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BEFORE THE CALIFORNIA DEPARTMENT
OF RESOURCES RECYCLING AND RECOVERY

In the Matter of:)	REQUEST FOR HEARING ON LOCAL
)	ENFORCEMENT AGENCY'S ALLEGED
Request for Hearing on the Solid Waste)	FAILURE TO ACT AS REQUIRED BY
Facility Permit Application for the Proposed)	LAW OR REGULATION
Gregory Canyon Landfill,)	
)	
Pala Band of Mission Indians,)	Public Resources Code Sections 44307,
Petitioner)	45030(a)
)	
)	Hearing Date: June 13, 2011; 1:00 p.m.
)	
)	
)	

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
STAFF RESPONSE TO PETITIONER'S STATEMENT OF ISSUES

Introduction

Petitioner Pala Band of Mission Indians ("Petitioner" or the "Pala Band") alleges that the County of San Diego Solid Waste Local Enforcement Agency ("LEA") failed "to act as required by law or regulation" when it determined that the application for a solid waste facilities permit ("SWFP") for the Gregory Canyon Landfill in San Diego County was "complete and correct," a prerequisite to the LEA's consideration of the application and its subsequent decision to propose the issuance of a SWFP for the Landfill to the Landfill operator, Gregory Canyon Ltd. (the

1 “Operator”).¹ See, Public Resources Code (“PRC”) § 44307; Title 27, California Code of
2 Regulations [“CCR”], §§ 21650, subd. (a), 21570, subd. (f). Under the Integrated Waste
3 Management Act (the “IWMA”), PRC Sections 40000 et seq., an enforcement agency must hold
4 a hearing before a hearing officer or a hearing panel to consider allegations that it has failed to
5 act as required by law or regulation. PRC §§ 44307, 44308.

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7 On March 3, 2011, Petitioner filed a proper request for a hearing before the local hearing
8 panel in San Diego County (Exh. 1), but, on the advice of its counsel, the panel refused to
9 provide the requested hearing (Exh. 2). Petitioner then requested a hearing before the
10 Department of Resources Recycling and Recovery (“Department” or “CalRecycle”) pursuant to
11 Public Resources Code Section 45030, subd. (a), filing the request (Exh. 3) and a statement of
12 issues (Exh. 4) (including Pala Band Exhibits A – K) with the Department on April 14, 2011.
13 Department staff has reviewed Petitioner’s statement of issues. In anticipation of the hearing
14 before the local hearing panel, the LEA on March 15, 2011, filed a response to the Pala Band’s
15 request for hearing together with LEA Exhibits 1 through 15. Department staff has reviewed the
16 LEA’s response to Petitioner’s statement of issues.
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19 Staff Response to Petitioner’s Statement of Issues

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21 The Pala Band argues that the LEA wrongly determined that the SWFP application for
22 the Landfill was complete and correct, thus the LEA, Petitioner alleges, failed to act as the
23 IWMA and Department regulations require. Exh. 4, p.1. Reference to the controlling
24 regulations is useful here. The required contents of an application for a solid waste disposal
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27 ¹ On May 13, 2011, the LEA proposed to issue a SWFP for the Landfill and submitted the proposed SWFP to the
Department for its review and concurrence or objection under PRC Section 44009. Petitioner’s challenge does not
encompass the proposed SWFP, but is limited to the LEA’s determination that the application for the Landfill was
complete and correct.

1 facility, such as the Landfill, are set out at Title 27, CCR, Section 21570, subd. (f): “A complete
2 and correct application package shall include, but not necessarily be limited to, the following
3 items...” “Complete” and “correct” are defined terms. “Complete” means that “all requirements
4 placed upon the operation of the solid waste facility by statute, regulation, and other agencies
5 with jurisdiction have been addressed in the application package.” Title 27, § 21563, subd.
6 (d)(1). “Correct” means that “all information provided by the applicant regarding the solid waste
7 facility must be accurate, exact, and must fully describe the parameters of the solid waste
8 facility.” Title 27, § 21563, subd. (d)(2). In addition, there is an overarching requirement that
9 “[t]he application package shall require that information be supplied in adequate detail to permit
10 thorough evaluation of the environmental effect of the facility and to permit estimation of the
11 likelihood that the facility will be able to conform to the [State minimum] standards over the
12 useful economic life of the facility.” Title 27, § 21570, subd. (d).

13
14 Allegation: Because the site of the proposed Landfill is “uniquely complex,” the SWFP
15 application is not complete and correct because it lacks sufficient site-specific detail
16 (Exh. 4, p.2) –

17
18 The unique characteristic which Petitioner notes is the location of the site in a steep
19 canyon up-gradient from the San Luis Rey River and over fractured bedrock making it difficult
20 “to detect, delineate, and remediate” any contamination which might leak from the Landfill. Id.
21 To the extent that this assertion relates to water quality, it seeks LEA and Department
22 consideration of a matter outside their jurisdiction. PRC §§ 43020, 43021. Protection of water
23 quality is solely within the jurisdiction of the San Diego Regional Water Quality Control Board
24 (“Regional Board”). The Joint Technical Document (“JTD”), a required element of an
25 application for a SWFP for a disposal facility, contains information as to the manner in which the
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1 facility will prevent water pollution and must be reviewed and approved by the applicable
2 Regional Water Quality Control Board. Title 27, §§ 21570, subd. (f)(1), (2); 21585; 21710-
3 21760. In addition, the LEA utilized an outside expert, URS Corporation, to evaluate key design
4 elements of the Landfill, as authorized by Title 14, Section 18072, subd. (a)(3)(B). (The URS
5 Report is found at Exhibit 4 of the LEA's Response to Petitioner's Statement of Issues.) URS
6 made 35 findings as to the reasonableness of the design. It is staff's opinion that outside review
7 and the LEA's own evaluation of the Landfill's design sufficiently addressed the complexities of
8 the Landfill site.

10 Allegation: the SWFP application for the Landfill did not demonstrate that the
11 Preliminary Closure/Post-Closure Maintenance Plan ("PCPCMP") had been approved by
12 the Regional Board (Exh. 4, p. 2) –

13 Department regulations only require that PCPCMPs be deemed complete, not approved,
14 before the enforcement agency may deem a SWFP application to be complete and correct. Title
15 27, § 21570, subd. (f)(6) ("A complete and correct application package shall include...[6] For
16 disposal sites, [a] completeness determination...") (emphasis added). "Completeness" for
17 PCPCMPs is not the same as "complete and correct" for SWFP applications. For plans to be
18 deemed complete they have to address all required elements (i.e., have enough information to
19 review), but the information need not be adequate for approval. Title 27, § 21860(c, d). Such a
20 determination of completeness is sufficient for the LEA to determine that an application is
21 "complete and correct." The actual approval of PCPCMP does not occur until 120 – 130 days
22 after it is complete, and approval may take much longer if the reviewing agencies require
23 changes in the PCPCMP. Title 27, § 21860, subd. (e), (f). The timeframe for approval of the
24 PCPCMP may extend beyond the 60 days the Department has to concur in, or object to,
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1 proposed permits. See, PRC § 44009. Thus, such approval may occur after a SWFP has been
2 issued. To address this possibility, Department regulations provide that it the Department may
3 concur in a proposed SWFP for a disposal facility if the applicant has submitted documentation
4 sufficient for Department staff to determine that the PCPCMP is “consistent” with State
5 standards. Title 27, § 21685, subd. (b)(5). This means that the PCPCMP is in compliance with
6 State Minimum Standards and is consistent with the JTD.
7

8 Based on the following chronology, staff finds that the LEA appropriately deemed the
9 permit application complete and correct with regard to plans submittal and review. The
10 PCPCMP was received by the LEA, the Regional Board and the Department on approximately
11 December 23, 2010. Department Engineering Support Branch (“ESB staff”) received and
12 reviewed the PCPCMP for completeness and concluded it was complete. However, this finding
13 was not formalized in a letter. ESB staff allowed their completeness determination to be made by
14 operation of law pursuant to Title 27, Section 21860(c). It is staff’s understanding that the
15 Regional Board did not make a finding of incompleteness within 30 days of receipt, either, so by
16 action of Section 21860(c) the Regional Board was deemed to have found the document
17 complete. Accordingly, the LEA properly made its completeness determination and provided its
18 finding to the agencies in a letter dated January 24, 2011. Department ESB staff determined the
19 PCPCMP was complete and consistent with State requirements and documented that in an
20 internal form submitted to the Permit Unit. Subsequently, in a May 3, 2011 email, ESB staff
21 provided comments on the PCPCMP to the Operator’s consultant. By regulation, the Operator
22 has 60 days to respond to the comments unless an alternate timeline is approved by all agencies
23 including RWQCB, LEA, and the Department. Title 27 CCR, § 21860, subd. (f).
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1 Allegation: The SWFP application is not complete and correct in that it erroneously
2 states that the requirements of CEQA have been satisfied (Exh. 4, p. 3) –

3 Title 27, Section 21570, subd. (f)3 requires that a SWFP application provide either
4 evidence of compliance with CEQA or information as to the status of efforts to comply with
5 CEQA. The application for the SWFP for the Landfill provides such evidence. Exh. 5, Letter to
6 Rebecca Lafreniere, dated January 13, 2011, p. 2, Application Form, Part 5.

7 Petitioner's primary argument here is not that the application fails to meet the complete
8 and correct requirement, but that the LEA has not complied with CEQA because additional
9 CEQA analysis is required for various reasons. This Landfill has been the subject of several
10 CEQA lawsuits over the years, and the LEA has complied with various court decisions. Staff
11 finds that the requirements of CEQA have been satisfied and that the application meets the
12 Department's requirements for reporting on the status of compliance with CEQA.

13 Allegation: The Application fails to show that the Landfill operator will adequately
14 protect the First San Diego Aqueduct located on and near the Landfill site (Exh. 4, p. 4) –

15 Regardless of the merits of Petitioner's argument regarding the aqueduct, resolution is
16 not required in order for the LEA to find the application complete and correct. The application
17 contains the information required by Section 21570, subd. (f). Proposition C requires the
18 Landfill operator to take certain steps to protect the aqueduct, not the IWMA or Department
19 regulations.

20 Allegation: The SWFP application is not complete and correct because the JTD does not
21 contain sufficient detail for this Landfill due to the complexity and sensitivity of
22 developing this site. in particular, the JTD does not address the contingency that access to
23 the Landfill may be blocked due to bridge failure or flooding (Exh. 4, p. 5) –

24 The only road accessing the Landfill crosses a bridge over the San Luis Rey River. The
25 JTD acknowledges that, in the event of a 100-year flood, the bridge would only have 18 inches
26 of clearance above the floodwaters. Petitioner asserts that the JTD is insufficient because it does
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1 not address contingency measures required if a larger flood event or other emergency rendered
2 the Landfill inaccessible.

3 Title 27, Section 21600, subd. (b)(4)(A) states that a JTD must “describe how the site
4 design accommodates or provides for ... climatological factors ...” This is adequately described
5 on page B.4-14 of the JTD. The JTD states that should access to the Landfill become
6 unavailable, the Operator would notify haulers to use alternative landfills until access to Gregory
7 Canyon Landfill could again be provided. Staff finds that such notification to haulers is adequate
8 to address issues that may result from the temporary loss of the use of the bridge. Waste would
9 not be received at the site until the bridge can be used safely and operations at the Landfill.

10 Allegation: The SWFP application is not complete and correct because the JTD does not
11 contain sufficient detail for this Landfill due to the complexity and sensitivity of
12 developing this site, in particular, the application and the JTD do not demonstrate that the
13 groundwater monitoring wells described in Exhibit G-2 of the JTD and the Technical
14 Memorandum referenced in Exhibit G-2 have been installed (Exh. 4, p. 5) –

15 Petitioner argues that the LEA should have required that the referenced groundwater
16 monitoring wells should have been installed before it accepted the application as complete and
17 correct. However, groundwater monitoring relates directly to protection of waters of the state,
18 and falls within the regulatory authority of the Regional Board. Title 27, § 20415 – SWRCB -
19 General Water Quality Monitoring and System Requirements.) The IWMA precludes the
20 Department from enacting, and, consequently, LEA from imposing, requirements on solid waste
21 facilities that are within the regulatory jurisdiction of the State Water Resources Control Board
22 and the regional water quality control boards. PRC §§ 43020, 43021. Further, the IWMA
23 expressly declares that the protection of water quality rests with the State Water Resources
24 Control Board and the Regional Water Quality Control Boards. PRC § 43101, subd. (c)(2).
25 Therefore, LEA is not allowed to make substantive determinations as to matters within the
26 regulatory authority and expertise of the Regional Board, such as the monitoring wells for the
27 purpose of monitoring groundwater quality.

1 Allegation: The SWFP application is not complete and correct because the JTD does not
2 contain sufficient detail for this Landfill due to the complexity and sensitivity of
3 developing this site, in particular, because the JTD's calculation of the cost of carrying
4 out known or reasonably foreseeable corrective action activities is based on costs
5 associated with a release to the underlying bedrock and fails to consider a release to the
6 alluvial aquifer (Exh. 4, p. 6) –

7 Department regulations require that operators of disposal facilities demonstrate they have
8 sufficient financial resources to carry out those “corrective action activities...required under
9 [Title 27] Sections 20380(b) and 22100. Title 27, §§ 22220, subd. (a), 22221, subd. (a). Section
10 20380(b) refers to releases to ground water, surface water or the unsaturated zone, and is within
11 the sole authority of the Regional Board. Title 27, § 20380, sub. (a). Section 22100 references,
12 in Section 22101, subd. (a) and (b), the Department's requirements for costs estimates for
13 carrying out corrective actions for releases to waters of the state (§ 22101, subd. [a]) and for
14 other releases (§ 22101, subd. [b])². In keeping with the IWMA's requirement that the
15 Department not duplicate or overlap with other agencies' regulatory authority (PRC § 43101), it
16 is solely the Regional Board's responsibility to approve the cost estimate and plan to protect
17 against releases to the state's waters. Title 27, § 20380, et seq. The Department is responsible
18 for approving the financial assurance mechanism only, not the amount of the corrective action
19 cost estimate or the plan. Title 27, §§ 22221, subd. (a), 22222.

20 The corrective action estimate in the application challenged by Petitioner is related to the
21 water release estimate that the Regional Board reviews and approves. The Department assures
22 that the water release corrective plan is properly funded but neither reviews nor approves the
23 amount of the water release estimate. Title 27 CCR, § 22222 – SWRCB – Corrective Action
24 Funding.

25
26 ² Note that the newly-promulgated requirement for a cost estimate for reasonably foreseeable causal events resulting
27 in a non-water release corrective action is not effective until July 1, 2011. SWFP applications submitted prior to that
date do not have to meet that requirement until the first permit or permit review application after that date. Title 27,
§ 22100(b)(1).

1 Allegation: The SWFP application is not complete and correct because the JTD does not
2 contain sufficient detail for this Landfill due to the complexity and sensitivity of
3 developing this site, in particular, because the JTD fails to adequately describe how the
4 Operator would handle fires at the Landfill, whether arising with the facility area or
5 outside the Landfill boundary (Exh., 4, p. 6) –

6 The JTD must contain, among other things, a description of the procedures the operator
7 by which it will handle burning solid waste and will prevent landfill fires. Title 27, § 21600,
8 subd. (8)(b). Staff finds that the JTD meets this requirement for the following reasons.

9 Fire prevention and control is described in the JTD at the following pages:

- 10 • B.4-5 - B. 4-6 – An equipment list is found at Table 7 and includes “a variety of
11 equipment that will be used for the operation of the GCLF. On-site equipment will
12 serve disposal and site maintenance needs to allow for operations of the GCLF in an
13 environmentally sound manner and to comply with all applicable regulatory
14 requirements. On-site equipment will be maintained in accordance with State
15 minimum standards. Less equipment will be necessary during initial refuse disposal
16 operations. The numbers and types of equipment utilized to meet operational
17 requirements will be added as the landfill is developed and increased to accommodate
18 a higher inflow rate. However, in the event of multiple equipment failure, a local
19 rental company will be contacted to provide necessary back-up equipment.” LEA
20 Exh. 8, JTD, p. B.4-5.
- 21 • B.5.3.5 on page B.5-40. The Plan clearly states that due to site’s remoteness, fire
22 control measures are of great importance and will be pursued. The measures
23 discussed include, among other things:
 - 24 ○ Site personnel
 - 25 ○ Prohibit the burning of refuse at any time
 - 26 ○ Create a firebreak between refuse and the undisturbed natural areas
27 surrounding the Landfill

- Comply with PRC Section 4373 (flammable materials shall be maintained at least 150 feet from flammable solid waste)
- Clear brush and vegetative debris around active area
- Refuse shall not remain uncovered for more than 4 hours
- Wildfire suppression forces are available from the San Diego County Fire Authority, California Department of Forestry and Fire Prevention, North County Fire Protection District, and the Pala Reservation Fire Station.

- B. 5-41 – fire protection capabilities through the San Diego County Fire Authority, the North County Fire Protection District and the Pala Reservation fire station. The closest fire station would provide the initial response to a wildfire.
- B. 5-42 – Blasting operations are discussed, noting that the agency providing fire protection services will enforce compliance with all provisions of the San Diego County Consolidated Fire Code. Fire protection measures related to blasting include the use of a fine mesh screen over the blasting area to prevent the escape of rock fragments, dust or other debris.

The Operator’s ability to prevent and protect itself against fire is especially important in this case because one local agency, the San Diego County Fire Authority, has stated that it does not at present have fire protection facilities that are adequate to serve the Landfill, and, accordingly, the Fire Authority imposed several conditions on the Landfill. See, Letter from Paul Dawson, Fire Marshall, to the LEA, dated February 17, 2011 (Exhibit 6). Among other things, the Authority stated that Fire Severity is rated at “Very High” for most of the Landfill site and that “Fire protection facilities are not expected to be adequate to serve the proposed development within the next five years.’ The proposed Gregory Canyon Landfill is within an area of the County that the San Diego County Fire Authority does not currently have a designated, staffed fire station in close proximity. It is our goal to have a full service, staffed fire station in the area at some time in the future. We look forward to developing a cooperative plan to that end.” Exhibit 6, p. 1. Toward that end, the Fire Authority requires “that the project

1 commit to participating in a Community Facility District currently under formation or a
2 Developer Agreement to mitigate the impact that the facility will have on fire services.” Id. The
3 statement in the JTD that a fire station will be built in the future appears to stem from this letter.

4 Nonetheless, it is important to note that the State requirement for the JTD and the
5 application is that the Operator “[d]escribe procedures for handling burning waste and preventing
6 landfill fires. Title 27, § 21600, subd. (b)(8)(B). The JTD meets this requirement.

7 Allegation: The SWFP application is not complete and correct because the JTD does not
8 contain sufficient detail for this Landfill due to the complexity and sensitivity of
9 developing this site, in particular, because the engineering drawings and designs
10 supporting the application and the JTD are merely “conceptual” and are not sufficient “to
11 permit thorough evaluation of the environmental effects of the facility and to permit
12 estimation of the likelihood that the facility will be able to conform to the [State
13 minimum] standards over the useful economic life of the facility,” as required by title 27,
14 Section 21570, subd. (d) (Exh. 4, p. 7) –

15 Such designs are conceptual at first because not all the minor variables may be known at
16 the time of a SWFP application. Moreover, their main function is to provide support for the
17 estimated costs for the final design for construction. Appendix S, page 44 of the JTD states that
18 the tentative WDRs for the Landfill require that detailed designs be submitted to and approved
19 by the Regional Board prior to initial construction and that final construction reports with as-
20 built drawings be submitted to and approved by the Regional Board prior to the receipt of waste.

21 Allegation: The SWFP application is not complete and correct because the JTD does not
22 contain sufficient detail for this Landfill due to the complexity and sensitivity of
23 developing this site, in particular, because the JTD does not provide for a leachate
24 control and recovery system under the side slopes of the Landfill, allegedly required by
25 Title 27, Section 20340, and does not disclose an exemption from such requirement (Exh.
26 4, p. 7) –

1 Regulatory requirements for a leachate collection and removal system as specified by
2 Petitioner relate directly to the protection of waters of the state, and thus falls within the
3 regulatory authority of the Regional Board. Title CCR, § 20340 – SWRCB - Leachate
4 Collection and Removal Systems. The LEA is not required or allowed to make substantive
5 determinations as to matters within the regulatory authority and expertise of the Regional Water
6 Quality Control Board (RWQCB). PRC § 43101(c)(2).

7 Allegation: The SWFP application is not complete and correct because the JTD does not
8 contain sufficient detail for this Landfill due to the complexity and sensitivity of
9 developing this site, in particular, because the desilting basins are sized to accommodate
10 a 10-year rainfall event rather than a 100-year rainfall event on which the perimeter piping
11 discharging into the desilting basins is based, and the basin sizing further relies on
12 outdated best management practices.

13 The use of 10-year, 6-hr storm event (an event having a 10% chance of occurring in any
14 given year) is more conservative than the use of the 100-year, 24-hr event for design elements
15 based on peak storm intensity. However, the total volume of precipitation for the 100-yr, 24-hr
16 storm would be greater. San Diego County has a requirement directing developments to utilize
17 the precipitation intensity of the 10-yr, 6-hr event.³ The State requirement is to utilize the runoff
18 from the 100-year, 24-hour precipitation event. Title 27, § 20365, including Table 4.1 (note that
19 this is a requirement imposed by the State Regional Water Quality Control Board, not the
20 Department).

21 _____
22 ³ The San Diego County Department of Public Works website contains the following requirement:

23 DIRECTOR'S LETTER OF INSTRUCTION, DLI -- LD -- I:
24 LAND DEVELOPMENT
25 Velocity Reduction
26 DLI -- LD -- I
27 Page 6 of 12

25 The Developer must provide velocity reduction for all runoff leaving the site, and onsite runoff that could cause
26 erosion, through appropriate outlet protection year round. Velocity reduction BMPs shall be designed and
27 constructed for the precipitation intensity from the 10-year, 6-hour rain event (emphasis added). Runoff shall be
calculated using $Q=C \times I \times A$ where Q is the discharge rate measured in cubic feet per second; C is the runoff
coefficient; I is the precipitation intensity for the 10-year, 6-hour rain event; and A is the area draining into the
sediment basin in acres [SSM §F.3.4.1].

1 Department engineering staff did an analysis based on NOAA tables and found the
2 intensity for the 10-year, 6-hour event is greater than the 100-year, 24- hour event. Another
3 NOAA table showed that the total volume is greater for the 100-year event. Therefore, designs
4 based on storm intensity would be more conservative using the 10-year storm. Designs based on
5 total volume would be more conservative using the 100-year event. Therefore, to meet both
6 County and State requirements, drainage designs based on intensity should use the 10-year event
7 and drainage designs based on total volume should use the 100-year event.

8 The Landfill, of course, must meet all regulatory requirements. The JTD, at pages C.2-20
9 – C.2.21, shows that the 10-year, 6-hour event was used in conjunction with particle size to
10 determine the desiltation efficiency of the sedimentation basins, and to determine their
11 appropriate sizing to reduce downstream sediment loading. This is different from flows through
12 the system, which were designed to accommodate a 100-year, 24-hour storm calculated using the
13 Rational Method. Furthermore, the JTD, at p. C.2-20, notes that the design of the desilting
14 basins was based on the 2009 version of the California Stormwater Best Management Practices
15 Handbook, not the earlier 2003 version, as alleged in Petitioner’s Statement of Issues.

16 The URS Report at p. 2-3 concluded that “[d]esilting basins are designed based on the
17 10-year, 6-hour storm flows for sediment capacity and for the storm water runoff flows of the
18 100-year, 24-hour storm event. The spillway is sized for the 100-year, 24-hour storm event. This
19 complies with the regulatory requirements and is reasonable for the site.”

20 The plan presented in the Storm Water Management Plan (Appendix I-1 of the JTD) was
21 designed to mimic the volumes of flow from the Gregory Canyon mainstem occurring during the
22 pre-development condition. The goal was not to prevent flow but to allow flow to occur under
23 circumstances where flow would occur during the pre-development condition. The storm water
24 management system is also designed to allow for the transport of sediments where it would have
25 occurred during the pre-development condition. Routing storm water flows from undisturbed
26 areas through the desilting basins would limit the ability to preserve this pre-development
27 function.

1 The comment letter by Dr. Richar Horner, attached to the Statement of Issues, makes two
2 primary assertions. First, he states that the Landfill's plans are flawed for utilizing a flow model
3 that is outdated, instead of using newer techniques currently being developed. The Rational
4 Method, although developed some years ago, is still used often in determining storm water
5 runoff and designing the attendant drainage facilities. The newer techniques espoused by Dr.
6 Horner are still under development and are in the testing stage. The method used by the Landfill
7 is an acceptable method for the purposes of the IWMA and Department regulations.

8 Second, Dr. Horner opines that the precipitation events utilized in the design were
9 inadequate. The design storms used by the Operator in preparing the plans are those required by
10 local, state, and federal regulations. Title 27, § 20365, including Table 4.1.

11 Accordingly, it is staff's view that the LEA satisfied the requirements for determining the
12 SWFP application was complete and correct with respect to this allegation because those matters
13 were addressed in the JTD. (See Table 1 of the JTD, at p. A.1-6 – A.1-9. The JTD is attached as
14 Exhibit 8 of the LEA's Response to Petitioner's Statement of Issues.)

15 Allegation: The SWFP application is not complete and correct because the JTD does not
16 contain sufficient detail for this Landfill due to the complexity and sensitivity of
17 developing this site, in particular, because a portion of the Landfill's structures and
18 activities (including a desilting basin, an infiltration area and potentially part of the
19 facilities, such as the flare station), are situated within the 100-year floodplain⁴ (Exh. 4, p.
20 8)–

21 Pursuant to State regulations, the Landfill must be protected from inundation and damage
22 from a 100-year flood event. Title 27, § 20260, subd. (c), 21750, subd. (d)(2). Landfill facilities
23 may be within a 100-year floodplain provided they are protected from damage. Title 27, § 20260,
24 subd. (c). Protection can be provided by engineered berms or by demonstrating that the facility
25 elevation is above the 100-year floodplain or other methods. The JTD references this
26 requirement at pages B.5-43, D.2-1, Figure 30B and E.3-3. At page E.3-3 of the JTD, the

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⁴ The JTD indicates at pages D.2-1 to D.2-2 that the Landfill footprint is not within the 100-year floodplain.

1 Operator states that, in the event of flooding that cannot be handled by the stormwater control
2 system, it may construct earthen berms and, if necessary, may cut a diversion channel to avoid
3 inundation of the refuse cell. In addition, sandbags by be used with either of the above measures.
4 Id. Accordingly, the JTD meets the State requirements.

5 Allegation: The SWFP application is not complete and correct because the JTD does not
6 contain sufficient detail for this Landfill due to the complexity and sensitivity of developing this
7 site, in particular, because, although the JTD states that a “catching wall” or other means of
8 diverting rocks and boulders falling into the Landfill is recommended, the JTD fails to require
9 such a wall or other diversion, fails to provide a design for such a wall or other diversion, and
10 fails to consider the impact of falling rocks and boulders on the integrity of the eastern PSD
11 (Exh. 4, p. 8) –

12 This is an example of a design detail that will be further refined through the process of
13 reviewing and approving the JTD. The tentative WDRs at Appendix S, p 44 of the JTD require
14 that the detailed designs be submitted to and approved by the Regional Board prior to initial
15 construction and that final construction reports with as-built drawings be submitted to and
16 approved by the Regional Board prior to the receipt of waste. The JTD meets the State
17 requirements.

18

19 Availability of Staff

20 Please be advised that Department staff will be available during the hearing on this matter
21 to provide such evidence, including expert testimony, as the Hearing Officer shall request.

22

23 Conclusion

24 For the reasons set forth above, it is Department staff’s view that the LEA properly
25 determined the SWFP application for the Gregory Canyon Landfill was complete and correct and
26 that the LEA acted in accordance with law and regulations.

1 Respectfully submitted,

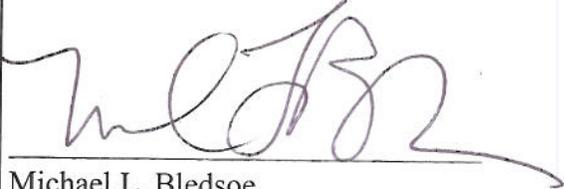
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3 Department of Resources Recycling and Recovery

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Michael L. Bledsoe,
Senior Staff Counsel

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6/6/11
Date

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EXHIBIT 1



Procopio, Cory, Hargreaves and Savitch LLP

Procopio

Walter E. Rusinek
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March 3, 2011

VIA HAND DELIVERY

Jack Miller, Director
San Diego Local Enforcement Agency
5500 Overland Drive, Suite 110
San Diego, CA 92123

Re: Request For a Hearing on the Solid Waste Facility Permit Application for the Proposed Gregory Canyon Landfill

Dear Mr. Miller:

Pursuant to Public Resources Code sections 44307 and 44310(a)(1)(B), on behalf of our client, the Pala Band of Mission Indians, we hereby request that the Solid Waste Hearing Panel for the San Diego County Local Enforcement Agency hold a hearing to review the LEA's decision of February 1, 2011, that the solid waste facility permit application submitted by Gregory Canyon Ltd. ("GCL") for the proposed Gregory Canyon landfill was complete and correct. Enclosed with this request for a hearing is a Statement of Issues which identifies the deficiencies in that permit application.

As required by state law, within 15 days of this request please provide us with written notice of the date, time, and place of the hearing. Because state law requires that the hearing be held within 30 days of this request, your prompt attention to this matter is required.

Sincerely,

Walter E. Rusinek

Enclosure

cc: List of CCs on next page

EXHIBIT 2



THOMAS E. MONTGOMERY
COUNTY COUNSEL

DEBORAH A. McCARTHY
ASSISTANT COUNTY COUNSEL

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April 5, 2011

Walter E. Rusinek, Esq.
Procopio, Cory, Hargreaves and Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101

Re: Gregory Canyon Landfill Hearing

Dear Mr. Rusinek:

On March 3, 2011, you requested, on behalf of the Pala Band of Mission Indians, that the Solid Waste Hearing Panel (Panel) review the Local Enforcement Agency's (LEA) decision of February 1, 2011, that the Solid Waste Facility Permit Application (SWFPA) submitted by Gregory Canyon Ltd., for the proposed Gregory Canyon Landfill, is complete and correct. Your March 3rd letter requested a hearing pursuant to Public Resources Code sections 44307 and 44310(a)(1)(B).

Section 44307 states that when such a request is received, a hearing shall be held in accordance with the procedures specified in section 44310. Under section 44310(b), a hearing "shall be held no later than 30 days after receiving the request for a hearing on the merits of the issues presented...." Upon receipt of your request on March 3, 2011, the County proceeded to establish a hearing date of March 30, 2011, and all parties were notified. The LEA responded to your Statement of Issues on March 15, 2011, and you provided a reply to the LEA response, dated March 25, 2011. The hearing room at the Department of Planning and Land Use was reserved, and notices and agendas were posted, in preparation for a March 30th hearing.

On March 29, 2011, I was contacted by Hearing Panel Member Neil Mohr who indicated that because he is the General Manager of several landfills in San Diego County, he has a conflict of interest, and would not be able to participate in the hearing

concerning the Gregory Canyon Landfill application. County Administrative Code section 860.5(c) states that "[t]hree members currently appointed to the Panel shall constitute a quorum." Because the Panel would no longer have a quorum, I notified the Panel members and interested parties that the hearing scheduled for March 30 would be cancelled.

Public Resources Code section 45030 addresses the circumstance where, as here, the hearing panel fails to reach a decision. Section 45030 (a) authorizes an appeal to the state board "in the instance of a failure of a hearing panel or hearing officer to render a decision or consider the request for review...." Section 45030(a)(2) authorizes a party to appeal to the state board "[i]f no decision is issued, within 45 days from the date a request for a hearing was received by the enforcement agency for which there was a failure of a hearing panel or hearing officer to render a decision or consider a petitioner's request pursuant to Section 44310." The statute is clear on how to handle a situation like this, where the hearing panel is unable to consider a petitioner's request for review within the 30-day period because of the lack of a quorum. The statute states that a party may appeal to the state board at the Department of Resources Recycling and Recovery (CalRecycle).

The Panel hearing for March 30 was not rescheduled because a quorum could not be established within the 30-day period. Any further review of the completeness and correctness of the Gregory Canyon SWFPA must now take place upon petition to CalRecycle. If you have authority that would require a different procedure, please let us know.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By 
PAUL J. MEHNERT, Senior Deputy

PJM:ls
10-01408

EXHIBIT 3



Walter E. Rusinek
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E-mail: walter.rusinek@procopio.com

April 14, 2011

Mr. Mark Leary
Acting Director
CalRecycle
801 K Street, MS 19-01
Sacramento, CA 95814

Re: Proposed Gregory Canyon Landfill

Dear Mr. Leary:

On March 3, 2011, the Pala Band of Mission Indians requested that the San Diego County Department of Environmental Health, acting as the local enforcement agency ("LEA") hold a hearing pursuant to Public Resources Code Section 44307. That hearing was requested to seek review of the LEA's decision that the permit application submitted for the proposed Gregory Canyon landfill was complete and correct. In accordance with state law, the LEA scheduled a hearing before a Hearing Panel for March 30, 2011.

But on the day before the scheduled hearing date, the hearing was cancelled when a member of the Hearing Panel suddenly claimed that he had a conflict of interest and could not participate. Although the County Ordinance establishing the Hearing Panel did not require that the hearing be cancelled, and although we agreed that the hearing could be held outside the 30-day period established in Section 44310 in order to allow an alternate member to be appointed to the Hearing Panel, the LEA claimed it had no authority to reschedule the hearing. The LEA took the position that the decision not to reschedule the hearing had been made solely by the Hearing Panel, although there was no evidence that the Hearing Panel ever met to make that decision. Consequently, although Section 44307 clearly requires that the LEA hold a hearing when it receives a request such as our March 3, 2011, request, the San Diego LEA has stated that it will not comply with the law.

Rather, the LEA, and the attorney from the San Diego County Office of County Counsel representing the Hearing Panel, both have stated that the only option for having a hearing on these issues would be for us to request a hearing before CalRecycle pursuant to Public Resources Code Section 45030. Because the time to file an appeal with CalRecycle is limited, this letter and the enclosed Statement of Issues provide the basis for our request for a hearing under Section 45030.

Mr. Mark Leary
April 14, 2011
Page 2

But the LEA's failure to comply with the law once again regarding this proposed permit should not be overlooked. This is not the first time where the LEA has taken such actions. In January of 2006, the San Diego Superior Court ruled that the Final Environmental Impact Report ("FEIR") for the proposed landfill was inadequate and that the solid waste facility permit issued by the LEA and supported by that FEIR also was invalid. The Court also enjoined activity at the site that could result in any change to the physical environment until these issues were resolved.

Even so, the LEA continued to treat the solid waste facility permit as if it was valid. The LEA conducted monthly "inspections" of the non-operating site, and it billed the applicant under Section 43213 more than \$170,000 from 2005 to 2009, even though no permit existed and no activity was occurring at the proposed landfill. Then, in October of 2007, the LEA agreed to process a permit modification for the facility, even though there was no permit to modify.

Even when CalRecycle (at that time the Integrated Waste Management Board) confirmed that the LEA was wrong about the validity of the permit and other issues regarding the LEA's authority versus the Board's authority (in one letter to the LEA, Mr. Block, the CIWMB's Chief Counsel, was forced to state that the "CIWMB vigorously disputes your interpretation of state law), the LEA still refused to accept that the permit was invalid. The LEA's actions forced yet another round of litigation, and the Superior Court ruled in June of 2010 that the LEA's position that the permit still existed was wrong and was based on a "hyper-technical, and out-of-context, reading of a portion of the writ of mandate."

Given the LEA's decision to fight at all costs to defend its untenable position that the solid waste facility permit still existed, it is not surprising that when the application for a new permit was submitted on June 24, 2010, the LEA simply rubber-stamped it as complete and correct even though inadequacies in that application were apparent. For example, the evidence of financial assurance provided in the application consisted of a 2001 letter from the CIWMB confirming the existence of a trust agreement, hardly the "current" documentation required by law. Moreover, the trustee identified in that document no longer existed, and the amount of financial assurance identified on the trust agreement for closure, post-closure and corrective action costs was much smaller than the estimates in the Joint Technical Document ("JTD").

Similarly, the insurance policies provided as financial assurance to compensate third parties for bodily injury and property damage had expired, and were not even on the correct forms. The policies also listed additional insureds in violation of the law. In addition, neither the JTD nor the preliminary closure post-closure maintenance plan was properly certified.

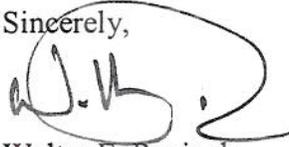
It was only because we requested a hearing on the LEA's decision and pointed out these and other glaring problems that the applicant requested that the permit application be withdrawn. Once again, the LEA did not conclude that it had failed to properly review the application and take the action necessary to rescind its previous decision, it relied on instructions from the applicant.

Mr. Mark Leary
April 14, 2011
Page 3

These numerous questionable actions by the LEA raises serious questions about its ability to act as a regulator under state law and not as a project proponent. CalRecycle should consider the LEA's actions when assessing the LEA's performance under Sections 43214 and 43215, and the ability of this LEA to properly regulate solid waste facilities in San Diego County.

Thank you for your attention to these matters. Please notify me by e-mail and hard copy regarding the date for the hearing to be scheduled on the permit issue.

Sincerely,



Walter E. Rusinek

WER

Enclosure (March 3, 2011 letter and attachments)

cc: (Enclosure previously provided)

Robert H. Smith, Chairman, Pala Band of Mission Indians
Ms. Shasta Gaughen, Director, Pala Environmental Services
San Diego County Board of Supervisors
Mr. Jim Wood, Mayor, City of Oceanside
Mr. Spencer MacNeil, U.S. Army Corps of Engineers
Ms. Shanti A. Santulli, U.S. Army Corps of Engineers
Mr. Jared Blumenfeld, USEPA, Region IX
Ms. Michelle Moreno, U.S. Fish & Wildlife Service
Mr. David Gibson, Regional Water Quality Control Board
Mr. Stephen Moore, San Diego County Air Pollution Control District
Ms. Maureen Stapleton, San Diego County Water Authority
Damon Nagami, Esq., NRDC
Pamela Epstein, Esq., Sierra Club
Ms. Laura Hunter, Environmental Health Coalition
Johnny Pappas, Surfrider Foundation
Everett L. DeLano III, Esq.

EXHIBIT 4

STATEMENT OF THE ISSUES

Pursuant to Public Resources Code Section 44310(a)(1), the Pala Band of Mission Indians hereby provides the following Statement of Issues identifying why the LEA has failed to act as required by law or regulation and why this panel should direct the LEA to rescind its determination that the solid waste facility permit application (“SWFPA”) for the proposed Gregory Canyon landfill was not complete and correct as required by law..

I. The LEA’s Past Actions on the Solid Waste Facility Permit

This is yet another example of the failure of the LEA to act in accordance with the law. Briefly, in 2004, the LEA issued a solid waste facility permit for the proposed landfill. That action was rescinded by the LEA in February of 2006 in response to a writ of mandate issued by the San Diego Superior Court. The Court issued that order after finding that the Final Environmental Impact Report (“FEIR”) prepared by the LEA was inadequate.

Even though the Court ordered the LEA to rescind the permit, the LEA continued to treat the permit as if it was still in existence and accepted an application from Gregory Canyon Ltd. (“GCL”) to modify the permit. The LEA’s action triggered yet another lawsuit, and in June of 2010, the Superior Court confirmed that there was no existing permit. The Court rejected the LEA’s reliance on a “hypertechnical , and out-of-context, reading of a portion of the writ of mandate” to support its claim that the permit still existed.

In response, on June 24, 2010, GCL submitted a new permit application. Although the application was inadequate on its face, the LEA concluded it was complete and correct on July 23, 2010. But, in response to comments provided by the Pala Band dated July 29, 2010, pointing out the clear inadequacies of the application, GCL requested that the LEA rescind its “completeness” determination, which it did on August 5, 2011. Again, the LEA did not make that decision on its own but merely responded to GCL’s request. That same day, GCL filed a new permit application designated as “incomplete.” The allegedly complete application at issue here was submitted on January 26, 2011.

II. Legal Standards for a Complete and Correct SWFPA

The CalRecycle rules specify what information must be included in an SWFPA for it to be deemed “complete and correct.” (27 C.C.R. § 21570(e) (attached as Exhibit A).) The rules list the specific, but *minimum*, information that must be contained in the SWFPA. In relevant part, an SWFPA must include

- (1) a determination by the LEA, the Regional Water Quality Control Board (“RWQCB”), and CalRecycle that the preliminary closure and post-closure plan for the facility is complete;
- (2) evidence of compliance with the California Environmental Quality Act (“CEQA”); and
- (3) a “complete and correct” Report of Disposal Site Information in the form of a Joint Technical Document (“JTD”).

The CalRecycle rules define the term “complete” as meaning that “all requirements placed upon the operation of the solid waste facility by statute, regulation, and other agencies with jurisdiction have been addressed in the application package.” (27 C.C.R. § 21563(d)(1) (emphasis added).) The rules define the term “correct” as requiring that “all information provided by the applicant regarding the solid waste facility must be accurate, exact, and must fully describe the parameters of the solid waste facility.” (27 C.C.R. § 21563(d)(2).)

The rules also require that information in a SWFPA must be “supplied in adequate detail to permit thorough evaluation of the environmental effects of the facility and to permit estimation of the likelihood that the facility will be able to conform to the standards over the useful economic life of the facility.” (27 C.C.R. §§ 21570(d).) Finally, the rules are clear that a complete and correct application “shall include, but not necessarily be limited to” the information listed in the rule. (*Id.* § 21570(f).)

These definitions demand that a “complete and correct” permit application contain a rigorous level of detail that this SWFPA sorely lacks. Because the rules state that the minimum required information may not be sufficient, a determination as to whether a SWFPA is “complete and correct” must be based on site-specific factors. In this case, significant detail is necessary because, the landfill is proposed to be located in a steep canyon that flows into the San Luis Rey River, and would be above fractured bedrock that the San Diego Regional Water Quality Control Board admits makes it “difficult to detect, delineate, and remediate” contamination leaking from the proposed site and that is interconnected with down-gradient alluvial aquifers which provide drinking water for individuals and municipalities, including the City of Oceanside.

Because the Gregory Canyon site is a uniquely complex project site, the lack of detail in the SWFPA and the JTD is another reason why the SWFPA is not complete and correct.

III. The SWFPA Was Not Complete and Correct

A. The SWFPA Did Not Provide Evidence That the Preliminary Closure/Post-Closure Maintenance Plan (“PCPCMP”) Has Been Approved by the Regional Board and CalRecycle.

As noted above, the CalRecycle rules require that a complete and correct application include a determination by the LEA, the Regional Water Quality Control Board (“RWQCB”), and CalRecycle that the PCPCMP for a facility is complete. GCL addressed this issue in a cover letter from Bryan Stirrat dated January 13, 2011, by stating that the “PCPCMP is submitted as an integral part of the JTD and this SWFP application for your review and approval in accordance with 27 CCR, Section 21860.” (*See Exhibit B at pg. 3*).

But that claim is not sufficient to comply with the CalRecycle rules governing the application process. Those rules explicitly state that for a disposal site such as the proposed landfill, a complete and correct application shall include a:

... completeness determination of Preliminary or Final Closure/Postclosure Maintenance Plan as specified in §§ 21780, 21865, and 21890 (Subchapter 4 of this Chapter); and [Note: The operator has the option of submitting the

preliminary closure plan with the JTD, in which case the EA, RWQCB, and CalRecycle would review it at the same time. If deemed complete by the reviewing agencies, the permit application package could then be accepted for filing if all the other information in the JTD is accepted by the EA. . . .

(27 C.C.R. § 21570(f)(6) (italics in original, underline added).)

While this rule requires that the PCPCMP be approved by the Regional Board and by CalRecycle before the LEA can accept the application, GCL's statement quoted above does not indicate that such approval has occurred. GCL merely refers to Section 21860, which applies to final closure plans.

Given this clear violation of CalRecycle rules, the LEA should not have accepted the permit application package for filing, and the SWFPA was not complete and correct. The approval of the SWFPA as being complete and correct must be rescinded and the application not processed until this requirement is satisfied.

B. The Permit Application Erroneously Claims That There Has Been Compliance with the California Environmental Quality Act ("CEQA").

The claim in the application that there has been compliance with CEQA also is wrong. The discretionary action before the LEA is the consideration of a new solid waste facility permit, or in CEQA terms, consideration of an application for a new "project." Although this is a new project, the last public-comment period for most portions of the FEIR ended in 2001, nearly 10 years ago, and the public-comment period for the Revised FEIR closed in the summer of 2006, nearly five years ago.

In the interim, the County issued three Addendums, which it did not circulate for public comment. We provided comments on the December 2009 Addendum to the LEA identifying the inadequacies in that Addendum, and requesting the opportunity for wider public comment, which was denied. The failure of the LEA to circulate the Addendum for public comment violated CEQA.

In addition, as pointed out in our comments on the Addendum, the LEA has violated CEQA by refusing to analyze the significant impacts that the proposed landfill would have on the environment due to the emission of greenhouse gases ("GHGs"). Data generated by GCL for show that GHG emissions after the first year of operations would be approximately 50,000 tons CO₂ equivalent ("CO₂e")¹ and that by the end of the assumed disposal period, those emissions would rise to 893,709 tons. (See Exhibit C).²

¹ The United States Environmental Protection Agency ("EPA") has identified methane as being 21 times more potent GHG than carbon dioxide, methane emissions and it must be multiplied by that factor to calculate the CO₂e.

² The data are from Appendix J of the "Updated Air Quality Impact Analysis and Health Risk Assessment for the Proposed Gregory Canyon Landfill" dated September 14, 2010. That report is incorporated here by reference and a copy of the entire report can be provided upon request.

Critically, the data show that, even 66 years after the assumed end of operations in 2100, annual emissions of GHGs would still be 238,741 tons of CO₂e. Those GHG emissions would continue indefinitely long after any emissions controls are still operating.

These facts show that the LEA must analyze the direct and cumulative impacts of these emissions under CEQA. In 2010, the CEQA Guidelines were revised by the California Natural Resources Agency to confirm the need to analyze GHG-related impacts under CEQA. CEQA Guidelines Section 15064.4 identifies requirements for determining whether a project would cause significant impacts due to GHG emissions, new CEQA Guidelines Section 15126.4(c) addresses mitigation measures for GHG emissions, and Section 15130 discusses how the cumulative impacts of a project's GHG emissions must be assessed.

Given these significant emissions and the changes to the CEQA Guidelines, a subsequent or supplemental EIR must be prepared. (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 384-84.) The fact that the original FEIR was certified nine years ago makes the need for review of the impacts of GHG emissions even more critical. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 143 (two-year delay after certification raised issue of need for subsequent or supplemental EIR).) Until this analysis is completed, there has not been compliance with CEQA.

C. GCL Has Not Shown That it Has Properly Protected the First San Diego Aqueduct to the Satisfaction of the San Diego County Water Authority.

One of the critical problems with the site for the proposed landfill is that the First San Diego Aqueduct pipelines, which supply critical imported water to San Diego County, run under the San Luis Rey River and through the site along the eastern edge of the proposed landfill footprint and through proposed Borrow Area B. (Exhibit D.) One of the critical problems with the SWFPA is that it does not address the protection of these pipelines as required by Proposition C.

Section D.5.5 of the JTD entitled "Aqueduct Relocation Option" (which is included with all other cited sections of the JTD as Exhibit E) previously stated that the First San Diego Aqueduct was "planned to be relocated" to the west away from the landfill footprint. But that section of the JTD now states that it is "possible" that the aqueduct "may be relocated further west of the landfill footprint." The issue is important because, in its current location, the pipelines could be impacted by the construction of the bridge, which could increase scour and impact the pipeline buried under the river, by the fact that all trucks entering and leaving the facility or accessing the borrow areas for dirt would have to drive over the pipelines, and by the blasting would be required to remove bedrock during construction.

Proposition C explicitly stated that 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." Proposition C defined the term "Project" as being the proposed landfill described in the initiative and any modifications included in a site plan submitted to the LEA "as part of the solid waste facilities permit." Based on that language, the issue of how the aqueduct would be protected to the satisfaction of the County Water Authority must be resolved before the SWFP can be issued by the LEA and sent to CalRecycle.

But as the attached letters from the County Water Authority show, it repeatedly has raised concerns regarding impacts of the proposed project on the aqueduct, and GCL has failed to address those concerns. (Exhibit E.) Consequently, the County Water Authority's August 12, 2010, letter stated that the LEA should not issue the permit and forward it to CalRecycle "until there is an executed agreement between the Water Authority and Gregory Canyon Ltd. (or their successors in interest) regarding the protection of the San Diego Aqueduct pipelines and facilities." Given this situation, this panel should direct the LEA to rescind its determination that the SWFPA was complete and correct and require resolution of this issue before the permit can be sent to CalRecycle.

D. The JTD Does Not Provide Sufficient Information to Be Considered Complete and Correct.

The SWFPA also was not complete and correct because other section of the JTD did not include information in sufficient detail for a project of this complexity and sensitivity. Some of the deficient sections are discussed below. The relevant sections of the JTD are attached as Exhibit F.

Section B.4.4.4 – Inclement Weather Operations

The JTD fails to discuss contingencies if access to the landfill is precluded by high water in the San Luis Rey River for a period of time or if the bridge is damaged by a 100-year flood or greater, given that JTD acknowledges that a 100-year flood would only a 18 inches below the bridge. Even assuming that those calculations are correct (and that the level of the water will not actually be higher), the JTD should provide contingency measures describing when the access road and bridge would be closed for safety purposes, and describing what would occur if a larger storm event damaged the bridge. The JTD fails to address the risks created by building a landfill that can only be accessed by a bridge over the San Luis Rey River.

Section B.5.1.3.1 (pg. B.5-12) – Groundwater Monitoring Well Locations

The JTD claims that "additional groundwater monitoring wells have been proposed to reflect Dr. Huntley's recommendations (Appendix C-2), and the revised workplan is included in Appendix G-2." Dr. Huntley's June 24, 2009, Technical Memorandum identified a number of inadequacies in the groundwater monitoring system and described the additional work he believed was necessary to address those inadequacies, including the installation of two additional groundwater monitoring wells and the completion of additional studies to identify locations for more wells at the mouth of the canyon. (Exhibit G.)

In response, GCL prepared a 19-page workplan, which was included as Appendix G-2 of the JTD. The workplan states that, following its approval, five additional groundwater wells would be drilled, borehole logging and aquifer testing would be conducted, the wells would be developed and sampled, and a final report would be prepared. But the JTD does not state whether the workplan was approved (or by what agency), or if it was implemented, and the JTD does not include a copy of the report that was to be prepared.

Instead, the JTD admits that the groundwater wells described in the workplan and in the Technical Memorandum have not been installed, even though it is 20 months since the Technical Memorandum was prepared. Also, there is no evidence that the proposed locations for the wells satisfy the requirements in the Technical Memorandum. This is clear evidence that the JTD and the SWFPA are not “complete and correct.” This panel should direct the LEA to require that the workplan be implemented before it accepts the SWFPA for processing.

Section B.5.1.7 (pg. B.5-24) - Estimated Cost for Mitigating a Reasonably Foreseeable Release

CalRecycle rules require that an applicant demonstrate financial responsibility for initiating and completing all “known or reasonably foreseeable corrective action” at a facility. (27 C.C.R. § 22221(a).) But in calculating the cost for addressing the “known or reasonably foreseeable corrective action” at the facility, the JTD states that corrective action financial assurance analysis is based on the costs associated “with a release to the underlying bedrock as described in Section B.5.1.6.4 above.”

The failure to estimate the costs of mitigating contamination to the alluvial aquifer means that the JTD and the financial assurance calculations are inadequate. There is no dispute that groundwater in the fractured bedrock system flows into the alluvial aquifer, so it is reasonably foreseeable that corrective action in the alluvial aquifer also would be needed. Without an analysis of how that remediation would occur and its costs, the JTD is incomplete. For example, a pump and treat system designed for the fractured bedrock might not be sufficient to handle the greater amount of water in the alluvial aquifer.

Section B.5.3.5 (pg. B.5-40) - Fire Control

The JTD does not adequately explain how fires that begin on the site or threaten the site from outside would be handled. The on-site fire-fighting capabilities of the operator are not described, and thus the claim that “additional fire suppression forces are available from the California Department of Forestry (CDF) station” begs the question as to what on-site “forces” those CDF capabilities would supplement. The JTD should identify the location of the CDF station and provide written confirmation that the CDF will provide fire-protection services. The statement that the “San Diego County Fire Authority operates a fire station in the general vicinity of the landfill property, and it is expected that the Authority will be constructing a fire station at a location close to the landfill property” is not sufficient and speculative at best.

This issue of fire protection is critical given that the proposed facility would be located in an area designated as a very high fire hazard severity zone by the California Department of Forestry. That designation applies in part because the site is susceptible to Santa-Ana-wind-driven fires such as the Rice Canyon fire which burned thousands of acres nearby.

The JTD also does not discuss the fact that nearly 800,000 tons of material would need to be blasted to construct the proposed landfill, requiring up to 88 blasts a year and that a single blast could consist of up to eight tons of a mixture of ammonium nitrate and fuel oil (“ANFO”). Given this significant blasting, the lack of any discussion of blasting in the context of fire safety is inexcusable. There also should have been some discussion of Section 96.1.3301.2 of the 2009

County Consolidated Fire Code, which describes specific permitting and inspection requirements for such major blasting.

The only source of water to fight fires would be groundwater wells and any remaining water stored in the 20,000-gallon water tank. But that is a small amount of water and the JTD does not describe how the water would be used to fight a fire, including what equipment would be available for fire-fighting purposes. The fact is that a fire on the site could severely damage the facility, including the liner, the bridge, the hazardous waste storage area, and all the structures in the facilities area. In addition, a fire at the proposed landfill could increase the risk to neighboring properties given that tires and hazardous waste would be stored on the site and there may be fuel storage for dispensing to trucks at the site. Without a better discussion of these risks and of the operator's fire-fighting capabilities, the SWFPA is not complete and correct.

Section C.2.1 (pg. C.2-1) – Design Features

The JTD admits that the engineering drawings and designs supporting the SWFPA are “conceptual” in nature. That is not the level of detail required by law for this proposed project because the detail is not adequate enough “to permit thorough evaluation of the environmental effects of the facility and to permit estimation of the likelihood that the facility will be able to conform to the standards over the useful economic life of the facility.” (27 C.C.R. §§ 21570(d).) While final drawings may not be required, conceptual designs are not sufficient. Construction designs must be provided in greater detail to ensure that the true costs of the project and the problems that may be encountered in the field are assessed so that unforeseen economics of the project do not become the driving force in its final design and construction. Even a permit to remodel a private residence would require more than “conceptual” designs.

For example, the JTD states that storm water falling on the steep sides of Gregory Canyon would be controlled by the construction of perimeter storm drain (“PSD”) channels. The only design for these PSD channels are shown on Figure 19 of the JTD (identified as “PCC”), which simply show that the channels will be three or four foot wide trapezoidal channels. (Exhibit H). Although the eastern PSD channel would be located on the slopes of Gregory Mountain high above the bottom of the canyon, the JTD contains no discussion or figures showing how this PSD channel would be constructed on the side of the mountain or how it would be anchored to ensure that it would be able to properly perform its water-collection functions. More construction details of these PSD channels and other landfill features are needed before the LEA can approve the SWFPA as complete.

Section C.2.5.4 (pg. C.2-12) – Leachate Control and Recovery System (“LCRS”)

Federal and state regulations require that the entire waste unit be underlain by an LCRS, but the JTD admits there would not be an LCRS on the landfill slopes. (27 C.C.R. § 20340.) The JTD does not identify the regulatory exemption from those requirements or to discuss in detail how the proposed system would be protective of human health and the environment or describe in detail how leachate collected in slope areas would be managed. A proper analysis of this alternative design is critical given that approximately 90% of the leachate generated by the proposed landfill would be generated on the side-slope areas. (Exhibit I, FEIR at pg. 4.3-21-22).

Section C.2.8.3.4 - Storm Water Desilting Basin

The JTD fails to provide a rationale for using a 10-year, six-hour rainfall event to size the desilting basins, given that the JTD claims that the perimeter piping which will discharge into those basins will be sized to carry water from a 100-year, 24-hour storm event. There is no discussion of what will happen to those desilting basins when larger events occur.

The JTD states that the desilting basins were designed to the 10-year storm event based on the 2003 California Stormwater Best Management Practices Handbook published by the California Stormwater Quality Association ("CASQA"). But the CASQA website states that it no longer supports the 2003 Handbook because of the new general stormwater permit. The JTD should be updated to reflect current regulatory standards. In addition, given the amount of sediment that would be collected in the perimeter drainage channels, any water in those channels should be directed to the desilting basins and not discharged to "infiltration" areas as proposed. The desilting basins should be resized to handle those additional flows.

In addition, as shown in the letter report prepared by Dr. Richard Horner and attached as Exhibit J, the modeling which formed the basis for designing all of these stormwater control systems is flawed and needs to be reevaluated. As his report shows, the claim that infiltration or percolation areas could be used to control runoff from the perimeter storm drain channels is not supported by sufficient analysis of infiltration rates and other critical factors.

Section D.2.3 – Floodplain

The JTD fails to mention that the eastern desilting basin, infiltration area and potentially part of the facilities area, including the proposed flare station, are within the 100-year floodplain shown on Figure 30B attached as Exhibit K. That figure shows the where the floodplain area is located and Figure 9 shows that same area on the left along the property line. Because no analysis of the impacts of this construction on the floodplain has been conducted and no approvals from FEMA have been obtained, the SWFPA is not complete and correct.

Section D.4.7 - Geologic Hazards Due to Surface and Near-Surface Processes

The JTD concludes that "there is clear evidence that rock falls have occurred at the site" and that "construction of a 'catching' wall or other diversion structure near the edge of the landfill is recommended to effectively mitigate the risk of rock fragments rolling onto the landfill." But, there is no further discussion regarding the specifications or location of this "catching" wall. The JTD also does not consider the impact of falling boulders on the integrity of the eastern PSD channel, and does not identify where this "catching wall" would be located in relation to the PSD channel. Construction in these open space areas is not allowed and the need for these structures should be determined now and the impacts analyzed.

IV. Conclusion

For all these reasons, the SWFPA was not complete and correct and the LEA should be directed to rescind that determination and not to accept any subsequent document until these deficiencies are remedied and the application complies with the law.

EXHIBIT 5

**GREGORY CANYON LANDFILL
SOLID WASTE FACILITIES PERMIT (SWFP)
APPLICATION PACKAGE**

Gregory Canyon Ltd. LLC

January 26, 2011

Ms. KariLyn Merlos
Local Enforcement Agency
San Diego County Department of Environmental Health
5500 Overland Ave. Suite 110
San Diego, CA 92123

Re: Gregory Canyon Landfill - Amendment to Application for Solid Waste Facility Permit

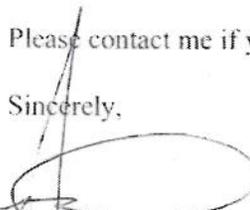
Dear Ms. Merlos:

On behalf of Gregory Canyon, Ltd. LLC (GCL), we are writing to submit an amendment to our previously submitted application for a new Solid Waste Facility Permit for the Gregory Canyon Landfill (SWIS No. 37-AA-0032).

Two hard copy sets of the complete permit application package, including a complete Joint Technical document, are attached. Please let me know if you need additional hard copies or CD-ROM's of the application package.

Please contact me if you have any questions or comments regarding this application.

Sincerely,



Jim Simmons
Project Manager

Attachments



BRYAN A. STIRRAT & ASSOCIATES
CIVIL AND ENVIRONMENTAL ENGINEERS

January 13, 2011

JN: 1997-0139

Ms. Rebecca Lafreniere
County of San Diego
Department of Environmental Health Services
5500 Overland Avenue, Suite 110 MS O560
San Diego, CA 92123

**RE: GREGORY CANYON LANDFILL PROJECT
SOLID WASTE FACILITIES PERMIT APPLICATION PACKAGE
(DATED SEPTEMBER 2010, UPDATED JANUARY 2011)**

Dear Ms. Lafreniere:

Bryan A. Stirrat & Associates (BAS) is pleased to submit this Solid Waste Facility Permit (SWFP) Application Package for the Gregory Canyon Landfill (GCLF) project on behalf of Gregory Canyon Limited (GCL). Please find attached three (3) hard copies and two PDF copies on CD of the SWFP Application Package (dated September 2010, Updated January 2011) prepared for the GCLF project in accordance with the California Code of Regulations Title 27 (27 CCR) requirements. It is our understanding that the following information is required by 27 CCR, Section 21570(f) to complete the SWFP application submittal to your agency:

1. Joint Application Form

An application form (E-1-77) has been completed for the purpose of the permitting process. Please note that additional explanations and/or documentation were needed to further describe information indicated on the SWFP application form. These explanations and/or documentation are in the form of Attachments SWFP-A, SWFP-B, SWFP-C and SWFP-D. The cover sheets for these attachments indicate which part(s) of the SWFP application form that requires further explanation and/or documentation.

2. Joint Technical Document – Attachment 1

Three (3) copies of the Joint Technical Document (JTD) (dated September 2010, Revised January 2011) are considered Attachment 1 to this application package and are submitted under separate cover.

Ms. Rebecca Lafreniere

Re: Gregory Canyon Landfill Project

Solid Waste Facilities Permit Review Application Package (Dated Sept. 2010, Updated Jan. 2011)

January 13, 2011

Page 2

3. California Environmental Quality Act (CEQA) Compliance – Attachment 2

The EIR for the project was initially certified on February 6, 2003, SCH#1995061007. Litigation challenging the EIR was filed, and on January 20, 2006, the Superior Court decertified the EIR and ordered additional analysis in the areas of traffic, mitigation for impacts to biology and water supply. The January 20, 2006 order was upheld by the Court of Appeal on June 12, 2009. A Revised Final EIR (RFEIR) was prepared in response to the court order, and was certified on May 31, 2007. In June 2007, a motion was filed to discharge the writ of mandate issued on January 20, 2006, which was granted in part and denied in part on February 11, 2008. The court ordered additional analysis in the area of water supply. An Addendum to the RFEIR was prepared in response to the court order, and adopted on August 8, 2008. In August 2008 a second motion to discharge the January 20, 2006 writ of mandate was filed, which was granted on November 20, 2008. The November 20, 2008 order was upheld by the Court of Appeal on March 30, 2010. Based on a Court of Appeal decision overturning a 2006 recycled water supply contract entered into by the operator, an Addendum to the RFEIR was prepared to identify other sources of water supply, and was adopted on January 7, 2010. Based on a new Jurisdictional Determination by the U.S. Army Corps of Engineers, an Addendum to the RFEIR was prepared to update the waters on the landfill site subject to federal and state jurisdiction, and was adopted on May 7, 2010.

4. CEQA Mitigation Monitoring Implementation Schedule – Attachment 3

A User's Guide to the Gregory Canyon Landfill Mitigation Monitoring and Reporting Program (MMRP) was developed based on the LEA's comment letter dated December 23, 2003 and has been revised in April 2007 to reflect changes in the MMRP contained in the March 2007 Revised FEIR. The *User's Guide to the Gregory Canyon Landfill Mitigation Monitoring and Reporting Program* is included as Attachment 3.

In addition, the measures presented in Table 10-1 in the Revised FEIR are to reduce specific project impacts, the measures contained in Tables 10-2 and 10-3 of the FEIR are those measures contained in Proposition C and Table 10-3 are measures related to the potential relocation of the First San Diego Aqueduct pipelines. The CEQA MMRP schedule (Table 10-1) from the Revised Final EIR (dated March 2007) and Table 10-2 from the FEIR are presented in Attachment 3. Implementation of the measures in the MMRP is indicated in the document. Also, please note that the CEQA MMRP schedule is included in the JTD as Appendix D-2.

Ms. Rebecca Lafreniere

Re: Gregory Canyon Landfill Project

Solid Waste Facilities Permit Review Application Package (Dated Sept. 2010, Updated Jan. 2011)

January 13, 2011

Page 3

5. San Diego County Integrated Waste Management Plan (CIWMP) Conformance Finding – Attachment 4

A revised Siting Element was prepared and approved by the County of San Diego on January 5, 2005 and approved by the California Integrated Waste Management Board (now CalRecycle) on September 20-21, 2005. The GCLF was included as a proposed new landfill (see Attachment 4).

6. Completeness Determination of Preliminary Closure/Post-Closure Maintenance Plan (PCPCMP)

The PCPCMP is submitted as an integral part of the JTD and this SWFP application for your review and approval in accordance with 27 CCR, Section 21860. The PCPCMP is submitted as part of the JTD as Parts E and F.

7. Closure and Post-Closure Maintenance Financial Assurance Documentation – Attachment 5

A Trust Agreement (Form 100) demonstrating coverage for closure and post-closure maintenance costs for GCLF is included as Attachment 5 of this application package.

8. Compliance with Operating Liability Requirements - Attachment 6

A Certificate of Liability Insurance (Form 107) is included as part of this application package to document the type(s) of insurance for the GCLF. Gregory Canyon Limited has been and will continue to update the certificate. A copy of Form 107 is included as part of Attachment 6.

9. Conditional Use Permits

Typically, the local land use authority will require the project proponent to obtain a land use entitlement. In the case of the GCLF, the approval would normally be obtained from the San Diego County Department of Planning and Land Use (DPLU). However, in 1994, Proposition C was written to provide for the siting of a new Class III landfill to allow the residents and businesses of northern San Diego County a place to dispose of their solid waste. Proposition C amended the General Plan, Zoning Ordinances and other ordinances and policies to allow the construction of a Class III landfill. The Zoning Ordinance was amended to create a new zoning classification designator (Solid Waste Facility) applied only to the Gregory Canyon site. The approval of Proposition C by the voters in November

SWFP JOINT APPLICATION FORM

CIWMB E-1-77 FORM

APPLICATION FOR SOLID WASTE FACILITY PERMIT/WASTE DISCHARGE REQUIREMENTS

CIWMB E-1-77 (Rev. 8-04)

NOTE: This form has been developed for multiple uses. It is the transmittal sheet for documents required to be submitted to the appropriate agency. Please refer to the attached instructions for definitions of terms and for completing this application form in a complete and correct manner.

FOR OFFICIAL USE ONLY			
SWIS NUMBER: <u>37-AA-0732</u>	FILING FEE:	RECEIPT NUMBER:	DATE RECEIVED: <u>6/25/10</u> <i>AMMENDMENT RECEIVED</i>
DATE ACCEPTED: <u>7/22/10</u> <i>2/1/11</i>	DATE REJECTED:	ACCEPTANCE DATE OF INCOMPLETE APPLICATION: <u>8/5/10</u>	<u>1/24/11</u>
		DATE DUE: <u>2/1/11</u>	

Part 1. GENERAL INFORMATION

A. ENFORCEMENT AGENCY: San Diego County Department of Environmental Health

B. COUNTY: San Diego

C. TYPE OF APPLICATION (Check one box only):

- 1. NEW SWFP and/or WDRS
- 2. REVISION OF SWFP and/or WDRS
- 3. EXEMPTION and/or WAIVER
- 4. PERMIT REVIEW
- 5. AMENDMENT OF APPLICATION
- 6. RFI/ROWD/JTD AMENDMENTS

Part 2. FACILITY DESCRIPTION

A. NAME OF FACILITY: _____

Gregory Canyon Landfill

B. LOCATION OF FACILITY:

1. PHYSICAL ADDRESS OR LOCATION AND ZIP CODE:

9708 Pala Road, Pala, CA 92059

2. LATITUDE AND LONGITUDE:

Lat: 33.347777; Long: -117.117560 (approximate center of project)

3. LEGAL DESCRIPTION OF PERMITTED BOUNDARY BY SECTION, TOWNSHIP, RANGE, BASE, AND MERIDIAN, IF SURVEYED:

Sections 4 and 5 of Township 10 South and Sections 32 and 33 of Township 9 South Range 2 West of USGS 7.5' Pala Quadrangle. See Attachment SWFP-A for legal description/maps.

C. TYPE OF ACTIVITY: (Check applicable boxes):

- 1. DISPOSAL
a. TYPE: Class III/ Municipal
- 2. COMPOSTING
a. TYPE: _____
- 3. TRANSFORMATION
- 4. TRANSFER/PROCESSING FACILITY
CHECK HERE IF RECYCLABLE MATERIALS ARE RECOVERED PRIOR TO TRANSFER/PROCESSING.
- 5. OTHER (describe): _____

D. CONFORMANCE FINDING INFORMATION (CIWMP):

- 1. FACILITY IS IDENTIFIED IN (Check one):
 - SITING ELEMENT
DATE OF DOCUMENT Jan. 5, 2005; approved by CIWMB Sept. 20-21, 2005 PAGE # 42-46
 - NONDISPOSAL FACILITY ELEMENT
DATE OF DOCUMENT _____ (See Attachment 4) PAGE # _____
- 2. FACILITY IS NOT REQUIRED TO BE IDENTIFIED IN SITING ELEMENT OR NONDISPOSAL FACILITY ELEMENT

E. TYPE OF PERMITTED WASTES TO BE RECEIVED: (Check applicable boxes):

- 1. AGRICULTURAL
- 2. ASBESTOS Friable Non-friable
- 3. ASH
- 4. AUTO SHREDDER
- 5. COMPOSTABLE MATERIAL (describe): Green Material
- 6. CONSTRUCTION/DEMOLITION
- 7. CONTAMINATED SOILS
- 8. DEAD ANIMALS
- 9. INDUSTRIAL
- 10. INERT
- 11. LIQUIDS
- 12. MIXED/MUNICIPAL SOLID WASTE
- 13. SEWAGE SLUDGE
- 14. TIRES
- 15. OTHER (describe): _____

Part 3. FACILITY INFORMATION

A. PROPOSED CHANGE (Check applicable box(es)):

- 1. DESIGN (describe): _____
- 2. OPERATION (describe): _____
- 3. OWNER, OPERATOR, ADDRESS, AND/OR FACILITY NAME CHANGE (describe): _____
- 4. OTHER (describe): Application for new SWFP in response to Court decision invalidating SWFP 37-AA-0032, issued December 17, 2004

B. FACILITY INFORMATION:

1. INFORMATION APPLICABLE TO ALL FACILITIES:

- a. PEAK DAILY TONNAGE OR CUBIC YARDS 5,000 Tons Per Day (TPD)
 - 1) DISPOSAL/TRANSFER (unit) 5,000 TPD of refuse
 - 2) OTHER (unit) 0
- b. DAILY DESIGN TONNAGE (TPD) 3,200 TPD with maximum of 1,000,000 tons per year
- c. FACILITY SIZE (acres) 308 acres
- d. PEAK TRAFFIC VOLUME PER DAY (vpd) 675 (includes both waste for disposal and other material)
- e. DAYS AND HOURS OF OPERATION Mon-Fri 7:00 am to 6:00 pm; Sat 8:00 am to 5:00 pm

2. ADDITIONAL INFO. REQUIRED FOR COMPOSTING FACILITIES ONLY:

- a. SITE STORAGE CAPACITY (cu yds) Not Applicable

3. ADDITIONAL INFORMATION REQUIRED FOR LANDFILLS ONLY:

- a. AVERAGE DAILY TONNAGE (TPD) 3,200 TPD with maximum of 1,000,000 tons per year
- b. SITE CAPACITY CURRENTLY PERMITTED (Airspace) (cu yds) _____
- c. SITE CAPACITY PROPOSED (Airspace) (cu yds) 59,500,000 cu.yd. of total gross airspace; new facility
- d. SITE CAPACITY USED TO DATE (Airspace) (cu yds) 0 cu.yd.
- e. SITE CAPACITY REMAINING (Airspace) (cu yds) 57,000,000 cu.yd. for total estimated net airspace; new facility
- f. DATE OF CAPACITY INFORMATION (Date) (See instructions): January 2011 (See Attachment SWFP-B)
- g. LAST PHYSICAL SITE SURVEY (Date) 1991 (aerial survey)
- h. ESTIMATED CLOSURE DATE (month and year) December 2040
- i. DISPOSAL FOOTPRINT (acres) 183 acres
- j. SITE CAPACITY PLANNED (cu yds) Not Applicable - No Expansion Planned
- k. 1. (i) IN-PLACE WASTE DENSITY (lbs of waste per cu yd of waste) Estimated 1,350 lbs/cy
AND
(ii) WASTE-TO-COVER RATIO (Estimated) (v:v) Estimated 4:1
OR
2. AIRSPACE UTILIZATION FACTOR (tons of waste per cu yd of landfill airspace) N/A

Part 4. SOURCE OF WATER SUPPLY (Check applicable boxes)

- A. MUNICIPAL OR UTILITY SERVICE: Recycled water from contracts with San Gabriel Valley Water Company, 11142 Garvey Ave., El Monte, CA 91733
- B. INDIVIDUAL (wells): GMW-1, GLA-3, GLA-12, GLA-13, GLA-B, GLA-C, GLA-G*; additional wells to be installed at SPA, SPB and north of SR 76 (Refer to Section B.5.3.1 and Figure 11A in the JTD)
- C. SURFACE SUPPLY:
 - 1. NAME OF STREAM, LAKE, ETC. : Underflow of San Luis Rey River
 - 2. TYPE OF WATER RIGHTS:
 RIPARIAN APPROPRIATION
 - 3. STATE PERMIT OR LICENSE NUMBER , IF APPLICABLE: _____

Part 5. COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) (Check applicable boxes)

A. CHECK BOX(ES) IF ENVIRONMENTAL DOCUMENT WAS OR WILL BE PREPARED FOR THIS PROJECT AND PROVIDE THE STATE CLEARINGHOUSE NUMBER (SCH#):

- ENVIRONMENTAL IMPACT REPORT (EIR) SCH# 1995061007 (See Attachment SWFP-C for detailed description of EIR)
- NEGATIVE DECLARATION (ND)/MITIGATED NEGATIVE DECLARATION (MND) SCH# _____
- ADDENDUM TO (Identify environmental document) FEIR 05/31/2007 - 08/08/08; 01/07/10;05/07/10 SCH# 1995061007

B. IF ENVIRONMENTAL DOCUMENT(S) WAS NOT PREPARED, PLEASE PROVIDE THE FOLLOWING INFORMATION:

- CATEGORICAL/STATUTORY EXEMPTION (CE/SE) EXEMPTION TYPE _____ GUIDELINE # _____

Part 6. LIST OF ATTACHMENTS (Fill in the date for each document checked)

A. REQUIRED WITH ALL APPLICATION SUBMITTALS:

- | | |
|---|---|
| <input checked="" type="checkbox"/> RFI/JTD <u>September 2010, Revised January 2011 (Attachment 1)</u> | <input checked="" type="checkbox"/> ENVIRONMENTAL DOCUMENT(S): |
| <input type="checkbox"/> LOCAL USE/PLANNING PERMITS <u>Not Applicable</u> | <input checked="" type="checkbox"/> EIR <u>Revised Final EIR (dated March 2007) CEQA Statement (Attachment 2)</u> |
| <input type="checkbox"/> LOCATION MAP <u>Not Applicable</u> | <input type="checkbox"/> MND/ND _____ |
| <input checked="" type="checkbox"/> MITIGATION MONITORING IMPLEMENTATION SCHEDULE: <u>March 2007 (Attachment 3)</u> | <input type="checkbox"/> EXEMPTION _____ |
| | <input checked="" type="checkbox"/> ADDENDUM <u>Aug. 2008; Jan. 2010, May 2010</u> |

B. ADDITIONAL REQUIRED DOCUMENTS FOR LANDFILLS ONLY:

- | | |
|--|--|
| <input checked="" type="checkbox"/> OPERATING LIABILITY FINANCIAL MECHANISM: <u>Effective 6/23/10 see Attachment 6</u> | <input checked="" type="checkbox"/> FINANCIAL RESPONSIBILITY DOCUMENTATION: <u>New Facility/Trust Agreement (Appendix P of JTD and Attachment 5)</u> |
| <input checked="" type="checkbox"/> CLOSURE/POST CLOSURE MAINTENANCE PLAN | <input checked="" type="checkbox"/> LANDFILL CAPACITY SURVEY RESULTS (see instructions): <u>January 2011 (See Attachment SWFP-B)</u> |
| <input type="checkbox"/> PRELIMINARY: <u>September 2010, Revised January 2011</u> | |
| <input type="checkbox"/> FINAL _____ | |

C. IF APPLICABLE: (See Attachment SWFP-D for Status of Permits)

- | | |
|--|---|
| <input checked="" type="checkbox"/> REPORT OF WASTE DISCHARGE: <u>In the form of a JTD (September 2010, Revised January 2011)</u> | <input type="checkbox"/> DEPT. OF HEALTH SERVICES PERMIT <u>Not Applicable</u> |
| <input checked="" type="checkbox"/> CONTRACT AGREEMENTS: <u>Water Supply Agreement, SGVWC (Sept. 2009) (See Appendix Q of JTD)</u> | <input type="checkbox"/> SWAT (Air and water) <u>Not Applicable - New Facility</u> |
| <input checked="" type="checkbox"/> STORMWATER PERMIT APPLICATION: <u>NOI-Sept. 15, 2010 (see Appendix D of JTD)</u> | <input checked="" type="checkbox"/> WETLANDS PERMITS - <u>USACE 404 Individual Permit (dated March 2010); RWQCB Sec. 404 Water Quality Certification (May 2010); and Calif. Dept. of Fish and Game Streambed Alt. Agreement and 2081 Agreement (dated 9/2005; revised 2/2009) and Final (dated 12/2009)</u> |
| <input type="checkbox"/> NPDES PERMIT APPLICATION <u>Not Applicable</u> | <input checked="" type="checkbox"/> VERIFICATION OF FIRE DISTRICT COMPLIANCE <u>January 21, 2011 (see Attachment S)</u> |
| <input checked="" type="checkbox"/> OTHER <u>Tentative WDRs (pending) - See Appendix S of JTD</u> | |

Part 7. OWNER INFORMATION (For disposal site, if operator is different from land owner, attach lease or other agreement)

TYPE OF BUSINESS:

- SOLE PROPRIETORSHIP PARTNERSHIP CORPORATION -LLC GOVERNMENT AGENCY

OWNER(S) OF LAND (Name):

Gregory Canyon Ltd., LLC

SSN OR TAX ID #

94-3222520

ADDRESS, CITY, STATE, ZIP

160 Industrial Street, Suite 200, San Marcos, CA 92078

TELEPHONE #:

(760) 471-2365

FAX #:

(760) 471-2383

E-MAIL ADDRESS:

jim.simmons@ccconnect.com

CONTACT PERSON (Print Name):

James Simmons

Part 8. OPERATOR INFORMATION (For disposal site, if operator is different from land owner, attach lease or other agreement)

BUSINESS: PROPRIETORSHIP PARTNERSHIP CORPORATION-LLC GOVERNMENT AGENCY

FACILITY OPERATOR(S) (Name): Gregory Canyon Ltd., LLC	SSN OR TAX ID #: 94-3222520
ADDRESS: CITY, STATE, ZIP 160 Industrial Street, Suite 200, San Marcos, CA 92078	TELEPHONE #: (760) 471-2365
	FAX #: (760) 471-2383
	E-MAIL ADDRESS: jim.simmons@ccconnect.com
	CONTACT PERSON (Print Name): James Simmons

ADDRESS WHERE LEGAL NOTICE MAY BE SERVED:
160 Industrial Street, Suite 200, San Marcos, CA 92078

Part 9. SIGNATURE BLOCK

Owner:

I certify under penalty of perjury that the information I provided for this application and for any attachments is true and accurate to the best of my knowledge and belief. I am aware that the operator intends to operate a solid waste facility at the site specified above pursuant to this application and understand that I may be responsible for the site should the operator fail to meet applicable requirements.

SIGNATURE (LAND OWNER OR AGENT):

PRINTED NAME:

James Simmons

TITLE Authorized Rep.

DATE: 6/24/10

Operator:

I certify under penalty of perjury that the information contained in this application and all attachments are true and accurate to the best of my knowledge and belief.

SIGNATURE (FACILITY OPERATOR OR AGENT):

PRINTED NAME:

James Simmons

TITLE Authorized Rep.

DATE: 6/24/10

Part 10. OTHER (Attach additional sheets to explain any responses that need clarification).

EXHIBIT 6



RAYMOND A. FERNANDEZ
DEPUTY CHIEF ADMINISTRATIVE OFFICER
(619) 531-4535
FAX (619) 232-2436

County of San Diego
PUBLIC SAFETY GROUP

734 W. BEECH STREET, SUITE 301, SAN DIEGO, CALIFORNIA 92101

Received
FEB 24 2011
DEH/LEA

February 17, 2011

County of San Diego
Solid Waste Local Enforcement Agency
Department of Environmental Health
5500 Overland Ave, Suite 110 MS O560
San Diego CA 92123

Attn: Jim Henderson, Project Coordinator

Ref: **Gregory Canyon Landfill 37-AA-0032** 36 parcels including APN 110-150-24-00
County Fire Marshal comments San Diego County Fire Authority CSA 135

Please accept the following County Fire Marshal's Office comments, which are based on the information provided to us by the applicant as of this date.

The project is located in Wildland Urban Interface (WUI) and in State Responsibility Area (SRA). Fire Severity is zoned as "Very High" Fire Severity for the majority of the site, and "Moderate" for the remainder. The project is located within the San Diego County Fire Authority jurisdictional boundary (CSA-135).

Attached is a Project Facility Availability Form - FIRE, which is accompanied by a two page summary of Fire Conditions. On the form, we indicate that "Fire protection facilities are not expected to be adequate to serve the proposed development within the next five years." The proposed Gregory Canyon Landfill is within an area of the County that the San Diego County Fire Authority does not currently have a designated, staffed fire station in close proximity. It is our goal to have a full service, staffed fire station in the area at some time in the future. We look forward to developing a cooperative plan to that end.

The project will have a potentially significant impact on the delivery of emergency fire suppression, fire prevention and EMS services provided by the County Fire Authority. We require that the project commit to participating in a Community Facility District currently under formation or a Developer Agreement to mitigate the impact that the facility will have on fire services.

Paul Dawson, Fire Marshal
San Diego County Fire Authority
Public Safety Group

Attachment: Project Facility Availability Form and two page attachment
cc: Applicant representative Matt Simmons [matt.simmons@cciconnect.com]
William Johnson, County Counsel



**COUNTY OF SAN DIEGO
DEPARTMENT OF PLANNING AND LAND USE: Zoning
PROJECT FACILITY AVAILABILITY FORM, Fire**

Please type or use pen

Gregory Canyon LTD C/O Jim Simmons (760) 471-2365		ORG _____	F
Owner's Name	Phone	ACCT _____	
160 Industrial St Suite 200		ACT _____	
Owner's Mailing Address		Street	
San Marcos	Ca	92078	
City	State	Zip	DATE _____ AMT \$ _____

DISTRICT CASHIER'S USE ONLY

SECTION 1. PROJECT DESCRIPTION TO BE COMPLETED BY APPLICANT

<p>A. <input type="checkbox"/> Major Subdivision (TM) <input type="checkbox"/> Specific Plan or Specific Plan Amendment <input type="checkbox"/> Minor Subdivision (TPM) <input type="checkbox"/> Certificate of Compliance: Boundary Adjustment Rezone (Reclassification) from _____ to _____ zone. Major Use Permit (MUP), purpose: _____ Time Extension...Case No. _____ Expired Map...Case No. _____ <input checked="" type="checkbox"/> Other <u>Class 3 Landfill</u></p> <p>B. <input type="checkbox"/> Residential Total number of dwelling units _____ <input type="checkbox"/> Commercial Gross floor area _____ <input checked="" type="checkbox"/> Industrial Gross floor area _____ <input type="checkbox"/> Other Gross floor area _____</p> <p>C. Total Project acreage <u>17.9</u> Total lots <u>2</u> Smallest proposed lot <u>308</u></p>	<p align="center">Assessor's Parcel Number(s) (Add extra if necessary)</p> <table border="1"> <tr><td align="center">See Attached</td><td></td></tr> <tr><td align="center">36 parcels</td><td></td></tr> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> </table> <p>Thomas Bros. Page <u>1049</u> Grid <u>C,D,E 1+2</u> 9708 Pala Road Project address _____ Street _____ Falbrook Community Planning Area/Subregion _____ Zip _____</p>	See Attached		36 parcels					
See Attached									
36 parcels									

OWNER/APPLICANT AGREES TO COMPLETE ALL CONDITIONS REQUIRED BY THE DISTRICT.

Applicant's Signature: _____ Date: 1-7-11
 Address: 160 Industrial St Suite 200 San Marcos Ca 92078 Phone: (760) 471-2365
 (On completion of above, present to the district that provides fire protection to complete Section 2 and 3 below.)

SECTION 2: FACILITY AVAILABILITY TO BE COMPLETED BY DISTRICT

District name SAN DIEGO COUNTY FIRE AUTHORITY (CSA-135)

Indicate the location and distance of the primary fire station that will serve the proposed project: CALFIRE MILLER STATION
9127 W. HLAC RD, ESCONDIDO 92026 7.4 MILES

A. Project is in the District and eligible for service.
 Project is not in the District but is within its Sphere of Influence boundary, owner must apply for annexation.
 Project is not in the District and not within its Sphere of Influence boundary.
 Project is not located entirely within the District and a potential boundary issue exists with the _____ District.

B. Based on the capacity and capability of the District's existing and planned facilities, fire protection facilities are currently adequate or will be adequate to serve the proposed project. The expected emergency travel time to the proposed project is _____ minutes.
 Fire protection facilities are not expected to be adequate to serve the proposed development within the next five years.

C. District conditions are attached. Number of sheets attached: TWO
 District will submit conditions at a later date.

SECTION 3. FUELBREAK REQUIREMENTS

Note: The fuelbreak requirements prescribed by the fire district for the proposed project do not authorize any clearing prior to project approval by the Department of Planning and Land Use.

Within the proposed project 100 feet of clearing will be required around all structures; 150' AROUND LANDFILL
 The proposed project is located in a hazardous wildland fire area, and additional fuelbreak requirements may apply. Environmental mitigation requirements should be coordinated with the fire district to ensure that these requirements will not pose fire hazards.

This Project Facility Availability Form is valid until final discretionary action is taken pursuant to the application for the proposed project or until it is withdrawn, unless a shorter expiration date is otherwise noted. EXPIRES 2/24/2015

Paul Dawson PAUL DAWSON FIRE MARSHAL 858 684-3000 2/24/2011
 Authorized signature _____ Print name and title _____ Phone _____ Date _____

On completion of Section 2 and 3 by the District, applicant is to submit this form with application to:
 Zoning Counter, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, San Diego, CA 92123

Parcel #

110-150-2400
110-362-0800
128-470-0800
128-470-1900
110-361-1600
110-362-0900
110-150-0100
110-150-2500
110-150-4300
110-150-4400
110-150-4500
110-150-4600
128-470-0501
128-470-0502
128-470-0900
128-470-1500
128-470-1600
128-470-1800
128-470-2000
110-072-0300
110-072-0400
110-160-0500
110-160-0900
110-370-0900
128-020-0200
128-020-0300
128-020-0400
128-020-0600
128-020-2100
128-020-2200
128-020-2400
128-020-3000
128-020-4000
128-020-4100
128-340-3100
128-340-3200

Please accept the following FIRE CONDITIONS as an attachment to the Project Facility Availability Form – FIRE, dated February 24, 2011:

County Fire Authority FIRE CONDITIONS

1. The project is in the jurisdictional boundary of the San Diego County Fire Authority (CFA), which is the fire, emergency medical (EMS), and rescue provider for the site. In addition, the County Fire Authority
 - a. provides fire code enforcement
 - b. initiates and coordinates additional non-law enforcement emergency actions.
2. The proposed Gregory Canyon Landfill is within an area of the County that the San Diego County Fire Authority does not currently have a designated, staffed fire station within an acceptable emergency travel time. The project shall commit to participating in a Community Facility District or Developer Agreement to mitigate the impact that the facility will have on fire services.

Without participation in a Community Facility District or Developer Agreement to mitigate the lack of adequate fire services in the vicinity, the County Fire Authority is unable to commit to adequate facilities and personnel to serve the proposed development within the next five years.

3. Prepare a Full Report Fire Protection Plan (FPP) to thoroughly evaluate fire issues and propose ways to mitigate them. Full Report FPP to be consistent with current County of San Diego LUEG *“Guidelines for Determining Significance and Report Format and Content Requirements – Wildland Fire and Fire Protection”*. The Fire Consultant is to be from County’s current “approved CEQA fire consultant” list.
4. Provide a water supply for fire fighting with minimum 2500 GPM at 20 psi for minimum 2 hours – minimum storage 300,000 gallons
 - a. Hydrants required at approved locations in vicinity of structures and at designated points along fire access from SR 76 to site, and on-site to active dumping areas
5. Fire access roads are required which fully meet County Fire Code (CFC), serving the site, structures and landfill operational areas, including
 - a. 50,000 pound load carrying capacity
 - b. posted standard signage: “FIRE LANE - NO PARKING - CVC 22500.1” at points where required by CFA
 - c. meeting County Public Road Standards or County Private Road Standards, whichever is applicable
 - d. Gates and other barriers along fire access roads must meet CFC and County Fire Marshal requirements to facilitate rapid access and egress by all emergency responders anticipated to respond to the site
6. Buildings must meet County Building Code Chapter 7A, be fully protected by fire sprinkler systems meeting commercial standard (NFPA-13), with approved central station monitoring

7. Portable fire extinguishers required in structures (minimum 2A:10BC)
8. Portable fire extinguishers required to be carried on site equipment (minimum 4A:60BC)
9. Defensible space (fuel modification per CFC) to be maintained as follows:
 - a. minimum 100 foot around structures
 - b. minimum 30 feet along fire access roads measured from edge of pavement
 - c. minimum 150 feet around landfill perimeter
 - i. Landfill perimeter to be bare earth
10. Establish and enforce a policy for personnel to notify fire authorities through 9-1-1 system immediately on discovery of any fire
11. During "red flag" weather, cover waste material frequently (frequency to be defined), as embers from distant fire can ignite combustibles
12. Establish an action plan with law enforcement, County OES, and County Fire Authority to be implemented when wildfire is in the immediate vicinity (to be defined) of site
 - a. closing site access at SR 76
 - b. bringing cued vehicles onto the landfill cleared area
 - c. moving individuals to buildings for shelter during passage of flame front
 - d. Fire Incident Command and/or law enforcement will determine when sheltered persons may be evacuated
13. Waste tires and shredded or crumbed tire material shall not be stored within 150 feet of edge of landfill fuelbreak
 - a. Waste tires shall not be stored on surfaces with grades or other physical features that will or could interfere with fire fighting, fire equipment or personnel
14. Greenwaste operations shall comply with County Fire Code section 1908 including but not limited to
 - a. greenwaste pile size limitations
 - b. separation of piles
 - c. re-mixing to alleviate spontaneous combustion fire potential
 - d. internal pile probe temperature monitoring and recording
 - e. actions required for internal pile heat in excess of 170 degrees F
15. Obtain and maintain Fire Code operational permits for
 - a. Waste Handling
 - b. Greenwaste Operations
 - c. Flammable/Combustible liquid storage and dispensing
 - d. (and any other operation listed in County Fire Code)

DECLARATION OF SERVICE BY E-MAIL

Case Name: **IN THE MATTER OF: REQUEST FOR HEARING ON THE SOLID WASTE FACILITY PERMIT APPLICATION FOR THE PROPOSED GREGORY CANYON LANDFILL**

I declare:

I am employed in the Legal Office of the California Integrated Waste Management Board, which is the office of a member of the California State Bar under which member's direction this service is made. My business address is California Department of Resources Recycling and Resources, 1001 I Street, MS 24B, Sacramento, CA 95814. I am 18 years of age or older and not a party to this matter.

On June 6, 2011, I served the attached **DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY STAFF RESPONSE TO PETITIONER'S STATEMENT OF ISSUES** by sending an electronic copy thereof addressed to the parties hereinafter named at the electronic mail addresses specified below:

Addressees: Attn: Pala Band of Mission Indians
 Walter E. Rusinek, Esq.
 Procopio, Cory, Hargreaves and Savitch LLP
 525 B Street, Suite 2200
 San Diego, CA 92101
 walter.rusinek@procopio.com
 Attorney for Petitioner Pala Band of Mission Indians

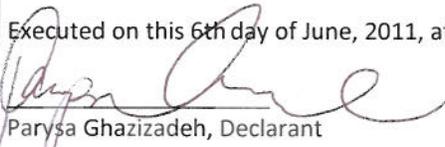
San Diego County Department of Environmental Health
Attn: Rodney F. Lorang, Esq.
Office of County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101
rodney.lorang@sdcounty.ca.gov
Attorney for Respondent San Diego County Department of Environmental Health

Gregory Canyon Ltd.
Attn: E. William Hutton, Esq.
Law Offices of E. William Hutton, P.C.
6303 Owensmouth Avenue, 10th Floor
Woodland Hills, CA 91367
bill.hutton@huttonlawoffice.com
Attorney for Real Party in Interest Gregory Canyon Ltd.

Department of Resources Recycling and Recovery
Attn: Michael L. Bledsoe, Esq.
801 K Street, MS 19-01
Sacramento, CA 95814
michael.bledsoe@calrecycle.ca.gov
Attorney for Department of Resources Recycling and Recovery

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 6th day of June, 2011, at Sacramento, California.


Parysa Ghazizadeh, Declarant