

(O-2000-131 COR. COPY)

ORDINANCE NUMBER O-18802 (NEW SERIES)

ADOPTED ON MAY 15 2000

AN ORDINANCE AMENDING CHAPTER XIV, ARTICLE 1, DIVISION 10, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 141.1004, RELATING TO THE CALIFORNIA SURFACE MINING AND RECLAMATION ACT OF 1975.

WHEREAS, in 1975 the California Legislature adopted the Surface Mining and Reclamation Act (SMARA) (Public Resources Code sections 2710 through 2793) to regulate the surface mining industry; and

WHEREAS, local jurisdictions are required under SMARA to adopt local ordinances and assume Lead Agency status in the administration and enforcement of SMARA; and

WHEREAS, to assume Lead Agency status, the California State Mining and Geology Board must approve of local ordinances adopted for the purpose of administering and enforcing SMARA; and

WHEREAS, on September 11, 1981, by Resolution No.81-13, the California State Mining and Geology Board certified City of San Diego Ordinance No.12513 N.S. which imposed regulations on the surface mining industry consistent with the requirements under SMARA; and

WHEREAS, the City of San Diego assumed Lead Agency status in the administration and enforcement of SMARA; and

WHEREAS, since the City of San Diego assumed Lead Agency status in 1981, the California Legislature has amended SMARA; and

WHEREAS, in order to maintain Lead Agency status, the San Diego Municipal Code must be amended to reflect amendments to SMARA passed by the California Legislature since 1981;

WHEREAS, it is in the best interest of the City of San Diego to maintain Lead Agency status; NOW THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter XIV, Article 1, Division 10, of the San Diego Municipal Code is amended by amending Section 141.1004, to read as follows:

SEC. 141.1004 Mining and Extractive Industries

Mining and extractive industries may be permitted with a Conditional Use Permit decided in accordance with Process Four in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

(a) Exemptions. The following activities and persons are exempt from the provisions of this section:

(1) Prospecting for or *exploration* of minerals for commercial purposes where less than 1,000 cubic yards of *overburden* are removed in any single location of 1 acre or less;

(2) Any *surface mining* operation that does not involve the removal of more than 1,000 cubic yards of minerals, ores, and *overburden* or involve more than 1 acre in any single location;

(3) *Surface mining* operations that are required by federal law in order to protect a mining claim, if the operations are conducted solely for that purpose; and

(4) *Excavations* or *grading* conducted for farming, onsite construction, or for the purpose of restoring land following a flood or natural disaster.

(5) The solar evaporation of sea water or bay water for the production of salt and related minerals.

(6) Onsite *excavation* and onsite earthmoving activities that are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:

(A) All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to Public Resources Code, Division 13 (commencing with Section 21000).

(B) The lead agency's approval of the construction project included consideration of the onsite *excavation* and onsite earthmoving activities pursuant to Public Resources Code, Division 12 (commencing with Section 21000).

(C) The approved construction project is consistent with the general plan or zoning of the *premises*.

(D) Surplus materials shall not be exported from the *premises* unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.

(7) Operation of a plant site used for mineral processing, including associated onsite structures, equipment, machines, tools, or other materials, including the onsite stockpiling and onsite recovery of mined materials, subject to all of the following conditions:

(A) The plant site is located on lands designated for industrial or commercial uses in the applicable county or city general plan.

(B) The plant site is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the applicable city or county.

(C) None of the minerals being processed are being extracted onsite.

(D) All *reclamation* work has been completed pursuant to the approved reclamation plan for any mineral extraction activities that occurred onsite after January 1, 1976.

(8) Emergency *excavations* or *grading* conducted by the California Department of Water Resources or the Reclamation Board for the

purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.

(9) *Surface mining* operations conducted on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the California Department of Water Resources for the purpose of the State Water Resources Development System or flood control, and *surface mining* operations on lands owned or leased, or upon which easements or rights-of-way have been obtained, by the Reclamation Board for the purpose of flood control, if the California Department of Water Resources adopts, after submission to and consultation with, the California Department of Conservation, a *reclamation* plan for lands affected by these activities, and those lands are reclaimed in conformance with the standards specified in regulation of the board adopted pursuant to the California Surface Mining and Reclamation Act of 1975. The California Department of Water Resources shall provide an annual report to the California Department of Conservation by the date specified by the California Department of Conservation on these mining activities.

(10) *Excavations* or *grading* for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity. This exemption is limited to *excavation* and *grading* that is conducted adjacent to timber operation or forest management roads and shall not apply to onsite *excavation* or *grading* that occurs within 100 feet of a Class One

watercourse or 75 feet of a Class Two watercourse, or to *excavation* for materials that are, or have been sold for commercial purposes.

(A) The exemption set forth in Section 141.1004(a)(10) applies only if slope stability and erosion are controlled in accordance with Section 3704(f) and Section 3706(d) of Title 14 of the California Code of Regulations and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and postclosure uses in consultation with the California Department of Forestry and Fire Protection.

(11) Excavations, grading, or other earthmoving activities in an oil or gas field that are integral to, and necessary for, ongoing operations for the extraction of oil or gas that comply with all of the following conditions:

(A) The operations are being conducted in accordance with Public Resources Code, Division 3 (commencing with Section 3000).

(B) The operations are consistent with any general plan or zoning applicable to the site.

(C) The earthmoving activities are within oil or gas field properties under a common owner or operator.

(D) No excavated materials are sold for commercial purposes.

(b) Vested Rights

(1) Any person who obtained a vested right to conduct a *surface mining* operation before January 1, 1976, shall not be required to secure a Conditional Use Permit pursuant to the provisions of Section 141.1004, as long as

the vested right continues and no substantial change is made in the operation except in accordance with the provisions of Section 141.1004. Any substantial change in the *surface mining* operation subsequent to January 1, 1976, may be permitted only with a Conditional Use Permit in accordance with Section 141.1004.

(A) A person is deemed to have a vested right if, before January 1, 1976, that person has in good faith and in reliance upon a permit or other authorization, if a permit or other authorization was required, diligently commenced *surface mining* operations and incurred substantial liabilities for work and necessary materials. Expenses incurred in obtaining the enactment of a resolution in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials that would create a vested right.

(2) A person with vested rights who has continued *surface mining* in the same disturbed area after January 1, 1976, and who did not receive approval for his or her reclamation plan prior to July 1, 1990, shall cease continuation of the surface mining operation until a reclamation plan has been submitted to the City Manager and approved in accordance with Process One. All *reclamation* plans submitted to the City Manager for vested operations that are conducted after January 1, 1976, shall be accompanied by the applicable deposit.

(3) Any person who has obtained a vested right to conduct *surface mining* operations shall obtain a grading permit and be subject to the same frequency of inspection as those mining operators required to obtain a Conditional Use Permit pursuant to Section 141.1004.

(4) Nothing in Section 141.1004 shall be construed as requiring the filing of a *reclamation* plan for, or the *reclamation* of, mined lands on which *surface mining* operations were conducted prior to, but not after, January 1, 1976.

(c) The applicant shall submit a *reclamation* plan, financial assurances and grading plans, in accordance with the provisions set forth in Section 141.1004; the California Surface Mining and Reclamation Act of 1975, Article 5 including Sections 2772, 2773 and 2773.1; applicable provisions of Chapter 8, Division 2, Title 14 of the California Code of Regulations including Sections 3500-3505 and 3700-3713; and procedures established by the City Manager. The Conditional Use Permit, *reclamation* plan, financial assurance, and *grading* plan shall be processed as a consolidated action.

(d) The Director of the California Department of Conservation shall be notified by the City Manager of the filing of a Conditional Use Permit application pursuant to Section 141.1004.

(e) In accordance with Public Resources Code section 2772, any person who owns, leases, or otherwise controls or operates on all or any portion any mined lands, or who plans to conduct *surface mining* operations on the lands, shall submit a *reclamation* plan for approval by the City Manager. The *reclamation* plan shall be submitted in a format specified by the City Manager. The *reclamation* plan shall include all information and documentation set forth in Public Resources Code sections 2772 (c) and 2773(a).

(f) The mining operator shall file an annual *surface mining* report on forms provided by the State Mining and Geology Board with the California

Department of Conservation and the City Manager no later than the anniversary date established by the Director of the California Department of Conservation, or as otherwise required by the Conditional Use Permit.

(g) *Reclamation* plans, reports, applications, and other documents submitted in accordance with Section 141.1004 are public records unless it can be demonstrated to the satisfaction of the City Attorney that the release of this information would reveal production, reserves, or rate of depletion that is entitled to protection as proprietary information. The City Attorney shall identify the proprietary information as a separate part of each application. A copy of all permits, *reclamation* plans, reports, applications, and other documents submitted in accordance with Section 141.1004, including proprietary information, shall be furnished to the Director of the California Department of Conservation by the City Manager. Proprietary information shall be made available to persons other than the Director of Department of Conservation only when authorized by the *surface mining* owner in accordance with Public Resources Code section 2778.

(h) As a condition of approval for the Conditional Use Permit or the *reclamation* plan, or both, the *applicant* shall agree to allow the City, upon notice of inspection, to enter the site to inspect and evaluate continuing compliance with the Conditional Use Permit and the *reclamation* plan. The inspections shall occur no less frequently than once in any calendar year, in accordance with Public Resources Code section 2774(b). The inspection shall be conducted by a state-registered geologist, state registered civil engineer, state licensed landscape architect or state registered forester, who is experienced in land *reclamation* and

who has not been employed by the *surface mining* operation in any capacity during the twelve month period prior to the inspection. The inspection shall be conducted using a form provided by the California Department of Conservation and subject to review and approval by the City Manager. The completed inspection form and an inspection report shall be submitted to the City Manager within fifteen days of the inspection. All costs related to the inspections and report shall be borne solely by the operator. The City Manager shall notify the California Department of Conservation within thirty days of completion of the inspection that the inspection has been conducted; the City Manager shall also forward a copy of the notice, the completed inspection form and any necessary supporting documentation, to the applicant.

(i) As a result of the annual inspection, if the City Manager finds that the *surface mining* operator is not following the provisions of the *reclamation* plan, the *surface mining* operator shall be given notice to comply within a given time not to exceed ninety calendar days. A copy of the notice shall be given to the owner of the land upon which the *surface mining* operations are located. If at the end of the stated time the operator is not in compliance, the City Manager may revoke or suspend the Conditional Use Permit or the *reclamation* plan or both until the *surface mining* operator complies or obtains approval of a revised *reclamation* plan.

(j) In accordance with the provisions of Section 141.1004, Public Resources Code section 2773.1 and as a condition of approval of the Conditional Use Permit or the *reclamation* plan or both, the *surface mining* operator shall

submit financial assurances to ensure compliance with the *surface mining* operation's *reclamation* plan, including revegetation and landscaping requirements, restoration of aquatic or wildlife habitat, restoration of water bodies and water quality, slope stability and erosion and drainage control, disposal of hazardous materials, annual adjustments for disturbance to new lands and those anticipated for the upcoming calendar year, inflation and other measures, as necessary.

(1) Cost estimates shall be prepared in accordance with the procedures outlined in the most recent edition of the State Mining and Geology Board's "Financial Assurance Guidelines" and shall be submitted to the City Manager for review and approval prior to the *surface mining* operator securing financial assurances.

(2) A copy of the cost estimates will be forwarded to the State California Department of Conservation for review.

(3) Revisions to financial assurances shall be submitted to the City Manager each year prior to the anniversary date for approval of the financial assurances. The annual adjustments shall take into account new lands disturbed by *surface mining* operations, changes with respect to environmental conditions affected by mining operations, new information concerning mining *reclamation* or the *reclamation* of subject mined lands, modifications of the *reclamation* plan, changes in the laws and regulations affecting *surface mining*, inflation and *reclamation* of lands accomplished in accordance with the reclamation plan.

(4) The financial assurances shall be made payable to the City of San Diego and the California Department of Conservation and may be any of those listed below. The financial assurances shall be released, upon written notification from the City Manager to the *surface mining* operator and the California Department of Conservation, that the *surface mining* operator is in compliance with the provisions of the Conditional Use Permit and has completed the work in accordance with the approved *reclamation* plan. Financial assurances may be any of the following:

(A) A bond or bonds by one or more duly authorized corporate securities;

(B) A deposit of money or negotiable bonds of the kind approved for securing deposits of public moneys;

(C) An instrument of credit from one or more financial institutions subject to regulation by the state or federal government and pledging that the funds necessary to carry out the plan are on deposit and guaranteed for payment; or

(D) Other security which the State Mining and Geology Board determines are reasonably available and adequate to ensure reclamation in accordance with the California Surface Mining and Reclamation Act of 1975.

(5) Default of financial assurances shall comply with the procedures established by the City Manager, as amended from time to time.

(k) Whenever any *surface mining* operation or portion of a *surface mining* operation that is subject to Section 141.1004 is sold, assigned, conveyed,

exchanged, or otherwise transferred, the successor in interest shall be bound by the provisions of the Conditional Use Permit, *reclamation* plan, the provisions of Section 141.1004 and the California Surface Mining and Reclamation Act of 1975.

(l) In accordance with Public Resources Code section 2770, and as further provided in Section 141.1004, whenever any *surface mining* operation becomes *idle*, the *surface mining* operator shall submit a proposed interim management plan (IMP) to the City Manager for review and approval. The IMP shall be submitted within ninety days of the operation becoming *idle* on forms provided by the City Manager. Review and approval of the IMP shall be carried out in accordance with Public Resources Code section 2770(h). Upon receipt of a complete proposed IMP, the City Manager shall forward it to the California Department of Conservation for review.

(m) Deviations from the approved *reclamation* plan, including an IMP, are not permitted unless amendments to the *reclamation* plan, financial assurances and the Conditional Use Permit have been approved by the decision maker in accordance with *Process Four*, or the Substantial Conformance Review process where applicable.

(n) In the OR-1-2 zone, the following regulations apply.

(1) Processing and other related mining activities (such as asphaltic processing) are permitted only within the allowable 25% development area.

(2) All mining and other related mining activities must be consistent with the objectives, guidelines, and recommendations in the Multiple

Species Conservation Program Plan, the California Surface Mining and Reclamation Act of 1975, the regulations in Chapter 14, Article 3, Division 1 (Environmentally Sensitive Lands Regulations) and other applicable state and local laws and regulations.

(3) Any sand removal activities should be monitored for noise impacts to surrounding sensitive habitats, and all new sediment removal or *surface mining* operations proposed in proximity to the *MHPA* or changes in existing operations, must include noise reduction methods that take into consideration the breeding and nesting seasons of sensitive bird species.

(4) All existing and future mined lands adjacent to or within the *MHPA* shall be reclaimed in accordance with the California Surface Mining and Reclamation Act of 1975 and should be designed to contribute biologically to the *MHPA*. Native habitats should be restored as much as possible. No invasive non-native plant species shall be introduced into areas adjacent to the *MHPA*

(5) Any permitted *surface mining* activity, including *reclamation* of sand, must consider changes and impacts to surface water and groundwater quality, water table level, fluvial hydrology, flooding, and habitats upstream and downstream and must provide adequate mitigation.

(o) The City Manager may suspend or revoke a Conditional Use Permit or *grading* permit for violation of the terms and conditions of the permit, inadequate financial assurances, or Municipal Code violations.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. Outside the Coastal Overlay Zone, this ordinance will take effect and be in force on the date certified by the California State Mining and Geology Board.

Section 4. Within the Coastal Overlay Zone, this ordinance shall be in force and effect on the date it is effectively certified by the California Coastal Commission as a City of San Diego Local Coastal Program amendment.

APPROVED: CASEY GWINN, City Attorney

By 
Mary Jo Lanzafame
Deputy City Attorney

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3/24/00
4/24/00 Cor. Copy
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