

## **ATTACHMENT D STATEMENT OF OVERRIDING CONSIDERATIONS**

The Findings required under the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 and following) and the CEQA Guidelines (California Code of Regulations, title 14, section 15000 and following), and in particular CEQA Guidelines §15091, made by the San Diego County Department of Environmental Health (“LEA”), find that approval of the Gregory Canyon Landfill project could result in significant environmental impacts that cannot be substantially lessened or avoided with the implementation of mitigation measures. Despite these significant and unavoidable impacts, the LEA chooses to approve the project on the basis that specific economic, legal, social, technological or other benefits of the landfill project outweigh and override these significant and unavoidable impacts.

Each of the reasons for approval cited below is a separate and independent basis that justifies approval of the landfill project. Thus, even if a court were to set aside any individual reason or reasons, the LEA hereby finds that it would stand by its determination that each reason, or any combination of reasons, is a sufficient basis for approving the project irrespective of the significant and unavoidable impacts that may occur. The substantial evidence supporting the benefits can be found in the Final Environmental Impact Report (“FEIR”) for the landfill project, December 2002; Revised Final Environmental Impact Report (“RFEIR”) for the landfill project, March 2007; the 2008 Addendum; the 2009 Addendum; the 2010 Addendum; Gregory Canyon Landfill Benefits Analysis, October 2003 (“Benefits Analysis”); the Integrated Waste Management Plan, Countywide Siting Element adopted in 2005 (“2005 Siting Element”); the March 23, 2011 Five-Year CIWMP/RAIWMP Review Report; the LEA staff memorandum “Gregory Canyon Landfill Solid Waste Facility Permit” (“Staff Report”), May 11, 2011; and any other documents and information in the Administrative Record of the CEQA litigation related to the project.

### **1. The Gregory Canyon Landfill provides additional disposal capacity in the County.**

14 Cal. Code Regs §18755(a), implementing Public Resources Code §41701, states as follows regarding the Siting Element of County Integrated Waste Management Plans: “The Siting Element shall demonstrate that there is a countywide or region wide minimum of 15 years of combined permitted disposal capacity through existing or planned solid waste disposal and transformation facilities or through additional strategies.” The Gregory Canyon Landfill will add approximately 30 million tons of landfill capacity to the solid waste disposal system in the County. Even if not required to meet the minimum statutory requirement, having additional disposal capacity beyond the statutory minimum benefits the County, as it will provide for a more cost-effective and competitive disposal market, and provide necessary infrastructure for continued economic and population growth.

LEA's staff report discussing landfill capacity issues noted that "a new landfill that increases disposal capacity is a benefit to the County."

**2. The Gregory Canyon Landfill would implement Policy 2.2 and 2.5 and Tasks 2.5.1 and 2.5.2 of the Countywide Siting Element. The Gregory Canyon Landfill would increase competition among disposal sites and reduce waste tipping fees.**

Policy 2.2 of the 2005 Siting Element states, "Extend and/or expand in-county capacity as feasible." The Gregory Canyon Landfill will add approximately 30 million tons of landfill capacity to the solid waste disposal system in the County and, as such, would implement Policy 2.2 of the Countywide Siting Element.

14 Cal. Code Regs §18755.3(c) states in part regarding the Siting Element, "Area(s) shall be selected where solid waste disposal facilities are envisioned to be expanded or sited and constructed for the purpose of meeting the required minimum of 15 years of combined permitted disposal capacity." The Gregory Canyon Landfill is consistent with and implements this Siting Element requirement. See 2005 Siting Element, page SE 39.

Policy 2.5 of the 2005 Siting Element states, "Promote diverse solid waste management options sufficient to manage the local solid waste stream in an environmentally responsible manner." Task 2.5.1 of the 2005 Siting Element states, "Promote a regional integrated solid waste management system." The Gregory Canyon Landfill also promotes a regional integrated solid waste management system, by providing for landfill capacity locally available to the North County, where no landfills currently operate, while being available to other portions of the region.

Task 2.5.2 of the 2005 Siting Element states, "Promote competition and diversity among a choice of franchise and independent solid waste service providers." The Gregory Canyon landfill offers diversity and promotes competition for solid waste disposal services. At present, all privately-owned landfills operating in the County are owned by one company. The Gregory Canyon Landfill should increase competition in the land disposal and recycling business in San Diego County, which should result in lower tipping fees at landfills than would otherwise be the case. If tipping fees are lower because of increased competition than would otherwise be the case, cost savings would benefit San Diego government entities, businesses and residents.

**3. The Gregory Canyon Landfill will add landfill capacity in the North County.**

In 1999, approximately 24% of the solid waste generated in the County was generated in North County. See Benefits Analysis, p. 11. Assuming this percentage remains constant, the North County will generate approximately 1,000,000 tons of solid waste annually by 2020, based on waste generation predictions in the 2005 Siting Element, as updated in the March 23, 2011 Five-Year CIWMP/RAIWMP Review Report. (See also Procopio (2011),

Comments on the San Diego County's Draft Five-Year CIWMP/RAIWMP Review Report.) Based on waste generation records compiled by the California Department of Resources Recovery and Recycling (CalRecycle), waste generation in North County cities and the unincorporated portion of North County increased from 578,034 tons in 1995 to 1,059,946 tons in 2005, then decreased to 891,246 tons in 2008, and to 819,905 tons in 2009. However, the major landfills in the County, Miramar Landfill, Sycamore Landfill and Otay Landfill, are all located in central and south County. See Siting Element, page SE 14, Figure 4.1. The Gregory Canyon Landfill will be the only landfill located in North County, a region that generates a substantial portion of the solid waste in the County. See Benefits Analysis, page 6, Exhibit 2-1 and pages 10, 15, 28, 32, 54 and 55; and 2005 Siting Element, pages SE 40 and 41. Even though waste generation has declined in recent years due to lower economic activity, waste generation in the North County is still likely to be similar to or in excess of the annual maximum permitted tonnage at Gregory Canyon Landfill of 1,000,000 tons per year during the initial years of operation of the landfill.

**4. The location and design of the Gregory Canyon Landfill offers opportunities to aid in limiting the emission of greenhouse gases and producing alternative energy.**

The Gregory Canyon Landfill was located primarily to provide a replacement for the closed San Marcos Landfill, and would be the only landfill located in North County. It can provide environmentally sound disposal capacity for North County generators, currently utilizing landfills in other portions of the County or out of County landfills. The direction of waste generated in the North County to Gregory Canyon would result in fewer vehicle miles traveled to dispose of waste, less consumption of fossil fuels, and lower emission of greenhouse gases and air pollutants. As a new landfill, Gregory Canyon will be better able than existing, older landfills to incorporate new components and designs into the landfill, to maximize collection of landfill gas and its beneficial reuse. This will allow the landfill to better provide alternative sources of energy, and to respond to future regulatory requirements to limit greenhouse gas emissions.

**5. The Gregory Canyon Landfill project incorporates an enhanced liner system that may set a new and higher standard for landfill liners.**

The liner design for this project has been enhanced repeatedly during the CEQA process. The line far exceeds what applicable state regulations would require, but is still required CEQA mitigation. Because the liner is a required part of this project, its local use is not a benefit of the project. However, because these liner enhancements would be the first of their kind, the benefits of proving the value of these enhancements so that they can also be implemented elsewhere is a project benefit.

The FEIR concluded that the project would cause no significant and unavoidable impacts to groundwater. This conclusion was based on the landfill using a single composite liner. The liner described as Alternative B in the FEIR and selected for the project was a double liner (FEIR, section 6.7.2.1 and Exh. 6-8.). The project was further enhanced in 2007 to modify the double liner by adding an additional

drainage layer and an additional high-density polyethylene (HDPE) geomembrane to the Alternative B double liner. (RFEIR, p. 3-1; Exhibit 3.8b) The project has proposed this enhanced liner design in response to comments from the San Diego Regional Water Quality Control Board (RWQCB), which under State law has jurisdiction over liner systems at solid waste landfills. The RWQCB has included this liner design in tentative Waste Discharge Requirements for the project. If the RWQCB approves this enhanced liner system, it will be monitored and tested under actual landfill conditions, thus providing important empirical information on liner design and performance. If this enhanced liner system proves to be more effective than other liners, it would be a significant advancement in landfill liner system design for protecting groundwater and may set a new and higher standard for other landfill projects in the state.

**6. Gregory Canyon Landfill will contribute \$1 million to Caltrans for safety improvements on SR-76 in the vicinity of the landfill.**

Prior to the start of construction, Gregory Canyon, Ltd. will make an irrevocable offer to contribute up to \$1 million to Caltrans that Caltrans, in its discretion, may use to make traffic safety improvements on SR-76 in the vicinity of the landfill project. The RFEIR presented information that fatality rates on SR-76 were less than the statewide average per million vehicle miles traveled, that the combined fatality plus injury rate was slightly higher than the statewide average, and that the accident rate remained higher than the statewide average. The FEIR and RFEIR concluded that traffic from the landfill project would not have a significant impact on the traffic accident rate on SR-76, and therefore did not require mitigation measures for traffic safety impacts.

The FEIR nevertheless identified potential traffic safety improvements in the vicinity of the landfill, based in part on consultations with Caltrans. Gregory Canyon, Ltd.'s commitment to make this irrevocable offer is not required by state law and is not a required CEQA mitigation measure, but the requirement to make that offer will be enforceable through the proposed permit. Gregory Canyon Ltd.'s contribution to Caltrans for traffic safety improvements should result in earlier implementation of one or more traffic safety improvements than would otherwise occur. The earlier completion of one or more such projects would provide a public benefit by contributing to a safer highway and a reduced accident rate in the general vicinity of the project.

**7. The Gregory Canyon Landfill will provide for open space preservation beyond the acreage required to mitigate project impacts.**

Proposition C, which amended the County's general plan and zoning ordinance to authorize a landfill at this site, included this statement: "At least 1313 acres will be dedicated as permanent open space to provide an important habitat and sensitive species preserve." The FEIR for the project counted this preserved open space as mitigation for the impacts of landfill construction and operation on biological resources. During subsequent CEQA litigation over the project, the court ruled that the preservation of on-site open space as mandated by Proposition C could not be used to provide mitigation for project impacts to biological resources, because this open space preservation was already required by Proposition C.

The project and its associated mitigation were therefore redesigned. Mitigation measures that reduced impacts to less than significant were achieved through on-site habitat creation and enhancement, or off-site habitat preservation. Because preserved open space is no longer being “used” as mitigation for impacts to biological resources, the project now includes an excess of 1,128.8 acres of preserved open space beyond what is required for mitigation. (See letter Chase to USACE, 6/8/07, Attachment 2) This preserved open space will assist the County in achieving long-term protection and preservation of habitat for threatened and endangered species, beyond any requirements triggered by this project. This is especially beneficial because this area has been designated as a pre-approved mitigation area in the draft North County Multi-Species Conservation Plan.

**10. The Gregory Canyon Landfill will provide for additional on-site habitat creation and enhancement beyond the acreage required to mitigate project impacts.**

After this project and its associated mitigation measures were redesigned in response to a court ruling concerning Proposition C, a plan to use a mix of mitigation measures was put in place. The RFEIR memorialized that plan, and provided for 155.5 acres of habitat creation and 57.1 acres of habitat enhancement (for a total of 212.6 acres), which, along with off-site preservation, was determined to reduce potential impacts to biological resources to less than significant. Subsequently, the Revised Habitat Restoration and Resource Management Plan (2008) proposed to increase the habitat creation area to 172.5 acres and the habitat enhancement area to 75.6 acres, to a total of 248.1 acres. (See JTD, Appendix I-3, Table 2) This increase of 35.5 acres of mitigation area is not required by CEQA. These additional biological resource benefits will assist the County in achieving long-term protection and preservation of habitat for threatened and endangered species, especially since this area has been designated as a pre-approved mitigation area in the draft North County Multi-Species Conservation Plan.

**11. The Gregory Canyon Landfill Habitat Restoration is consistent with the goals of the draft North County Multi-Species Conservation Plan, and consistent with continued development of the San Luis Rey River Park.**

The landfill project will create or enhance at least 248.1 acres of land on the Gregory Canyon property to create habitat for endangered or threatened species, much of which had been disturbed as the result of historic dairy operations. The landfill project will also preserve a minimum in 1,313 acres of land on the Gregory Canyon property as open space, which includes the creation/preservation areas. The area in and around the Gregory Canyon property has been designated as a pre-approved mitigation area in the draft North County Multi-Species Conservation Plan. Pre-approved mitigation areas are considered those that are important to preserve to meet the goals of the Plan. The Gregory Canyon project is consistent with and supports the goals of the Plan.

In addition, Gregory Canyon Landfill has proposed to San Diego County that it make a sustained contribution to funding the North County MSCP, consisting of a large advance payment coupled with future periodic payments tied to waste

receipts. It is likely that such an agreement will be finalized should the project go forward. This funding source will help to ensure that a North County MSCP program is effective on a sustained basis.

The San Diego County Parks and Recreation Department has announced its intention to develop a San Luis Rey River Park. The proposed park would provide both habitat conservation and recreational opportunities. The boundaries of the proposed park would extend up the San Luis Rey River to about two miles west of the Gregory Canyon property. The habitat creation/enhancement to be undertaken as part of the landfill project is located within or adjacent to the San Luis Rey River. The developer is already required to provide some access to these biological mitigation areas for selected Tribal representatives, under a mitigation measure requiring the creation of in-kind habitats for plant species with ethno-botanical significance to the Luiseño people. An easement through these enhancement areas has been granted to SDG&E for a natural gas pipeline, and that easement must be kept clear to allow for pipeline monitoring and maintenance. The presence of these activities would create conditions suitable for and consistent with eventual incorporation into the San Luis Rey River Park, or for a public trail easement, and would provide a public benefit.