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July 11, 2011

*Via Hand Delivery*

John McKenzie, Project Manager  
County of San Luis Obispo  
Department of Planning and Building  
976 Osos Street, Room 200  
San Luis Obispo, CA 93408-2040

**Re: Comments on Revised Recirculated Draft Environmental Impact Report, Cold Canyon Landfill Expansion, San Luis Obispo, California**

Dear Mr. McKenzie:

Cold Canyon Land Fill, Inc. ("CCL") and Waste Connections, Inc. ("WCI") have completed a review of the Revised Draft Environmental Impact Report (DEIR), dated May 24, 2011, for the Cold Canyon Landfill Expansion Project. We have prepared comments on behalf of both CCL and WCI on the Revised Recirculated portions of the DEIR, which are being provided by this cover letter as well as in the attachments to this letter. Attached please find the following:

- Attachment 1: Legal opinion letter dated July 11, 2011 from C. Wesley Strickland, Brownstein Hyatt Farber Schrek, to Patrick Shea, General Counsel for CCL and WCI regarding proposed mitigation measure WR/mm-1;
- Attachment 2: Comments on the water supply section of the RDEIR prepared by Tom Vercoutere, Golder Associates, Inc., together with a current curriculum vitae for Mr. Vercoutere. Mr Vercoutere has a long standing expertise in geology, hydrogeology and water supply matters;
- Attachment 3: Comments on the project description, hazards and hazardous materials, and noise sections of the RDEIR prepared by Douglas Brown of Douglas Environmental, a firm with considerable experience and expertise in the development and drafting of complex environmental impact reports in connection with solid waste facility projects for public agencies and private clients. Also provided is a curriculum vitae for Mr. Brown, indicating his broad experience in the environment review of solid waste facilities.

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Attachment 4: Comments of CCL and WCI staff, reflecting combined remaining RDEIR comments based on the solid waste facility design and operations experience and expertise of CCL and WCI staff members.

In addition to the detailed comments provided in the attachments, we are also providing additional, specific comments below on items which in our judgment should be highlighted as serious concerns and deficiencies regarding the RDEIR analysis and conclusions. While we believe the RDEIR can serve as the basis for an informed decision by the County on the adequacy of the EIR and the ultimate permit decision, there are aspects of the document, primarily certain conclusions and recommendations drawn in the RDEIR, that need to be addressed and modified where noted. Our summary of these matters is set forth below.

## Water Supply

With respect to proposed mitigation measure WR/mm-1, the legal opinion letter provided in Attachment 1 sets forth a thorough and reasoned analysis in making clear that the proposed mitigation measure is both improper and not legally enforceable. The following summarizes the issues:

- Under California law, CCL is entitled to exercise its overlying rights to the extent that it will put the water extracted to beneficial use on its overlying land. CCL is also free to expand its existing uses on the parcel. If its increased extractions for the expansion were to cause the total correlative rights of all landowners in the study area to exceed the safe annual yield of the water-bearing formations, all present uses would need to be proportionately reduced to accommodate the equal rights of expanded use by the Landfill. The proposed 25 AFY restriction would limit the Landfill’s exercise of its right to extract groundwater as an overlying owner, without any legal justification.
- Overlying landowners in the vicinity of the Project are not entitled to maintenance of prescriptive water levels. The County’s imposition of the 25 AFY restriction on the basis of potential drawdown in neighboring wells disregards existing California water law, under which an overlying owner is not generally entitled to maintenance of a particular water level.
- The proposed restriction inappropriately represents an effort to restrict water use by one user in favor of future preferred water users. Because the DEIR indicates a decided preference for future water uses (e.g., vineyard and domestic uses), water must be reserved for those uses to the detriment of water users today, arbitrarily denying CCL’s exercise of its overlying rights. In the absence of the

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consideration of all overlying rights and the fair and just proportion of each, the County may not impose restrictions on one water rights holder such as CCL.

## Noise

We have several comments and observations about the noise analysis and mitigation proposals in the Recirculated DEIR, with a few of the more important matters set forth immediately below.

First, the DEIR's establishment of a Noise Barrier Contingency Plan (NS/mm-1) is not appropriate under the California Environmental Quality Act (CEQA), and we think such a plan requirement is unworkable in any event. This proposed mitigation measure states that a Residential Noise Barrier Contingency Plan shall be prepared for surrounding residences that can demonstrate noise levels of 50 decibels or more from ongoing landfill operations. The text of this mitigation measure should be revised to clarify that the demonstrated noise levels for surrounding residences must be 50 decibels  $L_{eq}$  not just 50 decibels in order to ensure consistency with the Noise Element standards.

In addition, CEQA requires that feasible mitigation measures be identified for significant environmental impacts associated with project implementation. A requirement to pay residents a fee equivalent to the estimated cost of a noise barrier does not constitute mitigation under CEQA. Amongst other infirmities, such a measure does not include any requirement that the resident spend the money on noise reducing measures. Because the proposed payment appears to establish a flawed public policy for mitigation and set a precedent, and in addition it cannot be shown that this measure would have any measurable beneficial effect on the environment, it is inappropriate to include it in the Recirculated Draft EIR and it should be deleted.

The feasibility of constructing a noise barrier on private property also raises a number of legal questions that make this mitigation measure unworkable. The attached detailed comments (Attachment 3) raise serious issues and questions about such a requirement. Because these questions have not been addressed, the feasibility of implementing NS/mm1 remains speculative and it should therefore be removed from the Recirculated Draft EIR.

The fundamental factual basis for whether -- and to what extent -- noise mitigation is required are a serious issue not only for such matters as NS/mm-1, but the other noise analyses in the Recirculated DEIR as well. Some examples, also addressed in Attachment 3, follow.

The Recirculated DEIR summarizes the Noise Element requirements for new or modified stationary noise source standards. However, it must be noted that the Noise Element further states that when the noise level standard is exceeded at the property line of vacant land (i.e., land that does not contain a habitable structure), such exceedance shall be waived when the Director of Planning and Building determines that such vacant land is not likely to be developed with a noise sensitive land use.

The RDEIR does not assert, and the facts are clear, that the adjacent lands which are being used for agricultural purposes (i.e., vineyards) are not likely to be developed with a

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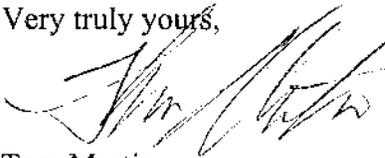
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noise sensitive land use. As such, we believe the RDEIR must conclude that the Director should in fact waive the requirement. The RDEIR text should be revised to so state. In addition, the threshold of significance utilized (one decibel (1 dB)) is inconsistent with industry standards and conflicts with the threshold of 3 to 5 dBA included in the original Environmental Noise Assessment prepared by Brown-Buntin Associates, Inc. and included in Appendix E of the Draft EIR. As stated on page 3 of Appendix E, “For non-transportation noise sources, it is common to assume that a 3 to 5 dB increase in noise levels represents a substantial increase in ambient noise levels. This is based on laboratory tests that indicate that a 3 dB increase is the minimum change ‘perceptible’ to most people, and a 5 db increase is perceived as a ‘definitely noticeable change.’” Therefore, a 3 to 5 dBA threshold is appropriate, consistent with the Brown-Buntin report, and should be applied.

Finally, the County Noise Element states that new development of noise-sensitive land uses shall not be permitted where the noise level due to existing stationary noise sources will exceed noise level standards unless effective noise mitigation measures have been incorporated into the design of the development to reduce noise exposure to or below the allowable threshold (refer to DEIR Table V.I.-4). These noise thresholds are applied at the property line. *The stationary noise source threshold referenced applies to the new development of noise-sensitive land uses (e.g., residences, churches, hospitals).* The project does *not* include the new development of a noise-sensitive land use. The expanded landfill operation is not a use that is sensitive to noise. Therefore, the appropriate threshold for “new proposed stationary noise sources” or “existing stationary noise sources which undergo modifications” (i.e., the landfill expansion) is identified in Policy 3.3.5 of the County General Plan Noise Element. The text of the Recirculated DEIR should be modified to identify the correct stationary source noise threshold for the proposed project.

Thank you for your consideration of these comments. We look forward to working with you to complete the EIR review process.

Very truly yours,



Tom Martin  
Division Vice President  
Cold Canyon Land Fill, Inc.



Thomas Reilly  
CA Engineering / Corporate Compliance Manager  
Waste Connections, Inc.