

Ojai Valley Municipal Advisory Council

c/o Supervisor Steve Bennett
800 South Victoria Avenue, L# 1900
Ventura, California 93009

January 29, 2009

Mr. Patrick Richards, Manager
Ventura County Planning Division
Location # 1740
800 South Victoria Avenue
Ventura, CA 93009

Mail & Via Email to Patrick Richards
Patrick.richards@ventura.org

RE: OZENA MINE

Dear Mr. Richards,

Thank you for your letter of December 12, 2009.

The Ojai Valley Municipal Advisory Council (MAC) has heard numerous complaints and concerns from residents of the Ojai Valley about the Ozena Mine violating many conditions of its Conditional Use Permit (C.U.P). It is up to the Planning Division to enforce these conditions and we are deeply concerned that very little is being done to enforce the conditions of approval. Attached are two documents on this subject provided to the MAC by the Coalition to Stop the Trucks. We have also recently received copies of two additional documents:

1. A letter dated January 14, 2009 from Kimberly L. Rodriguez, Director of the Ventura County Planning Division, addressed to the Coalition to Stop the Trucks, regarding the results of recent investigations into alleged C.U.P. violations by Ozena.
2. A email dated January 20, 2009 from Howard Smith, Vice Chairperson of the Coalition to Stop the Trucks, to Marty Robinson, Matt Carroll and Noel Klebaum, the subject of which was: Concerns Re: The Annual Reviews of Ozena.

This information, together with the verbal statements by Howard Smith and other residents of the Ojai Valley during our January 12, 2009 meeting, strongly challenges the Planning Divisions ability to properly monitor the Ozena Mine C.U.P.

We urge you to take action to properly monitor for violations, promptly act on documented reports of violations and promptly provide all of the public information requested by the Coalition. Based on past violations the Planning Division has identified and on the time and other action delays indicated in your letter of December 12, 2008, and the other information provided to us, it occurs to the MAC that you should be considering that an appropriate action would be to terminate the Ozena Mine's temporary C.U.P. until the past violations, alleged violations and new EIR are completely resolved..

This is a matter of vital concern to the MAC for the ongoing safety, air quality concerns, health and welfare of the residents of the Ojai Valley.

Thank you for the opportunity to comment on this issue of importance to the Ojai Valley.

Sincerely,

A handwritten signature in cursive script that reads "Russ Baggerly".

Russ Baggerly, Chair

Encl/Attached: Coalition-Ozena Mine-Key Critical Failures of RMA
Coalition-Ozena Mine-Issues of concern

Cc: Via Email to:
Ventura County Supervisor Steve Bennett, First District
Marty Robinson, Ventura County CEO
Matt Carroll, Ventura County Deputy CEO
Noel Klebaum, Ventura County Counsel
Coalition to Stop the Trucks
Members, Ojai Valley Municipal Advisory Council

Key Critical Failures of the Resource Management Agency and the Planning Division in the Administration of the Ozena Gravel Mining and Trucking C.U.P.

Failure of a current Resource Management Agency Director and then Planning Division Director, Chris Stephens to respond to MAC letter of concern from August 21, 2006 about Potential Road Collapse and Agency's failure to meet CEQA guidelines for monitoring daily trips.

Failure of Planning Division to monitor road hazards in EIR proposals despite the collapse of Highway 33.

Failure of Planning Division to monitor daily trips under existing C.U.P or in new applications reviews.

Failure to proactively monitor truck traffic along with seemingly bending over backwards so as not to monitor

Failure to follow up on complaints

Failure to Obtain Weigh Tickets for 2008 as means to monitor trucking

Failure to turn over all weigh tickets in Public Records Request

Failure to fully comply with Public Records Request for all Ozena related documents, including public court records on Ozena law suit, EIR proposals and bids, new leaseholder status and change in mine operation management

Failure to properly evaluate data on weigh tickets

Failure to respond to Board of Supervisors public hearing request to insure adequate monitoring and compliance procedures

Failure to read, understand and implement conditions of the Ozena C.U.P. for seven years and Failure of Planning Director to penalize staff incompetence for such errors

Failure to promptly notify Ozena in writing following notice from the D.A. that Ozena must follow the C.U.P. (Three month delay followed by a year of no enforcement)

Failure to enforce penalties for past (massive) violations C.U.P. by Ozena and in fact possibly violating State law and public policy by issuing such a waiver

Failure of Planning Director to understand that conditions imposed by a C.U.P. are not open to appeal seven years later because staff failed to enforce rules, including failure of Planning Director to realize that, according to County Counsel that "Planning staff has a ministerial duty to apply the conditions as adopted by the Planning Commission."

Failure to prevent agent for applicant from having undue and inappropriate influence in the choosing of an "independent" firm to review their application

There are a number of issues which give us reason for concern regarding Ozena & the Planning Division, which are detailed below:

First: As I shared with Deputy CEO, Matt Carroll at our meeting last July, the probably violations by Ozena in regards trucking through the Ojai Valley have occurred not just on the dates cited in the complaint of 11/24/2008, but rather on a daily basis. Violations begin as early as 3:30 am each day and continue well after the 3:00 pm cut off until 5:00 and 6:00 pm each day. This information has been communicated to the RMA and the Planning Division on a regular basis now for almost two years. There have been over 75 emails and bulletins sent out to County officials during this time and more than two dozen news articles in the local press. As one small example, witness a copy of our correspondence and subsequent posting of a moving violation on our website of October 11, 2008:

http://www.ojai-post.com/2008/10/stop_the_trucks_early_morning.shtml

Second: A formal complaint was also filed early in 2008 by Bob Walker, a Coalition associate, that was received and commented upon by Ms. Aragon. However, according to records we have obtained through various Public Record Requests, the complaint was never followed up or brought to a conclusion by any staff in Planning or RMA. Not only was no action taken by the county, no one ever followed up with Mr. Walker.

Third: When the Coalition made a request for all weigh tickets from Ozena for the nine months between 12/1/07 and 8/12/08, the Division failed to include any of the weight tickets Ms. Aragon had in her possession in regards the Walker complaint, this despite the fact that the weigh tickets were referred to in her correspondence with the agents for Ozena.

Numerous other Ozena related documents in the County's possession were also not turned over. These include, for example: flyers provided to drivers at Ozena by Tony Virgilio about hours of operation that actually listed the wrong hours; any follow up on the Ojai's MAC 2006 request to have seismic testing of Route 33 as part of any new EIR; documents about Ozena's Writ of Mandate (which we were later able to obtain directly from County Counsel); any documentation about a change in the management and lease-holder status of Ozena; and any documentation about the pending EIR. Failure to fulfill a PRR fully is a possible violation of state law.

Fourth: The Planning Division and RMA have made it clear that their only acceptable tool under CEQA is through the monitoring of weigh tickets. However going back as far as our complaints of August 2007, agency staff, most particularly Patrick Richards, have demonstrated a notable inability to understand and effectively use the data gleaned from weigh tickets. In his first review of our complaint, Mr. Richards found no violations. We however found that more than half were in possible violations and subsequently requested a full two months of tickets from that summer.

For the two months of July and August 2007, Mr. Richards found only minor violations whereas the Coalition found that nearly 55% of all trucks passing through Ojai were in possible violation. Deputy CEO Matt Carroll also found fault with the Planning Division's methodology. This information was communicated to the RMA and the Division by County CEO, Mary Robinson. Such incompetence by a senior county staffer responsible for following CEQA guidelines and State law must be deemed unacceptable and dealt with.

Fifth: The failure of the RMA and the Planning Division to meet CEQA standards for monitoring and compliance was brought to the attention of the Board of Supervisors directly during testimony regarding the Tom Berg Report in March of 2008. All five members of the Board of Supervisors individually directed both Chris Stephens and Kim Rodriguez to insure that adequate compliance and monitoring steps were taken, but to date nothing has happened. In fact, both county units seemingly have bent over backwards to avoid compliance and monitoring in regards of Ozena. Witness the fact that in response to our PRR requesting nine months worth of weigh tickets for 2007-2008, the County claims only to be in possession of one week's worth.

Sixth: In documents in the County's possession that we have obtained through PRR's, Ozena representatives have actively and knowingly campaigned for and indicated a need for (in the past, in the present and going into the future) a minimum of three round trips per day per trucker that would clearly push their hours of trucking well beyond those acceptable under the terms of the C.U.P. They even claim that the restrictions are direction only, something in complete opposition to the actual C.U.P. County has avoided being proactive in its monitoring of Ozena and enforcing permit conditions.

Seventh: After the Coalition filed a complaint with the DA's office in June of 2007, Chief Deputy District Attorney Jeffrey Bennett, issued a letter, (a copy of which appears in County Counsel's filing in Ozena's Writ of Mandate lawsuit against the county) indicating that the terms of the C.U.P. must be followed, notwithstanding any mis-application of those terms by County officials.

Eighth: It was not until, December 2007, long after the Coalition had filed its complaint with the D.A. and its initial complaint about August 2007 violations that Kim Rodriguez informed Ozena that the mine would be strictly held to the hours recognized in the C.U.P., Ozena requested a "stay" of that order pending an appeal. When Kim Rodriguez was forced to acknowledge that her letter was not an appealable decision but rather a restatement of the C.U.P., Ozena filed a "Writ of Mandate" suit to get those conditions overturned.

Five questions arise here that call into question Ms. Rodriguez's actions as Head of the Planning Division:

- 1) Why did it take Ms. Rodriguez three months to warn Ozena that they must follow the C.U.P.?
- 2) Why did she inform Ozena that there would be no penalties for past violations?
- 3) Why did Ms. Rodriguez incorrectly inform Ozena that her decision was an appealable ruling?
- 4) Why did she fail to recognize Mr. Richards's incompetence in evaluation weigh tickets and other documentary evidence?
- 5) Why did she fail to pro-actively have her staff monitor Ozena's compliance with her own mandate?

Ninth: Had Pat Richards properly investigated our August 2007 complaint the first time, Ozena would have been found in violation. He however took no action, in violation of public policy and law. The Planning Division and the RMA have a long (and embarrassing) staff history of not knowing the actual requirements of the C.U.P. dating back as far as its initial implementation in 2001 and its 2003 renewal. This history came to the public's attention with Scott Ellison's ill-advised written comments to a reporter for the Ojai Valley News and me in the spring of 2007 where he clearly mis-quoted and mis-represented the acceptable hours of operation. These mis-statements are well documented in records obtained through various Public Records Requests.

Tenth: Since December of 2007, Kim Rodriguez arbitrarily swept away any punishment for possible past violations by Ozena - in effect covering up staff incompetence and/or possible corruption and avoiding any need to discipline or shut down Ozena - by telling Ozena that it would not be held accountable for past violations, but must follow the rules in the future. This application of her apparent discretion as head of the Planning Division directly contradicts County Counsel's position in the Ozena Writ of Mandate suite. County Counsel claims that "Planning staff has a ministerial duty to apply the conditions as adopted by the Planning Commission."

Eleventh: County Officials failed to heed warnings about Potential Road Collapse and the Danger is Apparently Still Being Ignored by Planning Division.

In a August 21, 2006 letter regarding the Ozena Valley Ranch Mining project, the Board of the Ojai Valley Municipal Advisory Council warned Christopher Stephens, then the Director of Planning for the Ventura County Planning Division and now the head of the entire Resource Management Agency for the County, that *"SR-33 has suffered many landslides and slipped roadways in past years. The vibration created by the mine's trucks on SR-33 may be adding significantly to the problem of road slippage, slumps, and slides. No review of vibration as a potential impact on SR-33 has been included in the Draft MND and vibration from trucks may present a significant adverse impact on the environment."*

In February of 2008 a portion of Route 33 collapsed into the river. The warning from the Ojai Valley Municipal Advisory Council to monitor road vibrations and related issues seems to have been totally ignored in early drafts of EIR oversight scoping documents, also obtained during the course of our Public Records Request.

In July of 2007 - nine months before the road collapsed - Caltrans District 7 investigators concluded in a now controversial traffic study that State Route 33 is maintained to provide safe travel for all motorists, and is designed to accommodate large trucks.

Scott Ellison, a planner with the Ventura County Planning Division, who worked under Mr. Stephens, was quoted in the Ventura County Reporter last year as saying, *"They concluded it was safe for the trucks, as long as they followed the posted limitations."* Ellison added that Caltrans examined the *"radius of the turns, the way the turns are sloped — road geometrics, looking at the height of the tunnels, for instance, blind curves, these sorts of things. They felt the road geometrics were safe for the trucks. As a local agency we're not likely to challenge a Caltrans safety study that's two weeks old that looks at the road segment we're interested in."*

After the collapse, Maria Raptis, spokesperson for Caltrans District 7 said that the study had focused exclusively on the geometric design of the road for safe and orderly movement of vehicles. **According to Caltrans engineers it did not focus on the stability of the roads or the hydraulics."**

The "Stop the Trucks" Coalition has repeatedly questioned whether the vulnerable road should be open to any heavy gravel trucks. The Coalition has not only questioned why the possibility of such a failure had not been predicted during the Caltrans study of Highway 33, but why extensive studies of the impact of gravel trucks are seemingly being systematically excluded (along with many other issues) from the EIR review process.

Twelfth: The MAC letter also noted that *"The proposed Project Description includes references to truck trips increasing from 66 Average Daily Trips to 132 Average Daily Trips (ADT). By using Average Daily Trips, both in the Project Description and proposed mitigation measures for Noise and Vibration, and Traffic and Circulation, Planning staff has failed to actually limit daily truck traffic. **Using an average provides for extremes in actual trips.***

In addition, mitigation measures based upon using ADT may also have significant adverse environmental effects associated with them because the actual number of trips per day cannot be controlled. Furthermore, monitoring an average would be nearly impossible. If monitoring is nearly impossible, then the proposed mitigation measure is infeasible and does not comply with the intent of State and County environmental requirements."

Thirteenth: Ozena Wants to Expand Hours of Trucking Thru Ojai and Hand Pick the Consultant who will Review their new Proposal!

In documents recently obtained by the Ojai "Stop the Trucks" through a Ventura County Public Records Request, the Coalition has learned that Ozena wants to alter their existing permit so that trucking through the Ojai Valley will begin as early as 3:00 am and continue as late as 6:00 pm during the week with "No Route Restrictions" at all on Saturdays!

This proposal would more than double trucking from a total of seven hours a day during the week to a new and even more intrusive and disturbing 15 hours a day!

In a recent review of weigh tickets from 2007, the "Stop the Trucks" Coalition estimated that Ozena is likely now violating existing permit hours in trips through Ojai by as much as 55%. In a letter to "Stop the Trucks," County CEO, Ms. Marty Robinson, agreed with the Coalition that violations have been under reported by the Planning Division.

In a further review of emails obtained through that same Records Request, we found that the agent for Ozena, John Hecht of West Coast Environmental & Engineering, rejected the consultant the County originally selected, URS, because: *"...the proposed costs did not appear in line to the anticipated scope of work. Ozena believes that a competitive process will provide a qualified CEQA contractor in a more cost effective manner."*

In a separate email Mr. Hecht then went on to propose the names of three other firms:

"Per our discussions, the following consultants that we are familiar with that are qualified to provide services to the county on mineral extraction and other industrial services:

Mr. Marty Derus, Lilburn Corporation of San Bernardino; Mr. Tony Locacciato, Managing Principal of Impact Science, Inc.; and Mr. Warren Coalson of Enviromine, Inc. of San Diego.

Additionally Mr. Hecht, on behalf of Ozena, asks that a second C.U.P. proposal on building an Aquaculture stock pond be including in the same review.

This Aquaculture proposal of Ozena's keeps popping up like a mummy in some horror movie, despite the fact that in 2004, a consultant for the County, David Magney & Associates reported *"Potentially Significant" Environmental Impacts.*

Magney wrote: *"Mosquito Fish and Catfish are nonnative invasive fish species. Presently, neither Mosquitofish nor Catfish are known to occur in the upper Cuyama River and tributaries. Aquaculture of these fish species, into isolated ponds in areas adjacent to a natural river system (Cuyama River), creates a high potential for the introduction of these species into the Cuyama River and tributaries." "Mosquito Fish and Catfish will inevitably escape and colonize natural stream habitats." "Catfish and Mosquito Fish are scavengers and eat almost anything that fits in their mouths." "...these fishes will potentially swim upstream into river habitats inhabit by populations of Rainbow trout." "The introduction of these fishes creates the potential for populations of native natural fishes and amphibians to be lost."*