



**Law Department
City & Borough of Juneau**

MEMORANDUM

TO: Borough Assembly
FROM: Amy Gurton Mead, Municipal Attorney
DATE: April 27, 2017
SUBJECT: Proposed Amendments to CBJ 49.65, Exploration and Mining Code.

Attached are three documents provided by the proposer, Jim Clark:

1. A chart outlining state, federal, and CBJ regulatory requirements;
2. An 11 page memorandum explaining the reasons for the proposed revisions (titled “Sections Removed from Current Mining Ordinance).
3. The proposed new CBJ 49.65, with a two page cover sheet (“Sections removed from Current Mining Ordinance” and. “Reasons for Changes to Mining Ordinance.”)

In 1986, the CBJ Assembly adopted 86-43, which amended the Land Use Code to add one code section related to “exploration and mining.” In 1987, that concept was expanded upon with the adoption of a new chapter to 49.65, the Exploration and Mining part. The stated purpose of the regulations were as follows:

49. 65 .110 PURPOSE. It is the purpose of this section to foster the development of a safe, healthy, and environmentally sound mining industry while protecting the overall interests of public health, safety, and the general welfare and minimizing the surface effects of mining. This section establishes the review and permit procedures necessary to conduct exploration, to gain approval to open a mine, to conduct operations, and to provide for final reclamation and bond release at the conclusion of mining. This section does not include surface or subsurface water, geothermal resources, sand or gravel, common varieties of construction aggregate, or natural oil, gas, coal, and peat or associated by-products recovered therewith.

The intent of this section is to supplement existing state and federal regulatory programs by regulation of areas of local concern which those programs do not cover.

In 1989, as a result of the recommendations made by a committee created for that purpose, the mining code was overhauled by ordinance 89-47. 89-47 is still on the books. Subsection (b) illustrates the change in policy that occurred in 1989.

49.65.110 - Purpose.

(a) It is the purpose of this article to foster the development of a safe, healthy and environmentally sound mining industry while protecting the overall interests of public health, safety and the general welfare and minimizing the environmental and surface effects of mining projects for which an exploration notice or mining permit is required. This article establishes the review and permit procedures necessary to conduct exploration, to gain approval to open a mine, to

conduct mining operations, and to provide for final reclamation and financial warranty release at the conclusion of exploration and mining operations and reclamation of affected surface. This article does not include regulation of surface or subsurface water, geothermal resources, sand or gravel, common varieties of construction aggregate, or natural oil, gas, coal and peat or associated byproducts recovered therewith, except to the extent that such substances are developed or extracted as a mining by product in a mining operation of a large or small mine.

(b) The intent of this article is to regulate areas of local concern, reserving to the City and Borough all regulatory powers not preempted by state or federal law. The department may require a permit to be obtained or a notice given for federally approved activities on federal lands, including unpatented mining claims, so long as the purpose of the review process is not to deny use or expressly prohibit mining, but rather the purpose of the review is to impose conditions for the protection of the environment, health safety and general welfare of the City and Borough.

The policy behind the proposed code provisions is contained in the attached memorandum from the proposers and in the stated purpose section of the revision:

49.65.110 - Purpose.

(a) The purposes of this article are to encourage mining and investment in mining and to foster the development of a safe, healthy and sound mining industry while protecting the overall interests of public health, safety and the general welfare and meeting the land use and development requirements set out in Title 49 of this Code.

(b) This article does not include regulation of surface or subsurface water, geothermal resources, sand or gravel, common varieties of construction aggregate, or natural oil, gas, coal and peat or associated byproducts recovered therewith.

(c) The purpose of the review process is not to deny use or expressly prohibit mining, but, rather, the purpose of the review is to ensure mining activities meet the land use and development requirements set out in Title 49 of this Code.

In addition to the documents provided by the drafter of the revisions, I have also included a strikethrough version of current code showing the proposed deletions and additions.

Due to the revised schedule, a more substantive review could not be provided. If you need more information, please let me know.

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
49.65.120 Exploration <ul style="list-style-type: none"> • Notice of intent to explore • Reclamation plan • Financial warranty 	Forest Service Land	<ul style="list-style-type: none"> • 36C.F.R Part 228 • Plan of Operation to explore – FSM 2840.04 • Plan of operation includes reclamation 36.C.F.R.228.8(g) • PoO supported by NEPA document • Financial warranty required by 36 C.F.R 228.51 • CWA { 404 Permit for Wetlands 	<ul style="list-style-type: none"> • APDES Permit for Discharges to State or Federal Waters (46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901)
	State Land – Surface and/or Subsurface (AS38.05.125)	<ul style="list-style-type: none"> • CWA{404 Permit for Wetland NEPA Review (usually EA) 	<ul style="list-style-type: none"> • AS27.19.020-.03 (Reclamation) • AS27.19.040 (financial warranty) • 11AAC Chapter 97 implements AS27.19.020-.040 • APDES permit for Discharge to State or Federal Water (46.03.050 - .120) • Title 26 Anadromous Fish (16.05.841) (16.05.871-.901) • Plan of Operations AS38.05.185 et seq. • In <i>Nunamta v. DNR</i> the Alaska Supreme Court specifically a 30 day notice and comment period and financial warranties in Miscellaneous Land Use Permit for exploration.
	CBJ as Owner of Surface and Subsurface – Assume Key requirements will	<ul style="list-style-type: none"> • CWA{404 Permit for Wetland NEPA Review (usually EA) 	<ul style="list-style-type: none"> • APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120) <ul style="list-style-type: none"> • Title 16 protection for

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
	be set out in lease		<p>Anadromous Fish (16.05.841) (16.05.871-.901)</p> <ul style="list-style-type: none"> In <i>Nunamta v. DNR</i> the Alaska Supreme Court specifically a 30 day notice and comment period and financial warranties in Miscellaneous Land Use Permit for exploration. MLUP will be required to cross State tidelands.
	Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)	<ul style="list-style-type: none"> CWA{404 Permit for Wetland NEPA Review (usually EA) 	<ul style="list-style-type: none"> APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120) Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901)
<p>49.65.125 Small Mine Permits</p> <ul style="list-style-type: none"> Right to use area Timetable, mining plan, reclamation plan, Potential environmental, health, safety and general welfare impacts, and mitigation plan 	Forest Service Land	<ul style="list-style-type: none"> 36 C.F.R Part 228 Plan of Operations (NEPA Review) CWA 404 Permit for Wetlands Plan of operation includes PoO includes reclamation (228.8(g)) Financial warranty required by 36 C.F.R 228.51 36 C.F.R. 228.8 covers potential mining impacts as part of PoO Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120) Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) Potential air permit AS46.14.120(a) and (b) SPCC Plan SWPPP (Stormwater) Plan MLUP to cross tidelands

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
<ul style="list-style-type: none"> • Mitigate impact of mining operation • No subsidence • Financial warranty 	<p>State Land: Surface and/or subsurface (AS38.05.125)</p>	<ul style="list-style-type: none"> • CWA 404 Permit for Wetland NEPA Review (usually EA) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • AS 27.19.020-.03 (Reclamation) • AS 27.19.040 (financial warranty) • 11AAC Chapter 97 implements AS27.19.020-.040 • Plan of Operations or permit AS38.05.185 et seq.11 AAC6.800 • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Potential air permit AS46.14.120(a) and (b) • Solid Waste Plan 18AAC Chapter 60 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands • Mendenhall Game Refuge AS16.20.034
	<p>CBJ as Owner of Surface and Subsurface put Key Requirements in Lease</p>	<ul style="list-style-type: none"> • CWA {404 Permit for Wetland NEPA Review (usually EA) 	<ul style="list-style-type: none"> • APDES Permit for Discharges to Federal or State water (AS 46.03.050 - .120) • Potential air permit AS46.14.120 • SPCC Plan • Fish Habitat Permit AS 16.05.841, AS16.05.871-.901

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
	<p>Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)</p>	<ul style="list-style-type: none"> • CWA {404 Permit for Wetland NEPA Review (usually EA) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • MLUP for tidelands • APDES Permit for Discharges to Federal or State water (AS 46.03.050 - .120) • Potential air permit AS46.14.120 • SPCC Plan • SWPPP (Stormwater) Plan • Fish Habitat Permit AS 16.05.841, AS16.05.871-.901 • MLUP to cross tidelands
<p>49.65.130 Large Mine Permits</p> <ul style="list-style-type: none"> • Description and timetable, • reclamation • Hazardous waste disposal • Health, safety and general welfare impacts • Feasibility study info • Application to other agencies • Socioeconomic report • Environmental impacts • No subsidence 	<p>Forest Service Land</p>	<ul style="list-style-type: none"> • 36 C.F.R Part 228 • Plan of Operations (NEPA Review - EIS) addressing potential environmental impacts set out in 36 C.F.R. 228.8 • EIS includes socio-economics • PoO includes reclamation (228.8(g)) • Financial warranty required by 36 C.F.R 228.51 • CWA 404 Permit for Wetlands • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • SPCC Plan • SWPPP (Stormwater) Plan • Solid Waste Permit (18 AAC Chapter 60) • Dam Safety AS 46.17.020 • MLUP to cross tidelands
	<p>State Land – Surface and/or Subsurface (AS38.05.125)</p>	<ul style="list-style-type: none"> • CWA 404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements reclamation)

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
			<ul style="list-style-type: none"> • AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty) • Plan of Operations or permit AS 38.05.185 et seq.11 AAC6.800 • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands • Mendenhall Game Refuge AS 16.20.034
	<p>CBJ as Owner of Surface and Subsurface – Assume Key requirements in lease</p>	<ul style="list-style-type: none"> • CWA 404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b)

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
			<ul style="list-style-type: none"> • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands
	<p>Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)</p>	<ul style="list-style-type: none"> • CWA 404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands
<p>49.65.135 Standards for Issuance of Permits:</p> <ul style="list-style-type: none"> • Mitigate environmental Health, safety and 	<p>Forest Service Land</p>	<ul style="list-style-type: none"> • 36 C.F.R Part 228 • Plan of Operations (NEPA Review - EIS) addressing potential environmental impacts set out in 36 C.F.R. 228.8 • EIS includes socio-economics • PoO includes Reclamation 	<ul style="list-style-type: none"> • APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • SPCC Plan

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
<p>general welfare impacts</p> <ul style="list-style-type: none"> • Meet air and water requirements • Hazardous and toxic waste • Reclamation • Local impacts 		<p>(228.8(g))</p> <ul style="list-style-type: none"> • Financial warranty required by 36 C.F.R 228.51 • CWA 404 Permit for Wetlands • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • SWPPP (Stormwater) Plan • Solid Waste Permit (18 AAC Chapter 60) • Dam Safety AS 46.17.020 • MLUP to cross tidelands
	<p>State Land – Surface and/or Subsurface (AS38.05.125)</p>	<ul style="list-style-type: none"> • CWA 404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements reclamation) • AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty) • Plan of Operations or permit AS 38.05.185 et seq.11 AAC6.800 • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020 • SPCC Plan • SWPPP (Stormwater) Plan

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
			<ul style="list-style-type: none"> • MLUP to cross tidelands • Mendenhall Game Refuge AS 16.20.034
	<p>CBJ as Owner of Surface and Subsurface – Assume Key requirements in lease</p>	<ul style="list-style-type: none"> • CWA 404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands
	<p>Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)</p>	<ul style="list-style-type: none"> • CWA 404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS 46.14.120(a) and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
			<ul style="list-style-type: none"> • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands
<p>49.65.140 FINANCIAL WARRANTY</p> <ul style="list-style-type: none"> • Will consider financial warranty set by other agencies • Reserves right to increase if does not adequately protect the CBJ 	<p>Forest Service Land</p>	<ul style="list-style-type: none"> • Financial warranty required by 36 C.F.R 228.51 	<ul style="list-style-type: none"> • AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty)
	<p>State Land – Surface and/or Subsurface (AS38.05.125)</p>		<ul style="list-style-type: none"> • AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements reclamation) • AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty)

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
	CBJ as Owner of Surface and Subsurface – Assume Key requirements in lease		<ul style="list-style-type: none"> AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements reclamation) AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty)
	Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)		<ul style="list-style-type: none"> AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements reclamation) AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty)

SECTIONS REMOVED FROM CURRENT MINING ORDINANCE

INTRODUCTION: The purpose of this Memorandum is to explain why sections of the current Mining Ordinance should be removed. In the main it is because they duplicate, and thus add additional process layers, to what is required by Federal and State law and existing law. By doing so they increase the delay and cost of mining exploration and mining within the CBJ along with opportunities for a multi-layered sequence of litigation.

Accordingly, to avoid duplication and added delay and added litigation (to say nothing about the tremendous amount of staff time it would take to review an application under the Mining Ordinance process described below) the proposal is for CBJ staff to simply check with the relevant Federal and State regulatory agencies to determine whether or not the applicant has the needed permits. If so, the application would be submitted to the Planning Commission to decide whether or not to issue a conditional use permit.

The specific wording of the applicable Federal and State Laws and Regulations may be different in some cases from the wording of the deleted requirements of the Mining Ordinance listed below, but the environmental protections are substantially the same.

The CBJ does have the power to apply more stringent standards than those set out in Federal and State law. Indeed, the vague and undefined terms and standards used in the Mining Ordinance would allow CBJ staff to interpret them more stringently. However, the Mining Ordinance itself states that it is sufficient for the two operating mines within the CBJ to be regulated by their Federal and State permits. (CBJ 49.65.190). The proposal is for all mines within the CBJ to be regulated by the same requirements.

DNR's Office of Project Management and Permitting website partially lists Kensington and Greens Creek Mine permits, plans, and findings. These are incomplete lists of the State and Federal permits required for a mining operation in the City and Borough of Juneau.

Kensington:

<http://dnr.alaska.gov/mlw/mining/largemine/kensington/>

Greens Creek:

<http://dnr.alaska.gov/mlw/mining/largemine/greenscreek/>

The Current reclamation bonds at the mines are: Kensington \$28,727,011; Greens Creek \$72,831,187.

CURRENT LAW:

FEDERAL LAND WITHIN THE CBJ: 36 Code of Federal Regulations Part 228 governs mining activity, including exploration, on Federal Lands. Plan of Operations (PoO) within the City and Borough of Juneau (CBJ). Forest Service Manual (FSM) 2840.4 requires a Plan of Operations in advance of such exploration or mining. FSM 2840.5 (3) defines a PoO as follows:

“A written description of planned, on-the-ground mineral activities, including reclamation, to be conducted by the mineral operator for either locatable, leasable, or common variety minerals.” The PoO must be supported by a National Environmental Policy Act (NEPA) review, usually an Environmental Impact Statement (EIS).

The Forest Service requirements for environmental protection are set out in 36 C.F.R § 228.8:

All operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources, including the following requirements:

(a) Air Quality. Operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1857*et seq.*).

(b) Water Quality. Operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151*et seq.*).

(c) Solid Wastes. Operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste, shall either be removed from National Forest lands or disposed of or treated so as to minimize, so far as is practicable, its impact on the environment and the forest surface resources. All tailings, dumpage, deleterious materials, or substances and other waste produced by operations shall be deployed, arranged, disposed of or treated so as to minimize adverse impact upon the environment and forest surface resources.

(d) Scenic Values. Operator shall, to the extent practicable, harmonize operations with scenic values through such measures as the design and location of operating facilities, including roads and other means of access, vegetative screening of operations, and construction of structures and improvements which blend with the landscape.

(e) Fisheries and Wildlife Habitat. In addition to compliance with water quality and solid waste disposal standards required by this section, operator shall take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.

(f) Roads. Operator shall construct and maintain all roads so as to assure adequate drainage and to minimize or, where practicable, eliminate damage to soil, water, and other resource values.

(g) Reclamation. Upon exhaustion of the mineral deposit or at the earliest practicable time during operations, or within 1 year of the conclusion of operations, unless a longer time is allowed by the authorized officer, operator shall, where practicable, reclaim the surface disturbed in operations by taking such measures as will prevent or control onsite and off-site damage to the environment and forest surface resources including:

- (1) Control of erosion and landslides;
- (2) Control of water runoff;
- (3) Isolation, removal or control of toxic materials;

- (4) Reshaping and revegetation of disturbed areas, where reasonably practicable; and
- (5) Rehabilitation of fisheries and wildlife habitat.

Financial Warranties are required by 36. C.F.R. §228.51.

STATE LAND WITHIN THE CBJ: Article VIII, Section 11 of the Alaska Constitution provides: “Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State, which upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery location and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases and transferable licenses for their extraction. ”

AS 38.05.125 (a) reserves all subsurface minerals to the State along with the surface rights to extract them. This has been required to be part of every grant of State land or interest in State land since Statehood. Thus, with few exceptions (such as pre-Statehood patented mining claims and Regional Corporation subsurface ownership), all non-Federal land within the CBJ is governed by State mining laws.

The State’s Mining Law (AS 38.05.185 et seq.) and supporting regulations (11 AAC chapter 86) govern mining on all State Land within the CBJ. 11 AAC 86.150 requires either a land use permit or plan of operations pursuant to 11 AAC 86.800 before “conduct[ing] mineral exploration or development activities.”

AS 27.19.020 requires that: “A mining operation shall be conducted in a manner that prevents undue degradation of land and water resources, and the mining operation shall be reclaimed as contemporaneously as practicable with the mining operation to leave the site in a stable condition.” 11 AAC Chapter 97 sets out rigorous standards for reclamation, a reclamation plan, and financial warranties.

CBJ LAND: A Lease will be required from the CBJ in those cases in which it owns the subsurface rights as well as surface rights (e.g. the AJ and Treadwell Mines). Like any other mining lease, the Lease will prescribe the terms and conditions under which the Lessee may be allowed to conduct exploration and mine, including reclamation and financial warranties.

PRIVATE LAND WITHIN THE CBJ: To the extent a private landowner owns the subsurface rights as well as surface rights (the most significant being Goldbelt’s 4000 acres of surface land ownership and Sealaska’s underlying 4000 acres of subsurface land ownership) their Lease with the mining company will prescribe the terms and conditions under which the Lessee may be allowed to conduct exploration and mine, including reclamation and financial warranties. Activities on their land require all applicable Federal and State permits and cannot create a nuisance on adjacent land.

REGULATIONS GOVERNING ALL LAND OWNERSHIPS: A Clean Water Act § 404 permit from the Corps of Engineers is required for mining exploration and mining in wetlands,

which are hard to escape in the CBJ. The Permit must be supported by a NEPA review, usually an Environmental Assessment (EA).

An Alaska Pollution Discharge Elimination System (APDES) permit will be required under AS 46 Chapter 5 for the discharge of water to the waters of the United States or the State of Alaska. An APDES permit is required whenever there is a discharge of pollutants to surface water, including the ocean, lakes, rivers, and streams. Facilities permitted under the APDES Program include domestic wastewater treatment plants, log storage and transfer facilities, seafood processors, fish hatcheries, mines, and oil and gas facilities. APDES permits are also required for storm water, cooling water intakes and discharges, munitions, and pretreatment of industrial wastes discharged to municipal wastewater systems.

An APDES permit covers both point sources and nonpoint sources. All such permits are subject to Spill Prevention (SPCC) and Stormwater Plans (SWPPP) which act as permits for petroleum products storage and stormwater management.

An Alaska Air Permit will be required under AS 46 Chapter 14 and 18 AAC Chapter 50. AS 46.14.120 (a) and (b) require an air permit before constructing or operating a stationary source. Depending on the worst-case emissions forecast this could entail a "Minor" permit or Prevention of Significant Deterioration (PSD) permit. In any event a permit to construct based on design emissions would precede an operating permit based on actual emissions.

The Fishway (or Fish Passage Act AS 16.05.841), requires that an individual or government agency notify and obtain authorization from the Alaska Department of Fish & Game (ADF&G), Division of Habitat for activities within or across a stream used by fish if it is determined that such uses or activities could represent an impediment to the efficient passage of resident or anadromous fish.

The Anadromous Fish Act (AS 16.05.871- .901) requires that an individual or government agency provide prior notification and obtain permit approval from ADF&G before altering or affecting "the natural flow or bed" of a specified waterbody, or fish stream. All activities within or across a specified anadromous waterbody require approval from the ADF&G Habitat Division, including construction; road crossings; gravel removal; mining; water withdrawals; the use of vehicles or equipment in the waterway; stream realignment or diversion; bank stabilization; blasting; and the placement, excavation, deposition, or removal of any material.

The location of specified anadromous waterbodies is contained in the "Catalog of Waters Important for the Spawning Rearing or Migration of Anadromous Fishes." The Anadromous Waters Catalog is updated annually, and adopted into regulation (5 AAC 95.011) after public review; it is the legal record of known anadromous fish streams in the state.

Solid wastes are regulated in the State of Alaska under two main bodies of regulations:

- The Resource Conservation and Recovery Act (RCRA) federal regulations contained in Title 40 Code of Federal Regulations (CFR), Parts 260 to 279.
- The State of Alaska regulations contained in 18 AAC 60, Solid Waste Management.

Hazardous wastes are regulated by the U.S. Environmental Protection Agency (EPA), Region 10 in Alaska, in accordance with RCRA regulations. Alaska does not have the authority to administer hazardous waste regulations and, therefore, defers to federal regulations. Non-hazardous solid wastes, tailings, and waste rock are mainly managed under the state regulations in 18 AAC 60, which includes permitted solid waste inert landfills.

A Toxic Release Inventory (TRI) of tailings is required by Section 313 of EPCRA (Emergency Planning and Community Right to Know Act of 1986) at 42 U.S.C. paragraph 11001 et. seq. EPCRA is part of the Superfund Amendments and Reauthorization Act (SARA). TRI was supplemented with waste reduction rules contained in the Pollution Prevention Act of 1990 at Section 6607 42 U.S.C. paragraph 13101 et. seq.

AS 46.03.74 prohibits oil pollution: “A person may not discharge, cause to be discharged, or permit the discharge of petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or a residuary product of petroleum, into, or upon the waters or land of the state except in quantities, and at times and locations or under circumstances and conditions as the department may by regulation permit... .” Thus, any facility storing petroleum products must have an SPCC Plan. If there is a potential to release to Marine water a SPCC Plan must include a means to clean up, which under the Oil Pollution Act of 1990 involves contracting for regional cleanup cooperative services with a Response Contractor – in Southeast Alaska this means SEAPRO.

AS 46.03.822 imposes strict liability for a spill of a hazardous substance, the definition of which includes oil. The Comprehensive Environmental Response, Compensation, and Liability Act 42 USC §§ 9601-9675 is the Federal counterpart of AS 46.03.822. All producers of hazardous waste, which would include any operating mine, must obtain a producer ID and file reports with EPA under RCRA.

Under certain conditions DEC may authorize an Integrated Waste Management Permit (AS 46.03.100) that includes air, water, land, solid waste management coordination in order to allow for cooperative oversight by DEC and DNR to ensure consistent application of the two agencies rules and regulations in an enforceable document.

AS 46.03.820 Gives the Commissioner of DEC emergency powers to immediately terminate an activity that poses an imminent threat of irreparable damage to natural resources or the environment: “When the department finds, after investigation, that a person is causing, engaging in, or maintaining a condition or activity that, in the judgment of its commissioner presents an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interests of the people of the state to delay action until an opportunity for a hearing can be provided, the department may, without prior

hearing, order that person by notice to discontinue, abate, or alleviate the condition or activity. The proscribed condition or activity shall be immediately discontinued, abated, or alleviated.”

AS 46.17.020 requires the DNR to employ a professional engineer to “supervise the safety of dams and reservoirs” in Alaska. A dam is defined as any obstruction in a waterbody greater than 20 feet in height (downstream face to crest), or 10 feet in height and impounding 50 acre-feet or more.

The State Dam Safety Engineer is the authorized representative of the commissioner of ADNR responsible for the following: Adopting regulations and issuing orders necessary for ensuring dam safety; Providing routine administration of the ADSP and the Dam Safety and Construction Unit (Dam Safety) of the ADNR; Classifying dams based on the potential hazard to lives and property created by the dam; Approving the design, construction, operation, and inspection of dams through “certificates of approval,” which are issued based on specific information submitted to Dam Safety for review; Identifying unsafe dams that compromise the mission of the ADSP, and taking the necessary steps to mitigate those risks; Raising the level of compliance for jurisdictional dams that are out of compliance with state dam safety regulations; Enforcing the dam safety statutes and regulations through appropriate legal actions, if necessary, including issuing injunctions, assuming operational control of the dam, breaching the dam, or other activities necessary to mitigate the risk; Providing information and educational material about dams in Alaska and dams in general, including the Alaska Dam Inventory, Training Aids for Dam Safety, conference proceedings, and other resources.

AS 27.19.030 requires a Reclamation Plan: a) Except as provided in AS 27.19.050 , a miner may not engage in a mining operation until the commissioner has approved a reclamation plan for the mining operation.

(b) In reviewing a reclamation plan for state, federal, or municipal land under (a) of this section, the commissioner may consider, after consultation with the commissioners of environmental conservation and fish and game and with the concurrence of the miner and landowner, uses to which the land may be put after mining has been completed, including trails, lakes, recreation sites, fish and wildlife enhancement, commercial, and agriculture uses.

AS 27.19.040 requires Reclamation Financial Assurance. (a) The commissioner shall require an individual financial assurance in an amount not to exceed an amount reasonably necessary to ensure the faithful performance of the requirements of the approved reclamation plan. The commissioner shall establish the amount of the financial assurance to reflect the reasonable and probable costs of reclamation. The assurance amount may not exceed \$750 for each acre of mined area, except that the \$750 an acre limitation does not apply to the assurance amount required for a lode mine. Subsection (b) provides a statewide bonding pool for mining operations as an alternative to individual financial assurance.

11 AAC Chapter 97 sets out in great detail what is required to comply with AS 27.19.020, .030, and .040.

49.65.120 EXPLORATION NOTICES, FINANCIAL WARRANTIES, AND PROCEDURES, RELEASE OF FINANCIAL WARRANTIES FOR EXPLORATION NOTICES

Obligating companies to obtain what amounts to a permit to simply *explore* for minerals along with a financial warranty for clean-up duplicates what is required by Current Law.

Current Law requirements are known: On Forest Service land within the CBJ a Notice of Intent must be filed under 36 C.F.R. § 228.4 and operations must be conducted pursuant to 36 C.F.R. § 228.8.

What are the CBJ criteria for conducting exploration and reclamation? While subsection (a) states: “In conducting exploration operations, the operator shall comply with all applicable federal, state and *City and Borough laws, rules and regulations*, and such compliance shall be a condition of the effectiveness of the authority to operate under and exploration notice,” there are no clear requirements for a CBJ exploration permit. Will the CBJ be passing ordinances dealing with the manner in which exploration will be conducted? Will the CBJ be adding and training staff to conduct this review?

The extra set of permitting allows an opponent of the mine exploration to sue an agency for improvidently granting a permit under Current Law, and, if she/he loses, to sue the CBJ under the Mining Ordinance for improvidently granting the equivalent permit.

What if the Forest Service approves a PoO with which CBJ staff disagrees and CBJ staff denies the CBJ exploration permit on the ground that the applicant has failed to comply with federal law? This puts the applicant and the Federal agency in the position of potentially suing the CBJ in support of his/her Federal permit. This potentially adds layers of litigation to that which already exists with the issuance of Federal and State permits.

49.65.120(b) requires that reclamation of exploration activities be “completed in accordance with the standards of 49.65.135(b).” Except for private landowners holding both the surface and subsurface lands who are not operating in wetlands or discharging water from their operation or impacting a fish stream, reclamation is already required by Current Law described above. (See 36 C.F.R. Part 228 and 11 AAC Chapter 97).

In short, this provision which duplicates State and Federal requirements and will require the CBJ to enact rules governing exploration and reclamation will have a chilling effect on exploration in the CBJ.

49.65 125 SMALL MINE PERMITS, FINANCIAL WARRANTIES AND PROCEDURES

Again, this provision duplicates what is required by Current Law. (See 36 C.F.R. Part 228, 11 AAC 86.800, and 11 AAC Chapter 97).

This provision requires a small mine operator to prepare a description of “the potential environmental, health, safety and general welfare impacts of the operation.” How will the CBJ staff determine whether this vague, undefined language has been met? Will the CBJ be passing ordinances defining these terms?

Subsection (b) says that a small mine application shall include “a description and timetable of the mining operation, the plan for reclamation and the potential environmental health, safety, and general welfare impacts of the operation.” This language is so vague that at the end of the day it will mean whatever CBJ staff or a Court says it means.

Subsection (c) says that the staff review of a small permit mine application will include a “determination: whether air and water quality standards will be maintained in accordance with federal, state and city borough laws, rules and regulations.” On its face this section authorizes staff to determine that Federal or State agencies got it wrong when they decided that Federal and State air and water quality standards have been met and to insert staff-determined requirements into the CBJ permit.

Subsection (c) provides that if the CBJ staff is satisfied that the application contains sufficient information and analysis it is then presented to the Planning Commission for review. This creates another duplicate review along with the potential opportunity for litigation.

Subsection (d) states that “if the department determines that the proposed mining operation does not meet the standards of sections 49.65.135 and 49.15.330” the applicant can revise its plan or allow it to go forward to the Planning Commission with the negative recommendation from staff. The 49.65.135 standards duplicate what is already required by Current Law. (See discussion of 49.65.135 below).

These requirements are a recipe for endless NEPA - like litigation. For example, did the applicant fully consider and describe those environmental impacts that opponents perceive are “potential?” What are the criteria by which CBJ staff will determine whether the applicant’s mitigation measures will in fact “mitigate the adverse effects of such impacts?”

Mine opponents will put pressure on CBJ staff to find that the applicant needs to do more to comply and will sue on the ground that the applicant failed to meet the opponent’s more ambitious requirements. This is all in addition to putting pressure on State and Federal agencies to increase requirements and to sue those agencies when that pressure yields insufficient results.

The proposed changes to the Mining Ordinance would have the Planning Commission determine whether an applicant had the requisite Federal and State permits as part of its decision whether or not to issue a conditional use permit.

49.65.130 LARGE MINES, FINANCIAL WARRANTIES AND PROCEDURES

Subsection (b) requires that the Large Mine Permit application be submitted in a form that can be reviewed under the standards of subsection 49.65.135 (a). Again, the standards listed in 49.65.135 (a) duplicate those already required by Current Law. (36 C.F.R. Part 228, FSM 2840.4 and 11 AAC 86.800).

Subsection (b) also requires the applicant to provide “additional information normally prepared by the operator for its feasibility studies and mining plans, including information establishing the right to use the affected surface, labor force characteristics and timing, payroll projections, anticipated duration of the mining operation, construction schedules, infrastructure description,

and other information reasonably requested by the department in the pre-application conference held pursuant to subsection 49.15.330(b).” Subsection (c) requires the applicant to submit a socioeconomic impact assessment.

This is similar to the environmental and socio-economic information that would be included in a Forest Service EIS supporting a mining Plan of Operations and a DNR permit application for a land use plan or plan of operations. (11 AAC 86.150). It is information which the CBJ could require in the lease of the AJ or Treadwell Mines. It may be information which a private owner of the surface and subsurface estate might not wish to provide to the CBJ.

The applicant is also required to submit copies of permit applications submitted to other agencies. In short, these provisions assume that CBJ staff will have the expertise to review feasibility studies and mining plans and information in Federal and State permit applications.

Like the Small Mine section above, this Large Mine section describes the CBJ staff’s permit approval and disapproval process and recommendation for a financial warranty.

Subsection (h) provides that if an EIS is required the large mine permit will not be presented to the Planning Commission “until publication of the final environmental impact statement. The department’s recommendation may include such conditions or stipulations as the department seems to be reasonably necessary to mitigate any adverse environmental, health, safety or general welfare impacts which may result from the proposed mining operation.” In other words, CBJ staff reserves the right to add requirements to the EIS.

Subsection (h) leaves open the question of what happens if there is litigation concerning the EIS. Is the staff recommendation delayed until the litigation is complete? If so, even if an applicant prevails in NEPA litigation the application returns to CBJ staff which may add additional requirements before submitting the application with staff recommendations to the Planning Commission for review. Whatever decision is reached by the Planning Commission would itself be subject to litigation. In short, the Mining Ordinance process could extend for years after the Federal and State process.

49.65.135 STANDARDS FOR ISSUING PERMITS, CONDUCT OF OPERATIONS

This section generally requires that the applicant maintain air and water quality “in accordance with federal, state and City and Borough laws, rules and regulations.” What air and water quality rules and regulations does the CBJ have in addition to those required by federal and state law? Would such rules and regulations have to be enacted by the Assembly before an application could be filed under the Mining Ordinance?

Subsection (a)(4) requires the operator “to minimize to the extent reasonably practicable safety hazards and to control and mitigate adverse impacts on the public and neighboring properties, such as from traffic overloading, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and erosion.” These matters should be taken up in the conditional use permit issued by the Planning Commission.

Subsection (a)(7) requires the operator to “negotiate and enter into a mitigation agreement with the city and borough, which agreement shall establish responsibility for the mitigation of reasonably foreseeable and demonstrable adverse impacts, including direct impacts and indirect impacts. The operator shall be responsible for mitigating the direct impacts. The city and borough shall be responsible for mitigating indirect impacts except for the costs of mitigating specific indirect impacts are filed by the manager to (A) exceed the amount of any city and borough nonproprietary revenue increase attributable to the mining operation; and (B) require direct and significant increase in local taxes or fees to adequately mitigate the impact.” What does this mean? What does it require the applicant and the CBJ to do?

Subsection (b) describes how reclamation is to be performed. This duplicates what is required by Current Law. On Federal land the mine operator is required to return the mined land to pre-existing uses or higher. State reclamation rules apply to public and private land and also requires that the land must be returned to “a stable condition.” A “stable condition” is defined by 11 AAC 97.200(a). There is an exception for private landowners who may choose to take advantage of mine facilities for future industrial uses and associated employment opportunities.

49.65.140 FINANCIAL WARRANTY

This section duplicates the bonding requirements of 36 C.F.R. § 228.8(g), AS 27.19.040, and 11 AAC 97.400.

49.65.145 TERM OF NOTICES AND PERMITS; TEMPORARY CESSATION

This provision duplicates the term of notices and permits and temporary cessation in Federal and State Current Law. Accordingly, this provision should be limited to the conditional use permit and contained as a provision in the conditional use permit. It should not be included in the Mining Ordinance.

Under state law, temporary closure requires a new plan-of-operations with modifications to any and all permits to reflect changes in the operating situation. Discharges via the Waste Management Permit may be severely limited or curtailed to reflect the much reduced impacts allowed under the temporary cessation situation.

The conditional use permit should reserve the right to modify or terminate the permit depending on the significance of any change to a Federal or State permit. The conditional permit should also reserve the right to suspend its effect during a temporary cessation.

49.65.150 ANNUAL REPORTS; MONITORING; MONITORING FEE

This should be converted into a Conditional Use Permit provision requiring that an applicant submit to CBJ staff copies of reports required by its Federal and State permits.

49.65.155 (A) AND (B)(1) TECHNICAL REVISIONS. [SUMMARY APPROVAL (49.65.155 (B)(2)) REMAINS]

49.65.160 ENFORCEMENT

This section should be restored to the Mining Ordinance.

49.65.165 APPEAL

This section should be restored to the Mining Ordinance.

49.65.170 RELEASE OF WARRANTIES FOR MINING OPERATIONS

This provision duplicates Current Law. State and Federal reclamation laws allow for reclamation warranty recalculation every five years or whenever significant changes are made to the mining operation that would materially impact closure costs. (11 AAC. 97.435). These rules allow for partial warranty release as closure tasks are successfully completed.

49.65.175 SUCESSOR OPERATIONS

This provision duplicates Current Law. Transfer of permits to a new operator is subject to approval by all Federal and State regulatory agencies and written acceptance of permit provisions by the new operator. It also requires posting of a new warranty after review and recalculation – as necessary.

Accordingly, the issue of “successor operations” should be limited to transfer of the conditional use permit and contained as a provision in the conditional use permit. It should not be included in the Mining Ordinance.

49.65.180 CONFIDENTIALITY

This section should be restored to the Mining Ordinance.

49.65.185 SUSPENSION OR REVOCATION OF NOTICES AND PERMITS

This section should be rewritten to say that the Commission may suspend or revoke the Conditional Use permit if a Federal or State permit is suspended or revoked. In addition the Commission may also suspend or revoke the Conditional Use permit for violation of its traffic, noise, dust, light, surface subsidence, avalanche, landslide, or erosion requirements.

SECTIONS REMOVED FROM CURRENT MINING ORDINANCE

49.65.120 EXPLORATION NOTICES, FINANCIAL WARRANTIES, AND PROCEDURES, RELEASE OF FINANCIAL WARRANTIES FOR EXPLORATION NOTICES

49.65.125 SMALL MINE PERMITS, FINANCIAL WARRANTIES AND PROCEDURES

49.65.130 LARGE MINES, FINANCIAL WARRANTIES AND PROCEDURES

49.65.135 STANDARDS FOR ISSUING PERMITS, CONDUCT OF OPERATIONS

49.65.140 FINANCIAL WARRANTY

49.65.145 TERM OF NOTICES AND PERMITS; TEMPORARY CESSATION

49.65.150 ANNUAL REPORTS; MONITORING; MONITORING FEE

49.65.155 (A) AND (B)(1) TECHNICAL REVISIONS. [SUMMARY APPROVAL (49.65.155 (B)(2)) REMAINS]

49.65.160 ENFORCEMENT

49.65.165 APPEAL

49.65.170 RELEASE OF WARRANTIES FOR MINING OPERATIONS

49.65.175 SUCESSOR OPERATIONS

49.65.180 CONFIDENTIALITY

49.65.185 SUSPENSION OR REVOCATION OF NOTICES AND PERMITS

REASONS FOR CHANGES TO MINING ORDINANCE

1. THE CURRENT ORDINANCE IS A BARRIER TO POTENTIAL DEVELOPMENT OF THE AJ BECAUSE IT REQUIRES CBJ STAFF TO DUPLICATE THE PERMIT REQUIREMENTS SET OUT IN STATE AND FEDERAL LAW. NO OTHER MINE IN JUNEAU OR ALASKA IS REQUIRED TO GO THROUGH SUCH A PROCESS.
2. THE ENVIRONMENTAL RECORD OF THE GREENS CREEK AND KENSINGTON MINES SHOWS THAT FEDERAL AND STATE PERMITTING REQUIREMENTS ARE SUFFICIENT TO PROTECT THE ENVIRONMENT. DUPLICATION IS NOT NECESSARY.
3. THE CBJ STAFF DOES NOT CURRENTLY HAVE THE EXPERTISE OR THE ARRAY OF EXPERTS NEEDED TO DUPLICATE STATE AND FEDERAL PERMIT REQUIREMENTS. IT WILL BE AN ADDITIONAL COST TO THE CBJ TO HIRE OR CONTRACT FOR THE EXPERTS REQUIRED TO DUPLICATE THE STATE AND FEDERAL PERMITTING SYSTEMS.
4. THE INTERPLAY OF THE PROCESS NECESSARY TO IMPLEMENT THE CURRENT MINING ORDINANCE'S DUPLICATIVE REQUIREMENTS WITH THE PROCESSES NECESSARY TO IMPLEMENT STATE AND FEDERAL PERMITTING REQUIREMENTS WILL LEAD TO LITIGATION AS IT DID IN THE *THANE NEIGHBORHOOD ASSN* CASE (WHICH THE CBJ LOST).
5. THE REQUIREMENT THAT A MINE OBTAIN A CONDITONAL USE PERMIT DEALING WITH SURFACE SUBSIDENCE, TRAFFIC, LIGHT, DUST AND NOISE REMAINS.

Chapter 65 of Title 49 is repealed in its entirety and the following, revised Chapter 65 is enacted in its stead.

- **ARTICLE I. - EXPLORATION AND MINING**

- **49.65.110 - Purpose.**

(a)

The purposes of this article are to encourage mining and investment in mining and to foster the development of a safe, healthy and sound mining industry while protecting the overall interests of public health, safety and the general welfare and meeting the land use and development requirements set out in Title 49 of this Code.

(b)

This article does not include regulation of surface or subsurface water, geothermal resources, sand or gravel, common varieties of construction aggregate, or natural oil, gas, coal and peat or associated byproducts recovered therewith.

(c)

The purpose of the review process is not to deny use or expressly prohibit mining, but, rather, the purpose of the review is to ensure mining activities meet the land use and development requirements set out in Title 49 of this Code.

- **49.65.115 - Applicability.**

(a)

There is adopted for the purpose of defining the mining and exploration surface subsidence exclusion district in the City and Borough, the Mining and Exploration Surface Subsidence Exclusion District Maps A—F, dated June 5, 2006, as the same may be amended from time to time by the assembly by ordinance. These maps, as adopted or as amended, identify the area of the City and Borough within which surface disturbance (excluding access to mining properties) or surface subsidence in support of exploration and mining activities is prohibited. Except as provided herein, mining and related activities may be conducted elsewhere within the City and Borough subject to the provisions of this article.

(b)

Except as provided in subsection (a), this article does not regulate subsurface mining within or without the district. It is not the intent of this article to unreasonably limit or nullify private property rights.

(c)

There is adopted for the purpose of regulating exploration and mining activities within the City and Borough the Urban/Rural Mining District Map, dated June 5, 2006, depicting the Urban and Rural Mining Districts, as such may be amended from time to time by the assembly by ordinance.

- (i) Mines located in the Rural Mining District which will undergo environmental review by state agencies, federal agencies, or both, as determined by the director, shall not be subject to [Chapter 49.65](#), and shall be permitted as allowable uses pursuant to CBJ [49.15.320](#). With respect to mines in the rural mining district, the planning commission may impose conditions pursuant to CBJ [49.15.320](#)(f)(1)—(8) and additional conditions relating to traffic, lighting, safety, noise, dust, visual screening, surface subsidence, avalanches, landslides, and erosion.

(Serial No. 87-49, § 2, 1987; Serial No. 89-47am, § 4, 1989; Serial No. 2003-27am, § 2, 6-16-2003; Serial No. 2006-15, § 16, 6-5-2006)

- (ii) A Mine located in the Urban Mining District that undergoes, or has undergone, an environmental review by state agencies, federal agencies, or both, and has received state or federal permits, or both, shall be permitted as a conditional use pursuant to CBJ 49.15.330. The planning commission may impose conditions relating to traffic, lighting, safety, noise, dust, visual screening, surface subsidence, avalanches, landslides, and erosion that are substantially similar to conditions imposed on other entities in the City and Borough.

- **49.65.155 – Summary Approval.**

(a)

Upon request of the applicant, the director may summarily approve a proposed change in mining operations not constituting a new land use or separate development upon a written determination that:

- (i) the mine is located entirely outside the roaded service area established in CBJ 01.30.320;
- (ii) the application is complete, providing all of the information necessary for the director to make the summary approval determinations set forth in subsections (i)—(iv);
- (iii)

the proposed change in mining operations will have no significant impact within the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion; and

(iv)

the proposed change in mining operations has undergone or is undergoing environmental review and approval by one or more federal agencies, state agencies, or both.

(b)

The director shall make the determination required by this section within 45 days unless additional information is required. If the director requires additional information to make the determination, upon written notification to the applicant, the time for determination may be extended for up to 20 additional days after submittal by the applicant of the additional information. If an environmental impact statement is required by one or more federal agencies, completion of the draft environmental impact statement is necessary for summary approval.

(c)

Planning commission review.

(i)

The director shall promptly forward the proposed summary approval to the planning commission after the determination is completed. The planning commission may ratify or reject the proposed summary approval.

(ii)

If the commission rejects the proposed summary approval, it may:

(A)

return the matter to the director for further consideration of whether the director, in consultation with the applicant, can address issues identified by the commission through imposition of conditions or changes in the proposed mining operation; or

(B)

direct that the proposed change be processed by the department as an application for an allowable use permit for which the commission may impose conditions under CBJ [49.15.320\(f\)\(1\)–\(8\)](#) and such additional conditions as are necessary to reduce to non-significant any impacts in the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion.

(Serial No. 87-49, § 2, 1987; Serial No. 89-47am, § 12, 1989; Serial No. 2003-26(am), § 2, 6-9-2003)

- **49.65.160 - Enforcement.**

This article shall be enforced in accordance with chapter 49.10, article VI and section 49.65.185.

(Serial No. 87-49, § 2, 1987; Serial No. 89-47am, § 13, 1989)

- **49.65.165 - Appeal.**

Any person who is aggrieved by a decision of the department or the commission with respect to this article, other than one under section 49.65.160, may appeal that decision to the commission or the assembly, as applicable, as provided in chapter 49.20, article I.

(Serial No. 87-49, § 2, 1987; Serial No. 89-47am, § 14, 1989)

- **49.65.185 - Suspension or revocation of a Permit**

(a) The commission may suspend or revoke the Conditional Use permit issued under this article upon a determination by the commission that a Federal or State permit previously issued to the Mine or Mining Exploration operation has been suspended or revoked.

(b) The commission may suspend or revoke the Conditional Use permit issued under this article for a substantial violation or repeated violations of its traffic, noise, dust, light, surface subsidence, avalanche, landslide, or erosion requirements.

49.65.190 - Effect of article on operations in annexed territory.

Mines and mining exploration operations occurring in territory annexed by the City and Borough which have been issued the federal and state permits or approvals necessary for the operation, including, if applicable, permits or approvals necessary to operate in accordance with the National Environmental Policy Act (NEPA) process, shall be deemed to have been issued a permit under this article and to otherwise be eligible to operate pursuant to this article upon the effective date of annexation; provided, that all such federal and state permits or approvals are currently valid. With the exception of the initial permit application and exploration notice filing requirements, the operator shall be subject to all of the requirements, of this article in effect upon the effective date of annexation, including the technical revisions and permit amendment requirements, and the monitoring fee enforcement and revocation or suspension provisions, in the same manner as any other operator.

(Serial No. 89-47am, § 19, 1989)

ARTICLE I. - EXPLORATION AND MINING (Strikethrough version)

49.65.110 - Purpose.

(a) The purposes of this article are to encourage mining and investment in mining and to foster the development of a safe, healthy and sound mining industry while protecting the overall interests of public health, safety and the general welfare and meeting the land use and development requirements set out in Title 49 of this Code.

~~It is the purpose of this article to foster the development of a safe, healthy and environmentally sound mining industry while protecting the overall interests of public health, safety and the general welfare and minimizing the environmental and surface effects of mining projects for which an exploration notice or mining permit is required. This article establishes the review and permit procedures necessary to conduct exploration, to gain approval to open a mine, to conduct mining operations, and to provide for final reclamation and financial warranty release at the conclusion of exploration and mining operations and reclamation of affected surface. This article does not include regulation of surface or subsurface water, geothermal resources, sand or gravel, common varieties of construction aggregate, or natural oil, gas, coal and peat or associated byproducts recovered therewith, except to the extent that such substances are developed or extracted as a mining by product in a mining operation of a large or small mine.~~

(b) This article does not include regulation of surface or subsurface water, geothermal resources, sand or gravel, common varieties of construction aggregate, or natural oil, gas, coal and peat or associated byproducts recovered therewith.

~~The intent of this article is to regulate areas of local concern, reserving to the City and Borough all regulatory powers not preempted by state or federal law. The department may require a permit to be obtained or a notice given for federally approved activities on federal lands, including unpatented mining claims, so long as the purpose of the review process is not to deny use or expressly prohibit mining, but rather the purpose of the review is to impose conditions for the protection of the environment, health safety and general welfare of the City and Borough.~~

(c) The purpose of the review process is not to deny use or expressly prohibit mining, but, rather, the purpose of the review is to ensure mining activities meet the land use and development requirements set out in Title 49 of this Code.

49.65.115 - General applicability.

(a) There is adopted for the purpose of defining the mining and exploration surface activities exclusion district in the City and Borough, the Mining and Exploration Surface Activities Exclusion District Maps A—F, dated June 5, 2006, as the same may be amended

from time to time by the assembly by ordinance. These maps, as adopted or as amended, identify the area of the City and Borough within which surface disturbance or subsidence in support of exploration and mining activities is prohibited. Except as provided herein, mining and related activities may be conducted elsewhere within the City and Borough subject to the provisions of this article.

(b) Except as provided in subsection (a), this article does not regulate subsurface mining within or without the district except that subsidence within the district is prohibited. It is not the intent of this article to unreasonably limit or nullify private property rights..

(c) There is adopted for the purpose of regulating exploration and mining activities within the City and Borough the Urban/Rural Mining District Map, dated June 5, 2006, depicting the Urban and Rural Mining Districts, as such may be amended from time to time by the assembly by ordinance. Mines located in the Rural Mining District which will undergo environmental review by state agencies, federal agencies, or both, as determined by the director, shall not be subject to Chapter 49.65, and shall be permitted as allowable uses pursuant to CBJ 49.15.320. With respect to mines in the rural mining district, the planning commission may impose conditions pursuant to CBJ 49.15.320(f)(1)—(8) and additional conditions relating to traffic, lighting, safety, noise, dust, visual screening, surface subsidence, avalanches, landslides, and erosion.

(d) A Mine located in the Urban Mining District that undergoes, or has undergone, an environmental review by state agencies, federal agencies, or both, and has received state or federal permits, or both, shall be permitted as a conditional use pursuant to CBJ 49.15.330. The planning commission may impose conditions relating to traffic, lighting, safety, noise, dust, visual screening, surface subsidence, avalanches, landslides, and erosion that are substantially similar to conditions imposed on other entities in the City and Borough.

~~49.65.120—Exploration notices, financial warranties and procedures, release of financial warranties for exploration notices.~~

(a) ~~— In order to ensure that exploration is conducted in accordance with the environmental, health, safety and general welfare concerns of the City and Borough, any operator intending to conduct or continue exploration operations other than pursuant to a previously filed exploration plan shall file with the department a notice of its intent to conduct exploration activities. Such notice shall identify, on a map on a scale of 1:63,360 or a more detailed scale, the area of and schedule for the exploration activities. The notice shall also describe the operator's plan for reclamation of the areas disturbed by its exploration activities and shall contain information as to the methodology and cost of such reclamation sufficient to enable the department to determine an appropriate financial~~

warranty. The operator shall include a processing fee, as specified in section 49.85.100, with the exploration notice. The notice shall also contain copies of any prospecting permits, notice of intent to conduct exploration, or operating plans filed with any federal or state agency with all modifications, revisions and amendments thereto. The department may require and set the amount of a financial warranty in accordance with section 49.65.140 and shall so advise the operator within 20 days after receiving the operator's notice of intent. When the operator has submitted a financial warranty in the amount set by the department and in a form satisfactory to the city attorney, the authority to operate under the exploration notice shall become effective. In conducting exploration operations, the operator shall comply with all applicable federal, state and City and Borough laws, rules and regulations, and such compliance shall be a condition of the effectiveness of the authority to operate under an exploration notice.

(b) — Upon completion of exploration activities, and all necessary reclamation, the operator shall notify the department that exploration and reclamation are complete and shall submit a map on a scale of 1:63,360 or a more detailed scale, showing the location of the exploration and reclamation activities. The department shall determine whether an inspection of the lands explored is necessary to determine whether reclamation has been completed in accordance with the standards of section 49.65.135 and, if so, shall inspect the lands explored and reclaimed within 60 days of such notification or as soon thereafter as weather conditions permit. In determining whether an inspection is necessary, the department shall consider whether there has been a state or federal inspection and whether that inspection fulfills the requirements of this section and section 49.65.135. If the department finds that the reclamation satisfies the standards of subsection 49.65.135(b), the financial warranty shall be promptly released. If the department finds that the standards have not been satisfied, it shall notify the operator within 30 days of the inspection, or the review of other agency records, of the additional steps necessary to achieve compliance with subsection 49.65.135(b). The department shall give the operator a reasonable time to complete reclamation and request another inspection, in which case the inspection, or review of other agency records, shall be repeated. If the department, after such reinspection or review, is not satisfied that the standards of subsection 49.65.135(b) have been complied with, it may declare so much of the financial warranty as necessary forfeited and, after notice thereof and an opportunity for the operator to appeal pursuant to section 49.65.165, apply the financial warranty to complete reclamation.

(c) — The requirement of a financial warranty may be waived if the department determines that a financial warranty is not necessary to ensure compliance with the requirement of this article. The waiver shall be in writing and shall set for the reasons for the waiver.

49.65.125 — Small mine permits, financial warranties and procedures.

~~(a) — Except as provided in CBJ 49.65.115(e), no new small mine shall commence mining operations after August 6, 1986, unless the operator shall have obtained a small mine permit pursuant to Chapter 49.15, Article III, as modified by this article. No small mine which is in operation on August 6, 1986, may remain in operation more than one year thereafter, unless the operator has submitted a permit application and the permit has not been denied.~~

~~(b) — A small mine application shall include information establishing the right to use the affected surface, a map showing the location of the small mine and the affected surface for that small mine on a scale of 1:63,360 or a more detailed scale, and a description and timetable of the mining operation, including the mining plan, the plan for reclamation and the potential environmental, health, safety and general welfare impacts of the operation. The application shall also require a description of the measures to be taken to mitigate the adverse effects of such impacts, to mitigate adverse effects of mining operations on neighboring land, and to comply with sections 49.15.330 and 49.65.135. The map and description must indicate that there will be no affected surface within the boundary of the mining and exploration surface activities exclusion district and the narrative material must demonstrate that there will be no significant subsidence within the mining and exploration surface activities exclusion district. The application shall also include a listing of all permits applied for or granted by other agencies as well as amendments to those other applications as they are filed. To the extent that the information required by this subsection is provided in applications to other agencies, the operator may respond on its application form by cross reference to the relevant portions of those applications. Subject to the procedures of subsections (c) and (d) of this section, the requirement to provide information is continuing, and supplemental information regarding any changes in the information reasonably requested must be provided to the department throughout the duration of the application process.~~

~~(c) — Upon receipt of an application and a processing fee pursuant to section 49.85.100, the department shall review the application, and within 35 days make a recommendation as to whether the proposed mining operation will mitigate adverse environmental, health, safety and general welfare impacts. This review shall include, but not be limited to, the following determinations: whether air and water quality standards will be maintained in accordance with federal, state, and city borough laws, rules and regulations; whether sewage, solid waste, hazardous and toxic materials will be properly contained and disposed of in accordance with federal, state and City and Borough laws, rules and regulations; whether the mining operation will be conducted in such a way as to minimize safety hazards to the extent reasonably practicable and to mitigate adverse impacts on the public and on neighboring properties such as those from traffic, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and erosion; and whether appropriate historic sites designated by the City and Borough as significant will be protected. If the department makes a favorable recommendation, it will also make a recommendation on the amount of the financial warranty as provided in section 49.65.140. The department's~~

recommendations shall be forwarded to the commission for inclusion on the agenda for the next regularly scheduled meeting after notice has been published as provided in section 49.15.230. The application shall then be heard as a conditional use application as provided in chapter 49.15, article III, as modified by this article. If the commission determines that the application, with stipulations or conditions as appropriate, satisfies the standards of sections 49.65.135 and 49.15.330, it shall approve the application and set the amount of financial warranty pursuant to section 49.65.140. When the operator has submitted a financial warranty in the amount set by the commission and in a form satisfactory to the city attorney, the permit shall be promptly issued by the department.

(d) — If the department determines that the proposed mining operations does not meet the standards of sections 49.65.135 and 49.15.330, it shall so advise the operator, stating the reasons therefor. The operator may then either allow the department's recommendation to be forwarded to the commission pursuant to subsection (c) of this section, or revise its plans, if appropriate, and resubmit the application for processing in accordance with subsection (c) of this section. If the application is resubmitted within 180 days of the initial submission, no new application fee will be required.

49.65.130 — Large mines, financial warranties and procedures.

(a) — Except as provided in CBJ 49.65.115(e), no large mine shall commence mining operations after August 6, 1986, unless the operator has obtained a large mine permit pursuant to Chapter 49.15, Article III, as modified by this article.

(b) — The application shall be submitted in the form of a report containing sufficient information so that the department can, after reviewing the application, evaluate, in accordance with the standards of subsection 49.65.135(a), the impacts described in this subsection that the mining operation may have on the City and Borough. The application shall contain a map on a scale of 1:63,360, or a more detailed scale, a description of the mine site and affected surface; description and timetable of the proposed mining operation, including all roads, buildings, processing and related facilities; a description and timetable of proposed reclamation of affected surface; a description of proposals for the sealing of open shafts, adits and tunnels upon the completion or temporary cessation of mining operations; a description of methods to be used to control, treat, transport and dispose of hazardous substances, sewage and solid waste; and a description of other potential environmental, health, safety and general welfare impacts, as well as neighboring property impacts and measures to be taken to mitigate their adverse effects. The application shall also contain additional information normally prepared by the operator for its feasibility studies and mining plans, including information establishing the right to use the affected surface, labor force characteristics and timing, payroll projections, anticipated duration of the mining operation, construction schedules, infrastructure description, and other information reasonably requested by the department in the preapplication conference held pursuant to

~~subsection 49.15.330(b). The map and description must indicate that there will be no affected surface within the boundary of the mining and exploration surface activities exclusion district and the narrative material must demonstrate that there will be no significant subsidence within the mining and exploration surface activities exclusion district. The application shall include a copy of each application submitted to other agencies and a report on the current status of all such applications, as well as amendments to those other applications as they are filed. To the extent that the information required by this subsection is provided in applications to other agencies, the operator may respond on its application form by cross reference to the relevant portions of those applications. Subject to the procedures of subsections (f) and (h) of this section, the requirement to provide information is continuing, and supplemental information regarding any changes in the information reasonably requested must be provided to the department throughout the duration of the application process.~~

~~(c) — (1) — The department, in consultation with the operator, shall determine the scope and budget of a socioeconomic impact assessment. The socioeconomic impact assessment shall be prepared by the department, or both. All reasonable costs and expenses required to prepare the assessment shall be paid to the department by the operator prior to the initiation of the assessment. For the purposes of this article, the term "socioeconomic impact assessment" shall be and mean a report or study that shall address the beneficial and adverse impacts, including direct impacts and indirect impacts, of the mining operation on existing and future local conditions, facilities and services, including transportation and traffic; sewer and water; solid waste; public safety and fire protection; education, native history and culture; health; recreation; housing; employment; local businesses; the rate, distribution and demographic characteristics of any population changes induced by the mining operation; and the fiscal impacts of the mining operation on public facilities and services, including general government functions. The socioeconomic impacts to be studied must be reasonably foreseeable and demonstrable. Highly speculative impacts need not be studied. The purpose of this impact assessment shall be to provide information to the department concerning possible beneficial and adverse mining operation impact on the City and Borough, in order to allow the department to determine the extent of these impacts and how these impacts can be mitigated. The impact assessment shall be completed before the time that the department must make a recommendation on the application. Review of those portions of the application that would not be affected by information to be included in the assessment shall not be delayed while the impact assessment is being prepared for review.~~

~~(2) — The department shall waive the requirement that any operator submit particular information required by this subsection or that the impact assessment required by this subsection address certain impacts when the department determines that: such information is not essential to evaluate what impact the mining operation will have on the City and Borough; or such information has been previously provided; or such information is adequately presented in another report previously submitted to the department or another agency. The waiver shall be in writing and shall set forth the reasons for the waiver.~~

~~(d) — The department shall conduct a preliminary review of the application within 20 days of its submission and schedule promptly thereafter a meeting with the operator to request such additional information as may be necessary to make the application complete. At this meeting, the department and the operator shall establish the procedures for coordinating the review of the application with the review by other agencies of the applications submitted to them by the operator.~~

~~(e) — The fee for processing the application shall be as specified in section 49.85.100. This fee is intended to cover the City and Borough's costs of review of the application. If, after receipt of the application, the department determines that the cost of review is likely to substantially exceed such fee the department may, after consultation and discussion with operator, recommend an additional fee to the assembly. Such additional fee shall be approved by the assembly by motion and shall be set in an amount that will, as far as can be determined, cover the cost of renew of the application, including reasonable administrative and overhead expenses. In recommending the additional fee, the department may consider, among other factors: that proper review will require the department to retain outside professional assistance either to review the application or to perform original study and research; that significant staff effort will be required by the department to adequately review the application; the involvement in the review process of other governmental agencies, either through a federal environmental review process or other procedure; the necessity for extraordinary travel and transportation costs that may be incurred by the department during review; the potential benefit of information generated by the application review to other mining operations or to the City and Borough; and the necessity for extraordinary communication, duplication or publication costs arising from the review.~~

~~(f) — Unless the operator agrees to an extension, within 90 days after the department has received all additional information requested at the initial meeting described in subsection (d) of this section and the fee has been established, the department shall complete its review of the application, unless an Environmental Impact Statement (EIS) is required by the National Environmental Policy Act (NEPA). If an EIS is required, then the timing of the review of the application shall be in accordance with the provisions of subsection (h) of this section. The application review shall include the following determinations: whether air and water quality will be maintained in accordance with federal, state and City and Borough laws, rules and regulations; where sewage, solid waste, hazardous and toxic material will be properly contained and disposed of in accordance with federal, state and City and Borough laws, rules and regulations; the extent to which the operator will agree to mitigate adverse impacts on the City and Borough; whether the mining operation will be conducted in such a way as to minimize safety hazards to the extent reasonably practicable and will mitigate adverse impacts on the public and on neighboring properties such as those from traffic overloading, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and erosion; and whether appropriate historic sites will be protected. The department shall form a recommendation as to whether the permit should be approved~~

~~and, if so, it shall make a recommendation on the amount of the financial warranty as provided in section 49.65.140. The department's recommendation may include such conditions or stipulations as the department deems to be reasonably necessary to mitigate any adverse environmental, health, safety or general welfare impacts which may result from the proposed mining operation. The department's recommendations shall be provided to the operator and forwarded to the commission where the matter shall be placed on agenda for the next regularly scheduled meeting after notice has been published as provided in section 49.15.230. The application shall then be heard as a conditional use application as provided in chapter 49.15, article III, as modified by this article. If the commission determines that the application, with stipulations or conditions as appropriate, satisfies the standards of sections 49.65.135 and 49.15.330, it shall approve the application and set the amount of the financial warranty.~~

~~(g) — If the department determines that the proposed mining operation does not meet the standards of sections 49.65.135 and 49.15.330, it shall so advise the operator, together with the reasons therefor. The operator may then either withdraw its application or allow the department's recommendation to be forwarded to the commission pursuant to subsection (f) of this section. If the application is withdrawn, it may be revised and submitted within 180 days upon payment of an additional processing fee as determined by the department to be reasonably necessary to defray its cost of reviewing the revised application to the extent that it is different from the original submittal. Revised applications shall be processed in accordance with the procedures set forth in subsections (d), (e), (f) and (h) of this section.~~

~~(h) — In order to prevent duplication of studies and to avoid premature decision-making, if an EIS is required to be completed on the mining operation pursuant to NEPA, then the application will not be considered to be complete until the draft environment impact statement (DEIS) is concluded. The department will begin its review of the application upon its filing. The operator shall advise the department immediately at any time during the application process or thereafter if NEPA is involved so that the City and Borough may participate in the NEPA process. The DEIS, the final environment impact statement and all comments and testimony related thereto will be considered as part of the application. The department may, before the final environment impact statement is complete, prepare its recommendation as to whether the permit should be approved. If the department prepares its recommendation before the final environment impact statement is complete, the recommendation shall not be presented to the commission until the department has considered the final environment impact statement in its recommendation. The department's recommendation shall not be presented to the commission until publication of the final environment impact statement. The department's recommendation may include such conditions or stipulations as the department deems to be reasonably necessary to mitigate any adverse environmental, health, safety or general welfare impacts which may result from the proposed mining operation. The department shall also recommend the amount of the financial warranty as provided in section 49.65.140. The department's recommendation shall be provided to the operator and forwarded to the commission where~~

~~the matter shall be placed on the agenda for the next regularly scheduled meeting after the final environment impact statement is complete and a notice has been published as provided in section 49.15.230. The application shall then be heard as a conditional use application as provided in chapter 49.15, article III, as modified by this article. If the commission determines that the application, with stipulations or conditions as appropriate, satisfies the standards of sections 49.65.135 and 49.15.330, it shall approve the application and set the amount of the financial warranty.~~

~~(i) — After a permit has been approved by the commission, a financial warranty in the amount set by the commission has been submitted in a form satisfactory to the city attorney, and the operator has agreed to such conditions as are deemed appropriate by the commission, the department shall promptly issue a permit.~~

~~49.65.135 — Standards for issuance of permits and conduct of operations.~~

~~(a) — In determining whether to recommend issuance of a permit, the department shall require that:~~

~~(1) — The mining operations be conducted in accordance with this article, section 49.15.330, and any other applicable provisions of the City and Borough Code in such a way as to mitigate adverse environmental, health, safety and general welfare impacts;~~

~~(2) — Air and water quality be maintained in accordance with federal, state and City and Borough laws, rules and regulations;~~

~~(3) — Hazardous and toxic materials, sewage, and solid waste be properly contained and disposed of in accordance with applicable federal, state and City and Borough laws, rules and regulations;~~

~~(4) — The operator conduct all mining operations according to the standards of the City and Borough as contained in this article, section 49.15.330, the permit and any other applicable provisions of the City and Borough Code, so as to minimize to the extent reasonably practicable safety hazards and to control and mitigate adverse impacts on the public and neighboring properties, such as from traffic overloading, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and erosion;~~

~~(5) — Appropriate historic sites designated as significant by the City and Borough be protected;~~

~~(6) — Reclamation of the affected surface be in accordance with the approved reclamation plan of the operator; and~~

~~(7) — With respect to a large mine permit application, the operator negotiate and enter into a mitigation agreement with the City and Borough, which agreement shall establish~~

responsibility for the mitigation of reasonably foreseeable and demonstrable adverse impacts, including direct impacts and indirect impacts. The operator shall be responsible for mitigating the direct impacts. The City and Borough shall be responsible for mitigating indirect impacts except where the costs of mitigating specific indirect impacts are found by the manager to:

(A) — Exceed the amount of any City and Borough nonproprietary revenue increase attributable to the mining operation; and

(B) — Require a direct and significant increase in local taxes or fees to adequately mitigate the impact.

Highly speculative impacts shall not be included in the mitigation agreement. Taxes and nonproprietary revenues generated as a result of the proposed mining operation shall be a factor considered in negotiating the mitigation agreement. This agreement shall be incorporated as part of the permit. This subsection does not limit or otherwise affect the authority of the department or the commission to condition or place stipulations on a permit pursuant to this article or the conditional use process as provided in chapter 49.15, article III.

(b) — Reclamation of all affected surfaces shall be completed as soon as is reasonable after affected surface areas are no longer being used in exploration and mining operations. Reclamation shall include the following:

(1) — Cleanup and disposal of dangerous, hazardous or toxic materials;

(2) — Regrading of steep slopes of unconsolidated material to create a stable slope;

(3) — Backfilling underground shafts and tunnels to the extent appropriate;

(4) — Adequate pillaring or other support to prevent subsidence or sloughing;

(5) — Plugging or sealing of abandoned shafts, tunnels, adits or other openings;

(6) — Adequate steps to control or avoid soil erosion or wind erosion;

(7) — Control of water runoff;

(8) — Revegetation of tailings and affected surface areas with plant materials that are capable of self regeneration without continued dependence of irrigation and equipment where appropriate;

(9) — Rehabilitation of fisheries and wildlife habitat; and

(10) — Any other conditions imposed by the commission.

~~Subsequent to the issuance of a permit or the grant of authority under an exploration notice, the operator's compliance shall be measured against the requirements contained in that permit or the conditions of the exploration notice and the operator's plans submitted with the permit application or the notice.~~

~~(c) — In the event mining operations violate or threaten to violate this article, section 49.15.330, or a permit issued under this article, the operator shall notify the department of such fact and of the steps to be taken to return to compliance, or resolve the potential noncompliance.~~

49.65.140 - Financial warranty.

~~(a) — No permit shall be issued or exploration authorized pursuant to this article, until any financial warranty required has been submitted by the operator, approved by the city attorney, and accepted by the department. The purpose of any financial warranty shall be to ensure that, during all phases of exploration or a mining operation, the operator will carry out all those obligations or requirements of the permit or conditions of an exploration notice, which are necessary to protect the environmental, health, safety, general welfare and reclamation requirements of the City and Borough, or that, if the operator does not carry out those obligations, there will be sufficient funds available to the City and Borough to enable it to complete the necessary work, taking into account the financial warranties which the operator must submit to other agencies. The department reserves the right to seek forfeiture of the financial warranty, in whole or in part, in the interest of protecting the environmental, health, safety and general welfare requirements of the City and Borough if it determines that the operator has violated the obligations or requirements of the permit or the conditions of an exploration notice. The forfeiture shall be limited to the extent necessary to satisfy the requirements or conditions that the operator has violated.~~

~~(b) — The amount of financial warranty for an exploration notice shall be set by the department. The amount of financial warranty for small mines and large mines shall be determined by the commission. The amount of the financial assistance of the department and the engineering department, to be required to ensure the performance of the requirements of the permit or conditions of an exploration notice as set forth in subsection (a) of this section. In recommending and setting the amount of the financial warranty, the department and the commission, respectively, shall take into consideration the amount and scope of any financial warranties which have been submitted to other agencies. When the performance of such obligations is guaranteed by financial warranties that have been submitted to other agencies, the operator may be required to post a separate financial warranty with the City and Borough if the city attorney determines that the financial warranty submitted to another agency does not create a lien or interest sufficient to protect the interests of the City and Borough. Examples of obligations to be covered by the financial warranty required under this section include but are not limited to;~~

- ~~(1) — Construction of berms, dikes, spillways, channels or other facilities to control, detain, retain or reduce runoff, soil erosion and siltation, or to divert water around waste, tailings, stockpiles or other facilities or disturbed areas;~~
 - ~~(2) — Installation and maintenance of landscaping, including berming, tree planting and other required grading or planting to provide visual and sound barriers and to eliminate or reduce the appearance of scarring;~~
 - ~~(3) — Installation and maintenance of road or highway improvements to mitigate the impact of increased traffic or heavy trucking which is measurable and directly attributable to the mining operation; such facilities may include speed access ramps or lanes, turn lanes, intersection improvements, traffic control devices or private haulage ways where necessary to avoid the use of public roads or highways. The cost of installation or maintenance described in this subsection shall be shared by the operator and the City and Borough in relation to the proportion of the directly attributable and measurable impact on traffic of the operator's activities or the facilities being maintained, installed or improved;~~
 - ~~(4) — Reclamation of affected surfaces during and following exploration and mining operations;~~
 - ~~(5) — Regrading of steep slopes of unconsolidated materials to create a stable slope;~~
 - ~~(6) — Installation of facilities required to prevent or reduce degradation of air or water quality or to contain or control toxic or hazardous wastes;~~
 - ~~(7) — Removal of buildings, structures or equipment where appropriate;~~
 - ~~(8) — Such other obligations as necessary to conform with the commission's determinations under subsection 49.15.330(f) and (g) and subsection 49.65.135(a) and (b)~~
- ~~(e) — The financial warranty required under this article for a large or small mine permit or an exploration notice may be in any one or a combination of the following forms at the option of the operator; provided, that the cumulative amount is equal to the amount provided in subsection (b) of this section:~~
- ~~(1) — Cash;~~
 - ~~(2) — Certificate of deposit;~~
 - ~~(3) — An irrevocable standby letter of credit from a United States bank; or~~
 - ~~(4) — A surety bond from a bonding company licensed to do business in the state which is satisfactory to the department for credit worthiness. Interest on cash deposits or certificates of deposit will accrue to the credit of the operator.~~
- ~~(d) — In addition to the forms of financial warranty set forth in subsection (e) of this section, with respect to a small mine permit or an exploration notice, the operator may elect~~

~~to use a property bond as a form of financial warranty; provided, that at least ten percent of the total amount of the financial warrant shall be cash or a certificate of deposit; and provided further, that the commission determines that the value of the property is equivalent to the amount required to be generated for satisfaction of the obligation and the city attorney determines that the bond creates a lien with sufficient priority to permit its collection should such become necessary.~~

~~(e) — The form of financial warranty shall provide that the funds may be used by the City and Borough to satisfy the obligations described in subsections (a) and (b) of this section when there has been a determination by the department that the operator has not completed its obligations in a timely manner or has otherwise violated the terms of its permit or conditions of its exploration notice, and after notice and opportunity to perform the obligation has been given to the operator.~~

~~(f) — The amount of the financial warranty shall be reviewed annually by the department, and a determination shall be made whether the amount should be increased or decreased, taking into account changes in the obligations of the operator to be undertaken during the ensuing year, cost of current obligations of final reclamation, and changes due to inflation of deflation.~~

~~(g) — If the amount of financial warranty is to be increased or decreased by the determination made in subsection (f) of this section, then the actual increase or decrease shall be made according to the procedure in subsection (b) of this section.~~

~~49.65.145 — Term of notices and permits; temporary cessation.~~

~~(a) — Exploration notices and permits for mining operations shall remain in effect for the duration of the operation, as stated in the notice or in the application, subject to the conditions of this section; and provided, that the following conditions are met:~~

~~(1) — The financial warranty must remain in full force and effect;~~

~~(2) — The operator must not be found to be in substantial violation of this article; and~~

~~(3) — With respect to a large or small mine permit, mining operations must be continued in accordance with the plan contained in the application for at least 90 days in each year as to a large mine, and for at least 30 days in each year as to a small mine.~~

~~(b) — During the term of any exploration notice or permit, the department may, pursuant to subsection 49.65.140(f), revise the amount of the financial warranty. If the amount of financial warrant is increased, the operator shall submit the appropriate amount of additional financial warranty within 60 days of the department's determination.~~

~~(e) — The operator shall advise the department within ten days of the date upon which the operator receives notice that a financial warranty which has been submitted to any other agency is reduced or released.~~

~~(d) — If at any time during the term of a permit, the operator determines that it will not conduct mining operations for the applicable time minimums established in subsection 49.65.145(a)(3), it shall notify the department of that intent and request that its mining operation be placed in an inactive status. In conjunction with this notification, and as a condition to granting a request for inactive status, the operator shall advise the department of the measures it will employ to prevent hazardous or dangerous conditions, erosion or other environmental damage which may result from the operator's activities, and the security measures it will employ at the mining operation during the inactive period. An operator may continue in inactive status for a five-year period and may, with the permission of the department, obtain successive five-year extensions of that status. At the conclusion of inactive status, the operator shall either resume operations or commence final reclamation in accordance with its plans. If an operator ceases operations for more than one year but does not request inactive status, the department may require the operator to commence final reclamation in accordance with its plans.~~

~~(e) — Throughout the duration of a large mine permit, the operator of a large mine shall also notify the department not less than 60 days prior to requesting placement on inactive status. The operator and the City and Borough shall maintain a process to exchange information regarding the impact on the City and Borough that may result from a change in mining operations. In addition, the operator shall provide the department with copies of any notification it may be required to provide to federal agencies under federal law concerning proposed personnel layoffs at its mining operation. The department may waive any of these notification requirements in the event of an unforeseen act of God or disaster.~~

49.65.150 — Annual reports; monitoring; monitoring fee.

~~(a) — During the term of each exploration notice, the operator shall submit annual progress reports to the department on or before March 31 of each year and shall describe the areas in which exploration was conducted during the preceding year, the amount of acreage which was disturbed by such exploration, and the nature and extent of associated reclamation activities.~~

~~(b) — During the term of each small mine permit or large mine permit, including any inactive period, the operator shall submit an annual progress report to the department on or before March 31 of each year describing the status of the mining operation in relation to the mining plan and timetable in the application, and describing reclamation activities during the year.~~

~~(e) — The department shall have ongoing authority to monitor any mining operation for which a permit has been issued in order to ascertain whether the mining operation is in compliance with the requirements, terms, conditions and mitigation measures in the permit. The operator shall, upon reasonable notice, provide the department with access, at reasonable times, to the premises and to the records of the mining operation to the extent such access to the premises and records is necessary to ascertain whether the mining operation is in compliance with the requirements, terms, conditions and mitigation measures in the permit.~~

~~(d) — Throughout the duration of the term of a small mine permit or a large mine permit, the operator shall pay to the department an annual monitoring fee to defray the costs of inspecting and reviewing the affected surface and compliance with the permit. The annual monitoring fee shall be such amount as may be established by the commission as necessary to cover the reasonable costs of inspection and review.~~

49.65.155 - ~~Technical revisions, summary approval, and amendments.~~

~~(a) — During the term of a permit, the operator shall notify the department of all technical revisions to its operations. As used in this section a "technical revision" is a change in operations which does not, in the judgment of the department, have more than a minor effect on reclamation and which does not change the total amount of disturbance or the overall environmental or socioeconomic impact of the mining operation. After the technical revision is submitted to the department, the department shall within 30 days determine and notify the operator whether a permit amendment or summary approval of the change is necessary or whether the technical revisions may be accomplished under the operator's existing permit.~~

~~(b) — If the operator or the department determines that the change to the mining operations will require preparation of a new or supplemental environmental impact statement, or will increase the acreage of affected surface or otherwise have a significant effect on reclamation or the environmental or socioeconomic impact of the mining operation, the permit shall be amended, unless summary approval of the change is granted pursuant to (b)(2) of this section.~~

~~(1) — Except as provided in subsection (2) of this section, the operator shall file with the department an application for amendment to its original permit, together with an application with the same content as required for an original application, except that no operator will be required to resubmit any information which duplicates applicable previous submittals. The permit amendment application shall be processed in accordance with the same procedure as established for processing permits under sections 49.65.125, 49.65.130 and 49.65.135. The operator shall not commence changes requested in its amendment~~

~~application until the permit amendment has been approved and, if appropriate, additional financial warranties submitted.~~

~~(a) (2)~~ Summary approval.

(a) Upon request of the applicant, the director may summarily approve a proposed change in mining operations not constituting a new land use or separate development upon a written determination that:

(i) the mine is located entirely outside the roaded service area established in CBJ 01.30.320;

(ii) the application is complete, providing all of the information necessary for the director to make the summary approval determinations set forth in subsections (i)—(iv);

(iii) the proposed change in mining operations will have no significant impact within the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion; and

(iv) the proposed change in mining operations has undergone or is undergoing environmental review and approval by one or more federal agencies, state agencies, or both.

(b) The director shall make the determination required by this ~~section subsection (2)~~ within 45 days unless additional information is required. If the director requires additional information to make the determination, upon written notification to the applicant, the time for determination may be extended for up to 20 additional days after submittal by the applicant of the additional information. If an environmental impact statement is required by one or more federal agencies, completion of the draft environmental impact statement is necessary for summary approval.

(c) Planning commission review.

(i) The director shall promptly forward the proposed summary approval to the planning commission after the determination is completed. The planning commission may ratify or reject the proposed summary approval.

(ii) If the commission rejects the proposed summary approval, it may:

(A) return the matter to the director for further consideration of whether the director, in consultation with the applicant, can address issues identified by the commission through imposition of conditions or changes in the proposed mining operation; or

(B) direct that the proposed change be processed by the department as an application for an allowable use permit for which the commission may impose conditions under CBJ 49.15.320(f)(1)—(8) and such additional conditions as are necessary to reduce to non-

significant any impacts in the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion.

49.65.160 - Enforcement.

This article shall be enforced in accordance with chapter 49.10, article VI and section 49.65.185.

49.65.165 - Appeal.

Any person who is aggrieved by a decision of the department or the commission with respect to this article, other than one under section 49.65.160, may appeal that decision to the commission or the assembly, as applicable, as provided in chapter 49.20, article I.

~~49.65.170 - Release of warranties for mining operations.~~

~~(a) — Upon completion of mining operations, the operator shall file a written notice of completion with the department when it believes it has completed any or all requirements of this article, section 49.15.330 and its permit with respect to any or all of its affect surfaces. The department shall, within 90 days after receiving the notice, or as soon thereafter as weather conditions permit, inspect the lands and reclamation described in the notice to determine whether the operator has complied with all applicable requirements.~~

~~(b) — If the department determines that the operator has successfully complied with all the requirements of this article, section 49.15.330 and the permit, it shall release all financial warranties applicable to said requirements. Release shall be in writing and shall be delivered to the operator promptly after the date of such filing.~~

~~(c) — If the department finds that the operator has not complied with the requirements of this article, section 49.15.330 or the permit, it shall so advise the operator not more than 90 days after the date of the inspection. The operator shall be given a reasonable time to comply with requirements before a second inspection. If the operator does not complete the requirements, or if after reinspection the department is not satisfied that the operator has complied with all the requirements of this article, section 49.15.330 or the permit, the financial warranty shall be subject to forfeiture to the extent necessary to satisfy any outstanding requirements.~~

~~49.65.175 - Successor operators.~~

~~Any operator desiring to transfer its rights under an exploration notice, a small mine permit, or a large mine permit shall submit to the department a request for transfer. This request shall identify the name and address of the new operator. The department may approve in writing the request for transfer if it finds that: the proposed operator will conduct the operations covered by the notice or permit in accordance with the requirements of this article and any additional requirements set by the department; the proposed operator has submitted a financial warranty at least equivalent to the financial warranty of the original operator such other amount as may be determined using the procedures in section 49.65.140; the proposed operator will continue to conduct the operations involved in full compliance with the terms and conditions of the original notice or permit; and all obligations and responsibilities undertaken by the original operator shall be accepted and assumed by the proposed operator. The department may deny approval of the request for transfer if the original operator has any existing notice or permit violations at the time of the request until such time as the violations have been remedied. If the department approves the transfer the financial warranty submitted by the original operator shall be released.~~

49.65.180 — Confidentiality.

~~Upon request of any operator, information in any application or report relating to the location, size, grade, geology or geochemistry of any ore deposit, proprietary process information, or information as to cost of mine construction or operation shall be kept confidential by the department to the extent permitted by AS 09.25.110, AS 09.25.120 or other applicable law. Information to be maintained as confidential must be separately presented to the department and must be marked "Confidential."~~

49.65.185 - Suspension or revocation of a notices and permits.

(a) The commission may suspend or revoke the Conditional Use permit issued under this article upon a determination by the commission that a Federal or State permit previously issued to the Mine or Mining Exploration operation has been suspended or revoked.

The commission may suspend or revoke the Conditional Use permit issued under this article for a substantial violation or repeated violations of its traffic, noise, dust, light, surface subsidence, avalanche, landslide, or erosion requirements.

~~Subject to the procedures of this section, the commission may suspend or revoke a permit issued under this article, or the authority to operate under an exploration notice pursuant to section 49.65.120, upon a determination by the commission that:~~

~~(1) — The exploration of mining operations are not in material and substantial compliance with the requirements of the exploration notice or permit and such material and substantial noncompliance remains unremedied after issuance of a compliance order issued pursuant to section 49.10.620; or~~

~~(2) — The exploration of mining operations under the notice or permit have a history or pattern of intentional or grossly negligent noncompliance and compliance orders have previously been issued for such past events of noncompliance. Good faith efforts to remedy events of noncompliance shall create an inference that such noncompliance is not a cause for suspension or revocation.~~

~~(b) — The department shall provide the operator with written notification that it is recommending that the commission consider the entry of a suspension or revocation order under subsection (a) of this section. The written notification shall set forth the reasons for the department's recommendation and the operator's right to a hearing before the commission. The commission shall schedule a hearing within 30 days after the operator has received the written notification. At the hearing, the department shall have the burden of establishing that the operator is not in material and substantial compliance with the permit or authority to operate under an exploration notice, or that there is a past history or pattern on noncompliance sufficient to justify suspension or revocation.~~

~~(c) — Upon written notification of the entry of a suspension or revocation order to the operator or to any person operating under the authority of the permit or exploration notice, all exploration or mining operations shall cease except those specifically authorized by the commission in the order or except if the assembly stays the order pending appeal.~~

~~(d) — A suspended notice or permit may be reinstated by the commission upon a determination that the exploration or mining operations have been brought into compliance with the conditions of the notice or permit. A notice or permit which has been revoked may not be reissued by the commission until the commission determines that the exploration or mining operation has been brought into compliance with the terms and conditions of the notice or permit, and the operator has clearly and convincingly demonstrated that preventative measures have been taken to ensure that those conditions which gave rise to the revocation will not reoccur.~~

~~(e) — A suspension or revocation order may be appealed to the assembly in accordance with chapter 49.20, article I. Pending appeal, the assembly may in its discretion stay an order of suspension or revocation.~~

~~(f) — The rights of suspension or revocation provided for in this section are in addition to any rights or powers vested in the City and Borough in section 49.65.160 or chapter 49.10, article VI.~~

49.65.190 - Effect of article on operations in annexed territory.

Mines and mining ~~Large mine, small mine and exploration~~ operations occurring in territory annexed by the City and Borough which have been issued the federal and state permits or approvals necessary for the operation, including, if applicable, permits or approvals necessary to operate in accordance with the National Environmental Policy Act (NEPA) process, shall be deemed to have been issued a large mine permit, a small mine permit, or an exploration notice, as applicable, under this article and to otherwise be eligible to operate pursuant to this article upon the effective date of annexation; provided, that all such federal and state permits or approvals are currently valid. With the exception of the initial permit application and exploration notice filing requirements, the operator shall be subject to all of the requirements, of this article in effect upon the effective date of annexation, including the technical revisions and permit amendment requirements, and the monitoring fee enforcement and revocation or suspension provisions, in the same manner as any other operator. ~~The terms of the City and Borough permit or notice shall be deemed to be the terms of the state and federal permits or approvals, unless and until a permit amendment is required. The operator shall be required to execute documentation acknowledging that the permit or notice deemed to be issued under this article shall have the same terms as the federal and state permits or approvals unless and until a permit amendment is required, and that the operator, and the permit or notice deemed issued, shall be subject to all of the requirements of this article in effect upon the effective date of annexation with the exception of the initial permit application and exploration notice filing requirements.~~

~~49.65.195 - Severability.~~

~~If any section, subsection, paragraph, sentence, clause or phrase of this article is for any reason held unlawful or otherwise invalid, such holding shall not affect the remaining portions of the article. The City and Borough declares that it would have enacted this article and each and every part thereof, irrespective of the fact that any one or more parts might be held unlawful or otherwise invalid.~~