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Stop the Trucks! Coalition  
c/o Ojai Valley Chamber of Commerce  
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June 17, 2008

RE: "Investigation of Ozena Valley Ranch Mine, July & August 2007 Weigh Tickets & Billing Records"

Marty Robinson, CEO  
County of Ventura  
800 South Victoria Ave,  
Ventura, CA 93009

Dear Ms. Robinson:

Thank you for commissioning Tom Berg and his report on the operations of the Ventura County Resource Management Division. The Ojai Stop the Trucks! Coalition was grateful that we not only were able to provide input to the report but were also afforded the opportunity to present our views before the Board of Supervisors.

In the wake of the comments made by each of the Supervisors, one would have imagined that the employees of the Resource Management Agency and the Planning Division would have gotten the message that when it comes to the administration and processing of C.U.P.'s, that county staff must deal with the issues of monitoring and compliance.

Sadly, that does not seem to be the case. Last week our coalition received the attached letter from Patrick Richards. Please consider this letter our formal response and *rejection* of his May 29, 2008 "*Investigation of Ozena Valley Ranch Mine July & August 2007 Weigh Tickets and Billing Records.*"

According to Mr. Richards, he reviewed some two-months of weigh tickets and allegedly spotted so few violations that, in his words, they "were found to be inconclusive towards reviewing Condition No. 72 of CUP 5170."

We reviewed the same Weigh Tickets and Time Stamps as Mr. Richards but arrived at a completely different conclusion using the guidelines clearly set – and confirmed last year by County Counsel and Division Director Kim Rodriguez – in Condition No. 72 of CUP 5170.

We found that of the 649 weigh tickets reviewed, *476 were for trucks that used Route 33 north or south through Ojai and Casitas Springs.* By our count over 268 -- **or over 40% of the total, amounting to an astonishing 55% of those going through our valley** -- were in apparent violation of Condition No. 72 of CUP 5170.

It would be an act of charity to say that after eight years of monitoring this C.U.P., the Planning Division staff appears to suffer from a profound aversion to comprehending, implementing, monitoring and/or insuring compliance of this permit.

With Mr. Richards seemingly using an apocryphal set of standards to evaluate compliance that have nothing to do at all with Condition No. 72 guidelines, is it any wonder that so many people – leaders from within Ojai's elected and appointed city officials, the leadership of the Ojai Unified School District, the CEO of the Ojai Chamber of Commerce – and the thousands of regular

citizens who constitute and support Ojai's broadly represented Stop The Trucks! Coalition -- are so angry?

Given that more than half of all mine transport truck trips through the Ojai Valley are in apparent violations of time constraints, this calls into question any recommendation made by the Planning Division to the Planning Commission and the Board of Supervisors regarding Ozena over the past eight years. There is an obvious need for an independent Ombudsman to not only undertake a further investigation into abuse of CUP 5170 by the permit holders, but also the very operation of compliance monitoring by the Planning Division as was called for by the Board of Supervisors on the day of Tom Berg's presentation.

Mr. Richards, however practically precludes any further examination by quoting his supervisor, Kim Rodriguez, the Planning Division Director, who stated that the County *will not retroactively enforce possible violations of Condition No. 72.*

Kim Rodriguez sent letters to Brian Bergman (the attorney for Ozena) and to Scott Eicher (at the time, the Chairperson of the "Stop the Trucks! Coalition") declaring that *"although there was some past confusion among department staff as to the interpretation of the hours listed in the 2003 CUP Modification #1 of 2003, the Planning Division has determined that Condition 72 (Days and Hours of Operation) will be enforced using a strict and literal reading of the conditions which prohibit All Project Related Travel on Highway 33 between Casitas Springs and the City of Ojai on weekdays at any time other than 6:00am to 7:00 am and 9:00 am to 3:00 pm and Saturdays from 6:00 am to 5:00 pm.*

Ms. Rodriguez's decision to not retroactively enforce violations is, in itself, questionable. It is akin to a Police Department refusing to stop criminal behavior because patrol officers were ignorant of the law. Incompetence of staff is no excuse for justifying a unilateral decision to override the conditions of a C.U.P.

Given what appears to be more than tacit approval of Mr. Richards' work by his superiors, we respectfully ask the following:

- 1) That you appoint an Ombudsman to investigate the entire handling of C.U.P. 5170 as well as the operation and behavior of Planning Division management and staff on this project.
- 2) That you take appropriate actions to begin the C.U.P. termination process for Ozena for what appears to be known and regular violations of the terms of their permit – violations that continue with impunity by virtue of all parties being fully well that the Planning Division thoroughly lacks the ability to engage in enforcement.
- 3) We believe that given Mr. Patrick Richards' judgments regarding oversight of the Ozena Ranch Mine project (some of which are detailed below) that he should be barred from having any further involvement with this project or any other involving Ojai.

In reviewing the history of The Ozena Ranch Mine project, the original permit to operate the gravel mine was issued in 2001. Unfortunately for the citizens of Ojai, CEQA violations began immediately when the Division failed to establish reasonable standards for monitoring, compliance or enforcement.

The next CEQA violation occurred in May of 2003, when Mr. Richards reviewed and approved a "Minor Modification of C.U.P. 5170 (1)." Although the restrictions on transit through Ojai were left unchanged, Mr. Richards signed off on an "Approval Letter" issued two weeks later, on June 13, 2003. In that letter the conditions are apparently modified significantly in the favor of the applicant -- the Virgilio Family -- without any public review or approval. In item #7 (3) of the Approval Letter, the limits of trucking through Ojai are redefined as follows: *No change in trucks avoiding Highway 33 through the Ojai Valley between 7-9am and 3-5pm during weekdays.*

Although the C.U.P. itself calls for no trucks though Ojai after 3:00pm, the insertion of the phrase “3-5pm” created the illusion that trucks can now travel through Ojai unrestricted after 5:00pm, effectively tripling the hours of operation through the valley from 7 to 20 hours a day. This also had the effect of vastly increasing the income flowing into Ozena and to the Virgilio family, despite the fact that neither Mr. Richards nor the Planning Division violated CEQA guidelines by making such a modification without public input, awareness or review.

All of this might have gone entirely unnoticed or treated as a mere typo except for several facts: First, as best anyone can confirm, after the 2005 slides on Route 33 above the Sespe Gorge were cleared, trucks began to run through Ojai as early as 2:30 am and well past the 3:00pm scheduled weekday cut off.

It was then perhaps entirely ironic that when two gun stores -- one in Compton and one in the Ojai Valley -- both owned by the same Virgilio family that operates the Ozena Ranch Mine facility -- were raided and closed by Federal agents of the ATF, resulting in a member of the Virgilio family apparently being convicted on charges related to illegally selling guns to known felons -- that their rock and gravel mine operations began to more fully occupy the radar screens of a vast number of Ojai residents and civic leaders. Increased press coverage began to appear. In response to the rapidly growing complaints about Ozena’s trucks, Nao Braverman -- a reporter for the Ojai Valley News -- interviewed Ventura County Planning Division staff for an April 2007, article. Scott Ellison is quoted in that article as saying:

*“It has been difficult to monitor trucks violating their travel restrictions because there are several mines in the area that use gravel trucks, each with varying permit restrictions, and it has been almost impossible to identify which mines the trucks are coming from.”*

Given the Planning Division's claim that it is seemingly impossible to monitor C.U.P. compliance, the County had no business, under CEQA guidelines, approving the C.U.P. in the first place. Further, when pushed by public pressure to monitor the trucks, the Division came up with the ludicrous idea of “placards”, which are invisible at night when most violations occur, rather than suggesting ideas that might actually work, such as traffic cameras mounted at the “Y” in Ojai and on Route 33 near the mines.

In an April 2, 2007 memo to Kim Rodriguez (*Early Morning Trips, Ozena Valley Mine*), Mr. Richards does mention that the Division had received a number of telephone complaints and 10 letters in which noise was listed as a serious problem. To date, *those ten letters have never surfaced in any of our continuous Public Records Requests.*

Here’s a classic, telling example of how the Ventura County Planning Division deals with complaints regarding the mine trucking transports careening through the Ojai Valley during restricted time periods: A resident of Maricopa Highway north of Matilija Canyon submitted two complaints between 2005 and 2006. These complaints were either ignored or never investigated. To date, the submitter of these complaints has never received a response from the Planning Division. He has since filed a third complaint early this year but this has also failed to garner any response. By the way, copies of these complaints have been re-submitted to the Planning Division, the County Board of Supervisors and the press.

Eventually -- and perhaps in a face-saving effort which we believe was too little and too late -- in response to a complaint that may have originated from the Ojai Valley Unified School District protesting that gravel trucks from Ozena were violating the schedule -- Scott Ellison made an appearance in Ojai in September of 2006. According to his case notes on file, (*Memorandum; Ventura County Planning Division, September 18, 2006*) which we obtained last year during a Public Records Request, there were observations of seven violations by trucks from Ozena in the course of one week. In fact, if one reviews Mr. Ellison’s charts (as Mr. Richards should have done) one finds that 9 of 16 trips, or nearly two-thirds of all trucks observed, were in apparent

violation. Planning Division staff once again exhibited a profound lack of knowledge of Condition No. 72 of CUP 5170.

Following-up on Ellison's report, Carole Aragon of the Planning Division wrote up a "Notice of Violation" that ignored most of the actual early morning violations and instead focused only on those during school black-out hours that Mr. Ellison reported. The mine was told to comply but no other disciplinary action or follow-up seems to have been taken to determine whether or not the Ozena Ranch Mine transports remained in compliance.

Last year, when initially questioned about complaints in two Public Record Requests filed by Los Padres Forestwatch (a member of the Stop the Trucks! Coalition) Planning Division staff ignored the first request and then rebuffed the second, claiming that *"Material that is not public record include copies of actual complaints, any enforcement files/notes, or proprietary information that could give competitors business insights into a project's operational or financial activities."* That response was a clear violation of state law and it was only following our third request, made in our behalf by the law firm representing the Stop the Trucks! Coalition, and presented directly to Kim Rodriguez, that we finally obtained the documents originally requested months earlier.

On January 25, 2007, the Planning Division prepared another memo entitled "Early Morning Truck Runs Through the Ojai Valley." That memo details the department's discussions about Ozena, but repeatedly misquotes the hours of truck restrictions through the Ojai Valley and continues to repeat the errors as if they were facts. In truth, all the memo does is memorialize the Planning Division's profound aversion to knowing and implementing the restrictions of the C.U.P.

Mr. Richards further compounds and confirms the Division's lack of understanding of the C.U.P. conditions in that same April 2, 2007 memo to Kim Rodriguez noted above, by failing to accurately cite the restrictions on traffic through Ojai, instead stating only that there is much public hostility to the mine.

On April 30, 2007 – responding in an email to Nao Braverman and myself – with copies forwarded to Patrick Richards and Kim Rodriguez, Manager of the Planning Division, as well as several other staff in Supervisor Bennett's office and the City of Ojai, Scott Ellison repeats the canard worked into the 2003 Approval Letter.

*"4. Since the operator can start loading trucks at 3:00 am now, empty trucks can be running north through the Ojai at 2:00 am and loaded trucks can be coming back through the Ojai by 4:00 am. The proposed project would move the start time to 4:30 am which shifts the empty trucks to 3:30 am and the full trucks to no earlier than 5:30. While the new start time is still early, it is later than the existing allowed time \* we assume later is better than earlier."*

In other words, the Planning Division treats their apocryphal schedule as a given and then goes out of its way to defend it in the press and public.

Later that same day, April 30, Patrick Richards, "upon review of public comments..." issues a letter from the Planning Department announcing that the Draft Mitigated Negative Declaration (MND) is being withdrawn, to be replaced by a full EIR. He states:

*"The existing project has a 3:00am start time to load trucks. The MND indicates the project would have a 6:00am start time. However the applicant is requesting a 4:30am start time. This results in truck trips occurring earlier in the morning that are assumed in the MND. The impacts of these earlier trips have not been evaluated."*

Mr. Richards' statement seems innocuous enough except for the fact that the schedule on page 9 of the MND does not call for a 6:00am start. There is no evidence of a request to move it to

4:30am, nor would a supposed start time 1-1/2 hours later require an evaluation of impacts given that the impacts would be less.

Once gain Mr. Richards is off the mark, but it gets worse...

In August of 2007, Ojai resident John Broesamle (former president of the Ojai Valley Land Conservancy and supporter of the Stop the Trucks! Coalition) and I each filed written complaints. Mr. Broesamle's complaint was said to be "lost" and remained without a response until he personally called the Division for a follow up, almost five months later, in January 2008. On the other hand, my complaint was summarily rejected by Pat Richards before he even evaluated case facts from a written response by John Hecht (environmental consultant to the Ozena Ranch Mine) submitted on August 30, 2007. Mr. Hecht's response and the enclosed weigh tickets raised additional questions about trucks running out of hours, weights being hand written and times being possibly manipulated. Mr. Richards inquired about these but never followed up. In February we requested a formal reopening of the process along with two months of weigh tickets and billing records. Four-months later, we were handed Mr. Richards' two-page "investigation" that we are now rejecting.

Adding insult to injury, Kim Rodriguez, in her December 21, 2007 letter to Mr. Bergman, actually encouraged Ozena to appeal her ruling that the C.U.P. will be strictly enforce. Ms. Rodriguez was later over-ruled by County Counsel who determined that there can be no appeal because, in fact, what Ozena would be appealing is the very C.U.P. conditions that they, themselves, had already agreed to and had supposedly been operating under for eight years.

Having been denied an appeal of the C.U.P., the lawyers for Ozena have now filed a "*Verified Petition for a Writ of Mandamus,*" to get their conditions changed.

Given the Division's history on this C.U.P., would it be out-of-line to wonder if, in fact, they were encouraged to do so by county officials? I sincerely hope not.

None of this would amount to much except for the ongoing impacts to the Ojai Valley – which can not be reversed or repaired. The original C.U.P. expired in 2006. While its renewal is debated, the failures of the Planning Division to follow CEQA and properly monitor compliance have not only increased the number and hours of trucking, but have also increased onerous air and noise pollution; furthered road bed damage; diminished the quality of life and property values of all those who live along the Route 33 corridor; increased the odds of accidents on all stretches of Route 33; and opened up the County to civil liability and litigation. It is only due to the collapse of a portion of Highway 33 adjacent to Wheeler Hot Springs and the current economic down-turn that has more recently handed the Ojai Valley an unanticipated respite from any increase of mine truck transports degrading our environment, health and safety. However, the citizens of Ojai cannot continue to count on Mother Nature or domestic and/or world market conditions to preserve and safeguard our valley.

The entire economy of the Ojai Valley is built upon three legs: Tourism, the Arts, and Education. Like a three-legged stool, if any one of these legs are degraded, there's a profoundly negative effect on the entire structure. Turning the Ojai Valley into what would inevitably become a de facto industrial trucking transportation zone would have a catastrophic impact on our economy by threatening and degrading both the valley's environmental health, its safety and welfare, and the overall ambiance that is the very foundation for why Tourism, Education and the Arts are the fuels that power our town's economic well-being and way of life. This is why there is such wide-spread, grass-roots, civic and governmental support for keeping Ojai just the way it is. Indeed, if the numerous rock and gravel mines located in the Los Padres Forest and either now in operation or about to come on line wish to deliver their product throughout Ventura County, mandate that they take the alternative and safer route via Lockwood Valley Road connecting with the I-5 and Route 126 to the Ventura Freeway. If that is so mandated, this conflict will immediately evaporate.

We respectfully ask you to immediately investigate this matter and to take all appropriate actions necessary. It has become painfully clear that neither the staff, administration of the Resource Management Agency or the Planning Division, are going to police themselves. The citizens of Ventura County should not have to suffer the burdens created by the intransigence and/or incompetence of public employees. Thank you.

Sincerely,

Howard Smith, Vice Chair  
Ojai Stop the Trucks! Coalition

CC: Supervisors Foy, Bennett, Long, Flynn & Parks