

DEPARTMENT OF PLANNING AND BUILDING



August 24, 2012

Cold Canyon Landfill Inc.  
Corral de Pierda Land Co.  
2945 McMillan #136  
San Luis Obispo, CA 93401

Earl Darway  
350 Patchett Road  
San Luis Obispo, CA 93401

**SUBJECT: APPEAL OF COLD CANYON LANDFILL / DRC2005-00170**  
**HEARING DATE: AUGUST 9, 2012 / PLANNING COMMISSION**

We have received an appeal on the above referenced matter. In accordance with County Real Property Division Ordinance Section 21.04.020, County Land Use Ordinance Section 22.70.050, and Section 23.01.042 of the Coastal Zone Land Use Ordinance, the matter will be scheduled for public hearing before the County Board of Supervisors. A copy of the appeal is attached.

The public hearing will be held in the Board of Supervisors' Chambers, County Government Center, San Luis Obispo. As soon as we get a firm hearing date and the public notice goes out, you will receive a copy of the notice.

Please feel free to telephone me at 781-5718 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Nicole Retana".

Nicole Retana, Secretary  
County Planning Department

cc: Murry Wilson, Project Manager  
Bill Henry, Consultant  
Ellen Carroll, Division Manager  
Jason Giffen, Director  
Jim Orton and Whitney McDonald, County Counsel



# INLAND APPEAL FORM

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING  
976 OSOS STREET • ROOM 200 • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600

Promoting the Wise Use of Land • Helping to Build Great Communities

Please Note: An appeal should be filed by an aggrieved person or the applicant at each stage in the process if they are still unsatisfied by the last action.

**PROJECT INFORMATION** Name: Cold Canyon Landfill File Number: DRC2005-00170

Type of permit being appealed:

- Plot Plan
- Site Plan
- Minor Use Permit
- Development Plan/Conditional Use Permit
- Variance
- Land Division
- Lot Line Adjustment
- Other: \_\_\_\_\_

The decision was made by:

- Planning Director (Staff)
- Building Official
- Planning Department Hearing Officer
- Subdivision Review Board
- Planning Commission
- Other \_\_\_\_\_

Date the application was acted on: 8/9/12

The decision is appealed to:

- Board of Construction Appeals
- Board of Handicapped Access
- Board of Supervisors
- Planning Commission

SLO COUNTY  
PLANNING/BUILDING  
DEPT  
2012 AUG 23 PM 2:46

**BASIS FOR APPEAL**

State the basis of the appeal. Clearly state the reasons for the appeal. In the case of a Construction Code Appeal note specific code name and sections disputed). (Attach additional sheets if necessary)

See the attached

List any conditions that are being appealed and give reasons why you think it should be modified or removed.

Condition Number	Reason for appeal (attach additional sheets if necessary)

**APPELLANT INFORMATION**

Print name: Earl Darway

Address: 350 Patchett Road, San Luis Obispo, CA 93401

Phone Number (daytime): 805-459-2232

We have completed this form accurately and declare all statements made here are true.

Signature: *Earl Darway* Date: 8-23-12

**OFFICE USE ONLY**

Date Received: 8/23/12 By: NAR

Amount Paid: \$ 250.00 Receipt No. (if applicable): 0588

John W. Belsher  
Howard M. Becker  
Steven P. Roberts  
Gregory A. Connell



Belsher, Becker & Roberts  
ATTORNEYS AT LAW

412 Marsh Street  
San Luis Obispo, CA 93401

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www.bbrlawfirm.com

August 23, 2012

SLO Board of Supervisors  
County Government Center  
San Luis Obispo, CA 93408

**RE: Cold Canyon Landfill Expansion**

Dear Commissioners,

Earl Darway adjoins the proposed expansion of the Cold Canyon Landfill, immediately to the south. A residence on his property is within a few feet of the common property line, as shown on the attached Figures from the EIR, Exhibits A and B.

Mr. Darway submitted a letter to the Planning Commission, dated August 9, 2012, which outlines simple and achievable alternative alignments for the access to the expanded facility and alternatives to the 40-foot-high working dirt pile proposed next to a residence on his property. The letter is attached. If Mr. Darway's suggestions were implemented, these changes to the project would substantially reduce the impacts on his residential property without causing a significant impact on the plant's expansion capacity. Mr. Darway would then drop his legal claims against the project.

Mr. Darway's simple solutions were discussed at the Planning Commission and considered favorably by more than one Commissioner, but dropped because your staff had not studied it, nor considered in the environmental or other evaluations. This rush to decision has the effect of putting blinders on the obvious. We hope the Board will do a more responsible job.

1. The project violates the Noise Ordinance

The EIR admits the General Plan requirement of 50 dB (Leq daytime) cannot be achieved with the applicant design (p. V-226) [20dB reduction needed - only up to a 15db reduction can be achieved with a berm] Alternative II reduces noise to a less than significant impact (p. IV-22). The compromise using a permanent, non-working berm and relocating the access road away from Patchett Road would be an acceptable approach to Mr. Darway, even though the conflict with the General Plan is unavoidable.

SLO Board of Supervisors  
August 23, 2012  
Page 2

As shown above, the "findings" drafted by staff to override this factual determination in the EIR are not supported by any, much less substantial evidence. Rather, the staff suggests that public benefits override all the noise concerns.

The Noise Ordinance is required to be consistent with the Noise Element. The Noise Element 1.1 says the Noise Ordinance is to address existing situations. The Noise Element provides standards for projects under consideration. A level of 50 Db (Leq daytime) is to be achieved.

Effective noise mitigation is required to be incorporated into project design. Section 4 General. No effort appears to have been made in this regard. Rather, the staff is reacting to the design proposed by the applicant.

The Noise Element provides for waivers under Section 4.5, where mitigation is "not feasible". Section 4.5. The waiver is to be for the "minimum amount necessary" and mitigation is to be implemented to the "maximum extent feasible". This test is to be applied to enable "reasonable" use of the property, not just what the corporate entity requests.

The County has yet to apply the Noise Element provisions to this project using substantial evidence to support its waiver.

2. The last minute noise "findings" claim to have evaluated "all feasible mitigation measures" but this is false.

In June/July, the staff realized the project was going to cause irremedial noise impacts in violation of the Noise Element and that this created a serious conflict with the Noise Element and General Plan. No project can be approved which violates the General Plan and the Board cannot simply make findings of overriding considerations as it can for CEQA determinations. Rather than deal with the violation of noise standards by redesign of the project or consideration of Mr. Darway's suggestions, the staff report admits the noise standards cannot be met, yet provides a new "finding" to overlook this circumstance.

The new finding provides:

"H. The standards of the Noise Element have been considered, the project related noise impacts have been evaluated, and all feasible mitigation measures have been recommended to minimize the impacts associated with the proposed Landfill and noise generating uses at the Landfill site to the maximum extent feasible."

The Board members are invited to ask themselves: Did we, the County, really consider and study the ideas presented by Mr. Darway?

SLO Board of Supervisors  
August 23, 2012  
Page 3

Do you, the Board members, have "evidence" in front of you to support the claim that the alternatives for the access and the 40-foot high working dirt pile are not feasible? Or are you just taking the applicant's word for it?

In a legal sense, the Board cannot make such sweeping statements without pointing to evidence in the record to support the statements.

3. The 40' high Working Stockpile should be replaced by a 12-15' berm along Patchett Road.

The "Proposed Stockpile" is a 40' high mountain immediately adjacent to a Patchett residence. It is to be worked daily. There is no reason to impose such a huge burden on residences. Instead, a 12-15' high berm along Patchett Road is proposed, as shown in Exhibit A. A top soil layer should be applied so it can be planted. Pending final closure there is no reason to have this berm used for cover. A working stockpile can be moved from module to module in the expansion area, as well as continue in its existing location.

4. Patchett Road is private and not available for emergency access - County Fire input is needed.

The conditions of approval (No. 104) previously provided for use of Patchett Road for "emergency vehicles." Patchett Road is, however, private. The staff then took out the reference to Patchett Road. The landfill owners have not discussed use of Patchett Road with its residents, nor otherwise secured any easement rights. Residents are concerned that the single road to the interior of the landfill creates a fire hazard with no emergency alternative access. A review of the record discloses no input from County Fire. Given the obvious dangers of industrial operation on a dead end road, the Board should request County Fire input.

The Board is requested to consider the project design and demand evidence Mr. Darway's alternative proposals have been evaluated. If feasible, they are required to be incorporated into the project.

Sincerely,

**BELSHER, BECKER & ROBERTS**



John W. Belsher, Esq.

JWB/je/ab  
cc: Earl Darway

C:\Users\Angela Brezden\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\PKoUWK2T\Board ltr B 23 12 .wpd

John W. Belsher  
Howard M. Becker  
Steven P. Roberts  
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August 9, 2012

SLO Planning Commissioners  
County Government Center  
San Luis Obispo, CA 93408

**RE: Cold Canyon Landfill Expansion**

Dear Commissioners,

Earl Darway adjoins the proposed expansion of the Cold Canyon Landfill, immediately to the south. A residence on his property is within a few feet of the common property line, as shown on the attached Figures from the EIR, Exhibits A and B.

Mr. Darway views the expansion as inevitable even if it contradicts promises and conditions of approval associated with the 1991 expansion and associated sorting facility approval not to expand to Patchett Road. The present proposal has admitted significant environmental impacts on neighbors as well as conflict with the General Plan Noise Element which cannot be mitigated or overridden by findings. There are a few important compromises proposed which will mitigate the admitted impacts to the neighbors and greatly reduce the effects of the General Plan conflict.

1. The access road should be consistent with Alternative 2, the "environmentally superior alternative."

Alternative 2 uses the existing entrance and skirts along 227 before heading uphill into the facility. This design has three advantages:

- A. Site visibility is retained in its best configuration;
- B. The "frontage" aspect allows for stacking of trucks, cars, getting them off 227; and
- C. It removes the conflict of a heavy service road adjacent to residences on Patchett Road.

Darway proposes to extend the Alternative 2 road, as shown in Exhibits A and B, so as to encompass the expansion capacity sought by the applicant yet protect the neighbors, truly a win-win situation. This compromise access

does not appear to cause an appreciable loss of operational capacity. It is a "feasible" alternative and required to be studied under CEQA.

2. The 40' high Working Stackpile should be replaced by a 12-15' berm along Patchett Road.

The "Proposed Stockpile" is a 40' high mountain immediately adjacent to a Patchett Residence . It is to be worked daily. There is no reason to impose such a huge burden on residences. Instead a 12-15' high berm along Patchett Road is proposed, as shown in Exhibit A. A top soil layer should be applied so it can be planted. Pending final closure there is no reason to have this berm used for cover. A working stockpile can be moved from module to module in the expansion area, as well as continue in its existing location.

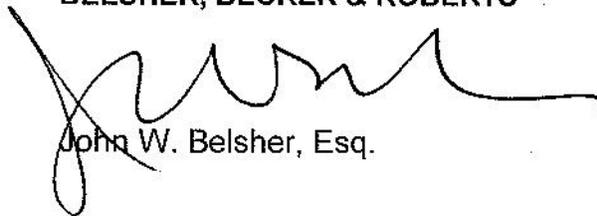
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3. Patchett Road is private and not available for emergency access - County Fire input is needed.

The conditions of approval (No. 104) specify use of Patchett Road for "emergency vehicles." Patchett Road is, however, private. The landfill owners have not discussed use of Patchett Road with its residents, nor otherwise secured any easement rights. A review of the record discloses no input from County Fire. Given the obvious dangers of industrial operation on a dead end road, the Commission should request County Fire input.

Sincerely,

**BELSHER, BECKER & ROBERTS**



John W. Belsher, Esq.

JWB/je

cc: Earl Darway



Exhibit "A"



NORTH  
1" = 400'

Final EIR

Alternative 2: Redesignated Project - Onsite Fellocation of Disposal Area and Entrance Alternative  
FIGURE VI-1

 Proposed Access Revision  
 Permanent Berm (Pending final Closure)

Source: Cold Canyon Landfill / Shaw Environmental 7/07

Cold Canyon Landfill Expansion EIR

III. Project Description

Exhibit "B"



Final EIR

Proposed Access Revision



Permanent Berm Pending Final Closure

Proposed Module Detail

FIGURE III-9

III-35

Access Point



**San Luis Obispo County Department of Planning and Building**

County Government Center San Luis Obispo, California 93408 Telephone: (805) 781-5600

**Receipt #: 3220120000000000528**

**Date: 08/23/2012**

**Line Items:**

Case No	Last Name	Tran Code	Description	Revenue Account No	Amount Paid
		APPEAL	Appeal to Board of Supervisors Fee -	1420000-1000000000-142S23	850.00
			PDA	-4350106	

**Line Item Total: \$850.00**

**Payments:**

Method	Payer	Bank No	Account No	Confirm No	How Received	Amount Paid
Check	BELSHER, BECKER & ROBERTS		30749	DRC2005-00170	In Person	850.00
<b>Payment Total:</b>						<b>\$850.00</b>

Balance

MEMORANDUM

DATE: August 24, 2012  
TO: JIM ORTON, COUNTY COUNSEL & WHITNEY McDONALD, COUNTY COUNSEL  
FROM: NICOLE RETANA, PLANNING  
RE: **APPEAL OF COLD CANYON LANDFILL (EARL DARWAY)**  
**- COUNTY FILE NUMBER: DRC2011-00043**

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Please find attached copies of associated correspondence which have been forwarded to the Project Manager and Supervisor.