COUNTY OF SANTA BARBARA

Planning and Development

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Appeal to the Board of Supervisors or Planning Commission (County or Montecito)

APPEAL TO THE BOARD OF SUPERVISORS OR PLANNING COMMISSION (APL) on the issuance, revocation, or modification of :

- **All Discretionary projects heard by one of the Planning Commissions**
- **Board of Architectural Review decisions**
- **Coastal Development Permit decisions**
- **Land Use Permit decisions**
- **Planning & Development Director's decisions**
- **Zoning Administrator's decisions**

THIS PACKAGE CONTAINS

- ✓ **APPLICATION FORM**
- ✓ **SUBMITTAL REQUIREMENTS**

AND, IF ✓'D, ALSO CONTAINS

South County Office 123 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2000 Fax: (805) 568-2030	**Energy Division** 123 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2040 Fax: (805) 568-2522	**North County Office** 624 W. Foster Road, Suite C Santa Maria, CA 93455 Phone: (805) 934-6250 Fax: (805) 934-6258	**Clerk of the Board** 105 E. Anapamu Street Santa Barbara, CA 93101 Phone: (805) 568-2240 Fax : (805) 568-2249
Website: www.sbcountyplanning.org			

SUBMITTAL REQUIREMENTS

_____ 8 Copies of the attached application.

_____ 8 Copies of a written explanation of the appeal including:

- If you are not the applicant, an explanation of how you are an "**aggrieved party**" ("Any person who in person, or through a representative, appeared at a public hearing in connection with the decision or action appealed, or who, by the other nature of his concerns or who for good cause was unable to do either.");
- A clear, complete and concise statement of the **reasons or grounds for appeal**:
  - Why the decision or determination is consistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law; or
  - There was error or abuse of discretion;
  - The decision is not supported by the evidence presented for consideration;
  - There was a lack of a fair and impartial hearing; or
  - There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

_____ 1 Check payable to Planning & Development.

✓ Note: There are additional requirements for certain appeals including:

✓

a. **Appeals regarding a previously approved discretionary permit** – If the approval of a Land use permit required by a previously approved discretionary permit is appealed, the applicant shall identify: 1) How the Land Use Permit is inconsistent with the previously approved discretionary permit; 2) How the discretionary permit's conditions of approval that are required to be completed prior to the approval of a Land Use Permit have not been completed; 3) How the approval is inconsistent with Section 35.106 (Noticing).

b. **Appeals regarding Residential Second Units (RSUs)** – The grounds for an appeal of the approval of a Land Use Permit for a RSU in compliance with Section 35.42.230 (Residential Second Units) shall be limited to whether the approved project is in compliance with development standards for RSUs provided in Section 35.42.230.F (Development Standards).

PLANNING & DEVELOPMENT
APPEAL FORM

SITE ADDRESS: Cuyama River / Cuyama Valley

ASSESSOR PARCEL NUMBER: 149-220-002; 149-220-001; and 149-220-65

PARCEL SIZE (acres/sq.ft.): Gross 279.94 ac Net (CUP = 132.46 ac)

COMPREHENSIVE/COASTAL PLAN DESIGNATION: _____ ZONING: (rural) Agriculture A-II

Are there previous permits/applications? ☐no ☐yes numbers: _____
(include permit# & lot # if tract)

Are there previous environmental (CEQA) documents? ☐no ☐yes numbers: _____

1. **Appellant:** Save the Cuyama Valley Phone: 661-766-2128 FAX: _____

Mailing Address: Star Route 1, Box 189-D 6974 Quatal Rd Maricopa, CA 93252 E-mail: jolaine@wildblue.net
Street City State Zip

2. **Owner:** Gene Zannon, Chair Phone: 661 766 2485 FAX: _____

Mailing Address: 3380 Hwy 33 Maricopa, CA 93252 E-mail: gene@sbpistacios.com
Street City State Zip

3. **Agent:** Gordon Hensley, San Luis Obispo Coastkeeper Phone: 805 781 9932 FAX: 805 781 9384

Mailing Address: 1013 Monterey St. Ste. 202 San Luis Obispo, CA 93401 E-mail: g.r.hensley@sbcglobal.net
Street City State Zip

4. **Attorney:** Babak Naficy Phone: 805 593 0926 FAX: 805 593 0946

Mailing Address: 738 Higuera St, Ste B San Luis Obispo, CA 93401 E-mail babaknaficy@sbcglobal.net
Street City State Zip

COUNTY USE ONLY

Case Number: _____ *Companion Case Number:* _____
Supervisorial District: _____ *Submittal Date:* _____
Applicable Zoning Ordinance: _____ *Receipt Number:* _____
Project Planner: _____ *Accepted for Processing* _____
Zoning Designation: _____ *Comp. Plan Designation* _____

COUNTY OF SANTA BARBARA APPEAL TO THE :

__X__ **BOARD OF SUPERVISORS**

_____ **PLANNING COMMISSION:** _____**COUNTY** _____ **MONTECITO**

RE: Project Title Diamond Rock Gravel Mine and Processing Facility

Case No. CUP-00000-00037;03RPP-00000-00002; 05EIR-00000-00001

Date of Action May 14, 2008

I hereby appeal the _____approval __X__approval w/conditions _____denial of the:

_____Board of Architectural Review – Which Board? _____

_____Coastal Development Permit decision

_____Land Use Permit decision

__X__Planning Commission decision – Which Commission? SB County Planning Commission

_____Planning & Development Director decision

_____Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

_____ Applicant

__X__ Aggrieved party – if you are not the applicant, provide an explanation of how you are and "aggrieved party" as defined on page two of this appeal form:

Members of "Save the Cuyama Valley" , a local grassroots group organized to protect the environment and quality of life in the Cuyama Valley, as well as our representatives and agents, including San Luis Obispo Coastkeeper and Babak Naficy, have submitted written comment and made appearance at Santa Barbara County Planning Commission hearings regarding this matter.

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

We believe the EIR approved by the County Planning Commission on May 14, 2008 violates the California Environmental Quality Act and fails to provide adequate foundation for approval of the CUP and Reclamation Plan.

Further we believe the EIR inadequately characterizes the project and critical environmental impacts likely to occur, and therefore has misled the Planning Commission and the public.

Our specific claims are outlined on the attached pages.

Specific conditions imposed which I wish to appeal are (if applicable):

a. _____

b. _____

c. _____

d. _____

Please include any other information you feel is relevant to this application.

CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

"Save The Cuyama Valley" E.F. Zannon 5-19-08

Print name and sign – Firm Date

Gordon Hensley Gordon R Hensley 5/20/08

Print name and sign - Preparer of this form Date

E.F. Zannon E.F. Zannon for "Save the Cuyama Valley" 5-19-08

Print name and sign - Applicant
Date

Gordon Hensley Gordon R Hensley 5/20/08

Print name and sign - Agent Date

Print name and sign - Landowner
Date

ATTACHMENT A

Appeal to the Santa Barbara Board of Supervisors of County Planning Commission Decision.

1. Cumulative Impacts Not Analyzed (Pub. Res Code §§ 21083, 21100; Guidelines §§15065(e), 15130; County LUD Code 35.82.060).

The County received a formal permit application from the Richards Holding Company (RHC) for proposed sand and gravel mine on May 30, 2007, the same day the Planning Commission was scheduled to hold hearing for the proposed Diamond Rock mine. It would appear that the submission of the RHC application on the same day as the Planning Commission was an attempt to ensure Diamond Rock mine's approval without adequate consideration of its cumulative impacts in addition to those of the GPS and RHC mines. This cynical attempt to deprive both the public and the County of information vital for adequate assessment of Diamond Rock's cumulative impacts must be emphatically rejected.

Incredibly, the June 25, 2007 Staff Report fails even to mention the RHC application. One can only speculate in amazement why the staff did not feel that the Planning Commission and members of the public deserved to know about this application and the circumstances surrounding it in order to adequately consider the cumulative impacts of the proposed Diamond Rock mine.

There is ample evidence that RHC deliberately delayed its application long enough to come in after Diamond Rock was already approved. A brief review of the record has revealed that all studies undertaken on behalf of RHC in support of its application were undertaken in 2003. These include a biological study and Geological study, both of which were completed in 2003. The laboratory soil study was completed in 2002. In fact, none of the studies or other supporting documents for the proposed RHC mine were prepared after 2003. There is no evidence to suggest that the four year delay in the RHC application was due to any legitimate reasons.

The County cannot simply ignore the RHC mine under these circumstances. The pre-application for the mine was filed in 2003 and the County planning staff was apparently on notice that RHC will inevitably submit an application for a proposed sand and gravel mine close to the site of the GPS and proposed Diamond Rock mine. In any event, the May 30, 2007, formal submission of a permit application by RHC removes any doubt that RHC is proceeding with its plans for a sand and gravel mine. Even if the County was not aware of this project before, it is now. This development cannot be ignored.

The revised FEIR has not been certified. The Planning Commission has yet to seriously consider the project, let alone render a final decision, and the Board of Supervisors has yet to consider the issue. It is not too late to consider the impacts of the proposed Diamond Rock mine in addition to GPS and the RHC proposal. In fact it is imperative that the County fully disclose and analyze these impacts before certifying the EIR for this project.

The proposed RHC mine will result in significant adverse environmental impacts very similar to the impacts that will result from the proposed Diamond Rock mine. These include additional traffic, noise, air quality, biological, water supply and hydrological impacts. More significantly

however, the addition of yet another mine to this small rural community and this wild stretch of the river will result in devastating cumulative impacts. Without adequate analysis of the combined effects of these three mines, the County's analysis of the impacts of Diamond Rock alone will be hopelessly inadequate.

2. The Revised Final EIR fails an informational document. (*Kings County Farm Bureau v. City of Hanford*, 221 Cal App.3d. 692 [1990]).

The Revised FEIR's discussion of the increase in project-related truck traffic is confusing and grossly misleading. At 3.5-14, citing table 3.5-15, the RFEIR states that the increase in total vehicle traffic and truck traffic along State Route 33 from Ojai to Casitas Springs will be very low (<1 to 5 percent), even if all mine production were directed to Ventura. The increase in vehicular and truck traffic along State Route 33 south of the project site would be minor if mine production were dispersed (4-7 percent), but would be substantial if all mine production was hauled to Ventura (22 to 34 percent). The percentage of trucks along State Route 33 in Cuyama Valley would also increase with increased production.

Although table 3.5-15 contains the percentage of the current ADT that is comprised of trucks, it does not contain a column explaining the percentage of ADT that would consist of trucks after the implementation of the project. But close attention to the table reveals that in average production years, if all production is sent to Ventura, 25% of all traffic in Ventucopa will consist of trucks. This information is included in the Staff Report (table 6.2-1), but not the EIR.

In peak production years, the percentage of truck traffic would reach more than 30% of all traffic.

Although table 3.5-15 does not disclose this information, this information too is included in Staff Report table 6.2-1.

A version of Staff Report table 6.2-1 that was contained in a working draft that was contained in the planning department working files was includes additional information that is not included in the FEIR or the Staff Report table 6.2-1. A true and correct copy of this table (3-39) is attached to these comments as Exhibit A. This table contains a column that discusses the increase in the absolute number of truck traffic caused by the project alone. In average production years, truck traffic in the vicinity of Ventucopa will increase between over 50% (production dispersed to all locations) to over 270% (all production to Ventura). In peak production years the increase would escalate to over 400% of current levels. This dramatic increase in truck traffic graphically underscores Ventucopa residents' concerns about the degradation of the quality of their rural lifestyle that will be occasioned by the Diamond Rock Project.

The EIR fails to include this information, which is also not included in the Staff Report. Without this information, the FEIR violates the CEQA policy of fair and full disclosure of all environmental impacts.

3. Condition of Approval 34 does not adequately ensure reduction of truck traffic south on Route 33.

Proposed Condition of Approval No. 34 does not provide a genuine limitation on the number of

project-generated truck traffic southward on Route 33. The Staff Report explains that "should the County of Ventura approve additional mining-related truck trips into Santa Barbara County, a similar number of Diamond Rock-generated truck trips may be subsequently allowed through Ojai." Staff Report at p. 5. Accordingly, the amount of truck traffic on Route 33 can increase without any further hearing or notice if Ventura approves any mine-related truck traffic. Moreover, it appears that any mine-related truck traffic could result in increased Diamond Rock related truck traffic south on Route 33. For example, mining traffic originating in Ventura which would enter Santa Barbara on Highway 101 could trigger additional Diamond Rock trucks heading south on Route 33. Condition 34, therefore, provides no real long-term limit on truck traffic south on Route 33. Moreover, the Staff Report does not explain whether the same or similar limits would be imposed on the GPS mine or the proposed RHC mine.

The EIR must be revised to show that the project-related increase in truck traffic is a significant adverse impact. Any traffic-related mitigation measure, such as Condition 34, must be tied to such a conclusion.

4. The Staff Report does not respond to comments regarding the project's impact on quality of life.

The Revised FEIR does not acknowledge that the proposed project's impacts on Ventucopa residents' quality of life will be significant. This is a departure from an earlier draft of the FEIR which correctly acknowledged the significance of these impacts. The Staff Report fails to respond to address my earlier comments in this regard.

5. Potential Impacts to Special-Status Species are not adequately analyzed.

The Staff Report purports to make certain "corrections" to the EIR because as a commentator has pointed out, the EIR incorrectly states that there are no special status plant species present at the Diamond Rock mine site. The Staff Report readily admits that the County has not and does not define "special status species" consistently. Page 12. As the Staff Report admits, the County sometimes defines "special status species" narrowly by including only species that are federally or state listed as endangered or those on CNPS (California Native Plant Society) List 1B or List 2. Ibid

In other instances, the Staff Report explains, the County will also consider species that are "locally rare" but not present on any statewide list as "special status". The Staff Report also admits that the choice of "categorization" is left to individual project biologists based on "the species and circumstances present in a given project." Ibid.

The County's ad hoc and inconsistent methodology is contrary to state law.

According to CEQA Guideline section 15065(a), a project may have a significant effect on the environment when the project has the potential to reduce the number or restrict the range of an Endangered, Rare, or Threatened species. See, also Defend the Bay v. City of Irvine, et al. (2004) 119 Cal. App. 4th 1261, 1274-75. ("Any project that substantially reduces the habitat of a wildlife species, or reduces the number or range of an endangered, **rare** or threatened species, is deemed to have a significant impact on the environment as a matter of law. (Guidelines, § 15065 (a).)" (Emphasis added).

Within the meaning of CEQA, a species is considered "rare" when either:

> (A) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or
> (B) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered "threatened" as that term is used in the Federal Endangered Species Act. CEQA Guideline 15380(b)(2).

Accordingly, to be consistent with CEQA, the County was required in every instance to gauge whether a species is "rare" as defined in section 13580(b)(2). Project impacts on a "rare" species, must be considered significant and adverse. Moreover, this determination must be the product of the agency's independent evaluation, not the decision of a biologist. Finally, the County must apply the definition of "special status" consistently; to arbitrarily apply different definitions to this important concept constitutes an abuse of discretion.

The Staff Report admits that nine plant species occurring on the site were identified as "locally rare" but were not considered "special status" plants in the biology survey report. The County must reconsider its assessment of the project's impacts on these "locally rare" species in light of the guidance provided by the CEQA guidelines.

As for the five plant species identified by David Magney (*Astragalus macrodon* (CNPS List 4), *Eriogonum inerme* (locally rare), *Filago depressa* (locally rare), *Lessingia tenuis* (locally rare), *Romneya coulteri* (CNPS List 4), the Staff Report admits that these species were identified by the Channel Island chapter of CNPS as locally rare. The fact that these species were listed as rare by the CNPS is strong evidence that these plants must be considered "special status" species and therefore the project's impacts on these species must be considered significant.

According to the Revised Final EIR, special status species include "species of local botanical interest, and included on the list of locally rare plants maintained by the local CNPS chapter." Final EIR 3.4-7. According to this definition, the five pant species identified by Magney Environmental qualify as "special status," but were unjustifiably not identified as such in the EIR. Due to this omission, the FEIR failed to adequately consider the project's impacts on these species. Had the EIR correctly considered the "special status" of these species, it would have concluded that the project's impacts are significant.

Rather than correct this error, the Staff purports to eliminate an inconsistency between the biological survey and the EIR by unceremoniously deleting the definition of "special status" that would have required the County to conclude that the project's impacts on these locally rare species is significant. The Staff Report offers no explanation for this deletion other than that it is inconsistent with the standard that was adopted by the biological report. This approach is inconsistent with the long-standing requirement that the lead agency must make its own impact determination. The County must use its independent judgment to assess a project's environmental impacts. Without some explanation or rationale, this departure from the standard already adopted in the EIR arbitrary and capricious and would therefore constitute an abuse of discretion. In any event, such a significant change in the EIR requires re-circulation and public notice followed by a public comment period. Re-circulation in this instance is especially important because according to the "special status" criteria already contained in the EIR, the

County would be required to revise the analysis of the project's impact on special status plants and conclude that the project's impacts on biological resources would be significant.

6. County's response to comments regarding Blunt Nosed Leopard Lizard(BNLL) are insufficient

Public comments criticized the proposed project's failure to include adequate surveys to determine the presence or absence of BNLL on the project site. These comments explained that post-construction survey are inappropriate and inadequate because surveys after the commencement of construction cannot establish the biological baseline with respect to the BNLL. Without adequate pre-construction surveys, any post-construction surveys would amount to nothing more than a post-hoc rationalization. The County's response to comments fail to address this critical issue.

Instead, the County's response focuses on the EIR's failure to recognize the significant adverse impact caused by the proposed BNLL exclosure. The Staff Report argues that because the Fish and Wildlife Service ("FWS") has concluded that with mitigation, the proposed project will not result in "jeopardy", it follows that the proposed mitigation measures are "adequate" to "avoid or minimize effects to this species."

The problem with Staff's analysis is that it borrows the wrong standard from the Federal Endangered Species Act ("ESA"). When a federal agency consults with the FWS pursuant to Section 7 of the ESA, the only question is whether the project is "likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section." 16 U.S.C.A. § 1536.

A "no jeopardy" determination by the FWS does not necessarily mean the project will not result in adverse impacts on the species. It just means the project would not likely drive the species to extinction. Jeopardy is not the proper test under CEQA. The proper analysis under CEQA is whether the project would adversely affect a sensitive species. An adverse impact may be considered significant under CEQA even if it does not cause "jeopardy" within the meaning of the ESA. Because CEQA and ESA standards are not interchangeable, the County's reliance on FWS' "no jeopardy" determination is misplaced.

The Staff Report's reliance on the FWS's Biological Opinion and "incidental take statement" is misplaced also because the BNLL is considered "fully protected" under California law, which means that "take" of BNLL cannot be authorized under California law, but can be authorized under federal law. The Staff Report and the EIR fail to discuss and disclose this critical difference between California and Federal law.

The Staff Report also incorrectly implies that "take" can occur only as a result of harassment of a species. Take can occur also as a result of adverse modification of a species' habitat in a way that disrupts behavior that is important to the species' survival. In this case, the exclusion of the river-side terraces will undoubtedly result in the adverse modification of the BNLL by excluding BNLL from this habitat. The construction of the mine, in addition to the proposed RHC and expanded GPS mines will result in major fragmentation of BNLL habitat, an impact that was not

considered by the EIR.

7. Significance of the project's impact on groundwater.

The Staff Report does not respond to the comment that the project's cumulative impact on groundwater should be considered significant. The FEIR fails to undertake any cumulative impact analysis of the project's impact on groundwater resources. The Staff Report repeats this mistake by only considering the project's direct impacts on groundwater. A project whose direct impact on a resource falls below the threshold of significance may nevertheless cause a cumulatively significant impact.

> [U]under CEQA section 21083, [and] under the Guidelines section 15355 definition of cumulative impacts, . . . the need for an EIR turns on the impacts of both the project under review and the relevant past, present and future projects.. . . . Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time" (italics added). And "the relevant question" under the Kings County/Los Angeles Unified approach is not how the effect of the project at issue compares to the preexisting cumulative effect, but whether "any additional amount" of effect should be considered significant in the context of the existing cumulative effect. Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98, 119.

The County's approach focuses on the proposed project's allegedly "individually minor" impact on groundwater resources, but refuses to consider whether the project's additional groundwater withdrawal should be considered "significant in the context of the existing" overdraft. The County's refusal to consider the project's impact on the groundwater resources is especially puzzling in light of the County's own admission that "there has been some increase in planted acreage since 1992 [adoption of the threshold of significance for Cuyama groundwater basin]." Unlike this project, extraction of groundwater by farming operations is unregulated and not subject to the County's discretion. The County, therefore, should have considered these additional water usage in an already overdraft basin to decide whether the project's contribution to the overdraft is cumulatively significant.

The Staff Report attempts to defend the EIR's failure to consider the project's cumulative impact on groundwater by suggesting that the County's 31 acre feet per year threshold of significance for groundwater extraction in Cuyama Valley was intended as a threshold for assessing both direct and cumulative level impacts. See, Staff Report at page 20. This explanation cannot be correct. The point at which a project's impacts on groundwater is individually significant cannot be the same point the project's cumulative impacts are considered significant. This approach would conflate the concept of direct and cumulative impact analysis and would eliminate the distinction. The County must reconsider the significance of the project's contribution to the overdraft conditions by utilizing an appropriate significance threshold.

8. In-River Sediment Transport

The USEPA has criticized the FEIR's analysis of the significance of the sediment deficit that would result from the operation of the GPS mine in addition to the proposed Diamond Rock mine. Dr. Loaiciga analysis goes further, pointing out that "section 3.1.2.2.3 of the EIR, which deals with sediment transport estimates in the Cuyama River, presents irreproducible estimates of annual sediment accumulation..." The Staff Report's response to the EPA's valid criticism is

confused and inadequate. But perhaps more egregious, Staff and the Planning Commission have ignored Dr. Loaiciga'a analysis all together and have attempted to keep his expert comment from being introduced into the record. (See Attachment B; Comment letter of USEPA, and Attachment C; Comment of Hugo Loaiciga, PhD.,PE).

The EPA points out that the operation of the two mines creates a significant sediment deficit that will likely result in significant erosion downstream and headcutting upstream. The EPA's letter cited the EIR's own sediment transport model which estimated the inflow of sediment to the two mines at about 314, 000 tons per year, with an average outflow of 85,000 tones, resulting in an annual net deficit of 229,000 tons per year. The EIR states that "the proposed mining projects would create a sediment deficit of approximately 771,000 tones per year which could affect river hydraulics, including possible channel degradation and possible upstream headcutting." Ibid.

In light of this criticism, the Staff Report attempts to minimize the significance of the EIR's own sediment transport estimates, claiming that it was "intended to identify and describe the potential for impacts associated with sand mining in river beds, and to provide context for mitigation measures . . ." The Staff Report claims the sediment transport model was not intended to "be used for engineering design purposes. . ." The distinction the Staff attempts to draw is illusive at best. The EPA letter, as well as Dr. Hugo A. Loaiciga (reaching many of similar conclusions) uses this analysis exactly for the purpose for which it was intended, namely, to "describe the potential impacts associated with sand mining in the river bed." The Staff has nothing in this regard to complain about.

The Staff Report also explains that the 314,000 tons per year is weighted estimate, but the actual range in this estimate is rather large. This explanation appears to suggest that the use of weighted estimates is inappropriate because of the wide range of possible actual outcomes. This is a rather curious criticism of the model because the model was put forth by the County itself as an appropriate analytical tool. It would be inappropriate to abandon this analytical tool only because the Staff does not agree with the outcome of the analysis.

The Staff Report also states that the proposed mine is intended not to intercept and remove sediment, but to remove sand and gravel already deposited the river bed. Page 18. The Staff Report also points out that the mine will be designed to divert river flows around the mine pit. Ibid. But what will happen to the riverbed after the life of the mine, when the excavated mine pits are left without a protective berm to be filled by sediment from river flows? Isn't this essentially the applicant's reclamation plan? Scouring and headcutting are the inevitable and inescapable outcome of the proposed recovery plan for these mines. Even if scouring and headcutting can be avoided to a degree during the life of the mine by diverting river flows away from the pits, these will be the legacy of these mines for decades to come.

9. County Planning Commission Policy Regarding Submittal of Public Comment Violates State Law.

At the SB County Planning Commission hearings of May 30, 2007; July 11, 2007; and May 14, 2008 Planning Staff and Planning Commissioners have challenged the submittal of written comments presented by members of "Save the Cuyama Valley", Attorney Babak Naficy, San Luis Obispo Coastkeeper and expert testimony of Hugo Loaiciga, PhD.,PE.

The Planning Commission and County Staff have insisted that County policy allows the exclusion from the record of written comments submitted prior to the close of a public hearing. While a Public Records Act request did not produce a copy of the alleged "policy", as we read Public Resources Code § 21177 such a policy and practice would violate CEQA regulations.

Based on our reading of section 21177, we conclude that any party may bring an action pursuant to Public Resources Code § 21167 if it has raised an objection to the adequacy of an EIR prior to certification. Accordingly we conclude that the record contains all the written and oral concerns about the inadequacy of the final EIR submitted by the appellants.

Appeal to the Santa Barbara Board of Supervisors
of County Planning Commission Decision

Attachment B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

APR 21 2004

OFFICE OF THE
REGIONAL ADMINISTRATOR

Colonel Richard G. Thompson
District Engineer, Los Angeles District
Attention: Mr. David Castanon, North Coast Section
U.S. Army Corps of Engineers
P.O. Box 532711
Los Angeles, California 90053-2325

re: Public Notice (PN) 200300803-MWV; Diamond Rock Aggregate Mine; Cuyama River watershed; Santa Barbara County, CA

Dear Colonel Thompson:

In our letter dated 26 March 2004, we provided you our comments on the proposed Diamond Rock Aggregate Mine. Pursuant to the 1992 Memorandum of Agreement (MOA) between EPA and the Department of the Army prepared under Section 404(q) of the Clean Water Act (CWA), we determined the proposed project **may result** in substantial and unacceptable impacts to aquatic resources of national importance (ARNIs). Also, we observed that the scope of the proposed activities warranted the preparation of an Environmental Impact Statement under the National Environmental Policy Act (NEPA).

Since we made this determination, we have not received any information to indicate that measures have been taken to resolve the adverse environmental effects of the proposed project. As discussed in our detailed comments, the proposed project fails to comply with the Federal Guidelines promulgated under CWA§404(b)(1) in terms of avoidance, minimization, and mitigation (40 CFR 230.10). Therefore, under the procedures described at Part IV, paragraph 3(b) of the aforementioned MOA, we have concluded the proposed project **will have** substantial and unacceptable impacts to ARNIs. This means we are respectfully recommending that the Corps deny the permit, and we have identified the proposed project as a candidate for elevation whereby EPA reserves the option to request a higher-level review of any permitting decisions made by the Los Angeles Corps District.

Thank you for considering our concerns. If you wish to discuss this matter further, please call me at (415) 947-8702, or have your staff contact Tim Vendlinski, Supervisor of our Wetlands Regulatory Office, at (415) 972-3464.

Sincerely,

Wayne Nastri
Regional Administrator

Detailed EPA Comments
PN 200300803-MWV for the Proposed Diamond Rock Aggregate Mine

I. Project Description

Troesch Ready Mix, Inc ("the applicant") is proposing to construct a sand and gravel extraction and processing facility in the Cuyama River channel and floodplain, approximately 1 mile north of the town of Ventucopa in Santa Barbara County, California. The proposed development would directly impact 100 acres of waters on-site.

Approximately 500,000 tons of sand and gravel would be extracted annually and processed at the proposed on-site facility for use in the counties of Santa Barbara, Ventura, and Kern. Proposed construction includes (1) the mechanized clearing of 100 acres of waters of the United States; (2) construction of flood control berms and access roads; (3) construction of a rip-rap weir at the confluence of Deer Park Creek and the Cuyama River; and (4) removal of buried cars along the bank for mitigation (approximately 2 acres).

The mine is proposed to operate year-round and truck loading will occur 24 hours a day, requiring lights for the facility. The applicant anticipates mining for 28 years and has requested a permit for the duration of the operation.

II. Findings of Compliance with the Guidelines

To obtain a Clean Water Act Section 404 permit, an applicant must comply with the 404(b)(1) Guidelines. After reviewing the restrictions on discharges in section 230.10 (a) through (d) of the Guidelines, we find the applicant has failed to demonstrate compliance with any of the requirements and has not completed the necessary analyses to determine compliance with the Guidelines.

Finding 1: The applicant has not demonstrated that the proposed project is the least environmentally damaging alternative [40 CFR 230.10 (a)]

No discharge shall be permitted if there is a practicable alternative to the proposed discharge which would have a less adverse impact on the aquatic system. To demonstrate compliance, the applicant must complete a robust 404(b)(1) alternative analysis. A thorough alternatives analysis will consider practicable alternatives both off-site and on-site. Properties not presently owned by the applicant which could reasonably be obtained, utilized, expanded, or managed must be considered and should include properties in the three counties of Santa Barbara, Ventura, and Kern. Alternatives to be explored include facilities located in upland areas, as well as smaller scale facilities. Although these alternatives may achieve a lower return on investment than the applicant's preferred alternative, they may be considered practicable for the purposes of 404 permitting. We are aware of successful mining operations in upland areas that have avoided impacts to jurisdictional waterways, and the applicant must explore such options. In the case of special aquatic sites, the Guidelines presume that a less environmentally damaging practicable alternative exists for those projects that are not water-dependent.

The documentation prepared by the applicant does not meet the burden of proof required to rebut

the presumption made by the Guidelines about the availability of a less environmentally damaging practicable alternative. In general, mining projects do not require "access or proximity to or siting within special aquatic sites to fulfill the basic project purpose" [40 CFR 230.10(a)(3)]. This circumstance appears to apply to the proposed project, but the applicant has not submitted a 404(b)(1) alternatives analysis to inform our regulatory decision-making. [40 CFR 230.10(a), 40 CFR 230.12(a)(3)(i), 33 CFR 323.6(a)].

Finding 2: The applicant has not demonstrated that the proposed project will not violate state water quality standards [40 CFR 230.10 (b)]

No discharge shall be permitted if the dredged or fill material causes or contributes to violations of any California water quality standard. The applicant must demonstrate that the proposed project will not violate any of the water quality objectives or numeric standards outlined in the Basin Plan for the Central Coast Regional Water Quality Control Board. The proposed project could result in potentially significant and long-term water quality impacts on the Cuyama River. For example, changes in sedimentation processes in the river could lead to increased erosion downstream from the "hungry water" phenomenon (see enclosed technical paper). At the same time, intrusive activities in the river could increase turbidity in the water column, and risk potential discharges of oil and grease into the river from heavy equipment.

With regard to other water quality parameters and beneficial uses, the applicant must thoroughly analyze the effects of the proposed project on dissolved oxygen concentrations, temperature, and the sediment regime in the project area and on reaches upstream and downstream. These reaches might be inhabited by benthic macroinvertebrate and native fish populations including the arroyo chub, California roach, Pacific lamprey, rainbow trout, speckled dace, and the threespine stickleback. This aquatic life might be sensitive to changes in the water quality parameters.

Finding 3: The applicant has not demonstrated that the proposed project will not jeopardize threatened and endangered species [40 CFR 230.10 (b)]

No discharge shall be permitted if the dredged or fill material jeopardizes the continuance of species listed as endangered or threatened under the Endangered Species Act. We are aware of several federally listed species that may exist on or near the project site. These species include: the blunt nosed leopard lizard, California condor, California jewelflower, California red-legged frog, San Joaquin kit fox, San Joaquin woolythreads, and yellow-blotched salamander. We are concerned that the proposed mining operation may adversely affect threatened and endangered species via both direct destruction of habitat from the mining operation, and secondary effects on the riverine environment. In addition, the proposed project could disturb sensitive animal populations from unnatural lighting and noise throughout the life of the project.

Finding 4: The applicant has not demonstrated that the proposed project will not contribute to significant degradation of the waters of the United States [40 CFR 230.10 (c)]

The Guidelines state that no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of waters. The operation of Twitchell Dam and Reservoir, a 241-foot dam downstream of the project, already contributes to significant environmental degradation in the watershed through the aggradation of sediment behind the dam, and the controlled

releases of water from the dam. "Hungry water" released from the dam has changed channel morphology and sediment transport in the river, and has contributed to a sediment deficit at the Guadalupe-Nipomo Dune Complex, an extremely rare coastal dune-lagoon ecosystem. The channel below the dam is narrower and has changed the natural flooding processes that maintained native vegetation along the river, and the upstream reservoir complex has changed the regional composition of plants and animals. Similar channel changes would likely occur with this mining project.

Given the scale and scope of the proposed mining facility (both spatial and temporal), the project would have long-term adverse effects on river geomorphology and therefore adverse effects on biological communities. The applicant must demonstrate that the proposed project will not cause and contribute to significant degradation of waters and aquatic ecosystems in the project area. A proper analysis would address: (1) anticipated changes to vegetation communities and channel morphology both upstream and downstream of the project; (2) anticipated changes in stream substrate; and (3) potential adverse effects to aquatic and terrestrial life dependent on the aquatic ecosystem. Computer models could help answer these questions, as several studies have already been completed on the fate and transport of sediment in the Santa Maria watershed downstream of Twitchell Dam and Reservoir.

Finding 5: The applicant has not taken the appropriate steps to minimize potential adverse impacts to the aquatic system and has proposed unacceptable mitigation [CFR 230.10 (d)]

No discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on the aquatic system. The 1990 Memorandum of Agreement on mitigation between the Corps and EPA clarified this section of the Guidelines by establishing a mitigation sequence that first avoids adverse effects, then minimizes adverse effects, and finally compensates for unavoidable impacts to waters. Compensatory mitigation is required for unavoidable adverse impacts which remain after all appropriate and practicable minimization has been achieved.

The applicant has not attempted to avoid or minimize impacts to waters. These steps must be taken before mitigation is considered. Once avoidance and minimization have been analyzed, an applicant may propose mitigation to compensate for unavoidable impacts. A proper mitigation plan includes compensation for direct, secondary, and cumulative effects. The proposed mitigation is to enhance 2 acres of jurisdictional waters by removing an unspecified number of cars along the river bank. Clearly, this would be an unacceptable mitigation proposal for the direct loss of 100 acres of waters. The applicant must formulate a mitigation package to compensate for the large-scale indirect, and cumulative impacts. We are confident a large portion of waters can be avoided and have a project that is still practicable. For unavoidable impacts, the applicant should review the national no-net loss goal that was advanced by the Corps' Regulatory Guidance Letter dated 26 December 2002[1].

[1] U.S. Army Corps of Engineers, Regulatory Guidance Letter No. 02-2, December 26, 2002, Guidance on Compensatory Mitigation Projects for Aquatic Resource Impacts under the Corps Regulatory Program Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899

III. Insufficient Information to make a finding of compliance with the 404(b)(1) Guidelines

The regulations require the District Engineer to make a finding of non-compliance if there is not sufficient information to determine whether a proposed discharge complies with the restrictions on discharges related to an alternatives analysis, water quality, endangered species, significant degradation, and/or mitigation [40 CFR 230.12(a)(3)(iv)]. Presently, the information provided by the applicant is not sufficient to allow the government to make a determination regarding compliance with the Guidelines. We are aware the applicant has just started the CEQA/NEPA process, and it appears premature for the applicant to apply for a permit under CWA§404.

The CEQA/NEPA document should evaluate the effects of the proposed project on the following:

a. Changes to substrate elevation and bottom contours in the river both upstream and downstream of the project, and anticipated changes to the benthic community;
b. Changes in water circulation and fluctuations related to all aspects of the project including the weir proposed at the Deer Creek confluence. Consideration should be given to water chemistry, salinity, clarity, color, odor, taste, dissolved gas levels, temperature, nutrients, and eutrophication;
c. Changes in suspended particulates and turbidity during normal operations and flood events;
d. Changes in the structure and function of the aquatic ecosystem including aquatic and terrestrial resources;
e. Cumulative impacts[2] to the Cuyama watershed including the operation and maintenance of the existing Twitchell reservoir; and
f. Secondary effects[3] to the Cuyama watershed including adverse effects extending beyond the direct 100-acre footprint of the proposed project.

IV. Evaluation of Secondary Effects

The applicant has proposed mining to a maximum depth of 90 feet. This will create an artificial dam affecting both the hydrologic and sediment transport regime of the river. An evaluation of secondary effects should extend to the potential adverse effects on biological, recreational and educational resources (e.g., fishing, rafting, kayaking, canoeing, bird-watching). For the applicant's reference, we have included an article on the effects of mining on river channels.[4]

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[2] Cumulative impacts are the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material [40 CFR 230.11(g)]

[3] Secondary effects are those effects on an aquatic ecosystem that are associated with the discharge of dredged or fill materials, but do not result from the actual placement of the dredge of fill material.

[4] Kondolf, Matias G. Hungry Water: Effects of Dams and Gravel Mining on River Channels. Environmental Management Vol. 21. No. 4, pp 533-551.

V. Need for an EIS under NEPA

The significance of the direct discharges (affecting 100 acres) triggers the need for thorough analysis of the proposed project under NEPA. Beyond this consideration, the applicant has not addressed the potential indirect, secondary, and cumulative effects of the proposed project. Given the scale and duration of the proposed project, the spectrum of potential adverse effects are clearly significant under NEPA's threshold of "significance" test (40 CFR 1508.27). Under the applicable federal regulations, the Corps is required to analyze the indirect and cumulative effects of their permit actions [40 CFR 230.11(g) and 33 CFR 320.4(a), and 40 CFR 1508.27(7)]. The impacts of a mining operation extend far beyond the direct footprint of the project. The Corps has "sufficient control and responsibility" over impacts beyond its immediate jurisdiction for the scope of analysis to encompass the entire project, not just the direct discharges (33 CFR 325 Appendix B). We urge the Corps to require the preparation of an EIS for the proposed project.

Appeal to the Santa Barbara Board of Supervisors
of County Planning Commission Decision

Attachment B

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July 5, 2007

Mr. Larry Appel
Supervising Planner
Planning and Development Department
County of Santa Barbara, California

Subject: My report on the analysis of the proposed Diamond Rock Sand and Gravel Mine and Processing Facility, Cuyama River, Santa Barbara County, California

1. This report is based on my analysis of the Environmental Impact Report (EIR) prepared by URS Corporation for the County of Santa Barbara's Planning & Development Department on May 2007.

2. The proposed sand and gravel mine most likely would cause significant adverse effects on Cuyama River upstream and downstream from the site, and on the proposed mining site.

3. Sand and gravel would be excavated from 84 acres of channel bed of the Cuyama River, with an average annual production of 500,000 tons of sand and gravel, with a maximum production of 750,000 tons/year. The excavation would reach a maximum depth of 90 (ninety) feet) relative to existing surface elevation. Production permit would extend over 30 (thirty) years. The magnitude and duration of the proposed mining operation embody a large-scale project whose cumulative impacts on channel morphology, sediment budgets, aquatic habitat and water quality could be irreversibly damaging to the Cuyama River. To make matters worse, the proposed Diamond Rock Mine would be located only 1,500 feet upstream from the existing GPS Mine, which has an average sand and gravel production of 500,000 tons/year, implying an eventual sand and gravel mining from the Cuyama River bed in the study area of 1,000,000 tons/year. This is an unsustainable rate of mining given the natural sediment supply of sediments by the Cuyama River and its tributaries upstream of the Diamond Rock Mine.

4. There are several flaws with the hydrologic and geomorphologic calculations made by URS in the May 2007 EIR. First, sections 3.1.1.1, 3.1.1.2, 3.1.2.2.1 include incorrect estimates of flood events for a variety of return periods. For ungaged sites, these calculations should be approached instead using the USGS Water Resources Investigations Report 77-21 "Magnitude and Frequency of Floods in California" (1977). Second, section 3.1.2.2.3 of the EIR, which deals with sediment transport estimates in the Cuyama River, presents irreproducible estimates of

annual sediment accumulation rate at the Diamond Rock site of 229,000 tons. Be that as it may, this rate of accumulation is much less than the proposed 500,000 tons/year mining rate at the Diamond Rock Mine, and even less than the 1,000.000 tons/year combined mining rate of the Diamond Rock and GPS mines. The mismatch between natural Cuyama River sediment supply and the proposed annual rate of sediment mining would lead to severe degradation and channel incision at the Diamond Rock site.

5. My opinion is that likely adverse impacts of the proposed sand and gravel mining will result in the following categories:

a. Degradation of Cuyama River: this would:

(i) lower the local base level
(ii) produce a channel level below the rooting depth and create unstable banks
(iii) lower the water table causing loss of productivity and health of riparian vegetation
(iv) change the stream type, triggering a succession in stream morphology of unstable characteristics
(v) drastically alter the sediment budget on site and downstream from the mining site

b. Accelerated stream bank erosion on site and downstream/upstream from it: this would:

(i) increase downstream sediment supply from bank erosion,
(ii) loss and or alteration of aquatic habitat
(iii) change the width/depth ratio of the Cuyama River, leading to excessive channel degradation, increase of flood hazard, water quality degradation (measured in terms of water temperature, dissolved oxygen, dissolved and suspended solids and nutrient loading), possible damage to nearby infrastructure (associated with mining development).

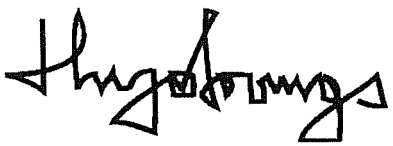
6. The URS's EIR did not include an adequate monitoring plan of the proposed mining operations on the Cuyama River. Monitoring is needed to:

a. Measure the response of the Cuyama River to changes imposed by the mining of its sand and gravel
b. Document the response of the Cuyama River and compare the observed response to the predicted response envisioned in the EIR
c. Document spatial and temporal variability of geomorphic processes in the Cuyama River and its response to the proposed mining
d. Assess the effectiveness of mitigation measures proposed to cope with sand and gravel mining
e. Determine if mitigation is implemented correctly
f. Evaluate the effectiveness of river stabilization and restoration measures
g. Build a database to extrapolate to future conditions based on observed changes in the Cuyama River.

7. A more detailed watershed assessment of river stability and sediment supply (WARSSS) associated with the proposed mining of sand and gravel in the Cuyama River would require taking field

measurements on site and downstream and upstream from the Diamond Rock Mine, as well as the implementation of several quantitave models for WARSSS.

Sincerely,



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Cc/ G.R. Hensley