

ORDINANCE NO: 3301

AN ORDINANCE TO THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN AMENDING SECTIONS 23.06.10, 23.06.020, 23.06.030, 23.06.050, 23.06.060, 23.06.070, 23.06.080, 23.06.090, 23.06.100, 23.06.110, AND 23.06.120, AND ADDING SECTION 23.06.105, OF THE MARIN COUNTY CODE REGULATING THE CONTROL OF SURFACE MINING AND QUARRY OPERATIONS

THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN does hereby ordain as follows:

SECTION I. Section 23.06.010 of the Marin County Code is hereby amended to read as follows:

23.06.010 Purpose.

The provisions of this chapter are intended to insure the continued availability of important mineral resources, while regulating and controlling surface mining and quarrying operations for the purposes enumerated in Chapter 23.02 of this title. In addition, the provisions of this chapter are intended to insure that all areas of lands affected by such operations shall be reclaimed, i.e., rehabilitated or restored to as nearly a natural appearance as possible, to be compatible with surrounding properties or for other contemporary uses. (Ord. 1844 §2 (part), 1971).

SECTION II. Section 23.06.020 of the Marin County Code is hereby amended to read as follows:

23.06.020 Definitions.

As used in this chapter, the following words shall have the designated meanings:

- (1) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all lands affected by any phase of exploration, mining, quarrying, processing, waste and tailings disposal, and includes access roads and pond sites;
- (2) "Operation" means all or any part of the premises, facilities, roads and equipment involved in the process of producing the mining or quarrying products from the designated strip mine or quarry area or removing overburden for the purpose of determining the location, quality or quantity of a natural deposit;
- (3) "Operator" means any person, partnership, corporation or public agency engaged in or who intends to engage in surface mining or quarrying, or who removes overburden for the purpose or determining the location, quality or quantity of a natural deposit, except a person who is engaged in a surface mining operation as an employee with wages as his/her sole compensation;
- (4) "Overburden" means all the earth and other materials, consolidated or unconsolidated, which lie above a natural deposit of mineral or useful rock, and also means such earth and other material after removal from their natural state in the process of surface mining;
- (5) "Person" means persons, partnership, corporation or public agency;

- (6) "Quarrying" means the surface excavation of rock or mineral deposits from the earth's crust;
- (7) "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 creates 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;
- (8) "Stream" means a natural watercourse designated as a perennial or intermittent stream on the most recently published United States Geological Survey 7.5 Minute Series Topographic Quadrangle Map, or a natural watercourse at the time of the surface mining or quarrying operation;
- (9) "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, 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. (Ord. 2222 § 1, 1976: Ord. 1844 § 2 (part), 1971)
- (10) "Lead Agency" means the City, County, or the appropriate State Agency, which has the principal responsibility for approving a surface mining operation or reclamation plan pursuant to this chapter.
- (11) "Financial Assurance Amount" means the amount of money necessary to conduct and complete reclamation on the mined land in accordance with the approved reclamation plan, plus a reasonable estimate of the administrative costs and expenses which would be incurred by the lead agency or the Department of Conservation, the total of which shall be calculated in accordance with Section 3804 of the California Surface Mining and Reclamation Act, and shall constitute an obligation to pay by the operator.
- (12) "Idle" means to curtail for a period of one year or more surface mining operations by more than 90% of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

SECTION III. Section 23.06.030 of the Marin County Code is hereby amended to read as follows:

23.06.030 Permit.

No person shall engage in any commercial surface mining or quarrying operation, or any exploration for such operation, if such exploration exceeds ten thousand square feet of disturbed ground surface or requires the removal of more than one thousand cubic yards of earth, without first securing a permit from the lead agency. Prior to obtaining a new Surface Mining and Quarry permit, the applicant must obtain the appropriate Use permit pursuant to Chapter 22.88 on the Marin County Code. Following a public hearing, and the approval of the Use permit, the

- (5) Grading shall be carried out so as to cover, with at least two feet of overburden or other relatively inert natural rock materials, any acid forming or other toxic materials which are exposed by the operations. Such burial is subject to the requirements of the California Environmental Quality Act.
- (6) All other parts of the Reclamation Plan are to be completed concurrently with the grading or as soon as practicable after completion of the grading specified in the plan. (Ord. 1844 § 2 (part), 1971)

SECTION V. Section 23.06.060 of the Marin County Code is hereby amended to read as follows:

23.06.060 Fees.

In addition to any fees imposed by Public Resource Code §2207, and the Marin County Community Development Agency related to the Use permit, Marin County Public Works will require an additional permitting fee to cover the reasonable costs incurred in implementing the administration of the Surface Mining and Quarry permit.

Following the necessary approvals from the Marin County Community Development Agency, the Director of Public Works shall collect fees for processing applications and inspecting work performed pursuant to this chapter. Such fees shall be as established in the current "Resolution of the Marin County Board of Supervisors Establishing Fees for Permits Administered by the Department of Public Works." (Ord. 2775 § 1, 1983: Ord. 1844 § 2 (part), 1971)

SECTION VI. Section 23.06.070 of the Marin County Code is hereby amended to read as follows:

23.06.070 Revocation.

In the event any permittee holding a permit hereunder fails, neglects or refuses to fulfill any of the requirements of this chapter or conditions of the permit or violates any provisions of this title or any other applicable law or ordinance, or conducts or carries on the operation in such a manner as to materially adversely affect the health, welfare or safety of persons residing or working in the neighborhood of the property wherein the operation is being conducted, or conducts or carries on the operation so that it is materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the Planning Commission may revoke or suspend the Use Permit. The Surface Mining and Quarry permit may be suspended by the Public Works Director; however, the Surface Mining and Quarry permit may not be revoked until a hearing is held by the Planning Commission. Written notice of such hearing shall be served upon the permittee and shall state:

- (1) The grounds for complaint or reasons for the proposed revocation or suspension, in clear and concise language;
- (2) The time and place where such hearing is to be held. Such notice shall be served on the permittee at least ten days prior to the date set for the hearing. At any such hearing the permittee shall be given an opportunity to be heard and defend himself, call witnesses and present evidence on his behalf. Upon conclusion of such hearing, the Planning Commission may suspend or revoke the permit upon such terms and conditions as, in the judgment of the Planning Commission, will be proper. (Ord. 1844 § 2 (part), 1971)

Public Works Department shall approve, conditionally approve, or deny the application for a Surface Mining and Quarry Permit within 90 days of obtaining a Use permit, unless a later date is agreed upon. Prior notice of the hearing shall be sent to property owners within two thousand five hundred feet of the perimeter of the area of land affected.

The Department of Public Works shall have the authority to provide for any reasonable special conditions to a Surface Mining and Quarry permit that it may deem necessary to carry out the purposes of this chapter, or the purposes established by the Surface Mining and Reclamation Act of 1975 (Public Resources Code §2710, et seq.) and applicable policy rules and regulations of the State Mining and Geology Board adopted pursuant to Public Resources Code § 2755. (Ord. 2222 § 2, 1976; Ord. 1844 § 2 (part), 1971)

SECTION IV. Section 23.06.050 of the Marin County Code is hereby amended to read as follows:

23.06.050 Land Reclamation Requirements.

Application for a Site Approval or Reclamation Plan for surface mining or land reclamation projects shall be made on forms approved by the Marin County Public Works Department. Said application shall be filed in accord with this Chapter and procedures to be established by the Public Works Director. The forms for Reclamation Plan applications shall require, at a minimum, each of the elements required by Surface Mining and Reclamation Act and State regulations, and any other requirements deemed necessary to facilitate an expeditious and fair evaluation of the proposed Reclamation Plan, to be established at the discretion of the lead agency. As many copies of the Site Approval application as may be required by the lead agency shall be submitted to the lead agency. Copies of the Site Approval application will be forwarded to the State Department of Conservation for comments and to the Marin County Department of Public Works. The Department of Conservation will be allowed 30 days to conduct a review of the Site Approval application in addition to the County review period.

Unless otherwise specified in the Use Permit, or Surface Mining and Quarry Permit, reclamation shall be done in the following manner:

- (1) Grading required under the approved reclamation plan shall be carried out as soon as practicable.
- (2) Grading shall be carried out to provide a surface as nearly natural appearing as possible, or to provide a surface consistent with the land use objectives stated in the approved reclamation plan. In all cases, grading shall be done in such a manner as to minimize erosion.
- (3) Within ninety days of termination of the actual rock or mineral production, all structures, metal, lumber or other debris resulting from the operation, are to be removed or buried. Such burial is subject to the provisions of the Reclamation Plan, requirements of the California Environmental Quality Act and approval of the Director of Public Works. If specified in the reclamation plan, a structure or materials may be retained on the site for the stated land use objective anticipated after completion of the operation, subject to the approval of the Director of Public Works.
- (4) Earth dams may be constructed wherever the formation of lakes for water impoundment does not interfere with the operations or damage adjoining property and is in conformance with the land use objectives in the reclamation plan.

- (f) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed (including any maintenance required).
- (g) The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operations, inflation, and reclamation of lands accomplished in accordance with the approved Reclamation Plan. The financial assurances shall include estimates to cover reclamation for existing conditions and anticipated activities during the upcoming year, excepting that the permittee may not claim credit for reclamation scheduled for completion during the coming year.
- (h) Revisions to financial assurances shall be submitted to the County of Marin, Department of Public Works, each year prior to the anniversary date for approval of the financial assurances. The financial assurances shall cover the cost of existing disturbance and anticipated activities for the next calendar year, including any required interim reclamation. If revisions to the financial assurances are not required, the operator shall explain, in writing, why revisions are not required.

SECTION VII. Section 23.06.090 of the Marin County Code is hereby amended to read as follows:

23.06.090 Inspections.

The Department of Public Works shall make sufficient inspections of the mining or quarrying operations to insure compliance with the provisions of this chapter and any permits issued hereunder. Upon notification by the operator that operations have been completed in any area, the department shall continue to make inspections to insure that there is compliance with the reclamation and revegetation plans. (Ord. 1844 §2 (part), 1971)

The Public Works Department or lead agency shall arrange for inspection of a surface mining operation within six months of receipt of the State of California Mining Operation Annual Report for the individual mine, to determine whether the surface mining operation is in compliance with the approved Site Approval and/or Reclamation Plan, approved financial assurances, and State regulations. In no event shall less than one inspection be conducted in any calendar year. Said inspections may be made 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 mining operation in any capacity during the previous 12 months, or other qualified specialists, as selected by the Director of Public Works. All inspections shall be conducted using a form approved and provided by the State Mining and Geology Board. The Department of Public Works shall notify the State Department of Conservation within thirty (30) days of completion of the inspection that said inspection has been conducted, and shall forward a copy of said inspection notice and any supporting documentation to the mining operator. The operator shall be solely responsible for the reasonable cost of such inspection.

SECTION VIII. Section 23.06.100 of the Marin County Code is hereby amended to read as follows:

SECTION VII. Section 23.06.080 of the Marin County Code is hereby amended to read as follows:

23.06.080 Financial Assurances.

- (a) To ensure that reclamation will proceed in accordance with the approved Reclamation Plan, the County of Marin shall require, as a condition of approval, security which will be released upon satisfactory performance. The applicant may post security in the form of a surety bond, trust fund, irrevocable letter of credit from an accredited financial institution, or other method acceptable to the County of Marin and the State Mining and Geology Board as specified in State Regulations, and which the County of Marin reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved Reclamation Plan. Financial assurances shall be made payable to the County of Marin and the State Department of Conservation.
- (b) Financial assurances will be required to ensure compliance with elements of the Reclamation Plan including, but not limited to, 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, and other measures, if necessary.
- (c) Cost estimates for the financial assurances shall be submitted to the Marin County Department of Public Works and approved prior to the operator securing financial assurances. The Public Works Director shall forward a copy of the cost estimates, together with any documentation received supporting the amount of the cost estimates, to the State Department of Conservation for review. If the State Department of Conservation does not comment within 45 days of receipt of these estimates, it shall be assumed that the cost estimates are adequate, unless the County has reason to determine that additional costs may be incurred. The Public Works Director shall have the discretion to approve the financial assurances if they meet the requirements of this Chapter, Surface Mining and Reclamation Act and State regulations.
- (d) The amount of the financial assurances shall be based upon the estimated costs of reclamation for the years or phases stipulated in the approved Reclamation Plan, including any maintenance of reclaimed areas as may be required, subject to adjustment for the actual amount required to reclaim lands disturbed by surface mining activities since January 1, 1976, and new lands to be disturbed by surface mining activities in the upcoming year. Cost estimates should be prepared by a California registered professional Engineer and/or other similarly licensed and qualified professionals retained by the operator and approved by the Department of Public Works. The estimated amount of the financial assurances shall be based on an analysis of physical activities, the number of units of each of these activities, and the actual administrative costs.
- (e) Financial assurances to ensure compliance with revegetation, restoration of water bodies, restoration of aquatic or wildlife habitat, and any other applicable element of the approved Reclamation Plan shall be based upon cost estimates that include but may not be limited to labor, equipment materials, mobilization of equipment, administration, and reasonable profit by a commercial operator other than the permittee. A contingency factor of ten percent (10%) shall be added to the cost of financial assurances. In projecting the costs of financial assurances, it shall be assumed without prejudice or insinuation that the surface mining operation could be abandoned by the operator and consequently, the county or State Department of Conservation may need to contract with a third party commercial company for reclamation of the site.

- (c) Upon receipt of a complete proposed Interim Management Plan, the Department of Public Works shall forward the Interim Management Plan to the State Department of Conservation for review. The Interim Management Plan shall be submitted to the State Department of Conservation at least 30 days prior to approval by the Department of Public Works.
- (d) Within 60 days of receipt of the proposed Interim Management Plan, or a longer period mutually agreed upon by the Director of Public Works and the operator, the Department of Public Works shall review, approve, conditionally approve, or deny the Interim Management Plan in accordance with this Chapter. The operator shall have thirty (30) days, or a longer period mutually agreed upon by the operator and the Director of Public Works, to submit a revised Interim Management Plan. The Department of Public Works shall approve, conditionally approve, or deny the revised Interim Management Plan within sixty (60) days of receipt. If the Public Works Director denies the revised Interim Management Plan, the operator may appeal that action to the Planning Commission.
- (e) The Interim Management Plan shall remain in effect for a period not to exceed five years, at which time the Department of Public Works may renew the Interim Management Plan for another period not to exceed five years, or require the surface mining operator to commence reclamation in accordance with its approved Reclamation Plan.

SECTION X. Section 23.06.110 of the Marin County Code is hereby amended to read as follows:

23.06.110 Appeal.

The applicant, or any other person who is aggrieved by any action involving the approval, denial, or revocation of a Surface Mining and Quarry permit, may appeal such action in accordance with the provisions of Chapter 22.89 of the Marin County Code.

SECTION XI. Section 23.06.120 of the Marin County Code is hereby amended to read as follows:

23.06.120 Violations.

If the County of Marin, based upon an annual inspection or otherwise confirmed by an inspection of the mining operation, determines that a surface mining operation is not in compliance with this Chapter, the applicable Site Approval, any required permit and/or the Reclamation Plan, the County shall follow the procedures set forth in Public Resources Code Sections 2774.1 and 2774.2 concerning violations and penalties, as well as those provisions of the County Code for revocation and/or abandonment of a Site Approval which are not preempted by the Surface Mining and Reclamation Act, and the operator is subject to these procedures and penalties for any violation.

SECTION XII. PUBLICATION

This Ordinance shall be and is hereby declared to be in full force and effect thirty (30) days from and after date of its passage and shall be published once before the expiration of fifteen (15) days after passage, with the names of the Supervisors voting for and against the same in the Independent Journal, a newspaper of general circulation published in the County of Marin.

23.06.100 Existing Operations.

A lawful surface mining or quarrying operation existing at the time of the adoption of this chapter must possess a lead agency approved Reclamation Plan and financial assurances regardless of when those operations commenced activity. The provisions of the County's ordinance must apply to all surface mines within the County's jurisdiction. Only "vested" surface mining operations may be exempt from lead agency "permitting" requirements, but they are not exempt from obtaining Reclamation Plans and financial assurances for all lands disturbed by mining activities since 1976.

No such operation may enlarge the area of land affected beyond that identified on an approved County map. Should any such operation cease for a period of one year and 90 days without an approved Interim Management Plan then the operation is considered abandoned, and must be reclaimed. The benefits of this section shall not be lost or diminished in any way by a sale, transfer, assignment, lease or other change in the ownership or of the operator of the mining or quarrying operation. (Ord. 1844 § 2 (part), 1971)

Surface mining operators shall forward an annual surface mining report to the State Department of Conservation and to the County Department of Public Works on a date established by the State Department of Conservation, upon forms furnished by the State Mining and Geology Board. New mining operations shall file an initial surface mining report and any applicable filing fees with the State Department of Conservation within 30 days of permit approval, or before commencement of operations, whichever is sooner. Any applicable fees, together with a copy of the annual inspection report, shall be forwarded to the State Department of Conservation at the time of filing the annual surface mining report.

The County of Marin shall forward a copy of each approved Site Approval for mining operations and/or approved Reclamation Plan, and a copy of the approved financial assurances to the State Department of Conservation. By July 1 of each year, the County of Marin shall submit to the State Department of Conservation for each active or idle mining operation a copy of the Site Approval or Reclamation Plan amendments, as applicable, or a statement that there have been no changes during the previous year.

SECTION IX. Section 23.06.105 of the Marin County Code is hereby added to read as follows:

23.06.105 Idle Mines.

- (a) Within 90 days of a surface mining operation becoming idle, the operator shall submit to the Department of Public Works a proposed Interim Management Plan. The proposed Interim Management Plan shall fully comply with the requirements of Surface Mining and Reclamation Act, including but not limited to all site approval conditions, and shall provide measures the operator will implement to maintain the site in a stable condition, taking into consideration public health and safety. The proposed Interim Management Plan shall be submitted on forms approved by the Department of Public Works, and shall be processed as an amendment to the Reclamation Plan. Interim Management Plans shall not be considered a project for the purposes of environmental review.
- (b) Financial assurances for idle operations shall be maintained as though the operation was active, or as otherwise approved through the idle mine's Interim Management Plan.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, held this 14th day of September 1999, by the following vote:

AYES: SUPERVISORS Cynthia L. Murray, Steve Kinsey, John B. Kress,
Annette Rose

NOES: NONE

ABSENT: SUPERVISORS Harold C. Brown, Jr.



PRESIDENT, BOARD OF SUPERVISORS

ATTEST:



Clerk

