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Orange Citizens Retain Prevailing Attorney in High-Profile Rock Quarry Lawsuit

Orange, CA, September 23, 2019 – An Orange citizens group has announced it has retained the San Francisco law firm of Edgcomb Law Group, LLP (ELG) to represent it in response to the City of Orange's failure to close concrete-crushing operations on the former Sully-Miller site. ELG represented a non-profit group that recently prevailed in *Point Pedro Road Coalition v. County of Marin and San Rafael Rock Quarry*. The California Court of Appeal, First Appellate District, sided with the non-profit in finding that the importation of asphalt grindings for recycling was an unlawful expansion of the Quarry's nonconforming use given the residential zoning of the Quarry site.

The Orange Park Association (OPA) contends the concrete-crushing operation the City has allowed to continue on the former Sully-Miller site as a nonconforming use, located on the north side of Santiago Canyon Road between Jamestown Way and Orange Park Boulevard in East Orange, should also be shut down. The property is owned by Milan REI X, LLC, which has retained the law firm that represented the Quarry and Marin County that lost its appeal in the *Point Pedro Road Coalition v. County of Marin and San Rafael Rock Quarry* case.

The attorney for ELG, John D. Edgcomb on behalf of his client OPA sent a letter to the City of Orange demanding the immediate halt of what he calls "...unlawful operation of a concrete crushing and stockpiling operation conducted by Milan REI X, LLC and related entities..."

The letter lists a series of interactions between the City and multiple owners of the Sully-Miller property dating back to 2002. According to the minutes from a 2003 hearing, the City Council voted to allow operations to continue apparently based on an opinion of the then-City Attorney that operations were "a legal non-conforming use entitled to continue" even though the Sand and Gravel ordinance was modified and no longer permitted importing and crushing of concrete waste materials. At that time a resident who testified at that hearing demanded that the City Council enforce zoning codes "and make the health and safety of nearby residents a priority." The City Attorney responded that "if a finding is made that a public nuisance exists, [the imported concrete crushing/recycling operation] can possibly be abated." OPA's attorney states in his letter, "However it appears that City staff never took any action....for terminating this non-confirming use to make the health and safety of nearby residents a priority."

The letter calls attention to four provisions in Orange's Municipal Code (OMC) that define a public nuisance. They are:

- 1) Building exteriors, walls, fences....and **other property** which are deemed defective, **unsightly** or in such condition of deterioration that they are **significantly detrimental to or have caused depreciation of the values of surrounding property**.
- 2) ...**rubble, broken asphalt, concrete**...or other **debris** stored on the property such that they are **visible at ground level from a public street, alley or adjoining property**.
- 3) Attractive nuisances dangerous to children including abandoned broken or neglected equipment and machinery, hazardous pools, ponds and excavations....**rubbish**, refuse, fence, **debris**, or vegetation **which may constitute a hazard for children**.
- 4) Maintenance of the property in such condition as to be detrimental to the **public health, safety, or general welfare** or in a manner as to constitute a public nuisance as defined in California Civil Code Section 3480, including but not limited to, **anything dangerous to human life or detrimental to human health**...

Edgcomb's letter states "We understand that the materials include not just crushed concrete, but broken asphalt, bricks, tile, rebar and other demolition-related debris that are not crushed but just dumped and stockpiled." Therefore, the letter demands that City staff conduct an immediate investigation to identify the components of the materials stockpiled at the property.

Since it is unclear where the dumped materials originate, the letter cautions the City that concrete slabs from industrial facilities may contain hazardous constituents, which when crushed may emit particles of contaminants into the air that could be inhaled by members of the community.

The letter also lists evidence from the attorney of the former owner, Hanson Aggregates West, that "[imported concrete-crushing is only performed two or three times a year." Orange Municipal Code (OMC) states that should operations be halted for an extended period of time the Planning Commission should immediately schedule a hearing to address whether the non-confirming concrete crushing use should be terminated.

Finally the letter states that since Milan is in violation of current zoning and the mountainous piles of rubble, broken asphalt, concrete, scrap metal and trash constitute a public nuisance, "the City should and has the authority to order termination of the imported concrete crushing and stockpiling operation."

If you would like more information, please contact Don Bradley, President, Orange Park Acres at 714-668-2400 or Peter Jacklin, Co-Chair, OPA Real Estate Committee, 714-381-6395.

Orange Park Association is a non-profit organization, formed in 1960 to protect the rural-equestrian area that was established in 1928 known as Orange Park Acres.

Edgcomb Law Group, LLP is an AV-rated environmental law firm representing a diverse client base of Fortune 100 companies, small businesses, government agencies, community groups, and individuals. The firm has earned a reputation for providing the highest quality legal representation at reasonable rates in all areas of environmental law since 1995.

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