

## CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

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Extended to:	June 27, 1998
Staff:	James Muth
Staff Report:	September 24, 1997
Meeting of:	October 9, 1997
Commission Action:	

TO: Commissioners and Interested Parties

FROM: Steven F. Scholl, Deputy Director  
Robert S. Merrill, North Coast District Manager  
James Muth, North Coast Planner

SUBJECT: **Del Norte County LCP Amendment No. 1-97 (major),**  
Revised County-wide Surface Mining and Quarries Ordinance (for  
Commission consideration at the meeting of October 9, 1997 in Del  
Mar)

SYNOPSISAmendment Description.

Del Norte County LCP Amendment No. 1-97 amends the County's Implementation Program to include a revised, County-wide Surface Mining and Quarries Ordinance.

Analysis Criteria.

To approve the LCP amendment, the Commission must find that the Implementation Plan, as amended, conforms with and is adequate to carry out the policies of the Land Use Plan (LUP).

Summary of Staff Recommendation.

Staff recommends approval of the LCP amendment with two suggested modifications. First, Section 7.36.045 of the proposed ordinance should be modified to recognize the Coastal Commission's authority for certifying LCP amendments. The language of Section 7.36.045 of the proposed ordinance would automatically incorporate by reference future changes of the State Surface Mining and Reclamation Act (SMARA) of 1975 and its regulations into the County's General Plan/LCP without certification of an LCP amendment by the Commission as required by Section 30514(a) of the Coastal Act. The suggested modification would require that all future changes to the ordinance be certified by the Commission as an LCP amendment before those changes become effective. Second, Section 7.36.085 of the proposed ordinance should be modified to include a cross-reference for appeals within the coastal zone to clarify that County-approved permits for projects within the coastal zone may be appealable to the Commission.

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If the LCP amendment is modified as suggested, the proposed ordinance will conform with and be adequate to carry out the policies of the certified LUP. The appropriate motion and resolution to adopt the staff recommendation are found on pages 2 and 3 of the staff report.

### Additional Information.

For further information, please contact James Muth at (415) 904-5260. Correspondence should be sent to the Coastal Commission at the above address, attention James Muth.

### LCP AMENDMENT BACKGROUND.

Del Norte County LCP Amendment No. 1-97 amends the County's Implementation Program to include a revised, County-wide surface mining and quarries ordinance. The LCP amendment was considered by the County's Planning Commission at two public hearings on January 29, 1997 and February 5, 1997. The LCP amendment was considered by the County's Board of Supervisors at a public hearing on March 25, 1997.

The LCP amendment was submitted to the Coastal Commission on March 31, 1997 and filed as complete on June 27, 1997. Pursuant to Sections 30513 and 30514 of the Coastal Act, on August 14, 1997, the Coastal Commission voted to extend the 60-day deadline for action on the LCP amendment until June 27, 1998.

### I. STAFF RECOMMENDATION ON THE LCP AMENDMENT.

Staff recommends that, following a public hearing, the Commission adopt the following resolutions and related findings:

#### A. Denial of the LCP amendment as submitted.

##### MOTION:

"I move that the Commission reject the LCP Amendment No. 1-97 to the Implementation Plan of Del Norte County's Local Coastal Program."

Staff recommends a YES vote on the motion which would result in rejection of the LCP amendment as submitted and the adoption of the following resolution and findings. An affirmative vote of the majority of the Commissioners present is needed to pass the motion.

##### RESOLUTION A:

The Commission hereby rejects certification of LCP Amendment No. 1-97 to the Implementation Plan portion of Del Norte County's Local Coastal Program for the specific reasons discussed in the findings on the grounds that as submitted, the amendment does not conform with and is inadequate to carry out the provisions of the Land Use Plan as certified. There are feasible

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alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact within the meaning of CEQA, that the approval of the amendment would have on the environment.

### B. Approval of the LCP amendment if modified as suggested.

#### MOTION:

"I move that the Commission approve Amendment No. 1-97 to the Implementation Plan of the Del Norte County's Local Coastal Program if modified as suggested."

Staff recommends a YES vote which would result in the adoption of the following resolution and findings. An affirmative vote of the majority of the Commissioners present is needed to pass the motion.

#### RESOLUTION B:

The Commission hereby approves certification of Amendment No. 1-97 to the Implementation Plan of the Del Norte County Local Coastal Program according to Modifications 1 and 2 for the specific reasons discussed in the following findings on the grounds that the Implementation Plan as modified, conforms with and is adequate to carry out the provisions of the Land Use Plan as certified. Approval of the Implementation Plan if modified as suggested would have no significant adverse impact on the environment within the meaning of CEQA.

### II. SUGGESTED MODIFICATIONS

There are two suggested modifications. The modifications apply to Sections 7.36.045 and 7.36.085 of the proposed ordinance.

Attached Exhibit 3 presents the revised Surface Mining and Quarries Ordinance that would be substituted by LCP Amendment No. 1-97 for the current Surface Mining and Quarry Ordinance, attached as Exhibit 1. A summary of the differences in the two ordinances is contained in Finding A-2 of this report, "LCP Amendment Description and Highlighted changes." The Suggested Modifications below show the amended text proposed by the County in plain type, while additions suggested by the Commission are underscored, and suggested deletion are struck through.

#### SUGGESTED MODIFICATION NO. 1

Section 7.36.045 shall be modified as follows:

As applied to areas located outside of the coastal zone, the provisions of SMARA (PRC 2710 et seq.) PRC Section 2207, and State regulations CCR 3500 et. seq., as those provisions and regulations may be amended from time to time, are made a part of this Chapter by reference with the same

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force and effect as if the provisions therein were specifically and fully set out herein, excepting that when the provisions of this Chapter are more restrictive than State provisions, this Chapter shall prevail. As applied to areas within the coastal zone, an amendment to SMARA or its regulations shall not become effective and part of the County's LCP until the amendment has been certified by the Coastal Commission.

### SUGGESTED MODIFICATION NO. 2

Section 7.36.085 shall be modified as follows:

- A. Any person, including the applicant, aggrieved by an action of the Planning Commission other than an action on a use permit that would serve as a coastal development permit pursuant to Section 21.50.020 of the coastal zoning ordinance may appeal that action to the Board of Supervisors following the procedure set forth in Section 20.58.010. An action of the Planning Commission on a use permit that would serve as a coastal development permit may be appealed to the Board of Supervisors following the procedure set forth in Chapter 21.51 of the coastal zoning ordinance.

### III. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares as follows.

#### A. LCP AMENDMENT DESCRIPTION.

##### 1. Components of Certified LCP

The Coastal Commission certified Del Norte County's Implementation Plan in July of 1983. As described on pages three and four of the staff report for certification:

the County's Zoning and Implementation Program consists of: revision to existing County ordinances to insure consistency with the approved land use plan, a surface mining and quarry ordinance, grading standards, subdivision ordinance, resource protection ordinance, mobile home standards, and a coastal overlay district.

In 1995/1996 the Coastal Commission approved an amendment to the County's Implementation Plan for a County-wide ordinance to allow the placement of manufactured homes and mobile homes on a property and to expand the use permit process to allow permanent second dwelling units and temporary second dwelling units for senior or invalid care on a property.

##### 2. Background.

Since 1983, Del Norte County has had a surface mining and quarry ordinance that is based on the State Surface Mining and Reclamation Act of 1975

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(SMARA). SMARA is the state law that establishes the requirements for commercial surface mining throughout the state. Under SMARA, all but certain exempt mining operations are required to be permitted by a lead agency (in this case Del Norte County), and to also have: (1) an approved reclamation plan for eventual closing of the mine, and (2) approved financial assurances in an amount sufficient to complete the reclamation of the mine (should the operator fail to perform final reclamation).

In July of 1983, the Coastal Commission approved a surface mining and quarries ordinance as part of the County's implementation program. This ordinance needs to be updated and revised to reflect changes the State Legislature have made to SMARA and changes the Department of Conservation, Division of Mines and Geology, have made to SMARA regulations that include: (a) requirements for annual investigations of each mine by the lead agency and reports on each investigation, (b) requirements for annual reports by operators of each mine with annual fees, (c) expanded financial assurance requirements for reclamation, and (d) establishing a process for fines for mining operations not in compliance with SMARA. The County has based the revisions to its ordinance on the State Model Ordinance prepared by the Department of Conservation to ensure compliance with SMARA.

Del Norte County has approximately 14 permitted mining and quarry operations. Eight of these 14 operations are located within the coastal zone. Of the approximately eight operations located within the coastal zone, seven operations are in-stream sand and gravel extraction operations located primarily over the seasonally exposed portions of gravel bars located within the lower Smith River. The lower Smith River is located west of, and downstream from, the Highway 101 or Dr. Fine Bridge that crosses the Smith River. The in-stream operations within the lower Smith River are all located within the original or retained permit jurisdiction of the Coastal Commission. Some processing and crushing is allowed with four of the in-stream extraction operations located on the lower Smith River; however, all processing occurs outside of the stream channel and on the upland area above the bank of the river, which is within the coastal zone permit jurisdiction of the County. The remaining extraction operation within the coastal zone is a surface rock quarry located between Highway 101 and the ocean, just north of the Smith River Rancheria.

The County requires a conditional use permit for all extractive operations under SMARA. Each use permit for mining operations is subject to an annual review by the County. The County reviews all of the use permits for mining operations at the same time to help determine overall extraction rates. The conditional use permit and CEQA process requires that potential impacts to wildlife habitat, fisheries, and archaeological/historical resources be identified and mitigated prior to issuance of a permit to operate.

Within the coastal zone, the conditional use permit required for extractive operations serves as the coastal development permit. Chapter 21.50.020 of the County's coastal zoning ordinances states in applicable part that:

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Where development within the California Coastal Zone requires the issuance of a permit or other entitlement pursuant to Titles 14, 16 and 21 of the Del Norte County Code (e.g., General Plan amendment, zoning amendment, use permit, variance, building permit or grading permit or tentative map), said entitlement shall serve as the coastal development permit....

### 3. LCP Amendment Description and Highlighted Changes.

The County's existing, 13-page surface mining and quarries ordinance is found in Chapter 7.36 of the County's Implementation Plan and is attached to this staff report as Exhibit No. 1. Exhibit No. 3 contains the full, 17-page text of the proposed LCP amendment. There are a number of changes between the existing and the proposed surface mining and quarries ordinances. As submitted, the proposed ordinance:

- a. Deletes the definition for the term "personal use", adds new definitions for the terms: "area of regional significance", "area of statewide significance", "borrow pit", "compatible land use", "haul road", "idle", "incompatible land use", and "operator", and clarifies the definitions for the terms "minerals" and "surface mining operations".
- b. Creates Section 7.36.045, "Incorporation by Reference", whose provisions allow changes in the State Surface Mining and Reclamation Act of 1975 and changes in the law's regulations to be automatically incorporated by reference into the County's General Plan/LCP.
- c. Revises Section 7.36.050, "Compliance with Provisions Required - Exceptions", to add provisions which clarify that: (1) conducting a surface mining operation first requires County approval of a use permit (which serves as a coastal development permit within the coastal zone), reclamation plan, and financial assurances for the reclamation plan, (2) any applicable exemption from the proposed ordinance does not automatically exempt a project or activity from other regulations, ordinances, or policies of the County, including CEQA, and (3) excavation by the owner for his own personal use is no longer exempted under this ordinance. In addition, the amendment revises the section to add new exemptions. As amended, the list of mining activities that are exempt from the requirements of the ordinance includes the following:
  - (a) excavations or grading conducted for farming, on-site construction, or restoring land following a flood or natural disaster,
  - (b) operation of a mineral processing plant under certain conditions,
  - (c) prospecting for, or extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less,
  - (d) surface mining operations whose sole purpose is to protect a mining claim under federal law,
  - (e) any other surface mining operations that the State Mining and

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- Geology Board determines to be of an infrequent nature and which involve only minor surface disturbance,
- (f) solar evaporation of sea water to produce salt and related minerals,
  - (g) emergency excavations or grading conducted by the Department of Water Resources or the Reclamation Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies, and
  - (h) road construction and maintenance for timber forest operations if the land is owned by the same person or entity, if the excavation is conducted adjacent to timber or forest operation roads, if slope stability and erosion are controlled in accordance with Board regulations and, upon closure of the site, if the person closing the site implements, where necessary, revegetation measures and post-closure uses in consultation with the Department of Forestry and Fire Protection, and so long as the on-site excavation or grading does not occur within 100 feet of a class one watercourse or 75 feet of a class two watercourse, and so long as the excavated materials are not sold for commercial purposes.
- d. Creates Section 7.36.065, "Vested Rights", which revises the vested rights provisions of Section 7.36.190 in the existing ordinance. The revised provisions continue to recognize the right of operations conducted prior to January 1, 1976, which have previously been recognized as vested to continue those operations, but states that no new vested rights operations will be permitted within Del Norte County.
  - e. Revises Section 7.36.070, "Permit - Application", whose provisions have been expanded to include: (1) new application forms provided by the County Planning Division, (2) all required environmental review forms, (3) new procedures to review and process permit applications, and (4) additional site information including, submission of a current tax assessor's map.
  - f. Revises Section 7.36.120, "Excavation Regulations", in two ways. First, subsection (a), whose provisions now prohibit the extraction of gravel from the live waters of a river to allow such extraction if it is specifically permitted by the Department of Fish and Game. The revision is designed to allow trenching in the channels to promote fish passage and permit anadromous fish from being stranded by shallow water sections of the river. Second, subsection (b), whose provisions now require that extraction volumes not exceed the average annual bedload at any project site, would be revised to state that "average annual bed load for any extraction area on a county river or stream shall provide a guide to determine maximum extraction volumes."
  - g. Revises Section 7.36.130, "Gravel Extractions", whose provisions now require that finished grades for surface mining operations have slopes of not less than one and one-half percent, sloping towards the channel.

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The amendment would allow deviations from this standard if otherwise permitted by the Department of Fish and Game.

- h. Revises Section 7.36.160, "Site Reclamation and Standards", to add provisions that: (1) no surface mining operation or quarry use permit be issued prior to the Planning Commission approval of both a reclamation plan and financial assurances instead of just prior to Planning Commission approval of a reclamation plan as the current ordinance requires, (2) all reclamation plans must comply with the provisions of SMARA (2772 and 2773) and State regulations (CCR 3500-3505), (3) reclamation plans approved after January 15, 1993, reclamation plans for proposed new mining operations, and any substantial amendments for reclamation plans must comply with the requirements for reclamation performance standards (CCR 3700-3713), (4) the County may impose additional performance standards as developed either in review of individual projects, as warranted, or through the formulations and adoption of Countywide performance standards, (5) reclamation activities must be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance, (6) the County may require interim reclamation for mined lands that have been disturbed and that may be disturbed again in future operations, (7) reclamation may be done on an annual basis, in stages compatible with continuing operations, or on completion of all excavation, removal, or fill, as approved by the County, and (8) each phase of reclamation must be specifically described in the reclamation plan and include: (a) the beginning and expected ending dates for each phase, (b) all required reclamation activities, (c) criteria for measuring completion of specific reclamation activities, and (d) estimated costs for completion of each phase of reclamation.
- i. Creates Section 7.36.165, "Statement of Responsibility", which requires that: (1) the person submitting the reclamation plan sign a statement accepting responsibility for reclaiming the mined lands in accordance with the reclamation plan, (2) the statement be kept by the Planning Division in the mining operation's permanent record, and (3) upon sale or transfer of the operation, the new operator must submit a signed statement of responsibility to the Planning Division for placement in the permanent record.
- j. Creates a new Section 7.36.170, "Findings for Approval", whose provisions require that use permits for site approval for surface mining operations include a finding that the project complies with the provisions of SMARA and State regulations and that reclamation plans include findings that the plan: (1) complies with SMARA Sections 2772 and 2773 and with the applicable requirements of State regulations (CCR 3500-3505 and 3700-3713), (2) is consistent with County's General Plan, (3) has been reviewed pursuant to CEQA and the County's environmental review guidelines, (4) mitigates all significant adverse impacts to the maximum extent feasible, (5) will reclaim mined lands to a condition



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that is compatible with, and blends in with, the surrounding natural environment, topography, and other resources or that suitable off-site development will compensate for related disturbance to resource values, (6) will restore the mined lands to a useable condition which is readily adaptable for alternative land uses consistent with the General Plan and applicable resource plan, and (7) includes a written response to the State Department of Conservation that describes the disposition of major issues raised by the DOC, and where the County's position is at a variance with the recommendations and objections raised by the DOC and why.

- k. Creates the following new sections to reflect other new SMARA requirements: (1) Section 7.36.180 establishing requirements for Financial Assurances to ensure that reclamation will proceed in accordance with the approved reclamation plan, (2) Section 7.36.190 establishing requirements for Interim Management Plans to ensure that the operator maintains an ongoing mining operation in a stable condition, (3) Section 7.36.200 establishing requirements for the submittal of Annual Reports to the County and DOC, (4) Section 7.36.210 for inspections establishing requirements that the County inspect mining operations at least once a year, (5) Section 7.36.220 establishing procedures for the County to resolve violations, (6) Section 7.36.230 establishing requirements for processing Fees, (7) Section 7.36.240 establishing County policy that mineral resource areas be protected from intrusion by incompatible land uses, and (8) Section 7.36.250 for Severability so that any portion of the ordinance which is determined to be invalid or unconstitutional by a court of competent jurisdiction will not affect the remaining portions of the ordinance.

### **B. ANALYSIS OF LCP AMENDMENT.**

To approve the amendment, the Commission must find that the Implementation Plan, as amended, conforms with and is adequate to carry out the policies of the Land Use Plan (LUP). The findings below are for denial of the LCP amendment as submitted, followed by findings for approval of the LCP amendment if modified as suggested.

#### **1. Findings for Denial of the LCP Amendment as Submitted.**

Section 7.36.045 of the proposed ordinance is entitled "Incorporation by Reference." The language of Section 7.36.045 allows future changes in the State Surface Mining and Reclamation Act (SMARA) of 1975 and its regulations to be automatically incorporated by reference into the County's General Plan/LCP and to be fully effective for areas within and outside of the coastal zone, without certification by the Coastal Commission as an LCP amendment. Section 30514(a) of the Coastal Act requires that an LCP amendment shall not take effect until the amendment has been certified by the Coastal Commission. As a result, the County's LUP does not have, and can never have, a policy that would allow future changes to the County's LCP to be automatically

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incorporated by reference and to become effective without certification by the Coastal Commission. Consequently, the Implementation Plan amendment must be denied as submitted as the language of Section 7.36.045 as proposed is inconsistent with the Coastal Act.

In addition, Section 7.36.085 of the proposed ordinance applies to appeals, stating that actions of the Planning Commission on Surface Mining Appeals may be appealed to the Board of Supervisors following the procedures set forth in Section 20.58.010 (the appeal procedure for actions on matters other than coastal development permits. There is no corresponding cross-reference to Sections 21.51.010 through 21.51.050 (the appeal procedure for the coastal zone portion of the County). The proposed language does not take into account that appeals of actions on use permits that would serve as coastal development permit appeal procedure set forth in Chapter 21.52 of the coastal zoning ordinance. Without clarification that appeals of actions on use permits serving as coastal development permits must be reviewed pursuant to this other section of the ordinance, the ordinance language could lead to confusion over the proper application of appeal procedures. Consequently, the LCP amendment must be denied as submitted as it is unclear whether the language of Section 7.36.085 is adequate to carry out LCP provisions for local appeals in the coastal zone consistent with Coastal Act requirements.

### 2. Findings for Approval of the LCP Amendment if Modified as Suggested.

#### a) Implementation Plan Sections Suggested for Modification.

If appropriate text is added to Section 7.36.045 to make it clear that any future changes to the proposed ordinance and to Del Norte County's LCP for areas within the coastal zone will not become effective until those changes have been certified by the Coastal Commission as an LCP amendment, then Section 7.36.045 can be found to conform with and be adequate to carry out the policies of the County LUP. The suggested modification below is based on the requirements of Section 30514(a) of the Coastal Act (which requires certification by the Commission of any LCP amendment before it becomes effective) and based on the fact that there is no LUP policy that would conform with Section 7.36.045 as proposed. Therefore, if the proposed ordinance is modified as suggested below with the underlined text, then Section 7.36.045 would read as follows:

#### MODIFICATION NO. 1

##### Section 7.36.045 Incorporation by Reference.

As applied to areas outside of the coastal zone, the provisions of SMARA (PRC 2710 et seq.) PRC Section 2207, and State regulations CCR 3500 et. seq., as those provisions and regulations may be amended from time to time, are made a part of this Chapter by reference with the same force and effect as if the provisions therein were specifically and fully set out herein, excepting that when the provisions of this Chapter are more

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restrictive than State provisions, this Chapter shall prevail. As applied to areas within the coastal zone, an amendment to SMARA or its regulations shall not become effective and part of the County's LCP until the amendment has been certified by the Coastal Commission.

In addition, if appropriate text is added to Section 7.36.085 to make it clear that local appeals of use permits serving as coastal development permits are subject to the procedure found in Chapter 21.52 of the County's LCP, then Section 7.36.085 of the amendment can be found to conform with and be adequate to carry out the provisions of the LUP for local appeals in the coastal zone. Therefore, if the proposed ordinance is modified as suggested below with the underlined text, then paragraph A of Section 7.36.085 would read as follows:

### MODIFICATION NO. 2

#### Section 7.36.085 Appeals.

A. Any person, including the applicant, aggrieved by an action of the Planning Commission other than an action on a use permit that would serve as a coastal development permit pursuant to Section 21.50.020 of the coastal zoning ordinance may appeal that action to the Board of Supervisors following the procedure set forth in Section 20.58.010. An action of the Planning Commission on a use permit that would serve as a coastal development permit may be appealed to the Board of Supervisors following the procedure set forth in Chapter 21.51 of the coastal zoning ordinance.

#### b. Implementation Plan Sections Approved as Submitted.

The provisions of the Implementation Plan amendment other than Sections 7.36.045 and 7.36.085, for which modifications are suggested as discussed above, conform with and are adequate to carry out the Land Use Plan.

The LUP policies that are applicable to the proposed LCP amendment are Extractive Resource Policies No. 9, 10, 11, and 12 found on pages 58 and 59 of the LUP.

#### i. LUP Policy No. 9 on page 58 states:

Operators of extraction operations shall take all precautions necessary to avoid contamination from waste disposal or general operation activity of the site, nearby streams or rivers, air, and the environment in general. Existing and future local, state and federal regulations will be met or exceeded.

#### ii. LUP Policy No. 10 on page 58 states:

No extraction shall be permitted in areas where it would significantly bar, alter, or destroy wildlife habitat, fisheries or archaeological or historic sites without mitigation.

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The Commission finds that the Implementation Plan, as amended by the proposed LCP amendment conforms with and is adequate to carry out LUP Policies No. 9 and 10 above because: (a) all terms associated with surface mining and quarry operations are well defined in Section 7.36.040 of the ordinance as amended to avoid ambiguity and to avoid unnecessary impacts to the environment, (b) no person is allowed to conduct a surface mining operation without first obtaining a permit and an approved reclamation plan having appropriate financial assurances pursuant to new Section 7.36.180 to reclaim the mined area, (c) all exempt project must still comply with other provisions of law, such as the requirements of CEQA to consider feasible, less environmentally damaging alternatives and to impose feasible measures to mitigate adverse impacts on the environment, and (d) the required findings for permit approval (pursuant to new Section 7.36.170), including conditions for periodic inspections, annual reviews, dust and noise control, etc. all collectively ensure that an approved mining operation will not contaminate the site, nearby streams or rivers, air, and the environment as indicated in LUP Policy No. 9 above and will not significantly bar, alter, or destroy wildlife habitat, fisheries, or archaeological or historic sites without mitigation as indicated in LUP Policy No. 10 above.

iii. LUP Policy No. 11 on pages 58 and 59 states:

Extractive resource areas shall be protected from incompatible development, which would seriously interfere with extractive operations, now or in the future.

The Commission finds that the Implementation Plan, as amended by the proposed LCP amendment conforms with and is adequate to carry out LUP Policy No. 11 above because Section 7.36.240 of the proposed ordinance has provisions that: (a) state mineral resource areas shall be protected from incompatible development that would interfere or preclude mineral extraction or processing, (b) require that the resource maps in the County's General Plan/LCP will be periodically updated to reflect mineral information provided by the State Mining and Geology Board, to help guide future land use decisions within the County to help conserve and protect mineral resources of regional significance, and (c) allow permit conditions to be imposed in permits granted for a use that would be incompatible with mineral resource protection to potential conflicts with existing mining operations.

iv. LUP Policy No. 12 on page 59 states:

Sand and gravel extractions along local streams and rivers shall continue as long as the replenishment rate is not exceeded. To reduce impact on stream courses, removal of sand and gravel from point bar deposits is recommended and will be critically examined along straight reaches.

The proposed amendment would change an existing provision of the ordinance (Section 7.36.120(B)) that requires that the aggregate gravel extraction

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volume of an in-stream extraction operation not exceed the average annual bedload for any project site. This current requirement has been interpreted as meaning that gravel could be extracted from a gravel bar in any one season in an amount that would be generated by the average annual rate of deposition on the site by the river, regardless of whether an amount of gravel beyond that needed to be retained on the site to prevent degradation of the river bottom actually exists at the site or whether a surplus of gravel has accumulated without extraction during previous years. The proposed amendment would loosen the requirements of Section 7.36.120(B) to only require that the average annual bed load shall provide a guide to determine maximum extraction volumes.

The Commission finds that the more flexible standard proposed in the amendment is appropriate for at least a couple of reasons. First, annual replenishment rates for sand and gravel resources along river bars will vary from year to year and from bar to bar, depending on a number of variables. For example, more gravel moves downstream during wet years than during drought years. The amount of sand and gravel that enters the upper watersheds of a riverine system and moves downstream is variable due to the presence or absence of landslides, highly erodible soils, and certain land use practices, such as timber harvest operations. Second, not every gravel bar along coastal rivers and streams is mined for sand and gravel resources on a year to year basis. A property owner/gravel operator may choose not to mine in any given year if market conditions are not favorable or if existing bar deposits are insufficient to meet the needs of the gravel operator. Consequently, a bar deposit may be allowed to build up to a point where it greatly exceeds the annual replenishment rate. An excess of material on gravel bars can damage a riverine ecosystem just as a deficit of material can. Excess material in the bed of a river can result in braided streams and the loss of deep water habitat, which collectively results in warmer water temperatures and the loss of cool water habitat for migratory fish. Thus, under certain circumstances, allowing a property owner or mining operator to exceed the annual replenishment rate for a particular year would not be inconsistent with the intent of LUP Policy No. 9 above, particularly if there is an excess of material on the bar, as such extraction would not exceed gravel deposits replenished in previous years and would not lead to degradation of the river. Therefore, it is important that the County be guided by a comprehensive and long-term view when complying with LUP Policy No. 9's prohibition against exceeding the replenishment rate. The Commission finds that the Implementation Plan as amended by the proposed LCP amendment conforms with and is adequate to carry out LUP Policy No. 12 above because Section 7.36.120 of the ordinance as amended, requires in applicable part as the average annual bed load for any extraction area on a county river or stream shall provide a guide to determine maximum extraction volumes.

### C. CEQA.

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local governments from the requirements of preparing an environmental impact

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report (EIR) in connection with a local coastal program (LCP). Instead, the CEQA responsibilities are assigned to the Coastal Commission. Additionally, the Commission's Local Coastal program review and approval procedures have been found by the Resources Agency to be functionally equivalent to the environmental review process. Thus, under Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an environmental impact report for each local coastal program submitted for Commission review and approval. Nevertheless, the Commission is required when approving a local coastal program to find that the local coastal program does conform with the provisions of CEQA.

The Commission finds that approval of the Implementation Program with the incorporation of the suggested modifications would not result in significant adverse environmental impacts under the meaning of CEQA. Absent the incorporation of these suggested modifications to effectively mitigate potential resource impacts, such a finding could not be made.

Specifically, the Implementation Plan as modified would carry out the new provisions of the Land Use Plan, specifically assure that sufficient water is available prior to approving proposed development consistent with the needs of priority uses, and would assure that the legally applicable LCP provisions are properly applied to projects entering the approval processes at different times relative to the effective date of the Amendment.

Given the suggested mitigation measures, the Commission finds that Del Norte County's Local Coastal Program, as modified, will not result in significant adverse environmental impacts under the meaning of the CEQA. Further, future individual projects would require coastal development permits, either issued by Del Norte County, in the case of areas of original jurisdiction, by the Coastal Commission. Throughout the coastal zone, specific impacts associated with individual development projects are assessed through the CEQA environmental review process; thus, an individual project's compliance with CEQA would be assured. Therefore, the Commission finds that there are no feasible alternatives under the meaning of CEQA which would reduce the potential for significant adverse environmental impacts which have not been explored.

# SURFACE MINING AND QUARRIES

## Chapter 7.36

### SURFACE MINING AND QUARRIES

#### Sections:

- 7.36.010 Title of provisions.
- 7.36.020 Purpose of provisions.
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<b>EXHIBIT NO.</b> 1
<b>APPLICATION NO.</b> DNC LCP Amend #1-97
Existing Ordinance

#### 7.36.010 Title of provisions.

The ordinance codified in this chapter shall be known and cited as the surface mining and quarry ordinance of the county. (Ord. 77-16 § 2.0, 1977.)

#### 7.36.020 Purpose of provisions.

The purpose of this chapter is to provide for the orderly use and regulation of surface mining and quarries within the unincorporated area of the county in keeping with the protection of the public health, safety, convenience and general welfare. (Ord. 77-16 § 1.0, 1977.)

## SURFACE MINING AND QUARRIES

### 7.36.030 Authority.

The ordinance codified in this chapter is adopted pursuant to Chapter 4, Article 2, Title 7, of the California Government Code, under the planning and health powers granted the county, and the Surface Mining and Reclamation Act of 1975. (Ord. 77-16 § 2.2, 1977.)

### 7.36.040 Definitions.

For the purpose of this chapter, certain words and phrases are defined as set forth in this section, and certain provisions shall be construed as set forth unless it shall be apparent from the context that they have different meaning:

- A. "Average annual bedload" means the average amount of gravel that is carried downstream in a normal year, and deposited during the high water season in the lower river bars.
- B. "Excavation" means any excavation, removal, relocation or alteration of the existing contours and location of any soil, earth, fill, sand, rock, gravel, or waste material more than ten cubic yards or as determined by the planning commission, or any combination thereof, and the conditions resulting therefrom.
- C. "Ground level" means and includes the natural or finished grade, surface, or contour of a site.
- D. "Mineral" means any naturally occurring element or compound or group of elements or compounds obtained for man's use including, but not limited to, sand, stone, ore, soil; not including geothermal resources, natural gas or petroleum.
- E. "Mined lands" means 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 excavation, 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.
- F. "Overburden" means soil, rock, or other materials that lie above a natural mineral deposit or in between deposits,



## SURFACE MINING AND QUARRIES

- before or after their removal by surface mining operations.
- G. "Personal use" means for the use of the owner (not to be sold) which meet the following criteria:
1. Excavations or grading conducted for farming or on-site construction or for the purpose of restoring land following a flood or natural disaster;
  2. Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than one thousand cubic yards in any one location of one acre or less;
  3. Surface mining operations that are required by federal law in order to protect a mining claim, if such operations are conducted solely for that purpose;
  4. Such other surface mining operations which are categorically identified by the State Mining and Geology Board pursuant to Section 2714(d) of the California Surface Mining and Reclamation Act of 1975.
- H. "Quarry" means premises from which any rock, sand, gravel, stone, earth, topsoil, or mineral is removed or excavated for the purpose of disposition away from the immediate premises, whether such disposition is immediate or in the future.
- I. "Reclamation" means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.
- J. "Reclamation plan" means the applicants' (operators') proposal to the lead agency for reclaiming the lands affected by his mining operation. Refer to Section 7.36.200.
- K. "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

## SURFACE MINING AND QUARRIES

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 the following:

1. In-place distillation or retorting or leaching;
2. The production and disposal of mining waste;
3. Prospecting and exploratory activities. (Ord. 81-28 § 3, 1981; Ord. 77-16 §§ 3.0-3.11, 1977.)

### 7.36.050 Compliance with provisions required—Exception.

It is unlawful for any person to operate or maintain or cause to be operated or maintained any surface mining operation or quarry in the county which is not in compliance with the provisions of this chapter with the following exceptions:

- A. Excavation by the owner for his own personal use as defined in Section 7.36.040;
- B. Excavation for the construction of any building for which a building permit has been duly issued, or excavation which is all or part of a grading operation necessary to bring the contours of a proposed land subdivision to the grades shown on a tentative subdivision plan which has been officially approved;
- C. Leveling of land for agricultural purposes;
- D. Those earth material moving activities (such as excavation, grading, compaction, and the creation of fills and embankments) which are required to prepare a site for construction of structures, landscaping, or other land improvements are not deemed to be surface mining operations if the resultant excavations, fills, grades, or embankments are beneficially modified by such construction of structures, landscaping, or other land improvements. Excavations, fills, grades, or embankments that of themselves constitute engineered works, such as dams, road cuts, fills, catchment basins, or levees, are not considered to be surface mining operations;
- E. Total excavations on any site or contiguous sites held under one ownership not exceeding ten cubic yards and where the

## SURFACE MINING AND QUARRIES

excavation is not intended for the purpose of disposition away from the immediate premises;

- F. Any such excavation, removal of rock, sand, stone, earth topsoil, or minerals that the county board of supervisors determines to be exempt and is categorically identified by the State Mining and Geology Board pursuant to the California Surface Mining and Reclamation Act of 1975. (Ord. 81-28 § 4, 1981; Ord. 77-16 §§ 4.0 – 4.6, 1977.)

### 7.36.060 Permit—Required when.

Surface mining and quarry operations may be operated in any portion of the county where there are provisions for such uses in the intended zones. Surface mining and quarry operations unless excluded by Section 7.36.050 are subject to the securing of a permit as specified in this chapter and subject to the regulations of this chapter. The issuance of such a use permit is a discretionary action of the planning commission. (Ord. 77-16 § 5.0, 1977.)

### 7.36.070 Permit—Application.

Each application for any such permit shall be made to the planning commission on a form provided by the planning department. Such applications shall be filled out completely and accompanied by the following:

- A. An accurate plot plan (assessor's parcel map) showing exterior boundaries of the property on which the proposed surface mining or quarry will be located, and the location of existing and/or proposed structures, roads, rivers, streams, or other significant land uses;
- B. Contour map when required by the planning commission;
- C. Aerial photos when required by the planning commission;
- D. Statement of plan of operation, including time limits, method of removal, how much to be removed, equipment to be used, areas to be removed, processing final grading of site and cleanup;
- E. Performance bonds, when required by the planning commission, shall be executed in favor of the county and maintained in an amount equal to the cost of completing

## SURFACE MINING AND QUARRIES

the reclamation of the site as prescribed in the approved or amended reclamation plan. Site reclamation will be completed during the prescribed time within the succeeding two-year period or other reasonable time as determined by the planning commission. Such surety shall be executed in favor of the county and reviewed and revised, as necessary, biannually. Such surety shall be maintained in an amount equal to the cost of completing 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;

- F. Filing fees shall be paid to the planning department and shall be as prescribed in the current fee schedule resolution of the board of supervisors;
- G. A site reclamation plan illustrating how the site is to be rehabilitated after completion of the excavation. This plan is mandatory for all projects which exceed items 1 through 4 in subsection G of Section 7.36.040, for both commercial and personal uses, and are discretionary to the planning commission for projects which are commercial but are less than items 1 through 4 in subsection G of Section 7.36.040, in scope and size. A recommended form is available from the planning department. All plans must include the information requested in Section 7.36.200. (Ord. 82-09 § 2 Exh. A (11), 1982; Ord. 77-16 §§ 6.0 – 6.7, 1977.)

### 7.36.080 Permit—Issuance—Hearing.

- A. At the completion of the application procedure outlined in Section 7.36.070, the planning department will review the use permit application for the following:
  - 1. Site inspection shall determine whether the proposed surface mining or quarry conforms to the provisions of this chapter;
  - 2. That the proposal is consistent with the terms of any other county ordinance or state law;
  - 3. A public hearing shall be scheduled to determine public attitudes towards the project and make findings as to whether the project may be a public nuisance;
  - 4. As lead agency, the county planning commission may

## SURFACE MINING AND QUARRIES

- require an environmental impact report be prepared.
- B. If, in the opinion of the planning commission, the proposed surface mining operation or quarry will not be deemed detrimental, a seasonal use permit or up to a twenty-four-month permit shall be issued as provided in this chapter. The planning commission, in issuing any such permit, shall specify such conditions as are deemed necessary for the protection of persons and property in the area and to ensure the operation will not significantly adversely affect the character of the area in which the surface mining operation or quarry is located. In order to ensure compliance with such conditions, the planning commission, as a condition of approval for the permit or the reclamation plan, or both, shall impose a schedule for periodic inspections of the site to evaluate continuing compliance with the permit and the reclamation plan. Inspection may coincide with the issuance and subsequent review for renewal of the issued use permit and shall include an inspection upon completion of the project. The planning commission may require bonds and other guarantees as are necessary to ensure compliance with the regulations imposed under the terms of any permit. (Ord. 81-28 § 1, 1981; Ord. 77-16 §§ 7.0 – 7.4, 1977.)

### 7.36.085 Appeals.

- A. Any person, including the applicant, aggrieved by an action of the planning commission may appeal that action to the board of supervisors following the procedure set forth in Section 20.58.010.
- B. An application for a permit to operate which is denied in an area of statewide or regional significance, as designated by the State Mining and Geology Board, may be appealed under Section 2775 of the Surface Mining and Reclamation Act of 1975 to the state board.
- (Ord. 84-16 § 1, 1984; Ord. 81-28 § 2, 1981.)

## SURFACE MINING AND QUARRIES

### 7.36.100 Permit—Suspension or revocation.

Any permit granted under this chapter shall be subject to revocation or suspension by the planning commission where violation of this chapter, contingencies of the use permit, or a proven public nuisance have occurred. Revocation or suspension proceedings shall be the following:

- A. A notice shall be served on the permit holder specifying:
  - 1. He has failed to comply with the provisions of this chapter or with the terms specified in the permit;
  - 2. He must cease operation of any surface extraction or quarry until the county planning commission may hold a public hearing;
  - 3. He shall be required to appear before the planning commission at a date and hour specified, not less than thirty days after the serving of the notice, to show cause for the permit to be reinstated.
- B. A public hearing shall be held by the county planning commission.
- C. The planning commission shall confront the permit holder during the public hearing of any charges or complaints which have been filed in the planning department.
- D. The permit holder shall have the right to appear in person or by counsel and introduce such evidence as he may desire to show why his use permit should be reinstated.
- E. After the hearing, the planning commission may, if it is their opinion the permit holder has violated the terms of his permit, revoke or reinstate the permit.
- F. The permit holder may appeal to the county board of supervisors regarding revocation. (Ord. 77-16 §§ 9.0 – 9.6, 1977.)

## SURFACE MINING AND QUARRIES

### 7.36.110 Operation regulations generally.

Surface mining operations may be conducted and maintained in any zone district where it is permitted subject to the general requirements of Sections 7.36.120 through 7.36.160. (Ord. 77-16 § 10.0, 1977.)

### 7.36.120 Excavation regulations.

- A. Gravel extractions shall not be excavated from the live waters of the river.
- B. Aggregate gravel extraction volume shall be discretionary to the planning commission, but in no case shall the extraction volume exceed the average annual bedload, if known, for any project site on a county river or stream.
- C. Quarries shall in no case allow cut slopes at a ratio steeper than two to one to be brought closer than twenty-five feet of any exterior property line. (Ord. 77-16 § 10.1, 1977.)

### 7.36.130 Gravel extractions, drainage within stream channels.

- A. The finished excavation shall in all cases be graded in such a manner as to prevent accumulation of waters or natural seepage.
- B. Finished grades in the case of surface mining operations shall have slopes of not less than one and one-half percent, sloping towards the channel. (Ord. 82-09 § 2 Exh. A(13), 1982; Ord. 77-16 § 10.2, 1977.)

### 7.36.140 Erosion control and screening.

- A. All surface drainage existing or developed by or through the surface mining operation of a quarry shall be controlled by dikes, barriers, or drainage structures to any existing drainage course and permitted from encroaching on state or county roads or private property. All provisions to control natural drainage or floodwater shall meet with the approval of the county engineer.
- B. Existing trees and natural undergrowth should be retained to screen the proposed operation and maintain the stability

## SURFACE MINING AND QUARRIES

of surrounding terrain. (Ord. 82-09 § 2 Exh. A(4), 1982; Ord. 77-16 § 10.3, 1977.)

### 7.36.150 Maintenance and operation.

- A. The surface mining operation shall be maintained at all times in a neat and orderly manner to the satisfaction of the planning director.
- B. The surface mining operation or quarry shall be conducted in such a manner as to obviate excessive dust and noise. The operator shall maintain haulage roads in a dust-free condition.
- C. The holder of the surface mining or quarry permit shall be responsible for the spilling or dumping of materials related to the quarry operation on county roads. (Ord. 77-16 § 10.4, 1977.)

### 7.36.160 Site reclamation.

- A. No surface mining or quarry use permit shall be issued prior to the planning commission approval of a reclamation plan subject to the provisions of subsection G of Section 7.36.070.
- B. The holder of the surface mining or quarry operation permit shall be responsible for adhering to the approval plan as set forth in subsection A of this section.
- C. Whenever one operator succeeds to the interest of another in any incompletd surface mining operation by sale, assignment, transfer, conveyance, exchange, or other means, the successor shall be bound by the provisions of the approved reclamation plan and the provisions of this chapter. (Ord. 77-16 § 10.5, 1977.)



## SURFACE MINING AND QUARRIES

### 7.36.170 Enforcement of provisions.

Any surface mining operation or quarry set up, altered, constructed, enlarged, converted, operated, or maintained contrary to the provisions of this chapter and/or any use of any land or premises established, conducted, operated, or maintained contrary to the provisions of this chapter shall be, and the same is declared to be, unlawful and a public nuisance. The district attorney of the county shall, upon order of the board of supervisors, immediately commence action or proceedings for the abatement and removal and injunction thereof, in the manner provided by law and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief, as will abate and remove such quarry and restrain and enjoin any person from setting up, maintaining, using any quarry, or using any property contrary to the provisions of this chapter. (Ord. 77-16 § 11.0, 1977.)

### 7.36.180 Emergency action.

Should the county board of supervisors declare an emergency situation due to floods, earthquakes, or any other such emergencies, provisions of this chapter governing surface mining and quarry operations may be temporarily suspended by board action until such time as the emergency situation is mitigated. (Ord. 77-16 § 12.0, 1977.)

### 7.36.190 Prior vested rights.

- A. No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit pursuant to the provisions of this chapter as long as such vested right continues; provided, however, that no substantial changes may be made in any such operation except in accordance with the provisions of this chapter. A person shall be deemed to have such vested rights if, prior to January 1, 1976, he has, in good faith and in reliance upon a permit or other authorization, if such permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary

## SURFACE MINING AND QUARRIES

therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials.

- B. A person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall submit to the lead agency and receive, within a reasonable period of time, approval of a reclamation plan for operations to be conducted after January 1, 1976, unless a reclamation plan was approved by the lead agency prior to January 1, 1976, and the person submitting the plan has accepted responsibility for reclaiming the mined lands in accordance with the reclamation plan.
- C. 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 conducted prior to January 1, 1976. (Ord. 77-16 § 13.0, 1977.)

### 7.36.200 Reclamation plan.

The reclamation plan shall include the following information and documents:

- A. The name and address of the operator and the names and addresses of any persons designated by him as his agents for the service of process;
- B. The anticipated quantity and type of minerals for which the surface mining operation is to be conducted;
- C. The proposed dates for the initiation and termination of such operation;
- D. The maximum anticipated depth of the surface mining operation;
- E. The size and legal description of the lands that will be affected by such operation; a map that includes the boundaries and topographic details of such lands; a description of the general geology of the area; a detailed description of the geology of the area in which surface mining is to be conducted; the location of all streams, roads, railroads, and utility facilities within, or adjacent to, such lands; the location of all proposed access roads to be constructed in conducting such operation; and the names

## SURFACE MINING AND QUARRIES

- and addresses of the owners of all surface and mineral interests of such lands;
- F. A description of and plan for the type of surface mining to be employed and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation;
  - G. A description of the proposed use or potential uses of the land after reclamation and evidence that all owners of a possessory interest in the land have been notified of the proposed use or potential uses;
  - H. A description of the manner in which reclamation, adequate for the proposed use or potential uses, will be accomplished, including a description of the manner in which contaminants will be controlled and mining waste will be disposed, and a description of the manner in which rehabilitation of affected streambed channels and streambanks to a condition minimizing erosion and sedimentation will occur;
  - 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;
  - K. Any other information which the planning commission may require by ordinance. (Ord. 77-16 § 15.0, 1977.)

**BOARD OF SUPERVISORS  
COUNTY OF DEL NORTE  
STATE OF CALIFORNIA**

**RESOLUTION NO. 97- 033**

**A RESOLUTION OF THE DEL NORTE COUNTY BOARD OF SUPERVISORS  
SUBMITTING ORDINANCE NO. 97-005, AN ORDINANCE AMENDING  
CHAPTER 7.36 OF THE DEL NORTE COUNTY ORDINANCE CODE REGARDING  
SURFACE MINING AND QUARRIES TO THE CALIFORNIA COASTAL  
COMMISSION FOR CERTIFICATION AS AN LCP AMENDMENT**

**WHEREAS, the County of Del Norte has adopted an ordinance amending the  
local Coastal Plan and Title 21 Coastal Zoning Ordinance; and**

**WHEREAS, this amendment has been reviewed and processed pursuant to  
the provisions of the Local Coastal Plan and Title 21 (Coastal Zoning); and**

**WHEREAS, the project is Class Eight exempt from the California  
Environmental Quality Act has been adopted; and**

**WHEREAS, this ordinance is intended to be carried out in a manner in  
conformity with the Coastal Act and the implementing Local Coastal Plan; and**

**WHEREAS, this amendment shall take effect and be enforced thirty (30)  
days after the date of the passage of the companion ordinance, and after approval  
of the amendment by the Coastal Commission, whichever is later.**

**NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the  
County of Del Norte, State of California do hereby approve the changes as  
outlined by the attached Ordinance; and**


**BE IT FURTHER RESOLVED, that by submission of such changes to the  
Coastal Commission for certification, the Board of Supervisors is requesting the  
subject amendments be identified as requiring rapid and expeditious action.**

**PASSED AND ADOPTED this 25th day of March 1997, by the following  
polled vote:**

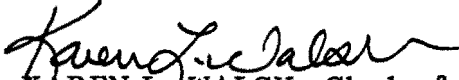
**AYES: Supervisors Finigan, Reese, Eller, McClure and Clausen**

**NOES: None**

**ABSENT: None**

  
**BARBARA P. CLAUSEN, Chairman  
Board of Supervisors**

**ATTEST:**

  
**KAREN L. WALSH, Clerk of the  
Board of Supervisors, County  
of Del Norte, State of California**

**RECEIVED**  
**MAR 31 1997**

**CALIFORNIA  
COASTAL COMMISSION**

**BOOK PAGE**

<b>EXHIBIT NO.</b>	<b>2</b>
<b>APPLICATION NO.</b>	<b>DNC LCP Amend #1-97</b>
<b>Ordinance and Resolution of submittal</b>	

**BOARD OF SUPERVISORS  
COUNTY OF DEL NORTE  
STATE OF CALIFORNIA**

**ORDINANCE NO. 97-005**

**AN ORDINANCE AMENDING CHAPTER 7.36 OF THE DEL NORTE COUNTY  
ORDINANCE CODE REGARDING SURFACE MINING AND QUARRIES**


The following ordinance, consisting of twenty-eight sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Del Norte, State of California, at a regular meeting of the Board of Supervisors held on the 25th day of March, 1997, by the following vote:

AYES: SUPERVISORS FINIGAN, REESE, ELLER, MCCLURE AND CLAUSEN

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

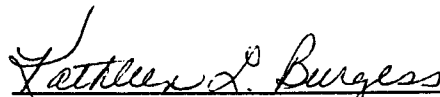
  
BARBARA P. CLAUSEN, Chairman  
Del Norte County Board of  
Supervisors

ATTEST:



KAREN L. WALSH, Clerk of the  
Board of Supervisors, County  
of Del Norte, State of  
California

APPROVED AS TO FORM

  
KATHLEEN L. BURGESS, Del  
Norte County Counsel

Page 2 of 2, Exhibit #2, <sup>OAK</sup> LCP Amended. #1-97

EXHIBIT NO. 3
APPLICATION NO. DNC LCP Amend #1-97
Proposed Ordinance

## Chapter 7.36

### SURFACE MINING AND QUARRIES

#### Sections:

7.36.010	Title of Provisions
7.36.020	Purpose of Provisions
7.36.030	Authority
7.36.040	Definitions
7.36.045	Incorporation by Reference
7.36.050	Compliance with Provisions Required - Exceptions
7.36.060	Permit - Required When
7.36.065	Vested Rights
7.36.070	Permit - Application
7.36.080	Permit - Issuance - Hearing
7.36.085	Appeals
7.36.100	Permit - Suspension or Revocation
7.36.110	Operation Regulations Generally
7.36.120	Excavation Regulations
7.36.130	Gravel Extractions - Drainage Within Stream Channels
7.36.140	Erosion Control and Screening
7.36.150	Maintenance and Operation
7.36.160	Site Reclamation and Standards
7.36.165	Statement of Responsibility
7.36.170	Findings for Approval
7.36.180	Financial Assurances
7.36.190	Interim Management Plans
7.36.200	Annual Report Requirements
7.36.210	Inspections
7.36.220	Violations and Penalties
7.36.230	Fees
7.36.240	Mineral Resource Protection
7.36.250	Severability

#### 7.36.010 Title of Provisions

The ordinance codified in this chapter shall be known and cited as the surface mining and quarry ordinance of the County.

#### 7.36.020 Purpose of Provisions

The purpose of this chapter is to provide for the orderly use and regulation of the surface mining and quarries within the unincorporated area of the county in keeping with the protection of the public health, safety, convenience and general welfare.

#### 7.36.030 Authority

The ordinance codified in this chapter is adopted pursuant to Chapter 4, Article 2, Title 7, of the California Government Code, under the planning and health powers granted the county, and the Surface Mining and Reclamation Act of 1975.

7.36.040 Definitions (Updated to include new SMARA definitions)

For the purpose of this chapter, certain words and phrases are defined as set forth in this section, and certain provisions shall be construed as set forth unless it shall be apparent from the text that they have different meaning.

- A. "Area of regional significance" means an area designated by the State Mining and Geology Board which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in a particular region of the State within which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the premature loss of minerals that are of more than local significance.
- B. "Area of statewide significance" means an area designated by the State Mining and Geology Board which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the State and which, if prematurely developed for alternate land uses, could result in the premature loss of minerals that are of more than local or regional significance.
- C. "Average annual bed load" means the average amount of gravel that is carried downstream in a normal year and deposited during the high water season in the lower river bars.
- D. "Borrow pit" means excavation created by the surface mining of rock, unconsolidated geologic deposits or soil to provide material (borrow) for fill elsewhere.
- E. "Compatible land use" means land uses inherently compatible with mining and/or that require a minimum public or private investment in structures, land improvements, and which may allow mining because of the relative economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, very low density residential, geographically extensive but low impact industrial, recreational agriculture, silviculture, grazing, and open space.
- F. "Excavation" means any excavation, removal, relocation or alteration of the existing contours and location of any soil, earth, fill, sand, rock, gravel, or waste material more than 10 cubic yards or as determined by the Planning Commission, or any combination thereof, and the conditions resulting therefrom.
- G. "Ground level" means and includes the natural or finished grade, surface, or contour of a site.
- H. "Haul road" means a road along which material is transported from the area of excavation to the processing plant or stockpile area of the surface mining operation.
- I. "Idle" means surface mining operations curtailed for a period of one year or more, by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

- J. "Incompatible land use" means land uses inherently incompatible with mining and/or that require public or private investment in structures, land improvements, and landscaping and that may prevent mining because of the greater economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, high density residential, low density residential with high unit value, public facilities, geographically limited but impact intensive industrial, and commercial.
- K. "Mined lands" means the surface, subsurface, and ground water 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.
- L. "Minerals" means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic process and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.
- M. "Operator" means any person who is engaged in surface mining operations, or who contracts with others to conduct operations on his/her behalf, except a person who is engaged in surface mining operations as an employee with wages as his/her compensation.
- N. "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.
- O. "Quarry" means premises from which any rock, sand, gravel, stone, earth, topsoil, or mineral is removed or excavated for the purpose of disposition away from the immediate premises, whether such disposition is immediate or in the future.
- P. "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 mines are reclaimed to a useable 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 means.
- Q. "Reclamation Plan" means an applicant's (Operator's) proposal to the lead agency for reclaiming the lands affected by his mining operation. Refer to Sec. 7.36.200.
- R. "Stream bed skimming" means excavation of sand and gravel from stream bed deposits above the mean summer water level or stream bottom, whichever is higher.



- 5 "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 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 include, but are not limited to, in-place distillation or retorting or leaching, the production and disposal of mining waste, prospecting and exploratory activities, borrow pitting, stream bed skimming, and segregation and stockpiling of mined materials (and recovery of same).

7.36.045 Incorporation by Reference (New from State Model Ord.)

The provisions of SMARA (PRC 2710 et seq.) PRC Section 2207, and State regulations CCR 3500 et seq., as those provisions and regulations may be amended from time to time, are made a part of this Chapter by reference with the same force and effect as if the provisions therein were specifically and fully set out herein, excepting that when the provisions of this Chapter are more restrictive than State provisions, this Chapter shall prevail.

7.36.050 Compliance with Provisions Required - Exceptions  
(Revised and/or updated to meet minimum SMARA standards)

Except as provided in this Chapter, no person shall conduct surface mining operations unless a permit, reclamation plan, and financial assurances for the reclamation have first been approved by the County. Any applicable exemption from this requirement does not automatically exempt a project or activity from the application of other regulations, ordinances or policies of the County, including but not limited to, the application of CEQA, the requirement of site approvals or other permits, the payment of development impact fees, or the imposition of other dedications and exactions as may be permitted under the law. The provisions of this Chapter shall apply to all lands within the County, public and private.

This Chapter shall not apply to the following activities, subject to the above referenced exceptions:

- 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. On-site excavation and on-site earthmoving which are an integral and necessary part of a construction project and that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:
  1. All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with

- applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, the California Environmental Quality Act (CEQA, Public Resources Code, Division 13, 21000 et seq.).
2. The County's approval of the construction project including consideration of the on-site excavation and on-site earthmoving activities pursuant to CEQA.
  3. The approved construction project is consistent with the General Plan or zoning of the site.
  4. Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.
- C. Operation of a plant used for mineral processing, including associated on-site structures, equipment, machines, tools, or other materials, including the on-site stockpiling and on-site recovery of mined materials, subject to all of the following conditions:
1. The plant site is located on lands designated for industrial or commercial uses in the County's General Plan.
  2. The plant site is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the County.
  3. None of the materials being processed are being extracted on-site,
  4. All reclamation work has been completed pursuant to the approved Reclamation Plan for any mineral extraction activities that occurred on-site after January 1, 1976.
- D. Prospecting for, or the extraction of, minerals for commercial purposes and the removal of overburden in total amounts of less than 1,000 cubic yards in any one location of one acre or less.
- E. Surface mining operations that are required by federal law in order to protect a mining claim, if those operations are conducted solely for that purpose.
- F. Any other surface mining operations that the State Mining and Geology Board determines to be of an infrequent nature and which involve only minor surface disturbance.
- G. The solar evaporation of sea water for the production of salt and related minerals.
- H. Emergency excavations or grading conducted by the Department of Water Resources or the Reclamation Board for the purpose of averting, alleviating, repairing, or restoring damage to property due to imminent or recent floods, disasters, or other emergencies.
- I. Road construction and maintenance for timber forest operations if the land is owned by the same person or entity, and if the excavation is conducted adjacent to timber or forest operation roads. This exemption is only available if slope stability and erosion are controlled in accordance with Board regulations and, upon closure of

the site, the person closing the site implements, where necessary, revegetation measures and post-closure uses in consultation with the Department of Forestry and Fire Protection. This exemption does not apply to on-site excavation or grading that occurs within 100 feet of a class one watercourse or 75 feet of a class two watercourse, or excavations for materials that are, or have been, sold for commercial purposes.

7.36.060 Permit - Required When (No change)

Surface mining and quarry operations may be operated in any portion of the County where there are provisions for such uses in the intended zones. Surface mining and quarry operations, unless excluded by Section 7.36.050, are subject to the securing of a permit as specified in this chapter and subject to the regulations of this chapter. The issuance of such a use permit is a discretionary action of the Planning Commission.

7.36.065 Vested Rights (New - Updates 7.36.190 to new SMARA standard)

No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976, shall be required to secure a permit to mine, so long as the vested right continues and as long as no substantial changes have been made in the operation except in accordance with SMARA, State regulations, and this Chapter. Where a person with a vested right has continued surface mining in the same area subsequent to January 1, 1976, he/she shall obtain County approval of a reclamation plan covering the mined lands disturbed by such subsequent surface mining. In those cases where an overlap exists (in horizontal and/or vertical sense) between pre- and post-act mining, the Reclamation Plan shall call for reclamation proportional to that disturbance caused by the mining after the effective date of the Act (January 1, 1976).

All other requirements of State law and this Chapter shall apply to vested mining operations.

7.36.070 Permit - Application (Updated to SMARA minimum standard)

- A. Applications for a Site Approval or Reclamation Plan for surface mining or land reclamation projects shall be made on forms provided by the Planning Division. Said application shall be filed in accord with this Chapter and procedures to be established by the Planning Director. The forms for Reclamation Plan applications shall require, at a minimum, each of the elements required by SMARA (2772-2773) and State regulations, and any other requirements deemed necessary at the discretion of the Planning Division. As many copies of the Site Approval application as may be required by the Planning Division shall be submitted.
- B. As many copies of a reclamation plan application as may be required shall be submitted in conjunction with all use permit applications for site approvals for surface

mining operations. For surface mining operations that are exempt from a use permit for site approval pursuant to this chapter, the reclamation plan application shall include information concerning the mining operation that is required for processing the reclamation plan. All documentation for the reclamation plan shall be submitted to the County at one time.

- C. Applications shall include all required environmental review forms and information prescribed by the Planning Division.
- D. Upon completion of the environmental review procedure and filing of all documents required by the Planning Director, consideration of the use permit and/or reclamation plan for the proposed or existing surface mining operation shall be completed pursuant to Section 20.56 of Del Norte County Code at a public hearing before the Planning Commission and pursuant to Section 2774 of the Public Resources Code.
- E. Within thirty days of acceptance of an application for a use permit for site approval of surface mining operations and/or a reclamation plan as complete, the Planning Division shall notify the State Department of Conservation of the filing of the application. Whenever mining operations are proposed in the 100 year flood plain of any stream, as shown in zone A of the Flood Insurance Rate Maps issued by the Federal Emergency Management Agency, and within 1 mile upstream or downstream of any state highway bridge, the Planning Division shall also notify the State Department of Transportation that the application has been received.
- F. The Planning Division shall process the application through environmental review pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) and the County's environmental review guidelines.
- G. Subsequent to the appropriate environmental review, the Planning Division shall prepare a staff report with recommendations for consideration by the Planning Commission.
- H. The Planning Commission shall hold at least one public hearing on the use permit for site approval and/or reclamation plan.
- I. Prior to final approval of a reclamation plan, financial assurances (as provided in this Chapter), or any amendments to the reclamation plan or existing financial assurances, the Planning Commission shall certify to the State Department of Conservation (DOC) that the reclamation plan and/or financial assurance complies with the applicable requirements of State Law, and submit the plan, assurance, or amendments to the State Department of Conservation for review. The Planning Commission may conceptually approve the reclamation plan and financial assurance before submittal to the DOC. If a use permit for site approval is being processed concurrently with the reclamation plan, the Planning Commission may simultaneously also conceptually approve the use permit

for site approval. However, the Planning Commission may defer action on the use permit until taking final action on the reclamation plan and financial assurances. If necessary to comply with permit processing deadlines, the Planning Commission may conditionally approve the use permit for site approval with the condition that the Planning Division shall not issue the use permit for the mining operations until cost estimates for financial assurances have been reviewed by the State Department of Conservation and final action has been taken on the reclamation plan and financial assurances.

Pursuant to PRC 2774(d), the State Department of Conservation shall be given 30 days to review and comment on the reclamation plan and 45 days to review and comment on the financial assurance. The Planning Commission shall evaluate written comments received, if any, from the DOC during the comment periods. Staff shall prepare a written response describing the disposition of the major issues raised by the DOC for the Planning Commission's approval. In particular, when the Planning Commission's position is at variance with the recommendations and objections raised in the State's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted. Copies of any written comments received and responses prepared by the Planning Commission shall be promptly forwarded to the operator/applicant.

- J. The Planning Commission shall then take action to approve, conditionally approve, or deny the use permit for site approval and/or reclamation plan, and to approve the financial assurances pursuant to PRC 2770(d).
- K. The Planning Division shall forward a copy of each approved use permit for site approval for surface mining operations and/or approved reclamation plan, and a copy of the approved financial assurances to the DOC. By July 1 of each year, the Planning Division shall submit to the DOC for each active or idle mining operation a copy of the use permit for site approval or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year.

In addition to the above listed SMARA required information, an application for a permit to conduct surface mining shall include, but is not limited to, the following information:

- 1. An accurate plot plan showing exterior boundaries of the property on which the proposed surface mining or quarry will be located, and the location of existing and/or proposed structures, roads, rivers, streams, or other significant land uses;
- 2. A current Assessor's parcel map;
- 3. Contour map when required by the Planning Commission;
- 4. Aerial Photo(s) at a scale of no smaller than 1" = 600';
- 5. Statement of plan of operation, including time limits, method of removal, volume to be removed over the life of the project, equipment to be used, areas to be disturbed and final grading of site and clean-up;

6. Filing fees shall be paid to the Planning Division and shall be as prescribed in the current fee schedule resolution of the Board of Supervisors.

7.36.080 Permit - Issuance - Hearing (Slightly revised to meet existing policies and conditions).

- A. At the completion of the application procedure outlined in Section 7.36.070, the Planning Division will review the use permit application for the following:
  1. A site inspection shall be conducted to determine whether the proposed surface mining or quarry operation conforms to the provisions of this Chapter;
  2. That the proposal is consistent with the terms of any other County ordinance or State law;
  3. As lead agency, the County Planning Commission may require an environmental impact report be prepared;
  4. A public hearing shall be scheduled to determine public attitudes towards the project and make findings as to whether the project may be a public nuisance;
- B. If, in the opinion of the Planning Commission, the proposed surface mining operation or quarry will not be deemed detrimental, a use permit for up to a 5 year period that may be seasonal shall be issued as provided in this Chapter. The Planning Commission, in issuing any such permit, shall specify such conditions as are deemed necessary for the protection of persons and property in the area and to ensure the operation will not significantly adversely affect the character of the area in which the surface mining operation or quarry is located. In order to ensure compliance with such conditions, the Planning Commission, as a condition of approval for the permit or reclamation plan, or both, shall impose a schedule for periodic inspections of the site to evaluate continuing compliance with the permit and the reclamation plan. Inspection may coincide with the issuance and subsequent review for renewal of the issued use permit and shall include an inspection upon completion of the project. The Planning Commission shall require financial assurances to ensure compliance with the regulations imposed under the terms of any permit.

7.36.085 Appeals (No change)

- A. Any person, including the applicant, aggrieved by an action of the Planning Commission may appeal that action to the Board of Supervisors following the procedure set forth in Section 20.58.010.
- B. An application for a permit to operate which is denied in an area of statewide significance or regional significance, as designated by the State Mining and Geology Board, may be appealed under Section 2775 of the Surface Mining and Reclamation Act of 1975 to the State Board.

7.36.100 Permit - Suspension or Revocation (Slightly revised wording for clarity)

Any permit granted under this chapter shall be subject to revocation or suspension by the Planning Commission where violation of this chapter, contingencies of the use permit, or a proven public nuisance have occurred. Revocation or suspension proceedings shall be the following:

- A. A notice shall be served on the permit holder specifying:
  1. He/she has failed to comply with the provisions of this chapter or with the terms specified in the permit;
  2. He/she must cease operation of any surface mining or quarry until the County Planning Commission may hold a public hearing;
  3. He/she shall be required to appear before the Planning Commission at a date and hour specified, not less than 30 days after the serving of the notice, to show cause for the permit to be reinstated.
- B. A public hearing shall be held by the County Planning Commission.
- C. The Planning Commission shall present to the permit holder during the public hearing any charges or complaints which have been filed in the Planning Division.
- D. The permit holder shall have the right to appear in person or by counsel and introduce such evidence as he/she may desire to show why his/her use permit should be reinstated.
- E. After the conclusion of the public hearing, the Planning Commission may, if it is their opinion the permit holder has violated the terms of his permit, revoke or reinstate the permit.
- F. The permit holder may appeal to the County Board of Supervisors regarding revocation.

7.36.110 Operation Regulations Generally (No change)

Surface mining may be conducted and maintained in any zone district where it is permitted subject to the general requirements of Sections 7.36.120 through 7.36.160.

7.36.120 Excavation Regulations (Updated to reflect current conditions/policies and for clarity)

- A. Gravel extractions shall not be excavated within the live waters of a river, except as specifically permitted by the Department of Fish and Game.
- B. Aggregate gravel extraction volume shall be discretionary to the Planning Commission; the average annual bed load for any extraction area on a county river or stream shall provide a guide to determine maximum extraction volumes.
- C. Quarries shall in no case allow cut slopes at a ratio steeper than two to one to be brought closer than twenty five feet of any exterior property line.

7 36.130 Gravel Extractions - Drainage Within Stream Channels  
(Updated to reflect current conditions and policies)

- A. The finished excavation shall in all cases be graded in such a manner as to prevent accumulation of waters to natural seepage;
- B. Finished grades in the case of surface mining operations shall have slopes of not less than one and one half percent, sloping towards the channel, unless otherwise permitted by the Department of Fish and game.

7.36.140 Erosion Control and Screening (No change)

- A. All surface drainage existing or developed by or through the surface mining operation of a quarry shall be controlled by dikes, barriers, or drainage structures to any existing drainage course and permitted from encroaching on state or county roads or private property. All provisions to control natural drainage or floodwater shall meet with the approval of the county engineer.
- B. Existing trees and natural undergrowth should be retained to screen the proposed operation and maintain the stability of surrounding terrain.

7.36.150 Maintenance and Operation (No change)

- A. The surface mining operation shall be maintained at all times in a neat and orderly manner to the satisfaction of the Planning Division.
- B. The surface mining or quarry shall be conducted in such a manner as to obviate excessive dust and noise. The operator shall maintain haul roads in a dust free condition.
- C. The holder of the surface mining or quarry use permit shall be responsible for the spillage or dumping of materials related to the operation on county roads.

7.36.160 Site Reclamation and Standards (Updated to reflect changes to other referenced sections and to add new SMARA wording)

- A. No surface mining operation or quarry use permit shall be issued prior to the Planning Commission approval of a reclamation plan and financial assurances subject to the provisions of Section 7.36.070 (a) through (k).
- B. The holder of the surface mining or quarry operation use permit shall be responsible for adhering to the approval plan as set forth in subsection A of this section.
- C. Whenever one operator succeeds to the interest of another in any uncompleted surface mining operation by sale, assignment, transfer, conveyance, exchange, or other means, the successor shall be bound by the provisions of the approved reclamation plan and the provisions of this chapter.
- D. All reclamation plans shall comply with the provisions of SMARA (2772 and 2773) and State regulations (CCR



- 3500-3505). Reclamation Plans approved after January 15, 1993, reclamation plans for proposed new mining operations, and any substantial amendments for reclamation plans shall also comply with the requirements for reclamation performance standards (CCR 3700-3713).
- E. The County may impose additional performance standards as developed either in review of individual projects, as warranted, or through the formulation and adoption of Countywide performance standards.
  - F. Reclamation activities shall be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance. Interim reclamation may also be required for mined lands that have been disturbed and that may be disturbed again in future operations. Reclamation may be done on an annual basis, in stages compatible with continuing operations, or on completion of all excavation, removal, or fill, as approved by the County. Each phase of reclamation shall be specifically described in the reclamation plan and shall include: (a) the beginning and expected ending dates for each phase; (b) all reclamation activities required; (c) criteria for measuring completion of specific reclamation activities; and (d) estimated costs for completion of each phase of reclamation.

7.36.165 Statement of Responsibility (New - reflects SMARA requirements)

The person submitting the reclamation plan shall sign a statement accepting responsibility for reclaiming the mined lands in accordance with the reclamation plan. Said statement shall be kept by the Planning Division in the mining operation's permanent record. Upon sale or transfer of the operation, the new operator shall submit a signed statement of responsibility to the Planning Division for placement in the permanent record.

7.36.170 Findings for Approval (New SMARA required findings)

- A. Site Approvals. In addition to any findings required by the County Surface Mining and Quarries Code, use permits for site approval for surface mining operations shall include a finding that the project complies with the provisions of SMARA and State regulations.
- B. Reclamation Plans. For reclamation plans, the following findings shall be required:
  - 1. That the reclamation plan complies with SMARA Sections 2772 and 2773, and any other applicable provisions;
  - 2. That the reclamation plan complies with applicable requirements of State regulations (CCR 3500-3505, and 3700-3713).
  - 3. That the reclamation plan and potential use of reclaimed land pursuant to the plan are consistent with this chapter and the County's General Plan;
  - 4. That the reclamation plan has been reviewed pursuant to CEQA and the County's environmental review guidelines, and all significant adverse impacts from

reclamation of the surface mining operations are mitigated to the maximum extent feasible;

5. That the land and/or resources such as water bodies to be reclaimed will be restored to a condition that is compatible with, and blends in with, the surrounding natural environment, topography, and other resources, or that suitable off-site development will compensate for related disturbance to resource values;
6. That the reclamation plan will restore the mined lands to a useable condition which is readily adaptable for alternative land uses consistent with the General Plan and applicable resource plan;
7. That a written response to the State Department of Conservation has been prepared, describing the disposition of major issues raised by the DOC. Where the County's position is at a variance with the recommendations and objections raised by the DOC, said response shall address, in detail, why specific comments and suggestions were not accepted.

7.36.180 Financial Assurances (New - reflects new SMARA requirements)

- A. To ensure that reclamation will proceed in accordance with the approved reclamation plan, the County 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 and the State Mining and Geology Board as specified in State regulations, and which the County reasonably determines is 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 Del Norte 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 assurance shall be submitted to the Planning Division for review and approval prior to the operator securing financial assurances. The Planning Director shall forward a copy of the cost estimates, together with any documentation received supporting the amount of the cost estimates, to the DOC for review. If the DOC 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 Planning Director shall have the

discretion to approve the financial assurance if it meets the requirements of this Chapter, SMARA, and State regulations.

- D. The amount of the financial assurance 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. The estimated amount of the financial assurance shall be based on an analysis of physical activities necessary to implement the approved reclamation plan, the unit costs for each of these activities, the number of units of each of these activities, and the actual administrative costs. Financial assurances to ensure compliance with revegetation, restoration, 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 shall be added to the cost of financial assurances.
- E. 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 DOC may need to contract with a third party commercial company for reclamation of the site.
- 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 upcoming year.
- H. Revisions to financial assurances shall be submitted to the Planning Director 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 any revisions are not required.

7.36.190 Interim Management Plans (New - reflects new SMARA requirements)

- A. Within 90 days of a surface mining operation becoming idle, the operator shall submit to the Planning Division a proposed interim management plan (IMP). The proposed IMP shall fully comply with the requirements of SMARA, including but not limited to all use permit 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 IMP shall be submitted on forms provided by the Planning Division, and shall be processed as an amendment to the reclamation plan. IMP's 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 were active, or as otherwise approved through the idle mine's IMP.
- C. Upon receipt of a complete proposed IMP, the Planning Division shall forward the IMP to the DOC for review. The IMP shall be submitted to the DOC at least 30 days prior to approval by the Planning Commission.
- D. Within 60 days of receipt of the proposed IMP, or a longer period mutually agreed upon by the Planning Director and the operator, the Planning Commission shall review and approve or deny the IMP in accordance with this Chapter. The operator shall have 30 days, or a longer period mutually agreed upon by the Planning Director and operator, to submit a revised IMP. The Planning Commission shall approve or deny the revised IMP within 60 days of receipt. If the Planning Commission denies the revised IMP, the operator may appeal that action to the County Board of Supervisors.
- E. The IMP may remain in effect for a period not to exceed five years, at which the Planning Commission may renew the IMP for another period not to exceed five years, or require the surface mining operator to commence reclamation in accordance with its approved reclamation plan.

7.36.200 Annual Report Requirements (New - reflects new SMARA requirements)

Surface mining operators shall forward an annual surface mining report to the DOC and to the County Planning Division on a date established by the DOC, 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 DOC 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 DOC at the time of filing of the annual surface mining report.

7.36.210 Inspections (New - reflects new SMARA requirements)

The Planning Division shall arrange for inspection of a surface mining operation within six months of receipt of the annual report required in Section 7.36.200, to determine whether the surface mining operation is in compliance with the approved use permit 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, a state registered civil engineer, a state licensed landscape architect, or a 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. All inspections shall be conducted using a form approved by the State Mining and Geology Board.

The Planning Division shall notify the DOC within 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.

7.36.220 Violations and Penalties (New - reflects new SMARA requirements)

If the Planning Director, based on 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 use permit, 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 Del Norte County Code???? for revocation and/or abandonment of a use permit which are not preempted by SMARA.

7.36.230 Fees (New - reflects SMARA standards)

The County shall establish such fees as it deems necessary to cover the reasonable costs incurred in implementing the Chapter and the State regulations, including but not limited to, processing of applications, annual reports, inspections, monitoring, enforcement and compliance. Such fees shall be paid by the operator, as required by the County, at such time of filing of the use permit for site approval application, reclamation plan application, and at such other times as are determined by the County to be appropriate in order to ensure that all reasonable costs of implementing this Chapter are borne by the applicant and/or operator.

7.36.240 Mineral Resource Protection (New - reflects new SMARA standards)

Mine development is encouraged in compatible areas before encroachment of conflicting uses. Mineral resource areas that have been classified by the DOC Division of Mines and Geology or designated by the State Mining and Geology Board, as well as existing surface mining operations that remain in compliance with the provisions of this Chapter, shall be protected from intrusion of incompatible land uses that may impede or preclude mineral extraction or processing, to the extent possible for consistency with the County's General Plan.

In accordance with PRC 2762, the County's General Plan and resource maps will be updated to reflect mineral information (classification and/or designation reports) within 12 months of receipt from the State Mining and Geology Board of such information. Land use decisions within the County will be guided by information provided on the location of identified mineral resources of regional significance. Conservation and potential development of identified mineral resource areas will be considered and encouraged. Recordation on property titles of the presence of important mineral resources within the identified mineral resource areas may be encouraged as a condition of approval of any development project in the impacted area. Prior to approving a use that would otherwise be incompatible with mineral resource protection, conditions of approval may be applied to encroaching development projects to minimize potential conflicts.

7.36.250 Severability (New - reflects SMARA standards)

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.

**DEPARTMENT OF CONSERVATION**  
**STATE MINING AND GEOLOGY BOARD**  
801 K Street, MS 24-05  
Sacramento, California 95814-3528



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May 21, 1997

Jay Sarina, County Planner  
County of Del Norte  
Community Development Department  
700 Fifth Street  
Crescent City, California 95531

**RECEIVED**

MAY 27 1997

PLANNING  
COUNTY OF DEL NORTE

**Re: Certification of Surface Mining Ordinance No. 97-005**

Dear Mr. Sarina:

I am pleased to inform you that on May 15, 1997 the State Mining and Geology Board (SMGB) formally adopted Resolution No. 97-05 certifying Del Norte County's surface mining ordinance Number 97-005 as being in accordance with State Policy. This action completed the certification procedures required by § 2774.3 of the Surface Mining and Reclamation Act (SMARA, Public Resources Code §§ 2710 et seq.). The SMGB sincerely appreciates the dedicated work that you and your staff, your Board, and others have put into this project, and commends you for your efforts.

Certification assures that each ordinance contains a basic core of procedural requirements, is consistent with State Policy for the issuance of permits to conduct surface mining operations, and provides for the review and approval of reclamation plans and financial assurances for reclamation. After certification of a local ordinance, it is the continuing responsibility of the local lead agency, as lead agency for SMARA purposes, to implement and enforce its ordinance in accordance with the provisions and requirements of the Act.

SMARA § 2774(a) requires that ordinances be reviewed periodically and amended, as necessary, to ensure the document's full compliance with State Policy. Please note that amended ordinances must be reviewed and re-certified by the SMGB.

<b>EXHIBIT NO.</b>	4
<b>APPLICATION NO.</b>	DNC LCP Amend #1-97
<b>DOC letter</b>	

Jay Sarina  
May 21, 1997  
Page 2

The SMGB thanks you and your staff for its cooperation during this formal review and certification process. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John G. Parrish". The signature is fluid and cursive, with a large initial "J" and "P".

John G. Parrish, Ph. D.  
Executive Officer

cc: Barbara P. Clausen, Chair  
Del Norte County Board of Supervisors



# *A Resolution of The State Mining & Geology Board*

THE STATE MINING &  
GEOLOGY BOARD

Sacramento, California

DeWayne Holmdahl, Chairman  
Julie Mann, Vice Chairwoman  
Sands Figuers  
Robert Grunwald  
Raymond Krauss  
Robert Munro  
Sheila M. Murphy  
Lee Thibadeau

*Resolution Number 97-05*

Certification of the County of Del Norte's Surface Mining  
Ordinance No. 97-005

*Whereas:* Lead agencies with surface mining operations in their jurisdictions are required to adopt ordinances, in accordance with specific criteria, that establish procedures for review and approval of reclamation plans, financial assurances and the issuance of permits to conduct surface mining operations pursuant to Section 2774(a) of the Surface Mining and Reclamation Act (SMARA; Public Resources Code Sections 2710 et seq.);

*Whereas:* SMARA Section 2774.3 requires that the State Mining and Geology Board (Board) review and certify these local ordinances found to be in compliance with State Policy;

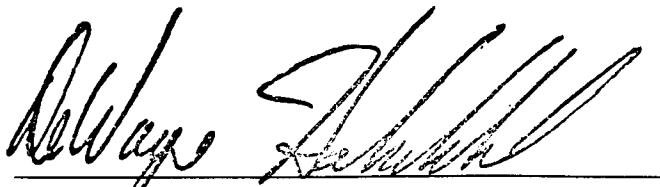
*Whereas:* On May 2, 1981 the Board, by Resolution No. 81-06, adopted the following criteria as constituting the minimum requirements for certification of ordinances;

- (1) The ordinance shall establish procedures for the review and approval of reclamation plans and the issuance of permits to conduct surface mining operations;
- (2) The ordinance shall establish procedures requiring at least one public hearing and annual inspections;
- (3) The ordinance shall neither contradict the Surface Mining and Reclamation Act of 1975, nor State Policy for surface mining and reclamation as adopted by the Board, and;

*Whereas:* Del Norte County submitted Ordinance Number 97-005 amending Chapter 7.36 of the County Code; and the Board's Policy Committee, having reviewed the ordinance, finds that it meets the certification criteria;

*Therefore, now be it resolved:* The State Mining and Geology Board certifies Ordinance Number 97-005 (adopted March 25, 1997) as being in compliance with State Policy governing the regulation of surface mining and reclamation in California.

*Adopted: May 15, 1997*

  
DeWayne Holmdahl, Chairman

