Jim Burch
<jimburch@intergate.com>
09/20/2005 04:53 PM
Please respond to jimburch

To: jdmckenzie@co.slo.ca.us
cc:
Subject: Proposed asphalt plant disaster

9/20/05

To: **John McKenzie**
SLO County Planner
e-mail: jdmckenzie@co.slo.ca.us
Phone: 781-5452

From: Jim Burch
504 Poplar Street
Santa Maria, CA 93458
Phone: 925-4707
E-mail: jimburch@intergate.com

Dear John,

The Santa Maria Times had your e-mail wrong. I am sure that you would have gotten a lot of mail otherwise regarding the unwise location of the proposed asphalt plant. A-1

I read with alarm the story in the Santa Maria Times regarding the asphalt plant being proposed across from our fair city. I live on the south side of the Santa Maria riverbed and can throw a rock into it. Here are my thoughts on that dastardly proposal.

ANOTHER CATASTROPHE IS SHAPING UP

Unlike hurricane Katrina this one is a slow poisoning of the air we breathe, massive pollution, noise, a stench in the air for all time, and dust that chokes the lungs of those who live in North Santa Maria and Santa Maria proper. On August 21st and September 3rd the Santa Maria Times published articles about the possibility of an "Asphalt Plant" being built on, and adjacent to, the North side of the Santa Maria river bed (just West of the highway 101/166 interchange) by A.J. Diani Construction Co. **It will produce 400,000 TONS of asphalt per year and** A-2

will operate 24 hours a day. It will also generate carbon monoxide, a known deadly poison. A-2

As the proposed location is the southernmost end of San Luis Obispo County it will affect the Nipomo residents, but more so we here in Santa Maria, as the prevailing winds blow, most of the time, from Northwest by North towards the Southeast by South which is exactly in the direction of Santa Maria. Therefore Northern most Santa Maria, only about 440 yards away, and Santa Maria overall will be directly in the path of this poison and pollution from the asphalt plant. The communities immediately adjacent to the South side of the river bed will not only bear the brunt of this disaster, but also see a drop in their property values. This includes River Oaks, Hidden Pines Estates, Willow Ridge, etc. **The SLO County Board of Supervisors and the Nipomo Community Advisory Council (NCAC) are urged NOT to approve of this proposed Asphalt plant location.** A-3

When the winds blow this massive pollution towards Nipomo, I predict a really serious response from the people who live there.

Sincerely,
Jim and Mary Ann Burch

A.J. DIANI CONSTRUCTION CO., INC.
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SLO CNTY
PLANNING/BUILDING
DEPT

2005 SEP 30 PM 3:34

September 26, 2005

Mr. John McKenzie, EIR Project Manager
San Luis Obispo County
Department of Planning and Building
County Government Center, Room 310
San Luis Obispo, CA 93408-2040

Re: Response to Biorn Draft EIR
Noise Section

Dear Mr. McKenzie,

A. J. Diani Construction Co., Inc. ("Diani") requested its consultant, West Coast Environmental and Engineering ("WCE"), to review and provide comment on the subject Draft Environmental Impact Report ("DEIR"). Upon comprehensive review, WCE has concluded that there are major discrepancies between our evaluation and the DEIR regarding noise measurements, the subsequent evaluation of that data and the resulting recommended mitigation measures. Accordingly, Diani has attached its comments via WCE correspondence of September 23, 2005 (the "WCE Noise Section Analysis").

There are many inconsistencies identified in the WCE Noise Section Analysis, but, of particular concern is Mitigation Measure NOS-2 requiring installation of an eight foot high masonry wall for a potential noise barrier. This is an unwarranted and extreme Mitigation Measure due to not only the failure of the DEIR to utilize current, readily available information regarding operational noise, but also the DEIR use of an inappropriate method of calculating and interpreting projected ambient noise levels given current conditions. In addition to Diani's concerns, it is quite apparent that the author is uncomfortable imposing this dubious Mitigation Measure based upon the written comments. B-1

Diani suggest that the reference to the block wall be eliminated and the reference to monitoring remain so that appropriate and effective site specific mitigation measures, if necessary, may properly be developed and unwarranted, wasteful measures not be required. Furthermore, Diani requests the DEIR noise analysis utilize directly relevant and current information regarding operational noise in order to properly estimate noise impacts.

In addition to the above issues Diani respectfully request your comprehensive review and comment on all the issues brought forth in the WCE Noise Section Analysis. B-2

Respectfully,

Richard D. Jackson, President

Attachment: WCE Noise Section Analysis dated September 23, 2005

cc: Jim Diani (with attachment)
Timothy J. Carmel (with attachment)

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September 23, 2005

Mr. Jim Diani
A.J. Diani Construction Co., Inc.
295 N. Blosser Road
Santa Maria, CA 93456-0636

Subject: Comments on the Noise Section of the Biorn DEIR **AJD140**

Dear Mr. Diani:

Discussion of CNEL and Ldn noise measurements is not necessary because this Project is a noise source. Noise sources are evaluated based on units of Leq-1hr.

1.0 AMBIENT NOISE

The Noise Section prepared for the Draft Environmental Report (DEIR) monitored noise using the same monitoring duration (15 - 30 minutes) that WCE used. The results were slightly different as shown in Table 1.

Table 1. Comparison of Ambient Noise Assumptions

	WCE	Padre
Daytime	58.1	57.1
Nighttime	53.1	58.1

Note: WCE nighttime ambient level assumes a 5 dB decrease between day and nighttime noise levels at the receptor(s). Padre nighttime ambient level was measured between 4:15 and 4:35 AM.

The DEIR Noise Section made two (2) daytime ambient noise measurements for the receptor in the LUO/LUE Amendment Area and found ambient noise levels to be 50.1 dBA and 63.1 dBA. The large discrepancy was explained in the DEIR as follows, "The large range of noise levels measured within the LUO/LUE amendment area (50.1 to 63.1 dBA Leq) appear to be the result of large variation in activity at the existing concrete batch plant." B-3

The DEIR section made one (1) nighttime ambient noise measurement which, based on their analysis, shows that nighttime ambient noise is louder than daytime noise at the receptor. Clearly, this does not reflect reality.

A better method of monitoring would be to measure ambient noise levels over the period of a day and base ambient noise assumptions on average noise levels observed during Project operating hours. Nevertheless, a 15-minute measurement meets the minimum standards for measuring ambient noise. B-3

Ambient noise exceeds 50 dBA, significance thresholds are calculated to be ambient noise plus 1 dBA. However, significance thresholds are based on ambient measurements that do not appear to represent conditions at the sensitive receptor (i.e. nighttime noise exceeds daytime noise).

2.0 CONSTRUCTION PHASE

The DEIR Noise Section estimated peak construction noise during grading to be 62.4 dBA at the receptors in the LUO/LUE amendment area. No calculations or identification of source noise levels is provided. Therefore, calculations could not be confirmed. Although it is quite likely that construction noise impacts are less than those calculated, mitigations (NOS-1) required during this phase of the Project are acceptable and include: B-4

A. No construction between 9 PM and 7 AM weekdays and 5 PM and 8 AM weekends.

B. Equipment engine covers shall be in place and mufflers shall be in good condition.

C. Adjacent residents and the County of SLO will be given advanced written notification of proposed construction activities, scheduling and hours of construction, and noise compliant procedures to minimize potential annoyance related to construction activities.

3.0 OPERATION PHASE

3.1 Sources

Stationary equipment noise is based on ALmix data but the DEIR does not state what noise level was assumed for that equipment based on the contoured plot provided. WCE assumes that a sound pressure level at some reference distance from the equipment would have been used in the calculations.

Mobile equipment noise (two wheeled loaders and one backhoe) was estimated using noise reference values from EPA (1971). WCE would suggest that a 35 year old reference is too old and that update reference data should be used in the analysis. Based on discussions with Jim Barr of Quinn Caterpillar (805.485.2171), late model construction equipment has lower noise emissions than models that would have been tested for the 1971 EPA report. In addition, Boston's Big Dig project has a recent list of noise from construction equipment. Moreover, as discussed in the Project Description and Air Quality Sections, only one loader will be operating at any one time. The second loader is present in case the first loader needs to be taken out of service for repair. Lastly, WCE assumes that a sound pressure level at some reference distance from the equipment would have been used in the calculations. No such data was provided in the DEIR. B-5

Motor vehicle noise was estimated using the Caltrans SOUND2000 model and included modeling the access road from U.S. 101/S.R. 166 interchange to the site and internal roadways. According to Caltrans, SOUND2000 model should not be used for any new projects. Caltrans requires all new project noise studies beginning after January 15, 2005 to use the Federal

Highway Administration (FHWA) Traffic Noise Model (TNM) version 2.5 or later for acoustic modeling of traffic noise. Nevertheless, no SOUND2000 input or output files were provided in the DEIR. B-5

3.2 Impact

Ambient noise exceeds 50 dBA, significance thresholds are calculated to be ambient noise plus 1 dBA. However, significance thresholds are based on ambient measurements that do not appear to represent conditions at the sensitive receptor (i.e. nighttime noise exceeds daytime noise).

The DEIR added ambient noise to Project noise before comparing the value to significance thresholds. Based on review of the County Noise Ordinance, this method seems appropriate. Based on review of the Noise Element of the County General Plan, this method may or may not be appropriate. Methods are not clearly defined in the Ordinance or Noise Element. B-6

Although addition of existing ambient noise to source noise may be appropriate based on applicable ordinances, WCE does not believe that the method will yield an accurate prediction at the receptor because several industrial noise sources (e.g. concrete batch plant, recycle asphalt crushing plant, aggregate processing plant) and sound barriers (i.e. stockpiles) are located in the space between the Project and the receptor(s). Intervening sources will "cover" Project noise with their own noise. For instance, if Project noise is 65 dBA at the concrete batch plant (located directly in the line of sight between the Project and the receptor(s)) and the batch plant has noise emissions exceeding 75 dBA, then a receptor on the far side of the batch plant will only hear noise from the batch plant.

3.3 Mitigation

Operation phase Mitigation NOS-2 reads:

> *NOS-2 - An 8-foot high concrete or masonry block wall (noise barrier) shall be constructed and maintained along the northern and western boundaries or the asphalt plant site. The noise barrier shall be placed between the plant and associated internal access roads and land uses north of the site. The noise barrier would reduce noise levels at the nearest residential receptor by approximately 4 dBA Leq (see barrier insertion loss in Harris, 1991). However, many components of the asphalt plant extend greater than 8 feet above the ground and noise generated by these components would not be reduced by the noise barrier. Therefore, the noise barrier may not reduce ambient noise levels generated by the proposed asphalt plant by 4 dBA Leq. Due to the complexity involved with modeling the magnitude, location, operating hours, and frequency of the numerous noise sources proposed (vehicles, mobile equipment, and stationary equipment), it is unclear if an 8-foot noise barrier would reduce the project noise impact to a level of less than significant. A taller wall may be proposed, but would likely have significant aesthetics impacts. Therefore, noise monitoring at the two nearest residences shall be conducted immediately following project implementation to determine if noise levels are significant (greater than 58.1 dBA Leq, or 1 dBA above existing, without the asphalt plant operating). If noise monitoring indicates noise levels are significant, noise walls* B-7

adjacent to the affected residences shall be provided to reduce noise levels at these two residences below the significance threshold. Alternatively, the applicant may purchase and demolish the two affected residences.

Clearly, the author is confused and doesn't really know if installation of a sound wall will result in the desired effect at the receptor(s). Accordingly, it seems inappropriate to suggest such a mitigation. Furthermore, in order to engineer a sound barrier, one needs to take into account the following parameters which the author has not made known:

- Elevations of the source, receptor, and top of the wall; and
- Distances separating source, receptor, and the wall.

B-7

Nevertheless, monitoring ambient noise at the receptor with and without the Project operating is an acceptable way to determine if the Project causes a significant impact. If such an impact is found, then options for mitigation should be researched and proposed by the Applicant. Options may include but should not be limited to the following:

- Sound barrier (e.g. wall, berm, or stockpile);
- Retrofit receptor homes with noise attenuating building materials (e.g. windows or insulation); and
- Purchase homes in order to remove receptor.

If you have any questions, please feel free to call me at (805) 644-7976.

Sincerely,

Scott D. Cohen

Scott Cohen, P.E.
Project Manager
West Coast Environmental and Engineering

A.J. DIANI CONSTRUCTION CO., INC.
GENERAL BUILDING • GENERAL ENGINEERING • ENVIRONMENTAL SERVICES

September 26, 2005

Mr. John McKenzie, EIR Project Manager
San Luis Obispo County
Department of Planning and Building
County Government Center, Room 310
San Luis Obispo, CA 93408-2040

Re: Response to Biorn Draft EIR
General Comments

Dear Mr. McKenzie,

C-1

A. J. Diani Construction Co., Inc. (Diani) requested its consultant West Coast Environmental and Engineering (WCE) review the subject Draft Environmental Impact Report (DEIR) and present to Diani their comments and conclusions. Diani is submitting general comments via the attached WCE correspondence of September 23, 2005 (the "WCE Biorn DEIR General Comments").

We are particularly disappointed that even though the project description addressed the clear separation between the Diani/Biorn Conditional Use Permit application component ("CUP application") and the additional 35 acres of the County's proposed Land Use Ordinance/Land Use Element Amendment component ("LUO/LUE Amendment"), it is quite clear that the substantive DEIR analysis does not. We are disturbed that the CUP application is being severely impacted by this separate project component without the DEIR presentation making it possible for the CUP application to be clearly distinguished as a stand alone project and be judged accordingly. Diani is requesting representative language be included in the DEIR so that such a distinction can be made and understood by the general public and the decision making bodies.

Additionally, Diani believes that there are inherent flaws within many of the proposed mitigation measures which range from simple grammatical and textual errors to a complete failure to provide a justifiable nexus between the purported project impact and the proposed mitigation measure. These concerns are specifically addressed in the WCE Biorn DEIR General Comments.

Therefore, Diani is requesting representative language be included in the DEIR so that the proper distinction can be made between the CUP application and the LUO/ LUE Amendment and that all issues brought forth in the WCE Biorn DEIR General Comments by fully addressed.

Respectfully,

Richard D. Jackson, President

Attachment: WCE Biorn DEIR General Comments dated September 23, 2005

cc: Jim Diani (with attachment)
Timothy J. Carmel (with attachment)

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September 23, 2005

Mr. Jim Diani
A.J. Diani Construction Co., Inc.
295 N. Blosser Road
Santa Maria, CA 93456-0636

Subject: A.J. Diani Nipomo, Response to Draft EIR **AJD140**

Dear Mr. Diani:

West Coast Environmental and Engineering (WCE) has reviewed the Draft Environmental Impact Report (DEIR) for the Biorn Conditional Use Permit and Land Use Ordinance/Land Use Element (LUO/LUE) Amendment. WCE reviewed the DEIR for accuracy of the Conditional Use Permit (CUP) request for the portable stand-alone asphaltic concrete plant (plant site). The following comments are arranged according to chapter:

General Comments

C-2

It is very difficult to distinguish between the two project components, the LUO/LUE and the CUP for the plant site. The following should be stated in Chapter 1 to distinguish between the two project components of the DEIR to avoid confusion and adhered to throughout the DEIR (this is especially evident in Chapter 4.1.1 Regional Setting):

> *For the purposes of describing the two components of this project, "plant site" refers specifically to the area affected by the CUP (the proposed asphalt facility), and "LUO/LUE area" refers to the entire area which will be affected by the LUO/LUE amendment (including the asphalt facility).*

C-3

Chapter 2.4 – Summary of Alternatives Analysis

The County identifies five alternatives to meet project objectives of the plant site. "Alternative 1 – No Project Alternative" does not meet project objectives.

C-4

Chapter 3.0 – Project Description

The DEIR states that the development of the plant site will occur on a 14.5 acre site. This is incorrect, the plant site will occur on a 6.15 acre site.

Chapter 3.5.3 – Structures

The DEIR incorrectly states that the Control Room will be installed atop a 50 to 60 foot concrete block wall. This should be rewritten to reflect a 5 to 6 foot concrete block wall. C-5

Chapter 4.2 – Land Uses in the Area of Impact

The DEIR incorrectly states that an existing concrete batch plant is located on the plant site and will be moved to an adjacent parcel. The correct facility to be moved is an asphalt and concrete recycling plant. This should also be changed on page 4-14 under Impact LND-2 and elsewhere in the DEIR. C-6

Chapter 5.0 – Environmental Impacts Analysis

Chapter 5.1 – Aesthetics

A *Visual Impact Analysis*, dated April 23, 2003, was prepared for the Applicant and submitted to the County with the Project application materials. That analysis evaluated visual resources using the Scenery Management System (SMS). The SMS is used by federal agencies to inventory, evaluate, and develop policy or Scenic Integrity Objectives for the lands they manage. Although federal lands are generally more "wild" by nature, the concepts are applicable to all but the most urban settings. At the time of application submittal, San Luis Obispo County had not adopted impact threshold criteria specific to scenic resources and features. In lieu of such criteria, the methodology and analysis used in the *Visual Impact Analysis* were discussed with San Luis Obispo County staff to determine the visual impacts of the Project. C-7

The SMS characterizes existing scenery in terms of the following criteria:

- Scenic Integrity
- Scenic Attractiveness
- Landscape Visibility, which takes into consideration the following:
  - Concern Level (public viewing point of view)
  - Distance Zone
  - Topography

To evaluate the potential visual impact of the Project, the *Visual Impact Analysis* depicted the existing environment and compared it to the Diani Project setting. Specifically, this analysis addresses the size and height of facility components, most notably the aggregate stockpiles, asphalt plant and associated silos, and contrasts the:

- Before Condition - inclusive of the existing concrete batch plant and recycling operations.
- After Condition - inclusive of the Diani Project.

The Before Condition was used to define "environmental setting" as defined by the California Environmental Quality Act Guidelines (i.e., Section 15125), which states:

C-7

> *"An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives."*

To visually establish the environmental setting, digital photographs were taken from southbound U.S. Highway 101, from U.S. Highway 101 looking northwest, and from the residential developments across the Santa María River. These digital photographs were then modified to include the Project and evaluate whether it will result in adverse alterations of the existing landscape features (i.e., color, texture, configuration, etc.). Specifically, the *Visual Impact Analysis* was conducted to determine whether the Diani Project will degrade visual resources or significantly alter or obscure public views from sensitive viewing locations. The "before" and "after" evaluations are presented in the *Visual Impact Analysis* as were conclusions regarding the potential impacts of the Diani Project with regards to aesthetic values.

Although the DEIR directly incorporates the "before" and "after" evaluations and much of the supporting text of the *Visual Impact Analysis*, it departs significantly from the conclusions it presented. Without comparable analysis or documentation, the DEIR simply concludes the Diani Project will result in impacts that are Significant but Mitigable and assigns a variety of Mitigation Measures.

C-8

The following specific comments are offered to support the position taken above.

View 1 – On page 5.1-8 of the DEIR, we concur with the following statement:

> *For southbound motorists on U.S. Highway 101, the proposed plant would be briefly visible (approximately 6 second @ 65 mph). From this vantage point, the proposed use would be among similar commercial-industrial uses that would comprise the "foreground" viewshed. As such, rather than dominating the viewshed, the plant would be visually compatible with the surrounding environment (e.g., concrete batch plant, transfer station).*

This is due to the fact southbound motorists will need to look through and over the existing commercial and industrial development that dominates the area to see the Diani Project. In addition, the Diani Project, although hosting a taller silo, will be adjacent to the Troesh operation which has other large equipment and stockpiles, some of which are on the site proposed for use by the Diani Project.

C-9

View 2 – On pages 5.1-8 and 5.1-9 of the DEIR, information is provided regarding the view for northbound motorists (View 2), which is followed by a conclusion the Diani Project will result in an impact that is Significant but Mitigable. This conclusion is incorrect. During our site visit, we concluded:

C-9

The original photograph was taken from the west side of the U.S. Highway 101/Santa Maria River Bridge, while looking northwest toward the Project. This photograph provides an oblique vantage point, which, although convenient for the photographer, will be experienced only by those using the bike path in the foreground. Looking across the river, the area being evaluated is framed, right to left, by trees to the left of the light colored building and white cut slope (an abandoned mine) adjacent to the U.S. Highway 101/Santa Maria River Bridge, and the area directly behind the three power poles that appear in the center foreground of the photo.

One of the fundamental concepts underlying the SMS analysis is not whether something can be seen or not, but whether it is unique, dominate or otherwise intrusive into the visual landscape. In this instance, northbound motorists in all but the tallest of vehicles will have their view obscured by the US Highway 101 railing. Viewing time, if any, will be extremely brief and the vantage point is one of a distant view across the Santa Maria River. In addition, the scenic value of this vantage point is considered low. All of this is acknowledged in the DEIR as follows:

Key Viewing Area 2 - Northbound U.S. Highway 101 *– The proposed asphalt concrete plant site is possibly visible from the U.S. Highway 101/Santa Maria River Bridge for a brief period (approximately 6 seconds @ 65 mph), although the bridge railing partially obscures this view depending on the size of the vehicle. This view has relatively low scenic value.*

C-10

View 3 – With regard to the residential community across the Santa Maria River (View 3), the DEIR concludes that Mitigation Measure AES-2 "*would provide adequate screening of the plant and would serve to provide screening of the existing batch plant when viewed from the residences across the river and from persons on the public path located atop of the levee along the south bank of the Santa Maria River.*" While this is correct, it presupposes the Diani Project impacts from that vantage point are Significant but Mitigable. We believe this is an incorrect conclusion and without analytical basis. The *Visual Impact Analysis* correctly concluded:

This photograph was taken while standing on the south bank of the Santa Maria River, directly in front of an existing residential development. This photograph provides a more direct vantage point, which will only be visible for homes on the river side of this community. However, this view will be limited or entirely obscured by the flood control berm placed between the Santa Maria River and the residential development. This view will be experienced only by those using the bike path along the south bank of the Santa Maria River. Looking across the river, the area being evaluated is framed by a large stand of Eucalyptus trees to the left of the white cut slope (an abandoned mine) to the left of the U.S. Highway 101/Santa Maria River Bridge, and westward to the area immediately before the concrete batch plant silos.

As such, the Diani Project will serve to borrow from the existing views across the Santa Maria River and will, through installation of the plant palette proposed in the *Visual Impact Analysis*, serve to fill in the existing reach of riparian vegetation, thereby improving the overall visual appearance of the area. The beneficial impacts of this are not acknowledged in the DEIR as a Class IV Impact (Beneficial).

Mitigation Measure AES-3 – Should be revised to ensure onsite operational safety requirements are also maintained. C-11

Mitigation Measure AES-4 – Correctly concludes the sound walls required under Mitigation Measure NOS-2 will likely not produce the intended results. If Mitigation Measure NOS-2 is deleted, as we recommend, there is no need for Mitigation Measure AES-4. Please refer to the comments below regarding NOS-2. C-12

Mitigation Measure AES-5 – Please refer to the comments below regarding Mitigation Measure PUB-2. C-13

Cumulative Impacts – On page 5.1-15, the following text is poorly written and very confusing to the reader: C-14

> *The contribution of the proposed project to regional visual impacts of the cumulative projects would be considerable. These cumulative impacts could alter the significance of visual impacts of the project.*

We disagree with the conclusions made regarding cumulative impacts and stand by the following conclusions made in the *Visual Impact Analysis*:

> *Given the commercial-industrial character and appearance of the area, and the lack of sensitive viewing locations, the visual appearance of the Project is expected to combine successfully with that of other projects within the immediate vicinity. Near-term, the resulting visual presentation is expected to remain consistent with the existing commercial-industrial appearance. As such, the cumulative visual impacts are expected to be less than significant (Class III).*
>
> *Long-term, Project landscaping will assume a density and height that will be sufficient to extend and lend continuity to the existing line of vegetation paralleling the north bank of the Santa Maria River. In addition, landscaping will shield the Project from view by southbound motorists on U.S. Highway 101. As such, the Project will result in long-term beneficial impacts (Class IV).*

Mitigation Measure AES-6 – Discusses construction of detention basins and other structures at elevations a minimum 1-foot above the 100-year flood profile. Detention basins are constructed below grade and cannot be constructed above the 100-year flood plain. C-15

Chapter 5.3 – Air Quality C-16

Please refer to the attached Response to the Air Quality Analysis.

Chapter 5.4 – Biological Resources C-17

Mitigation Measure BIO-2 – This Mitigation Measures further closes the construction window imposed under Mitigation Measure WR-2(A) (page 5.14-19). If both are observed, Diani Project construction activities will need to occur between September 16 and October 14. Mitigation

Measure BIO-2A provides the option to determine if there is onsite nesting, or nesting within a prescribed area. However, the timing of the surveys needs to be more clearly described. For example, does the current language, "between February 15 and September 15", require that a single survey be conducted at some point during that time interval, or throughout that time interval. Point-in-time surveys are very different than concurrent surveys of a prolonged duration. C-17

Mitigation Measure BIO-5 – Cross-references are made to Mitigation Measures BIO-4(B) and (C). If it is intended that this portion of the earlier Mitigation Measure also applies in the context of Impact BIO-5, the entire text should be duplicated and inserted, rather than using a backwards cross-referencing. This is especially important if one or more of the referenced Mitigation Measures is deleted or revised. C-18

Mitigation Measure BIO-6 – The DEIR states that the Blochman's ragwort, a List 4 Species by the California Native Plant Society, was observed on site and a protective fencing shall be installed around populations to prevent a loss of the species. This species was identified within the northern sand banks of the Santa Maria River channel, directly adjacent to the concrete rubble located within the existing facility. C-19

No activity is planned within the Santa Maria River. The Blochman's ragwort should be identified on the plant community map to show if it is located on the proposed plant site area.

Mitigation Measure BIO-7 – Cross-reference is made to Mitigation Measure BIO-5(C), which is yet another cross-reference to Mitigation Measure BIO-4(C). If it is intended that this portion of the earlier Mitigation Measure also applies in the context of Impact BIO-7, the entire text should be duplicated and inserted, rather than using a backwards cross-referencing. This is especially important if the referenced Mitigation Measure is deleted or revised. C-20

Mitigation Measure BIO-9 – Cross-reference is made to Mitigation Measure BIO-4(C). If it is intended that this portion of the earlier Mitigation Measure also applies in the context of Impact BIO-9, the entire text should be duplicated and inserted, rather than using a backwards cross-referencing. This is especially important if the referenced Mitigation Measure is deleted or revised. C-21

We recommend the references to Mitigation Measures WR-9 and WR-10 be moved to a new sub-section "Related Mitigation Measures" that follows Mitigation Measures. In that sub-section, insert a sentence that reads: "Refer also to Mitigation Measures WR-9 and WR-10." C-22

Similarly, we recommend the reference to Mitigation Measure AES-6 on page 5.7-9 of the Residual Impacts (Impact HAZ-2) be moved to a new sub-section entitled: "Related Mitigation Measures". In that sub-section, insert a sentence that reads: "Refer also to Mitigation Measure AES-6."

Chapter 5.7 – Hazards and Hazardous Materials C-23

Mitigation Measure HAZ-1 – States:

A. "*Asphaltic oil ASTs installed at the project site shall be provided with secondary containment capable of holding 110% of the volume of the AST. The containment*

shall provide adequate protection to prevent inundation of the containment area in the event of a 100-year flood; and, C-24

B. Prior to operation, the applicant shall prepare and implement a SPCC plan for the operation of on-site ASTs containing petroleum hydrocarbons in excess of 660 gallons."

Asphalt is a solid material at outdoor temperatures. According to *Hawley's Condensed Chemical Dictionary* (Eleventh Edition), asphalt must be heated to approximately 93°C [222°F] before it converts into a viscous liquid. This is why asphalt storage tanks are heated.

If an asphalt storage tank were to rupture, the spilled material would quickly cool and harden where it fell out of the tank and would not leave the site or enter the nearby river. Thus, secondary containment of the asphalt ASTs provides no useful environmental benefit.

The EIR incorrectly references SPCC requirements. The current SPCC regulations (promulgated July 17, 2002) require that an SPCC Plan be prepared for facilities that store more than 1,320 gallons of oil. In determining this threshold, facilities must include containers of oil that are 55 gallons or larger. There is no 660 gallon threshold.

In addition, it should be noted that the SPCC regulations apply to "oil." The definition of oil includes any kind of oil including petroleum oil and fuel oil. However, the definition does not include all "petroleum hydrocarbons" as alluded to in Mitigation Measure HAZ-1.

Chapter 5.8 – Noise C-25

Please refer to the attached Comments on the Noise Section of the Biorn DEIR.

Chapter 5.9 – Population and Housing C-26

The Population and Housing discussion fails to note the Class IV (Beneficial) impacts associated with the Diani Project (e.g., increased employment opportunities; locally reduced asphalt costs, which translate into reduced housing costs; reduced air quality impacts and road wear and tear, as a result of shorter hauling distances; among others) and those that will likely result with subsequent projects within the LUO/LUE Amendment Area.

Impact POP-1 – The DEIR concludes the Diani Project "would result in additional job opportunities, thus increasing the population and the demand for housing." Instead of concluding the Diani Project will increase the population and demand for housing, we recommend this be changed to read as follows:

The proposed project would result in additional job opportunities, which could result in a minor increase in population and demand for housing.

Such a change will be consistent with Impacts PUB-3 and PUB-4 use of the words *"could increase"* when describing Diani Project impacts in terms of increased demand for police protection and school facilities.

Chapter 5.10 – Public Services and Utilities

C-27

Impact PUB-1 – The DEIR notes the Diani Project will result in a significant impact with regard to the need for increased fire protection personnel. Where in the DEIR is this increase documented?

C-28

Mitigation Measure PUB-2 – Mitigation Measure PUB-2 is excessive and should be deleted. The DEIR fails to demonstrate a nexus between Diani Project impacts and this Mitigation Measure. It appears the Fire Department intends that the 180,000 gallon water tank be installed for fire suppression use within the LUO/LUE amendment area and that this installation cost be incurred by the Diani Project. We conclude this is the case because Impact PUB-6 describes the lack of a community water system within the LUO/LUE amendment area. If this is the intent, it should be considered on its own merits, as a separate project. A location should be identified, a project proposed and evaluated by the County, and the cost shared by LUO/LUE amendment area projects on a pro-rata basis.

Mitigation PUB-2 states:

> *"In accordance with the fire flow and water storage requirements of the County adopted California Fire Code (CFC), the applicant shall construct a firewater storage tank with a minimum storage capacity of 180,000 gallon"*

Section 903.3 of the CFC states that "*water supply is allowed to consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required fire flow. In setting the requirements for fire flow, the chief* ***may be guided by*** *Appendix III-A.*" [Emphasis added].

Appendix III-A includes Table A-III-A-1 (*Minimum Required Fire Flow and Flow Duration for Buildings)*. This table lists the minimum fire flow rate for buildings as 1,500 gallon per minute and the minimum flow duration as 2 hours. Presumably, the EIR uses these two data points to arrive at 180,000 gallons (1,500 gal/min * 60 min/hour * 2 hours = 180,000 gallons). Note that per Section 903.3, this Appendix is discretionary on the part of the Fire Chief.

The only "building" on the site will be the control room for the asphalt plant. Conservatively assuming that the control room will be 10 feet wide by 20 feet long by 8 feet high, the volume of this building will be 1,600 cubic feet or 12,000 gallons. A 180,000 gallon tank would be enough to fill this control room with water 15 times and is clearly over stated.

More importantly, the control room will house electronic equipment used to control the asphalt plant. It is extremely undesirable to use water on an electronics fire as it ruins the equipment. Thus, the project proponent will equip the control room with a fire suppression system that does not use water (e.g. foam suppression system).

It may be possible to argue that water is necessary for other fires involving other materials used at the site. However, the largest volume materials at the site will be aggregate and asphalt. Aggregate is simply rock and sand which will not burn. Asphalt may burn if heated to extremely high temperatures, however, a review of various material safety data sheets (MSDS) for asphalt indicate that the preferred fire extinguishing media is dry chemical, carbon dioxide, or foam. The

MSDS also state that water should not be used on asphalt fires as it may cause frothing, violent foaming, and boil over. C-28

There may also be other combustible hazardous materials at the site such as diesel fuel. Again water is not the desired fire extinguishing media as materials such as diesel fuel float on water and using water to fight fires can cause the fire to spread. Furthermore, 180,000 gallons to extinguish a fire of these materials (which are typically stored in volumes less than 200 gallons) is far more than could reasonably be expected to be used. A 180,000-gallon tank is not required by the CFC and is not appropriate for the proposed project.

Impact PUB-4 – The DEIR states the Diani Project could result in a significant impact with regard to the potential demand for school services. Subsequently, the DEIR concludes the impacts are significant. Where in the DEIR is the magnitude of this demand documented? Worst case, the conclusion of Significant and Mitigable should be changed to *Potentially* Significant and Mitigable. C-29

Mitigation Measure PUB-4 – The Mitigation Measure is incorrectly numbered, probably due to the fact the preceding Mitigation Measure, presumably PUB-3, is unnumbered. C-30

Impact PUB-5 – The discussion acknowledges the Diani Project will make use of recycled asphalt products (RAP) and recycled rubberized asphalt concrete (RAC), which serves to reduce the solid waste generated within the County that might otherwise be placed in sanitary local landfills. As a result, we recommend the Impact Category attributed to the Diani Project be change from Insignificant to Beneficial (Class IV). C-31

Impact PUB-8 – Refer to the Mitigation Measure PUB-2 related comments provided above. C-32

General Comment Regarding DEIR Tone - Given the characterization of Diani Project Public Services and Utilities related impacts, we find there is considerable disparity in the language accorded the Diani Project and that accorded the LUO/LUE Amendment Area Impacts and Mitigation Measures. Care need be taken to ensure there is consistency within the DEIR discussions and how information is being characterized. Contrasting the following pairings this disparity becomes evident: C-33

- PUB-6 and PUB-1 regarding the demand for fire protection services, mitigation fees and residual impacts to fire protection personnel.
- PUB-7 and PUB-3 regarding the demand for police protection services.
- PUB-8 and PUB-4 regarding the demand for school services.
- PUB-9 and PUB-5 regarding increases in solid waste services.

This disparity is most evident in how the DEIR discussion of Impact PUB-2 is entirely focused on Diani Project impacts, without a parallel discussion of the LUO/LUE Amendment Area Impacts, which will also generate demand for water resources for fire protection services. Refer to the comments provided above regarding Mitigation Measure PUB-2.

Chapter 5.11 – Recreation

C-34

Mitigation Measure REC-2 requires the Applicant grant a permanent easement to the County for the proposed trail corridor (25-foot wide minimum). The DEIR needs to acknowledge the Applicant is a tenant and is only in a position to request that the landowner grant such an easement.

Chapter 5.14 – Water Resources and Flooding

C-35

Mitigation Measure WR-7 requires lime-treated aggregate to be stored on elevated concrete pads under shelters to prevent direct contact with rainfall, storm run-off and floodwaters.

Lime-treated product is a direct result of market demand, has limited uses and will be produced approximately 20 days per year during the dry season. It is unnecessary to require that this product be placed on concrete pads and covered due to the short-term manufacturing and storage on site during dry weather conditions.

Comments Regarding Insignificant Impacts with Mitigation Measures

C-36

With regard to the characterization of impacts and the development of Mitigation Measures, CEQA Guidelines Section 15126.4(a)(1), provides that an EIR shall describe feasible mitigation measures which could minimize significant adverse impacts; the operative words being "significant adverse impacts". In several locations, a Mitigation Measure has been developed for an insignificant impact. This is an inappropriate use of the CEQA process, serves to confuse the reader regarding the information provided in the analysis, and labors mandated Mitigation Monitoring and Reporting Plan (MMRP) with unnecessary requirements.

The "insignificant" impacts for which Mitigation Measures have been developed include the following:

Page 5.2-4, Impact AG-2, unnumbered Mitigation Measures (presumably AG-2)
Page 5.4-34, Impact BIO-6, Mitigation Measure BIO-6
Page 5.12-6, Impact TRA-1, Mitigation Measure TRA-1
Page 5.12-9, Impact TRA-2, Mitigation Measure TRA-2
Page 5.14-21, Impact WR-4, Mitigation Measure WR-4
Page 5.14-26, Impact WR-11, Mitigation Measure WR-11

Because each of these impacts have been determined to be insignificant, no mitigation is needed (i.e., there is no CEQA nexus). A sentence should be added that states: "No mitigation required."

In many of instances, the Mitigation Measure simply restates what the Applicant has included within the Project Description as a self-developed condition. Where this is the case, the DEIR should have acknowledged the value of the Applicant's conditions in contributing to the determination of an insignificant impact, and presented condition language in a sub-section following Mitigation Measures that is entitled "Recommended Conditions of Approval".

In other instances, the County appears to be recommending additional requirements, even though the impact has been identified as insignificant. This too should be acknowledged in the DEIR, clearly explained, and presented condition language in a sub-section following Mitigation Measures that is entitled "Recommended Conditions of Approval". C-36

In this manner, County staff will be presented with the information needed to develop and implement the required MMRP, and develop and implement the recommended Conditions of Approval they advance to the decision making body in their Staff Report.

If you have any questions or wish to discuss this further, please contact John Hecht or me at (805) 644-7976.

Best regards,

Ingrid Elsel

Ingrid Elsel
Senior Manager
West Coast Environmental and Engineering

Enclosures: WCE Response to the Draft EIR Air Quality Analysis
WCE Comments on the Noise Section of the Biorn DEIR

A.J. DIANI CONSTRUCTION CO., INC.
GENERAL BUILDING • GENERAL ENGINEERING • ENVIRONMENTAL SERVICES

September 26, 2005

Mr. John McKenzie, EIR Project Manager
San Luis Obispo County
Department of Planning and Building
County Government Center, Room 310
San Luis Obispo, CA 93408-2040

Re: Response to Biorn Draft EIR
Air Quality Section

Dear Mr. McKenzie,

D-1

A. J. Diani Construction Co., Inc. ("Diani") requested its consultant, West Coast Environmental and Engineering ("WCE"), to review and provide necessary comment on the subject Draft Environmental Impact Report ("DEIR"). Upon comprehensive review, WCE has concluded that numerous misinterpretations and miscalculations exist within the DEIR Air Quality Analysis Section which do not accurately reflect or represent the true impacts of the proposed facility. Accordingly, Diani has attached its comments via WCE correspondence dated September 23, 2005 (the "WCE Air Quality Analysis").

As such, Diani is disappointed and disturbed that the Air Quality Section (5.3) of the DEIR fails to utilize the current baseline information on the specifically proposed equipment and facilities for the conditional use permit component of the project. The proposed equipment and underlying data is representative of current standards and technology available to provide the proposed state-of-the art facility. Not only was the baseline information ignored, but it was replaced with out-of-date data and irrelevant information from sources which do not properly represent the specific facility that Diani is proposing. Consequently, the Air Quality Section of the DEIR overestimates both short term and long terms air quality impacts and renders Diani subject to unjustifiable mitigation measures. Furthermore, the DEIR attempts to circumvent the San Luis Obispo Air Pollution Control District's (APCD) permitting process by suggesting requirements and mitigation measures beyond DEIR requirements, and under the purview of APCD.

Diani is recommending that the entire Air Quality Section of the DEIR be thoroughly reviewed and rewritten, utilizing the data that accurately represents the proposed facilities and that the WCE Air Quality Section Analysis be fully addressed.

Respectfully,

Richard D. Jackson, President

Attachment: WCE Air Quality Section Analysis dated September 23, 2005

cc: Jim Diani (with attachment)
Timothy J. Carmel (with attachment)

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September 23, 2005

Mr. Jim Diani
A.J. Diani Construction Co., Inc.
295 N. Blosser Road
Santa Maria, CA 93456-0636

Subject: Response to Draft EIR Air Quality Analysis **AJD140**
A.J. Diani Nipomo Project

Dear Mr. Diani:

West Coast Environmental and Engineering (WCE) has reviewed the Air Quality Analysis portion of the Draft Environmental Impact Report (DEIR) for the Biorn Conditional Use Permit and Land Use Ordinance/Land Use Element Amendment. The following concerns were identified:

- The DEIR utilized out of date or incorrect emission factors and emission calculation methods and aggressive project assumptions that combine to overestimate both construction and operational air impacts for the proposed project.

- Asphalt plant operational emissions were incorrectly included in the assessment of project significance. Although presenting these emissions in an EIR is appropriate for informational purposes, they should not be included in the significance analysis since these emissions are permitted by the San Luis Obispo County Air Pollution Control District (SLOAPCD) who will conduct New Source Review (NSR) and Best Available Control Technology (BACT) review to determine permitting and control requirements (i.e. mitigation measures). Only non-permitted plant equipment and emissions such as area sources of fugitive dust and mobile equipment combustion should be considered in a significance analysis.

- This same logic applies to the discussion of health risk assessments that would be required by the SLOAPCD during permitting activities. Analysis of impacts and application of Toxics Best Available Control Technology (T-BACT) would occur at the time of SLOAPCD permitting per their Rule 219 "Toxics New Source Review".

Our analysis indicates that these flaws have resulted in the unnecessary inclusion of Mitigation Measures AQ-1, AQ-3 and portions of AQ-2. A more detailed discussion of our analysis follows.

1.0 CONSTRUCTION EMISSIONS

1.1 DEIR Significance Findings for Construction Impacts:

The DEIR identified mitigated (water spray) fugitive dust emissions of 5.4 tons/quarter (12.11 tons/quarter unmitigated) which exceeds the 2.5 ton/quarter threshold. As a result, Mitigation Measure AQ-1 was proposed to reduce fugitive dust emissions.

1.2 Discussion of the DEIR's Analysis

Off Road Combustion Emissions: The references used by the DEIR to calculate combustion emissions from non-road engines are out of date. The DEIR used 1991 Non-Road Engine & Vehicle Emission study and loading factors from EPA NONROAD model based on Report NR-005 from 1997.

ARB recommends using Mail Out 99-32 which is the basis for the State's non-road emission inventory and should be representative of the local fleet and CARB diesel fuel formulations (i.e. low sulfur fuels). Alternatively, URBEMIS is also a more current and accurate source for emission factors for non-road sources.

Fugitive Dust Emissions: The DEIR used 1995 AP42 Section 11.9.2, 13.2.2, 13.2.3 and 13.2.4 emission factors for grading, scraping, unpaved road and wind dust emissions. In general, the emission factors used are either out of date, or grossly overestimate emissions:

- The use of land clearing and scraper soil removal and scraper travel and scraper soil dumping emission estimates is excessive. Also, the land clearing emission factor used in the calculations is for clearing of undeveloped land in coal mining operations. This project does not involve land clearing but rather finish grading of an already cleared and developed property.

- The unpaved road equations utilized are out of date and are no longer found in AP42. The DEIR estimates 5.0 ton/quarter fugitive dust emissions (unmitigated) for unpaved road heavy duty truck travel assuming 10 VMT/day, 65 days/quarter. There is no discussion to justify the use of 10 VMT/day or 65 days of heavy truck use. The equipment list supplied in WCE's April 2003 Air Quality Assessment does not support these assumptions. Heavy duty delivery trucks that may be used during construction of the asphalt plant would be in use 35 days and travel a distance of only 200 to 300 feet from the gate to the plant site to deliver asphalt plant equipment. The combination of excessive miles and out of date equations makes this estimate invalid.

- The lb/peak-day calculations assume all construction emissions occur at the same time. There is no accounting for staging of the construction operations. The calculations drastically overestimate peak daily fugitive dust emissions.

- Wind erosion emissions are grossly overestimated and use an incorrect emission estimation method. The DEIR estimates 5.94 ton/quarter fugitive dust emissions (unmitigated) for wind erosion assuming an emission factor of 26.4 lb/day-acre for 90 days. The emission factor used is from the SCAQMD 1993 CEQA table A9-9 for "Graded Surface". This factor is meant for surface grading not for wind erosion. This

was confirmed via contact with Mike Krause of SCAQMD Planning Group. The use of 90 days also assumes high wind conditions for the entire construction period, which is not a viable assumption.

Use of the SLOAPCD screening factor for construction fugitive dust of 0.75 tons/acre-month would yield a screening estimate for all fugitive dust emissions during the construction phase. WCE's April 2003 Air Quality Assessment used this factor and actual proposed construction phase duration estimates to generate a total uncontrolled fugitive dust emission of 1.96 tons for the construction phase. Assuming these emissions occur in 3 months (one quarter) as the DEIR did, the construction phase fugitive dust emissions are below the level of significance of 2.5 tons/quarter. Using the DEIR's mitigation values based on watering, 65% reduction for unpaved roads and 50% reduction for wind erosion, the emissions are reduced well below significance.

Based on this analysis, Mitigation Measure AQ-1 in its proposed form would not be required. The use of water trucks or sprinkler systems would provide the necessary dust control.

2.0 OPERATING EMISSIONS

2.1 DEIR Significance Findings for Long Term (Operating) Impacts

The DEIR's analysis identified peak day emissions would exceed the daily significance threshold for NOx, ROG, CO, SO_2 and PM_{10} and the annual significance threshold would be exceeded for PM_{10}. As a result the following mitigation measures were proposed:

- Measure AQ-2 related to controlling fugitive dust and asphalt plant emissions. Control measures included:
  - Paving the asphalt plant site and all access roads
  - Water spraying stockpiles and any other dust generating area/activity.
  - Providing a dust monitor.
  - Utilizing drum mix technology for the asphalt plant (instead of a separate mixer) to reduce CO emissions.
  - Contribution to an off-site mitigation fund administered by APCD to finance regional emission reduction projects in the area.
- Measure AQ-3 related to SLOAPCD requiring an AB2588 risk assessment.
- Measure AQ-4 related to asphalt odors (no mitigation required).
- Measure AQ-5 related to the requirement of project specific air quality assessment studies for future proposed new uses within the LOU/LUE amendment area.

2.2 Discussion of the DEIR's Analysis

Off Road Combustion Emissions: As discussed above in 1.2, the references used by the DEIR to calculate combustion emissions from non-road engines are out of date. ARB recommends using Mail Out 99-32 which is the basis for the State's non-road emission

inventory and should be representative of the local fleet and CARB diesel fuel formulations. Alternatively, URBEMIS is also a more current and accurate source for emission factors for non-road sources.

The PM_{10} calculations assume that 2 wheeled loaders will operate 20 hours per day each during the operations phase. Since only one loader will operate at any one time, this calculation overestimates PM_{10} emissions. Revised calculations would yield 7.3 lbs/peak day versus 13.5 lbs/peak day, yielding total operations mobile source PM_{10} emissions of 8.6 lbs/peak day versus 14.8 lbs/peak day. Associated NOx, ROG and CO emissions are similarly reduced yielding total operations mobile source emissions of 419.5, 24.9 and 115.2 lbs/peak day respectively.

Also, the peak day values for ROG and CO have been erroneously switched in Table 5.3-6. This error carries through into the emissions Summary Table 5.3-8.

Asphalt Plant Operating Fugitive Dust/PM_{10} Emissions: The DEIR's fugitive PM_{10} emissions for plant operations are grossly overestimated at 3,378.5 lbs/peak day (1.201.9 lb/peak day mitigated by watering). This is noteworthy as the bulk of the recommendations in control measure AQ-2 relate to fugitive dust. Also, there is no discussion or calculations shown for how the annual emissions of 37.9 tons/year was determined:

- According to the DEIR's calculations, "unpaved road" truck travel accounts for 2,459.3 lbs/peak day or 72.8% of the estimated unmitigated fugitive PM_{10} emissions. The unpaved road equation used by the DEIR is out of date and is no longer found in AP42. <u>As all on site truck access roads are proposed to be paved before operations commence, (see Mitigation Measure AG 2-A) it is unclear why the DEIR chose to estimate unpaved road emissions.</u> With proper watering, paved roads provide a 95% control factor for PM_{10}. Recalculated emissions using the DEIR's original uncontrolled PM_{10} estimate assuming controlled paved roads result in:

  2,459.3 lb/peak day x 0.05 = 123 lb/peak day

- According to the DEIR's calculations, "unpaved road" loader travel accounts for 789.9 lbs/peak day or 23.4% of the estimated unmitigated fugitive PM_{10} emissions. The unpaved road equation used by the DEIR is out of date and is no longer found in AP42. Also, the estimated 200 VMT/day seems excessively high for loader travel and appears to be calculated using an average speed of 10 mph for a 20 hour day. This assumes no stopping to pick up and unload material. An alternate calculation assuming a distance of 250 feet from the mid point of the stockpiles to the point of unloading is shown below:

6,000 ton/day production x 92% aggregate =	5,520 tons aggregate moved on the peak day
Caterpillar 980: 7.5 yd3 bucket x 1.5 tons/yd3 =	11.25 tons/load
5,520 tons/day ÷ 11.25 tons/load =	490 round trips to stockpiles
490 trips x 250 ft to stockpile x 2 ÷ 5,280 ft/mile =	46.4 VMT on peak day

  46.4 VMT on peak day is 23.2% of the DEIR's estimate of 200 VMT/day. Recalculated emissions using the DEIR's original uncontrolled PM_{10} estimate yield:

789.9 lbs/peak day x 0.232 x 0.35 reduction for watering = 64.1lbs/peak day

- Wind erosion accounts for 3.8% of the total estimated fugitive dust emissions. Again, the emission factor used for wind erosion is from SCAQMD 1993 CEQA table A9-9 for "Graded Surface". This factor is meant for surface grading not for wind erosion.

Using the recalculated road emissions yields total peak day PM_{10} emissions of 187 lb/day. Comparing average day deliveries of 54 to 240 deliveries for a peak day yields a ratio of 22.5%.

Average day fugitive PM_{10}: 187 lb/peak day x 0.225 = 42 lb/average day

Annual average fugitive PM_{10}: 42 lb/day x 303 operating days/year
= 12,726 lb/year or 6.36 tons/year

The recalculated annual PM_{10} emissions of 6.36 tons/year is much lower than the 37.9 tons/year estimated by the DEIR and makes the annual PM_{10} emissions fall below the level of significance, questioning the need for portions of control measure AQ-2, especially the requirement to pave the asphalt plant site.

SLOAPCD Permitted Asphalt Plant Operating Emissions: The DEIR included asphalt plant emissions that would require permitting by the SLOAPCD in their analysis of project significance. Although presenting these emissions in an EIR is appropriate for informational purposes, they should not be included in the significance analysis since these emissions are permitted by the SLOAPCD. This permit system is separate from CEQA and involves reviewing equipment design, followed by inspections, to ensure that the equipment will be built and operated in compliance with SLOAPCD regulations.

The emissions from equipment or operations requiring SLOAPCD permits are not counted towards the air quality significance thresholds. This is for two reasons. First, such equipment or processes are subject to the District's New Source Review permit system, which is designed to produce a net air quality improvement. Second, facilities are required to mitigate emissions from equipment or processes subject to APCD permit by using emission offsets and by installing BACT on the process or equipment. Imposing mitigation measures under CEQA for equipment requiring permit by a local air district is inappropriate.

Regarding the informational presentation of asphalt plant operating emissions, the DEIR utilized EPA AP42 Section 11.1 emissions factors for an asphalt "batch" plant to estimate portions of the operational emissions. The batch plant AP42 emission factors were developed using source test information from the late 1980's through the mid 1990's and do not reflect current asphalt plant emissions control technology, making the use of the AP42 factors suspect. Also, the proposed project asphalt plant utilizes a continuous counter flow dryer and separate continuous flow mixer both utilizing BACT emission controls, not a batch process.

Of primary concern is the use of the CO emission factor of 0.4 pounds of CO per ton asphalt produced. This factor is a combined emission factor for natural gas, No. 2 fuel oil and No. 6 fuel oil. This factor significantly overestimates CO emissions. Use of emission factors found in AP42 Section 1.4 for natural gas combustion would be more representative of expected emissions.

As discussed, only non-permitted plant equipment and emissions that need to be subjected to CEQA impact analysis and mitigation should be considered in a significance analysis. This includes:

- Area sources of fugitive dust.
- Mobile equipment combustion emissions.
- Emergency IC engine electric generators used solely as a source of standby power when normal power fails.
- External combustion equipment rated less than 2,000,000 Btu/hour and fired exclusively on natural gas. Since the proposed asphalt oil heaters are rated at 2,000,000 Btu/hour, they would require APCD permitting.

Removing equipment permitted by the APCD (asphalt plant and emergency generator), and utilizing the revised emissions estimates shown above, the emissions summary becomes:

Pollutant	Units	Non-Permitted Plant Emissions		Mobile Sources	Total	Significance Threshold	Threshold Tier
		Fugitive Dust	Emergency Generators				
NOx	Pounds/peak day	--	7.9	419.5	***427.4***	25	2
	Tons/year	--	0.21	18.07	18.28	25	3
ROG	Pounds/peak day	--	0.3	24.9	***25.2***	25	3
	Tons/year	--	0.01	1.21	1.22	25	3
CO	Pounds/peak day	--	2	115.2	162	550	2
	Tons/year	--	0.05	6.32	6.37	NA	NA
PM_{10}	Pounds/peak day	64.1	0.4	8.6	***73.1***	25	2
	Tons/year	6.36	0.01	0.55	6.92	25	3

Based on this analysis, only NOx, ROG and PM_{10} would exceed the daily Tier 2 significance threshold and no pollutants would exceed the annual Tier 3 significance threshold.

3.0 MITIGATION MEASURE DISCUSSION

Based on the discussion in Section 1.0 and 2.0, the following recommendations are made:

- As construction phase fugitive dust emissions are below the level of significance of 2.5 tons/quarter Mitigation Measure AQ-1 in its proposed form would not be required. The use of water trucks or sprinkler systems would provide the necessary dust control.

- As annual operational PM_{10} emissions are well below the Tier 3 level of significance of 25 tons/year, portions of Mitigation Measure AQ-2 may not be required. Particularly, the requirement to pave the asphalt plant site would be unnecessary, especially considering that at least half of the unpaved area will be covered by stockpiles.

- The Mitigation Measure AQ-2 requirement for utilizing drum mix technology for the asphalt plant (instead of a separate mixer) to reduce CO emissions is also unnecessary since the requirements for equipment permitted by the SLOAPCD will be determined through the air permitting process.

- Measure AQ-3 related to the SLOAPCD requiring an AB2588 "Hot Spots" risk assessment should be removed. The need for an AB2588 "Hot Spots" risk assessment will be determined during the air permitting process.

If you have any questions regarding this review, please feel free to call me at (805) 644-7976.

Sincerely,

Rob Dal Farra, P.E.
Vice President
West Coast Environmental and Engineering

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September 30, 2005

John McKenzie
Environmental Devision, Planning and Building
County Government Center
San Luis Obispo, CA 93408

Email jdmckenzie@co.slo.ca.us
(805) 781-5452 Phone
(805) 781-1242 Fax

Dear John McKenzie

RE: Comments on the Draft Environmental impacts report Biorn Land Use Ordinance

There are no maps provided that show the boundaries of a the "Nipomo Mesa Hydrologic sub-basin of the Santa Maria Groundwater basin" and the relation to the project.. E-1

In the water section Page 5.14-1 makes an incorrect assumes that the proposed water supply sources for the project are from the "Nipomo Mesa Hydrologic sub-basin of the Santa Maria Groundwater basin".

There is no Hydro_geologic "sub-basin" (groundwater "sub-basin") with in the Santa Maria groundwater basin.

Other sections make the above incorrect assumptions

Attached maps and there sources show that the project is outside any previously defined "Nipomo" "sub area", as are the maps from the referenced studies.

Failure to include the project in a correctly defined hydrologically based sub area will result in a excessively favorable analysis of the water status and result in an inadequate evaluation and mitigation of the environmental impacts to the water resource, there by causing environmental impacts to water resources by the project.

The Deir must correctly locate and analyze the projects and it's impacts with respect to groundwater.

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There is no analysis of the fact that the project is within the Santa Maria Valley Water Conservation District Boundary and pays a benefit assessment tax to support the Twitchell reservoir and it's recharge of the groundwater under the project. E-2

Failure to include the projects contributions and the resulting benefits of paying for recharge of the groundwater under the project will result in a excessively unfavorable analysis of the water status and result in an inadequate evaluation and mitigation of the environmental impacts to the water resource, there by causing environmental impacts to water resources by the project.

Thank You

John Snyder
Vice President

File: Biorn EIR letter 05 0930b Page 2 Printed: 10/3/2005 6:47 AM

http://www.sccomplex.org/docfiles/V79FD16EFD7F.pdf
Pages 19 and 20
Settlement Management areas, Exhibit C

EXHIBIT C

Map of the Basin and Boundaries of the Three Management Areas

Santa Maria Valley Water Conservation District v. City of Santa Maria
Santa Clara County Superior Court Case No. CV 770214

File: Biorn EIR letter 05 0930b Page 3 Printed: 10/3/2005 6:47 AM

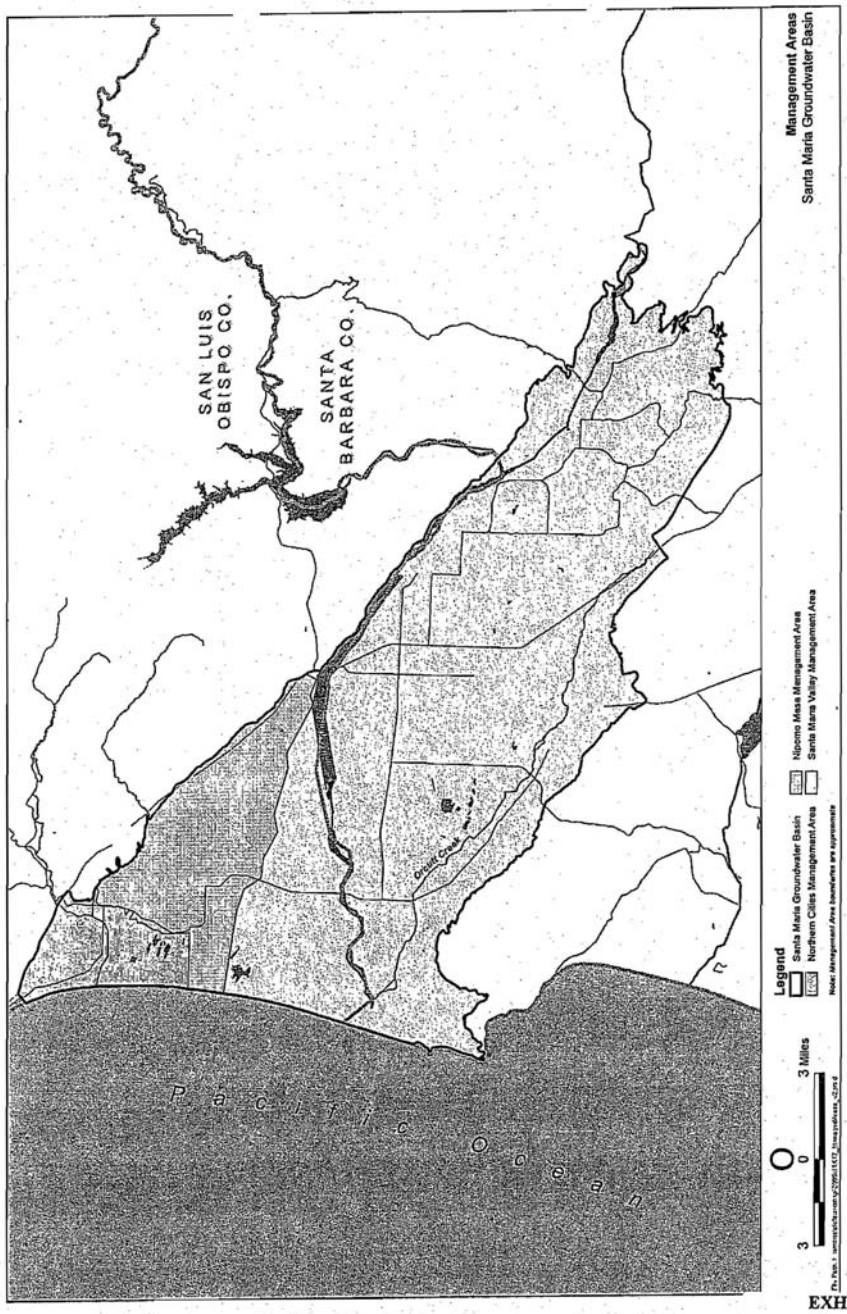

EXHIBIT C
Page 1 of 1

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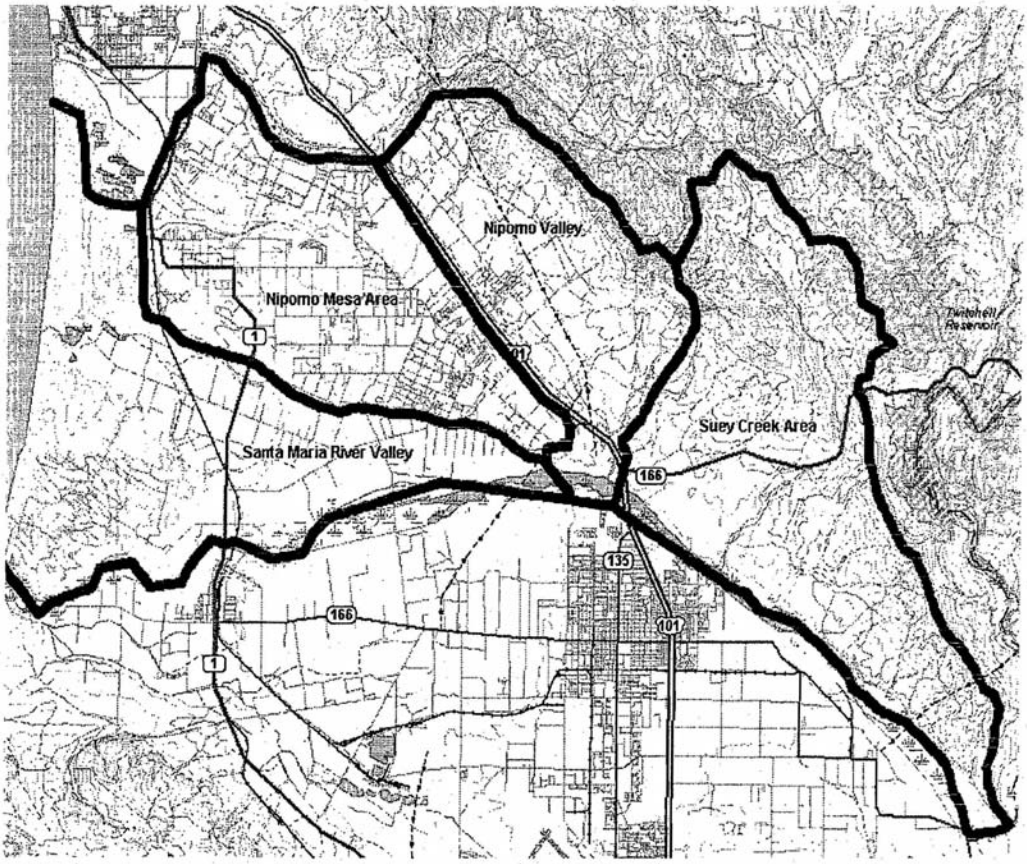

Adapted from San Luis Obispo County Master Water Plan Update, Phase II, January 2003

NIPOMO WATER PLANNING AREA (WPA6) AND SUBAREAS
Nipomo Mesa Water Resource Capacity Study
San Luis Obispo County, California

Figure 2

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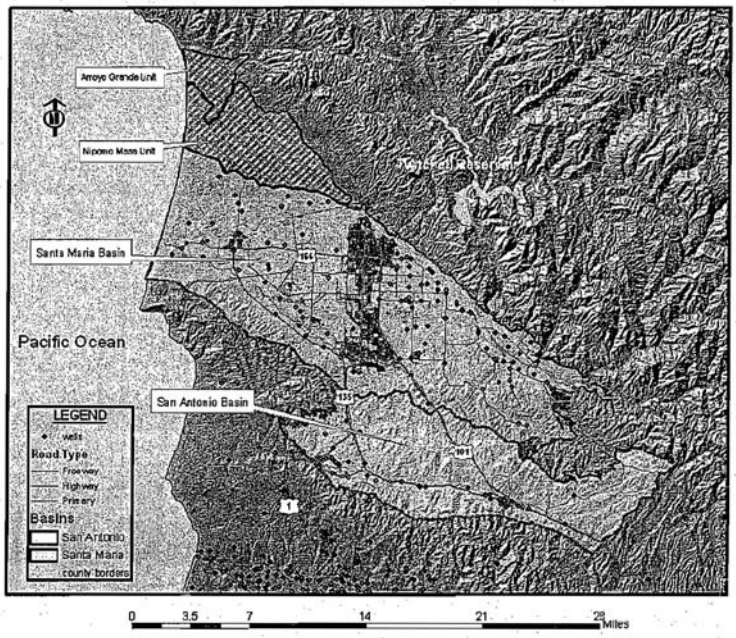
http://www.countyofsb.org/pwd/water/pdf/Santa%20Maria%20Groundwater%20Basin.pdf Page 3

Santa Maria Groundwater Basin



In 1921 the first soil survey of the basin was made. Examination of the basin continued to be limited to oil until 1931 when Lippincott established baseline hydrologic conditions for consideration of federal and state funding towards a project to curb runoff problems on wet years and establishing a need for water conservation practices.

In 1946 USGS Bulletin 222 was released, mentioning a 12,000 AF annual overdraft. The period of the *most comprehensive evaluation* of the basin began in 1947 and continued until 1966 with work by Worts, Miller and Evanson. During this period the perennial yield of the basin was established to be 70,000 AF (revised from 57,000 AF) and an approximate annual overdraft of 20,000 AF was calculated. In 1976 the Toups Corporation was hired by the City of Santa Maria to perform a thorough Water Resources study of the basin. This report concluded that in 1976 the annual average overdraft of the basin was 6,000 AF and projected to be 25,000 AF by the year 2025 without implementation of additional water sources. The USGS did a report in 1976 focusing of water quality of the basin, specifically increasing nitrogen levels. This report listed the calculated average annual overdraft to be 10,000 AF.

In 1977 the Water Agency (Ahlroth et al) completed a comprehensive report of the basin using all of the latest data and climate trends that concluded an average annual overdraft of 20,000 AF existed and projected a 30,000 AF overdraft by the year 2000. In

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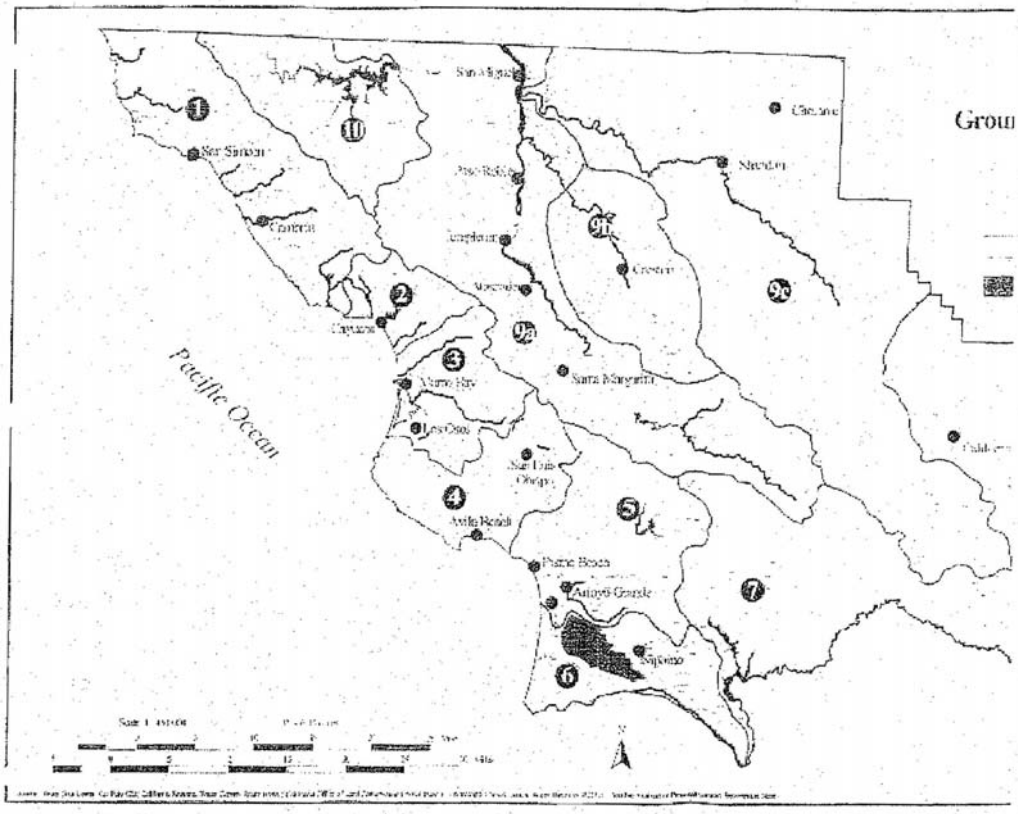
http://www.slocountywater.org/mvp/pdf_files/Water%20recharge%20areas.pdf



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Nipomo Community Advisory Council Response to Draft Environmental Impact Report for Biorn Land Use Ordinance Amendment and Conditional Use Permit ED03-344, -345 (G020020M/D020293D)

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S.L.O. CO PLANNING DEPT.

After careful review, the Nipomo Community Advisory Council (NCAC) finds this Draft Environmental Impact Report (DEIR) has a number of major flaws, some of which are as follows:

1. Table 2-1 (AES-1): Visual impacts to motorists traveling on Highway 101. The report states: "No Mitigation Required." But the NCAC does not believe the gateway to the community of Nipomo and San Luis Obispo County should be an asphalt/concrete plant with towers exceeding the height of the concrete plant that already exists on the site. The DEIR claims that the proposed facility will only be visible for six seconds to motorists traveling at 65 miles per hour on Hwy 101 in either direction. In fact, the existing plant is visible for 23 seconds to northbound traffic crossing the bridge at 65 miles per hour, and is visible for four-tenths of a mile southbound. With taller towers, the plant will be visible for an even longer time frame. The idea that this is what visitors will first see when they enter the community of Nipomo and San Luis Obispo County is incongruous with the scenic highway corridor and undermines the rural atmosphere that area residents are trying hard to preserve in Nipomo. F-1

2. Table 2-1 (AES-2): Suggests that mitigation would be necessary for motorists traveling along Highway 101 and for some residences in the area. Yet, the proposed landscape plan for fast growing trees will not obscure this Plant with the proposed towers for many years. (AES-1 and AES-2 are in conflict) F-2

3. Table 2-1 (AES-4): According to the report, a concrete sound wall will prevent noise generated by this industrial operation from migrating off site. However, the proposed sound wall will create a visual obstruction that is conspicuous, offensive, and out of place on a scenic highway. F-3

   The report also provides conflicting data on whether residences involved in the mitigations are located 500, 1000, 1500 or 2,500 feet from the project site -- different sections of the report refer to different distances. In any case, residences to the south and north of the site will have reason for complaint and may be subjected to a variety of impacts to air quality and health, among others.

4. Noise from big trucks using engine breaks as a braking assist is very loud. Mitigation should require them to meet all the noise conditions of the Land Use F-4

Ordinance. Also, no use of engine breaks within one mile of this intersection should be permitted. F-4

5. Table 2-1 (AES-5): The report refers to an 180,000 gallon water tank "set into the grade." Does this mean it will be below grade? Set into the bluff? How high will it be above grade? And if set into the grade, will it have a pump to provide pressure for emergency equipment to obtain the needed fire flow in case of an emergency? What about the fact that it is located in a flood plain? What will happen to this tank in a 100-year flood? F-5

6. Table 2-1 (ES 7): If the project site is rezoned to Industrial, the LOU/ LUE would allow a chemical manufacturing plant to be constructed on this property. Because it is located in a flood plain, we believe this should be limited and that operation of a chemical manufacturing plant (or any similar activity) on this site should be prohibited. F-6

7. Control of dust pollution from this facility will require large amounts of water. The source of this water presumably will be the underlying ground water basin, which is in overdraft. This could have a detrimental effect on the quality of Nipomo's water as well as the availability of water to residents. F-7

8. This facility will generate an estimated 3.02 million gallons (9.26 acre-feet) of wastewater per year. How will this wastewater be disposed of? The operations at this plant will produce a likely increase in the PH, so wastewater should not be allowed to flow off site into the Blue Line waterways, nor should it be allowed to percolate back into the ground water basin, which is the main source of drinking water for the residents of Nipomo and Santa Maria. The DEIR also indicates that there will be an onsite septic system for the restroom and other such amenities but it gives no indication of how this bio-wastewater will be disposed of. F-8

9. Table 2-1 (AQ-2): Air Quality. The proposed industrial activities at the plant will cause the air quality in the general vicinity to become less acceptable. Depending on the amount and type of emissions generated, wind velocity and direction, and other factors, the level of emissions and subsequent degradation of air quality could be significant. Allowing this plant to be constructed in such close proximity to residences and then allowing it to pay an off site fee for mitigation of air quality is neither appropriate or an acceptable alternative for this area. F-9

   The NCAC also has concerns on the following: What is the length of time an air monitoring station will be in place? Who is responsible for monitoring? How long will county oversight be in place? All options for the required air quality mitigation projects must be identified in in the Final EIR. The mitigations must prove to be measurable and with a nexus to project.

10. Table 2-1 (A.Q.-4): Mitigation should be required to keep airborne fumes from migrating off site. Asphalt fumes and other odors produced by this plant may be F-10

2

highly offensive and will be a concern for residents living nearby. Such noxious fumes could become a nuisance and a health hazard if not abated. F-10

11. Additionally, there are concerns about the long term effects that the industrial operations on this site may have on flora and fauna in the area. Why are these impacts acceptable? How are the special status species going to be protected or relocated? F-11

12. Section 5.4.38 of the report states that "due to access constraints identified, a large portion of the LOU/LUE area which would be affected by the Land Use Ordinance amendment was not surveyed." How can a bona fide Environmental Impact Report be compiled with any meaningful degree of accuracy -- and how can necessary mitigations be identified and implemented -- if the researchers do not have permission to pass over the land in question? Looking at the land through binoculars cannot possibly provide an understanding of what must be done to protect wildlife, plants, and water resources or to safeguard other environmental concerns that may be present on or around the site. F-12

TRAFFIC ANALYSIS F-13

We see a major problem with increased traffic from this expanded plant, even though the DEIR suggests that the facility will not change the Level of Service (LOS), which will supposedly remain at Level C. Although the numbers given in the DEIR are inconsistent and vary quite a bit depending on which chart or paragraph you read, it is clear that there will be many net trips per day from this plant.

1. **Table 3.5** tells us that during peak production, traffic generated by the proposed facilities will include 240 outbound trips, 216 inbound trips, and 14 other trips, for a total of **470 trips**. During normal operations, this table shows there will be 53 outbound, 45 inbound, and 3 other trips for a total of **101 trips.**

2. **Table 3.6** states there will be 240 outbound production, 216 inbound aggregate, and 14 "other" for a total of 470 deliveries and 470 deliveries and 470 return trips, plus 12 incoming and 12 outgoing employee trips for a total of **964 trips per day** during peak production. In non-peak production, there would be 101 total deliveries and 101 returns, and 24 employee trips, for a total of **226 trips**.

If we use the figures for the non-peak work day, employees (or crews) will be working eight hours and, if table 3.5 is correct, then this facility will generate movement of one vehicle every **4.8 minutes** during a typical eight hour work day. For a ten-hour shift, one vehicle movement would occur every **6 minutes.** The DEIR indicates that there would be eight driving hours per shift. During peak production, assuming that crews will work for 80 days maximum at peak, that would be **16 hours of driving** (two eight hour shifts.) By extrapolating these figures, we can estimate that there will be a movement from or to this facility about every **two minutes**.

3

As previously mentioned, the draft EIR provides conflicting data on the number of daily vehicle trips this facility would generate. For instance, *page 42.2* states that there will be 964 movements net from the site on a daily basis, while *5-3-4* suggests that 240 asphalt trips are planned, 25 tons each, plus 226 materials trips, 25 tons each, 452 truck movements, an additional 30 truck movements for other purposes, and 24 employee trips for a total of **746 daily trips**. F-14

TRA-2 acknowledges that an expected 984 truck trips will have an impact on traffic. It also states that there will be a maximum of 840 one-way trips per day, averaging 202 one-way daily trips over a running twelve-month time frame. This means there will still be a vehicle movement from this facility every **4.8 minutes** during non-peak hours. One sure way to create gridlock would be to Install a signal light at Hutton and Cuyama Lane. F-15

TRA-2 concludes that the increased traffic from the proposed plant will have no impact on the traffic Level of Service (LOS). It is hard to understand how the movement of **964, 840, 746, 470 or 226 vehicles, or even 101 daily trips** involving large, slow moving trucks will not affect the LOS. How many of these trips will go south? According to the DEIR, most of the incoming and outgoing trips will be traveling south over the Santa Maria River bridge. The DEIR also claims that the onramp meets the State of California's requirements for a freeway onramp, but if you are driving south past the onramp when a large truck is coming on to the highway, you will often see two to five vehicles trailing behind it. On a good day, these large trucks will be traveling at 35 to 45 miles per hour before they reach the southern end of the Santa Maria River bridge. The southbound onramp is 792 feet up a steep grade, and it is 3,960 feet form the entrance to the onramp to the southern end of the bridge. These slow trucks must merge with traffic moving at speeds of 70 to 75 miles per hour. This influx of large trucks often causes traffic to slow and back up; motorists caught behind the trucks will pull out and try to pass as soon as the trucks enter the freeway, exacerbating the traffic problem and causing potentially unsafe road conditions. For traffic moving in the opposite direction, the northbound freeway onramp is 1056 feet in length until you merge with freeway traffic, and additional truck traffic and daily vehicle trips generated by the proposed plant will cause an even more serious problem on Highway 101 and 166.

Mitigation for these potentially hazardous traffic conditions should include but not necessarily be limited to the construction of a longer onramp leading to the three-lane Santa Maria River bridge. Such an improvement is currently being discussed. This would allow slow-moving vehicles 3960 feet to reach optimum speeds before they merge into freeway traffic.

The DEIR states that the Plant's hours of operation will be 06:00 to 16:00 and 19:00 to 05:00 Monday through Saturday. Yet, existing traffic in this area is typically heavy on weekends because motorists use this corridor to reach Santa Barbara and other points such as Los Angeles and San Diego, while northbound traffic is for the most part business and tourist related. At present, there is no bypass to allow motorists to avoid the slow-moving truck traffic from the proposed facility. F-16

4

Notably, the efficient exit routes form this area are limited. If a traffic accident or other major obstruction to circulation occurs on this stretch of road, it will cause gridlock. Similarly, in the event of a catastrophic event at the Diablo Nuclear Power Plant, the plan for evacuating Nipomo's population calls for using Thompson and/or Orchard Road to Highway 166, then south on Highway 101. A traffic jam at this intersection would be disastrous, a possibility that is not addressed in this DEIR. F-17

There are inconsistencies in the DEIR other than the number of vehicle trips, including: F-18

1. The distance to the dwellings -- *AQ-4* says it is .3 miles (roughly 1572 feet); on another page, we are told it is 800 feet, and elsewhere we find 1000 and 2500 feet. We do not know how far it is, but these inconsistencies must be reviewed and corrected with the real numbers.

2. The storage of hazardous materials – is the fixed LPG tank 1,000 gallons or 1,500 gallons? F-19

3. Will the 8000 gallon portable propane tank always be on site? F-20

4. *Page 3-21: 42* reports that an estimated 42,090 gallons of hydrocarbon liquids will be stored on the site in various forms. As previously mentioned, this site is on a flood plain. When -- not if -- the site floods, what will prevent these toxic and potentially carcinogenic liquids from washing offsite and contaminating the surrounding farmlands? In January and February, 1969, November, 1977, January, 1995, January, 1997, and on March 5, 2001, the Santa Maria River flowed bank to bank, barely clearing the bottom of the Highway 101 bridge. In January 1997, Highway 166 washed out leaving Nipomo land locked. F-21

5. In Section 5 of the DEIR, which addresses safety concerns, no mitigation is suggested for the additional Sheriff patrols needed. In addition, there is a need for additional fire personnel. It is the proponent's responsibility to provide this additional fire protection and to do so on a 24/7 basis at the proponent's own expense. Unless these conditions are satisfied, the project should be denied. In similar developments, other counties have required developers to provide necessary public safety personnel, and to ensure that they will remain in compliance with these requirements as long as the plant remains operational, before they are allowed to start up operations. F-22

BIOLOGICAL MITIGATIONS F-23

1. The biological surveys cited in the DEIR were conducted during the dry season, and species identification was not specific to the project site. This is inadequate. Surveys must be carried out during optimal seasons for botanical and wildlife

5

identification. Several photos of wildlife on and near the proposed project site are submitted herewith. F-24

2. The impact of light and sound on the adjacent wetland, which is a migration stop on Pacific Flyway Route, must be evaluated. Recommend on-site species survey and count of both resident and migratory birds in the fall, winter, and spring on the Lower Nipomo Creek area. Also recommend a summary of the literature of the impacts of industrial noise and light to determine potential impact to resident and migratory avian species of the Lower Nipomo Creek. F-25

3. *The Lower Nipomo Creek Vision Plan and the Nipomo Watershed Plan* will be submitted to the California Department of Fish and Game in December 2005. The EIR should include elements of this document. This document was funded by Guadalupe Mitigation Funds because Nipomo Creek is part of the Santa Maria River Watershed. It should be a guiding document for identifying issues and problems relevant to the project site such as flooding, creek bank erosion, water quality, and viability of nearby agriculture. Additionally, the document identifies barriers in Lower Nipomo Creek that contributed to the major flooding incident on March 5, 2001. Removal of these barriers and proper repair of the creek bank will help prevent future flooding on the project site as well as improve habitat. The watershed plan also identifies other specific potential enhancement project sites in the Lower Nipomo Creek. The Final EIR should not be complete until this document is studied with respect to evaluating both on- and off-site mitigation options. F-26

4. Intensive industrial activity and direct construction impacts to the mixed willow habitat on the project site warrant on-site and off-site mitigation. Replacement of mixed willow habitat on the bank of the Santa Maria River adjacent to the project site will help prevent erosion, reduce flooding potential to the project site, and mitigate for industrial impacts to wildlife in the area. Additional off-site mitigation on the banks of Nipomo Creek at identified project areas in the Nipomo Watershed Plan should be included. If each project in the rezoned area is only responsible merely for on-site impacts, the cumulative impacts of the industrial zoning will not be fully addressed. Specific offsite projects that can reduce these impacts should be identified with costs assigned. A formula for contributing to such mitigation measures should be developed, and contributing to such a fund should be a condition of approval. F-27

5. The prior practices of the project applicant relative to Nipomo Creek should be taken into account in reviewing this application. The accompanying photos shown in Appendix A provide evidence of multiple violations and sub-standard monitoring by the county and regulatory agencies F-28

6

CONCLUSIONS

The mere fact that this large-scale industrial facility poses a host of potential hazards to the ground water, the air quality, and to surrounding residents and businesses is ample reason that this plant should not be constructed at the gateway to Nipomo and San Luis Obispo County. F-29

In conclusion, the authors of the DEIR did not physically inspect a majority of the area covered in the proposed General Plan Amendment. The report acknowledges a threat to Nipomo's ground water during construction, yet no mitigations are proposed, a fact that is unacceptable. Additional traffic generated by this project will only exacerbate the existing congestion, a direct result of inadequate infrastructure required to support the fast pace of residential and commercial development in Nipomo. Storage of hazardous and potentially cancer-causing chemicals on a known flood plain, and adjacent to the Blue Line waterway of Nipomo Creek and Santa Maria River could lead to contamination of those streams and of the ground water which Nipomo residents depend on for their drinking water. People downstream from the Plant may experience adverse impacts to air quality and short-term respiratory ailments as well as more insidious long-term health concerns. Payment of an offsite mitigation fee does nothing to benefit residents who would be directly impacted by the degradation of water and air quality, nor the impacts on agriculture production downstream from the facility. The increased load on the area's already overtaxed infrastructure and additional demands on public safety with no mitigations is unacceptable and a disaster in the making. Little or no mitigation is proposed to protect plant and wildlife species inhabiting the site or which use the area.

Assuming that the above referenced inconsistencies and omissions of the DEIR were to be remedied and adequate mitigations adopted, who will monitor this facility around the clock and enforce these mitigations? The County of San Luis Obispo has admitted that they do not have the personnel to do the required monitoring.

In consideration of the fact that this DEIR fails to adequately identify or promulgate the mitigations necessary to assure the quality of our air, water and agricultural lands, the Nipomo Community Advisory Council strongly opposes this project and recommends that the proposed rezoning and construction of this facility not be allowed at the gateway to our community.

Attached:

Copy of NCAC Response to Notice of Preparation of a Draft Environmental Impact Report for Biorn Land Use Ordinance Amendment and Conditional Use Permit; ED03-344-345 (G020020M/D020293)

7

Respectfully Submitted,

Bonnie Eisner

Bonnie Eisner
Vice Chairperson
Nipomo Community Advisory Council

NCAC Response to
Notice of Preparation of a Draft Environmental Impact Report
for
Biorn Land Use Ordinance Amendment and Conditional Use Permit;
ED03-344, -345 (G020020M/D020293D)

1. Name of Contact Person: Dan Woodson 929-3966

2. Permit or Approval Authority: Nipomo Community Advisory Council

3. Environmental Information: Transportation/Circulation, Water, Geology and Soils, Noise, Air Quality, Aesthetics.

4. Permit Stipulations: Require Traffic Circulation Mitigation Plan and Street Pavement Mitigation Plan. Require design based on 100 year storm occurrence. Require drainage study involving Santa Maria River, Nipomo Creek and the unnamed creek and runoff from all properties downstream from the Nipomo Creek bridge.

5. Alternatives: Not considered

6. Reasonable Foreseeable Projects, Programs or Plans: Consider effects of new housing development above Santa Maria Racetrack. Consider effects of the proposal to increase the capacity of the Santa Maria Bridge by adding lanes.

7. Relevant Information: Not considered

8. Further Comments: The NCAC recommends disapproval of the project if all of the concerns of this report are not properly addressed and mitigated.

Traffic: The proposal does not adequately address the traffic situation. The intersection consists of three single-lane one way ramps and one double-lane one way ramp entering or exiting SR 101, one two way minor arterial (Orchard), one two way collector (Thompson) and one two way service road all converging on the two way SR 166/Cuyama Lane. An increasing amount of traffic is using Orchard to go South on SR101. Visitors, quarry material trucks and concrete trucks use the service road. This road will also be used by the asphalt plant. SR166/Cuyama Lane is used by local customers visiting the businesses sited adjacent to Cuyama Lane. SR 166 is used by agricultural trucks and shippers to transfer to or from SR 101. The proposed asphalt plant will add significant traffic to the intersection especially during peak operating times. The NCAC is concerned that existing traffic patterns will be severely disturbed as a result of this project. It is feared that traffic will increase on Tefft Street at the 101 Freeway

because of the traffic disruption that large platoons of heavy trucks will cause as they attempt climb up the steep on-ramp to the 101 Freeway at highway 166. It is feared that local residential and commercial traffic will find access to the 101 Freeway much more convenient at Tefft Street than at highway 166. Such a disruption of local traffic pattern will have a devastating effect on the already critical traffic gridlock that now exists on Tefft Street. **The County and/or the developer shall provide a Traffic Mitigation Plan before the facility's vehicles are allowed to encroach on public roads**. The size and reduced acceleration of the trucks will greatly inhibit efficient traffic flow.
The volume of loaded trucks and the traffic backed up behind them entering the freeway will pose a safety hazard to themselves and to freeway traffic especially to traffic crossing the river. There may not be sufficient distance to provide an acceleration lane for southbound trucks entering the freeway. **Caltrans must be made aware of this concern**.
The weight of the trucks and their turning maneuvers has the potential to severely degrade the existing pavement both on the surface roads and on the freeway. Roadway pavement removal and reconstruction must be performed along project truck routes to remove existing failed pavement and subgrade conditions so the new subgrade and roadway pavement can satisfactorily accommodate the pavement loads and frequency of use. Appropriate pavement design criteria for the number and weight of vehicles that the project intends to use in its commercial enterprise shall be utilized.
The County and/or the developer shall provide a Street Pavement Mitigation Plan before the facility's vehicles are allowed to encroach on public roads.

Noise: *Sec.8, Preliminary Noise Study (PNS), page 8, Sec. 5, Table 5*: Why is the difference in ambient noise level (NMP#2 minus NMP#1, as shown in the tabulation) exactly 5? If this difference was an average, what were the smallest and the largest differences? What is the rationale for accepting the nighttime noise level exactly 5 dB less than the daytime level? Please show the actual data.

Sec. 8, PNS, page 8, Sec. 5:
Why do the average ambient noise levels of Table 5-1 exceed the guidelines of the San Luis Obispo County Land Use Ordinance (shown as an Leq 1H of 50 dB (A))? What is the rationale for unilaterally deciding to continue the calculations and discussion with the threshold criteria capped at the measured ambient noise level plus 1 dB(A) as shown in Table 5-2? This is a critical question, because the rationale must be based on an understanding that this plant will make a considerable amount of noise during its operation. In addition, mechanical equipment, heavy equipment, and large trucks will also produce a considerable amount of noise during the hours of operation of the plant.

Sec. 8, PNS, page 8, sec. 5:
By unilaterally choosing a threshold that exceeds the guideline established by San Luis Obispo, it appears that the developer plans to justify noise levels that would not be allowed in other county locations. With the future development of Nipomo pointing to the densification of residential residences that will one day be local to this proposed plant, the developer should not be given approval to exceed noise guidelines only because there very few existing homes. We already are planning for growth. Excessive noise

should be a critical issue for this project. The developer should provide mitigating measures that reduce noise and contain it within the project area.

Sec. 8, PNL, page 1, Sec. 1.2, paragraph 2:
The 5 dB difference in noise level needs to be explained and justified. In rural areas, this might be acceptable. But, this area is shown in the General plan not to be in a rural area. The developer needs to explain how critical recognition of noise levels and mitigation of offensive noise levels are being employed to justify this project.

Sec. 8, ONS, page 6, Sec. 3.0:
Although it may be true that one residence is located 900 feet from the operating plant, the developer needs to recognize that other residential properties are planned for this region of the Nipomo community. What is the developer doing to control noise levels?

Run-off:_The containment and proper handling of storm run-off must address the handling, processing and removal of contaminated and hazardous waste materials.

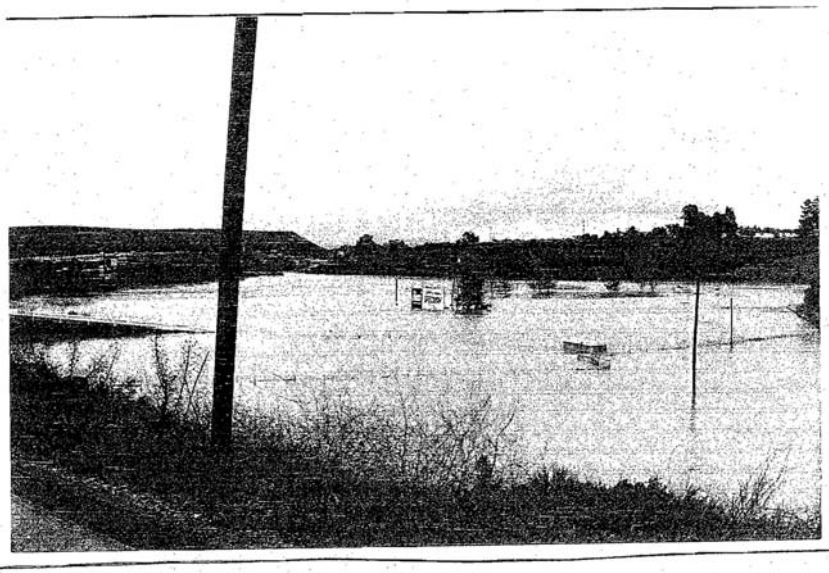
Monitoring: Continuing maintenance of all onsite and offsite activities of the project must be addressed and discussed by the applicant.

Reporting: Comments addressing the concerns expressed by the NCAC must be sent to Caltrans, Fish and Game, Army Corps of Engineers, Fish and Wildlife, Santa Maria Valley Water Conservation District and Salmon Enhancement.

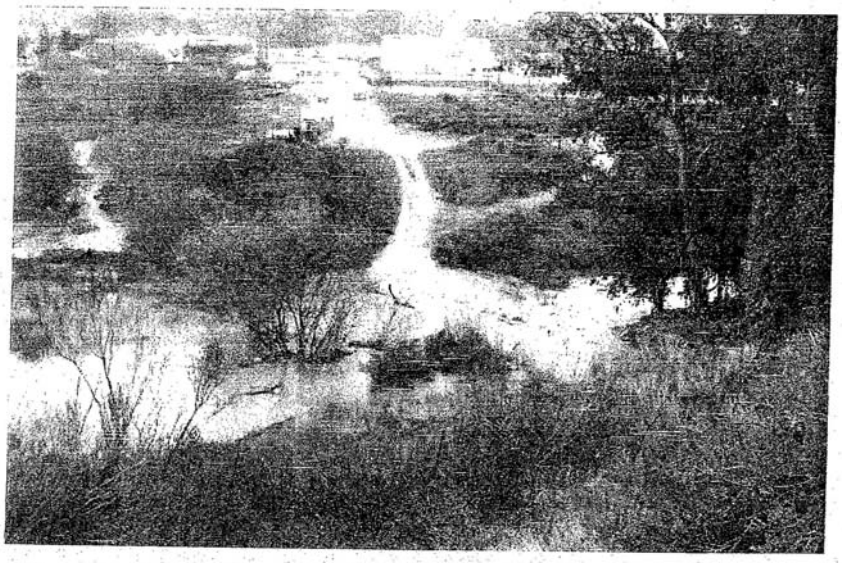
Review: The NCAC specifically requests to formally review and approve all mitigation plans produced by the applicant that addresses the review comments and concerns expressed by the NCAC in its review of the Draft EIR report.

The Santa Maria River flooded from bank to bank in March 2001. (above)

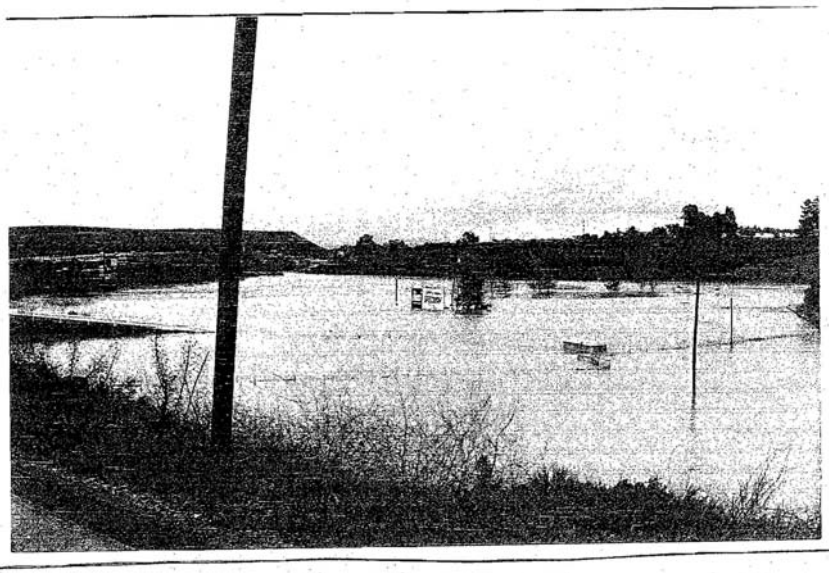
Flooding at the proposed Project site (pictured below). Adjacent offsite mitigation planning should be a requirement to avoid erosion of Santa Maria creek bank and to reduce the chances of project site flooding.



Lower Nipomo Creek is prone to severe flooding as pictured here in March 2001. In December 2005, flooding occurred again across the entire area.



There are barriers in Lower Nipomo Creek on the project site and adjacent to project site (pictured below) which dam up the area causing flooding. The rezoning should include a funding mechanism to improve creek hydrology



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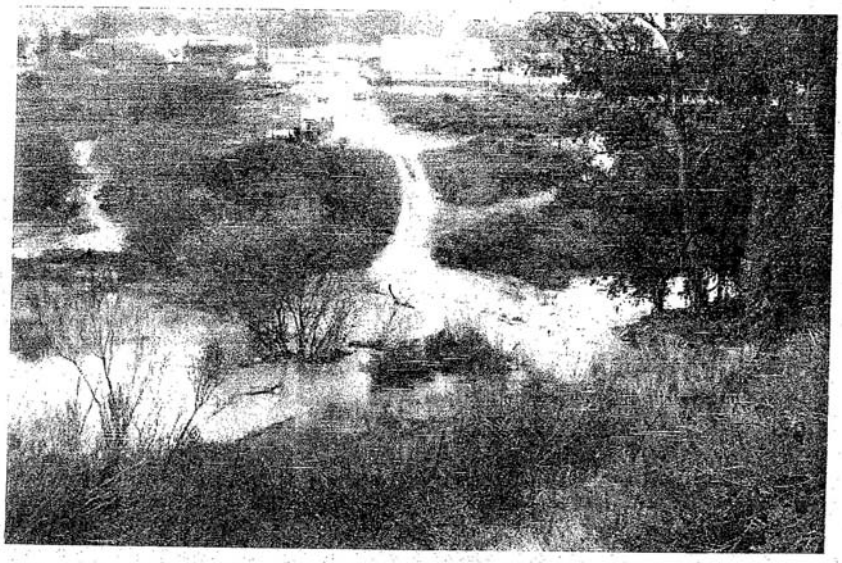

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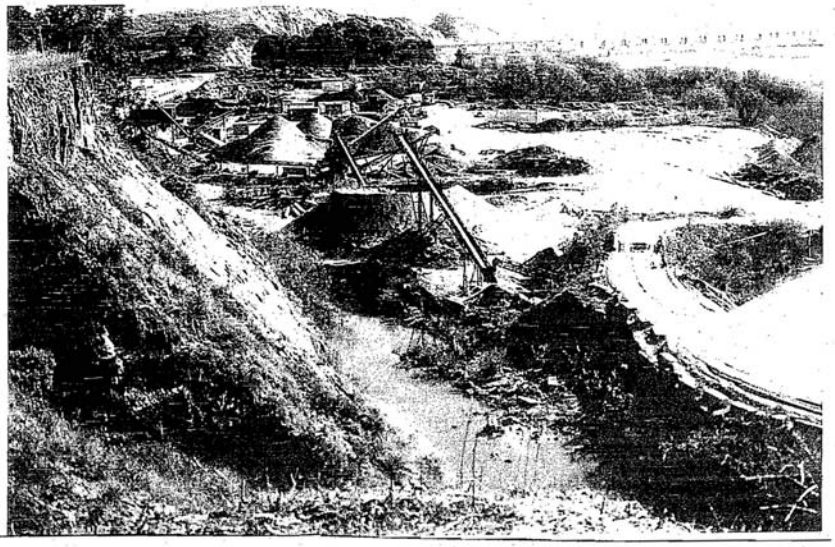
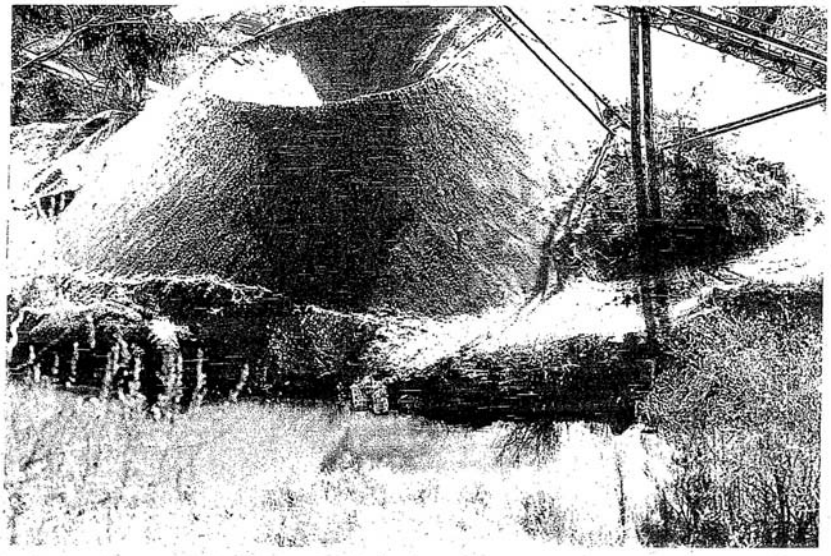
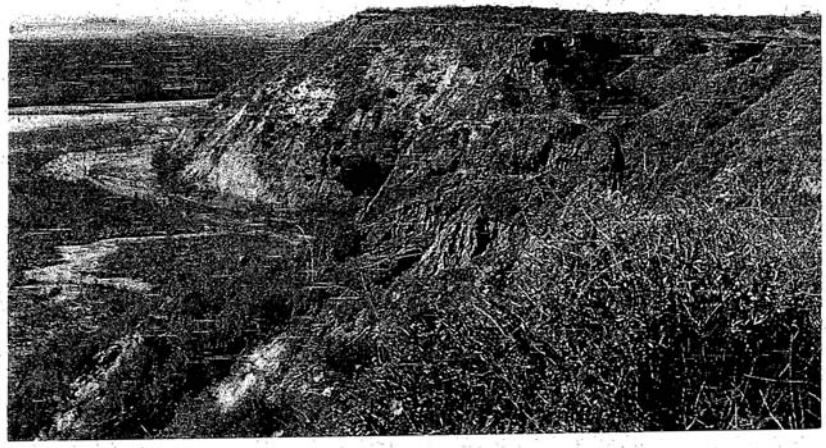
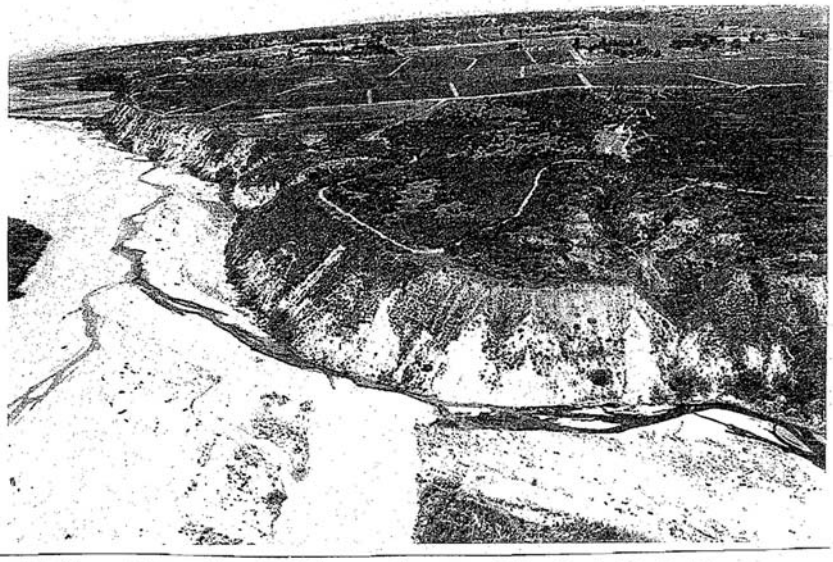


The industrial activity on this site by the project applicant has historically disregarded established creek channel management practices, causing severe bank erosion and sedimentation into Nipomo Creek. County and public agencies have also failed in their duty of monitoring and oversight.

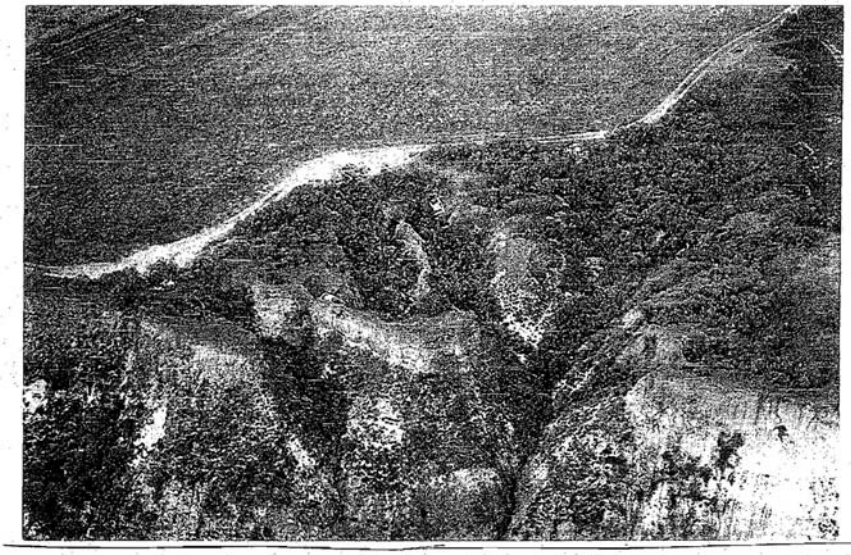




Above: The Confluence of Nipomo Creek and the Santa Maria River just below the proposed project site, show the impacts of increased erosion along the bluff face. Best management practices including willow planing can reduce the impact of erosion to the bluff face.



The Bluffs and the wetlands at the confluence of the Santa Maria River are sensitive resources that must be protected, and if the project is approved, enhanced with off site mitigation.



Proper management of the bluffs near the project site is essential to avoid the bluff blowout that took place 1/2 mile down stream from the proposed project site. A protective easement, larger buffer on the bluff between industrial and agricultural, or residential should be required

Pictured above: Trash including petrochemicals dumped along Nipomo Creek within the area of proposed rezoning. This is a common occurrence in the lower Nipomo Creek. A protective easement for restoration and monitoring should be the project, to provide protection to (pictured below) the resource including the sensitive wetlands of the Nipomo Creek Santa Maria River confluence downstream of the proposed project site.

A small eared owl nests in the Bluff face adjacent to the project site each season. THe project site is part of this birds hunting grounds. This is an example of a rare species not listed in the EIR that inhabits the the area. Biological surveys should be conducted in several seasons to produce an accurate species list.

Unique plants, such as the Dudlia are found on The bluff face.

Site planning for the proposed project and the proposed zoning change must take into account unique hydrological features and natural resources of the entire Lower Nipomo Creek area to prevent flooding and protect resources.

An example of piecemeal planning in this area was a large detention basin recently installed upstream of the project site that eliminated this flood plain wetland area.

THe new County approved detention basin after rains in December 2004.

SIERRA CLUB
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Santa Lucia Chapter
P.O. Box 15755
San Luis Obispo, CA 93406
(805) 543-8717
www.santalucia.sierraclub.org

September 30, 2005

Comments of the Santa Lucia Chapter of the Sierra Club on the Draft Environmental Impact Report for Biorn Land Use Ordinance Amendment and Conditional Use Permit ED03-344, -345 (G020020M/D020293D)

2.5 –Mitigation Monitoring Program
This would be unlikely to function as promised. Monitors are not identified, nor is a source of funding to cover the cost of monitoring. The absence of such details from the DEIR and their promised appearance in the FEIR is unacceptable. If monitoring for the proposed project will be infeasible, this needs to be noted in the DEIR. G-1

5.2-1 Land Use Compatibility
The DEIR notes that land use compatibility issues include "pesticide use, noise, dust, trespassing, vandalism, theft, litter, liability issues, rodent control, agricultural burns, and erosion" and states that "The most effective mitigation measures for these issues are open space buffers between the land uses." Here, as throughout, the DEIR fails to note that the objective of CEQA is **avoidance** of such impacts and seeks to give the impression that mitigation is the only option, as approval of the project is presumably a fait accompli. A Draft EIR without this clear bias should be prepared. G-2

5.2-4 LUO/LUE Amendment Impacts - Impact AG-2
The DEIR finds that "The plant could potentially have an adverse effect on air quality and groundwater in addition to the increased potential for fire, explosion, and hazardous materials leaks." The DEIR seeks to narrow the scope of these obviously broad and dire impacts on environmental and human health by defining them as potential "land use compatibility conflicts," having first consigned them to the category of indirect impacts on agricultural resources, and declaring this potential – deriving from the storage of potential carcinogens on a flood plain, adjacent to a blue line creek feeding the Santa Maria River – to be "insignificant." The DEIR then seeks to assign the mitigation of these impacts to the Agricultural Commissioner. All of these conclusions are unacceptable. G-3

Further, at **5.4-37**, the DEIR notes that facilities cited as a result of the proposed amendment to the LUO/LUE could "result in other environmental hazards such as an increased potential for fires and explosions which may substantially affect

surrounding habitats and wildlife species." These are impacts clearly beyond the purview of the Ag Commissioner, contrary to the imputation at 5.2-4. G-3

5.3-12 Mitigation Measure AQ-2

Proposed mitigation measures A through D would fail to reduce PM10 emissions to a level below the threshold of significance and would reduce CO emissions to a level 300 pounds per day in excess of the 550 pound per day threshold. Mitigation measure E, which resembles nothing so much as the actions of desperate pilots of a plummeting hot air balloon throwing everything out of the gondola in an effort to lighten the load, is a grab-bag of measures that allow for no objective measurement and hence no means of substantiating the conclusion that "Measure E would offset project emissions, resulting in residual emissions below the threshold and considered less than significant." G-4

The Final EIR needs to acknowledge the failure of these measures to mitigate air pollutants to a level of less than significant impact and that approval of the project would thus result in a violation of APCD Rule 402: "A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property."

5.4-35 -Mitigation Measure REC-2

We fail to see how this qualifies among those listed measures that "shall be implemented to avoid and/or minimize significant long-term impacts to those special-status species due to habitat loss." This 25-foot wide min. trail corridor may cause existing riparian to "be impacted during construction and operation of the proposed trail," along with "special-status wildlife species...that forage and breed within the riparian vegetation." How are measures that result in additional impacts to habitat and wildlife mitigation for loss of habitat? G-5

5.4-38

We note the admission "that a large portion of the LUO/LUE area which would be affected by the land use ordinance amendment was not surveyed by Padre biologists," who admit to basing their conclusions on extrapolations from findings from the remnant portion of the area that they were able to survey. From this it follows that the DEIR's field reconnaissance surveys "for the purpose of identifying plant communities, determining typical species associated with these communities, identifying and assessing potentially impacted habitats, and to document occurrences of those federal and state list special-status species and habitats which have the potential to occur within the project area" (cited at **5.4-5**); the "description and analysis of biological resources within the LUO/LUE area...based on a review of pertinent literature, field reconnaissance surveys, G-6

and one USFWS protocol-level California red-legged frog survey," as well as the assessment of the presence of wetlands on the site, central dune scrub, central foredune, coastal and valley freshwater marsh and southern vernal pool habitat (**5.4.2.2)** are invalid. G-6

From this admission, the site survey was clearly inadequate. This is an environmental Impact Report, not a Mitigated Negative Declaration or an Environmental Assessment. The cursory level of review represented by a largely incomplete site survey is not acceptable and constitutes a violation of CEQA.

5.4-39 Mitigation Measures: BIO-9

Listed as proposed mitigation are surveys for special-status wildlife species "prior to any new development within 150 feet of Nipomo Creek, Nipomo Creek tributary, and/or Santa Maria River" and "a qualified biologist shall determine whether the project site contains suitable habitat for Black-flowered figwort." Surveys are not mitigation. Once the land has been zoned for industrial use, the pressure for industrial development and bias toward the presumption of no or mitigatable impacts of such development will have been established. Such surveys should have been undertaken and completed in the course of preparing the DEIR. G-7

Overall comments

We note throughout the use of the phrase "'worst-case' permissible land use." This is misleading, as it refers to relative likelihood of an occurrence. Once the area has been changed to the industrial land use category, there will be no "best" or "worst" case development; there will be only development of the type permitted under industrial land use. No type of project in this category will be more or less likely to occur than any other. G-8

It seems inconceivable that this study would have been completed with no mitigation proposed for acknowledged construction phase impacts on groundwater, but this appears to be the case.

The DEIR fails to disclose to decision makers and the public the significant environmental effects of the proposed activities; identify ways to avoid or reduce environmental damage; and prevent environmental damage by requiring implementation of feasible alternatives or mitigation measures, as required under CEQA and by the South Coast Area Plan. For the reasons cited above, we recommend that the County deny the LUO/LUE Amendment and the Conditional Use Permit Request and endorse the No Project Alternative.

Andrew Christie
Chapter Coordinator

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION
50 HIGUERA STREET
SAN LUIS OBISPO, CA 93401-5415
PHONE (805) 549-3111
FAX (805) 549-3329
TDD (805) 549-3259
http://www.dot.gov/dist05

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September 28, 2005

SLO – 101 PM 0.80

SCH # 2004011126

John McKenzie
San Luis Obispo County
Department of Planning & Building
County Government Center
San Luis Obispo, CA 93408

Dear Mr. McKenzie;

RE: Biorn Conditional Use Permit and Land Use Ordinance/Land Use Element Amendment Draft EIR (NOC)

The California Department of Transportation (Department) has reviewed the above referenced project and as a result the following comments were generated.

General Comments

1. The Traffic Impact Study (TIS) in the NOC did not include a merge/acceleration analysis for both the northbound and southbound U.S. 101 on-ramp truck traffic. It takes merging, fully loaded sand/gravel and asphalt-hauling trucks a great deal more time to get up to speed – matching the speeds of through-traffic on U.S. 101. Although heavy truck traffic currently originates from the existing plant, the proposed asphaltic concrete plant's addition of up to a maximum of 964 average daily trips has the potential to significantly impact the operations of U.S. 101 as the heavy trucks gain speed slowly to merge into U.S. 101 through-traffic. The EIR needs to include the merge/acceleration analysis in a revised TIS. H-1

   If the merge/acceleration analysis shows a significant traffic impact is created by proposed project traffic merging onto U.S. 101 through-traffic, project-specific mitigation strategies such as increasing the length of the on-ramps to accommodate the merging needs of the additional, heavy-truck traffic, needs to be identified.

"Caltrans improves mobility across California"

Mr. McKenzie
September 28, 2005
Page 2

2. The revised traffic study should also investigate if the curb-return radii at the 101/166 Interchange ramp termini are sufficiently great enough to accommodate the large asphalt/concrete trucks that will be utilizing these State highway facilities. Please include an analysis of the ability of the curb-returns to accommodate the turning radius of all new and existing truck traffic originating from the plant. If the trucks cannot negotiate the turns without crossing over into opposing lane traffic, then The Department requests that The Lead Agency condition this proposed project to modify the curb-returns as necessary as project-specific mitigation. H-2

3. A revised traffic study for the proposed Biorn Project needs to include a formally described depiction and enumeration of trip assignments of project-generated traffic. Please include this in a revised TIS. H-3

4. A revised traffic study also needs to include a pavement traffic index (TI) for the State highway facility (Routes 101 and 166 Interchange & ramps). The Department needs to know if the extra volume of heavy truck traffic will be tolerated by the State highway pavement surfaces. H-4

Specific Comments

5. (Ref. Page 5.12-7, *Impact Category: Insignificant, Thresholds of Significance Criteria:* 1 *TRA-2*) The third sentence states that, "Given that the improvement to the Santa Maria (River) Bridge has been previously identified and that a funding arrangement has already been established, there is not a nexus to impose a fee contribution toward improvements to the bridge." This statement is incorrect. First, full funding has not been established for the bridge-widening project. Second, even if full funding has been established for the bridge-widening project, this would not negate the fact that there is a nexus and absolve the project proponents from their responsibility to mitigate their traffic impacts. If the proposed asphaltic plant project adds traffic to a State highway facility that currently or in a cumulative scenario creates a significant impact, either through additional traffic volumes or safety considerations such as problems with merge/acceleration capabilities, then there is a nexus. H-5

   If a revised traffic study shows a significant cumulative impact to the Santa Maria River Bridge operations, a pro rata share contribution should be forthcoming from the proposed asphaltic plant to offset truck traffic impacts on the State highway facility. The pro rata share contribution should be based on an aggregate of the support costs and the costs of constructing the Santa Maria River Bridge Project. Currently the escalated cost estimate for the "Santa Maria River Bridges" project, (Widen & Replace Bridges, Construct Auxiliary Lanes & Bike Path) is estimated to be $35,341,000.00.

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Mr. McKenzie
September 28, 2005
Page 3

The project is presently in the Project Approval & Environmental Document (PA&ED) phase of project development. PA&ED is currently scheduled for completion in December of 2006. H-5

6. (Ref. Page 5.12-10, Section 5.12.3 - *LUO/LUE Amendment Impacts, Mitigation Measure TRA-3*) Please be advised that placement of traffic signals within State highway Right of Way (R/W), is at the sole discretion of The Department. The Department requires that a 12-hour traffic signal warrants analysis be conducted and the parameters of the analysis be met before a signal can be installed. Even if all signal warrants are met, the granting of their placement is still subject to final Department approval. H-6

The Encroachment Permit

7. For any Lead Agency-required traffic mitigation that needs to be performed in the State's Right of Way (R/W) the Applicants will be required to apply for an encroachment permit from The District 5, Permits Office, Please contact Mr. Steve Senet at (549-3206) for more information regarding the encroachment permit process or visit The Department's Website at: http://www.dot.ca.gov/hq/traffops/developserv/permits/. H-7

   Please be advised that all work done in the State's R/W will be done to the Department's engineering and environmental standards and at no cost to the State. Furthermore, the conditions of approval and the requirements for obtaining the encroachment permit are at the sole discretion of the Permits Office, and nothing in this letter shall be implied as limiting those future conditions and requirements.

   Also, if a Department encroachment permit will be required for this proposed project, please set as a condition of occupancy and defined in the conditions for the building permit, the requirement that the applicant substantiate that the conditions and requirements stipulated in the Department's Encroachment Permit were in fact completed to those standards (through a letter of acknowledgement from the District 5, Permits Office) to be included in the County's file for this project.

Thank you for the opportunity to comment on the Biorn Asphaltic Plant Draft EIR. If you have any questions, please contact me at 549-3683.

Sincerely,

James Kilmer
District 5
Development Review/CEQA Coordination

"Caltrans improves mobility across California"

Mr. McKenzie
September 28, 2005
Page 4

c: File,
D. Murray
R. Barnes
S. Senet
J. Gonzalez
L. Lowerison
T. Farris
D. Ramey-SLO County Public Works
R. DeCarli - SLOCOG

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Santa Maria
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CITY OF SANTA MARIA
OFFICE OF THE MAYOR
AND CITY COUNCIL

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September 30, 2005

Mr. John McKenzie
EIR Project Manager
San Luis Obispo County Planning and Building
County Government Center, Room 310
San Luis Obispo, CA 93408-2040

Re: **Comments on Draft EIR for the Biorn Land Use Ordinance Amendment and Conditional Use Permit; ED03-344, -345 (G020020M/D020293D)**

Dear Mr. McKenzie:

Please accept this letter as the City of Santa Maria's comments on the draft EIR for the proposed asphalt plant included in the Biorn Land Use Ordinance Amendment and Conditional Use Permit application pending before the County of San Luis Obispo Department of Planning and Building.

The City has been contacted by several residents of the City concerned about the impacts that may be caused by the proposed asphalt plant. The concerns are centered around potential air quality impacts and odors that may be generated from the operation of the plant and carried in the prevailing wind direction across the Santa Maria River toward the City of Santa Maria. These residents have expressed significant concern about the emissions that may contribute to local air quality degradation. I-1

Additionally, many feel that the operation of the proposed asphalt hot mix plant will result in toxic air contaminant emissions that may adversely affect local and regional air quality, including the prevailing downwind areas of Santa Maria where many residents live, just south of the Santa Maria River. Many have expressed concern about "nuisance" odors as well. Some have raised concerns over the potential noise impacts from the operations of the proposed plant as well.

The City of Santa Maria respectfully requests that each of these concerns be thoroughly reviewed and addressed as part of this review for this proposed project, so that each of the concerns expressed by residents of the City are fully mitigated.

Thank you for the opportunity to comment on the draft EIR and share with you, the Commission and the Board the concerns of residents of the City of Santa Maria.

Respectfully submitted,

Larry Lavagnino

LARRY J. LAVAGNINO
Mayor, City of Santa Maria

c- City Council

Santa Maria
All-America City

CITY OF SANTA MARIA
COMMUNITY DEVELOPMENT
DEPARTMENT

110 S. PINE STREET #101 (ON HERITAGE WALK) • SANTA MARIA, CALIFORNIA 93458-5082 • 805-925-0951 • TDD 925-4354

October 3, 2005

John McKenzie
Environmental Specialist
Environmental & Resource Management Division
Planning & Building Department

SUBJECT: **Proposed Asphalt Plant - Biorn Land Use Ord Amendment and CUP**

1. As a technical point of clarification, the City of Santa Maria Noise Element of the General Plan identifies the exterior noise exposure standard for the residential receptors as 60 dB CNEL, which differs from the 65 dBA CNEL standard for Santa Barbara County. It is important to consider the City noise standards as the threshold for significance. J-1

   Because Santa Maria residents occasionally experience noise impacts from the Santa Maria Speedway operations at night, the noise analysis should include hours of operation, wind, and atmospheric conditions as factors for concluding the level of impact that applies the Santa Maria standards. The pertinent pages from the City of Santa Maria Noise Element are included with this comment.

2. In working with Bailey Hudson, former Urban Forester with the City of Santa Maria, we are starting to use trees as air quality mitigation offsets for projects. Constructing a dense windrow with trees that are "low or non-emitters of Biogenic Volatile Organic Compounds" would help mitigate air quality, noise, and aesthetic impacts. J-2

   The wording of this mitigation follows:

   Low Emission Landscape Materials. Trees that are used for onsite landscaping shall be selected from species and varieties that are low or non-emitters of Biogenic Volatile Organic Compounds (BVOC's) that may be appropriate for use in the landscape design for this project. Street trees selected for the site shall be chosen from the City Approved Street Tree List based on the relative BVOC rank order of street trees as low or non-emitters.

Thank you for accepting these comments.

B. Shipsey

Bill Shipsey, Planner III
Community Development Department

attachments

\\CSM19\SHARED\Community Development\Planning\General Correspondence\2005\SLOCo EIR Comment.doc

III. GOALS, POLICIES AND PROGRAM

GOAL N.1
To protect present and future Santa Maria residents and workers from the harmful and annoying effects of exposure to excessive noise levels.

POLICY N.1.a - Overall Noise Control in Santa Maria
Protect and enhance the quality of the City's noise environment by controlling noise at its source, along its transmission paths, and at the site of the ultimate receiver.

POLICY N.1.b - Location of New Noise Generators
Regulate the placement and construction of new noise generators, to avoid excessive interior and exterior noise level impacts on adjacent noise sensitive properties; and of new noise receptors (such as housing and schools), to minimize the negative effects of local noise generation.

POLICY N.1.c - Noise Control with the Required Environmental Planning and Regulatory Process
Control harmful or undesirable noise through the environmental planning and regulatory process with emphasis on noise/land use compatibility planning.

POLICY N.1.d - Explore New Measures to Address Existing and Future Transportation Noise.
Explore possible strategies to control vehicular noise generation that would reduce noise impacts on existing noise-sensitive land uses (residential and schools) located within the 60+ dB CNEL contour.

OBJECTIVE N.1.a - Existing Noise Levels
To have mobile and stationary noise sources in compliance with the Santa Maria Noise Element and Noise Ordinance, and state and federal noise regulations.

OBJECTIVE N.1.b
To maintain and reduce noise to acceptable levels throughout the community.

OBJECTIVE N.1.c - Mitigation of New Transportation Noise Sources
Noise created by new transportation noise sources, including roadway, airport and railway improvements, shall be mitigated to the maximum extent feasible, using Table N-4 or other credible evidence as a guide.

OBJECTIVE N.1.d - New Development Projects
All new development projects will meet the acceptable exterior and interior noise level standards specified in Table N-4: *"Interior and Exterior Noise Standards"*.

N-19

Table N-4
City of Santa Maria
Interior and Exterior Noise Standards

LAND USE CATEGORIES		STANDARD (dB CNEL)	
CATEGORIES	USES	INTERIOR	EXTERIOR
Residential	Single Family, Duplex, Multiple Family, Mobile Home	45	60
Commercial	Retail, Restaurant, Professional Offices	55	65[1,2]
Industrial	Manufacturing, Utilities, Warehousing, Agriculture	65	70[2]
Noise-Sensitive Land Uses	Motel, Hospital, School, Nursing Home, Church, Library, and other	45	60
Open Space	Passive Outdoor Recreation	--	65

Notes

1. The Commercial Exterior Noise Standard is a noise level of 65 dB CNEL or less, or which does not interfere with normal business activity.

2. Where commercial development proposes outside activities such as patio dining, outside play and picnic areas, the noise standards shall not apply to those outdoor areas.

3. The Industrial Exterior Noise Standard is a noise level of 70 dB CNEL or less or which does not interfere with normal business activity.

N-20

IMPLEMENTATION PROGRAMS

Planning and Regulatory Process:

1. Review all development proposals, both public and private, for consistency with the policies of this Element.

2. In reviewing and approving new subdivisions, general plan amendments, rezones, specific plans, use permits, conditional use permits and planned development permits, the City may require applicants to evaluate potential noise impacts and require appropriate noise control measures. Noise evaluations may include the review and requirement of: site design criteria, additional setbacks, earthen berms, sound walls, and modification of roadway design. Examples of mitigation measures are outlined in Table N-7; Figures N-3 and N-4 are illustrations of noise mitigation through site design and architectural layout.

3. Use the noise guidelines outlined in this Element and the projected noise contours (Figure N-2) to determine the need for noise studies, and require new developments to construct or pay for noise attenuation features as a condition of approving the project.

   Require a noise study and/or implementation of standard noise control measures based on the measurements at the site for noise sensitive projects within the 60+ dB CNEL contour (see Figure N-2) as part of the project review process. Should measurements indicate that unacceptable noise levels will be created or experienced, noise control measures may be required.

4. Require discretionary development proposals to meet the interior and exterior noise standards specified in Table N-4.

5. Any intensification of an existing activity, which is subject to discretionary review and can reasonably be expected to generate noise which would exceed the allowable noise levels in Table N-4, may be evaluated for compatibility with adjacent noise sensitive land uses. Appropriate mitigation measures may be imposed to result in the activity meeting the noise levels in Table N-4.

6. As part of project review, discourage the intrusion of commercial and industrial traffic onto local residential streets through the circulation planning review process.

Existing Noise Environment Improvements:

7. Evaluate those areas identified in the City with unacceptable noise levels and identify possible attenuation measures to improve that area's existing noise environment. Measures could include offering incentives that encourage developers and homeowners to use noise reduction materials to retrofit existing residences and schools close to U.S. Highway 101, major City roadways, the Santa Maria Public Airport, commercial manufacturing, industrial plants and agricultural operations.

8. Coordinate with the California Department of Transportation to effectively attenuate freeway noise through the placement of noise barriers, berms, and landscaped open space for existing residences, and incorporating design features in new development to reduce future noise level increases.

9. Discourage residential developments where traffic generated noise levels already exceed the acceptable noise levels for residential uses, and where there is no practical way to reduce noise to acceptable exterior and interior noise levels.

10. Continue to make the community aware of the effects of noise, and to keep the community informed of the measures being taken to combat noise.

11. Continue to update and enforce the City's Noise Ordinance.

12. Continue enforcement of the City's Noise Ordinance, both by responding directly to complaints and by conducting field monitoring compliance checks to identify violators. Table N-5 shows the maximum allowed noise levels and time durations which are used to determine if a noise violation has occurred.

Table N-5
Maximum Noise Exposure For Noise-Sensitive Uses

Level (dBA)		Duration in An Hour
Day (7 am to 10 pm)	Night (10 pm to 7 am)	
55	45	30 Minutes
60	50	15 Minutes
65	55	5 Minutes
70	60	1 Minute
75	65	Maximum

A noise violation is determined to exist when the noise level exceeds the ambient noise level or base noise level (Table N-6) as follows:

1. By any amount 30 minutes for any given hour, measure cumulatively;
2. By 5 dBA, 15 minutes for any given hour;
3. By 10 dBA, 5 minutes for any given hour;
4. By 20 dBA at anytime
5. Where zoning districts interface, the ambient noise base level for the most restrictive zones shall prevail.

Please refer to the Santa Maria Noise Ordinance for further detailed discussion.

N-22

Stationary Noise Sources:

13. Control noise intrusion from stationary outdoor machinery, appliances, and air conditioners through effective site design and with the site specific mitigation measures specified in Table N-6 and shown in Figures N-3 and N-4, where appropriate.

14. As part of the planning process, evaluate stationary noise sources to identify potential noise impacts. Where appropriate, require mitigation of those impacts so they do not exceed the noise level standards specified in Table N-4.

15. In reviewing development proposals, minimize traffic noise impacts on commercial and office buildings through effective site design and appropriate mitigation measures.

Roadway Noise Programs:

16. Continue to coordinate transportation and land use planning in future General Plan revisions and updates to promote acceptable noise levels for specific types of land uses and activities.

17. Continue to evaluate truck movements and routes in the city to provide for their effective separation from residential and noise sensitive areas.

18. Encourage the enforcement of State Motor Vehicle noise standards for cars, trucks, and motorcycles through coordination with the California Highway Patrol and County Sheriff.

19. Discourage the operation of service and maintenance vehicles of a non-emergency nature in residential areas during early morning and late evening hours.

20. Where appropriate, use less than standard lane widths to reduce vehicle speeds where this would reduce noise levels and protect existing residential neighborhoods.

Airport Noise Programs:

21. Encourage the SMPAD to require "state-of-the art" quiet aircraft for commercial airlines proposed to locate at Santa Maria Public Airport.

22. Where appropriate, require avigation easements and noise mitigation measures in new residential developments near the airport in the 60+ dB CNEL contour and in areas that are commonly overflown.

Building Code Programs:

23. Enforce the California Noise Insulation Standards (California Administrative Code, Title 25) for all new residential construction.

24. Where excessive noise levels exist, the City may require special construction assemblies such as attic and eave vent mufflers to mitigate noise (see Figure N-5).

N-23

Construction Noise Programs:

Although construction noise is considered to be a short-term site specific impact, the City of Santa Maria should continue to mitigate and monitor noise generated at construction sites. Figure N-7 shows typical construction equipment noise levels. To minimize construction noise levels, the City of Santa Maria will continue to require the following measures, where appropriate.

25. Limit the hours of construction activity in residential areas in order to reduce the intrusion of noise in the early morning and late evening hours, and on weekends and holidays.

26. Control noise at all construction sites through the provision of mufflers and the physical separation of machinery maintenance areas from adjacent residential and noise sensitive land uses.

27. Continue to work with the Santa Barbara County Fairgrounds Board to find ways to minimize nuisance noise from the events held at the Fairgrounds.

28. Continue to enforce the Noise Ordinance by monitoring activities at the Santa Maria Speedway as well as working with San Luis Obispo County and the agencies and/or associations responsible for regulating activities at the race track.

ACCOMPLISHMENTS TO DATE:

1. The City has adopted a Noise Ordinance to resolve existing noise conflicts. See Section 5.5 of the Municipal Code.

2. Through land use amendments, zone changes, subdivision maps, conditional use permits and planned development permits, the Community Development Department reviews said projects for consistency with the General Plan, Noise Ordinance and requires appropriate mitigation measures. Measures include, but are not limited to setbacks, architecturally treated noise walls, noise attenuation measures within the structure and use restrictions such as hours of operation.

ANTICIPATED RESULTS:

1. Consistent enforcement of the City noise regulations and compliance with state and federal noise regulations.

2. Compliance with adopted noise standards and the Noise Ordinance and a reasonable quiet community with few complaints.

N-24

AIR POLLUTION CONTROL DISTRICT
COUNTY OF SAN LUIS OBISPO

September 29, 2005

RECEIVED
OCT 03 2005
Planning & Bldg

Mr. John McKenzie, Environmental Division
County Planning & Building Dept
County Govt. Center, Rm. 310
San Luis Obispo, CA 93401

SUBJECT: Response to Environmental Impact Report Regarding the Biorn CUP & EIR.
(Agency Project # G020020M, D020293D, SCH#2004011126)

Dear Mr. McKenzie,

Thank you for including the APCD in the environmental review process. We have completed our review of the proposed project located at 2880 Hutton Rd. in Santa Maria. The project involves the re-designation of up to 50 acres in the Residential Suburban (RS) and Commercial Service (CS) land use categories to the Industrial (IND) land use category and the development of a 14.5 acre portion of site with a asphalt concrete plant (400,000 ton/yr. capacity). The following are APCD comments that are pertinent to this project.

GENERAL COMMENTS

As a commenting agency in the California Environmental Quality Act (CEQA) review process for a project, the APCD assesses air pollution impacts from both the construction and operational phases of a project, with separate significant thresholds for each. **Please address the action items contained in this letter that are highlighted by bold and underlined text**.

SPECIFIC COMMENTS

Section 3, Project Description, page 3-13 through 3-16

All of the table references in this section are incorrect. For example on page 3-13 it states that Table 3-4 summarizes the expected asphalt production capacity for the site, when in fact Table 3-4 show the raw material deliveries for the site. This error is carried throughout this section of the document making it difficult to review. The document table references should be corrected. K-1

Section 3, Project Description, page 3-19

Based on the equipment listed on page 3-19 through 3-22, the facility will require an authority to Construct and a Permit to Operate. **To minimize potential delays, prior to the start of the project, please contact David Dixon of the District's Engineering Division at (805) 781-5912 for specific information regarding permitting requirements.** K-2

Section 3, Project Description, page 3-22

As part of the site preparation, on page 3-22 the project description indicates that stockpiles will be relocated and existing buildings will be removed. **The following mitigation measures should be added to address demolition activities.** K-3

- Demolition activities can have potential negative air quality impacts, including issues surrounding proper handling, demolition, and disposal of asbestos containing material (ACM). Asbestos containing materials could be encountered during demolition or remodeling of existing buildings. Asbestos can also be found in utility pipes/pipelines (transite pipes or insulation on pipes). **If utility pipelines are scheduled for**

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Environmental Impact Report for Biorn CUP & EIR
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removal or relocation; or building(s) are removed or renovated this project may be subject to various regulatory jurisdictions, including the requirements stipulated in the National Emission Standard for Hazardous Air Pollutants (40CFR61, Subpart M - asbestos NESHAP). These requirements include but are not limited to: 1) notification requirements to the District, 2) asbestos survey conducted by a Certified Asbestos Inspector, and, 3) applicable removal and disposal requirements of identified ACM. Please contact Tim Fuhs of the Enforcement Division at 781-5912 for further information. K-4

Section 5, Air Quality, page5.3-6
A reference is made to the San Luis Obispo APCD CEQA Air Quality Handbook (1997). It should be noted the Handbook was undated in 2003. Minor revisions were made throughout the Handbook. The most recent version of the Handbook should be used for CEQA evaluation. K-5

Section 5, Air Quality, page 5.3-6
The CO operational impact threshold of 50 lb/day referenced in section 5.3.2.1 (Thresholds of Significance) is incorrect – the APCD considers CO operational emission impacts to be of significance at or above 550 lb/day, there is no 50 lb/day threshold. K-6

Section 5, Air Quality, page 5.3-6
A consistency analysis with the Clean Air Plan (CAP) was not performed as part of this EIR. The District considers a project of this magnitude to fall within the category of large commercial/industrial developments, in addition the applicants is seeking a land use Ordnance/Land Use Element Amendment and therefore **a consistency analysis with the CAP should be performed.** K-7

Section 5, Air Quality, page 5.3-7
The statement is made on page 5.3-7 that "it is assumed that wind erosion of the 5 acre plant site would occur through the construction period." At all times during constructions, dust control measures must be implemented to control fugitive dust generated by construction equipment and wind erosion until construction surfaces are stabilized to prevent erosions. K-8

CONSTRUCTION PHASE EMISSIONS
Section 5, Air Quality, page 5.3-8
APCD staff agrees with the dust control measures presented on page 5.3-8. However, the list presented does not include all measures recommended by the District for a project of this magnitude. **The following mitigation measures should be included to control fugitive dust during construction.** K-9

- All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by the APCD.
- All roadways, driveways, sidewalks, etc. to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
- Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site.

K-9

- All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet of freeboard (minimum vertical distance between top of load and top of trailer) in accordance with CVC Section 23114.
- Install wheel washers where vehicles enter and exit unpaved roads onto streets, or wash off trucks and equipment leaving the site.
- Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible.
- All PM10 mitigation measures required must be included on grading and building plans. In addition, the contractor or builder should designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust off site. Their duties shall include holidays and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the APCD prior to land use clearance for map recordation and land use clearance for finish grading of the structure.

In addition to the dust control measures listed above the following mitigation measures should be added for the construction phase of this project.

- Naturally Occurring Asbestos - The project site is located in a candidate area for Naturally Occurring Asbestos (NOA), which has been identified as a toxic air contaminant by the California Air Resources Board (ARB). Under the ARB Air Toxics Control Measure (ATCM) for Construction, Grading, Quarrying, and Surface Mining Operations, **prior to any grading activities at the site, the project proponent shall ensure that a geologic evaluation is conducted to determine if NOA is present within the area that will be disturbed. If NOA is not present, an exemption request must be filed with the District (see Attachment 1). If NOA is found at the site the applicant must comply with all requirements outlined in the Asbestos ATCM.** This may include development of an Asbestos Dust Mitigation Plan and an Asbestos Health and Safety Program for approval by the APCD. Please refer to the APCD web page at *http://www.slocleanair.org/business/asbestos.asp* for more information or contact Tim Fuhs of our Enforcement Division at 781-5912.

- Construction Permit Requirements - Based on the information provided, the APCD has determined that several pieces of construction equipment with a power rating of 50 hp or more will be used during the construction phase of this project. Portable equipment, 50 horsepower (hp) or greater, used during construction activities may require California statewide portable equipment registration (issued by the California Air Resources Board) or an APCD permit. The following list is provided as a guide to equipment and operations that may have permitting requirements, but should not be viewed as exclusive. For a more detailed listing, refer to page A-5 in the District's CEQA Handbook.
    - Power screens, conveyors, diesel engines, and/or crushers;
    - Portable and stationary backup generators (50 hp or greater);
    - IC engines;
    - Concrete batch plants;
    - Rock and pavement crushing; and
    - Tub grinders trommel screens.

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To minimize potential delays, prior to the start of the project, please contact David Dixon of the District's Engineering Division at (805) 781-5912 for specific information regarding permitting requirements.

- Contaminated Soil - Page 2-22 of the DEIR indicates that the existing 55-gallon drum and former containment area may have contaminated soil. **Should contaminated soil be encountered during construction activities, the APCD must be notified immediately.** Any storage pile of contaminated material must be covered at all times except when soil is added or removed. The following measures shall be implemented: K-10
  - Covers on storage piles shall be maintained in place at all times in areas not actively involved in soil addition or removal;
  - Contaminated soil shall be covered with at least six inches of packed uncontaminated soil or other TPH –non-permeable barrier such as plastic tarp. No headspace shall be allowed where vapors could accumulate;
  - Covered piles shall be designed in such a way to eliminate erosion due to wind or water. No openings in the covers are permitted;
  - During soil excavation, odors shall not be evident to such a degree as to cause a public nuisance; and,
  - Clean soil must be segregated from contaminated soil.

  For further information, contact Karen Brooks of our Enforcement Division at 781-5912.

OPERATIONAL PHASE EMISSIONS

Section 5, Air Quality, Impact AQ-2, page 5.3-9 K-11

As indicated above, the applicant will need to work with APCD engineering staff to prepare and submit an application for an Authority to Construction and a Permit to Operate. Please note the APCD engineering staff will also be able to provide information on appropriate emissions factors to be used for the stationary source emission calculations.

Section 5, Air Quality, Mitigation Measures AQ-2.C, page 5.3-12 K-12

Mitigation measures AQ-2-C indicates that a dust monitor shall be designated for each work shift to monitor site conditions. While not required the applicant may want to have some employees obtain a Visual Emissions Evaluation (VEE) Certification. More information on this certification can be found at http://www.arb.ca.gov/training/370.htm.

Section 5, Air Quality, Mitigation Measures AQ-2.C, page 5.3-12

Mitigation measures AQ-2-C indicates that a water truck will be onsite from 1pm to 6pm when high winds are likely as well as when winds exceed 15 mph. **To adequate control dust APCD staff recommends a water truck be onsite at all times.** If a water truck is brought in from an offsite location response time could be compromised, which may result in fugitive dust exceedances (pursuant to the requirements of Rule 401 Visible Emissions). K-13

Section 5, Air Quality, Mitigation Measures AQ-2, page 5.3-12

Stationary Equipment Evaluation K-14

When evaluating operational emissions from a project of this type, the APCD looks at the emissions from stationary and mobile equipment. As mentioned previously, the stationary

Environmental Impact Report for Biorn CUP & EIR
September 29, 2005
Page 5 of 9

equipment will require an Authority to Construct and Permit to Operate. The stationary equipment will be evaluated in accordance with the New Source Review criteria and Toxics New Source Review (Rules 204 and 219). The applicant will need to submit to the APCD engineering staff calculations that show the uncontrolled emissions from the project, proposed control equipment and their associated emission reduction efficiencies. These calculations will be utilized to determine the appropriate emission controls and any necessary offset. Offset prices are market based and will depend upon the availability of offset in the area. Offset requirements, if any will be determined as part of the permitting phase of the project. K-15

Mobile Equipment Evaluation

When evaluating emissions from the mobile equipment associated with this project, the APCD follows the guidelines in the APCD CEQA Air Quality Handbook. Emissions are compared to the following: K-16

a. Emission thresholds - A tiered approach is taken when evaluating operational phase emissions from a project. The various thresholds can be found in the CEQA Air Quality Handbook on page 2-2. The Tier 2 threshold is exceeded when the project emits 25 lb/day of ROG, NOx, SO2 and PM10 or 550 lb/day of CO. The Tier 3 threshold is exceeded when the project emits more than 25 tons/year of ROG, NOx, PM10 and SO2. If the project proponent is unable to lower overall ROG, NOx and PM10 emissions below 25 tons/year through the use of on-site mitigation measures, the additional emissions must be mitigated through contribution to an off-site mitigation fund at the rate of $13,600 per (combined) ton of pollutants.

On Table 5.3-6 mobile source emissions are summarized from calculations presented in Appendix F. It appears the onsite equipment emissions data for ROG and CO were transposed in Table 5.3-6. In Appendix F the onsite equipment ROG peak day emissions are 18.0 lb/day in Table 5.3-6 it is shown as 98.7. This error should be fixed.

Based on the annual throughput of 400,000 tons and assumptions presented in the DEIR the mobile source emissions from the project exceeds the APCD's Tier 2 significance threshold of 25 lb/day but does not exceed the Tier 3 threshold of 25 ton/yr. Therefore all applicable operational phase mitigation measures from the APCD CEQA Air Quality Handbook (pages 5-4 through 5-6) should be implemented. It should be noted that **if the annual throughput increases the Tier 3 threshold would most likely be triggered and off-site mitigation measures would be required.**

b. Special conditions unique to the project like diesel particulate matter emissions- In July of 1999 the California Air Resources Board (ARB) listed diesel particulate matter (diesel PM) emissions from diesel-fueled engines as a toxic air contaminant with no identified threshold level below which there are no significant effects. If a project will result in release of diesel emissions in areas with potential for human exposure, a finding of significance can be made, even if overall emission are low. Factors that are considered by APCD staff when determining significance of a project

include the expected emissions from diesel equipment, location of the project and distance to sensitive receptors. K-16

The risk associated with diesel emissions from the project was evaluated as part of the Health Risk Assessment (HRA). Comments regarding the HRA are outlined below.

c. Comparison to ambient air quality standards - Based on the data presented there is no indication at this time that the project will result in an exceedance of the ambient air quality standards.

d. Consistency with the CAP - As indicated previously, an evaluation to determine consistency with the CAP needs to be prepared for this project. The consistency evaluation should include comparisons of the impacts from the proposed land use vs. the impacts should the land use designated remain unchanged.

In addition to the on-site mitigation measures outline in AQ-2 district staff recommends the following:

1. Mitigation Measure AQ-2.A indicated that all access road will be paved to minimize fugitive dust generation by mobile equipment and vehicles. In addition to access roads all plant staging and operational areas should also be paved. Paving will greatly reduce fugitive dust emissions however; dust can collect on paved areas and will need to be removed periodically.

Section 5, Air Quality, Impact AQ-4, page 5.3-16
Even with best available control technologies, asphalt plants can generator odors that could be a nuisance to local residents. It should be noted that if odors are determined to be a nuisance as outlined in District Rule 402 additional measures to control odors maybe required. K-17

Section 5, Air Quality, Impact AQ-5, page 5.3-16
As indicated above, a consistency analysis with the Clean Air Plan (CAP) was not performed as part of this EIR. The District considers a project of this magnitude to fall within the category of large commercial/industrial developments, in addition the applicants is seeking a land use Ordnance/Land Use Element Amendment and therefore a consistency analysis with the CAP should be performed. K-18

HEALTH RISK ASSESSMENT
Section 5, Air Quality, page 5.3-6 and Impact AQ-3 page 5.3-13 K-19
The following deficiencies and inaccuracies have been identified in the HRA:

1. The 70-year lifetime cancer risk for this project has been underestimated. The cancer risk at Receptor 1, a residence in San Luis Obispo County, is reported as 9.43-in-a-million. While this appears to be less than 10-in-a-million, the risk was only calculated for a 20-year project and only included adult exposure. The District's significance threshold of 10-in-a-million as adopted by the APCD Board is based on a lifetime exposure for 70 years. While health conservative, the significance

threshold takes into account the assumption that a person may not reside in the same location for 70 years but will likely have similar exposures in a new residence or from a new project replacing the short term project in future years. Comparing the risk from 20 years of exposure to a 70-year threshold is like comparing apples to oranges. The 70-year lifetime exposure equivalent risk for this project is 9.43(70/20) = 33-in-a-million which is considered significant. As clearly stated in South Coast Air Quality Management District's Rule 1401(d)(4), "The risk per year shall not exceed 1/70 of the maximum allowable risk . . ." In the SLO County APCD, the maximum allowable risk would be 10-in-a-million with Toxics Best Available Control Technology (T-BACT) installed or 1-in-a-million without T-BACT. T-BACT is determined on a case-by-case basis, but it most likely would not include 25-year old fleet vehicles. To be considered insignificant, the risk from a 20-year project would have to be less than 2.86-in-a-million and T-BACT would still be required. K-19

2. The risk from childhood exposure was not included. Cancer potency factors used to model risk are based on a 70-year lifetime exposure. The 9-year adult risk multiplied by 20/9 does not account for childhood exposure. The 70-year derived risk includes different breathing rate calculations to account for childhood exposure and should have been used for this risk assessment.

3. The HRA assumes that the project will only be permitted for 20 years. This is problematic because the APCD typically does not limit the length of a permit but assumes continuous operation. The CUP is not being limited to 20 years and in order to accept the conclusions of this HRA, the APCD permit would need to include a clearly enforceable permit condition with a sunset date of operation. In addition, it is unknown what would happen in the next 50 years. To be health conservative, the District generally assumes that a new source is likely to replace the short-term project at its completion.

4. A significant source of toxic emissions has not been included in the HRA. Emissions for maintenance of three diesel fired standby generators were not included in the calculations. Toxic emissions from 20 hours per year of maintenance for a single diesel powered generator have been shown to be significant even at a distance of 790 feet.

5. Acute and chronic non-cancer risk were not determined for the Biorn project. The Santa Paula HRA showed an acute hazard index of 0.191. While this is below the maximum significance level for the health hazard index of 1.0, it is above the SLO County APCD Rule 219.E.3 level of 0.1 which would require Toxics Best Available Control Technology (T-BACT) on the subject equipment. In addition, the location of the receptors is very important for acute risk since it only considers 1-hour maximum exposure, all potential public receptors that are accessible for one hour should be considered regardless of whether there is a residence or business at that location.

6. Receptors were not clearly identified and it doesn't appear that business receptors were considered. A grid or table showing the locations of the modeled receptors

K-19

should have been included. Without a grid or map, it is impossible to know the location of the receptors to determine whether there are actual or potential residences or businesses present. For example, the HARP output file shows an inhalation cancer risk associated with receptor #3444 of 37.2-in-a-million for a 9-year adult exposure. If this were extended for 20 years the risk would be 82.67-in-a-million, for a 70-year lifetime exposure, the risk at that receptor would be 289-in-a-million, and the childhood exposure for those first 9 years would still be underestimated.

7. Risk isopleths were not included. Isopleths showing the areas of 1-in-a-million and 10-in-a-million lifetime cancer risk should be included to help identify actual receptors or areas where new development could occur.

8. The point of maximum impact (PMI) outside of the property line and the maximum exposed individual worker (MEI_W) were not identified.

9. Only the 1996 meteorological data set was used with no explanation or justification. Three years of ISCST formatted met data were provided to the applicant including 1994, 1995 and 1996 Nipomo area data. The HRA assessment should use three years of met data or the worst-case year. Other HRAs performed for the District have shown that the 1994 data for the Nipomo area is the worst-case year of the three. While the different receptor locations could affect which is the worst-case year, there should be some explanation why 1996 was considered the worst-case year or else all three years of met data should be used.

10. The UTM coordinates and reference system may be incorrect. Page 6 indicates that USGS, NAD27, Zone 11 UTM coordinates were used in this assessment. This project is in UTM Zone 10, not in Zone 11. HARP relies on UTM coordinates in the NAD83 format. Although HARP has a conversion algorithm, there is no indication that the coordinates were converted using HARP. The use of NAD27, Zone 11 UTMs without conversion would result in a misrepresentation of all of the receptors placing them in the wrong locations.

APCD staff does not agree with the findings on Page 12 of the Heath Risk Assessment and page 5.3-15 of the DEIR. For the reasons sited above we believe this HRA does not adequately assess the potential risks associated with this project. Ideally this HRA should be redone and address the deficiencies sited above. In order to mitigate the risk associated with the particulate matter from diesel exhaust APCD staff strongly recommends the following mitigation measures be incorporated into the project to control diesel particulate matter exhaust emissions.

1. Catalyzed diesel particulate filters (CDPF) should be installed on all onsite mobile equipment. The CDPF selected should have a control efficiency of 85% or more.

2. CDPF should be installed on all on road haul trucks owned, operated or contracted by the applicant.

3. The applicant shall use ultra low sulfur diesel in all onsite diesel equipment.

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4. A "no idling" policy shall be prepared and submitted to the APCD for review and approval, prior to the start of construction for this project. The policy should apply to both onsite diesel equipment and haul trucks and limit idling of diesel equipment to 5 minutes. K-19

Again, thank you for the opportunity to comment on this proposal. If you have any questions or comments feel free to contact me at 781-4667.

Sincerely,

Melissa Guise
Air Quality Specialist

MAG /sll

cc: Tim Fuhs, Enforcement Division, SLOAPCD
David Dixon, Engineering Division, SLOAPCD
Vijaya Jammalamadaka, SBAPCD

Attachments:
1. Naturally Occurring Asbestos Construction & Grading Project - Exemption Request Form.

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Naturally Occurring Asbestos - Construction & Grading Project Form

Send To:
San Luis Obispo County Air Pollution Control District
3433 Roberto Court
San Luis Obispo, CA 93401
805-781-5912

Applicant Information/Property Owner		**Project Name**	
Address		**Project Address and/or Assessors Parcel Number**	
City, State, Zip		**City, State, Zip**	
Phone Number	**Date Submitted**	**Agent**	**Phone Number**

Check Where Applicable	ITEM	APCD REQUIRED ELEMENT 1	APCD REQUIRED ELEMENT 2
	Project IS NOT Subject to NOA Requirements	Mapped Location Attached	
	Project IS Subject to NOA Requirements but NOT Disturbing NOA	Geological Evaluation Attached	Exemption Request Form Attached
	Project IS Subject to NOA Requirements and Project is Disturbing NOA - More than One Acre	Geological Evaluation Attached	Dust Control Measure Plan Attached
	Project IS Subject to NOA Requirements and Project is Disturbing NOA - One Acre or Less	Geological Evaluation Attached	Mini-Dust Control Measure Plan Attached

APPLICANT MUST SIGN BELOW:
Legal Declaration/Authorized Signature:
Date:

OFFICE USE ONLY - APCD Required Elements

Geological Evaluation		Exemption Request Form		Dust Control Measure Plan		Monitoring, Health & Safety Plan	
Approved		Approved		Approved		Approved	
Not Approved		Not Approved		Not Approved		Not Approved	
Comments:		Comments:		Comments:			

APCD Staff:	Intake Date:	Date Reviewed:	OIS Site #	OIS Proj. #
REQUEST FOR INVOICE	Basic Fee:	Additional Fees:	Billable Hrs:	Total Fees:

H:\enforce\karen\word\kbdir\asbestos\atcm\constructgrade\c&gform.pdf

Naturally Occurring Asbestos – Construction & Grading Project Exemption Request Form

Send To:

San Luis Obispo County
Air Pollution Control District
3433 Roberto Court
San Luis Obispo, CA 93401

Phone (805) 781-5912
Fax: (805) 781-1002

Applicant Information/ Property Owner		**Project Name**	
Address		**Project Address and /or Assessors Parcel Number**	
City, State, Zip		**City, State, Zip**	
Phone Number	**Date Submitted**	**Agent**	**Phone Number**

The District may provide an exemption from Section 93105 of the California Code of Regulations - Asbestos Airborne Toxic Control Measure For Construction, Grading, Quarrying, And Surface Mining Operations for any property that has any portion of the area to be disturbed located in a geographic ultramafic rock unit; if a registered geologist has conducted a geologic evaluation of the property and determined that no serpentine or ultramafic rock is likely to be found in the area to be disturbed. Before an exemption can be granted, the owner/operator must provide a copy of a report detailing the geologic evaluation to the District for consideration. The District will approve or deny the exemption within 90 days. An outline of the required geological evaluation is provided in the District handout **"ASBESTOS AIRBORNE TOXIC CONTROL MEASURES FOR CONSTRUCTION, GRADING, QUARRYING, AND SURFACE MINING OPERATIONS – Geological Evaluation Requirements."**

APPLICANT MUST SIGN BELOW:
I request the San Luis Obispo County Air Pollution Control District grant this project exemption from the requirements of the ATCM based on the attached geological evaluation.
Legal Declaration/Authorized Signature:
Date:

OFFICE USE ONLY - APCD Required Element – Geological Evaluation			
Intake Date:	APCD Staff:	OIS Site #:	OIS Proj. #:
Date Reviewed:	APCD Staff:	Approved	Not Approved
Comments:			

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SAN LUIS OBISPO
COUNTY PARKS

MEMO

RECEIVED
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TO: John McKenzie, Planning & Building Department

FROM: Jan Di Leo, Parks

DATE: September 1, 2005

RE: Biorn EIR (G020020M, D020293D) SCH2004011126

Thank you for sending the Draft EIR to Parks for review.

On page 5.11-1 there is a discussion of Recreation and the proposed trail along the Santa Maria River. Mitigation Measure REC-2 (page 5.11-3) adequately covers the proposed trail. Thank you for the opportunity to comment. If you have questions or concerns please contact me at 781-4089. L-1

1087 Santa Rosa Street, San Luis Obispo, CA 93408 Tel: (805) 781-5200 Fax: 781-1102
Web: www.slocountyparks.com

Our Vision Clean Air

Santa Barbara County
Air Pollution Control District

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September 30, 2005

Mr. John McKenzie, EIR Project Manager
San Luis Obispo County
Department of Planning and Building
County Government Center, Room 310
San Luis Obispo, CA 93408-2040

RE: Biorn CUP and LUO/LUE Amendment and Asphaltic Concrete Plant Draft EIR

Dear Mr. McKenzie,

The Santa Barbara County Air Pollution Control District (SBCAPCD) has reviewed the Draft Environmental Impact Report (DEIR) for the above-mentioned project located in San Luis Obispo County as it relates to air quality impacts in Santa Barbara County.

The project includes the construction and operation of a portable stand-alone asphaltic concrete plant capable of using recycled asphalt and concrete; and periodic operation of a portable lime system, a portable asphaltic concrete recycling facility and a portable rubberized asphaltic blending system.

In general, the SBCAPCD is concerned that the DEIR did not properly characterize and mitigate the project's potential air emissions and their public health effects on communities in Santa Barbara County.

SPECIFIC COMMENTS

1. The health risk assessment (HRA) was performed using the 9 year exposure method for cancer risk and adjusted to a 20 year operation period. The Office of Environmental Health and Hazard Assessment recommends using a 70-year exposure duration for long term projects. In addition, there are no regulations or permit conditions that prevent this facility from operating for more than 20 years. For these reasons, the results of the 70-year exposure duration should be presented and should not be adjusted to 20 years. The risk from a 70-year exposure duration would be 33.0 in a million (9.43 in a million * 70 years/20 years). This value exceeds M-1

Terence E. Dressler • Air Pollution Control Officer
260 North San Antonio Road, Suite A • Santa Barbara, CA • 93110 • www.sbcapcd.org • 805.961.8800 • 805.961.8801 (fax)

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September 30, 2005
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the SBCAPCD's significant risk threshold for excess cancer risk (the significance threshold for public health risk is set at 10 excess cancer cases in a million). M-1

2. The DEIR does not include an analysis for acute and chronic non-cancer health affects; instead the DEIR refers to a health risk assessment done in Santa Paula. The SBCAPCD does not recommend ignoring acute and chronic non-cancer risk based on studies done at similar facilities. Topography, meteorology, receptor location, and other factors are different in Nipomo than in Santa Paula. In addition, the SBCAPCD has not been given the opportunity to review the Santa Paula HRA to determine if that HRA was performed correctly. The SBCAPCD recommends that the acute and chronic non-cancer risk be calculated and compared to our significant risk thresholds (for non-cancer risk, the significance level is set at a Hazard Index of more than one (1.0). The Hazard Index of more than one means that predicted levels of a toxic pollutant are greater than the exposure level, which is generally considered acceptable). M-2

3. Section 5.1, *Emission Calculations*, of the *Air Quality Health Risk Assessment* presented in Appendix F, states that emission calculations for the HRA are based on an average operating schedule. If the project were to obtain a permit, the SBCAPCD would require the emissions be calculated based on the maximum operating schedule. The intention of performing a HRA is to prevent creating a significant risk to the public. If operations may occur beyond what was presented in the health risk assessment, the public may be exposed to a significant risk. For these reasons, the SBCAPCD recommends calculating emissions based on the maximum operating schedule. M-3

4. Section 5.1.1., *Stationary Sources*, of the *Air Quality Health Risk Assessment* presented in Appendix F, states that AP-42 and VCAPCD emission factors were used to calculate naphthalene emissions from natural gas combustion sources. Additional toxic pollutants (e.g., benzene, formaldehyde, et cetera) are listed in AP-42 and *Ventura County APCD AB 2588 Combustion Emission Factors* and should be included in the analysis. The SBCAPCD recommends including every toxic pollutant listed in these documents in the HRA. M-4

5. There are three permanent diesel fuel fired backup generators, including two (2) 600 kW and one (1) 150 kW engines. The diesel particulate matter emission from these M-5

SLO Co. Biorn Asphaltic Concrete Plant DEIR
September 30, 2005
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generators should be included in the HRA. The SBCAPCD recommends including the diesel particulate matter emissions from testing and maintenance in the HRA. M-5

6. The HRA evaluated the risk at residential receptors. Were nearby business receptors also included? The SBCAPCD recommends evaluating the risk at business receptors. M-6

7. An electronic copy of the HARP input and output files should be made available for review. The HRA can not thoroughly be reviewed without these files. M-7

Thank you for the opportunity to comment on the draft environmental document for this project. We look forward to your response. Please call Robin Cobbs, Air Quality Engineer at 961-8824 or contact me by e-mail at *vlj@sbcapcd.org*, if you have questions.

Sincerely,

Vijaya Jammalamadaka

Vijaya Jammalamadaka, AICP
Air Quality Specialist III
Technology and Environmental Assessment Division

cc: Ms. Robin Cobbs, Air Quality Engineer
TEA Chron File

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STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION
50 HIGUERA STREET
SAN LUIS OBISPO, CA 93401-5415
PHONE (805) 549-3111
FAX (805) 549-3329
TDD (805) 549-3259
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SLO – 101 PM 0.80
SCH # 2004011126

John McKenzie
San Luis Obispo County
Department of Planning & Building
County Government Center
San Luis Obispo, CA 93408

Dear Mr. McKenzie;

RE: Biorn Conditional Use Permit and Land Use Ordinance/Land Use Element Amendment Draft EIR (NOC)

This letter is intended to provide the California Department of Transportation's (Caltrans) response to section 5.12 of the Draft Environmental Impact Report for the Biorn Conditional Use Permit (Biorn CUP) and Land Use Ordinance/Land Use Element Amendment (LUO/LUEA). After reviewing additional information and taking into consideration the costs and delays associated with performing the Deflection and Merge/Acceleration analyses requested in our letter of November 28, 2005, Caltrans requests that the County of San Luis Obispo impose the following conditions of approval on the Biorn CUP:

1. Prior to issuance of a certificate of occupancy for the Project, the applicant, its' heirs or assignees, shall enter into an "Agreement for Pro-Rata Share for Improvements" with the California Department of Transportation (Caltrans), in which the applicant agrees to deposit one hundred fifty thousand dollars ($150,000) towards the Santa Maria River Bridge Widening Project (E.A. 44590). Applicant, its' heirs or assignees, shall provide receipt or other written documentation from Caltrans that the funds have been deposited. N-1

2. Subject to the written direction of the California Department of Transportation (Caltrans), within five (%) years of issuance of a certificate of occupancy for the Project, the applicant, its' heirs or assignees, shall provide one and one half inch (1.5") thick asphalt concrete pavement overlay on the four (4) State Route 101/166 on and off ramps. Caltrans shall provide the applicant, its' heirs or assignees, with at least ninety (90) days prior written notice to proceed with said paving work. The applicant, its' heirs or assignees, shall obtain an encroachment permit from and shall coordinate the paving with Caltrans. N-2

"Caltrans improves mobility across California"

Mr. McKenzie
May 3, 2007
Page 2

These conditions are an appropriate strategy for mitigating the Biorn CUP's traffic impacts to the state highway system to a level of non-significance under CEQA. Recognition of the appropriateness of this mitigation strategy is based on Caltrans best engineering judgement as owner/operator of the state highway system and the statutory authority granted the Department under *California Streets and Highways Code*.

If you have any questions, please contact me at 549-3168.

Sincerely,

DAVID MURRAY, Chief
Office of Regional Planning and Development Review

cc: Tim Carmel, Carmel & Naccasha LLP
Ron Decarli, Director, SLOCOG

"Caltrans improves mobility across California"

Melissa Guise/APCD/COSLO
05/03/2007 04:33 PM

To John McKenzie/Planning/COSLO@Wings
cc
bcc
Subject Biorn

History: This message has been replied to and forwarded.

Hi John,

Per our conversation on the Biorn Project , as we discussed please include the following mitigation measures

1. Previous correspondence including mitigation measures from FEIR and our associated comment letter dated 9-29-05

2. The following 2 measures from our 5-11-06 letter (the others have been addressed or aren't applicable)

The applicant shall use ultra low sulfur diesel in all onsite diesel equipment

A "no idling" policy shall be prepared and submitted to the APCD for review and approval, prior tot he start of construction for this project. The policy should apply to both onsite diesel equipment and haul trucks and limit idling of diesel equipment to a maximum of 5 minutes. O-1

3. In the addendum to the HRA dated 1-17-07 page 5 the applicant has included a condition for the conditions of approval

" Project loaders shall be powered by engines that are Tier 2 or better and equipped with add-on controls for diesel particulate matter. Add-on controls chosen shall be consistent with the highest level of ARB verified technology approved for use with the loaders at the time of issuance of a certificate of occupancy." O-2

Also here is the letter that we sent on April 11, 2007 regarding the addendum to the HRA. 3072-1g.pdf O-3

Please let me know if you have any questions
Thanks
Melissa
781-4667

AIR POLLUTION CONTROL DISTRICT
COUNTY OF SAN LUIS OBISPO

April 11, 2007

RE
APR 1 5 2007
S.L.O. CO PLANNING DEPT.

John McKenzie
San Luis Obispo County Building and Planning Department
County Government Center
San Luis Obispo, CA 93408

SUBJECT: Addendum to Health Risk Assessment - Biorn Asphalt Plant

Dear Mr. McKenzie:

O-3

We have completed our review of the Addendum to the Biron Asphalt Plant Health Risk Assessment (HRA). We appreciate the updates to the HRA and have no further comments at this time.

If you have any questions regarding is matter please feel free to contact Melissa Guise at (805) 781-4667.

Sincerely,

Melissa Guise
Air Quality Specialist

MAG/sll

cc: Scott Cohen, West Coast Environmental

h:\plan\ceqa\project_review\3072-1\3072-1g.doc

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25 July 2007

Mr. John D. McKenzie, Environmental Specialist
COUNTY OF SAN LUIS OBISPO
PLANNING AND BUILDING DEPARTMENT
1055 Monterey Street
San Luis Obispo, CA 93408

RE: DRAFT BIORN CONDITIONAL USE PERMIT AND LAND USE ORDINANCE/LAND USE ELEMENT AMENDMENT – DRAFT ENVIRONMENTAL IMPACT REPORT (EIR), G020020M, D020293, SCH #200411126

Dear Mr. McKenzie,

This letter is being sent to you after consulting with the current Fire Marshal, Mr. Rick Swan and former Fire Marshal, Mr. Rob Lewin to modify proposed EIR mitigation measures *PUB-2* and *PUB-6*. After careful review of our proposed mitigation measures, the Fire Marshal made modifications and now concurs with the proposed modifications. Listed below are both the original Mitigation Measures, PUB-2 and PUB-6 (in italics) and proposed revisions.

EIR Mitigation Measure PUB-2

In accordance with the fire flow and water storage requirements of the County adopted California Fire Code (CFC), the applicant shall construct a firewater storage tank with a minimum storage capacity of 180,000 gallon. P-1

Proposed Mitigation Measure PUB-2

Prior to occupancy and/or initiation of the asphalt concrete plant and related operations, the applicant shall install a 5,000-gallon fire water storage tank to CAL FIRE Standards. If the design of the asphalt facility requires by code an automatic extinguishing system or if CAL FIRE requires a system as mitigation, the applicant shall install a system that meets industry and CAL FIRE requirements.

EIR Mitigation Measure PUB-6

All new development within the LUO/LUE amendment area shall meet the fire flow requirements of the County adopted California Fire Code (CFC). Minimum water storage and hydrant requirements are outlined in Appendix IIIA of the CFC. This requirement is usually met through the establishment of a community water system. P-2

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RLA 2248 • CLARB #907

OASIS ASSOCIATES, INC.
July 25, 2007
BIORN CUP & DEIR
Page 2 of 2

Proposed Mitigation Measure PUB-6

Prior to the issuance of a certificate of occupancy, applicant shall prepare a Water/Fire Suppression Master Plan, to the satisfaction of CALFIRE, for the 55-acre area redesignated to the Industrial land use category. The scope of the Master Plan shall be prepared in collaboration with CALFIRE, the New Cuyama Mutual Water Company and the San Luis Obispo County Department of Planning & Building. Applicant shall pay for said Master Plan, subject to a pro-rata reimbursement by the benefiting property owners, pursuant to a Reimbursement Agreement. P-2

We are requesting that the EIR consultant modify Mitigation Measure PUB-2 and PUB-6, accordingly. Thank you for your immediate attention to this matter. Please contact us with your questions and/or comments.

Respectfully submitted,
OASIS ASSOCIATES, INC.

C.M. Florence, AICP Agent
BIORN/DIANI

Attachments– Correspondence to R. Swan from C.M. Florence, AICP – July 9, 2007
Email response to C.M. Florence, AICP, et al – July 23, 2007

c: R. Swan/CAL FIRE
J. Diani
T. Carmel
07-0045

O:\Diani-Biorn\Correspondence\JMcKenzie7-25-07.doc