Appendix M:  
City of Orange SMARA Memo
City of Orange
City Attorney's Office

Memo

To: Addendum to Fieldstone Staff Report

From: David A. De Berry, City Attorney

Date: July 22, 2003

Re: Fieldstone/Application of Mining Reclamation Law

Question Presented

Must the City require a mining reclamation plan in accordance with Surface Mining and Reclamation Act ("SMARA") prior to considering the proposed Fieldstone project?

Short Answer

No. Based on existing evidence it does not appear that SMARA applies to the site.

Background

This report was drafted primarily in response to inquiries from the City Council, general public interest and a letter dated May 5, 2003, from the Office of Mine Reclamation ("OMR") which concluded that mining operations subject to SMARA had ceased prior to 1975 on the Fieldstone site, but that "the City of Orange is best able to make the needed factual determinations as to what did or did not occur on this site over the years in question..." (Exhibit 1). In a second letter dated June 18, 2003, the OMR notes the controversy on this issue and that it had received letters and photos from the Santiago Greenway Alliance and others, expressing an interpretation different than OMR's. This letter reiterates that the OMR concluded "after reviewing available data from the City of Orange and County of Orange planning department files, examining aerial photographs from those files, and aerial photographs submitted by Hanson Aggregates spanning the time interval from 1950 to 1992, [that it had] concluded that apparently surface mining activities on the Fieldstone site had ceased prior to January 1, 1976." (Exhibit 2).

Initially, as to the material reviewed by OMR, the City is in no better position than OMR to determine whether mining activities subject to SMARA occurred on this site. The City does not possess OMR's geological expertise or familiarity with SMARA requirements. OMR visited the City and apparently the County, copied and/or reviewed

ATTACHMENT NO. 17
CC, JULY 22, 2003
MEMO FROM D. DEBERRY
RE: SMARA
records it deemed relevant and has concluded that the site is not subject to SMARA. Considering that the state agency responsible for insuring SMARA compliance has concluded it does not apply to the Fieldstone site, there seems little value in second-guessing that conclusion absent substantial evidence to the contrary. It is worth noting that OMR initially concluded that SMARA did apply, but in upon making this initial conclusion showed no deference to the City in making the factual determination, going so far as to suggest the City was not complying with State law and demanding that the City provide documents showing a rehabilitation plan in compliance with SMARA prior to considering the Fieldstone project (Exhibit 3).

It is unclear why OMR believes the City is in a better position to make a factual determination now that OMR has concluded SMARA does not apply. Its staff is made up of experts in the field of mining and its familiarity with SMARA requirements is far superior to the City’s. There is a nine-member State and Mining Geology Board that is authorized by SMARA to replace the local agency if OMR believes that a local agency is not fulfilling its SMARA obligations. (Public Resources Code Section 2774.4) Members of the Board are required to have specialized expertise in mining, groundwater hydrology, water quality, rock chemistry, environmental protection of ecosystems, geology, civil engineering, mineral conservation, urban planning, etc. (Section 662)

SMARA was enacted in 1975 and in general it requires operators of surface mining operations to obtain a permit to conduct surface mining operations post 1976 and to file a reclamation plan for post 1975 mining operations. (Section 2776). The basic policies of the legislation are to minimize adverse environmental effects from mining, reclaim mined lands to a usable condition which is adoptable to an alternative use, and to encourage the production and conservation of minerals, while protecting wildlife (Section 2712).

City Attorney’s Analysis

In an apparent reaction to inquiries from Orange residents, the OMR began an investigation to determine whether or not mining operations subject to SMARA took place along a reach of Santiago Creek downstream from Villa Park Dam, an area that includes the site for the proposed Fieldstone project. The OMR sent representatives to review and copy City records. After reviewing these records, the OMR sent a letter (Exhibit 3) that it had concluded that surface mining operations subject to SMARA did occur on the proposed Fieldstone site.

The OMR’s conclusions were passed on to Hanson Aggregates, which currently operates a concrete and recycling facility on the Fieldstone site. Representatives from Hanson Aggregates met with OMR and after receiving Hanson’s input, the OMR reversed itself (Exhibit 1) concluding that the evidence suggested to the OMR that “active mining did cease prior to 1975. and that only processing facilities were active after 1975 on the property…”

¹ All Section references are to the Public Resources Code unless otherwise stated.
In addition, the City has received a declaration from Tom Davis of Justice and Associates (Exhibit 4), a consultant retained by Hanson Aggregates. According to his declaration, Mr. Davis has a bachelor’s degree in biology and geology from Cornell and a Master’s degree from Cal State Fullerton. He states that he has worked and consulted for mining companies for 30 years. Mr. Davis states he reviewed 22 aerial photographs of the Fieldstone site (presumably the same aerials viewed by the OMR). He concluded from the photos that mining on the site ceased sometime “between January 30, 1970 and October 30, 1973.”

City records appear to support the position that no mining occurred on the site after January 1, 1976. In 1976 there was significant discussion and proposals among City officials to adopt a mining reclamation ordinance that complied with SMARA. According to an August 1976 report to the City Council by Gary Johnson, former City Engineer, staff looked into adopting a SMARA ordinance and in addition, “researched the diggable sand and gravel areas in Orange.”

The Johnson report states that “there are not many sand and gravel zoned parcels remaining that have not been mined.” In addition, a map was created showing areas where future extraction was unlikely and future extraction was possible. Nearly the whole Fieldstone site, save a small area that now hosts the Hanson recycling operation, was listed as “future extraction unlikely”.

I spoke to Gary Johnson on June 5, 2003, concerning his recollection of mining operations on the site. It was his express recollection that no mining operations were occurring in Orange’s jurisdiction at the time SMARA was adopted. He did recall that Sully Miller was mining a site west and north of the old Santiago Road, which was washed out in 1969. However, at the time that area was within the County of Orange and was eventually reclaimed, annexed into Villa Park and 17 homes were built on it. Mr. Johnson recalled Sully Miller talking about possibly excavating south of Santiago Canyon Road, but that for various reasons, excavation never occurred. He also recalls Sully Miller considering mining at other sites either within or outside the City’s jurisdiction, but ultimately deciding not to mine in the City.

A 1971 resolution adopted by the Planning Commission (Exhibit 5) granted a conditional use permit to Sully Miller to operate an asphalt batch plant on what appears to be the same site on which Hanson currently operates its recycling operation. Paragraph 3 of the resolution states that “to the West and North is sand and gravel excavation” and goes on to list other non-mining activities.

A 1975 City Council resolution (Exhibit 6) approved an asphalt batch plant on the same site. The present use was described as a “sand and gravel operation including conveyer systems and stock piles.” The resolution further provides that “to the west and north of the subject property is the applicant’s sand and gravel plant and office” and lists other activities. Unlike the 1971 resolution, there is no reference to “sand and gravel excavation” on or near the site.
In 1978 the City adopted an amendment to its Sand and Gravel District by urgency ordinance. However, according to a report from City Manager Gifford Miller to the City Council, this was in response to the City being advised by Conrock that it was considering opening a new area for mining on a parcel of land west of Prospect and south of Walnut, which is outside the Fieldstone site. There is no mention of any current or future mining on the Fieldstone site. It does not appear that Conrock ever went forward with its mining plans.

In the 1988 Environmental Impact Report for the project now known as “The Reserve”, the EIR only references an asphalt-concrete batch plant on the site. A letter dated September 20, 1988, from Blue Diamond, the then operator of the site, references a sand and gravel plant, a hot mix asphalt plant, a concrete and asphalt recycling operation, a heavy equipment repair facility and general contracting operation. The letter states that Blue Diamond has no plans for terminating its use and that the use be “recognized as permanent.” There is no mention of any excavation activities.

A letter dated May 16, 2003, from Shirley Grindle, William Bouska and G. David Piper (hereafter, ‘Residents’ Letter) to the OMR argues that mining activities subject to SMARA did take place on the site (Exhibit 7). The Residents’ Letter states that they reviewed aerial photos and concluded that active mining did occur after 1976. In the alternative, it appears to argue that even if there are no actual excavation activities taking place on the property, if sand and gravel is processed on the site, then SMARA requires a reclamation plan. In a letter dated June 18, 2003, Tom Davis of Justice & Associates responds to these contentions (Exhibit 8). In addition, it is clear from OMR’s May 5 letter (Exhibit 1) that it was aware of the sand and gravel processing, but still concluded it was not subject to SMARA. After receiving the Residents’ Letter, OMR still concludes that SMARA does not apply. From my own reading of SMARA, there does not appear to be an intent to have it apply to property on which there was no post-1975 excavation.

The Residents’ Letter references the City’s Open Space and Conservation Element Technical Report, noting that the report states that Section J (of which approximately 10% is the Fieldstone site) contained one active quarry. The Residents’ Letter concludes by this that Sully-Miller had an active quarry within Section J in 1987. However, although the Technical Report states that as “of September 1987, the Santiago Creek channel supported only one active surface mining operation, located as shown on Figure OSC-2”, Figure OSC-2 does not show any active surface mining operations in Sector J, let alone one on the Fieldstone site (Exhibit 7). The only aggregate site shown as operating is miles away on an unincorporated area northwest of Orange at the R.J. Noble site.

The Residents’ Letter correctly points out that an attorney representing Hanson during hearings before the City Council stated that between 1975 and 1985 both excavation and processing of sand and gravel took place. In addition, in a declaration filed by Ken Barker, an environmental manager for Hanson Aggregates, stated that based “upon my personal knowledge and my review of business records duly retained by Hanson...” that between 1975-1985 “both extraction and processing occurred.” Mr.
Barker has since submitted a new declaration (Exhibit 9) stating that he had erred in concluding that both extraction and processing had taken place on that site until 1985. His new declaration states that extraction on the site ceased in 1973, even though material extracted from other sites was brought to the site for processing.

**Conclusion**

Although there is some evidence to the contrary, the weight of evidence from the City's records, the interview with former City Engineer Gary Johnson, in conjunction with the conclusions reached by OMR and Mr. Davis after reviewing City/County records and aerials, is that SMARA does not apply to the Fieldstone site. Based on this, SMARA compliance does not appear to be an issue that must be addressed prior to the City Council considering the Fieldstone application.
May 5, 2003

Alice Angus, Director
City of Orange
Community Development Department
300 E. Chapman Ave.
Orange, CA 92668

City of Orange Surface Mining Activities (Fieldstone Project)

Dear Ms. Angus:

In our letter to you dated February 4, 2003 the Department of Conservation, Office of Mine Reclamation (OMR) concluded that based solely on the evidence available to OMR at that time, derived from aerial photographs viewed at the County of Orange geometrics division, county planning department records and City of Orange planning department records, that post-SMARA (post January 1, 1976), surface mining had occurred along several reaches of Santiago Creek. The reaches in question included the 117-acre Sully Miller / Fieldstone Communities Properties site. Based on that information we suggested that if mining did occur, the City should require that a reclamation plan be prepared for the mined areas.

On Monday, April 14, 2003, Tom Davis and Ken Barker, representing Hanson Aggregates, presented a series of aerial photographs of the Sully-Miller / Fieldstone Communities property to OMR staff. This chronological series of aerial photographs dated from 1967 through 1999 showed the progression of activity on the Fieldstone site. The photographs suggest to us that active mining in fact did cease prior to 1975, and that only processing facilities were active after 1975 on the property in question. To date OMR has not received any other factual information regarding this property.

The OMR is generally not in a position to resolve factual disputes involving local land uses. That is better done in the first instance by the local land use decision-making body. In this instance, the City of Orange is best able to make the needed factual determinations as to what did or did not occur on this site over the years in question, and whether post SMARA mining did or did not occur at the Fieldstone Communities site. We expect that the City will perform that function in the present situation.

If you have further questions feel free to contact either Bret Koehler at (916) 323-9198, or Robert Joehnck at (916) 323-6733.

Sincerely,

Wm. Armstrong
Assistant Director

EXHIBIT 1
June 18, 2003

David L. Rudat
City Manager
City of Orange
300 E. Chapman Ave.
Orange, CA 92866

Dear Mr. Rudat:

This letter is in regard to the Fieldstone Communities/ Sully-Miller Property, and surface mining activities associated with that site. As I'm sure you are aware, the site in question is embroiled in controversy between the Santiago Creek Greenway Alliance and the City of Orange, among others, as to applicability of the Surface Mining and Reclamation Act of 1975 (SMARA), Public Resources Code section 2710 et seq. There is disagreement among various parties interested in the Fieldstone Communities project, concerning the timing of surface mining activities on that site. The key issue is; did active open pit mining cease on the Fieldstone Communities site prior to, or after, January 1, 1976, the date SMARA became law?

The Department of Conservation's (DOC) Office of Mine Reclamation (OMR), after reviewing available data from the City of Orange and County of Orange planning department files, examining aerial photographs from those files, and aerial photographs submitted by Hanson Aggregates spanning the time interval from 1950 to 1992, concluded that apparently surface mining activities on the Fieldstone site had ceased prior to January 1, 1976. A letter so stating, dated May 5, 2003 was mailed to Alice Angus, Planning Director of the City of Orange.

Subsequent to our May 5th letter to Ms. Angus, opponents of the Fieldstone project have submitted photographic evidence to OMR, which they believe makes the conclusions reached in that letter inaccurate. The OMR has received numerous telephone calls, letters, data, and long-term resident accounts from the Santiago Creek Greenway Alliance, which express an interpretation of the evidence counter to the DOC/OMR interpretation, that mining activity on the site is pre-SMARA.

The OMR is at a disadvantage when trying to make a determination as to what occurred, or did not occur on a particular site, during a period extending back more than 25 years. It is the City of Orange which has land use jurisdiction over the Fieldstone site, and which is in the best position to determine when surface mining activity last occurred on it.

EXHIBIT 2
It is respectfully suggested that the City of Orange make the relevant determinations as to when surface mining activity last occurred on the Fieldstone site, and if such activity post-dated SMARA, to notify the State Mining & Geology Board which is the current lead agency in the area, unless the City determines to update its now lapsed SMARA ordinance (see PRC section 2774 (a)).

Sincerely yours,

Wm. Armstrong
Assistant Director

cc:  Francisco Alonso
    Manager, Planning and Development Services Department
    County of Orange
February 4, 2003

CERTIFIED MAIL

City of Orange
Community Development
Attn: Alice Angus, Director
300 E. Chapman Ave.
Orange, CA 92866

City of Orange Surface Mining Activities

Dear Ms. Angus:

According to Department records, mining operators Sully-Miller/Blue Diamond, and Conrock, engaged in post-January 1, 1976 mining (the effective date of the Surface Mining and Reclamation Act of 1975, SMARA, Public Resources Code Section 2710 et seq.) along a reach of Santiago Creek downstream from Villa Park Dam. Apparently, mining occurred at locations approximately one-half mile upstream from State Highway 55, including sites known as and adjacent to the Bond Pit, Smith Pit, Villa Park Landfill, and the proposed Fieldstone Communities. As you are aware, any surface mining operation, which removes in excess of 1,000 cubic yards of minerals, ores, and overburden, or involve more than one acre of disturbance in any one location, is subject to SMARA.

The Department of Conservation's (DOC) Office of Mine Reclamation (OMR) has determined that these operators did not possess Lead Agency approved reclamation plans, financial assurances, or local permits to mine, as required by SMARA. Failures to have obtained these approvals are violations of SMARA.

As the SMARA Lead Agency for these mine sites, the City of Orange is required to provide OMR with documentation that these sites have been reclaimed in accordance with reclamation plans approved by the City, which plans must meet minimum SMARA requirements, and that SMARA sanctioned financial assurances have been provided by the operators, to carry out that reclamation required by the approved reclamation plans. You are also required to demonstrate to OMR a proposed course of action as to how the City of Orange intends to comply with these requirements in a timely manner.

Additionally, OMR has received information regarding the proposed Fieldstone Communities project, which if approved will allow the construction of residential dwellings on lands previously identified by this Department as containing minerals of regional economic significance.

EXHIBIT 3
The proposed project site encompasses an area designated to be a state classified Mineral Resource Zone (MRZ).

As you are aware, Public Resources Code (PRC) 2763 requires that prior to permitting a use which would threaten the potential to extract these minerals, the City must prepare a statement specifying its reasons for permitting the proposed use. This statement, prepared by the lead agency, must be prepared in conjunction with any environmental document for a project, which would make the mineral deposit unusable. Upon review of Fieldstone's final Environmental Impact Report (EIR) by OMR staff, it appears that the required statement has not been prepared nor submitted to the State Geologist and State Mining and Geology Board (SMGB), for review, as required pursuant to PRC 2762. Without preparation and submission of this statement, the City of Orange is not in compliance with State law. Additionally, the California Environmental Quality Act (CEQA) review documentation prepared for this project should include information regarding the proper closure and reclamation of the mine site(s) and any information required under PRC 2762.

While the final EIR for Fieldstone Communities has been drafted, it is not clear if it has been certified. Prior to certification of that document, the OMR advises that the City should resolve these issues regarding compliance with the reclamation and mineral classification requirements of SMARA, as outlined above. Please provide us by February 21, 2003, with information about the current status of the City's consideration of the project and how these issues either are or will be addressed. You may contact Bret Koehler, at (916) 323-9198 should you have further questions.

Sincerely,

Wm. Armstrong, Assistant Director
Department of Conservation
Office of Mine Reclamation

cc:  J. Davis, State Geologist
     State Mining and Geology Board
     C. Carnes, Senior Planner, City of Orange
DECLARATION OF TOM DAVIS

I, Tom Davis, declare as follows:

1. I work for Justice & Associates, an environmental and land use planning consulting firm in California, and consultant for Hanson Aggregates, regarding the land use issues affecting Hanson's aggregate production operations.

2. I earned a dual Bachelors degree in biology and geology from Cornell College in 1975. In 1990, after several years working in the aggregate mining and construction materials industry, I earned a Masters degree in environmental studies, with an emphasis on hydrogeology, from California State University - Fullerton.

3. In my capacity as an environmental geologist, I have worked for or consulted with aggregate mining and construction materials companies for approximately 30 years. I worked as a geologist for Martin Marietta Materials and a smaller aggregate company in the Midwest from 1972 to 1980. In 1980, I relocated to California where I continued to work as a property manager and manager of permitting in the aggregate mining industry. While in California, I have worked as a property manager for Livingston Graham (now part of Hanson Aggregates), as Director of the Environmental Department for the Barrett Consulting Group (consultant to aggregate and related industries) and as Director of California Permitting for Vulcan Materials Company (formerly CalMat). For the past two years, I have worked for Justice & Associates as an environmental and land use planning consultant.

4. An issue has been raised as to whether a reclamation plan, pursuant to the California State Mining and Reclamation Act of 1975 (SMARA) and the Sand, Gravel, and Mineral Extraction Code for the City of Orange, (Code) was prepared and approved for the Sully Miller site (Site) in the City of Orange, California.

5. The Site is located on the north side of East Santiago Canyon Road between Cannon Street and Orange Park Blvd. The Site, while within the City of Orange, has historically had addresses of 4621 – 6145 E. Santiago Canyon Road, Orange, CA 92869. The site is further identified as assessor parcels:

   093-280-07, 27, 29, 30, and 31
   370-011-08, 18, 21, and 22
   370-041-12, 13, and 19

6. The Site's parcels are owned by either the Sully Miller Land Company or the Sully Miller Contracting Company.

7. Surface mining operations ceased at the Site prior to January 1, 1976, the effective date of SMARA. Such operations also ceased at the Site before the Code was amended on November 13, 1973 to require an approved rehabilitation plan for excavation operations.

8. Since December 17, 2002, I have reviewed approximately 22 aerial photographs of the Site (a list of those photos are attached hereto as Attachment "A"). The dates of the aerial photo's range from August 1928 to February 24, 1999. The purpose of the review was to document

EXHIBIT 4
the Site's historical activities. The 1928 aerial shows human activity in Santiago Creek, however the quality of the aerial does not allow the determination that the activity included sand and gravel mining. The next photo, 1938, clearly indicates sand and gravel mining and processing equipment on the Site.

9. Importation of sand and gravel for processing at the Site commenced sometime prior to December 12, 1952. The December 12, 1952 aerial photography indicates that sand gravel was being mined on a parcel west of where Cannon Street now crosses Santiago Creek. This area is now the depression between Blue Ribbon Nursery and Cannon Street. The sand and gravel was hauled to the processing plant via a haul road along Santiago Creek.

10. Mining on the Site ceased sometime between January 30, 1970 and October 30, 1973. The January 30, 1970 aerial photograph (Attachment "B") indicates a small area that was excavated between that date and the next aerial photograph dated October 30, 1973 (Attachment "C"). A red arrow points to this excavation area on both photographs.

11. The October 30, 1973 aerial photograph and subsequent aerial photographs indicate no surface mining operations being conducted on the Site.

I declare under penalty of perjury that the foregoing is true and correct. Executed February 19, 2003 in Long Beach, California.

[Signature]

Tom Davis
Attachment "A"

Reviewed Aerial Photographs

02-24-99
10-15-97
01-29-95
06-09-93
01-29-92
06-12-90
03-22-89
01-09-87
05-17-83
01-31-81
12-14-78
01-24-77
01-13-75
10-30-73
01-30-70
04-07-69
03-30-67
03-25-59
12-12-52
09-01-47
1938
08-28
RESOLUTION NO. FC-15-71

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY
OF ORANGE GRANTING A CONDITIONAL USE PERMIT TO CON-
STRUCT AN ASPHALT BATCH PLANT IN THE S-G (SAND AND
GRAVEL EXTRACTION) DISTRICT UPON PROPERTY LOCATED ON
THE NORTH SIDE OF SANTIAGO CANYON ROAD BEGINNING AT
A POINT APPROXIMATELY 400 FEET WEST OF THE CENTER
LINE OF ORANGE PARK BOULEVARD.

SULLY-MILLER CONTRACTING COMPANY

Moved by Commissioner Ault and seconded by Commissioner Fox that
the following resolution be adopted.

WHEREAS, the Planning Commission did hold one duly noticed public
hearing on March 1, 1971 for the purpose of considering a request to allow
construction of an asphalt batch plant in the S-G (Sand and gravel extraction)
district upon the following described property:

That portion of Lot Two (2) in Block "A" of the Lands of
Gege and Bond, as per map thereof recorded in Book 3, page
130 of Miscellaneous Records of Los Angeles County, California,
described as follows:

Beginning at the Northeast corner of said Lot 2, and running
thence Southwesterly along the Northwesterly line of the land
conveyed by W. V. Whisler et ux to Mrs. J. R. Fletcher by deed
recorded April 13th, 1914 in Book 248, page 55 of Deeds to a
bill in the center of the County Road at the Southwest corner of
that portion ofsaid Lot 2 conveyed by Mrs. J. R. Fletcher; thence running
toward the center line of said County Road 284.10
feet more or less, to an old pipe in the angle point in the
center line of said County Road; running thence South 88 degrees
West along the center line of said County Road 597.94 feet to
the Southwest corner of that portion of said Lot 2 conveyed by
B. D. Parker, a single man to Chris Sentz, and wife by Deed
dated October 25th, 1923; running thence North 39° 50' 13"
East 815.36 feet more or less to a point in the North line of
said Lot 2, which point is 266.66 feet South 85° West from the
Northeast corner of said Lot 2; running thence North 85°
East 266.66 feet to the point of beginning.

ALL EXCEPT therefrom that portion included in the County Road
as the same existed prior to 1927.

ALL EXCEPT an undivided one-half interest in the pipe line
located along or near the Northwesterly line of the above
described property.

WHEREAS, the Commission finds as follows:

1. That the subject property is an irregular-shaped parcel of land
having approximately 677 feet of frontage on Santiago Canyon Road,
a maximum depth of approximately 873 feet, and a land area of
approximately 7.9 acres.

2. That the present use consists of a cement plant, base plant,
conveyor systems, stock piles and an orange orchard.

EXHIBIT 5
That to the West and North is sand and gravel excavation, two asphalt batch plants and related activities on land zoned S-3, to the East is a single family dwelling and a citrus grove on land zoned R-1-10 and to the South is a citrus grove in the R-1-10 district.

That Santiago Canyon Road is a primary arterial street with a proposed width of 100 feet.

That the applicant presently operates two asphalt batch plants on adjacent property immediately to the west of the subject property. The applicant proposes to construct a new asphalt batch plant on the subject property in order to consolidate operations and replace the two existing plants which will not be able to comply with anticipated air pollution regulations. The new plant would include utilization of a baghouse which would result in lower emissions and satisfy the more stringent standards now being set for air quality.

That the proposed structure would have a maximum height of slightly over 68 feet and would be located approximately 165 feet from the ultimate right-of-way of Santiago Canyon Road. Santiago Canyon Road is generally elevated in relation to the immediate site on which the structure would be located. However, the road elevation is approximately 4 feet lower than the site at the west side of the subject property and 22 feet higher than the site at the east side of the property.

That in addition to construction of the asphalt plant, the applicant proposes to make the following improvements on the subject property:
A. The cement treated base plant is proposed to be removed.
B. A 10' x 60' truck scales and 30' x 40' scale house would be constructed toward the southwest corner of the subject property.
C. Material dividers with an 8' x 300' tunnel is proposed along the west side of the subject property and would receive material by way of a conveyor system from the applicant's adjacent property to the west.
D. A 40' x 60' area for buried asphalt tanks would be located along the south side of the proposed asphalt plant.
E. The circulation area around the asphalt plant (shown within the dotted line on the submitted plot plan) would be paved and would include space for 21 employee parking stalls and twenty 15' x 60' truck parking stalls.
F. Proposed screening includes two staggered rows of oleanders backed up by one row of pines or eucalyptus along the
ultimate right-of-way of Santiago Canyon Road. This planting strip would be 20 feet in width and would be at street grade level. In widening Santiago Canyon Road, additional fill is necessary to provide for the 20 foot wide planting strip.

G. Truck traffic would circulate counter clockwise on the subject property and would enter and exit by way of a 35 foot wide driveway onto Santiago Canyon Road and located approximately 35 feet from the west property line.

8. That the applicant's representative indicated that remaining aggregate deposits on the applicants holdings (approximately 23 acres) in the vicinity of the subject property amounts to approximately 7 to 8 million tons which is sufficient to continue plant operations for 15 years without bringing material from other areas.

9. That the staff is in receipt of a letter from the applicant indicating that there is presently no specific plan for ultimate use of their sand and gravel pits. It is their intention, however, to continue with their program of filling the pits with inert material until they have been raised to an elevation above the flood level of Santiago Creek.

10. That the applicant's proposal to construct an asphalt batch plant on the subject property is directly related to the entire operation of the sand and gravel facility on properties owned or leased by the applicant in the area, and also must be related to the ultimate use of these properties after valuable materials have been depleted. For this reason the staff requested that the applicant submit ideas and concepts for rehabilitation and ultimate use of these properties.

11. That this hearing was continued from the February 1, 1971 and February 16, 1971 Planning Commission meetings.

11 ' That the applicant's representative spoke in favor of the request but opposed recommended condition of approval number 15, 16, 17.

12. That one person spoke in favor of conditional use permit 498 providing recommended conditions number 15, 16 and 17 are proposed.

13. That with the proposed conditions it was the Commission's opinion that the proposed batch plant would be compatible at this location. NOW, THEREFORE, BE IT RESOLVED, that said Conditional Use Permit No. 498 be granted subject to compliance with the following conditions:

1. That Santiago Canyon Road be dedicated to City of Orange standards.

2. That a grading plan be submitted to the Department of Public Works for approval.

3. That Santiago Canyon Road be improved to City of Orange standards.
That the Santiago Canyon Road parkway be paved with concrete with the exception of 3 foot square tree wells placed 45 feet on center. Said tree wells to be planted with trees as specified by the Director of the Department of Parks and Recreation within 30 days from the completion of the street improvements.

5. That water, sewer and firefighting facilities be provided as required by the related City agencies.

6. That street lights be provided as required by the Department of Public Works.

7. That a complete system of underground electrical and telephone utilities be provided as required by Section 9127.

8. That a 6 foot view obscuring trash enclosure of non-combustible material be provided or such other trash enclosure as approved by the City Planner.

9. That all lighting be so directed as to prevent direct glare of illumination onto adjacent properties.

10. That the landscaping and screening plan and means of irrigation be submitted to and approved by the Director of Parks and Recreation. Screening plants used shall have sufficient foliage and be of adequate size at the time of planting to screen the subject property as viewed from Santiago Canyon Road and adjacent property to the east. That concrete curbing or such other separation material be provided surrounding the landscape areas as approved by the Parks and Recreation Director.

11. That landscaping and screening be provided as indicated upon the approved plan, including means for the protection and irrigation thereof prior to occupancy of any buildings.

12. That development be according to the approved plans as approved by the Planning Division.

13. That all provisions under Section 9112.4 (5-G. sand and gravel extraction district) be adhered to.

14. That the applicant diligently and continuously pursue a program of rehabilitation of their owned or leased property by filling pits and other depressions with inert material in a manner meeting with the approval of the Department of Public Works.

15. That approval of this conditional use permit shall be for a five (5) year period; except that the Planning Commission may extend the effective time of this conditional use permit for an additional five (5) year period without a public hearing.

16. That the City and applicant negotiate and confer in good faith in order to provide for the rehabilitation of certain properties as set forth in Exhibit A on file in the office of the City Planner.
negotiations shall begin immediately and not extend in excess of a three (3) year period from the effective date of this conditional use permit.

17. That if in the event Condition 16 is resolved to the satisfaction of the City, that Condition 15 no longer apply and that said conditional use permit be granted for a period not to exceed fifteen (15) years from the effective date of said grant.

I, hereby certify that the foregoing resolution was adopted on March 1, 1971, by the Planning Commission of the City of Orange by the following vote:

AYES: Commissioners Ault, Fox, Ingle, Swank

NOES: Commissioner Parisi

ABSENT: Commissioners Nofe

Darrell Daugherty, City Planner & Secretary to the Planning Commission of the City of Orange
RESOLUTION NO. 4139

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF ORANGE MODIFYING CERTAIN CONDITIONS IMPOSED
BY PLANNING COMMISSION RESOLUTION NO. PC-15-75
GRANTING A CONDITIONAL USE PERMIT TO INSTALL A
READY-MIXED CONCRETE BATCH PLANT UPON PROPERTY
SITUATED ON THE NORTH SIDE OF SANTIAGO CANYON
ROAD BEGINNING AT A POINT APPROXIMATELY 400
FEET WEST OF ORANGE PARK BOULEVARD.

Conditional Use Permit 704

Appeal No. 233

SULLY-MILLER CONTRACTING COMPANY

RECATS:

After report thereon by the Planning Commission and after
due public hearings as required by law, and after receiving a
recommendation from the Planning Commission recommending, by
Resolution No. PC-15-75, that a conditional use permit be granted
to install a ready-mixed concrete batch plant upon property
situated on the north side of Santiago Canyon Road beginning at a
point approximately 400 feet west of Orange Park Boulevard, and
after an appeal by the Applicant protesting the imposition of
certain conditions imposed on Conditional Use Permit 704 by the
Planning Commission, and after considering all evidence presented
at said hearing, the City Council approved the appeal in part and
determined to modify the resolution in the manner hereinafter
described.

The real property to which this conditional use permit is
applicable is more particularly described as follows:

That portion of Lot 2 in Block "A" of the Lands of Oge
and Bond, as per map thereof recorded in Book 3, page
430 of Miscellaneous Records of Los Angeles County,
California, described as follows: Beginning at the
Northeast corner of said Lot 2, and running thence
Southwesterly along the Northwesterly line of the land
conveyed by W. V. Whisler et ux to Mrs. J. R. Fletcher
by deed recorded April 13, 1914 in Book 248, page 55
of Deeds to a bolt in the center of the County Road
at the Southwest corner of said land conveyed to said
Mrs. J. R. Fletcher; thence running Northwesterly along
the center line of said County Road 284.10 feet, more
or less, to an old pipe in the angle point in the
center line of said County Road; running thence South
84 degrees West along the center line of said County
Road 597.94 feet to the Southeast corner of that
portion of said Lot 2 conveyed by E. D. Parker, a
single man to Chris Senti and wife by Deed dated
October 25, 1923; running thence North 39 degrees 50'
15" East 815.36 feet more or less to a point in the
North line of said Lot 2, which point is 266.66 feet
South 85 degrees West from the Northeast corner of said
Lot 2; running thence North 85 degrees East 266.66 feet
to the point of beginning.

EXHIBIT 6
ALSO EXCEPT therefrom that portion included in the County Road as the same existed prior to 1927.

ALSO EXCEPT an undivided one-half interest in the pipe line located along or near the Northwesterly line of the above described property.

Upon the public hearing before the City Council, the following facts were established:

1. That the subject property is an irregular-shaped parcel of land situated on the north side of Santiago Canyon Road beginning at a point approximately 400 feet west of the centerline of Orange Park Boulevard. The site has approximately 677 feet of frontage on Santiago Canyon Road, a maximum depth of approximately 879 feet and a land area of 7.9 acres.

2. That the subject property is zoned S-G (Sand and Gravel Extraction) District.

3. That the present use of the subject property consists of a sand and gravel operation including conveyor systems and stock piles and a small orange orchard.

4. That to the west and north of the subject property is the applicant's sand and gravel plant and office in the S-G District; to the east is a single family residence, a school district horticultural training facility and a vacant future school site in the R-1-10 District; to the south is a citrus grove in the R-1-10 District and a church in the County R-1 District.

5. That Santiago Canyon Boulevard is a primary arterial street with a proposed width of 100 feet.

6. That the applicant requests approval of a conditional use permit to install a ready mixed concrete batch plant on the subject property. The proposed batch plant would measure sand and gravel, water and cement and load the ingredients into mixer trucks. The applicant's adjacent property to the west is presently used for sand and gravel production and two asphalt batch plants, which are similar to the proposed installation but produce paving material rather than concrete. The new installation will be equipped with a dust collector and baghouse to prevent dust from leaving the truck loading point. The overall height of the structure would be 28-1/2 to 34 feet above grade. Santiago Canyon Road is generally elevated in relation to the immediate site on which the structure would be located. However, the road elevation is approximately 4 feet lower than the site at the west side of the subject property and 22 feet higher than the site at the east side of the property. Additional offstreet parking and landscaping is not proposed. The proposed plant is a replacement for the concrete batch plant now located at 980 N. Hewes Street.
7. That on March 1, 1971 the Planning Commission approved Conditional Use Permit 498 to construct a new asphalt batch plant on the subject property. The new batch plant was to replace the two existing asphalt batch plants on the adjoining property and would have been equipped with a baghouse which would result in lower emissions and satisfy the more stringent standards being set for air quality. Conditional Use Permit 498 became void, however, due to the applicant's failure to utilize the permit. The applicant had opposed special conditions placed on the permit limiting its approval to a maximum of 15 years.

8. That one person spoke in favor of said request, one person spoke in favor of said request subject to changes in the recommended conditions, and no one spoke in opposition to said request.

9. The City Council of the City of Orange certifies that EIR No. 208 has been completed in compliance with all legal requirements, including the California Environmental Quality Act and all guidelines promulgated pursuant thereto. The City Council further certifies that it has reviewed and considered the information contained in EIR No. 208. As a result of such review and consideration of EIR No. 208, the City Council finds as follows:

- The project will have no substantial adverse impact on the environment.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Orange that Appeal No. 233 be approved and Conditional Use Permit 704 be approved with the addition of Condition #19 and the modification of Conditions #3, #5 and #18 of Planning Commission Resolution No. PC-15-75.

BE IT FURTHER RESOLVED that Conditional Use Permit 704 be approved subject to the following conditions:

PRIOR TO THE ISSUANCE OF A BUILDING PERMIT THE FOLLOWING CONDITIONS SHALL BE COMPLIED WITH:

1. That Santiago Canyon Road be dedicated to City of Orange standards.

2. That a grading plan showing the installation of the batch plant be submitted to the Department of Public Works for approval.

PRIOR TO TEMPORARY OR FINAL CERTIFICATE OF USE AND OCCUPANCY THE FOLLOWING CONDITIONS SHALL BE COMPLIED WITH:

3. That Santiago Canyon ultimate right-of-way be dedicated and improvements be made to widen the street to provide adequate left-turn pockets into and out of the new batch plant site.

4. That water, sewer and firefighting facilities be provided as required by the related City agencies.

5. That street lighting be in keeping with the approved Webb Plan for street lights in Orange Park Acres.

6. That a complete system of underground electrical and telephone utilities be provided as required by Section 9127.
That 6 foot view-obscuring trash enclosures of a non-combustible material be provided or such other trash enclosures as approved by the Administrator of Current Planning.

That all lighting be so directed as to prevent direct glare of illumination onto adjacent properties.

That a landscaping and screening plan and means of irrigation be submitted to and approved by the Design Review Board and the Director of Public Works. Said landscaping and screening shall be for the purpose of minimizing the view of the batch plant as seen from Santiago Canyon Road and from adjoining private residences on the East of the plant site using the Santa Ana river and Santiago Creek landscaping plan as a guide.

That landscaping and screening be provided as indicated upon the approved plan, including means for the protection and irrigation thereof prior to operation of any equipment.

That development be according to the approved plan as approved by the Design Review Board and the Planning Division.

That all provisions under Section 9112.4 (S-G, Sand and Gravel Extraction District) be adhered to.

That the applicant continue to work with the County and City of Orange in the ongoing joint study and effort to rehabilitate their owned or leased properties in Santiago Creek.

That this conditional use permit shall be reviewed at five year intervals for the purpose of assessing the status of the sand and gravel operations.

That this conditional use permit shall not extend for a period of time exceeding 15 years from the date of issuance of this conditional use permit.

That the applicant shall comply with the City of Orange noise ordinance.

That the batch plant at 1000 N. Hewes be removed immediately upon operation of a new modern batch plant authorized by the conditional use permit.

That hours of operation of the batch plant shall be as follows: Monday thru Friday - 6:00 a.m. until 6:00 p.m.; Saturday - 8:00 a.m. until 6:00 p.m.; no operations permitted on Sundays or holidays.

That provisions be made for adequate drainage as recommended by the Department of Public Works.

BE IT FURTHER RESOLVED that Conditional Use Permit 704 be granted for the following reasons:

1. The subject proposal is consistent with all approved elements of the General Plan and with the S-G zoning of subject parcel.

2. Conditional Use Permit 704 complies with all requirements of Section 9114.1(a) of the Orange Municipal Code.

ADOPTED this 13th day of May, 1975.

ATTEST: CHARLOTTE M. JOHNSON, CITY CLERK (pro tem)

City Clerk of the City of Orange
California Dept. of Conservation  
Office of Mine Reclamation  
801 K Street  
Sacramento, California 95824

Attn: Wm. Armstrong, Assistant Director

Re: City of Orange Surface Mining Activities (Fieldstone Project/Sully Miller Property)

Dear Mr. Armstrong:

The undersigned individuals are citizens concerned that a decision made by your office, as reflected in your May 5, 2003 letter (copy enclosed) to Alice Angus (Director, Orange Community Development Dept.) is based on questionable information provided by representatives of Hanson Aggregates, who have a vested interest in the outcome of your decision.

It is interesting that a prior decision (ref: Feb. 4, 2003 letter, copy enclosed) made by your office that Sully-Miller mining activities had occurred post-SMARA, have now been negated merely on testimony by Hanson Aggregates. We disagree with your latest decision “that the photographs suggest to us that active mining in fact did cease prior to 1975, and that only processing facilities* were active after 1975 on the property in question”. We have viewed aerial photos taken in 1977, 1983 and 1993 which clearly show extraction and disposal of mine waste were occurring on this site after Jan. 1, 1976. We submit the following attached information in support of our position.

Attch. A – Relevant Sections of Surface Mining and Reclamation Act

Section 2715. This section clearly defines “surface mining operations” to include not only removal of overburden and extraction of minerals, but also “the production and disposal of mining waste”.

Section 2730. “Mining waste” is defined as including the residual of soil, rock, mineral, liquid . . . or other materials or property directly resulting from, or displaced by, surface mining operations. It is clear that mining waste would therefore include slurry from the crushing of sand and gravel, which was deposited into on-site man-made basins.

*We believe that Hanson Aggregates is using their recycling operation to disguise the extraction, processing and disposal of mining waste of minerals mined on-site.

EXHIBIT 7

Barry A. Ross, Attorney at Law, representing Hanson Aggregates West, Inc., in a recent dispute involving the operation of a recycling facility on the Fieldstone Project/Sully-Miller Property, stated in his letter on the bottom of Page 2 and the top of Page 3:

“For more than 50 years, the subject property* was used for extraction (or mining) of natural resources. Processing (or recycling) started in 1975 and continues to this day. Extraction stopped in 1985. For the ten-year period of 1975 to 1985, both extraction and processing occurred. After 1985, only processing occurred.” (emphasis added)

(The information presented in this letter did not come directly from the attorney, but was provided to Attorney Barry Ross by Hanson Aggregate personnel – no doubt the same individuals who are now telling you that no mining activities occurred after Jan. 1, 1976.)

The Barry Ross letter is an obvious contradiction of the information provided to you by Hanson Aggregates in private meetings with your department. We believe the dates mentioned above are the true dates based on aerial photos we have covering the years 1977 through 1993, which show extraction in one area of the property and disposition of mining waste (slurry) on other areas. This also coincides with observations made by long-time residents in the area who had the opportunity to observe activity on this property.

It should be brought to your attention that the Barry Ross letter is dated Oct. 7, 2002, which was prior to our raising the issue of compliance with SMARA in mid-to late November 2002. It is interesting to note that once the issue of compliance with SMARA was publicly raised, Hanson Aggregates personnel switched their stories and claimed that extraction and disposition of mining waste ceased prior to Jan. 1976. THIS CHANGE IN STORIES IS OBVIOUSLY TO GET OUT FROM UNDER THE RECLAMATION REQUIREMENTS OF SMARA; IT SHOULD NOT BE RELIED ON AS CREDIBLE INFORMATION.


The area outlined in red depicts the boundary of the Fieldstone Project and is totally within property on which mining operations were conducted by Sully-Miller. The 1928 Photo C1 shows the creek before Sully-Miller started their mining operations. In Photo C2 (1977) and C3 (1983), it is apparent that extraction occurred in Area A. This confirms the Barry Ross/Hanson Aggregates statements that extraction occurred between 1975 and 1985. It is our contention that both extraction and processing of sand and gravel occurred on this property (i.e., the Fieldstone Project/Sully-Miller Site) between 1977 and 1983.

* The property being referred to is the Sully-Miller site on which the Fieldstone Project is proposed to be constructed.
Comparing Photos C2 (1977) and C3 (1983), the prior excavated pit shown as Area B is being used to deposit slurry from the processing operation. Area C is another large depression at the extreme east end of the property, which was also being used throughout these years for depositing mining waste.

By 1993 (Photo C4), Areas A, B and C have been completely filled with mining waste. Area C was filled to an elevation some 20-30 feet above the original creekbed and currently diverts the upstream creek to a narrow channel created by Sully-Miller.

All of these photos show either extraction or disposal of mining waste, or both, occurring after Jan. 1976.


As part of the City of Orange General Plan, the Open Space and Conservation Element Technical Report dated December 1987 was prepared. A copy of pages 15 and 20 and Figure OSC-2 are included as part of Attch. D. There were only two sand and gravel operators who mined in Sector J – ConRock and Sully-Miller. ConRock terminated ALL of their mining operations in Sector J in 1984 (this date was verified by City of Orange records). Therefore, the statement contained on p. 15 and again on p. 20 to the effect that as of September 1987 Sector J contained only one active quarry leads to the conclusion that the one active quarry being referred to is that mined by Sully-Miller.

CONCLUSIONS:

- Per the Surface Mining and Reclamation Act, the definition of “surface mining operations” includes not only the extraction of minerals, but also the production and disposal of mining waste.

- Per the Surface Mining and Reclamation Act, the definition of “mining waste” includes the slurry product from the washing and crushing of sand and gravel mined on-site and deposited into man-made basins on-site.

- Based on aerial photographs taken in 1977, 1983 and 1993 it is apparent that mining waste (slurry) was being deposited on-site in several locations on this property between 1977 and 1993. The aerials also show a sizable area of extraction occurring between 1977 and 1983 on this property.

- The letter from Hanson Aggregates Attorney – Barry A. Ross – makes it very clear that extraction occurred post-SMARA (i.e., after January 1976 and continued through 1985). It is also evident from the Ross letter that processing of the resource mined on-site was conducted through 1985. (After 1985 the processing operation consisted of recycling asphalt and concrete products that were imported from other locations and crushed on-site.)

- The Open Space and Conservation Element Technical Report confirms that one active quarry existed in Lower Santiago Creek in 1987. This could only have
been the Sully-Miller operation since the only other sand and gravel operator had terminated their operations in 1984.

REQUESTED ACTION:
We believe your office has not been told the entire truth about the mining operations conducted at this site since Jan. 1976 and that your decision has been tainted by self-serving mis-information provided to you by the very individuals who stand to lose the most by your decision. You shouldn’t ask the fox how many chickens he ate – but if you do ask, you definitely need to verify their information through other sources.

It is our specific request that you reconsider your decision in light of the information presented in this letter. It is a shameful record at best, that not a single sand and gravel operation in Orange County has been subjected to SMARA’s reclamation requirements because the individual operators claim they ceased mining operations prior to Jan. 1, 1976 and what few records are maintained by local government are not in sufficient detail to refute the operators’ claims. We do not intend to let the Sully-Miller owners/operators use the same fallacious arguments and are relying on your office to do a credible job in enforcing SMARA’s reclamation requirements.

Sincerely,

Shirley L. Grindle
Former Chmn. Orange County Planning Commission
5021 E. Glen Arran, Orange, California 92869
(714) 633-0251

Wm. Bouska
Co-Chair Santiago Creek Greenway Alliance
270 N. Malena Drive, Orange, California 92869
(714) 538-5404

G. David Piper
6705 E. Oak Lane, Orange, California 92869
(714) 744-9304

cc: David DeBerry, Orange City Attorney

Encls: May 5, 2003 and Feb. 4, 2003 Letters from Wm. Armstrong
Attach. A – Relevant Sections of Surface Mining and Reclamation Act
Attach. B – Barry Ross, Atty. For Hanson Aggregates Letter to City of Orange
Attach. D – Excerpts from City of Orange Open Space and Conservation Element
        Tech. Report Dated December 1987
May 5, 2003

Alice Angus, Director
City of Orange
Community Development Department
300 E. Chapman Ave.
Orange, CA 92866

City of Orange Surface Mining Activities (Fieldstone Project)

Dear Ms. Angus:

In our letter to you dated February 4, 2003, the Department of Conservation, Office of Mine Reclamation (OMR) concluded that based solely on the evidence available to OMR at that time, derived from aerial photographs viewed at the County of Orange geomatics division, county planning department records and City of Orange planning department records, that post-SMARA (post January 1, 1978), surface mining had occurred along several reaches of Santiago Creek. The reaches in question included the 117-acre Bully-Miller / Fieldstone Communities Properties site. Based on that information we suggested that if mining did occur, the City should require that a reclamation plan be prepared for the mined areas.

On Monday, April 14, 2003, Tom Davis and Ken Barker, representing Hanson Aggregates, presented a series of aerial photographs of the Bully-Miller / Fieldstone Communities property to OMR staff. This chronological series of aerial photographs dated from 1957 through 1988 showed the progression of activity on the Fieldstone site. The photographs suggest to us that active mining in fact did cease prior to 1978, and that only processing facilities were active after 1978 on the property in question. To date OMR has not received any other factual information regarding this property.

The OMR is generally not in a position to resolve factual disputes involving local land use. That is better done in the first instance by the local land use decision-making body. In this instance, the City of Orange is best able to make the needed factual determinations as to what did or did not occur on this site over the years in question, and whether post SMARA mining did or did not occur at the Fieldstone Communities site. We expect that the City will perform that function in the present situation.

If you have further questions feel free to contact either Bret Koehler at (916) 323-6198, or Robert Jochnick at (916) 323-6723.

Sincerely,

[Signature]

Wm. Armstrong
Assistant Director
February 4, 2003

CERTIFIED MAIL

City of Orange
Community Development
Attn: Alice Angus, Director
300 E. Chapman Ave.
Orange, CA 92866

City of Orange Surface Mining Activities

Dear Ms. Angus:

According to Department records, mining operators Sully-Miller/Blue Diamond, and Conrock, engaged in post-January 1, 1976 mining (the effective date of the Surface Mining and Reclamation Act of 1975, SMARA, Public Resources Code Section 2710 et seq.) along a reach of Santiago Creek downstream from Villa Park Dam. Apparently, mining occurred at locations approximately one-half mile upstream from State Highway 55, including sites known as and adjacent to the Bond Pit, Smith Pit, Villa Park Landfill, and the proposed Fieldstone Communities. As you are aware, any surface mining operation, which removes in excess of 1,000 cubic yards of minerals, ores, and overburden, or involve more than one acre of disturbance in any one location, is subject to SMARA.

The Department of Conservation's (DOC) Office of Mine Reclamation (OMR) has determined that these operators did not possess Lead Agency approved reclamation plans, financial assurances, or local permits to mine, as required by SMARA. Failures to have obtained these approvals are violations of SMARA.

As the SMARA Lead Agency for these mine sites, the City of Orange is required to provide OMR with documentation that these sites have been reclaimed in accordance with reclamation plans approved by the City, which plans must meet minimum SMARA requirements, and that SMARA sanctioned financial assurances have been provided by the operators, to carry out that reclamation required by the approved reclamation plans. You are also required to demonstrate to OMR a proposed course of action as to how the City of Orange intends to comply with these requirements in a timely manner.

Additionally, OMR has received information regarding the proposed Fieldstone Communities project, which if approved will allow the construction of residential dwellings on lands previously identified by this Department as containing minerals of regional economic significance.
The proposed project site encompasses an area designated to be a state classified Mineral Resource Zone (MRZ).

As you are aware, Public Resources Code (PRC) 2763 requires that prior to permitting a use which would threaten the potential to extract these minerals, the City must prepare a statement specifying its reasons for permitting the proposed use. This statement, prepared by the lead agency, must be prepared in conjunction with any environmental document for a project, which would make the mineral deposit unusable. Upon review of Fieldstone’s final Environmental Impact Report (EIR) by OMR staff, it appears that the required statement has not been prepared nor submitted to the State Geologist and State Mining and Geology Board (SMGB), for review, as required pursuant to PRC 2762. Without preparation and submission of this statement, the City of Orange is not in compliance with State law. Additionally, the California Environmental Quality Act (CEQA) review documentation prepared for this project should include information regarding the proper closure and reclamation of the mine site(s) and any information required under PRC 2762.

While the final EIR for Fieldstone Communities has been drafted, it is not clear if it has been certified. Prior to certification of that document, the OMR advises that the City should resolve these issues regarding compliance with the reclamation and mineral classification requirements of SMARA, as outlined above. Please provide us by February 21, 2003, with information about the current status of the City's consideration of the project and how these issues either are or will be addressed. You may contact Bret Koehler, at (916) 323-9198 should you have further questions.

Sincerely,

Wm. Armstrong, Assistant Director
Department of Conservation
Office of Mine Reclamation

cc: J. Davis, State Geologist
State Mining and Geology Board
C. Carnes, Senior Planner, City of Orange
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.

§ 2730. "Mining waste" includes the residual of soil, rock, mineral, liquid, vegetation, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations.

§ 2731. "Operator" means any person who is engaged in surface mining operations, himself, or who contracts with others to conduct operations on his behalf, except a person who is engaged in surface mining operations as an employee with wages as his sole compensation.

§ 2732. "Overburden" means soil, rock, or other materials that lie above a natural mineral deposit or in between mineral deposits, before or after their removal by surface mining operations.

§ 2732.5. "Permit" means any authorization from, or approval by, a lead agency, the absence of which would preclude surface mining operations.

§ 2733. "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.

§ 2734. "State policy" means the regulations adopted by the board pursuant to Section 2735.

§ 2735. "Surface mining operations" means all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

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

Article 3. District Committees

§ 2740. In carrying out the provisions of this chapter, the board may establish districts and appoint one or more district technical advisory committees to advise the board. In establishing districts for these committees, the board shall take into account physical characteristics, including, but not limited to, climate, topography, geology, type of overburden, and principal mineral commodities. Members of the committee shall be selected and appointed on the basis of their professional qualifications and training in mineral resource conservation, development and utilization, land use planning, mineral economies, or the reclamation of mined lands.

§ 2741. The members of the committee shall receive no compensation for their services, but shall be entitled to their actual and necessary expenses incurred in the performance of their duties.

Article 4. State Policy for the Reclamation of Mined Lands

§ 2755. The board shall adopt regulations which establish state policy for the reclamation of mined lands in accordance with the general provisions set forth in Article 1 (commencing with Section 2710) of this chapter and pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

§ 2756. State policy shall apply to the conduct of surface mining operations and shall include, but shall not be limited to, measures to be employed by lead agencies in specifying grading, backfilling, resoiling, revegetation, soil compaction, and other reclamation requirements, and for soil erosion control, water quality and watershed control, waste disposal, and flood control.

§ 2757. The state policy adopted by the board shall be
October 7, 2002

Chairperson Smith & Members
of the Planning Commission
City of Orange
Orange Civic Center
300 East Chapman Avenue
Orange, CA 92666-1591

Re: Hanson Aggregates West, Inc. v. City of Orange

Dear Chairperson Smith & Members of the Planning Commission:

I represent Hanson Aggregates West, Inc. ("Hanson"), the owner of the subject property at 4261-6145 East Santiago Canyon Road, Orange, California. Hanson has been engaged in the sand and gravel processing business at the subject property for 10 years. The staff is requesting you to determine that Hanson's sand and gravel processing business is not a permitted land use within the sand and gravel zone. Hanson requests that you determine that Hanson's sand and gravel processing business is a permitted land use within the sand and gravel zone.

1. THE STAFF INTERPRETATION OF MUNICIPAL CODE SECTION 17.32.010 IS INCORRECT.

The staff interpretation that Hanson's sand and gravel processing facility can not be operated on the subject property is based on the fact that Hanson is no longer excavating on the subject property. The staff bases the interpretation on Orange Municipal Code section 17.32.010. A careful reading of this section demonstrates that the staff interpretation of this section is incorrect.

The first sentence of this section provides:

"These regulations are established to provide for the commercial extraction and processing of natural resources in a manner that is most beneficial to the citizens of the City."
This sentence states that commercial extraction and commercial processing of natural resources are permitted uses. My client is engaged in the commercial processing of natural resources. Sand and gravel is a natural resource. As stated in Bambauer v. Menjoulet (1963) 214 Cal.App.2d 871, 874:

"It is true that commercial gravel belongs to the mineral kingdom in that it is inorganic and it is formed by nature alone."

The sand and gravel that Hanson is processing is organic and it is formed by nature alone. Therefore, it qualifies as a natural resource. Further, Hanson's business is performed "in a manner that is most beneficial to the citizens of the City." By recycling sand and gravel at this location, Hanson's business activity will result in a reduction in truck traffic, less material going into landfills and an increase in conservation of natural resources. Further, there is no indication that extraction cannot be conducted without processing or that processing cannot be conducted without extraction.

The second sentence of this section provides:

"Sand, gravel, earth, and similar materials can be excavated only where they have been deposited by nature, which in some instances may be close to existing or planned urban development."

Since Hanson is not currently engaged in any excavation activity, the sentence is inapplicable to the present case. The sentence only applies when the business activity consists of excavation.

The third sentence of the section provides:

"These regulations are intended to ensure compatibility between extraction operations and adjacent uses in a manner that will minimize adverse effects caused by the uses permitted."

For more than 50 years, the subject property was used for extraction (or mining) of natural resources. Processing (or recycling) started in 1975 and continues to this day. Extraction stopped in 1985. For the ten-year period of 1975 to 1985, both extraction and processing
Planning Director and Members of the Planning Commission  
October 7, 2002  
Page 3

occurred. After 1985, only processing occurred. In 1992, Hanson acquired its ownership in the subject property and continued the previous use of processing of natural resources to the present time, a period of ten years. The absence of extraction activity during the past 17 years, including the noise and airborne debris affiliated with the process of extraction is more compatible with the adjacent uses and will certainly minimize the adverse effects caused by the business operations. It is noteworthy that stone crushing is performed only 2 or 3 times per year. In contrast, extraction would be performed on a continuous basis.

The fourth and last sentence of this section provides:

"It is also the intent of these regulations to provide assurance that as soon as it is feasible to do so that excavated areas will be maintained or modified in order to guarantee that the property will be suitable for a useful purpose."

If the City prohibits Hanson's processing operation, there is no other use that can be made of the subject property. The sand and gravel zone uses described in Section 17.32.020 are incompatible with the current property and would not be supported or endorsed by the staff even in the absence of the Fieldstone project's application for a change in zoning to residential. With the Fieldstone project zone change pending, the staff certainly would not recommend any of the permitted uses on the subject property. Your staff has informed Hanson that it will not support a change of zoning to manufacturing. If Hanson's current use is banned, the property will probably remain fallow without any "useful purpose" until and unless a zone change to a residential use is developed.

2. THE CURRENT USE IS INCIDENTAL AND AUXILIARY TO THE PRIOR USE.

As stated above, prior to 1985, the use of the property consisted of excavation and processing of sand and gravel. After 1985, the use has been limited to processing without any excavation. The processing is incidental and auxiliary to excavation. Even the staff report admits that the existing operation has "some similarities with permitted uses." Reference is made to the attached letter dated March 20, 2002, from Ken Barker, Environmental Manager to Alice Angus, Community Development Director. The leading case on this issue is the California Supreme Court decision of Hansen Brothers Enterprises, Inc. v. Board of Supervisors (1996) 12 Cal.4th 533. In Hansen Brothers (no relation to my client), the property owner had engaged for many years in hillside rock quarrying on a portion of the property. The property owner sought to engage in riverbed gravel mining on a separate portion of the property. The issue presented is whether this was an impermissible intensification of the prior use, or was this incidental and auxiliary to the prior use. The court held that although riverbed gravel mining is a distinct
business operation from hillside rock quarrying, the new use is not an intensification of the prior use; the new use is incidental and auxiliary to the prior use. The majority opinion and especially the dissenting opinions of Justice Mosk and Kennard explain the differences between the prior use of hillside rock quarrying and the current use of riverbed gravel mining which differences appear to me to be significant. Nevertheless, the court held that riverbed gravel mining is an incidental and auxiliary use to hillside rock quarrying. The court states at pages 565 to 566 as follows:

"In determining the use to which the land was being put at the time the use became nonconforming, the overall business operation must be considered. One entitled to a non-conforming use has a right to engage in uses normally incidental and auxiliary to the non-conforming use... The mining uses of the Hansen Brothers' property are incidental aspects of the aggregate production business."

IF diverse uses such as riverbed gravel mining and hillside rock quarrying are considered to be incidental and auxiliary uses, then certainly commercial extraction and the commercial processing of sand and gravel must also be considered to be incidental and auxiliary uses, especially since both such uses are expressly permitted in the first sentence of Section 17.32.010 of the Orange Municipal Code.

3. SINCE THE SUBJECT PROPERTY IS NOT SUITABLE FOR ANY OF THE PERMITTED USES OTHER THAN SAND AND GRAVEL PROCESSING, THE CITY'S PROHIBITION OF THE CURRENT USE WILL DEPRIVE THE OWNER OF SUBSTANTIALLY ALL USE AND VALUE WHICH WILL SUBJECT THE CITY TO LIABILITY FOR INVERSE CONDEMNATION.

In North Sacramento Land Company v. City of Sacramento (1983) 140 Cal.App.3d 576, the only permitted uses on the subject property were agriculture or camping facilities. The property owner argued that the subject property was particularly suitable for the extraction of sand and gravel and it was particularly unsuitable for either agriculture or camping facilities. The property owner argued that the zoning regulation eliminated any possible use of the land and constituted unconstitutionally excessive regulation. The court held that the property owner stated a cause of action against the City of Sacramento for inverse condemnation arising out of its zoning ordinance. The court stated at page 579:

"a zoning ordinance may be unconstitutional and subject to invalidation when its effect is to deprive a landowner of
4. A MODEST PROPOSAL.

Hanson has entered into a sales contract with Fieldstone for the sale of the subject property. The sales contract is contingent upon Fieldstone obtaining land use entitlements from the City of Orange necessary for the project including a change of zoning from sand and gravel to residential. Accordingly, Hanson proposes that it will vacate the subject property and discontinue the current use within three years of the current date, whether or not the Fieldstone project is ultimately implemented. This proposal will allow Hanson to partially amortize the current value of its business while it attempts to locate an alternate business site without going out of business during the interim period. This proposal will avoid protracted litigation between the City and Hanson which may exceed three years. This proposal will cost nothing to the City other than the time required for the City Attorney and I to draft an appropriate agreement to implement this proposal.

I would be pleased to answer any questions.

Very truly yours,

BARRY A. ROSS

BAR: Isk
cc: Ken Barker
    Paul R. Kielhold
    James L. Wallmann, Esq.
- No pond areas are visible in the historic streambed. The vegetation along the old north pond area has increased.

- A single main flowpath is evident. The channel bend near the west end of the Sully Miller property follows essentially the same alignment to the present day.

- Mabury Ranch and Mabury Avenue have been constructed to the north of the channel. No residential development adjacent to the Sully Miller property. Agricultural land use north of the channel. Minor agricultural use south of the channel.

- Gravel mining operation base to the south of the channel is still extensive.

- Santiago Dam/Irvine Lake has been constructed (1935); Villa Park Dam has been constructed (1963).
- A new small pond area is visible in the historic streambed. Vegetation has grown throughout most of the north pond. The two south ponds have been filled (likely a result of settling operation from the mining) and appear to be cutoff from the floodplain by a haul road.

- A single main flowpath is evident. The channel bend near the western end of the Sulli Miller property follows essentially the same alignment to the present day.

- No residential development adjacent to the Sulli Miller property, except for a small piece along the southern boundary. Agricultural land use north of the channel. Minor agricultural use south of the channel.

- Gravel mining operation base to the south of the channel is still extensive.

- Santiago Dam/Irvine Lake has been constructed (1935), Villa Park Dam has been constructed (1963).
The streambed is a wide sandy area.

Mudflats are visible, particularly near the west and east ends of the main flowpath.

The mudflats are located near the south bank, in particular near the west end of the property.

No evidence of gravel mining.

Santiago Dam/Irvine Lake and Villa Park Dam have not been constructed.

1928
• Assist in the management of land use which affect areas of statewide and regional significance; and

• Emphasize the conservation and development of identified mineral deposits.

**Significant Resource Areas**

Within the established mineral resource zones, CDMG has designated specific areas as "Regionally Significant Aggregate Resource Areas," also referred to as "Resource Sectors." Designated resource sectors in the City of Orange are included within the Lower Santiago Creek Resource Area and the Santa Ana River Resource Area. Figure OSC-2 indicates the resource area boundaries established by the CDMG. The boundaries encompass the known or inferred extent of the sand and gravel resources.

**Lower Santiago Creek Resource Area:** The Lower Santiago Creek area is divided into two resource sectors, Sector J and Sector K (Figure OSC-2). Together these sectors are estimated to contain 263.6 short tons, or 18 percent, of the 1,468.2 short tons of aggregate identified within the study area as indicated in Table OSC-3.

Sector J has a designation of MRZ-2, indicating that the area contains significant mineral deposits. The CDMG estimates that Sector J, which lies wholly within the City limits, contains 233.6 million tons of aggregate resources at an average density of 0.665 tons per cubic foot. The resource extends to an approximate depth of 400 feet, although drill logs indicate that below 200 feet the material has an inconsistent economic quality. Groundwater levels prevent excavation below the 400 foot depth. Sector J contains one active quarry. Figure OSC-2 indicates existing and former quarry sites.

Although Sector J may contain significant reserves, much of the surface area of Sector J outside of the creek channel and flood plain has been urbanized. The urbanization will undoubtedly preclude recovery of all known sand and gravel deposits. Future recovery operations, if any, will be concentrated in and along the stream bed. The CDMG has not estimated the amount of material which can be mined reasonably, recognizing existing land use patterns. Also, the CDMC indicates that Orange County surface
mining regulations prohibit extraction below 150 feet. These regulations further reduce the volume of aggregate which may be recovered.

As of September 1987, the Santiago Creek channel supported only one active surface mining operation, located as shown on Figure OSC-2.

Santa Ana River Resource Area: A very small portion of the Santa Ana River Resource Area (Resource Sector G) lies within the planning area (Figure OSC-2). The resource area contains primarily sand since the upstream Prado Dam now prevents alluvium from being carried through the Santa Ana Canyon to Orange.

The minable sand resources extend to a depth of approximately 180 feet with a density of .062 tons per cubic foot. The CDMG has not published reserve and resource figures for this section of the resource area since it is actively mined and the producer's data is confidential. The sector is within the MRZ-2 classification.

Significance of the Resources

By applying the MRZ-2 and resource sector designations to the areas shown on Figure OSC-2, the CDMG has indicated that these areas are prime potential sources of aggregate. The CDMG estimates that Sector J contains 16 percent of the known sand and gravel resources within the Orange County-Temescal Valley (in Riverside County) production-consumption region. As the Orange County population continues to grow, construction projects will demand an increasing amount of this resource. Current estimates place the Orange County aggregate demand at 840 million tons for the next 50 years.

Construction requires concrete products made from the aggregate. If aggregate resources lie near construction areas, construction costs can be reduced substantially due to lower transportation costs. Thus, Sector J may be considered a good source of relatively inexpensive concrete materials, which can be used to support the growth occurring throughout Orange County.

However, the CDMG points out that the Orange County region imports 16 to 20 percent of aggregate consumed from adjacent production consumption regions, namely the San Gabriel and Claremont-Upland

Open Space and Conservation Element
Technical Report-20
12/22/87
June 18, 2003

California Department of Conservation
Office of Mine Reclamation
801 K Street
Sacramento, CA 95824

Attention: William Armstrong

Subject: SMARA Applicability – Fieldstone Project
Sully Miller Property, Orange, CA

Dear Mr. Armstrong:

On behalf of Hanson Aggregates, we are responding to a letter addressed to you by Ms. Grindle, Mr. Bouska and Mr. Piper dated May 16, 2003 regarding the above referenced subject. The letter essentially attempts to make the argument that mining of sand and gravel took place on the Fieldstone Project / Sully Miller Property (Property) since January 1, 1976, the effective date of the State Surface Mining and Reclamation Act (SMARA).

Their letter questions the determination from your office, that after further review of information provided by our office, that mining on the Property ceased prior to 1975. Their letter attempts to provide further information that supports their claim that a surface mining operation was conducted post January 1, 1976 and SMARA requires a reclamation plan for the Property.

We have reviewed the letter and reviewed the color copies of the aerial photographs known as Attachments “C1”, “C2”, “C3” and “C4” in the Sacramento offices of the Office of Mine Reclamation (OMR) on Friday, June 13, 2003. We offer the following response:

EXHIBIT 8

1
1. Attachment "A" – Relevant Sections of SMARA

They cited two sections of SMARA, Section 2735 and 2730. We do not challenge their definition citations. However, they have failed to cite Section 2714:

Section 2714. This chapter does not apply to any of the following activities:

(c) Operation of a plant site used for mineral processing, including associated structures, equipment, machines, tools, or other materials, including the stockpiling and recovery of mined materials, subject to all of the following conditions.

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

2. The plant site is located on lands zoned industrial or commercial, or are contained within a zoning category intended exclusively for industrial activities by the applicable city or county.

3. None of the minerals being processed are being extracted.

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

The operation of Blue Diamond’s (aka Sully Miller) mineral processing plant since January 1, 1976 until it ceased, did so under this exemption while meeting the four conditions:

1. The plant site is within the “Resource Area” land use designation of the City of Orange’s General Plan. This land use designation allows for aggregate extraction which is an industrial use. The General Plan indicates the plant site area is within Resource Section J as identified by the Division of Mines and Geology’s mineral classification process. Section J is recognized by the State as being a regionally significant aggregate resource.
2. The plant site is within the Sand and Gravel Extraction District which is the industrial zone designation adopted by the City of Orange for this site.


4. There were no mineral extraction activities after January 1, 1976.

This exemption specifically allows recovery of mined materials. Recovery of mined materials may be from, but not limited to, stockpiles or settling ponds.

2. Attachment “B” – Barry Ross October 7, 2002 letter to the City of Orange

The authors are correct by stating that there is a conflict between what was reported in Mr. Ross’ letter relative to extraction time periods and what has been reported in subsequent declarations.

To rectify the conflict, Ken Barker has submitted to the City of Orange a subsequent clarifying declaration. A copy of this declaration is attached as Attachment “A”.

The record is now clear that there has been no mineral extraction since January 1, 1976.


We would like to comment on the 1977 and 1983 aerial photographs:

A. 1977 Aerial Photograph

The color copy of the 1977 aerial photography that is attached to the subject letter does not have a specific day when it was taken. Upon review of your color copy we were able to determine that the aerial photograph was flown January 24, 1977. The original, that we have reviewed, is located at Continental Aerial Photo, Inc. in Los Alamitos, CA. This aerial along with others were reproduced and scanned. The scanned January 24, 1977 photograph as well as the 1983 photograph, discussed below, were shown to OMR staff in your offices in Sacramento on April 14, 2003.
Area A

The subject letter claims that extraction occurred in Area A in 1977. This is incorrect. Mineral extraction, based on my review of several aerial photographs occurred in Area A sometime between 1947 and 1967. Our September 1, 1947 aerial photograph shows Area A as undisturbed. The December 12, 1952 aerial photograph indicates extraction in Area A. The March 30, 1967 aerial photograph shows Area A as an active settling pond. Consequently, extraction in Area A ceased sometime prior to 1967.

Our January 30, 1970 aerial photograph shows Area A as an inactive settling pond and is dry. Starting with our October 30, 1973 aerial photograph the settling pond in Area A is capped and used for open storage of construction equipment and material. Consequent aerial photographs, including 1975, 1977 (i.e. aerial photograph C2 of subject letter), and 1978 indicate the same.

Area B

The subject letter states that Area B is a prior excavated pit and is being used to deposit slurry from the processing operation. The quality of the 1977 is poor and it is difficult to determine whether it is an active or inactive settling pond. It probably was active at this date because it’s not obvious that any of the other settling ponds onsite are active. Active settling ponds are a part of mineral processing and is allowed in the Section 2714(c) exemption.

According to our aerial photographs, Area B was extracted sometime between 1952 and 1970. Our January 30, 1970 aerial photograph is the first indication that Area B was being used as a settling pond. Consequently, mineral extraction ceased in Area B prior to 1970.

Area C

The subject letter concludes that Area C was “being used throughout these years for depositing mining waste”. This statement is true. According to our aerial photographs, Area C first was used as a settling pond sometime between 1938 and 1947. The 1947 photograph and subsequent photographs indicate Area C being used as a settling pond. Consequently, mineral extraction in Area C ceased sometime prior to 1947.
B. 1983 Aerial Photograph

Area A

The original aerial photograph is dated May 17, 1983. The subject letter states that extraction was occurring in Area A. This is incorrect. The activity appearing in Area A is the recovery of stockpiled material which is allowed in the Section 2714(c) exemption.

In the 1983 aerial photograph, it is clear that there is a well watered haul road leading from Area A to a formed a loop east of the mineral processing plant or SW of Area C. It appears to us, that haul trucks are being loaded semi-processed material stockpiled in Area A and being hauled to the drive over hopper (i.e. at the loop) feeding the crusher and in turn feeding the plant's surge pile.

Area B

The authors are incorrect in stating that Area B is being used to deposit slurry from the processing operation. Area B in this aerial photograph is a former settling pond, not active. In this aerial it appears that Area C is the active settling pond.

In either case, the activity of discharging process water into settling ponds is part of mineral processing and is consistent with the 2714(c) exemption.


We do not argue that the one active quarry in Section J, as referenced in the Technical Report, is not the Sully-Miller Plant. The Sully-Miller Plant was processing material imported from an active quarry within Section J approximately two miles downstream of the plant site. The active quarry was not on the Property.

Summary:

- The Property was not and is not subject to SMARA because the activity on the Property since January 1, 1976 is exempt by Section 2714(c).

- The conflict in testimony relative to the time period in which mineral extraction has been corrected and clarified with the submission of Ken Barker's subsequent declaration.
The interpretation of activities in the 1977 and 1983 were partially incorrect or the activities are consistent with the exemption found as SMARA Section 2714(c).

The active quarry referred to in the City of Orange technical report was not on the Property but downstream and within Section J.

Conclusions:

There is no compelling information presented in the subject letter to warrant OMR reversing their opinion stated in its letter to the City of Orange dated May 5, 2003 whereby you state “active mining in fact did cease prior to 1975”.

If you have any questions, feel free to contact me at (562) 961-3494.

Sincerely,

G. Thomas Davis
Justice & Associates

cc: Ken Barker, Hanson Aggregates
    David DeBerry, Orange City Attorney
ATTACHMENT “A”

Clarifying Declaration of Ken Barker
CLARIFYING DECLARATION OF KEN BARKER

I, Ken Barker, declare as follows:

1. I am currently employed as the Environmental Manager for Hanson Aggregates West, Inc., where I represent the company before governmental agencies that regulate the use of air, land, and water.

2. On December 10, 2002 I submitted a declaration ("December Declaration") in support of the Hanson Aggregates West, Inc. letter to the Mayor of the City of Orange and Members of the Orange City Council requesting a determination that Hanson's recycling operation, which operation crushes material to produce road base, was an allowed use in its current location.

3. In the December Declaration, I inadvertently made an erroneous statement regarding extraction activities at the property at 4626-6145 East Santiago Canyon Road, Orange, California ("Subject Site"). Specifically, I stated that "Extraction stopped in 1985. For the ten-year period of 1975 to 1985, both extraction and processing occurred." Declaration of Ken Barker, ¶ 2 (Dec. 10, 2002). This misstatement was based on my misunderstanding of information gathered from current and former employees associated with the site during the relevant ten-year time period. I was told that rock plant operations continued on the Subject Site until approximately 1985. I erroneously interpreted this to mean that both extraction and processing occurred on the Subject Site until 1985.

4. Subsequent to submission of the December Declaration, further questioning of employees working at the site during the relevant period revealed that while processing of virgin material on the subject site did occur until 1985, extraction of material on the site had ceased at the site sometime before 1973. After that time the material processed on the Subject Site was hauled there from other sites.

5. I now understand that processing of virgin material ceased on the Subject Property in 1985 but mining and extraction activities on the Subject Property ceased sometime between January 30, 1970 and October 30, 1973.

I declare under penalty of perjury that the foregoing is true and correct. Executed June 17, 2003 in Rancho Cucamonga, California.

Ken Barker

EXHIBIT 9