

RESOLUTION NUMBER R-289997

ADOPTED ON APRIL 21, 1998

WHEREAS, H.G. FENTON MATERIAL COMPANY, a California Corporation, Owner/Permittee, filed an application with the City of San Diego for a permit to amend Conditional Use Permit No. 82-0014 to extend the period of time in which to continue operation of the permit, which allows for mining, processing and sale of natural resource products on approximately 240 acres located on the north and south sides of Friars Road, between Interstates 15 and 805, described as Lots 26 and 27, Mission City Unit 1, Map No. 11675; a portion of Lot 34, Rancho Mission of San Diego, SCC No. 348; portion of Lot 1, plat of Lot 32, Ex-Mission Rancho and a portion of Pueblo Lot 1113, Map No. 875; Parcel 3, Parcel Map No. 15626; Lots A, 7 and 8 of Mission City Unit 3, Map No. 11677; Parcel 2, Parcel Map 16988; a portion of Lot 36 of Rancho Mission of San Diego, SCC 348; that portion of Rio San Diego Drive offered for dedication on Mission City Unit No. 1, Map No. 11675, but which has not been accepted for dedication; and those portions of Northside Drive, Old Quarry Road and Questor Place that were offered for dedication on Mission City Unit No. 3, Map No. 11677, but which have not been accepted for dedication; and

WHEREAS, the project site is located in the MV-M/SP Zone in the Mission Valley Community Planning area; and

WHEREAS, on April 21, 1998, the City Council of the City of San Diego considered Conditional Use Permit No. 96-0680 pursuant to Section 101.0510 of the Municipal Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that this Council adopts the following findings with respect to Conditional Use Permit Amendment No. 96-0680:

1. The proposed use will not adversely affect the neighborhood, the General Plan or the Community Plan, and, if conducted in conformity with the conditions provided by the permit, will not be detrimental to the health, safety and general welfare of persons residing or working in the area.

The property has been operating as a natural resource mining, processing and sales facility for over 60 years and has been successfully regulated by a Conditional Use Permit for the past 16 years. Conditions are applied to the Conditional Use Permit to mitigate or avoid noise, air pollution, drainage runoff, and ponding impacts that would otherwise be detrimental to surrounding properties. Continued operation of the facility will require conformance with laws and standards of other governmental agencies, such as but not limited to the County Health Department and the Air Pollution Control District.

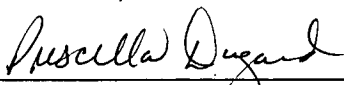
2. The proposed use will comply with all relevant regulations in this Code.

The Code requires a Conditional Use Permit for this type of facility because of the specialized nature of conditions that are needed to assure reasonable use of the land, compatibility with neighboring properties and the rehabilitation of mined areas. The amendment proposed by this action is intended to extend the period of time in which to continue operation of the facility from the year 2002 to 2014. Existing conditions contained in the permit are being updated to reflect current standards in effect for mined properties.

BE IT FURTHER RESOLVED that, based on the findings adopted by the Council of the City of San Diego, this Conditional Use Permit Amendment No. 96-0680 is granted by the City

Council to H.G. Fenton Material Company, in the form, exhibits, terms and conditions as set forth in Permit No. 96-0680, a copy of which is attached and made a part of this resolution.

APPROVED: CASEY GWINN, City Attorney

By 
Prescilla Dugard
Deputy City Attorney

PD:cdk
04/30/98
Or.Dept:Clerk
R-98-1234

**RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES**

**AND WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**CONDITIONAL USE PERMIT NO. 96-0680
MISSION CITY MINING PERMIT
AMENDMENT TO CONDITIONAL USE PERMIT NO. 82-0014
CITY COUNCIL**

This Permit Amendment, is granted by the City Council of the City of San Diego to H.G. Fenton Material Company, a California Corporation, Owner and Permittee, pursuant to Section 101.0506 of the Municipal Code of The City of San Diego. The 229 acre site is located on the north and south sides of Friars Road, between Interstates 15 and 805 in the MV-M/SP and FW Zones of the Mission Valley Community Planning area. The project site is legally described as Lots 26 and 27 of Mission City Unit No. 1, Map No. 11675; a portion of Lot 34 of Rancho Mission of San Diego, SCC 348; a portion of Lot 1 of plat of Lot 32, Ex-Mission Rancho and part of Pueblo Lot 1113, Map No. 875; Parcel 3, Parcel Map No. 15626; Lots A, 7 and 8 of Mission City Unit No. 3, Map No. 11677; Parcel 2, Parcel Map No. 16988; a portion of Lot 36 of Rancho Mission of San Diego, SCC 348; that portion of Rio San Diego Drive offered for dedication on Mission City Unit No. 1, Map No. 11675, but which has not been accepted for dedication; and those portions of Northside Drive, Old Quarry Road and Questor Place that were offered for dedication on Mission City Unit No. 3, Map No. 11677, but which have not been accepted for dedication.

Subject to the terms and conditions set forth in this permit, permission is granted to H.G. Fenton Material Company, Owner/ Permittee, to continue to operate a natural resource mining facility with related activities on a 229 acre site as described above and shown on the approved Exhibits "A", dated April 29, 1982, and April 21, 1998 on file in the Office of Development Services. The facility shall include:

- a. The extraction, sales and processing of natural resources; production and sales of concrete and concrete products (blocks, paving materials, stepping stones and other related products); soil remediation; equipment service and storage buildings; a concrete

batch plan; and a recreational vehicle and boat storage yard.

- b. Landscaping of slopes remaining from mined areas;
- c. Off-street parking of fuel trucks, rock trucks, bulldozers, loaders, cranes, cement trucks, tractor-trailers and other project related vehicles; and
- d. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying MV-M/SP and FW zones, conditions of this permit, and any other applicable regulations of the Municipal Code in effect for this site.

1. This Conditional Use Permit amendment shall not become effective until:

- a. The Permittee signs and returns the Permit to Development Services; and
- b. The Permit is recorded in the office of the San Diego County Recorder.

If the permit is not signed, notarized and recorded, the terms and conditions of Conditional Use Permit No. 82-0014 shall remain in effect for the property.

2. Unless this permit has been revoked by the City of San Diego the property included by reference within this permit shall be used only for the purposes and under the terms and conditions set forth in this permit unless otherwise authorized by the City Manager.

3. This permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.

4. The utilization and continued use of this permit shall be subject to the regulations of this and any other applicable governmental agencies.

5. Issuance of this permit by the City of San Diego does not authorize the applicant for said permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act

of 1973 and any amendments thereto (16 U.S.C. Section 1531 et seq.)

6. The Owner/Permittee shall secure all necessary demolition permits to remove existing structures and secure necessary building permits to replace or relocate existing structures. The applicant is informed that to secure building permits, substantial modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

7. All grading associated with this mining permit shall be in substantial conformity to Exhibit "A," dated April 29, 1982, and April 21, 1998, on file in the Office of Development Services. No change, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.

8. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded special rights which the holder of the Permit is obtaining as a result of this Permit. It is the intent of the City that the Owner of the property which is the subject of this Permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the Owner complies with all the conditions of the Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new Permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the Permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed Permit and the condition(s) contained therein.

9. This Conditional Use Permit and corresponding use of this site shall expire on midnight, December 31, 2014. Upon expiration of this permit, the facilities and improvements described herein shall be removed from this site and the property

shall be graded and landscaped in conformance with the approved reclamation plan on file with this permit.

10. Prior to the expiration date of this Conditional Use Permit, the Permittee may request an amendment or extension of time to the permit. Said applications shall be filed with the City Manager for consideration, with review and a decision made by the appropriate decisionmaker at that time.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

11. Aggregate extraction and/or processing activities shall be prohibited within: 1) 500 feet of an occupied residential structure within Mission City; 2) 300 feet of an occupied church, office, business or professional structure within Mission City; or 3) 150 feet of a commercial retail or outdoor spectator area. Other permitted ongoing activities (soil remediation, vehicle storage, concrete block manufacture and equipment storage) shall not be located closer than 100 feet of an occupied structure within Mission City.

12. A final restoration plan shall be prepared at the time development occurs. The anticipated compensation requirement would be the creation of riparian/wetland habitat at a ratio of 1:1. The final restoration plan shall include: plant palette selection, mitigation bonding, planting guidelines, post-installation maintenance and protection and monitoring requirements. The applicant shall demonstrate, to the satisfaction of the City Manager, that existing riparian/wetland habitat has been acquired and placed in permanent open space at a ratio of 2:1 for each acre lost with development. The anticipated combination of creation and preservation will result in an overall compensation of 3:1.

13. In the event that habitat suitable for the coastal California gnatcatcher remains at the time that development occurs, the applicant shall demonstrate that either 1) a suitable area of Diegan coastal sage scrub has been acquired and preserved with a negative open space easement or 2) a suitable contribution has been made to the City's Habitat Acquisition Fund.

If the permission to impact coastal sage scrub is obtained through the Interim Habitat Loss Permit provisions of the 4(d) Rule, the amount of coastal sage scrub to be preserved or the amount of the Habitat Acquisition Fund contribution shall be based on the following compensation ratios: coastal sage scrub (2:1), broom baccharis scrub adjacent to coastal sage scrub (2:1), and broom baccharis scrub near coastal sage scrub (1:1). Based on the amounts of each of these habitats to be lost, the compensation shall be equivalent to 8.6 acres. Preserved coastal sage scrub shall be located within the incorporated area of the

City of San Diego in a future preserve area, as defined by the City's Multiple Species Conservation Plan.

If the loss of coastal sage scrub is permitted under the City's MSCP Implementing Agreement, the mitigation shall be based on compensation ratios defined in the MSCP. If the mitigation would occur within the MHPA, the compensation ratio will be 1:1 for all the coastal sage and broom baccharis scrub (4.7 acres). If the mitigation land lies outside of the MHPA, the ratio will be 1.5:1 (7.05 acres). Compensation may take the form of direct habitat purchase or equivalent Habitat Acquisition Contribution within the City. Once the adequacy of mitigation has been confirmed, the City shall confer Third Party Beneficiary status to the project.

14. A six foot wide bench shall be constructed at the interface between any new manufactured slope and 1.5:1 mining slopes. A debris fence, consisting of a two foot chain link fence, shall be constructed on the bench to intercept any rocks which may be dislodged from the mining slopes.

15. Erosion control measures currently being implemented onsite, that relate to the existing mining operations, shall continue to be implemented. These include, but are not limited to: maintenance of the onsite drainage channel to carry runoff; use of erosion control measures including sandbags, silt fences, energy dissipaters, drainage inlets and catch basins; and prohibition of ponding or accumulation of surface waters that could constitute a hazard or nuisance to persons or property in the vicinity.

PLANNING/DESIGN REQUIREMENTS:

16. Off-street parking shall be maintained on the property in the approximate locations shown on the approved Exhibits "A," dated April 29, 1982, on file in the Office of Development Services. Parking spaces shall comply at all times with Division 8 of the Municipal Code and shall not be converted for any other use unless otherwise authorized by the City Manager.

17. Approved landscape planting shall be installed within 60 days of any finished slope. Such planting shall not be modified or altered unless this permit shall have been amended. The planting shall be maintained at all times.

18. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.

19. If any screening or crushing equipment is to be used, the applicant shall obtain from the Air Pollution Control District a permit to operate such equipment.

20. The permittee must annually renew all required APCD Permits to Operate and obtain APCD authority to construct and permit to operate for any new sources or modifications of existing sources which are subject to APCD Rules and Regulations.

21. Dust control methods must be applied to any dust-producing conditions which may develop, and result in a nuisance, from this operation as may be determined by the Air Pollution Control District.

22. Air contaminant emissions from this operation must meet all the emission standards of the San Diego County Air Pollution Control District.

23. The premises shall continue to provide the following facilities per the approval of the Health Officer of the County of San Diego:

A. A potable water supply.

B. Proper sanitary facilities, including toilet, hand washing and sewage disposal facilities for employees working on the premises.

24. A drainage channel shall be maintained in the westerly area of the proposed graded areas to carry offsite drainage from the north property line to the culvert under Friars Road.

25. Operations of the facility shall be restricted to the hours between 6:00 a.m. and 6:00 p.m., Monday through Saturday, except for:

A. Auto, truck, equipment and plant maintenance and repair that are incidental to the approved operation.

B. Manufacturing as required by the emergency demands of government agencies.

26. The Planning Commission shall review this permit at successive five-year intervals from the date of this amendment approval.

27. No plant installation or operational methods are to be permitted which shall obstruct or deflect the natural flow of the San Diego River as determined by the City Engineer.

28. The temporary storage of recreational vehicles and boats shall continue to be permitted on the premises as shown on Exhibit "A", dated April 21, 1998. Relocation of this storage facility on the subject Conditional Use Permit site, in response to the phased redevelopment of the property proposed by the

Mission City Specific Plan, must be approved by the City Manager.

29. This conditional use permit may be revoked by the City if there is a material breach or default in any of the conditions of this permit, or a revocation may be requested by the permittee.

30. During the term of this permit, whenever any portion of the property is redeveloped with non-mining uses consistent with the Mission City Specific Plan, that redeveloped area shall no longer be considered a part of this Conditional Use Permit.

APPROVED by the City Council of the City of San Diego on April 21, 1998, by Resolution No. R-289997.

AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

H.G. FENTON MATERIAL COMPANY
Owner/Permittee

By _____

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**

05/01/98