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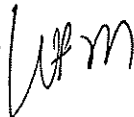
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MEMORANDUM

TO: Mark Schleich
FROM: Whit Manley 
DATE: October 13, 2006
RE: Tajiguas Landfill

The County wishes to begin planning for final closure of a portion of airspace at the Tajiguas Landfill containing municipal solid waste (“MSW”). The status of this portion of the landfill under the California Coastal Act has implications for whether the County can leave the MSW in place, or must move the MSW to another portion of the landfill outside the Coastal Zone for final closure.

From an operational perspective, the County would prefer to submit a closure plan that leaves the MSW in place. This approach would avoid the expense and potential environmental impacts associated with moving the MSW from one section of the landfill to another.

The issue is whether the landfill is, in this area, a legal non-conforming use. If it is, then the County would be able to leave the MSW in place. If it is not, then the County would have to either move the MSW out of the Coastal Zone, or change the zoning designation of this area (an action that would be appealable to the Coastal Commission).

The memorandum begins with a brief discussion of the Coastal Act and its general relationship to the Tajiguas Landfill, particularly with respect to the portion of the landfill the County proposes to close. Next, the memorandum summarizes available information in the County’s files concerning whether this portion of the landfill is a legal

nonconforming use. Finally, this memorandum makes recommendations regarding the environmental review and permitting processes applicable to the proposal to leave the MSW in place.

1. The Coastal Act and the Tajiguas Landfill

Tajiguas Landfill commenced operations in 1966. The County has operated the landfill on a continuous basis since that date.

In 1976, the California Legislature enacted the California Coastal Act. (Pub. Resources Code, § 30000 et seq.) The Coastal Act designates a “Coastal Zone.” Land within the Coastal Zone is subject to the provisions of the Coastal Act. (Pub. Resources Code, § 30103, subd. (a).)

The Coastal Zone boundary bisects the Tajiguas Landfill site. The figure attached to this memorandum is taken from the draft environmental impact report (“EIR”) for the Tajiguas Landfill Expansion Project published by the County in 2001. As this figure indicates, the southern-most quarter of the landfill site falls within the Coastal Zone.

The portion of the site within the Coastal Zone is in the “AG-II” zone district. Under the County’s coastal zoning ordinance, landfills are not a permitted use, either by right or conditionally, in the AG-II zone district. Thus, under current zoning ordinance, a new landfill could not be established at the site unless the County amended the zoning designation for the site.

A decision to amend the zoning designation for the site and to approve a permit for a landfill in the Coastal Zone would require the County to comply with the procedures for amending the Coastal Land Use Plan (CLUP). Such amendments are not effective until certified by the Coastal Commission.

Because the Tajiguas Landfill footprint was established prior to enactment of the Coastal Act, the landfill has long been considered “grandfathered” for purposes of the Act. The landfill’s status with respect to the Coastal Act is therefore analogous to that of a “legal non-conforming use” with respect to the area within the Coastal Zone. That is, the use would not be permitted today in the AG-II zone; the use, however, was legal at the time it was established, and the use predates the enactment of the Coastal Act. As a general matter, the grandfathering of the Tajiguas “footprint” is uncontroversial.

The record indicates, however, that there may be uncertainty regarding the “vertical extent” of the grandfathering of this use within the Coastal Zone. In other words, although there is no debate regarding the grandfathering of this use up to a certain elevation, there may be ceiling to the vesting of this use, such that any MSW deposited above this ceiling is not a legal non-conforming use, and cannot be left in place. The Draft EIR for the Tajiguas Landfill Expansion, published by the County in 2001, characterized the issue as follows:

“For County permitting purposes, the landfill has been ‘grandfathered’ under the current zoning and is considered a legal, nonconforming use. The legal, nonconforming landfill has been defined as the landfill within the waste footprint as defined in the Solid Waste Facility Permit to an elevation of 400 feet mean seal level (MSL), and all operations necessary to support the landfill under these criteria.”

(Draft EIR, p. 3.7-34.)

Over the past 40 years, the County has deposited MSW, rising to an approximate elevation of 460 feet above mean sea level, in the area of the landfill that falls within the Coastal Zone. The elevation of waste within the Coastal Zone has raised concerns regarding whether such waste can remain in this area without a zone change and amended CLUP designation. In particular, the concern focuses on MSW within the Coastal Zone above 400 feet MSL.

The 400-foot ceiling in the Coastal Zone traces to a 1978 Solid Waste Facilities Permit (“1978 SWFP”). County documents prepared after that date generally assume the landfill use was “grandfathered” only up to an elevation of 400 feet MSL. These documents also assume that the MSW located above this elevation will have to be relocated to an area outside the Coastal Zone.

The County now wishes to proceed with planning for closure of the southerly portion of the landfill – the same area within the Coastal Zone. The County therefore needs to determine whether, in fact, the MSW in the Coastal Zone above 400 feet MSL must be relocated, or can be left in place.

The following section of this memorandum traces the history of the landfill based on documents in the County’s permitting file for Tajiguas. The purpose of this analysis is to determine whether, in fact, the portion of the landfill within the Coastal Zone is grandfathered only up to the 400 feet MSL ceiling. In other words, the analysis focuses on whether the 2001 Draft EIR properly characterizes the permitting status of the landfill with respect to the Coastal Zone.

2. History

In December 1965, Santa Barbara County conducted a refuse disposal site study. The study reviewed four potential landfill sites located in the south coastal region of Santa Barbara County. Of the four sites, the study concluded that the Cañada de la Pila site was the best site for a new landfill to service Santa Barbara County

The Cañada de la Pila site lies approximately 26 miles west of Santa Barbara and one-third of a mile north of U.S. Highway 101. The Tajiguas Landfill was designed to utilize 150 of the original Cañada de la Pila site’s 167 acres for landfill purposes. The

original landfill was designed to accommodate 15,000 acre-feet of MSW, which equated to an estimated 52-year lifespan.

As is often the case for a dynamic facility such as a landfill, the County has over the years prepared a variety of plans and maps depicting possible configurations for the landfill. The final elevation shown on these plans has also fluctuated. These plans and maps have been prepared to serve as internal engineering plans for purposes of operating the landfill, and as attachments to permit applications.

a. 1967 - 1978

From 1967 through 1978, prior to the issuance of the 1978 SWFP, multiple fill plans were drafted for the Tajiguas Landfill. Each new fill plan contemplated a different elevation. In 1969 a theoretical maximum fill plan was drafted for the Tajiguas site listing a final elevation of 500 feet. Depth curve calculations from the same year studied final elevations from 225 to 375 feet above MSL. By September 1971 the County prepared engineering studies showing level surface areas from 400 to 500 feet above MSL. Each new plan referred to different elevations, larger capacities, and a broader footprint as the County increased the capacity of the Landfill. None of these plans drafted for the landfill prior to the 1978 SWFP were credited with, or claimed to represent, the final elevation for the landfill.

In 1973, the County sought a Coastal Development Permit to construct drainage improvements for the landfill, including the area extending into the Coastal Zone. The County Public Works Department prepared a Negative Declaration for the project, conducted public meetings, and applied to the South Coast Regional Coastal Commission for the permit.

On August 30, 1973, the County filed for the permit. The County attached a map of the Tajiguas site illustrating the location of the proposed drainage improvements in relation to the location of the Coastal Zone boundary. Neither the map, nor the application to which it was attached, identified an elevation limitation.¹

The Coastal Commission expressed concern regarding the impact of the landfill on the Coastal Zone, suggesting that future expansion of the Tajiguas Landfill be closely monitored.

The Coastal Commission issued the Coastal Development Permit in 1973. The 1973 permit was, and remains, the only permit issued by the Coastal Commission for the Tajiguas site. The permit does not impose an elevation limit for the facility, but fill plans

¹ / The County applied for this permit under the 1972 "Coastal Zone Conservation Act." This statute was subsequently replaced by the California Coastal Act. (See former Pub. Resources Code, § 27000 et seq.)

prepared by the County during the same time period reference a maximum 500-foot elevation.²

b. 1978 Solid Waste Facilities Permit

In 1978, the Solid Waste Management Act required existing MSW landfills to obtain solid waste facility permits (“SWFP”). In February 1978, the County received a SWFP for the Tajiguas Landfill. The 1978 SWFP included specific findings regarding the Tajiguas Landfill, including the then-current size, disposal rate, expected life and growth of the landfill.

The 1978 SWFP included a map of the landfill. The map depicted a maximum elevation of 400 feet above MSL. The map is entitled “Finish Grades Phase I.” This map is the first time the County’s records refer to a 400-foot “ceiling” in the Coastal Zone.

Subsequent County documents cite this permit as establishing a final elevation for the landfill of 400 feet above MSL within the Coastal Zone. There are four reasons, however, why this figure does not appear to have been intended to establish such a ceiling:

- (1) The map’s title – “Finish Grades Phase I” – indicates the County regarded the elevations shown on the map as interim, not final.
- (2) Earlier renditions of the landfill plans indicate final elevations of up to 500 feet. Nothing in the 1978 SWFP indicates an intention to scale back on the size of the landfill.
- (3) Throughout the history of the County’s operation on the landfill, the Department of Public Works has prepared a series of fill plans depicting how MSW will be deposited at the landfill. These plans have generally been prepared as an aid to site operations, rather than for purposes of obtaining permits. Particularly in the early years of the landfill’s operations, however, the County also used these fill plans as attachments to their permit applications as a handy way to depict the site. Thus, when the County applied for the 1978 SWFP,

²/ Subsequent to the grant of the 1973 Coastal Development Permit, there is no record of communications between Santa Barbara County and the Coastal Commission regarding the Tajiguas Landfill until August 2002. At that time, the Commission sent the County a letter requesting that the County file a claim of vested rights for the Tajiguas Landfill. (See Cal. Code Regs., §§ 13200-13208 (regulations for seeking “vested rights” determination from Commission).)

the County attached a copy of most recent fill plan prepared by the Department of Public Works.³

- (4) The figure attached to the 1978 MSW depicts a large, level area at the top of the landfill, including a large bedrock bench. This design is characteristic of an interim design, rather than the design for final cover of a landfill. A large, level bench is generally used only when the operator anticipates placing additional MSW on top of the level area; the level area provides a stable surface for placement of the next lift of MSW. The level surface is not characteristic of a design for final cover, however; final cover design includes a gentle slope to provide controlled drainage from the surface to limit infiltration and avoid ponding. Thus, the large, level bench area shown on the 1978 figure was, like previous fill plans, clearly intended as the base for the next phase of landfill development.

The figure attached to the 1978 SWFP generally became the benchmark for purposes of determining the extent to which the landfill was “grandfathered” in the Coastal Zone. As early as 1983, in correspondence pertaining to Tajiguas, references were made to the 1978 SWFP and the 400-foot elevation limit. A letter dated May 18, 1983, from the California Integrated Waste Management Board (“CIWMB”) to the Santa Barbara County Resource Management Department referred to the 1978 SWFP as a “grandfathered” permit for a use that existed prior to the 1972 Kapiloff Solid Waste Control Act.⁴

c. Amendments to 1978 SWFP

In 1987, the County certified an environmental impact report for a proposed expansion of the landfill. The 1987 EIR (87-EIR-8) stated that, for Phase 1, “[s]ideslopes will be benched and have slopes that will not exceed 1.75: 1.” (1987 EIR, p. III-7.) The EIR analyzed impacts from implementing Phase 1 to an elevation of 500 feet above MSL at the existing landfill, and above 500 feet on the inland or “back canyon” portions of the landfill expansion area. The existing landfill straddled the Coastal Zone. (See 1987 EIR,

³ / Similarly, in 1973 the County attached the then-current fill plan to its application for a Coastal Development Permit.

⁴ / Elsewhere, the record suggests the 1978 SWFP was not intended to place strict limits on landfill operations. In particular, a 1990 letter from the California Integrated Waste Management Board stated the daily tonnage included in the 1978 SWFP was not intended to limit the facility to that tonnage, but rather to describe operations at the site. Arguably, the same would be true of the 1978 SWFP map and its reference to the 400-foot MSL level. Thus, the 1978 SWFP has been characterized both as a description of operations at the site, and as establishing limits on site operations.

Figure III-2.) In describing the applicability of the Coastal Act to the expansion, however, the EIR stated:

“Although a portion of the existing landfill site is within the Coastal Zone, the proposed expansion area is outside the Coastal Zone (see Figure III-2); therefore, the County Coastal Plan does not apply to the expansion.”

(1987 EIR, p. IV-6.)

The EIR included an analysis of the extent to which the proposed expansion was consistent with applicable land-use policies. The analysis stated the expansion was located outside the Coastal Zone. (1987 EIR, p. V-41.) The EIR considered Local Coastal Plan policies, however, due to the proximity of the expansion to the Coastal Zone. (*Ibid.*) No significant impacts associated with the Coastal Zone were identified in terms of land-use conflicts or sensitive resources.

The EIR also considered the “no-project” alternative. The EIR described this alternative as follows:

“This alternative assumes a ‘status quo’ or the continuation of existing land uses and conditions. Under the ‘no project’ alternative, the existing Tajiguas landfill would continue operation until the landfill elevation reaches a height of 500 feet and the proposed expansion area would remain as an Open Space area.”

(1987 EIR, p. XI-1.)

The no project alternative did not identify the 400-foot “ceiling” on depositing MSW in the Coastal Zone. Thus, the EIR strongly suggests that, in 1987, the County did not believe such a ceiling existed.

The CIWMB submitted a comment letter on the Draft EIR requesting a clarification of the extent to which the County proposed to alter the height of the existing landfill. The CIWMB’s comment letter stated:

“In several sections of this document, the Phase I development of the landfill is discussed. In these discussions, it is stated that the landfill expansion project just applies to Phases II and III, and that Phase I represents the existing operation. In reviewing information in the current Solid Waste Facilities Permit, specifically the exhibits showing the final fill elevations for Phase I, a maximum elevation of 400’ is indicated. This contrasts with the maximum elevation of 500’ for Phase I which is indicated in this document. The 100’ difference in elevation should be explained in this document. This additional height in fill for Phase I potentially could be considered as part of the facility expansion, since it

appears to go beyond the height limit indicated in the information in the Solid Waste Facilities Permit.”

(Memorandum from Alan A. Oldall, Deputy Executive Officer, CIWMB, to Chris Wilson, Santa Barbara County (August 18, 1987).)

The memorandum from the CIWMB did not mention the Coastal Zone.

The County prepared an addendum to the EIR addressing the CIWMB’s comments. The addendum stated the proposal to raise the height of the existing landfill to 500 feet was made “subsequent to the preparation of the EIR.” (1988 Addendum, p. 1.) The 1988 addendum to the EIR focused on impacts of raising the landfill’s maximum elevation from 400 feet above MSL to 500 feet above MSL. The addendum addressed impacts to groundwater, drainage, air quality, slope stability/erosion and aesthetics. The addendum did not identify or discuss the project’s potential inconsistency with the Local Coastal Plan. The County, the LEA and the CIWMB approved the revision to the SWFP. Thus, the County was authorized to raise the elevation of the existing landfill from 400 feet above MSL to 500 feet above MSL. The County did not apply for a Coastal Development Permit to allow the increase in height within the coastal zone portion of the landfill. The Coastal Commission did not comment on the EIR prior to its approval.

In 1995, the LEA and CIWMB approved an updated SWFP for the landfill. The 1995 SWFP authorized disposal of up to 12.0 million cubic yards of MSW. The 1995 SWFP did not revise the footprint of the landfill, or change the maximum authorized gradient of final slopes. The 1995 SWFP did not refer to the Coastal Zone issue, but cited the elevation as 500 feet above MSL.

In 1999, the LEA and CIWMB approved the “Bench Plan,” which authorized the County to revise the slope design of the 1995 SWFP. The documentation surrounding the Bench Plan focused on drainage and stability issues, rather than on the limits of permissible landfill operations within the Coastal Zone.

d. 1992 – Orders Issued by EHS

Environmental Health Services (“EHS”) – the Local Enforcement Agency for the landfill – has issued two separate stipulated orders of compliance and agreement addressing the height of the landfill.

EHS issued the first order on January 29, 1992. The Order referenced the 1978 SWFP. Among the terms and conditions, the order extended the height of the Landfill to 420 feet after stating that the Tajiguas Landfill had exceeded the 400-foot elevation limit purportedly established by the 1978 SWFP.

EHS issued the second order on September 8, 1992. The second Order raised the elevation limit from 420 feet to 435 feet.

Both orders referred generally to an overall elevation limit on depositing MSW at the landfill. The first order raised the limit from 400 feet to 420 feet. The second order raised the limit from 420 feet to 435 feet. Neither order distinguished between MSW in the Coastal Zone, and MSW outside the Coastal Zone; rather, both orders refer generally to a height limit on MSW disposal, without regard to whether the MSW was within or outside the Coastal Zone. Thus, to the extent EHS interpreted the 1978 SWFP as establishing a ceiling on the disposal of MSW at the landfill, EHS did not tie that ceiling to the Coastal Zone.

e. **1991-2001 -- County Correspondence**

County correspondence from 1991 to 2001 indicates there was some uncertainty regarding whether the 1978 SWFP established a 400-foot MSL ceiling on landfill operations in the Coastal Zone:

- In a July 15, 1991, letter, the Department of Public Works stated: “a review of the current Waste Discharge Requirements for the Tajiguas Landfill does not specify a final height for the landfill.”
- A November 18, 1991, memorandum drafted by Chris Wilson from the County of Santa Barbara referred to a final fill plan that imposes a final elevation of 500 feet above MSL. The memorandum was accompanied by a map depicting the 500-foot elevation.
- An August 13, 1999, memorandum from Jackie Campbell of the County Planning and Development Department referred to a bench plan reconfiguration proposed for the existing landfill. The memorandum stated the “bench plan involves areas in the Coastal Zone below 400 feet in elevation and areas outside the Coastal Zone below 500 feet in elevation.”
- In an August 16, 1999, memorandum to Phil Demery, Santa Barbara County Planning and Development, reviewed the local permit requirements for the Tajiguas Landfill site. In the memo, the Planning Department summarized the status of the landfill with respect to the Coastal Act. The memorandum stated: “In 1978, the landfill received a Solid Waste Facilities Permit (SWFP) from the State of California. The 1978 SWFP imposed a 400-foot elevation limit on the landfill but did not otherwise affect the permit status of the facility. Landfill activity within the parcel and below 400 feet in elevation was (and is) a continuation of the historic operation of the original landfill. This landfill activity is not subject to Coastal Zone requirements.”

- A January 23, 2001, letter and an August 1, 2002, memorandum to the Board of Supervisors stated the 1978 SWFP “imposed a 400-foot elevation limit” on the portion of the landfill within the Coastal Zone.

f. 2001-2002 – Tajiguas Landfill Expansion Project

In 2001, the County released a Draft EIR for the Tajiguas Landfill Expansion project (01-EIR-05). The Draft EIR stated that the “southeast corner modification” of the existing landfill was evaluated as a component of the project. The modification proposed to remove and relocate all waste above 400 feet in the Coastal Zone to the inland portion of the landfill. Phased landfill closure was to “...be implemented within a practical time period after an area or phase of the landfill reaches its final contours.” The Draft EIR provided the following description of this aspect of the project:

“The Coastal Zone boundary on the landfill site was refined in recent years. With confirmation of the Coastal Zone boundary on the site, it was discovered that approximately 2 years of waste was inadvertently buried above the 400-foot elevation of a portion of the landfill within the Coastal Zone. Placement of waste above 400 feet, the vertical limit for the legal, nonconforming landfill facility, in the Coastal Zone is subject to the permit requirements of Article II. In the Coastal Zone, placement of waste above 400 feet involves a landfill-related activity in air space that was not previously used for landfill purposes. This activity triggers Coastal Zone permitting requirements.

“Environmental impacts of expansion of the landfill into this area were addressed under 87-EIR-8; however, the Coastal Zone permit was not obtained for waste placement above 400 feet. Expansion of the landfill, under the existing agricultural zoning of the parcel, does not allow for a landfill as a permitted or conditionally permitted use. A zone district change would be required. Because of these considerations, as part of the proposed project, and to correct this inconsistency, the southeast corner of the landfill would be modified to be in conformance with the limits of the historic landfill. Concurrent with development of either the Front Canyon configuration or Back Canyon configuration, waste above 400 feet in the Coastal Zone would be relocated, from the southeast corner of the landfill to the expansion area. This element of the project would restore the landfill elevation to historic levels and would bring the landfill into consistency with the ‘grandfathered’ use of the landfill.”

(Draft EIR, p. 3.7-55.)

The County received comments on the Draft EIR objecting to the proposal to excavate and move this MSW. The City of Lompoc requested that the County consider

amending its Local Coastal Program to allow the MSW to remain in place. (City of Lompoc, Comment 19-1.) The City of Santa Barbara made a similar recommendation. (City of Santa Barbara, Comment 17-1.)⁵ The Final EIR provided the following response to these comments:

“The alternative to leave the waste associated with the southeast corner modification in place is not currently feasible under existing zoning and the existing Coastal Land Use Plan and Coastal Act, even though it would be environmentally superior to leave the waste in place. The waste removal is required to bring the facility into compliance with existing zoning and the Coastal Land Use Plan and Coastal Act. As noted in previous Responses, the Coastal Policies do apply to any activities, including waste placement, above the 400-foot elevation in the Coastal Zone. . . . Leaving the waste in place is not feasible under current zoning because expansion of the landfill above 400 feet is not an allowed use under the AG-II zoning designation in the Coastal Zoning Ordinance, Coastal Plan policies or the California Coastal Act.”

(Final EIR, Response to Comment 3-123.)

Elsewhere, the Final EIR quoted the Planning Department’s August 16, 1999, memorandum to support this analysis:

“The proposed Tajiguas Landfill Expansion project has been designed to avoid the coastal zone located on APN 81-150-19 (the southern parcel where the existing Landfill is located).

“In an August 16, 1999 memo to Phil Demery (Correspondence # 31), the Santa Barbara County Planning and Development reviewed the local permit requirements for APNs 081-150-019 and-026. In the memo P&D found that:

““The Tajiguas Landfill has been in operation since 1966 prior to the enactment of the Coastal Act, the passage of the California Environmental Quality Act, and the onset of State regulation of landfills through the Solid Waste Management Act. Therefore, the only potentially applicable regulation was the County of Santa Barbara Zoning Ordinance 661. The Tajiguas Landfill, a County owned Public Works Facility, was not subject to a County permit requirement because Ordinance #661 specifically states that it is not applicable to “the County of Santa Barbara or any district of which the Board of Supervisors is the governing body.” Thus the

⁵ / The Coastal Commission did not submit comments.

landfill became a legal facility with no established limits of operation within the boundaries of the original landfill property (APN 081-150-019).

In 1978, the landfill received a Solid Waste Facilities Permit (SWFP) from the State of California. The 1978 SWFP imposed a 400-foot elevation limit on the landfill but did not otherwise affect the permit status of the facility. *Landfill activity within the parcel and below 400 feet in elevation was (and is) a continuation of the historic operation of the original landfill. This landfill activity is not subject to Coastal Zone requirements.*” (emphasis added).

“In 1988, 87-EIR-8 was completed to allow a larger expansion at the Tajiguas Landfill north, east and west of the Landfill footprint, and to an elevation of 500 feet. This expansion project would have allowed the expansion to occur laterally and fill over portions of what is now the natural channel of Pila Creek north of the existing Landfill. This expansion project was never completed. In 1988, a new SWFP was issued to expand the height limit to 500 feet throughout the Landfill including the coastal zone. However, no Coastal Development Permit to allow the increase in height within the coastal zone portion of the landfill has been issued.

“Historically, Landfill activity below 400 feet in elevation has been considered to be a continuation of the historic operations of the original Landfill. This is the reason the downstream sedimentation structure (referred to in the past as the down canyon in-channel and later the down canyon out-of-channel sedimentation basin) has not required CEQA review or coastal permits (see Correspondence # 53).

“The Landfill expansion has avoided the Coastal Zone and would not expand the Landfill beyond the 400-foot elevation in the Coastal Zone. Therefore, the proposed project is an expansion of an existing use. As analyzed in Draft EIR Sections 3.2 – Geology, 3.3 – Water Resources and 3.4 – Biological Resources, coastal resources would not be impacted by the expansion project. Therefore the California Coastal Act does not apply to the project. Elements that, under the worst-case analysis, may occupy the Coastal Zone above 400 feet, plus applicable coastal policies, are discussed in Draft EIR Section 3.7.4.3.”

Finally, the response to the City of Santa Barbara’s comment stated that “a zoning change application to develop a new or expand an existing landfill within the Coastal Zone would likely be denied” in light of Coastal Act policies regarding such uses. (Response to Comment 17-1.)

In 2003, the LEA issued a revised SWFP for the landfill. The landfill is now operating under the 2003 SWFP. The 2003 SWFP references the “southeast corner modification,” and thus contemplates excavating the MSW as described in the EIR. The 2003 SWFP does not require excavating the MSW; rather, the 2003 SWFP simply echoes the EIR. Because the 2003 SWFP does not require excavating the MSW, the 2003 SWFP does not need to be amended to leave the MSW in its current location.

To date, the southeast corner MSW has remained in place.

g. Summary

The above chronology indicates the figure accompanying the 1978 SWFP was not intended to establish the vertical limits of the landfill for purposes of grandfathering the landfill under the Coastal Act. Rather, this figure appears to have served simply as the Department of Public Works’ plan for the construction of an interim phase of the landfill.

In 1987-1988, when the County prepared an EIR to analyze potential expansion of the landfill, the County analyzed increasing the height of the landfill to 500 feet above MSL, including the portion of the landfill falling within the Coastal Zone. The EIR made no mention of the Coastal Zone “grandfathering” issue. As late as the early 1990s, County plans showed a final elevation of 500 feet above MSL, as had been analyzed in the 1988 SWFP.

In the late 1990s, the County began to refer to 400 feet above MSL as the “ceiling” of the landfill in the Coastal Zone. Because some waste had been deposited above the 400-foot ceiling, the County’s proposal to expand the landfill included excavating and relocating that portion of the MSW within the Coastal Zone that was above this elevation. This approach begins to appear in Planning Department documents in 1999, and is the position consistently adopted by the County throughout the process culminating in 2002 with the approval of the Tajiguas Landfill Expansion project. The 2003 SWFP does not require removal of this MSW, but the 2003 SWFP’s description of landfill operations echoes this approach.

County files do not explain why this shift took place. The closest the documents come to providing an explanation is set forth in the Tajiguas Landfill Expansion Project Draft EIR issued in 2001, in which the County stated that the “Coastal Zone boundary on the landfill site was refined in recent years.” The Draft then went on to note the 400-foot ceiling on landfill operations for purposes of the Coastal Act.

In short, for at least the last seven years, County documents indicate the figure attached to the 1978 SWFP established a 400-foot ceiling on depositing MSW in the Coastal Zone. The 1978 SWFP itself, however, does not support this position.

3. Recommendations

The County now wishes to begin planning for closure a portion of the Tajiguas Landfill, including the portion located in the Coastal Zone above 400 feet MSL. The Tajiguas Landfill Expansion Project EIR stated MSW in this area would be excavated and deposited elsewhere at the landfill, outside the Coastal Zone. As the EIR acknowledged, excavating this waste would result in environmental impacts. There is no evidence this MSW would, if left in place, cause any environmental impacts, other than the psychic impact of a potential violation of the Coastal Zone. In the “real world,” the MSW should be left where it is.

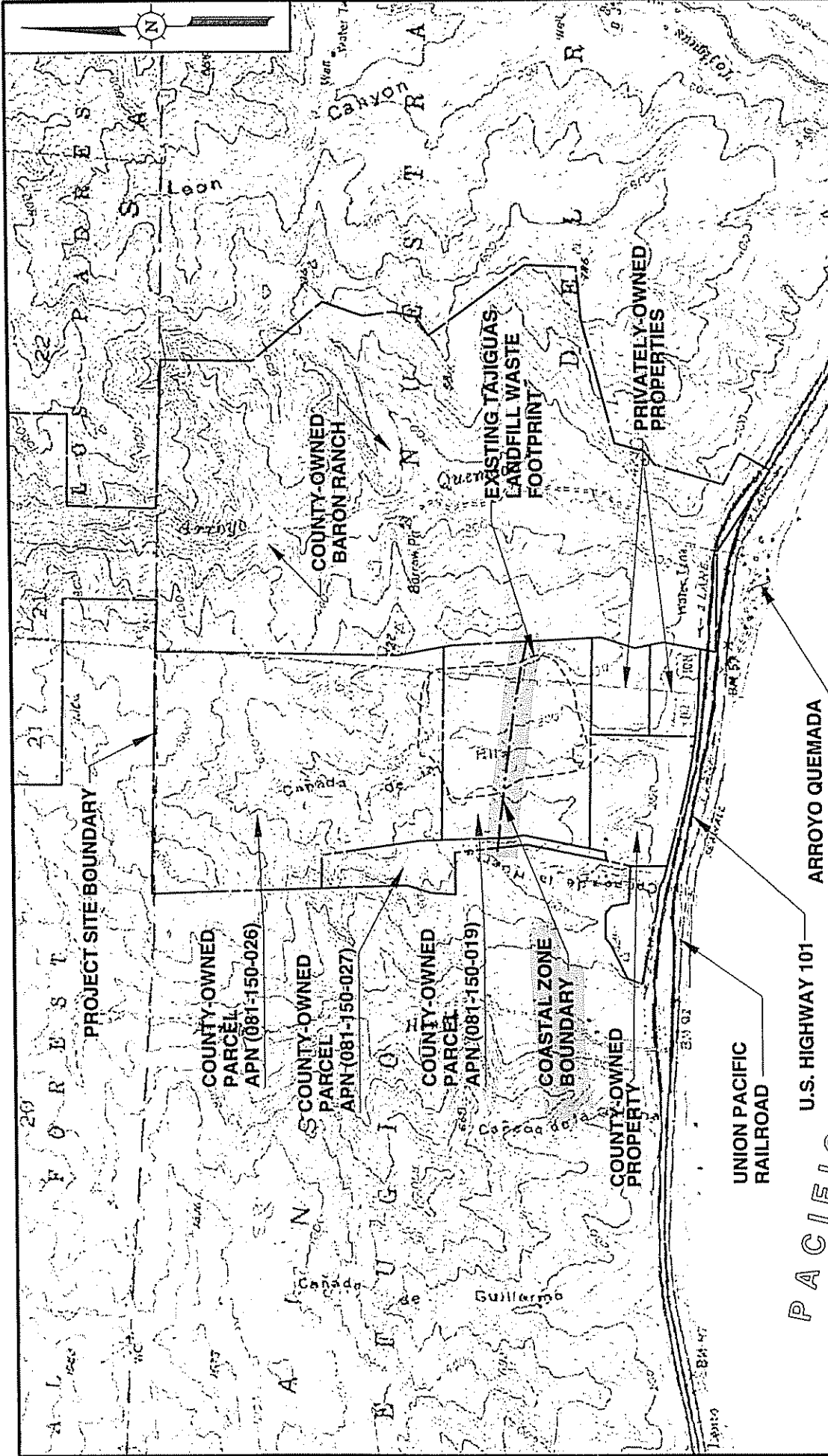
Leaving the MSW in place would represent a change in the description of the Tajiguas Landfill Expansion Project. For this reason, we recommend that the County comply with the California Environmental Quality Act prior to approving this change. Because the impacts of leaving the MSW in place are beneficial, however, this analysis should take the form of an addendum to the EIR certified by the County in 2002. The addendum would demonstrate that leaving the MSW in place would result in no new or substantially more severe impacts to the environment. (See Pub. Resources Code, § 21166; CEQA Guidelines, § 15164.)

This approach is premised on the conclusion that, on scrutiny, the 400-foot MSL ceiling is illusory, and is based on a misreading of the figure attached to the 1978 SWFP. As explained above, the record appears to support the view that the “grandfathering” of the landfill within the coastal zone does not stop at 400 feet above MSL.

Assuming the County agrees with this conclusion, we recommend that the County prepare and consider an addendum analyzing the impacts of this change in the project description. We also recommend that the County formally approve this change in the project description. Once the County approves this change, the County would prepare and submit to the LEA a closure plan that calls for leaving the MSW in place. This approach would ensure that the CEQA record is consistent with the proposal to leave the MSW in place. This approach should also be uncontroversial, in that all those who commented on the 2001 Draft EIR recognized that, from an environmental perspective, the MSW ought to be left where it is.

Attachment

60108039 003



**TAJIGUAS LANDFILL
SITE VICINITY MAP**

TAJIGUAS LANDFILL EXPANSION
SANTA BARBARA, CALIFORNIA



FIGURE 1-2



REFERENCE: USGS 7.5 MINUTE TOPOGRAPHIC MAPS OF TAJIGUAS AND GAVIOTA, CALIFORNIA, 1982.