

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

813



**FROM:** County Counsel

**SUBMITTAL DATE:**  
May 15, 2012

**SUBJECT:** Denial Findings for Surface Mining Permit No. 213 and Reclamation Plan, Change of Zone No. 7508 and Noise Ordinance Exception No. 2; Final Environmental Impact Report No. 475; District 1/3

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Adopt the attached denial findings for Surface Mining Permit No. 213 and Reclamation Plan, Change of Zone No. 7508 and Noise Ordinance Exception No. 2; and
2. Certify that Final Environmental Impact Report No. 475 has been completed in compliance with the California Environmental Quality Act; that Final Environmental Impact No. 475 was presented to the Board; that the Board considered the information contained in Final Environmental Impact Report No. 475; and that Final Environmental Impact Report No. 475 reflects the County's independent judgment and analysis; or
3. Decline to certify Final Environmental Impact Report No. 475.

(cont'd next page)

*Karin Watts-Bazan*

KARIN WATTS-BAZAN, Principal Deputy Co. Co. for  
PAMELA J. WALLS, County Counsel

<b>FINANCIAL DATA</b>	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

<b>SOURCE OF FUNDS:</b> N/A	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

Dept's Recomm.:  
Per Exec. Ofc.:

Prev. Agn. Ref.: 1/30/12 1.0;  
2/16/12 1.0; 2/14/12 1.0; 2/16/12 1.0

District: 1/3

Agenda Number:

14.1

Departmental Concurrence

County Counsel

Denial Findings for Surface Mining Permit No. 213 and Reclamation Plan, Change of Zone No. 7508 and Noise Ordinance Exception No. 2; Final Environmental Impact No. 475; District 1/3

May 15, 2012

Page 2

**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. 2 ("Project") and directed the preparation of denial findings.

The basis for the Board's tentative denial was the failure of the Project to meet the requirements of Ordinance No. 555 and the Board's determination that the benefits of the Project did not outweigh the significant effects that cannot be avoided or reduced to a level of insignificance. The basis for the tentative denial was not the inadequacy of Final Environmental Impact Report No. 475 ("EIR").

Alternative motions are presented on the issue of certification of Final EIR No. 475 as the Applicant included as a basis for its appeal the Planning Commission's "failure to certify" the Final EIR. A decision by the Board to certify or decline to certify the Final EIR would resolve this issue.

**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, (“Applicant”) appealed the Planning Commission’s December 7, 2011 denial of Surface Mining Permit No. 213 and Reclamation Plan, Change of Zone No. 7508, and Noise Ordinance Exception No. 2, and Environmental Impact Report No. 475 (collectively, “Project”) to the Board of Supervisors (“Board”). The Board heard the 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 preparation of denial findings. The basis for the Board’s tentative denial was the failure of the Project to meet the requirements of Ordinance No. 555 and the Board’s determination that the benefits of the Project did not outweigh the significant effects that cannot be avoided or reduced to a level of insignificance. The basis for the tentative denial was not the inadequacy of Environmental Impact Report No. 475 (“EIR”). 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. 155 acres of the 414-acre site would be used for the quarry including aggregate, asphalt, concrete batch, and recycling plants, and related facilities; nine 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 restriction. 50 foot setbacks would be established along properties adjacent to the actual quarry.
2. The proposed maximum aggregate production during the Project life would be five 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. Because it is unlikely that the maximum extraction rate would reach five 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 five years would commence.

3. The proposed maximum mining depth would be 1,020 feet below ground surface.
4. Mining would occur from 4:00 a.m. until 12 a.m., six 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, seven 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. No change is proposed to the rest of the Project site. The Change of Zone is not required for the Surface Mining Permit or the Project to be approved, but is more specific to the uses that are permitted with a Surface Mining Permit.
7. As proposed in the application, Noise Ordinance Exception No. 2 would, if approved, provide a continuous noise exception from County Ordinance No. 847.
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. 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 to the north and west which the City of Temecula has designated Open Space (OS), properties to the east which the County of Riverside has designated Community Development: Light Industrial (CD:LI) and properties to the south which the County of San Diego has designated Multiple Rural Use.
11. The existing zoning for the Project site is R-R.
12. Surface mining and related activities, are 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 and related 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 to the north and west which the City of Temecula has zoned Open Space-Conservation-Santa Margarita (OS-C-SM), properties to the east which the County of Riverside has zoned R-R , and property to the south which the County of San Diego has zoned A-70.
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 two to three miles 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 west 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 based on the information contained in the Final Environmental Impact Report No. 475 (EIR) and on evidence presented at the public hearings. The Planning Commission determined at that time that the environmental effects of the Project were not outweighed by the Project's benefits. Additionally, the Planning Commission found that the Project and proposed conditions of approval for Surface Mining Permit No. 213 did not protect the public health, safety or general welfare.
22. On December 8, 2011, the Applicant filed an appeal of the Planning Commission's denial of the Project to the Board. The Applicant also appealed the Planning Commission's "failure to certify" the Final EIR.
23. In four 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. Section 7(b) of Ordinance No. 555, provides that 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. 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.

3. 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. 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 (SO<sub>2</sub>) emissions would be below the SCAQMD thresholds. However, emissions of Nitrogen Oxides (NO<sub>x</sub>), Organic Gases (ROG), Carbon Monoxide (CO), and particulate matter less than 2.5 microns in size (PM<sub>2.5</sub>) 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, PM<sub>10</sub>, and PM<sub>2.5</sub> are expected to be reduced to less than their SCAQMD CEQA operation emission significance thresholds. However, NO<sub>x</sub> 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 PM<sub>10</sub> 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 Pm2.5. However, the EIR concludes that the maximum off site ambient pollutant concentrations of 24 hour PM10, annual PM10, and 24 hour PM2.5 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.

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.

3. 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 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.

4. Even after the design and 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.

#### **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. 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 restriction over approximately 250 acres included in the Project site. 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. Project Denial**

1. The Project conditions do not protect the health, safety or general welfare of the community as required by Section 7(b) of Ordinance No. 555 for the following reasons:
  - a. The proposed maximum mining depth --1,020 feet below ground surface-- may preclude adequate reclamation.
  - b. The proposed mining hours --4:00 a.m. until 12:00 a.m., six days per week, 52 weeks per year-- would have a detrimental effect on surrounding uses.
  - c. The proposed 75-year Project term exceeds a reasonable time period.
  - d. The proposed market area would result in the sale of approximately 70 percent of the mineral resources from the Project to San Diego County which would disproportionately burden Riverside County.

2. In light of the conclusions concerning direct and cumulative air quality impacts identified in the EIR, the Project, would result in unavoidable adverse air quality impacts that are not outweighed by the Project's benefits set forth above.
3. In light of the conclusion concerning the cumulative wildlife movement impact identified in the EIR, the Project, would result in an unavoidable adverse biological impact that is not outweighed by the Project's benefits set forth above.
4. In light of the conclusions concerning direct and cumulative traffic impacts identified in the EIR, the Project would result in unavoidable adverse traffic impacts that are not outweighed by the Project's benefits set forth above.
5. In light of the conclusions concerning the cumulative water supply impact identified in the EIR, the Project would result in an unavoidable adverse utility and service system impact that is not outweighed by the Project's benefits set forth above.
6. For these reasons and in consideration of the above findings, the Project is hereby denied.