

ORDINANCE NO. 1150

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF NAPA, STATE OF CALIFORNIA,
REPLACING CHAPTER 16.12 "SURFACE MINING AND RECLAMATION" OF
TITLE 16 OF THE NAPA COUNTY CODE WITH A NEW CHAPTER 16.12
"SURFACE MINING AND RECLAMATION" SO AS TO
REORGANIZE, CONSOLIDATE, AND BRING INTO CONFORMANCE WITH
STATE LAW THOSE COUNTY REGULATIONS DEALING WITH SURFACE
MINING AND RECLAMATION**

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

SECTION 1. Chapter 16.12 "Surface Mining and Reclamation" of Title 16 of the Napa County Code is repealed.

SECTION 2. A new Chapter 16.12 "Surface Mining and Reclamation" is added to Title 16 of the Napa County Code to read in full as follows:

Chapter 16.12

SURFACE MINING AND RECLAMATION

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Article I. General Provision and Definitions

16.12.010 Findings.

The board of supervisors finds that:

A. The extraction of minerals is important 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.

B. 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 therefor may vary accordingly.

16.12.020 Purpose of provisions--Statutory authority.

A. It is the purpose and intent of this chapter to regulate all commercial surface mining operations in the unincorporated area of the county, as required by the California Surface Mining and Reclamation Act of 1975 (Public Resources Code Section 2710 et seq.) to ensure that:

1. The reclamation of mined lands will be carried out in such a way that the continued mining of minerals will be permitted;

2. The adverse effects of surface mining operations will be prevented or minimized, and that the lands will be reclaimed to a usable condition which is readily adaptable for alternative land use;

3. Residual hazards to the public health and safety will be mitigated to the maximum extent possible; and

4. The production and conservation of minerals will be encouraged while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.

B. This chapter shall not be construed as exempting any activity from, or interpreted so as to conflict with any county, federal, or state regulation or law which, except for the enactment of the ordinance codified in this chapter, would be applicable.

16.12.030 Definitions.

The definitions of those words found in Section 2710 et seq. of the Public Resources Code and in Section 3501 of Title 14 of the California Code of Regulations are incorporated into this code as though set forth at length herein. In addition, unless the context otherwise requires, the following words shall have the following meanings:

"Abandon" or **"abandonment"** means to cease surface mining prior to completion of required reclamation, or to cease surface mining whether or not actual reclamation has commenced, or both. Mere non-use shall not constitute abandonment; provided, however, that non-use for twelve consecutive months or longer shall create a rebuttable presumption of abandonment.

"Applicant" means any person seeking a permit to conduct surface mining and reclamation, exploration, or prospecting operations in the county.

"Board of Supervisors" means the board of supervisors of the county.

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

"Collateral bond" means an agreement for a specific maximum sum payable to the county, executed by the permittee, and secured by the deposit with the county of cash, negotiable bonds of the United States or of any state or municipality, negotiable securities, certificates of deposit, or a letter of credit in a form acceptable to the county of any bank organized or authorized to transact business in the United States.

"County" means the County of Napa.

"Commercial surface mining" means a surface mining operation that involves the exchange of cash, goods, or services, barter, forgiveness of indebtedness, or any other remuneration in exchange for the materials being mined.

"Department of Conservation" means the Department of Conservation of the State of California.

"EIR" means a detailed statement setting forth the environmental effects and considerations pertaining to a project, as specified in Section 21100 of the California Environmental Quality Act, and may mean either a draft or a final EIR.

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

"Idle" means to curtail for a period of one year or more surface mining operations by more than ninety percent of the operation's previous maximum annual mineral production since 1976 with the intent to resume those surface mining operations at a future date.

"Incompatible land uses" means land uses that are inherently incompatible with mining and/or that require public or private investment in structures, land improvements, and landscaping that may prevent mining because of the greater economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, high density residential, low density residential with high unit value, public facilities,

geographically limited but impact intensive industrial, and commercial uses. In contrast compatible land uses include, very low-density residential, geographically extensive but low impact industrial, recreational, agricultural, silvicultural, grazing and open space uses.

"Master Mining Plan " means a plan for the mining, reclamation, and ultimate use of the mining property. It includes two components; the mining plan, which specifies how the mine will be operated, and the reclamation plan, which specifies how the site will be reclaimed.

"Mining property" means and includes all property that is physically affected by exploration, development and mining operations, or the construction of facilities necessary and related to such operations.

"Notice of noncompliance" means that notice sent to the permittee informing him that his/her surface mining operation is not in compliance with the applicable master mining plan.

"Operator" means any person other than an employee with wages as his/her sole compensation who is engaged in surface mining operations or who contracts with others to conduct operations on his behalf.

"Owner" means any person who owns or has any interest in real property physically disturbed by a surface mining operation.

"Permit" means any formal authorization from or approval by the county, the absence of which would preclude surface mining, exploration, or prospecting operations.

"Permittee" means the owner, the operator, or any duly authorized representative of the owner or operator.

"Person" means any individual, firm, association, corporation, organization, or partnership; any city, county, or district; or the State of California or any department or agency thereof.

"Planning commission" means the conservation, development and planning commission of the County.

"Planning department" means the conservation development and planning department of the County.

"Planning director" means the director of the conservation, development and planning department of the County.

"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 create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.

"Site" means a lot or parcel of land, a series of lots or parcels of land which are contiguous, or a series of noncontiguous lots or parcels which could become an extension of an existing or proposed excavation.

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

"Subsidence" means the lowering of surface elevations over an underground mine caused by loss of support and subsequent caving of strata lying above the mine.

"Surface Mining & Reclamation Act" means the California Surface Mining & Reclamation Act of 1975 (i.e., Section 2710 et seq. of the State Public Resources Code).

"Surface mining operations" means all, or any part of, the process involved in the mining of minerals by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations include, but are not limited to, in place distillation or retorting or leaching, the production and disposal of mining waste, borrow pitting, streambed skimming, and segregation and stockpiling of mined materials and the recovery of same.

"Topsoil" means the upper part of the solid profile that is relatively rich in humus, which in the field of agronomy is known as the A-1 horizon of the soil profile.

"Zoning Administrator" means the Zoning Administrator of the Napa County.

16.12.040 Application of provisions--In general.

A. The provisions of this chapter shall apply to all unincorporated land within the county, both public and private.

B. No person shall conduct mineral exploration, prospecting, or surface mining operations in the unincorporated area of the county without first obtaining an exploration or surface mining permit pursuant to Section 16.12.200 or 16.12.300 below except as otherwise provided in Sections 16.12.050 and 16.12.540.

16.12.050 Application of provisions--Exemptions.

The provisions of this chapter are not applicable to:

A. Non-commercial surface mining;

B. Commercial surface mining, exploration, and prospecting operations that involve the removal of a total of less than 1,000 cubic yards of minerals, ores, and overburden, or the disturbance of less than one acre in any one location (see Section 2714(d) of the State Public Resources Code);

C. Geological, geochemical or geophysical mapping, hand surface-sampling of outcrops and soil, and core or other test drilling, which do not involve extensive excavation (see sub-section 2 above), devegetation or other significant environmental impact;

D. The solar evaporation of sea or bay water for the production of salt and related minerals;

E. Excavations or grading conducted for farming or on-site construction, or for the purpose of restoring land following a flood or natural disaster;

F. Onsite excavation and onsite earthmoving activities which are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, whether or not surface materials are exported so long as all four requirements of Section 2714(b) of the State Public Resources Code are met;

G. Operation including on-site stockpiling and mineral recovery of a mineral processing plant on lands zoned and designated in the Napa County General Plan for industrial use so long as none of the minerals being processed are being extracted on-site and all reclamation work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976;

H. Surface mining operations that are required by federal law in order to protect a mining claim, if such operations are conducted solely for that purpose;

I. Emergency excavations or grading conducted by the State Department of Water Resources or the State Reclamation Board for the purpose of averting, alleviating,

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

J. Surface mining operations conducted on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the State Department of Water Resources for the purpose of the State Water Resources Development System or flood control, and surface mining operations on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the State Reclamation Board for the purpose of flood control, if the State Department of Water Resources adopts, after submission to and consultation with, the Department of Conservation, a reclamation plan for the lands affected by these activities, and those lands are reclaimed in conformance with the standards specified in regulations of the State Board;

K. Road construction and maintenance for timber or forest operations if the land is owned by the same person or entity, and if the excavation is conducted adjacent to timber or forest operation roads. This exemption is only available if slope stability and erosion are controlled in accordance with State Board 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 State Department of Forestry and Fire Protection. This exemption does 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 excavations for materials that are, or have been, sold for commercial purposes;

L. Excavations, grading, or other earthmoving activities in an oil or gas field that are integral to, and necessary for, ongoing operations for the extraction of oil or gas that comply with all four requirements of Section 2714(k) of the State Public Resources Code;

M. Surface mining operations that were conducted and completed or abandoned prior to January 1, 1976;

N. Such other surface mining operations as are categorically identified by the State Board as exempt from the provisions of the Surface Mining and Reclamation Act because they are of an infrequent nature and involve only minor surface disturbances; and

O. Such other surface mining, exploration, and prospecting operations as are henceforth found to be exempt under the provisions of the Surface Mining and Reclamation Act as hereafter amended.

16.12.060 Ownership of permits & responsibility for reclamation.

A. Exploration and surface mining permits and the applications therefore are the property of the owner(s) of the parcel(s) involved. Their ownership can not be severed nor held separate from ownership of the land.

B. The mine operator, the owner(s) of the property effected, and their respective successors-in-interest shall be jointly and severally liable for compliance with all conditions of the permit(s) issued and reclamation of the mining property in conformance with the most current master mining plan approved. The mine operator and the property owner(s) shall at the time of surface mining permit submission submit signed statements formally accepting said liability. Thereafter, prior to the sale or transfer of the operation/property, the new mine operator/property owner(s) shall file with the county a signed statement formally accepting liability for all reclamation remaining to be done.

16.12.065 Successors-in-interest.

Whenever any surface mining operation or portion of an operation subject to this chapter is sold, assigned, conveyed, exchanged, or otherwise transferred, whether

voluntarily or by operation of law, the original operator and owner as well as each successor-in-interest shall be bound by the provisions of any master mining plan approved pursuant to the provisions of this chapter; provided, however, that the original operator and/or owner or any successor-in-interest may be relieved from all liability for completing the reclamation by action of the board of supervisors if, after application to the board, it is determined that the current operator and/or owner has posted adequate security to ensure completion of all remaining reclamation.

16.12.070 Time limit for use of permit.

Any permit that is not used within one year from the effective date thereof shall be null and void. For the purpose of this section, the term "use" shall mean either by beginning of a substantial surface mining operation in accordance with the approved master mining plan, or by demonstrating that the permittee has incurred substantial expense in an attempt to secure required permits at the state or federal level but that, despite due diligence, the permits have not yet been issued, and that it is probable that they will be issued within an additional eighteen months from the expiration of the one-year period.

16.12.080 Public records.

A. Plans, reports, applications, and other documents including mining reports submitted pursuant to this chapter are public records unless it can be demonstrated to the satisfaction of the planning director that the release of such information, or any part thereof, would reveal production, reserves, trade secrets, or rate of depletion entitled to protection as proprietary information.

1. If the planning director concludes the material does not constitute proprietary information, the operator shall be notified in writing of this decision which may be appealed to the board of supervisors in accordance with Chapter 2.88 of the county code.

2. The planning director and the board of supervisors shall hear the issue of the claim of confidentiality in such a manner as to preserve the confidentiality of the contents of the records at issue until the validity of said claim is determined by the planning director or the board of supervisors.

3. In the event the board of supervisors disallows the claim of confidentiality, the operator may withdraw the documents claimed to be confidential; provided, however, if an application or report is incomplete without such documents, the surface mining permit may be denied, revoked or suspended due to the submission of an incomplete application.

B. The planning director shall identify material deemed proprietary information as a separate part of each application, which shall be kept in a separate confidential file.

C. A copy of all permits, reclamation plans, reports, applications and other documents submitted pursuant to this chapter, including proprietary information, shall be furnished upon request of the Director of the Department of Conservation by the planning director. Proprietary information shall be made available to persons other than the Director of the Department of Conservation only when permitted by law or when authorized by both the operator and owner.

16.12.090 Fees.

The county may, by resolution of the board of supervisors, impose fees sufficient to fully cover the costs of implementing this chapter and State regulations, including but

not limited to, processing of applications, review of annual reports, and undertaking of inspection, monitoring, enforcement and compliance actions.

Article II. Exploration Permits

16.12.200 Operations requiring permits.

No person shall conduct exploration or prospecting operations in the unincorporated area of the county without first obtaining an exploration permit to do so, unless exempted by subsection B or C of Section 16.12.050.

16.12.210 Application--Contents.

The owner or operator, whether or not he or she is currently conducting a surface mining operation, may apply for an exploration permit. All such applications shall be filed with the planning director on forms provided by the planning department, shall be accompanied by the required filing fee, and must be signed by the property owner and, if different, the operator. An application shall not be deemed complete or accepted for filing and the time limitations for processing a permit shall not begin to run unless and until the planning director certifies the application is complete. The planning director shall not certify an application as complete unless it contains:

- A. Names and addresses of the surface and mineral owners of record and those persons responsible for conducting the exploration;
- B. A brief description of the geologic, water, vegetation and other physical factors that may be affected by the proposed operation;
- C. A narrative discussion of each of the following factors:
 1. Method of exploration and types of equipment to be used,
 2. Measures to be taken to prevent or control fire, soil erosion, pollution of surface water and groundwater, pollution of air, and hazards to public health and safety, and
 3. The location, proposed or existing, of access to the sites, considering the anticipated tonnage of material to be removed;
- D. The method to be utilized for plugging drill holes;
- E. If underground mining techniques are to be utilized in prospecting, the measures to be taken to prevent damage to the surface so as to maintain the value and reasonably foreseeable use of surface lands;
- F. The measures to be taken for surface reclamation if surface disturbance is involved, and the ore samples removed from the disturbed area indicate that the area cannot be economically mined, including:
 1. A reclamation schedule,
 2. The method of grading, backfilling, soil stabilization, and compacting and contouring,
 3. The method of soil preparation and type of replanting anticipated;
- G. The estimated timetable for each phase of the work and for final completion of the program;
- H. Suitable topographic maps and aerial photographs showing existing surface water, drainage features, structures, roads, and the proposed location of drill holes, trenches, machine access routes and proposed roads, which shall be designated as permanent or temporary; and

I. Such other data as may be required by the planning director, including such data as is necessary to complete the required environmental assessment.

16.12.220 Application--Review process/Public hearing.

A. All applications shall be submitted to the planning department for review prior to filing. Within thirty days after receipt of an application for an exploration permit, the planning director shall review the application and shall inform the applicant in writing whether or not the application is complete. If the application is complete, it shall be accepted for filing immediately if the required filing fees have been paid. If the application is found to be incomplete, the applicant shall be so notified in writing, together with a description of the type of information that must be submitted to make the application complete.

B. Once an application has been determined to be complete, it shall be set for public hearing before the zoning administrator in accordance with the notice provisions of subsection (B) of Section 16.12.370.

16.12.230 Issuance--Required findings/conditions.

A. The zoning administrator shall approve, conditionally approve, or deny an exploration permit within sixty days after receiving a completed application, and give notice of the decision, including any required conditions-or-approval, by mail to the applicant.

B. An application for an exploration permit shall only be approved if the zoning administrator or, on appeal, the board of supervisors finds that:

1. All significant adverse environmental impacts have been mitigated, or a statement of overriding findings has been made;

2. A schedule of periodic inspections has been imposed as a condition of approval, of a frequency sufficient to ensure compliance with the approved reclamation plan; and

3. The approval is conditioned so as to adequately protect the public health, safety and welfare.

C. The decision of the zoning administrator shall be final unless, within ten calendar days after the date of his/her decision, the applicant or any interested person appeals in writing to the board of supervisors in accordance with Chapter 2.88 of this code.

16.12.240 Suspension or revocation.

The procedure for suspension or revocation of an exploration permit shall be as set forth in Section 16.12.370.

Article III. Surface Mining Permits

16.12.300 Operations requiring permits.

Unless exempted by Section 16.12.050 or Section 16.12.540, no person shall conduct surface mining operations in the unincorporated area of the county unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been accepted by the county.

16.12.310 Application—Contents.

All applications for a permit shall include a master mining plan, which shall be composed of a mining plan and a reclamation plan, shall be filed with the planning department on forms provided by the planning department, shall be accompanied by the required filing fee, and shall be signed by the owner and, if different, the operator. An application shall not be deemed complete or accepted for filing, and the time limitations for processing a permit shall not begin to run, unless and until the planning director certifies the application is complete. The planning director shall not certify an application as complete unless it contains:

- A. All the information and data required by Section 2772 of the Public Resources Code and this chapter;
- B. All information needed to complete any required environmental assessment;
- C. The names and addresses of all property owners listed on the most recent update of the equalized assessment roll as owning property situated within three hundred feet of the mining property; and
- D. Such additional information as may be required by the planning director.

16.12.320 Mining plan--Contents.

The mining plan shall contain to the extent applicable all of the following information:

A. The names and addresses of the permit applicant, including his or her telephone number; every legal or equitable owner of record of the property to be mined, including mineral interests; the holders of record of any leasehold interest in the property to be mined; any purchaser of record under a real estate contract of the property to be mined; the operator, if the operator is a person different than the applicant, including his or her telephone number; the resident agent of the applicant who will accept service of process, including his or her telephone number; the owner of record of all surface and mineral areas contiguous to any part of the proposed permit area; and the name and address of the person to be contacted by the planning director in the event consultation with the applicant is necessary. Each application shall also contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity;

B. A description of the environment of the mining property, including any potential mining sites. Such description shall include, at a minimum, a report of geologic conditions specifying the general geology of the area and providing a detailed description of the mine site itself, including potential geologic hazards; a report of the types, depths and distribution of soils; principal minerals or rock types present; climatological data identifying precipitation and average direction and velocity of prevailing winds; the quality of the surface and ground water supplies present prior to commencement of mining, and distribution, abundance and habitat of fish and wildlife;

C. The uses of the mining property at the time the mining plan is submitted for approval, including the capability of the mining property immediately prior to any mining to support alternative uses;

D. A narrative description with tables, where appropriate, of the proposed operation, identifying:

1. The type and method of mining techniques to be utilized, including the major equipment to be used for all aspects of those operations and the maximum anticipated depth to which mining will extend;

2. The construction, use, maintenance, and ultimate removal of each of the following types of facilities:

a. Each water diversion, collection, conveyance, treatment, storage, and discharge facility, including but not limited to dams, embankments and other impoundments,

b. Overburden, ore, tailings, and topsoil handling and storage areas and structures,

c. Ore removal, handling, storage, cleaning and transportation areas and structures,

d. Mining facilities,

e. Water and air pollution control facilities, and

f. Explosives storage and handling facilities, including the amount of explosives to be stored on site;

3. The quantity and quality of water required by the proposed operation, identifying the proposed sources of water, the method of conveyance to portions of the property on which it will be used, and the method of disposal of used and/or surplus water, and

4. The type and approximate amounts of mineral commodities to be removed and the approximate amounts of waste materials to be disposed on and off site, including the method and location of disposal of any water utilized;

E. A discussion of the probable extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of underground or surface water. If contamination or interruption of water supplies presently relied upon for domestic, agricultural or industrial use at any downstream location may occur, alternative sources of water that could be developed to replace the existing sources under such circumstances must be identified;

F. A list of the measures to be taken to prevent or control fire, to minimize air pollution, to minimize soil erosion, to prevent pollution of surface and groundwater, to prevent flooding, to salvage existing topsoil, to protect the habitat of fish and wildlife in the area, and to generally prevent excessive erosion and surface runoff in other than natural drainage courses;

G. A blasting plan for the proposed permit area:

1. The following information shall be required regardless of the location of the mining operation:

a. Types and approximate amounts of explosives to be used for each type of blasting operation to be conducted, including estimated maximum dBA levels for each type of blasting at the outer perimeter of the site,

b. Description of blasting warning and site access control equipment and procedures,

c. Description of types, capabilities, sensitivities, and locations of use of any blast monitoring equipment and the procedures proposed to be use, and

d. Description of plans for recording and reporting to the regulatory authority the results of pre-blasting surveys, if required.

2. The following additional information shall be provided if the distance from the outer perimeter of the blasting site to the nearest structure not owned by the operator is less than one-half mile, or if the distance from the outer perimeter of the blasting site to the nearest structure used for human habitation not owned or utilized by the operator or an employee of the operator is less than one mile, or if the distance from the outer

perimeter of the blasting site to any area that has density of one dwelling unit or more per acre is less than ten miles:

a. Description of procedures and plans for recording and retention of information on the following:

- i. Drilling patterns, including size, number, depths and spacing of holes,
- ii. Charge and packing of holes,
- iii. Types of fuses and detonation controls, and
- iv. Sequence and timing of firing holes; and

b. Description of unavoidable hazardous conditions for which deviations from the blasting schedule will be needed;

H. A description of the anticipated progression of all operations of the facility, indicating time frames for each phase and the estimated life of the operation; the anticipated progression of stripping and excavating should be shown through the use of cross-sections, elevations and topographic maps; the proposed dates for the initiation and termination of surface mining shall in addition be specified;

I. The time lag between mining and reclamation and equipment siting and removal and/or relocation, together with the reasons for same;

J. Whether excavation and reclamation will occur simultaneously and, if not, the reasons why such an approach is not feasible;

K. Maps and plans of the proposed mining operations specifying:

1. The extent of the area to be affected within the proposed permit area. If the mining is to be accomplished in phases, the land to be affected by each phase must be clearly indicated,

2. The location of all access roads to be utilized and/or constructed in conducting mining operations,

3. The location of all streams, watercourses, structures, roads, railroads, sewage disposal systems, water wells, and utility facilities within, passing through, or passing over the mining site, or within one thousand feet thereof, and the potential for altering runoff patterns as a result of topographic alterations, and

4. The outer perimeter of the blasting site, with all structures within one mile of the site indicated on the map. Each such structure shall be identified as to ownership, and whether or not it is to be used as a dwelling for human habitation.

The maps submitted shall be presented in a consolidated format to the extent possible, and shall include topography and all other types of information that are typically set forth on U.S. Geological Survey topographic maps. Maps of the permit area shall be in a scale of 1:4800 or larger;

L. If the performance bonds or other security to be posted will be limited to certain areas of the site, each area shall be clearly designated, together with a description of the security to be posted for that area;

M. Documentary evidence that all owners of the land including owners of a possessory interest in the land have been notified of the proposed mining operation; and

N. Such other data as may be determined by the planning director to be necessary.

16.12.330 Reclamation plan---Contents.

The reclamation plan shall comply with the provisions of the Surface Mining & Reclamation Act and State Board Reclamation Regulations. It shall, in addition to these and all other requirements, be signed by the applicant and either the principal mining engineer or some other qualified person responsible for drawing up the plans who is

acceptable to the planning director. The plan shall at a minimum contain the following information:

A. A detailed schedule of the anticipated sequence and timing of each phase of the reclamation. Each phase shall be specifically described and the following information specified therefor:

1. The beginning and ending dates thereof;
2. All reclamation activities required;
3. Criteria for determining completion of specific reclamation activities; and
4. Estimated costs for completion of said phase;

B. A physical/environmental description of the site prior to commencing operations or, if operations have already commenced, a description as of the date the application is filed;

C. The location and condition of any mined area that was completed or abandoned prior to January 1, 1976, and which will not be mined pursuant to the present application for a surface mining permit, if granted;

D. The method of grading, backfilling, soil stabilization, compacting, or contouring to be used to ensure that the mining property will contain stable slopes and waste piles; final slope gradients for the mining property flatter than the critical gradient for the type of material involved must be specified. When the final slopes proposed are within 5 degrees of the critical gradient, an engineering analysis of slope stability shall be provided;

E. The amount of settlement expected in filled areas. Where ultimate site uses include roads, building or other improvements sensitive to settlement, specifications for fill compaction conforming with good engineering practice shall be included;

F. The extent of the areas to be mined to produce additional materials for backfilling and grading;

G. The extent of any stream or watershed diversions planned and the manner in which rehabilitation of pre-mining drainage will occur. A description of the manner in which affected streambed channels and streambanks will be rehabilitated to a condition minimizing erosion and sedimentation shall be included;

H. The method by which contaminants remaining upon completion of the mining operation will be controlled so as to avoid contamination of surface runoff and groundwater;

I. The disposition of mine waste rock and overburden and the method to be utilized to salvage and re-use existing topsoil;

J. The method of soil preparation and fertilizer used to prepare the land for replanting, and the type and mixture of shrubs, trees, grasses or other vegetation to be planted, including the method of planting, approximate quantity, and spacing. All land in areas containing Class I, II or III soils that are zoned primarily for agricultural use must be reclaimed to an agriculturally productive state equal or superior to that existing before mining commenced. All other lands zoned primarily for agricultural use must be reclaimed so as to reasonably permit the use of the land in a manner that is compatible with agriculture;

K. The manner in which structures, machinery, waste materials and scraps will ultimately be removed from the reclaimed site, including a description of all structures to remain on-site after reclamation has been completed and their ultimate use and location;

L. A set of detailed, site specific reclamation performance standards. The County may modify or impose additional performance standards beyond those proposed

based on its review of the individual permit or through the formulation and adoption of countywide standards;

M. The ultimate uses to which the land is proposed to be put after reclamation, including a discussion of the consistency of such proposed uses with any applicable general and specific plans and the existing uses of adjacent properties. How reclamation may affect the future use of the area and surrounding lands for other purposes, including mining purposes shall be indicated;

N. If underground mining techniques are to be utilized, the measures to be taken to prevent subsidence from causing material damage to the surface, so as to maintain the value and reasonable foreseeable use of surface lands;

O. The effect on public health and safety, giving consideration to the degree and type of present and probable future exposure of the public to the site;

P. A reasonable detailed cost estimate of the probable costs of the reclamation to be conducted taking into account inflationary factors. The most current Department of Conservation Financial Assurance Cost Estimate Forms and methodologies shall be used and supporting data for all required estimates shall be provided. If the mining and reclamation are to be completed in phases, a breakdown of the estimate of the cost of reclamation for each phase shall be included;

Q. A reasonably detailed financial statement by the applicant, which demonstrates that sufficient funds will be available to enable the applicant to reclaim the land;

R. A map which will delineate through the use of cross-sections and elevations the physical characteristics of the land upon the conclusion of reclamation. A topographic map shall be provided with the location of the reclaimed land clearly indicated. The map must show existing bodies of surface water, topographic, cultural and drainage features, and the proposed location of drill holes, trenches and roads;

S. Documentary evidence that all owners of the land including owners of a possessory interest in the land have been notified of and concur with the proposed use or potential uses, to which the site is to be put after reclamation; and

T. Such other data as may be required by the planning director.

16.12.340 Reclamation plan--Commencement of reclamation.

Reclamation activities shall be commenced at the earliest possible time on those portions of mined lands that are not subject to further disturbance. Interim reclamation may also be needed for mined lands that have been disturbed and that may be disturbed again in future operations. Reclamation may be done on an annual basis, in stages compatible with continuing operations, or on completion of all excavation, removal, or fill, as approved by the County.

16.12.350 Application--Review process.

A. All applications shall be submitted to the planning department for review prior to filing. Within thirty days after the receipt of an application, the planning director shall review it and shall inform the applicant in writing whether or not the application is considered complete. If the application is complete, it shall be accepted for filing immediately if the required filing fees have been paid. If the application is found to be incomplete, the applicant shall be so notified in writing, together with a description of the types of information that must be submitted to make the application complete.

B. Upon determination that the application submitted is complete, the planning director shall notify the Department of Conservation that an application for a permit has

been filed. Whenever mining operations are proposed in the 100-year floodplain of any stream, as shown in Zone A of the Flood Insurance Rate Maps issued by the Federal Emergency Management Agency, or within one mile upstream or downstream of any state highway bridge, the planning director shall also notify the State Department of Transportation.

C. No later than 15 days after receipt of a complete application, the planning director shall submit the reclamation plan or reclamation plan amendment provided along with all relevant documentation to the Department of Conservation for review. Pursuant to state law 30 days shall be provided for comment. Said submittal shall contain a certification by the county that the plan or plan amendment is in compliance with all relevant State Board Reclamation Regulations (Sections 3500 et seq. and 3700 et seq. of Title 14 of the California Code of Regulations).

D. The planning director shall evaluate the written comments received from the Department of Conservation and any variance between his recommendations and the recommendations contained therein shall be noted in the staff report provided the planning commission.

E. No later than sixty days after receipt of a complete application which does not require an environmental impact report, or no later than one hundred eighty days after receipt of a complete application which requires the preparation of an environmental impact report, the planning commission shall hold a public hearing to consider approval or denial of the application. Approval or denial of the project may take place at this hearing, or the hearing may be continued at the discretion of the commission.

F. At the time set for the hearing, or any continuation thereof the planning commission shall hear all relevant testimony from interested persons, close the hearing, and within a reasonable time after the close of the hearing, make its decision. Approval of any permit shall be subject to such conditions as are necessary to protect the health, safety and general welfare of the community, and shall further be conditioned upon compliance with the approved master reclamation plan.

G. The decision of the planning commission and the reasons therefor shall be reduced to writing, and the planning director shall mail a copy thereof to the operator, owner and, if different, applicant and to any person who has made a written request for a copy of the decision.

H. Following approval of a surface mining permit or permit amendment the planning director shall forward copies of the permit or permit amendment itself along with any related reclamation plan/reclamation plan amendment to the Department of Conservation. If the permit or permit amendment involves adoption or amendment of a reclamation plan, the planning director shall include with this submission a response to any Department of Conservation comments received under C above. Said response shall describe the disposition of the major issues raised and shall address, in detail, why specific comments and suggestions were not accepted. Copies of Department of Conservation comments and the response prepared thereto shall be provided the operator, owner, and, if different, applicant.

16.12.360 Issuance--Required findings.

The planning commission or, on appeal, the board of supervisors shall approve an application for a permit pursuant to this chapter only if all of the following findings are made:

A. The application is complete and the plans and reports submitted therewith adequately describe the proposed operation,

B. The project is supported by adequate environmental documents that comply with the provisions of CEQA,

C. The mining operation to be conducted and subsequent reclamation of the site provide for specific changes or alterations which avoid or mitigate the significant environmental effects of the project as identified in the recommended negative declaration or final EIR or if an EIR was prepared that specifically identified economic, social or other considerations make infeasible the mitigation measures or project alternatives identified therein,

D. The application as approved demonstrates that the proposed operation will be conducted in compliance with the provisions of the Surface Mining and Reclamation Act, State Board Reclamation Regulations including but not limited to Sections 2502, 3503 and 3700-3713 of Title 14 of the California Code of Regulations, and this chapter,

E. Any comments received from the Department of Conservation pursuant to Section 16.12.350(C) have been reviewed and considered by the Commission,

F. The mining operation and reclamation plans, as approved, are consistent with the objectives, policies and general land uses and programs set forth in the general plan, any specific plan applicable to the area of operations, and the zoning of the site,

G. The reclamation to be undertaken will restore the mined lands to a usable condition which is readily adaptable for alternative land uses which are consistent with the general plan and any specific plan applicable to the area of operations,

H. Appropriate conditions have been imposed to ensure that the site, during and after reclamation, will not cause a public hazard, will not impair the character of the surrounding neighborhood, nor be detrimental to the public health, safety or general welfare, considering the degree and type of present and probable future exposure of the public to the site,

I. The proposed timing for reclamation requires reclamation to be fully completed as soon as it is feasible, considering the particular circumstances of the site to be reclaimed, and provides for appropriate incremental reclamation at the earliest feasible time, considering the particular circumstances of the site to be reclaimed,

J. The estimated cost of the reclamation reasonably approximates the probable costs of performing the reclamation work proposed in the reclamation plan approved, the permittee will be financially able to complete the reclamation, and the security to be posted will be sufficient to ensure completion of the required reclamation, and

K. The applicant has a public liability policy in force for both the mining and reclamation operation which provides for personal injury and property protection in an amount adequate to compensate all persons injured or for property damaged as a result of such operations.

16.12.370 Issuance, suspension, or revocation--Public hearing.

A. To the extent practicable, all required public hearings shall be set so that the hearings on the environmental aspects of the project shall be heard simultaneously with the hearing on issuance of the permit itself.

B. Public hearings to consider the granting, suspension, revocation or amendment of a permit shall be noticed in accordance with the following procedure:

1. Not less than thirty days prior to the date set for a hearing, the planning director shall cause notice of the hearing to be given as follows:

a. Notice shall be published not less than once in a newspaper of general circulation, published and circulated in the county or posted in not less than three prominent locations adjacent to the property,

b. Notice shall be mailed to all persons shown on the most recent update of the equalized assessment roll as owning real property within three hundred feet of the property which is the subject of the proposed mining operation,

c. If the hearing involves the revocation or suspension of a permit, notice shall be sent to the owner and operator by certified mail, and

d. Notice shall also be sent to any person who has requested in writing notice of this or any surface mining permit hearing.

2. All such notices shall state the date, time and place of the hearing, shall include a general explanation of the matters that are to be considered at the hearing, including the location of the mining property, shall state that any person may appear and be heard, and shall indicate that if the initial hearing is before the planning commission, the failure to comment orally or in writing to the planning commission shall bar a later appeal to the board of supervisors. If a negative declaration will be recommended for the project, the notice shall also state that at the time of the hearing and before a decision on the permit is made, the planning commission will receive comments and determine whether or not the recommended negative declaration should be adopted.

Article IV. Security

16.12.400 General requirements.

A. All applicants, as a condition of approval of a permit issued under the provisions of this chapter, shall be required to execute an agreement and provide adequate security made payable to the county and the Department of Conservation guaranteeing without proof of loss compliance with the master mining plan, the conditions of the permit involved, and all of the requirements of this chapter and the Surface Mining and Reclamation Act.

B. Liability under any security required as a condition of approval of the permit shall continue until all reclamation work required by the approved master mining plan has been completed. In addition, the period of liability shall continue, and adequate security shall be retained to ensure the continued viability of the reclamation effort for a period of not less than five years, beginning with the last year of augmented seeding, fertilizing or other concluding work of the reclamation. This liability shall begin anew whenever additional reclamation is required on the mining site prior to bond release. The minimum security to be retained to guarantee the continued viability of the reclamation effort shall be as follows:

1. If the security guarantees the cost of all reclamation, ten percent of the aggregate cost of all reclamation; or

2. If the security posted was limited to each phase of the operation, the lesser of ten percent of the aggregate cost of all reclamation or the actual cost of reseeding or taking similar steps to ensure the continued viability of the reclamation.

The planning director may require greater security than the minimum if the probable cost of ensuring the long-term viability of the reclamation exceeds the above minimums.

C. If the county determines, following a public hearing, that an operator is financially incapable of performing reclamation in accordance with its approved reclamation plan or has abandoned its operation without reclamation, the county shall take such actions to forfeit the assurances as are described in subparagraphs (b) and (d) of Public Resources Code Section 2773.1.

16.12.410 Amount required--Initial.

A. The security required by Section 16.12.400 shall be in an amount equal to the estimated cost to the county if it were required to complete the reclamation required by the master mining plan, including any additional costs which may reasonably be expected to arise from public contracting requirements and further including an amount to account for inflationary factors, such amount not to exceed the inflationary increase associated with reclamation activities during the preceding five years. If the master mining plan submitted provides for mining in phases, the security may be limited to the cost of reclaiming the land impacted by the current phase of the mining operation if, upon application by the permittee, the planning commission or, on appeal, the board of supervisors, determines that:

1. The security of the county will not be impaired by accepting such lesser security,
2. Each phase of the mining operation will be completed prior to the next phase commencing,
3. Each phase of the mining excavation will impact on discrete parcels, and
4. Reclamation of a completed phase of the mining operation will commence simultaneously with the mining of the land involved in the succeeding phase.

B. Approval of any such lesser security shall be subject to the conditions that the security will equal or exceed the estimated cost of reclaiming the current phase of the permittee's mining operation and that, in addition to the aforementioned security, the approving body may at any time, after notice and hearing, require the permittee to increase the security to such an amount as represents the current estimated cost of reclaiming all land impacted by the permit to date, or all permits heretofore issued shall terminate.

16.12.415 Amount required--Annual adjustment/Updating of reclamation cost estimates.

The amount of financial assurances for any one year shall be adjusted annually to account for the new land disturbed by surface mining operations, inflation, and reclamation of lands pursuant to the approved reclamation plan. The permittee shall annually file a revised cost estimate with the county on which said adjustment shall be based. Failure to file such an estimate shall be considered cause to revoke the permit after notice and hearing.

16.12.420 Amount required--Additions when.

A. If at any time the conditions under which a security was approved no longer prevail, the county may revoke the permit unless, within ninety days after notice is given, the permittee posts such sufficient or additional security as may be required by the planning director to ensure completion of reclamation.

B. If upon incapacity of a surety for any reason including, but not limited to, bankruptcy, insolvency or suspension or revocation of its license, and after receipt of a written demand by the county that additional security be provided, the permittee fails to provide additional security within sixty days, the permittee shall be in violation of the permit and mining operations shall immediately be discontinued until new and adequate security is provided.

16.12.430 Review Process.

A. Within 15 days of receipt of the agreement and associated security required under Section 16.12.400 (A), the planning director shall review the materials provided for

completeness. If the submittal is incomplete, the applicant shall be notified of the deficiencies found.

B. Upon a determination that the agreement and security package received is complete, the planning director shall distribute copies thereof to county counsel for review as to the acceptability of the documents contained therein.

C. Upon receipt of both an agreement and a security revised to reflect the comments received under (B) above, the planning director shall submit copies of these documents along with the related costs estimates and the approved reclamation plan to the Department of Conservation for review. Pursuant to state law, 45 days shall be provided for comment. The submittal shall contain a certification by the planning director that these financial assurances or assurance modifications meet all the requirements contained in the State Board Reclamation Regulations (Sections 3500 et seq. and 3700 et seq. of Title 14 of the California Code of Regulations).

D. The planning director and county counsel shall review the written comments received from the Department of Conservation and seek modification by the permittee of the agreement and/or security as necessary. The revised documents provided shall be returned to the Department of Conservation for final approval.

E. The board of supervisors shall review the approved agreement and security and either accept them in the submitted or a modified form or reject them.

F. Following acceptance of an agreement and the related security, the planning director shall forward copies of these documents to the operator, owner, and Department of Conservation.

16.12.435 Allowable types.

The security referred to in Section 16.12.400 shall be one of the following, subject to the approval of the board of supervisors and the State Board:

- A. A surety bond or bonds by one or more duly authorized admitted sureties;
- B. Irrevocable letters of credit;
- C. Trust funds;
- D. A deposit in trust with the Napa County Treasurer, in a manner acceptable to the Napa County Auditor-Controller, of cash or negotiable bonds of the kind approved for securing deposits of public monies; or
- E. Other securities specified by the State Board.

16.12.440 Surety bond conditions.

- A. Surety bonds shall be subject to, at a minimum, the following conditions:
 - 1. The bond shall be on the relevant state-approved surety bond form found in Sections 115.1 through 115.5 of Title 14 of the California Code of Regulations;
 - 2. A rider shall be attached to each bond that:
 - a. Prohibits the issuer at any time during the period of liability from canceling the bond for any reason including, but not limited to, nonpayment of premium,
 - b. Waives the provisions of Section 2819 of the California Civil Code,
 - c. Provides that the surety, the owner, and the operator are jointly and severally liable, and
 - d. Provides that, in the event the issuer is unwilling to fulfill its obligations under the bond for any reason, notice shall immediately be given by the surety to the county and the Department of Conservation.
- B. If the permittee has posted bonds for other mining operations in this or any other state, the history of such bonds shall be provided, including:

1. Names of sureties, if any, for outstanding bonds,
2. Amounts of outstanding bonds,
3. Names of any surety which denied any bond, and
4. Unsatisfied claims against any bond.

C. Surety bond coverage for lands not disturbed may be canceled, provided that the surety gives at least ninety days' notice prior to the effective date of cancellation to the permittee, the county, and the Department of Conservation of the intent to cancel. Such notice shall be by certified mail and shall not be effective until received by the permittee, the county, and the Department of Conservation.

D. All bonds currently in existent shall be re-issued on the standard bond form referenced under A(1) above and the rider specified under A(2) provided by July 1, 1999 or upon each bond's renewal, whichever comes first.

16.12.445 Letter of credit conditions.

Letters of credit shall be subject to the following conditions:

A. The letter may only be issued by a bank organized or authorized to do business in the United States;

B. The letter must be irrevocable prior to a release by the county and the Department of Conservation;

C. The letter must be payable to the county and the Department of Conservation in part or in full within thirty days following demand and receipt from the county or the Department of Conservation of a copy of final notice of noncompliance served on the permittee; and

D. The letter of credit shall provide that the bank will give prompt notice to the permittee, the county, and the Department of Conservation of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business, and that in the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee, the county, and the Department of Conservation.

16.12.450 Trust fund conditions.

A trust fund shall be permitted only if all of the following conditions are met:

A. The permittee designates the name and address of a suitable agent to receive service of process in California;

B. The permittee, or the permittee's parent organization in the event the permittee is a subsidiary corporation, has a net worth, certified by an independent certified public accounting firm acceptable to the planning director and the Department of Conservation, of no less than six times the total amount of trust fund obligations on all permits issued to the applicant for surface mining and reclamation operations;

C. The permittee, or the permittee's parent organization in the event the permittee is a subsidiary corporation, has a history of financial solvency and continuous operation as a business entity for ten years prior to filing the application;

D. The security agreement has been executed by the permittee in the following manner:

1. If a corporation, then by two corporate officers in their official capacity who are authorized to sign the agreement by a resolution of the board of directors, a copy of which shall be provided.

2. To the extent the history or assets of a parent organization are relied upon, then the parent organization and every parent organization of which it is a subsidiary, whether first-tier or further removed, in the manner specified in subsection (D)(1) of this section.

3. If the permittee is a partnership, all of its general partners and their parent organization or principal investors.

4. If the permittee is a married individual, the permittee's spouse.

E. The security agreement specifies that it is a binding obligation, jointly and severally, on all who execute it;

F. The trust is irrevocable with the county and the Department of Conservation as beneficiaries. A bank or other entity acceptable to the county and the Department of Conservation shall act as trustee; and

G. The instruments establishing the trust are in a form acceptable to the county, the permittee, and the Department of Conservation and are subject to all of the following terms and conditions:

1. Deposits in the trust are insulated from creditors of the permittee;

2. The trust funds may be expended by the trustee, upon approval by the planning director and the Department of Conservation, for the sole purpose of paying for the cost of performing the reclamation required by the master mining plan. Such payments may be requested by the permittee. Upon notice from the county and the permittee that reclamation is completed, the trustee shall pay to the permittee any unexpended trust funds, retaining only that portion required to insure the long-term viability of the reclamation plan;

3. The planning director and the Department of Conservation shall receive from the trustee a copy of all records showing transactions in the trust; and

4. Payments for reclamation costs from the trust fund shall be made solely as directed by the permittee; provided, however, that payments for reclamation costs from the trust fund shall be made solely as directed by the county or the Department of Conservation, unless and until the Zoning Administrator finds and notifies the trustee that the permittee is in compliance with the master mining plan, if either of the following conditions exist:

a. The permittee receives from the planning director or the Department of Conservation an initial notice of noncompliance with respect to its reclamation obligation pursuant to Section 16.12.610(A) and the permittee does not, within ten days of receipt of that initial notice, either appeal the existence of such noncompliance or, within thirty days of receipt of the initial notice, bring its operation into compliance with the master mining plan, or

b. If after appeal it is determined that the permittee has failed to comply with the master mining plan.

Payments from the trust fund for reclamation shall continue as directed by the permittee if, after appeal, it is determined that the permittee is in substantial compliance with the master mining plan.

16.12.460 Replacement.

The permittee may replace any existing security other than a collateral bond with other forms of security, if the liability that has accrued against the operator and owner is transferred to such replacement security. The existing security shall not be released until the permittee has submitted and the county has approved an acceptable replacement security.

16.12.470 Release--Partial.

The security shall be partially released only after an application to and a finding by the board of supervisors that the requirements of a specific phase of the reclamation has been met; provided, however, that no partial release shall occur if such release would reduce the total remaining liability to an amount less than that necessary for the county to complete the approved reclamation plan.

16.12.480 Release-- Full/Acceptance of work.

A. No reclamation or phase of reclamation shall be deemed complete until the work has been inspected by the planning director and a certificate of acceptance has been executed by him indicating the county's acceptance of such reclamation work.

B. Within sixty days after the county has been notified by the operator of the completion of the reclamation, or any phase thereof, the planning director shall inspect the site and either file a certificate of acceptance or notify the operator and owner in writing of the items found to be unfinished.

C. Upon the acceptance by the county of the reclamation work or any phase of it, the portion of the improvement security guaranteeing that work, less the security required to be retained by Section 16.12.400(B), shall be released.

Article V. Inspections, Appeals, and Administration

16.12.500 Inspection and notice requirements.

A. The county shall inspect, or cause to be inspected, a surface mining operation within six months after the planning director receives the annual mining report required under Section 16.12.710 in order to determine whether it is in compliance with the approved surface mining permit, the Surface Mining and Reclamation Act, and State Board Reclamation Regulations. Said inspection shall be conducted using an approved form provided by the State Board.

B. In no case shall the county inspect a surface mining operation less than once a calendar year.

C. The operator shall be solely and entirely responsible for the cost of inspections.

D. The planning director shall notify the Department of Conservation within thirty days of the completion of the inspection using forms approved and provided by the State Board. The notice shall contain a statement regarding which aspects of the mine's operation, if any, are not in compliance with law. The notice shall further indicate whether the permittee has any appeals or reclamation plan, financial assurance, or interim management plan reviews pending. The planning director shall transmit a copy of the notice to the operator, together with supporting documentation.

16.12.510 Appeals.

A. Except as provided in subsection (B) of this section, any person aggrieved by the denial or issuance by the planning commission, zoning administrator, or planning director of a permit pursuant to this chapter or by the imposition of a condition or conditions to such permit, may appeal such denial or issuance to the board of supervisors pursuant to Chapter 2.88 of this code.

B. Any person may appeal to the State Board the failure to act according to due process, or the reliance on considerations not related to the specific requirements of

Public Resources Code Sections 2772 and 2773 and this chapter in reaching a decision to deny a reclamation plan, or the failure to act within a reasonable time pursuant to Article 5 (commencing with Section 3650) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations.

16.12.520 Master mining plans--Amendments.

A. An approved master mining plan may be amended at any time. All proposed amendments shall be on forms provided by the planning department and be accompanied by the required filing fee and such data as is required to complete an environmental assessment. They shall be processed and heard in the same manner as an application for a surface mining permit.

B. Amendments shall be granted only if:

1. The proposed amendments are necessary or desirable to assure a more practical recovery of the mineral resource and will not produce multiple future disturbances of surface land or waters;

2. No substantial adverse environmental damage, either on- or off-site, will result from delay, if any, in completion of reclamation;

3. The security required to be filed by the applicant with the county is adequate, or additional security has been filed to guarantee compliance with the amended reclamation plan;

4. The reclamation plan, as amended, will continue to meet the requirements of this chapter, and will be conducted in conformity with all applicable laws, ordinances and regulations of all agencies with jurisdiction over the mining operations; and

5. The approval of the amendment will not be detrimental to the public health, safety or welfare, is compatible with the objectives and policies of the County's general, and applicable specific, plans, and complies with the zoning of the site.

16.12.530 Master mining plans--Minor revisions.

A. Notwithstanding Section 16.12.520, minor changes to an approved master mining plan may be submitted to and approved by the planning director.

B. Within thirty days of receipt of a request for approval of a minor change, the planning director shall determine whether or not the change requested is in fact minor. If it is determined that the change is not minor, the application shall be deemed an application for an amendment, and shall be noticed and set for hearing like any other amendment to a master mining plan. If the change is considered minor, the planning director shall summarily approve or deny the request and notify the applicant in writing within ten days of his/her decision. The decision of the planning director as to whether or not the request involves a minor change and whether or not the request, if minor, should be approved shall be final.

C. Requests for a minor change shall only be approved if:

1. There is no possibility that the proposed change may have a significant adverse effect on the environment;

2. The proposed change involves minor changes in dimensions, volumes, or the timing of reclamation and will not affect the basic character or implementation of the reclamation plan;

3. The security required to be filed by the applicant with the county is adequate, or additional security has been filed to guarantee compliance with the revised reclamation plan;

4. The reclamation plan, as revised, will continue to meet the requirements of

this chapter, and will be conducted in conformity with all applicable laws, ordinances, and regulations of all agencies with jurisdiction over the mining operations; and

5. The proposed change will not be detrimental to the public health, safety, or welfare and complies with the zoning of the site.

16.12.540 Vested mines--Reclamation plan, financial assurances & inspections required.

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

B. A person who has a vested right to conduct surface mining operations prior to January 1, 1976, shall as a condition of commencing or continuing his operation submit on or before March 31, 1988, to the planning department for approval by the planning director, a secured reclamation plan for vested operations that are to be conducted after January 1, 1976, shall provide securities meeting the requirements of Article IV of this chapter, and shall apply for inspections by the planning director in the same manner and with the same frequency as the owners/operators of non-vested mines. Except as provided in subparagraphs (c), (d), or (f) of Section 2770 of the Public Resources Code, if no such plan has been approved by July 1, 1990, continuation of the surface mining operation shall be prohibited until such time a secured reclamation plan is approved by the county.

C. Any substantial change in a vested surface mining operation subsequent to January 1, 1976, shall require the granting of a permit pursuant to this chapter.

16.12.550 Idle mines--Interim management plans.

A. Within 90 days of a surface mining operation becoming idle, the operator or owner shall submit a proposed Interim Management Plan (IMP). The proposed IMP shall fully comply with the requirements of the Surface Mining & Reclamation Act including but not limited to all permit conditions, and shall provide measures the operator and/or owner, will implement to maintain the site in a stable condition, taking into consideration public health and safety. The proposed IMP shall be submitted on forms provided by the planning director and shall be processed as a minor revision to the reclamation plan under Section 16.12.530. IMPs shall not be considered a project for the purposes of environmental review.

B. No less than 35 days before the planning director takes action on the proposed IMP, he shall forward it to the Department of Conservation for review.

C. Within 60 days of receipt of the proposed IMP, or a longer period mutually agreed upon by the planning director and the operator, the planning director shall review and approve or deny the IMP. If the planning director denies the proposed IMP, the operator may appeal that decision to the board of supervisors.

D. The IMP may remain in effect no more than 5 years, at which time the operator or owner may file to renew the IMP for another period not to exceed 5 years. Said renewal shall be processed as an amendment to the reclamation plan under Section 16.12.520. The planning commission may approve this renewal, require implementation

of a revised IMP, or require the operator to commence reclamation in accordance with the approved reclamation plan.

E. Financial assurances for idle operations shall be maintained as though the operation were active.

16.12.560 Abandoned mines.

A. In the event of a proposed abandonment of a mining operation, the operator or owner shall provide written notification to the planning department of its intention to abandon the site at least thirty days prior to such abandonment. Said notification shall be accompanied by proposed modifications of the applicable reclamation plan. The planning director or his delegate shall inspect the site prior to the date of the proposed abandonment and shall notify the operator and owner of any necessary protective devices or structures required pending reclamation of the site. Such temporary protective devices shall be installed before the site may be abandoned.

B. Upon the receipt of a notice to abandon, the planning department shall review the proposed modifications to the reclamation plan and determine whether or not such modifications will result in adequate reclamation of the site. If additional modifications are required, the planning director shall notify the permittee in writing of the additional modifications needed. Any proposed modifications shall contain a schedule for completion, which shall not exceed the date of completion of reclamation had the mining operation not been abandoned.

C. Within thirty days of receipt of the planning director's determination, the permittee shall file an application for amendment of the original reclamation plan pursuant to Section 16.12.520, and if the existing security is not sufficient, shall post such additional security as may be required to guarantee reclamation in accord with the amended reclamation plan.

D. Failure of an owner or operator to provide notice of abandonment shall not constitute evidence of non-abandonment if no materials have been commercially mined from the site for a year or more and there is no approved interim management plan in place.

16.12.570 Gold/precious metal mines--Cyanide heap leaching.

The county shall prepare, or cause to be prepared, and certify the completion of an environmental impact report for any open pit mining operation subject to this chapter that utilizes a cyanide heap-leaching process to produce gold or other precious metals.

16.12.580 Areas of regional or statewide significance--Protection.

A. If an area is designated by the State Board as an area of regional or statewide significance, it shall be protected from intrusion by incompatible land uses to the greatest extent possible consistent with the County General Plan. Prior to permitting a use that could threaten the potential to extract minerals, the county shall prepare a statement specifying its reasons for permitting the use and distribute same in accordance with Section 16.12.590.

B. Prior to approving a use that would otherwise be incompatible with mineral resource protection, conditions of approval shall be applied to minimize potential conflicts.

16.12.590 Uses threatening significant mineral deposits.

A. If any area is classified by the State Geologist as one containing significant mineral deposits and the county has either designated the area in its general plan as

having minerals to be protected or has not yet done so, then before permitting a use which would threaten such materials, the county shall prepare appropriate environmental documents or, if no such document is prepared, a statement specifying its reasons for permitting the use and forward a copy to the State Geologist and the State Board for review.

B. If a proposed use is subject to the California Environmental Quality Act, the county shall comply with the public review requirements of the Act. Otherwise, it shall give notice of the availability of the statement referred to in subsection (A) above by:

1. Publishing a notice at least once in a newspaper of general circulation in the area affected; and

2. Mailing a notice to all owners of property within one-half mile as shown on the latest equalized assessment roll.

C. The public review period for the statement referred to in subsection (A) above shall be no less than sixty days from the date notice is given and shall include at least one public hearing. The county shall evaluate comments received and respond in writing.

Article VI. Enforcement

16.12.600 Enforcement agent.

The planning director, his designee, or such other person(s) as may hereafter be designated by the board of supervisors shall enforce the provisions of this chapter.

16.12.610 Noncompliance-- Notice.

A. If, after conducting the inspections required by Section 16.12.500 , other inspections as may be undertaken, or upon the receipt of a verified complaint by any interested person, the planning director finds that the mining operation is not in substantial compliance with this chapter, the exploration or surface mining permit issued, or the master mining plan, the operator and owner shall each be sent an initial notice of noncompliance, and given thirty days to substantially comply.

B. The permittee may appeal this determination to the zoning administrator if the appeal is filed in accordance with Chapter 2.88 of the county code within ten working days of receipt of the initial notice of noncompliance. If not appealed, the decision of the zoning administrator shall be final.

C. If at the end of this initial thirty day period compliance has not been achieved, the planning director shall issue a final notice of noncompliance to the mining operator and owner by certified mail or personal service that a violation exists and that the mining permit may, after hearing, be suspended or revoked, and that all mining operations may be ordered to cease.

16.12.620 Noncompliance--Permit suspension or revocation.

A. Upon issuance of a final notice of non-compliance, the planning director shall set the matter for public hearing before the planning commission in accordance with the procedures set out in Section 16.12.370 of this chapter.

B. At the hearing, the planning commission shall determine whether or not the mining operator or owner has substantially complied with this chapter, the permit issued, and the master mining plan. If it is found that the operator or owner is not in substantial compliance, the commission shall determine if the permit should be revoked or,

alternatively, suspended until the operator files an amended master mining plan with the planning director or otherwise complies with the requirements of this chapter and the permit issued. The decision of the planning commission in this matter may be appealed to the board of supervisors.

C. No amended master mining plan prepared pursuant to this section shall be acceptable unless it is so structured that the goals of the original master mining plan will be met within a reasonable period of time.

D. An amended master mining plan prepared pursuant to this section shall not be accepted by the planning director unless it is accompanied by one of the forms of security permitted under Section 16.12.435. This security shall not be released or reduced until the amended master mining plan has been satisfactorily completed, nor may it be limited to the current phase of reclamation, even though the original permit authorized bonding in phases.

E. The remedies described in this section are in addition to any other remedies, civil or criminal.

16.12.630 Noncompliance--Other Penalties.

A. The planning commission may at the conclusion of the hearing required under Section 16.12.620(A) direct the planning director to issue an order by personal service or certified mail to comply or cease all mining activities. The order shall specify the violations, and a reasonable time for compliance.

B. Any operator or owner who violates or fails to comply with an order issued pursuant to subsection (A), fails to provide updated reclamation cost estimates as required under Section 16.12.415, or fails to submit reports in accordance with Section 16.12.710, shall be subject to an administrative penalty of up to five thousand dollars per day from the original date of noncompliance. Notice of such a penalty shall be given personally or by certified mail to the operator and owner. Payment shall be made to the county within thirty days unless the operator or owner petitions for review pursuant to the procedures described in Section 16.12.640 .

C. If noncompliance presents an imminent and substantial danger to public health or the environment, the planning director may seek without a hearing before the planning commission or board of supervisors an order from a court enjoining the operation.

D. The county shall have primary responsibility for enforcement of the provisions of this section.

E. The remedies described in this section are in addition to any other remedies, civil or criminal.

16.12.640 Review of orders.

A. Within thirty days after the planning director issues an order imposing administrative penalties, the operator or owner may petition the board of supervisors for review.

B. If the operator or owner does not petition the board of supervisors for review in a timely manner, the order shall not be reviewable by any court or agency.

C. The board of supervisors shall notify the operator and owner by personal service or certified mail whether it will review the order and the date and time of any review scheduled.

D. The record on review, if any, shall consist of the record before the county and any other relevant evidence that the board of supervisors determines should be considered.

E. The board of supervisors may affirm, modify, or set aside, in whole or in part, any order of the planning director imposing administrative penalties. Any such decision shall be effective on issuance and payment shall be due within thirty days.

F. An operator or owner may obtain review of a decision of the board of supervisors by filing a petition for administrative mandate pursuant to Section 1094.5 of the Code of Civil Procedure within thirty days following the date of the notice of the decision. If the operator or owner does not petition for such a writ in a timely manner, the decision of the board of supervisors shall not be subject to review by any court or agency.

16.12.650 Violation--Public nuisance.

A. The board of supervisors hereby declares that violation of the conditions regulating the operation and reclamation of mined lands within the county is a public nuisance in that compliance with such operating and reclamation conditions is necessary to prevent substantial harm to the environment and to protect the health, safety, and general welfare of the community.

B. Any person violating any term or condition of an approved master mining plan after receipt of a final notice of noncompliance pursuant to Section 16.12.610(C) shall be guilty of conducting a public nuisance, and shall be guilty of a separate offense for each and every day such nuisance is maintained.

16.12.660 Violation--Penalty.

A. Any person who operates, maintains or causes to be operated or maintained any surface mining operation which is not in conformance with the provisions of this chapter, the exploration or surface mining permit issued, or any requirement, term or condition of a master mining plan approved for the site being mined is guilty of a misdemeanor.

B. Each person violating or contributing in any way to the violation of any of the provisions of this chapter shall be deemed guilty of a separate offense for each day during which such violation continues, and such violation shall be deemed to be a misdemeanor and shall be punishable therefor as provided below.

C. Any person convicted of a misdemeanor under the provisions of this section shall be punished by a fine not exceeding one thousand dollars, imprisonment in the county jail not exceeding six months, or by both.

Article VII. Operator Reports

16.12.700 First and subsequent annual mining reports--Submission to state.

The operator of each mine within the unincorporated portion of the county or, if there is none or he fails to perform this task, the property owner shall annually file a mining report with the Department of Conservation on forms provided by the State Board.

Said report shall at a minimum include all the information required under Section 2207(a) of the State Public Resources Code. The initial report for each mining operation along with any applicable filing fees shall be filed within thirty (30) days of approval of the surface mining permit authorizing the subject operation, or before commencement of operations, whichever comes first. Subsequent reports together with applicable fees and a copy of the annual inspection report shall be filed each year thereafter on or before the date established by the Department of Conservation.

16.12.710 First and subsequent annual mining reports--Submission to county.

The operator of each mine within the unincorporated portion of the county or, if there is no operator or he fails to perform this task, the owner of the property shall annually file with the planning department a mining report. Said report shall be filed at the same time as he/she files with the state the mining report required under Section 16.12.700. The report submitted shall be on forms provided by the State Board and shall provide the same information provided the state other than:

A. The total production for each mineral commodity produced during the previous year; and

B. A copy of any approved reclamation plan and any amendments or conditions of approval thereto.

16.12.720 Subsequent annual mining reports—Contents.

Subsequent reports shall include only changes in the information submitted in the first or previous report, as appropriate.

16.12.730 Information public.

All information in reports submitted pursuant to Section 16.12.710 other than that which indicates total mineral production, reserves, or rate of depletion shall be public.

Article VIII. County Notifications to State

16.12.800 Mining permits--Submission to state.

A. By July 1, 1991, the planning director shall submit to the Department of Conservation for each active or idle mine, a copy of the mining permit and any conditions or amendments thereto.

B. By July 1st of each year, the planning director shall submit to the Department of Conservation, for each active or idle mine, a copy of the mining permit or reclamation plan amendment(s), as applicable, approved during the prior year or a statement that there were none.

SECTION 3. This ordinance shall take effect thirty (30) days after its passage.

SECTION 4. A summary of this ordinance shall be published at least once before the expiration of fifteen (15) days after its passage in the Napa Valley Register, a newspaper of general circulation, printed and published in the County of Napa, together with names of the members voting for and against same.

The foregoing ordinance was introduced and read at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the 15th day of December, 1998, and passed at a regular meeting of the Board of Supervisors of the County of Napa, State of

California, held on the 15 th day of December, 1998 by the following vote:

AYES: SUPERVISORS WINTER, VARRELMAN, RIPPEY,
LUCE and FERRIOLE

NOES: SUPERVISORS NONE

ABSTAIN: SUPERVISORS NONE

ABSENT: SUPERVISORS NONE

Vince Ferriole
VINCE FERRIOLE, Chairman
 Board of Supervisors

ATTEST:

MARY JEAN MCLAUGHLIN
Clerk of the Board

By: *Teri Lison, Deputy*

APPROVED AS TO FORM
 Office of County Counsel
 By: *Frank Tolled, Deputy*
 Date: *December 10, 1998*

APPROVED DEC 15 1998
 BOARD OF SUPERVISORS
 COUNTY OF NAPA

MARY JEAN MCLAUGHLIN
CLERK OF THE BOARD

BY *M. Price* Deputy

