

## **CHAPTER 29.2528. NATURAL RESOURCE EXCAVATION<sup>1 2</sup>**

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### **29.2528.010. Purpose.**

The purpose of the Natural Resource Excavation Chapter is to permit natural resource extractive and related uses such as mines, quarries, gravel pits, rock crushers, concrete batching plants, and asphalt plants, and to provide for the orderly removal of mineral resources and the reclamation of the areas from which mineral resources are taken. The Natural Resource Excavation Chapter is further intended to protect the environmental, ecological, scenic, and visual resources of the City from undue impacts resulting from such uses.

### **29.2528.020. Application of Natural Resource Excavation Chapter.**

The application of the Natural Resource Excavation Chapter and a conditional use permit for natural resource excavation and related uses as specified in Chapter 29.14.030(12) will be considered only where all of the following tests are met.

- A. The resource is available;
- B. Existing land uses are buffered;
- C. Natural resource excavation and related uses are consistent with the goals of the Brigham City General Plan.

### **29.2528.030. Definitions.**

Words and phrases used in this Chapter shall have the meanings set forth in this Section. Words and phrases not defined in this Section but defined in Section 29.01 of this Title shall be given the meanings thus set forth. All other words and phrases shall be given their common, ordinary meaning, unless the context clearly requires otherwise. Section headings or captions are for reference purposes only and shall not be used in the interpretation of this Chapter.

Applicant. Any person, firm, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind either public or private, submitting an application for natural resource excavation approval.

Excavation. The removal of natural resources by excavating, stripping, leveling, or any other process, together with all other types of mining operations where natural resources are removed from the earth. The provisions of this Chapter shall not apply to the removal of sod or topsoil, provided that any removal of sod or topsoil shall not be closer than ten feet to any property line, involve excavation depths in excess of eighteen inches, or adversely affect the drainage, stability, vegetation, or air quality of the area. Further, this Chapter shall not apply to ditching and land leveling for agricultural purposes, so long as such land leveling for agricultural purposes does not include the removal of natural resources from the site for other uses.

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<sup>1</sup> Complete Chapter adopted with Ordinance No. 00-03, 01/20/00

<sup>2</sup> Numbering changed with Ordinance No. 07-13, dated 7/19/07

Operation. Those activities conducted on the surface of the land directly involved in or incidental to the exploration for, or development or extraction of, natural resources from their natural occurrences, including surface mining and surface effects of underground mining, on-site transportation, and other processing

Operator. Any person, firm, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind either public or private, owning, controlling or managing natural resource excavation operations or proposed operations, including exploring for or developing of a mineral deposit.

Owner. Any person, firm, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind either public or private, owning, controlling or managing a mineral deposit or the surface of lands employed in natural resource excavation operations.

Parcel. A parcel of property shall mean a contiguous quantity of land, existing as a separate legal description with a separate tax identification number on or before February 19, 1998. Land in one ownership but with more than one legal description or tax identification number shall not be considered one parcel. Land assembled into one legal description or tax identification number after February 19, 1998 shall not be considered one parcel for purposes of this zoning regulation. Land in one ownership but physically divided by a public or private highway, road or street is not considered contiguous under this definition.

Permittee. An owner or operator who has received or is in the process of applying for a conditional use permit for natural resource excavation.

Reclamation. Actions performed during and after natural resource excavation operations to shape, stabilize, re-vegetate, or otherwise treat the land affected in order to achieve a safe, stable, ecological condition.

#### **29.2528.040. Applications and Approval of Natural Resource Excavation Activities.**

Applications for a conditional use permit for natural resource excavation and/or related activities shall be submitted to the Planning and Zoning Department on forms provided for that purpose, and shall include as a minimum the following information: the name of the mineral property, property owners, lessee, proposed operations, agent of process, location of mineral property, and legal description.

Conditional uses listed under 29.14.030(12) for any parcel of land in the corporate boundary of Brigham City, and which are not valid and legal non-conforming uses, shall be subject to this chapter and chapter 29.06 Conditional Uses, and shall occur only pursuant to the provisions of said chapters.

#### **29.2528.050. Required Documents.**

The following are documents that are required during the review process for all applications for final conditional use approval pursuant to this chapter.

A. Pre-mining Site Inventory and Analysis. A pre-mining inventory and analysis shall be performed by the applicant containing the following information both on-site and extending off-site beyond the site to the nearest public street or highway or to a minimum distance of five hundred (500) feet:

1. A written regional vicinity analysis describing site hydrology and geology, the visual characteristics with particular concern given to the use of natural topography and vegetation to shield site operations.

2. A description of other land uses surrounding the site, the possible impacts of the proposed excavation on surrounding land, its economic value, and the methods to be employed to mitigate any potentially negative effects of mining and associated impacts.

3. A topographic map at a scale of one inch equals two hundred feet (1" = 200') with a maximum contour interval that provides adequate detail for review while retaining visual clarity. The area to be included in the map shall extend beyond the site to the nearest public street or highway or to a minimum distance of 500 feet beyond the limits of the proposed operation.

4. A geological survey of the area, in plan and profile, including information relating to depths of deposits of the mineral proposed for mining, including a soils survey to include a soils profile.

B. Mining Operations Plan. The applicant shall provide a mining operations plan which describes in written and/or graphic form the following :

1. Proposed starting date, the anticipated period of operation including a full and adequate description of all phases, and the amount of material to be removed.

2. Operations development plan in written and graphic form showing the following proposed operations:

- a) A description of transportation routes used in the site, schedule of proposed operations, and an overlay to the topographic map (29.2528.050(1)(b)) showing existing and proposed location of buildings, storage areas, process equipment and material stockpiles.
  - b) A description of the type and kinds of machinery, equipment, milling and processing systems which will be or might be necessary to carry on the operation, and waste disposal systems.
  - c) The water to be used in the operation, its source, quantity, and methods of control and disposal.
  - d) Wind and air movement patterns with a description of techniques used to control dust and noise.
3. A traffic study in accordance with 29.2528.110(13).

The graphic portion of the operations development plan shall be superimposed on a topographic map (to a scale of one inch equals two hundred feet (1" = 200')) of the area extending beyond the site to the nearest public street or highway or to a minimum distance of five hundred (500) feet beyond the proposed excavation.

C. Reclamation Plan. The applicant shall provide a reclamation plan in written and graphic form with the use of maps, imagery, and renderings, at a scale equal to that of the topographic map (29.2528.050(1)(c)), and including the following as a minimum:

- 1. A grading plan drawn and certified by a licensed professional engineer or land surveyor indicating the areas to be excavated and the proposed finished grades.
- 2. A description of the methods and plans to be employed for simultaneous reclamation of the site during and after the mining operation including proposed phasing of simultaneous mining and reclamation.
- 3. A landscape plan in accordance with 29.2528.110(9) including a description of the top soil requirements and application, planting schedule, specifications for plat applications, mulching, and type of irrigation to be used.
- 4. A description of the hydrologic environment of the reclaimed site to include a map illustrating the water drainage areas such as lakes, springs, ponds, streams, wells, pipe lines, culverts, ditches, canals.
- 5. A description of all permanent roads and other man-made structures which are to remain after reclamation.
- 6. Signature blocks for the operator, property owner or owners, City Engineer, Planning Commission Chairman, and Mayor.

**29.2528.060. Planning Commission Review Procedure.**

A. Pre-application Meeting. The applicant shall meet with the City Planner to review the application plans and submittal documents for the proposed operation. The City Planner shall determine the number of application plans to be submitted consistent with the number of reviewing agencies and individuals. Applicants are encouraged to submit all documentation required by 29.2528.050 above, however initial review and preliminary approval may be granted upon submittal and review of the information outlined in 29.2528.050(1) plus the following:

- 1. A written description of the anticipated amount of material to be removed and the equipment and machinery to be employed in the removal process.
- 2. An overlay sketch to the topographic map of the site contours after excavation is complete showing drainage channels, vegetation, and roadways.

B. Initial Review of Application Plans. The City Planner shall distribute copies of the application plans, documents, and statements to other interested County, City, and State agencies as determined by the City Planner and shall ask for comments and recommendations.

Within sixty (60) days of receipt by the City Planner the application plans shall be formally considered at a regularly scheduled or specially scheduled meeting of the Planning Commission with the applicant. Following consideration of the excavation proposal, the Planning Commission shall notify the operator or owner of its findings as to preliminary approval, disapproval, or request for additional information prior to final review.

C. Review of Final Plans. Following initial review by the Planning Commission, the applicant shall provide any additional information requested by the Planning Commission and any documentation required in 29.2528.050 not submitted with the initial application. The City Planner shall determine the number of copies of maps, drawings, and plans to be submitted. The City Planner shall distribute copies of the final application and accompanying plans and statements to other interested county, City, and state agencies as determined by the City Planner, and shall ask for comments and recommendations.

Within a period of not more than sixty (60) days of receipt of the final application, the Planning Commission shall hold a public hearing through proper notice as prescribed by law to consider said final application. Following the public hearing, the Planning Commission shall review the application and shall approve or deny the application. If the Planning Commission finds that the information provided is insufficient or that additional public or other input is necessary for a final decision, it may continue the hearing or decision until such information or input is provided.

D. Authorization of Permit. The conditional use permit, and associated reclamation maps and plans shall include signature lines and blocks for the operator, property owner or owners, City Engineer, Planning Commission Chairman, and Mayor. Upon obtaining signatures of the above individuals, the permit shall be authorized.

**29.2528.070. Conditional Use Permit Format.**

A. Conditional use permits for natural resource excavation shall include the following documents:

1. A written permit following the format outlined below and containing the signatures of the operator, the property owner or owners, City Engineer, Planning Commission Chairman, and Mayor.
2. A complete copy of the application as submitted for final review.
3. Any additional permits, licenses, or documentation pertaining to the permittee's operation, which may be required by other agencies will be incorporated into and become a condition of the Conditional Use Permit.

4. A list of all parcels of land included in the application.

B. The written permit shall specify the conditions and requirements imposed upon the operation by the Planning Commission and shall include as a minimum the following:

1. A statement by the operator and the owner or owners of the subject property acknowledging and accepting the obligations created by the permit and agreeing to the conditions imposed.
2. Conditions relating to transfer to successor operations pursuant to Section 29.2528.090.
3. Conditions relating to the permit term and renewal periods, if any, pursuant to Section 29.2528.100.
4. Conditions relating to mining operations and conditional use standards pursuant to Section 29.2528.110.
5. Conditions relating to reclamation pursuant to Section 29.2528.120.
6. Conditions relating to monitoring of requirements of the conditional use permit
7. Conditions relating to the provision of surety pursuant to Section 29.2528.130.
8. Conditions relating to enforcement and penalties for violation of terms of the conditional use permit.

**29.2528.080. Revocation or Modification of Permit.**

A. Any conditional use permit issued for natural resource excavation shall be subject to revocation or modification by the Planning Commission, for cause, and in the following manner:

1. Notice of Failure to Comply. A notice shall be served on the owner or the permittee by the City Planner or his representative specifying the failure to comply with the requirements of the Zoning Ordinance or with any of the conditions set forth in the conditional use permit or Brigham City Code and State Law, requiring him to appear before the Planning Commission at a designated date and hour to show cause why said permit should not be revoked or modified.

2. Hearing. Upon the date set for hearing, the Planning Commission shall hear all charges and other testimony relating to the matter under consideration. The Planning Commission shall then decide to either continue, revoke, or modify the permit, or refer the matter to the Brigham City Attorney for further action.

3. Modification of the Natural Resources Permit Plans. Modification of the conditional use permit plans for natural resource excavation may be initiated by the Planning Commission or by the permittee where it is merely sought to affect minor revisions in the approved grading plan, schedule of proposed operation, proposed reuse plan, or landscape plan. Consideration of such revisions need not require a public hearing provided that in the judgment of the Planning Commission the proposed revisions would not constitute significant changes, and providing also, that the permittee has not expressly requested that a public hearing be held.

**29.2528.090. Transfer to Successor Operation.**

Whenever an operator succeeds to the interest of another operator by sale, assignment, lease, or other means, the Planning Commission may release the first operator from its responsibilities under its

approved plans, including surety, provided the successor assumes all of the responsibilities of the former operator, to the satisfaction of the Planning Commission under the approved operations and reclamation plans and the posting of surety. Upon satisfactory assumption of such responsibilities by the successor operator, under conditions approved by the Planning Commission the responsibility of the total excavation site shall be transferred to the successor operator.

#### **29.2528.100. Permit Term.**

Notwithstanding Section 29.06.090, a conditional use permit for natural resource excavation may be approved for a specific term with subsequent renewals as approved by the Planning Commission. The intent of this Section is to allow the Planning Commission to conduct a review of a natural resource excavation operation following an initial approval term to determine if impacts have exceeded those foreseen in the initial review process and to allow conditions to be added to the original approval to mitigate those impacts.

#### **29.2528.110. Conditional Use Standards for Natural Resource Excavation.**

A. The following standards shall apply to all conditional use permits granted under this chapter. The Planning Commission may modify these standards or attach additional conditions upon a finding by the Planning Commission that such modifications or additional conditions are necessary to mitigate impacts of natural resource excavation operations as determined during a conditional use permit review procedure.

##### **1. Buffer Distances.**

a) All extractive operations, roads, machinery, equipment, and stockpiles (excluding top soil used for reclamation, and screening and rock crushing) shall be kept at least one hundred feet horizontal distance from the boundary with any other property owner except as may be reduced by the Planning Commission, but in no event should the operation be closer than forty feet to the property line, except as provided in 29.2528.120 (3)(e) below.

b) All screening and rock crushing operations shall be conducted at least four hundred feet horizontal distance from the boundary of any other property owner (except as may be reduced by the Planning Commission, but in no event shall the operation be closer than fifty feet to the property).

c) All excavations shall be kept at least 100 feet from a public road except where the Planning Commission determines the excavations may be moved closer if it will not endanger the users of the road.

2. Fencing. Areas of excavation with serious or hazardous conditions shall be reasonably fenced, except where in the determination of the Planning Commission other suitable devices may be used.

3. Grading. All grading, including slope stabilization, shall be done in accordance with the latest reclamation plans, with the concurrence of the City Engineer.

4. Air Quality. All air quality plans and actions shall be monitored and approved by the Utah Division of Air Quality. The permittee shall obtain an air quality approval order from the Utah Division of Air Quality prior to the final approval of a conditional use permit. The air quality permit and application for the permit shall be incorporated by reference into a conditional use permit and shall be on file with the City. The permittee shall establish to the satisfaction of the City, and as certified by the City Engineer, the availability of water sufficient for required dust suppression activities and reclamation. Acceptable opacity on-site shall be established through the conditional use process and in consultation with the Utah Division of Air Quality. All equipment and machinery, on-site and off-site, utilized in the excavation and processing of native natural resources shall be constructed, operated, and maintained in such a manner as to minimize on-site dust, smoke, and odor, and to minimize off-site drift of dust, smoke, and odor. The Planning Commission may impose particular conditions to ensure that fugitive dust suppression utilizes best available control technologies, and to establish air quality and fugitive dust monitoring and reporting procedures.

5. Water Quality. The washing of sand and gravel shall be done so as to prevent the discharge of waste water onto any public or private roads or any private property, or into a public or private river, stream, canal, or waterway, without the written consent of the owner and/or appropriate local, state, or federal jurisdiction. Water from wash plants shall be collected in evaporating ponds and shall not be permitted to drain into waterways.

6. Storm Water. The entire area subject to a conditional use permit shall be graded so that storm water remains on site. The site shall be graded so that as the area is eventually reclaimed, storm drainage is properly managed in a manner reviewed and approved by the Brigham City Engineer and Planning Commission. A storm water discharge plan shall be incorporated into the conditional use permit by reference.

7. Tracking of Material Onto Public Streets. Trucks or other equipment which exit the operations approved under a conditional use permit, whether owned and operated by the permittee or others, and

whether loaded or unloaded, shall adhere to all laws (state, county, or City) requiring that loads be contained within the hauling vehicles. All vehicles exiting the operation site, whether owned or operated by the permittee or others, and whether loaded or unloaded shall be checked for material on the wheels before leaving the pit. Any material outside a truck or other equipment exiting the operations approved under a conditional use permit, whether owned or operated by permittee or others, and whether loaded or unloaded shall be cleaned from the truck or equipment.

8. Hours and Days of Operation. Hours and days of operation shall be established through the conditional use process as follows:

a) The hours for mining operations, crushing and screening, and hauling, except for the maintenance and repair of vehicles and equipment, shall be established during the review of the applicant's operation plan but shall not exceed the hours between 6:00 a.m. and 10:00 p.m., Monday through Friday, and Saturday from 7:00 a.m. to 7:00 p.m.

b) Mining operations, crushing and screening, and hauling, except for the maintenance and repair of vehicles and equipment, are prohibited on Sundays and on the following holidays: New Year's Day, Memorial Day, Independence Day, Pioneer Day, Labor Day, Thanksgiving Day, and Christmas.

c) The Planning Commission may vary these days and/or hours of operation in specific cases upon a finding that unusual circumstances associated with the particular case warrant such a variance, and upon a finding that no existing or anticipated residential use will be unduly impacted by such varied hours and/or days of operation.

d) During periods of national or unusual emergency, or in instances of unusual contractual obligations or other factors, time and hours of operation may be altered at the discretion of, and following formal approval by, the City Council.

9. Landscaping. Properties containing uses for which a conditional use permit for natural resource excavation is required shall be landscaped for purposes of screening such uses from public streets and abutting properties, and providing for site reclamation planting. Vegetative materials shall be planted together with necessary top soil as per the schedule approved in the granting of the Conditional Use Permit and shall be maintained in a healthy, growing condition. The Reclamation Plan shall include a landscaping plan prepared by a licensed Landscape Architect, and shall include a planting plan and an irrigation plan. Landscaping shall be accomplished and maintained in accordance with the approved Reclamation Plan and the guidelines established in Section 29.2528.120 "Reclamation".

10. Lighting. Reflectors, spotlights, floodlights and other light sources may be used to illuminate buildings, landscaping, signs, parking, and loading areas, provided they are equipped with proper lenses or other devices concentrating the illumination upon the building, landscaping, signs, parking and loading areas, and preventing any bright, direct illumination upon adjacent property or any public right-of-way. No unshielded lights of any color, reflectors, spotlights, strobe lights, or searchlights shall be located in such a manner that they are pointed toward or are directly visible from frequently traveled public rights-of-way or adjacent properties.

11. Noise.

a) Natural resource excavation operations shall be performed in such a manner that noise emissions do not exceed the following dB A levels at the boundary of the parcel containing the operation:

Zoning of adjacent property	Day time 6:00 a.m. to 7:00 p.m.	Night time 7:00 p.m. to 6:00 a.m. (only when night operations are previously approved as specified above).
Multiple Use Zoned	50 dB A	40 dB A
Residentially or Agriculturally Zoned	50 dB A	40 dB A
Commercially Zoned	60 dB A	55 dB A
Industrially Zoned	80 dB A	75 dB A

b) Blasting and/or the use of explosives of any kind are strictly and completely prohibited.

c) Best available control technologies shall be used to minimize noise and vibration from being perceptible on adjacent property.

d) Strobe lights shall be used instead of backup alarms when it is dark to mitigate noise impacts on the surrounding properties.

12. Haul Roads. All permanent haul roads, and temporary haul roads within five hundred feet of public streets, shall be regularly surfaced with asphalt or oil, and all permanent or temporary roadways shall be regularly watered, swept, or surfaced with a dust palliative. Any haul road accessing a public street, or a State or federal road or highway, shall be approved by UDOT and the Planning Commission prior to construction.

13. Traffic. Trucks or other equipment which exit onto a City street from the operations approved under a conditional use permit, whether owned and operated by the permittee or others, and whether loaded or unloaded, shall travel only on truck routes established by ordinance. The Planning Commission may establish conditions mitigating the impact of traffic on City streets, school zones, and pedestrian routes. Such conditions may include, but are not limited to, restrictions on hours of truck traffic, restrictions on vehicle size, and restrictions on speed.

\_\_\_\_\_ A traffic study shall be required as part of a Mining Operations Plan submittal. The traffic study shall address the following issues:

- a) Identify peak volumes.
- b) Identify measures to mitigate traffic impacts during critical school times.
- c) Projected traffic generated by the operation.
- d) Projected traffic levels on routes traveled by traffic generated by the operation.

\_\_\_\_\_ Traffic and speed shall be monitored over the first year of operations, and the Planning Commission shall conduct a review of traffic routing following the first year of operation. At that time, the Planning Commission may establish additional conditions related to transportation and any such conditions shall become binding on the permittee, the property owner or owners, and any successors.

14. Related Manufacturing Operations. The manufacture of concrete building blocks or other similar items, the production or manufacture of lime products, the production of ready-mixed concrete, the production of asphalt mixes and any similar production or manufacturing processes which might be related to an excavation operation shall not be permitted in association with such an operation, except as expressly provided by a conditional use permit under this Chapter.

15. Monumentation. Monuments or other means of identification shall be placed and maintained around the perimeter of the excavation site so as to enable reasonable identification of the property line separating the excavation property from adjoining land owners.

## **29.2528.120. Reclamation.**

### **A. The Objectives of Excavation Reclamation Shall Be:**

1. To return the land, concurrently with the mining operation or within a reasonable amount of time thereafter to a predetermined condition defined by the reclamation plan as submitted and approved, compatible with past, present, or probable future local land uses, and consistent with the Brigham City General Plan.

2. To minimize or prevent present and future on-site or off-site environmental degradation to the ecological and hydrological regimes caused by mining operations, and to meet other pertinent state and federal regulations regarding air and water quality standards and health and safety criteria.

3. To minimize or prevent present and future hazards to public safety and welfare.

4. To ensure that the area of excavation shall be rehabilitated to a condition of practical usefulness and reasonable physical attractiveness.

### **B. Simultaneous Excavation and Reclamation.**

1. The reclamation or rehabilitation of natural resources sites with a projected life of more than one year shall be carried out simultaneously with the excavation of the resource. The purpose and intent of simultaneous excavation and reclamation includes but is not limited to the creation of a usable land resource and the elimination of waste heaps, and the prevention of shallow, stagnant, small bodies of water, small unusable remnants of land, and eroding, barren slopes all normally associated with open pit operations, except as providing storm water detention facilities as described in a hydrological report.

2. Excavations shall be planned so as to progressively develop the proposed final land forms by grading and by stockpiling overburden materials in areas designated for future land forms or in excavations where the material will be spread over the pit floor where no future excavation is anticipated. Such areas are to be seeded and planted immediately after grading is completed or within appropriate planting seasons, but in any case, the grading and planting shall be completed within one year. The reclamation plan shall contain a description of the phased reclamation process throughout the anticipated life of the mine.

C. Final Reclamation. Final reclamation shall begin immediately for any site where operations authorized under a conditional use permit have been abandoned for a period of at least one year, or otherwise

terminated, as determined by the City Planner. The final reclamation shall conform to the plan approved (including approved modifications) in the conditional use permit for natural resource excavation. All reclamation plans shall conform at least to the below listed minimum standards and requirements listed elsewhere in the Ordinance; provided however, that the Planning Commission may require more stringent standards where special hazards exist in order to protect the health, safety, or general welfare of the public, and to prevent injury to property or improvements.

1. **Grading.** Slopes, overburden stockpiles, and abandoned soil piles shall be graded and smoothed so as to control erosion and prevent the creation of potentially dangerous areas in accordance with the direction of the City Engineer. The peaks and depressions of the reclamation area shall be reduced to a surface which will result in topography in substantial conformity to the land area generally surrounding and which will minimize erosion due to rainfall. In no case shall any slope of a reclamation site exceed the normal angle of repose of the material involved.

2. **Water-filled areas.** All excavations which create standing water or ponds shall be refilled with inert materials. This requirement shall not apply, however, to any water-filled excavations scheduled to become an integral part of the final reclamation plan. The rehabilitation of these areas shall be done in such a manner that the groundwater is not polluted as determined through consultation with the Box Elder County Health Department. Fill material shall be porous to allow for water dispersion unless otherwise specified in the reclamation plan.

3. **Landscaping.** Unless inconsistent with the final proposed use of the reclaimed land, the excavated areas and all other disturbed areas shall be replanted and maintained with trees, shrubs, grasses, or other vegetative ground cover, native to the area, in order to minimize erosion and to restore the land to a natural appearance, or to an appearance previously approved by the Planning Commission.

4. **Removal of Buildings and Equipment.** Upon termination of excavation and/or manufacturing, all buildings, equipment (including electrical conduits), temporary structures (except fences), rock piles, rubble heaps, or other debris used in the excavation and/or mining operations, shall be removed unless deemed necessary to the approved final use of the reclaimed site. If determined by the City Engineer and City Planner to be acceptable, these materials may be back-filled into the excavation.

5. In the final year of excavation, the mining operation may, as part of the reclamation project, excavate closer than 40 feet to any property lines, but only upon a showing of compelling mutual good and the approval of the Planning Commission.

D. **Reclamation Verification.** At the conclusion of mining operation and reclamation of the excavation site, the City Planner and City Engineer shall present to the Planning Commission a statement verifying the permit area has been reclaimed in compliance with the requirements of this Ordinance and reclamation plans previously submitted in compliance with this Ordinance. The Planning Commission shall certify to the City Council that all requirements of this Ordinance have been met.

### **29.2528.130. Provision of Surety.**

A. **Provision of Surety Before Operations Begin.** After receiving notification that the application for a natural resource permit has been approved, but prior to commencement of such operation, the operator shall provide surety to the City, in a form and amount to be determined by the Planning Commission in consultation with the City Engineer.

B. **Amount of Surety.** In determining the amount of surety to be provided, the Planning Commission shall consider factual information as to the magnitude, type, and costs of approved reclamation activities planned for the land affected and the nature, extent, and duration of operations under the approval notice. The Planning Commission shall fix the amount of the bond at an amount reasonably related thereto, to protect the City and insure compliance with the requirements of the conditional use permit; however, the amount of the bond shall not exceed one hundred and twenty-five percent (125%) of the estimated cost of rehabilitating the excavation. The bond shall be periodically reviewed to insure that the amount of the bond is capable of insuring adequate reclamation.

C. **Form of Surety.** In determining the form of surety to be provided by the owner, the Planning Commission shall approve a method acceptable to the owner and consistent with the requirements of this Ordinance which may be one or a combination of corporate surety bond, land, cash or other deposited securities.

D. **Release of Surety.** The liability under surety provisions shall continue until such time as it is released as to part, or in its entirety, by the City Council.

E. **Forfeiture of Surety.** If the operator fails or refuses to carry out the necessary land reclamation as outlined in the approved operation and reclamation plans, the Planning Commission may, after notice and



hearing, declare any surety filed for this purpose forfeited, or in case of a corporate bond file suit against the owner and his bonding company. The City shall also have the right to file suit against the defaulting permittee for costs of rehabilitation and reasonable attorney's fees.