



AGENDA

Thursday, February 6, 2014

6:30 P.M.

**SPECIAL MEETING
PLANNING COMMISSION**

**Council Chambers
211 Hillcrest Avenue
Marina, California**

VISION STATEMENT

Marina will grow and mature from a small town bedroom community to a small city which is diversified, vibrant and through positive relationships with regional agencies, self-sufficient. The City will develop in a way that insulates it from the negative impacts of urban sprawl to become a desirable residential and business community in a natural setting. **(Resolution No. 2006-112 - May 2, 2006)**

MISSION STATEMENT

The City Council will provide the leadership in protecting Marina's natural setting while developing the City in a way that provides a balance of housing, jobs and business opportunities that will result in a community characterized by a desirable quality of life, including recreation and cultural opportunities, a safe environment and an economic viability that supports a high level of municipal services and infrastructure. **(Resolution No. 2006-112 - May 2, 2006)**



1. CALL TO ORDER
2. ROLL CALL & ESTABLISHMENT OF QUORUM
Planning Commission Members:
Margaret Davis, Debra Daniels, Eugene Doherty, Greg Furey, Virgil Piper, Vice-Chair Ken Turgen, Chair David Burnett
3. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)
4. SPECIAL ANNOUNCEMENTS AND COMMUNICATIONS FROM THE FLOOR: *Announcements of special events or meeting of interest as information to Board and Public. At this time any person may comment on any item, which is not on the agenda. Please state your name and address for the record. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on the next agenda. Planning Commission members or City staff may briefly respond to statements made or questions posed*

as permitted by Government Code Section 54954.2. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of Four (4) minutes. Any member of the public may comment on any matter listed on this agenda at the time the matter is being considered by the Planning Commission.

5. CONSENT AGENDA: *Background information has been provided to the Planning Commission on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. If discussion is requested by anyone on any item, that item will be removed from the Consent Agenda and placed at the end of Other Action Items if separate action is requested.*

a. Minutes for the January 23, 2014 Planning Commission meeting.

6. PUBLIC HEARINGS: *Time will be set aside during the Public Hearing to receive oral comments on all items listed as Public Hearings. Staff will present the project brought forth for Planning Commission consideration and possible action and answer questions from the Planning Commissioners. The applicant will then have the opportunity to raise any issues. The public will then be invited to approach the podium to provide up to four (4) minutes of public testimony.*

a. None

7. OTHER ACTION ITEMS: *Action listed for each Agenda item is that which is brought forth for Planning Commission consideration and possible action. The Planning Commission may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

a. It is requested that the Planning Commission:

Provide an interpretation of Marina Municipal Code (MMC) Section 17.41.260, Surface Mining and Reclamation Standards, pursuant to a request by City Staff in accordance with MMC Section 17.56.020¹. Specifically, the Commission is asked whether or not the exploratory extraction of water for the purpose of determining its mineral content is a "surface mining operation" under MMC Section 17.41.260.B.

8. COMMISSIONERS AND STAFF INFORMATIONAL REPORTS:

- a. City Council, Design Review Board, Tree Committee and other meetings of note.
b. Upcoming items scheduled for future meetings.

¹ This section states: "[a]pplication for appeal *or interpretation* shall be made in writing to the planning commission."

c. Ad Hoc Committee

9. CORRESPONDENCE:

a. None

10. ADJOURNMENT

CERTIFICATION

I, Judy Paterson, Administrative Assistant for the City of Marina, do hereby certify that a copy of the foregoing agenda was posted at Marina City Council Chambers bulletin board, 211 Hillcrest Avenue; City Kiosk at the corner of Del Monte Boulevard and Reservation Road; and Monterey County Free Library Marina Branch at 190 Seaside Circle on or before 6:30 p.m. Wednesday February 5, 2014.



Judy Paterson, Administrative Assistant II
Community Development Department

PLANNING COMMISSION NOTES:

1. The Marina Planning Commission regularly meets at 6:30 P.M. on the second and fourth Thursdays of each month.
2. The Planning Commission follows procedures intended to allow for project applicants and members of the public the fullest possible opportunity to be heard, while enabling the Commission to complete its meetings within a reasonable time.
3. Copies of staff reports are available to the public on the Friday afternoon, prior to the Thursday meetings at the Community Development Department office located at 209 Cypress Avenue.
4. Planning Commission meetings may be viewed on Marina's Comcast Cable Channel 25.
5. Planning Commission subcommittees include the Marina Design Review Board (DRB) and Tree Committee. The DRB regularly meets at 6:30 P.M. on the third Wednesday of each month and the Tree Committee meets quarterly on the 2nd Wednesday of January, April, July and October... All meetings take place in the Council Chambers unless otherwise noticed... Public notices and agendas are posted at the following locations: Monterey County Library Marina Branch, Kiosk at the corner of Del Monte Blvd. and Reservation Rd., and Marina City Council Chambers Bulletin Board.
6. The public is invited and encouraged to participate in all meetings of the Planning Commission and its subcommittees.



MINUTES

Thursday, January 23, 2014

6:30 P.M.

REGULAR MEETING
PLANNING COMMISSION

Council Chambers
211 Hillcrest Avenue
Marina, California

1. CALL TO ORDER

Chair Burnett called the meeting to order at 6:30 p.m.

2. ROLL CALL & ESTABLISHMENT OF QUORUM

Planning Commission Members:

Margaret Davis, Debra Daniels, Greg Furey, Virgil Piper, Vice- Chair Ken Turgen, Chair David Burnett

Members Absent: Eugene Doherty (excused.)

3. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE

4. SPECIAL ANNOUNCEMENTS AND COMMUNICATIONS FROM THE FLOOR:

Commissioner Davis commented that work was progressing well at the Equestrian Center for the stabilization project.

Chair Burnett sent condolences to meeting videographer Alex Vasquez and family for the recent loss of their daughter Andrea.

5. CONSENT AGENDA:

- a. Minutes for the December 12, 2013 Planning Commission meeting.

Commissioner Daniels moved for approval which was seconded by Commissioner Piper. The motion passed by a 5-0-1(Doherty)-1(Turgen) vote.

6. PUBLIC HEARINGS:

- a. None

7. OTHER ACTION ITEMS:

a. It is requested that the Planning Commission:

Provide an interpretation of Marina Municipal Code Chapter 17.55, Surface Mining and Reclamation Standards, that the extraction of water to determine its mineral content is a surface mining operation.

Ms. Symanis gave a staff report, provided background information and clarified the request before the commission.

Chair Burnett disclosed that he had met with Director di Iorio and Ms. Szymanis as well as a teleconference with City Special Counsel Kathy Jenson, prior to the meeting. Following that meeting it was advised that the item be continued to their next regular meeting on February 13, 2014 in order to have additional information.

The public hearing was opened.

Public Comments:

- Jim Cullem, Director, Regional Water Authority, spoke to the critical timeline of the water project and expressed concern with a delay;
- Brian Lee, General Manager of the Marina Coast Water District supported the continuance;
- Jan Shriner, MCWD Board member also supported the continuance so that their board would have an opportunity to meet and discuss the item ;
- Ian Crooks, Engineering Manager for California-American Water was not in support of the delay;
- Bruce Delgado asked about the different process with Monterey County approvals for a similar request;
- Molly Erickson, Stamp Law Offices, representing the Ag Land Trust, spoke in opposition to the request and the process as presented, supported the delay and suggested the item be taken up by the City Council rather than the Planning Commission.

The public hearing was closed.

Chair Burnett made a motion to continue the item to the next regularly scheduled Planning Commission meeting of February 13, 2014. The motion was seconded by Vice-Chair Turgen and passed by a 5-1(Daniels)-1(Doherty)-0 vote.

8. COMMISSIONERS AND STAFF INFORMATIONAL REPORTS: None

9. CORRESPONDENCE: None

10. ADJOURNMENT

The meeting was adjourned at 7:00 p.m.

ATTEST:

David Burnett, Chair

Judy Paterson, Administrative Assistant II

DATE

February 4, 2014

Item No.

Honorable Members
of the Marina Planning Commission

Planning Commission Meeting of
February 6, 2014

**CONTINUED REQUEST FOR AN INTERPRETATION OF
MARINA MUNICIPAL CODE SURFACE MINING AND
RECLAMATION STANDARDS THAT THE EXTRACTION
OF WATER TO DETERMINE ITS MINERAL CONTENT
IS A SURFACE MINING OPERATION**

REQUEST:

It is requested that the Planning Commission:

1. Provide an interpretation of Marina Municipal Code (MMC) Section 17.41.260, Surface Mining and Reclamation Standards, pursuant to a request by City Staff in accordance with MMC Section 17.56.020¹. Specifically, the Commission is asked whether or not the exploratory extraction of water for the purpose of determining its mineral content is a “surface mining operation” under MMC Section 17.41.260.B.

BACKGROUND:

This matter was originally before the Planning Commission on January 23, 2013, at which time it was continued to the Commission’s next meeting.

The City of Marina has received two separate requests by representatives of California American Water (“Cal Am”) and the California Public Utilities Commission (“CPUC”) to drill a total of five exploratory boreholes at the CEMEX mining site for the purpose of gathering information for the preparation of the Environmental Impact Report (“EIR”) for the Monterey Peninsula Water Supply Project (MPWSP). That Project is Cal Am’s proposed regional desalination project. CEMEX has authorized the drilling of the boreholes. The first three boreholes were for soil exploration only, and were treated by City Staff as an activity that is part of on-going “surface mining operations” of the CEMEX site. These boreholes have been drilled and refilled.

The final two proposed boreholes would involve not only soil boring, but also the extraction of a *de minimus* amount of water for a limited duration to determine its mineral content. Cal Am and CPUC submit that these final two exploratory boreholes should be treated the same as the prior soil extraction boreholes because the purpose is the same – namely, the examination of the minerals present in the extracted material, but in this case it will also include the extraction of a *de minimus* amount of water for water samples.

City Staff, the City Attorney, and the City’s Special CEQA/Land Use Counsel concur with the interpretation, but desire to bring the matter forward for a formal interpretation by the Planning Commission pursuant to MMC Section 17.56.020 because of the public interest in this issue.

The Planning Commission’s interpretation would guide the City’s process for examining the final two proposed exploratory boreholes. If the Planning Commission agrees with the proposed interpretation of “surface mining operation,” then no permit or approval from the City would be needed for the two final boreholes since the MMC exempts CEMEX from having to obtain permits to conduct its surfacing mining operation unless there are substantial changes made to the

¹ This section states: “[a]pplication for appeal *or interpretation* shall be made in writing to the planning commission.”

mining operations (MMC § 17.41.260.D.2.(d)). If the Planning Commission disagrees with the proposed interpretation of the MMC, a Coastal Development Permit would be required for the final two boreholes.

FACTS & ANALYSIS:

This request seeks a determination of the applicability of MMC Section 17.41.260 (“**EXHIBIT A**”) to two proposed exploratory boreholes. The boreholes would be made for the purpose of testing the mineral extracted, including the content of water extracted there from and would be dug in an area designated for mining under the CEMEX Reclamation Plan. The locations of the existing boreholes (CB-1, CB-2 and CB-4) and proposed boreholes (CB-3 and CB-5) are shown on “**EXHIBIT B**”.

The proposed boreholes would be dug in close proximity to three completed boreholes. The boreholes would be approximately 6” in diameter, 300 to 350 feet deep and would leave no permanent footprint.² While 10,000 gallons of water would be pumped from each borehole (20,000 total for the testing), we understand from Cal Am that only a total 14 liters would be taken from the site for scientific testing regarding mineral content. It is important to note that this is not a ground water production effort, but instead is for scientific sampling, and would not have any impacts on water rights. The borehole operations would only occur during daylight hours and each borehole would require approximately 10 days to move equipment in to place for use, and then be decommissioned. Except for the 14 liters that would be taken offsite for testing, the water collected during the process would be stored in the on-site baker tank and then slowly deposited back into the ground via a small percolation pit.

MMC Chapter 17.41.260 details and regulates Surface Mining and Reclamation Standards in the Coastal Zone. This Section was adopted pursuant to Cal. Public Resources Code § 2710 *et seq.* The pertinent definitions are found in MMC Section 17.41.260.B.³ (Definitions). This code section states:

“**Surface mining operations**” means all or any part of the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incidental to an underground mine. Surface mining operations shall include, but are not limited to: (1) in-place distillation, retorting or leaching; (2) the production and disposal of mining waste; and (3) **prospecting and exploratory activities**.

“**Exploration or prospecting**” means the search for minerals⁴ by geological, geophysical, geochemical or other techniques, including, but not limited to, sampling, assaying, drilling, or **any surface or underground works needed to determine the type, extent or quality of minerals present** (emphasis added).

“Mineral” is defined in the MMC to mean “any naturally occurring chemical element or compound or groups of elements or compounds, formed from inorganic processes and organic substances, including, but not limited to, sand, but excluding geothermal resources, natural gas and petroleum (MMC § 17.41.260.B). Indeed, according to Webster’s Dictionary, the water itself is a mineral. (See <http://www.merriam-webster.com/dictionary/mineral> - “a solid

² After the requisite amount of water is pumped for mineral testing, the boreholes will be terminated in a way that is consistent with County standards and leave no lasting footprint.

³ These definitions are identical to the definitions found in Cal. Public Resources Code §§ 2735 and 2007. Research indicates that these definitions have never been applied to our current situation through the judicial process.

homogeneous crystalline chemical element or compound that results from the inorganic processes of nature; *broadly*: any of various naturally occurring homogeneous substances [as stone, coal, salt, sulfur, sand, petroleum, water, or natural gas] obtained usually from the ground.”) It is noted that “natural gas” and “petroleum” are excluded from the Marina definition of “mineral” but no mention is made of “water” which leads to an interpretation that water was intended to be included within the definition of “mineral” by the drafters of the Code.

Staff believes that this exploratory boring to pump out water to determine mineral content falls under the definition of “surface mining operations.” While the purpose of the boreholes may not fit the colloquial definition of mining operations, the plain language of the MMC indicates that this type of activity likely falls under the definitions. The purpose of pumping the water is to “determine the type, extent or quality of minerals present” in each respective test sample. This places this activity within the statutory definition of “prospecting and exploratory activities” and thus, it would be considered “surface mining operations.”

As mentioned above, the Planning Commission’s interpretation will inform the City’s process for examining the exploratory test boreholes. Staff interprets the actions to fall under the activities defined in MMC Section 17.55.020. However, the request is directed toward the Planning Commission for the official interpretation.

CONCLUSION:

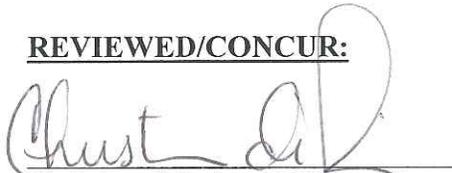
This request is submitted for Planning Commission consideration and possible action.

Respectfully submitted,



Katherine M. Jenson
City of Marina CEQA/Land Use Counsel
Rutan & Tucker

REVIEWED/CONCUR:



Christine di Iorio, AICP
Director, Community Development Department
City of Marina

RESOLUTION NO. 2014-

A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF MARINA DETERMINING THAT, IN ACCORDANCE
WITH MARINA MUNICIPAL CODE, SURFACE MINING
AND RECLAMATION STANDARDS, THE EXTRACTION OF
WATER TO DETERMINE ITS MINERAL CONTENT IS A
SURFACE MINING OPERATION

WHEREAS, the City of Marina has received a request from representatives of the California American Water Company and the California Public Utilities Commission to drill two boreholes for a limited duration on the CEMEX mining site for the purpose of extracting minerals through both soil and water to provide additional information on the hydrogeologic conditions in the area of the site to complete an environmental study for the Monterey Peninsula Water Supply Project Settlement Proposals in Application 12-04-019, which is currently before the Public Utilities Commission of the State of California, and;

WHEREAS, CEMEX is currently entitled to conduct a "surface mining operation" as defined by the Marina Municipal Code (MMC) on the CEMEX site, and;

WHEREAS, the City Staff has requested an interpretation by the Planning Commission of the scope of the term "surface mining operation" as defined in MMC Section 17.41.260, Surface Mining and Reclamation Standards and whether it would include a *de minimus* extraction of water to provide information on its mineral content, and;

WHEREAS, pursuant to MMC Section 17.56.020, the Planning Commission has the authority to render interpretations of the MMC, and;

WHEREAS, this request seeks a determination that the scope of a surface mining operation extends to the extraction of water through a temporary borehole to determine its mineral content for the limited purpose of the California American Water Company request to drill two boreholes for a limited duration to extract minerals contained in water, consisting of approximately 20,000 gallons of water for testing with all water returned to the site, except for 14 liters, and;

WHEREAS, according to MMC Section 17.41.260.B, "Surface mining operations" means all or any part of the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incidental to an underground mine. Surface mining operations shall include, but are not limited to: (1) in-place distillation, retorting or leaching; (2) the production and disposal of mining waste; and (3) prospecting and exploratory activities, and;

WHEREAS, "Exploration or prospecting" means the search for minerals by geological, geophysical, geochemical or other techniques, including, but not limited to, sampling, assaying, drilling, or any surface or underground works needed to determine the type, extent or quality of minerals present, and;

WHEREAS, it has been represented by California American Water Company that approximately 20,000 gallons of water will be extracted from the site so as to extract minerals for testing, with all water returned to the site except for 14 liters, resulting in the ability to make the finding that the only purpose of the extraction will be to explore for minerals that are present in the water and there will be no other use of the water as a result of this interpretation and;

WHEREAS, the staff report and testimony provided during the Planning Commission's consideration of this request supports the requested interpretation.

NOW THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Marina does hereby determine that, in accordance with Marina Municipal Code, Surface Mining and Reclamation Standards, the extraction of water to determine its mineral content as proposed in this instance is within the scope of a surface mining operation.

PASSED AND ADOPTED, at a regular meeting of the Planning Commission of the City of Marina, duly held on the 6th day of February 2014, by the following vote:

AYES: COMMISSION MEMBERS:
NOES: COMMISSION MEMBERS:
ABSENT: COMMISSION MEMBERS:
ABSTAIN: COMMISSION MEMBERS:

David Burnett, Chairperson

ATTEST:

Christine di Iorio, AICP
Director, Community Development Department
City of Marina

EXHIBIT A**17.41.260 Surface mining and reclamation standards.**

A. Purpose and Intent.

1. This chapter is adopted pursuant to the California Surface Mining and Reclamation Act of 1975, Chapter 9, Public Resources Code.
2. The city council finds and declares that the extraction of minerals is essential to the continued economic well-being of the city and to the needs of society, and that the reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.
3. The city council further finds that the reclamation of mined lands as provided in this chapter will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.
4. The city council further finds that surface mining takes place in areas where the geologic, topographic, climatic, biological and social conditions are different and that reclamation operations and the specifications therefore may vary accordingly.

B. Definitions. As used in this chapter:

“Environmental assessment” means the study of the environment of an area proposed to be mined including the flora, fauna, geologic, erosion potential and other factors deemed to be important by qualified experts of appropriate disciplines.

“Environmental impact report” means a report on the environmental effects of a project prepared according to the standards and provisions of the California Environmental Quality Act (CEQA).

“Exploration” or “prospecting” means the search for minerals by geological, geophysical, geochemical or other techniques, including, but not limited to, sampling, assaying, drilling, or any surface or underground works needed to determine the type, extent or quality of minerals present.

“General plan” means the adopted general plan for the city of Marina.

“Local coastal program” means the adopted local coastal land use and implementation plans for the city as certified by the California Coastal Commission.

“Mined lands” means and includes the surface, subsurface and groundwater of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.

“Minerals” means any naturally occurring chemical element or compound or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, sand, but excluding geothermal resources, natural gas and petroleum.

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

"New mining" means and includes any significant increase in the rate of extraction or change in location.

"Operator" means any person who is engaged in surface mining operations, himself, or who contracts with others to conduct operations on his behalf.

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

"Permit" means any formal authorization from or approval by, the city without which surface mining operations cannot occur.

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

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

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

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

"Surface mining operations" means all or any part of the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incidental to an underground mine. Surface mining operations shall include, but are not limited to: (1) in-place distillation, retorting or leaching; (2) the production and disposal of mining waste; and (3) prospecting and exploratory activities.

C. Scope.

1. The provisions of this chapter shall apply to the incorporated areas of the city.
2. The provisions of this chapter are not applicable to:
 - a. Excavations or grading conducted for farming or on-site construction or for the purpose of restoring land following a flood or natural disaster;

b. Such other mining operations that the city determines to be of an infrequent nature, and which involve only minor surface disturbances and are categorically identified by the State Board pursuant to Sections 2714(d) and 2758(c), California Surface Mining and Reclamation Act of 1975 (SMARA).

D. Permit, Reclamation Plan and Reporting Requirements.

1. Reclamation Plan Requirements. Reclamation plans as defined in this chapter shall be required of all mining operations undertaken since January 1, 1976. Any person who proposes to engage in new mining operations as defined in this chapter shall also be required to prepare a reclamation plan prior to commencing new mining operations.

a. Existing Mining Operations. A person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976 shall submit and receive city approval of a reclamation plan within two years from the effective date of the ordinance codified in this chapter for all mining operations conducted after January 1, 1976. Nothing in this chapter shall be construed as requiring the filing of a reclamation plan for, or the reclamation of, mined lands on which surface mining operations were lawfully conducted prior to, but not after January 1, 1976.

b. Reclamation Plan Review. Approved reclamation plans shall be reviewed by the planning commission at least every five years. It shall be the sole responsibility of the operator to submit a written request to the planning commission prior to the expiration of each five-year period. Operator shall provide the planning commission with ample evidence that compliance is being maintained with the provisions of the approved reclamation plan. The planning commission retains the right subsequent to reclamation plan review to modify the terms of any reclamation plan to assure continuing compliance with the local coastal program. Furthermore, the planning commission may consider and approve modification of any reclamation plan requested by the operator so long as it finds that the reclamation plan is in compliance with the local coastal program.

2. Permit Requirements. The planning commission shall issue a mining permit for any new surface mining operation, which the planning commission finds is in conformance with the local coastal program. No new mining activity shall take place prior to the issuance of a mining permit by the planning commission.

a. Existing Mining Operations. Existing mining operations are required to obtain a mining permit from the city in accordance with the requirements of this chapter within two years from the date of adoption of the ordinance codified in this chapter except as provided in subsection (D)(2)(d) of this section.

b. Mining Permit Review. The planning commission shall review mining permits issued pursuant to this chapter every five years. It shall be the sole responsibility of the operator to submit a written request to the planning commission prior to the expiration of each five-year period. Operator shall provide the planning commission with ample evidence that compliance is being maintained with the local coastal program and the approved reclamation plan for the site. The planning commission retains the right subsequent to

mining permit review to modify the terms of any mining permit required to assure continuing compliance with the local coastal program. Furthermore, the planning commission may consider and approve modifications of any mining permits so long as it finds that any such modification is in compliance with the local coastal program and reclamation plan.

c. **Review Period Adjustment.** It is the intent of the city to review mining permits concurrent with reviewing reclamation plans, whenever possible, for any individual mining operation. In order to assure that the city's intent is realized the planning commission may permit reasonable adjustments in the timing of mining permit review.

d. **Permit Limitations.** No person who has obtained a legal vested right to conduct a surface mining operation prior to January 1, 1976 shall be required to secure a mining permit pursuant to the provisions of this chapter so long as such vested right continues, provided that no substantial change is made in that operation except in accordance with the provisions of this chapter.

e. **Mining Permit Revocation.** Mining permits may be revoked by the planning commission following a hearing. Operator shall be notified in writing at least ten days prior to such hearing. Grounds for revocation shall be noncompliance with the provisions of this chapter, the approved reclamation plan, coastal development permit (if applicable) and the local coastal program (if applicable).

f. **Notification of State Geologist.** The State Geologist shall be notified of the filing of all permit applications.

g. **Periodic Review.** This chapter shall be reviewed and revised, as necessary to ensure that it is consistent with the state policy for mined lands reclamation and the city's local coastal plan and general plan.

3. **Reporting Provision.** In order to establish reference base data for the purpose of determining whether or not any particular mining activity constitutes new mining activity and to monitor shoreline erosion it is required that all operators of existing mining operations submit to the planning department a brief written statement specifying the approximate annual volume of sand being removed and an accurate cronaflex ortho-topographic map, at a scale of one inch equals two hundred feet with two-foot contour intervals, preferably prepared by a licensed photogrammetric engineer. All elevations on said map shall be based on city datum. Said maps may also be prepared by a licensed surveyor or civil engineer. All areas being mined shall be clearly and accurately outlined on said topographic map. The information specified above shall be certified for accuracy and be submitted by the operator to the city.

a. **Initial Submittal.** Initial submittal of the reference base data shall be completed by existing operators within six months from the effective date of the ordinance codified in this chapter.

b. **Subsequent Resubmittal.** Updated reference base data shall be resubmitted to the planning department by January 1, 1984 and every January 1st thereafter.

- ii. A description of the manner in which rehabilitation of affected natural habitat areas to their original condition will occur, and
 - iii. A description of the manner in which the tsunami run-up zone will be preserved to protect the public safety of the community;
- i. An assessment of the effect of implementation of the reclamation plan on future mining in the area;
 - j. A statement that the person submitting the plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan; and acknowledgement that the obligations of the plan transfer from one operator to another on a site;
 - k. An environmental assessment of the area to be mined executed by at least a qualified biologist and a qualified geologist selected from the city's list;
 - l. If in the environmental assessment, any rare and endangered species habitats and/or shoreline erosion are found to be present on the site, an environmental impact report must be completed and all mitigations, including those for rare and endangered species and/or shoreline erosion, included in the proposed reclamation plan;
 - m. Compliance and conformance with the Marina local coastal program and city's general plan, zoning ordinance and any other pertinent city ordinances and regulations;
 - n. Map of all areas mined prior to January 1, 1976;
 - o. Any other information which the planning commission may require as pertinent to the determination of the adequacy of the proposed plan.
6. Time Limits. Time limits for the approval of a reclamation plan or mining permit for existing operations may be extended for a period of up to one year by the planning commission or city council on appeal subject to the following conditions:
- a. Written request is provided by the operator prior to expiration of initial two-year time period.
 - b. Operator shall submit evidence to planning commission or city council showing good cause for the extension request.
7. Transferability. Whenever one operator succeeds to the interest of another in any uncompleted surface mining operation by sale, assignment, conveyance, exchange, or other means, the successor shall be bound by the provisions of the approved reclamation plan and the provisions of this chapter.
- E. Review Procedure. The planning commission shall review the permit application and the reclamation plan and shall schedule a public hearing within thirty days of accepting the completed application. The public hearing will be held for the purpose of considering a permit or reclamation plan for the proposed surface mining operation.

F. Performance Bond. Upon a finding by the planning commission that a supplemental guarantee for the reclamation of the mined land is necessary, and upon the determination by the city planner of the cost of the reclamation of the mined land according to the reclamation plan, a surety bond, lien, or other security guarantee conditioned upon the faithful performance of the reclamation plan shall be filed with the city. Such surety shall be executed in favor of the city and reviewed and revised, as necessary. Such surety shall be maintained in an amount to complete the remaining reclamation of the site as prescribed in the approved or amended reclamation plan during the succeeding two-year period, or other reasonable term.

G. Public Record. Reclamation plans, reports, applications and other documents submitted pursuant to this chapter are public records unless it can be demonstrated to the satisfaction of the city that the release of such information, or part thereof, would reveal production, reserves, or rate of depletion entitled to protection as proprietary information. The city shall identify such proprietary information as a separate part of each application. A copy of all permits, reclamation plans, reports, applications, and other documents submitted pursuant to this chapter, including proprietary information, shall be furnished upon request of the district geologist of the State Division of Mines and Geology by the city. Proprietary information shall be made available to persons other than the mine owner in accordance with Section 2778, California Surface Mining and Reclamation Act of 1975.

H. Amendments.

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

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

I. Variance. Variances from an approved reclamation plan may be allowed upon request of the operator and applicant, if they are not one and the same, upon findings by the planning commission that each requested variance is necessary to achieve the prescribed or higher use of the reclaimed land and is consistent with the Marina local coastal program.

J. Appeal. Any person aggrieved by an act or determination of the planning commission in exercise of the authority granted herein shall have the right to appeal to the city council. Any appeal must be filed, on forms provided, within ten working days after the rendition, in writing, of the decision.

K. Enforcement. The provisions of this chapter shall be enforced by any authorized member of the planning department or such other persons as may be designated by the city council.

L. Separability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of this chapter. (Ord. 2007-11 § 3 (Exh. A (part)), 2007)

“EXHIBIT B”

Borehole Locations

