SAND, GRAVEL, AND MINERAL EXTRACTION CODE

ENVIRONMENTAL MANAGEMENT AGENCY

ORANGE COUNTY CALIFORNIA

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DIRECTOR

1993 EDITION
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EMA / Frank McGill

BOARD OF SUPERVISORS
ORANGE COUNTY, CALIFORNIA MINUTES January 4, 1994

ORDINANCE NO. 3906 -- AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA, AMENDING THE PROVISIONS OF THE SAND, GRAVEL AND MINERAL EXTRACTION CODE (CA93-2B): Environmental Management Agency requests adoption of an amendment to the Sand, Gravel and Mineral Extraction Code. (Introduced at the December 14, 1993 meeting.)

MOTION: On motion by Supervisor Riley, seconded by Supervisor Stanton, the Board adopted Ordinance No. 3906, by the following vote:

AYES: SUPERVISORS: RILEY, STANTON, VASQUEZ, STEINER, WIEDER
NOES: SUPERVISORS: NONE
ABSENT: SUPERVISORS: NONE

MOTION UNANIMOUSLY CARRIED.

ORDINANCE NO. 3906

AN ORDINANCE OF THE COUNTY OF ORANGE CALIFORNIA, AMENDING THE PROVISIONS OF THE SAND, GRAVEL AND MINERAL EXTRACTION CODE (CA93-2B)

The Board of Supervisors of the County of Orange, California, does ordain as follows:

SECTION 1. Sec. 7-10-1 through 7-10-34 of the Codified Ordinances of the County of Orange are hereby amended to read as follows:

Sec. 7-10-1. Title.

This article shall be know as "The Sand, Gravel and Mineral Extraction Code of the County of Orange". All reference to this article shall include sections 7-10-1 through 7-10-34.

Sec. 7-10-2. Purpose.

Due to the nature of (1) existing or future pits which were or are being used or shall be used for the mining, quarrying, or commercial extraction of sand, gravel, rock, aggregate, clay or similar materials, and (2) operations for the mining, quarrying, or commercial extraction of sand, gravel, rock, aggregate, clay or similar materials, this code is adopted to safeguard life, limb, property and the public welfare by establishing minimum safety standards for the maintenance of pits and the mining, quarry or commercial extraction of sand, gravel, rock, aggregate, clay or similar materials within the unincorporated territory of the County of Orange and to establish procedures pursuant to which such standards are to be enforced.

Sec. 7-10-3. Scope.

Except as otherwise provided herein below, all existing and future pits or operations which are being and shall be or have been used for mining, quarrying, or commercial extraction of sand, gravel, rock, aggregate, clay or similar materials within the unincorporated territory of the County of Orange shall be maintained and conducted in compliance with the provisions of this code. The provisions of this code shall not apply to the following:

(1) Excavation operations incidental to the development of property in which a specified quantity of material is to be removed to a predetermined elevation so that, upon completion, the site will be left suitable for development, and for which a valid grading permit is in force. The predetermined elevation shall be the finished surface shown on the grading plan. However, this exception shall not apply to any such excavation operations which are not completed within one (1) year from the date excavation operations are commenced. There shall be no renewals or extensions of this one year period.

(2) Commercial batch plants and processing, or storage of sand, gravel, rock, aggregate, clay or similar materials where no extraction or excavation

operations are conducted on the site. A grading permit may be required for disposal of waste material, as determined by the Building Official.

Sec. 7-10-4. Definitions.

All references to this section shall include sections 7-10-5 through 7-10-14. The following terms as used in this code shall, unless the context clearly indicates otherwise, have the respective meanings herein set forth.

Sec. 7-10-5. Definitions. (A)

Abandonment is the cessation of mining, quarrying and extraction operations on the site in compliance with the provisions of this code.

Agency is the Environmental Management Agency of the County of Orange.

Sec. 7-10-6. Definitions. (C)

Closure means termination of all obligations under the Zoning Code Sand and Gravel Extraction District Regulations, the Sand, Gravel and Mineral Extraction Code, and SMARA by virtue of having completed all requirements imposed by each.

Code is the Sand, Gravel and Mineral Extraction Code of the County of Orange.

Commercial Extraction Operation is the removal or displacement of sand, gravel, rock, aggregate, clay or similar materials conducted for financial gain.

Commercial Processing is the crushing, screening, washing or stockpiling of sand, gravel, rock, aggregate, clay or similar material which is to be sold for financial gain.

County is the County of Orange, State of California.

Sec. 7-10-7. Definitions. (E)

Excavation, extraction and extraction operation. See "commercial extraction operation."

Sec. 7-10-8. Definitions. (I)

Idle Mine is a mine which has curtailed for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

Sec. 7-10-9. Definitions. (M)

Mining is 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 are further defined by Section 2735 of SMARA and Section 3501 of the State Mining and Geology Board regulations.

Sec. 7-10-10. **Definitions. (O)**

Operator is the person in charge and in control of 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.

Owner is a person who owns a site upon which a pit is located or upon which mining, quarrying, or commercial extraction operations are being conducted or may be conducted.

Sec. 7-10-11. **Definitions. (P)**

Permit is any permit issued pursuant to the provisions of this code, together with the application for same, the conditions upon which it was issued, and any plans, specifications, reports and approved modifications pertaining thereto.

Permittee is any person to whom a permit is issued pursuant to the provisions of this code.

Person includes any individual, firm, association, corporation, organization or partnership, or any city, county, district, or any department or agency of the state.

Pit is any excavation or depression or hole in the ground, natural or artificial from which sand, gravel, rock, aggregate, clay or similar materials are being or have been dug, mined, extracted, or quarried.

Sec. 7-10-12. **Definitions. (Q)**

Quarrying is the process of removing or extracting stone, rock or similar materials from an open excavation for financial gain.

Sec. 7-10-13. **Definitions. (S)**

Settling basin is an area devoted to the storage of waste residue.

Site is a lot or parcel of land, or a series of contiguous or adjacent lots or parcels of land described by a lease or similar document upon which a pit is located or upon which commercial extraction operations are being or may be conducted, and which is covered by a permit.

Slope is the exposed surface of an excavation or fill which forms an incline.

SMARA is the Surface Mining and Reclamation Act of 1975 as amended (Public Resources Code Sec. 2710 et. seq.).

Sec. 7-10-14. **Definitions. (U)**

Ultimate right-of-way is the right-of-way shown as ultimate on an adopted precise plan of highway alignment, or a street right-of-way shown within the boundary of a recorded tract map, a recorded parcel map, or a recorded PC

development plan. The latest adopted or recorded document in the above cases shall take precedence. If none of these exist, the ultimate right-of-way shall be considered to be the right-of-way required by the highway classification as shown on the Master Plan of Arterial Highways. In all other instances, the ultimate right-of-way shall be considered to be the existing right-of-way in the case of a private street, and the existing right-of-way, but not less than sixty (60) feet in the case of a public street.

Sec. 7-10-15. Permits required.

No person shall maintain a pit or commence or perform any operations or activities within the scope of this code without first obtaining the appropriate permit(s) to do so as specified below:

(a) **Extraction permit.** No person shall maintain a pit from which materials have been extracted since the enactment of this code or perform any surface mining operations or activities without first obtaining an extraction permit.

An extraction permit may be issued by the Building Official for the maintenance of pits from which no materials have been extracted since the enactment of this code, provided the pit is found to comply with section 7-10-29 or section 7-10-30 and all other applicable requirements of this code have been met.

(b) **Grading permit for repair of SG site.** Except as provided in section 7-10-22, repair work required in order to bring a pit into compliance with the provisions of section 7-10-29 shall be accomplished only after a grading permit for repair of a site zoned Sand and Gravel Extraction District (SG) has been obtained and the work shall be performed in compliance with the terms of said permit.

Sec. 7-10-16. Permit procedure.

(a) An application for a permit signed by the owner or his legally authorized agent shall be filed with the Environmental Management Agency upon forms provided by the Agency. The application shall be accompanied by a description of the site and such fees, plans, reports, and engineering data as are outlined in sections 7-10-17, 7-10-18, and 7-10-21.

(b) The Building Official shall notify the State Department of Conservation within thirty days after the filing of an application for an extraction permit.

Sec. 7-10-17. Plans of the site.

Plans signed by a registered civil engineer shall be submitted by the operator or his authorized agent with an application for a permit. The plans shall comply with the Orange County Zoning Code and the Surface Mining and Reclamation Act of 1975, including reclamation requirements. Plans of the site shall be drawn to a scale of one (1) inch equals one hundred (100) feet, unless therwise specified by the Building Official. The plans shall include but not be limited to the following items:

(a) Property lines and lease lines, in addition to plans of the site. Plans of the site shall show operation limits.

(b) Contours at five-foot intervals unless otherwise specified by the Building Official.

(c) Required setbacks.

(d) Location of all existing and proposed structures, including processing plants and other appurtenant equipment.

(e) Location of existing and proposed points of ingress and egress, haul roads, drive-ways and parking areas.

(f) Location and approximate depth of existing and proposed settling basins, desilting ponds, and other bodies of water.

(g) Method of disposing of on-site and off-site drainage.

(h) The area to be excavated and typical cross sections of slopes to be formed or modified.

(i) Location of existing and proposed fencing.

(j) Location for stockpiling of topsoil.

(k) Location for stockpiling of spoils.

Sec. 7-10-18. Reports and engineering data.

Reports and engineering data, prepared by a registered civil engineer or a registered engineering geologist which are pertinent to the pit or operation shall accompany the application where the operator or permittee proposes to establish setbacks less than, or slopes steeper than those specified in sections 7-10-29 and 7-10-30 or where required pursuant to sections 7-10-29 and 7-10-30 due to close proximity to a watercourse or groundwater.

Sec. 7-10-19. Compliance with standards.

The permit application, plans, reports and engineering data shall indicate compliance with the standards specified in sections 7-10-29 and 7-10-30.

A registered Civil Engineer shall certify compliance with the vertical and horizontal limits of extraction each year, concurrent with the submittal of permit and inspection fees. The Building Official may require the owner or operator to furnish additional plans, reports, or other references, including aerial photographs to determine compliance with this code.

Sec. 7-10-20. Site inspections.

(a) Prior to approval of any plans or the issuance of a permit, the Building Official may inspect the site to determine that the plans, reports or other data are accurate and sufficient.

(b) The Building Official shall inspect each site regulated by this code at the time of payment of annual fees as required by section 7-10-21(b) and at such other times as he deems necessary, for the purpose of ascertaining whether the operations are being conducted and the site maintained in conformity with the minimum standards of this code, and applicable permits.

(c) Whenever the Building Official determines that the work does not comply with the terms of the permit, or is not in compliance with the requirements of this code, or that the soil or other conditions are not as stated on the permit, he shall notify the permittee of such fact in writing by personal service or by certified mail, demanding compliance within thirty (30) days from the date of such notice. If the permittee has not, within the stated time, complied with the terms of the permit, or requirements of the code, or given reasonable assurances that steps are being taken to comply, the Building Official may order the permittee by personal service or by certified mail, to cease all work or any portion thereof.

(d) An order issued under subsection (c) shall not take effect until the permittee and/or operator has been provided a hearing before the Building Official concerning the alleged violation except in accordance with Sec. 7-10-32. Any order issued under subsection (c) shall specify which aspects of the mining activity or operation are inconsistent with this Code, and/or with SMARA, shall specify a time for compliance which the Building Official determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, and shall set a date for the hearing, which shall not be sooner than 30 days after the date of the order.

(e) Pursuant to Section 2774(b) of SMARA, the Building Official shall inspect each site regulated by this code within six months of receipt of the operator's annual report required by Public Resources Code Section 2207. The results of the inspection shall be sent to the State Department of Conservation.

Sec. 7-10-20.1. Idle mines.

(a) Idle mines are subject to compliance with SMARA Section 2770(h). Specifically, within 90 days of an operation becoming idle, the operator must submit an Interim Management Plan to the Building Official for approval after a 45 day review period by the State Department of Conservation.

(b) Idle mines shall be inspected annually and must maintain approved financial assurances for reclamation.

Sec. 7-10-21. Fees.

(a) **Plan-checking and processing fee.** With the submission of an application for permit or whenever new plans are required to be submitted for review by the Department, a permit and processing fee in an amount specified by resolution of the Board of Supervisors shall be paid by the applicant.

(b) **Permit and inspection fee.** An annual fee in an amount to be specified by resolution of the Board of Supervisors shall be submitted to the Agency by

the first day of July of each year to cover the cost of inspection for the subsequent fiscal year, except that the initial fee shall be prorated on the basis of the portion of the fiscal year remaining with a minimum fee as determined by Board of Supervisors Resolution.

Sec. 7-10-22. Term and expiration.

Each extraction permit issued for an existing or proposed operation shall continue in effect only as long as none of the provisions of this code are violated and as long as the annual permit fee has been paid. The annual permit fee is to be remitted to the County each year until the site is officially closed.

The extraction permit shall expire on the first day of July unless the annual permit and inspection fees for the subsequent fiscal year have been paid by that date. No operations other than such corrective work as may be designated by the Building Official shall be conducted after said date unless a new permit has been issued by the Building Official. In the case of existing pits, this corrective work shall include compliance with all the provisions of section 7-10-29.

A valid extraction permit shall expire upon change of operator. A new permit application shall be filed, accompanied by a description of the site and such fees, plans, reports and engineering data as are outlined in sections 7-10-17, 7-10-18 and 7-10-21. No work may be done by the new operator until an extraction permit is issued in the name of the new operator.

Sec. 7-10-23. Revocation.

The Building Official may, pursuant to the procedures provided in Sec. 7-10-20, revoke any permit if the pit or work covered by the permit has been extended beyond the limits of the permit, or if any fences or walls or other protective devices required by the code have not been constructed or maintained in good repair, or if other provisions of this code or the permit have been violated by operator, owner, or permittee. If the permit is revoked, all mining activity shall cease and reclamation shall then commence.

Sec. 7-10-24. Renewal.

Any extraction permit that has expired or been revoked may be renewed by making application to the Agency, upon the following conditions:

(a) Submission of an application, up-to-date plans, reports and other data specified by this code or required by the Building Official.

(b) The site is in compliance with all applicable provisions of this code.

(c) Payment of the fees required by section 7-10-21 hereof.

Sec. 7-10-25. Not a permit to violate law.

The issuance, granting or renewal of a permit shall not be deemed or construed to be a permit for or an approval of any violation of the provisions of this code or any other code; and no permit presuming to give authority to

violate or cancel the provisions of this code shall be valid except insofar as the work or use which is authorized by the issuance, granting or renewal of the permit is lawful.

Sec. 7-10-26. Conformity to plans.

Upon issuance of a permit, the plans submitted by the applicant shall be approved and so stamped by the Agency. The pit and all work pertinent thereto shall be maintained in conformity with the approved plans unless authorization to modify the pit or operation is obtained from the Building Official and the plans and records are so changed and noted.

Sec. 7-10-27. Bonds.

A corporate surety bond or other form of financial security in the form and amount specified below shall be submitted by each applicant for a permit to perform any mining, quarrying or commercial extraction of rock, sand, gravel, aggregate, clay or similar products on private property in the unincorporated areas of Orange County.

(a) Every bond shall be executed by the operator and by a corporate surety insurer authorized to do business in this State as surety, or in lieu thereof, a written agreement for same accompanied by a deposit in cash or such other financial security as shall be approved by the Manager of EMA/Financial Services and County Counsel.

(b) Every bond shall be in a form approved by the County Counsel of Orange County.

(c) Every bond or other form of financial security in lieu thereof, shall, as a condition thereof, require that the operator shall faithfully comply with all provisions of this code until the site is properly closed in conformity with the provisions of sections 7-10-28 and 7-10-29.

(d) The bond or other form of financial security shall secure the County of Orange against all costs, charges and expenses caused by the failure of the principal to fully comply with the provisions of this code.

(e) The bond or other form of financial security shall be in an amount set by Board of Supervisors resolution.

(f) Whenever the Building Official finds that a default has occurred in the performance of any requirement of this code, written notice as provided in section 7-10-20 of this code shall be given to the principal and surety on the bond, or depositor as the case may be.
Such notice shall specify the default and demand correction within thirty (30) days, or such longer time as the Building Official may allow, on penalty of forfeiture of the reasonable costs of making the necessary corrections by the County. The Building Official shall proceed by such mode as he deems convenient to cause the required work to be performed and completed.

(g) Any bond issued in compliance with these regulations shall be exonerated and the surety relieved of all obligations thereunder when the Building

Official certifies that the site has been closed in conformity with all regulations of this code.

(h) A substitute bond may be filed in lieu of any bond on file hereunder and the Building Official shall accept and file the same if it is qualified and in proper form and substance and the bond for which it is substituted shall be exonerated, but only if the Building Official finds that no default exists as to performance upon which the bond is conditioned, to the date of substitution.

Sec. 7-10-27.1 Financial Assurance for Reclamation.

(a) An extraction permit shall not be issued or renewed for any site until the owner or operator furnishes the County of Orange with security in an amount determined by the Building Official to be sufficient for the remaining reclamation of those lands disturbed by mining activities since January 1, 1976 and those lands proposed to be disturbed in the forthcoming year in accordance with the SG site permit and reclamation plan for that site.

(b) Any security given pursuant to SMARA section 2773.1 shall be subject to a 45 day review period by the State Department of Conservation, shall be approved by the County Counsel, and shall be in one of the following forms:

(1) A bond or bonds by one or more duly authorized corporate sureties made payable to the County of Orange and the State Department of Conservation.

(2) Cash or a passbook or certificate of deposit all within a trust fund located in a local financial institution payable to the County of Orange and the State Department of Conservation.

(3) A letter of credit from a financial institution payable to the County of orange and the State Department of Conservation upon demand when accompanied by a letter from the Building Official and State Department of Conservation stating that the principal has not complied with the rehabilitation requirements of the SG site permit and reclamation plan.

(4) Other forms of assurance acceptable to the State pursuant to Public Resources Code 2773.1(a)(1), a section of SMARA.

(c) Financial assurances shall be reviewed annually and, if necessary, adjusted to account for newly disturbed lands, land successfully reclaimed, and inflation.

Sec. 7-10-28. Closure.

When all permitted activity and reclamation is complete, including provisions for continued maintenance, the operator shall notify the Building Official in writing and request a final inspection.

Within thirty (30) days of receiving a request for inspection, the Building Official will inspect the site for compliance with section 7-10-29 and the

requirements of the reclamation plan. Thereafter, within fifteen (15) days, the permittee and the property owner will be notified in writing of the inspection results.

Whenever the Building Official determines that the site conforms to the provisions of 7-10-29 and the requirements of the reclamation plan, he shall so note on the permit, notify the State Department of Conservation, and upon their approval release all financial security.

Sec. 7-10-29. Standards for Closure.

Each pit or mine which is to achieve closure shall, in addition to meeting the requirements of SMARA, also be maintained in accordance with the following minimum standards.

(a) Setback and slopes

(1) The finished perimeter slope shall not be steeper than one and one-half (1½) feet horizontal to one (1) foot vertical projecting into the pit from a fifty-foot setback adjacent to the perimeter of the property.

(2) In addition, where the Building Official determines there is a possibility of potentially hazardous seepage or flow into a pit from a flood control channel, reservoir, conservation or flood retarding basin, or natural watercourse, he shall establish the setback and slope requirements based on the preservation of the integrity of the existing flood control channel, reservoir, conservation or flood retarding basin, or natural watercourse, so that the subject property shall continue to receive and carry off waters in a manner equal to that experienced prior to any excavation. Setback requirements imposed under this subsection may exceed the fifty-foot requirement set forth hereinabove, in the discretion of the Building Official but such setbacks may not be less than fifty (50) feet, as set forth in section 7-10-29(a) (1). Slope requirements may be greater or less than that set forth in section 7-10-29(a) (1), in the discretion of the Building Official. The applicant may be required to furnish reports and engineering data, as set forth in section 7-10-18, to justify the setback and slope requirement requested in such a case. The Building Official may require such reports in any case.

(3) Where the Building Official determines that the pit extends below, or in the future may extend below, groundwater elevations, the slopes shall not be steeper than the safe values as determined by the Building Official, based on the reports described in section 7-10-18, which reports may be required by the Building Official in such a case.

These requirements may be modified by the Building Official in cases where safety conditions and engineering and geological data submitted to the Building Official for approval indicate that a less or more restrictive setback or slope may be allowed.

(b) **Diversions.** No pit shall be maintained in or adjacent to the floodplain of any watercourse which by reason of the excavation's shape, location, berm

elevations or area, in the opinion of the Building Official, is likely to produce a diversion of the natural watercourse away from the pit and outside the natural watercourse in the event that flow from the watercourse enters the excavation.

(c) **Drainage.** Adequate provision for conveyance of water across and from the site and for long-term retention of water shall be accomplished in a manner meeting the approval of the Building Official so as to minimize potential dangers from landslide and erosion.

(d) **Fencing.** Other than in cases where data is submitted to the Building Official for approval and which data indicate to the Building Official that no safety hazards exist, a fence shall be constructed enclosing the area of each existing pit. Said fence shall be of steel, chain link type, and a minimum of six (6) feet in height above the existing grade of property outside the fenced area. The bottom of said fence shall conform to the ground surface so as to prevent any opening between it and the ground surface exceeding four (4) inches unless approved otherwise by the Building Official.

Gates of the same material and height as the fence shall be installed at all points of vehicular or pedestrian ingress and egress. Said gates shall be equipped with keyed locks and shall be kept locked at all times when not in regular use. Said fence, gates, and locks shall be maintained in good condition and repair.

(e) **Protective devices, correction and repair.** Whenever the Building Official determines that maintenance of protective devices or structures, or the correction of potentially unsafe conditions may be necessary for the protection of adjacent properties and the general public, he shall notify in writing the owner or other responsible person, who shall take such corrective action as necessary and shall post a surety bond or other financial security in an amount sufficient to insure the continued maintenance of the protective devices for such potentially unsafe conditions. A grading permit will be required for any repair work. The fees for such a permit shall be as specified by the Grading Code of the County of Orange unless such fees are waived by the Building Official.

Sec. 7-10-30. Standards for active and idle operations.

The mining, quarrying and commercial extraction of sand, gravel, rock, aggregate, clay or similar products shall be performed in accordance with the following minimum standards:

(a) **Setbacks.**

(1) No excavation activities shall be carried on within fifty (50) feet of:

a. The common property line of any parcel of land not used for the same purpose.

b. The ultimate right-of-way of any public street, either existing or whose precise alignment has been adopted by the Board of Supervisors.

(2) In addition, where the Building Official determines there is a possibility of potentially hazardous seepage or flow into a pit from a flood control channel, reservoir, conservation or flood retarding basin, or natural watercourse, he shall establish the setback requirements based on the preservation of the integrity of the existing flood control channel, reservoir, conservation, or flood retarding basin, or natural watercourse, so that the subject property shall continue to receive and carry off waters in a manner equal to that experienced prior to any excavation.

(3) Setback requirements imposed under this section may exceed the fifty-foot requirement set forth hereinabove, in the discretion of the Building Official, but such setbacks may not be less than fifty (50) feet, as set forth in section 7-10-29(a) (1). The applicant may be required to furnish reports and engineering data, as set forth in section 7-10-18, to justify the setback requirement requested in such a case. The Director may require such reports in any case.

(b) Slopes.

(1) Where the Building Official determines there is a potentially hazardous seepage into a pit from a flood channel, reservoir, conservation or flood retarding basin or natural watercourse; or where the Director determines that the pit extends below or in the future may extend below groundwater elevations; the finished perimeter slope shall not be steeper than two and one-half (2½) feet horizontal to one (1) foot vertical, except as provided in subsection 3 below.

(2) The finished perimeter slope shall not be steeper than one and one-half (1½) feet horizontal to one (1) foot vertical projecting into the pit from the required setback line adjacent to the perimeter of the property.

(3) Subsections 1 and 2 above notwithstanding, the slope requirement may be modified by the Building Official in cases where the Building Official determines that the proposed excavation operations present a potential hazard to adjacent property or where other safety conditions and engineering or geological data, as described in section 7-10-18, submitted to the Building Official for approval, or as may be required by him, indicate that less restrictive slopes may be permitted or more restrictive slopes may be required.

(c) Diversions. No excavation shall be made or pit maintained in or adjacent to the floodplain of any watercourse which by reason of the excavation's shape, location, berm elevations or area, in the opinion of the Building Official is likely to produce a diversion of a natural watercourse away from the pit and outside the natural watercourse in the event that flows from the watercourse enter the excavation.

(d) **Drainage.** Adequate provisions for conveyance of water across and from the site and for long-term retention of water shall be accomplished in a manner meeting the approval of the Building Official so as to minimize potential dangers from landslide and erosion.

(e) **Fencing.** Prior to the commencement or continuation of any excavation or extraction operations or the construction or use of any settling basin, a fence shall be constructed enclosing the area of said proposed or existing excavation or settling basin, or the entire site, other than in cases where data are submitted to the Building Official for approval and which data indicate to the Building Official that no substantial safety hazards exist. Said fence shall be of a steel, chain link type, and a minimum of six (6) feet in height above the existing grade of property outside the fenced area. The bottom of said fence shall conform to the ground surface so as to prevent any opening between it and the ground surface exceeding four (4) inches unless approved otherwise by the Building Official. Gates of the same material and height as the fence shall be installed at all points of vehicular or pedestrian ingress and egress. Said gates shall be equipped with keyed locks and shall be kept locked at all times when not in regular use. Said fence, gates and locks shall be maintained in good condition and repair.

(f) **Boundary markers.** The site shall be surveyed by a registered civil engineer authorized to do land surveying or licensed surveyor and the record of survey shall be recorded in the office of the Orange County Recorder. The boundaries shall be defined by a series of poles, (two-and-one-half-inch pipe) six (6) feet in height measured from the ground level and painted a bright color which shall be installed and maintained at each change of direction and along the entire length of the subject site in such a manner that an individual standing at one such pole can clearly see the next pole in either direction. The boundary to be marked shall be the permitted operational boundary. Marking of property lines and lease lines may also be required if determined to be necessary by the Building Official.

For good cause shown, the Building Official may waive or modify this requirement for any extraction operations that are proposed to result in finished elevations that are not below the average natural ground elevations at the perimeter of the site, or for any extraction operations proposed to be located more than one thousand (1,000) feet from any property lines.

(g) **Posting of signs.** Within ninety (90) days after a permit has been issued pursuant to the provisions of this code, the outer boundaries of the site shall be continuously posted with signs not less than five hundred (500) feet apart and at each change of direction of said boundary line in such a manner as will reasonably give notice to passers-by of matters contained in such notice, stating in letters not less than four (4) inches in height: "CAUTION" and stating in letters not less than one (1) inch in height: "THIS PROPERTY MAY BE USED FOR THE MINING, QUARRYING OR COMMERCIAL EXTRACTION OF MATERIALS SUBJECT TO PERMITS ISSUED BY THE COUNTY OF ORANGE." Said signs shall be of wood or metal and shall be maintained in legible condition at all times. Signs posted in compliance with the "SG" District

regulations of the Orange County Zoning Code shall be considered as satisfying this section. The Building Official may waive this requirement for good cause shown.

(h) **Ingress, egress and traffic safety.** Roads providing vehicular access to public highways which are used for transporting materials shall be located only at points designated on plans as approved by the Orange County Traffic Engineer. Adequate sight distance shall be maintained for traffic safety and a distance of not less than eighty (80) feet from the intersection of the drive or access road with the right-of-way line of the public highway shall be paved for a width of not less than twelve (12) feet.

In addition, that portion of the access road lying between the right-of-way line and the existing pavement of the public highway shall be constructed in accordance with the terms of an encroachment permit issued by the Environmental Management Agency, County of Orange, or in the case of state highways, issued by State of California, Department of Transportation.

Sec. 7-10-31. Responsibility.

The permittee, operator, property owner and their authorized agents, and any other person in control of the property, individually and collectively, are responsible for the observation and compliance with all the provisions of this code. Such responsibility shall include the correction of any unsafe condition and the construction and continued maintenance of all fences and other protective devices required by this code or as deemed necessary by the Building Official to protect the general public and adjacent properties.

In case the owner or other responsible person shall fail, neglect or refuse to perform the required corrections, maintenance, or repairs within the time specified in section 7-10-20 after being notified in writing to do so by the Building Official, the Building Official may, in his sole and absolute discretion cause the required corrections, repairs, or maintenance to be done, and the cost thereof shall be a charge and expense against the owner and the land.

Sec. 7-10-32. Enforcement.

If at any time the Building Official finds any owner, permittee, or operator is violating any of the provisions of the code, he may order compliance in the manner provided in section 7-10-20. If compliance does not proceed, the Building Official may, at the end of thirty (30) days, or in the absence of reasonable assurance given as provided in section 7-10-20, order immediate cessation of operations.

However, if in the opinion of the Building Official, an immediate and substantial hazard exists to adjacent property or the general public, the Director may order immediate cessation of that portion of the operation which may contribute to such a hazard within the thirty-day period provided in section 7-10-20, and which cessation shall continue until correction of the hazardous condition.

Sec. 7-10-33. Penalty.

(a) Criminal

Any person in violation of any provision of this code shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the county jail for a period of not more than six (6) months or by both such fine and imprisonment. Each such person shall be deemed guilty of a separate offense for each day or portion thereof during which any violation of any of the provisions of this code is committed, continued or permitted by such person and shall be punishable thereof as herein provided.

(b) Administrative

Any permittee and/or operator who violates or fails to comply with an order issued under subsection (c) of Section 7-10-20 after the order's effective date, as provided by subsection (d) of section 7-10-20, or who fails to submit a report to the County as required by Public Resources Code Section 2207, shall be subject to an order by the Building Official imposing an administrative penalty of not more than five thousand dollars ($5,000.00) per day, assessed from the original date of non-compliance with this Code or Public Resources Code Section 2207. The penalty may be imposed administratively by the Building Official. In determining the amount of the administrative penalty, the Building Official shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters justice may require. Orders setting administrative penalties shall become effective upon issuance thereof and payment shall be made to the County within 30 days, unless the permittee and/or operator petitions the Board of Supervisors of the County, or the Superior Court for review as provided in Section 7-10-34 of this Code and/or Public Resources Code Section 2774.2. Any order shall be served by personal service or by certified mail upon the permittee and/or operator.

(c) Public Nuisance

(1) Any mining, quarrying, or commercial processing performed and/or maintained on any site in the County of Orange contrary to, or not in compliance with the provisions of this Code shall be and the same is hereby declared to be unlawful and a public nuisance, and any failure, refusal, or neglect to obtain a permit as required by the terms of this Code shall be prima facie evidence of the fact that a public nuisance has been committed.

(2) The County may commence an appropriate civil action to abate a public nuisance. Any civil action shall be preceded by a finding by the Board of Supervisors and by the Building Official that a violation of this Code has occurred.

(d) Other

Penalties and/or remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, including but not limited to injunctive relief, and to the penalties provided by Section 2774.1 of the Public Resources Code.

Sec. 7-10-34. Right of appeal.

(a) Within 30 days of the issuance of an order setting administrative penalties under subsection (b) of Section 7-10-33, the permittee and/or operator may petition the Board of Supervisors of the County for review of the order. If the permittee and/or operator does not petition for review within the time limits set by this subsection, the order setting administrative penalties shall not be subject to review by any court or agency.

(b) The Board of Supervisors of the County shall notify the permittee and/or operator by personal service or certified mail whether it will review the order setting administrative penalties. In reviewing an order pursuant to this section, the record shall consist of the record before the Building Official, and any other relevant evidence which, in the judgment of the legislative body or the Board, should be considered to effectuate and implement the policies of this chapter.

(c) The Board of Supervisors of the County may affirm, modify, or set aside, in whole or in part, by its own order, any order of the Building Official setting administrative penalties.

(d) Any order of the Board of Supervisors of the County issued under subdivision (c) shall become effective upon issuance thereof, unless the permittee and/or operator petitions the superior court for review. Any order shall be served by personal service or by certified mail upon the permittee and/or operator. Payment of any administrative penalty which is specified in an order issued under subdivision (c), shall be made to the County within 30 days of service of the order; however, the payment shall be held in an interest bearing impound account pending the resolution of a petition for review filed pursuant to subdivision (e) of Public Resources Code Section 2774.2.

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SECTION 2. This Ordinance shall take effect and be in full force thirty (30) days from and after its passage and, before the expiration of fifteen (15) days after the passage thereof, shall be published once in the Orange County Register, a newspaper published in the County of Orange, State of California, together with the names of the members of the Board of Supervisors voting for or against the same.

Harriett M. Wieder

Chairman of the Board of Supervisors
of Orange County, California

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

Phyllis A. Henderson

PHYLLIS A. HENDERSON
Clerk of the Board of Supervisors
County of Orange, California

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, PHYLLIS A. HENDERSON, Clerk of the Board of Supervisors, do hereby certify that at a regular meeting of the Board of Supervisors of Orange County, California, held on the 4th day of January, 1994, the foregoing ordinance containing two sections was passed and adopted by the following vote:

AYES: SUPERVISORS THOMAS F. RILEY; ROGER R. STANTON; GADDI H. VASQUEZ; WILLIAM G. STEINER; AND HARRIETT M. WIEDER

NOES: SUPERVISORS NONE

ABSENT: SUPERVISORS NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board of Supervisors of the County of Orange, State of California, this 4th day of January, 1994.

THE FOREGOING INSTRUMENT IS A TRUE
AND CORRECT COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE

ATTEST January 6, 1994
PHYLLIS A. HENDERSON, Clerk of the Board
of Supervisors, County of Orange

BY Katherine Sirk, DEPUTY

Phyllis A. Henderson

PHYLLIS A. HENDERSON
Clerk of the Board of Supervisors
of Orange County, California

OFFICE OF COUNTY COUNSEL ORANGE COUNTY

0192-210 (5/77)