

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

813



FROM: Planning Department and County Counsel

SUBMITTAL DATE:
May 15, 2012

SUBJECT: Certification of EIR No. 475 and Adoption of Denial Findings for Surface Mining Permit No. 213 (No Public Hearing Required) District 1/District 3.

RECOMMENDED MOTION: That the Board of Supervisors: Certify EIR No. 475 and adopt the attached denial findings for Surface Mining Permit No. 213 and Reclamation, Change of Zone No. 7508 and Noise Ordinance Exception No. 1.

BACKGROUND: On February 16, 2012, the Board of Supervisors tentatively denied Surface Mining Permit No. 213 and Reclamation Plan, Change of Zone No. 7508, and Noise Ordinance Exception No. 1 and directed the Planning Department and County Counsel to prepare the attached denial findings.

Departmental Concurrence

Carolyn Syms Luma

Karin Watts-Bazan

Carolyn Syms Luma, Director
Planning Department

Karin Watts-Bazan, Principal Deputy County Counsel
for Pamela J. Walls, County Counsel

FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ N/A	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY: *Tina Grande*
Tina Grande

County Executive Office Signature

- Policy
- Consent
- Policy
- Consent

Dep't Recomm.:
Per Exec. Ofc.:

3.24

**BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE**

**IN THE MATTER OF SURFACE MINING PERMIT)
NO. 213 AND RECLAMATION PLAN, CHANGE OF)
ZONE NO. 7508 AND NOISE ORDINANCE)
EXCEPTION NO. 2 _____)**

FINDINGS

On December 8, 2011, Granite Construction Company, (the "Applicant") filed an appeal of the Planning Commission's December 7, 2011 denial of the Applicant's application for Surface Mining Permit No. 213 and Reclamation Plan, Change of Zone No. 7508, and Noise Ordinance Exception No. 2 (collectively, the "Project") to the Board of Supervisors ("Board"). The Board heard the Applicant's appeal during regular and special sessions assembled on January 30, February 6, February 14, and February 16, 2012 after giving the required notice. The Planning Department made an introductory presentation and the Applicant, the Applicant's representatives, and members of the public provided oral testimony and documentation to the Board throughout the hearing process. Following the presentation and oral testimony, the Board tentatively denied the Project and directed the Planning Department and Office of County Counsel to prepare the following findings. The Board has reviewed the findings and hereby denies the Project based thereon.

A. Project Description and Procedural History

1. As proposed in the application, Surface Mining Permit No. 213 would, if approved, permit the construction and operation of a mine on 414 acres located in southwest Riverside County. The 414 acre site would include 155 acres to be used for the quarry including aggregate, asphalt, concrete batch, and recycle plants, and related facilities, 9 acres would be used for the access road and lower utility pad, and the remaining 250 acres would remain as undisturbed open space. The open space would be located west and east of the quarry footprint. Approximately 70 acres on the western and southwestern portion of the site would remain undisturbed along both sides of an existing unnamed drainage, which flows north to south and then west, offsite. This undisturbed area would act as a buffer to the adjacent properties to the west. An additional 180 acres would remain undisturbed by quarry operations to the northeast and southeast to maintain the existing ridges to block views of the Project. These areas would be placed into a conservation easement or similar legal mechanism. Fifty foot setbacks would be established along properties adjacent to the actual quarry.
2. The proposed maximum aggregate production during the Project life would be 5 million tons per year. It is anticipated that it would take approximately 10 years for the Project to reach this level of production due to construction of facilities and market demand. The estimated total volume of the proposed quarry is over 270 million tons. At a maximum extraction rate of 5 million tons per year and total available reserves of over 270 million tons, it is anticipated that the life of the quarry is over 54 years. Because it is unlikely

- that the maximum extraction rate would reach 5 million tons each year, the Applicant has requested a 75 year operations plan for the quarry. Certain reclamation activities would be ongoing throughout the operational life of the quarry. At the conclusion of aggregate mining and production, a final reclamation phase of 5 years would commence.
3. The proposed maximum mining depth would occur at a depth of 1,020 feet below ground surface.
 4. Operations would occur from 4:00 a.m. until 12 a.m., 6 days per week, 52 weeks per year. The site would be closed during a maximum of eight holidays. Shipping of material could occur 24 hours per day, 7 days per week to avoid peak freeway traffic times and to meet customer needs and provide aggregate products for night construction on freeways.
 5. Approximately 70 percent of the aggregate produced by the Project would be transported to San Diego County, while 30 percent would remain in Riverside County.
 6. As proposed in the application, Change of Zone No. 7508 would, if approved, change the zone from Rural Residential (R-R) to Mineral Resources and Related Manufacturing (M-R-A) on 14 parcels consisting of 110 acres near the center of the site. The application proposes no change to the rest of the site. The Change of Zone is not required for the Surface Mining Permit to be approved. It would make ancillary uses contemplated under the mining permit, permitted without requiring a conditional use permit.
 7. As proposed in the application, Noise Ordinance Exception No. 2 would, if approved, provide an exception from County Ordinance No. 847 to address the existing ambient noise levels resulting from noise levels related to the I-15 Interstate Highway.
 8. The Project site is designated Rural: Rural Mountainous (R:RM) on the Southwest Area Plan which is part of the Riverside County General Plan.
 9. The proposed use, surface mining and related activities, are conditionally permitted uses in the R:RM designation which specifically provides "limited recreational uses, compatible resource development (which may include the extraction of mineral resources with approval of a surface mining permit) and associated uses, and governmental uses are also allowed within this designation."
 10. The Project site is surrounded by properties which have General Plan designations of Open Space (OS) by the City of Temecula to the north and west, Community Development: Light Industrial (CD:LI) to the east by the County of Riverside, and Multiple Rural Use by the County of San Diego to the south.
 11. The zoning for the Project site is R-R.
 12. The proposed use, surface mining and related activities, is a permitted use, pursuant to Section 5.1a.(15) of Article V of Ordinance No. 348, in the R-R zone.
 13. A 2.5 acre portion of the Project site located in San Diego County is zoned as A-70. Surface mining operations, and related facilities and activities are permitted in this zoning district, subject to a San Diego County approved and issued Major Grading Permit.
 14. The Project site is surrounded by properties which are zoned Open Space-Conservation-Santa Margarita (OS-C-SM) by the City of Temecula to the north and west, R-R to the east by the County of Riverside, and A-70 by the County of San Diego to the south.
 15. The Project is consistent with the Multi-Species Habitat Conservation Plan (MSHCP).
 16. The Project is not located within a Criteria Area of the MSHCP.
 17. There are a number of residential subdivisions within one half mile of the Project site, such as the community of Red Hawk, consisting of approximately 3,000 homes. Single

family homes generally on lots over one half acre in size, are located to the south, north and east of the Project site.

18. The Applicant submitted its original Project application to the County in March, 2005 and subsequently amended its application in April, 2007.
19. The Planning Commission heard the Project in regular and special sessions assembled on April 26, 2011, May 3, 2011, June 22, 2011, July 18, 2011, August 15, 2011 and August 31, 2011, after giving the required notice.
20. On August 31, 2011, the Planning Commission tentatively denied the Project and requested the Planning Department and County Counsel to prepare appropriate denial findings.
21. On December 7, 2011, the Planning Commission adopted denial findings and conclusions for this Project.
22. On December 8, 2011, the Applicant filed an appeal of the Planning Commission's denial of the Project to the Board of Supervisors.
23. In 4 successive hearings beginning on January 30, 2010, the Board reviewed and considered de novo the Applicant's appeals from the Planning Commission's denial of the Project. These hearings were held in Riverside and were intended to facilitate public input on the Project.
24. During these hearings, the Board received lengthy and extensive oral and written comments on the Project through testimony of individuals present, as well as through the submittal of emails, letters, petitions and other documentation.
25. On February 16, 2012, the Board voted to tentatively deny the Project after considering the oral and written testimony and other information provided throughout the hearing process.

B. Applicable Statutes, Regulations and Ordinances

1. Pursuant to Section 7(b) of Ordinance No. 555, an application for a permit shall not be granted unless that permit is expressly subject to such conditions as are necessary to protect the health, safety or general welfare of the community.
2. General Plan Open Space Policy 14.4 requires the imposition of "conditions as necessary on mining operations to minimize or eliminate the potential adverse impact of mining operations on surrounding properties, and environmental resources."
3. General Plan Land Use Policy 17.3 also requires that "development does not adversely impact the open space and rural character of the surrounding area."
4. Section 15093(a) of the California Environmental Quality Act ("CEQA") Guidelines requires the decision making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, of the project against its unavoidable environmental risks when determining whether to approve the project. If the benefits outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered acceptable.
5. Public Resources Code Section 21082.2(e) provides that "statements in an environmental impact report and comments with respect to an environmental impact report shall not be deemed determinative of whether the project may have a significant effect on the environment."

6. Additionally, CEQA Guidelines Section 15002(h)(5) provides, in pertinent part, when an [environmental impact report] shows that a project could cause substantial adverse changes in the environment, the governmental agency must respond to the information by one of several listed methods, including disapproving the project.

C. Project Non-Compliance with Ordinance No. 555, Open Space Policy 14.4 and Land Use Policy 17.3

1. The Project's proposed maximum mining depth of 1,020 feet below ground surface is incompatible with surrounding uses and is thus inconsistent with Section 7(b) of Ordinance No. 555, Open Space Policy 14.4 and Land Use Policy 17.3.
2. The Project's proposed maximum aggregate production of five million tons per year is incompatible with surrounding uses at the Project's full build out and is thus inconsistent with Section 7(b) of Ordinance No. 555, Open Space Policy 14.4 and Land Use Policy 17.3.
3. The Project's proposed hours of operation, which would occur from 4:00 a.m. until 12:00 a.m., 6 days per week, 52 weeks per year, are incompatible with surrounding uses and is thus inconsistent with Section 7(b) of Ordinance No. 555, Open Space Policy 14.4 and Land Use Policy 17.3.
4. The Project's proposed permit term of 75 years exceeds a reasonable time period within which Project compatibility with the surrounding uses can be ensured and is thus inconsistent with Section 7(b) of Ordinance No. 555, Open Space Policy 14.4 and Land Use Policy 17.3.

D. Project Benefits

1. The Project would produce a significant economic mineral resource; provide a portion of the local and regional demand for aggregate; and, would help ensure a reliable supply of aggregate to meet western Riverside County's aggregate needs for 75 years.
2. The Project would create approximately 99 direct jobs and 178 indirect jobs.
3. The Project site is located in close proximity to a major transportation corridor, thus reducing the overall cost of aggregate by reducing transportation costs.
4. Additionally, the Project site is not as visible to large population areas as alternative locations identified in the EIR.
5. The Project would produce approximately \$300 million in new sales tax revenue and \$41 million in new property taxes and fees for the County of Riverside. The Project would also produce significant tax revenue for the State of California.
6. The Project is consistent with the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) and would contribute undisturbed open space land to the MSHCP through the dedication of a conservation easement or similar mechanism over approximately 250 acres. Additionally, \$1,038,612 in Ordinance No. 810 mitigation fees would be paid under the current fee. These funds would be transferred to the Western Riverside County Regional Conservation Agency (RCA) for use in the purchase of additional reserve land for the MSHCP.

E. Significant and Unavoidable Environmental Impacts

1. Even after the design and mitigation measures were taken into account, the EIR determined that the Project would have the following significant and unavoidable impacts to Air Quality:

- **Direct Air Impacts:**

Impact AQ-2 from the EIR analyzed if, “*construction-related air emissions from the Proposed Project could result in construction-related emissions that exceed any of the South coast Air Quality management District (SCAQMD) thresholds of significance in [DEIR] Table 3.2-8 (SCAQMD Thresholds for Construction Emissions).*” The EIR identified that the impacts would be significant but temporary, approximately 2 years.

According to EIR Table 3.2-15, particulate matter less than 10 microns in size (PM10) and Sulfur Dioxide (SO₂) emissions would be below the SCAQMD thresholds. However, emissions of Nitrogen Oxides (NO_x), Organic Gases (ROG), Carbon Monoxide (CO), and particulate matter less than 2.5 microns in size (PM_{2.5}) would exceed SCAQMD daily emission thresholds for construction and would be considered a potential significant impact. These impacts are related to construction only and would, therefore, be temporary in nature.

Impact AQ-3 from the EIR analyzed if, “*operational emissions from the Proposed Project could exceed any of the SCAQMD thresholds of significance in [DEIR] Table 3.2-10 (SCAQMD Thresholds for Operational Emissions).*” According to EIR Table 3.2-20, after mitigation, the emissions of ROG, PM₁₀, and PM_{2.5} are expected to be reduced to less than their SCAQMD CEQA operation emission significance thresholds. However, NO_x and CO emissions are expected to remain above their SCAQMD CEQA operation significance thresholds and would be considered a potentially significant impact.

Impact AQ-5 from the EIR analyzed if, “*construction from the Proposed Project could result in off site ambient air pollutant concentrations that exceed the SCAQMD thresholds of significance in the [DEIR] Table 3.2.9 (SCAQMD Thresholds for Ambient Air Quality Concentrations Associated with Proposed Project Construction).*” Construction impacts are short term (approximately 2 years), and there are no residential or worker receptors (i.e., no human exposure) at the point of maximum impact, which is at the Project boundary. According to EIR Table 3.2-24, modeled air quality concentrations for construction activities all remain below the SCAQMD air quality impact thresholds, except the 24 hour and annual PM₁₀ concentrations. Therefore, the EIR determined that off site air pollutant concentrations due to Project construction would be significant for PM₁₀. These impacts are related to construction only and would, therefore, be temporary in nature.

Impact AQ-6 from the EIR analyzed if, “*Proposed Project operations could result in off site ambient air pollutant concentrations that exceed a*

SCAQMD threshold of significant in [DEIR] Table 3.2-11 (SCAQMD Thresholds for Ambient Air Quality Concentrations Associated with Proposed Project Operations).” According to EIR Table 3.2-25, the offsite ambient concentration impacts associated with the Project’s operation would be less than significant for NO₂, SO₂, CO, and annual Pm_{2.5}. However, the EIR concludes that the maximum off site ambient pollutant concentrations of 24 hour PM₁₀, annual PM₁₀, and 24 hour PM_{2.5} associated with operations would be significant as compared to the SCAQMD incremental thresholds.

- **Cumulative Air Impacts:**

Impact AQ-8 from the EIR analyzed if, “*the Proposed Project could result in GHG [greenhouse gas] emissions that would hinder or delay the state’s ability to meet the reduction targets contained in [Assembly Bill] AB 32.*” The Project is still anticipated to generate approximately 80,000 (30,000 with truck displacement) tons per year of CO₂d even with mitigation applied. Additionally, Section 5.4.2 of the EIR analyzes cumulative effects and explains that although there are regional benefits to air from the Project, the analysis takes the most conservative approach and concludes that any new source of pollution that contributes to a cumulative exceedance of daily operational emissions thresholds or contributes to a cumulative net increase in GHG emissions is significant. Beyond the Project level measures indentified in Section 3.2 of the EIR, there are no additional feasible mitigations available. As such, the Project’s air quality impacts related to criteria pollutants and GHG are cumulatively considerable significant and unavoidable. However, the EIR also concluded that even though the environmental documents conservatively determine the impacts to be significant and unavoidable, given the EIR analysis, it is unlikely that the Project would hinder or delay the State’s ability to meet the reduction targets of AB 32.

- **Conclusions:**

In light of the conclusions concerning direct and cumulative air quality impacts identified in the EIR, the Project, would result in unavoidable environmental risks that are not outweighed by the Project’s benefits set forth above. Therefore, the air quality impacts are not acceptable.

2. Even after the design and mitigation measures were taken into account, the EIR determined that the Project would have the following cumulative significant and unavoidable impact to Biology:

- **Cumulative Biological Impact:**

Cumulative biological impacts were assessed in Section 5.4.3 in the DEIR. The biological function of the SAPM linkage area and the Pechanga Corridor is currently substantially impaired by the eight-land I-15, existing urban development in north San Diego County (Community of Rainbow,

Old US 395, and CHP truck weigh station) and in southwest Riverside County (Border Patrol checkpoint, CHP truck weigh station, Temecula and surrounding development). Despite compliance with the MSHCP and implementation of the recommended mitigation measures, the projects in the cumulative list show in DEIR/FEIR Table 5-1 would contribute to cumulative effects to wildlife movement in the vicinity of the Project. As no additional, feasible mitigation measures are available, the Project's cumulative effects on wildlife movement remain significant and unavoidable.

- **Conclusion:**

In light of the conclusion concerning the cumulative impact to wildlife movement identified in the EIR, the Project, would result in an unavoidable adverse impact on biology. This impact is not outweighed by the Project's benefits set forth above and is not acceptable.

3. Even after mitigation measures were taken into account, the EIR determined that the Project would have the following significant and unavoidable impacts to Traffic:

- **Direct Traffic Impacts:**

Impact T-1a from the EIR analyzed if, "*the Proposed Project could cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in reduction of [level of service] LOS at intersections).*" According to the EIR, the Project has included mitigation to pay for and construct intersection improvements that are outside the County's jurisdiction. Although this is technically (physically) feasible, implementation would require approval of other agencies including Caltrans, Temecula, and San Diego County. Because the intersections are within the jurisdictions of Caltrans, Temecula, and San Diego County, and because no improvement can be made without the approval of these jurisdictions, Riverside County cannot ensure that the improvements would mitigate the impacts of the Project. Therefore, although Riverside County would undertake all reasonable steps to coordinate with these jurisdictions to install the improvements, the Project's impacts on these intersections are significant and unavoidable.

Impact T-1b from the EIR analyzed if, "*the Proposed Project could cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in increased queue lengths).*" The EIR determined that this impact is significant and unavoidable for the same reason noted above.

Impact T-1c from the EIR analyzed if, "*the Proposed Project could cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in increased traffic volume along roadway segments).*" The EIR concluded that this impact is significant and unavoidable for the same reason noted above.

Impact T-3 from the EIR analyzed if, “*the Proposed Project could exceed, either individually or cumulatively, an LOS standard established by the San Diego County Congestion Management Agency for designated roads or highways.*” The EIR also determined that this impact is significant and unavoidable for the same reason noted above.

- **Cumulative Traffic Impacts:**

Cumulative traffic impacts were assessed in Section 5.4.3 of the EIR. According to the EIR, potential project related local, regional, and cumulative traffic impacts were determined to be less than significant with implementation of mitigation measures. The applicant would pay their fair share of cumulative traffic and transportation improvements including participation in the Riverside County Development Impact Fee Program and the Transportation Uniform Mitigation Fee, as well as the San Diego County Traffic Impact Fees for local road improvements. Although improvements to roadways would mitigate impacts to a less than significant level, for the same reasons noted in the transportation section above, the authority to fund and implement those improvements would be outside the jurisdictional authority of Riverside County in its role as the CEQA Lead Agency. Because this analysis cannot assume or rely upon the funding and construction by other entities, the EIR concluded that the impacts remain significant and unavoidable. It is also important to note that the impacts to intersections were determined without using the truck trip reduction concept in an attempt to create the most conservative analysis possible.

- **Impacts to the City of Temecula:**

Winchester Road, Rancho California Road, and SR-79 South provide access to and from I-15 within Temecula. As evaluated in Section 3.11 of the EIR, the Project would result in these intersections operating at a less than acceptable LOS and would cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system. Mitigation Measures T-1 and T-2 specify improvements that would reduce delays and allow these intersections to operate at an acceptable LOS and for traffic load to not exceed capacity of the street system. Because the intersections are within the jurisdictions of Caltrans and Temecula, and because no improvement can be made without approval of these jurisdictions, Riverside County cannot ensure that improvements would mitigate the impacts of the Project. Therefore, although Riverside County would undertake all reasonable steps to coordinate with these jurisdictions to install the improvements, the Project’s impacts on these intersections are significant and unavoidable.

- **Conclusions:**

In light of the conclusions concerning direct, cumulative and City of Temecula traffic impacts identified in the EIR, the Project would create an

unavoidable adverse traffic impact that is not outweighed by the Project's benefits. Therefore, the traffic impacts are unacceptable.

4. Even after mitigation measures were taken into account, the EIR determined that the Project would have the following significant and unavoidable impact to utility and service systems:

- **Cumulative Impact to Water Supply:**
Impact USS-2 from the EIR analyzed if, "the Proposed Project could have insufficient water supplies from existing entitlements and resources, or new or expanded entitlements might be needed." Western Municipal Water District (WMWD) has prepared and approved a Water Supply Assessment (WSA) which indicates a sufficient supply of water to serve the Project for a 20 year period. Impacts to water supply are determined to be less than significant. However, cumulative water supply impacts were assessed in Section 5.4.12 in the DEIR. Despite implementation of recommended mitigation measures to reduce demand to 369 acre feet/year, the County has conservatively determined that given the uncertainties in the ability of the State to provide future water supply, as discussed in Sections 3.12 and 5.4.12, the Project's water supply impacts are considered cumulatively significant.
- **Conclusion:**
The WSA was prepared correctly, in accordance with applicable State laws. However, the uncertainties in the ability of the State to provide future water supply, make any time line longer than 20 years (the Project is requesting a 75 year permit) unacceptable. Therefore, the cumulative impact to water supply is unavoidable and significant and cannot be outweighed by the Project's benefits.

F. Certification of the Final EIR/Project Denial

The Board has reviewed and considered the information contained in the Final Environmental Impact Report (EIR) No. 475. The Final EIR reflects the Board's independent judgment and analysis, and has been completed in compliance with CEQA. Therefore, the Board certifies Final EIR No. 475.

Notwithstanding the conclusions of the Final EIR, the Board, after considering all of the oral and written testimony presented during the Project proceedings, nonetheless finds that the Project benefits do not outweigh its significant and unavoidable environmental impacts. Additionally, the Project does not comply with Ordinance No. 555 (as amended through 555.18), which sets forth the County's standards for surface mining permits under the Surface Mining and Reclamation Act of 10975 (SMARA, Public Resources Code, Section 2710 *et seq.*). For these reasons and in consideration of the above findings, the Project is hereby denied.