

Attachment 1

**Cuyama Valley Conservancy Appeal Form with
Attachments A and B**

APPEAL TO THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA

Submit to: Clerk of the Board
County Administration Building
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

APPROVED
JUN 20 2011
COUNTY CLERK

RE: (Project Title) Revision to the Previously Approved Diamond Rock Mine and Processing Facility;

Case Number 11RVP-00000-00032

Tract/ APN Number

Date of action taken by Planning Commission at the Hearing held on June 8, 2011

I hereby appeal the approval with conditions of the Planning commission
(approval) approval with conditions/ or denial) (Planning Commission) Zoning Administrator/ or County Surveyor)

Please state specifically wherein the decision of the Planning Commission, Zoning Administrator, or Surveyor is not in accord with the purposes of the appropriate zoning ordinance (one of either Articles I, II, III, or IV), or wherein it is claimed that there was an error or an abuse of discretion by the Planning Commission, Zoning Administrator, or Surveyor. {References: Article I, 21-71.4; Article II 35-182.3, 2; Article III 25-327.2, 2; Article IV 35-475.3, 2} Attach additional documentation, or state below the reason(s) for this appeal.

Please refer to attachment A submitted with this application.

Specific conditions being appealed are: Please refer to attachment B

Name of Appellant (please print): Cuyama Valley Conservancy

Address: 3380 Highway 33, Maricopa, CA 93252

(Telephone) (805)-962-5200

Appellant is (check one): ___ Applicant ___ Agent for Applicant X Third Party ___ Agent for Third Party

Fee \$ 643.00 {Fees are set annually by the Board of Supervisors. For current fees or breakdown, contact Planning & Development or Clerk of the Board. Check should be made payable "County of Santa Barbara".}

Signature: E. J. Zamm, Spokesperson Cuyama Valley Conservancy

Date: June 20, 2011

ATTACHMENT A

—Appeal to the Santa Barbara County Board of Supervisors
of Santa Barbara County Planning Commission Decision Dated June 8, 2011

Reasons for Appeal:

A) Acceptance of the Planning Commission's recommendations in this case would be a clear violation of responsibility.

One of the primary responsibilities of the Santa Barbara County Board of Supervisors (Board) is to protect their community (Cuyama Valley) and its environment and natural resources.

The Planning Commission's mandate also requires it to protect, among other things, the water resources that supply the area surrounding the mine pits. The permit accepted by the Commission on June 8, 2011 can irreparably jeopardize water quality and supply to the Ventucopa and Cuyama Valley areas by compromising the water table. River channel stability imbalance is already clearly evidenced by the GPS Mine pit as a result of historic mining and failure of the Cuyama River to replenish aggregate that GPS extracted without a permit in 2007 and 2008. **In short, the scope and duration of the excavation activities the Planning Commission would permit will destroy or seriously compromise the natural water supply to the area for decades to come.**

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.

By a split 3 to 2 vote, the Santa Barbara County Planning Commission and Board of Supervisors are permitting a scope of activity that the Federal Government has already, after a substantial study, found to be unsafe. There is a direct conflict between what the County as a sub-agency of the State Government is willing to allow, and what the Federal Government has already forbidden, in violation of the Supremacy Clause. The section 404 permits issued by the United States Army Corps of Engineers (USACOE), after considering the documentation the Applicants submitted to them, imposed much stricter limits upon the Applicants' activities than those the Planning Commission proposes. The USACOE order constitutes a new regulatory landscape within which Diamond Rock and GPS will be unable to implement the mining projects that the Planning Commission proposes to permit. It is important to remember that the USACOE is not only a Federal regulatory body, it is just what

reconsider its own analysis and conclusions in light of this new information. The limitations imposed by the USACOE permit also constitute “changed circumstances” which also compel further analysis and reconsideration by the County. The section 404 permit constitutes a new regulatory landscape within which Diamond Rock will be unable to implement the mining project as permitted by the County.

New information compelling a supplemental or subsequent EIR also includes new evidence of erosion that has resulted from the historical operation of GPS. As explained in Dr. Curry’s June 6, 2011 report, photographs of the area in the vicinity of the mines show that the ongoing mining operations are causing significant erosion that the Diamond Rock EIR concluded would not occur. Dr. Curry’s report explains that these photographs show hydraulic river channel erosion far in excess of rates predicted by the EIR. The County did not meaningfully consider any evidence of erosion on the Cuyama River in the course of its environmental review of the Diamond Rock Mine project or the cumulative effect of the two mines operating side by side. Please refer to USACOE project limitations listed above in item B).

D) The Board should keep in mind that it is dealing with the mine operator, GPS, who has a history of illegal activities and violations of law in the past and they need to be monitored more closely than an operator who does not have the same history.

The permit that you are being asked to approve provides for totally inadequate supervision of an operator, GPS Mine, already found by several agencies to be undependable; to have excavated without appropriate permits; to have operated without due regard for environmental concerns; and to have operated in a way that endangered the environment and in particular the water supply and water table. The USACOE Environmental Assessment (EA) prepared for GPS substantially limits their activity in a manner similar to the limitations in scope imposed on the Diamond Rock Mine.

In 2004 and 2005 GPS was cited by the EPA for discharge of dredge or fill material that resulted in alteration of approximately 22 acres of watershed under the jurisdiction of the United States.

In 2008 the Federal Environmental Protection Agency (EPA) determined GPS had encountered ground water in 2007 and 2008, in the unpermitted pit, where they began excavation in 2007. County Planning and Development staff allowed the unpermitted excavation and expansion to take place. Planning and Development has not protected the water resources in the vicinity of the mines in the past.

F) The proposed action, as pointed out by experts' reports submitted by Appellant, will allow damage to the Cuyama River underflow, river water that flows in the gravels and sands in the bed of a river, that supplies vital recharge water to agricultural and domestic users near and below the mine sites.

Contrary to claims accepted by the Planning Commission, the water in the mine excavation pits is, in part, underflow of the river, not just rainwater. Historic groundwater levels in the mine-site Observation/Domestic Well #1, as measured by SB County Floods Control, Water Conservation District, and Water Agency vary from a depth of 111 feet below ground surface (BGS) in 1975 to 12 feet BGS (river bed level) in 1990. Water level in 1995 was 34 ft BGS [p. 15, Reclamation Plan, Southwest ReadyMix (now GPS), Sept 30, 1997 - RAM Consultants]. Agricultural water recharged from the Cuyama underflow is critical to upper Cuyama Valley. This is part of the Cuyama River and part of the Waters of the United States. Exposure of these flowing waters degrades water quality through evaporative concentration and reduces adjacent and down-stream recharge.

Please refer to Dr. Curry's Professional Geologists' reports for June 6, 2011 and 2009. See US Geological Survey preliminary online data for Zannon well and others at the Cuyama River Project website.

G) The Planning Commission has approved breaking up an environmental assessment into separate parts that can be evaluated individually (piecemealing), rather than looking at the impacts of the sum of the parts, which may exceed the individual impacts. Under CEQA, piecemealing is not permitted for impact assessment.

To allow piecemealing of impact assessments for the 5-year Federal (USACOE and CDFG) regulatory periods will obscure the cumulative damages to the watershed at and in the area of the mine pits.

Federal and State regulators all concur with limiting the Joint Venture between Diamond Rock and GPS mines to excavation of only one mine at a time for a 5-year period. The Planning Commission has misinterpreted this to suggest that both mines may operate after 5 years. Environmental assessment of this already severely imbalanced riverbed site, as noted in the down-cutting of river banks and in the laterally migrating river channel, cannot be delayed until after mining occurs for several more years. The evidence of channel damage is readily visible in the riverbed above, at and below the GPS mine site.

proposed Diamond Rock processing facility and the County's conclusion that 74% of the processing groundwater would be recycled and reused. Based on the project description and assumptions unique to the proposed Diamond Rock site, the County concluded that during peak production, the Project would use water at the maximum net rate of 28.1 acre feet/yr. EIR at 3.3-6. Based on this calculation, the County concluded that Diamond Rock would not result in a significant adverse impact on groundwater because the net consumption would be less than the County's 31 acre-feet per year threshold. Ibid.

K) The County and Diamond Rock have entered into an agreement that is not enforceable with respect to GPS who will be operating both the GPS mine and the Diamond Rock mine.

L) The County has proposed an addendum to the California Environmental Quality Act and modifications to the Diamond Rock CUP operating agreement between the Diamond Rock Mine and the County, but failed to consider any changes requested by local property owners and residents.

M) The Planning Commission fails to modify mitigations of approval by the Army Corps of Engineers and the Supremacy Clause.

AMENDMENT B
Appeal to the Board of Supervisors / County of Santa Barbara

Specific conditions being appealed are:

1. The County has failed to adopt conditions of approval consistent with conditions mandated by the Army Corps of Engineers under the "Supremacy Clause" of the United States Constitution.
2. The County has not adopted an independent monitoring program for public site and record review of material extraction rates, water usage, water quality, water depth and disposition of fines nor any action to be taken if DR or GPS falls out of permit compliance.
3. The County has failed to review current mitigation to reflect new mine thresholds, i.e.:
 - a. Night mining
 - b. Maximize truck trips per day
 - c. Caps on emergency conditions declared by the planning director

The County should allow public review of the contract between Diamond Rock and GPS before being adopted.