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January 17, 2013

VIA E-MAIL AND OVERNIGHT MAIL

Permit Appeals Officer
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200
Email: appeals@dtsc.gov

Alfred Wong, P.E., Team Leader
Used Oil and Tanks Team
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710
Email: awong@dtsc.gov

Re: Petition for Review of Hazardous Waste Facility Permit for CleanTech Environmental, Inc., 5820 Martin Road, Irwindale, California 91706 (EPA ID No. CAL 000330453)("Project")

Dear Honorable Permit Appeals Officer:

I write in furtherance of my letters of July 5, 2012 and December 5, 2012 regarding the above-referenced Project. Please let this letter serve as a formal appeal and petition for review, pursuant to California Code of Regulations, title 22, Section 66271.18, of the granting and issuance of a hazardous waste facility permit to CleanTech Environmental, Inc. ("CleanTech") to construct and operate a used oil recycling facility in the City of Irwindale. Both my firm and my client, L.I.M.P.I.A., an unincorporated association of residents of Los Angeles County, were dumbfounded and shocked by the California Department of Toxic Substances Control's ("DTSC") action in issuing the permit for this Project without proper review under the California Environmental Quality Act ("CEQA"). Specifically, we are concerned about the potentially significant environmental impacts caused by the Project, and in particular the lack of consideration of environmental justice. DTSC failed to properly review the Project under CEQA, and ignored the potentially significant effects of the Project on the environment, putting at risk the health and safety of tens, if not hundreds, of thousands of southern California residents. Most affected would be minority populations in the area, including poor and working-class Latino communities. Irwindale, the municipality where the Project is proposed is over 88%

RECEIVED JAN 18, 2013
Permitting Unit

ORIGINAL

Latino. As stated by the California Attorney General in a Legal Background report on Environmental Justice: "The benefits of a healthy environment should be available to everyone, and the burdens of pollution should not be focused on sensitive populations or on communities that already are experiencing its adverse effects." (Office of the Attorney General, California Dept. of Justice, Environmental Justice at the Local and Regional Level (2012) p. 1.)

This wanton disregard for the safety of the general public, particularly the citizens surrounding this Project site, must be remedied immediately and DTSC must prepare an Environmental Impact Report for the Project so that the public is fully informed about the health risks of the Project and mitigation is identified before a final decision on the Project. For the reasons set forth below, we request DTSC to accept review of this appeal and stay the permit decision pursuant to Code of Regulations, title 22, Section 66271.14(b)(2)).

I. INTRODUCTION

As explained more fully below, we are seeking review of the permit on legal and factual error in the conditions of the hazardous waste facility permit issued on December 20, 2012. Additionally, the permit approval raises a substantial policy consideration which must be reviewed. Specifically, we believe the Project would result in numerous significant environmental impacts which DTSC did not adequately consider, including environmental justice.

Further, when I wrote to you in July 2012, it was my understanding that your office would first respond to comments before issuing a permit and then allow further public input prior to making a determination as to whether the permit should be issued at all. DTSC's action in issuing a permit for a hazardous waste facility on December 20, 2012, just before the Christmas holiday celebrated by so many of the area's Latino residents, smacks of environmental injustice.

The lives of our clients, who are underserved and poor, and many of whom do not speak English will be forever altered if a large hazardous waste facility is allowed to be constructed at 5820 Martin Road. Accordingly, we request DTSC to accept review of this appeal.

II. STATEMENT OF REASONS

The reasons for this appeal were raised in the public comment period. But DTSC cannot limit the issues people raise in an appeal, or in public comments before final approval of the Project. CEQA allows any member of the public to comment on any issue until the final decision on a project. (*Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal.App.4th 1109, 1121 (CEQA allows "any alleged grounds for noncompliance with CEQA provisions may be raised by any person prior to the close of the public hearing on the project before the issuance of the notice of determination.").

A. Geology and Soils

There is a confluence of earthquake faults in the Project area, which is highly unusual. Nine separate faults are located within 30 miles of Irwindale, as referenced in Irwindale's 2008 General Plan at page 130. (Copy attached as Exhibit 1.) Five active earthquake faults are located within 3.5 miles of the city's core, which covers only 8.8 square miles in land mass. Furthermore, the Duarte fault (Segment D of the Sierra Madre Fault) runs through the entire city. Segment E of the Sierra Madre Fault meets up with several other faults in a complex zone northwest of the town of Upland near the epicenter of the 1990 Upland earthquake. The general trend of the Sierra Madre Fault Zone continues eastward from this point along the base of the San Gabriel Mountain, but this eastern continuation is known as the Cucamonga Fault Zone. The Cucamonga Fault Zone seems to be more active (has a higher slip rate) than the Sierra Madre Fault Zone. While rupture on the Sierra Madre Fault Zone could be limited to one segment at a time, it has recently been suggested by seismologists studying this area that a large event on the San Andreas fault to the north could cause simultaneous rupture on reverse faults south of the San Gabriel Mountains -- the Sierra Madre Fault Zone being a prime example of such. (Southern California Earthquake Data Center, *Sierra Madre Fault Zone*, California Institute of Technology <http://www.data.scec.org/significant/sierramadre.html> [as of January 10, 2012].) (Copy attached as Exhibit 2.)

Further, the California State Department of Conservation, in its official maps, identifies a body of water less than 2,000 linear feet from the proposed Project site. The state of California State Geologist labels the body of water and other areas around it as potential areas for:

> Earthquake Induced Landsides: Areas where previous occurrence of landslide movement, or local topographic, geological, geotechnical, and subsurface water conditions indicate a potential for permanent ground displacements such that mitigation as defined in Public Resources Code Section 2693(c) would be required.

(Copy attached as Exhibit 3.) The United States Geological Service estimates an 87.3% probability of an earthquake of greater than 6.0 magnitude occurring within 31 miles of the subject site. (U.S.G.S. 2009 Probability Earthquake Mapping.) (Copy attached as Exhibit 4.)

Given the confluence of faults that exist within and surrounding the subject site and given that the State Department of Conservation has identified a water body less than 2,000 feet from the Project site situated on land where previous landslide movement occurred, it would be impossible for the DTSC not to determine the Project has the potential to expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as result of the failure of a levee or damn. Should such a large earthquake occur, it could have disastrous consequences on the local population due to a spill from the Project site. CEQA demands that a Lead Agency conduct an independent review of a proposed project's impacts. (CEQA Guidelines, §§ 15020, 15064.) Geology and soils, the potential for earthquakes, and

potential flooding were not properly studied by DTSC and DTSC erred in concluding the Project would not have significant effects on the environment.

In addition, as noted in our previous comments, DTSC relies on improper and legally inadequate sources—particularly, mere statements by the applicant—for its analysis of geology and soils.

B. Recreation/Hazards and Hazardous Materials

Additionally, within hundreds of feet from the Project site is the Santa Fe Dam Recreation Area, a county park and designated county Significant Ecological Area, located in Irwindale. The park is maintained and operated by the Los Angeles County Department of Parks and Recreation. The park, located off the San Gabriel River Freeway (I-605), contains a 70-acre lake for year-round fishing and non-motorized watercraft.

The dam is a popular tourist attraction as visitors are afforded a view of the San Gabriel Mountains and recreational activities at the park include swimming, fishing, boating, cycling, birdwatching, and hiking. Fish found in the lake include largemouth bass, bluegills, crappie and carp. Should an accident occur at the Project site, or with a truck loaded with hazardous waste travelling to the Project site, and hazardous waste spill or leach into the ground, the Santa Fe Dam Recreation Area would be detrimentally affected and tens of thousands residents affected by this act. CEQA demands that a Lead Agency conduct an independent review of a proposed project's impacts. (CEQA Guidelines, §§ 15020, 15064.) This issue was not properly studied by DTSC and DTSC erred in concluding the Project would not have significant effects on the environment.

C. Biological Resources

In addition, some of the rarest plants and wildlife are found in the Santa Fe Recreation Area and river fan, including the alluvial fan sage scrub, cactus wrens, California gnatcatchers, scissor-tail flycatchers, horned lizards and kangaroo rats. The alluvial fan sage scrub is among the rarest and last of its kind in Los Angeles County. In addition, cactus wrens, California gnatcatchers, scissor-tail flycatchers, horned lizards and kangaroo rats are all rare and endangered species. The effect of the Project on these endangered species was not properly studied by DTSC and DTSC erred in concluding the Project would not have significant effects on the environment.

The result of an accident at the Project site would have far reaching consequences, potentially polluting the water system in the surrounding area as well as damaging the rare eco-system found in the Santa Fe Dam Recreation Area, which includes not only rare plants but endangered species.

Undoubtedly, the Project has the potential to degrade the quality of the environment, substantially reduce the habitat of fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or reduce the number or restrict the range of a rare or endangered plant or animal species.

The failure to prepare an environmental impact report to disclose, analyze, and mitigate the potential impacts of the proposed CleanTech Hazardous Waste Facility on the greater Los Angeles environment could result in the carrying out of a project that may cause irreparable harm to the citizenry of Los Angeles County. CEQA demands that DTSC conduct an independent review of a proposed project's impacts. (CEQA Guidelines, §§ 15020, 15064.)

D. Environmental Justice

Local governments and state agencies, such as DTSC, have an obligation to consider environmental justice issues when approving specific projects. "Environmental justice" is defined in the Government Code as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." (Gov. Code, § 65040.12, subd. (e).) Lead agencies are required to consider the public health burdens of a project as they relate to environmental justice for certain communities. The Initial Study does not acknowledge this issue nor does the Negative Declaration consider environmental justice in violation of CEQA.

Here, the Project is being thrust upon a largely Latino community without proper notice or communication with the community. Much of the surrounding community does not understand English, and very few understand CEQA or the environmental impacts of the Project. While the Fact Sheet may have been in Spanish, the Initial Study was not published in Spanish, creating a significant information gap in the environmental review process. This limited public review and included only a very small portion of the community, effectively defeating CEQA's "informational purpose". To remedy this deficiency, DTSC should 1) re-circulate the Initial Study in Spanish for public review; 2) hold a public hearing on the issue in both English and Spanish for the community to understand the effects of this Project; and 3) prepare an environmental impact report and provide a Spanish translation. Allowing this Project to go forward as approved would subject tens, if not hundreds, of thousands of underserved citizens to the effects of a Project they do not know about.

E. Other Environmental Issues

We submitted a report by Karen Ruggels, an environmental expert and Principal of KLR Planning, with our July 5, 2012 letter. The letter contained a detailed critique of the CEQA review for the Project, but DTSC has not adequately addressed any of the comments in that report. It is attached hereto as Exhibit 5 and incorporated herein by reference. As described more fully in the Ruggels report and in other public comments, DTSC's CEQA analysis is inadequate because it fails to properly analyze and mitigate the following issues:

- The Project may have significant air quality impacts, including impacts related to odors, indoor air quality affecting working, and nearby sensitive receptors—including nursing homes, schools, and daycares near the Project. The air quality analysis is opaque and appears to use the wrong localized significance thresholds, incorrectly finding that the Project will not have an impact.
- The Project may have significant land use impacts and requires a General Plan Amendment, Zoning Code amendment, and Major Use Permit by the City of Irwindale.
- There is no analysis of cumulative impacts, even though there are numerous other hazardous waste sites nearby.
- The Project will increase noise in an already noisy area, and may cause a significant impact. There is no substantive analysis of this impact.
- The Project will increase greenhouse gas emissions and may have a significant impact, particularly if used oil from the Project is burned as fuel.
- The Initial Study admits that "project activity could unearth previously unknown human remains." But there is no analysis of or mitigation for this potentially significant impact to cultural resources.
- There is no substantive analysis or mitigation related hazardous waste transport. This is particularly important as this Project will create a new source of large trucks carrying hazardous waste in the community, and it is reasonably foreseeable that an accident could occur, spilling hazardous waste in the community.
- The Project may contaminate groundwater, causing a significant impact. The Main San Gabriel Basin Watermaster recognized this, and asked DTSC to impose mitigation.
- In addition, the Project site may be subject to floods, and may contaminate nearby impaired water bodies, causing a significant impact.
- The Project may have significant impacts related to public services (e.g., fire and police) and utilities and service systems (stormwater discharges and solid waste disposal). DTSC must analyze all of the reasonably foreseeable consequences of the Project, including use of its full capacity and use of public services.

F. <u>CEQA Explicitly Mandates an EIR for a Large Treatment Facility Like the Project</u>

Nearly all of DTSC's responses to comments were so cursory and opaque that they frustrated public participation and violate CEQA. Below, we provide responses to DTSC's "Responses to Comment" on our July 5, 2012 letter. These responses show how DTSC erred pursuant to Code of Regulations, title 22, Section 66271.18, subd.(a). The issues discussed below were all raised during the public comment period. Specifically, as described in our July 5,

2012 letter, and as discussed further below, the Project clearly qualifies as a "large treatment facility" and CEQA specifically requires DTSC to prepare an environmental impact report.

Response to Comments:

1. We requested DTSC prepare an EIR based on the capacity of the proposed Project. It is clear the proposed Project, a "hazardous waste facility", has the capacity to treat, land treat or recycle significantly more than 1,000 tons of hazardous waste during any one month period. The sheer size of the facility and the proposed size of the numerous storage tanks make clear that the proposed CleanTech facility has the capacity to treat more than 1,000 tons per month. DTSC and CleanTech's attempt to avoid preparing an EIR pursuant to Public Resources Code section 21151.1(a)(3), as a large treatment facility is erroneous and defeats the purpose of CEQA. Because the total capacity of the units at the Project described in the draft permit is 243,240 gallons, based on a specific gravity of 0.88, a gallon of oil weighs 7.34 pounds, the Project can hold over 1.7 million pounds of used oil (7.34 multiplied by 243,240). The Project must be categorized as a large treatment facility.

Allowing this proposed Project to be approved is a violation of DTSC's trust to our citizens and in particular the Los Angeles County residents whose health and safety will be affected by this Project. Special Condition 22 does not alter the fact the facility has the capacity to treat more than 1,000 tons of hazardous waste per month. Condition 22 does not limit the capacity of the Project to treat less than 1,000 tons per month. The fact that the proposed Project has the capacity to treat over 1,000 tons per month, whether or not that amount is disclosed makes the facility a large treatment facility as defined by Health and Safety Code Section 25205.1(d). DTSC's determination the Project is not a large treatment facility is an erroneous finding of fact. DTSC's determination not to prepare an environmental impact report for this Project is an erroneous conclusion of law.

2. We requested DTSC prepare an environmental impact report based on the capacity of the proposed Project. DTSC's response regarding how much hazardous waste is actually treated or recycled is irrelevant pursuant to the language of Health and Safety Code section 25205.1(d). The only relevant factor is the physical capacity of the treatment facility. As indicated above, based on the proposed size of the tanks for the Project, there is no reasonable conclusion that the Project has a capacity to treat, land treat or recycle less than 1,000 tons per month. To argue otherwise would be to disavow DTSC's duty to protect the environment, businesses and residents in Irwindale and surrounding Los Angeles County. Relying on Condition 22 to exempt the Project from Public Resources Code section 21151.1(a)(3) is an erroneous conclusion of law.

3. DTSC has incorrectly interpreted the ruling in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 444. The *Rancho Cordova* case, while discussing mitigation measures as conditions of approval, is not strictly applicable to mitigation measures. Instead, *Rancho Cordova* requires that any condition of approval which limits the scope of the project to something less than full available capacity cannot limit the

environmental review to that condition. Accordingly, DTSC erred in not preparing an EIR for a project which has the capacity to treat, land treat or recycle 1,000 or more tons per month. The Project is not in compliance with CEQA and therefore the conclusion in Condition 3 is clearly erroneous.

4. DTSC does not negate that the capacity of the proposed Project is greater than 1,000 tons. Accordingly, with an approved facility capable of treating more than 1,000 tons per month, any reasonable person would conclude it is foreseeable that CleanTech will request an expansion in the amount of hazardous waste it can treat in the near future. It flies in the face of reason that a business would construct the Project with the intent of using only a small fraction of its capacity. DTSC's Permit Condition 22 is tantamount to building a 7-terminal airport and limiting airline traffic to one terminal. In fact, Robert E. Brown III, representative for CleanTech, drafted a letter to DTSC in which he argued against the imposition of Condition 22 and requested the removal of Condition 22 from the permit, which limits the amount of used oil CleanTech can treat and/or recycle in one month. (See Responses to Comment, Comment #11-7-4, p. 72.) The only reason to oppose this condition would be to allow for the right to treat more than the 1,000 ton limit per month. This comment clearly shows CleanTech's intent and desire to treat more than 1,000 tons per month. To treat the excess capacity as if it does not exist violates existing case law, CEQA, and reason. DTSC's failure to respond to our comment shows a wanton disregard for California law and for the health and safety of southern California citizens. Accordingly, DTSC's decision is an erroneous conclusion of law.

5. The failure of DTSC to consider substantial evidence providing a fair argument that the Project may have a significant effect on the environment will only hurt the citizens of this County through additional health risks and/or wasted tax dollars. DTSC has been provided substantial evidence in the form of expert analysis indicating the Project will cause substantial environmental impacts, however, DTSC's conclusion is a clearly erroneous one in violation of CEQA Guidelines section 15384.

6. DTSC, having added additional conditions to the Hazardous Waste Facility Permit, among other things, should have issued a new comment period. In considering a Project of this magnitude, DTSC should err on the side of caution and make sure the entire public is informed about this Project. Limiting comments on the proposed Negative Declaration and Initial Study is inappropriate and improper. Accordingly DTSC's exercise of discretion violates the very mandate of CEQA to inform the general public. (CEQA Guidelines, § 15002.)

7. CEQA requires the preparation of an EIR where "there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment." (CEQA Guidelines § 15064, subd. (a)(1).) Failure to do so is a clear breach of DTSC's obligations under CEQA. Substantial evidence has been provided to DTSC in the form of expert analysis that the Project may have a significant effect on the environment. Accordingly, DTSC must find or conclude that an EIR is required for the Project; any contrary legal determination is clearly erroneous.

III. CONCLUSION

Given that substantial evidence exists to demonstrate the Project has the capacity to treat, land treat or recycle 1,000 or more tons of hazardous waste per month, DTSC's findings and conclusions that an EIR is not required for this Project is clearly erroneous and violates the important public policy requirements of California Public Resources Code.

Sincerely,

Todd Elliott
of TRUMAN & ELLIOTT LLP

Enclosures

EXHIBIT 1

City of Irwindale
GENERAL PLAN UPDATE

City of Irwindale
5050 North Irwindale Avenue
Irwindale, California 91706

June 2008

Table 6-1
Major Active Faults in the Irwindale Region

Fault Name	Distance from City	MCR[1]	Fault Type	Most Recent Activity
Duarte	In the City	7.0	Reverse	N/A
Northridge	29 miles west	6.7	Reverse Oblique	1994
Elysian Park Zone	10 miles north-east	6.9	Blind Thrust Reverse	1987 (Whittier)
Sierra Madre	2 miles north	7.2	Reverse	1971
San Andreas	31 miles north-west	8.0	Strike Slip	1857
Newport Inglewood	29 miles south-west	7.0	Strike Slip	N/A
Whittier/Elsinore	9 south	7.0	Strike Slip	1987
Raymond Hill	3.5 miles northwest	6.0-7.0	Left Lateral	Holecene
Clamshell-Sawpit	3 miles west	NA	Reverse Thrust	1991

Notes: 1. MCR refers to a potential earthquake's the maximum credible intensity as measured on the Richter scale.
Source: United States Geological Survey

The downtown Los Angeles area is now known to be underlain by a number of potentially damaging blind thrust faults. These thrust faults are referred to as "blind" because they do not exhibit any surface expression typically associated with fault traces. Instead, these faults often produce folds in the overlying strata that may be characterized by rolling hills. The nearest known blind thrust fault to Irwindale is the Puente Hills Fault, located approximately 7 miles to the south of the City. The Puente Hills Fault was discovered in 1999 and a follow-up 2003 study prepared by the Southern California Earthquake Center (SCEC) determined that the fault had resulted in a major earthquake at least four times during the past 11,000 years with magnitudes (Richter) ranging from 7.2 to 7.7.

Seismic and Geologic Hazards

The effects of an earthquake may take many forms depending on a number of factors including distance from the epicenter, the characteristics of the underlying soils, the presence of groundwater, and topography. The primary effects include the following:

- *Surface Rupture.* Surface rupture refers to the actual "tearing apart" of the ground surface along a fault trace resulting from an earthquake. The effects of surface rupture may be mitigated by placing structures at a specified distance from the known fault trace. The State of California has promulgated regulations prohibiting the placement of structures over or in close proximity to a known fault trace through the implementation of the Alquist-Priolo Special Studies Zones (APSSZ). There are no APSSZ in the City.

- *Ground Shaking.* The energy created from earthquakes moves out from the epicenter in waves that affect the various rock and soil types differently. In some instances ground shaking may cause unconsolidated soils to settle, which can result in significant damage to structures.

- *Liquefaction.* Liquefaction results when seismic induced ground shaking cause water-laden, cohesion-less soils, to form a quicksand-like soil condition below the ground surface. Structural damage may ensue as building foundations lose ground support. Liquefaction occurs in areas where groundwater exists within 30 feet of the ground surface and where poorly consolidated, cohesion-less soils predominate.

- *Slope Failure.* The ground motion generated by an earthquake may result in landslides and/or

EXHIBIT 2

Historical Earthquakes & Significant Faults Map in Southern California

Chronological Earthquake Index

Fault Name Index

Significant Earthquakes and Faults

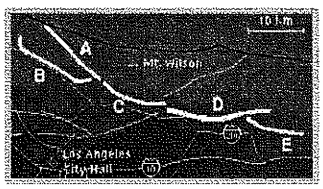
A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z

Fault Name Index

Sierra Madre Fault Zone

TYPE OF FAULT: reverse
LENGTH: the zone is about 55 km long; total length of main fault segments is about 75 km, with each segment measuring roughly 15 km long
NEARBY COMMUNITIES: Sunland, Altadena, Sierra Madre, Monrovia, Duarte, Glendora
MOST RECENT SURFACE RUPTURE: Holocene
SLIP RATE: between 0.36 and 4 mm/yr
INTERVAL BETWEEN SURFACE RUPTURES: several thousand years (?)
PROBABLE MAGNITUDES: M_W6.0 - 7.0 (?)
OTHER NOTES: This fault zone dips to the north. It was not the fault responsible for the 1991 Sierra Madre earthquake.

The Sierra Madre fault zone is often divided into five main segments, labelled with the letters A through E, to more easily characterize this fairly complex system. The map below shows these segments.



These five divisions, while simpler than the entire fault zone, should not be thought of as individual faults, however -- some of these segments are themselves complex systems of parallel and branching faults. It has been suggested that differing fault geometries in this zone keep each lettered segment separate during rupture events -- thus, neighboring segments should not rupture simultaneously. Others, however, suggest that the fault zone may rupture both in single-segment and multiple-segment breaks.

The most recent surface ruptures are seen on the B and D segments. The least active segment, at least in surficial appearance, is the A segment, also known as the **Vasquez Creek fault**, which runs between the San Gabriel fault and the intersection of the B and C segments of the Sierra Madre fault zone. At the junction of the C and D segments, the Clamshell - Sawpit Canyon fault splays off from the fault zone, toward the northeast (shown in sea green on the map above). It was this fault, not the Sierra Madre fault zone itself, that ruptured to produce the Sierra Madre earthquake of 1991 (named for the nearby community of Sierra Madre).

One of the strands that makes up segment D is known as the **Duarte fault**, because of its location near that community. Segment E represents the easternmost part of this fault zone, and at its eastern end, it meets up with several other faults in a complex zone northwest of the town of Upland, near the epicenter of the 1990 Upland earthquake. The general trend of the Sierra Madre fault zone continues eastward from this point along the base of the San Gabriel

Mountains, but this eastern continuation is known as the Cucamonga fault zone. The Cucamonga fault zone seems to be more active (has a higher slip rate) than the Sierra Madre fault zone.

While rupture on the Sierra Madre fault zone (theoretically) could be limited to one segment at a time, it has recently been suggested that a large event on the San Andreas fault to the north (like that of 1857) could cause simultaneous rupture on reverse faults south of the San Gabriel Mountains -- the Sierra Madre fault zone being a prime example of such. Whether this could rupture multiple Sierra Madre fault zone segments simultaneously is unknown.

References

This fault is featured on the following maps:
Mojave Fault Map
Southern Fault Map
Los Angeles Fault Map

↑

Comments: Email | last update: 10/04/2011
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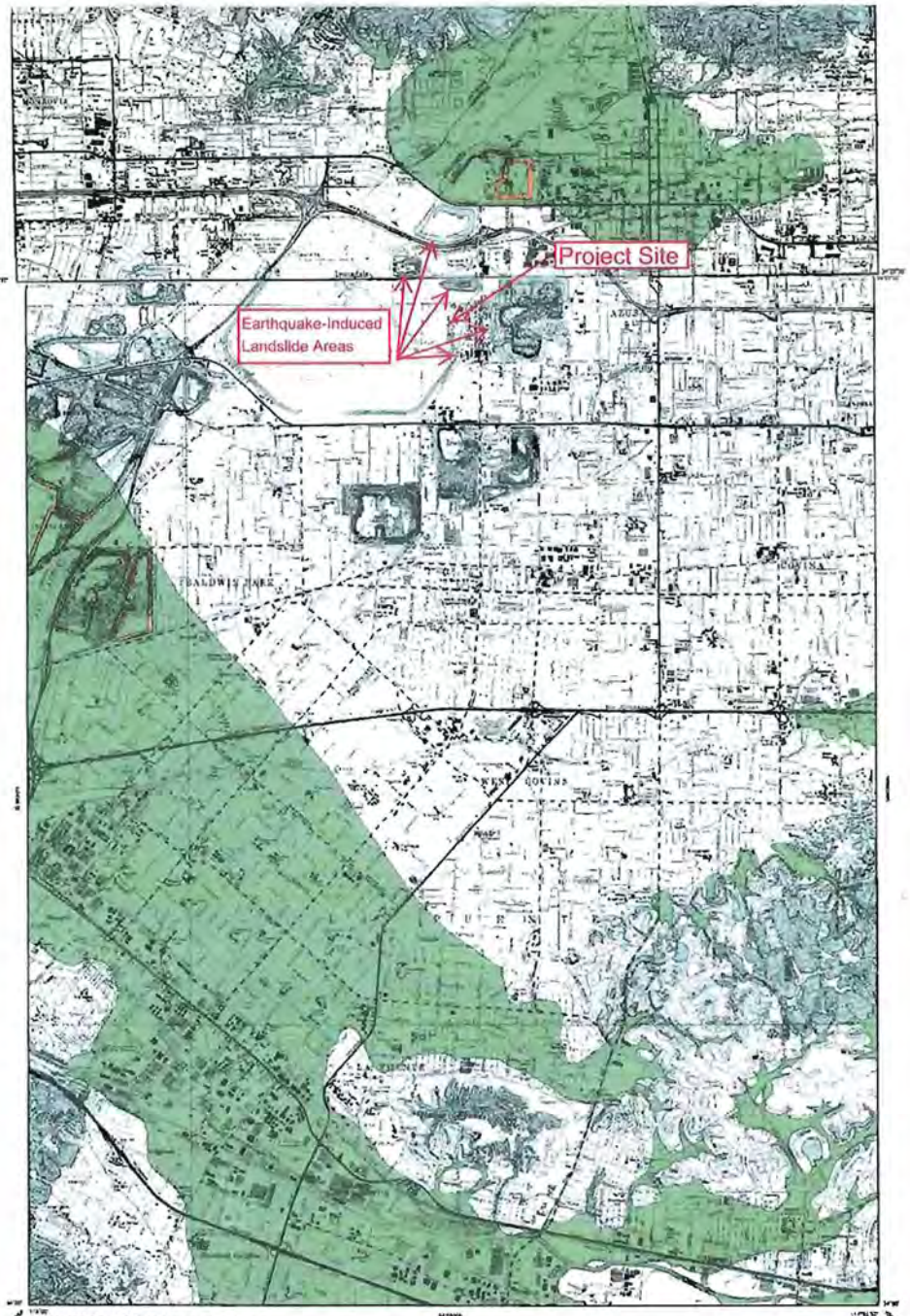
EXHIBIT 3



PURPOSE OF MAP

IMPORTANT - PLEASE NOTE

STATE OF CALIFORNIA
SEISMIC HAZARD ZONES

BALDWIN PARK QUADRANGLE
OFFICIAL MAP

Released: March 25, 1999

STATE GEOLOGIST

MAP EXPLANATION
Zones of Required Investigation

Copyright 1999 by the California Department of Conservation, Division of Mines and Geology. All rights reserved.

EXHIBIT 4

- Unemploy

Irwindale Earthquake Information

Irwindale Earthquake Risk Grade

The USGS database shows that there is a 98.785% chance of a major earthquake within 50 miles of Irwindale, California within the next 50 years. The largest earthquake within 50 miles of Irwindale, California was a 6.7 Magnitude in 1994.

Earthquake Survival Kits
www.QuakeKare.com
Stay Safe 72 Hours After Disaster Buy Directly from the Manufacturer AdChoices

Probability of earthquakes within the next 50 years

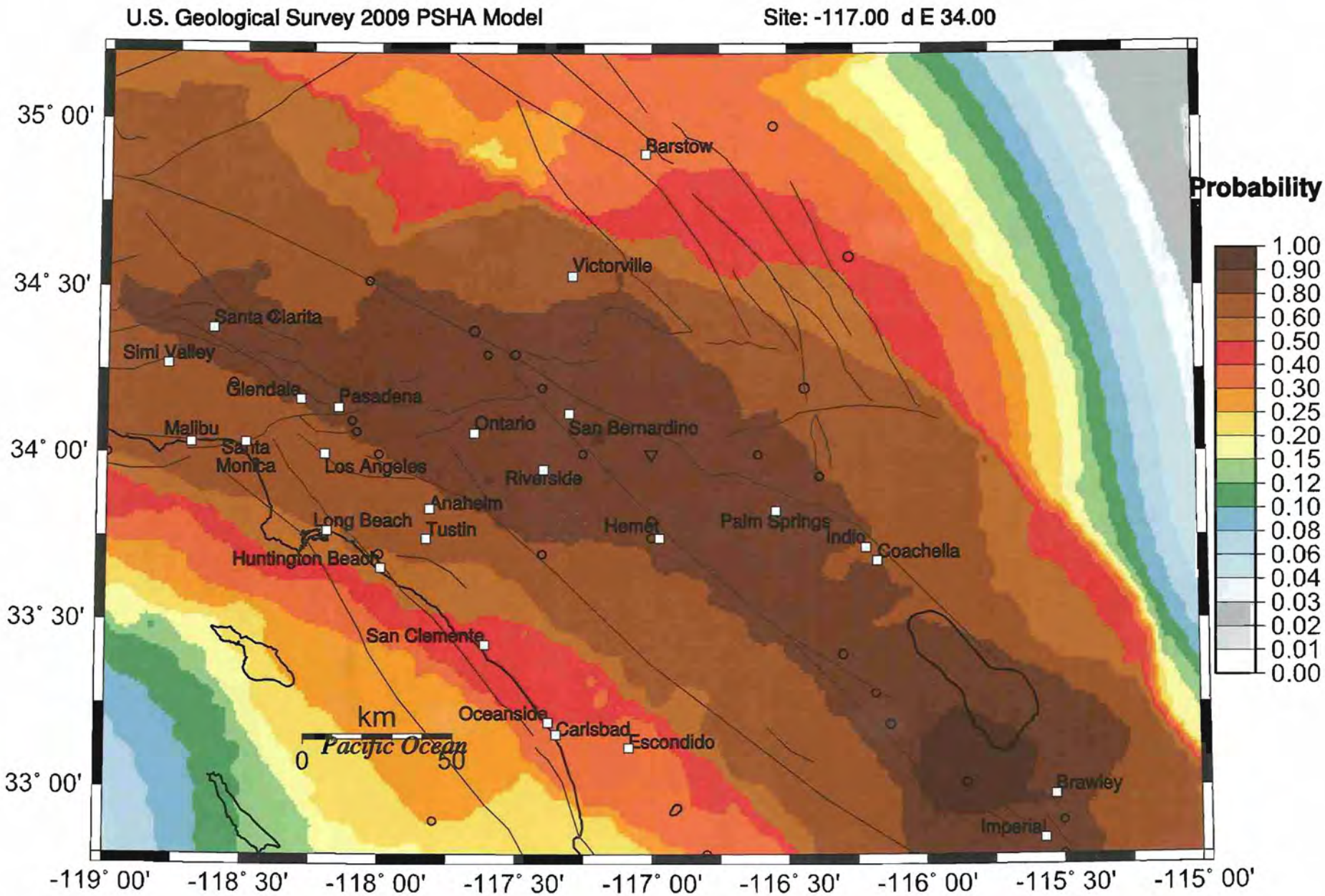
Within 31 Miles / 50km above magnitude

Magnitude
Probability
5.0
98.785%
5.1
98.058%
5.2
97.132%
5.3
96.033%
5.4
94.804%
5.5
93.497%
Click To View More Magnitudes
5.6
92.163%
5.7
90.847%
5.8
89.585%

5.9
88.405%
6.0
87.321%
6.1
86.245%
6.2
85.269%
6.3
84.268%
6.4
81.819%
6.5
76.095%
6.6
70.268%
6.7
64.197%
6.8
59.000%
6.9
54.240%
7.0
49.641%
7.1
45.649%
7.2
41.606%
7.3
37.417%
7.4
33.476%
7.5
29.050%
7.6
24.582%
7.7
19.546%
7.8
14.237%
7.9
9.044%
8.0
4.553%
8.1

Lat: 34°6'45" N
Long: -117°57'52" W

Probability of earthquake with M > 6.0 within 50 years & 50 km



GMT 2013 Jan 10 20:22:50 EQ probabilities from USGS OFR 08-1128 PSHA. 50 km maximum horizontal distance. Site of interest: triangle. Fault traces are brown; rivers blue. Epicenters M>=6.0 circles.

EXHIBIT 5

KLR planning

P.O. Box 882676
San Diego, CA 92168-2676
karen@klrplanning.com
619.578.9505

July 5, 2012

Mr. Alfred Wong, Project Manager
700 Heinz Avenue, Suite 200
Berkeley, CA 94710

Subject: DRAFT HAZARDOUS WASTE FACILITY PERMIT AND PROPOSED NEGATIVE DECLARATION – CleanTech Environmental Inc.

Dear Mr. Wong:

I have reviewed the Initial Study and Draft Negative Declaration for the Hazardous Waste Facility proposed by CleanTech Environmental Inc. (CleanTech). The facility is to be located at 5820 Martin Road in the City of Irwindale. CleanTech has applied for approval of a Hazardous Waste Facility Permit by the Department of Toxic Substance Control (DTSC) to allow CleanTech to construct and operate a used oil recycling facility and to store drums of used oil, waste antifreeze, and non-Resource Conservation and Recovery Act (RCRA) wastewater (Project). DTSC has prepared an Initial Study and Draft Negative Declaration in an attempt to comply with the California Environmental Quality Act (CEQA). However, in my review of the environmental documents prepared by DTSC, information provided in the Initial Study is not adequate to support adoption of a Draft Negative Declaration by DTSC. Rather, it is clear that the Project may have numerous significant environmental impacts, and DTSC must analyze these impacts in an environmental impact report (EIR). Moreover, as noted below, CEQA Section 21151(a)(3) requires that an EIR be prepared for the Project. It is clear that the CleanTech facility has a capacity far in excess of 1,000 tons per month and that the facility is being built for a capacity far in excess of 1,000 tons per month. As such Section 21151(a)(3) requires that an EIR be prepared for the Project.

I am a CEQA practitioner with more than 30 years of experience in preparing, processing, and reviewing environmental documents as staff at public agencies and as a private consultant. Attached is my firm resume. I have prepared and processed hundreds of legally defensible CEQA documents throughout California. Additionally, I am a skilled planner with in-depth knowledge in local planning documents. This unique combination of skills and knowledge provides the necessary expertise to conduct a thorough review of the Initial Study and Draft Negative Declaration. In so doing, I have found that the Initial Study fails to address, or inadequately addresses, many environmental concerns that are required to be addressed under CEQA.

CEQA is intended to ensure that all environmental impacts and potential environmental impacts of a project are adequately considered. Based on CEQA Guidelines Section 15063, through the Initial Study process, the Lead Agency should be able to determine if the project may have a significant effect on the

environment. However, the Initial Study must be conducted and prepared with a certain level of expertise and knowledge and rely on substantial evidence to determine its findings. Without this level of detail, the Initial Study becomes useless. In addition, as described in CEQA Guidelines Section 15070, CEQA has a very low threshold for when an EIR must be prepared. An EIR is required when there is substantial evidence of a fair argument that a project may have a significant impact on the environment. This standard is met for this Project. The Initial Study does not adequately disclose and analyze the proposed hazardous waste facility's impacts. Further, based on the information that is available, it is clear that the Project may have a number of significant impacts on the environment; certainly enough information is presented to show that CEQA's low threshold for requiring an EIR is met. DTSC must prepare an EIR to fully review, analyze and mitigate the potential impacts of the Project.

It is surprising to see that a Negative Declaration for a hazardous waste facility does not include a single mitigation measure. CEQA requires analysis of the total physical capacity of the facility and not an arbitrary "limit" imposed by DTSC to avoid a specific requirement in CEQA to prepare an EIR. Based on the information presented and omitted, it is clear that the Project may have numerous significant impacts on the environment that must be further analyzed an EIR. For impacts that are significant, the EIR must include mitigation measures to reduce impacts to below a level of significance. Additionally, the EIR must include a discussion of project alternatives, including alternative locations, which may reduce or avoid the project's significant environmental impacts.

GENERAL COMMENTS

The Project Requires Preparation of an EIR as a Large Treatment Facility

CEQA Section 21151.1(a)(3) requires that an EIR be prepared for "*[t]he initial issuance of a hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code to an offsite large treatment facility, as defined pursuant to subsection (d) of Section 25205.1 of the Health and Safety Code.*" According to Section 25205.1(d), a "large treatment facility" is defined as "*a treatment facility with capacity to treat, land treat, or recycle 1,000 or more tons of hazardous waste.*" A "small treatment facility" is defined as "*a treatment facility with capacity to treat, land treat, or recycle more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste.*" It is abundantly clear from the information presented in the Initial Study that the proposed hazardous waste facility will have a **capacity** far in excess of 1,000 tons per month. As such CEQA mandates that an EIR be prepared.

DTSC has added a condition to the draft CleanTech permit that the authorized limit of hazardous waste that may be treated or recycled at the proposed facility is 1,000 tons per month, classifying the CleanTech facility as a "small treatment facility." However, there is no discussion of how this limit is enforced or even how quickly the limit could be reached. It appears that DTSC has arbitrarily placed this limit on the Project for the sole purpose of identifying the facility as a "small treatment facility" without providing any meaningful basis upon which to determine if the facility can realistically stay within that limit based on its monthly operations. How much do facilities of a similar size treat and/or recycle on a monthly basis? What are the limiting factors at this facility that would prevent the treatment of more than 1,000 tons per month? Why would a facility that is designed and built to treat several thousands of tons per month be limited to 1,000 tons per month except to avoid the legal requirement to prepare an EIR?

Additionally, the statute does not rely on "permitted capacity" but instead only speaks to "capacity." Looking at the different units to be permitted in the draft permit, it is clear that the actual capacity of the Project is much greater than 1,000 tons per month. For example, the total capacity of all of the units at the Project that are described in the draft permit is 243,240 gallons. Based on a specific gravity of 0.88, a gallon of oil weighs 7.34 pounds. Thus, the project can hold over 1.7 million pounds of oil (7.34 multi-lied by 243,240). The Initial Study fails to disclose how many times a month the production will be turned over. Were this capacity to be turned over only twice a month, the Project would exceed the 1,000-ton per month threshold. It is likely that the capacity will be turned over far more frequently than twice per month, meaning that the Project is likely far over the 1,000 ton per month threshold. Similar facilities can turn over their capacity 10 to 15 times per month. If the facility is turned over 10 times a month, then the actual capacity would be in excess of 8,000 tons per month. Neither the Initial Study nor the Draft Permit provides any information with regards to industry standards for turn over of production capacity and what measures would be applied to the proposed project that would preclude the facility from exceeding the 1,000 tons per month limit. The Project should be defined as a "large treatment facility."

Even if the Project were somehow able to successfully argue that it did not meet the 1,000-ton per month of capacity threshold found in the statute, as a project that is likely to have environmental impacts, an EIR would otherwise be required by Public Resource Code section 21151.1(a)(3). By definition, the "project" a Lead Agency must analyze under CEQA includes "reasonably foreseeable" environmental consequences of the project. This has been subsequently refined by the courts to include reasonably foreseeable future expansion. Because the Project has the capacity to treat more than 1,000 tons per month, it is reasonably foreseeable that the Project may one day want to utilize the full capacity of the Project, putting it undoubtedly over the 1,000-ton per month capacity threshold. DTSC has misclassified the Project based on the statues, and preparation of an EIR is required.

Project Definition

The Initial Study makes reference to future actions and/or permits (such as a future permit from the Los Angeles County Sanitation District or a Storm Water Discharge Permit) that have not been analyzed in the Initial Study. This is in strict violation of CEQA. CEQA Guidelines Section 15378 defines a project as "*the whole of an action, which has a potential for resulting from either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment [...]*". Under CEQA, the project as a whole must be analyzed. Anticipated subsequent actions associated with the Project, such as application for additional permits, are considered part of the Project as a whole and must be analyzed with the Project. The future actions that are part of the Project may cause significant environmental impacts. An EIR is required for the Project that includes the analysis of <u>all</u> project elements.

The Project is Not in Compliance with the City of Irwindale's Municipal Code

The proposed Project is located within the City of Irwindale's M-2 (Heavy Manufacturing) Zone. Section 17.56.010 of the Irwindale's Municipal Code lists the permitted uses in the M-2 Zone, and **<u>hazardous waste treatment is not on the list of allowable activities</u>**. Uses that the zoning code does not call out as allowed are prohibited. Therefore, hazardous waste processing is prohibited, because the zoning code

does not list hazardous waste processing as an allowed use.[1] In order to allow hazardous waste treatment facilities in the M-2 zone, the City's Municipal Code must be amended. Additionally, the zoning code specifically regulates the type of use the Project will be: "processing facilities" that process recyclable material.[2] But the zoning code specifically prohibits processing facilities, like the Project, from accepting "hazardous materials, including but not limited to, automotive fluids."[3] Thus, the zoning code specifically **prohibits** the Project's use, and the Project cannot be allowed unless the City of Irwindale amends its zoning code.

Even if the Project were allowed under the current zoning code (which it is not), it would require a Conditional Use Permit. Section 17.56.020 lists the uses requiring a Conditional Use Permit, [*b*]*ecause of considerations of smoke, fumes, dust, vibration, noise, traffic congestion, or* <u>*hazard*</u> (emphasis added). Because the proposed facility would "recycle" hazardous waste, it could be classified as "recycling facilities." Recycling facilities require issuance of a Conditional Use Permit by the City of Irwindale. Additionally, the proposed Project is a hazardous waste treatment facility with some degree of hazard involved. Because it will store and treat large volumes of used oil and other hazardous waste, there will be associated fumes and traffic.

Furthermore, Section 17.80.030 of the City's Municipal Code specifically states when Conditional Use Permits are required. According to Section 17.80.030, "*[a]ll uses which involve the use, sale, or storage of any materials classified as toxic or hazardous by either the federal or state government as a substantial part of the total use shall require a CUP, as shall the parking or storage of vehicles used to carry such materials.*" The proposed Project certainly meets this definition. Therefore, the Project requires the City of Irwindale to amend its zoning code and to issue a Conditional Use Permit; and, as part of the City of Irwindale's Conditional Use Permit process, the applicant must provide substantiation "*that the proposed use will not have an adverse effect on adjacent property.*" There is no information provided in the Initial Study that such an action would be required. This information is valuable in understanding the proposed Project; without it, the reviewer is deprived of a full and meaningful review of the Project.

Appropriateness of DTSC as Lead Agency

The requirement for a zoning code amendment and other City approvals brings into question whether DTSC can act as the Lead Agency for the Project. CEQA Guidelines Section 15051 provides guidance on the determination of which agency would be the Lead Agency for a project. Section 15051 (b)(1) states that "*[t]he Lead Agency will normally be the agency with the general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or district which will provide a public service or a public entitle to the project.*"

Because the City of Irwindale must issue a permit for the Project, it has the general governmental powers and should, therefore, be the Lead Agency. DTSC is similar to an air pollution control district, as referenced in CEQA, and has limited powers, which would be classified as a Responsible Agency. Allowing Irwindale to assume the role of Lead Agency not only puts the burden of proof in issuing the local land use approvals on the City decision-makers, but also ensures that the CEQA study more

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1 City of Irwindale Municipal Code, §§ 17.56.010, 17.56.020.

2 City of Irwindale Municipal Code, § 17.56.080.

3 City of Irwindale Municipal Code, § 17.56.090(B)(12).

accurately reflects the concerns of the local community. DTSC would still be responsible for review of the Project to issue a Hazardous Waste Facility Permit. Furthermore, in several places, the Initial Study references consistency with the City of Irwindale's policies. (See, for example, Initial Study item 4.f. under Biological Resources.) Without inserting the City's authority in reviewing and authorizing the Project, stating that the Project would implement the City's policies is spurious.

Inadequate Discussion and Representation of the Santa Fe Dam Recreational Area

The Santa Fe Dam Recreational Area is located immediately south and west of the proposed facility. The Area is a valuable resource to Irwindale and the surrounding communities. Irwindale's General Plan identifies several endangered plants that call Irwindale home, along with many wildlife species that have the potential of being listed in the future; and the County of Los Angeles identifies the Area as a Significant Ecological Area. The Area, as an open expanse, is a sanctuary of many protected species, and thus is deserving of protection. Additionally, the Area is a gathering place for families and others who flock to the area to participate in its many recreational activities, like swimming, fishing, biking, horseback riding, hiking, and so on. No discussion of the potential impacts on the many species living in the Area, or the activities that take place in the Area daily, is included in the Initial Study.

Furthermore, when the Area is discussed in the Initial Study, it is done so with such brevity and with lack of supporting facts or analysis. For example, the Initial Study states, without any support, "*DTSC cannot foresee any reasonable pathway for waste at the facility to impact the Santa Fe Dam Recreation Area.*" Yet, it is clear from the figures in the Initial Study that the Area is in extremely close proximity to the Project, and that to access the Project, trucks hauling hazardous waste will be required to pass by the Area. Moreover, contamination of the ground water and spills could adversely affect the Area. Therefore, it is entirely foreseeable that accidents and spills at the Project site or runoff from trucks as they pass have a real chance of impacting the Area. The Initial Study contains no information discounting the possibility that patrons enjoying the northeast corner of the Area will not notice odors, noise, or other impacts from the Project. As such, there is no basis for DTSC's statement that there is no foreseeable way that the Project could impact the Area. The Project may have significant impacts on the Santa Fe Dam Recreational Area, and DTSC must analyze those impacts in an EIR.

INITIAL STUDY REVIEW

Project Description

The Initial Study makes vague remarks about transport of the hazardous materials that would be treated at the proposed facility (such as "*primarily uses Interstate 210*"). However, it appears that trucks could also use a variety of other routes to access the facility, some of which traverse residential neighborhoods. The Initial Study should include a map that shows the transport route. Additionally, if the Initial Study is dependent on transport routes that do not go through residential neighborhoods – as is implied in the Initial Study – the Project should be conditioned such that trucks must follow a specific route to access the facility. The routes that may be used to access the facility must be presented in the EIR to address the potential significant impacts from transporting hazardous materials.

Initial Study Item 3: Air Quality

For a project of this size, a project-specific air quality analysis is generally required, particularly given the potential for release of hazardous fumes and emissions and the proximity of sensitive receptors in the Project area. It is unusual that DTSC has failed to include a project specific air quality analysis for the Project. An air quality analysis should be prepared that clearly evaluates whether air quality impacts could result from the Project.

With regard to item 3.d., the Initial Study states that there are no sensitive receptors in the area. It appears that an analysis of sensitive receptors in the Project area was not conducted, as this statement is incorrect. The sensitive ecological area is in very close proximity to the Project. In addition, the recreation area is park frequented by thousands of people. In addition, two daycares are located within a half-mile of the Project, and it appears that many daycares are within three miles of the Project. A high school and five elementary schools are within a mile and a half of the Project. Numerous nursing homes, assisted living centers, and other similar facilities are within three miles. There are sensitive receptors in the vicinity of the Project, and the Project may have significant impacts on them. DTSC must analyze these potential significant impacts in the EIR.

Initial Study Item 4: Biological Resources

While, as stated in the Initial Study (page 17), it is recognized that the Project site is within a "heavy industrial zone", it is also located immediately adjacent to the Santa Fe Dam Recreational Area, one of the largest and most important sensitive ecological areas in the region. Not only does the Santa Fe Dam Recreational Area serve as a valuable park and recreation resource for residents of Irwindale, Azusa, and other cities in the San Gabriel Valley, but is also home to many protected native plants and animals.

The Initial Study focuses on the distance of the proposed facility to the "paid parking lot entrance" and the "swim beach". The Initial Study acknowledges that "[*a*] *number of threatened, rare, and/or endangered species are identified as being located within the general area of the Facility*", but then dismisses this fact by stating that "*the Facility and surrounding area is highly urbanized and does not have any sensitive habitat to impact.*" However, this statement is not supported by any factual information or analysis. A biological resources survey and report has not been prepared. It is unclear where sensitive habitat, threatened, rare, and/or endangered species are located relative to the Project site and proposed facilities. Without this factual information, DTSC cannot conclude that there would be no direct, indirect, or cumulatively significant impacts to biological resources. Stating that the "*Californian Department of Fish and Game (DFG) reviewed the CleanTech Initial Study and provided no comments*" is completely understandable given the complete lack of information and analysis in the Initial Study to allow for thoughtful review. In fact, DTSC completely ignores the existence of the sensitive ecological area in the first draft of the Initial Study and Draft Negative Declaration and then mentions it only in passing in the second draft environmental document. DTSC has shirked its responsibility to conduct a thorough analysis in order to determine the extent of the Project's risk to biological resources. No information or analysis is presented by DTSC regarding the "*threatened, rare, and/or endangered species are identified as being located within the general area of the Facility*" that DTSC acknowledges are present. How is the public or decision makers supposed to evaluate the adequacy of the environmental document when the information to do so is non-existent?

Initial Study item 4.f. states that the proposed Project will be implemented consistent with the City of Irwindale's policy as it relates to maintaining current data and information on biological resources including the types of habitats, individual species, and their locations. However, except for conducting a generalized search for sensitive and endangered species, **a biological resources survey and report has not been prepared**; and there is no other indication as to how the proposed Project will maintain current data and information on biological resources. This fails to meet CEQA's minimum standards of disclosure and analysis. The Project is adjacent to a protective area that provides habitat for threatened, rare, and endangered species and may impact these sensitive resources through spills, air emissions, water discharges, or foreseeable accidents. These potential impacts must be analyzed and in the EIR; and mitigation measures must be implemented to reduce significant impacts to below a level of significance.

The Lead Agency must require that a biological resources survey and report be prepared for the proposed project that addresses the project's potential for direct, indirect, and cumulative effects. Specific project design features, specific permit conditions, and any mitigation measures that will ensure that no impacts to biological resources occur must be discussed and imposed in an EIR. The Draft Negative Declaration fails to include a single mitigation measure designed to protect the adjacent sensitive habitat.

Initial Study Item 5: Cultural Resources

The discussion under item 5 of the Initial Study states that "[*i*]*n the event that archaeological or paleontological resources should be encountered during excavation and grading activities, the City General Plan states all work would cease until appropriate salvage measures are established.*" Additionally, the Initial Study states that "*it is possible that project activity could unearth previously unknown human remains.*" These issues constitute potentially significant Project impacts under CEQA, and require DTSC to analyze the potential significant impacts in the EIR and adopt mitigation measures. The EIR must include mitigation measures to ensure that impacts can be reduced to below a level of significance. However, no mitigation measures are identified in the Negative Declaration or as conditions of the permit. This is in violation of CEQA. Cultural resources must be addressed in the EIR, clearly indicate the potential to encounter unknown cultural resources, and require mitigation measures in the event that resources are encountered. Additionally, in accordance with CEQA Guidelines Section 15097, a Mitigation Monitoring and Reporting Program must be adopted.

Initial Study Item 6: Geology and Soils

The discussion of Geology and Soils appears to be based on the applicant's permit application, which states that "*the Facility is not within 3,000 feet of an active earthquake fault [...]*". CEQA requires that the Lead Agency conduct an independent review of the proposed project's impacts. The Lead Agency cannot rely on hearsay from the applicant unless such statements can be supported by technical expertise. Therefore, the Lead Agency should require that a geotechnical report be prepared for the project that accurately evaluates the potential for geologic hazards, seismic risks, liquefaction and seiche risks. It is important to note that the proposed facility is close to a large body of water. There is no analysis of potential risks associated with a seismic or other event causing a release of water from the Sante Fe Dam area. Such an analysis must be included in the EIR.

It appears in reviewing the *References Used* for the discussion of Geology and Soils that DTSC relied on information presented in the *Target Store Redevelopment Project* ***Draft*** *Environmental Impact Report.* The Initial

Study cannot rely on information in a **draft** document that has not yet been certified by a Lead Agency, which questions the validity of the analysis in this section of the Initial Study.

Initial Study Item 8: Hazards and Hazardous Materials

The discussion under item 8.a. completely ignores the analysis of the Project's potential to "*create a significant hazard to the public or the environment throughout the routine transport*" (emphasis added). Nowhere does the Initial Study evaluate the transport route for trucks loaded with hazardous materials and accessing the facility. While the Initial Study implies that transport would be via Interstate 210, review of circulation in the Project area reveals that there are many other logical routes that trucks could follow, some of which are through residential neighborhoods. Nowhere in the Negative Declaration is there a mitigation measure requiring any particular routing for hazardous waste trucks. All potential access routes to the facility must be presented in the EIR and the potential for significant impacts associated with transport of hazardous materials must be addressed. DTSC should consider mitigation that would limit the route of transport to the facility along specified roadways.

Where there will be millions of gallons of hazardous waste transported, there is the potential for spills and other incidents, even when the best practices are employed, but the Initial Study takes the approach that these spills and incidents might only happen at the Project site, and not anywhere else. This is clearly not the case, as tanker trucks will be required to transport the hazardous waste and oil to and from the Project site. Impacts outside the confines of the Project due to accidents, by an employee or transporter, are readily foreseeable and must be analyzed, especially where there is the possibility that the Santa Fe Dam Recreational Area or one of the many nearby sensitive receptors could be impacted. These potential impacts must be analyzed in an EIR.

The discussion under item 8.a. states that the flashpoint for used oil is fairly high – approximately 400°F – and concludes that the possibility of a fire starting without an external source is minimal. However, the Initial Study also recognizes that *sparks, open flames, and cigarettes* could be a source of ignition. What precludes these sources – particularly sparks and cigarettes – or particularly an accident from occurring? These significant impacts must be analyzed in the EIR and appropriate mitigation measures presented.

Initial Study Item 9: Hydrology and Water Quality

This section includes inconsistencies with regards to wastewater discharge. Specifically, this section states that "*wastewater will [...] be shipped to an authorized offsite treatment or disposal facility. If in the future, CleanTech does want to discharge into the sewer system, CleanTech will apply to both the Public Works and Los Angeles County Sanitation District for an industrial wastewater discharge permit.*" However, in the discussion of item 6.e., the Initial Study states that "*[m]unicipal wastewater from the site is discharged to a sanitary sewer.*" Other sections of the Initial Study state: "*[w]ater from containment areas is collected and pumped into a holding tank, tested to determine if it is hazardous, and either released to the POTW in accordance with permit discharge limits or disposed of offsite as hazardous waste.*" These inconsistencies must be corrected in the EIR.

The Initial Study contains no analysis of the potential transport issues associated with shipping of wastewater which is required to be transported offsite (traffic, greenhouse gases, air quality, hazards). There is no discussion of where offsite wastewater would be transported or the capacity of offsite facilities to handle the additional wastewater. The EIR should include an estimate of the number of truck trips,

quantities of wastewater to be disposed, and the capacity of the wastewater sewer system. The environmental document must analyze any future permits required to dispose of wastewater into the wastewater treatment system, if it is reasonably foreseeable as is implied in the Initial Study.

Even where the best containment methods are in place, there still could be a release from the Project, yet the Initial Study discounts this possibility and then skips any analysis of what impacts a release could have on local groundwater and surface water resources. Clearly the lake and beach at the Santa Fe Recreational Area could be impacted by a release of oil that is washed away from the site in a storm. The Initial Study acknowledges that the San Gabriel Canyon Basin aquifer is under the Project, but an analysis of the likelihood of impacts to this aquifer has not been conducted. Irwindale's General Plan discusses the aquifer underlying the Project as one that has the potential to be used as a water source, but if it is impacted by contamination from industry in Irwindale, like the Project, its utility as a water source will be limited. Based on the other deposits in the area, it is likely that the Project is situated on top of alluvial deposits from the San Gabriel River, meaning that it would likely be on top of high porosity soils that could quickly transport any released fluids downward and into the aquifers. Because these significant impacts are reasonably foreseeable, they must be analyzed and mitigated in an EIR.

Initial Study Item 10: Land Use and Planning

Relative to Land Use and Planning, the Initial Study is severely lacking in its presentation of existing and planned land uses and zoning, as well as discussion of the applicable General Plans policies and Zoning regulations. Without this detailed discussion, the basis for determining potential impacts associated with Land Use and Planning is missing. Not only does the Project require a zoning code amendment and appear not to be consistent with the Irwindale General Plan (sufficient information to make such a determination is lacking), the Project has not been analyzed to determine whether it meets the various goals of the General Plan. Until this analysis is done, a conclusion on whether the Project would conflict with any applicable *land use plan, policy, or regulation* cannot be made. An EIR is required that includes this analysis, and both the City of Irwindale and the City of Azusa must be consulted. Furthermore, due to the Project's location within the City of Irwindale and adjacent to the City of Azusa, both the Irwindale and Azusa General Plans should be evaluated. It is not uncommon for adjacent jurisdictions to contain different – and sometimes conflicting – policies with regard to land use. Additionally, the discussion of Land Use and Planning should be expanded to address any *applicable habitat conservation plan or natural community conservation plan* that occurs in the Project area; or in the least, state that there are no habitat conservation or natural community conservations plans that could be affected by the Project.

The Project also does not appear to have consulted with the fire department and local authorities to coordinate transportation of hazardous materials through Irwindale as required by the General Plan. Nor does the Initial Study make any findings about the potential for accidents in Irwindale, something specifically contemplated in the General Plan. Simply checking "*No Impact*" under issue areas 10.a. and 10.b. is not acceptable and in strict violation of CEQA. The Project may have significant impacts related to land use. These impacts must be addressed in the EIR, and mitigation measures must be provided to reduce significant impacts to below a level of significance.

Initial Study Item 12: Noise

It appears in reviewing the *References Used* for the discussion of Noise that DTSC relied on information presented in the *Irwindale Materials Recovery Facility and Transfer Station Project* ***Draft*** *EIR*. The Initial Study cannot rely on information in a **draft** document that has not yet been certified by a Lead Agency. Therefore, the validity of the analysis of Noise impacts is questionable. The Project will introduce additional heavy trucks and industrial processes almost adjacent to the Santa Fe Dam Recreational Area. This may cause significant noise impacts, which must be analyzed in the EIR.

Initial Study Item 14: Public Services

The Initial Study does not include evidence to support the conclusion that the Project would not result in significant impacts to public services. Instead, the Initial Study makes a general statement that the Project "*will not impact existing fire or police rations, response times, or other performance objectives.*" However, there is no evidence that service providers were even consulted during conduct of the Initial Study or that current services and response times are adequate to serve the Project and surrounding areas. Service providers, including Fire and Police, should be consulted to determine if the proposed facility would impact existing resources.

Initial Study Item 16: Transportation and Traffic

The Initial Study does not include a discussion of the potential routes that trucks hauling hazardous material will use to access the facility. Therefore, the Initial Study does not adequately address item 16.c. – *substantially increase hazards due to [...] incompatible uses.* The Project requires transport of hazardous materials, and there is an inherent risk in potential for accidents associated with this transport. The Project may cause a significant impact in transportation of hazardous materials, which must be addressed in the EIR. Transport routes could traverse residential neighborhoods. However, the Initial Study does not address the potential for accidents to occur and what measures and/or precautions would be implemented to ensure that risks are reduced to below a level of significance.

Initial Study Item 17: Utilities and Service Systems

Item 17.a. states: "*[i]f approved, the Facility will apply for a Storm Water Discharge Permit.*" CEQA Section 15378 defines a project as "*the whole of an action, which has a potential for resulting from either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment [...]*". Under CEQA, the Project as a whole must be analyzed. Anticipate subsequent actions associated with the Project, such as application for an additional permit, are considered part of the Project as a whole and must be analyzed with the Project. Additionally, the Initial Study does not address the potential impacts associated with urban runoff that could be laden with pollutants and how such runoff would affect adjacent sensitive areas, such as the Santa Fe Dam Recreational Area. Deferring this analysis to the Water Quality Control Board does not provide the public with the thorough investigation of impacts required by CEQA for an Initial Study. Potential impacts of urban runoff from the Project must be addressed in the EIR.

Under the discussion of solid waste generation (item 17.f.), the Initial Study states that the facility would use the Azusa Land Reclamation Landfill for disposing of solid waste and the Landfill "*has sufficient permitted capacity for disposal of current hazardous waste generated by the Facility.*" How can the future quantities be determined without knowing what the lifetime is for the Landfill and how much hazardous waste would

be generated by the facility? The Initial Study fails to include any of these quantities. Also, the Initial Study speaks to "*current hazardous waste*". Are there potential impacts that could occur in the future, during the lifetime of the facility, that would affect the Landfill? There are no facts or other basis to support the Initial Study's conclusion that "*the project is not expected to increase the amount of waste to be disposed in a landfill.*" The Project's potential impact to landfill capacity must be disclosed and analyzed in the EIR.

Mandatory Findings of Significance

An important and essential element in making the Mandatory Findings of Significance is consideration of a project's cumulative impacts. It is obvious that DTSC has not conducted an analysis of cumulative impacts to support its finding that *the Project does not have impacts that are individually limited but cumulatively significant*, as required in Mandatory Findings of Significance "b". Review of Exhibit 6-4 in the City of Irwindale's General Plan indicates that there are numerous hazardous waste sites in the City. Additionally, review of EnviroFacts indicates that there are no less than 12 EPA-regulated facilities within a 300-foot radius of the proposed Project, which either generate, transport, treat, store, or dispose of hazardous waste. It is unknown what other additional projects currently under review in the City (such as the *Irwindale Materials Recovery Facility and Transfer Station Project*) or adjacent cities and how many future projects could be anticipated that would also involve storage, treatment, and/or transport of hazardous wastes. When *viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects*, the Initial Study does not have the information and analysis required to conclude that there would no significant environmental impacts associated with the Project. Therefore, DTSC cannot make the Mandatory Findings of Significance. DTSC must analyze the Project in an EIR—together with all potential cumulative impacts from past, current, and reasonably foreseeable projects.

Determination of Appropriate Environmental Document

As described above, the Initial Study is lacking in the most basic information and analysis about key parts of the Project. Despite the amount of information and analysis missing from the Initial Study, it can readily be seen that the Project may cause significant environmental impacts. DTSC must conclude that the Project **may have** a significant impact on the environmental and that an EIR is required to analyze and mitigate those impacts. Moreover, CEQA Section 21151.1(a)(3) requires the preparation of an EIR. The facts clearly demonstrate that this is a "large treatment facility" and requires an EIR Moreover, it is reasonably foreseeable that this facility will treat many thousands of tons per months. An EIR is mandated.

CONCLUSION

In my experience of over 30 plus years of professional planning, environmental analysis, and project management in both the public and private sectors, it is my expert opinion that DTSC cannot rely on the Initial Study, as currently prepared, to support its determination that a Negative Declaration can be adopted for the proposed Project. There are clearly potential impacts that will be caused by this Project that have not been disclosed in the Initial Study, and the discussion of other environmental issue areas is not supported by factual analysis. Each of the issues presented in this letter presents a strong basis to conclude that the Project may have significant environmental impacts. DTSC must reconsider its CEQA analysis and prepare an EIR. Furthermore, preparation of an EIR is required for the Project, as the

facility meets the definition of a "*large treatment facility.*" The Project should be submitted to the City of Irwindale for review as Lead Agency.

Sincerely,

Karen L. Ruggels

Karen L. Ruggels
K L R PLANNING

Karen L. Ruggels

Owner
Principal

KLR Planning
RESUME

Karen Ruggels is a San Diego native, graduating from San Diego State University in 1980 with a Bachelor of Science Degree in Biology and a Minor in Geography. Beginning her planning career in the environmental field at CalTrans, Ms. Ruggels went on to work eight years for the City of San Diego, serving as Senior Planner, and subsequently 18 years in the private sector before starting her own consulting company in 2005.

Ms. Ruggels has over 30 years of professional planning, environmental analysis, and project management experience in both the public and private sectors. Her expertise includes site and policy planning, environmental review processing, environmental document preparation, planning document preparation, project management, resources management, writing and public presentations, and agency coordination. She has experience in preparing complex and technical Master Plans, Specific Plans, and other land use documents, as well as design guidelines, community plans and community plan amendments, and general plan amendments. Her project management skills have played a key role in obtaining approvals for a wide variety of projects ranging from Specific Plans to Planned Development/Tentative Map entitlements for mixed use, residential, institutions, commercial, and industrial uses. She is also skilled in preparing and processing resource agency permits (U. S. Army Corps of Engineers 404 permits, State Fish and Game Section 1600 permits).

EDUCATION
B.S., Biology (Minor, Geography), 1980, San Diego State University

PROFESSIONAL AFFILIATIONS
Association of Environmental Professionals (AEP)

American Planning Association (APA)

CERTIFICATIONS
Project Management for Planners, APA

Project Management, Ronald I. LaFleur, Cadence Management Corp.

Academy 2000, Supervisors Academy, Dr. Richard I. Lyles

ENVIRONMENTAL REVIEW AND DOCUMENT PREPARATION/PROCESSING

Ms. Ruggels is proficient in environmental review and document preparation in compliance with NEPA and CEQA. As a seasoned environmental planner with a wide array of NEPA and CEQA experience, Ms. Ruggels has prepared and/or processed a full range of environmental documents and clearance, including:

- NEPA
  - Preliminary Environmental Study (PES)
  - Categorical Exclusion (CE)
  - Environmental Assessment (EA)
  - Environmental Impact Statements (EIS)
  - Section 4(f) Evaluation
- CEQA
  - Exemption
  - Addendum
  - Initial Study (IS)
  - Negative Declaration/Mitigated Negative Declaration (ND/MND)
  - Environmental Impact Report (EIR)
  - Supplemental/Subsequent Environmental Impact Report
  - Program Environmental Impact Report

Ms. Ruggels' knowledge of CEQA and NEPA is well recognized by her peers and respected by her clients. She is often requested to participate as a panel member in local annual CEQA conferences at both the "nuts and bolts" and the advanced levels. Ms. Ruggels believes that the only way to stay in-step with the constantly changing world of environmental review and land development is to regularly attend workshops and conferences that provide current policy review and update, as well as state-of-the art approaches to addressing environmental analyses and provide for innovative planning tools. Most recently, Ms. Ruggels has attended conferences focusing on sustainability and urban design, global climate change, water resources and availability, and changing regulations related to reducing greenhouse gas emissions and carbon footprint.

CURRENT AND RECENT ENVIRONMENTAL PROJECTS

Uptown/North Park/Greater Golden Hill Community Plan Update PEIR, City of San Diego
The Watermark EIR, City of San Diego
Otay Valley Quarry Reclamation Plan Amendment EIR, City of Chula Vista Quarry Falls Specific Plan PEIR, City of San Diego
Stone Creek Master Plan EIR, City of San Diego
Espanada EIR, City of Chula Vista
Village 7 SPA Plan EIR, City of Chula Vista
Bella Lago EIR, City of Chula Vista
US 95 EIS, Idaho Department of Transportation

PLANNING AND PROJECT MANAGEMENT EXPERIENCE

Added to Ms. Ruggels' years of experience in environmental review, document preparation, and processing is her lengthy career as a planner. Ms. Ruggels has processed virtually every entitlement approval through a variety of local jurisdictions, including:

Community Plans and Community Plan Amendments
Specific Plans and Specific Plan Amendments
Master Plans
Precise Plans
Rezones
Planned Development and Site Development Permits
Coastal Plan Amendments and Coastal Development Permits
Conditional Use Permits
Major and Minor Use Permits
Tentative Maps
Street and Easement Vacations
Lease of City Property

CURRENT AND RECENT PLANNING AND PROJECT MANAGEMENT PROJECTS

Stone Creek – Community Plan Amendment/Master Plan/Rezone, City of San Diego
The Watermark – Community Plan Amendment/Planned Development Permit/Rezone, City of San Diego
San Diego Polo Club – Site Development Permit, City of San Diego
Erma Road – Community Plan Amendment/Planned Development Permit, City of San Diego
University Office and Medical Park – Specific Plan/General Plan Amendment, City of San Marcos
Lux Art Institute – Major Use Permit Amendment, City of Encinitas
Vulcan-Otay Mesa – Major Use Permit, County of San Diego
Parcel Map 35212 – General Plan Amendment/Rezone/Parcel Map, Riverside County

Working with local community groups, other agencies, jurisdictions, and local interested citizens, Ms. Ruggels' abilities include understanding and analyzing the simplest to the most complex of issues. Ms. Ruggels' extensive experience in working directly with staff members of a variety of public jurisdictions and private clients has resulted in having achieved successful processing of projects. She works hard to ensure a smooth integration of work efforts with client staff assigned to the project. Her responsiveness, attention to staff requests, and undying commitment to the client ensures that schedules are met. Her intimate knowledge of planning and environmental review enable her to quickly adept to project changes, which often arise during preparation of the environmental document or as a result of project refinements following the public review period.

Additionally, Ms. Ruggels is accustomed to working with applicants and clients with seemingly impossible schedules. She is experienced in developing work programs which meet the project's scheduling challenges through efficient management techniques including, but not limited to, conducting tasks in a concurrent manner; close and regular coordination with the Project Team, City staff, and subconsultants; beginning tasks as early as possible; and avoiding down-time by active participation in all aspects of the project's review and approval processes.

Ms. Ruggels is also committed to her company's policy of active community involvement. She currently sits on the board of the Mission Valley Community Planning Group, is an alternative for the Grantville Redevelopment Area Stakeholders Committee, and is a past board member for the Mira Mesa Community Planning Group and the Navajo Community Planners. Karen believes this participation provides unique insight into the projects she works on providing a clearer understanding of the public's concerns and issues.