



County of San Diego

SOLID WASTE LOCAL ENFORCEMENT AGENCY

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Informational Meeting Package and Summary of Comments for the Proposed Gregory Canyon Solid Waste Facility Permit and Application Package

As required by Title 27 §21660 an Informational Meeting was held on February 23, 2011. A Meeting Notice (Exhibit 1) and Letter (Exhibit 2) were generated to provide notification of the meeting time and location, and distributed per Title 27 with additional e-mail, US Mail and web site posting. In addition, two legal advertisements were placed in local newspapers (Exhibit 3). A formal presentation was made by the LEA using a PowerPoint presentation which is attached as Exhibit 4. Speaker slips and sign in sheets (Exhibits 5 and 6) were used to track and coordinate speakers and attendees. A court reporter was on hand to record the presentation and the public comment and the resulting transcripts are Exhibit 7. Press packages (Exhibit 8) were provided to various media representatives.

To accommodate an anticipated large crowd, the meeting was held in a community meeting room adjacent to the Fallbrook public library, with seating for 200 people indoors. There were additional seats in adjacent outdoor patio with an audio/visual feed. Several Television and print media representatives attended the meeting and some of the associated press coverage is provided as Exhibit 9.

Comment Sources

Comments were received by mail, e-mail, in writing at the Informational Meeting and provided verbally at the Informational Meeting.

About 200 people attended the meeting and 35 completed speaker slips and provided oral comments on the project. All written comments are also attached to this report as Exhibit 10.

At the public meeting participants were asked to self-identify as government, organized group presentation, or individuals. Government speakers identifying themselves as such were invited to speak first. "Government" included cities and other government agencies, Indian Tribes and their representatives, and public agencies such as the San Diego County Water Authority.

Verbal comments were provided at the public meeting by the following:

Elected Officials / Tribal Leaders:

Pam Slater-Price - County Supervisor, District 3;

Mark Hammond - City of Oceanside and Office of the Mayor;

Pamela Epstein - representing City of Oceanside (spoke on behalf of Deputy Mayor Esther Sanchez);

Mel Vernon - Chairman, San Luis Rey Band of Mission Indians;

Robert Smith - Chairman Pala Band of Mission Indians; and

Shasta Gaughen - Environmental Director, Pala Band of Mission Indians

Hershill Price - County Water Authority Board Member representing the City of del Mar (spoke on behalf of Mayor of Del Mar, Don Mosier)

Lavon Peck - Chairman, La Jolla Band of Luiseno Indians

Group presentations:

Gregory Canyon Ltd.;
Sierra Club, San Diego; and,
RiverWatch

Members of the Public

26 individuals

Several of the individual speakers also stated that they were members of or were representing groups or organizations including the following.

Gregory Canyon Limited
League of Women's Voters
Natural Resources Defense Council
SurfRider Foundation
Environmental Heath Coalition
County Water Authority
Procopio, Cory, Hargreaves and Savitch LLP ("Procopio")
(Attorneys representing the Pala Band of Mission Indians)
San Luis Rey Watershed Council Back County Coalition
Pala Band of Mission Indians

54 written comments (31 of which were generic form letters) were received at the meeting. Additional written comments were received after the meeting. The comment summary below addresses both oral and written comments. Written comments included the following Government and group submissions:

City of Oceanside
Native Lands Consulting Service
Pala-Pauma Sponsor Group
Procopio, on behalf of the Pala Band
County Water Authority
San Luis Rey Watershed Council
Natural Resources Defense Council
Pechanga / Temecula Band of Luiseno Indians
County of San Diego Parks Department

The applicant submitted written responses to several comment letters including letters from Procopio, the Natural Resources Defense Council, the County Parks department, the San Luis Rey Municipal Water District, and the Pechanga Cultural Resources Department of the Temecula Band of Luiseno Indians ("Pechanga Band"). Those responses are included in the attached written comments Exhibit 10.

Input Received and Comment Summary

All responses were reviewed for the individual comments within the letters and other forms of comment. For example one letter (response) might include several different individual comments on different subjects such as water or biological resources. All of the individual comments identified were classified into general categories as follows.

Location

Comments were received stating that the location did not meet established criteria for identifying potential landfill locations. (Some of these comments referred to criteria that have been superseded for regional solid waste facility planning purposes.) The location's proximity to the San Luis Rey River was also cited as a bad location for a landfill.

Biology

Commenters stated a variety of concerns for Biological and Natural resources in the canyon that would be impacted by siting a landfill at the proposed location.

Geology

Several commenters suggested that seismic evaluations were not adequate considering the steepness of the slopes proposed for the landfill and the proximity of the site to the Elsinore and San Andreas faults.

Traffic

General comments were received on the negative impact of an increase in traffic on an already busy two lane stretch of highway that commenters said is inadequate to support the increased traffic associated with the landfill.

Noise

Some comments were made in general terms about the negative impacts of noise from the project.

General Opposition

Many comments included a statement of general opposition to the project.

General Support

Several commenters included a statement of general support for the project.

Money

There were several general comments made that the project was just being proposed to make a profit for the owners of the property.

Permit Application Completeness

A February 23, 2011 letter from Procopio stated with various examples that the permit application package was incomplete and should not move forward. Topics addressed in this letter include: legal standards for the complete and correct determination, type of permitted waste, daily waste disposal quantities, landfill capacity survey, status of current permits, fire protection, CEQA compliance, preliminary closure post closure maintenance plan, level of

design, other permits, temporary construction storage, inclement weather operation, alternative daily cover use, leachate collection and removal, leachate volumes, groundwater analysis, groundwater monitoring, storm water permitting, corrective action cost estimate, dust control, fire control, design features, material availability, stockpile / borrow area, leachate generation, leachate control and recovery system, landfill gas, hydrology, perimeter storm drain channel system, storm water desilting basin, landfill construction phasing, liner system development, drainage control development, floodplain, precipitation, geologic hazards, local hydrogeologic setting, final cover construction, floods, and emergency response notification. Procopio also filed a petition with the Solid Waste Hearing Panel on some of the grounds cited in their comment letter. The LEA filed a response to the petition, and Procopio filed a reply.¹ Topics addressed in this exchange include: legal standards for the complete and correct determination, preliminary closure post closure maintenance plan approval, CEQA compliance, aqueduct protection, inclement weather operation, groundwater monitoring well locations, corrective action cost estimate, fire control, design features, leachate control and recovery system, storm water desilting basin, floodplain, and geologic hazards. A couple of other commenter's cited areas where they felt that there was incorrect or incomplete information in the package including: adequacy of proposed groundwater monitoring program; incorrect calculations related to the availability of soil for cover material; and, completeness of the cost estimates for closure.

Water

A wide variety of comments were received on water-related issues including groundwater, surface water and storm water. Most of these comments stated that the facility was not properly designed to protect water sources or in practice would not be protective. Comments also focused on the proximity of the project to the San Luis Rey River, and the concept that the water in the San Luis Rey River was threatened with contamination from the landfill operation and that this in turn would impact drinking water supplies.

Pipeline

Several comments including one from the County Water Authority were related to protection of the aqueducts that run through the property.

Air

General comments were received on negative impacts of the facility on air quality.

Green House Gas (GHG)

Several comments were received on the issue of greenhouse gas generation by the decomposition of solid waste in the landfill and its effect on global climate change, and on the absence of GHG analysis in the CEQA studies for the project.

Fire Protection

¹ These materials are treated as written comments for purposes of this comment summary. In Exhibit 10 to this summary, these hearing materials are attachments to the applicant's response to Procopio's comment letter.

One commenter, Procopio, felt that the discussion of fire protection in the package was inadequate.

Landfill Capacity Needs

Commenters stated that based on current and future recycling rates and reductions in the current rates of solid waste generation there was no need for additional landfill capacity and therefore no need to build a landfill at this location.

Cultural / Environmental Justice

Some commenters felt that, based on the proximity to sites held sacred by Native Americans the landfill should not be constructed in this location. A couple of commenters felt that the location of the landfill presented environmental justice issues.

A comment was made by the Pechanga Band that they would “welcome the opportunity to meet with the LEA, and any other agency involved, to further explain and provide confidential documentation concerning specific cultural significance for the project”.

Recreational Trails

The County Parks Department submitted a letter concerning recreational trails through the buffer zone associated with the landfill site. The applicant also submitted a letter on this subject.

CEQA Process

Individual commenters cited areas where they felt that the project or the conditions under which the project would be undertaken had changes, or that additional information about the project details or features had been provided which had not previously been available and therefore should result in additional review of the project under CEQA. Examples included blasting details provided in an Air Pollution Control District permit application, a changed Corps of Engineers determination of what parts of the project are within that agency’s jurisdiction, the addition of a litter control fence on the top of the proposed bridge across the San Luis Rey, and quantities of green house gas (GHG) emissions.

Liability

A couple of comments were received requesting long term liability insurance for the facility.

Out of County Waste

A couple of commenters were concerned that the landfill would receive waste from areas outside the County of San Diego.

Comment Summary by Source (written and verbal)

Of the approximately 300 responses received to date the following shows numbers by source:

Citizen	253
Government	35
Environmental Group	16

Of the about 1,200 individual comments within those responses, the following show numbers by topic:

Water	322
Location	264
Capacity	261
General Opposition	188
Cultural / EJ	87
Biology	82
Traffic	9
General Support	8
Money	8
Geology	5
Noise	2
Permit Completeness	5
Air / GHG	6
Fire Protection	2
Liability	5
Out of County Waste	2

Many of the comments received were similar to the comments received and addressed during the CEQA process and have been incorporated into the mitigation measures identified during that process. These mitigation measures will be included as a permit condition in the Solid Waste Facility permit. Some additional discussion and some specific steps taken in response to comments received are outlined below.

Steps Taken by the LEA Relative to Comments Received at the Public Informational Meeting

Introduction

The material that follows is not intended to be a comprehensive response to comments received at the public meeting and in written comments; instead, the focus is on “steps taken” relative to comments received, as required by 27 CCR section 21650(g)(5). This summary is an informational permit-related document, not a CEQA findings or CEQA decision-making document.

Written comments and comments received at the public information meeting addressed both matters within the LEA’s express jurisdiction under the Public Resources Code, and broader project impacts and mitigation measures. Many comments did not reflect the express limits on the LEA’s jurisdiction under the Public Resources Code, or limitations imposed by the prior certification of the FEIR and RFEIR for this project. However, those limitations affected the steps the LEA could take relative to some comments received.

Because San Diego County Proposition C (1994) made a local major use permit for this facility unnecessary, the LEA has served as the CEQA lead agency for this project. In addition, LEAs are directed by Section 44012 of the Public Resources Code to give primary consideration when issuing permits to protecting public health and safety, preventing environmental damage, and long term protection of the environment. The LEA’s consideration of environmental issues related to this project has therefore been broad in scope. However, matters reserved to the Air Pollution Control District

(APCD) and to the Regional Water Quality Control Board (RWQCB) under state law are explicitly excluded from LEA permitting and regulatory jurisdiction under the Public Resources Code. Therefore, while the LEA's review of environmental issues and consideration of public comments is broad, the actions it can take in the solid waste facility permit to regulate air and water matters is limited. The LEA has determined it can use this permit to ensure the enforceability of project features proposed by the applicant and the enforceability of mitigation measures determined through the CEQA process to be necessary to reduce and to mitigate adverse environmental impacts of the project, but cannot use this permit to intrude any further on matters within the jurisdiction of the APCD and RWQCB.

The Final Environmental Impact Report (FEIR) for this project dated December 2002 including a detailed Mitigation Monitoring and Reporting Program was certified by the LEA in February 2003 and is referred to in this document as the FEIR. Following litigation, additional analysis, and public comment the LEA certified a Revised Final Environmental Impact Report (RFEIR) in May 2007 and is referred to in this document as the RFEIR. Subsequently, three addendums were prepared. An addendum to address court ordered analysis of water supply was completed and adopted in 2008 and is referred to as the 2008 Addendum. An additional water source addendum, completed in December 2009 and adopted in January 2010, is referred to as the 2009 Addendum. An additional addendum addressing jurisdictional waters was adopted in May 2010 and is referred to as the 2010 Addendum. Because the EIR has been certified, the LEA's ability to require further environmental analysis of the proposed project is limited by Section 15162 of the CEQA Guidelines. This in turn limits the steps the LEA can take relative to comments received in writing or at the public informational meeting that requested further environmental review.

This summary of "steps taken" is not limited to actions taken by the LEA after the public informational meeting. Instead, this summary also describes prior determinations by the LEA that are relevant to some recurring areas of public comment.

1. Environmental Impacts and Environmental Mitigation Generally

Many comments received at the public meeting concerned the environmental impacts of the proposed project and mitigation for those impacts. In general, these comments were consistent with comments previously received by the LEA in connection with the CEQA process. Detailed responses to such comments are included in the RFEIR. The step taken by the LEA relative to these comments in the context of the proposed permit was to propose an SWFP that will make enforceable all project design features that limit or mitigate environmental impacts, all mitigation measures included in the CEQA Mitigation Monitoring and Reporting Program (MMRP), and additional project design features proposed by the applicant after the FEIR was certified.

As other agencies issue permits, similar or more stringent requirements are likely to be imposed by and become enforceable by those agencies. In the context of its own permit reviews, however triggered, the LEA will consider whether to delete from the SWFP requirements that are not based on the LEA's regulatory mandate under the PRC, if another agency with clear jurisdiction has imposed similar enforceable requirements in its permit.

2. Threats to Ground Water and Surface Water, and Post-Closure Care Issues

Many comments received at the public meeting expressed concerns that the landfill liner system would or could eventually leak, that other protective measures would prove inadequate, and that the landfill would eventually contaminate ground water and the San Luis Rey River. Concern was expressed that these failures might not fully manifest, or might not be resolved, while the operator was still present at the site to pay for any necessary response. These comments requested that an SWFP not be issued.

The EIR and RFEIR concluded that this project would not have a significant adverse impact on ground water or surface water. The LEA therefore has no basis under CEQA to deny a permit for this project based on generalized concerns that landfill liner systems and other protective systems will eventually be ineffective.

This landfill is expected to continue to generate landfill gas and leachate for more than 30 years post-closure. Current state regulations require landfill operators to provide financial assurance for post-closure care and groundwater corrective action based on a 30 year post-closure care period. Operator legal responsibility for air pollution control, leachate collection and management, other post closure care, and corrective action does not end at 30 years post-closure, but instead continues indefinitely. However, a special-purpose legal entity created to operate the landfill might not maintain adequate financial resources to address all applicable requirements at a facility for a longer post-closure period, unless required to do so by law.

Concerns of this kind were expressed by the San Luis Rey Municipal Water District (SLRMWD) several years ago. In response, the applicant entered into a contract with the SLRWD that imposes an obligation on the operator to provide replacement water if the aquifer near the landfill is contaminated by the landfill and that requires that a \$100,000,000 insurance policy be purchased to fund such a remedy if necessary. These contractual obligations are noted here because of their potential relevance to this set of comments. However, these contractual obligations will not be enforceable through the SWFP.

In connection with the SWFP, the step taken by the LEA relative to these comments was to consider whether the LEA could impose additional financial assurance requirements on the operator via the SWFP. After consulting with legal counsel, the LEA concluded that this was not possible because under state law financial assurance requirements are assigned to CalRecycle and are not entrusted to LEAs. However, state regulations could be revised during the period of operation of the landfill, or after closure, to require that additional financial assurance be provided. The LEA therefore urges CalRecycle to revise state regulations to require landfill operators to provide financial assurance based on the full period of time post-closure that continued management and monitoring of a landfill is expected to be necessary.

27 CCR 21650(i) limits the LEA's ability to take further steps in response to these comments. That section prohibits an LEA from including conditions in an SWFP that pertain solely to air or water quality. Instead, those matters are reserved to the APCD and RWQCB. As CEQA lead agency, the LEA has nevertheless included enforceable conditions pertaining to air and water quality in the proposed SWFP, but has limited these conditions to project design features and MMRP measures as described for item 1 above. The project applicant has agreed that it will not challenge such conditions

based on an assertion that the Public Resources Code does not allow such conditions to be included in an SWFP. Before the landfill can be constructed, the applicant will have to obtain permits from the APCD and RWQCB that will include clearly enforceable requirements to protect air and water quality. If and when the RWQCB issues Waste Discharge Requirements, the LEA will consider in consultation with the RWQCB whether to delete from the SWFP some or all requirements that pertain solely to water quality.

3. Green House Gases and Climate Change

Procopio and NRDC noted that the EIR and RFEIR do not include an analysis of the impacts of emissions of green house gases associated with the project on global climate change, and stated that such an analysis was necessary to comply with CEQA. The LEA responded to this assertion in its response to Procopio's March 3, 2011 Statement of Issues in support of Procopio's petition to the County Solid Waste Hearing Panel. (The LEA response is an attachment to an attached comment letter from Gregory Canyon, Ltd., see Response to Issue #3, in Exhibit 10). The LEA determined that these claims do not constitute "new information" within the meaning of Public Resources Code §21166(c) and section 15162 of the CEQA Guidelines because the threat of global warming was well known even before the Revised Final Environmental Impact Report was certified on May 31, 2007.

The NRDC comment letter also stated that the applicant had provided estimates of landfill gas generation rates to the APCD that were substantially higher than estimates contained in technical studies supporting the FEIR, and that this information could not have been known at the time the FEIR was prepared, making a supplemental or subsequent EIR necessary.

The NRDC's comparison of landfill gas (LFG) generation in the FEIR and the Air Quality Impact Analysis (AQIA) submitted to the San Diego Air Pollution Control District (SDAPCD) is flawed. The two estimates are not directly comparable—the FEIR addressed average emissions over a long period of time, and the AQIA was based on a conservative (i.e., high) estimate of peak year emissions. When adjustments are made to estimate average year emissions from both analyses, the average Global Warming Potential (GWP) of the landfill based on landfill gas emissions reported in the FEIR exceeds the average GWP reported in the AQIA. (This analysis is detailed in a technical memorandum prepared by Kleinfelder (2011), attached to a comment letter from Gregory Canyon, Ltd. submitted to CalRecycle with this summary (Exhibit 10).) Average year GWP is the relevant basis for comparison, because global warming is a long-term phenomenon, and not a function of emissions in a peak year. As a result, NRDC's comment does not disclose any "new information" within the meaning of Public Resources Code §21166(c) and section 15162 of the CEQA Guidelines.

In issuing a solid waste facility permit the LEA must also consider section 44012 of the Public Resources Code, which directs LEA to make long term protection of the environment a guiding light in permitting decisions. This landfill will generate landfill gas for many years, and some greenhouse gases will be emitted after control systems are taken into account. But the relevance of those expected emissions to the LEA in the context of section 44012 of the Public Resources Code is limited, because the control of emissions to air from the landfill is reserved to the APCD, and 27 CCR section 21650(i) prohibits an SWFP from containing conditions pertaining solely to air or water quality. Pursuant to the "note" to 27 CCR section 21650, the LEA has taken into consideration that APCD

requirements for the use of control systems to limit landfill gas emissions will limit releases of green house gases from the landfill.

The LEA also notes that GHC's that landfill gas generation and emissions will be addressed in the APCD permitting process, and in the Environmental Impact Study being prepared for the Army Corp of Engineers.

Despite the limitations in 27 CCR section 21650(i) the LEA as CEQA lead agency has included enforceable conditions pertaining to air quality in the proposed SWFP. Those conditions are limited to project design features and MMRP measures as described for item 1 above. The project applicant has agreed that it will not challenge such conditions based on an assertion that the PRC does not allowed such conditions to be included in an SWFP. Before the landfill can be constructed, the applicant will have to obtain an authority to construct and a permit to operate from the APCD. Those permits will include clearly enforceable requirements to protect air quality. If and when the APCD issues a Permit to Operate for the landfill, the LEA will consider whether to delete from the SWFP requirements that pertain solely to air quality.

4. County Water Authority Pipelines

Proposition C states "The project will include work required to protect any San Diego Aqueduct pipelines to the extent and in the manner required by the San Diego County Water Authority." The CEQA MMRP for the project implemented this requirement by providing that an agreement with the County Water Authority regarding pipeline protection or relocation was required to be in place prior to the start of construction.

At least three comments provided to the LEA after the LEA determined that the permit application for this facility was complete and correct addressed this project requirement. At the public meeting the County Water Authority stated that it had not received information it needed from the applicant concerning risks to the pipelines from landfill and bridge construction, and that it would therefore require that the pipelines be relocated. In a request for a hearing before the solid waste hearing panel on the LEA's determination that this application was complete and correct, Procopio stated that an agreement with the Water Authority was required before a permit could be issued, rather than prior to the start of construction. The Water Authority had previously made the same request to the LEA. However, Water Authority comments at the public information meeting only asked that this agreement be in place prior to the start of construction.

A third commenter stated that information related to blasting contained in the applicant's submission to the APCD was significant new information for purposes of Section 15162 of the CEQA guidelines, and that that information showed that these pipelines would be damaged by blasting.

The step taken by the LEA relative to the first two of these comments was to include a requirement in the SWFP that an agreement be reached with the Water Authority concerning pipeline protection or relocation prior to the start of construction. In addition, the LEA decided that the SWFP should clarify that for purposes of the required agreement with the CWA, relevant construction includes construction of the bridge over the San Luis Rey River. The LEA concluded that Procopio's assertion that an agreement was required prior to the issuance of an SWFP was not a correct interpretation of

Proposition C, was not consistent with the certified EIR and RFEIR and MMRP, and was not consistent with the Permit Streamlining Act.

The assertion that significant new information on blasting was provided to the APCD was reviewed by staff and determined to be incorrect. It is true that exact blast locations were not provided in Section 4.6 of the FEIR, but that detail was not necessary to ensure that project restrictions sufficient to protect the Water Authority's pipelines were specified. Based on criteria established in the Bureau of Mines RI 8507 standards and criteria set forth in the San Diego County Water Authority (SDCWA) design procedure manual 02229-3, and on an SDCWA request for an additional margin of safety, the FEIR provided that blasting would not occur within 500 feet of the pipelines unless approved by SDCWA, that blasting must be conducted by a State-licensed blasting contractor, and that seismographic instrumentation would be placed to measure vibration impacts (FEIR, p. 4.6-34- 4.6-35). Blasting anywhere outside of that zone was determined to have a less than significant impact as long as the above project design features were implemented, so precise blasting locations were therefore not required for purposes of this impacts analysis.

As for charge sizes, the information contained in the FEIR concerned two test charges detonated and monitored to measure geologic properties of the site. The information provided to the APCD concerned the effects of potential blasting events comprised of multiple charges detonated sequentially. Sequential detonations allow ground vibrations to subside between detonations. Therefore, while the charge weights discussed in the two analyses are quite different, it is because they are quantifying different things. There is no basis for NRDC's assertion that the information presented in the AQIA would result in a new or increased vibration impact to the pipelines. NRDC's comment does not disclose any "new information" within the meaning of Public Resources Code §21166(c).

5. Fire Protection Services

Some comments stated that an SWFP should not be issued because the facility did not have definitive arrangements for fire protection service in place.

A Zoning Project Facility Availability Form - Fire, was filed with the County of San Diego Department of Planning and Land Use. In response to this submission the County Fire Marshall has indicated in a letter to the LEA that the San Diego County Fire Authority will provide fire protection service, but that in order to receive fire service the project must commit to participation in a Community Facility District currently under formation or execute a Developer Agreement to address fire service. The LEA therefore included in the proposed SWFP a requirement for participation in a Community Facility District currently under formation or execution of a Developer Agreement prior to the start of construction.

6. Regional Solid Waste Disposal Capacity Planning

Several comments stated that the LEA should not propose to issue an SWFP for this facility because there was no need for the facility. These comments noted that other landfills in the County have daily capacity and/or total capacity expansions pending or planned, and noted that waste disposal rates in

the County had declined as recycling and recovery of waste materials increased. As a result, the most recent regional study of disposal capacity needs shows adequate daily disposal capacity for 16 to 18 years² without Gregory Canyon, assuming other capacity expansions at another landfill in the County are approved by specified dates. 16 to 18 years of daily capacity is more years of daily capacity than the 15 year planning horizon called for in section 41701(a) of the Public Resources Code ("PRC").

In the narrow context of the solid waste disposal facility LEA permitting provisions of the PRC, regional disposal capacity needs are not a relevant consideration for the LEA. The County of San Diego has assigned responsibility for integrated waste management plans within the County to the Department of Public Works, not to the LEA, to ensure that there is no conflict of interest between regional planning decisions concerning capacity needs and designated sites for facilities, versus LEA regulatory decisions that particular proposed facilities do or do not meet the standards specified in the PRC and state regulations. Pursuant to Section 44008(b) of the PRC and 22 CCR 21570(f)(5)(B), the LEA's inquiry into planning issues under the landfill permitting provisions of the PRC is therefore limited to whether the site for this project is designated as a landfill site in the regional integrated waste management plan. It is.

In the broader context of CEQA and the LEA's responsibilities as CEQA lead agency, whether this landfill would provide significant benefits is a critical consideration, because the FEIR identified significant unmitigable environmental impacts from the project. This CEQA issue is discussed in the CEQA findings and statement of overriding considerations, and in the LEA staff report for this permitting action.

7. Tribal Sacred Sites

Tribal representatives and others at the public meeting stated that Gregory Mountain was given to the Luiseno people by God as a place of worship, and that construction of the landfill should not be allowed because it would desecrate an Indian sacred site. As they did during the CEQA process, Tribal representatives stated that in Luiseno Indian tradition Gregory Mountain (called "Chokla" by the Luiseño) is believed to be one of the residing places of "Taakwic", a powerful and feared spirit. Several commenters asked that Jack Miller, Director of DEH, come to the Gregory Canyon site to experience its spiritual significance. Commenters also stated, as during the CEQA process, that construction of the landfill near Medicine Rock would be inappropriate due to Tribal interests.

These cultural resources (Gregory Mountain and Medicine Rock) were recognized as being significant to Native Americans during the CEQA process. A very brief summary of related facts and of the conclusions reached during the CEQA process follows.

The western portion of Gregory Mountain, including the peak, is located on the eastern boundary of the project site. The eastern portion of Gregory Mountain is on the Pala Indian Reservation. Because the peak and the western portion of Gregory Mountain have been in private ownership for many

² The 18 year figure is used in the draft study. However, only 16 years will pass from the end of calendar 2011 when this study will be finalized, until the beginning of the year in which a daily disposal capacity shortfall is project to exist.

years, tribal access to the site for spiritual and religious uses has been limited. Heavy underbrush and topography limit access to the top of Gregory Mountain.

Medicine Rock is not located on the project site. At its nearest point, Medicine Rock is located approximately 1,400 feet from the ancillary facilities included as part of the project. Medicine Rock is located on property recently acquired by the Pala Tribe. The Medicine Rock site is not within the Pala Reservation.

The impacts of the project on both Gregory Mountain and Medicine Rock were evaluated from an objective and a subjective standpoint in the FEIR. For the objective evaluation, air quality, noise, and visual impact studies were completed to evaluate project impacts. Some objective impacts were determined to be insignificant (e.g., noise, and view impacts) and some were mitigated to a level of insignificance (e.g., dust). The project was determined to contribute cumulatively to a preexisting violation of air quality standards.

The subjective component of the analysis considered the belief of the Luiseño that impacts of the project to Gregory Mountain and Medicine Rock are significant and unmitigable. Their belief is based on their intangible use and relationship to Gregory Mountain and Medicine Rock. Following interviews with the Luiseño people, and considering land ownership and physical conditions, the CEQA analysis concluded that recent use of Gregory Mountain for spiritual or religious purposes has been very limited. Although Medicine Rock is considered an important cultural resource by the Luiseño, a search of ethnohistoric literature and the cultural resources report has not documented any significant use of Medicine Rock for religious or ceremonial purposes.

Although the objective analysis of impacts from the project did not support significant impacts to either Gregory Mountain or Medicine Rock, and although the recent use of either Gregory Mountain or Medicine Rock for religious or spiritual purposes has not been documented, the FEIR accepted the subjective position of the Luiseño that impacts of the project upon both Gregory Mountain and Medicine Rock are significant and unmitigable. Mitigation measures were therefore adopted to reduce these impacts wherever feasible. To partially mitigate the impacts to Gregory Mountain, the project has been required to either convey a permanent open space easement or to dedicate the western slopes and the top of Gregory Mountain to preserve the resource. The project will also dedicate an access easement that will grant the Pala Band of Mission Indians the right to walk or hike from the western boundary of the land owned by the Pala Band to the summit of Gregory Mountain. The project will also provide a cash contribution to the Pala Band of Mission of Indians to create a footpath to the top of Gregory Mountain. Construction of this footpath will be the responsibility of the Pala Band of Mission Indians and is not part of the project. The project will provide funding as needed for the annual maintenance of the trail from the eastern base to the top of the mountain during the operational life of the landfill. These obligations are open ended; the Pala Band can call on the developer to fulfill these obligations at any time after a solid waste facility permit containing these requirements is issued and accepted, until the landfill is no longer operating. The FEIR did not conclude that these measures would reduce subjective impacts to Gregory Mountain or Medicine Rock to less than significant, so these significant subjective impacts must still be overridden if the project is to be approved.

Following the public meeting, the Pechanga Band submitted a comment letter asserting that “the Luiseno Ancestral Origin Landscape ...is a region or area” not a particular site or feature, and asserting generally that this broad regional landscape should be protected. The certified FEIR for this project did not address Tribal assertions of this kind; no such assertions were made during the CEQA comment process or in subsequent litigation challenging the FEIR.

In its comment letter, the Pechanga Band stated that it would “welcome the opportunity to meet with the LEA, and any other agency involved, to further explain and provide confidential documentation concerning specific cultural significance for the project.” The LEA decided not to meet separately with Pechanga Band representatives, in part because the permitting process is subject to statutory deadlines, in part because the Pechanga Band comments did not indicate that the Band could provide new information of substantial importance that could not have been known with reasonable diligence at the time the previous FEIR was certified, and in part because the information the Pechanga Band offered to provide was not being offered for inclusion in the public record. The LEA has considered the Pechanga Band's written comments in its consideration of this permit application package. The applicant also submitted a letter responding to the comments of the Pechanga Band.

In response to the further comments at the public information meeting and the written comments submitted by the Pechanga Band, the LEA considered whether the comment process had provided any significant new information or had identified any additional feasible mitigation measures that should be required for this project, other than disapproval of the project. Staff concluded that this information was not new information that could not have been known at the time the FEIR was prepared, and determined that the mitigation measures already included in the MMRP included all feasible mitigation measures that had been identified to reduce impacts to these sites and to the Pechanga cultural affiliation with the general region around the landfill property, other than disapproval of the project. Staff therefore considered whether a solid waste facility permit for this project could be denied based on significant subjective impacts to the Indian sacred sites identified in the FEIR or based on the more general Indian cultural affiliations asserted by the Pechanga Band. Staff concluded that the Pechanga Band's recent assertions of general cultural affiliations could not be a basis for denying a permit, because the threshold tests established in section 15162 of the CEQA Guidelines for a project with a certified EIR had not been met. Staff concluded that a permit could be denied based on the significant subjective impacts to the Indian sacred sites identified in the FEIR, because under CEQA the LEA could not approve this project and propose to issue a solid waste facility permit unless it concluded that the benefits of the project outweighed these and other significant adverse environmental effects. However, the Director, DEH instead determined that the benefits of this project do outweigh this and other significant and unavoidable impacts of the project and has adopted overriding findings in accordance with CEQA Guidelines §15093. Prior to making this determination the Director visited the site. The Director's findings are included in a Separate Statement of Overriding Considerations.

8. Environmental Justice Issues Other than Tribal Sacred Sites

An Environmental Health Coalition representative stated at the public information meeting that a landfill at this location would violate environmental justice principles because of the Tribal interests discussed above, and because poverty levels in the area exceed national averages, and because the average percentage of white residents in the zip code that includes the landfill site is lower than the

County average. This speaker stated that siting landfills in poorer and less white areas was a disturbing trend in the County, and urged that CalEPA and its boards and commissions are committed to environmental justice in the issuing of permits, including application of the precautionary principle. The speaker urged that permitting a landfill near the San Luis Rey River would involve high environmental risks and therefore would violate the precautionary principle of environmental justice.

In response to these comments, LEA staff asked the applicant to provide a summary of prior environmental justice reviews of this project. Staff learned that the applicant has provided a discussion of this issue to the Chair and Executive Officer of the Regional Water Quality Control Board in 2005, following comments at a public workshop, and had also provided an updated summary of this issue to the Chair of the State Water Resources Control Board in preparation for a briefing on the project. Those materials included analyses of potential environmental risks to low income and non-white communities, a discussion of environmental justice concepts and of the review of this issue in the FEIR, an analysis of relevant ethnic and racial profiles and income profiles, mitigation measures for impacts to ethno-historical values, and a summary of the opportunities provided for public participation in the LEA’s CEQA and permitting processes. These summaries are attached at Exhibit 11. LEA staff concluded that the FEIR and these additional prior reviews did not support the denial of this permit based on environmental justice considerations.

LEA staff also determined how ethnic/racial and demographic issues are currently reviewed by CalRecycle in making permitting decisions, and learned that relevant data had already been assembled by CalRecycle staff in anticipation that a proposed permit could be forwarded to CalRecycle. Those data as provided to the LEA were as follows:

According to the 2000 Census, the population consists of the following:

US Census Bureau Data	
Census Tract – 191.01, in the	
Pauma Valley in San Diego County	
	Percent
White	55.4
Black or African American	1.1
American Indian and Alaska Native	19.8
Asian	2.3
Native Hawaiian & Other Pacific Islander	0.1
Some other race	17.9
Two or more races	3.4

About 38 % of this Census Tract identified themselves as Hispanic or Latino. Additionally, 7.8% of the families were below the poverty level and 10.1% of the individuals in Census Tract 191.01 were below the poverty level.

Based on these data it does not appear that this landfill would be located in an area that is disproportionately poor or non-white. In addition, the statutory criteria for LEA permitting decisions do not include environmental justice concerns such as proximity to other facilities or local socioeconomic and demographic profiles.

CalRecycle also requires its grant recipients including LEAs to agree to comply with the environmental justice principles set out in Government Code section 65040.12(e) in their use of grant funds. This section provides as follows: "For the purposes of this section, 'environmental justice' means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies."

The LEA does not use CalRecycle grant funds to fund work on permits, inspections, or enforcement. All LEA costs related to the Gregory Canyon project have been or will be recovered through permit application fees, permit fees, and other payments by the applicant. This grant condition is therefore not applicable to LEA decisions concerning a permit for this landfill. Moreover, a grant condition of this kind, if applicable, could not override statutory and regulatory directives the LEA must follow in making permitting decisions, because compliance with those legal requirements would not be "unfair." Finally, within the scope of its discretion, the LEA's actions and decisions concerning this project have not treated people of any race, culture or income unfairly.

In response to the environmental justice comments at the public information meeting, LEA staff also further reviewed CalRecycle guidance on the application of environmental justice considerations to landfill siting decisions. The best recent summary of CalRecycle's guidance that staff could locate was from a staff report for a CIWMB meeting on November 15 2006, Agenda Item 18, "Consideration of the Board's Future Environmental Justice Actions." Staff's recommendations were adopted by the Board in Resolution 2006-212. CIWMB staff's advice to the state board was as follows:

Siting of Facilities

The CIWMB is responsible for certifying, overseeing, and evaluating the 55 local enforcement agencies (LEAs) in the State. In turn, LEAs are responsible for inspecting and issuing permits for solid waste facilities. The CIWMB also must decide whether to concur in the issuance of any solid waste facilities permit by a LEA, pursuant to specific requirements in statute. The statutory criteria do not include environmental justice concerns such as proximity to other facilities or local socioeconomic and demographic profiles. Moreover, the CIWMB has no explicit authority or role in the actual siting of a solid waste facility. This role is vested entirely at the local decision-making level (e.g., City Council or County Board of Supervisors). This local role includes, among other things, assessment and selection of sites (which may include evaluation of environmental justice issues), preparation and approval of California Environmental Quality Act documents, and approval of local land use entitlements.

No similar CIWMB regulation or guidance directed to LEAs was located concerning environmental justice generally or the application of the precautionary principle in an environmental context to support environmental justice.

Local planning, zoning and land use entitlement issues for the Gregory Canyon project were resolved by the voters of San Diego County when County-wide Proposition C was adopted in 1994. Even in the absence of Proposition C, the development of landfill siting criteria and the identification of landfill sites in San Diego County is a regional planning matter pursuant to the Public Resources Code, and

the County's participation in that process is through the Public Works Department, not the LEA. The LEA, like CalRecycle, has no authority to determine where landfills will be sited, but can only propose to issue or not propose to issue a permit for facilities that submit applications to the LEA, based on applicable law. The CEQA process for this project did not identify high environmental risks related to the project location, but instead concluded that project impacts to water resources would be less than significant. The LEA has therefore concluded that environmental justice consideration including if applicable the precautionary principle as applied to environmental impacts do not provide a legal basis for the LEA to deny a solid waste facility permit for this project.

9. Traffic Safety

The FEIR disclosed an overall accident rate on SR 76 that was higher than statewide averages. The landfill project will add traffic to SR 76, and will also realign and widen SR 76 within the project site. The realignment will increase sight distances, and will provide an east-bound deceleration lane and a west-bound acceleration lane for landfill traffic. The FEIR included an analysis of how trash trucks would impact this traffic safety situation with these improvements to SR 76 in place. The FEIR identified and discussed potential traffic safety improvement projects, including improvements to the hairpin turn west of Couser Canyon Road at PM 19.393 and improvements to the Rice Road intersection, or a contribution for safety improvements such as speed monitoring and enforcement. (FEIR, p. 10-61). The FEIR also analyzed the potential environmental impacts from Couser Canyon/Rice Canyon improvements, and provided for mitigations to reduce potentially significant impacts to a level of insignificance. (FEIR, pp. 10-61). However, the FEIR concluded that traffic from the landfill project would not have a significant impact on the traffic accident rate on SR-76. The FEIR therefore did not require mitigation measures for traffic safety impacts.

Traffic safety nevertheless continued to be a concern for the LEA. Traffic safety has also been raised as a concern whenever the public has had an opportunity to comment on this project. In 2004, the LEA and the applicant discussed traffic safety again. Those discussions resulted in commitments by the applicant to two additional traffic safety measures, memorialized in a September 20, 2004 letter from the project applicant to the LEA.

First, the applicant agreed to install a traffic light at the intersection of the landfill access road with realigned SR 76, at the applicant's expense. The signal construction would coincide with realignment work on SR 76, with activation prior to the acceptance of waste. As required by state law, activation was conditioned on agreement by CalTrans that traffic conditions warranted a light. (Proposition C MMRP measure MM4.5.C5I.) Second, the applicant agreed that prior to the commencement of operations it would make an irrevocable offer to contribute up to \$1 million to Caltrans that Caltrans, in its discretion, may use to make traffic safety improvements on SR-76 in the vicinity of the landfill project.

The LEA accepted these commitments and determined that they should be made enforceable through the Solid Waste Facility Permit.

Traffic safety information was updated in the RFEIR in 2007. That document presented information that fatality rates on SR-76 were less than the statewide average per million vehicle miles traveled, that the combined fatality plus injury rate was slightly higher than the statewide average, and that the

accident rate remained higher than the statewide average. The RFEIR again concluded that traffic from the landfill project would not have a significant impact on the traffic accident rate on SR-76.

Because of the comments received at the public information meeting, the LEA has revisited the commitments the applicant made in 2004 to ensure that they would provide real and timely traffic safety benefits. Staff confirmed that prior analysis has shown that the conditions CalTrans will consider to determine whether a traffic light is warranted will be met when the landfill is operating. (That analysis was provided to DEH in 2004, and is also contained in the 2006 Traffic Study (Appendix A to the RFEIR), at Appendix J, P. J7-J8. It is therefore virtually certain that CalTrans will consent to activation of the traffic signal prior to the commencement of operations. Earlier activation of the signal is possible, after the realignment of SR 76 is completed, if ongoing landfill construction traffic warrants the signal under CalTrans standards.

LEA staff also inquired into whether a \$1 million contribution to CalTrans was enough money to substantially fund a useful traffic safety improvement project on SR 76. Staff were informed that the \$1 million contribution figure used in 2004 exceeded the then-estimated cost of the improvements to the hairpin turn west of Couser Canyon Road at PM 19.393 plus improvements to the Rice Road intersection that were examined in the FEIR.

Finally, the LEA has proposed to the project applicant that the requirement to provide this irrevocable offer of funding be accelerated from prior to the commencement of operations, to prior to the start of construction. The applicant has agreed to this change, and the change is included in the proposed permit. An earlier contribution to Caltrans for traffic safety improvements should result in earlier implementation of one or more traffic safety improvements than would otherwise occur. The earlier completion of one or more such projects would provide a public benefit by contributing to a safer highway and a reduced accident rate in the general vicinity of the project.

10. Revised ACOE Jurisdictional Determination

NRDC's comment letter stated that the LEA's May 2010 Addendum, which was prepared to consider a revised U.S. Army Corp of Engineers (ACOE) determination concerning the extent of ACOE jurisdictional waters on the project site, was inadequate under CEQA. The Addendum concluded that no "new information" was compiled by the ACOE to support this determination and that no "new information" arose from the ACOE determination itself, for purposes of section 15162 of the CEQA Guidelines. This was because the additional jurisdictional waters identified by the ACOE were in areas already designated for disturbance as part of the project, and mitigation measures reducing the impacts of that disturbance to a level of less than significant had already been provided. The LEA has further considered and stands by that conclusion.

The NRDC letter also cites a more recent determination that the RWQCB has identified approximately 16,000 linear feet of waters of the state that would be impacted by the landfill development. The 2010 Addendum provides estimates of impacts to waters of the state in Table 4.9-5, but expressly acknowledged that these estimates were "subject to final confirmation from the agencies." The overall increase in designated waters of the state in the more recent determination referenced by NRDC is about 0.4 acres. But again all of those waters are within areas of the landfill development that would already be disturbed. For that reason, whether or not they are determined to be jurisdictional does

not constitute a change in the project or a change in the physical impacts of the project. As noted in the 2010 Addendum, “whether or not a water on the landfill site is jurisdictional or not, the activity that may create a significant impact is the disturbance of that portion of the landfill property” (2010 Addendum, p. 6). Even if the revised jurisdictional determinations are viewed as a change in the circumstances in which the project is undertaken, then that change does not result in new or increased impacts. Section VI of the CEQA Project Findings provided to CalRecycle with the proposed permit presents that analysis.

11. Litter Control Fence on Access Road Bridge

The 2010 Addendum described a litter fence for the bridge over the San Luis Rey River that was being incorporated into the project design at the request of the San Diego Regional Water Quality Control Board,. NRDC’s comment asserts that the litter fence could have a significant adverse effect on endangered birds that use the river as a flyway, making a subsequent or supplemental EIR necessary.

This assertion of a significant impact on birds seemed implausible to the LEA, but the LEA asked the project applicant to have an expert address that question. Bill Magdych Associates (2011) prepared a technical memorandum analyzing potential impacts to birds that populate the area in and around the proposed bridge. The analysis concluded that the fence would present little or no potential for bird strikes or entanglement. The analysis is attached to a comment letter by Gregory Canyon, Ltd. attached to this summary. LEA staff conclude that NRDC’s comment does not disclose any new significant impact or any “new information” within the meaning of Public Resources Code §21166(c) and CEQA Guidelines section 15162.

Exhibit List

- Exhibit 1 - Meeting Notice
- Exhibit 2 - Meeting Notification letter
- Exhibit 3 - Legal Advertising for two Newspapers
- Exhibit 4 - PowerPoint Presentation
- Exhibit 5 - Speaker Slips
- Exhibit 6 - Sign in sheets
- Exhibit 7 - Meeting Transcripts
- Exhibit 8 - Press Package
- Exhibit 9 - Press Coverage
- Exhibit 10A - Comments Received at the Informational Meeting
- Exhibit 10B- Comments Received by Mail
- Exhibit 10C - NRDC Bulk Comments
- Exhibit 10D - Late Comments
- Exhibit 11 - Environmental Justice Summaries