

**ORDINANCE 2018-14**

**AN ORDINANCE ENACTING CHAPTER 30, REGULATION OF ALL MINING, QUARRY, SAND AND GRAVEL EXCAVATION OPERATIONS, INCLUDING BOTH THOSE CURRENTLY PERMITTED AND LEGAL NONCONFORMING USES, OF THE TOOELE COUNTY LAND USE ORDINANCE**

**NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE BODY OF TOOELE COUNTY, UTAH AS FOLLOWS:**

**SECTION I – PURPOSE.** Planning and Zoning staff recognize the need to amend the Tooele County Land Use Ordinance with the addition and update of regulations governing all mining, quarry, sand and gravel excavation operations, including both those currently permitted and nonconforming. Pursuant to Utah Code Annotated Sections 17-27a-502 and 17-27a-503, the Tooele County Planning Commission conducted a public hearing on the proposed amendment and made a favorable recommendation to enact this chapter.

**SECTION II – CHAPTER ENACTED.** Chapter 30, Regulation of All Mining, Quarry, Sand and Gravel Excavation Operations, Including Both Those Currently Permitted and Legal Nonconforming Uses, of the Tooele County Land Use Ordinance is hereby enacted to read as attached hereto, which attachment is, by this reference, made a part hereof.

**SECTION III – REPEALER.** Ordinances and resolutions in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION IV – EFFECTIVE DATE.** This ordinance shall become effective fifteen (15) days after its passage, provided it has been published, or at such publication date if more than fifteen (15) days after passage.

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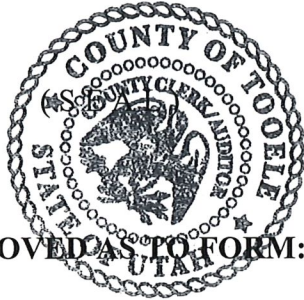
IN WITNESS WHEREOF the Tooele County Commission, which is the legislative body of Tooele County, passed, approved, and enacted this ordinance this 18<sup>th</sup> day of December 2018.

ATTEST:


TOOELE COUNTY COMMISSION:

  
MARILYN K. GILLETTE, Clerk/Auditor

  
WADE B. BITNER, Chairman



APPROVED AS TO FORM:

  
SCOTT A. BROADHEAD  
Tooele County Attorney

Commissioner Bateman voted aye  
Commissioner Bitner voted aye  
Commissioner Milne voted aye

# Chapter 30

## Regulation of all mining, quarry, sand and gravel excavation operations, including both those currently permitted and legal nonconforming uses

### 30-1 Purpose and Intent.

- A. As residential development is near or anticipated to be near excavated or potential excavated land, it is the purpose and intent of this ordinance to establish reasonable and uniform limitations, safeguards, and controls on excavation activities, both as a regulated land use category and under the police power, within the unincorporated areas of the County. These provisions are deemed necessary in the public interest to affect practices which recognize nearby residential land and will provide protection of the tax base, provide for the economical use of vital materials necessary for our economy and give due consideration to the present and future use of land in the interest of promoting the public health, comfort, safety, community character and general welfare. It is the intent of this ordinance that excavated land be rehabilitated as soon as possible to prevent conditions detrimental to neighboring property and residents, and to provide for the subsequent beautification and beneficial use of the lands affected by excavation.
- B. It is also the intent of this ordinance to avoid unnecessary, duplicative, overlapping or conflicting regulations to the extent reasonably practicable by incorporating herein the requirements of DOGM so far as they are not in conflict with County requirements.
- C. It is the intent to not apply this ordinance to those provisions listed as exceptions in section 30-2(E)(1).

### 30-2 Definitions and General Provisions

- A. *Appellant*. Appellant means any person adversely affected by any final decision made regarding the issuance of an Excavation Permit or other final decisions under the provisions of this Chapter.
- B. *Applicant*. Applicant means an Owner or Operator submitting an Application in accordance with the requirements of section 30-4 for the purpose of obtaining an Excavation Permit as required by this Chapter.
- C. *Application*. Application means the Operation and Reclamation Plan and other required plans, drawings, or materials submitted by an Applicant in accordance with the requirements of section 30-4.
- D. *Community Development Director or CDD*. Community Development Director or CDD means the Community Development Director of the County or his or her designee.
- E. *DOGM*. DOGM means the Utah Division of Oil, Gas and Mining.

F. *Excavation*. For the purposes of this ordinance, Excavation refers to any type of mining operation including, but not limited to, the removal of rock, sand, gravel, clay and any other soil by digging, leveling, scraping, blasting, screening, processing, and operating, maintaining and repairing equipment, marketing, advertising and selling aggregate products and services to the general public, or any other process, together with all other types of mining operations where material is removed from the earth.

1. Exceptions. The provisions of this ordinance shall not apply to any or all of the following:

- (a) The removal of sod, provided such removal will not adversely affect the drainage, stability, and/or vegetation of the area.
- (b) Ditching and land leveling for agricultural, personal residences, or public recreational uses (parks or trails), or other improvements associated with residential dwellings.
- (c) Site preparations for an approved development project or for building a structure for which a building permit has been issued.
- (d) Installation or maintenance actions for utility purposes, or County capital improvement projects.
- (e) Excavation Operations conducted on federal, tribal or state land or within the incorporated limits of a municipality.

G. *Excavation Permit*. Excavation Permit means that permit approved by the County pursuant to section 30-3.

H. *Land*. Land means the surface and subsurface of an area within the incorporated areas of the County where excavation operations are being or will be conducted, including but not limited to: on-site private ways, roads, the excavation site itself, exploration sites, drill sites or working areas, parking or storage areas; and includes areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in such operation, are situated.

I. *Off-site*. Off-site means the land areas that are outside or beyond the area proposed or approved for an Excavation Permit.

J. *On-site*. On-site means the land within which excavation operations are or will be conducted, which is bounded by continuous property lines dividing the surface or land ownership, control, or right that is invested in the Operator. A series of related properties under the control of a single Operator, including properties separated by small parcels of land controlled by others, may, at the election of the Operator, be considered a single site.

K. *Operation and Reclamation Plan*. Operation and Reclamation Plan means the Operation and Reclamation Plan approved as part of the Excavation Permit under the provisions of this Chapter.

- L. *Operator*. Operator means 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, leasing, controlling, or managing excavation operations or proposed excavation operations.
- M. *Owner*. Owner means any person, corporation, association, partnership, or other legally deeded organization or representative of any kind, whether public or private, owning, controlling or managing a mineral deposit or the lands employed in excavation operations.
- N. *Public Road*. Public road means any road, street, alley, lane, court, place, viaduct, tunnel, culvert, or bridge laid out or erected as such by the public, or dedicated or abandoned to the public, or made such in an action for the partition of real property, and includes the entire areas within the right-of-way.
- O. *Reclamation*. Reclamation means actions performed during and after excavation operations as specified in section 30-9.

**30-3                    Applicability, Excavation Permit and Notification Required.**

- A. All facilities engaged in the mining or quarrying of sand and gravel, whether operating under current permits from the County or as a legal nonconforming use, shall be required to obtain an excavation permit from the County and comply with the applicable provisions of this Chapter, which may vary depending on the proximity of the operation to existing residential areas or property zoned for residential uses as set forth below. All extractive operations are considered a part of excavation activities, but the operation of a concrete batch plant or a hot mix asphalt plant is not permitted except as otherwise allowed and approved as provided in the MG-EX Zone or on a temporary basis under the provisions of section 30-11. Those excavation operations located more than one thousand feet (1000') as measured from property line to property line from existing residential areas or property zoned for residential uses, not including agricultural zoning designations, at the time an Operator first commences excavation activities on the property or submits an application for an Excavation Permit, whichever is earlier, an Excavation Permit shall be required but such operations shall not be required to comply with the requirements of sections 30-8(B) and (E) of this Chapter.
- B. If an Owner or Operator submits an application to DOGM, whether for a modification of an existing permit or a new permit, the Owner or Operator shall give written notice within thirty (30) days of such application to the CDD.
- C. For those excavation operations that have existing and valid conditional use permits or a written agreement between the County and the Owner or Operator acknowledging the existence of a legal nonconforming use, such conditional use permits and written agreements shall remain in full force and effect. The provisions of this Chapter shall only apply to such operations to the extent that they are not inconsistent with or otherwise covered by a current, valid conditional use permit or a written agreement with respect to a legal nonconforming use.

**30-4 Application Contents and Review Procedures.** In order to ensure that the existing or proposed excavation operation is conducted in a manner that will mitigate the effects on the community and provide for reclamation of the land to a state that enables meaningful use and respects aesthetic values, the Owner or Operator shall, prior to the commencement of any phase of operation, submit to the CDD an Application containing, among other things, a proposed Operation and Reclamation Plan which addresses the following:

A. *General Information.* The following shall be provided:

1. The name, permanent business mailing address, and telephone number, including a cell phone number, of the Operator responsible for the mining operations and reclamation of the site.
2. The name, permanent mailing address, and telephone number of the Owner(s) of all land to be included as a part of the operations.
3. The name, permanent business mailing address, and telephone number, including a cell phone number, of the initial representative designated or appointed by the Owner or Operator to serve as the initial representative to act as a liaison between the County and its various departments and the Owner or Operator. The Owner or Operator may change its designated representatives by notice. The representatives shall be available at all reasonable times to discuss and review the Excavation Permit
4. The name and mailing address of the surface landowner(s) and mineral owner(s) as set forth in the public property tax records available from the County of all land directly adjacent to the operations.
5. The DOGM Notice of Intent Application approval, if subject to DOGM oversight.
6. Proposed starting date and the anticipated period of operation.
7. Preliminary reclamation plan as described in section 30-9.

B. *Plans, Drawing, Materials Required.* The Application shall also include site plan application fees paid in full, a completed application form as provided by the County, one hard copy and an electronic copy of all items submitted to or required by DOGM for the Notice of Intent Application approval (including surety), or equivalent information if not subject to DOGM oversight. In addition, one hard copy and an electronic copy of the following items demonstrating the then-existing conditions shall also be submitted:

1. A regional vicinity analysis describing other land uses within one thousand feet (1000') of the site, the possible impacts of the proposed excavation on surrounding land and, if necessary, any proposed measures to mitigate these impacts;
2. A description of the hauling routes anticipated to be employed by the Operator in hauling material from the excavation site to roads maintained by the County or State;

3. A description of the visual characteristics, with particular attention given to the potential use of existing natural topography and vegetation, and, if necessary, to shield site operations from nearby properties, roadways, and the general public;
  4. The most currently available aerial photograph of the proposed excavation site and adjacent properties;
  5. All maps, drawings or cross sections as found in the DOGM application, if applicable;
  6. Planned phases of excavation and anticipated amount of material to be removed at each phase, depicted on an appropriate map;
  7. Number, type and kinds of machinery and equipment to be used;
  8. Operational processes to be used, including crushing, stockpiling, milling, etc.;
  9. The water to be used in operations, its source, control and disposal;
  10. Electrical power requirements, source and control;
  11. Accessory facilities, such as scales and buildings;
  12. Sanitary facilities and disposal system;
  13. Proposed techniques to be used for control of dust and noise;
  14. Storm Water Management Plan (SWPPP).
  15. Proposed lighting plan.
  16. A proposed Operation and Reclamation Plan.
  17. Division of Air Quality Permit.
- C. *Authorization of Permit.* All Operation and Reclamation Plans, maps, plans and documents submitted as part of the Application shall be considered part of the final approval and shall be signed and dated by the CDD following approval of an Excavation Permit as set forth below. DOGM requirements, if applicable, are considered a part of County approvals. However, to the extent DOGM requirements are applicable, only DOGM shall have authority to enforce such DOGM requirements. With respect to issues not addressed by DOGM, County provisions shall apply.
- D. *Application Review.*
1. Once an Application has been submitted, the CDD shall review the Application.
  2. The CDD shall, within thirty (30) days of receipt, make a determination of Application completeness or if further information is necessary for review.

- a. **Incomplete Application.** If an Application is determined to be incomplete, the CDD shall provide the Applicant with a listing of all deficiencies in the Application or additional materials needed and the Applicant shall have thirty (30) days to remedy the deficiencies and/or provide additional materials after which the Application shall be considered null and void. The Applicant may appeal a determination by the CDD that an Application is incomplete in accordance with the requirements of section 30-17.
  - b. **Complete Application.** Once an Application is determined to be complete, the CDD shall post a copy of the Application on the County's website and send notice of the Application to all property owners located within one thousand feet (1000') of the property which is the subject of the Application and may distribute copies of the Application and accompanying plans and statements to other interested county or state agencies, service providers, or others as determined by the CDD and shall ask for comments and recommendations. Following adequate time for response from interested parties, which shall not be less than ten (10) days, the CDD shall make a written decision regarding the Application.
  - c. **Denial or Conditioned Approval of Application.** If an Application is denied by the CDD or if the CDD imposes any conditions on the approval beyond those proposed in the Application, the Applicant may appeal the denial or the imposition of conditions by the CDD in accordance with the requirements of section 30-17.
3. The Owner, the Owner's authorized representative, or the Operator shall be given an opportunity to meet with the CDD to review the Application.
  4. The CDD shall post a copy of the decision regarding an Application on the County's website and send notice of the decision to all property owners within one thousand feet (1000') of the property which is the subject of the Application.

**30-5 Notice of Issued Permit.** Upon the approval of an Application and issuance of an Excavation Permit in accordance with section 30-4, the County shall provide a note on all future plats recorded within one thousand feet (1000') of the property which is subject of the Excavation Permit indicating that an excavation operation exists on the Property and an Excavation Permit has been issued. Additionally, the County shall require any owner(s) of property within one thousand feet (1000') to adhere to the requirements of Chapter 1 of Title 13 of the Tooele County Code in the development of that property.

**30-6 Transfer to Successor Operator.** Whenever an Operator succeeds to the interest of another Operator by sale, assignment, lease or other means, the County may release the first Operator from his responsibilities under his approved Excavation Permit as described above, including surety, provided the successor assumes all of the responsibilities of the former Operator under the approved Operation and Reclamation Plan, including the posting of surety. Upon satisfactory assumption of such responsibilities by the successor Operator,



under conditions approved by the CDD, the responsibility of the total excavation site shall be transferred to the successor Operator.

**30-7 Filing of an Annual Progress Report.** At the end of each calendar year, unless waived by the CDD for good cause, the Owner or Operator shall submit a report of the status of the operations in regards to compliance with the Excavation Permit requirements to the CDD on a form or a checklist to be prepared and distributed to each Operator by the CDD. The CDD will review, or cause to be reviewed, the report and if necessary, make an onsite visit and review the excavation operation and will report the findings to the County Legislative Body. The report will summarize compliance with the Excavation Permit and the requirements of this Chapter. The Operator shall be responsible for all commercially reasonable costs of reviews, investigations and reports as reflected in the County fee schedule for review of Annual Progress Reports.

**30-8 Operations.** All excavation operations conducted or carried on that are subject to the requirements as found in applicable DOGM rules, including plans and practices, shall continue to comply with those requirements as provided in section 30-4 (C) above. Because of the potential impact on adjacent properties, the following additional limitations, restrictions, and controls shall also apply except as otherwise specified in this Chapter:

A. *Dust, Noise, Vibration, Smoke, Lights and Odor.* All equipment and machinery operation on the site and in the transportation of products through the County shall be conducted in compliance with the approved Operation and Reclamation Plan and other applicable requirements of the County Code and Ordinances. Such operations must meet applicable County standards as adopted or amended including, but not limited to, the noise requirements contained in Chapter 6-21 of the County Code.

Soil berming, landscaping and other techniques may be used to accomplish the objective of reducing the impact of noise, vibration and other operation factors on adjacent property. All state and federal emission guidelines and regulations must be adhered to, including compliance with any regulations or with any permit issued by the State Divisions of Air or Water Quality. On site access and haulage roads shall be maintained by the Owner/Operator, including surfacing or other treatment as approved by the CDD, in such a manner as to minimize dust.

B. *Fencing and Barriers.* Fencing or other suitable barriers shall be created and maintained on the excavation site or on any portions of the site where such fencing is necessary because of dangerous conditions as approved as part of the Operation and Reclamation Plan. Fencing, 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.

C. *Washing Operations and Run-off Water Detention.* The Operator or Owner shall maintain a Storm Water Management Plan (SWPPP) for the excavation operation.

D. *Mitigating Impacts on Public Roads and Highways.* In order to mitigate the impact of gravel operations and related activities on public roads and highways, including fugitive dust, the conditions of an Excavation Permit may include a requirement to apply a liquid magnesium chloride or similar product on all access roads owned or leased by the Owner from the subject property where gravel operations will be conducted, to the closest adjoining public road. In addition, all such accesses used for gravel operations and related activities shall be periodically swept, cleaned and treated as deemed necessary for safety purposes at the expense of the Owner and/or Operator.

E. *Hours, Days and Limits of Operation.*

1. Hours of Operation.

- a. Aggregate Crushing Operations. Rock crushing and related operations shall be limited to the hours of 7:00 a.m. to 7:00 p.m. from April 1 to November 30; and from 8:00 a.m. to 6:00 p.m. from December 1 to March 31.
- b. Hauling. The activities of hauling product shall be limited to the hours of 6:00 am to 8:00 pm from April 1 to November 30; and from 8:00 am to 6:00 pm from December 31 to March 31. No trucks used in hauling operations shall be allowed to enter the site before the specified time or permitted to leave the site loaded with material after the specified time.
- c. Washing Equipment. The washing of equipment shall be limited to the hours of 6:00 am to 9:00 pm; and all permanent yard lighting shall be turned off other than during those hours.
- d. Maintenance, Repair and Related Work. Notwithstanding the foregoing, an Operator shall have the right to perform maintenance, repair and related work during hours beyond those specified for other activities above but shall make reasonable efforts to reduce noise and light by using low impact mobile lighting as needed for such maintenance work.

2. Designated Hauling Routes. All commercial vehicles utilizing the excavation site shall use the designated hauling routes as determined pursuant to the Excavation Permit.

3. Use of Processing Equipment. Rock crushing and all other operations may be conducted only under appropriate conditions consisting of a combination of buffering, berming, screening, landscaping, and other mechanisms, including limitations on noise as found in Chapter 6-21 of the County Code, to reduce or mitigate potential adverse impacts on neighboring land owners and County residents. No processing shall be permitted on Sundays.

4. No excavation operations, shall take place on Sunday or the following legal holidays: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

5. The limitations herein may be modified as found in sections 30-11 and 30-12.

- F. *Operation Boundaries.* To protect neighboring residents and properties from the potentially adverse effects of dust, noise, vibration, smoke, welding and other lights, orders, and soil erosion and to provide for the future development of the property, extractive operations are prohibited within ten (10) feet of the outside boundary of the permitted property. In situations where gravel excavation operations or extractive activities as defined and regulated under the provisions of this Chapter are being conducted on two adjoining properties, by agreement of those adjoining property owners, extractive operations may be conducted up to the property line between those adjacent properties with written notice to the County of not less than 30 days before such extractive operations are conducted within that adjacent boundary area between such properties.
- G. *Cessation of Operations.* Within eighteen months (18 months) after the cessation of any excavation operations as defined in this Chapter, the Operator shall implement the approved Operation and Reclamation Plan for the disturbed areas. This includes the reclamation of the last area to be excavated. An Operator may file a written notice with the CDD informing the County that they are temporarily ceasing excavation operations for commercial reasons and in that case, the provisions of this section shall not apply and the temporary cessation of excavation operations shall not be considered as evidence of an intent to abandon any nonconforming use of the property for excavation operations. An Operator shall provide written notice to the County when it intends to resume excavation operations.
- H. *Blasting.* Any blasting or related explosive detonation proposed to be conducted as part of excavation operations as part of an Excavation Permit, and any such activities, if approved, shall be limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday if the excavation operation is within one thousand feet (1000') of existing residential areas and shall be responsible to provide written notification (including email) to the CDD and County Sheriff at least twenty-four hours in advance of any blasting.

**30-9 Reclamation.** The Owner or Operator shall adhere to an approved Operation and Reclamation plan as provided in this Chapter. It is understood that initial or preliminary reclamation plans are subject to revision and specificity as areas are taken out of production and such revisions will be duly considered by the County.

In the case of an operation that has a reclamation plan that has already been approved by DOGM, that plan shall be submitted to the County as its reclamation plan.

For those operations not subject to the regulations of DOGM, the following requirements shall apply:

- A. *Progressive Reclamation by Phase.* The Owner or Operator shall incorporate progressive reclamation, meaning that reclamation will commence and be carried on during excavation operations as specified in the Reclamation Plan. When an area is completed per the Operation and Reclamation Plan or has been left inactive for eighteen (18) months

or more per the Operation and Reclamation Plan, subject to the provisions of §30-8(I) above, that area shall be reclaimed. Reclamation shall proceed after completion of a phase, or site if there are no phases, as set forth in the approved Operation and Reclamation Plan. The Applicant shall provide an overall preliminary reclamation plan. Final reclamation plans (at an appropriate scale for adequate review) with the use of maps, imagery, and renderings for each phase or site shall be submitted as such area is taken out of production.

- B. *Backfilling.* Where backfilling is required, the excavated area shall be graded and backfilled with uncontaminated materials or topsoil only. This backfill must be of such material as to support vegetation and grass growth. The graded or backfilled area shall not be contoured so that it will collect and permit stagnant water to remain thereon. Peaks and depressions in the excavation area shall be reduced to a surface which will result in level or gently sloping topography in substantial conformity to the land area immediately surrounding and which will minimize the possibility of erosion.
- C. *Final Grading Plan.* The Operator/Applicant shall provide a final grading plan, designed by a licensed engineer, surveyor or landscape architect, indicating the areas excavated, existing and design contours, and proposed final grades and elevations.
1. To help control storm water run-off and erosion, to increase potential for vegetation growth, to improve slope stability and lateral support due to potential seismic activity (recognizing that fault lines exist on or near the properties), and to generally improve safety for future residential or commercial structures above and at the base of excavations, all finished slopes (including cuts and fills) shall be graded according to a geotechnical report or engineering study supplied by the Owner/Operator for stability based on the expected subsequent use of the property. Such slope engineering shall be approved by the CDD with the assistance of an engineer if deemed necessary by the CDD based on horizontal to vertical ratios, and may be varied across the site. Such ratios shall not exceed a two to one ratio (2H:1V) in those areas where no future development will occur, except in limited areas as approved by the County based on the engineering study referenced above. For areas expected to be utilized for any future residential, commercial or similar future land use purposes, other than as open space or to satisfy setback or similar requirements, the ratio shall not exceed three to one (3H:1V).
  2. For any future development of the property after the cessation of excavation operations and completion of the reclamation process, the owner at the time of the development of the property shall be required to comply with the applicable land use regulations of the County then in effect.
- D. *Grading, Stockpiling, Seeding, Phases, Etc.* Excavations shall be planned so as to progressively develop the proposed final land forms by grading and by stockpiling overburdened materials in areas designated for future land forms or in excavations where the material will be spread over the excavation floor where no future excavation is anticipated. Such areas are to be seeded and planted within a reasonable time after grading is completed or within appropriate planting seasons, but in any case, the grading

and planting shall be complete within one year. The reclamation plan shall contain a description of the phased reclamation process throughout the anticipated life of the excavation.

- E. *Final Reclamation of Entire Site.* Final reclamation shall begin within a reasonable time and be pursued diligently until completed for any site where operations authorized under an Excavation Permit have been completed. The final reclamation shall conform to the approved Operation and Reclamation Plan (including approved modifications) in the Excavation Permit. All reclamation plans shall conform at least to the below listed minimum standards and requirements listed elsewhere in this chapter. The County Legislative Body 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, overburdened 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 CDD.
  2. Water-filled Areas. All excavations which create permanent standing water or ponds shall be filled with uncontaminated materials. This requirement shall not apply, however, to any water filled excavations scheduled to become an integral part of the final reclamation plan. The reclamation of these areas shall be done in such a manner that the groundwater is not polluted. 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, preferably 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 CDD.
  4. Removal of Buildings and Equipment. As soon as excavation has been permanently terminated, all building, including temporary structures (except fences), equipment, rock piles, rubble, or other debris (including electrical conduits) used in the administration of the operations, shall be removed unless deemed necessary to the approved final use of the reclaimed site.
  5. Securing of property. The Operator shall secure, in a manner approved by the CDD, any and all areas determined by the CDD to be a dangerous condition and shall provide adequate fencing around the perimeter of the entire property as deemed necessary and appropriate by the CDD.
- F. *Reclamation Verification.* After excavation operations have been completed and reclamation of the excavation site has been completed according to the approved Operation and Reclamation Plan, the CDD shall verify that the permit area has been reclaimed in compliance with the requirements of this Chapter and the approved

Operation and Reclamation Plan previously submitted and approved under the provisions of this Chapter.

**30-10 Provision of Surety.** An operation shall have an approved provision of surety and the following requirements shall apply:

- A. *Provision of Surety before Operations Begin.* After receiving notification that the application for an Excavation Permit has been approved, but prior to commencement of such operation, the Operator shall provide surety to the County, in a form and amount to be approved by the CDD and County Attorney based on an estimate of an engineer retained by the Operator that is sufficient to secure compliance with requirements of the approved Operation and Reclamation Plan. If the scope of the operation or area changes, the surety may be adjusted, as determined by the CDD and County Attorney upon further review not to exceed five (5) years. The surety required by DOGM, if applicable, shall satisfy this requirement.
- B. *Amount of Surety.* If no surety bond is provided per DOGM requirement, the County may require a bond in an amount determined by the CDD. In determining the amount of the surety, the CDD 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 approved Operation and Reclamation Plan. The CDD shall determine the amount of the surety reasonably related thereto, to protect the County and ensure compliance with the requirements with the Excavation Permit; however, the amount of surety shall not exceed one hundred percent of the estimated cost of reclaiming the excavation site provided by an engineer retained by the Operator as set forth above. The surety shall be periodically reviewed to ensure that the amount of the surety is capable of insuring adequate rehabilitation and shall be adjusted accordingly.
- C. *Form of Surety.* In determining the form of surety to be provided, the CDD and County Attorney shall approve a method acceptable to the Owner or Operator that is consistent with the requirements of this Chapter.
- D. *Release of Surety.* The liability under surety provisions shall continue until such time as released in part, or in its entirety, by the CDD based on the report verifying compliance with the provisions of this Chapter and the approved Operation and Reclamation plan.
- E. *Forfeiture of Surety.* If the Operator fails to or refuses to carry out the necessary land reclamation as outlined in the approved Operation and Reclamation Plan, the County may, after providing Operator with notice, reasonable opportunity to cure and hearing, declare default and assert a claim against the surety or corporate bond, including filing suit against the Owner or Operator and its bonding company.

**30-11 Emergencies and Short Term Contractual Obligations.** The County may modify the provisions relative to the nature and scope of excavation activities, hours of operations and days of operations consistent with the intent of these regulations to address the following circumstances subject to review and approval based on the criteria set forth below.

A. *Bona Fide Emergencies.* The Operator of any excavation operations may obtain approval from the CDD for any temporary change to the conditions of an Excavation Permit relating to hours of operation, days of operation and hauling routes in order to respond to bona fide emergencies or emergent circumstances. Each such request shall be promptly reviewed and may be approved subject to the imposition of reasonable conditions to reduce or mitigate potential adverse impacts on neighboring landowners and the County such as dust control, noise reduction and traffic control requirements. Any emergency beyond thirty days must be further reviewed and approved by the CDD.

B. *Temporary Short Term Contractual Obligations.*

1. If an Operator has obligations under a contract that require, as a condition to entering into such contract, that the Operator deliver or otherwise provide aggregate products (including hauling and processing) on days and hours of operation not normally otherwise allowed under the provisions of this Chapter, the Operator may present a copy of the contract to the CDD and request approval from the CDD for a change to the scope and conditions of an Excavation Permit including, but not limited to, hours of operation, days of operation and hauling routes for contractual obligations up to the limits of the contract and according to those contractual provisions.
2. Any contract presented to the CDD as part of a request for a temporary change to the scope and conditions of an Excavation Permit shall be deemed a protected record under Utah Code § 63G-2-305.
3. Within five (5) business days of receiving a request for a temporary change to the scope and conditions of an Excavation Permit, the CDD shall make a determination regarding the request. Unless the CDD can identify specific and reasonable concerns as to why the request should not be approved, the CDD shall approve the request for a temporary change to the scope and conditions of an Excavation Permit.
4. If the CDD denies an Operator's request for a temporary change to the scope and conditions of an Excavation Permit, the Operator may appeal said decision in accordance with section 30-17; however, said appeal shall be heard by the County Administrative Hearing Officer within ten (10) business days of the Operator's filing a request for an appeal.

**30-12 Modification of an Excavation Permit.** Any Excavation Permit issued may be modified in the following manner:

A. *Modification of the Excavation Permit Plans.* Modification of the Excavation Permit plans may be initiated by the Operator where minor revisions are sought on the approved grading plan, schedule of proposed operation, or proposed reclamation plan. Any modification initiated by the County must be based on a compelling, countervailing public interest as defined under Utah Law.

1. For purposes of this section minor revisions shall mean changes or variances of up to thirty percent (30%) of each parameter of the Operation and Reclamation Plan.

2. Consideration of such revisions need not require a public hearing provided that in the judgment of the CDD the proposed revisions would not constitute significant changes, and provided also, that the permittee has not expressly requested that a public hearing be held.

B. *Modification Exception.* Changes in equipment are not considered a modification of the Excavation Permit and do not require approval by the CDD unless such changes significantly alter the scope of the operation or violate noise or operational limitations, as determined by the CDD.

C. *Other Modification to the Excavation Permit Plans.* Other amendments or modifications to the Excavation Permit that are not deemed minor revisions as defined in section 30-12(A)(1) or determined by the CDD shall require compliance with the approval process set forth in section 30-4 above.

**30-13 Compliance by Existing Operations.** Within eighteen (18) months after adoption of the ordinance codified in this Chapter, all existing excavation operations shall comply with all applicable provisions set forth herein.

**30-14 Enforcement.**

A. The CDD is designated and authorized as the officer charged with the enforcement of this Chapter. It shall be the duty of the CDD to inspect or cause to be inspected all excavation operations regulated under the provisions of this Chapter. Where it is determined by the CDD that there are violations of the provisions of this Chapter, the CDD shall enforce the provisions of this Chapter, and in performance of those duties seek the assistance of the County Attorney to file actions in the courts where necessary, and any failure to do so shall not legalize any violation of such provision.

B. *Default.*

1. *Notice.* If the Owner or Operator fails to perform their obligations under the Excavation Permit, the County shall provide a notice of default to the Owner or Operator.

2. *Contents of the Notice of Default.* The notice of default shall:

a. *Specific Claim.* Specify the claimed event or action resulting in the default;

b. *Applicable Provisions.* Identify with particularity the provisions of any applicable law, rule, regulation, or provision of the Excavation Permit that is claimed to be in default;

c. *Materiality.* Identify why the default is claimed to be material; and

d. *Mandatory Cure.* Provide a time for curing the default which shall be of no less than thirty (30) days duration.



3. *Meet and Confer, Mediation.* Upon the issuance of a notice of default, the parties shall engage in the “Meet and Confer” and “Mediation” processes specified in sections 30-14(C) and 30-14(D).
4. *Extended Cure Period.* If any default cannot be reasonably cured within thirty (30) days, then such cure period may be extended at the discretion of the party asserting default so long as the defaulting party is pursuing a cure with reasonable diligence.

C. *Meet and Confer Requirement.* The County and Owner or Operator shall meet within fifteen (15) business days of any notice provided pursuant to section 30-14(B)(1) to resolve the issues specified in the notice.

D. *Mediation Requirement.*

1. *Issues Subject to Mediation.* Issues resulting from the County’s issuance of a notice pursuant to section 30-14(B)(1) that the County and the Owner or Operator are not able to resolve by “Meet and Confer” shall be mediated.
2. *Mediation Process.* If the County and the Owner or Operator are unable to resolve a disagreement subject to mediation, the parties shall attempt within ten (10) business days to appoint a mutually acceptable mediator with knowledge of the legal issue in dispute. If the County and the Owner or Operator are unable to agree on a single acceptable mediator, they shall each, within ten (10) additional business days, appoint their own representative. These two representatives shall, between them, timely choose the single mediator. The Owner or Operator shall pay the fees of the chosen mediator. The chosen mediator shall, within fifteen (15) business days, review the positions of the parties regarding the mediation issue and promptly attempt to mediate the issue between the parties. If the parties are unable to reach agreement, the mediator shall notify the parties in writing of the resolution that the mediator deems appropriate. The mediator’s opinion shall not be binding on the parties, nor shall it be admissible in any subsequent proceedings regarding the dispute.

**30-15**            **Violation.** The County may, by ordinance, establish civil penalties for violations of this Chapter, pursue other civil remedies allowed by law, or revoke the Excavation Permit of any person or corporation violating any provisions of this Chapter after a hearing upon due notice following the procedures set forth in section 30-14 above, which hearing shall be open to the public.

**30-16**            **Repealer.** In the event any part of the ordinance is determined to be invalid or unconstitutional, the portion is deemed stricken from the ordinance, but the remaining provisions shall remain valid.

**30-17**            **Appeals.**

- A. Any person adversely affected by any final decision made regarding the issuance of an Excavation Permit or other final decisions under the provisions of this Chapter (an Appellant) may file an appeal within ten (10) business days to the County Administrative Hearing Officer. The appeal shall be made in writing and filed with the Community

Development Department. The request shall contain the signature of the responsible party and a written justification of such appeal.

- B. The appeal shall then be heard by the County Administrative Hearing Officer on a de novo standard in a public meeting in which only the Appellant and named parties to the appeal shall be entitled to present evidence.
- C. In an appeal involving scientific or technical issues, any Appellant may request the County to assemble a panel of qualified experts who have knowledge and experience in excavation and mining operations and the reclamation of the same to serve as the appeal authority for purposes of determining the technical aspects of the appeal.
- D. If a request is made under section 30-17(C), the County shall assemble the panel described in section 30-17(C) consisting of, unless otherwise agreed by the person appealing and the County:
  - 1. one expert designated by the County;
  - 2. one expert designated by Appellant; and
  - 3. one expert chosen jointly by the County's designated expert and the Appellant's designated expert.
- E. A member of the panel assembled by the County under section 30-17(C) may not be associated with the Excavation Permit or the excavation that is the subject of the appeal.
- F. The Appellant shall pay:
  - 1. one-half (1/2) of the cost of the panel; and
  - 2. the County's published appeal fee.
- G. Any person adversely affected by any final decision of the County Administrative Hearing Officer may file an appeal, based on and limited to a review of the record of the proceedings, in the State District Court within thirty (30) calendar days after the final decision is rendered by the County Administrative Hearing Officer.