

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 11/20/2012	(3) CONTACT/PHONE Murry Wilson, Environmental Resource Specialist (805) 788-2352	
(4) SUBJECT Hearing to consider an appeal by Cold Canyon Landfill (Corral de Piedra Land Company) and Earl Darway of the Planning Commission's approval of a Conditional Use Permit to allow the expansion of the existing Cold Canyon Landfill (Landfill) including: an increase of the footprint by approximately 46 acres; an increase in the total facility allowable tonnage limit; expanded and relocated the Resource Recovery Park and Materials Recovery Facility; a new scalehouse and entrance; increase in the operating hours and staffing levels; and other miscellaneous improvements (e.g., relocating fuel tanks, landscaping, replacing equipment maintenance building). Supervisorial District 3.			
(5) RECOMMENDED ACTION Adopt and instruct the Chairperson to sign the resolution affirming the decision of the Planning Commission, certifying the Final Environmental Impact Report, conditionally approving the application of Coral de Piedra Land Co. (Cold Canyon Landfill) for a Conditional Use Permit (DRC 2005-00170) based on the findings listed in Exhibit A, the conditions listed in Exhibit B (with minor modifications), and California Environmental Quality Act (CEQA) findings in Exhibit C (with minor modifications).			
(6) FUNDING SOURCE(S) Appeal fees	(7) CURRENT YEAR FINANCIAL IMPACT \$850.00 (for each appeal)	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT { } Consent    { } Presentation <b>{X}</b> Hearing (Time Est. <u>150 min.</u> )    { } Board Business (Time Est. _____)			
(11) EXECUTED DOCUMENTS <b>{X}</b> Resolutions    { } Contracts    { } Ordinances    { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: { } 4/5th's Vote Required <b>{X}</b> N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? Yes	(16) AGENDA ITEM HISTORY <b>{X}</b> N/A Date _____	
(17) ADMINISTRATIVE OFFICE REVIEW  Reviewed by Leslie Brown			
(18) SUPERVISOR DISTRICT(S) District 3			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Murry Wilson, Environmental Resource Specialist

VIA: Ellen Carroll, Environmental Coordinator

DATE: 11/20/2012

SUBJECT: Hearing to consider an appeal by Cold Canyon Landfill (Corral de Piedra Land Company) and Earl Darway of the Planning Commission's approval of a Conditional Use Permit to allow the expansion of the existing Cold Canyon Landfill (Landfill) including: an increase of the footprint by approximately 46 acres; an increase in the total facility allowable tonnage limit; expanded and relocated the Resource Recovery Park and Materials Recovery Facility; a new scalehouse and entrance; increase in the operating hours and staffing levels; and other miscellaneous improvements (e.g., relocating fuel tanks, landscaping, replacing equipment maintenance building). Supervisorial District 3.

## **RECOMMENDATION**

Adopt and instruct the Chairperson to sign the resolution affirming the decision of the Planning Commission, certifying the Final Environmental Impact Report, conditionally approving the application of Coral de Piedra Land Co. (Cold Canyon Landfill) for a Conditional Use Permit (DRC 2005-00170) based on the findings listed in Exhibit A, the conditions listed in Exhibit B (with minor modifications), and California Environmental Quality Act (CEQA) findings in Exhibit C (with minor modifications).

## **DISCUSSION**

The Planning Commission held four separate hearings to discuss the proposed landfill expansion. Over 12 hours of public comment and deliberations occurred during these hearings. The Planning Commission carefully reviewed the proposed project, project alternatives, and recommendations provided by the public. Through this process, the Planning Commission determined that existing operations were resulting in on-going compatibility issues and they could be addressed by the conditions of approval imposed by the Planning Commission.

On August 9, 2012 the Planning Commission approved the application by Cold Canyon Landfill to allow the expansion of the existing Cold Canyon Landfill (Landfill) including: an increase of the footprint by approximately 46 acres; an increase in the total facility allowable tonnage limit; expansion and relocation of the Resource Recovery Park and Materials Recovery Facility; a new scalehouse and entrance; increase in the operating hours and staffing levels; and other miscellaneous improvements (e.g., relocating fuel tanks, landscaping, replacing equipment maintenance building).

Many of the existing operations at the Landfill would continue as they do currently if the proposed project is approved. Additional details associated with the above referenced project are contained in Section III.C and III.D of the Environmental Impact Report (EIR).

The Landfill currently operates under numerous separate approvals issued by the Department of Planning and Building. The department has consolidated these approvals into one package as a part of this action. Conditions of approval that include the symbol "Θ" are related to on-going activities at the landfill which

have been applied to landfill operations based on previous discretionary approvals. These conditions should remain in effect so as to ensure compliance with previous environmental concerns as well as land use compatibility issues that arose during the previous approvals.

Conditions of approval that are no longer applicable to the project site were removed from the proposed conditions of approval (see August 9, 2012 – Condition of Approval Change Table included in Attachment 7). All conditions of approval that are not intended to be in effect at the time of final project approval (the permit is considered final upon approval by the Board of Supervisors) are applicable as specified within the language of the individual condition of approval (i.e. prior to issuance of the initial notice to proceed).

An appeal was filed by Earl Darway as a result of the Planning Commission's decision on August 23, 2012. The basis of this appeal is related to noise impacts and the findings related to noise impacts, the proposed stockpile located near Patchett Road, and the use of Patchett Road associated with emergency access.

A second appeal was filed by the applicant, Cold Canyon Landfill, on August 23, 2012. The basis of the applicant's appeal is related to 33 specific conditions of approval as well as all other conditions of approval that were identified by the symbol "Ø". The symbol "Ø" is intended to identify conditions of approval that are applicable to the project once the approval becomes final (i.e. after final action by the Board of Supervisors). A supplemental appeal letter was submitted by the applicant on October 25, 2012 detailing the general issues that were mentioned in the above reference appeal letter.

The appeal issues are discussed in detail below.

#### **Earl Darway Appeal:**

##### **Appeal Issue 1 – The Project violates the Noise Ordinance.**

The appellant contends that the un-adopted Environmentally Superior Alternative - Alternative II, reduces noise impacts to a less than significant level therefore a compromise using a permanent, non-working berm and relocating the access road away from Patchett Road would be preferred by the appellant even though there would still be a General Plan conflict.

**Staff Response:** *The appellant correctly states that noise levels from the proposed project (associated with disposal activities) would intermittently exceed the County's noise threshold along the southern property line. The appellant incorrectly states that Alternative II would reduce noise impacts to a less than significant level. Alternative II does reduce the severity of noise impacts but it does not necessarily reduce the impact to a less than significant level. Alternative II has the potential to avoid the need for construction of an earthen noise berm along the southern property line.*

*The appellant's version of Alternative II is not the same alternative that was evaluated in the EIR. The appellant's alternative is actually a combination of the proposed project and Alternative II found in the EIR. The likelihood that the appellant's alternative would avoid the need for construction of the earthen berm along the southern property line is much smaller than Alternative II identified in the EIR because the disposal activities that would result in the noise impact along the southern property line would be in the same location as the proposed project.*

*There is not a conflict with the General Plan. Findings have been made to allow for an adjustment to the Noise Standards and Noise Element. Further discussion is provided in the response to Appeal Issue 2 below.*

**Appeal Issue 2 – The last minute noise “findings” claim to have evaluated “all feasible mitigation measures” but this is false.**

The appellant contends that the findings that have been provided for the proposed project have been made before all feasible mitigation measures were evaluated and the findings are not supported by the substantial evidence in the record. Additionally, the appellant argues that the County has not appropriately applied the Noise Element provisions and therefore the project is not consistent with the General Plan.

**Staff Response:** *As discussed in the response to Appeal Issue 1, the proposed project and the environmentally superior alternative (Alternative II) would both result in Class I significant and unavoidable noise impacts. Findings were provided in support of Staff’s recommendation and subsequently in support of the Planning Commission’s approval. The findings represent a determination that all feasible measures have been applied to the project to reduce noise impacts associated with the Planning Commission approved project. The determination of effective noise mitigation and feasibility is assigned to the County (as discussed in Noise Element Section 4.4). Staff has determined through the analysis in the EIR and procedures discussed in Section 4.2 of the Noise Element that all feasible mitigation measures have been applied to the proposed project.*

*The finding related to the Noise Element, and the adjustment / waiver process that is allowable through the Noise Element (see Section 4.5), was refined through the Planning Commission hearing process to correctly identify the adjustment that is proposed. Noise mitigation measures are proposed, and with the exception of NS/mm-3, these measures have been determined to be feasible mitigation. Consistent with Section 4.5 of the Noise Element, Staff is recommending an adjustment to the standards (the minimum amount necessary to enable reasonable use of the property) while still mitigating noise impacts to the maximum extent feasible.*

*The Planning Commission’s finding represents an authorization to adjust the noise standards (not a waiver of the noise standards) which clarifies that mitigation is available, will be implemented, and will reduce noise impacts but not below the established thresholds found in the Noise Ordinance / Element. This adjustment allows the project to be consistent with the General Plan in accordance with the procedures found in the Noise Element.*

*This finding is supported by substantial evidence in the record because this issue was discussed through the Planning Commission hearing process, noise impacts were evaluated and mitigation measures were recommended in the EIR, and a determination was made that all noise measures (except NS/mm-3 – Noise Barrier Contingency Plan) were feasible measures to reduce noise impacts associated with the proposed project. Specific findings were made concerning NS/mm-3, explaining why it was determined to be infeasible (see Pg. C-52 and C-53, Attachment 5).*

*In addition, the Planning Commission heard and considered Mr. Darway’s suggested configuration for the landfill expansion. Mr. Darway’s configuration would not reduce noise impacts to a less than significant level, or eliminate the need for an adjustment to the Noise Element standards because the footprint of the disposal area is essentially in the same location as the proposed project. This would result in similar noise impacts from disposal activities as Mr. Darway’s proposed alternative. The access road would be relocated north across the on-site drainage (approximately 200-300 feet) but not a distance great enough to reduce traffic noise impacts to a less than significant level. A new finding has been included in the CEQA Findings for your Board’s consideration to make this determination, and its rationale, explicit.*

**Appeal Issue 3 – The 40’ high working stockpile should be replaced by a 12-15’ berm along Patchett Road.**

The appellant suggests that the 40’ stockpile proposed near the southern property line should be replaced by with a 12-15’ high berm along Patchett Road and that the berm should not be used for final closure activities. The appellant further suggests that a working stockpile can be moved from module to module and other stockpile activities should continue in the existing locations.

**Staff Response:** *The preliminary engineering design suggests that an additional stockpile will be needed during module excavation activities and on-going landfilling activities. The reference to a 40’ tall stockpile is based on the preliminary plans that were submitted as a part of the proposed project. As a part of the EIR process, it was determined that activities near the property lines adjacent to stockpile #1, 3, and 4 would intermittently exceed the noise standard at these adjacent property lines. The Landfill would continue to use existing stockpiles located on the project site subject to mitigation measure NS/mm-4 (condition #12) and condition of approval #120. The project conditions of approval (condition #12 and 120) are intended to address the concern identified in this appeal issue as follows:*

12. *(NS/mm-4) Prior to issuance of the initial Notice to Proceed, in order to reduce stockpile activity adjacent to property lines, the applicant shall revise the proposed grading plans and re-allocate the material from the proposed stockpile 4 (i.e., southeastern property line) to existing Stockpiles 1 and 3, to the extent feasible. If these stockpiles cannot accommodate all of the material, the remaining material shall be located in a new location as far away from the property line(s) as feasible, potentially adjacent to existing Module 8 and proposed Module 11.*
  
120. *As soon as material is available, the applicant shall limit the use of the southern stockpile (stockpile 4) to construction and final cover activities (non-operational activities) to the maximum extent feasible. The stockpile / berm shall be designed to shield stockpiling activities from the southern property line and stockpiling activities shall incorporate all measures to reduce noise, dust, and liter. The visual and noise screening qualities associated with the berm portion of the stockpile/berm (i.e., adjacent to Patchett Road) shall not be affected by ongoing stockpiling activities. Placement and removal of stockpiled material shall be conducted in a manner where the equipment and earth moving operations occur north and below the top elevation of the stockpile / berm to the maximum extent feasible.*

*Since the preliminary plans will be amended to re-allocate material from proposed stockpile #4, the plan that indicated a 40’ tall stockpile (EIR – Pg. III-35) does not accurately represent the height of the stockpile after implementation of the above referenced conditions of approval. The material that was allocated to stockpile #4 (requiring a large stockpile up to 40’ in height) will be relocated to other stockpile locations, and condition #120 further limits the use of proposed stockpile #4 to non-operational activities (i.e. construction and final cover activities or intermittent activities) in the event all the material cannot be relocated.*

*Even if the berm were reduced and conditioned as Mr. Darway suggests, the project’s noise impacts would remain the same. At this time, it cannot be said with certainty that the landfill will not need the material contained within the proposed berm along the southern property line for final closure activities. Therefore the material should remain available for final closure activities.*

**Appeal Issue 4 – Patchett Road is private and not available for emergency access – County Fire input is needed.**

The appellant states that Patchett Road is a private road and that the landfill owners have not discussed the use of Patchett Road nor secured an easement for such use. The appellant then suggests that Cal Fire did not have any input on the matter and that their agency should provide input.

**Staff Response:** *The appellant is correct in stating that Patchett Road is a private road. However, the project does not include a request to utilize Patchett Road. The condition of approval referenced in this appeal issue reads as follows:*

104.  $\Theta$  *Access to the sort facility will be via the Cold Canyon Landfill entrance which fronts on State Highway 227. No access to the facility shall be taken from the access road commonly known as Weir Ranch Road or Patchett Lane, except for emergency vehicles.*

*This condition was brought forward from a previous approval associated with the Sort Facility (D960087D). Based on Staff's review of the previous project file, this condition was included to ensure that vehicle traffic associated with the previous approval did not use Patchett Road. At the time this condition was applied, CDF (now Cal Fire) did not require use of Patchett Road for emergency access because it was determined that adequate access through the Landfill was available.*

*The applicant has not proposed to use Patchett Road as a part of the proposed project and Cal Fire has not requested secondary access for the proposed project in their referral response or comments on the EIR. Staff brought this condition forward from the previous approval because the Sort Facility will remain a part of the landfill operations and therefore the condition is still applicable.*

*Staff contacted Cal Fire on October 24, 2012 (personal communications with Laurie Donnelly) and Cal Fire indicated that their agency would prefer that the condition remain in place. Even if the condition were to be removed, Cal Fire indicated that if access via Patchett Road was the best way to access an emergency situation at the landfill, they would use the private road to access the emergency.*

**Appeal Issue 5 – Mr. Darway's alternative proposal must be evaluated because it is a "feasible" alternative.**

The appellant (Earl Darway) contends that his proposed alternative must be studied because it is feasible and demands evidence that his proposal has been evaluated.

**Staff Response:** *Section 15126.6 of the California Environmental Quality Act (CEQA) Guidelines states that "an EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation."*

*The Final Environmental Impact Report included an analysis of seven preliminary alternatives. Of the seven preliminary alternatives, the following were brought forward for further review in the EIR:*

- *No Project Alternative (Alternative I)*
- *Redesigned Project (Alternative II) – Onsite Relocation of Disposal Area and Entrance*
- *Alternative Project Location (Alternative III)*
- *Waste Diversion Alternative (Alternative IV)*

*An alternative (Alternative II) was evaluated that was similar to Mr. Darway's proposed alternative. The alternative that is being requested to be evaluated (see Attachment 1) by the appellant was discussed at the Planning Commission when Mr. Darway presented his August 9, 2012 letter to the Planning Commission. The final decision, after deliberation, was to approve the project as proposed by the applicant and not to approve the alternative proposed by Mr. Darway. Staff evaluated Mr. Darway's alternative and concluded that it is not feasible as it does not meet a number of the applicant's project objectives including a reduction in disposal capacity and the potential to impact additional sensitive biological resources. The Planning Commission chose not to accept Mr. Darway's proposed alternative because it did not clearly improve the proposed project. The appellant's alternative appears to conflict with proposed and existing detention basins on the project site. Noise impacts would also likely still be significant with the appellant's proposal. Therefore, the Planning Commission selected the proposed project with carefully crafted conditions of approval and mitigation measures. Staff has included a new finding for your Board's consideration as part of the CEQA Findings that makes this determination explicit.*

Cold Canyon Landfill Appeal:

**Appeal Issue 6 – The Landfill appealed the following Conditions of Approval (COA) without limitation: COA # 1, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 17, 18, 22, 25, 27, 30, 31, 32, 41, 53, 72, 75, 76, 77, 82, 83, 86, 87, 88, 117, 119, 120; together with all COA identified in the Planning Commission's final approval document with the symbol "Ø", whether or not included in the above listing of conditions.**

**The basis for appealing the above referenced Conditions of Approval is as follows:**

- 1. The conditions of approval are not supported by substantial evidence in the administrative record. The conditions of approval unduly limit or restrict operation(s) of the landfill, the materials recovery operation as well as ancillary site operations and maintenance activities.**
- 2. The conditions of approval – which impose restrictions, limitations, prohibitions, and required actions – are not supported by substantial evidence in the administrative record as noted above, and lack the required constitutional or statutory nexus between the interests sought to be protected or addressed by the Planning Commission, and the site operations being conditioned, prohibited or restricted by the conditions of approval.**
- 3. The conditions require the permittee / appellant to undertake an unreasonable expense and commitment of resources relative to the stated rationale or putative basis for imposing the conditions(s), which rationale and bases are not supported by substantial evidence in the administrative record. The actions of the Planning Commission in imposing such conditions are consequently arbitrary, capricious, and beyond the scope of the Commission's statutory authority.**

The appellant contends that the above referenced conditions of approval have been applied without being supported by substantial evidence in the record, unduly limit or restrict operations of the landfill, lack a nexus to require such conditions, and are unreasonable relative to the stated rationale. The appellant also asserts that the Planning Commission, in imposing such conditions, acted arbitrarily, capriciously, and beyond the scope of their statutory authority.

**Staff Response:** *The project included preparation of an EIR which documented impacts associated with the proposed project. These impacts have been evaluated, and are supported by evidence in the record. In the process of preparing mitigation measures to reduce project related impacts, County Staff and its consultant determine the severity of the impact and the required level of mitigation to off-set these impacts (where feasible). In making this determination, County Staff first determines if a nexus exists between a potential impact and a regulatory interest (i.e. consistency with County Code, a threshold of significance, or other regulatory measures such as the Endangered Species Act) and then ensures the measures are roughly proportionate to the impact that was identified. For these reasons, Staff believes that all mitigation measures that have been applied to the project have a nexus, and were applied proportionately to the identified impact and in a rationale manner.*

*Additionally, the project site has been subject to numerous previous approvals that required the preparation of various environmental documents. These previous actions resulted in mitigation measures being applied to the project site as conditions of approval. These conditions of approval are identified by the symbol “Θ” in the conditions of approval associated with this appeal. As discussed in the paragraph above, these measures were applied based upon careful consideration of the type of impact, the severity of the impact, and the mitigation required to off-set the impact during the previous discretionary actions and environmental determinations. Because this permit will replace all existing permits on the project site, it is necessary to bring conditions of approval forward where those previously approved activities would still take place at the site to ensure the previously identified impacts and concerns would continue to be addressed.*

*Where conditions of approval are similar to previous conditions that have been applied to the project site, Staff replaced these previous conditions with similar measures that are more up to date (such as the updated litter control plan). Through the deliberations at the four Planning Commission meetings, these changes were discussed in detail at the request of the commission. The commission wanted to ensure that on-going impacts associated with landfill operations that have been clearly documented in the record through the hearing process (such as litter problems and odor complaints) would be addressed upon final approval by the County.*

*For these reasons, Staff believes that all conditions of approval have been correctly applied based upon substantial evidence in the record (that indicated the need for such conditions), with careful consideration to the nexus and rough proportionality requirements, and in a rational manner through the Planning Commission’s deliberations.*

**Appeal Issue 7 – As a part of the supplemental appeal letter submitted by the appellant and received on October 25, 2012, the appellant has suggested modifications to the conditions of approval for the following reasons:**

- 1. Conditions were either modified or deleted because the conditions adversely affect the appellant’s daily operations and/or increases the cost of operation without a corresponding benefit based on the lack of substantial evidence in the record or required nexus to impose the condition; and**
- 2. The symbol “Θ” has been replaced to reflect a more appropriate timing of implementation to later planned implementation dates based on the Project’s development, and not based upon an artificial construct of the initial notice to proceed. The acceleration of the condition implementation was not based on potential impacts of the project as identified in the Project EIR and places an unreasonable cost and resource burden on the applicant to implement the conditions without a basis or corresponding benefit; and**

3. **Conditions have been consolidated in order to reduce the number of conditions and improve ease of Permit administration and oversight, but without changing the substantive requirements of the language which has been consolidated into one or more existing conditions.**

**Staff Response:** *Individual responses to specific language modifications and deletion of conditions of approval will be addressed in Appeal Issues #8 below. While it is true that measures applied to the approval of the proposed project will effect daily operations and may increase cost of operations at the landfill, Staff does not believe these measures were applied without a corresponding benefit, lack of substantial evidence, or the required nexus to impose such conditions.*

*The symbol “Θ” was applied to conditions of approval brought forward from previous actions or where otherwise determined necessary by the Planning Commission. Documented compatibility issues including a history of odor and litter complaints associated with landfill activities led the Planning Commission to require a number of actions once the project receives its final approval. As discussed above (Pg. 2, paragraph 1), these conditions should remain in effect so as to ensure compliance with previous environmental concerns as well as land use compatibility issues that arose during the previous approvals and not be deferred to a later date.*

*All conditions of approval contain an action or timing mechanism (i.e. prior to ground disturbance or prior to issuance of the notice to proceed) if the condition requires any sort of reportable action by the applicant. As part of the monitoring program required by condition of approval #22, all conditions of approval will be organized per the applicable milestone to ensure compliance with said requirements. For these reasons, Staff does not recommend reorganization and consolidation of the conditions of approval.*

**Appeal Issue 8 – The appellant has provided a “track changes” version of the Planning Commission adopted conditions of approval. Staff has provided a response to each change in the table below for your board’s consideration.**

COMMENT #	STAFF RESPONSE
D1	The symbol “Θ” has been applied to all conditions that demand attention upon final project approval as determined through previous permit approvals and deliberations associated with the proposed project. Additional discussion is provided in the body of the Staff Report. No change is recommended.
D2	Condition of Approval (COA) #122 has been incorporated into COA #1 because it directly relates to the existing approval.
D3	In response to the request at the July 12, 2012 hearing, the Planning Commission restricted the closure time to 5:30 p.m. based upon compatibility issues. No change is recommended.
D4	Staff believes the language, as written in the current version of the conditions, provides the same flexibility being sought by the appellant. No change is recommended.
D5	The requested change is reflected in revised COA #3.
D6	In order to ensure on-going verification of aesthetic resource mitigation measures for an ever changing and long lived project, the mitigation measure must identify the timing for demonstrating compliance. No change is recommended.
D7	See response to comment D1. Additionally, the Planning Commission, through testimony received during the hearing process, determined that the updated litter control plan identified in HAZ/mm-2 should replace the existing litter control plan because testimony and complaint history indicated that litter is an on-going problem at the landfill which deserved additional attention immediately. No change is recommended.

COMMENT #	STAFF RESPONSE
D8	Five years is an appropriate time frame to review and update plans. If after 5 years, as determined through consultation with the Environmental Monitor, it is determined that no changes are necessary; the plan will remain in effect without change. No change is recommended.
D9	The requested change has placed the responsibility on neighboring property owners to request litter pick-up from their property instead of the responsibility being placed on the Landfill who generates the litter. No change is recommended.
D10	This part of the litter control plan was developed as a result of historic litter related impacts along the haul routes. The measures addresses the litter impacts along the primary haul routes to the landfill and should remain as written. No change is recommended.
D11	The litter control plan is the mitigation measure to address litter related impacts and should remain in effect. No change is recommended.
D12	Documentation of source problems associated with wind-blown trash allows open communications between staff to ensure problems are corrected and not overlooked. No change is recommended.
D13	While the "Adopt a Highway" program is related to litter, it is not a specific measure identified in the litter control plan. This condition was brought forward from a previous action and should remain in effect as written. No change is recommended.
D14	See response to comment D1. Additionally, the Planning Commission through testimony received during the hearing process, determined that the updated litter control plan identified in HAZ/mm-2 should replace the existing litter control plan because testimony and complaint history indicated that litter is an on-going problem at the landfill which deserved additional attention immediately. No change is recommended.
D15	This measure provides for reporting of bird strikes associated with Bird Deterrent Program. All mitigation measures must contain a mechanism to ensure the implementation and effectiveness of the measures. No change is recommended.
D16	The requested change to "display" education materials instead of "distributing" the materials will reduce the effectiveness of the measures. No change is recommended.
D17	See response to comment D1. Additionally, the Planning Commission through testimony received during the hearing process, determined that noise impacts were an on-going concern at the landfill which deserved additional attention immediately. No change is recommended.
D18	The layout of the landfill will change over time and therefore is the basis for the recommendation for periodic monitoring is appropriate to ensure maximum feasible results from the mitigation measure. No change is recommended.
D19	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D20	See response to comment D1. Additionally, the Planning Commission, through testimony received during the hearing process, determined that noise impacts were an on-going concern at the landfill based on testimony and complaint history which deserved additional attention immediately. No change is recommended.
D21	See response to comment D1. Additionally, the Planning Commission, through testimony received during the hearing process, determined that noise impacts were an on-going concern at the landfill based on testimony and complaint history which deserved additional attention immediately. No change is recommended.
D22	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D23	The requested change is reflected in revised COA #15.
D24	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D25	There is a potential for drainage swales to be visible from public views. No change is recommended.

COMMENT #	STAFF RESPONSE
D26	See response to comment D1. Additionally, the Planning Commission through testimony received during the hearing process, site photos, and a site visit, determined that visibility of existing operation on the “top deck” should be addressed immediately because the operation and related equipment storage silhouettes against the skyline as viewed from public areas. No change is recommended.
D27	See response to comment D26 above.
D28	See response to comment D26 above.
D29	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D30	This condition was brought forward from the previous landfill expansion project (D860156:A) and should remain in effect so as to ensure that the facility has an appropriate area for holding hazardous waste once the facility is reorganized. No change is recommended.
D31	See response to comment D1. Additionally, the Planning Commission, through testimony received during the hearing process, determined that there is a need to have a responsible party available to respond to permit violation and emergencies. No change is recommended.
D32	As written, the condition does not require the applicant to correct the violation within 24 hours if a different time frame is determined to be appropriate by the responsible agency. No change is recommended.
D33	See response to comment D1. Additionally, the Planning Commission, through testimony received during the hearing process, determined that a Monitor is necessary to ensure that on-going operations at the landfill comply will comply with all existing and updated conditions of approval (upon final approval of the project). Many concerns were identified that led the Planning Commission to require implementation of the Monitor as soon as possible at the landfill. The requested change by the applicant could mean that a Monitor is not in place for as many as 7 more years. No change is recommended.
D34	See response to comment D1. Additionally, the Planning Commission through testimony received during the hearing process, determined that litter is an on-going problem at and surrounding the landfill which deserved additional attention immediately. No change is recommended.
D35	This condition was brought forward from a previous approval associated with the Sort Facility (D960087D) and it has not been verified that all components of the condition have been satisfied. The condition has been modified to reflect the remaining concerns that have not been documented to date. Staff’s recommended change is shown in COA # 25.
D36	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D37	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D38	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D39	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D40	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D41	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D42	Per discussions with the APCD (personal communications with Melissa Guise on 10/30/2012), APCD Staff believes the measures described are feasible and where feasibility is in question, the measures states “where possible” or “whenever feasible”. No change is recommended.

COMMENT #	STAFF RESPONSE
D43	Per discussions with the APCD (personal communications with Melissa Guise on 10/30/2012), APCD Staff believes the dust control measures are feasible and where feasibility is in question, the measures states "where possible" or "whenever feasible". No change is recommended.
D44	See response to comment D43 above.
D45	Per discussions with the APCD (personal communications with Melissa Guise on 10/30/2012), daily sweeping is important and reclaimed water should be used where feasible. No change is recommended.
D46	Removal of this portion of the mitigation measures would mean that the mitigation would not be consistent with the requirements of the Kuehl Bill (SB 1334). Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D47	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D48	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D49	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D50	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D51	This condition ensures the completion of the required mitigation planting and the bond will be released upon successful completion of said mitigation. No change is recommended.
D52	The requested change from an annual to five year reporting program is recommended. The existing condition language allows the APCD to determine alternative time frames at the request of the applicant. Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D53	The requested change is reflected in revised COA #41.
D54	Per discussions with the APCD (personal communications with Melissa Guise on 10/30/2012), APCD Staff interprets their CEQA Air Quality Handbook different than the appellant and disagrees with the appellants interpretation. During the time that Planning Staff was developing the conditions of approval, additional consultation with the APCD occurred. During that time, APCD Staff recommended that the language requested for removal by the appellant be added. Off-site mitigation is feasible according to the APCD, and this language further describes how that could occur. No change is recommended.
D55	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D56	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D57	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D58	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D59	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D60	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D61	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D62	The requested change is reflected in revised COA #50.

COMMENT #	STAFF RESPONSE
D63	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D64	Staff contacted Cal Recycle regarding the request to remove this condition of approval (personal communications with Jeff Hackett 10/31/2012). The preference of Cal Recycle is to remove the condition and they would review stockpiling as part of their regulations and future permit actions rather than a separate review and approval process. COA #52 has been removed from the recommended conditions.
D65	While this condition was not derived from an impact associated with the proposed project, the condition was applied through the environmental review process required by the previous landfill expansion (D86156:A). Therefore, Staff believes it is appropriate to bring this condition forward. No change is recommended.
D66	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D67	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D68	This is a standard condition of approval applied to land use permits. No change is recommended.
D69	This is a standard condition of approval applied to land use permits. No change is recommended.
D70	While this condition was not derived from an impact associated with the proposed project, the condition was applied through implementation of the Land Use Ordinance (Section 22.10.155 – Stormwater Management) and an agreement between the Regional Water Quality Control Board and the Department of Planning and Building for any project that will result in an increase of 5,000 or more square feet of impervious area. See minor modifications proposed by Staff in revised COA #59.
D71	This edit does not affect the ability of the applicant to implement the project. No change is recommended.
D72	This is a standard condition of approval applied to land use permits. No change is recommended.
D73	Based on the evaluation contained in the EIR, it was determined that the building would be visible along Highway 227 and increase the industrial appearance of the landfill; therefore the landscaping plan required by this condition was deemed feasible and appropriate mitigation for the identified impact. No change is recommended.
D74	This condition ensures the completion of the required mitigation planting and the bond will be released upon successful completion of said mitigation. No change is recommended.
D75	See minor modifications proposed by Staff in revised COA #66.
D76	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D77	This edit does not affect the ability of the applicant to implement the project. No change is recommended.
D78	This language was added to allow flexibility, at the request of the applicant, to change the time frames for required pre-construction surveys (if approved by the applicable resource agency). No change is recommended.
D79	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D80	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D81	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D82	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.

COMMENT #	STAFF RESPONSE
D83	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D84	This edit does not affect the ability of the applicant to implement the project. No change is recommended.
D85	This edit does not affect the ability of the applicant to implement the project. No change is recommended.
D86	This is a standard condition of approval applied to land use permits. No change is recommended.
D87	This edit does not affect the ability of the applicant to implement the project. No change is recommended.
D88	See response to comment D1. Additionally, green waste and wood waste will continue to be accepted and processed at the landfill. Therefore this condition is applicable upon final project approval. No change is recommended.
D89	See response to comment D1. Additionally, the Planning Commission, through testimony received during the hearing process and odor complaint history at the landfill, determined that odor impacts were an on-going concern which deserved additional attention immediately. This condition requires an updated to the previously issued odor control plan. No change is recommended.
D90	The requested change is reflected in revised COA #83.
D91	This allows the County to verify the adequacy of the required mitigation associated with landscape screening. No change is recommended.
D92	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D93	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D94	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D95	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D96	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D97	Removal of the symbol “Ø” would mean that this condition is required upon final project approval because Staff is recommending the heading for this section of conditions remain. The heading reads, “On-going conditions of approval valid for the life of the project”. No change is recommended.
D98	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D99	See response to comment D97 above.
D100	See response to comment D1. Additionally, the Planning Commission, through testimony received during the hearing process, determined that noise impacts were an on-going concern at the landfill which deserved additional attention immediately. No change is recommended.
D101	See response to comment D97 above. It is appropriate to have copies of all permits that the facility should be in compliance with on-site at all times. No change is recommended.
D102	See response to comment D97 above. All local, state, and federal laws and regulations should be complied with at all times. No change is recommended.

COMMENT #	STAFF RESPONSE
D103	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D104	See response to comment D97 above. This measures should be applicable for the life of the project and implemented immediately as it was brought forward from the previous landfill expansion (D860156:B) and the sort facility (D960087D). It also incorporates ordinance requirements associated with grading activities. No change is recommended.
D105	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D106	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D107	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D108	See response to comment D97 above. It is appropriate to have adequately trained personnel on-site at all times. No change is recommended.
D109	See response to comment D97 above. The prohibition of the acceptance of asbestos should continue and should not be delayed up to 7 years (approximate time until the initial notice to proceed would be issued). No change is recommended.
D110	See response to comment D97 above. Material salvaging should continue at the landfill. This condition was brought forward from a previous approval associated with sort facility (D960087D). No change is recommended.
D111	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D112	See response to Appeal Issue 4 above. No change is recommended.
D113	See response to comment D97 above. This condition was brought forward from a previous approval associated with the sort facility (D960097D). No change is recommended.
D114	While the "Adopt a Highway" program is related to litter, it is not a specific measure identified in the litter control plan. This condition was brought forward from a previous action and should remain in effect as written. The measures should be implemented immediately so the activity continues until the proposed project is commenced. No change is recommended.
D115	This edit does not affect the ability of the applicant to implement the project. No change is recommended.
D116	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D117	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D118	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D119	See response to comment D97 above.
D120	This measure was applied to a previous approval associated with the landfill expansion (D860156:B). The professional only needs to be approved by the County; therefore the condition should remain in effect. No change is recommended.
D121	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D122	See response to comment D97 above.
D123	See response to comment D97 above.
D124	See response to comment D97 above.
D125	This condition is not redundant to condition #43. It implements an ordinance standard and should remain in effect. No change is recommended.

<b>COMMENT #</b>	<b>STAFF RESPONSE</b>
D126	See response to comment D97 above. Additionally, the text of this measure also refers back to the "effective date" which is essentially the same as "final project approval" which is symbolized by "Ø". No change is recommended.
D127	The applicant is requesting that the entire permit be allowed to vest immediately. This is not supported by the Land Use Ordinance. The ordinance requires substantial site work to be completed before a permit is considered vested. This project, by the nature of activities and the use, does not fall squarely within the definitions of substantial site work contained in the ordinance. The language proposed by staff allows the project to be vested appropriately, taking into account the provisions of the ordinance, the type of work the permit allows, and the applicant's estimated time frame for beginning site work in the expansion areas. No change is recommended.
D128	See response to comment D97 above.
D129	See response to comment D97 above.
D130	Combining these conditions does not affect the ability of the applicant to implement the project. No change is recommended.
D131	The requested change is reflected in revised COA #1.

**OTHER AGENCY INVOLVEMENT/IMPACT**

The project was referred to: Public Works, Environmental Health, Agricultural Commissioner, APCD, CAL FIRE, Caltrans, the City of San Luis Obispo, and the City of Arroyo Grande. County Counsel reviewed and approved the Resolution as to form and legal effect.

**BUSINESS IMPACT STATEMENT**

Denying the appeals would allow the expansion of the Cold Canyon Landfill as conditioned by the Planning Commission in its August 9, 2012 approval. As a result, the landfill would continue to provide waste disposal services for the service area which would benefit the local economy.

**FINANCIAL CONSIDERATIONS**

The appellants have each paid the appeal fee of \$850 to partially offset staff time required to prepare this staff report. The actual cost of processing an appeal ranges from \$2,500 to \$4,500. The balance of funding comes from the Department's General Fund budget.

**RESULTS**

Denial of the appeal(s) as recommended by Staff would mean the application for Conditional Use Permit DRC2005-00170 would be conditionally approved with minor modifications to the conditions approved by the Planning Commission on August 9, 2012. The proposed landfill expansion would be allowed to proceed. This action would be related to the County community-wide goals of healthy, livable, and prosperous communities.

Upholding the appeal(s) would mean either:

1. The application for Conditional Use Permit DRC2005-00170 would be conditionally approved and subject to the findings and conditions as modified by your Board. The proposed landfill expansion would be allowed to proceed subject to the modifications directed by your Board; or,

2. The application for Conditional Use Permit DRC2005-00170 would be denied based on findings proposed by the Board. The proposed landfill expansion would not be allowed to proceed and the landfill would reach capacity in approximately six to seven years.

## **ATTACHMENTS**

1. Appeal Form and Appellant Letter from Earl Darway
2. Appeal Form and Appellant Letter from the Applicant
3. Supplemental Appeal Letter from Cold Canyon Landfill
4. Board Resolution with Findings and Conditions of Approval Affirming the Planning Commission's Decision
5. CEQA Findings Affirming the Planning Commission's Decision
6. Planning Commission Minutes from all four Meeting
7. Planning Commission Staff Report from the August 9, 2012 Meeting
8. Planning Commission Staff Report from July 12, 2012 Meeting
9. Planning Commission Staff Report from the June 28, 2012 Meeting
10. Planning Commission Staff Report from the June 14, 2012 Meeting
11. Graphics
12. Clerk's File (Final Environmental Impact Report)