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7
8 **BEFORE THE CALIFORNIA DEPARTMENT**
9 **OF RESOURCES RECYCLING AND RECOVERY**

10
11 In the Matter of:

12 PALA BAND OF MISSION INDIANS,

13 Petitioner,

14 v.

15 SAN DIEGO COUNTY DEPARTMENT OF)
16 ENVIRONMENTAL HEALTH, SOLID)
17 WASTE LOCAL ENFORCEMENT)
18 AGENCY,)

19 Respondent.
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No.
Action Filed:

LOCAL ENFORCEMENT AGENCY'S
RESPONSE TO PETITIONER'S APPEAL
FROM THE SAN DIEGO COUNTY
SOLID WASTE HEARING PANEL'S
FEBRUARY 11, 2016 DECISION

Public Resources Code section 44307,
45030 *et seq.*

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1 I.

2 INTRODUCTION

3 A. Background and Proceedings at the Hearing Panel.

4 In 1994, the voters of San Diego County approved a local initiative (“Proposition C”)
5 allowing the Gregory Canyon landfill project to go forward on a 1,783 acre site, with at least
6 1,313 acres required to remain open space. The project was authorized to proceed without
7 Board of Supervisor’s action on a general plan or zoning code amendment, and without a
8 locally-issued Major Use Permit. As a result, the County had no significant discretionary
9 authority over the project, and the Local Enforcement Agency (LEA) became the lead agency
10 under CEQA for the entire “project” as defined in the CEQA Guidelines. The LEA also became
11 responsible for implementing the conditions that were included in Proposition C.

12 The LEA has issued a Solid Waste Facility Permit (SWFP) for the landfill and ancillary
13 facilities, which together will occupy a 308 acre “Total Permitted Site.” That permit was also
14 the only tool the LEA had available to implement CEQA to preserve 1,313 acres of open space
15 as required by Proposition C. As a result, the SWFP permit contains environmental mitigation
16 provisions and permit conditions that are not based on State solid waste law and regulations, and
17 which apply beyond the 308 acre landfill permit boundary.

18 Some of these mitigation provisions are triggered “prior to construction of the landfill” or
19 based on similar language; one requirement is triggered “prior to ground disturbance.”
20 Appellant is asserting that the LEA must enforce these “prior to” mitigation measures now,
21 because derelict buildings on the project property are proposed to be demolished. Appellant
22 bases its argument on the project description in the Revised Final Environmental Impact Report
23 (“FEIR”) for the project as a whole, which identifies structure demolition as being one part of
24 the initial phase of construction of the landfill.

25 In the proceeding below, Respondent Local Enforcement Agency (LEA) urged that these
26 “prior to” requirements had not yet been triggered, because building demolition by itself is not
27 landfill construction, in reality or in the FEIR project description. The LEA also urged, based

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1 on sections 44307 and 45032 of the Public Resources Code¹ (the “PRC”), that the independent
2 Solid Waste Hearing Panel did not have jurisdiction over the issues raised by Petitioner. (LEA
3 Response at 6:22-7:22.)

4 Real Party in Interest GCL, LLC appeared at the Panel hearing through counsel
5 (Transcript at 6:22-7:1). Petitioner questioned this appearance and Real Party’s right to party
6 status. Counsel to the Hearing Panel noted the objection but deferred any ruling. (Transcript at
7 8:14-24.) Ultimately, there was no Panel ruling on party status because the Chair preferred to
8 keep things “informal.” (Transcript at 27:24-28:8.) However, Real Party had previously
9 submitted a Response to the Hearing Panel, which was accepted into the record at the request of
10 counsel for the LEA. (Transcript at 79:9-16.) Real Party was also allowed to provide both
11 testimony and argument; in doing so Real Party explained its reasons for planning to demolish
12 structures, and the limits of that work, and distinguished that planned work from landfill
13 construction.

14 The Hearing Panel did not reach the jurisdictional issue raised by the LEA, and instead
15 made a dispositive factual finding, on a 3-0 vote. The Panel found that the demolition work
16 planned by GCL, LLC “...is an effort to abate a public nuisance and not the initiation of a
17 construction project, and Petitioner does not have grounds for the Hearing Panel to compel the
18 LEA to require compliance.”

19 B. Alternative Grounds to Resolve this Appeal.

20 CalRecycle could resolve this appeal on any of four different grounds—factual,
21 jurisdictional, textual, or ripeness.

22 CalRecycle could resolve this case on factual grounds by testing against the relevant
23 evidence the Hearing Panel’s dispositive factual determination that the proposed work was “not
24 the initiation of a construction project.” That determination was supported by substantial
25 evidence. (Response of Real Party in Interest GCL, LLC, *passim*, and attached Declaration of
26 James D. Simmons; Transcript at 28:9-29:25 (testimony of Mr. Hutton).)

27 _____
28 ¹ All section references hereafter will be to the Public Resources Code unless otherwise stated.
We will also refer to the solid waste portions of the PRC collectively as the “Waste Act.”

1 Even if the Panel's decision is upheld based on this factual finding, CalRecycle should
2 also speak to its jurisdiction. CalRecycle has had multiple opportunities recently to reaffirm that
3 the administrative hearing jurisdiction of both Hearing Panels and of CalRecycle is limited to
4 the Waste Act matters listed in sections 44307 and 45032. But it is important that this be said
5 again in this case, so that the case law cited by Appellant can be discussed and set aside.

6 Optionally, CalRecycle could choose to address the permit interpretation issue that was
7 the main focus of briefing below. That issue has been thoroughly briefed. (Petitioner's
8 Statement of Issues at pp. 2 to 8; Supplemental Statement of Issues at 4:12-5:12; LEA Response,
9 Sections II and III, at 8:16-18:5; Response of Real Party in Interest GCL, LLC, at 6:10-7:4).
10 During the hearing, the Chair of the Panel also endorsed the LEA's approach to this issue.
11 (Transcript at 64:24-65:9.)

12 Finally, CalRecycle could decline to address this matter now because demolition activity
13 at the site has been postponed until at least September, to avoid work during the bird breeding
14 season. The LEA was informed of this change in the land owner's plans after the Hearing Panel
15 proceeding.

16 Based on past history, the LEA anticipates continuing challenges to this project by
17 Appellant. The LEA therefore urges CalRecycle to address the first three of these issues--
18 factual, jurisdictional and textual--as guidance for all parties regarding demolition activity, and
19 potentially to limit further petitions and appeals. The LEA does not want to see this matter
20 dismissed as premature, after the work that all parties have done on the case. Essentially the
21 same issues would need to be addressed later this year anyway.

22 II.

23 ARGUMENT

24 The LEA's positions on the main issues in this case were thoroughly briefed for the
25 Hearing Panel. Counsel for the LEA also provided a condensed summary of the LEA's
26 positions in his opening statement at the hearing (Transcript at 14:19-27:22). The statement
27 largely tracks the LEA's filed Response, also adding discussion of Appellant's illogical

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1 assertion that if only a landfill can be built at this site, then all activity at this site must be
2 landfill construction. (Transcript at 19:2-19.)

3 The LEA's arguments below will not be copied over or repeated at length here. Instead,
4 summaries are provided below, with citations to the record. The LEA incorporates its Response
5 before the Hearing Panel, and Real Party's written response and exhibits, into this Response by
6 reference.

7 This response also provides some additional discussion on two issues which the LEA did
8 not directly address below: the limited relevance of public nuisance considerations in this
9 context, and interpretation of the phrase "ground disturbance" as used in one mitigation
10 measure. On issues not discussed in this Response, the LEA submits on the record below.

11 A. The Hearing Panel Correctly Determined That the Proposed Demolition Was Not the
12 Initiation of a Construction Project.

13 The Hearing Panel's "Action" in its "Minute Order of Written Decision" was to make
14 this finding:

15 The proposed activity is an effort to abate a public nuisance and not the initiation
16 of a construction project, and Petitioner does not have grounds for the Hearing
17 Panel to compel the LEA to require compliance.

18 The dispositive portion of this finding was the determination that the proposed work was "not
19 the initiation of a construction project." There is substantial evidence in the record to support
20 this finding, and no contradictory evidence—only argument by Appellant's counsel.

21 The non-essential portion of this finding was the determination that the proposed activity
22 was "an effort to abate a public nuisance." The evidence in the record to support that finding
23 concerning the landowner's motive comes directly from the landowner. That evidence is clear
24 and un-contradicted.² However, Appellant correctly points out that the landowner's testimony

25 _____
26 ² Appellant speculates that the landowner's actual motive in asserting a nuisance is to "avoid the
27 need to comply with the SWFP." (Appeal at 14:3-8.) That allegation is unsupported, circular, and
28 illogical: the owner could avoid implementing mitigation measures prematurely simply by not doing this
demolition, so the motive for doing the demolition must be something else. We note that ownership of
this land changed hands less than a year ago. (Transcript at 28:16-17.) The new owner is making its
decisions regarding land management in a timely manner. (Transcript at 75:5-76:5.)

1 documented specific nuisance condition for only some of the structures on the property, not all.
2 Appellant therefore focuses on this finding, and on whether the conditions at the site are actually
3 a public nuisance. (Appeal at 13:20-14:10.) We discuss the limited relevance of nuisance
4 conditions at this property in the next section of this Response.

5 The Hearing Panel supported its determination that the proposed work was not the
6 initiation of a construction project by summarizing relevant evidence in its written decision.
7 The decision notes that there was evidence of nuisance, and also notes evidence that the
8 proposed work would only remove structures and dispose of debris off site, and would not
9 involve excavation, grading, or the storage of materials on site for future landfill use. Panel
10 members also noted and considered in their deliberations that all work would be above ground
11 and that none of the slabs or asphalt or any of the surface structures would be removed.
12 (Transcript at 83:14-16.)

13 The Response of Real Party includes an attached Declaration of James D. Simmons
14 describing the limited scope of planned work (paragraphs 9-12), the land owner's concerns
15 (paragraphs 5 and 6), and the decision by the owner "to exercise its rights as the owner of the
16 property to improve site security and arrange for the partial demolition of some or all of the
17 structures as deemed appropriate." (Paragraph 6.) In addition, Mr. Hutton testified to the desire
18 of the property owner (his client) to make the owner's property safer, stating: "and that's
19 something every property owner has the right to do." (Transcript at 28:11-15.) Mr. Hutton
20 provided additional detail on site conditions and the owner's motivations (Transcript at 28:16-
21 29:25), and concerning the limited scope of the planned work. (Transcript at 30:10-31:18.) This
22 is clear evidence that the landowner had motives for this work that were independent of landfill
23 construction. The existence of that intention, even if nuisance conditions were not shown for all
24 derelict structures on the site, was relevant to support the Panel's finding that the proposed work
25 was not a disguised attempt to start a construction project.

26 There is also clear evidence that the planned work would not transition into the use of
27 demolition materials for landfill construction. Appellant alleged a broader scope of work in its
28 initial Petition, and has had some difficulty letting go of that argument despite the corrective

1 evidence provided at the Panel hearing. (Appeal at 9:16-24.) The LEA disagrees with
2 Appellant’s assertion that the disposition of demolition debris is irrelevant. When all debris
3 from building demolition will be hauled away, there is no physical connection left between
4 structure demolition and landfill construction. (Transcript at 21:11-22:4.)

5 B. There Is No Nuisance Precondition for Structure Demolition in San Diego County.

6 Responding to the Hearing Panels finding that “the proposed activity is an effort to abate
7 a public nuisance...,” Appellant asserts that “There is No Public Nuisance Exception to Comply
8 With the SWFP.” (Appeal at 13:20-14:21.) As noted above, Appellant correctly points out that
9 the record does not contain evidence that every structure at this site is a public nuisance.

10 Appellant misses the relevant legal point, which is that a nuisance or public nuisance is
11 cannot be required by the County as a condition for issuing a demolition permit. In this County
12 structure demolition is an activity that any property owner can undertake as of right, pursuant to
13 a ministerial permit. The Hearing Panel was informed that demolition permits are issued by the
14 County on a ministerial basis. (Response at 4:18-23; Transcript at 72:13-19.) Structure
15 demolition is regulated, but by the County Department of Planning and Development Services,
16 not by the LEA

17 The LEA’s Response for the Panel, at 4:18-5:3, referenced Division 1 of Title 9 of the
18 County Code of Regulations, which implements the locally-adapted versions of State model
19 building codes. Additional detail is provided here. This Division applies to demolition and
20 requires permits for demolition work. (County Code §§ 91.1.101.2. “Scope” and 91.1.105.
21 “Permits”). Applications are made to the County “building official” not to the LEA. (County
22 Code § 91.1.105.3.) The permits are ministerial, as provided in County Code § 91.1.105.3.1.,
23 which reads as follows:

24 **SEC. 91.1.105.3.1. ACTION ON APPLICATION.**

25 The building official shall examine a permit application and any amendment to the
26 application within a reasonable time after filing. If the application or the
27 construction documents do not conform to the requirements of this chapter or
28 other applicable laws, the building official shall reject the application in writing
and state the reasons for the rejection. If the building official is satisfied that the
proposed work conforms to the requirements of this chapter and other applicable
laws the building official shall issue a permit as soon as practicable.

1 There is no requirement in this chapter of the County Code or in other applicable law that a
2 structure must be a public nuisance before a demolition permit can be issued.

3 C. Structure Demolition is not “Ground Disturbance.”

4 Mitigation Measure 4.9-9b, enforceable through SWFP condition 17.g (when the
5 condition is triggered), requires a survey “prior to ground disturbance” to determine if eagles
6 are nesting on the project site. If nesting eagles are found additional requirements apply. The
7 meaning of the phrase “ground disturbance” was addressed in a conclusory way by the LEA
8 below (LEA Response at 13:25-14:2.) That brief discussion drew a reply by Appellant that the
9 LEA was being “nonsensical.” (Reply at 4:24-5:5.) There was no further discussion at the
10 hearing.

11 The Parties do agree that what is at issue here, as Appellant has phrased it, is “the use of
12 large trucks and heavy equipment to demolish, manage and remove debris.” The use of
13 equipment is also *all* that is at issue, because the proposed demolition would not involve any
14 grading or any foundation or slab removal.

15 Equipment use would generate noise, and the LEA’s biologist has acknowledged that if
16 that noise were excessive near the river during the bird breeding season (March 15 to September
17 15) it could disturb protected vireos and flycatchers in their riparian habitat. (Declaration of
18 Cynthia Curtis (Exhibit 4 to the LEA’s Response) at paragraph 13.) But potential noise impacts
19 on bird breeding are addressed by mitigation measure 4.9-12a. The inclusion of a separate
20 mitigation measure for all construction noise indicates that an activity is not “ground
21 disturbance” merely because it causes noise.

22 Neither party has located an applicable definition or discussion of “ground disturbance”
23 in the project’s CEQA documents. The phrase is also not used in the County Code. However,
24 some County environmental screening forms provide examples of “ground disturbance” as “i.e.,
25 trenching, excavations, etc.”, and provide examples of “previous ground disturbance” as “e.g.,
26 parking lot, farming, commercial development, etc..” (One such example is attached as Exhibit
27 1.) This usage indicates that ground disturbance is used by the County to refer to things done
28 with the direct intent and effect of physically altering the ground itself.

1 An informal Google search was also done to see how the term “ground disturbance” has
2 been used in studies of how projects in other jurisdictions impact eagles. The term has been
3 used to describe mining, and the construction of specific lengths of power transmission lines. In
4 other studies, impacts from “ground disturbance” have been distinguished from the impacts of
5 “increased public access” to remote areas.

6 It remains the LEA position that more than the use of trucks and equipment, operating
7 entirely on the existing ground surface, is necessary to establish the kind of “ground
8 disturbance” that would trigger this mitigation measure. Instead, examples of “ground
9 disturbance” would include trenching, excavation, paving, farming, or grading to allow a
10 development project.

11 D. CalRecycle Has No Jurisdiction Over the LEA’s Implementation of CEQA, of
12 Proposition “C”, or of Mitigation Measures That Are Not Waste Act Requirements.

13 The LEA argued below, based on sections 44307 and 45032 that CalRecycle and the
14 Hearing Panel have no jurisdiction over the LEA’s implementation of CEQA, of Proposition
15 “C”, or of mitigation measures that are not Waste Act requirements. (Response at 6:22-7:22.)
16 The relevant language in section 44307, regarding Hearing Panel proceedings, is as follows:

17 The enforcement agency shall also hold a hearing upon a petition to the
18 enforcement agency from any person requesting the enforcement agency to review
19 an alleged failure of the agency to act as required by this part, Part 5 (commencing
20 with Section 45000), or Part 6 (commencing with Section 45030) or a regulation
adopted by the department pursuant to this part, Part 5 (commencing with Section
45000), or Part 6 (commencing with Section 45030).

21 That language does not authorize hearings (or require exhaustion of administrative remedies)
22 when an LEA failure to act is based on any law other than Parts 4, 5 and 6 of Division 30 of the
23 Public Resources Code.

24 The relevant language in section 45032, regarding appeals to CalRecycle, is as follows:

25 (b) The board may only overturn an enforcement action, and any administrative
26 civil penalty, by a local enforcement agency if it finds, based on substantial
27 evidence, that the action was inconsistent with this division. If the board overturns
the decision of the local enforcement agency, the hearing panel, or the hearing
officer, or finds that the enforcement agency has failed to act as required, the
board may do both of the following:

1 (1) Direct that the appropriate action be taken by the local enforcement agency.

2 (2) If the local enforcement agency fails to act by the date specified by the board,
3 take the appropriate action itself.

4 This language does not expressly limit the kinds of LEA “failures to act” that CalRecycle can
5 review, but two limitations are necessary implied. First, CalRecycle’s cannot entertain on
6 appeal matters that a Hearing Panel could not properly address in the first instance under section
7 44307. Second, CalRecycle cannot have jurisdiction over an alleged LEA failure to act, if
8 CalRecycle could not take the appropriate action itself.

9 Moreover, CalRecycle has recognized in the past, including in the context of this project,
10 that its jurisdiction is limited to Waste Act matters. In 2011 this Appellant filed a petition
11 challenging on 13 different grounds the LEA’s determination that the permit application for this
12 project was “complete and correct.” CalRecycle rejected that challenge, citing state law
13 limitations on CalRecycle and LEA authority. This case was discussed in the LEA’s Response
14 at 7:8-15; the full CalRecycle decision is Exhibit 1 to that Response. CalRecycle stated (at
15 15:10-23) that it’s CEQA review in a “complete and correct” context was limited to whether the
16 requirement for *reporting the status* of CEQA compliance had been met, and did not extend to
17 whether the requirements of CEQA were in fact met. Similarly, this decision stated (at 15:24-
18 16:9) that CalRecycle would not review the LEA’s implementation of Proposition C
19 requirements, because “To accept Petitioner’s argument would be to accept the idea that a
20 county proposition can add requirements to a state agency’s regulations.” CalRecycle has
21 reaffirmed this limitation in other recent decisions. *See*, Decision in the Matter Of Appeal of
22 Orange County Local Enforcement Agency Hearing Officer Decision, Issued February 4, 2015
23 at 6:14-7:21 (The Scope of Public Resources Code Section 44307).

24 Appellant attempts to circumvent these fundamental limitations by asserting that every
25 provision in a solid waste facility permit can be enforced through the PRC petition and appeal
26 process. Appellant relies upon *San Elijo Ranch, Inc. v. County of San Diego*, 65 Cal. App. 4th
27 608 (1998), which found that a local agency failed to exhaust administrative remedies when it
28 did not use the “extensive administrative structure” in the Waste Act to attempt to enforce a

1 CEQA mitigation requirement. However, the Waste Act’s administrative structure is not as
2 extensive today as it was in 1998. Section 44307 was amended in 2013 (Stats. 2013, Ch. 509,
3 Sec. 6) to add express limitations on the kinds of LEA decisions that can be challenged through
4 the petition process. As a result, the *San Elijo* decision is no longer good law on what
5 constitutes a Waste Act issue.

6 This analysis applies to all of the CEQA and Proposition C mitigation measures that are
7 enforceable through condition 17.g of the SWFP (once they have been triggered). None of these
8 measures implements the Waste Act, and all can be traced to a CEQA or Proposition C origin.
9 That is also the case for permit condition 17.m, which has a CEQA MMRP counterpart in
10 mitigation measure 4.1-3. (Response at 10:6-11:6).

11 Three challenged permit conditions cannot be traced back to CEQA: SWFP conditions
12 17.i, 17.n, and 17.o.. But these permit conditions are also not within the Hearing Panel’s or
13 CalRecycle’s Waste Act jurisdiction, because they do not implement any provision of the Waste
14 Act or related regulations. In addition, because these permit conditions were not developed
15 through the CEQA process, they should be interpreted solely by reference to the SWFP itself,
16 and not the FEIR. (Response at 9:4-10:25.)

17 E. The Solid Waste Facility Permit and the MMRP Do Not Require Mitigation for
18 Structure Demolition

19 CalRecycle need not wade into the interpretation or application of FEIR language if
20 CalRecycle chooses to resolve this appeal on factual or jurisdiction grounds. But if Appellant’s
21 textual arguments concerning structure demolition are considered by CalRecycle, they should be
22 rejected for two main reasons.

23 First, Appellant misinterprets and distorts the dispositive text from the CEQA document,
24 which is the Project Description at pages 3-27 to 3-29 of the Revised Final EIR.³ That text
25 describes a set of activities which collectively are said to constitute the “initial construction” of

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27 ³ Petitioner / Appellant provided page 3-27 of the FEIR to the Hearing Panel with its Petition.
28 The LEA discussed this entire passage in its Response at 17:11-18:5, but failed to provide the additional
pages from the FEIR to the Hearing Panel. Pages 3-27 to 3-29 of the Revised Final EIR are therefore
attached as Exhibit 2.

1 the landfill. Those activities together are a complete construction program; they include
2 construction of the initial landfill cell and all ancillary facilities, and the realignment of State
3 ///
4 Route 76. Combined, all of these activities were expected to take 9 to 12 months. It is a gross
5 distortion to read the “structure demolition” item in this collection, standing alone, to be “initial
6 construction” of the landfill.

7 Second and as important, Appellant’s proposed interpretation would lead to absurd
8 triggers for mitigation, and absurd and confiscatory demands for premature mitigation.

9 The absurdity of a single item trigger from this collection is made clear by the second
10 item in the FEIR’s project description list of included “initial construction” activities: manure
11 removal from the old dairies. Manure removal by itself is clearly not the “initial construction”
12 of a landfill. This was pointed out at the hearing below by the Panel chair, twice. (Transcript at
13 65:24-65:9 and 78:2-11). The other Panel members agreed that the relevant test of the start of
14 construction was the significance of the activity at issue, not ‘just being on the list.’ (Transcript
15 at 78:2-25.)

16 Despite this clear and unanimous conclusion of the Panel members, Appellant does not
17 explain on appeal why structure demolition by itself is the start of “construction” because it is in
18 the project description list, when manure removal by itself clearly is not the start of construction.

19 Regarding confiscatory mitigation, the measures that Appellant would trigger are clearly
20 intended to address the impacts of actual landfill construction, not mere structure demolition.
21 (Response, Section II, at 8:15-16:8.) The mitigation measures at issue are not needed now, and
22 if required prior to any actual construction activity would be massively disproportionate.
23 (Response at 5:12-19.)

24 CONCLUSION

25 The LEA’s assessment of the structure demolition proposed by this new landowner was
26 upheld by the Hearing Panel: the work is not the initiation of a construction project. There is no
27 contrary evidence. Appellant’s equation of any activity at this site to landfill construction
28 because ‘only a landfill can be constructed’ is not a logical inference, and ignores the new

1 property owner's legal right and practical need to manage this land while continuing to seek the
2 additional permit need to actually begin landfill construction.

3 Appellant's position depends on its interpretation of the CEQA documents, but
4 Appellant's entire interpretive process is misdirected. There is nothing in the documents that are
5 enforceable through the SWFP--the JTD and the MMRP--that characterizes structure demolition
6 as landfill construction, or that ties any mitigation to structure demolition. There is nothing in
7 the FEIR that ascribes any significant environmental impact to that activity. It is astonishing,
8 when the actual impacts of structure demolition and the actual mitigation measures at issue are
9 considered, that Appellant is asserting that the LEA must require all of that "landfill" mitigation
10 before derelict buildings can be demolished and removed. No regulatory agency could actually
11 require such disproportionate mitigation with so little nexus.

12 Appellant's proposed interpretation and application of language in the FEIR is also
13 strained; it does as much violence to that language as Appellant's proposed sequencing of
14 mitigation to impacts would do to common sense and the Fifth Amendment. "Initial
15 construction" of this landfill as described in the FEIR includes actual construction of the first
16 landfill cell and of everything necessary to support that. No single item on this FEIR list
17 equates to the list as a whole.

18 Appellant also persists in challenges to this project based on CEQA matters and other
19 non-Waste Act matters, despite CalRecycle's clear statements to Appellant in 2011 concerning
20 the limits of CalRecycle's jurisdiction. It is particularly egregious that Appellant makes those
21 arguments again without acknowledging the current text of section 44307.

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1 CalRecycle should resolve this appeal with a decision that upholds the Hearing Panel's
2 factual finding, upholds the LEA's reasonable interpretation of the SWFP, and that reiterates the
3 limited scope of the petition and appeal process that is explicit in section 44307.

4
5 DATED:

DEBORAH A. McCARTHY, County Counsel

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7 By



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10 Local Enforcement Agency
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LEA 1
(CalRecycle Appeal)
County Environmental
Screening Memo

ENVIRONMENTAL and HISTORIC PRESERVATION SCREENING MEMO (EHPSM)

This memo should be attached to all project information sent to the Grant Programs Directorate (GPD) for an environmental and historic preservation (EHP) regulatory compliance review. Please complete sections A – D of this memo, as applicable. When questions are not applicable to the project, please leave the field blank. This memo is intended to be completed electronically. Please contact GPD-EHP for a version of this memo that is suitable for printing and completing by hand.

A. PROJECT INFORMATION

Grant Program Name: _____ Grant Award Number: _____

Project Type (Check all that apply):

- I. Physical security enhancements (i.e., installation of fencing, cameras, TWIC readers, bollards, motion detection systems, x-ray machines, lighting, etc.)
- II. New installation/construction/renovation (i.e., emergency operations centers, docks, piers, security guard buildings, etc.)
- III. Renovations/upgrades/modifications to structures 50 years old or older
- IV. Communication towers, related equipment, and equipment shelters
- V. Other ground disturbing activities (i.e., trenching, excavation, etc.)
- VI. Training and exercises
- VII. Purchase of equipment (specify) _____
- VIII. Other (specify) _____

Grantee Name: San Diego County

State: CA County: San Diego Agency: Office of Emergency Services

Subgrantee: _____

Project Title: _____

Fiscal Year: _____

B. PROJECT DESCRIPTION/LOCATION *(The following information will be required in order to complete a review for each project type. If multiple "project types" describe the same project, [i.e., physical security enhancements AND renovations of structures 50 years old or older AND other ground disturbing activities], it is not necessary to repeat information; please make a note to refer back to the previous entry.)*

I. Project Type: Physical security enhancements (i.e., installation of fencing, cameras, TWIC readers, bollards, motion detection systems, x-ray machines, lighting, etc.)

Project Location (physical project address or latitude/longitude of project location): _____

Color site photos and other visual documentation (i.e., maps, technical drawings) attached? Yes No

Will ground disturbance be required? Yes No

If yes, please give total extent (depth, length, and width) _____

Has the ground been previously disturbed? Yes No

Please describe previous ground disturbing activities (e.g., parking lot, farming, commercial development, etc.): _____

Will any equipment or structures need to be installed? Yes No

If yes, please explain how and where this is proposed to be done (*please include site-specific photographs, and attach additional pages, if needed*): _____

Please state the date of construction of the building(s) or structure(s) (e.g., bridge) involved in the proposed project: _____

II. Project Type: **New installation/construction/renovation (i.e., emergency operations centers, docks/piers, security guard buildings, etc.)**

Project Location (*physical project address or latitude/longitude of project location*): _____

Color site photos and other visual documentation (i.e., maps, technical drawings) attached? Yes No

Will ground disturbance be required? Yes No

If yes, please give total extent (*depth and length*): _____

Has the ground been previously disturbed? Yes No

Please describe previous ground disturbing activities (e.g., parking lot, farming, commercial development, etc.): _____

Will any equipment or structures need to be installed? Yes No

If yes, please explain how and where this is proposed to be done (*please include site-specific photographs, and attach additional pages, if needed*): _____

Please state the date of construction of the building(s) or structure(s) (e.g., bridge) involved in the proposed project: _____

III. Project Type: **Renovations/upgrades/modifications to structures 50 years old or older**

Project Location (*physical project address or latitude/longitude of project location*): _____

Color site photos and other visual documentation (i.e., maps, technical drawings) attached? Yes No

Will ground disturbance be required? Yes No

If yes, please give total extent (*depth and length*): _____

Has the ground been previously disturbed? Yes No

Please describe previous ground disturbing activities (e.g., parking lot, farming, commercial development, etc.): _____

Will any equipment or structures need to be installed? Yes No

If yes, please explain how and where this is proposed to be done (*please include site-specific photographs, and attach additional pages, if needed*): _____

Please state the date of construction of the building(s) or structure(s) (e.g., bridge) involved in the proposed project: _____

IV. Project Type: **Communication towers, related equipment, and equipment shelters**

Project Location (*physical project address or latitude/longitude of project location*): _____

Color site photos and other visual documentation (i.e., maps, technical drawings) attached? Yes No

Please state the total height (in ft.) of the tower or structure, including any antennae to be mounted: _____

If the proposed tower height is greater than 199 feet above ground level, please state why this is needed to meet the requirements of the project: _____

Will the tower be free-standing or require guy wires? Free standing Guy wires

If guy wires are required, please state how many: _____

Please state why a guyed tower is needed to meet the requirements of this project: _____

Has an FCC license been obtained for this tower? Yes No License #: _____

If yes, please attach all relevant environmental documentation submitted as part of the licensing process, including use of the Tower Construction Notification System (TCNS), if applicable.

Will ground disturbance be required? Yes No

If yes, please give total extent (*depth and length*): _____

Has the ground been previously disturbed? Yes No

Please describe previous ground disturbing activities (e.g., parking lot, farming, commercial development, etc.): _____

Will any equipment or structures need to be installed? Yes No

If yes, please explain how and where this is proposed to be done (*please include site-specific photographs, and attach additional pages, if needed*): _____

Please state the date of construction of the building(s) or structure(s) (e.g., bridge) involved in the proposed project: _____

V. Project Type: **Other ground disturbing activities (i.e., trenching, excavation, etc.)**

Project Location (*physical project address or latitude/longitude of project location*): _____

Color site photos and other visual documentation (i.e., maps, technical drawings) attached? Yes No

What type of ground disturbance is needed and why (*i.e., utility trenching, etc.*)? _____

Please give the total extent of ground disturbance required (*depth and length*): _____

Has the ground been previously disturbed? Yes No

Please describe previous ground disturbing activities (e.g., parking lot, farming, commercial development, etc.): _____

Will any equipment or structures need to be installed? Yes No

If yes, please explain how and where this is proposed to be done (*please include site-specific photographs, and attach additional pages, if needed*): _____

Please state the date of construction of the building(s) or structure(s) (e.g., bridge) involved in the proposed project: _____

VI. Project Type: **Training and exercises**

Project Location (*physical project address or latitude/longitude of project location*): _____

Is the training field-based or classroom-based? Field-based Classroom-based

Will field-based training take place at an approved facility (i.e. existing facilities, with established and approved procedures, and that conform with existing land use designations)? Yes No

If training is classroom-based or taking place at an approved facility, no further information is required. If field-based and not at a previously approved facility, please provide the following:

Color site photos and other visual documentation (i.e., maps, technical drawings) attached? Yes No

Will ground disturbance be required to prepare the training site? Yes No

If yes, please give total extent (depth and length): _____

Has the ground been previously disturbed? Yes No

Please describe previous ground disturbing activities (e.g., parking lot, farming, commercial development, etc.): _____

Will any equipment or structures need to be installed to facilitate training? Yes No

If yes, please explain how and where this is proposed to be done (please include site-specific photographs, and attach additional pages, if needed): _____

Please describe the scope of the proposed training (purpose, frequency, facilities/location needed, materials and equipment needed, number of participants, and type of activities required) (Attach additional pages, if needed): _____

Does the training exercise differ in any way (frequency, amount of facilities/land used, materials or equipment used, number of participants, type of activities, etc.) from previously approved, permitted training exercises and training practices? Yes No

If yes, please explain any differences, and the reason for them, in detail (Attach additional pages, if needed): _____

VII. Project Type: Purchase of equipment (specify) _____

Will any equipment need to be installed? Yes No

If yes, please explain how and where this is proposed to be done (please include site-specific photographs, and attach additional pages, if needed): _____

Please state the date of construction of the building(s) or structure(s) (e.g., bridge) involved in the proposed project: _____

VIII. Project Type: Other (specify) _____

Please provide a detailed project description, including where the project is proposed to take place, what steps it will consist of, and how its goals are proposed to be accomplished (Attach additional pages, if needed): _____

C. CONSIDERATION OF RESOURCE IMPACTS

The EHP review process will be greatly facilitated by comprehensive and detailed answers in this section. When completing this section, please state a specific reason [i.e., "there will be no impacts to geology and soils because this project will not involve any ground disturbance"] and cite a source [i.e., local master plan, previous environmental assessment, correspondence with US Fish and Wildlife Service, correspondence with State Historic Preservation Office, FEMA Floodplain Insurance Rate Map (FIRM), etc.] to support a response of "no impact" or "potential to impact."

Identify potential impacts to the following resources	No Impact	Potential to Impact	Reason/ Data Source/Agency
Noise			
Air quality			

Identify potential impacts to the following resources	No Impact	Potential to Impact	Reason/ Data Source/Agency
Water resources, including surface water, groundwater, wetlands, coastal areas, and floodplains			
Geology and soil resources, including prime and unique farmlands and hydric soils			
Biological resources, including general vegetation, wildlife, wildlife habitat, migratory birds, and wetland habitat			
Threatened and endangered species and critical habitat			
Cultural resources, including architectural resources, archaeological resources, and Traditional Cultural Properties			
Buildings or structures 50 years old or older			
Socioeconomic resources, including economic development, demographics, and demand for housing and public services			
Environmental justice			
Aesthetics and visual resources			
Human health and safety			
Infrastructure, utilities, transportation and waste mgt.			
Land use planning and zoning			
Hazardous waste/ contamination			
Community facilities and services			

D. OTHER INFORMATION (Please answer the following questions/provide requested information.)

Are personnel preparing this form familiar with the site? Yes No

Did personnel visit site? Yes No

Is the project part of an approved plan such as a Master Plan or an Implementation Plan or any larger action with an accompanying National Environmental Policy Act (NEPA) document? Yes No (If yes, give the plan name, and please include a copy of the NEPA document)

Is the project still consistent with the approved plan? Yes No

(If no, additional EHP compliance requirements may apply.)

Is the environmental document accurate and up-to-date? Yes No

(If no, additional EHP compliance requirements may apply.)

What was the decision of the NEPA document? *(Check one, and please attach):*

Finding of No Significant Impact (FONSI) OR

Record of Decision (ROD)

Date approved _____

LEA 2

(CalRecycle Appeal)

FEIR Pages 3-27 to 3-29

Re: “Initial
Construction”

environmental analysis assumes the pipelines remain in their current location, which represents the worst case environmental analysis. However, because of the ongoing negotiations, a project option, which is the relocation of a portion of the First San Diego Aqueduct to the west of the current location (Exhibit 3-11), is analyzed in each section of Chapter 4.0 of this EIR. Since Section 3G of Proposition C requires the protection of the San Diego Aqueduct pipelines, a condition of the SWFP and a mitigation measure will require that prior to any construction work related to the landfill, the applicant shall provide DEH with a copy of the executed agreement with SDCWA providing for the relocation and protection of the San Diego Aqueduct pipelines.

As a separate matter, Metropolitan Water District (MWD) and SDCWA have a joint future water project, the Pipeline No. 6, which will run north-south through the project site. The 1993 Metropolitan Water District (MWD) Final Environmental Impact Report for Pipeline No. 6 analyzed a one-mile wide corridor through the site. The preferred alignment would locate Pipeline No. 6 to the west of the First San Diego Aqueduct. Analysis of the construction and location of Pipeline No. 6 has been included in Chapter 5.0, Cumulative Impacts of this EIR.

In 1996, the Gregory Canyon Landfill Agreement was executed by the proponents of the Gregory Canyon Landfill, San Luis Rey Municipal Water District (SLRMWD), and several private landowners located downstream of the landfill project (Appendix C). The purpose of the agreement is to ensure that the construction, operation, and closure of the Gregory Canyon Landfill project are carried out in a manner that will protect the Pala Basin of the San Luis Rey River and the water quality downgradient basin areas. Provisions outlined in the landfill agreement include stipulations, which address the protection of water supply, water rights, groundwater monitoring, liability, and closure. A reverse osmosis (RO) system for the treatment of collected waters is also included in the ancillary facilities area in accordance with this agreement. (Please see Section 3.5.2.3 for a description of the RO system.)

3.3 CONSTRUCTION

This section describes the initial construction phase as well as other construction activities that could occur during initial construction as well as after initial construction is complete and the landfill is operational.

3.3.1 INITIAL CONSTRUCTION

Several activities, which are considered the initial construction phase, are necessary to prepare the site and the landfill for operation. The initial construction of the project includes:

- Removal of the existing dairy buildings and residences on the site
- Removal of the manure to minimize or eliminate odors and/or potential impacts to water quality
- Construction of the access road and bridge
- Improvements to SR 76 at the access road
- Excavation of the river channel
- Construction of the ancillary facilities, including the scalehouses, maintenance building, water tank, and desilting basins
- Installation of the leachate and subdrain water storage tanks and the reverse osmosis system
- Excavation of approximately 25 acres of Phase I of the landfill footprint, including the excavation of rock and crushing with a portable crusher. (Please see Section 3.3.2 for a

description of rock crushing.) Any excess rock could be exported off-site, if a Major Use Permit (MUP) were obtained. (Please see Section 3.8 for a discussion of permits.) Initial Construction may require on-site blasting to fracture the underlying rock structure and ease the removal of and access to final footprint elevations. However, given the existing topography and geologic conditions, minimal blasting is anticipated during this phase of project construction.

- Installation of the subdrain system, leachate collection and removal system (LCRS) and composite liner within the excavated area
- Preparation of the Borrow/Stockpile Area A
- Clearance and grading of turnouts along the internal haul road between Borrow/Stockpile Area A and the landfill footprint
- Installation of monitoring wells¹⁰

The initial construction period will be approximately nine to twelve months in duration.

Construction equipment and deliveries will be brought into the site over the existing river crossing, which is currently used for the dairy operation, at the western end of the site. The construction equipment will cross the river using the temporary crossing and will remain on the south side of the river. The equipment will pass the existing Verboom residence and connect with the internal haul road near the Borrow/Stockpile Area A. Turnouts along the internal haul route will be created as shown on Exhibit 3-3 to allow equipment traveling in an opposing direction to pass.

The first activities for the landfill itself will be the excavation of the footprint and the grading for the ancillary facilities area. Rock material will be processed in the southwestern portion of the defined landfill footprint and will be used in the construction on site, stockpiled for future use, and any excess could be transported off-site, if a MUP were obtained (please see Section 3.8). However, the borrow/stockpile areas are sized to accommodate the storage of all excavated material on site.¹¹ As the excavation of the footprint is complete the materials for the LCRS, subdrain system, and clay liner will be brought onto the site.

Materials and supplies necessary for the construction of the initial refuse area will be brought to the footprint area either using the temporary river crossing or the permanent bridge once the bridge is complete. The temporary crossing will be removed once the permanent bridge is available for use.

The bridge construction will occur simultaneously with the footprint and facilities area, beginning with the removal of habitat. The access road and improvements to SR 76 at the access road will also be constructed during the initial construction phase. The construction period for

¹⁰ Of the 17 wells in the monitoring system, only well GLA-18 cannot be constructed prior to landfill operation because of the steep and currently inaccessible location. This well will be constructed following grading of the electrical utility pad as part of relocation of the transmission lines. See Section 3.5.2.3 for a detailed discussion regarding monitoring wells.

¹¹ The environmental analyses have been completed assuming a worst-case scenario with regard to rock excavation, crushing and exportation. For example, with regard to traffic, a worst-case scenario would be if the rock were exported since exportation would increase the number of truck trips. With regard to aesthetics, the worst-case scenario would be the storage of the material on site, since this would result in the full use of the borrow/stockpile areas.

the permanent bridge crossing the San Luis Rey River will be approximately six months during the initial construction phase, depending on when construction begins and the weather conditions during construction. A construction zone will be established beneath and adjacent to the bridge deck, which includes the bridge footprint and 50 feet to one side of the bridge. The vegetation within the construction zone will be removed. The bridge pilings will be cased-in-drilled holes.¹² The bridge deck will be laid with cranes located in the construction zone.

Construction of the access road and bridge includes minor excavation in the southern portion of the river up and down stream of the bridge structure but the channel will remain in its natural state. The excavation will maintain the river bottom's grade at or below the existing 100-year flood elevation. The excavation will create a more consistent bottom elevation of the river to improve the river flow. The channel excavation and bridge pile construction will result in the removal of approximately 16,000 cubic yards of material. The excavated material will be stockpiled on site within the landfill footprint.

The construction crew will be approximately 30 to 40 people for the bridge and the landfill footprint and ancillary facilities. Best management practices for erosion control include erosion control blankets, straw wattles and re-vegetation with native plant species. Sediment control will include silt fences, coir logs, straw/hay bales and landfill grading such as earthen berms. All of these measures will be used as appropriate during construction. In addition, secondary sediment control will be the desilting basins. Vehicle maintenance and fueling will not occur near any natural or manmade drainage courses. Equipment will be inspected daily for leaks and necessary repairs will be made.

3.3.2 OTHER CONSTRUCTION ACTIVITIES

As described in Section 3.3.1, Initial Construction, only a small portion (about 13 percent) of the entire refuse footprint will be excavated and prepared to accept waste during the initial construction phase. The amount of area developed to accept waste is limited so as to avoid disturbance to all of the land at one time. After completion of the initial construction the facility will open and begin to accept waste. The first cell of Phase I will accommodate about one million tons of waste. Excavation and preparation of the next area will begin before the first cell is completely filled with waste. The size of the next cell will be dependent on the current and projected volume of the waste received. Therefore, during the operational life of the project there will be times that construction occurs to excavate and prepare the next cell simultaneously with the landfill operation.

As in the initial construction, during periodic construction, material will be excavated from the footprint of the landfill utilizing mobile equipment such as scrapers and loaders, with deeper deposits generally requiring some drilling and blasting to loosen the material. On-site blasting could occur two days per week for a six to eight month period under a potential worst-case scenario. This cycle would be repeated every one to five years. Excavated material will be delivered to the processing plant, which is located within the footprint of the landfill, by truck and dumped into a hoppers feeder. The feeder separates large boulders from finer rocks that do not require primary crushing, thus reducing the load to the primary crusher. The crusher product

¹² Holes are drilled (no pile driving), a form installed inside and above the hole, and concrete poured into the hole.