



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: August 26, 2008
Placement: Departmental
Estimated Tme: 2.0 hours
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department John Baker, P&D Director 568-2085
Director(s)
Contact Info: Zoraida Abresch, P&D Deputy Director 934-6585

SUBJECT: **Save the Cuyama Valley Appeal of the Proposed Diamond Rock Sand and Gravel Mine and Processing Facility, Fifth Supervisorial District.**

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: No

Recommended Actions:

That the Board of Supervisors:

Consider appeal filed by Save the Cuyama Valley (08APL-00000-00024) of the County Planning Commission's May 14, 2008 approval of the Diamond Rock Sand and Gravel Mine and Processing Facility (Case Nos. 03CUP-00000-00037; 03RPP-00000-00002; and 05EIR-0000-00001) 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, Fifth Supervisorial District.

At the August 26, 2008 hearing, the Board of Supervisors' action should include the following:

- a) Adopt the required findings for the project specified in the Planning Commission action letter dated May 19, 2008, including the Statement of Overriding Considerations (Attachment A);
- b) Certify 05EIR-00000-00001, in its entirety, as complete and adequate pursuant to the requirements of the California Environmental Quality Act (CEQA), and adopt the mitigation monitoring program contained in the conditions of approval.

Auditor-Controller Concurrence

As to form: N/A

- c) Deny the appeal, thereby upholding the Planning Commission's approval of 03CUP-00000-00037 and 03RPP-00000-00002; and
- d) Grant *de novo* approval of Case Nos. 03CUP-00000-00037 and 03RPP-00000-00002 subject to the conditions of approval specified in the Planning Commission action letter dated May 19, 2008 (Attachment A).

Summary Text:

A. Proposed Project

The proposed project is a request for Conditional Use Permit and Reclamation Plan approval to allow for a new Sand and Gravel Mine and Processing Facility within and adjacent to the Cuyama River, respectively. The project would involve approximately 133 acres located on the west side of Highway 33 approximately 5.9 miles south of its junction with Highway 166.

B. Planning Commission Action

The Planning Commission conducted hearings for the Diamond Rock project on May 30 and July 11, 2007, and extensive public testimony was provided. Comments provided during the hearings addressed a variety of issues, but were predominantly focused on truck traffic and traffic safety issues. Other general areas of concern have been in regard to air quality, impacts to sensitive plant and animal species, and impacts to groundwater resources. At the July 11, 2007 hearing, the Planning Commission voted (Commissioner Cooney voted no) to conceptually approve the project.

Following the July 11, 2007 hearing, a copy of the conceptually approved mining and reclamation plans was transmitted to the California Department of Conservation, Office of Mine Reclamation (OMR) for review and comment pursuant to the Land Use and Development Code and the Surface Mining and Reclamation Act (SMARA). In response to comments made by OMR, the applicant made minor revisions to the reclamation plan. OMR subsequently provided a letter indicating that the revised plans adequately addressed their review comments.

On May 14, 2008, the Planning Commission granted final approval of the project by a vote of 4-0 (Commissioner Brown absent). This approval included numerous Conditions of Approval which significantly reduced the size and scope of the project from what was originally proposed.

The Final Environmental Impact Report (EIR) for the Diamond Rock project identified one project-specific environmental impact that cannot be fully mitigated and is therefore considered unavoidable (Class I). The significant and unavoidable project-specific impact is in regard to long-term air quality impacts resulting from project-related operations at the project site and emission of oxides of nitrogen, a criteria pollutant that contributes to the formation of ozone in the atmosphere. To the extent the project-specific air quality impacts remain significant and unavoidable, such impacts were deemed to be acceptable when weighed against the overriding social, economic, legal, technical, and other considerations, including the project's proposal to develop a sand and gravel mine that would provide necessary building materials for the project region. All other impacts would be less than significant or reduced to a level of insignificance with the required mitigation measures.

The Planning Commission's decision was the culmination of a 5-year review process. The project applications were filed in June of 2003 and an Initial Study was completed in October 2003 indicating the need to prepare an Environmental Impact Report (EIR) to evaluate the project's potential to have significant impacts on the environment. During the public review period for the first Draft EIR, public meetings were held in Ventucopa and Cuyama to inform and involve the public in discussions regarding the proposed project and its potential impacts. Over 30 letters and emails were received from public agencies and members of the public raising several important issues that required additional analysis. Hence, the County prepared and released a Revised Draft EIR in November of 2006. During the public review period on the Revised Draft EIR, another public meeting was held in Cuyama. Approximately 200 letters were received regarding the Revised Draft EIR and/or project. These letters are now included and responded to in the Final EIR. In addition, there were numerous letters and comments submitted prior to and during Planning Commission hearings to which staff responded.

C. Staff Response to Appeal Letter

Within the 10-day appeal period following the Planning Commission's approval of the project, an appeal was filed by Save the Cuyama Valley (Attachment B). Save the Cuyama Valley opposes the project and contends that the Final EIR is inadequate.¹

Following is a summary of, and staff's response to, the nine (9) issues raised in this appeal:

Issue #1 – Cumulative Impacts Not Analyzed

This appeal item speculates as to the reasons for the timing of an application submitted to the County for a proposed mining project located in the vicinity of the Diamond Rock project site. The application for the Richards Holding Company project was submitted on May 30, 2007, which was the day the Planning Commission conducted its first hearing on the Diamond Rock project. This item also indicates that the EIR prepared for the Diamond Rock project should have evaluated the cumulative impacts of the Richard's Holding project.

The evaluation of cumulative impacts resulting from mining projects in the Cuyama Valley was conducted in accordance with the requirements of CEQA, as an evaluation of the combined effects of the Diamond Rock project and other existing mines in the project region was provided. In regard to the evaluation of the proposed Richards Holding project, the CEQA Guidelines provides detailed guidance related to when a proposed project's application should be considered as a cumulative project in another project's EIR. Section 15130 of the CEQA Guidelines indicates that a lead agency may limit its analysis of probable future projects to those that are planned or that have had an application made at the time the Notice of Preparation for the EIR is released for review. The Notice of Preparation for the Diamond Rock EIR was released on November 12, 2003.

The release of the Notice of Preparation is considered to be a reasonable point in time at which to begin the cumulative impact analysis. Without this guideline, the cumulative impact

¹ It should be noted that a second appeal was filed by Coalition to Stop the Trucks, an Ojai-based organization that did not oppose the project, as conditioned, but that did oppose certification of the Final EIR in its entirety. That appeal has since been withdrawn (see Attachment C).

analysis may require frequent revisions as new projects are identified. This section also indicates that if additional projects are identified after the Notice of Preparation is released, such projects may be addressed during the completion of the final EIR.

Since the Final EIR for the Diamond Rock project was completed prior to the May 30, 2007 Planning Commission hearing and the submittal of the application for the Richards Holding project, it was not possible or reasonable to include the Richards Holding project in the Diamond Rock Final EIR. Therefore, based on the guidance provided by the CEQA Guidelines, the Diamond Rock project EIR was not required to include an analysis of potential cumulative impacts associated with the proposed Richards Holding project. If the Richards Holding project proceeds, the environmental review for that project will be required to evaluate cumulative impacts from past, present and future projects (CEQA Guidelines Section 15130 (b)(1)(A), including the cumulative environmental effects of the Diamond Rock project.

Issue #2 -- The Revised Final EIR fails as an Informational Document

This appeal item addresses the EIR's evaluation of existing and project-related increases in truck traffic on Highway 33 in the Cuyama Valley and Ojai areas, and suggests that a "true and correct" copy of a draft staff report table that was not included in the EIR or final staff report. The missing table is apparently a working draft document that was retained in the project file but that was determined to be inaccurate and therefore not used in the staff report or EIR. The referenced table was not included as part of the appeal letter.

This appeal item also claims that there has been inadequate disclosure of impacts related to the overall increase in truck traffic in the Cuyama Valley, and cites various statistics regarding pre- and post-project truck traffic volumes. The truck traffic increase statistics cited by this comment appear to have been derived from information provided by the EIR and staff report, indicating that information regarding truck traffic levels had been adequately disclosed. For example, Table 6.2-1 of the July 11, 2007 Planning Commission hearing staff report indicates that under peak mine production conditions, and if all project-related truck traffic were to be sent to Ventura, total truck traffic volumes on Highway 33 in the Cuyama Valley would be increased from approximately 34 trucks per day to 172 trucks per day. It appears that the information provided by the staff report was used by the Appellant to indicate that truck traffic levels in the Cuyama area could be increased "to over 400% of current levels." The data showing a potential increase in truck traffic of over 400% in the Ventucopa area was included in the EIR and staff report.

Issue #3 – Condition 34 does not Adequately Ensure a Reduction of Truck Traffic on Route 33.

This appeal item addresses the requirements of Condition of Approval No. 34. Condition 34 precludes project-related truck traffic from traveling southbound on Highway 33 through the Ojai area.

Previous versions of Condition 34 considered by the Planning Commission at their May 30 and July 11, 2007 hearings did include provisions that could have allowed project-related truck traffic to travel through the Ojai area in the future based on subsequent mine approval actions

taken by Ventura County. However, those provisions were subsequently omitted from the Condition 34 and are not included in the version of Condition 34 approved by the Planning Commission on May 14, 2008. In addition, the previous and current versions of Condition 34 require that the City of Ojai and County of Ventura be noticed regarding any proposed amendment to the Diamond Rock project's Conditional Use Permit. Therefore, this appeal item does not accurately reflect the requirements of Condition No. 34 as approved by the Planning Commission.

Issue #4 – The Staff Report does not Respond to Comments Regarding the Project's Impact on Quality of Life.

This appeal item pertains to revisions made to the Final EIR regarding the potential for the Diamond Rock project to result in significant "quality of life impacts." This item was addressed in detail in section 6.2 of the May 30, 2007 staff report, as follows:

The Draft EIR determined that operations at the Diamond Rock mine, in combination with operations at other mines in the region, including the GPS sand and gravel mine in Santa Barbara County, and the Ozena Valley Ranch sand and gravel mine and Lima gypsum mine in Ventura County, would have the potential to result in environmental effects that may adversely affect the "quality of life" of residents in the vicinity of the Diamond Rock mine. Quality of life impacts were determined to have the potential to occur primarily due to increases in noise levels that may be perceptible but do not exceed threshold of significance levels; increased traffic in quiet neighborhoods, although noise threshold levels would not be exceeded; and increased air emissions. However, prior to preparation of the Final EIR and certification of the Final EIR by the Planning Commission, this determination was re-evaluated by staff.

The Final EIR analysis demonstrated that the proposed Diamond Rock project, along with other mines in the project region, would have adverse effects on the existing environmental conditions of the project area. However, the Final EIR also identified mitigation measures to substantially reduce the environmental effects of the Diamond Rock project that would contribute to quality of life impacts to the extent feasible. The Draft EIR's conclusion that cumulative mining operation impacts would result in significant and unavoidable quality of life impacts was based on a determination that the cumulative environmental changes "would likely be viewed by some residents as inconsistent with the rural nature of the project region." This determination of impact significance is speculative and not consistent with the examples of quality of life impacts that are provided by the County's *Environmental Thresholds and Guideline Manual*. The *Guideline Manual* indicates that:

"Quality of life issues, while hard to quantify, are often primary concerns to the community affected by a project. Examples of such issues such issues provided the Guidelines Manual include the following: loss of privacy, neighborhood incompatibility, nuisance noise levels (not exceeding noise thresholds), increased traffic in quiet neighborhoods (not exceeding traffic thresholds), and loss of sunlight/solar access."

An evaluation of the proposed project's effects on the quality of life factors described by the *Guidelines Manual* is provided below.

Loss of Privacy -- The proposed Diamond Rock and other mine projects would not result in loss of privacy impacts.

Neighborhood Incompatibility -- Neighborhood compatibility issues generally pertain to factors such as the size and appearance of new development, noise- and traffic-related issues. Potential visual impacts of the Diamond Rock project that would have the greatest potential to adversely affect nearby residences would be night lighting. Required mitigation measures require on-site light shielding and that light levels at the project site perimeter not exceed 0.5 foot-candle. With the implementation of the proposed mitigation measures, potential lighting-related impacts would be reduced to a less than significant level, and lighting-related effects at nearby residences would not be substantial.

Nuisance Noise Levels -- The proposed project would result in new noise sources that have the potential to be audible during daytime and nighttime hours at the limited number of residences located near the project site. Mitigation measures to minimize these noise impacts were identified in the EIR. These mitigation measures include the construction of noise attenuation barriers; measures to reduce on-site equipment and material loading noise; and limitations on Sunday material loading operations. With the implementation of these mitigation measures, overall increases in noise levels in the project vicinity and noise impacts to nearby residences, particularly at night, would be minimized to the extent feasible. Therefore, with the proposed mitigation measures, effects to surrounding residences would not be significant.

Increased Traffic in Quiet Neighborhoods -- Increases in traffic-noise would occur primarily along State Route 33, and mitigation measures to reduce project-related noise effects to residences near the highway in the project area were provided by the EIR. These measures include limitations on the number of nighttime truck trips that may occur, and the timing of truck trips on Sundays. With the implementation of these mitigation measures, overall increases in traffic noise levels in the project vicinity and traffic noise impacts at nearby residences would be minimized to the extent feasible, particularly at night. Therefore, with the proposed mitigation measures, increases in existing traffic noise levels along State Route 33 in the project vicinity would be adverse, but the change in community character and effects to surrounding residences would not be substantial.

Loss of Sunlight/Solar Access -- The proposed Diamond Rock and other mine projects would not result in shading or solar access impacts.

Based on the assessment of potential project-related quality life impacts using impact evaluation criteria provided by the *Environmental Thresholds and Guidelines Manual*, after the implementation of required mitigation measures, the Diamond Rock project's contribution to quality of life impacts would not be significant. Therefore, the Final EIR indicates that the proposed project's contribution to cumulative quality of life impacts is a significant but mitigable impact (Class II).

Issue #5 – Potential Impacts to Special-Status Species are not Adequately Analyzed.

This appeal item addresses issues related to the EIR evaluation of potential impacts to several “special status” plant species. This item was addressed in detail by item No. 6 in the July 11, 2007 staff report, as follows:

A letter from Magney Environmental Consulting indicates that the EIR incorrectly states that there are no special status plant species present on the Diamond Rock project site. The comment then indicates that in survey work on the property, Magney specifically identified five such species:

Astragalus macrodon (CNPS List 4)
Eriogonum inerme (locally rare)
Filago depressa (locally rare)
Lessingia tenuis (locally rare)
Romneya coulteri (CNPS List 4)

Section 3.4.2.4 (page 3.4-7) of the Diamond Rock project EIR indicates that special status plant species occur in several different categories. In order of decreasing sensitivity from a regulatory perspective, these are:

- Federally listed endangered or threatened species, as designated by the U.S. Fish and Wildlife Service
- California listed endangered or threatened species, as designated by the California Department of Fish and Game
- Species listed by the California Native Plant Society, and placed in one of the following categories:

- 1A Species presumed to be extinct in California
- 1B Rare or endangered in California and elsewhere
- 2 Rare or endangered in California, more common elsewhere
- 3 Need more information.
- 4 Limited distribution

Threat ranks are added to the CNPS categories: 0.1 – seriously threatened, 0.2 – fairly threatened, 0.3 – not very threatened.

- Species not found on the CNPS statewide list, but maintained on a checklist of locally rare plants that is kept by a local CNPS chapter

There is no specific guidance or definition used by the County of Santa Barbara to apply the above categories in identifying special status species for a given project. In some circumstances, “special status species” are defined to include only federal or state listed species and those on CNPS List 1B or List 2. In other cases, the County will consider species on CNPS List 3 and 4 as also having “special status.” And in some cases, the County will also consider species that are “locally rare” but not present on any statewide list as having “special status.” The exact use and categorization is determined by the project biologist, depending on the species and circumstances present in a given project.

For the Diamond Rock project, the biology survey report identified special status species as those species listed in the California Natural Diversity Database “Rarefind 2” report, or contained in the California Department of Fish and Game 2003 List of Special Plants, or on the CNPS List 1B or List 2, or considered sensitive by the Los Padres National Forest (Bumgardner 2003b:3). Thus, the Diamond Rock biology survey report did not include CNPS List 3 and 4 species, or those plants considered locally rare by the CNPS chapter, in its definition of “special status plants.”

The biology survey report also included information on locally rare but “non-special status” plant species, provided by Dr. Dieter Wilken at the Santa Barbara Botanic Garden through communication with David Magney. This information is included as Appendix B in the Bumgardner 2003b report. This Appendix B discusses nine “locally rare” plant species, all of which were observed on the property but none of which were considered “special status” plants in the biology survey report. None of these nine species are within the group that David Magney lists in his comment letter. The five plant species that are mentioned in David Magney’s comment letter are all included in the biology survey report as occurring on the property (Bumgardner 2003b:Appendix A), but none are mentioned in the Appendix B listing of “locally rare” species. All five of David Magney’s species are listed, however, as locally rare plant species by the Channel Island chapter of the CNPS,—a list also prepared by Dr. Wilken (2003. *Locally Rare Plants of Santa Barbara County*. Central Coast Center for Plant Conservation, Santa Barbara Botanical Garden, Santa Barbara, CA.).

Regardless of the distinctions or inclusion of “locally rare” plant species, the EIR was inconsistent in its definition and use of the term “special status plant species,” between the biological survey report and the text of the EIR.

The following revision in the text of the Final EIR (Section 3.4.2.4, page 3.4-7) clarified this matter:

Special status plant species include the following categories of species that are considered rare or endangered: 1) species officially designated as rare, threatened, endangered by the California Fish and Game Department (CDFG) or US Fish and Wildlife (USFWS); 2) species included in the California Native Plant Society (CNPS) Inventory of Rare and Endangered Species of California on List 1B or 2 (rare or endangered in California). The biology survey report also reviewed plant species considered sensitive by the Los Padres National Forest (Bumgardner 2003b:3).

Based on the review of pertinent studies and records, seven rare or endangered plant species were identified that occur in the Cuyama Valley, including three federally listed species: California jewel-flower, Hoover’s eriastrum, and San Joaquin woolly threads. The other four species are included on CNPS List 1B – plants considered rare and endangered in California. A summary of these species is provided in Table 3.4-2. The occurrence of these species and their habitat types at the project site was investigated during the 2002, 2003, and 2004 surveys by Bumgardner Biological Consulting and URS. No listed rare or endangered plant species were observed at the project site, nor are any expected to occur due to the absence of suitable habitat.

Nine plant species, which are considered of interest due to their limited distribution or their rarity in Santa Barbara County, were observed on the project site. None of these species, however, is considered rare or endangered. These are described in the biological survey report (Bumgardner 2003b:Appendix B) and include:

Achnatherum hymenoides (Indian ricegrass)
Atriplex canescens ssp. *Canescens* (Fourwing saltbursh)
Chrysothamnus nauseosus ssp. *Bernardunus* (San Bernardino rubber rabbitbrush)
Encelia farinose (Brittlebush)
Eriastrum filifolium (Thread-leafed eriastrum)
Loeseliastrum schottii (Schott's loeseliastrum)
Monardella breweri (Brewer's coyote mint)
Purshia tridentate var. *glandulosa* (Antelope bush)

A comment was also provided indicating that *Astragalus asymmetricus* is known only from one location in Santa Barbara County, and from only one location in Ventura County. By the definitions of rare plants listed in the EIR on page 3.4-7, this species should have been treated as a rare species.

As clarified by the response provided above, the definition of a rare plant in the biological survey report and in the analysis in the EIR was intended to be limited to species listed by the federal or state agencies, or by the CNPS in list 1B or 2. *Astragalus asymmetricus* is not on any such list. It is commonly found in the San Joaquin Valley, a range extending to within a few miles northeast of the project site. It is not listed by Wilken (2003) as being locally rare in Santa Barbara County, and was not addressed as such in Appendix B of the biology survey report. The biology survey report lists both *A. asymmetricus* and *A. macrodon* as being present on the project site.

Issue #6 – County's Response to Comments regarding Blunt Nosed Leopard Lizard (BNLL) are Insufficient.

This appeal item pertains to the EIR's evaluation of potential impacts to blunt nosed leopard lizard, which is a state and federal endangered species.

The EIR's analysis of potential project-related impacts to blunt nosed leopard lizard indicates that the lizard is known to exist on the stream terrace adjacent to the river channel. The occurrence of the lizard in the river channel, however, is unknown. Based on the known presence of the lizard in the project area, the EIR indicates that the implementation of a mitigation plan approved by the U.S. Fish and Wildlife Service (USFWS) would reduce potential impacts to the lizard to a less than significant level. Conditional Use Permit Conditions of Approval Nos. 11, 18 and 20 provide specific protection requirements intended to protect blunt nosed leopard lizards. Other conditions of approval included in the Conditional Use Permit, such as requirements to provide habitat restoration areas on the project site and for the project to minimize ground disturbance, will also reduce the potential for impacts to the lizard. The EIR's conclusion that potential impacts to blunt nosed leopard lizard could be reduced to a less than significant level was based on the project's compliance

with the significance threshold requirements provided in section 3.4.3.1 of the EIR, not the “no jeopardy” requirements of the USFWS.

The post-construction survey requirements of Condition No. 19 have been provided to determine if blunt nosed leopard lizard utilizes habitat areas provided within the river. If it is determined that the lizard does not exist in the river habitat areas, modifications to the lizard protection plan requirements may be considered. If the lizard is found to inhabit the river areas, additional protection measures would be developed in coordination with the USFWS.

The EIR recognizes that the blunt nosed leopard “is protected from take (i.e., direct mortality and/or destruction of habitat) by the Federal Endangered Species Act and Fish and Game Code 5050). The CDFG has issued a draft 1602 (Agreement Regarding Proposed Stream or Lake Alteration) for the Diamond Rock project. Condition No. 47 of the Agreement requires that the applicant notify CDFG if blunt nosed leopard lizard or any other threatened or endangered species are found within 500 feet of the work area. Once notified, CDFG may conduct an onsite inspection to determine if work in the area of the sighting may proceed. In addition, condition No. 49 of the Agreement requires that if blunt nosed leopard lizard occurs in the project area, the applicant shall submit for Department review and approval, a plan to ensure that the species is not disturbed during project implementation. With these Agreement requirements, the Diamond Rock project will comply with the State’s fully protected species requirements.

The EIR and USFWS Biological Opinion recognize that proposed blunt nosed leopard lizard exclusion fencing has the potential to restrict lizard movement. Condition of Approval No. 20 requires the implementation of modifications to the applicant-proposed exclusion fencing plan, and would reduce potential lizard movement restriction impacts to a less than significant level.

Issue #7 – Significance of the Project’s Impact on Groundwater.

This appeal item is in regard to the EIR’s evaluation of cumulative impacts on ground water supply.

The analysis of project-specific and cumulative impacts to ground water supply caused by the Diamond Rock project was conducted in accordance with the guidance provided by the County of Santa Barbara Environmental Thresholds and Guidelines Manual, and the Groundwater Thresholds Manual that was revised and updated on August 20, 1992.

The adopted groundwater thresholds serve as both the level of groundwater consumption (i.e., increase in overdraft) considered to constitute a project-specific significant impact and the level of new pumpage considered to result in a substantial contribution to the ongoing cumulative impact of overdraft of the basin. This is because the threshold is constructed based upon an estimate of all of the existing groundwater pumpage in the basin (i.e. the cumulative level of pumpage and resulting level of overdraft).

Issue #8 – In-River Sediment Transport.

This appeal item pertains to potential project-related impacts on the transport of sediment in the Cuyama River. This issue was addressed in the July 22, 2007 Planning Commission staff report, as follows:

The U.S. Environmental Protection Agency submitted a letter indicating that together, the GPS (located downstream and adjacent to the proposed project site) and Diamond Rock mines propose to mine an average of 1,000,000 tons of sediment per year from the Cuyama River. The Revised Draft EIR for the proposed Diamond Rock facility included a sediment transport analysis that estimated the annual sediment inflow to the combined mine sites at about 314,000 tons per year, with an average outflow of 85,000 tons, resulting in an annual accumulation of 229,000 tons. The EIR concluded "...that the proposed mining projects would create a sediment deficit of approximately 771,000 tons per year which could affect river hydraulics, including possible channel degradation and possible upstream headcutting." The EPA also indicated that although the Revised Draft EIR included information about the impacts of the proposed project, they do not feel that it adequately addresses the cumulative impacts that would result from permitting the proposed Diamond Rock mine in conjunction with the increased production rates at GPS. Together, these two projects have the potential to significantly impact the hydrology of the Cuyama River.

The hydrology and sediment transport analysis presented in the EIR was intended to identify and describe the potential for impacts associated with sand mining in river beds, and to provide a context for the mitigation measures suggesting minor design changes to the design of the mine (W-1, W-3 and W-4) and stream bed and bank monitoring requirements (W-2) for data to be referenced in annual inspections as part of the County's monitoring and enforcement authority in the Conditional Use Permit. The sediment study was not intended to be used for engineering design purposes and should not be interpreted as establishing a specific engineering requirements related to the proposed Diamond Rock mine. The EIR contains a weighted annual average estimate of sediment flow (the 314,000 tons per year cited in the US EPA comment), which is derived from estimates for sediment flow associated with specific storm events. The range in this estimate, however, is very large—from less than 100,000 tons for a single 2-year storm event to over 1,000,000 tons for a 20-year storm event, and nearly 4,000,000 tons for a 100-year storm.

The proposed mine is not intended to intercept and remove sediment as it is transported along the river. Rather, it is intended to excavate and remove a volume and quality of material that is known to exist beneath the current river bed. The relationship between the project and the sediment transport function of the Cuyama River is determined by how river flows are diverted around the excavation area or, in the case of higher flows, how the excavation pit collects water, fills up, and influences flow velocities. The potential for downstream scouring or upstream headcutting is discussed in the EIR (Section 3.1.2.2.3 on pages 3.1-16 through 3.1-9). On the basis of observations of the GPS operation, observations of the river bed upstream and downstream, and in conjunction with the analysis in the EIR, URS Corporation and the County have concluded that the probability for substantial erosion of either type is low and that the resulting effect is not likely to be significant. The EIR recognizes the uncertainties involved in this issue, however, and identifies mitigation measures that are intended to ensure that such erosion remains less than significant.

The analysis incorporated both the GPS and the proposed Diamond Rock properties. The US EPA comment is incorrect in characterizing the GPS proposal as increasing its production rate. The GPS proposal will shift the excavation area for that project, and will establish a permit rate that reflects the historical production rates at that mine.

Issue #9 – Planning Commission Policy Regarding Submittal of Public Comment Violates State Law.

At the May 14, 2008 hearing, the Planning Commission determined that additional written material from SLO Coastkeeper did not need to be accepted into the record or considered. The subject letter, dated May 12, 2008 but not provided to the Planning Commission until the May 14, 2008 hearing, was essentially the same as a letter from Coastkeeper dated May 28, 2007 (which was submitted to the Planning Commission two days before the first hearing on the project). This issue seemed moot at the time, as the rejected letter did not contain substantial new information compared to the previous letter. Regardless, this cannot now be considered a basis for granting the appeal because the subject letter is now a part of the record on de novo consideration before the Board of Supervisors.

E. Facilitation Meeting with County Counsel between Appellants and Applicant

Originally, there were two appeals filed – one by the Coalition to Stop the Trucks and one by Save the Cuyama Valley. The Coalition to Stop the Trucks appeal was resolved through a facilitation meeting conducted by County Counsel's office on July 24, 2008 (see Attachment C).

Fiscal and Facilities Impacts:

Budgeted: Yes **Fiscal Analysis:** The cost to offset these appeals is partially offset by the two (2) \$443 appeal fees paid by each of the two the appellants (Save the Cuyama Valley and Coalition to Stop the Trucks) per the Planning & Development Department fee schedule in effect on the date that the appeals were filed (Resolution 06-359 adopted by the Board of Supervisors on November 14, 2006, effective January 2007). This is a total of \$886 in appeal fees received from the appellants. The remaining cost of processing the appeals is budgeted in the Permitting and Compliance Program of the Development Review Division – North on page D-290 of the adopted budget for Fiscal Year 2007/2008. There are no facilities impacts. Estimated staff time to process the appeals and prepare for and attend the hearing is approximately 50 hours for an estimated cost of \$6,450.

Special Instructions:

Planning and Development shall satisfy all legal noticing requirements through publication of legal ads and display ads in the Daily Sound, Santa Maria Times, Ojai Valley News and Ventura County Star at least ten (10) days prior to the August 26, 2008 hearing.

Clerk of the Board shall forward a copy of the Minute Order to Planning & Development, Hearing Support Section, Attention: David Villalobos.

Attachments:

- A. Final Planning Commission Action Letter dated May 19, 2008
- B. Save the Cuyama Valley Appeal Form and Letter
- C. Letter Withdrawing the Coalition to Stop the Trucks Appeal
- D. Staff Report for May 14, 2008 Planning Commission Hearing
- E. Staff Report for July 11, 2007 Planning Commission Hearing
- F. Staff Report for May 3, 2007 Planning Commission Hearing

Under Separate Cover -- Final Environmental Impact Report 05EIR-00000-00001

Authored by:

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