any capacity during the previous twelve (12) months. All inspections shall be conducted using a form developed by the Division of Mine Reclamation ~~Department of Conservation~~ and approved by the State Mining and Geology Board. The operator shall be solely responsible for the reasonable cost of the inspection. The County shall provide a notice of completion of inspection to the supervisor within ninety (90) days of conducting the inspection ~~notify the Director of the Department of Conservation within thirty (30) days of completion of the inspection that the inspection has been conducted~~. The notice shall contain a statement regarding the surface mine's compliance with this chapter, shall include a copy of the completed inspection form, and shall specify, as applicable, all of the following:
 - (1) Aspects of the surface mining operations, if any, are inconsistent with this chapter but were corrected before the submission of the inspection form to the Supervisor;
 - (2) Aspects of the surface mining operation, if any, that were found to be inconsistent with this chapter but were not corrected before the submission of the inspection form to the Supervisor;
 - (3) A statement describing the lead agency's intended response to any aspects of the surface mining operation found to be inconsistent with this chapter but were not corrected before the submission of the inspection form to the Supervisor; and
 - (4) A statement as to whether the surface mining operation is out of compliance with an order to comply or stipulated order to comply issued by the lead agency.
- (c) If the surface mining operation has a review of its reclamation plan, financial assurances, or an interim management plan pending under subdivision (b) or (h) of Section 2770, or an appeal pending before the State Mining and Geology Board or the County Board of Supervisors under subdivision (b) or (h) of Section 2770, the notice shall so indicate. The County shall forward to the operator a copy of the notice, a copy of the completed inspection form, and any supporting documentation, including, without limitation, any inspection report prepared by the geologist, civil engineer, landscape architect, ~~or forester~~, or qualified lead agency employee who conducted the inspection (PRC Section 2774 (b)).

Sec. 10-5.116. Record keeping.

- (a) The County shall establish and maintain in-house measures and procedures to ensure organized record keeping and monitoring of surface mining reclamation under its jurisdiction. The County shall forward a copy of each permit and approved reclamation plan and financial assurance instrument to the Department of Conservation (14 CCR Section 3504).
- (b) 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 County that the release of that information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The County shall identify such proprietary information as a separate part of the application. Proprietary information shall be made available only to the Department of Conservation and to persons authorized in writing by the operator and by the owner (PRC Section 2778(a)).
- (c) A copy of all reclamation plans, reports, applications, and other documents submitted pursuant to this chapter shall be furnished to the Department of Conservation by the County on request (PRC Section 2778(b)).

Sec. 10-5.117. Enforcement.

- (a) If the Planning Director, or his or her designee, based upon an annual inspection or otherwise confirmed by an inspection of the mining operation, determines that a surface mining operation is not in compliance with SMARA, the approved reclamation plan, an interim management plan or the provisions of this chapter, then the Planning Director may follow the enforcement procedures and remedies provided in PRC Section 2774.1 including issuance of a notice of violation and any subsequent order to comply and administrative penalties. Such enforcement procedures and remedies are non-exclusive and are in addition to any other procedure or remedy provided under the law.
- (b) An appeal of an order to comply without administrative penalties must be made to the Planning Commission in accordance with Section 1-5.112 except that the appeal may be lodged within 30 days of the order. An appeal of an order setting administrative penalties must be made directly to the Board of Supervisors in accordance with Section 1-5.112 except that the appeal may be lodged within 30 days of the order. (PRC Sections 2774.1(a)(3)(B) and 2774.2(a)).
- ~~(a) If, after conducting the annual inspection or otherwise confirmed by an inspection of the mining operation, the Planning Director finds that the surface mining operation is not in compliance with the approved reclamation plan, the provisions of this chapter, or SMARA, the Planning Director may notify the operator and the owner of the subject property of that violation by personal service or certified mail. If the violation continues beyond thirty (30) days after the date of issuance of the notice of violation, the Planning Director may issue an order by personal service or certified mail requiring compliance or, if the operator does not have an approved reclamation plan, to cease all further mining activities. The order shall specify which aspects of the surface mine's activities or operations are inconsistent with the approved reclamation plan, the provisions of this chapter, or SMARA; shall specify a time for compliance which the Planning Director determines is reasonable, given the seriousness of the violation and any good faith efforts to comply with applicable requirements; shall set a date for a public hearing before the Planning Commission no sooner than thirty (30) days after the date of issuance of the order; and shall not take effect until the operator has been provided a public hearing concerning the violation, unless it is~~

determined by the Planning Director that the violation presents an immediate threat to public health or safety requiring immediate corrective action pending a Planning Commission hearing, and the operator has been given adequate notice and an opportunity to be heard by the Planning Director prior to the effective date of his or her order (PRC Section 2774.1(a) and (b)).

- (b) ~~At the hearing, the Planning Commission shall determine whether or not the operator is complying with the approved reclamation plan or the provisions of this chapter and may affirm, modify or set aside the order issued by the Planning Director. The decision of the Planning Commission may be appealed within ten (10) calendar days to the Board of Supervisors.~~
- (c) ~~Any operator who fails to comply with an order issued by the Planning Director after the order's effective date, unless set aside by the Planning Commission or Board of Supervisors, shall be subject to an order by the Planning Director imposing an administrative penalty of not more than Five Thousand and no/100ths (\$5,000.00) Dollars per day, assessed from the original date of the Planning Director's notice of violation or noncompliance with PRC Section 2207. In determining the amount of the administrative penalty, the Planning Director shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation, and any other matters justice may require. An order imposing an administrative penalty shall become effective upon issuance and payment shall be made to the County within thirty (30) days, unless the operator petitions the Board of Supervisors for review of the order prior to the date on which the penalty payment is due. The order shall be served by personal service or by certified mail upon the operator.~~
- (d) ~~If, within ten (10) days from the date of issuance, the operator petitions the Board of Supervisors for review of the order imposing an administrative penalty, the operator shall be notified by personal service or certified mail as to whether the Board of Supervisors will review the order and, if so, when the matter has been set for public hearing, or consider the order final as previously issued. If it determines to consider the petition on its merits, the Board of Supervisors may affirm, modify, or set aside, in whole or in part, by its own order, any order of the Planning Director imposing an administrative penalty. Any order of the Board of Supervisors shall become effective upon issuance thereof and shall be served by personal service or by certified mail upon the operator. Payment of an administrative penalty specified in the Board of Supervisor's order shall be made to the County within thirty (30) days of service of the order.~~
- (e) ~~If a new mining operation commences without an approved reclamation plan, the County may initiate legal action and proceedings pursuant to the general enforcement provisions of the County Code, which may include abatement, injunctive actions and civil penalties.~~

Sec. 10-5.118. Fees.

The County shall establish such fees as it deems necessary to cover the reasonable costs incurred in implementing this chapter and the applicable State laws, including processing of applications, appeals, annual reports, inspections, monitoring, enforcement and compliance. Such fees shall be paid by the operator of the surface mining operation as required by the County at the time of filing of the reclamation plan application, modification to reclamation plan application, appeal, or time extension request, and at such other times as are determined by the County to be appropriate in order to ensure that all reasonable costs of implementing this chapter are borne by the mine operator.

Section II: Constitutionality: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section III: The Board hereby finds that this Ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) because it can be seen with certainty that there is no possibility of a significant effect on the environment from the adoption of this Ordinance amending the County’s Surface Mining and Reclamation regulations, as the Ordinance amends the County’s Surface Mining and Reclamation Ordinance to be consistent with the State’s Surface Mining and Reclamation Act “SMARA” (Public Resources Code Sections 2710 et seq.). Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In addition, the Board of Supervisors further finds that the Ordinance is categorically exempt from review under CEQA under the Class 7 Categorical Exemption, 14 CCR § 15307, (regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of a natural resources).

Section IV: This ordinance shall become effective 30 days after its passage and shall, within 15 days of adoption, be published once in a newspaper of general circulation, printed, and published in the County of Siskiyou.

Passed and Adopted this ____ day of _____, 2021 at a regular meeting of the Board of Supervisors by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Ray A. Haupt, Chair
Board of Supervisors

Attest:
Laura Bynum, Clerk,
Board of Supervisors

By _____
Deputy