



**SIMI VALLEY LANDFILL
AND RECYCLING CENTER**

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September 9, 2010

VIA ELECTRONIC & REGULAR MAIL
Becky.linder@ventura.org

Ms. Becky Linder
Senior Planner
County of Ventura
Planning Department
800 S. Victoria Avenue
Ventura, CA 93009

Re: Simi Valley Landfill & Recycling Center Expansion Project
Recirculated Draft Environmental Impact Report Sections

Dear Ms. Linder:

Waste Management of California, Inc. (WMC), owner/operator of the Simi Valley Landfill and Recycling Center appreciates the opportunity to provide comments on the Recirculated Draft Environmental Impact Report (RDEIR) for the Simi Valley Landfill and Recycling Center (SVLRC) Expansion and Modernization Project (the Project). Before providing our comments, we would like to emphasize that WMC appreciates the efforts of County staff and their consultant team. The document reflects those efforts. We do have a few comments on the RDEIR below.

Air Quality

- Table B-1-PP-12 *Landfill Gas Usage and Production* – This table overstates the cogeneration units and shows as many as 18 cogeneration units (in 2043). This has the effect of significantly overestimating emissions related to the proposed project. The proposed project is anticipated to have only 5 cogeneration engines. This can be clarified in the Final EIR.
- Table 3.2-3, *Average Daily Emissions for Operation of the Existing SVLRC Baseline Period of 2009-2034* – The Daily Emissions (pounds) for the Peak Year Emissions minus Permitted Sources, should be recalculated because as it appears there are arithmetic errors across this row for each criteria pollutant. Again, this can be clarified in the Final EIR.

For GHG emissions, there are three tables:

- Table 3.2-4, P. 3.2-21 presents emissions for the landfill under the existing permit for three years, 2009, 2032, 2034.
- Table 3.2-15, p. 3.2-40 presents emissions for the Proposed Project for the years 2009, 2041, 2055.
- Table 3.2-16, p. 3.2-42 presents the emissions for the Proposed Project after mitigation for the years 2009, 2041.

Since these tables use different years, we believe it would be helpful if the EIR were to explain the choice of years. Our understanding is that for Table 3.2-4, 2009 is the CEQA baseline year, 2032 is the peak emissions year, and 2034 is after closure for the existing permitted operations. For Table 3.2-15 and 3.2-16, 2009, 2041, and 2055 represent the baseline, peak, and after closure years for the Proposed Project operations. Again, this can be clarified in the Final EIR.

The baseline GHG emissions for the existing landfill appear to be underestimated. The emissions for the Proposed Project, conversely, appear to be overestimated.

- For diesel powered trucks, the GHG emissions are 1832 metric tons CO₂e for the baseline and 14,748 metric tons for 2041. This represents an eight-fold increase in emissions for a less than three-fold increase in the number of trucks. This should be corrected or explained in the Final EIR.

In addition to the above clarifications, we have ongoing concerns about the conclusions the RDEIR proposes the decisionmakers reach with regard to Land-Use Impacts and Recreation Impacts. As we explain below, we believe that several conclusions in this section of the RDEIR are not supported by substantial evidence and would set a bad precedent for future revenue and job creating projects in the County.

Land-Use Impacts

In the Land-Use section, the RDEIR finds one significant and unavoidable impact related to housing and a General Plan inconsistency based on the same legal analysis and factual assumptions. (See Impact LU-3 and Policy 3.4.2-8, at pp. 3.1-6 to 3.1-8 and 3.1-16 of the Recirculated Draft EIR (RDEIR).) The legal analysis and factual assumptions supporting this finding are faulty. As we explain below, the significance conclusions made by the consultants in the EIR do not bind the County decisionmakers if an alternative conclusion is rational and based on substantial evidence; namely, the Board of Supervisors, who can reach

their own independent conclusions and direct staff to make changes to the analysis. The Board should not, in our opinion, adopt the particular proposed findings as they are not reasonably supported by law or fact and are not based on sound policy.

1. The Proposed Findings Are Not Supported by Fact.

The proposed significance conclusions are based on a number of key assumptions that are not supported by any reference to fact. Specifically, the RDEIR assumes that the project would employ more than 30 employees in any given year and all of those employees would be part of low and very-low income households. Because of these factual assumptions, the EIR concludes that the project would create demand for low and very-low income housing. As a result, the EIR concludes that this new employment would result in unstated significant housing impacts and a General Plan inconsistency. Because no feasible mitigation exists (the County has not adopted any mitigation plans for this sort of impact), the impact would necessarily be significant and unavoidable. The assumptions and strained logic in the EIR are not supported by the facts.

The essential premise—that the project “could” result in an increase in more than 30 employees in any given year—is pure speculation. (RDEIR, p. 3.1-7.) The project is expected to result in up to 150 new hires, *but those hires would occur over the 40-year life of the project*. Thus, on average, the project would employ between 3-4 new employees each year. Nevertheless, for the purposes of the impact analysis, the EIR assumes that because the project could hire more than 30 employees in any one year, the project would hire 30 new employees in any given year—without explaining the basis for this assumption.

Not only does the EIR assume that the project would hire 30 new employees in a given year, it also assumes that all 30 employees would be part of low or very-low income households. To justify this assumption, the EIR assumes that all 30 employees would be the sole income producer for their household. (RDEIR, p. 3.1-7.) The EIR cites no evidence for this assumption. Thus, the entire factual basis for this impact analysis is unsubstantiated.

Finally, in determining whether the housing market can meet the needs of these new employees, the EIR employs 2008 vacancy rates—not the “most recent” (which is apparently 3.8%¹ not 2.28% as reported in the EIR)—to determine that there is insufficient housing to meet these employees’ needs because vacancy

¹/ Vacancy rates for Simi Valley as reported at <http://www.nationalrelocation.com/real-estate/California/Simi%20Valley.aspx>, accessed on August 27, 2010.

is under the 3%-standard. (RDEIR, p. 3.1-5.) The EIR justifies using “historical data” because, it says, the current volatility in the housing market is unpredictable (p. 3.1-5) and presumably historical data is more predictive of the future. This reasoning is not sound. Most experts now acknowledge that those historical demands for housing were artificially inflated and the current correction in the real estate market, while very painful to all, is more realistic of sustainable housing trends.

2. *The Proposed Findings Are Not Supported by Law.*

The EIR’s legal conclusions are unjustified—even if the decisionmakers accept the EIR’s tenuous conclusion factual conclusions that the 30 new employees create a small demand for low-income housing. After assuming that 30 new employees would be hired in any given year, and all thirty employees would be the sole providers for their households, the EIR assumes that this would translate to an identifiable impact to the physical environment as contemplated by the California Environmental Quality Act (CEQA). But CEQA is clear that impacts of a merely social or economic character *may not* be treated as significant impacts. (CEQA Guidelines, §15131.) Rather, the purpose of a CEQA analysis is to evaluate the physical impacts of a project on the physical environment. Environment is defined as the “physical conditions that exist within an area which will be affected by the proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic interest.” (Pub. Resources Code, § 21060.5.) The EIR makes no attempt to describe any physical effects that would result due to the project’s employees. Indeed, such a small impact on the local housing market is very unlikely to result in any significant new physical impacts, including any impacts from housing related construction caused by the Project. This is especially true because many new hires will likely already be living in the surrounding communities.

In addition to finding that the Project’s indirect impacts on the housing market is a significant and unavoidable impact, the EIR also concludes that the project’s affects on the housing market will result in an inconsistency with General Plan Policy 3.4.2-8. The EIR’s reasoning on this point is not clear. (DREIR, p. 3.1-16.) Policy 3.4.2-8 states that “[a]s area plans are prepared or updated, planned industrial and commercial areas shall be evaluated to assess the impact on jobs/housing within the community and region.” (Ventura County General Plan, p. 68.)

First, this project does not involve an area plan, so the policy does not even directly apply to this project. Second, and perhaps more to the point, this particular policy requires only that an *evaluation* of housing and jobs balance be undertaken; it does not set any standard that must be met. An evaluation was clearly done in this case, and thus the project should be found to be consistent

with this policy. There would be no General Plan inconsistency should the Project be approved.

3. *The Proposed Findings Are Not Sound Policy.*

Independent of this Project, the Board should consider the wisdom of the policies proposed in the EIR as may be applied Countywide. The Board should know that, if it adopts the policies and implements them as recommended by staff, it will discourage new employers from bringing their jobs to the County. This is because if a business would employ more than 30 people, and if the offered salaries cannot independently support a family at a medium income, than that future potential employer will be deemed to cause a significant impact as a matter of County policy. And moreover, since the County has no adopted mitigation program, that impact will be significant and unavoidable, triggering the need to prepare an EIR for the project—even where no other potentially significant adverse impacts are anticipated. Thus, if you are a medium-sized or larger employer, you may not choose to locate within Ventura County because it will involve preparation of a time consuming and expensive EIR. The message to new employers will be: You are not welcome here. Is this the message the Board wants to send to new employers, given the unemployment rate in Ventura County is now at 10.6%? ²

While the County's concern about the availability of housing affordable to low and very-low income families is understandable, does the County truly want to dissuade business in this fashion? In effect, taking this approach will discourage new jobs from being created within the County. We hope the Board gives serious consideration to this issue and direct that the analysis in the Final EIR is revised accordingly.

Recreation Impacts

Again, based on the fact that the project will provide create 150 new jobs over the next 40 years, the EIR also finds several significant and unavoidable impacts to recreational facilities. (DREIR, pp. 3.14-5 to 3.14-8 [Impacts REC-1, REC-2, REC 3, and REC-4].) As with the housing impacts, the purported recreational impacts are tenuously linked to the Project, as best.

The EIR assumes that the project will create new demand for recreational uses. This assumption is very unusual for industrial or commercial projects. More typically, this sort of analysis applies to residential projects, which logically create demand for park and recreational facilities. In fact, the County has established mitigation programs to assure that new residential projects fund such facilities. (See Ventura County Subdivision Ordinance, § 8209-6.) The EIR cites to

² / According to the U.S. Bureau of Labor Statistics <http://data.bls.gov/cgi-bin/surveymost>.

County's General Plan Policies 4.10.2-1, for instance, as grounds for extracting parkland dedication. (RDEIR, p. 3.14-4.) Nothing in the County's General Plan indicates that policies 4.10.2-1 was intended to apply to industrial or commercial facilities. (Ventura County General Plan, pp. 140-142.) Policy 4.10.2-1, for instance, states that parkland dedication requirements are contained in the County's Quimby Ordinance (which is section 8209-6 noted above), and which does not apply to this Project. The County's Quimby Ordinance, moreover, states that its purpose is to "provid[e] park and recreational facilities to serve the future residents of the property being subdivided." (Ventura County Subdivision Ordinance, § 8209-6.) There is no residential subdivision here.

Even if the 150 new employees—hired over the next 40 years—do place some small demand on the housing market, which in turn creates some small demand for recreational facilities, and that demand was not otherwise previously met by complying with the Quimby Ordinance when the residences were built, it is not at all clear that an impact will occur of any sort, much less a significant environmental impact. As noted above, CEQA is concerned about physical impacts on the environment, not purely social or economic impacts. In fact, merely social or economic character **may not** be treated as significant impacts. (CEQA Guidelines, §15131.) The EIR makes no attempt to describe any physical effects that would result due to the project's employees, and lacks any substantial evidence in support of its conclusion. Indeed, such a small impact on the County's recreational facilities, were it to occur, is very unlikely to result in significant new physical impacts.

Similar global policy concerns apply to these impact findings as well. As applied, this policy will create assumptions about significant impacts that will occur as a result of new commercial and industrial employment opportunities. Moreover; since the County provides no mechanism to mitigate those sorts of impacts, by necessity the impacts would be significant and unavoidable, triggering the need to prepare an EIR for a project that might otherwise not warrant one. The potential cost and delay will likely cause potential employers to look elsewhere.

Impact REC-4 is troubling for additional reasons that merit particular discussion. The EIR notes that the Rancho Simi Recreation and Parks District has planned trails and parks through the project site. Although the Project will not impede the trail or park by building facilities that physically block these planned amenities, or otherwise preclude the acquisition of these facilities by the District, the EIR concludes that the project will cause impacts by not constructing and donating these facilities to the District. (RDEIR, p. 3.14-7.) This sort of bootstrapping logic is inconsistent with the United States Supreme Court's holdings as set forth in *Nollan v. California Coastal Commission* (1987) 483 U.S. 825 (there must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest) and *Dolan v. City of Tigard* (1994) 512 U.S. 374 (mitigation it must be "roughly proportional" to the impacts of the project). Although the EIR acknowledges that the mitigation cannot legally be imposed, it

should also acknowledge that there are no physical impacts justifying the impact conclusion in the first place.

The Proposed Findings in the EIR Do Not Bind the Decisionmaker.

The conclusions in the EIR with respect to land-use impacts and recreational impacts, noted above, do not bind the Board of Supervisors. The Board is free to reach its own independent conclusions based on the evidence. The court in *Environmental Council of Sacramento v. Board of Supervisors* (1982) 135 Cal.App.3d 428 specifically held that the conclusions in an EIR do not conclusively bind the elected decisionmakers. The essential reasoning is that the board, not staff, is charged with implementing CEQA; while the Board may delegate some of its responsibility to staff, it cannot delegate the essential function of making findings and conclusions based on the evidence. In that case, the board of supervisors evaluated an impact identified in an EIR prepared by county staff. The EIR concluded that a particular impact was significant. The decisionmakers disagreed. The court held that this was proper because the decisionmakers are the ultimate finders of fact, so long as their findings are supported by substantial evidence:

As ultimate decision-maker, the Board had the power to change the findings in the EIR prepared by its staff. The preparation of an EIR is a CEQA responsibility which may but does not have to be delegated to staff. ([CEQA Guidelines], § 15055, subd. (3).) Only when the decision-making body of a public agency certifies as adequate and complete an EIR prepared by staff does it adopt the findings of the preparers. (See [CEQA Guidelines], § 15085, subd. (g); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 362 [173 Cal.Rptr. 390].) Here, the Board rescinded its prior certification of the staff-prepared EIR and was thus *at liberty to change the environmental conclusion*. (*Environmental Council of Sacramento, supra*, 135 Cal.App.3d at p. 438; see also CEQA Guidelines, § 15025, subd. (b)(2).)

In this case, the Board has not yet certified the EIR and thus remains at liberty to change the environmental conclusions noted above if it finds that such changes are supported by fact or law. We respectfully suggest that the Board consider making such changes to the EIR here, for the very policy reasons explained above and because of the otherwise precedent setting nature of such conclusions for future projects. Thus, we advise the Board to conclude that Impacts LU-3, REC-1, REC-2, REC 3, and REC-4 are less than significant, and to conclude that the project is consistent with Policy 3.4.2-8.

* * *

Please contact me at (805) 579-7478 if you have any immediate questions or concerns. Please also be sure to send me a complete copy of all the comment letters received by the County on the Draft EIR.

Sincerely,

A handwritten signature in blue ink that reads "Scott Tignac". The signature is fluid and cursive, with the first name "Scott" and last name "Tignac" clearly distinguishable.

SCOTT TIGNAC
District Manager

cc:

Dan Klemann, VC Planning

Kim Rodriguez, VC Planning

Mike Smith, WMC

Doug Corcoran, WMC

Jim Riley, WMC

Andee Leisy, Remy, Thomas, Moose and Manley LLP

Simi Valley Housing Information

	Simi Valley	Ventura County	California
Simi Valley Housing Units	37,330	251,712	12,214,549
Occupied	36,421	243,234	11,502,870
Owner Occupied	28,270	164,380	6,546,334
Homes Rented	8,151	78,854	4,956,536
Rental Vacancy Rate	3.8%	2.6%	3.7%
Vacant Houses In Simi Valley	851	8,478	711,679
Homes Mortgaged	22,944	118,565	4,367,361

[More Simi Valley Housing Information](#)

Nearest Cities to Simi Valley by Miles

Bethany - 7.89	Hydes - 15.95
Old Landing - 9.40	Darlington - 17.55
Havre de Grace - 9.55	Tallega - 19.58
Fillmore - 9.75	Sebastians Br - 20.02
Hvre de Grace - 10.50	Colesville - 23.15
Magnolia - 11.28	Unity - 23.54
Yellow Rock - 12.39	Barnesville - 24.12
Fork - 12.80	Dickerson - 24.57
Widecreek - 13.50	Natl Institute Stds & Tech - 25.93
National Naval Medical Ctr - 14.34	Poolesville - 26.09

Similar to Simi Valley

Bedford Village - 0
Lenoxville - 0
Crownsville - 1,780
Cheshire - 29,066
N Litchfield - 0
Stratford - 0
Port Monmouth - 3,776
Monroe Township - 1,829
Versailles - 0
Critz - 0

Simi Valley real estate information on the site is deemed reliable, but not guaranteed. Our Simi Valley stats, Simi Valley census, and Simi Valley information is aggregated from many different sources and may be dated. Currently, we have two Simi Valley bank foreclosure REOs of thirty-seven thousand three hundred thirty Simi Valley, California housing units, of which thirty-six thousand four hundred twenty-one are occupied, twenty-eight thousand two hundred seventy are owner occupied, eight thousand one hundred fifty-one are rented, eight hundred fifty-one are vacant, and twenty-two thousand nine hundred forty-four have mortgages. Simi Valley has thirty-six thousand four hundred twenty-one households, and one hundred eleven thousand three hundred fifty-one citizens.

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