



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: Planning &  
Development  
Department No.: 053  
For Agenda Of: November 8, 2011  
Placement: Departmental  
Estimated Time: 1 hour  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

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**TO:** Board of Supervisors

**FROM:** Department Glenn Russell, PhD., Director 568-2085  
Director(s) Planning and Development  
Contact Info: Doug Anthony, Deputy Director 568-2046  
Development Review Division, North County

**SUBJECT:** Cuyama Valley Conservancy Appeal of a Proposed Revision to the Previously  
Approved Diamond Rock Sand and Gravel Mine and Processing Facility

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**County Counsel Concurrence**

As to form: Yes

**Other Concurrence:** N/A

As to form: No

**Recommended Actions:**

That the Board of Supervisors:

Consider the appeal filed by the Cuyama Valley Conservancy (11APL-00000-00010) of the County Planning Commission's June 8, 2011 approval of a Revision to the Diamond Rock Sand and Gravel Mine and Processing Facility (Case Nos. 11RVP-00000-00032 to 03CUP-00000-00037) located on the west side of Highway 33, approximately 5.9 miles south of its junction with Highway 166 (APNs 149-220-02; 149-220-11; & 149-220-65) in the Cuyama/Ventucopa area, First Supervisorial District.

At the November 8, 2011 hearing, the Board of Supervisors' action should include the following:

1. Make the required findings for approval of Case No. 11RVP-00000-00032, including the CEQA findings, as specified in Attachment 2 (Attachment A of Planning Commission Action letter dated June 14, 2011);
2. Adopt the Addendum to Environmental Impact Report 05EIR-00000-00001 pursuant to Section 15164 of the State Guidelines for Implementation of the California Environmental Quality Act, included as Attachment 3 (Attachment D of Staff Report for May 11, 2011 Planning Commission Hearing);

**Auditor-Controller Concurrence**

As to form: N/A

3. Deny the Appeal, Case No. 11APL-00000-00010, thereby upholding the County Planning Commission's approval of 11RVP-00000-00032; and
4. Grant *de novo* approval of Case No. 11RVP-00000-00032 subject to the Conditions of Approval included in Attachment 2 (Attachment B of Planning Commission Action Letter dated June 14, 2011).

**Summary Text:**

**A. Proposed Project**

**Background --** The Diamond Rock Mine and Processing Facility is an approved Conditional Use Permit and Reclamation Plan that allows for a new Sand and Gravel Mine and Processing Facility within and adjacent to the Cuyama River, respectively. The project was approved by the Planning Commission on May 14, 2008 and by the Board of Supervisors on September 23, 2008. The Planning Commission subsequently approved a time extension for the Diamond Rock project on June 8, 2011 to extend the time to commence the approved project to March 23, 2012. The permit allows mining and processing activities to occur at an average annual rate of 500,000 tons per year (maximum annual production of 750,000 tons) over a 30-year period. The project site is approximately 133 acres in size and is located on the west side of Highway 33 approximately 5.9 miles south of its junction with Highway 166. Approximately 1,000 feet to the north of the approved-but-yet-to-be-established Diamond Rock Mine and Processing Facility is the existing GPS Mine and Processing Facility. Like Diamond Rock, GPS has its own mine pit within the Cuyama River Channel and processing facility on the adjoining river terrace and produced approximately 400,000 tons of sand and gravel per year between 2000 and 2007. GPS does not have a production limit per se, but the APCD permit for GPS essentially limits production to 500,000 tons per year. In the last couple of years, production at GPS has been reduced (71,938 tons/year in 2008; 133,929 in 2009; and 183,339 in 2010) due to a shortage of material. The GPS mine and processing facility has been in operation by other entities since at least 1969. GPS took over the mine from Southwest Ready-mix in June of 2002 and operates under an approved Land Use Permit (03LUP-00000-00511) and Reclamation Plan (93-RP-03), contained in Attachment 4.

**Proposed CUP Revision --** On June 8, 2011, the Planning Commission approved a CUP Revision for Diamond Rock. The CUP Revision would modify the approved project by adding an interim Phase I "mining and extraction only" option whereby raw material from the Diamond Rock Mine would be hauled to the existing GPS processing facility via an existing farm road that currently connects the two use areas. The existing farm road is virtually flat and of sufficient width and would not require improvement (although it would have to be watered regularly to control dust).

The Phase I "extraction and hauling only" plan would have far fewer and much reduced impacts on the environment compared to the previously approved "full build-out" project. Full build-out of the Diamond Rock project could still occur at a later date, in which case the impacts would be the same as those analyzed in the EIR that was prepared for the original approved project, but many of the impacts would be deferred and/or reduced during the proposed Phase I. The conversion of 14.2 acres of productive agricultural land would not occur nor would the visual impact of a new processing facility along Highway 33. GPS would cease extraction of raw materials from its property while extracting material from Diamond Rock and there would be no increase in allowable production, especially as

compared to both mines operating simultaneously as currently allowed. Hence, truck traffic in the area would not be increased, nor doubled as currently permitted, nor would the associated air quality and noise impacts along public roads be increased. All of the Conditions of Approval from the Diamond Rock CUP would remain in effect during Phase I “extraction and hauling only,” including those pertaining to truck traffic (i.e., no material may be transported from the mine south on Highway 33 through Ojai) and including Condition No. 65 which prohibits simultaneous mining at Diamond Rock and GPS. During Phase I, the Diamond Rock Conditions that pertain to mining and hauling would apply but not the conditions that pertain to a new processing facility at Diamond Rock. Those conditions would not be applicable until such time as a new processing facility is built at Diamond Rock.

**Summary --** The proposed CUP Revision would allow for an interim joint venture between the two adjacent mining operations. This interim joint venture would enable access to high quality construction-grade aggregate resources with only a fraction of the environmental impacts associated with “full build-out” of the two separate operations. The impacts would be reduced during the proposed Phase I “mining and extraction only” period but would be the same when the applicant begins Phase II.

### **B. Planning Commission Action**

The Planning Commission conducted hearings for the Diamond Rock CUP Revision project on May 11, 2011 and June 8, 2011, and public testimony was provided. At the June 8, 2011 hearing, the Planning Commission voted 3 to 2 to adopt an Addendum to the EIR and approve the proposed CUP Revision.

### **C. Staff Response to Appeal Letter**

Within the 10-day appeal period following the Planning Commission’s approval of the CUP Revision, an appeal was filed by the Cuyama Valley Conservancy (Attachment 1). Attachment A of the Appeal explains the Reasons for the Appeal (A through M) and Attachment B lists the Specific Conditions Being Appealed (1 through 3). Following is a summary of the appeal issues and staff’s response:

Issue A – Acceptance of the Planning Commission’s recommendations in this case would be a clear violation of responsibility ... [because] the scope and duration of the excavation activities ... will destroy or seriously compromise the natural water supply to the area for decades to come.

**Response –** The proposed CUP Revision would allow sand and gravel from an already approved mine site to be transported to an existing processing facility instead of to a new processing facility. This proposed change would have no affect on water supply, except that it would result in a reduction in water use and the deferment, reduction or elimination of other adverse impacts during Phase I. The applicant has an existing approved 30-year CUP that allows for mining and the construction and operation of a new processing facility. This already approved project is the second phase of the Revised CUP. If the Revised CUP is not approved, the approved CUP remains in effect. The approved CUP and associated impacts were analyzed in the EIR that was prepared for the project. The EIR Addendum analyzes the potential impacts of Phase I and concludes that no new potentially significant impacts would result.

Issue B -- The Planning Commission has violated the Supremacy Clause by recommending granting permission of activities specifically prohibited by the Army Corps of Engineers, an agency of the Federal Government.

**Response** – The proposed CUP Revision would allow sand and gravel from an already approved mine site to be transported to an existing processing facility instead of to a new processing facility. This change was not prohibited by the Army Corps and in fact the County permit conditions require the revision be approved by the Army Corps.

The approved Diamond Rock CUP allows for the extraction of sand and gravel aggregate from the Cuyama River over a 30-year period. The mining is approved to occur within an 84-acre area to a maximum depth of 90 feet. However, the more recent Army Corps permit (Attachment 6) expires in 5 years and reduces the size of the mine pit from 84 acres to 14 acres and from 90 feet deep to only 45 feet deep. The applicant expects that in 5 years the Corps permit will be extended and will be expanded and/or shifted within the overall 84 acre area approved by the County. Since the Corp approval is required by the conditions of approval, the County CUP is not inconsistent with the Corps permit; rather, it works in harmony with it.

Like the Corps permit, the County permit does require river surveys twice a year every year at three (3) different locations for monitoring purposes (see Condition No. 3). Several other conditions in the County permit also require monitoring.

Issue C – Because of new information and circumstances, pursuant to CEQA Guidelines Section 15162(3), the County must consider preparing a subsequent or supplemental EIR.

**Response** – The County did consider preparing a subsequent or supplemental EIR and determined that neither was required.

An Environmental Impact Report (EIR) was prepared and certified for the now-approved Diamond Rock Mining and Processing Facility. The EIR evaluates potential environmental impacts and mitigation measures for these impacts were incorporated into the Condition of Approval for the Diamond Rock project. CEQA Guidelines Section 15162 allows the use of a previously adopted EIR unless substantial evidence would require major revisions of the previous EIR due to substantial changes in the proposed project because of: 1) new significant environmental effects or a substantial increase in the severity of previously identified significant effects; 2) substantial changes to the circumstances under which the project is undertaken due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or 3) new information of substantial importance. Section 15162 of the State CEQA Guidelines is applicable to the project revisions now being proposed, as no new significant environmental effects would occur, previously identified environmental effects will not increase in severity, and no new information of substantial importance will require revisions to the previously approved document. The EIR and subsequent staff reports show that there was extensive analysis and discussion regarding the project's potential impacts on river hydrology/geomorphology and erosion. The letter from Dr. Curry did not contain substantial new information and did warrant further environmental review (Attachments 7 and 8).

05EIR-00000-00001 evaluated the potentially significant long and short-term impacts of the mining and reclamation project and found that all of these potential impacts were subject to feasible mitigation. These mitigation measures were incorporated into the Diamond Rock Conditions of Approval and adequately address potential environmental impacts. No impacts previously found to be insignificant are now significant. Because the current project meets the conditions for the application of State CEQA Guidelines Section 15162, preparation of a supplemental or subsequent EIR is not required.

Issue D – GPS has a history of illegal activities and needs to be monitored more closely than an operator that does not have the same history.

**Response** – County records do not indicate that GPS has a history of illegal activity. GPS reportedly took over the mine operation in June of 2002 and met with the Army Corps within the first month that they took over the operation about the need for a permit. It was then confirmed in writing by the Army Corps that no permits were required (Attachment 5). Based on the approval from the Army Corps, GPS resumed operations that were already in place under the prior mine operator. EPA later ruled that the operation should have a permit and issued a violation. The County has not received any communications from other agencies indicating noncompliance or requiring corrective actions. The County has compliance staff and will be monitoring both GPS and Diamond Rock for ongoing compliance with their permit conditions. The area that would be mined under the proposed Phase I project is on the Diamond Rock property and has been approved and permitted by the US Army Corps of Engineers and Regional Water Quality Control Board.

Issue E – The project jeopardizes the Cuyama Valley water supply in a way that cannot be remediated.

**Response** – The proposed CUP Revision would allow sand and gravel from an already approved mine site to be transported to an existing processing facility instead of to a new processing facility. This change would have no affect on water supply in the project area, except that it would result in a reduction in water use and the deferment, reduction or elimination of other adverse impacts during Phase I. The applicant has an existing approved 30-year CUP that allows for mining and the construction and operation of a new processing facility. This already approved project is the second phase of the Revised CUP that introduces Phase I. If the Revised CUP is not approved, the approved CUP remains in effect. The approved CUP and associated impacts were analyzed in the EIR that was prepared for the project. The EIR Addendum analyzes the potential impacts of Phase I and concludes that no new potentially significant impacts would result. Hauling the material to the GPS processing facility rather than a new processing facility at Diamond Rock would not cause additional impacts on the regional water supply.

Issue F – The propose action will allow damage to the Cuyama River underflow.

**Response --** The proposed CUP Revision would allow sand and gravel from an already approved mine site to be transported to an existing processing facility instead of to a new processing facility. This change would have no affect on water supply in the project area, except that it would result in a reduction in water use and the deferment, reduction or elimination of other adverse impacts during Phase I.

The applicant has an existing approved 30-year CUP that allows for mining and the construction and operation of a new processing facility. This already approved project is the second phase of the Revised CUP that introduces Phase I. If the Revised CUP is not approved, the approved CUP remains in effect. The approved CUP and associated impacts were analyzed in the EIR that was prepared for the project. The EIR Addendum analyzes the potential impacts of Phase I and concludes that no new potentially significant impacts would result.

In addition, the project's impact on water resources was independently evaluated by County Consultants, by the US Army Corps of Engineers and by the Regional Water Quality Control Board. These agencies could not have issued permits if the scope and duration of excavation activities would destroy or seriously compromise the natural water supply to the area. The Corps and Regional Water Quality Control Board issued reduced permits and will be re-evaluating before the permits are extended.

Issue G – The CUP Revision and accompanying CEQA Addendum constitute piecemealing.

**Response --** The proposed CUP Revision would allow sand and gravel from an already approved mine site to be transported to an existing processing facility instead of to a new processing facility. While the material from Diamond Rock is being processed at GPS, there would be no extraction at the GPS mine. Likewise, if a new processing facility were to be constructed at Diamond Rock there would be no transport of material to GPS. The CUP Revision would not expand or intensify the already allowable uses; rather, it would reduce the scope and intensity of uses.

The CEQA Addendum explains why the proposed use of an existing interconnecting farm road from the mine pit to the existing processing facility would not have new potentially significant impacts and it explains why impacts previously identified would not be more severe. Indeed, the proposed CUP Revision would defer and reduce adverse impacts to the environment. During Phase I, the project eliminates those impacts associated with processing, but not the impacts associated with mining. The proposed CUP Revision constitutes a reduction in the scale of the project during Phase I and a reduction in the environmental impacts of the previously approved project without the potential for new potentially significant impacts. Therefore, the proposed CUP Revision does not constitute piecemealing.

Issue H – The County must establish that the processing of Diamond Rock material at GPS can be lawfully undertaken at the GPS site consistent with the GPS permit

**Response –** The GPS permit does not prohibit the import of raw materials from other sources.

Issue I – The County must explain how water from the Diamond Rock site would be transported to the GPS site

**Response –** Water trucks from the GPS site would be used for dust control along the haul road. The trucks could be filled from the well on the GPS property or the well on the Diamond Rock property but there would be no need to transport water from the Diamond Rock site to the GPS site.

Issue J – The County must carefully consider whether the processing of Diamond Rock material at the GPS site would result in a greater net water consumption and therefore significant impact on groundwater.

**Response --** The proposed CUP Revision would allow sand and gravel from an already approved mine site to be transported to an existing processing facility instead of to a new processing facility. This change would defer the need for a second processing facility in the area, which would result in a significant decrease in net water usage and the deferment of other adverse impacts during Phase I. During Phase I, there would only be one processing facility for both sites, rather than two. The applicant has an existing approved 30-year CUP that allows for mining and the construction and operation of a new processing facility. This already approved project is the second phase of the proposed Revised CUP. If the Revised CUP is not approved, the approved CUP remains in effect. The approved CUP and associated impacts were analyzed in the EIR that was prepared for the project. The EIR Addendum analyzes the potential impacts of Phase I and concludes that no new potentially significant impacts would result.

There would be a longer haul road that would have to be watered for dust control but this water use is minor compared to the amount of water that would be saved by not building and operating a second processing facility.

Issue K – The County and Diamond Rock have entered into an Agreement that is not enforceable with respect to GPS...

**Response –** As discussed above (under Issue A), compliance is enforceable by the County. Condition No. 65 requires that Diamond Rock and GPS enter into a contract wherein GPS agrees to compliance as a condition of having access to the Diamond Rock material. Evidence of noncompliance would be grounds for CUP revocation hearings which could effectively shut down the joint venture operation.

Issue L – The CEQA addendum failed to consider changes requested by local property owners.

**Response –** The CEQA Addendum explained why the proposed CUP Revision did not require additional environmental review. There was no requirement to consider changes requested by local property owners. CEQA requires analysis of the applicant's proposal, not proposals of third parties.

Issue M – The Planning Commission failed to modify mitigation of approval by the Army Corps of Engineers and the Supremacy Clause.

**Response –** There was no requirement for the Planning Commission to modify conditions or mitigation measures based on actions by the Army Corps or based on the Supremacy Clause. In fact, the County CUP specifically requires that the project be approved by, and operate consistent with, the requirements of other agencies, including the Army Corps. To operate, Diamond Rock must be in compliance with all permits, County, State and Federal. Thus, Diamond Rock must comply with the most restrictive permit at all times.

### Attachment B – Specific Conditions Being Appealed

**Response** – The County CUP does include specific conditions that require approval by, and consistency with, applicable state and federal agencies (see Conditions 41, 42, 43, and 44). The County CUP does require independent compliance monitoring by the County, and County records are available to the public on request. There are no new mine thresholds that would warrant a review of mitigation measures. The CUP Revision would not allow GPS to do anything that they are not currently permitted to do, but it would require that they stop sending material south on Highway 33 through Ojai. The County and the appellant have both requested a copy of the Joint Venture Agreement but we are told that it is confidential and proprietary. Condition No. 65 requires the applicant to submit a Draft Contract between Diamond Rock and GPS that requires compliance with all applicable Diamond Rock CUP conditions and that prohibits simultaneous operations for review and approval by P&D and County Counsel prior to zoning clearance. That document would be available to the public upon request.

### Facilitation Meeting with County Counsel between Appellants and Applicant

The applicant and the appellant declined a facilitation meeting.

#### Fiscal and Facilities Impacts:

Budgeted: Yes

**Fiscal Analysis:** The cost to process these appeals is partially offset by a \$643 appeal fee paid by the appellant (Cuyama Valley Conservancy) per the Planning & Development Department fee schedule. The remaining cost of processing the appeals is budgeted in the Permitting and Compliance Program of the Development Review Division – North on page D-316 of the adopted budget for Fiscal Year 2011/2012. There are no facilities impacts. Estimated staff time to process the appeal and prepare for and attend the hearing is approximately 60 hours for an estimated cost of \$11,078.

#### Special Instructions:

Clerk of the Board shall publish a legal notice in the Santa Barbara News-Press and the Santa Maria Times and shall complete the mailed noticing requirements for the project at least ten (10) days prior to the November 8, 2011 hearing (mailing labels attached).

Clerk of the Board shall forward a copy of the Minute Order and copies of the legal notice and proof of publication to Planning & Development, Hearing Support Section, Attention: David Villalobos.

#### Attachments:

1. Cuyama Valley Conservancy Appeal Form with Attachments A and B
2. Final Planning Commission Action Letter dated June 14, 2011
3. Staff Report for May 11, 2011 Planning Commission Hearing (continued to June 14, 2011)
4. Existing GPS Permits
5. 2002 Correspondence to and from the US Army Corps
6. Recently Issued Army Corps Permits
7. June 6, 2011 Letter from Dr. Curry
8. URS Response to 2011 Letter from Dr. Curry (Oct. 27, 2011 Letter and Sept. 15, 2008 Memo)



9. Diamond Rock Sand and Gravel Mine and Processing Facility Final Environmental Impact Report (05EIR-00000-00001), State Clearinghouse No. 2003121049, May 2007. (CDs provided to Board of Supervisors. Document is available on-line at: <http://www.sbcountyplanning.org/projects/03CUP-00037/index.cfm>. A hard copy is available for review at the Clerk of the Board of Supervisors, 105 East Anapamu Street – Room 407, Santa Barbara, CA 93101).

**Authored by:**

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