

ORDINANCE NUMBER O- 18673 (NEW SERIES)

ADOPTED ON SEP 14 1999

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1,  
DIVISION 5, OF THE SAN DIEGO MUNICIPAL CODE BY  
AMENDING SECTION 101.0511, RELATING TO THE  
CALIFORNIA SURFACE MINING AND RECLAMATION ACT  
OF 1975.

WHEREAS, in 1975 the California Legislature adopted the Surface Mining and  
Relamation 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 review and certify 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 X, Article 1, Division 5, of the San Diego Municipal Code is amended by amending Section 101.0511, to read as follows:

**SEC. 101.0511 Requirements for Processing Conditional Use Permits and Reclamation Plans for Natural Resources Development**

A. [No change.]

B. DEFINITIONS

1. "Exploration" or "prospecting" means the search for minerals by geological, geophysical, geochemical, or other techniques including sampling, assaying, drilling, or any surface or underground works needed to determine the type, extent, or quantity of minerals present.

2. "Idle" means to curtail for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

3. "Mined Lands" means the surface, subsurface, and groundwater of an area in which surface mining operations are proposed to be, are being, or have been conducted,

including private ways or roads appurtenant to these areas, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property that result from or are used in surface mining operations are located.

4. "Minerals" means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat and bituminous rock, but excluding geothermal resources, natural gas and petroleum.

5. "Mining Waste" means the residual soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from or displaced by surface mining operations.

6. "Operator" means any person who is engaged in surface mining operations, himself/herself, or who contracts with others to conduct operations on his/her behalf, except a person who is engaged in surface mining operations as an employee with wages as his/her sole compensation.

7. "Overburden" means soil, rock, or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after their removal by surface mining operations.

8. "Permit" means any formal authorization from, or approval by, the City, the absence of which would preclude surface mining operations.

9. "Person" means any individual, firm, association, corporation, organization or partnership, or any city, county, district or the state or any department or agency thereof.

10. "Reclamation" means the combined process of land treatment that minimizes

water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.

11. "State Board" means State Mining and Geology Board in the Department of Conservation, State of California.

12. "State Geologist" means the individual holding office as structured in Section 677 of Article 3, Chapter 2 of Division 1 of the Public Resources Code.

13. "Surface Mining Operations" means all, or any part, of the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

(a) In-place distillation or retorting or leaching.

(b) The production and disposal of mining waste.

(c) Prospecting and exploratory activities.

#### C. SCOPE

1. [No change.]

2. The provisions of this section are not applicable to:

a. 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 one acre or less;

b. 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;

c. 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

d. Excavations or grading conducted for farming or onsite construction or for the purpose of restoring land following a flood or natural disaster.

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

f. 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:

(1) 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).

(2) 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).

(3) The approved construction project is consistent with the general plan or zoning of the site.

(4) Surplus materials shall not be exported from the site 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.

g. 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:

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

(2) 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.

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

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

h. 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.

i. 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.

Nothing in section 101.0511 shall require the California Department of Water Resources or the Reclamation Board to obtain a permit or secure approval of a Reclamation plan from any city or county in order to conduct Surface Mining Operations specified in section 101.0511.C.2.i. Nothing in section 101.0511 shall preclude the bringing of an enforcement action pursuant to Section 2774.1 of the Public Resources Code, if it is determined that an Operator, acting under contract with the California Department of Water Resources or the Reclamation Board on lands other than those owned or leased, or upon which easements or rights-of-way have been obtained, by the California Department of Water Resources or the Reclamation Board, is otherwise not in compliance with The California Surface Mining and Reclamation Act of 1975.

- j. 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.

This exemption set forth in section 101.0511.C.2.j. shall be available only if slope stability and erosion are controlled in accordance with of Section 3704(f) and Section 3706 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.

k. 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:

- (1) The operations are being conducted in accordance with Public Resources Code, Division 3 (commencing with Section 3000).
- (2) The operations are consistent with any general plan or zoning applicable to the site.
- (3) The earthmoving activities are within oil or gas field properties under a common owner or operator.
- (4) No excavated materials are sold for commercial purposes.



D. 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 this section, as long as the vested right continues and that no substantial change is made in the operation except in accordance with the provisions of section 101.0511. A person shall be 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. A person with vested rights who has continued Surface Mining Operations in the same disturbed area after January 1, 1976, shall submit a Reclamation plan to the City Manager for approval in accordance with Process One and shall obtain a grading permit. Any substantial change in the Surface Mining Operation subsequent to January 1, 1976, shall require the granting of a Conditional Use Permit in accordance with section 101.0511.

Any person who has obtained a vested right to conduct Surface Mining Operations prior to January 1, 1976, shall submit to the City Manager for approval a Reclamation plan for vested Surface Mining Operations that have been conducted since January 1, 1976, and 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 101.0511 before commencing or expanding their operation. If a Reclamation plan is not on file and approved by

the City Manager, the continuation of the Surface Mining Operation shall be prohibited until a Reclamation plan is submitted and approved. Nothing in this ordinance 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. 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.

E. REQUIREMENTS

1. The Applicant shall submit a Reclamation plan, financial assurances and grading plans, in accordance with the provisions set forth in section 101.0511; the California Surface Mining and Reclamation Act of 1975, Article 5; applicable provisions of Chapter 8, Division 2, Title 14 of the California Code of Regulations; 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.
2. The Director of the California Department of Conservation shall be notified by the City Manager of the filing of a Conditional Use Permit application to mine.
3. 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).
4. In accordance with Public Resources Code section 2207, or as a condition

of approval for a Conditional Use Permit, the Operator shall file an annual Surface Mining report on forms provided by the California Department of Conservation 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.

5. Reclamation plans, reports, applications, and other documents submitted in accordance with section 101.0511 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 101.0511, 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 State Geologist only when authorized by the surface mining owner in accordance with Public Resources Code section 2778.

6. 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

months 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 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.

As a result of the annual inspection, if the City Manager finds that the Operator is not following the provisions of the reclamation plan, the 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.

7. In accordance with the provisions of section 101.0511, Public Resources Code section 2773.1 and as a condition of approval of the Conditional Use Permit or the Reclamation plan or both, the 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. 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. A copy of the cost estimates will be forwarded to the California Department of Conservation for review. 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 Surface 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.

(a) 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 Operator and the California Department of Conservation, that the Operator is in compliance with the provisions of the Conditional Use Permit and has completed the work in accordance with the approved Reclamation plan.

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

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

(3) 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

(4) Other security at the option of the Surface Mining Operator that is acceptable to the City Manager and the City Attorney.

(b) Default of financial assurances shall comply with the procedures established by the City Manager.

#### F. SUCCESSOR IN INTEREST

Whenever any Surface Mining Operation or portion of a Surface Mining Operation that is subject to section 101.0511 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 101.0511 and the California Surface Mining and Reclamation Act of 1975.

#### G. IDLE SURFACE MINING OPERATION

In accordance with Public Resources Code section 2770, and as further provided in section 101.0511, whenever any Surface Mining Operation becomes Idle, the 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 may forward it to the California Department of Conservation for review.

#### H. AMENDMENTS

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.

I. ENFORCEMENT AUTHORITY

The City Manager is authorized to administer and enforce the provisions of this Section. The City Manager may designate anyone in the Neighborhood Services, Planning and Development Business Center to administer and enforce this section. The City Manager may also designate anyone in the Business Center to serve as an Enforcement Official, who may also exercise any enforcement powers as provided in Division 1, Article 2, Chapter I of this Code.

J. ENFORCEMENT REMEDIES

1. 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.

2. Violations of this section may be prosecuted as misdemeanors subject to the fines and custody provided in Municipal Code section 12.0201. The City Manager may also seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code section 12.0202 or pursue an administrative remedy provided in Chapter I of this Code.

K. VIOLATIONS

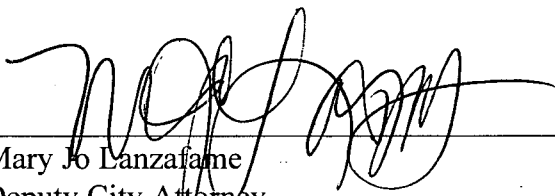
1. It is unlawful for any person to mine or maintain a Surface Mining Operation without either a Conditional Use Permit or a Reclamation plan if no Conditional Use Permit is required by section 101.0511.

2. It is unlawful for any person to perform surface mining or maintain a Surface Mining Operation contrary to the requirements or conditions of an approved Reclamation plan and existing Conditional Use Permit or grading permit.

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. That this ordinance shall take effect and be in force on the date it is effectively certified by the California State Mining and Geology Board except in the Coastal Zone and shall expire on the date the Land Development Code becomes effective.

APPROVED: CASEY GWINN, City Attorney

By   
Mary Jo Lanzafame  
Deputy City Attorney

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**STRIKEOUT ORDINANCE**

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**NEW LANGUAGE: Redlined**

(O-99-131)(COR. COPY)

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

ADOPTED ON \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1,  
DIVISION 5, OF THE SAN DIEGO MUNICIPAL CODE BY  
AMENDING SECTION 101.0511, RELATING TO THE  
CALIFORNIA SURFACE MINING AND RECLAMATION ACT  
OF 1975.

**SEC. 101.0511 Requirements for Processing Conditional Use Permits and Reclamation**

**Plans for Natural Resources Development**

A. [No change.]

B. DEFINITIONS

1. "Exploration" or "prospecting" means the search for minerals by geological, geophysical, geochemical, or other techniques including sampling, assaying, drilling, or any surface or underground works needed to determine the type, extent, or quantity of minerals present.

2. "Idle" means to curtail for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

23. "Mined Lands" means the surface, subsurface, and groundwater of an area in which surface mining operations will be proposed to be, are being, or have been conducted,

including private ways or roads appurtenant to ~~any such~~ these areas, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property ~~which~~ that result from; or are used; in surface mining operations are located.

34. "Minerals" means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat and bituminous rock, but excluding geothermal resources, natural gas and petroleum.

45. "Mining Waste" means the residual ~~of~~ soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from; or displaced by; surface mining operations.

56. "Operator" means any person who is engaged in surface mining operations, himself/herself, or who contracts with others to conduct operations on his/her behalf, except a person who is engaged in surface mining operations as an employee with wages as his/her sole compensation.

67. "Overburden" means soil, rock, or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after their removal by surface mining operations.

78. "Permit" means any formal authorization from, or approval by, the City, the absence of which would preclude surface mining operations.

89. "Person" means any individual, firm, association, corporation, organization or partnership, or any city, county, district or the state or any department or agency thereof.

910. "Reclamation" means the combined process of land treatment that minimizes

water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.

4011. "State Board" means State Mining and Geology Board in the Department of Conservation, State of California.

4112. "State Geologist" means the individual holding office as structured in Section 677 of Article 3, Chapter 2 of Division 1 of the Public Resources Code.

4213. "Surface Mining Operations" means all, or any part, of the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work; incident to an underground mine. Surface mining operations shall include, but are not limited to:

- (a) In-place distillation; or retorting; or leaching.
- (b) The production and disposal of mining waste.
- (c) Prospecting and exploratory activities.

C. SCOPE

- 1. [No change.]
- 2. The provisions of this section are not applicable to:

~~a. Excavations or grading conducted for farming or on-site~~

construction or for the purpose of restoring land following a flood or natural disaster.

~~b. Prospecting and exploration for minerals of commercial value where less than 1,000 cubic yards of overburden is removed in any one location of one acre or less.~~

~~c. Any surface mining operation that does not involve either the removal of a total of more than 1,000 cubic yards of minerals, ores and overburden, or involve more than one acre in any one location.~~

~~d. Surface mining operations that are required by federal law in order to protect a mining claim, if such operations are conducted solely for that purpose.~~

~~D. CONDITIONAL USE PERMIT AND RECLAMATION PLAN REQUIREMENTS~~

~~1. Any person who proposes to engage in surface mining operations as defined in this section shall, prior to the commencement of such operations, obtain (a) a conditional use permit to mine, and (b) approval of a reclamation plan, in accordance with the provisions set forth in this section and as further provided in Article 5, California Surface Mining and Reclamation Act of 1975. A fee, as established for the permitted uses in the fee ordinance, shall be paid to The City of San Diego at the time of filing.~~

~~As a condition of the approval of a conditional use permit or a reclamation plan as described herein, the owner of land on which surface mining operations are to be conducted shall agree to permit the City to enter the property for the purpose of inspection and performing such work of reclamation as may be required under such permit or plan. The permit shall be binding upon subsequent owners and will terminate only upon the termination of the~~

permit or plan. The permit shall be in a form approved by the Development Services Director and City Attorney.

~~\_\_\_\_\_ All applications for a reclamation plan for surface mining operations shall be made on forms provided by the City Development Services Department.~~

~~\_\_\_\_\_ 2. No person who has obtained a vested right to conduct a surface mining operation prior to January 1, 1976, shall be required to secure a conditional use permit pursuant to the provisions of the section as long as such vested right continues, provided that no substantial change is made in that operation except in accordance with the provisions of this section. A person shall be deemed to have such vested rights if, prior to January 1, 1976, he has in good faith and in reliance upon a permit or other authorization, if such 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.~~

~~\_\_\_\_\_ A person who has obtained a vested right not pursuant to a conditional use permit to conduct surface mining operations prior to January 1, 1976, shall submit to the City Development Services Department a reclamation plan for operations to be conducted after January 1, 1976, unless a reclamation plan was approved by the Planning Commission of The City of San Diego prior to January 1, 1976, and the person submitting that plan has accepted responsibility for reclaiming the mined lands in accordance with that plan. All vested rights operators shall submit an application for reclamation plan approval within one year of City Council adoption by ordinance of this section. The Development Services Director shall notify in~~

~~writing each vested rights operator of the due date for his application at least three hundred (300) days prior to the date of submittal. Nothing in this document shall require 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.~~

~~3. The State Geologist shall be notified of the filing of all conditional use permit applications to mine.~~

~~4. This section shall be continuously reviewed and revised, as necessary, in order to ensure that it is in accordance with the state policy for mined lands reclamation.~~

~~5. The Development Services Director may approve one request per operator for a 60-day extension of time for submittal of a reclamation plan approval application, provided the request is submitted a least thirty (30) days prior to the due date for application submittal. The Development Services Director may approve such an extension of time only if the public interest is not harmed thereby and if the applicant has been delayed by circumstances beyond his control.~~

~~E. REVIEW PROCEDURE~~

~~An Application for a conditional use permit for a proposed surface mining operation and/or reclamation plan may be approved, conditionally approved or denied by the Planning Commission in accordance with "Process Four" and the provisions of the California Surface Mining Reclamation Act of 1975.~~

~~F. SUCCESSOR IN INTEREST~~

~~Whenever any surface mining operation or portion of an operation subject to this ordinance is sold, assigned, conveyed, exchanged or otherwise transferred, the successor in~~

~~interest shall be bound by the provisions of any reclamation plan approved pursuant to the provisions of this section.~~

~~G. PUBLIC RECORDS~~

~~Reclamation plans, reports, applications and other documents submitted pursuant to this section are public records unless it can be demonstrated to the satisfaction of the City Attorney that the release of such information, or part thereof, would reveal production, reserves or rate of depletion entitled to protection as proprietary information. The City Attorney shall identify such proprietary information as a separate part of each application. A copy of all permits, reclamation plans, reports, applications and other documents submitted pursuant to this section, including proprietary information, shall be furnished to the District Geologist of the State Division of Mines by the Development Services Director of The City of San Diego. Proprietary information shall be made available to persons other than the State Geologist only when authorized by the mine operator and by the mine owner in accordance with Section 2778, California Surface Mining and Reclamation Act of 1975.~~

~~H. INSPECTION~~

~~As a condition of approval for the conditional use permit or the reclamation plan, or both a schedule for periodic inspections of the site shall be established to evaluate continuing compliance with the permit and the reclamation plan. Said periodic inspection shall occur no less frequently than biennially.~~

~~If after an inspection it is found that the mining operator is not following the provisions of the reclamation plan, the operator shall be given notice to comply within a given time not to exceed ninety (90) days. A copy of such notice shall be given to the owner of the land~~

~~upon which the operations are located. If at the end of the stated time the operator is not in compliance, the Development Services Director may revoke or suspend the conditional use permit and/or the reclamation plan until the operator complies or obtains approval of a revised reclamation plan. In addition, the Development Services Director may require security guaranteeing compliance as in his judgment shall be necessary to correct the situation and insure compliance. The security to be required may be (a) a bond or bonds by one or more duly authorized corporate securities, or (b) a deposit of money or negotiable bonds of the kind approved for securing deposits of public moneys, or (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) such other security at the option of the mining operator as is acceptable to the Development Services Director and the City Attorney.~~

~~————— Upon completion of the work to be done, the security above described shall be released by the Development Services Director when, in his discretion, the operator is in compliance with the provisions of the permit or the reclamation plan.~~

~~————— I. ——— AMENDMENTS~~

~~————— Amendments to an approved reclamation plan may be submitted to the City Planning Commission at any time, detailing proposed changes from the original plan. Substantial deviations from the original plan shall not be undertaken until such amendment has been filed with the approved by, the City Planning Commission.~~

~~————— Amendments to an approved reclamation plan shall be approved by the same procedure as is prescribed for approval of a reclamation plan.~~



~~J. VARIANCE~~

~~Variiances from an approved reclamation plan may be allowed upon request of the operator and applicant, if they are not one and the same, and upon a finding by the Planning Commission that each requested variance is necessary to achieve the prescribed or higher post-mining use of the reclaimed land.~~

~~K. ENFORCEMENT~~

~~The provisions of this section shall be enforced by the Development Services Director of The City of San Diego or such other persons as may be designated by the City Council.~~

~~L. APPEAL~~

~~Any person aggrieved by an act or determination of the Developed Services Director in the exercise of the authority granted herein shall have the right to appeal to the Planning Commission and the City Council. Any appeal must be filed on forms provided within fifteen (15) days after the rendition, in writing, of the decision.~~

~~M. SEPARABILITY~~

~~If any paragraph, subparagraph, sentence, clause or phrase of this section is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of this section.~~

- a. ~~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 one acre or less;~~
- b. ~~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 one acre in any~~

single location;

- c. 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
- d. Excavations or grading conducted for farming or onsite construction or for the purpose of restoring land following a flood or natural disaster.
- e. The solar evaporation of sea water or bay water for the production of salt and related minerals.
- f. 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:

(1) 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).

(2) 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).

(3) The approved construction project is consistent with the general plan or zoning of the site.

(4) Surplus materials shall not be exported from the site 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.

g. 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:

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

(2) 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.

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

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

h. 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.

i. 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.

Nothing in section 101.0511 shall require the California Department of Water Resources or the Reclamation Board to obtain a permit or secure approval of a Reclamation plan from any city or county in order to conduct Surface Mining Operations specified in section 101.0511.C.2.i. Nothing in section 101.0511 shall preclude the bringing of an enforcement action pursuant to Section 2774.1 of the Public Resources Code, if it is determined that an Operator, acting under contract with the California Department of Water Resources or the Reclamation Board on lands other than those owned or leased, or upon which easements or rights-of-way have been obtained, by the California Department of Water Resources or the Reclamation Board, is otherwise not in compliance with The California Surface Mining and Reclamation Act of 1975.

j. 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.

This exemption set forth in section 101:0511.C.2.j. shall be available only if slope stability and erosion are controlled in accordance with Section 3704(f) 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.

k. 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:

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

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

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

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

#### D. 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 this section, as long as the vested right continues and that no

substantial change is made in the operation except in accordance with the provisions of section 101.0511. A person shall be 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. A person with vested rights who has continued Surface Mining Operations in the same disturbed area after January 1, 1976, shall submit a Reclamation plan to the City Manager for approval in accordance with Process One and shall obtain a grading permit. Any substantial change in the Surface Mining Operation subsequent to January 1, 1976, shall require the granting of a Conditional Use Permit in accordance with section 101.0511.

2. Any person who has obtained a vested right to conduct Surface Mining Operations prior to January 1, 1976, shall submit to the City Manager for approval a Reclamation plan for vested Surface Mining Operations that have been conducted since January 1, 1976, and 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 101.0511 before commencing or expanding their operation. If a Reclamation plan is not on file and approved by the City Manager, the continuation of the Surface Mining Operation shall be prohibited until a Reclamation plan is submitted and approved. Nothing in section 101.0511 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. 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.

E. REQUIREMENTS

1. The applicant shall submit a Reclamation plan, financial assurances and grading plans, in accordance with the provisions set forth in section 101.0511; the California Surface Mining and Reclamation Act of 1975, Article 5; applicable provisions of Chapter 8, Division 2, Title 14 of the California Code of Regulations; and procedures established by the City Manager, is required before approval of a Conditional Use Permit for Surface Mining Operations. The Conditional Use Permit, *reclamation* plan, financial assurance, and *grading* plan shall be processed as a consolidated action.

2. The Director of the California Department of Conservation shall be notified by the City Manager of the filing of a Conditional Use Permit application to mine.

3. 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).

4. In accordance with Public Resources Code section 2207, or as a condition of approval for a Conditional Use Permit, the mining operator shall file an annual Surface Mining report on forms provided by the California Department of Conservation 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.

5. Reclamation plans, reports, applications, and other documents submitted in accordance with section 101.0511 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 101.0511, 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 State Geologist only when authorized by the surface mining owner in accordance with Public Resources Code section 2778.

6. 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 months 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 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.

As a result of the annual inspection, if the City Manager finds that the Operator is not following the provisions of the reclamation plan, the 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.

7. In accordance with the provisions of section 101.0511, Public Resources Code section 2773.1 and as a condition of approval of the Conditional Use Permit or the Reclamation plan or both, the 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. 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. A copy of the cost estimates will be forwarded to the California Department of Conservation for review. 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 Surface 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.

(a) 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 Operator and the California Department of Conservation, that the Operator is in compliance with the provisions of the Conditional Use Permit and has completed the work in accordance with the approved Reclamation plan:

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

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

(3) 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

(4) Other security at the option of the Operator that is acceptable to the City Manager and the City Attorney.

(b) Default of financial assurances shall comply with the procedures established by the City Manager.

F. SUCCESSOR IN INTEREST

Whenever any Surface Mining Operation or portion of a Surface Mining Operation that is subject to section 101.0511 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 101.0511 and the California Surface Mining and Reclamation Act of 1975.

G. IDLE SURFACE MINING OPERATION

In accordance with Public Resources Code section 2770, and as further provided in section 101.0511, whenever any Surface Mining Operation becomes Idle, the 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 may forward it to the California Department of Conservation for review.

H. AMENDMENTS

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.

I. ENFORCEMENT AUTHORITY

The City Manager is authorized to administer and enforce the provisions of this Section. The City Manager may designate anyone in the Neighborhood Services, Planning and Development Business Center to administer and enforce this section. The City Manager may also designate anyone in the Business Center to serve as an Enforcement Official, who may also exercise any enforcement powers as provided in Division 1, Article 2, Chapter I of this Code.

J. ENFORCEMENT REMEDIES

1. 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.

2. Violations of this section may be prosecuted as misdemeanors subject to the fines and custody provided in Municipal Code section 12.0201. The City Manager may also seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code section 12.0202 or pursue an administrative remedy provided in Chapter I of this Code.

K. VIOLATIONS

1. It is unlawful for any person to mine or maintain a Surface Mining Operation without either a Conditional Use Permit or a Reclamation plan if no Conditional Use Permit is required by section 101.0511.

2. It is unlawful for any person to perform surface mining or maintain a Surface Mining Operation contrary to the requirements or conditions of an approved Reclamation plan and existing Conditional Use Permit or grading permit.

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