

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Amending the )  
Columbia County Surface Mining )  
Land Reclamation Ordinance )  
of June 28, 1972 )  
\_\_\_\_\_ )

ORDINANCE NO. 90-11

The Board of County Commissioners for Columbia County, Oregon ordains as follows:

SECTION 1. TITLE.

This ordinance shall be known as Ordinance No. 90-11. Exhibit "A", which is attached hereto and incorporated herein by this reference, may also be referred to as the Columbia County Surface Mining Ordinance.

SECTION 2. AUTHORITY.

This ordinance is adopted pursuant to ORS 203.035, ORS 517.780 and Section 8.070 of the Columbia County Surface Mining Land Reclamation Ordinance of June 28, 1972.

SECTION 3. PURPOSE.

The purpose of this ordinance is to amend the Columbia County Surface Mining Land Reclamation Ordinance of June 28, 1972 in order to provide for more effective regulation of surface mining and reclamation of surface-mined lands in Columbia County.

SECTION 4. AMENDMENT.

The Columbia County Surface Mining Land Reclamation Ordinance of June 28, 1972 is amended to read as provided in the attached Exhibit "A" which is incorporated herein by this reference.

SECTION 5. SAVINGS CLAUSE.

It is the intent of the Board to continue and improve the regulation of surface mining and reclamation of surface-mined lands in the County without interruption by means of this ordinance. Existing grandfathered rights shall continue unaffected by this ordinance except to the extent specifically stated herein. Existing surface mining permits expire by their own terms when this ordinance goes into effect. Those holding existing permits under the June 28, 1972 ordinance shall be required to re-apply for permits under the provisions of this ordinance.

SECTION 6. SEVERABILITY.

The provisions of this ordinance, including Exhibit "A", are severable. If any section, sentence, clause or phrase of this ordinance is determined to be invalid, illegal or unconstitutional, by any court of competent jurisdiction, such section, sentence, clause or phrase shall be considered a separate, distinct and independent provision and the decision shall not affect the validity of the remaining portions hereof. In addition, if any section, sentence, clause or phrase of Exhibit "A", or the whole thereof, is declared invalid, illegal or unconstitutional, the original or relevant section, sentence, clause or phrase of the Columbia County Surface Mining Land Reclamation Ordinance of 1972, or the whole thereof, shall be reinstated as necessary to continue to effectively regulate surface mining in Columbia County.

SECTION 7. EMERGENCY CLAUSE.

This ordinance being immediately necessary to maintain the public health, safety and welfare of the citizens of Columbia County, an emergency is declared to exist and this ordinance shall take effect July 1, 1990.

ADOPTED this 20th day of June, 1990.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By:

John G. Peterson  
Chairman

By:

Wayne Dillard  
Commissioner

Attest:

By:

Chris Mayba  
Recording Secretary

By:

Michael J. Jones  
Commissioner

First Reading: 06-06-90  
Second Reading: 06-20-90  
Effective Date: 07-01-90

EXHIBIT "A"

C O L U M B I A   C O U N T Y

S U R F A C E   M I N I N G

O R D I N A N C E

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ARTICLE I. INTRODUCTORY PROVISIONS.

Section 1.1. Scope of Ordinance.

The provisions of this ordinance are in addition to the Columbia County Zoning Ordinance and any other laws, ordinances, rules and regulations that apply to the use of, or other development of, land. This Ordinance shall not apply within the limits of any incorporated city in Columbia County unless the city consents thereto.

Section 1.2. Findings.

The Board of Commissioners finds that:

- (1) Surface mining is a basic and essential activity making an important contribution to the economic well-being of the county, state and nation.
- (2) Surface mining, by its nature, disturbs the surface of the earth and produces waste materials. The character of many types of surface mining operations precludes complete restoration of the affected lands to their original condition.
- (3) Nevertheless, proper regulation of surface mining and the reclamation of surface-mined lands is necessary to prevent undesirable land, air and water conditions that would be detrimental to the general health, safety, welfare and property rights of the landowners and citizens of this county.
- (4) Surface mining takes place in diverse areas where the geologic, topographic, climatic, biological and social conditions are significantly different and the regulation of surface mining and reclamation of surface-mined lands, and specifications therefor, must vary accordingly.

- (5) The regulation of surface mining and the reclamation of surface-mined lands as provided for by this ordinance will allow surface mining to continue in Columbia County, but only in such a manner which respects lawful uses on adjacent lands and which provides for the protection and subsequent beneficial use of surface mined lands.
- (6) Local regulation of surface mining assures a more comprehensive, responsive and active involvement of government in the regulation of surface mining and the reclamation of surface-mined lands.

Section 1.3. Purpose.

The purposes of this ordinance are:

- (1) To provide for the reasonable protection of lawful uses on adjacent lands and to provide that the usefulness, productivity and scenic values of all land, air and water resources affected by surface mining operations within this county shall receive the greatest practical degree of protection and reclamation necessary for the subsequent beneficial use of such lands.
- (2) To provide for cooperation between private and governmental entities, and to provide for the equitable balancing of private and public interests, in carrying out the purposes of this ordinance.
- (3) To provide for local regulation of surface mining and the reclamation of surface-mined lands in a manner that is consistent with, but more comprehensive and responsive than, the procedures provided by state law.
- (4) To provide the procedures for obtaining an operating permit or exemption certificate for surface mining on lands in this county.

Section 1.4. Definitions.

- (1) "Abandonment" means any cessation of surface mining activity, prior to "completion" as defined by subsection (10) below, whether at an approved surface mining site or not, that was not set forth in an approved reclamation plan, permit or certificate application or other similar written notice, which extends:
  - (a) For more than 24 consecutive calendar months; or
  - (b) For a period of 24, or less than 24, consecutive calendar months, if there is substantial evidence to believe that such cessation of surface mining activity will extend for more than 24 consecutive calendar months.
- (2) "Access road" means a road used to enable equipment, supplies and vehicles to reach a surface mining site.
- (3) "Access road excavation site" means an area used for the excavation or removal of minerals from which substantially all the material excavated or removed is used, or exchanged for similar material to be used, for construction, reconstruction, or maintenance of an access road.
- (4) "Administrator" means "Surface Mining Administrator" as defined in subsection (31) below.
- (5) "Affected" means the condition of land which has been excavated or disturbed, or the condition of land on which any other surface mining activity has occurred, including the condition of land reserved as a setback area.
- (6) "Amended ordinance" means the Columbia County Surface Mining Land Reclamation Ordinance, which was enacted on June 28, 1972, as amended by Ordinance No. 90-11.



- (7) "Board" means the Board of County Commissioners for Columbia County, Oregon.
- (8) "Closure period" means a period of time when it is unlawful for a landowner or operator to engage in surface mining in this county at a particular surface mining site, except as may be specifically allowed by the Board.
- (9) "Committee" means "Surface Mining Advisory Committee" as defined in subsection (32) below.
- (10) "Completion" means the final termination of surface mining activity at a surface mining site, including the reclamation of any affected land, in accordance with an approved reclamation plan and operating permit.
- (11) "Demonstrated need" means a finding supported by substantial evidence in the record as a whole before the Board, that there is a need for the application of some or all of the reclamation plan, financial security and/or operating requirements of this amended ordinance to an existing surface mine with an approved reclamation permit under the original ordinance in order to achieve the purposes of this amended ordinance.
- (12) "Expansion" means lateral expansion of surface mining activity onto land surfaces not previously affected by surface mining.
- (13) "Fiscal year" means a full twelve (12) month period beginning on July 1 of one (1) calendar year and ending on June 30 of the next calendar year.
- (14) "Landowner" means a person who has legal title to, a contract to purchase, or a lease on, a surface mining site or proposed sur-

face mining site, or legal title to, a contract to purchase, or a lease on, the minerals which have been, are being, or are proposed to be, surface mined.

- (15) "Limited exemption" means an exemption for surface mining which operates under a Limited Exemption Certificate and, although not eligible for a "Total Exemption Certificate", is exempted from the requirements of this ordinance except as provided by Article IV and IX of this ordinance.
- (16) "Minerals" means soil, coal, clay, stone, sand, gravel, metallic ore and any other solid material or substance excavated, extracted or removed, or proposed to be excavated, extracted or removed, for commercial, industrial or construction use from natural deposits located in this county.
- (17) "Operating permit" or "permit" means a permit which, unless otherwise provided by this ordinance, is required before any landowner or operator may engage in surface mining.
- (18) "Operator" means any individual (including employers, employees, agents, permittees, contractors, subcontractors, lessors and lessees), public or private corporation, political subdivision, agency, board or department of this state, any municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever that is or has engaged in, or proposes or attempts to engage in, surface mining.
- (19) "Original ordinance" means the Columbia County Surface Mining Land Reclamation Ordinance which was enacted on June 28, 1972.
- (20) "Other on-site construction" means the on-site excavation or removal, filling or moving of minerals within construction sites

such as road rights-of-way, dams and reservoirs and/or real estate development sites. Material bought off-site for an on-site construction fill shall not be considered to be surface mining refuse or a spoil bank.

- (21) "Overburden" means the soil, rock and similar materials that lie above natural deposits of minerals.
- (22) "Permit" means "operating permit" as defined by subsection (17) above.
- (23) "Processing" includes, but is not limited to, the crushing, washing, milling and screening of minerals and any batching and blending of minerals into asphaltic and portland cement concrete products.
- (24) "Reclamation" means the employment before, during and after surface mining of procedures designed to minimize as much as practicable the disturbance from surface mining, and to provide for the rehabilitation of any land surfaces affected by surface mining, through the use of plant cover and soil stability techniques, through the use of measures to protect surface and subsurface water resources for domestic, agricultural and other uses, and through the use of other measures appropriate to the subsequent beneficial use of such surface mined lands.
- (25) "Reclamation plan" or "plan" means a written proposal submitted to the Administrator, as provided by this ordinance, for the reclamation of any land surfaces affected by, or proposed to be affected by, surface mining including, but not limited to, the following information:

- (a) Proposed measures to be undertaken by the landowner or operator in protecting adjacent lands.
  - (b) Proposed measures for the rehabilitation of the affected lands and the procedures to be applied.
  - (c) The procedures to be applied to control the discharge of contaminants and the disposal of surface mining refuse.
  - (d) The procedures to be applied to rehabilitate affected stream channels and stream banks to a condition which minimizes erosion, sedimentation and other types of pollution.
  - (e) A map in the form required by ORS 517.790(1)(e) and such other maps and supporting documents as may be requested by the Administrator.
  - (f) A proposed time schedule for the completion of reclamation.
- (26) "Spoil bank" means a deposit of excavated overburden or surface mining refuse.
- (27) "Surface impacts of underground mining" include, but are not limited to, the placement of any waste materials produced by underground mining upon the surface (such as waste dumps, mill tailings and washing plant fines) and any surface subsidence related to underground mining.
- (28) "Surface mine" means land from which minerals were, are, or are proposed to be, mined by the removal of overburden, if any, and the excavation or removal of minerals exposed thereby. "Surface mine" does not include setback areas or other lands which may be affected by surface mining activity, but on which actual excavation or removal of minerals has not occurred, is not occurring, and is not intended to occur.

(29) "Surface mined prior to July 1, 1972" means the condition of land affected by surface mining before July 1, 1972 which has not been reclaimed or abandoned.

(30) (a) (1) "Surface mining" means the process of, or any part of the process of, mining minerals by the removal of overburden, if any, and the extraction or removal of minerals thereby exposed by any method by which more than 2,500 cubic yards or minerals are excavated or otherwise disturbed in this county by any landowner or operator, or by businesses, firms, corporations, partners, employees, agents or relatives under the control of such landowner or operator, or by which more than one acre of land in this county is affected by any landowner or operator, or by businesses, firms, corporations, partners, employees, agents or relatives under the control of such landowner or operator, within one (1) fiscal year regardless of whether the activity occurs on a single lot or parcel or on a number of, or scattered, lots or parcels.

(2) "Surface mining" includes any open-pit mining operations and auger mining operations, and also includes processing operations, any surface impacts of underground mining, any production of surface mining refuse, the construction of adjacent or off-site borrow pits (except those constructed for the primary purpose of use as access roads), any reclamation of surface-mined lands, and any prospecting and exploration

activities, any of which come within the quantity or area specifications set forth in subparagraph (a)(1) above.

(3) "Surface mining" also includes prospecting and exploration activities when such activities affect more than one acre of land for each eight contiguous acres of land prospected or explored.

(4) "Surface mining" includes all commercial sales of minerals regardless of whether they come within the quantity and area specifications set forth in subparagraph (a)(1) above.

(b) (1) "Surface mining" does not include the excavation or removal of minerals by a landowner or operator for the primary purpose of construction, reconstruction or maintenance of an access road, excavation or grading operations conducted in the process of farming or cemetery operations, on-site road construction, other on-site construction, or excavations for personal use only, which do not exceed the quantity or area specifications set forth in subparagraph (a)(1) above.

(2) "Surface mining" also does not include nonsurface impacts of underground mines or the excavation or removal of minerals from the beds or banks of any waters of this county pursuant to permits issued under ORS 541.605 to 541.625 and 541.627 to 541.660.

(31) "Surface Mining Administrator" or "Administrator" means the person appointed by the Board to administer this ordinance.

- (32) "Surface Mining Advisory Committee" or "Committee" means the group of persons appointed by the Board to advise the Administrator and the Board.
- (33) "Surface mining refuse" means all waste materials, including minerals, liquids, vegetation and other materials resulting from or displaced by surface mining. "Surface mining refuse" also includes any waste materials produced off-site and deposited on the surface mining site.
- (34) "Surface mining site" means land for which an operating permit or Limited Exemption Certificate is required by this ordinance, whether or not a permit or certificate has been applied for, and whether or not it has been received. The surface mining site shall include the surface mine itself and all lands affected or proposed to be affected by the existing or proposed surface mining, including setback areas, whether on a single lot or parcel or on a number of, or scattered, lots or parcels. The surface mining site may be redefined as mining progresses.
- (35) "Total exemption" means an exemption for certain excavation or grading activities which are eligible for a Total Exemption Certificate and are exempted from the requirements of this ordinance except as provided by Article III and IX of this ordinance.
- (36) "Underground mining" means all human-made excavations below the surface of the ground through shafts or adits for the purpose of exploring for, developing or producing valuable minerals.

ARTICLE II. ADMINISTRATION

Section 2.1. Surface Mining Administrator.

The Surface Mining Administrator shall be appointed by the Board of County Commissioners and shall serve at its pleasure. The Administrator shall be responsible for the administration of all provisions of this ordinance. In addition, the Administrator shall comply with any rules adopted by the Board and orders issued by the Board relating to the administration of this ordinance. The Board may also appoint an assistant or assistants to work under the direction and control of the Administrator and who may act in the name of the Administrator in carrying out the provisions of this ordinance. The Administrator's duties include, but are not limited to the following:

- (1) Providing staff assistance to the Surface Mining Advisory Committee, attending all meetings of the Committee and acting as a liaison between the Committee and the Board.
- (2) Causing proposed surface mining sites to be inspected and reporting the findings from the inspection to the Committee and Board.
- (3) Causing existing surface mining sites to be inspected at least once each fiscal year and reporting to the Committee and Board whether they are in compliance with this ordinance.
- (4) Investigating written requests for enforcement action which may be received regarding activities alleged to be in violation of this ordinance.
- (5) Determining whether certain excavation or grading activities are eligible for a Total Exemption Certificate. The Administrator shall attempt to make a determination within twenty-eight (28) calendar days of receipt of a completed certificate application,



or within twenty-eight (28) calendar days of the initial investigation or report of the activity. Written notice of the Administrator's determination shall be mailed by first class mail to the affected landowner or operator. Such determination shall become final on the mailing date of the notice. A certificate of mailing shall be prepared, and a copy shall be attached to the notice, certifying the mailing date of the notice.

- (6) After considering the advice of the Committee, if any, making a written recommendation to the Board as to the following decisions:
  - (a) Whether to issue, deny, renew or revoke operating permits and/or Limited Exemption Certificates;
  - (b) Whether to approve, disapprove, or allow the amendment of, reclamation plans and the amount or release of financial security;
  - (c) Whether to approve or disapprove variances to this ordinance;
  - (d) Whether to issue closure orders or declarations of abandonment;
  - (e) Whether to take enforcement action based on written requests for enforcement action pursuant to Section 2.6 below which may be received regarding activities alleged to be in violation of this ordinance; and
  - (f) Findings or demonstrated need under Sections 6.2, 7.7 or 8.10 of this amended ordinance; and
  - (g) Regarding the adoption of rules, issuance of directives and adoption of amendments to this ordinance.

In the case of paragraphs (a), (b) and (c) above, the Administra-

tor shall attempt to make the recommendation within twenty-eight (28) calendar days of receipt of a completed application or approval request. In the case of paragraphs (d) and (e) above, the Administrator shall make the recommendation as soon as is reasonably practicable.

- (7) Performing other duties and taking enforcement action as provided by this ordinance or as directed by the Board.

Section 2.2. Surface Mining Advisory Committee.

- (1) The Surface Mining Advisory Committee is created and the Surface Mining Land Reclamation Review Committee is abolished. The Committee shall consist of five members who shall be selected by the Board of County Commissioners and shall serve for terms of three (3) years apiece. Two (2) members of the Committee should be chosen from the surface mining industry. On the effective date of this amended ordinance, or as soon thereafter as is reasonably feasible, the Board shall select the members of the Committee. Until the Board does so, members of the Surface Mining Land Reclamation Review Committee appointed under the provisions of the original ordinance shall be authorized to exercise the functions of the Committee. The initial terms of the members of the Committee appointed under this amended ordinance shall be staggered in length so that continuity on the Committee is assured.
- (2) The Committee shall meet monthly and shall act as an advisory body to the Administrator and the Board in carrying out the provisions of this ordinance. The Committee shall comply with all State of Oregon public meetings, public notice and public records laws in its deliberations, proceedings and decisions. The Committee may,

but is not required to, meet with landowners and/or operators before advising the Administrator and the Board. In particular, the Committee shall advise the Administrator and the Board as to the following decisions:

- (a) Whether to issue, deny, renew or revoke operating permits and/or Limited Exemption Certificates;
- (b) Whether to approve, disapprove, or allow the amendment of, reclamation plans and the amount of release of financial security;
- (c) Whether to approve or disapprove variances to this ordinance;
- (d) Whether to issue closure orders or declarations of abandonment;
- (e) Whether to take enforcement action based on written requests for enforcement action pursuant to Section 2.6 below which may be received regarding activities alleged to be in violation of this ordinance;
- (f) Findings of demonstrated need under Sections 6.2, 7.7, or 8.10 of this amended ordinance;
- (g) Regarding the adoption of rules, issuance of directives and adoption of amendments to this ordinance; and
- (h) Regarding the technical aspects of surface mining.

Section 2.3. Board of County Commissioners.

- (1) After considering the recommendations of the Administrator and advice of the Committee, if any, the Board of County Commissioners shall make the following decisions:
  - (a) Whether to issue, deny, renew or revoke operating permits and/or Limited Exemption Certificates;

- (b) Whether to approve, disapprove, or allow the amendment of, reclamation plans and the amount or release of financial security;
  - (c) After a hearing as provided by Section 2.5 of this ordinance, whether to approve or disapprove variances to this ordinance;
  - (d) Whether to issue closure orders or declarations of abandonment;
  - (e) Whether to take enforcement action based on written requests for enforcement action pursuant to Section 2.6 below which may be received regarding activities alleged to be in violation of this ordinance;
  - (f) Regarding the adoption of rules, issuance of directives and adoption of amendments to this ordinance; and
  - (g) Regarding the appointment of the Administrator, any assistant or assistants to the Administrator, and of Committee members.
  - (h) Findings of demonstrated need under Sections 6.2, 7.7 or 8.10 of this amended ordinance.
- (2) In the case of paragraphs (a), (b) and (c) above, the Board shall attempt to make the decision within twenty-eight (28) calendar days of receipt of the written recommendation of the Administrator. In the case of paragraphs (d) and (e) above, the Board shall make the decision as soon as is reasonably practicable. Written notice of the decisions under paragraphs (a), (b) and (d) above shall be mailed by first class mail to the affected landowner or operator. Written notice of the decision under paragraph (c) above shall be mailed by first class mail to the affected landowner or operator and to any person who provides oral or written testimony at the

hearing provided by Section 2.5 of its ordinance. Written notice of the decision under paragraph (e) above shall be mailed by first class mail to the person or persons who filed the written request for enforcement action. Unless otherwise provided by this ordinance, or by the decision itself, such decisions shall become final on the mailing date of the notices. A certificate of mailing shall be prepared, and copies shall be attached to such notices, certifying the mailing date of the notices.

- (3) All decisions of the Board shall be made in public meetings. The Board may, but is not required to, give individual notice to or hold a hearing with landowners or operators, or persons requesting enforcement action, before making the decisions provided for by subparagraphs (1)(a), (b), (d) and (e) above.

Section 2.4. Appeal Hearings.

- (1) Appeal hearings may be requested of the Board by adversely affected landowners or operators to review the following decisions:
  - (a) Determinations by the Administrator under Section 2.1(5) above whether certain excavation or grading activities are eligible for a Total Exemption Certificate;
  - (b) Decisions by the Board whether to issue, deny, renew or revoke operating permits and/or Limited Exemption Certificates;
  - (c) Decisions by the Board whether to approve, disapprove or allow the amendment of, reclamation plans and the amount or release of financial security;
  - (d) Decisions by the Board whether to issue closure orders or declarations of abandonment;

- (e) Findings of demonstrated need under Sections 6.2, 7.7 or 8.10 of this amended ordinance; and
  - (f) Any other decisions for which opportunities for appeal hearings are expressly granted by this ordinance.
- (2) Appeal hearings may be requested of the Board by adversely affected persons who have filed written requests for enforcement action pursuant to Section 2.6 below to review decisions by the Board not to take enforcement action regarding activities alleged to be in violation of this ordinance.
- (3) A request for an appeal hearing must be in writing and must be received by the Board within fourteen (14) calendar days after the date the notice of the determination or decision was mailed to the adversely affected landowner or operator, or such other person requesting enforcement action pursuant to Section 2.6 below. If a request for an appeal hearing is received by the Board in a timely and proper manner, an appeal hearing shall be scheduled as soon as is reasonably practicable. Written notice of the appeal hearing shall be mailed by first class mail to the person or persons who requested the appeal hearing at least fourteen (14) days prior to the hearing date. A certificate of mailing shall be prepared, and a copy shall be attached to the notice certifying the mailing date of the notice. The Board may, but is not required to, give any other notice of the appeal hearing. The Board may, but is not required to, change the date of the appeal hearing upon the request of the person or persons requesting the

hearing, or on its own motion. Unless otherwise provided by the Board, a request for an appeal hearing does not act as a stay of the decision appealed from. At the hearing the appellant shall have the burden of proof, of persuasion, and of going forward with the evidence necessary to reverse the decision appealed from. The Board shall consider the evidence and arguments presented, and any other evidence or recommendations presented by the Administrator and Committee, and may, but is not required to, consider evidence or testimony offered by other persons, and shall issue a written decision on the matter. The Board will attempt to make its decision within twenty-eight (28) calendar days of the date the request for appeal hearing is received by the Board. Written notice of the Board's decision on appeal shall be mailed by first class mail to the person or persons who requested the appeal hearing. Unless otherwise provided by this ordinance, or by the decision itself, such decision shall become final on the mailing date of such notice. A certificate of mailing shall be prepared, and a copy shall be attached to the notice, certifying the mailing date of the notice.

- (4) Any adversely affected person who requested an appeal hearing in a timely and proper manner as provided above and is dissatisfied with the Board's decision on appeal may petition for review of the decision as provided by ORS 34.010 to 34.100. The appeal hearing provided for by this section must be properly requested and completed before a petition for review is sought under this subsection.

### Section 2.5 Variances.

Upon good cause shown by a landowner or operator, after considering the recommendations of the Administrator and the Committee, and after holding a hearing on the request, the Board may in its sole discretion, grant a variance to any substantive provision of this ordinance that is not otherwise inconsistent with the purposes of this ordinance. Written notice of the variance hearing shall be mailed by first class mail to the property owners, and residents if known, of land located within 500 feet of the subject surface mining site at least fourteen (14) days prior to the hearing date. A certificate of mailing shall be prepared, and copies attached to the notices, certifying the mailing date of the notice. Notice of the hearing shall also be published in at least one newspaper of general circulation in the area of the surface mining site at least seven (7) days prior to the hearing date. A variance shall be granted only when substantial evidence is presented that all of the following conditions and facts exist:

- (1) The granting of the variance will not be detrimental to the public health, safety or welfare;
- (2) The proposed variance will not unreasonably interfere or impair existing uses on adjacent lands;
- (3) Approval of the variance will allow the property to be used only for purposes authorized by the Surface Mining Ordinance;
- (4) Strict compliance with the Surface Mining Ordinance would create an unnecessary hardship; and
- (5) The granting of the variance will not adversely affect or prevent reclamation of the surface mining site nor violate any other provision of the Surface Mining Ordinance, the Columbia County Zoning Ordinance or any other law, rule or ordinance.



The Board may impose whatever reasonable requirements it feels will fulfill the intent of this ordinance. The burden of justifying a variance shall be on the landowner or operator. Any person entitled to notice of the Board's decision after the variance hearing, as provided by Section 2.3(2) above, who is dissatisfied with the Board's decision may petition for review of the decision as provided by ORS 34.010 to 34.100.

Section 2.6. Requests for Enforcement Action.

- (1) Any person having reasonable cause to believe a landowner or operator is violating any provision of this ordinance and who desires the Administrator or Board to take enforcement action against the landowner or operator may file a request for enforcement action with the Administrator. The complaint shall be in writing, signed by the complainant and shall list the facts which cause the complainant to believe the landowner or operator is in violation of this ordinance. Thereafter, the request shall be handled as provided in Sections 2.1 through 2.4 above. The burden for establishing the need for enforcement action at all stages set forth in Section 2.1 through 2.4 above shall be on the person filing the request.
- (2) Nothing in this ordinance shall require a written request for enforcement action to be filed before the Board or Administrator may take enforcement action.
- (3) Nothing in this ordinance shall require the Board or Administrator to take enforcement action unless a written request for enforcement action is filed and substantiated as provided by Sections 2.1 through 2.4 and subsection (1) above.
- (4) Notwithstanding the procedure set forth above for requesting

enforcement action, any person whose interest in real property in the county is or may be, or who is otherwise, adversely affected by activities alleged to be in violation of this ordinance may institute private injunctive, mandamus, nuisance abatement, or other appropriate proceedings against the landowner or operator involved, to prevent, temporarily or permanently enjoin, abate or remove the activities alleged to be in violation of this ordinance.

Section 2.7. Transition Procedures.

Operating permits which were issued under the provisions of the original ordinance shall be treated as follows:

- (1) Those permits which have expiration dates after July 1, 1990 shall expire on the dates provided therein. After the expiration dates of those permits, no surface mining shall continue on the lands covered by the permits except pursuant to Articles III, IV or V of this amended ordinance, whichever applies. New operating permits or Limited Exemption Certificates issued to such landowners or operators shall expire on June 20, 1991. The fee for such new permits or certificates shall be prorated by the number of full calendar months the permits will be in effect.
- (2) Those permits which have an expiration date of "June 30, 1990 or until the new ordinance becomes effective" shall expire on the date this amended ordinance becomes effective. After the expiration dates of those permits, no surface mining shall continue on the lands covered by the permits, except pursuant to Articles III, IV or V of this amended ordinance, whichever applies. New operating permits or Limited Exemption Certificates issued to such landowners or operators shall expire on June 30, 1991. The fee for such new

permits or certificates shall be prorated by the number of full calendar months the permits will be in effect.

- (3) For the purpose of transitioning into this amended ordinance, those surface mining operations operating pursuant to a valid current permit on the effective date of this ordinance which have traditionally been assumed to be "grandfathered" operations under the provisions of the original ordinance shall be entitled to apply for and receive a Limited Exemption Certificate for the remainder of fiscal year 1990-91 upon payment of the required fee without submitting additional evidence of such exemption. However, before such certificate may be renewed for fiscal year 1991-92, the requirements in Article IV of this amended ordinance must be complied with.
- (4) For the purpose of transitioning into this amended ordinance, those surface mining operations operating pursuant to a valid current permit on the effective date of this ordinance which are not entitled to a Limited Exemption Certificate under Subsection (3) above, shall be entitled to apply for and receive an operating permit for the remainder of fiscal year 1990-91 upon payment of the required fee without submitting a new application under Section 5.3 of this ordinance. However, before such permit can be renewed for fiscal year 1991-92, the requirements of Article V of this amended ordinance must be complied with.
- (5) Nothing in subsections (4) and (5) entitles a landowner or operator to be issued a Limited Exemption Certificate or operating permit under this amended ordinance for lands which the Board determines are not grandfathered, or currently covered under a valid permit, or for operations which are not in compliance with this amended ordinance or the original ordinance on the effective date of this ordinance.

ARTICLE III. TOTAL EXEMPTIONS.

Section 3.1. Exempt Activities.

The following activities are exempt from Articles IV, V, VI, VII and VIII of this amended ordinance and do not require payment of fees, posting of bonds or submittal of reclamation plans:

- (1) Excavations or disturbances for personal use of no more than 2,500 cubic yards which affect no more than one acre of land.

Excavations or disturbances for personal use of no more than 2,500 cubic yards total material which affect no more than one acre of land during any fiscal year are exempt from this ordinance. A person who wishes to remain exempt after having excavated or disturbed 2,500 cubic yards of material or having affected one acre of land during a fiscal year must not engage in any further excavations or disturbances on the lot(s) or parcel(s) involved or contiguous lots or parcels, until the fiscal year has elapsed. No landowner or operator may excavate or disturb for personal use more than 2,500 cubic yards of material, or affect more than one acre of land within any fiscal year without obtaining an operating permit or Limited Exemption Certificate.

- (2) Prospecting or mineral exploration. Prospecting or mineral exploration activities which do not excavate or otherwise disturb more than 2,500 cubic yards of material and do not affect more than one acre of land at any one area during any fiscal year are exempt unless the cumulative area affected by one operation exceeds:

- (a) One acre within any 8 contiguous acres explored; or  
(b) A total of five acres. Exploration activities include, but are not limited to drill sites, trenches, and pilot plant sites.

- (3) Construction, reconstruction or maintenance of access roads. To maintain a total exemption, no more than 2,500 cubic yards of material from an access road excavation site may be used for any other purpose during any fiscal year.
- (4) Farming and cemetery operations. Excavation or grading activities conducted in the process of farming or cemetery operations are exempt. To maintain this exemption, no more than 2,500 cubic yards of material may be used for any other purpose during any fiscal year.
- (5) On-site road construction. Excavation or grading activities conducted within a road right-of-way or other easement for the primary purpose of road construction, reconstruction, or maintenance are exempt. To maintain this exemption, no more than 2,500 cubic yards of material may be used for any other purpose during any fiscal year.
- (6) On-site construction operations. If more than 2,500 cubic yards of material are to be sold from any construction site, the Administrator may request documentation from the person involved establishing that removal of the material is an essential and integral part of the construction work. This documentation shall include evidence that the construction project has been approved by the appropriate authorities and a construction time schedule has been filed. If removal of the material is not an essential and integral part of the construction project an operating permit or Limited Exemption Certificate must be obtained before any removal of material.

- (7) Surface impacts of underground mining which were created prior to October 1, 1983.
- (8) Removal of minerals from the beds or banks of waters of this county.

Excavations of materials from the beds or banks of any waters of this county are exempt from this ordinance when conducted pursuant to permits issued under ORS 196.670 to 196.695 and 196.705 to 196.735.

### Section 3.2. Application.

An application for a Total Exemption Certificate may be made to the Administrator using the established form. The Administrator may require the person applying for this exemption to provide data establishing the validity of the exemption. The data required may include, but is not limited to, the name of the person conducting the activity, the location of the activity, the size of the site, the date of commencement of the activity, types and amounts of minerals excavated or disturbed or proposed to be excavated or disturbed, and a summary of similar activities during the present and previous fiscal years. The Administrator shall review each such application and make a determination based on the evidence and documentation provided, and an on-site inspection if necessary. In determining whether an activity qualifies for a total exemption, the Administrator shall consider the cubic yardage of material excavated, disturbed or sold on all adjacent lots or parcels by the person or by businesses, firms, corporations, partners, employees, agents, or relatives under the control of such person. A Total

Exemption Certificate shall remain valid as long as the activity remains in compliance with this Article. No renewal application is required. If the Administrator denies the application, the applicant must obtain an operating permit or Limited Exemption Certificate before commencing or continuing the activities if an application for a Total Exemption Certificate is denied by the Administrator, the applicant may also request an appeal hearing before the Board pursuant to Section 2.4 of this ordinance.

Section 3.3 Other Statutes, Rules, Regulations and Ordinances.

Nothing in this Article is intended to exempt an activity from the requirements of any other statute, administrative rule or regulation, or County ordinance which would otherwise apply.

ARTICLE IV. LIMITED EXEMPTIONS.

Section 4.1. Exempt Lands.

Except as otherwise provided in this ordinance, nothing in this ordinance requires the reclamation of lands within the surfaces and contours of surface mines in existence on July 1, 1972, or to vertical extensions of those surfaces and contours. The surfaces and contours of such exempt surface mines shall not include those areas over which the landowner or operator merely leveled terrain or cleared vegetative cover. The surfaces and contours of such exempt surface mines shall not include those areas for which there may have been an intent, a goal or proposal to surface mine on July 1, 1972, but on which no actual surface mining had taken place on that date, unless it is established as provided in Section 4.3 below that the landowner or operator had made such an investment in time, money and/or labor as to establish a vested right to surface mine such property.

Section 4.2. Certificate Fee.

Notwithstanding the provisions of Section 4.1, and except as may be otherwise provided in this ordinance, any landowner or operator conducting surface mining at a surface mine exempted by Section 4.1 shall pay the certificate fee provided in Section 5.2. and acquire the certificate required below before continuing such surface mining operation.

Section 4.3. Certificate Required.

Those surface mines which qualify according to the provisions of Section 4.1, which have not been abandoned, and for which a Limited Exemption Certificate is obtained from the Board will be granted limited exempt status. Such limited exempt status shall also extend to the entire surface mining site, as it existed on July 1, 1972, associated with any such exempt surface mines. Surface mining is prohibited at such surface mining sites unless the



landowner or operator has a valid, current Limited Exemption Certificate. Surface mining is prohibited at such surface mining sites outside the surfaces and contours of the surface mine granted limited exempt status, or vertical extensions of such surfaces and contours, unless the landowner or operator has a valid current operating permit for such surface mining. A separate certificate is required for each separate surface mining site. Landowners and operators of surface mines and surface mining sites granted limited exempt status must pay the annual certificate fee, but are exempt from the reclamation, financial security and operating requirements of this ordinance until the surface mining is abandoned or completed at such surface mining site. The limited exemption applies only to surface mining and surface mining activity at a scale and intensity equivalent to that in existence on July 1, 1972. Surface mining and surface mining activity at a scale and intensity substantially disproportionate, as determined by the Board, to that in existence, or vested proposed mining and surface mining activity, on July 1, 1972 is not allowed by this article and an operating permit is required for such surface mining and surface mining activity.

A landowner or operator applying for a Limited Exemption Certificate must submit evidence in the form of copies of aerial photographs, and/or any other information necessary to establish the exemption, and the operational and geographical extent of the exemption, and must pay the fees established under Section 5.2 of this ordinance. Except for Section 5.2, surface mines entitled to limited exempt status are exempt from Articles V, VI, VII and VIII of this ordinance. Except for Section 5.2, surface mining sites entitled to limited exempt status are exempt from Articles V, VI, VII and VIII. However, nothing in this Article is intended to exempt the surface

mining activity involved from the requirements of any other statute, administrative rule or regulation, or County ordinance which would otherwise apply.

Section 4.4 Application and Review.

An application for a Limited Exemption Certificate shall be made to the Administrator using the established form. The application shall require a statement from the landowner or operator of the types and amounts of minerals expected to be excavated, disturbed, sold and/or removed from the surface mining site during the present and subsequent fiscal years. The landowner or operator must demonstrate that the site has not been abandoned or reclaimed naturally or by man. The landowner or operator must demonstrate that the site has not stabilized to the point where it is at least revegetated to 50 percent of original cover, or has not effectively reverted to any beneficial use such as wildlife habitat or grazing. The landowner or operator must demonstrate that the site, or any portion of the site, qualifies for limited exempt status. The Administrator shall review each such application and make a recommendation to the Board based on the evidence and documentation provided, and on-site inspection if necessary. In reviewing such applications, the Administrator shall consider the advice and recommendations of the Committee. If the Administrator refuses to recommend approval of the application for a Limited Exemption Certificate he or she shall notify the landowner or operator in writing, specify the reasons for the refusal and give the landowner or operator an opportunity to supply additional documentation to support the application. If the landowner or operator cannot provide the required documentation, the Administrator shall recommend that the Board deny the application for a Limited Exemption Certificate. If the Board denies the application for a Limited Exemption Certificate, the landowner or operator

must obtain an operating permit before commencing or continuing surface mining. If the application for a Limited Exemption Certificate is denied by the Board, the landowner or operator may also request an appeal hearing before the Board pursuant to Section 2.4 of this ordinance.

Section 4.5. Renewals.

Each Limited Exemption Certificate for surface mining shall expire on June 30 of each fiscal year. Except as expressly provided below, no surface mining shall continue on the surface mining site until the certificate has been renewed. The landowner or operator must renew the certificate annually in the same manner as an operating permit. As a courtesy the Administrator may, but is not required to, notify the landowner or operator that the certificate is due for renewal by mailing the necessary renewal forms and fee schedule on or before June 1 of each year prior to the renewal date. The landowner or operator must pay the established annual renewal fee and file the renewal application on or before June 15 of the year the certificate expires. The renewal application shall require a statement from the landowner or operator of the types and amounts of minerals excavated, disturbed, sold and/or removed from the surface mining site during the past and present fiscal years and the types and amounts of minerals expected to be excavated, disturbed, sold and/or removed from the surface mining site during the present and subsequent fiscal years. The Administrator may request information to determine continued eligibility. The final decision on renewal will be made by the Board. Unless a closure order is in effect, surface mining may continue during renewal application processing until renewal is granted or, in the case of denial, for sixty (60) days after the denial. If the Board denies the renewal application, the landowner or operator must obtain an operating permit before continuing the surface mining beyond sixty (60)

days after the denial. If the application or renewal of a certificate is denied by the Board, the landowner or operator may also request an appeal hearing before the Board pursuant to Section 2.4 of this ordinance.

Section 4.6 Expansion.

Expansion of surface mining under limited exempt status into previously unmined land which exceeds 2,500 cubic yards of material excavated, disturbed or sold or which affects more than one acre in any fiscal year is prohibited unless the landowner or operator applies for and receives an operating permit. An operating permit must be obtained before the expansion occurs. Expansion of a site before the operating permit is issued constitutes surface mining without a permit and is prohibited by Section 5.1 of this ordinance.

Section 4.7 Existing Mines.

Application for Limited Exemption Certificates for existing surface mines which have traditionally been assumed to be "grandfathered" operations under the provisions of the original ordinance, and review of such applications, shall be subject to the transition procedures set forth in Section 2.7(3) above. The Administrator is granted authority, subject to review by the Board, to grant reasonable extensions of time for the preparation and review of such Certificate applications as he or she deems to be equitable under the circumstances considering the purposes of this amended ordinance.

ARTICLE V. OPERATING PERMITS.

Section 5.1. Permit Required

Except as otherwise provided by Articles III and IV of this ordinance, surface mining is prohibited at all surface mining sites in Columbia County, unless the landowner or operator has a valid, current operating permit from the Board for such surface mining site. A separate permit is required for each separate surface mining site. Prior to receiving an operating permit the landowner or operator must submit an application on a form provided by the Administrator that contains information considered by the Administrator to be pertinent to the review of the application, including but not limited to, the information required by Section 5.3 below. Except as otherwise provided herein, in order to maintain an operating permit, the landowner or operator must comply with Articles V, VI, VII, VIII and IX of this ordinance.

Section 5.2. Permit and Certificate Fees.

Each application for a new operating permit or Limited Exemption Certificate shall be accompanied by an application fee established by an order of the Board in an amount not to exceed \$535. Annually on the renewal date of each such permit or certificate, each holder of an operating permit or Limited Exemption Certificate shall pay to Columbia County a renewal fee established by an order of the Board in an amount not to exceed \$385. In addition, the Board may, by order, set an amount not to exceed \$100 for inspections made at sites:

- (1) Where surface mining was conducted without the permit or certificate required by this ordinance;
- (2) Where surface mining has been abandoned; or
- (3) Where surface mining was conducted in an area not described in the permit or certificate.

Fees are not refundable. In order to bring uniformity to the issuance of operating permits or Limited Exemption Certificates, henceforth all operating permits and Limited Exemption Certificates shall expire on June 30 of each fiscal year. Application fees for new permits and certificates will be prorated on the basis of 1/12th the annual fee per complete calendar month. The holder of an operating permit or Limited Exemption Certificate must pay all fees in arrears before a new permit or certificate may be issued.

Section 5.3. Application.

Applications for operating permits for surface mining shall include, or be accompanied by, the following information or items and whatever additional information the Administrator requires or the applicant deems relevant:

- (1) The names and addresses of the landowner, the operator, any persons designated by them as their agents for service of process, any parent corporations of the landowner and/or operator, and the owners of all surface and mineral interests of the surface mining site;
- (2) The size and legal description of the proposed surface mining site and surface mine;
- (3) Vertical aerial photographs of the proposed surface mining site, to a scale of at least 1 inch to 200 feet, accurately representing the condition of the site at the time the application is made, and accompanied by a signed statement that the photographs do represent that condition;
- (4) A reproducible boundary map of the proposed surface mining site and surface mine drawn on an assessor's map or its equivalent or on an overlay for the photographs;

- (5) Identification of all existing and proposed access roads to be constructed in conducting the surface mining and any other roads that lead from public thoroughfares to the proposed surface mining site;
- (6) One or more transparent overlays showing:
  - (a) Areas for settling ponds and washing plants;
  - (b) Areas for processing and stockpiling;
  - (c) Areas for facilities for resource-related operations;
  - (d) Areas for excavations; and
  - (e) Locations of buildings and other structures;
- (7) A statement from the landowner or operator or the types and amounts of minerals expected to be excavated, disturbed, sold and/or removed from the surface mining site during the present and subsequent fiscal years.
- (8) A general description of the modes of excavation, the types of equipment to be used, and the disposition of the overburden;
- (9) The starting date for the surface mining;
- (10) The expected date of completion at the surface mining site;
- (11) The modes of controlling contaminants and disposing of surface mining refuse;
- (12) An erosion control plan detailing ground cover plantings and other modes of controlling erosion of surfaces affected by the surface mining;
- (13) A plan for visual screening by vegetation or otherwise that will be established and maintained on the surface mining site for the purpose of screening such site from the view of persons using adjacent public highways, public parks and residential areas;

- (14) In case the applicant does not own the site on which, or minerals for which, the surface mining is to take place, the written consent of the landowner for the mining, the landowner's written acknowledgment of the landowner's obligation to reclaim the site after the mining ceases, and the landowner's written consent for the county to impose on the land, if necessary, as security, a lien for any expense the county incurs in reclaiming the site;
- (15) A reclamation plan meeting the requirements of Article VI;
- (16) Financial security meeting the requirements of Article VII; and
- (17) Proof that local land use regulations have been complied with.

Section 5.4. Review.

The Administrator shall review the operating permit application and the accompanying reclamation plan. The Administrator shall evaluate each application for an operating permit and proposed reclamation plan on the basis of his or her own information and information provided by private persons, by county, state and federal agencies, and by the Committee. The Administrator may require additional information and changes in the reclamation plan before deciding whether to recommend issuance of the permit. The Administrator shall determine initially, subject to review by the Board, the amount of financial security required. The Administrator shall also after notice to the landowner or operator make an inspection of the proposed surface mining site. A copy of the inspection report shall be given the landowner, operator, Committee and the Board. If the Administrator finds, after consultation with the Committee, that the surface mining and reclamation plan proposed will be in compliance with this ordinance, he or she shall recommend that the Board approve the application for an operating permit. If he or she finds, after consultation with the Committee, that the



surface mining and reclamation plan proposed will not be in compliance with this ordinance, he or she shall recommend that the Board deny the application for an operating permit. The Administrator and Board shall investigate and may consider any prior statutory, administrative rule and/or county ordinance violations by the landowner and/or operator related to surface mining in determining whether an operating permit should be issued. If an application for an operating permit is denied by the Board, the applicant may request an appeal hearing before the Board pursuant to Section 2.4 of this ordinance.

Section 5.5. Renewal.

Each operating permit for surface mining shall expire on June 30 of each year. Except as expressly provided herein, no surface mining shall continue on the surface mining site until the permit has been renewed. The landowner or operator must renew the permit annually. As a courtesy the Administrator may, but is not required to, notify the landowner or operator that the permit is due for renewal by mailing the necessary renewal forms and fee schedule by June 1 of each year prior to the renewal date. The landowner or operator must pay the established annual renewal fee and file the renewal application before June 15 of the year the permit expires. The renewal application shall require a statement from the landowner or operator of the types and amounts of minerals excavated, disturbed, sold and/or removed from the surface mining site during the past and present fiscal years and the types and amounts of minerals expected to be excavated, disturbed, sold and/or removed from the surface mining site during the present and subsequent fiscal years. If there is a change in the surface mining activities and/or reclamation plan, the application shall describe the changes. Any changes are to be acknowledged in writing by the landowner and operator. The Administrator may request information to determine continued compliance with this ordinance. The

renewal may be granted annually so long as the landowner or operator maintains the necessary financial security and complies with the conditions of the permit, the reclamation plan, and with this ordinance. The final decision on renewal will be made by the Board. The Administrator and Board shall investigate and may consider any prior statutory, administrative rule and/or county ordinance violations by the landowner and/or operator related to surface mining in determining whether an operating permit should be renewed. Unless a closure order is in effect, surface mining may continue during renewal application processing until renewal is granted or, in the case of denial, for sixty (60) days after the denial. If the application for renewal of an operating permit is denied by the Board, the landowner or operator may request an appeal hearing before the Board pursuant to Section 2.4 of this ordinance.

Section 5.6. Existing Mines.

Application for operating permits for existing surface mines with approved reclamation permits under the original ordinance, and review of such applications shall be subject to the transition procedures set forth in Section 2.7(4) above. The Administrator is granted authority, subject to review by the Board, to grant reasonable extensions of time for the preparation and application and review of such operating permit applications as he or she deems to be equitable under the circumstances considering the purposes of this amended ordinance.

ARTICLE VI. RECLAMATION PLAN.

Section 6.1. Contents.

A reclamation plan shall be submitted with the application for an operating permit. The plan shall state a timetable for continually protecting the surface mining site during the surface mining and for reclaiming the site after the surface mining. If stated in the plan, the reclamation may be for a use other than the use of the land before the surface mining. The plan must contain, but is not limited to, the following:

- (1) A definitive statement of the present use of the proposed surface mining site and of the planned subsequent beneficial use of the site following the surface mining. The planned subsequent use must be in conformity to and consistent with the Columbia County Zoning Ordinance, Comprehensive Plan and implementing regulations;
- (2) Details of backfilling, recontouring, seed bed preparation, mulching, fertilizing, plant species, seeding rates, and topsoil replacement;
- (3) A description of any materials toxic to plant or animal life, acid forming materials or radioactive materials known to be present in any materials involved in the surface mining operation and their approximate concentrations. The Administrator may require the submission of analyses of water, reagents, wastes, and other materials involved in the surface mining operation; and
- (4) A description of how the materials described in subsection (3) will be handled during surface mining and reclamation.

In addition, the reclamation plan must provide for:

- (5) Stable storage of overburden. Sufficient overburden shall be retained to achieve the approved reclamation. A vegetative cover

- may be necessary and therefore required by the Administrator to prevent erosion of the overburden storage or spoils area;
- (6) Isolation and stable storage of the topsoil or equivalent growth media material maintained for use in revegetation;
  - (7) Protection of public and adjacent property from steep banks, deep holes, and other hazards during the surface mining and reclamation. Adequate setbacks of surface mining from adjacent property and provisions to assure lateral support of adjacent property must be provided;
  - (8) Protection of existing adjacent natural drainages and restoration of natural drainages disturbed or affected by the surface mining. All stream channels and stream banks shall be rehabilitated by procedures which will minimize bank erosion, channel scour and siltation. These procedures may also require a permit from the Division of State Lands;
  - (9) A water management plan to provide protection against contamination of ground water and the off-site discharge of sediments into adjacent waterways. This plan must include provision for settling ponds, diversion dikes, and channels, or other structures as may be required by the Administrator;
  - (10) The time schedule for the initiation and projected completion of the surface mining and reclamation. If reclamation is to be concurrent with surface mining the schedule must be included. Reclamation must be completed within three (3) years of the completion of surface mining on any parcel but this does not apply to any parcel being used as plant site, stockpile, or work area for an ongoing surface mining operation;

- (11) Stabilization of all final surfaces to be reclaimed by sloping, benching, or other ground control methods. Reclaimed surfaces shall not contain slopes which are steeper than 1-1/2 horizontal to 1 vertical except that steeper slopes may be approved for stable material when those slopes blend into the natural land forms of the immediate surrounding terrain or are consistent with the approved subsequent beneficial use. The final land form of the reclaimed site must be consistent with the approved subsequent beneficial use and must not constitute a hazard to adjacent property or personal safety;
- (12) Revegetation of all disturbed or affected areas with plants and grasses native or suitable to the area, when such planting is necessary to stabilize the surface, prevent damaging runoff, and restore the surface in a manner best suited for its future intended use. The Administrator will normally consider acceptable a vegetative cover survival, for one growing season, at least equal to the percent of the original ground cover or to the vegetation on nearby adjacent areas. Adjacent areas used for comparison should be of similar slope, aspect, vegetation type and soil material;
- (13) Prevention of stagnant water by drainage of the pit, filling in, or other effective practices;
- (14) The establishment of inwater slopes or safety benches for any permanent standing water impoundment which will be deeper than three feet. In order to avoid stagnant water the minimum depth of excavation, in most cases, shall be not less than eight (8) feet below the low water mark measured in the year of excavation. If conditions dictate, the depth of excavation may be less if approved

in advance by the Administrator or if the landowner or operator has provided a reasonable alternative approved by the Administrator which is consistent with the reclamation plan to accomplish the approved subsequent beneficial use. In-water slopes steeper than three (3) horizontal to 1 vertical to depths of at least six (6) feet below low water will normally not be approved unless the impoundment is designed for special purposes and then only when adequate protection such as fencing or other access barriers or controls are provided. Safety benches no more than two (2) feet below low water and at least five (5) feet wide around the entire perimeter may be substituted for the slope requirement where the Administrator determines that sloping is not practical. All above water disturbed surfaces shall be revegetated when required by the approved reclamation plan;

- (15) A plan for visual screening by use of native plants and trees, or plants and trees with a demonstrated ability to thrive under the conditions present at the surface mining site when the operating permit area will be in sight of a public road, highway, or urbanized area. Opaque fences and berms approved by the Administrator may also be used. Economic practicality and apparent need will be considered by the Administrator in determining the type of visual screening required;
- (16) The removal from the surface mining area of all equipment, refuse, temporary structures and other debris. Permanent structures may remain if they are approved in the reclamation plan;
- (17) Preparation of the surface mining site in the best practical manner, consistent with the approved subsequent beneficial use;

- (18) A suitable site plan or drawing which shows the existing configuration of the surface mining site and the planned configuration of the reclaimed site. Suitable cross sectional drawings shall be submitted with each site plan which show existing contours and contours planned for the final reclaimed site. If appropriate, the site plan shall illustrate the phases of planned surface mining. Site plans must be to a scale no smaller than one (1) inch equals 600 feet; and
- (19) The procedures to be applied in surface mining to control the discharge of contaminants and the disposal of surface mining refuse. The landowner or operator shall meet all applicable air, water quality and noise standards. The Department of Environmental Quality may also require permits.

Nothing in this section is intended to require that completed reclamation shall exceed pre-mining conditions in quality. Review and approval of proposed reclamation plans shall follow the procedures set forth in Section 5.4 above. Modifications in approved reclamation plans may be required before renewal of operating permits is allowed under Section 5.5 above.

Section 6.2. Existing Mines.

Nothing in this article is intended to require new reclamation plans for existing surface mines with approved reclamation permits under the original ordinance unless the Board finds there is a demonstrated need for a new reclamation plan under this amended ordinance to achieve the purposes of this amended ordinance.

ARTICLE VII. FINANCIAL SECURITY.

Section 7.1. Financial Security Required.

Before issuing or renewing an operating permit for any surface mining site, the Board shall receive from the landowner or operator a surety bond or security deposit in a sum to be determined by the Board, after considering the initial determination and recommendation of the Administrator and the advice of the Committee, but in an amount not to exceed the total cost for reclamation if the county were to perform the reclamation. The surety bond or security deposit shall be conditioned upon the faithful performance of the reclamation plan and fulfilling the other requirements of this ordinance. A surety bond must be provided by surety companies authorized to do business in Oregon. In lieu of a surety bond, the Board may accept cash, a cashier's check or certified check equal to the estimated cost of reclamation. The surety bond or other security deposit shall be forfeited to the county if the landowner or operator does not carry out the reclamation plan or fulfill the other requirements of this ordinance. The surety bond or security deposit shall remain on file with the Administrator until the reclamation is completed or the bond or deposit is forfeited. In the event of disagreement regarding the amount of the financial security required, the landowner or operator may request an appeal hearing before the Board pursuant to Section 2.4 of this ordinance.

Section 7.2. Factors to be Considered.

Factors the Administrator will consider in initially determining and recommending the amount of financial security may include, but are not limited to, the following:

- (1) Supervision;
- (2) Mobilization;



- (3) Costs of equipment;
- (4) Equipment capability;
- (5) Costs of labor;
- (6) Removal or disposition of debris, junk, equipment and structures;
- (7) Reduction of hazards such as: in-water slopes, high walls, encroachment on property lines or utilities, acid or chemical leaching residues, chemical and radioactive materials, including petroleum products, and landslides or other mass failure;
- (8) Backfilling, disposition of oversize, rejects, scalplings, overburden or topsoil;
- (9) Contouring or regrading;
- (10) Draining, establishment of drainage, erosion control;
- (11) Soil tests;
- (12) Seedbed preparation, seeding, mulching, fertilizing, netting, tackifiers or other stabilizing agents;
- (13) Tree planting;
- (14) Visual screening;
- (15) Fencing, posting; and
- (16) Any other material submitted in a timely fashion by the landowner or operator.

Section 7.3. Maintenance of Financial Security Required.

The surety bond or other financial security must be maintained until the surface mining site is reclaimed. Failure to post an acceptable bond or other security prior to beginning surface mining and failure to maintain an acceptable bond or other security until reclamation is complete and the bond or other security is released by the Board are violations and may be subject to the penalties provided by Article IX of this ordinance. The Board shall

issue a closure order for any surface mining site if the surety bond or other financial security is not maintained. The Board will not issue, renew, or consider valid any operating permit if the amount of the bond or other security as determined by the Board is not maintained.

Section 7.4. Coverage of Financial Security.

If the acreage to which the surety bond or security deposit pertains is designated by the landowner or operator, surface mining may take place only on the acreage so designated. Otherwise the acreage to which the bond or deposit pertains and on which excavation may take place is the entire surface mining site.

Section 7.5. Reduction of Financial Security.

In carrying out the provisions of this Article, the Administrator may recommend the reduction of, and the Board may reduce, the bond for surface mining sites by an amount not to exceed 50 percent if the applicant has conducted the surface mining operation with a valid operating permit for a period of not less than (10) years and has demonstrated sufficient financial ability to perform the reclamation required by the landowner or operator's approved reclamation plan.

Section 7.6. Release of Financial Security.

The landowner or operator may apply for release of a surety bond or security deposit pertaining to an area that has not been mined and is not intended to be mined or that has been mined and reclaimed in conformity to this ordinance. Within thirty (30) days after the application is filed, the Administrator shall consider the application. If the Administrator determines that the area, if unmined, is expected to remain so for the foreseeable future or, if mined, has been reclaimed in conformity to this ordinance, the Administrator may recommend, and the Board may order, the

release of the surety bond or security deposit to the extent that it pertains to that area. However, before the surety bond or security deposit may be reduced or released, the Administrator shall amend the applicable reclamation plan and operating permit accordingly. If the Board denies the release of financial security, the landowner or operator may request an appeal hearing before the Board pursuant to Section 2.4 of this ordinance.

Section 7.7 Existing Mines.

Nothing in this article is intended to require financial security for existing surface mines with approved reclamation permits under the original ordinance unless the Board finds there is a demonstrated need for such financial security to be provided under this amended ordinance to achieve the purposes of this amended ordinance.

## ARTICLE VIII. OPERATING REQUIREMENTS

The landowner and operator shall ensure that surface mining meets the following operational requirements.

### Section 8.1. Compliance with Laws and Ordinances Required.

Except as otherwise provided in this ordinance all surface mining in this county shall be conducted in compliance with all applicable federal and state statutes, including the Occupational Safety and Health Act of 1970 (19 U.S.C. 651 et seq.) and the Oregon Safe Employment Act (ORS 654.001 to 654.295 and 654.991), all county and local ordinances, including specifically Sections 1040 through 1048 of the Columbia County Zoning Ordinance, regardless of the terms and conditions attached to any permit granted under the zoning ordinance, and all applicable administrative rules including the rules and directives of the Department of Environmental Quality and of other affected agencies. In case of an inconsistency in the requirements of this ordinance, any any other law, rule, ordinance, or regulation which also applies, the most restrictive law, rule, ordinance or regulation shall govern.

### Section 8.2. Compliance with Reclamation Plan Required.

All landowners and operators shall comply with the reclamation requirements of Article VI of this ordinance and with any approved reclamation plan.

### Section 8.3. Operating Setbacks.

Each surface mining site shall be in compliance with the following setbacks:

- (1) No extraction or removal of minerals is permitted within fifty (50) feet of the rights-of-way of public roads or easements of private roads.

- (2) No extraction or removal of minerals is permitted within fifty (50) feet of another property, nor within two hundred (200) feet of a residence or zoning district which allows a residence as a permitted or conditional use without the prior written consent of the affected property owner(s).
- (3) Processing equipment, batch plants, and manufacturing and fabricating plants shall not operate within fifty (50) feet of the right-of-way of public roads or easements of private roads.
- (4) Processing equipment, batch plants, and manufacturing and fabricating plants shall not be operated within fifty (50) feet of another property, nor within one hundred and fifty (150) feet of a residence or zoning district which allows a residence as a permitted or conditional use, without the prior written consent of the affected property owner(s).
- (5) Stockpiling of materials and sedimentation ponds shall not be located closer than twenty-five (25) feet to the boundary line of the surface mining site or the right-of-way of any existing public road.
- (6) Conveying and transporting equipment are exempt from these setback requirements.
- (7) When excavation is completed adjoining a setback, the setback area shall be smoothed, all excavation debris removed, and all trees which are in an unsafe condition removed.
- (8) Wherever an excavation site is within two hundred (200) feet of a public road, or within two hundred (200) feet of a residence or zoning district which allows a residence as a permitted or conditional use, a fence to control access shall be maintained in

accordance with the conditions prescribed by the Board upon the recommendation of the Administrator.

#### Section 8.4. Variances to Setback Requirements.

Subject to the procedures set forth in Section 2.5 above:

- (1) The Board may grant a variance to the setback requirement when adjoining property is zoned for surface mining and no flood hazard would result.
- (2) The Board may grant a variance to the setback requirement whereby the excavated area will be refilled with other material which will neither decompose nor pollute underground waters.
- (3) The Board may grant a variance to the setback requirement in order to reduce the elevation of a surface mining site to the grade of an adjoining public street or road.
- (4) Notwithstanding the above, all operators shall allow for the widening of existing public roads when the excavation is at a lower level than the public road right-of-way.

#### Section 8.5. Visual Impacts.

Existing trees and other natural vegetation adjacent to any public park, residential development, public road, or residential zoning district shall be preserved for a minimum width of twenty-five (25) feet. Screening shall be provided at the boundary of the surface mining site. If such trees and other vegetation are insufficient to provide a screen, such screening may be accomplished by one or more of the following:

- (1) A sight-obscuring fence or wall;
- (2) A landscaped berm or preservation of a natural slope; or
- (3) Use of native vegetation, or plants and trees with demonstrated ability to thrive under the anticipated conditions.

Section 8.6 Access.

The surface mining site shall have access to a public road with two-way capacity. The Board may impose weight/load restrictions and/or require the landowner or operator to post an adequate surety bond for road repairs. Any access or service road used for mining shall be dust-free at all points within three hundred (300) feet of a public road or residence off the surface mining site. If surface mining is the primary cause of traffic on an unpaved public road, that road shall be kept dust-free within three hundred (300) feet of any such residences.

Section 8.7. Parking.

Vehicular parking off public roads shall be available for employees, customers, and visitors at the surface mining site. All parking facilities for employees, customers and visitors shall be located within the boundaries of the surface mining site.

Section 8.8. Water Quality.

All surface mining sites shall be operated in a manner which meets current D.E.Q. regulations with respect to water quality. In addition, the landowner or operator shall not cause contamination of groundwater or change a stream channel unless the channel change has previously been approved by all applicable state and federal agencies.

Section 8.9. Erosion Control.

The erosion of surfaces affected by mining activities shall be controlled during the surface mining by plantings of ground cover and other modes which protect these surfaces as provided by an approved reclamation plan.

Section 8.10. Existing Mines.

Nothing in this article is intended to impose new operating requirements on existing surface mines in excessive of, or more stringent than, those

imposed on existing surface mines with approved reclamation plans under the original ordinance unless the Board finds there is a demonstrated need for such new operating requirements to be imposed under this amended ordinance to achieve the purposes of this amended ordinance.



ARTICLE IX. COMPLIANCE.

Section 9.1. Inspections.

The Administrator may at reasonable times, after giving reasonable advance notice to the landowner or operator or their agents or employees, inspect any existing surface mining site, or proposed or suspected surface mining site, to gather and confirm information relating to the operating permit or certificate application and/or reclamation plan and to determine if the landowner or operator or other agent or employee has complied with the reclamation plan and/or the provisions of this ordinance.

Section 9.2. Notice of Violations.

If from inspections conducted pursuant to Section 9.1 above, or from any other source, the Administrator shall determine that the landowner or operator has not or is not complying with the reclamation plan or the provisions of this ordinance, he or she shall mail by certified or registered mail or deliver written violation notice thereof to the landowner or operator, specifically outlining the violations. Within ten (10) days of the mailing date or delivery date thereof, the landowner or operator shall commence action to correct those violations and diligently shall proceed until they are all corrected, which shall be no later than thirty (30) days after the mailing date or delivery date thereof. However, the Administrator may extend performance periods for delays occasioned by causes beyond the landowner's or operator's control, but only when the landowner or operator is, in the opinion of the Administrator, making a reasonable effort to comply. The landowner or operator mailed or delivered a violation notice may request an appeal hearing on the notice before the Board pursuant to Section 2.4 of this ordinance.

Section 9.3. Reclamation by County.

In the following cases:

- (1) If the landowner or operator has not commenced action to correct the violations within ten (10) days, or any extension granted thereof, or has failed to correct the violations within thirty (30) days, or any extension granted thereof, and after notification by the Administrator; or
- (2) If the landowner or operator has commenced such action and fails to diligently pursue it; or
- (3) If reclamation is not properly completed in conformance with the reclamation plan within three (3) years after surface mining on any segment of the surface mining site has terminated; or
- (4) If reclamation is not properly completed in conformance with the reclamation plan upon determination by the Administrator that abandonment of surface mining has occurred on any segment of the permit area;

Then the Administrator may recommend that, and the Board may, through its designated agents or representatives, in addition to any other remedies or sanctions provided by this ordinance, take the following actions:

- (5) Enter upon the surface mining site;
- (6) Reclaim the surface mining site in accordance with the approved reclamation plan, if any, with the County's own forces or by private contractor;
- (7) Notify the landowner or operator and their surety of the landowner or operator's failure to perform as required by this ordinance
- (8) Demand payment from the landowner or operator and/or their surety for the reclamation; and/or

- (9) If the security for the reclamation is a surety bond, notify the surety that reimbursement for the expense of the reclamation is due and payable to the county or, if the security is a security deposit of cash or other assets, appropriate as much of the security deposit as is necessary to recoup the expense.

In determining whether to perform the reclamation, the Board may consider:

- (10) The stage of development and the condition of the surface mining site when abandoned;
- (11) The amount of security; and
- (12) The practicality of completing the approved reclamation plan.

#### Section 9.4. Reclamation Lien.

- (1) If a landowner or operator fails to faithfully perform the reclamation required by the reclamation plan, if the Board determines that the county should perform the reclamation itself, and if the surety bond or security deposit required by the county is not sufficient to compensate the county for all reasonable necessary costs and expenses incurred by it in reclaiming the surface mining site, the additional amounts required to complete reclamation shall be a lien in favor of the county upon all property in the county, whether real or personal, belonging to the landowner and/or operator.
- (2) The lien shall attach upon the filing of a notice of claim of lien with the Columbia County Clerk. The notice of lien claim shall contain a true statement of the demand, the insufficiency of the surety bond or security deposit to compensate the county and the failure to the landowner or operator to perform the reclamation required.

- (3) The lien created by this section is prior to all other liens and encumbrances, except that the lien shall have equal priority with tax liens.
- (4) The lien created by this section may be foreclosed by a suit in the circuit court in the manner provided by law for the foreclosure of other liens on real or personal property, including tax liens.

Section 9.5. Issuance of Citations.

In addition to the procedures set forth in Sections 9.2, 9.3 and/or 9.4 above, the Administrator may, in his or her sole reasonable discretion, elect to utilize the enforcement procedures, including the issuance of citations, set forth in Columbia County Ordinance No. 90-7, the "Columbia County Enforcement Ordinance", in which case all of the procedures and penalties set forth in that ordinance apply.

Section 9.6. Closure Orders.

In lieu of the procedures set forth in Sections 9.3 and/or 9.4 above, the Board may issue a closure order when it finds that a landowner or operator is conducting surface mining:

- (1) For which a permit or certificate is required but has not been obtained; or
- (2) Where a surface mining site has expanded without obtaining an appropriate permit or certificate, without providing adequate financial security, or without an approved reclamation plan; or
- (3) For which adequate financial security has not been maintained; or
- (4) In a manner which presents a grave threat to human life or health; or
- (5) That is otherwise in violation of any provision of this ordinance, the reclamation plan, or permit conditions if the landowner operator has failed to correct the violation within thirty (30)

days of the mailing date or delivery of the notice provided under Section 9.2 above, or any extension granted thereof.

The closure order shall be mailed by certified or registered mail, or served personally on the named landowner or operator. Unless otherwise stated in the closure order, the closure period shall begin three (3) days after the mailing date of the order, if mailed, or immediately upon receipt, if served personally, by the landowner or operator, or their designated agents for service of process, or immediately upon delivery of such closure order to the headquarters at the surface mining site or to the nearest business office of the landowner or operator. The closure period shall remain in effect indefinitely, or until lifted by the Board or reviewing court. A landowner or operator subject to a closure order may request an appeal hearing before the Board pursuant to Section 2.4 of this ordinance. It is unlawful for any person to engage in surface mining of any surface mining site during a closure period.

Section 9.7. Revocation of Permits or Certificates.

The Board may revoke the permit or certificate of any landowner or operator who knowingly engages in surface mining at a surface mining site subject to a closure order during the closure period, except as may specifically be allowed in advance by the Board. A landowner or operator subject to permit or certificate revocation may request an appeal hearing before the Board pursuant to Section 2.4 of this ordinance. The Board shall give notice of its intent to revoke a permit or certificate to the landowner or operator by certified or registered mail no less than forty-five (45) days prior to the date revocation is scheduled to take effect in order to allow enough time for the landowner or operator to request an appeal hearing for a hearing to be held and for a written decision to be issued. The Board's

decision to notice of intent to revoke a permit or certificate, and the subsequent revocation, if any, doesn't preclude the Board or Administrator from utilizing any other remedies provided by this ordinance, other Columbia County ordinances, state statutes or administrative rules, nor does it relieve the landowner or operator from any duties or obligations required by this ordinance, other ordinances, statutes or administrative rules.

Section 9.8. Penalties for Violations.

If any person, including landowners and/or operators, shall violate or fail to comply with any provision of this ordinance, that person shall be subject to, and liable for, any sanction, penalty or proceeding provided for under this ordinance and state law including the issuance of closure orders and/or the revocation of any permit issued under this ordinance. In particular, such violation shall constitute a nuisance, and the violator of this ordinance may be prosecuted by the county in the name of the county, or be made the defendant in a civil proceeding by the county seeking redress of the violation. In such cases, all of the provisions of ORS 30.315 and 203.065 shall apply.

Section 9.9. Abandonment.

- (1) If there is, or appears to be, a cessation of surface mining activity at a surface mining site giving the Administrator reasonable cause to believe an abandonment has occurred, as defined in Section 1.4(1)(a) or (b) above, the Administrator shall give notice of his or her intent to recommend that the Board issue a declaration of abandonment by certified or registered mail or by personal delivery to the landowner operator, if known. If within thirty (30) days after the mailing or delivery date of such notice, the landowner or operator has failed to submit clear and convincing

evidence to the Administrator that such surface mining has not been abandoned, the Administrator shall make a recommendation to the Board to issue a declaration of abandonment.

- (2) When the Board has received a recommendation to issue a declaration of abandonment, it shall meet and consider the evidence relied upon by the Administrator, any contrary evidence supplied by the landowner or operator, and the advice of the Committee, if any. If the Board decides to issue a declaration of abandonment, it shall give notice of its intent to issue a declaration of abandonment to the landowner or operator by certified or registered mail no less than forty-five (45) days prior to the date the declaration is scheduled to take effect in order to allow enough time for the landowner or operator to request an appeal hearing under Section 2.4 of this ordinance, for a hearing to be held and for a written decision to be issued.
- (3) If the Board issues a declaration of abandonment, it shall direct the County Clerk to record the declaration in the Columbia County Deed Records.
- (4) No surface mining shall occur on lands in this county subject to a declaration of abandonment until a new operating permit has been applied for and received by a landowner or operator.
- (5) The Board's decision to issue a declaration of abandonment doesn't preclude the Board utilizing any other remedies provided by this ordinance, other Columbia County ordinances, state statutes or administrative rules, nor does it relieve the landowner or operator from any duties or obligations required by this ordinance, other ordinances, statutes or administrative rules.