

LAW OFFICES OF
E. WILLIAM HUTTON, P.C.
21ST CENTURY PLAZA
6303 OWENSMOUTH AVENUE
10TH FLOOR
WOODLAND HILLS, CA 91367
TELEPHONE: (818) 936-3480
WWW.HUTTONLAWOFFICE.COM

E. William Hutton, Esq.
Direct Dial: (818) 936-2457
E-mail: bill.hutton@huttonlawoffice.com

July 22, 2005

Mr. John Robertus
Executive Officer
San Diego Regional Water Quality Control Board
9175 Sky Park Court, Suite 100
San Diego, CA 92123

John Minan, Esq.
Chair
San Diego Regional Water Quality Control Board
9175 Sky Park Court, Suite 100
San Diego, CA 92123

Re: Gregory Canyon Landfill – Environmental Justice

Dear Mr. Robertus and Mr. Minan:

At the public workshop held on May 19, 2005 regarding the proposed Gregory Canyon Landfill, several members of the public alleged that issuance of Waste Discharge Requirements would deny environmental justice to minority or low-income communities.

In response to those comments, Gregory Canyon is pleased to provide information related to environmental justice aspects of the project. In summary:

- It is physically impossible for the Gregory Canyon project to have any **water quality** impacts on a minority or low-income community.
- Environmental justice concerns were exhaustively evaluated by the San Diego County Department of Environmental Health (DEH) as part of the EIR for the Gregory Canyon project. After considering all unmitigable impacts from the project, DEH concluded that there would be no disproportionate impacts from the project on minority communities.

A detailed discussion of these conclusions follows below.

I. Environmental Justice Concepts

Government Code §650.12(e) defines environmental justice as “[t]he fair treatment of all races, cultures and incomes with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.”

The application of environmental justice principles to Cal/EPA agencies was addressed in the September 30, 2003 Recommendations of the Cal/EPA Advisory Committee on Environmental Justice to the Cal/EPA Interagency Working Group on Environmental Justice. The report indicates that the environmental justice movement has been championed by among others, people of color and Native American tribes. (Cal/EPA Recommendations, p. 1) From the beginning of the movement, the overriding concern was that policies and activities, whether intentionally or not, “resulted in the disproportionate exposure of people of color to environmental hazards.” *Id.*

The Cal/EPA Recommendations, as they relate to permitting activities by member agencies, also noted the importance of meaningful public participation, and discussed a number of practical actions that could achieve that goal. (Cal/EPA Recommendations, pp. 17-19)

Thus, environmental justice incorporates two central themes – disproportionate impact and meaningful public participation.

II. Disproportionate Impacts from Gregory Canyon Project.

The RWQCB’s mission is to protect water quality. As a result, its consideration of environmental justice issues is necessarily limited to water quality impacts.

Even if (hypothetically) there were water quality impacts from the proposed landfill, local hydrology and hydrogeology dictates that those impacts would be experienced to the west of the site, which is both downstream and downgradient.

Gregory Canyon has reviewed and analyzed information regarding the Racial/Ethnic and income profiles of areas to the west of the project location.

Appendix Q to the EIR studied the demographic distribution of environmental effects from the project.¹ One part of the study was to analyze the Ethnic/Racial profile of geographic areas in all directions from the project site. The Fallbrook Planning Area is the area immediately to the west of the site. (EIR, Appendix Q, Exhibit 1)

¹ A copy of Appendix Q is enclosed as Attachment A.

The Ethnic/Racial profile of the Fallbrook Planning Area was set forth in Table 1 of Appendix Q.² 65.3% of its inhabitants were classified as White. The federal Interagency Working Group established by Executive Order 12898 (February 11, 1994) defined a minority community as a census tract with a minority population of at least 50%. As a result, the Fallbrook Planning Area cannot be considered a minority community.

As a follow up to this study and to be fully comprehensive, Gregory Canyon reviewed the Ethnic/Racial profile for areas further to the west. This was done because representatives of those communities have alleged that Gregory Canyon might have a water quality impact on those areas.

The Ethnic/Racial profile for the Bonsall Planning Area based on 2000 census data compiled by SANDAG is set forth below. Based on the federal definition, this area cannot be considered a minority community.

Ethnic Group	Number	Percent
Hispanic	1,679	19.1%
White	6,701	76.1%
Non-Hispanic Black	72	0.8%
Non-Hispanic Asian	235	2.7%
Non-Hispanic Indian	27	0.3%
Non-Hispanic Hawaiian	8	0.1%
Non-Hispanic Other	16	0.2%
Non-Hispanic 2+ Races	142	1.6%
Total	8,800	100.9*%

* 0.9% difference attributable to rounding.

The Ethnic/Racial profile for the City of Oceanside based on 2000 census data compiled by SANDAG is set forth below. Based on the federal definition, this area cannot be considered a minority community.

² The findings of Appendix Q are presumed to comply with CEQA for purposes of the RWQCB (as a Responsible Agency), under CEQA Guidelines §15231. In any event, litigation challenging the EIR did not challenge the adequacy or accuracy of the Appendix Q analysis

Ethnic Group	Number	Percent
Hispanic	48,691	30.2%
White	86,310	53.6%
Non-Hispanic Black	9,504	5.9%
Non-Hispanic Asian	8,623	5.4%
Non-Hispanic Indian	682	0.4%
Non-Hispanic Hawaiian	1,917	1.2%
Non-Hispanic Other	206	0.1%
Non-Hispanic 2+ Races	5,096	3.2%
Total	161,029	100%

Finally, Gregory Canyon has analyzed the income profile for these communities, to determine whether any could be considered a low-income community. SANDAG Publication 1041 (February 2004) established the threshold for low income communities in San Diego County at a median annual income of \$42,000, which is 80% of the Area Median Income of \$52,500.

The income profile for the Fallbrook Planning Area, the Bonsall Planning Area, and the City of Oceanside based on 2000 census data compiled by SANDAG is set forth below.

Area	Annual Median Income
Fallbrook Planning Area	\$49,391
Bonsall Planning Area	\$61,305
City of Oceanside	\$46,145

Based on SANDAG data, none of these communities could be considered a low-income community.

As a result, it is not physically possible (even hypothetically) for the Gregory Canyon Landfill to have a water quality impact on a minority or low-income community. Recognition of this fact alone could serve as the end point for the RWQCB's consideration of environmental justice issues related to this project.

III. County DEH Consideration of Environmental Justice Issues.

The San Diego County Department of Environmental Health (DEH) carefully considered environmental justice issues in the course of preparing the EIR for the Gregory Canyon project, and in issuing the Solid Waste Facility Permit.

In addition to acting as the Lead Enforcement Agency for the California Integrated Waste Management Board, DEH served as the CEQA Lead Agency. In that latter role, it evaluated all project impacts, not just those related to areas within its regulatory

Mr. John Robertus
John Minan, Esq.
July 22, 2005
Page 5

jurisdiction. In that regard, its mandate was broader than that of the RWQCB, which is focused on water quality issues as a Responsible Agency under CEQA.

A description of the efforts taken by DEH to address environmental justice concerns was prepared by Gregory Canyon in January 2004.³ When one considers that all of this work occurred prior to the issuance of the Cal/EPA Recommendations, the sensitivity and level of effort by DEH was simply remarkable. Acting without guidance, and even though not required by CEQA, DEH undertook most of the Task Force's recommendations for meaningful public participation.

Appendix Q of the EIR analyzed the communities located in every direction around the project site, and concluded that the unmitigable impacts of the project would not disproportionately impact minority communities or a particular minority community. This finding was not challenged in the pending litigation regarding the EIR, and as a matter of law is to be presumed to comply with CEQA for purposes of the RWQCB as a Responsible Agency (CEQA Guidelines §15231).

Provisions of the Public Resources Code encourage the RWQCB to rely on this significant body of work. Public Resources Code §43101(c)(1) expresses the legislature's intent that "[a] clear and concise division of authority shall be maintained . . . to remove all areas of overlap, duplication and conflict between the [CIWMB] and the state water board and regional water boards." Consistent with this intent, the RWQCB can and should rely on the substantial and extraordinary work done by DEH in addressing environmental justice issues.

Thank you for the opportunity to present Gregory Canyon's views on this issue.

Sincerely,

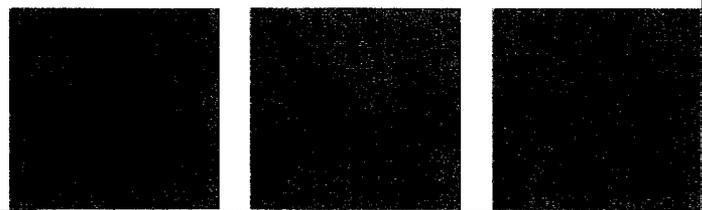


E. William Hutton

Enclosures

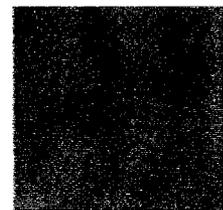
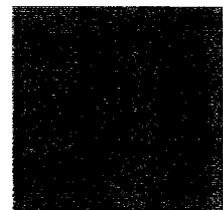
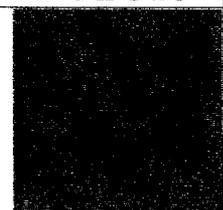
cc: Mr. John Odermatt
Ms. Carol Tamaki

³ A copy of this review memorandum is enclosed as Attachment B.



**DEMOGRAPHIC DISTRIBUTION
OF ENVIRONMENTAL EFFECTS**

Prepared by:
PCR Services Corporation:
December 1999



DEMOGRAPHIC DISTRIBUTION OF ENVIRONMENTAL EFFECTS

Introduction

The Recirculated Draft Environmental Impact Report (EIR), pursuant to the California Environmental Quality Act (CEQA), describes and discloses the environmental effects associated with the development of the Gregory Canyon Landfill. These potential environmental effects can be categorized, for the purposes of this analysis, to include those which are directly physical or resource related (i.e., aesthetics, noise, air quality, cultural resources, etc.) and those that are planning related (i.e., land use, socioeconomics, etc.). This analysis is presented as a complement to the Recirculated Draft EIR and seeks to create a bridge between the project's potential physical and resource effects and the demographic characteristics of the populations that may be effected. This analysis is presented solely for informational purposes and is not an EIR requirement under CEQA.

In building the bridge between the physical/resource issues and demographics, the analysis, after a brief summary of key findings, presents a description of the methodology upon which the analysis is conducted. This discussion is followed by a summary of the project's environmental effects and a description of the demographic characteristics of the affected populations. The analysis concludes with a discussion of the interplay among these two elements leading to a conclusion outlining the project's potential environmental effects in the context of applicable demographic characteristics.

Summary

Three County of San Diego Plan Areas were selected for analysis as the project site and these three areas share a common boundary. The use of common boundaries is important because it allows for describing local demographic characteristics in terms of the project's environmental effects. The three Plan Areas are shown on Figure 1 on page 2, and are as follows: (1) Pala-Pauma Subregion -- this area corresponds to locations north and east of the project site, (2) Valley Center Plan Area -- this area corresponds to locations south of the project site, and (3) Fallbrook Plan Area -- this area corresponds to locations west of the project site.

In terms of describing local demographic characteristics, an ethnic and racial profile of each of the three study areas was developed. These profiles indicate that ethnic and racial groups which historically have been characterized as "minorities" constitute over 60 percent of the

FALLBROOK
Planning Area

PALA-PAUMA
Subregion

PROJECT
SITE

VALLEY CENTER
Planning Area



Exhibit 1
County of San Diego
General Plan Areas

Source: PCR Services Corporation based on County of San Diego General Plan

population within the Pala-Pauma Subregion, in comparison to 30 to 35 percent of the population within the Valley Center and Fallbrook Plan Areas, respectively. Within these groups, American Indians represent a substantial portion of the minority population within the Pala-Pauma Subregion.

Project development would result in environmental effects within each of the three study areas, although the effects would be different from one study area to another. As the ethnic and racial profiles of the three areas are different in terms of the proportion of the population that is characterized as minority, it is concluded that project development would not disproportionately impact minority communities.

Methodology

Demographics for the purpose of this analysis is defined as those attributes of the population which can be described in terms of ethnicity and race. These two demographic variables were selected as they form the basis for an assessment of whether one particular ethnic or racial group is being disproportionately effected by project development. Based on 1990 Census and 1998 San Diego Association of Government (SANDAG) data, an ethnic and racial profile of the population within the project vicinity has been developed. This profile serves as part of the framework used to classify the project's changes to the physical environment. These changes are described in this analysis in terms of environmental impacts and environmental effects. Environmental impacts are those environmental changes identified in the Recirculated Draft EIR as significant after implementation of mitigation measures, while environmental effects are those environmental changes whose impacts after mitigation are concluded to be less than significant.

The Recirculated Draft EIR addresses a total of 16 categories of environmental issues. Four of these issues have been identified as affecting nearby populations and thus warrant further discussion within this analysis. The four categories of issues are as follows: (1) aesthetics – Section 4.13 of the Recirculated Draft EIR, (2) air quality – Section 4.7, (3) noise – Section 4.6, and (4) ethnohistory and native American interests – Section 4.12. The remaining 12 categories of environmental issues are either not affected by the project, or impact upon populations whose demographic characteristics cannot be clearly defined and thus whose characterization would be speculative. This latter category includes environmental effects for motorists traveling along SR-76 and intersecting roadways as no demographic information is available to describe these populations. In addition to lacking an undefined demographic composition, the effect for this population is transient in nature as it occurs in the context of driving a motor vehicle. This type of effect is in contrast to the environmental issues which are the focus of this analysis which have

a longer temporal experience for the affected population (i.e., a resident of the area). Project construction as well as operational impacts are addressed in this analysis.

Geographic areas have been identified within which the subject effects can be classified. In reviewing the Recirculated Draft EIR, the four categories of environmental effects identified above, can be characterized as occurring to populations located to the north, east, south and west of the project site. In reviewing available demographic data, County of San Diego Plan Areas were selected as the appropriate geographic areas within which to conduct this analysis. It is these areas, rather than census tracts or even census block groups, which correlate to the project boundaries which enable classifying environmental effects as occurring north, east, south and west of the project site. In terms of specific County of San Diego Community Plan Areas, the Pala-Pauma Subregion corresponds to areas north and east of the project site, while the Valley Center and Fallbrook Plan Areas correspond to areas south and west of the project site, respectively.

To summarize, the analysis presented herein identifies the ethnic and racial composition of each of three County Plan Areas and then uses this information as a means of classifying the project's environmental effects in the context of local demographic characteristics. This analysis is an effort at environmental disclosure and does not attempt to determine whether one set of environmental effects is more important to one population in relation to another.

Analysis

Summary of Environmental Effects

The environmental issues which are the focus of this analysis include the project's potential effects on the aesthetic, noise and air quality environments as well as issues relating to ethnohistory and Native American interests. Each of these four categories of potential environmental effects are summarized in the following paragraphs. The information provided below is intended as a summary of the project's effects. Refer to the respective sections of the Recirculated Draft EIR for a complete analysis of these four issues.

Aesthetics

Pala-Pauma Subregion. Aesthetic effects for locations within the Pala-Pauma Subregion are represented in the Recirculated Draft EIR by Key View Locations 6 through 8 (see Exhibits 4.13-9 through -11 of the Recirculated Draft EIR). While Key View Location 6 is from westbound State Route 76 (SR 76), a view location which is excluded from the focus of this analysis (see Methodology section above), it is included within this discussion because of its

location adjacent to the northern boundary of the project site and is thus representative of potential effects experienced by those located in this area. No view locations east of the project site are included within the Recirculated Draft EIR analysis, as Gregory Mountain blocks views of the portions of the project site where project activity is proposed to occur. From this perspective Gregory Mountain would be unaffected and no potential aesthetic effects would occur. From mid- and long-range views (represented by Key View Locations 7 and 8), aesthetic effects include the replacement of a portion of the hillsides beyond Gregory Mountain with the landfill footprint. Moving closer to the project site (represented by Key View Location 6), project development would significantly alter the existing aesthetic environment from this perspective, principally due to its close proximity to the project site. This potential impact is substantially reduced with the mitigation proposed. Notwithstanding, a residual significant aesthetic impact caused by landform changes occurs at this location. Regardless of view location, the unaffected portion of Gregory Mountain remains the dominant visual feature from all three of these viewing locations.

Valley Center Plan Area. Recirculated Draft EIR Key View Locations 9 and 10 represent potential aesthetic impacts for locations within the Valley Center Plan Area. As locations adjacent to the southern project boundary are at a lower elevation, these areas are not notably affected by project development. From Lower Couser Canyon (Key View Location 9), the Borrow/Stockpile Area B blocks views of all but the peak of Gregory Mountain. While mitigation reduces the visual effect of the impact, the impact nonetheless is apparent. However, the Borrow/Stockpile is a component of the project that is removed at project completion. Therefore, at project completion (i.e., approximately 30 years), the impact is eliminated and the existing view of Gregory Mountain from this perspective is restored. From Upper Couser Canyon (Key View Location 10), the landfill footprint during the second half of the project's time frame, blocks long range mountain views to the west of Gregory Mountain. While this view blockage occurs, the unaffected portion of Gregory Mountain remains the dominant element of the aesthetic environment from this perspective.

Fallbrook Plan Area. Recirculated Draft EIR Key View Locations 3 and 4 represent potential aesthetic impacts for locations within the Fallbrook Plan Area. From these locations, the landfill footprint would alter the perspective of the landform of Gregory Mountain by filling in Gregory Canyon. This represents a significant impact from Central San Luis Rey Canyon along SR 76 (Key View Location 3). With mitigation, this impact is reduced, particularly if highway plantings occur within Caltrans right-of-way and adjoining private property. Specific aesthetic effects from locations within Rice Canyon (Key View Location 4), include blocking views of the lower and middle portions of Gregory Mountain. Notwithstanding, the Gregory Mountain rock outcroppings which strongly contribute to the aesthetic environment from this perspective would be unaffected by the project.

Noise

Pala-Pauma Subregion. The Recirculated Draft EIR identifies noise effects attributable to SR 76 traffic for areas north of the project site. Another potential noise effect within this area results from on-site blasting. As SR 76 activities are excluded from this analysis, the extent of project noise effects for this area are limited to the intermittent effects associated with blasting. While the Recirculated Draft EIR concludes that no vibration impacts from blasting would occur, blasting has the potential to be audible, although not significant, north of the project site. This potential effect is forecasted to be limited to Medicine Rock, which is located on the landfill site. The landfill site is private property. As such, the effect would only occur on those occasions when on-site blasting coincides with the ceremonial use of Medicine Rock by the Native Americans. No other noise effects are anticipated to occur within the Pala-Pauma Subregion.

Valley Center Plan Area. The Recirculated Draft EIR noise analysis locations were selected because they have the greatest potential to create noise impacts in the Valley Center Plan Area. As four of the five residential noise locations are located south of the project site, locations within the Valley Center Area have the greatest potential to be exposed to noise effects attributable to on-site activities. On-site activities which have the greatest potential to be audible are as follows: (1) Location 2 is most effected by activities attributable to Borrow/Stockpile Area B, (2) Location 3 is most effected by activities on and around the landfill working face, and (3) Locations 4 and 5 are most effected by on-site rock crushing. In addition to these noise sources, areas south of the project site would also be affected by on-site blasting occurring within the landfill footprint.

Fallbrook Plan Area. Five homes are located west of the project site along SR 76. These homes are exposed to existing noise levels which exceed 60 decibels. An environmental effect occurs as project development increases noise levels, albeit by less than 3 dBA, at these locations. On-site activities, specifically those associated with the borrow/stockpile areas, would also be audible at Location 1 which is southwest of the project site.

Air Quality

The assessment of potential air quality effects is determined by correlating on-site emissions with local wind patterns. This relationship exists as the wind provides the means by which the project's emissions are transported to off-site locations. The Recirculated Draft EIR provides data regarding wind patterns at the project site as well as at Miramar Naval Air Station. Based on the data presented in Figure 4.7-2 of the Recirculated Draft EIR, the large majority of the winds blow from the north (i.e., the wind blows towards the south). To a lesser extent, winds

reverse and blow from the south. East-west winds constitute a much smaller percentage of the overall wind patterns in the area.

Pala-Pauma Subregion. The combination of on-site emission sources and the wind patterns described above result in potential air quality effects for locations to the north, while effects to the east will be limited by shielding provided by Gregory Mountain (i.e., the Mountain serves as a barrier between the project site and locations to the east). Effects upon residences to the north would be reduced due to the distance between the project site and these locations resulting from the intervening presence of H.G. Fenton Material, an extraction operation.

Valley Center Plan Area. As prevailing winds blow from the north to the south, the Valley Center Plan Area will be exposed to air quality effects during project construction as well as operation. Particular on-site activities which have the greatest potential to cause an air quality effect during project construction involve on-site excavation activities. Operational effects for locations to the south are greatest for activities involving Borrow/Stockpile Area B. Other sources of potential air quality effects include vehicle travel on unpaved roads and flare emissions.

Fallbrook Plan Area. Dust generation resulting from on-site earth movement occurs in sufficient proximity to the west project boundary to cause an effect upon some locations within the Fallbrook Plan Area. Sources contributing to this effect are similar to those described in the preceding paragraph.

Ethnohistory and Native American Interests

Potential effects on ethnohistory and Native American interests, for the purposes of this analysis, include those aspects of the project which are of interest and concern to the Luiseno population.

Pala-Pauma Subregion. Two resources are present within the Pala-Pauma Subregion which are of particular interest to the Luiseno people. Medicine Rock to the north and Gregory Mountain to the east. The project would result in long-term physical alterations to Gregory Canyon which is at the base of the sacred Gregory Mountain cultural resource. In addition, although Native American activities at Gregory Mountain have not been documented, the ongoing landfill operations could potentially disrupt future traditional Native American activities associated with this resource. The Recirculated Draft EIR concludes that this impact would be significant with implementation of the identified mitigation measures. The project would create less than significant dust effects to the areas of Medicine Rock and Gregory Mountain during high wind periods and short-term construction noise effects at the ridgeline of Gregory Mountain during the

relocation of the SDG&E transmission towers. While these are changes which potentially affect the Native American culture, they are described in detail in the context of the Pala-Pauma Subregion as this area contains a substantially greater proportion of Native Americans relative to the Valley Center and Fallbrook Plan Areas (see discussion of Demographic Characteristics provided below).

Valley Center Plan Area. The effects described above will also potentially occur for the Native Americans that reside within areas south of the project site as the effects occur relative to the location of the cultural resource rather than where the individuals reside.

Fallbrook Plan Area. The effects described above will also potentially occur for the Native Americans that reside within areas west of the project site as the effects occur relative to the location of the cultural resource rather than where the individuals reside.

Description of Demographic Characteristics

An ethnic and racial profile for each of the three geographies under study has been developed and is presented in Table 1 on page 9. These profiles are based on SANDAG estimates of 1998 conditions. As SANDAG provides recent estimates for only a selected number of demographic variables, 1990 Census data was used to supplement SANDAG estimates in order to complete the ethnic and racial profiles.¹

The ethnic and racial profile for the Pala-Pauma Subregion is one characterized by a diverse population with hispanics constituting the single largest population (43.3 percent). The next largest ethnic and racial group are whites (approximately 40 percent of the population). Of the remaining groups, American Indians make up the vast majority accounting for approximately 17 percent of the population. In addition, 7 percent of the population identified itself as hispanic as well as American Indian. As such, American Indians represent nearly one-fourth of the total population within the Pala-Pauma Subregion.

The Valley Center and Fallbrook Plan Areas exhibit ethnicity and racial profiles which are similar to one another and are also noticeably different than the profile occurring within the Pala-Pauma Subregion. Within the Valley Center and Fallbrook Plan Areas, approximately 70 percent of the population is white. Hispanics constitute between 25 percent and 30 percent of the

¹ SANDAG provides estimates of ethnicity for the following four categories: (1) hispanic, (2) white, (3) black, and (4) asian/other. Additional detail regarding other ethnic and racial characteristics were determined based on applying statistical methods to 1990 Census data. Refer to Footnote a of Table 1 for additional information.

Table 1
ETHNIC/RACIAL PROFILE OF THREE GEOGRAPHIC AREAS
(1998)

	Pala-Pauma Subregion		Valley Center Community Plan Area		Fallbrook Community Plan Area	
	Number	Percent	Number	Percent	Number	Percent
Hispanic ^a						
White ^b	1,492	28.2%	2,699	17.4%	5,643	15.2%
Black ^b	12	0.2%	-	0.0%	50	0.1%
American Indian/ Eskimo/Aleutian ^b	385	7.3%	435	2.8%	-	0.0%
Asian/Pacific Islander ^b	40	0.8%	18	0.1%	128	0.3%
Other ^b	363	6.9%	685	4.4%	5,264	14.2%
Total Hispanic	2,292	43.3%	3,837	24.7%	11,086	29.9%
White	2,099	39.5%	10,810	69.6%	24,216	65.3%
Black	10	0.2%	53	0.3%	671	1.8%
American Indian ^b	886	16.7%	667	4.3%	338	0.9%
Asian ^b	10	0.2%	171	1.1%	819	2.2%
Total	5,297	100.0%	15,538	100.0%	37,129	100.0%

^a The U.S. Census classifies Hispanics, an ethnic group, as also members of one of the following racial groups.
^b Data for this ethnic/racial group is not published by SANDAG. Data provided is a forecast based to the percent each ethnic/racial group represents within the 1990 Census for the SANDAG Subregional Areas (SRA) which approximates the geographic area of the respective Subregion or Community Plan Area shown in this Table.
Source: SANDAG 1998 Forecast and PCR Services Corporation based on SANDAG Data.

population within these two Plan Areas, while American Indians (including those also identifying themselves as hispanics) make up approximately 1 percent and 8 percent of the population within the Fallbrook and Valley Center Plan Areas, respectively.

In summary, ethnic and racial groups which historically have been characterized as "minorities" constitute over 60 percent of the population within the Pala-Pauma Subregion, in comparison to 30 to 35 percent of the population within the Valley Center and Fallbrook Plan Areas, respectively. Within these groups, American Indians represent a substantial portion of the minority population within the Pala-Pauma Subregion, principally due to the location of a portion of the Pala Indian Reservation within this Subregion.

Relationship of Demographic Characteristics and Environmental Effects

The Pala-Pauma Subregion, with a minority population that is proportionally greater than the other two study areas, would encounter some aesthetic effects from mid- and long-range view perspectives and a significant aesthetic impact for locations within proximity of the site.

However, as no residences exist in the area where this effect would occur, the overall importance of the significant aesthetic impact, for the purposes of this analysis, is diminished. Noise effects would be limited to those occasions when on-site blasting occurs during potential periods of future ceremonial use of Medicine Rock, which is on private property, by the Native Americans. Most of the air quality effects within the Pala-Pauma Subregion would occur within the H.G. Fenton Material facility. Effects on cultural resources would occur at Medicine Rock and due to the alteration of the base of Gregory Mountain.

The Valley Center Plan Area, with about a third of the population classified as minority, would encounter some aesthetic effects associated with the Borrow/Stockpile Areas, an effect that is removed at project completion, and a loss of some of the long-range views of hillsides beyond Gregory Mountain. Noise effects would occur to a few residences south of the project site due to various on-site activities such as the Borrow/Stockpile Areas, work on and around the landfill working face, on-site rock crushing and on-site blasting. Air quality effects, principally dust transport, could occur principally due to the prevailing winds in the area which flow from the north to the south. Cultural resource effects occur for the relatively small proportion of the total population within this area which is Native American.

The Fallbrook Plan Area, also with about a third of the population classified as minority, would encounter some aesthetic effects due to the presence of the landfill footprint, although the Gregory Mountain outcroppings would still be very prominent in terms of defining the aesthetic environment from this perspective. A noise effect occurs for the five homes located along SR 76 and residences to the west of the project site towards the southern project boundary. Earth moving activities in proximity of the western property boundary would cause an air quality effect, principally from wind blown dust. Cultural resource effects occur for the relatively very small proportion of the total population within this area which is Native American.

In conclusion, project development would result in environmental effects within each of the three study areas, although the effects would be different from one study area to another. As the ethnic and racial profiles of the three areas are different in terms of the proportion of the population that is characterized as minority, it is concluded that project development would not disproportionately impact minority communities or any particular minority community.

GREGORY CANYON LANDFILL
ENVIRONMENTAL JUSTICE ISSUES

January 13, 2004

I. Conclusion: Throughout a process lasting 9 years, the San Diego County Department of Environmental Health (DEH), which is both the CEQA Lead Agency and the CIWMB's Local Enforcement Agency, has demonstrated sensitivity to and afforded fair treatment and meaningful involvement to all persons potentially affected by the proposed project. Although not required by CEQA, DEH included a demographic analysis of impacts in the EIR, which demonstrated that there are no disproportionate impacts from the project on any racial, cultural or socioeconomic group.

II. Definition of Environmental Justice

“[T]he fair treatment of people of all races, cultures and incomes with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.” (Gov't Code Section 65040.12(e))

III. Gregory Canyon Setting

- Located about three miles east of I-15 on SR 76. Other uses along SR 76 include residential, agricultural, mining and the Pala Casino.
- The proposed landfill in Gregory Canyon is located immediately west of Gregory Mountain and south of Medicine Rock, two areas of significance to Tribal interests. The Pala Casino is located immediately east of Gregory Mountain and Medicine Rock.
- The landfill will not be visible from the Pala Casino.
- The proposed project would impact the lower slopes on the west side of Gregory Mountain, which has long been private property and not part of the Pala Indian Reservation. However, the large majority of Gregory Mountain including the peak would be placed in permanent conservation as part of the proposed landfill project. Medicine Rock is not part of the property owned by Gregory Canyon, and not part of the project site as defined in the EIR. Overall, over 1,300 acres of the 1,770 acre project site will be placed in permanent conservation.

IV. Approval and Permitting Process

- Land use approval for the proposed landfill was obtained through the passage of Proposition C in November 1994 by voters in San Diego County, by a 68-32% margin.
- An Environmental Impact Report was prepared in connection with the application for a Solid Waste Facilities Permit (SWFP). The Final EIR was certified on February 6, 2003. The Final EIR found that, despite numerous mitigation measures, there may be a significant and unmitigable impact to Native American cultural resources.
- An application for issuance of a Solid Waste Facility Permit has been submitted and is currently pending at DEH.
- **In order for DEH to issue a SWFP, and submit the permit for concurrence to CIWMB, DEH must first issue a statement of overriding considerations, finding that the benefits from the project outweigh its significant unavoidable impacts.** One of those significant unavoidable impacts is the subjective impact to Native American cultural resources.

V. Disproportionate Impacts

- Although not required by CEQA, DEH considered the issue of disproportionate impacts as part of the EIR process. This was done in response to environmental justice concerns expressed by Tribal interests.
- Appendix Q of the Final EIR studied the Demographic Distribution of Environmental Impacts from the proposed project. The study evaluated environmental effects as they correlate with the project boundaries, enabling the classification of environmental effects as occurring north, south, east or west of the project site in one or more planning areas.
- The Pala-Pauma Subregion to the north and east of the project site contained the highest level of non-white populations (60%) (Hispanic, 43% and Native American, 17%), compared with the Valley Center Plan Area to the south of the project site (30% non-white) and the Fallbrook Community Plan Area to the west of the site (35% non-white).
- Appendix Q found that effects from the proposed project, including aesthetics, air quality and noise, would be distributed throughout all three planning areas. Even though there may be significant and unmitigable impacts to Native American cultural resources, there would be significant impacts elsewhere in the other two planning areas. For this reason, Appendix Q concluded that the proposed project would not disproportionately impact minority communities or any particular minority community.
- Appendix Q was circulated for public comment in December 1999, as part of the Revised Draft EIR.

- The Pala Band, its legal counsel, and three consultants submitted 472 comments on the Revised Draft EIR. None of those comments objected to or even mentioned the findings of Appendix Q. As a result, the Pala Band may lack legal standing to contest the finding of no disproportionate impacts.
- The Native American Environmental Protection Coalition (NAEPC) commented on the Revised Draft EIR, and Appendix Q. Its comments did not contest the findings of Appendix Q, but instead took the position that the subjective response to even minimal impacts should be given greater weight.

VI. Meaningful Involvement

- The Notice of Preparation for the EIR was issued in June 1995. Legal counsel representing the Pala Band requested an extension of the scoping period on November 21, 1995. The Pechanga Band demanded preparation of an EIR for the project on November 15, 1995.
- In 1997, as part of the EIR process, a study by Baksh and Underwood was prepared, entitled Ethnohistory and Native American Consultation for the Proposed Gregory Canyon Landfill Project. On November 18, 1997, the authors requested consultation with Tribal interests, including the Pala Band, on potential impacts to cultural resources. Eight Tribal Elders and Leaders were interviewed as part of the study, including members of the Pala Band. The study was included as Appendix O of the EIR. The authors reported that Tribal interests took the position that no impacts were acceptable, and would not identify or consider any mitigation measures.
- The Draft EIR for the project was initially circulated for public comment in January 1999 in accordance with CEQA requirements.
- In response to the request of the U.S. Bureau of Indian Affairs, the Pala Band, the Pechanga Band, the San Pasqual Band, and the Soboba Band, DEH extended the public comment period on March 25, 1999 from 60 days to 90 days.
- In April 1999 the Pala Band, its legal counsel, the Pala EPA, and three consultants made in excess of 200 comments on the January 1999 Draft EIR. The Pala Band also submitted a detailed chronology of the development process beginning in 1985, supported by numerous documents. Counsel for the Pala Band requested that the Draft EIR be recirculated for additional public comment.
- Comments to the Draft EIR were also submitted by the U.S. Bureau of Indian Affairs, NAEPC, the San Luis Rey Band, and the Soboba Band.
- Although not required, DEH held a public hearing on April 23, 1999 in Escondido to hear comments regarding the project and the Draft EIR.

- DEH made the determination after the initial comment period and the public meetings to circulate the Draft EIR a second time for public comment.
- In August 1999, in response to statements made by representatives of the Pala Band, DEH, through its EIR consultant, requested a copy of the Pala's Land Use Plan, so that it could be considered in the EIR. This request was made a second time in April 2000. The Pala Band refused to provide a copy of the Plan, or any information regarding its land use policies.
- On October 20, 1999, with the encouragement and participation of NAEPC, DEH, a representative of the San Diego County Planning and Land Use Department, and the project proponent met with representatives of the Pala Band, the Pauma Band, the La Jolla Band, the Rincon Band, the San Pasqual Band, and Pechanga Band, and other community leaders to "comprehend the extent of the Tribal community's concerns and discuss how Tribal community concerns will be mitigated." After this initial meeting, it was agreed that further meetings would be productive. This initial consultation meeting was scheduled and arranged by NAEPC.
- Following the meeting, NAEPC requested that recirculation of the Draft EIR be delayed from its scheduled release date of November 1999.
- The Revised Draft EIR was recirculated for public comment in December 1999.
- A follow up meeting to discuss Tribal concerns was held on January 27, 2000. This second consultation meeting was scheduled and arranged by NAEPC.
- Although not required, DEH held a public hearing on January 28, 2000 to hear comments regarding the project and the December 1999 Revised Draft EIR.
- In February 2000 the Pala Band, its legal counsel, and four consultants submitted 472 comments on the December 1999 Revised Draft EIR.
- Comments to the Revised Draft EIR were also received from NAEPC, California Indian Legal Services, NAEPC & La Jolla Indian Reservation Council of Elders, and the San Luis Rey Band.
- In correspondence to DEH, NAEPC **praised DEH for arranging the consultation meetings**. The letter described the "diligent coordination efforts" and the "harmonious relation between Tribal governments and local enforcement agencies." NAEPC requested additional consultation on "mitigation measures," stating that the process of discussing such measures had only just begun.
- A third consultation meeting was scheduled for March 14, 2000 but **canceled by the Tribes**. No further consultations took place, and **no mitigations were ever proposed by the Pala Band or other Tribal governments**.

- Following the public comment period on the Revised Draft EIR, certain sections of the EIR were revised and circulated for public comment a third time on May 25, 2000.
- Each public comment received concerning the Revised Draft EIR and the May 2000 EIR revisions was responded to in writing by DEH, and the responses to comments were included as part of the Final EIR.
- The Final EIR was certified by DEH on February 6, 2003.

VII. Project Mitigations

- Despite the lack of any input from Tribal interests regarding mitigations to impacts to Native American cultural resources, a variety of mitigation measures were developed during the EIR process. However, because of the inherently subjective nature of these impacts, even with these mitigation measures the Final EIR took the conservative position that impacts to Native American cultural resources were significant and unmitigable. Mitigation measures incorporated into the Final EIR included:
 - Prior to commencement of operation of the landfill and as partial fulfillment of MM 4.1-2, the applicant shall either dedicate the portion of the site east of the landfill footprint and relocated SDG&E easement including the western slopes and the top of Gregory Mountain, as permanent open space or execute and convey a permanent open space easement over this area.
 - Prior to commencement of operation of the landfill the applicant shall execute and record an access easement to the Pala Band of Mission Indians from the western boundary of the land owned by the Pala Band of Mission Indians to the summit of Gregory Mountain. The access easement shall grant the Pala Band of Mission Indians the right to walk or hike only within the access easement area.
 - Should the Pala Band agree, the applicant shall, upon commencement of operation of the landfill, pay to the Pala Band of Mission Indians a fixed dollar amount as determined below. Such amount shall be used by the Pala Band to implement measures to enhance and improve access to Gregory Mountain from the Pala Reservation. Such measures may include, but are not limited to, a new footpath, clearing of an existing footpath, or the marking of new footpath trail as determined by Pala in its sole discretion. Such dollar amount shall be equal to the estimated cost of restoring the footpath that previously existed from the eastern base of Gregory Mountain to the top of the mountain. This estimate shall be obtained by the applicant from a company experienced in restoring footpaths.
 - In addition to the construction of the trail, should the Pala Band agree, the applicant shall provide funding as needed for the annual maintenance of the

trail from the eastern base to the top of the mountain during the operational life of the landfill.

- The applicant shall postpone landfilling activities on the western slope of Gregory Mountain above the existing San Diego Gas & Electric transmission line for as long as is practically possible.
- The applicant shall apply water on access roads, storage piles, and cleared areas in greater intervals, such as every three hours, during high wind periods to reduce the dust generated by vehicles.
- The applicant shall install landscaping between the landfill operations and Medicine Rock to create a dust screen. The landscape screen shall include shrubs and trees, such as manzanita and ceanothus.
- The applicant shall monitor noise levels at the ridgeline during the relocation of the SDG&E transmission towers. If noise levels exceed 62.5 dBA L_{eq} at the ridgeline, the applicant shall implement some or all of the following measures to reduce the noise levels to below 62.5 dBA L_{eq} :
 - Build temporary noise barriers or berms between construction activities and the ridgeline. Design parameters (e.g., height, length, and location) for these temporary noise barriers or berms shall be determined by a qualified noise expert.
 - Reduce the amount or size of construction equipment. For example, equipment with smaller engines could be used.If the 62.5 dBA L_{eq} threshold is not exceeded, no action beyond monitoring shall be necessary.
- The project shall mitigate for the loss of ethnobotanical plants in southern willow scrub, mulefat scrub, cotton-willow riparian forest, and native perennial grassland by the creation of in-kind habitats on the landfill site that include ethnobotanical species listed in Appendix O. This revegetated habitat shall be incorporated into the Habitat Enhancement Plan and/or the dedicated open space areas. Before the mitigation plans for these areas are finalized, the Tribe would have the opportunity to provide input concerning the selection of specific ethnobotanical resources. In addition, the Tribe shall be given the opportunity to provide input regarding the location of the in-kind habitats to ensure that tribal members have adequate access to the areas

VIII. California Environmental Protection Agency Advisory Committee on Environmental Justice

- **After certification of the Gregory Canyon EIR**, on September 30, 2003 the Committee issued its final report, giving recommendation to Cal/EPA agencies to assure environmental justice. One of the four elements of the strategy framework is relevant to permitting decisions: “Ensure meaningful public participation and promote community

capacity building to allow communities to be effective participants in environmental decision making.”

- The committee described the criteria that would distinguish successful programs for meaningful public participation. Even though the Gregory Canyon CEQA process occurred prior to the committee report, **the majority of those criteria had been incorporated by DEH as part of the Gregory Canyon approval and permitting process**, including:
 - The identification of an office or contact person who has authority and responsibility for coordinating effective public participation opportunities.
 - Awareness of and sensitivity to community-specific communication issues.
 - Relationship building prior to environmental decision points.
 - Early public involvement in environmental decisions.
 - Availability and timeliness of materials and information.
 - Feedback to participants and commenters.
- Even though the Gregory Canyon CEQA process occurred prior to the committee report, **many of the committee’s recommendations for meaningful public participation were undertaken by DEH as part of the Gregory Canyon approval and permitting process**, including:
 - Initiate outreach efforts as early as possible in the decision making process.
 - Design outreach efforts to appropriately address the culture of the community.
 - Distribute notices and materials widely throughout the community.
 - Use multiple ways of notifying the community of upcoming meetings.
 - When environmental decisions directly affect a specific community (for example, siting decisions), hold meetings and workshops, at times and locations that are convenient for community members to attend.
 - Initiate communications with communities before environmental decisions/concerns arise.

LAW OFFICES OF

E. WILLIAM HUTTON, P.C.

6303 OWENSMOUTH AVENUE
10TH FLOOR
WOODLAND HILLS, CA 91367
TELEPHONE: (818) 936-3480
WWW.HUTTONLAWOFFICE.COM

E. William Hutton, Esq.
Direct Dial: (818) 936-2457
E-mail: bill.hutton@huttonlawoffice.com

June 29, 2007

Ms. Tam M. Doduc
Chair, State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Gregory Canyon Landfill, San Diego County

Dear Ms. Doduc:

On behalf of the Gregory Canyon Landfill project, thank you for meeting with Richard Chase, Mike Gotch and myself to receive a project briefing. Also, thank you in advance for meeting with us on July 9, 2007.

One area of interest that arose at our recent meeting was the consideration of environmental justice issues related to the project. We anticipate this will be the primary focus of discussion on July 9.

To facilitate that discussion, GCL has prepared the enclosed outline describing the activities and analyses related to environmental justice performed during the course of the permitting process. We hope you find this background informative.

Thank you for your interest in the Gregory Canyon Landfill project.

Sincerely,



E. William Hutton

Enclosure

GREGORY CANYON LANDFILL
ENVIRONMENTAL JUSTICE ISSUES

June 19, 2007

I. State Agencies Involved.

The primary state agencies involved with the environmental permitting process for the Gregory Canyon Landfill are the San Diego County Department of Environmental Health, the Local Enforcement Agency for the California Integrated Waste Management Board (LEA) and the San Diego Regional Water Quality Control Board (RWQCB). Both agencies have made substantial efforts to ensure fair treatment and meaningful involvement to all persons potentially affected by the proposed project.

II. Definition of Environmental Justice.

“[T]he fair treatment of people of all races, cultures and incomes with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.” *Gov’t Code Section 65040.12(e)*. Based on the Recommendations of the Cal/EPA Advisory Committee on Environmental Justice, the key components of an effective environmental decision-making are an understanding of potential disproportionate impacts and meaningful participation by the public.

III. Disproportionate Impacts – CEQA/LEA Permitting Process.

- Although not required by CEQA, LEA analyzed the issue of disproportionate impacts in the EIR for the project, certified in February 2003. This was done in response to environmental justice concerns expressed by Tribal interests.
- Appendix Q of the 2003 Final EIR studied the Demographic Distribution of Environmental Impacts from the proposed project. The study evaluated environmental effects as they correlate with the project boundaries, enabling the classification of environmental effects as occurring north, south, east or west of the project site in one or more planning areas. Appendix Q concluded that the proposed project would not disproportionately impact minority communities or any particular minority community.
- A draft of Appendix Q was circulated for public comment in December 1999, as part of the Revised Draft EIR.
- The Pala Band, its legal counsel, and three consultants submitted 472 comments on the Revised Draft EIR. None of those comments mentioned the findings of Appendix Q.
- The Native American Environmental Protection Coalition (NAEPC) commented on the Revised Draft EIR, and Appendix Q. Its comments did not contest the findings of

Appendix Q, but instead took the position that the subjective response to minimal impacts should be given greater weight.

- The adequacy of the disproportionate impacts analysis contained in Appendix Q was not raised in the subsequent litigation challenging the 2003 Final EIR, or included in the court order overturning the 2003 Final EIR.

IV. Analysis of Potential Impacts to Cultural and Ethnohistorical Resources – CEQA/LEA Permitting Process.

- The Notice of Preparation for the EIR was issued in June 1995. In 1997, as part of the EIR process, a study by Baksh and Underwood was prepared, entitled Ethnohistory and Native American Consultation for the Proposed Gregory Canyon Landfill Project. On November 18, 1997, the authors requested consultation with Tribal interests, including the Pala Band, on potential impacts to cultural resources. Eight Luiseno Tribal Elders and Leaders were interviewed as part of the study. The study was included as Appendix O of the EIR. The authors reported that Tribal interests took the position that no impacts were acceptable, and that they would not identify or consider any mitigation measures.
- Even though the project would not have any objective significant and unavoidable impacts (i.e. noise, air quality, etc.), because of the subjective beliefs of the Luiseno peoples the 2003 Final EIR concluded that the project would have a significant and unavoidable impact on ethnohistorical resources.
- The adequacy of this analysis was not raised in the subsequent litigation challenging the 2003 Final EIR, or included in the court order overturning the 2003 Final EIR.
- In 2005, the Pala Band filed an application for inclusion of Gregory Mountain and Medicine Rock on the National Register of Historic Places. This application was approved by the State Historic Preservation Commission in November 2005, but returned by the Keeper of the National Register for additional information and analysis in March 2006. There has been no further activity on the application since that time.
- The Revised Final EIR for the project, certified in May 2007, analyzed potential impacts arising from the proposed listing. The Revised Final EIR concluded that inclusion of these features on the National Register of Historic Places, were that to occur, would result in a significant and unavoidable impact to cultural and historical resources in addition to the previously-identified significant and unavoidable impact on ethnohistorical resources. That conclusion was based, on the subjective beliefs of the Luiseno peoples.

V. CEQA/Solid Waste Facility Permit Measures to Reduce Impacts to Ethnohistorical Resources.

- The 2003 Final EIR included a series of mitigation measures that reduced potential objective impacts to a level of less than significant. Those were adopted as conditions of the Solid Waste Facility Permit issued by LEA in December 2004.

- Prior to commencement of operation of the landfill and as partial fulfillment of MM 4.1-2, the applicant shall either dedicate the portion of the site east of the landfill footprint and relocated SDG&E easement including the western slopes and the top of Gregory Mountain, as permanent open space or execute and convey a permanent open space easement over this area.
- Prior to commencement of operation of the landfill the applicant shall execute and record an access easement to the Pala Band of Mission Indians from the western boundary of the land owned by the Pala Band of Mission Indians to the summit of Gregory Mountain. The access easement shall grant the Pala Band of Mission Indians the right to walk or hike only within the access easement area.
- Should the Pala Band agree, the applicant shall, upon commencement of operation of the landfill, pay to the Pala Band of Mission Indians a fixed dollar amount as determined below. Such amount shall be used by the Pala Band to implement measures to enhance and improve access to Gregory Mountain from the Pala Reservation. Such measures may include, but are not limited to, a new footpath, clearing of an existing footpath, or the marking of new footpath trail as determined by Pala in its sole discretion. Such dollar amount shall be equal to the estimated cost of restoring the footpath that previously existed from the eastern base of Gregory Mountain to the top of the mountain. This estimate shall be obtained by the applicant from a company experienced in restoring footpaths.
- In addition to the construction of the trail, should the Pala Band agree, the applicant shall provide funding as needed for the annual maintenance of the trail from the eastern base to the top of the mountain during the operational life of the landfill.
- The applicant shall postpone landfilling activities on the western slope of Gregory Mountain above the existing San Diego Gas & Electric transmission line for as long as is practically possible.
- The applicant shall apply water on access roads, storage piles, and cleared areas in greater intervals, such as every three hours, during high wind periods to reduce the dust generated by vehicles.
- The applicant shall install landscaping between the landfill operations and Medicine Rock to create a dust screen. The landscape screen shall include shrubs and trees, such as manzanita and ceanothus.
- The applicant shall monitor noise levels at the ridgeline during the relocation of the SDG&E transmission towers. If noise levels exceed 62.5 dBA L_{eq} at

the ridgeline, the applicant shall implement some or all of the following measures to reduce the noise levels to below 62.5 dBA L_{eq} :

- Build temporary noise barriers or berms between construction activities and the ridgeline. Design parameters (e.g., height, length, and location) for these temporary noise barriers or berms shall be determined by a qualified noise expert.
- Reduce the amount or size of construction equipment. For example, equipment with smaller engines could be used.

If the 62.5 dBA L_{eq} threshold is not exceeded, no action beyond monitoring shall be necessary.

- The project shall mitigate for the loss of ethnobotanical plants in southern willow scrub, mulefat scrub, cotton-willow riparian forest, and native perennial grassland by the creation of in-kind habitats on the landfill site that include ethnobotanical species listed in Appendix O. This revegetated habitat shall be incorporated into the Habitat Enhancement Plan and/or the dedicated open space areas. Before the mitigation plans for these areas are finalized, the Tribe would have the opportunity to provide input concerning the selection of specific ethnobotanical resources. In addition, the Tribe shall be given the opportunity to provide input regarding the location of the in-kind habitats to ensure that tribal members have adequate access to the areas

VI. Meaningful Involvement – CEQA/LEA Permitting Process.

- The Draft EIR for the project was initially circulated for public comment in January 1999 in accordance with CEQA requirements.
- In response to the request of the U.S. Bureau of Indian Affairs, the Pala Band, the Pechanga Band, the San Pasqual Band, and the Soboba Band, LEA extended the public comment period on March 25, 1999 from 60 days to 90 days.
- In April 1999 the Pala Band, its legal counsel, the Pala EPA, and three consultants made in excess of 200 comments on the January 1999 Draft EIR. The Pala Band also submitted a detailed chronology of the development process beginning in 1985, supported by numerous documents. Counsel for the Pala Band requested that the Draft EIR be recirculated for additional public comment.
- Comments to the Draft EIR were also submitted by the U.S. Bureau of Indian Affairs, the Native American Environmental Protection Coalition (NAEPC), the San Luis Rey Band, and the Soboba Band.
- Although not required, LEA held a public hearing on April 23, 1999 in Escondido to hear comments regarding the project and the Draft EIR. Hundreds of persons attended the hearing.

- LEA made the determination after the initial comment period and the public meetings to circulate the Draft EIR a second time for public comment.
- On October 20, 1999, with the encouragement and participation of NAEPC, LEA, a representative of the San Diego County Planning and Land Use Department, and the project proponent met with representatives of the Pala Band, the Pauma Band, the La Jolla Band, the Rincon Band, the San Pasqual Band, the Pechanga Band, and other community leaders to “comprehend the extent of the Tribal community’s concerns and discuss how Tribal community concerns will be mitigated.” After this initial meeting, it was agreed that further meetings would be productive.
- A follow up meeting to discuss Tribal concerns was held on January 27, 2000. This second consultation meeting was also scheduled and arranged by NAEPC.
- Although not required, LEA held a public hearing on January 28, 2000 to hear comments regarding the project and the December 1999 Revised Draft EIR. Hundreds of people attended the hearing.
- In February 2000 the Pala Band, its legal counsel, and four consultants submitted 472 comments on the December 1999 Revised Draft EIR.
- Comments to the Revised Draft EIR were also received from NAEPC, California Indian Legal Services, NAEPC, the La Jolla Indian Reservation Council of Elders, and the San Luis Rey Band.
- In correspondence to LEA, NAEPC praised LEA for arranging the consultation meetings. The letter described the “diligent coordination efforts” and the “harmonious relation between Tribal governments and local enforcement agencies.” NAEPC requested additional consultation on “mitigation measures,” stating that the process of discussing such measures had only just begun.
- A third consultation meeting was scheduled for March 14, 2000 but was canceled by the Tribes. No further consultations took place, and no mitigations were ever proposed by the Pala Band or other Tribal governments.
- Following the public comment period on the Revised Draft EIR, certain sections of the EIR were revised and circulated for public comment a third time on May 25, 2000.
- The Final EIR was certified by LEA on February 6, 2003.
- Litigation challenging the Final EIR was filed by the Pala Band and other non-Native American interests, which led to a court order in January 2006 overturning portions of the 2003 Final EIR.
- LEA prepared and circulated a Revised Partial Draft EIR for public comment in July 2006.

- In August 2006 Pala Band, their consultants and attorneys, and other Tribal interests submitted 210 comments on the July 2006 Revised Partial Draft EIR.
- On August 14, 2006, although not required by CEQA, LEA held a public hearing to receive comments on the Revised Partial Draft EIR. The hearing was held in the evening in Escondido City Hall, and hundreds of persons attended. Numerous representatives of Tribal interests and Tribal members presented testimony at the hearing.

VII. Meaningful Involvement – RWQCB Permitting Process.

- The application for Waste Discharge Requirements was deemed complete and correct on March 1, 2005.
- RWQCB posted the entire Joint Technical Document, including technical appendices, on its website to maximize public availability.
- RWQCB established an e-mail based communications program, and provided input to approximately 180 interested parties on project developments related to the WDR's. Periodic e-mail reports from RWQCB were made throughout 2005 through 2007.
- RWQCB held a public workshop on May 19, 2005 at Escondido City Hall, and received testimony on both technical issues and environmental justice concerns. Hundreds of persons attended the workshop. Numerous representatives of Tribal interests and Tribal members presented testimony at the hearing. In addition, numerous speakers from communities located downgradient of the proposed project presented environmental justice concerns.

VIII. Disproportionate Impacts – RWQCB Permitting Process.

- On July 22, 2005, in response to public comments at the workshop, the project proponent presented RWQCB staff with the results of a demographic and household income analysis for communities downgradient of the project. These communities could, in theory, be impacted by contaminant releases from the project.
- Each of the potentially affected communities – Fallbrook, Bonsall and Oceanside –was classified as a non-minority community based on criteria set forth in the Federal Interagency Working Group established by Executive Order 12898 (2004) and 2000 census data compiled by the San Diego Council of Governments (SANDAG). Likewise, each of these communities was above the threshold to be considered a low income community, based on the standards and data contained in SANDAG Publication 1041 (2004).