

ORDINANCE NO. 9634 (N.S.)

**AN ORDINANCE AMENDING THE SAN DIEGO COUNTY CODE,
RELATING TO GRADING, CLEARING AND WATERCOURSES**

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. Purpose. On April 9, 2003, the Board of Supervisors adopted Ordinance No. 9547 (N.S.), which adopted a comprehensive revision of regulations relating to grading, clearing and watercourses. It is the purpose of this ordinance to make certain clarifying, corrective and miscellaneous changes to those regulations.

Section 2. San Diego County Code Section 87.101 is hereby amended to read as follows:

**SEC. 87.101. RESPONSIBILITIES OF OWNERS, PERMITTEES
AND OTHERS.**

- (a) General. It shall be unlawful for any owner, permittee or other person to perform or cause to be performed any grading or clearing on any property contrary to any provision of this Division, or to use or maintain such property in an unlawfully graded or cleared condition, or to commit any other act prohibited by this Division. This prohibition shall apply to any person operating grading or clearing equipment or otherwise performing work for hire, only if that person knowingly participates in activity prohibited by this Division. An owner shall be considered to have caused any grading, clearing or prohibited act on the property under the owner's dominion and control, and shall be responsible for the correction of any violation of any provision of this Division, including a violation which occurred prior to the owner's acquisition thereof which continues after such acquisition.
- (b) Hazardous Conditions. The owner of the property upon which an excavation, embankment or fill is located, or other person or agent in control of said property, upon receipt of notice in writing from the County Official to do so, shall within the period specified in such notice, repair or eliminate such excavation, embankment or fill so as to eliminate the hazard and be in conformance with the requirements of this Division.
- (c) Compliance With Plans and Requirements. All permits issued under this Division shall be presumed to include the provision that the permittee, and his or her agent, contractors and employees, shall carry out the proposed work in accordance with the approved plans and specifications, where such approval is required, and in compliance with any applicable storm water pollution prevention plan (SWPPP) prepared and maintained pursuant to federal or state requirements or a County directive, and in compliance with all the requirements of the permit and this Division. Failure to carry out the work in accordance with approved plans and specifications, any applicable SWPPP, and in compliance with all the

requirements of the permit and this Division shall be a violation of this Division.

- (d) Storm Damage Precautions. The owner, the permittee, and all persons performing any grading operations shall remove all loose dirt from the grading site and provide adequate erosion control or drainage devices, debris basins, or other safety devices and take all safety precautions reasonably necessary to protect persons and property. All such persons shall put into effect all safety precautions which in the opinion of the County Official are necessary.
- (e) Maintenance of Protective Devices. The owner of any property on which a fill or excavation has been made, the permittee pursuant to a permit granted under the provisions of this Division, or any other person or agent in control of such property, shall maintain in good condition and repair all retaining walls, cribbing, drainage structures or means and other protective devices and planting shown in the approved plans and specifications or in the record plans filed pursuant to Section 87.425 or required by the permit. Facilities dedicated for use by the public and accepted for such use by a public agency are excepted.
- (f) Protection of Utilities and Adjacent Property. During grading operations the permittee shall be responsible for the prevention of damage to any public utilities or services. This responsibility applies within the limits of grading and along any routes of travel of equipment. Notwithstanding the minimum standards set forth in this Division, the permittee is responsible for the prevention of damage to adjacent property and no person shall excavate on land so close to the property line as to endanger any adjoining public street, sidewalk, alley, or any other public or private property without supporting and protecting such property from settling, cracking, or other damage which might result. In the event that, during the grading operation, expansive soil is found within either two feet of the finished lot grade or three feet of the finished floor grade of any area intended or designed to be used as the location of a building, the applicant shall either: (1) remove the expansive soil and replace it with non-expansive soil properly compacted, to a depth of three feet; or (2) install a foundation which either conforms to the San Diego County Standard Foundation System For Single Family Dwellings (on file with the Department of Planning and Land Use) or has been approved and signed by a licensed civil engineer.
- (g) Truthful Statements. Owners, permittees, soils engineers, engineers serving as Permit Compliance Engineers, and others filing reports or providing official information to the County pursuant to this Division shall cooperate with and provide truthful and correct information to the County Official relating to the enforcement of this Division. Any falsification or misrepresentation made to the County concerning compliance with this Division, including any voluntary disclosures and including any report that is so deficient or incomplete as to cause misunderstanding, and any withholding of information required to be submitted by or pursuant to this Division, is a violation of this Division.

- (h) Compliance with Federal and State Requirements. Any violation of an applicable federal or state-issued Storm Water Permit, or any failure to conform to an applicable storm water pollution prevention plan (SWPPP) prepared pursuant to such a permit or pursuant to this division or Chapter 8 of Division 7 of Title 6 of the San Diego County Code, or any failure to comply with storm water-related provisions of a County-issued grading permit or of a grading plan prepared to secure such a permit, is also a violation of this division. Potentially applicable federal or state-issued Storm Water Permits and requirements include but may not be limited to: the state Industrial Activities Storm Water General Permit (State Water Resources Control Board (SWRCB) Order 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001); the state General Permit for Construction Activities Associated With Construction Activities (SWRCB Order 99-08-DWQ, NPDES General Permit No. CAS000002); the State Ocean Plan, Inland Surface Waters Plan, or Enclosed Bays and Estuaries Plan; the State Comprehensive Water Quality Control Plan for the San Diego Basin; any applicable U.S. Environmental Protection Agency or state-issued multi-sector, group, or general permit; and the stormwater-related provisions of any NPDES permit or state-issued Waste Discharge Requirements permit issued to a specific facility, each as it now exists or may hereafter be amended or superseded.

- (i) Permits and Compliance. Neither the issuance of a grading permit, clearing permit, watercourse permit, or reclamation plan under the provisions of this division, nor the compliance with any provisions or condition thereof, nor compliance with federal or state requirements, shall relieve any person from any liability or responsibility for compliance with this Division or responsibility or liability otherwise imposed by law for damage to person or property.

Section 3. San Diego County Code Section 87.108 is hereby amended to read as follows:

SEC. 87.108. VIOLATIONS - COST RECOVERY.

In addition to other penalties and remedies permitted in this Division, the following may be awarded without monetary limitations in any civil action:

- (a) Costs to investigate, inspect, monitor, survey, or litigate;
- (b) Costs to place or remove soils or erosion control materials; costs to correct any violation; and costs to end any adverse effects of a violation;
- (c) Compensatory damages for losses to the County or any other plaintiff caused by violations; and/or
- (d) Restitution to third parties for losses caused by violations.

Section 4. San Diego County Code Section 87.111 is hereby amended to read as follows:

SEC. 87.111. AGRICULTURAL GRADING PERMIT OR CLEARING PERMIT.

- (a) For a period of five years (ten years if the land is located within the "MSCP Subarea" as defined in Section 87.203) from and after the date of issuance of either an agricultural grading permit pursuant to Section 87.205 or an agricultural clearing permit pursuant to Section 87.506, no County decision maker shall grant or approve any authorization for land development on the land for which grading or clearing is authorized by the permit, to the permittee who made the certification required by Section 87.205(c)(12) or any other person who has actual or constructive notice of that certification, unless the authorization would be for a project or activity which is either: (1) one for which an exemption is provided at Sections 87.202 or 87.502; or (2) in furtherance of the agricultural operation specified in the property owner's certification. This prohibition does not prohibit the issuance of a building permit for construction of one single family dwelling on an existing legal lot, or the issuance of a minor grading permit pursuant to Section 87.206 of this Division, if it is found that the circumstances of the case are such that providing the single family dwelling would be in furtherance of the specified agricultural operation.
- (b) Where a certification of agricultural operation has been signed pursuant to Section 87.205 for an agricultural grading permit, or pursuant to Section 87.506 for an agricultural clearing permit, if the property owner fails either to establish the stated agricultural operation within one year, or to retain the land in agriculture for five years (ten years if the land is located within the MSCP Subarea) from the date the agricultural grading permit or agricultural clearing permit is issued, the agricultural grading permit or agricultural clearing permit shall immediately expire and the property owner shall restore the land to its condition prior to grading or clearing. The property owner shall obtain the appropriate grading or clearing permit as required by this Division for such restoration work. Such restoration work, which may include excavation, filling, construction or installation of erosion protection or other protective facilities, planting and landscaping, shall be completed to the satisfaction of the County Official. All provisions of Section 87.110(c), including the County Official's authority to require security and to establish time deadlines, shall apply.

Section 5. San Diego County Code Section 87.201 is hereby amended to read as follows:

SEC. 87.201. GRADING PERMIT REQUIRED.

- (a) Except as exempted by Section 87.202, no person shall do any grading nor shall an owner allow any grading on his property, nor allow property to remain in a

graded condition, unless the person or owner has a valid, unexpired grading permit issued by the County Official authorizing such grading or the grading is part of a surface mining operation authorized by Chapter 7 of this Division. A separate grading permit shall be required for each site.

- (b) The grading permit shall constitute an authorization to do only that work which is described or illustrated on the grading or improvement plans which are associated with the grading permit approved by the County Official and the work shall be done in accordance with any conditions imposed by the County Official and in accordance with the requirements of this Division.

Section 6. San Diego County Code Section 87.202 is hereby amended to read as follows:

SEC. 87.202. EXEMPTIONS FROM PERMIT REQUIREMENT.

The following are exempt from the requirements to obtain a grading permit (but not from other requirements of this Division including, but not limited to, the maximum slope, required setbacks, erosion prevention and planting requirements), provided they either do not occur in or affect a watercourse or are within one of the exemptions under Section 87.604 of this Division:

- (a) An excavation or fill which:
 - (1) is less than eight feet in vertical height (measured from the toe of the slope to the top of the slope); and
 - (2) does not result in the movement of more than 200 cubic yards of material on any one site.
- (b) An excavation below finished grade for basements and footings of a building, retaining wall, swimming pool, septic tank, leaching system, or other structure authorized by a valid building permit. This paragraph shall not exempt from the permit requirements any fill made with the material from such excavation having an unsupported height greater than eight feet after the completion of such structure.
- (c) Refuse disposal areas or sanitary fills operated and conducted in accordance with a use permit issued pursuant to the Zoning Ordinance or a permit issued pursuant to Article 2, Chapter 5, Division 8, Title 6, of this Code or as a lawful non-conforming use and where the operation and conduct thereof does not block or divert any natural drainage way or affect the lateral support of, or unduly increase the stresses in or pressures upon, any adjacent or contiguous property.
- (d) Tilling or cultivating land exclusively for agricultural production, subject

to the following:

- (1) The following limitations must be met:
 - (aa) no soils shall be exported from the area tilled or cultivated;
 - (bb) the tilling or cultivating will not block or divert any natural drainage way;
 - (cc) the tilling or cultivating will not affect the lateral support or unduly increase the stresses in or pressures upon any adjacent or contiguous property; and
 - (dd) the land to be tilled or cultivated has been in agricultural production for at least one of the preceding five years.
- (2) This exemption does not allow:
 - (aa) the establishment of new agricultural operations on, or the expansion of existing agricultural operations onto, any area which has not been in agricultural production for at least one of the preceding five years;
 - (bb) conversion of agricultural land to nonagricultural use or activities that reduce habitat and wildlife to facilitate conversion to non-agricultural use;
 - (cc) conversion of land previously used solely for grazing or beekeeping, to other types of agricultural operations which involve a greater intensity of land disturbance, such as planted crops. Planting crops on land previously used for grazing is a prohibited conversion, unless the grazing conducted for the period specified in paragraph (1)(dd) above included such crop planting.
- (e) Grading incidental to the construction or installation of facilities by a public agency or utility not subject to regulation by this Division.
- (f) Grading to the limited extent authorized in advance in writing by the County Official to perform repairs so as to prevent immediately threatened injury to persons or property which has arisen as a result of an emergency. The County Official may require that a grading permit subsequently be obtained to reflect the work performed, and may require the submittal of information, documentation, reports and other matter as required by the applicable provisions of this Division for such permit.

- (g) Grading or reclamation work pursuant to a use permit or reclamation plan approved pursuant to Chapter 7 of this Division for a borrow pit, quarry or other surface mining operation, unless the operation is not required to obtain a reclamation plan because it will complete the removal of material to be used exclusively for fill at another approved site or sites within one year. Operations required to secure a grading permit must do so for the excavation site as well as the fill sites.
- (h) Routine road maintenance activities, such as smoothing, texturing, and filling of small rills and potholes, provided they do not involve land form changes and are conducted entirely within the existing disturbed footprint of an existing road.
- (i) Temporary stockpiling of earth authorized by a valid and unexpired permit issued pursuant to Section 87.218 of this Chapter.

Section 7. San Diego County Code Section 87.205 is hereby amended to read as follows:

SEC. 87.205. AGRICULTURAL GRADING.

- (a) The County Official shall appoint an Agricultural Permit Coordinator to facilitate the filing and processing of applications for agricultural grading plans, improvement plans and grading permits.
- (b) The County Official shall prepare, circulate for public review, disseminate and maintain guidance documents which shall identify, explain and clarify standards for approval of grading plans, improvement plans and grading permits for agricultural grading. The guidance documents may include criteria which can be used to assure that proposed grading avoids adverse impacts to neighboring properties or the environment. The guidance documents may also address matters related to compliance with such plans and permits. The County Official may take these guidance documents into consideration when determining whether applications for grading plans or improvement plans for agricultural grading should be approved. The guidance documents shall not confer rights on applicants, nor constrain the discretion of the County Official relative to acting on such applications or enforcing such permits.
- (c) An application for grading plans or improvement plans for agricultural grading may be approved if the County Official makes all of the following determinations:
 - (1) The graded area is to be used exclusively for agricultural production;
 - (2) There will be no more than 200 cubic yards of soil imported or exported from the site;

- (3) The graded area does not include or affect a watercourse (a watercourse may be onsite, but not in the graded area or affected by the proposed grading);
- (4) The grading will not result in cut slopes steeper than one and one-half horizontal to one vertical, or in an exposed fill slope steeper than two horizontal to one vertical, exclusive of benches and rounding;
- (5) Sections 87.212 and 87.213, regarding specified sensitive areas, have been complied with;
- (6) If the grading will involve waters, rivers, streams or lakes, as referenced in Section 87.214, the applicant has submitted documentation of compliance with the requirements of that Section;
- (7) The application is accompanied by plans showing a vicinity sketch, property lines, location of all structures in the area to be graded (including those on land of others if within fifteen feet), contours showing the topography of the existing ground, elevations, dimensions, location, extent and slopes of all proposed grading, the location, extent and square footage of the total area to be cleared of vegetation, all areas proposed to be subjected to any "Land Disturbance Activity" (as that term is defined in Section 67.803 of this Code), all watercourses located on site and a map of the drainage area tributary to the site, all at a scale that allows analysis and review of what is proposed and is not smaller than 200 feet = 1 inch;
- (8) The grading conforms to the setbacks stated in paragraphs (a) and (b) of Section 87.412;
- (9) The application and accompanying plans demonstrate compliance with Part F.3 of the County Stormwater Standards Manual;
- (10) The plans include dust control measures sufficient to comply with Section 87.428;
- (11) The graded area is not to be used as a site for a building other than a greenhouse or agricultural shade structure; and
- (12) The property owner has signed a statement under penalty of perjury (which must be reaffirmed prior to grading permit issuance) certifying the following:
 - (aa) His or her intention to grade for a specified agricultural operation, to continue or establish the agricultural operation within one year and to retain the land in agriculture (including changing crops and

following for the specified agricultural operation) for at least five years (ten years if the land is located within the "MSCP Subarea" as defined in Section 87.803) from the date the permit is issued;

- (bb) His or her agreement to take no actions to change from the specified agricultural operation to a different type of land use for the period of time stated at paragraph (aa); and
- (cc) His or her acknowledgement that the County will deny any application for any non-agricultural land development, as specified in Section 87.111, for a period of five years (ten years if the land is located within the "MSCP Subarea" as defined in Section 87.803) following the date the grading permit is issued.

Section 8. San Diego County Code Section 87.206 is hereby amended to read as follows:

SEC. 87.206. MINOR GRADING.

- (a) Requirements For All Minor Grading. Proposed grading shall be considered "Minor Grading" if it:
 - (1) will not result in cut slopes steeper than one and one-half horizontal to one vertical, exclusive of benches and roundings;
 - (2) will not result in an exposed fill slope steeper in average slope than two horizontal to one vertical exclusive of benches and roundings;
 - (3) will be protected and conducted so that runoff water leaving the premises will not contain sand, silt or other debris;
 - (4) complies with the requirements of Sections 87.404 and 87.405 regarding fill compaction and preparation of the ground;
 - (5) includes the following drainage protections: will not result in the ponding of water on or above cut or fill slopes or damage from surface waters to the face of any excavation or fill; includes drainage facilities which will carry surface waters to the nearest practical street, storm drain or other watercourse; any area designed for buildings has a minimum of a one percent grade toward the approved drainage disposal area; all swales and ditches have a minimum grade of two percent and a minimum depth of one foot; and the point at which any drainage facility discharges onto natural ground shall be protected from erosion;
 - (6) includes installation and maintenance of ground cover or other planting which will protect against erosion and instability, on the face of all cut and

fill slopes in excess of three feet in vertical height; such planting is to commence as soon as slopes are completed on any portion of the site and is to be maintained so that 70 per cent of the plantings are established on all slopes during construction and established prior to final approval of the grading;

- (7) complies with Part F.3 of the County Stormwater Standards Manual;
- (8) conforms to the setbacks stated in Section 87.412(a) and (b);
- (9) is to prepare the land for the construction of a single or two-family dwelling or accessory structures;
- (10) complies with either paragraph (b) or (c) below;
- (11) complies with Section 87.213 regarding grading within the “MSCP Subarea” (as defined in Section 87.803);
- (12) is not for land development or borrow operation purposes where denial would be required by paragraphs (b) or (g) of Section 87.211 if major grading were involved;
- (13) either will not involve waters, rivers, streams or lakes, as referenced in Section 87.214, or the applicant has submitted documentation of compliance with the requirements of that Section;
- (14) is accompanied by a statement signed by the owner, as to the proposed use of the graded area; and
- (15) is described by grading plans or improvement plans which include the following:
 - (aa) vicinity sketch,
 - (bb) property lines,
 - (cc) the location of all structures in the area to be graded, including those on adjacent properties if within fifteen feet of the property line,
 - (dd) contour lines showing the topography of the existing ground, with a maximum contour interval of five feet;
 - (ee) the quantity of excavation and fill involved;
 - (ff) elevations, dimensions, location, extent and slopes of all proposed

grading,

- (gg) the setbacks from all structures and property lines as stated in Section 87.412;
- (hh) all areas proposed to be subjected to any “Land Disturbance Activity” (as that term is defined in Section 67.803 of this Code);
- (ii) all drainage devices, walls, cribbing, dams, stormwater protection best management practice devices or other protective devices to be constructed, including all temporary construction erosion and sediment control devices;
- (jj) a map of the drainage area of the land tributary to the site;
- (kk) dust control measures sufficient to comply with Section 87.428;
- (ll) the location, extent and square footage of the total area to be cleared of vegetation; and
- (mm) all watercourses located on the site.

(b) Minor Grading or Improvement Plans Under Jurisdiction of Director of Planning and Land Use. The Director of Planning and Land Use may approve grading plans or improvement plans for Minor Grading if he or she determines that the proposed grading complies with paragraph (a) above and:

- (1) does not exceed 2,500 cubic yards and will not require more than 200 cubic yards of import or export;
- (2) is on a single lot, or within an access easement serving such lot;
- (3) will not be on or across or affect any surface water body and will not require the construction of any drainage structures or facilities except for berms, swales, brow ditches or driveway culverts, except that a driveway crossing a water body serving a drainage area of 25 acres or less may be allowed; and
- (4) will not have a cut or fill bank in excess of 20 feet measured vertically from the toe of the slope to the top of the slope.

The Director of Planning and Land Use may decline to process, and instead refer to the Director of Public Works for processing under paragraph (c) below, any application where the complexity of grading operations, potential conflict with existing or proposed easements, drainage or storm water issues, unusual soil types

or conditions, or potential existence of any of the circumstances requiring denial under Section 878.211, make it more appropriate that the application be subject to the more involved review required by paragraph (c).

- (c) Minor Grading Plans Under Jurisdiction of Director of Public Works. The Director of Public Works may approve grading plans or improvement plans for Minor Grading if he or she determines that the proposed grading complies with paragraph (a) above and:
- (1) The proposed grading does not exceed a total of 5,000 cubic yards;
 - (2) The proposed grading is on a lot or adjacent lots under the same ownership, or within access easements serving such lots;
 - (3) The proposed grading will not be on or across or affect any surface water body, except that a driveway crossing a water body serving a drainage area of 25 acres or less may be allowed;
 - (4) The proposed grading will not have a cut or fill bank in excess of 25 feet measured vertically from the toe of the slope to the top of the slope;
 - (5) The application sets forth the estimated start and completion dates and estimated cost;
 - (6) The grading plans are stamped and signed by a registered civil engineer; and
 - (7) A calculation is included, showing that the estimated runoff of the area served by any existing or proposed drains can be accommodated by the carrying capacity of such drains.

SEC. 87.209. SOIL INVESTIGATION REPORT, OR PROOF OF LANDOWNER'S PERMISSION, MAY BE REQUIRED.

- (a) The County Official may require a soils investigation prior to approval of grading plans or improvement plans, to correlate surface and subsurface conditions with the proposed grading plan. The results of the investigation shall be presented in a soil report by a soil engineer which shall include, but need not be limited to, data regarding the nature, distribution and strength of existing soils and rock on the site; the soil engineer's conclusions and recommendations for grading requirements, including the correction of weak or unstable soil conditions and treatment of any expansive soils that may be present; and his opinions as to the adequacy of building sites to be developed by the proposed grading operations. The soil engineer shall provide an engineering geology report by an engineering geologist when required by the County Official. The County Official may require such supplemental reports and data as deemed necessary. Recommendations

included in such reports and approved by the County Official shall be incorporated in the grading plan or specifications.

- (b) The County Official may require that the applicant provide evidence that the owner of the land upon which any grading work is to be performed, has granted permission for such work, or that the applicant has the right to perform that work on the land.

Section 10. San Diego County Code Section 87.215 is hereby amended to read as follows:

SEC. 87.215. RIGHT OF ENTRY -- INDEMNIFICATION.

Prior to issuance of any grading permit, the owner of the site to be graded shall grant to the County a right of entry onto the site for purposes of inspection. The right of entry shall also allow entry for purposes of correction of grading not performed in compliance with the terms and conditions of the permit. The owner and the applicant shall agree to release the County from any and all claims for damages or injury which may result from the County's entry onto the property, including any corrective action taken. The applicant shall also agree to indemnify the County against claims asserted by third parties relating to damage or injury alleged to have resulted from the County's entry or corrective action. The right of entry and indemnification agreements shall be on a form approved by the County Counsel.

Section 11. Section 87.216 is hereby added to the San Diego County Code, to read as follows:

SEC. 87.216. MODIFICATION OR REVOCATION OF PERMIT FOR CAUSE.

- (a) The County Official may modify or revoke a grading permit granted under the provisions of this Division if he or she determines that:
 - (1) the permit was obtained by fraud, or the permittee has made false or misleading statements on the application or supporting documents, or has hindered or interfered with enforcement of the permit, the conditions thereof, or this Division;
 - (2) one or more of the conditions upon which the permit was granted have been violated, or grading or clearing was performed in a manner inconsistent with the permit or plans;
 - (3) the permittee fails or refuses to correct a deficiency or a hazard upon the receipt of written notice and within the time specified in such notices;
 - (4) the permittee fails or refuses to perform any of the work required or fails or

- refuses to conform with any of the standards established by a use permit;
- (5) the permittee fails to submit all material necessary for approval of a reclamation plan within 120 days from the date of written request therefor;
 - (6) revocation or modification is reasonably necessary to prevent creation of a nuisance or unreasonable hazard to persons or to public or private property; or
 - (7) information has been received indicating that previously unknown historical resources (as defined in Public Resources Code Section 21084.1) or unique archaeological resources (as defined in Public Resources Code Section 21083.2) may be located on the site, and therefore a modification is necessary, to prohibit grading in the area of the resources so as to preserve the resources, or to redirect proposed grading so as to avoid the location of such resources until they can be retrieved, or potential impacts to them have otherwise been appropriately mitigated.
- (b) A request to revoke or modify the permit or waiver may be made by any County officer, shall be in writing, and shall set forth the grounds upon which revocation or modification is sought.
 - (c) If a permit is revoked, no further work shall be done upon the site except the correction of hazards as directed by the County Official. Every agreement and every security required by this Division shall remain in full force and effect notwithstanding any such revocation.
 - (d) The County Official shall consider the request for revocation at a public hearing, unless a public hearing is waived in writing by the permittee. Request for revocation shall be directed to the County Official, who shall fix a time and place for the hearing, to be published once in a newspaper of general circulation published in the County of San Diego. The County Official shall also notify the permittee of the time and place set for the hearing. Any interested person may appear at the hearing and present evidence. At the conclusion of the hearing, the County Official may deny the request for revocation, grant the request for revocation, or modify existing conditions of or add new conditions to the grading permit. The decision of the County Official shall be final.

Section 12. Section 87.217 is hereby added to the San Diego County Code, to read as follows:

SEC. 87.217. PRE - CONSTRUCTION CONFERENCES.

The County Official may condition the issuance of a grading permit upon the permittee attending, prior to commencement of any work authorized by the permit, a pre-construction conference with the County Official. At that conference, the County

Official may provide direction to the permittee and others to be involved in the work, as to County requirements. Where such a conference has been required, it shall be a violation of this Division for the permittee to commence or allow any work to be commenced prior to such conference.

Section 13. Section 87.218 is hereby added to the San Diego County Code, to read as follows:

SEC. 87.218. TEMPORARY STOCKPILING PERMITS

The County Official may issue a permit for temporary stockpiling (storage) of earth conforming to the following:

- (a) Requirements. Temporary stockpiling shall:
- (1) not exceed 7,000 cubic yards and cover an area less than one acre in size;
 - (2) be on a single lot;
 - (3) not be on or across or affect any surface water body or divert existing drainage;
 - (4) not have a fill bank in excess of 6 feet measured vertically from the toe of the slope to the top of the slope;
 - (5) not exceed 18 months (or such shorter period as the County Official may require in the permit) from the date any stockpiled material is initially placed, to the date all material has been removed;
 - (6) not result in exposed fill slopes steeper in average slope than two horizontal to one vertical, including benches and roundings to ensure stability and reduce visual impacts;
 - (7) include, on the face of all fill slopes in excess of three feet in vertical height, installation and maintenance of measures to protect against erosion and instability and so that runoff water leaving the premises will not contain sand, silt or other debris, and will comply with Part F.4.9 of the County Stormwater Standards Manual;
 - (8) conform to the setbacks stated in Section 87.412(a) and (b) of this Division;
 - (9) involve placement of material only on areas which have been previously excavated or disturbed and which contain no significant habitat value, designated scenic area, or mapped geologic hazards; and complies with

Sections 87.212 and 87.213 of this Chapter, regarding specified sensitive areas; and

- (10) involve only material for use on the site, not for export, sales or borrow operations.
- (b) Application and Plan. The application shall be signed by the owner of the land upon which the earth is to be stockpiled and be accompanied by a stockpiling plan, grading plan or improvement plan. The application or the plan shall include the following:
 - (1) a certification that the fill material is for use exclusively on site;
 - (2) a description of the proposed ultimate use of the stockpiled material;
 - (3) a vicinity sketch, property lines, the location of all structures in the within 100 feet of the proposed stockpile and those on adjacent properties if within fifteen feet of the property line, contour lines showing the topography of the existing ground, with a maximum contour interval of five feet; the quantity of fill involved; elevations, dimensions, location, extent and slopes of all proposed stockpile areas, the setbacks from all structures and property lines as stated in Section 87.412 of this Division; the extent and square footage of the total footprint of the area proposed to be covered by the stockpiled material; all drainage devices, walls, cribbing, dams, stormwater protection best management practice devices or other protective devices to be constructed, including all temporary construction erosion and sediment control devices; a map of the drainage area of the land tributary to the site; and dust control measures sufficient to comply with Section 87.428 of this Division.
- (c) Security. At the time of permit issuance, the applicant shall enter into an agreement pursuant to Section 87.304 of this Division, secured by a cash deposit, to assure the future permanent placement or removal of the stockpiled material.

Section 14. San Diego County Code Section 87.301 is hereby amended to read as follows:

**SEC. 87.301. FEES AND DEPOSITS FOR PLAN CHECKING,
APPLICATION REVIEW, AND GRADING INSPECTION.**

At the time of filing the following applications, the following fees or deposits shall be paid to the County Official:

- (a) Grading Plans or Improvement Plans for Major Grading (Section 87.208): The actual costs to the County of examining and approving Grading Plans or Improvement Plans, or plan changes, including review under the

California Environmental Quality Act, the review of any required reports, compliance with project conditions, and the preparation of all necessary documents, shall be paid by the applicant. At the time of submitting a grading or improvement plans to the County Official for examination and approval, the applicant shall deposit with the County Official, a sum sufficient to cover actual costs as prescribed by the Board of Supervisors.

- (b) Grading Plans or Improvement Plans for Agricultural Grading (Section 87.205), Minor Grading Under Department of Public Works Review (Section 87.206(c)) or Grading for a Project With a Previous Discretionary Land Use Approval (Section 87.207):
 - (1) Intake Screening. The actual costs to the County of application intake screening for project impacts for agricultural grading, minor grading under review by the Department of Public Works, or grading associated with a project with a previous discretionary approval, including the review of any plans or reports, comparing project to public information, and the preparation of all necessary documents, shall be paid by the applicant. At the time of submitting a grading or improvement plan l for examination and approval, the applicant shall deposit with the County Official, a sum sufficient to cover actual costs as prescribed by the Board of Supervisors.
 - (2) Plan Review. The actual costs to the County of examining and approving Grading Plans or Improvement Plans, or plan changes, including review under the California Environmental Quality Act, for grading referenced in paragraph (1), including the review of any plans or reports and the preparation of all necessary documents, shall be paid by the applicant. At the time of submitting a grading or improvement plan, or application for plan change, for examination and approval, the applicant shall deposit with the County Official, a sum sufficient to cover actual costs as prescribed by the Board of Supervisors.
- (c) Grading Plans or Improvement Plans for Minor Grading Under Department of Planning and Land Use (Section 87.206(b)). For grading plan or improvement plan review, or plan change review, for a grading permit to be issued for projects subject to Section 87.206(b), the applicant shall pay to the County Official a fee in an amount as prescribed by the Board of Supervisors in Section 362 of the San Diego County Administrative Code.
- (d) Grading Permits:
 - (1) For each grading permit or permit modification issued for projects

subject to Section 87.206(b) (Minor grading under review by the Department of Planning and Land Use), the applicant shall pay to the County Official a fee in an amount as prescribed by the Board of Supervisors in Section 362 of the San Diego County Administrative Code.

- (2) For all grading permits not covered under paragraph (1) above, all costs associated with grading permit application processing and permit issuance are included in the cost of checking grading plans or improvement plans. There is no separate fee or deposit for issuance of the grading permit.
- (e) Structural Review. Where the plans or specifications provide for the construction of drainage structures or facilities (other than standard terrace drains and similar facilities), including retaining walls and sprinkler irrigation systems, or when such plans include proposals for granting drainage and appurtenant easements to the San Diego County Flood Control District, the applicant shall deposit amounts estimated by the County Official appropriate to pay for the County's actual cost of checking the plans and specifications, preparing the documents for the drainage and appurtenant easements, and inspecting the construction.
- (f) Clearing Permits. For all clearing permits applied for pursuant to Chapter 5 of this Division, the applicant shall pay to the County Official both: (1) an "Environmental Action CEQA Processing" fee or deposit, in the amount specified in Section 362 of the San Diego County Administrative Code; and (2) a clearing permit review fee of fifty dollars.
- (g) Deposit Refund or Increase. Where a deposit has been made, if the County's actual cost is less than the amount deposited, the excess shall be refunded. If any deposit is insufficient to pay all the County's actual costs, the permittee, upon demand of the County Official, shall deposit an additional amount deemed sufficient by the County Official to complete the work. If the permittee fails or refuses to pay such additional amount, the County Official may cease further work relating to the application, refuse approval of the plans or issuance of a grading permit until the amount is paid in full, or, if a permit is already issued, consider the grading incomplete and pursue proceedings to revoke the grading permit in accordance with Section 87.216.

Section 15. San Diego County Code Section 87.304 is hereby amended to read as follows:

SEC. 87.304. SECURITY REQUIRED FOR CERTAIN PERMITS.

- (a) No grading permit shall be issued pursuant to Section 87.207 or pursuant to

Section 87.208 of this Division, and no temporary stockpiling permit shall be issued pursuant to Section 87.218 of this Division, unless the applicant shall first enter into an agreement with the County assuring that the proposed grading will be completed in accordance with the permit and the terms and conditions thereof. For a temporary stockpiling permit pursuant to Section 87.218, the agreement shall be accompanied by a Cash Deposit in compliance with paragraph (1) below. For a grading permit, except where the grading will result in the movement of less than 3,000 cubic yards of material, the agreement shall be accompanied by security in the form of either a cash deposit or a combination of cash deposit and performance bond, in the following amounts (except as provided at paragraph (b) below):

- (1) Cash Deposit: If the applicant elects to provide a cash deposit only, the amount thereof shall be five per cent of the estimated cost of the earthwork, plus 100 per cent of the estimated cost of construction of all drainage or other structures; authorized by the permit, with a minimum of 5,000 dollars and a maximum of 30,000 dollars.
 - (2) Cash Deposit and Performance Bond Combination: If the applicant elects to provide a combination of a cash deposit and a faithful performance bond, the following shall apply:
 - (aa) The bond shall be in an amount equal to 30 per cent of the estimated cost of the earthwork, plus 100 per cent of the estimated cost of construction of all drainage or other structures authorized by the permit. The applicant may elect to provide a separate bond for work involving drainage and other structures, which may also be used for purposes of improvement security required by the Subdivision Ordinance (Section 81.101 and following of this Code).
 - (bb) The cash deposit shall be in an amount equal to 10 per cent of the total amount of the bond required under subparagraph (aa), up to a bond amount of 75,000 dollars or less, plus an additional five per cent of any portion said required bond amount over 75,000 dollars; provided, that the minimum cash deposit shall be 1,000 dollars and the maximum cash deposit shall be 10,000 dollars.
- (b) The estimated cost of the work shall be determined by the County Official after reviewing the civil engineer's estimates. The phrase, "Drainage or other structures" as used in paragraph (a) shall include retaining walls, sprinkler irrigation systems, landscaping, standard terrace drains, slope planting and similar facilities. Notwithstanding the security amounts specified in paragraph (a), if the County Official determines that possible deficiencies or the hazard or danger created by the work do not justify the full amount of the security, he or she may

waive all or part of the amounts to the extent that there is no hazard or danger, and if the County Official determines that possible deficiencies, hazards or dangers posed by the work require greater protection, he or she may increase the amounts.

- (c) All agreements and bonds required by this Section shall be in a form approved by the County Counsel, shall remain in effect until the completion of the work to the satisfaction of the County Official, and shall include and be made on condition that the permittee shall:
 - (1) Comply with all the provisions of this Code and all other applicable laws and ordinances;
 - (2) Comply with all of the terms and conditions of the grading permit, to the satisfaction of the County Official; and
 - (3) Complete all of the work contemplated under the grading permit within the time limit specified in the grading permit, or if no time limit is so specified, the time limit specified in Section 87.203(d) of this Division (including any approved time extensions).
- (d) The grading permit may provide for the partial release of the security upon the partial acceptance of the work.
- (e) In the event of failure to complete the work, failure to comply with any of the conditions or terms of the grading permit or this Division or other ordinances, or when necessary to eliminate any hazardous or dangerous condition, the County Official may cause to be performed such work as in his opinion is necessary to correct such deficiencies. Completion of work shall include the preparation of as-built plans, the certification of compliance and other matters required by Sections 87.425 and 87.426. The County Official may use all or any part of the security for such work. Any unused portion of a cash deposit, shall be refunded to the permittee, and any unused portion of the bond shall be released, after the completion of all work and the fulfillment of all requirements.
- (f) The permittee shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the County in causing any and all such work to be done. Use of the security or a portion thereof shall in no way limit or release the obligation of the permittee to satisfy the full cost of completing the work or correcting any deficiency, hazard, or injury created by the work. If the amount of the cash deposit is insufficient to satisfy the said cost in full, the permittee shall be liable to satisfy the remainder of the said cost in excess of the cash deposit. In addition, if suit is brought upon the agreement referred to in paragraph (a) by the County and judgment is recovered, the permittee shall pay all costs incurred by the County in such suit, including a reasonable attorney's fee to be fixed by the court.

Section 16. San Diego County Code Section 87.422 is hereby amended to read as follows:

SEC. 87.422. ADDITIONAL INSPECTION AND REPORTING REQUIREMENTS FOR SUPERVISED GRADING.

The following requirements shall apply to "supervised grading" as referenced in Section 87.420:

- (a) Requirements Applicable to the Permit Compliance Engineer. It shall be the responsibility of the Permit Compliance Engineer to oversee and coordinate all field surveys, setting of grade stakes in conformance with the plans, and site inspection during grading operations to assure that the site is graded in accordance with the permit, this Division and the San Diego County Watershed Protection and Stormwater Management Ordinance (Division 7 of Title 6 of this Code). This responsibility shall not include the superintendency of the contractor's equipment or personnel. The Permit Compliance Engineer shall file reports with the County Official, as follows:
 - (1) Said reports shall be filed at the following intervals:
 - (aa) weekly, during all times when grading of 200 cubic yards or more per week is active on the site;
 - (bb) monthly, at all other times; and
 - (cc) at any time when requested in writing by the County Official.
 - (2) Such reports shall certify to the County Official that the Permit Compliance Engineer has inspected the grading and related activities and has found them to substantially comply with the approved grading plans, the grading permit including any conditions thereof, this Division, and other applicable County ordinances, except with regards to any areas of noncompliance which the engineer shall specify in detail. The reports shall contain all matters required in a standard Report of Grading Activities form which the County Official shall publish.
- (b) Other Requirements. Soils reports shall be required and geology reports may also be required as specified in Sections 87.421(b) and (c). In addition to the copies filed with the County Official, copies of such reports shall be sent by the permittee to the Permit Compliance Engineer. The soil engineer shall make such tests and inspections as necessary to assure that

the recommendations given in the soils report and incorporated in the grading plan or specifications or the permit have been followed.

Section 17. San Diego County Code Section 87.425 is hereby amended to read as follows:

SEC. 87.425. COMPLETION OF WORK -- FINAL REPORTS.

Not later than 60 days following completion of grading pursuant to Sections 87.207 or 87.208, the following reports shall be filed with the County Official unless waived by him or her:

- (a) A certification by a civil engineer that all grading, lot drainage, and drainage facilities have been completed in conformance with the approved plans and specifications, the permit and this Division. In making such certification, the civil engineer does not assume responsibility for the correctness of the contents of the reports referred to in paragraphs (c) and (d) of this section;
- (b) An "as-built" or record plan of the completed work prepared by a civil engineer;
- (c) A soil engineer's report, which shall include certification of soil bearing capacity (except where the County Official determines such certification inapplicable), summaries of field and laboratory tests and location of tests if not previously submitted, and the limits of compacted fill on a record plan. The report shall include reference to the presence of any expansive soils or other soil problems which, if not corrected, would lead to structural defects in buildings constructed on the site. If the report discloses the presence of such expansive soils or such other soil problems, it shall include recommended corrective action which is likely to prevent structural damage to each building proposed to be constructed upon the site; and
- (d) A final engineering geology report by an engineering geologist, based on the as-built plan, including specific approval of the grading as affected by geological factors. Where required by the County Official, the report shall include a revised geologic map and cross sections and recommendations regarding building restrictions or foundation setbacks.

Section 18. San Diego County Code Section 87.502 is hereby amended to read as follows:

SEC. 87.502. EXEMPTIONS.

The following activities are exempt from the requirements of this Chapter:

- (a) Routine landscaping, maintenance, and the removal of dead or diseased trees or shrubs, including trimming or mowing of vegetation to the limited extent required in order to comply with Chapter 4 of Division 8 of Title 6 of this Code, dealing with abatement of weeds and rubbish.
- (b) Clearing for fire protection purposes within 100 feet of a dwelling unit. Any additional clearing for fire prevention, control or suppression purposes is exempt when authorized or required, in writing, by a fire prevention or suppression agency.
- (c) Clearing limited to the least amount necessary for the purpose of surveying, geotechnical exploration and access for percolation tests and wells. This exemption does not include clearing for building pads or leach fields.
- (d) Clearing incidental to the repair, alteration or construction of a single-family dwelling and accessory buildings and structures, pursuant to an approved building permit.
- (e) Clearing conforming to the location, extent and purpose authorized, explicitly or implicitly, by an approved plot plan pursuant to a discretionary land use permit or a discretionary development permit.
- (f) Clearing incidental to grading activities for which a grading permit has been issued pursuant to this Division, or which are exempt from a grading permit requirement pursuant to Section 87.202, paragraph (b), (c), (f) or (g) of this Division.
- (g) Tilling or cultivating which is within the exemption of Section 87.202(d), (reading the terms of said exemption as if they applied to clearing rather than grading).
- (h) Limited clearing to provide access to property to perform activities that would otherwise be exempt from the provisions of this Ordinance.
- (i) On land located outside the "MSCP Subarea" (as defined in Section 87.803 of this Division), clearing of up to a maximum of five acres, on a parcel zoned for single family residential use and improved with a single family residence. The amount of land cleared under this exemption shall not exceed a total of five acres, regardless of the number of occasions on which clearing is performed.
- (j) On land located within the boundaries of the MSCP

Subarea (as defined in Section 87.803 of this Division), clearing shall be exempt from this Division if it is exempt from the Biological Mitigation Ordinance pursuant to its terms.

Section 19. San Diego County Code Section 87.602 is hereby amended to read as follows:

SEC. 87.602. ACTS PROHIBITED.

No person shall do or commit or cause to be done or committed, any of the following described acts, nor allow the same to be done on his or her property, nor allow the property to remain in such condition:

- (a) Deposit any material of any kind in a watercourse which may impair, impede or accelerate the flow of water therein so as to adversely affect adjoining property;
- (b) Plant any vegetation (other than grasses or annual crops) within a watercourse which may impair, impede, or divert the flow of water in such watercourse (unless this is required by a land development permit issued by the County);
- (c) Commit any act on or in any easement dedicated, granted or reserved for flood control or drainage purposes which will impair the use of such easement for such purposes; or
- (d) Within a flood plain where a Flood Plain Designator or a Flood Channel Designator has been applied under the Zoning Ordinance or within a flood plain as delineated on approved maps issued by the Federal Insurance Administrator (designated by the Secretary of the United States Department of Housing and Urban Development), construct new or substantial improvements of structures unless the lowest floor (including basement) is elevated to or above the level of the 100-year flood or the structure, including attendant utility and sanitary facilities, is flood proofed up to the level of the 100-year flood. "Substantial improvements" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either: (1) before the improvement is started, or (2) if the structure has been damaged, and is being restored, before the damage occurred. "Substantial improvements" are considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. "Substantial Improvements" do not, however, include any alteration to comply with existing federal, state or local health, sanitary, building or safety codes or regulations.

Section 20. San Diego County Code Section 87.603 is hereby amended to read as follows:

SEC. 87.603. ACTS PROHIBITED UNLESS PERMIT OBTAINED.

No person shall do or commit or cause to be done or committed, any of the following described acts without first obtaining a grading permit pursuant to Chapter 2 of this Division:

- (a) Impair, impede or accelerate the flow of water in a watercourse;
- (b) Alter the surface of land, by construction, excavation, embankment or otherwise, so as to reduce the capacity of a watercourse;
- (c) Construct, alter or remove any flood control or storm water drainage structure, facility or channel of or in a watercourse;
- (d) Construct or place any structure in, upon or across a watercourse; or
- (e) Place fill or encroachments that would increase the flood level or impair the ability of a floodway to carry and discharge the waters resulting from the 100-year flood, within a "floodway" as shown on San Diego County Flood Plan Maps adopted by the Board of Supervisors and on file at the Department of Public Works, as shown on a "Flood Insurance Rate Map" adopted by the Federal Emergency Management Agency, or as defined in Section 87.803(20) of this Division. Permits may be issued where the effect of the fill or encroachment on flood heights is fully offset by stream improvements.

Section 21. San Diego County Code Section 87.606 is hereby amended to read as follows:

SEC. 87.606. EMERGENCY WATERCOURSE GRADING PERMITS.

- (a) Notwithstanding any other provision of this Division or any other County Ordinance, an emergency watercourse grading permit may be granted solely for the removal of silt, sand and debris from a watercourse, upon a finding that an emergency exists on public or private property. The permit may be granted by the County Official for the removal of up to 10,000_cubic yards of silt, sand and debris, or by the Board of Supervisors for amounts in excess of 10,000 cubic yards. For purposes of this Section, "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services. "Emergency" includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage, (see Section 15025, Title 14 of the California

Administrative Code) or projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed pursuant to Chapter 7 of Division 1, Title 2 of the Government Code (see Section 15071, Title 14 of the California Administrative Code).

- (b) The emergency watercourse grading permit shall be granted for such periods of time as the County Official or Board shall deem to be reasonable and necessary or advisable under the circumstances, and upon such conditions as the County Official or Board deems necessary to insure the health, safety and welfare of the affected persons or the protection of the affected properties, and to assure that the work shown is in accordance with County Plans and Specifications. Such permit shall be granted to the owner of the property or the authorized agent of the owner.

Section 22. Section 87.702 of the San Diego County Code is hereby amended to read as follows:

SEC. 87.702. DEFINITIONS.

Whenever the following words are used in this chapter, they have the following meanings:

- (a) "DEPARTMENT" means the Department of Planning and Land Use of the County of San Diego.
- (b) "DIRECTOR OF CONSERVATION" means the Director of the Department of Conservation within the California Resources Agency.
- (c) "SMARA" means the Surface Mining and Reclamation Act of 1975 (Public Resources Code, Section 2710 et seq.).
- (d) "SMGB" means the State Mining and Geology Board.
- (e) "SURFACE MINING" 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, surface work incident to an underground mine, borrow pitting, streambed skimming, and the segregation and stockpiling of mined materials and recovery of same. Surface mining shall include, but is not limited to: (i) inplace distillation or retorting or leaching; (ii) the production and disposal of mining waste; and (iii) prospecting and exploratory activities.

Section 23. Section 87.703 of the San Diego County Code is hereby amended to read as follows:

SEC. 87.703. SURFACE MINING PERMIT AND RECLAMATION PLAN REQUIRED.

Except as specified in Section 87.704, no person shall conduct surface mining unless a Major Use Permit therefor is obtained, a Reclamation Plan is approved as provided by this chapter, the Zoning Ordinance, and SMARA, and financial assurances for reclamation have been approved by the County. Grading performed pursuant to such Major Use Permit or Reclamation Plan shall be in accordance with a plot plan and conditions approved therewith. Where surface mining has been conducted in violation of this or other ordinances, a Reclamation Plan shall be obtained for the restoration of the site.

Section 24. San Diego County Code Section 87.704 is hereby amended to read as follows:

SEC. 87.704. EXEMPTIONS.

- (a) The provisions of this chapter do not apply to surface mining operations which the SMGB finds are exempt from the provisions of SMARA under Public Resources Code Section 2714.
- (b) Any person who has obtained a vested non-conforming right to conduct surface mining prior to January 1, 1976, shall not be required to secure a Major Use Permit as long as such vested non-conforming right continues; provided, however, that the mining operation is not in violation of any provision of this chapter, and provided further that a person who has obtained such a right to conduct surface mining prior to January 1, 1976, shall obtain approval of a Reclamation Plan for vested operations conducted after January 1, 1976. Nothing in this chapter shall be construed as requiring the filing of a Reclamation Plan for mined lands on which surface mining operations were conducted prior to, but not after, January 1, 1976.

Section 25. Section 87.705 of the San Diego County Code is hereby amended to read as follows:

SEC. 87.705. APPLICATION AND REVIEW.

- (a) All applications for a Major Use Permit for surface mining shall be made, considered and granted or denied pursuant to The Zoning Ordinance, and shall be accompanied by an "Application for Reclamation Plan" as provided by the Department. Both applications shall be processed concurrently. An application for a Reclamation Plan shall be processed under the same procedures as the Major Use Permit, including those provisions requiring a public hearing and those

provisions relating to appeals. Reclamation Plans may be granted subject to such conditions and limitations as may be deemed appropriate. All plans and specifications for the grading of the property shall be prepared or approved and signed by a registered civil engineer, and shall include all information required in Section 87.208 and any other information required by the County Official.

- (b) Any surface mining operation conducted pursuant to vested non-conforming rights or pursuant to a Major Use Permit, shall cease operating until a Reclamation Plan is approved by the County, unless the Reclamation Plan is on appeal to the SMGB. An "Application for Reclamation Plan" shall be submitted within 120 days from the date the County Official requests in writing to the mining operator or mining site property owner that such Reclamation Plan be submitted or within the extension periods the County Official may grant if cause is shown why more time should be granted for the filing.
- (c) The Department shall submit all proposed Reclamation Plans and any proposed amendments to the Director of Conservation for review at least 45 days before the County acts thereon. The County shall notify the Director of Conservation of the filing of an application for a surface mining permit within 30 days of the filing of an application. The Department shall also send the Director of Conservation a copy of each mining permit approved by the County.
- (d) The Reclamation Plan shall contain all matters required by SMARA and Sections 3502 and 3700 and following of Title 14 of the California Code of Regulations, and shall provide in designated phases for the progressive rehabilitation of the mining site land form so that, when reclamation is complete, it will contain stable slopes, be readily adaptable for alternate land uses, and be free of derelict machinery, waste materials and scrap to the satisfaction of the County Official. The proposed mining site land form, to the extent reasonable and practical, shall be revegetated for soil stabilization, free of drainage problems, coordinated with present and anticipated future land use, and compatible with the topography and general environment of surrounding property.
- (e) Where any requirement of the reclamation plan conflicts with any requirement of the approved major use permit, the County Official shall determine which requirement shall apply; provided however, that the minimum reclamation standards of SMARA shall apply in any event.

Section 26. Section 87.707 of the San Diego County Code is hereby amended to read as follows:

SEC. 87.707. AGREEMENT, RIGHT OF ENTRY AND FINANCIAL ASSURANCE.

- (a) No surface mining shall be conducted pursuant to a Major Use Permit or pursuant to a vested nonconforming right unless prior to commencement an Agreement has

been entered into whereby the operator agrees to reclaim the land in accordance with the Reclamation Plan and which allows the County to enter the property to correct any landscaping or irrigation system deficiencies, any unsafe condition, or any breach of provisions of the Major Use Permit and/or Reclamation Plan.

- (b) The Agreement shall authorize the County or any person authorized by the County to enter the property at a mutually agreeable time and after having given the mining operator or permittee a minimum 24 hour notice, to perform an inspection at least once each calendar year, as mandated by the State, or follow-up inspections as a result of the once a year inspections. The Agreement shall also authorize the County or any person authorized by the County to enter the property at any reasonable times to investigate any suspected violation of any condition of the Major Use Permit or Reclamation Plan and/or for emergency abatement of hazardous conditions. Said Agreement shall be executed by the permittee, the owner of the property and by holders of any lien upon the property which could ripen into a fee, other than government entities. The permittee shall provide acceptable evidence of title showing all existing legal and equitable interests in the property. The Director of Planning and Land Use is hereby authorized to execute and accept the Agreement on behalf of the County. The Agreement shall be recorded before any mining is done.
- (c) The Agreement shall be secured by financial assurances as follows:
 - (1) Pursuant to Section 2773.1 of SMARA, financial assurances shall be provided in an amount as specified in subsection (d), to assure that the site is reclaimed in accordance with the requirements of the approved Reclamation Plan. The assurance shall be made payable to the Director of Planning and Land Use and the California Department of Conservation and may take the form of surety bonds, irrevocable letters of credit, trust funds, or other forms of financial assurance adopted by the State Mining and Geology Board, which the County reasonably determines will be readily available to pay for reclamation in accordance with the surface mining operation's approved Reclamation Plan.
 - (2) The County Official may also require that additional, separate security be provided pursuant to Section 7362.a of the Zoning Ordinance, to insure the performance of conditions of a major use permit for a surface mining operation or a reclamation plan, other than the obligation to reclaim the site in accordance with the Reclamation Plan.
- (d) The financial assurances required by paragraph (c)(1) above shall be in an amount equal to the estimated cost to reclaim, in accordance with the requirements of the approved Reclamation Plan, all disturbed, unreclaimed lands and all acreage expected to be disturbed in the forthcoming year, to a condition that will not constitute a danger to the public health or safety and that will provide for the type of reclamation required in the Reclamation Plan. The surface mining operator or permittee shall provide an estimate of the cost of reclamation prepared by a state-

registered civil engineer. All financial assurances shall be forwarded to the California Department of Conservation for review at least 45 days prior to County approval. The Director of Planning and Land Use shall review all financial assurance estimates and shall approve those that are sufficient. The estimate must be submitted not later than July 1st of each year. If the operator or permittee does not submit this estimate by the required deadline, the County may calculate an estimate of assurance. The staff time spent calculating this estimate will be charged against the inspection deposit. The financial assurance shall be provided to the County within 60 days of notification of the Director of Planning and Land Use's approval of the financial assurance amount.

- (e) The amount specified in paragraph (d) shall be adjusted annually to account for new lands disturbed or expected to be disturbed in the forthcoming year by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved Reclamation Plan. In no event shall the amount of assurance required be construed as a limitation on the liability of the permittee.
- (f) The surface mining operator or permittee, and the surety(ies) providing financial assurances, shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the County in causing any and all work covered by the assurances to be done. When reclamation has been completed in accordance with the approved Reclamation Plan, financial assurances pursuant to paragraph (c)(1) above shall no longer be required and shall be released, upon written notification by the County, which shall be forwarded to the surface mining operator or the permittee and the Director of Conservation. Financial assurances provided pursuant to paragraph (c)(2) above shall be released and returned upon completion of the covered work or performance of applicable conditions. In the case of a cash deposit, any unused portion thereof shall be refunded to the surface mining operator or permittee.
- (g) The County must be notified no less than 180 days prior to cancellation of any financial assurance. The County may seek the forfeiture of such financial assurance if new assurance is not posted at least 30 days prior to the expiration of the financial assurance.
- (h) If a mining operation is sold or ownership is transferred to another person, the existing financial assurances shall remain in force and shall not be released by the lead agency until new financial assurances are secured from the new owner and have been approved by the County.
- (i) The County Official is authorized to terminate and release the Agreement, and the right of entry, and to execute all documents necessary to effectuate such termination and release, upon determining that all required reclamation work and other obligations of the Agreement have been completed to the County Official's satisfaction.

Section 27. Section 87.709 of the San Diego County Code is hereby amended to read as follows:

SEC. 87.709. MODIFICATION OR REVOCATION OF RECLAMATION PLAN.

- (a) An approved Reclamation Plan, or any conditions thereof, may be modified using the same procedures for processing a new application, including environmental review. The application fee and deposit for a Reclamation Plan modification shall be the same as that required for a modification of a Major Use Permit. If both a Major Use Permit and Reclamation Plan modification are applied for concurrently, the fee and deposit are the same as for a modification of a Major Use Permit. The County shall send a copy of all applications to modify Reclamation Plans to the Director of Conservation for review in sufficient time before the County acts on the application, to allow the Director of Conservation 30 days to review the application after receipt of the documents.
- (b) The County Official may approve minor amendments to the Reclamation Plan in the same manner as a Minor Deviation to a Major Use Permit. A minor amendment is a change to the approved Reclamation Plan that the Director determines will not increase any deleterious impact the project has on the environment or the conditions of the project's approved Major Use Permit or Reclamation Plan. The application fee for a minor amendment to an approved Reclamation Plan shall be the same as that required for a Minor Deviation of Major Use Permit.
- (c) Pursuant to Section 2774 of SMARA, any modification or amendment to a Reclamation Plan shall be forwarded to the Director of Conservation. The Director of Conservation shall have 30 days to provide written comments.
- (d) The County Official may modify or revoke a reclamation plan for cause, upon the grounds and upon following the same procedures as are specified regarding grading permits at Section 87.216 of this Division.

Section 28. Section 87.710 of the San Diego County Code is hereby amended to read as follows:

87.710. INSPECTION.

- (a) The County Official shall inspect each surface mining site at least once each calendar year within 6 months of receipt of a copy of the mining operation's annual report, filed with the State pursuant to Section 2207 of SMARA. A copy of the completed inspection report shall be forwarded to the Director of Conservation, within thirty days of inspection using a form approved by the State.

- (b) The mining operator or permittee shall provide to the County Official by each July 1, aerial photographs of the mining site taken in the same month of the second quarter of each year. The aerial photographs shall consist of:
 - (1) Defined, marked and permanent ground controls; and
 - (2) Planimetric map of the mining site based on the aerial models with 5" contours and drawn to 1" = 200' scale.
- (c) Upon the request of a mining operator or permittee, the County Official may waive the requirement for the aerial photographs on a case by case basis, such as when only channel maintenance is involved or when no excavation has been accomplished since the last inspection, or may adjust the quarter of each year in which the aerial photographs are taken.
- (d) Each surface mining operator or permittee shall pay an annual inspection deposit to the County Official by July 1 of each year unless otherwise stated in an approved Reclamation Plan. The amount of the deposit shall be as determined by the Board of Supervisors. This amount shall apply for the first year to all existing surface mining operations and for the first year of any new mining operation. Thereafter, the County Official will determine the amount of the deposit annually based on the cost to inspect each surface mining operation. If the County Official determines that the annual inspection should include volume calculations or a boundary survey, the cost for this work shall be included in the deposit. The County Official shall notify each mining operator by May 1 each year of the amount of the deposit. The amount of the deposit required shall not be construed as a limitation on the liability of the operator or permittee.
- (e) If, after inspecting the mining operation, the County Official determines that it does not comply with the Major Use Permit or Reclamation Plan, he or she shall notify the mining operator in writing of the non-compliance and shall give the mining operator a reasonable time, not to exceed 180 days, to comply. If at the end of this time the mining operation still does not comply with the Major Use Permit or Reclamation Plan, the County Official may:
 - (1) Pursue the remedies specified at Section 2774.1 of SMARA, if the Major Use Permit or Reclamation Plan violation(s) are also violations of said Section;
 - (2) Pursue the remedies specified in the Zoning Ordinance for violation of a Major Use Permit, including revocation or modification for cause; and/or
 - (3) Pursue the remedies specified in Chapter 1 of this Division.

Section 29. San Diego County Code Section 87.803 is hereby amended to read as follows:

SEC. 87.803. DEFINITIONS.

Whenever the following words are used in this Division they shall have the following meanings:

[(1) through (19): no change]

(20) "GRADING" is any excavating or filling or combination thereof and shall include the land in its excavated or filled condition. "AGRICULTURAL GRADING" is grading which meets the requirements of Section 87.205 and is not exempt under Section 87.202(d). "MINOR GRADING" is grading which meets the requirements of Section 87.206. "PREVIOUSLY APPROVED PROJECT GRADING" is grading which meets the requirements of Section 87.207. "MAJOR GRADING" is grading which is governed by Section 87.208. In calculating the quantities of grading, soil to be removed and replaced for purposes of conditioning and compaction shall not be included.

[(21) through (24): no change]

(25) "MSCP Subarea" shall mean that area shown as the "County of San Diego MSCP Subarea" on the map referenced in Section 86.502 of this Code.

[26 through (38): no change]

Section 30. Effective Date and Publication. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED this 24th day of March, 2004.