Linda S Adams
Secretary for
Environmental Protection

Department of Toxic Substances Control

Maziar Movassaghi
Acting Director
5796 Corporate Avenue
Cypress, California 90630

Arnold Schwarzenegger
Governor

May 13, 2010

Interested Parties, Ascon Facilities

RESPONSE TO COMMENTS ON THE INTERIM REMOVAL MEASURES – ASCON LANDFILL, HUNTINGTON BEACH, CALIFORNIA

Dear Interested Parties:

Attached please find the response to comments on the Interim Removal Measures which was public noticed for public comments in October 2009. This response to comments document is our department's official responses to public comments received. The Interim Removal Measures was approved on May 10, 2010.

If you have any questions or comments regarding this correspondence, please contact Mr. Safouh Sayed, Project Manager at (714) 484-5478, or me at (714) 484-5461.

Sincerely,

Greg Holmes, Unit Chief
Brownfields and Environmental Restoration Program

Enclosures – Response to Comments

cc: Mr. Peter Hamborg
21322 Seaforth
Huntington Beach, CA 92646

Ms. Merle Moshiri
8802 Dorsett Drive
Huntington Beach, CA 92646

Ms. Nancy Cotta
19632 Occidental Lane
Huntington Beach, CA 92646

Mr. Glen Provost, M.D.
9111 Mahalo Drive
Huntington Beach, CA 92646

Ms. Shirlee L. Stoner
9081 Aloha Drive
Huntington Beach, CA 92646

Mrs. Susan Junghans
8332 Seaport Drive
Huntington Beach, CA 92646

Mr. Joe & Mrs. Kristi Pennell
6901 Spickard Drive
Huntington Beach, CA 92646

Mr. Dennis and Mrs. Vicki McDonald
9102 Bermuda Drive
Huntington Beach, CA 92646

Mr. Charles Tupac, P.E.
Air Quality Analysis and Compliance Supervisor
Refinery and Waste Management Permitting
Office of Engineering and Compliance
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178

Ms. Jennifer Villasenor
Associate Planner
City of Huntington Beach
Department of Planning
2000 Main Street
Huntington Beach, CA 92648

Ms. Maryan Molavi
Acting Branch Chief
Local Development/Intergovernmental Review
State of California, Department of Transportation, District 12
3337 Michelson Drive, Suite 380
Irvine, CA 92616-8894

Ms. Meredith Osborne
Associate Biologist
California Department of Fish and Game,
South Coast Region (5)
4949 Viewridge Avenue
San Diego, CA 92123

Ms. Tamara Zeier
Project Navigator, LTD.
1 Pointe Dr., Suite 320
Brea, CA 92821-3651

RESPONSE TO COMMENTS

Ascon Landfill Site
Draft Interim Removal Measure Workplan and
Mitigated Negative Declaration

1.0 Introduction

On October 22, 2009, the Department of Toxic Substances Control (DTSC) public noticed the accepting of public comments on a draft Interim Removal Measure Workplan (IRM) and draft Mitigated Negative Declaration (MND) for the Ascon Landfill site. The Ascon Landfill site is located at the southwest corner of Magnolia Street and Hamilton Avenue in Huntington Beach. The draft IRM Workplan was developed specifically for the 38-acre site to remove and dispose, or, if feasible, recycle tarry and oily waste at the Ascon Landfill site. Under the California Environmental Quality Act (CEQA), a draft MND has been prepared because the proposed removal activities will not have an adverse environmental impact. The 30-day public comment period began October 22, 2009, and ended November 23rd, 2009.

Prior to public noticing the 30-day public comment period for the draft IRM and draft MND, DTSC held an Open House to discuss site information, proposed IRM Workplan and the draft MND with the public. The Open House was held on October 14, 2009, at Edison High School, Multi Purpose Room, 21400 Magnolia Street, Huntington Beach, CA 92646. DTSC hereby responds to all public comments received during the 30 day public comment period as documented in this Response to Comments document. Please note that DTSC received four (4) public comments prior to the official public comment period and these comments are also included.

The draft IRM and draft MND documents are available for public review at the following Information Repositories:

Huntington Beach Central Park
Main Library
7111 Talbert Avenue
Huntington Beach, CA 92648
(714) 842-4481

Banning Branch Library
9281 Banning Avenue
Huntington Beach, CA 92646
(714) 375-5005

Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, CA 90630
(714) 484-5337

Please contact Ms. Julie Johnson to make an appointment at the DTSC Cypress office.

In this Response to Comments, all comments are separated into the following Sections:

Section 1: Introduction

Section 2: Public Comments Received Prior to the Official Public Comment Period on the draft IRM and draft MND

Section 3: Public Comments Received During the Official Public Comment Period on the draft IRM and draft MND

2.0 Public Comments Received Prior to the Official Public Comment Period on the draft IRM and draft MND

Comment 1: Received from Peter Hamborg, e-mail: hamborg@mac.com, 22 year resident at 21322 Seaforth, Huntington Beach, CA 92646, Business owner at 8614 Hamilton Avenue, Huntington Beach, C 92646

I find no compelling or necessary reasons for the clean up of the Ascon Landfill given in the Fact Sheet #10 dated Oct. 2009. This shows need that the DTSC must reevaluate its protective standards and policies when effort, money and risk are being used and extended for no immediate health risks. I repeat . . . no immediate health risk. I suggest that you send out a "Fact Sheet" that would make a clear and compelling presentation of why a project of this scope needs to be undertaken. Please go beyond "Thus, DTSC requires . . ." (because it appears DTSC is misguided in this self proclaimed benign situation). If not, please stop wasting precious time and money.

DTSC Response to Comment 1:

This is the e e-mail response we provided to this commenter prior to the official public comment period.

Dear Mr Hamborg:

Thank you for comments regarding the Ascon Landfill project. DTSC's mission is to protect human health and the environment and our investigations have revealed that additional action should be taken in order to achieve our mission. As indicated in Fact Sheet #10, there is no immediate health risk to the public. However, under a future commercial or industrial land use scenario, public health and safety would be compromised if DTSC did not pursue further cleanup actions. Contaminants at the site cannot be left in place long-term without risk to public health and safety. The Ascon Landfill site, in its present condition is not an immediate health risk. DTSC wants to ensure that long-term public health is achieved. The oil companies, who brought waste materials to the site, are

funding the cleanup of this project. DTSC staff costs are being paid for by the oil companies who are responsible for the site's overall condition and cleanup costs. Further cleanup, identified in the Interim Removal Measure will provide for further characterization of the landfill and provide data necessary to develop a final cleanup plan that is critical in achieving long-term public health and safety

DTSC appreciates your comments and questions on this site in your community. If you have further questions, please do not hesitate to contact me directly (714) 484-5478, e-mail: ssayed@dtsc.ca.gov, or Ms. Stacey Lear, Public Participation Specialist, at (714) 484-5354, e-mail: slear@dtsc.ca.gov. As a reminder, the official public comment period begins Thursday, October 22, and ends Monday, November 23rd, 2009. You are welcome to send formal public comments for DTSC response during that time. Please ensure public comments are postmarked or e-mailed no later than November 23, 2009. Thanks.

Safouh Sayed
Hazardous Substances Engineer
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, CA 90630
(714) 484-5478
(714) 484-5428
ssayed@dtsc.ca.gov

Comment 2: Received from Merle Moshiri, e-mail: PARS11@aol.com, 8802 Dorsett Drive, Huntington Beach, CA 92646, 714-536-2017

Mr. Sayed,

As a home owner in close proximity to the ASCON facility, I would like some information as to when the decision was made to use a Negative Impact Declaration rather than an EIR regarding the interim removal of toxic substances for testing. Considering the closeness of Edison HS, Eader Elementary, Edison Park and about 400 homes to the site, and taking into account the toxicity of the substances contained in the pits, not to mention the impact to these places by approximately 5,000 trucks for 8 months past our homes, schools and park, I am curious as to how this decision was reached. The protocol involved in other words. Also, when this decision was made.

I know that a determination must be made regarding the severity of the substances at the ASCON site in order for you, ASCON and the City to proceed with whatever cleanup is decided upon but I think the interim removal presents unique circumstances to the community. I would appreciate hearing from you at your earliest convenience

Merle Moshiri
8802 Dorsett Dr.
Huntington Beach, CA 92646
714-536-2017

DTSC Response to Comment 2:

As part of the California Environmental Quality Act (CEQA) process, an Initial Study was drafted by DTSC to review the proposed project and its corresponding environmental impacts. In general, the results of an Initial Study indicate whether 1) an Environmental Impact Report is needed (as in cases when all potentially significant impacts cannot be mitigated), or either 2) a Mitigated Negative Declaration (MND) (used when all potentially significant impacts can be successfully mitigated), or 3) a Negative Declaration (used when the proposed project poses no potentially significant impacts). The Initial Study for the Interim Removal Measure took into account the potential impacts of the proposed project, including potential exposures to site hazards; proximity to homes, schools, and businesses; the proposed trucking routes; local traffic patterns; and many other considerations. The Initial Study for this proposed project demonstrated that all potentially significant environmental impacts could be mitigated to a less-than-significant level. For this reason, preparation of a Draft EIR was not warranted for this Interim Removal Measure, and DTSC determined that a Mitigated Negative Declaration was the appropriate mechanism to safely execute the Project. The determination to seek public comments on the Draft MND was made to allow for the public's review and comments and/or questions regarding the Initial Study/Draft MND. This Initial Study/Draft Mitigated Negative Declaration was completed by DTSC in October 2009, and was made available to the public for review on October 22, 2009. The final approval of the MND has yet to be issued and depends both on public comment and DTSC approvals following further review of the project plans and proposed mitigation measures. DTSC approval of the MND is anticipated to occur during the second quarter of 2010.
It has already been established that a Draft EIR will be needed for the final remedy for the Ascon Landfill Site, which will be made available for public review as part of the CEQA process for the final remedy. The Initial Study for this proposed project includes essentially the same analysis that will be conducted during the CEQA process for the final remedy EIR and RAP. This project (the IRM) will mitigate all significant impacts, and therefore an EIR is not required per CEQA.

Comment 3: Received from sehbna@yahoogroups.com, on behalf of John Scott, via E-mail to Ms. Mary Urashima (urashima@earthlink.net), e-mail forwarded to DTSC for response:

In a report obtained from the Department of Substance Control's website regarding the contents of the Ascon site, the following paragraphs give us an

understanding of what lurks there. This is based upon surface samples taken from the lagoons.

"2.4.4 A total of 15 surface waste samples from five lagoons were also collected and analyzed by Radian during the 1988 Site characterization. TPH levels in the lagoons ranged from 460,000 mg/kg to 530,000 mg/kg. Metals detected with the highest concentrations include calcium, sodium, and iron with concentrations ranging from 290 mg/kg to 3,600 mg/kg for this group. Aromatic VOCs including benzene, toluene, meta-xylene, ortho-xylene, and para-xylene were detected with levels ranging from 56 ug/kg to 3,800 ug/kg for this group?

The dangers those contents pose for people are presented in a Baseline Health Risk assessment (BHRA) in the paragraph below.

"2.4.11 The BHRA quantitatively evaluated the potential health impacts associated with human exposure to chemicals released from the waste pits and lagoons at the Site. The BHRA concluded that the estimated health risk for adults and children living in the immediate vicinity of the Site, onsite workers, and trespassers exceed levels considered acceptable by California regulatory agencies. These potential risks were found to be associated with the volatilization and subsequent inhalation of volatile organic compounds and oral and dermal contact with contaminants in the soil."

Some time ago the owners of the dump site and DTSC declared that the berm on the north side of the sump site that contained lagoons 4 & 5 had not been properly constructed and that it posed a danger of collapsing and releasing its contents. This action was deemed necessary because of the condition of the berm and thus it was considered exempt "from the requirements of the California Environmental Quality Act."

Some residents east of the site complained of foul odors and other physical symptoms during the removal process. Faced with the conclusions of paragraph 2.4.11 above, the options for residents of the area were to move or temporarily leave if they deemed the risks too great.

Now plans are in place to take the same actions with lagoons 1 & 2 which are in the southwest area of the site. This time the legal authority for this action will be a Mitigated Negative Declaration.

"The statute provides that mitigated Negative Declarations are used "when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the

project, as revised, may have a significant effect on the environment" (Section 21054.5)."

If residents conclude that the above conditions have not been met, even though state authorities decided they were, and they will not have the protection of an Environmental Impact Report, their only option again is to evaluate the risks and decide what is in the best interest of themselves and their families.

Health risks listed in the report from exposure to the 64 confirmed contaminants present at the site are:

"2.5.3 Significant risks from many of these chemicals may occur primarily by direct contact with soils, ingestion, and dermal exposure. Potential health effects include cancer, liver and kidney damage, respiratory impairment and central nervous system effects."

"2.5.2 Potential health effects include cancer, liver and kidney damage, developmental and reproductive impairment, and effects on the immune system."

"2.4.4. Significant risks from many of these chemicals may occur primarily by inhalation, including cancer, liver and kidney damage, respiratory impairment and other nervous system effects."

It seems to me that what we are seeing as we get into the actual cleanup of the Ascon site is an approach that gives less consideration to the health and safety of our neighborhood and more consideration to financial burden of the responsible parties.

John

DTSC Response to Comment 3:

The presence of toxic components within the lagoons is a reason for the long term remedy for the site. The purpose of the Interim Removal Measure is to remove materials to enable sampling and data collection from the deeper materials under the tars in Lagoons 1 and 2 for planning and design purposes with respect to the Final Remedy. The Initial Study documents that the lagoon materials can be removed without significant impacts to human health and the environment.

With regards to the BHRA, please note that the BHRA conclusions were based on available data and then-existing standards in 1997. In 2002, a re-evaluation of the BHRA conclusions was performed using additional data and current standards of practice. This re-evaluation indicated that the initial BHRA conclusions that you cite were overly conservative, and that the present-day site

does not pose what is categorized as significant risk to offsite receptors. The reevaluation is included in the DTSC-approved Revised Feasibility Study (RFS).

Odors might continue to be detected, especially by those with keen senses, but the detection of odors does not necessarily equate to a health risk. A health risk assessment was performed for the IRM and the results, as summarized in the IS/MND, indicated that the maximum impacts potentially experienced off-site as a result of the IRM activities would be less than the applicable health-protective standards. The RPs are required to prepare an Air Monitoring Plan, which will be approved and overseen by DTSC and the South Coast Air Quality Management District (SCAQMD). SCAQMD Rule 1166 is designed to control volatile organic compound (VOC) emissions, including odorous compounds, during Interim Removal Measure activities. The Air Monitoring Plan and the SCAQMD Rule 1166 permit specify the methods to be used to identify VOC-contaminated soil and the measures to be taken to minimize emissions, including using approved suppressants. In addition, on-site representatives of the RPs (e.g. remediation contractor) will implement mandated observation, air monitoring, and air sampling methods, including monitoring of odors at the fence line, that will be used to ensure that the Project engineers and workers will minimize potential offsite impacts and prevent significant negative health effects to nearby residents.

In order to address odor complaints if they arise, the DTSC has mandated (see Mitigation Measure AQ-4) that the project proponent establish and maintain signage specifying the manner in which the public can register odor complaints. If odor complaints are received, staff located on-site will walk around the perimeter of the site to verify the odor complaint and attempt to identify the source. If odors are verified, additional foam suppressants and watering will be applied or work will be suspended temporarily until nuisance odors are no longer detected.

Comment 4: Received from Glenn Howland. E-mail: t-howland@live.com

I am a resident of southeast Huntington Beach and have some questions regarding the removal operation.

How will the odors from each pond be controlled during and after removal?

Will all the ponds that contain drilling liquids and other industrial waste be capped with concrete?

These questions are probably included in the Interim Removal Measure and the Negative Declaration but I want to get closure.

In addition, will the waste be treated after it is deposited at the Clean Harbor Willow Button or CWM Kettleman Hills Landfills?

Sincerely,

Glenn Howland
949-903-9339

DTSC Response to Comment 4:

This is the e-mail response we provided prior to the official public comment period.

Dear Mr. Howland:

Thank you for comments regarding the Ascon Landfill project. DTSC's mission is to protect human health and the environment and our investigations have revealed that additional action should be taken in order to achieve our mission.

How will the odors from each pond be controlled during the removal:

The Department of Toxic Substances Control (DTSC) has approved the air monitoring plan which includes the following:

-Weather stations to monitor wind speed and wind direction.
-Measurement of direct readings at multiple perimeter locations.
-Odor and volatile organic compounds (VOC's) will be monitored and mitigated.

Please see response to comments 3, last paragraph for order control measures.

Will all the ponds that contain drilling liquids and other industrial waste be capped with concrete?

Yes, the ponds that contain drilling liquids and other industrial waste will be capped with concrete at the final stage of the project (final remedy).

Will the waste be treated after it is deposited at the Clean Harbor Willow Button or CWM Kettleman Hills Landfills?

Parts of the waste might be treated on site (by mixing with soil) before being deposited at the Landfill

Thank you for your comments on the Ascon Landfill site. More detailed information is included in the draft Interim Removal Measure Workplan and the Negative Declaration documents These documents as well as other supporting documentation will be available for public review on Thursday, October 22, 2009,

which is the first day of the public comment period. If you have additional comments and questions, please do not hesitate to participate in the formal public comment period. As a reminder, all public comments must be postmarked or e-mailed by November 23rd, 2009. I can be reached directly at (714) 484-5478 or e-mail: ssayed@dtsc.ca.gov, or you can contact Stacey Lear, DTSC Public Participation Specialist, at (714) 484-5354 direct or e-mail: slear@dtsc.ca.gov.

Thanks

Safouh Sayed
Hazardous Substances Engineer
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, CA 90630
(714) 484-5478
(714) 484-5428
ssayed@dtsc.ca.gov

Additional DTSC Response, May 2010
Re air monitoring plan:
Please see additional details in Comment 16 and Response.

Re: Ponds containing drilling liquids and possible concrete cap:

Please note that the final remedy and component of the cap for the ponds have not yet been determined. This will be analyzed and available for public comment as part of the final Remedial Action Plan and draft Environmental Impact Report.

3.0 Public Comments Received During to the Official Public Comment Period on the draft IRM and draft MND

Comment 5: Received from Glenn Howland, via e-mail: t-howland@live.com

DTSC, Southern California Cleanup Operations Branch
5796 Corporate Ave.
Cypress, CA 90630-4732

Attention: Safouh Sayed, Project Manager

After Reviewing the Draft Interim Workplan and Negative Declaration on Thursday, October 22, 2009 I noticed two issues that I could not understand. Can you clarify these issues for me.

Both of the publications I reviewed only discussed two Lagoons to be excavated and capped with concrete. Lagoons 3-5 were not included in the Negative

Declaration. Will these three Lagoons (3-5) be excavated also or were they excavated in 2006 during the Emergency Action Plan? Basically my issue is; Were Lagoons 3-5 already consolidated and cleaned in 2006 therefore not requiring them to be excavated and cleaned in March of 2010?

My second issue: Will the bridge at Newland Street be open for traffic before the March cleanup date. This will enable the trucks to proceed south on Newland Street and make a right turn on Pacific Coast Highway heading toward Beach Blvd. Will all trucks exit the site from Magnolia (East side of site) and enter on the north side of the site from Hamilton or will some trucks exit from Hamilton Ave.? This Hamilton exit plan could eleviate some of the traffic on Magnolia during the morning hours.

Sincerely,

Glenn P Howland

DTSC Response to Comment 5:

E-mail sent

Dear Mr. Howland:

Thank you for comments regarding the Ascon Landfill project.

Both of the publications I reviewed only discussed two Lagoons to be excavated and capped with concrete. Lagoons 3-5 were not included in the Negative Declaration. Will these three Lagoons (3-5) be excavated also or were they excavated in 2006 during the Emergency Action Plan? Basically my issue is, were Lagoons 3-5 already consolidated and cleaned in 2006 therefore not requiring them to be excavated and cleaned in March of 2010?

The interim Removal Measure (IRM) does not involve Lagoons 3-5 at all. The upcoming activities are limited to lagoons 1 & 2 only. Further cleanup of lagoon 3-5 will be considered as part of the final remedy in the future.

My second issue: Will the bridge at Newland Street be open for traffic before the March cleanup date. This will enable the trucks to proceed south on Newland Street and make a right turn on Pacific Coast Highway heading toward Beach Blvd. Will all trucks exit the site from Magnolia (East side of site) and enter on the north side of the site from Hamilton or will some trucks exit from Hamilton ave.? This Hamilton exit plan could eleviate some of the traffic on Magnolia during the morning hours.

We plan to use Newland which is now open from PCH, for incoming trucks. We will not use Newland for outgoing, loaded trucks because these trucks need to

exit south onto Magnolia through the gate designed for their exit. A Hamilton exit would be less safe (left turn across traffic) and also not practical because the interior road is essentially one-way (trucks could not enter and exit along same interior road).

Thanks

Safouh Sayed
Hazardous Substances Engineer
Brownfields and Environmental Restoration Program
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5796 Corporate Ave
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(714) 484-5478
(714) 484-5438
ssayed@dtsc.ca.gov

Comment 6: Received from "Rich", SEHBNA Resident, e-mail: TM4RB@aol.com, via E-mail to Ms. Mary Urashima (urashima@earthlink.net), e-mail forwarded to DTSC for response:

Hi Mary, it was reported in the press that an asphalt cover or similar type covering was to be placed over the contaminated debris that was to be left on the Ascon mud dump site. I also heard a similar comment at the Edison meeting while listening to the idea that the responsible parties wanted to clean the Ascon site up to a lesser degree level that would be cheaper or more "cost effective" for them and just cover over much of the toxic contaminated debris mess and leave it "on site" in our neighborhood forever.

Is this cheaper final clean up plan the one that is being envisioned and PR pushed to happen by the responsible parties and state DTSC employees or what? I ask you because it sure appears to be that from what has been said by the state employees in the press and from the state employees discussion at the Edison High School meeting.

When asked and inquired by a neighbor of Ascon about a large dome containment tent covering to be placed over the Ascon sit before an EIR is completed and before initially a bunch of contaminates are moved I observed a "resistive and deflective attitude" I will best describe it as a pooh-poohing, condescending demeanor for this excellent idea from state employees. These huge dome tents are used all the time for both very large major and even small minor contamination clean ups, auto auctions/shows, conventions etc. The scenario put forth of soliciting neighborhood input/concerns and then sluffing off or minimizing legitimate neighbor comments/ideas by the state employees responsible for an Ascon clean up plan does not sit well, win any hearts or minds nor confidence/trust for the Responsible parties or DTSC from the neighborhood.

Mary, as you well know there has been a history of continuous problems associated with the Ascon mud dump. An oil well explosion spewing forth contaminates into our neighborhood, a fire that sent smoke containing particulate matter and who knows what else billowing into our neighborhood (just lucky the lagoon didn't catch on fire or our fireman seriously injured or killed), animal deaths on site, stinking smells emanating from the site blown into our neighborhood. It seems remedies wee put forth only after the problems were let to fester and occur. Pro active preventative measures did not appear to be in place or used.

Some neighbors believe possibly their health issues including respiratory, cancers and others are associated with the contamination on the Ascon site. My point is: Murphy's Law always seem to raise its head in relationship to the Ascon mud dump site. It is the history of this contaminated mess. Many neighbors don't want just a covering of "asphalt any or similar type cover" over a bunch of contamination just to be left on site as a clean up remedy. Period! I agree with that line of thought after experiencing up close and personal the many problems directly caused for our neighborhood by the Ascon mud dump site toxic/hazardous contamination mess. We don't want it to haunt our neighborhood in the future! TOTAL and COMPLETE clean up needs to happen.

As you can probably gather from my previous SEHBNA web site comments I along with numerous other homeowners that live around the Ascon mud dump site sincerely feel the best clean up plan for the neighborhood and community (even though more costly and time consuming to all concerned) is to remove all of the contaminated toxic and all other debris and to restore the Ascon mud dump site properly to its previous toxic/hazardous chemical contamination "free" condition. Not just put a cap or cover placed over much or even some of it. Here is a very important point: A cover would probably not be much of an issue if the best final clean up plan scenario is done which includes the TOTAL and COMPLETE removal of all contaminated soil and hauling all the other debris off the Ascon site. Anything less than this total best clean up of the Ascon site puts the community's health, safety, welfare and quality of life at continuing risk into the future. That is not a good thing for our neighborhood or community.

Please seriously listen to and take heart our desired request and hope for the best clean up plan only. If it takes added truck trips so be it. We want it done right the first time for all time. We don't want a cheaper and less thorough or intense cleanup plan to continue to haunt our neighborhood into the future. Thank you for your reply to the sincere comments and concerns of the homeowners that live closely around the Ascon dump site and whose lives are impacted daily now and will be long into the future if the Ascon clean up is not done right the first time for all time.

P.S. The Responsible parties are just that "responsible" for the dumped toxic/hazardous mess. They need to clean the Ascon mud dump site totally and completely up not only because they are to do so by law but even more importantly because morally and ethically it is simply the right thing to do.

Best Regards, Rich

DTSC Response to Comment 6:

The proposed Interim Removal Measure project and draft MND cover interim work to be done in preparation for the Final Remedy. This work includes removal of much of the tarry materials from Lagoons 1 and 2. The final remedy will have a remediation plan for the entire site. DTSC does not believe that odors from the materials to be excavated pose a health risk requiring a tent. DTSC has required monitoring and mitigation to minimize any offsite odors. DTSC will solicit public comments on the Final Remedy during a future Final Remedy CEQA process.

Comment 7: Received from Nancy Cotta, Resident, nancycotta@firstteam.com, 19632 Occidental Lane, Huntington Beach, CA.

In regards to Air Monitor, I recommend air monitoring at levels of 10 to 20 feet above ground. Your sampling will be of greater significance than just collecting data at nose level. For one the fence line is buffered by bushes and vegetation that tends to divert air flow and create stagnation. Second air flow past a source tends to "pick up" the pollutant (see figure below).

The additional cost of monitoring stations is minimal and can give greater assurance if the air is found clean and if polluted, corrective measures can be taken.

DTSC Response to Comment 7:

Air sampling will be performed using SUMMA canisters, which are airtight, deactivated stainless steel containers used to sample ambient air quality. The SUMMA canisters will have intakes closer to the breathing zone rather than 10 to 20 feet above ground. In addition, air samples obtained from a higher elevation would be diluted due to increased mixing and wind speed. Emissions generated from project activities are mainly from surface (ground) based sources such as excavation and transport of soil which results in higher concentrations at ground level closest to the project site.

This sampling practice is consistent with EPA guidelines for air sampling at Superfund sites and is believed to provide optimum air sampling during the Interim Removal Measure. These guidelines also outline minimum sampling distances from trees, fences, building, etc to ensure a representative air sample (i.e., no stagnation).

Comment 8: Received from Glen Provost, M.D., 9111 Mahalo Drive, Huntington Beach, CA 92646

In order to suppress any dust which might be carried by the prevailing wind (which comes from the northwest) into our neighborhood which is just to the east I would request the following items be implemented:

1) Wetting of truck contents to decrease dust levels;
2) All loads should leave prior to 11 AM due to winds generally starting at that time;
3) Monitors be placed in our neighborhood to detect excessive dust levels, a) either due to wind or dust coming from trucks;
4) Create an exit point either at the northwest corner or on the west side to decrease dust which might be carried into our neighborhood; a) or contaminants which might be dangerous;
5) Route trucks so as to minimize dust exposure to neighborhoods.

DTSC Response to Comment 8:

The Air Monitoring Plan, approved and overseen by DTSC, and the South Coast Air Quality Management District (SCAQMD) Rule 1166 permit describe the observation and air monitoring program and sampling methods. The program includes monitoring for potential dust at the fence line to minimize potential offsite impacts and prevent negative health effects to nearby residents. Protective measures will be used to minimize dust onsite and in the neighborhood, including use of dust suppressants such as water at the excavation areas. Trucks will be tarped after loading and decontaminated prior to leaving the site. Other dust mitigation measures will include street sweeping along Magnolia Street and stopping work if wind speeds exceed specified levels. The monitoring conducted at the site perimeter is a more protective approach than monitoring in the neighborhood, prompting mitigation actions if thresholds are reached at the site perimeter. The majority of the anticipated waste to be removed from Lagoons 1 and 2 are tarry in nature and not anticipated to generate dust concerns. Possible truck routes were studied to minimize potential impacts to traffic and residential areas adjacent to the IRM routes. The southern Magnolia Street gate is the planned site exit for haul trucks and was designed to minimize traffic impacts when haul trucks leave the site. A Hamilton Street exit would be less safe because it would require a left turn across traffic followed by a left turn at an unsignalized intersection. Also, the interior road is planned to be one-way for haul trucks, and therefore haul trucks could not enter and exit along the same interior road.

Comment 9: Received from Shirlee L. Stoner, 9081 Aloha Drive, Huntington Beach, CA 92646

I want the site to stay as it is – open ground. No buildings, no houses, just open ground. I would like it cleaned up. But if it is some builder is going to put up 300 houses, Huntington Beach is already over-built. We need some open space in this town.

DTSC Response to Comment 9:

The subject of land use will not be considered until after the Final Remedy. You are invited to provide comments in the future on the Draft EIR and RAP for the Final Remedy for the site during the CEQA process for the Final Remedy. It is anticipated that a separate EIR will be required for the land use decision, with the City of Huntington Beach. At that time, there will be opportunity to comment on future plans for use of the site.

Comment 10: Received from Susan Junghans, 8332 Seaport Drive, Huntington Beach, CA 92646

I attended your open House on October 14th and found it informative however was disappointed in the format. Many of us had the same questions and a presentation type format with question and answers at the end would have been a better way to communicate the proposed cleanup plan of the Ascon Landfill.

I'm requesting DTSC hold another meeting and put a presentation together, and advertised to the community (O.C. Register, Independent) so a larger number of the community will be educated to the cleanup plan of the landfill.

DTSC Response to Comment 10:

We appreciate your feedback and will take this into account for future public meetings. In an effort to notify and encourage the public's participation, a briefing about the Interim Removal Measure was held at a Huntington Beach City Council study session on October 5, 2009. Public notices regarding the October 14, 2009, Open House at Edison High School were placed in both the Huntington Beach Independent and the Huntington Beach Wave in advance of the open house to encourage the community to attend the open house and learn more about the Interim Removal Measure and ask questions. A fact sheet also was mailed to area residents in early October 2009 to inform the community of the planned Interim Removal Measure, the documents available for public review and their location, and the October Open House. There will be another public notice prior to the start of the Interim Removal Measure, notifying the community of the planned work and anticipated start. A hotline will also be setup for the Interim Removal Measure so that the community can call during the work with any follow-up questions.

There will be additional opportunities and notices for public meetings and input for the Final Remedy EIR in the future. Please note that the Interim Removal

Measure is not part of the Final Remedy, but an interim measure to assess materials under Lagoons 1 and 2 in preparation for the Final Remedy.

Comment 11: Received from Joe & Kristi Pennell, 6901 Spickard Drive, Huntington Beach, CA

1) Kids going to Edison High

2) All traffic not using Magnolia by School

3) Protecting Edison High Students!

DTSC Response to Comment 11:

The safety of students traveling to and from Edison High School, as well as the safety of the public at large, is important to DTSC. For this reason, haul truck routes, as well as the entrance and exit gates avoid the intersection nearest to and the roadway in front of Edison High School. Haul trucks will enter and exit the site at gates that are over ¼ mile from the school. Haul trucks will enter the Ascon Site from the west at the Hamilton Avenue gate located at the northwest corner of the site and exit southward from the southernmost Magnolia Street gate located in the southeastern corner of the site. Also, the Initial Study analyzed traffic patterns at nearby intersections to make sure that traffic would not be significantly impacted. As an additional measure, flagmen will control traffic, both vehicular and pedestrian, for all haul truck arrivals and departures to and from the site to maximize safety.

Comment 12: Received from Dennis and Vicki McDonald, 9102 Bermuda Drive, Huntington Beach, CA 92646, (714) 269-3033 (cell)

Please consider the following:

1. Contain all soil and odor. Check all drainage while removing waste.
2. Remove all coyotes, foxes, raccoons from area.
3. Truck route should go away from housing.

DTSC Response to Comment 12:

Waste, soil, dust, emissions, and odors will be monitored through measures incorporated in the Interim Removal Measure Workplan, the Health and Safety Plan, the Transportation Plan, the Air Monitoring Plan, and the appropriate permits for the site actions. The Interim Removal Measure also will follow a project-specific Construction Storm Water Pollution Prevention Plan that outlines measures to be taken to comply with the General Construction National Pollution Discharge Elimination System (NPDES) permit, further reducing potential sediments in storm water.

The presence of coyotes, raccoons, and foxes is known in both the open and urban areas of southeast Huntington Beach, particularly with the proximity of wetlands. The Project activities will not significantly interfere with the behaviors and habitat of wild animals, and site workers will be sensitive to their presence. Haul truck routes were analyzed to minimize potential negative impacts to traffic and adjacent neighborhoods. The haul route mitigation measures include: (1) avoiding the intersection near and the roadway in front of Edison High School, (2) using the Hamilton Avenue gate for haul truck entrance, (3) exiting at the southernmost gate on Magnolia Street, and (4) minimizing the haul route near residential neighborhoods. Trucks will exit the site at the Magnolia Street gate and proceed south to Pacific Coast Highway, only passing residential areas located along the far side of the street between the site's exit gate and the flood control channel bridge.

Comment 13: Received from City of Huntington Beach, Department of Planning, 2000 Main Street, CA 92648

November 20, 2009

Department of Toxic Substance Control
5796 Corporate Avenue
Cypress, CA 90630-4732
Attn: Safouh Sayed, Project Manager

Subject: Draft mitigated Negative Declaration – Interim Removal Measure Workplan (Ascon Landfill)

Dear Mr. Sayed:

The City of Huntington Beach has reviewed the Draft Mitigated Negative Declaration for the Interim Removal Measure Workplan for the Ascon Landfill. The City of Huntington Beach has the following comments and requests that they be addressed in the Mitigated Negative Declaration:

Geology and Soils

- *Page 32 – Baseline Conditions*
  In the description of baseline conditions, discuss the potential for liquefaction to release the waste material into deeper zones based on the type of soils described in the upper layers.
- *Page 34 – Section b*
  Please note that a Storm Water Pollution Prevention Plans (SWPPP) is required to be prepared, a Notice of Intent (NOI) must be filed and a Water Discharge Identification Number (WDID) received for work. Best Management Practices (BMPs) related to the potential loss of topsoil, among others, must be implemented. In addition, please discuss that the

City of Huntington Beach requires preparation and implementation of erosion and sediment control plans as part of the Grading Improvement Plans.

Hazards and Hazardous Materials

- *Page 41 – Section e*
  Please note: The contractor shall submit, to the City of Huntington Beach Department of Public Works, a truck haul route plan prior to grading commencement.

Hydrology and Water Quality

- *Page 43 – Baseline Conditions (Groundwater and Groundwater Quality)*
  The discussion indicates that groundwater monitoring currently occurs on at least a semi-annual basis to ensure that contamination does not extend beyond the project site boundaries. There should be pre- and post-construction monitoring, as well as during activities, to ensure that construction/grading do not cause substantial contamination. Please address

- *Page 43 – Baseline Conditions (Hydrology and Drainage)*
  The discussion indicates that "contact water remains onsite." Does onsite mean within the lagoons? Please clarify. The discussion also states that storm water (excluding contact water) drains from the site beginning within a detention basin in the southeastern corner of the site. How big is the detention basin? How large a storm can the basin detain? Also, please note that "runoff is ultimately conveyed to the City's storm drain system."

- *Page 43 – Section a.*
  Existing engineered improvements include injection barriers according to the first sentence. Please explain the function of the injection barriers and indicate where they are.

- *Page 44 – Section a.*
  Discuss the approximate capacity of Lagoons 1, 2 and 4.

- *Page 44 – Section a.*
  "Per the current NPDES permit, if a severe rain season is encountered and the capacities of the available lagoons are reached, then contact storm water would be transferred to the Orange County Sanitation District following onsite treatment…" Discuss what the treatment is and how it gets collected and transferred.

- *Page 46 – Section e*
  Please provide a more detailed discussion on how the non-contact water is drained off-site. Does it drain into a detention basin?

Utilities and Service Systems

- *Page 68 – Baseline Conditions (Water)*
  Please note: fire Hydrant meters shall be purchased from the City of Huntington Beach Department of Public Works Water Division.

Finally, the City of Huntington Beach encourages the DTSC to notify property owners and residents in the surrounding area as well as Edison High School as early as possible of the construction dates for the project.

Thank you for the opportunity to comment on the draft MND. The City of Huntington Beach looks forward to reviewing other aspects of the project.

Sincerely,

Jennifer Villasenor
Associate Planner

Cc: Mary Beth Broeren, Planning Manager

DTSC Response to Comment 13:

Geology and Soils
□ *Page 32 – Baseline Conditions*
In the description of baseline conditions, discuss the potential for liquefaction to release the waste material into deeper zones based on the type of soils described in the upper layers.

Geology and Soils, Baseline Conditions:

Liquefaction due to seismic activity and shallow ground water in the Ascon area, while possible, would not likely cause a breach in the silty-clay layer that could result in a release of waste materials into deeper zones. More information regarding seismicity will be collected during the latter part of the Interim Removal Measure. A drilling program will be conducted after removal of the tarry materials from Lagoons 1 and 2 to collect data; this data collection is one of the reasons for conducting the Interim Removal Measure.

□ *Page 34 – Section b.*

Please note that a SWPPP is required to be prepared, a NOI must be filed and a WDID received for work. BMPs related to the potential loss of topsoil, among others, must be implemented. In addition, please discuss that the City of Huntington Beach requires preparation and implementation of erosion and sediment control plans as part of the Grading Improvement Plans.

Comments regarding the SWPPP are understood and will be incorporated as necessary or appropriate. The Interim Removal Measure Workplan addresses the filing of the NOI for the General Construction National Pollution Discharge Elimination System (NPDES) permit and preparation of a Construction SWPPP. Erosion and sediment control will be an integral part of the Construction SWPPP BMPs, in addition to the existing Industrial SWPPP BMPs that are currently being implemented. A grading permit will be secured from the City for the Interim Removal Measure.

Hazards and Hazardous Materials

□ *Page 41 – Section e.*

Please note: The contractor shall submit, to the City of Huntington Beach Department of Public Works, a truck haul route plan prior to grading commencement.

A truck haul route plan will be submitted to the Department of Public Works prior to field activities. Please note that the proposed haul truck routes are designated in the Transportation Plan, Appendix C of the Interim Removal Measure Workplan, and traffic impacts are assessed in the Traffic Impact Study, Appendix E of the Initial Study/Mitigated Negative Declaration.

Hydrology and Water Quality

□ *Page 43 – Baseline Conditions (Groundwater and Groundwater Quality) The discussion indicates that groundwater monitoring currently occurs on at least a semi-annual basis to ensure that contamination does not extend beyond the project site boundaries. There should be pre- and postconstruction monitoring, as well as during activities, to ensure that construction/grading do not cause substantial contamination. Please address.*

Groundwater monitoring and sampling is scheduled for March and September, 2010, and again for March, 2011. Given the slow groundwater flow rate in the area due to the relatively flat gradient, this monitoring plan will effectively identify any potential groundwater impacts. Also, the Interim Removal Measure Workplan prohibits excavations that would encroach on the groundwater level.

□ *Page 43 – Baseline Conditions (Hydrology and Drainage) The discussion indicates that "contact water remains onsite." Does onsite mean within the lagoons? Please clarify. The discussion also states that storm water (excluding contact water) drains from the site beginning within a detention basin in the southeastern corner of the site. How big is the detention basin? How large a storm can the basin detain? Also, please note that "runoff is ultimately conveyed to the* ***City's*** *storm drain system."*

"Contact water" is defined as storm water that comes in contact with tarry materials (i.e., generally, storm waters that fall into the lagoons). During average rainfall years, contact water collects in the lagoons and eventually evaporates. Storm water that flows away from the lagoons collects in a system of storm water swales and two detention basins (southwest and southeast detention basin) that all converge to the southeast detention basin. This basin is approximately 200 feet by 125 feet oval, and the storm water swales and detention basins (collectively, best management practices, or "BMPs") have been sized to treat at least 85% of the average annual runoff volume (per Orange County Drainage Area Management Plan's BMP sizing criteria for new development). In general, the storm water BMPs that are proposed for non-contact Site runoff are designed for water quality purposes. The low flow outlets from each detention basin gravity-drain into the Magnolia Street drainage at the southeast region of the Site. The design and calculations for these BMPs were issued to the City in 2005, and the City approved the storm water plans in October 2005. These BMPs are also part of the Site's General Industrial SWPPP, in compliance with the General Industrial NPDES permit.

□ *Page 43 – Section a.*

Existing engineered improvements include injection barriers according to the first sentence. Please explain the function of the injection barriers and indicate where they are.

The injection barrier reference refers to the groundwater injection system along Ellis Ave. designed to prevent further degradation of drinkable aquifers from salt water intrusion. The groundwater injection system is managed by the Orange County Water District.

□ *Page 44 – Section a. Discuss the approximate capacity of Lagoons 1, 2 and 4.*

The storm water capacities of Lagoons 1, 2, and 4 are approximately 44,000, 67,000, and 2,500,000 gallons, respectively.

□ *Page 44 – Section a. "Per the current NPDES permit, if a severe rain season is encountered and the capacities of the available lagoons are reached, then contact storm water would be transferred to the Orange County Sanitation District following onsite treatment…." Discuss what the treatment is and how it gets collected and transferred.*

Excess storm water would be collected, treated, and discharged as had occurred in early 2005 due to that record 2004-2005 rainfall season. Treatment would consist of oil/water separation and granulated activated carbon filtration. Treated water would be retained in Baker tanks, or equivalent, until testing verifies that treatment is effective, after which it would be pumped to the designated sanitation line, pursuant to a permit from the Orange County Sanitation District

□ *Page 46 – Section e.*

Please provide a more detailed discussion on how the non-contact water is drained off-site. Does it drain into a detention basin?

Non-contact water drains through a system of storm water swales to the site's two detention basins. These two detention basins will not be changed by the Interim Removal Measure. All storm water eventually flows to the southeast detention basin where residence time enables effective desedimentation prior to gravity flow to the Magnolia Street drainage. The design and calculations for the Site's BMPs were issued to the City in 2005, and the City approved the storm water plans in October 2005. These BMPs are also part of the Site's General Industrial SWPPP, in compliance with the General Industrial NPDES permit.

Utilities and Service Systems

□ *Page 68 – Baseline Conditions (Water)*

Please note: fire Hydrant meters shall be purchased from the City of Huntington Beach Department of Public Works Water Division.

The water source for onsite dust control and other water needs will be the onsite municipal water. Hydrant water would be arranged and meter(s) purchased, if the onsite water supply rate is found to be insufficient.

Comment 14: Received from State of California, Department of Transportation, District 12, 3337 Michelson Drive, Suite 380, Irvine, CA 92616-8894, Tel: (949) 724-2241, Fax: (949) 724-2592

November 23, 2009

Safouh Sayed
Department of Toxic Substances Control
Southern California Cleanup Operations Branch
5796 Corporate Avenue
Cypress, California 90630-4732

Subject: Interim Removal Measure Workplan for Ascon Landfill Site

Dear Mr. Sayed,

Thank you for the opportunity to review and comment on the Interim Removal Measure Workplan for the Ascon Landfill Site. The proposal is to remove and recycle the tarry materials from two onsite oil waste lagoons. This project involves the transportation of 700,000 cubic yards of material from the project

site, which is located at 21641 Magnolia Street in the City of Huntington Beach. The nearest State routes to this project are SR-1 and SR-39.

The Department of Transportation (Department) is a responsible agency on this project and we have the following comments:

1. A Transportation Management Plan (TMP) shall be submitted to Caltrans, summarizing the procedures that may be used to minimize traffic impacts and the process for distribution of accurate and timely information to the public.

2. If any project work (e.g. storage of materials, street widening, emergency access improvements, sewer connections, sound walls, storm drain construction, street connections, etc.) will occur in the vicinity of the Department's Right-of-Way, an encroachment period is required prior to commencement of work. Please allow 2 to 4 weeks for a complete submittal to be reviewed and for a permit to be issued. When applying for an Encroachment Permit, please incorporate Environmental Documentation, SWPP.WPCP, Hydraulic Calculations, Traffic Control Plans, Geotechnical Analysis, Right-of-Way certification and all relevant design details including design exception approvals. For specific details on the Caltrans Encroachment Permits procedure, please refer to the Caltrans Encroachment Permits Manual. The latest edition of the manual is available on the web site: http://www.dot.ca.gov/hq/traffops/develpscrv/permits/

Please continue to keep us informed of this project and any future developments, which could potentially impact the State Transportation Facilities. If you have any questions or need to contact us, please do not hesitate to call Marlon Regisford at (949) 724-2241.

Sincerely,

Maryan Molavi, Acting Branch Chief
Local Development/Intergovernmental Review

C: Terry Roberts, Office of Planning and Research

DTSC Response to Comment 14:

Please note that the Interim Removal Measure project involves the removal, transportation, and disposal and/or recycling of up to 70,000 cubic yards of material from the Ascon Landfill Site, not 700,000 cubic yards of material.

As requested, a Transportation Management Plan will be submitted to Caltrans that outlines procedures to minimize traffic impacts and provide public notification. No work will be performed in the vicinity of any DOT/Caltrans Right - of-Way; therefore, no encroachment will be required for the Interim Removal

Measure.

Comment 15: Received from Meredith Osborne, Associate Biologist, California Department of Fish and Game (CDFG), South Coast Region (5), 4949 Viewridge Avenue, San Diego, CA 92123, (858) 636-3163, fax: (858) 467-4299, via Crysta Dickson, c.dickson@pcrnet.com, Senior Biologist II, PCR, One Venture, Suite 150, Irvine, California 92618

Hi Crysta,

I have been looking over the MND and the proposed southern tarplant mitigation plan for the Ascon fill site. The approach is sound, but I have some questions and comments regarding certain of the measures.

Has the CCC looked over the proposed mitigation plan yet?

Is there a deadline for finding a mitigation site? Is it two years? That is the stated limit for storage of the tarplant seed. What will happen if a site is not located within that time frame? Will the plants be propagated in a nursery? Are there any sites that are already being considered?

If the success criteria are not met at the end of three years, how long will augmentation with additional seed be carried on? Will the Department be receiving the annual reports and consulting with PCR on the success of the translocation effort?

The plan should state how long-term maintenance/monitoring of the translocation site will be funded. Will it be through an endownment? A contract with the land manager? Annually from the DTSC's or landfill's budget?

I did not have a chance to produce a comment letter on the MND before the public review period closes at the end of today, but please consider my questions and comments below, and I hope we will get a chance to discuss the plan further over the phone soon.

Response to Comment 15:

Has the CCC looked over the proposed mitigation plan yet?

The MND was sent to the State Clearinghouse (15 copies) for distribution to state agencies. No copy was sent directly to the California Coastal Commission (CCC), but the MND was publicly noticed in accordance with CEQA requirements. No comments were received from the CCC during the public review period.

Is there a deadline for finding a mitigation site? Is it two years? That is the stated limit for storage of the tarplant seed. What will happen if a site is not located within that time frame? Will the plants be propagated in a nursery? Are there any sites that are already being considered?

The Project Sponsor (Ascon Responsible Parties) is actively researching potential mitigation sites. The mitigation site will be established and in place within two years from seed collection. The seeds will be stored at Rancho Santa Ana Botanical Garden until the mitigation site is ready for broadcasting.

If the success criteria are not met at the end of three years, how long will augmentation with additional seed be carried on? Will the Department be receiving the annual reports and consulting with PCR on the success of the translocation effort?

If the success criteria is not met at the end of three years then the Project Sponsor will be required to continue monitoring on a yearly basis until success has been met. Adaptive management practices will be implemented, as deemed necessary by a qualified biologist. A copy of the annual mitigation monitoring report will be submitted to CDFG.

The plan should state how long-term maintenance/monitoring of the translocation site will be funded. Will it be through an endowment? A contract with the land manager? Annually from the DTSC's or landfill's budget?

It is anticipated that there will be a third party steward on the mitigation lands and an endowment fund or other similar funding mechanism set up to ensure funds will be available for the long-term maintenance/monitoring of the mitigation site.

I did not have a chance to produce a comment letter on the MND before the public review period closes at the end of today, but please consider my questions and comments below, and I hope we will get a chance to discuss the plan further over the phone soon.

Comment noted.

The Mitigation Monitoring and Reporting program (MMRP) has been reviewed by the CDFG. They have no further comments and they concurred with the mitigation measures prior to project approval.

Comment 16: Received from Ascon Responsible Parties (RPs), via Tamara Zeier, P.E., Project Navigator, Ltd., Direct Phone: (714) 388-1804, Fax: (714) 388-1839, Website: www.projectnavigator.com

Public Comments on the Ascon Landfill Site Draft Interim Removal Measure Initial Study/Mitigated Negative Declaration from Ascon RPs

The Initial Study Introduction (page 2) states, "The proposed IRM is designed to avoid creation of significant environmental effects. The subsequent Final Remedy is already committed to being the subject of an EIR. Thus, the purpose of this current project does not violate the language within the CEQA statutes and Guidelines that limits project splitting to avoid the preparation of an EIR. Indeed, the current IRM is designed to provide better information and eliminate unknowns. The additional information gained from the IRM will be considered in determining the Final Remedy. Potential impacts within the Final Remedy will be addressed or mitigated, as appropriate, in the final remedy EIR."

Introduction Comment:
The RPs concur that the proposed mitigation measures for the IRM are specific to the IRM project and that the final remedy will be addressed or mitigated, as appropriate, as set forth in the Final Remedy EIR. As such, the proposed IRM mitigation measures, prepared to reduce all potential significant impacts to less-than-significant levels, should not be considered presumptive for the final remedy.

3. Air Quality

"AQ-4 Haul trucks shall depart the site no earlier than 8:30 a.m. and no later than 3:15 p.m., Monday through Friday." (Initial Study, page 16)

AQ-4 Comment:

1. The Air Quality section provides no rationale or justification for this mitigation measure. AQ-4 does not belong in the Air Quality section of the Initial Study, but is cited in the Transportation and Traffic section (see RP comments on the Transportation and Traffic section below).

"AQ-5 Implement a protocol to address odor complaints that shall include:

- *Post an odor complaint telephone number at the project site, including phone numbers for the SCAQMD where odor complaints can be lodged via telephone.*

- *Prior to the commencement of IRM activities, mail information to all surrounding property owners regarding procedures to follow to lodge an odor complaint." (Initial Study, page 19)*

AS-5 Comments:
1. The presence of odor during the IRM work activities, in and of itself, does not mean that a health risk is created. Odors during this project are anticipated to be less of an issue than during the 2005 Emergency Action conducted at the Ascon Landfill Site that excavated tarry materials/drilling mud in close proximity

to the site fence lines (IRM activities will be located further from the fence lines). Nevertheless, odors are likely to be detected at Ascon and during the site perimeter during the IRM; at times, mild odors are detected offsite even during non-work days. As such, we recommend that DTSC inform the public that the materials at Ascon typically have a low odor threshold, and therefore, the presence of odors during the IRM work activities, in and of itself, does not equate to a health risk.

2. The Air Monitoring Plan and South Coast Air Quality Management District (SCAQMD) Rule 1166 permit are designed to control odors and emissions during IRM activities. The Air Monitoring Plan, which will be approved and overseen by DTSC, and the SCAQMD Rule 1166 permit, provide the observation and air monitoring and sampling methods, including monitoring of odors at the fence line, to ensure that the Project engineers and workers will minimize potential offsite impacts and prevent any significant negative health effects to nearby residents. The Air Monitoring Plan provides for Project modifications to the work if certain trigger odor or other perimeter observations (e.g., emissions) are detected by trained workers in order to control potential offsite impacts. Notification to SCAQMD by residents who may mistakenly believe that their health is being negatively impacted when sensing odors would be unnecessary and counterproductive to the progress of the Project in that it may take more time for the complaint to reach the Project team, which will be able to respond much more quickly and effectively to a potential complaint that a SCAQMD inspector who may be located much farther from the project. In addition, the Project team would typically be available to respond to complaints or inquiries during the Project's work hours, and therefore during a greater portion of the day than SCAQMD's limited availability to respond to such complaints. Furthermore, the public is not likely to call the Project team after they have contacted SCAQMD, resulting in a delayed response to odor concerns. As such, a call to SCAQMD would be significantly less effective (and less responsive) than a direct call to the RPs' hotline, and should be discouraged, not encouraged.

3. The RPs plan to implement a 24-hour hotline to which the public could lodge odor concerns and/or inquiries. For the reasons noted in comment 2 above, we recommend that this hotline telephone number (not the SCAQMD number) be posted on signs at the Project Site during IRM construction activities, and for inclusion of the hotline number and information in the notice to be mailed to nearby residents prior to commencement of the IRM construction. Use of the hotline during the 2005 Emergency Action proved to work well and ensured a quick response to residents with inquiries or complaints, which were frequently questions from residents about the work activities, to which the Project team is best equipped to respond.

4. Odors are a subjective observation, with individuals having different thresholds of tolerance. The existence of a mitigation measure that encourages the public to report odors to SCAQMD may result in unwarranted alarm and

concern over non-existent public health issues. A mitigation measure that directs public complaints or inquiries to SCAQMD as a first step is a less effective and less timely method of managing this potential concern. It may also result in an abuse of the mitigation measure, resulting in project delays. Unfiltered public communications directly with the project team is strongly recommended for timely response and Action.

4. Biological Resources

"BIO-3 If southern tarplants cannot be avoided per Mitigation Measures BIO-1 and BIO-2, the Project shall ensure that impacted southern tarplant is restored at an appropriate off-site location. Restoration of the southern tarplant shall be implemented by the following measures:

- *The plants shall be counted and retained in place until they die back and the seed can be collected. The plant seed shall be stored in brown paper bags in a cool location until they have fully dried out and the seeds dehisced. The seeds shall not be stored longer than two years as the viability of the seed dramatically drops off after one year.*

- *The RPs shall work with a qualified biologist to identify an appropriate off-site conservation area within the local watershed that will accept the seed for broadcasting within a suitable and comparable-sized receptor site until a 1:1 ratio is met by the number of individuals and habitat impacted. These activities shall be implemented by a qualified biologist selected by the RPs and/or the on-site conservation area managers. The RPs shall be responsible for locating the off-site conservation area, ensuring the restoration of the impacted southern tarplant at the off-site conservation area, and ensuring maintenance within the off-site conservation area through payment of a one-time fee to the management entity once the 1:1 ratio is met." (Initial Study, page 26)*

<u>BIO-3 Comment</u>:

1. The level of protection and restoration given to the southern tarplant through BIO-3 is excessive. Just five years ago, the Ascon Site contained only approximately 1,300 southern tarplants but not contains approximately 67,000 individual tarplants, over a 5,000% increase, and is a sign that the southern tarplants do not need offsite restoration (BIO-3) to maintain numbers. BIO-1 and BIO-2 proposed mitigation measures, prescribed to prevent impacts to southern tarplants not to be directly impacted by IRM operations, already ensure survival of 71% of the existing southern tarplants at the Site and should be adequate to ensure longevity of onsite southern tarplant populations. Establishing offsite replacement populations for the 29% of onsite tarplants to be directly impacted by the IRM is unnecessary.

"BIO-4 – The proposed Project shall be implement the following Best Management Practices (BMPs) to ensure the disturbed coastal salt marsh is protected from potential indirect impacts:

- *The work area shall be flagged to clearly identify all "no equipment zones" by construction personnel.*
- *Clean-up equipment such as booms, absorbent pads, and skimmers, shall be on-site prior to the start of dredging in case of a spill/leak from stationary equipment.*
- *Tarry materials excavation or mixing shall not be conducted within 100 feet of the disturbed coastal salt marsh.*
- *The location of staging/storage areas for equipment and materials shall not be located within 100 feet of the disturbed coastal marsh.*
- *Vehicles and other equipment shall not be driven or operated in the disturbed coastal salt marsh.*
- *Access to the work site shall be via existing roads and access ramps.*
- *No equipment maintenance shall be conducted within 100-feet of the disturbed coastal salt marsh.*
- *The clean-up of all spills shall begin immediately upon identification.*
- *All litter and pollution laws will be adhered to during construction.*
- *Hazardous substances shall be placed a minimum of 100 feet from the disturbed coastal salt marsh."*

BIO-4 Comment:

1. The disturbed coastal salt marsh area at the southwestern corner of the Site contains pickleweed but not in sufficient quantities to constitute a salt marsh habitat. The area is intruded with non wetland plant species and is isolated by the Huntington Beach Flood Control Channel from other functioning wetland habitat areas. Also, this area does not support significant wildlife populations and does not constitute a migratory path for wildlife. As such, this area would not be designated an Environmentally Sensitive Habitat Area (ESHA) under the Huntington Beach General Plan, Coastal Element (CE). In fact, the CE identified 14.55 acres of "functional or restorable" wetlands (see Figure C-21 of CE) as the Huntington Beach Wetland Area and ESHA, and the City ESCHA designations do not include the Ascon disturbed coastal salt marsh area. Nevertheless, in the spirit of protecting all non-IRM operation areas from potential further impacts, the disturbed coastal salt march area will be protected during IRM activities per the

proposed mitigation measure BIO-4, with the clarification that haul trucks or onsite equipment may be loaded with the tarry materials (believed to be characterized as non-RCRA hazardous waste) within the 100 foot buffer, and loaded haul trucks will drive within 100 feet of the onsite disturbed salt marsh area.

"BIO-5: The Applicant shall be responsible for implementing mitigation to reduce potential impacts to migratory raptor and songbird species to below a level of significant by: (1) vegetation removal activities shall be scheduled outside the nesting season for raptor and songbird species (typically September 1 to February 14) to avoid potential impacts to nesting species (this will ensure that no active nests will be disturbed and that habitat removal could proceed rapidly); and/or (2) Any construction activities that occur during the raptor and songbird nesting season (typically February 15 to August 31) shall require that all suitable habitat be thoroughly surveyed for the presence of nesting raptor and songbird species by a qualified biologist before commencement of clearing. If any active nests are detected, a buffer of at least 300 feet (500 feet for raptors) shall be delineated, flagged, and avoided until the nesting cycle is complete as determined by the qualified biologist to minimize impacts." (Initial Study, page 28)

<u>BIO-5 Comments</u>:

1. Mitigation measure BIO-5 is needlessly restrictive. It states that a 300-foot buffer around any active songbird nest and 500-foot buffer around any active raptor nest found during the IRM must be "avoided" and/or that vegetation suitable for nesting be removed prior to the nesting season to prevent intrusion of nests into the project areas. Literal application of BIO-5, as written, could therefore require removal of all trees and large bushes over wide areas of the Site (i.e., up to 500 feet away from planned IRM activities), including most of the trees along the southern and Magnolia perimeters of the Site. Also, populations of southern tarplant are located within the potential buffer areas (e.g., nearby stormwater swales). The RPs do not wish to remove the perimeter trees or vegetation, which also are aesthetically desirable to the offsite community and removal of which could result in a significant impact in the Initial Study Aesthetics section, as well as any onsite vegetation that serves as an erosion control measure, and the RPs cannot remove the unmitigated southern tarplants. Therefore, the RPs propose that operations be allowed within the designated buffers under observation of a qualified biologist should an active nest be found during the nesting season during the IRM activities (see comment 2 below). Clearing and grubbing activities will be planned to occur at the Site to the extent practical (i.e., leaving all trees and large bushes along the Site's perimeter, leaving unmitigated southern tarplant, and leaving vegetation onsite that serves as an erosion control measure and per the Site's industrial SWPPP) prior to February 15, 2010, in coordination with mitigation measure BIO-5, contingent on DTSC approval (refer to comment number 3 below).

2. *The RPs propose to retain the services of a qualified biologist to monitor the project site and ensure that any impacts to bird nesting are mitigated. The resume/qualifications of the project biologist shall be submitted to DTSC prior to construction or removal activities. Vegetation removal activities shall be conducted for areas within 500 feet of planned IRM activities outside the nesting season for raptor and songbird species to avoid potential impacts to nesting species. If this is not feasible (see comment 1 above), any construction activities that occur during the nesting season shall require that all suitable habitats be surveyed for the presence of nesting birds by the biologist. If any active nests are detected, activities will cease in the immediate area, and a buffer of at least 300 feet (500 feet for raptors) shall be delineated. The qualified biologist shall monitor the nests, and construction activities may commence within the buffer area at the discretion of the biologist. Operations could therefore continue as long as the biologist observes no negative impact to the nest or bird behavior.*

3. *The February 15 deadline to remove vegetation could be problematic if DTSC does not approve the MND sufficiently before February 15, 2009, allowing time for scheduling of contractors and the actual vegetation removal. This is because the mitigated southern tarplants cannot likely be removed until the MND is approved, unless DTSC issues approval for this work in advance of MND approval. Songbird nests could be found in mitigated southern tarplant area (west of Lagoons 2 and 3) after February 15 (the start of the nesting season) if tarplants are not removed prior to that time, thereby preventing the mitigated tarplant removal and severely restricting IRM operations. Therefore, we recommend that DTSC proceed with finalization of the final IRM MND by the end of January 2010, at the latest, to avoid potential issues regarding timing of clearing and removal activities and associated mitigation measures discussed herein.*

7. *Hazards and Hazardous Materials*

The Initial Study, page 38, states "The HRA shows hazard indices of 0.013 for non-cancer effects of chronic exposure and 0.014 for non-cancer effects of acute exposure at the maximally exposed residence. The maximum acute and chronic HI values at the MEIR would both arise primarily from mercury in fugitive dust generated by on-site equipment and truck movements. Both hazard indices are well below the significance threshold of 1.0."

<u>Hazards and Hazardous Materials Comments</u>:

1. *The health risk assessment (HRA) demonstrates that both the non-cancer chronic and acute hazard indices of 0.013 and 0.014, respectively, are significantly below the threshold of 1.0, the DTSC threshold above which would be considered significant or even harmful (i.e., the very low hazard index values indicate there is essentially neither non-cancer chronic nor acute risk). Considering that these values are near one-hundredth the significance threshold,*

there is no need to unduly alarm the public by making the questionable statement regarding mercury.

2. The statement regarding mercury in site dust is not supported in the Initial Study and is questionable. The average mercury concentration reported in the Revised Feasibility Study (Table 3.2-8, Summary Statistics for Detected Compounds in Impacted Soils, Composite Soil, and Unspecified Soil) and used in the Initial Study risk calculations was 2.30 mg/kg (mean plus 95% upper confidence interval), but is biased high due to an anomalous concentration of mercury of 37 mg/kg at a 15-ft depth below ground surface in an area uninvolved in IRM operations (note that this sample was located at AW-3, near the fence line along Magnolia Street and is not in the vicinity of IRM removal activities). The mean mercury concentration in site impacted soils was considerably lower, at 0.98 mg/kg. Furthermore, not all impacted soils at the site are representative of surficial dust-generating soils, and the samples collected from deeper onsite soils are not considered to be relevant or appropriate for calculating risk for the IRM activities (e.g., the 37 mg/kg mercury impacted soil was at a 15-ft depth), and the average mercury concentration that was used in the Draft IRM Initial Study should not have been used in this risk calculation for the IRM. Nonetheless, the overall non-cancer risk is very low, and therefore calling out a potential mercury concern is not warranted.

15. Transportation and Traffic

Initial Study, page 66, states "Refer to Mitigation Measure AQ-4. No additional mitigation measures are necessary."

<u>Transportation and Traffic Comments</u>:

1. Mitigation Measure AQ-4 prescribes that "haul trucks shall depart the site no earlier than 8:30 a.m. and no later than 3:15 p.m., Monday through Friday." This mitigation measure differs from the October 15, 2009, DTSC approval of the Final Administrative Draft of the Interim Removal Measure Workplan, which included DTSC's approval of the haul truck export hours of 7 a.m. – 3:15 p.m. No explanation or supporting data was provided regarding this very late change in export haul truck hours. Apparent rationale for the morning restriction in hours is that the morning rush hour on the northbound I-405 is routinely congested and addition of 14 trucks per hour would be "considered cumulatively considerable," a result from DTSC's admitted "conservative" analysis. The difficulty is that this change does not rely on a traffic impact analysis yet it disallows even the addition of a single truck into traffic of many Southern California freeways in that these freeways experience similar congestion during rush hours. To the contrary, Caltrans does not prohibit additional traffic but instead requires that a traffic impact analysis be performed under the conditions exhibited on the I-405. Unfortunately, with the "cumulative considerable" argument, DTSC has effectively rejected the traffic impact analysis already provided (see comment #2 below)

2. The attached amendment to the Traffic Impact Study (Traffic Impact Study Freeway Analysis Supplemental Report, KOA, October 15, 2009) previously submitted to Mr. Safouh Sayed on October 16, 2009, but not used by DTSC in the Draft Initial Study, and to which DTSC provided no opposing comments, demonstrates that, despite the 70% Level of Service E or F rating (congested) experienced by the I-405 freeway during morning rush hour, also cited in the Initial Study, all segments of the I-405 between the Beach Boulevard onramp in Huntington Beach and the I-405 terminus in the northern San Fernando Valley experience Project impacts of less than a 2% increase in freeway capacity, the threshold only above which the Congestion Management Program for los Angeles County (CMP) would consider significant. Indeed, the Initial Study, and also the attached amendment to the Traffic Impact Study, states that the Project impact would constitute 0.1% to 0.2% of the morning rush hour freeway capacity, far below the 2% threshold of significance applied by the CMP. Because Caltrans does not maintain a similar traffic threshold, the Los Angeles County CMP threshold should be an acceptable means for DTSC to allow the minimal haul truck traffic on northbound I-405 during morning rush hours.

3. The DTSC "conservative" analysis is not supported by the data, is unreasonable, illogical, and unnecessary, and is arbitrarily applied in a matter that needlessly constrains trucking related to the Project. In the course of planning the IRM, DTSC had previously approved the haul truck export hours of 7 a.m. to 3:15 p.m. and the Draft IRM Workplan that documents these haul truck hours. The trucking hours were arbitrarily changed with no comments, supporting data or rationale regarding this change. Potential impacts resulting from this change in haul truck export hours could include prolonging the Project schedule; impacting workers and haulers' schedules including the potential inability for some haulers to reasonable make it home at the end of the work day; increasing the possibility that haulers are not able to arrive at the disposal facility prior to closing time (even with a delayed closing time), therefore increasing the possibility that trucks with loads of waste spend the night at an unknown location between the Ascon Site and the disposal facility; and additional unnecessary Project cost.

4. To account for additional departing haul trucks per hour, the RPs will document through appropriate traffic study that an increase from 14 haul trucks per hour to 20 trucks per hour, still within the 70 total haul trucks per day, would still be deemed less than significant. This will enable the project to proceed without undue delay if more than 14 loaded trucks (and up to 20) are ready to leave the Site in any specific hour during the day.

DTSC Response to Comment 16:

AS-5 Comments

1. The presence of odor during the IRM work activities, in and of itself, does not mean that a health risk is created. Odors during this project are anticipated to be less of an issue than during the 2005 Emergency Action conducted at the Ascon Landfill Site that excavated tarry materials/drilling mud in close proximity to the site fence lines (IRM activities will be located further from the fence lines). Nevertheless, odors are likely to be detected at Ascon and during the site perimeter during the IRM; at times, mild odors are detected offsite even during non-work days. As such, we recommend that DTSC inform the public that the materials at Ascon typically have a low odor threshold, and therefore, the presence of odors during the IRM work activities, in and of itself, does not equate to a health risk.

Comment noted. See response to public comment number 3 above.

2. The Air Monitoring Plan and South Coast Air Quality Management District (SCAQMD) Rule 1166 permit are designed to control odors and emissions during IRM activities. The Air Monitoring Plan, which will be approved and overseen by DTSC, and the SCAQMD Rule 1166 permit, provide the observation and air monitoring and sampling methods, including monitoring of odors at the fence line, to ensure that the Project engineers and workers will minimize potential offsite impacts and prevent any significant negative health effects to nearby residents. The Air Monitoring Plan provides for Project modifications to the work if certain trigger odor or other perimeter observations (e.g., emissions) are detected by trained workers in order to control potential offsite impacts. Notification to SCAQMD by residents who may mistakenly believe that their health is being negatively impacted when sensing odors would be unnecessary and counterproductive to the progress of the Project in that it may take more time for the complaint to reach the Project team, which will be able to respond much more quickly and effectively to a potential complaint that a SCAQMD inspector who may be located much farther from the project. In addition, the Project team would typically be available to respond to complaints or inquiries during the Project's work hours, and therefore during a greater portion of the day than SCAQMD's limited availability to respond to such complaints. Furthermore, the public is not likely to call the Project team after they have contacted SCAQMD, resulting in a delayed response to odor concerns. As such, a call to SCAQMD would be significantly less effective (and less responsive) than a direct call to the RPs' hotline, and should be discouraged, not encouraged.

The SCAQMD is the proper authority to handle nuisance complaints, such as odors, and is authorized to respond to air quality complaints 24 hours per day. Please see http://www.aqmd.gov/complain/report_dust_odors.html The MMRP includes provisions to provide both telephone numbers to the public. Based on DTSC contact with SCAQMD, they concur that both numbers should be provided and posted. When complaints are registered with the SCAQMD, the SCAQMD will, at the discretion, either contact the Ascon personnel and/or dispatch an inspector to the site.

3. The RPs plan to implement a 24-hour hotline to which the public could lodge odor concerns and/or inquiries. For the reasons noted in comment 2 above, we recommend that this hotline telephone number (not the SCAQMD number) be posted on signs at the Project Site during IRM construction activities, and for inclusion of the hotline number and information in the notice to be mailed to nearby residents prior to commencement of the IRM construction. Use of the hotline during the 2005 Emergency Action proved to work well and ensured a quick response to residents with inquiries or complaints, which were frequently questions from residents about the work activities, to which the Project team is best equipped to respond.

Both phone numbers shall be posted. Please see response above.

4. Odors are a subjective observation, with individuals having different thresholds of tolerance. The existence of a mitigation measure that encourages the public to report odors to SCAQMD may result in unwarranted alarm and concern over non-existent public health issues. A mitigation measure that directs public complaints or inquiries to SCAQMD as a first step is a less effective and less timely method of managing this potential concern. It may also result in an abuse of the mitigation measure, resulting in project delays. Unfiltered public communications directly with the project team is strongly recommended for timely response and Action.

Please see responses above.

BIO-3 Comment:

1. The level of protection and restoration given to the southern tarplant through BIO-3 is excessive. Just five years ago, the Ascon Site contained only approximately 1,300 southern tarplants but now contains approximately 67,000 individual tarplants, over a 5,000% increase, and is a sign that the southern tarplants do not need offsite restoration (BIO-3) to maintain numbers. BIO-1 and BIO-2 proposed mitigation measures, prescribed to prevent impacts to southern tarplants not to be directly impacted by IRM operations, already ensure survival of 71% of the existing southern tarplants at the Site and should be adequate to ensure longevity of onsite southern tarplant populations. Establishing offsite replacement populations for the 29% of onsite tarplants to be directly impacted by the IRM is unnecessary.

Impacts to southern tarplant resulting from implementation of proposed IRM project were analyzed under CEQA guidelines, and it was determined that the loss of 29 percent of the on-site population of the southern tarplant to be significant absent mitigation. Noted in the MND, the southern tarplant is considered a California Native Plant Society (CNPS) List 1B.1 ["seriously endangered in California (over 80 percent of occurrences threatened/high degree and immediacy of threat"] species. Further, the southern tarplant may be

considered an "Environmentally Sensitive Habitat Area" (ESHA) by the CCC. Moreover, CNPS species are considered "Rare" under CEQA and warrant consideration as such. Although a significant increase in the on-site population was mapped from 2004 to 2009, this species is still considered rare by the regulatory agencies and warrants protection. Specifically, in this case it becomes meaningful to look at the distribution, numbers, and potential threats to this species in the region. Data available on the distribution, numbers, and potential threats to this species in the region suggests that this species is in high degree of threat. As noted in the MND, regional population numbers of southern tarplant could be on the order of 300,000 individuals and cumulative impacts on the order of 207,000 individuals (includes the approximate 19,000 individuals impacted as part of the IRM project, the approximate 48,000 that could be impacted if the Ascon site is further remediated under the Imminent and Substantial Endangerment Determination and Order and Remedial Action Order, and the approximate 140,000 potentially impacted by the 241 Toll Road extension). Alone, the IRM project represents over six percent of the regional population of this species. Taken in combination with the reasonable and foreseeable future impacts to this species, cumulative impacts represents up to 69 percent of the regional population. As such, the loss of 29 percent on-site, which reflects 42 percent of the cumulative losses, would be considered cumulatively considerable under CEQA, as defined under Section 15064 of the CEQA guidelines, unless mitigation is implemented.

BIO-4 Comment:

1. The disturbed coastal salt marsh area at the southwestern corner of the Site contains pickleweed but not in sufficient quantities to constitute a salt marsh habitat. The area is intruded with non wetland plant species and is isolated by the Huntington Beach Flood Control Channel from other functioning wetland habitat areas. Also, this area does not support significant wildlife populations and does not constitute a migratory path for wildlife. As such, this area would not be designated an Environmentally Sensitive Habitat Area (ESHA) under the Huntington Beach General Plan, Coastal Element (CE). In fact, the CE identified 14.55 acres of "functional or restorable" wetlands (see Figure C-21 of CE) as the Huntington Beach Wetland Area and ESHA, and the City ESCHA designations do not include the Ascon disturbed coastal salt marsh area. Nevertheless, in the spirit of protecting all non-IRM operation areas from potential further impacts, the disturbed coastal salt march area will be protected during IRM activities per the proposed mitigation measure BIO-4, with the clarification that haul trucks or onsite equipment may be loaded with the tarry materials (believed to be characterized as non-RCRA hazardous waste) within the 100 foot buffer, and loaded haul trucks will drive within 100 feet of the onsite disturbed salt marsh area.

Regardless of the lack of diversity, isolation, and disturbance associated with the on-site coastal salt marsh, the area meets the definition of a coastal wetland and ESHA. As noted in the MND, the 0.2 acre of disturbed coastal salt marsh meets the "one parameter definition" [California Code of Regulation Title 14 (14CCR)] of

a coastal wetland (§30121 and §13577(b) Code of Regulations) as regulated by the California Coastal Commission under the California Coastal Act. The Coastal Commission's "one parameter definition" only requires evidence of a single parameter (soils, hydrophitic vegetation or hydrology) to establish wetland conditions and is defined as follows:

> "Wetlands shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats (14 CCR Section 13577)."

Due to the presence of hydrophitic vegetation (i.e., common pickleweed) within the disturbed coastal salt marsh, the area meets the definition of a coastal wetland under the Coastal Act and is therefore, regulated. In addition, the 0.2 acre of disturbed coastal salt marsh is considered rare and worthy of consideration under the CDFG's California Natural Diversity Database (CNDDB). Under the City of Huntington Beach's (City) General Plan Coastal Element (LUP-LCP) definition of an ESHA (which is consistent with the Coastal Act §30107.5), disturbed coastal salt marsh meets the definition of an ESHA. Coastal Act §30107.5 defines ESHA as, "Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities or development."

Based on regulation, DTSC still believes this area meets the definition of a coastal wetland and ESHA, and based on our experience with the CCC, it is recommended that the project proceed with the proposed protection measures, as revised, for the disturbed coastal salt marsh.

The third bullet point of Mitigation Measure BIO-4 has been revised as follows:

- Tarry materials excavation or mixing ~~shall not be~~ conducted within 100 feet of the disturbed coastal salt marsh shall be minimized to the maximum extent feasible. In no case shall these activities be conducted within 50 feet of the disturbed coastal salt marsh. Should excavation activities, including construction vehicles, occur within 50 to 100 feet of the disturbed coastal salt marsh, containment mechanisms [i.e., hay

rolls/bales, berm(s), and/or trench(s)] shall be placed between the disturbed coastal salt marsh and the excavation or mixing activities to ensure that excavated or mixing material(s) does not make contact with the coastal salt marsh.

The fifth bullet point of Mitigation Measure BIO-4 has been revised as follows:

- Vehicles and other equipment shall not be driven or operated in the disturbed coastal salt marsh, but are permitted to utilize the existing on site access roads which may occur within 100 feet of the disturbed coastal salt marsh. A biological monitor shall approve the delineation (i.e., brightly colored mesh fencing or k-rails) of the existing access roads.

The tenth bullet point of Mitigation Measure BIO-4 has been revised as follows:

- Hazardous substances shall be ~~placed~~ stored a minimum of 100 feet from the disturbed coastal salt marsh.

BIO-5 Comments:

1. Mitigation measure BIO-5 is needlessly restrictive. It states that a 300-foot buffer around any active songbird nest and 500-foot buffer around any active raptor nest found during the IRM must be "avoided" and/or that vegetation suitable for nesting be removed prior to the nesting season to prevent intrusion of nests into the project areas. Literal application of BIO-5, as written, could therefore require removal of all trees and large bushes over wide areas of the Site (i.e., up to 500 feet away from planned IRM activities), including most of the trees along the southern and Magnolia perimeters of the Site. Also, populations of southern tarplant are located within the potential buffer areas (e.g., nearby stormwater swales). The RPs do not wish to remove the perimeter trees or vegetation, which also are aesthetically desirable to the offsite community and removal of which could result in a significant impact in the Initial Study Aesthetics section, as well as any onsite vegetation that serves as an erosion control measure, and the RPs cannot remove the unmitigated southern tarplants. Therefore, the RPs propose that operations be allowed within the designated buffers under observation of a qualified biologist should an active nest be found during the nesting season during the IRM activities (see comment 2 below). Clearing and grubbing activities will be planned to occur at the Site to the extent practical (i.e., leaving all trees and large bushes along the Site's perimeter, leaving unmitigated southern tarplant, and leaving vegetation onsite that serves as an erosion control measure and per the Site's industrial SWPPP) prior to February 15, 2010, in coordination with mitigation measure BIO-5, contingent on DTSC approval (refer to comment number 3 below).

Please note: The vegetation proposed for removal is on the interior of the site and minimal if any perimeter vegetation will be removed

2. The RPs propose to retain the services of a qualified biologist to monitor the project site and ensure that any impacts to bird nesting are mitigated. The resume/qualifications of the project biologist shall be submitted to DTSC prior to construction or removal activities. Vegetation removal activities shall be conducted for areas within 500 feet of planned IRM activities outside the nesting season for raptor and songbird species to avoid potential impacts to nesting species. If this is not feasible (see comment 1 above), any construction activities that occur during the nesting season shall require that all suitable habitats be surveyed for the presence of nesting birds by the biologist. If any active nests are detected, activities will cease in the immediate area, and a buffer of at least 300 feet (500 feet for raptors) shall be delineated. The qualified biologist shall monitor the nests, and construction activities may commence within the buffer area at the discretion of the biologist. Operations could therefore continue as long as the biologist observes no negative impact to the nest or bird behavior.

Mitigation Measures BIO-5 has been revised in accordance with this comment as follows:

BIO – 5: The Project Proponent shall be responsible for implementing mitigation to reduce potential impacts to migratory raptor and songbird species to below a level of significant in one or more of the following ways: (1) vegetation removal activities shall be scheduled outside the nesting season for raptor and songbird species (typically September 1 to February 14) to avoid potential impacts to nesting species (this will ensure that no active nests will be disturbed and that habitat removal could proceed rapidly); and/or (2) Any construction activities that occur during the raptor and songbird nesting season (typically February 15 to August 31) shall require that all suitable habitat be thoroughly surveyed for the presence of nesting raptor and songbird species by a qualified biologist approved by DTSC before commencement of clearing. If any active nests are detected, all construction related activities shall cease immediately within the buffer zones of active nests (300 feet for songbird and 500 feet for raptors). The qualified biologist shall monitor the nests, and construction activities may commence within the buffer areas at the discretion of the biologist. Operations could therefore continue as long as the biologist observes no negative impact to the nest or breeding bird behavior.

3. The February 15 deadline to remove vegetation could be problematic if DTSC does not approve the MND sufficiently before February 15, 2009, allowing time for scheduling of contractors and the actual vegetation removal. This is because the mitigated southern tarplants cannot likely be removed until the MND is approved, unless DTSC issues approval for this work in advance of MND approval. Songbird nests could be found in mitigated southern tarplant area (west of Lagoons 2 and 3) after February 15 (the start of the nesting season) if tarplants are not removed prior to that time, thereby preventing the mitigated tarplant removal and severely restricting IRM operations. Therefore, we recommend that DTSC proceed with finalization of the final IRM MND by the end

of January 2010, at the latest, to avoid potential issues regarding timing of clearing and removal activities and associated mitigation measures discussed herein.

Comment Noted

Hazards and Hazardous Materials Comments:

1. The health risk assessment (HRA) demonstrates that both the non-cancer chronic and acute hazard indices of 0.013 and 0.014, respectively, are significantly below the threshold of 1.0, the DTSC threshold above which would be considered significant or even harmful (i.e., the very low hazard index values indicate there is essentially neither non-cancer chronic nor acute risk). Considering that these values are near one-hundredth the significance threshold, there is no need to unduly alarm the public by making the questionable statement regarding mercury.

DTSC agrees that the HRA hazard indices are well below the significance threshold of 1.0, and are near one-hundredth the significance threshold, and that there is not a concern regarding mercury in dust.

2. The statement regarding mercury in site dust is not supported in the Initial Study and is questionable. The average mercury concentration reported in the Revised Feasibility Study (Table 3.2-8, Summary Statistics for Detected Compounds in Impacted Soils, Composite Soil, and Unspecified Soil) and used in the Initial Study risk calculations was 2.30 mg/kg (mean plus 95% upper confidence interval), but is biased high due to an anomalous concentration of mercury of 37 mg/kg at a 15-ft depth below ground surface in an area uninvolved in IRM operations (note that this sample was located at AW-3, near the fence line along Magnolia Street and is not in the vicinity of IRM removal activities). The mean mercury concentration in site impacted soils was considerably lower, at 0.98 mg/kg. Furthermore, not all impacted soils at the site are representative of surficial dust-generating soils, and the samples collected from deeper onsite soils are not considered to be relevant or appropriate for calculating risk for the IRM activities (e.g., the 37 mg/kg mercury impacted soil was at a 15-ft depth), and the average mercury concentration that was used in the Draft IRM Initial Study should not have been used in this risk calculation for the IRM. Nonetheless, the overall non-cancer risk is very low, and therefore calling out a potential mercury concern is not warranted.

DTSC was not aware of the depth of the data anomaly that resulted in elevated mercury average concentrations. Because the significant depth of the mercury concentration anomaly, DTSC agrees that the RFS-presented average is not representative of surficial soils that could produce air-born dust.

Transportation and Traffic Comments:

1. *Mitigation Measure AQ-4 prescribes that "haul trucks shall depart the site no earlier than 8:30 a.m. and no later than 3:15 p.m., Monday through Friday." This mitigation measure differs from the October 15, 2009, DTSC approval of the Final Administrative Draft of the Interim Removal Measure Workplan, which included DTSC's approval of the haul truck export hours of 7 a.m. – 3:15 p.m. No explanation or supporting data was provided regarding this very late change in export haul truck hours. Apparent rationale for the morning restriction in hours is that the morning rush hour on the northbound I-405 is routinely congested and addition of 14 trucks per hour would be "considered cumulatively considerable," a result from DTSC's admitted "conservative" analysis. The difficulty is that this change does not rely on a traffic impact analysis yet it disallows even the addition of a single truck into traffic of many Southern California freeways in that these freeways experience similar congestion during rush hours. To the contrary, Caltrans does not prohibit additional traffic but instead requires that a traffic impact analysis be performed under the conditions exhibited on the I-405. Unfortunately, with the "cumulative considerable" argument, DTSC has effectively rejected the traffic impact analysis already provided (see comment #2 below).*

Draft Mitigation Measure AQ-4 prescribes that "haul trucks shall depart the site no earlier than 8:30 a.m. and no later than 3:15 p.m., Monday through Friday."

DTSC has reviewed the October 15, 2009 Traffic Impact Study Freeway Analysis Supplemental Report (October 15 Report) prepared by KOA Corporation and submitted by Project Navigator. This October 15 Report supplements the earlier September 2009 Traffic Impact Study (September 2009 Report) prepared by KOA Corporation and referenced in the draft Mitigated Negative Declaration. These Reports generally concluded that the additional traffic attributable to this project on the I-405 freeway would not be significant.

DTSC needed additional information to evaluate this conclusion, recognizing that the Level of Service on I-405 Freeway during the pertinent times was at levels E or F. DTSC obtained an additional review and evaluation (copy attached) dated March 18, 2010 (March 18, 2010 review) from Fehr & Peers transportation consultants. This review included additional information regarding the morning peak hour travel speeds along the I-405 freeway. The March 18, 2010 review concludes that:

> "...during the weekday morning hours, vehicles traveling northbound on I-405 are routinely able to travel at speeds of 55 mph or faster, accepting that vehicles would experience intermittent lower speed levels at various locations along the freeway. This information suggests that the small number of trucks added to the freeway by the project would not incrementally aggravate traffic congestion on affected segments of the I-405 Freeway (northbound) during the AM peak hours."

DTSC concludes, based on this additional analysis, that the incremental increase of truck traffic from the project is not a significant effect. As such, it does not need to be mitigated, nor does the removal of the Mitigation Measure need to be re-circulated for public comment. Draft Mitigation Measure AQ-4 is thus deleted from the Mitigation and Monitoring Report. Haul trucks will thus be able to operate from 7:00 am to 3:15 pm as described in the Project Description.

2. *The attached amendment to the Traffic Impact Study (Traffic Impact Study Freeway Analysis Supplemental Report, KOA, October 15, 2009) previously submitted to Mr. Safouh Sayed on October 16, 2009, but not used by DTSC in the Draft Initial Study, and to which DTSC provided no opposing comments, demonstrates that, despite the 70% Level of Service E or F rating (congested) experienced by the I-405 freeway during morning rush hour, also cited in the Initial Study, all segments of the I-405 between the Beach Boulevard onramp in Huntington Beach and the I-405 terminus in the northern San Fernando Valley experience Project impacts of less than a 2% increase in freeway capacity, the threshold only above which the Congestion Management Program for los Angeles County (CMP) would consider significant. Indeed, the Initial Study, and also the attached amendment to the Traffic Impact Study, states that the Project impact would constitute 0.1% to 0.2% of the morning rush hour freeway capacity, far below the 2% threshold of significance applied by the CMP. Because Caltrans does not maintain a similar traffic threshold, the Los Angeles County CMP threshold should be an acceptable means for DTSC to allow the minimal haul truck traffic on northbound I-405 during morning rush hours.*

See response above.

3. *The DTSC "conservative" analysis is not supported by the data, is unreasonable, illogical, and unnecessary, and is arbitrarily applied in a matter that needlessly constrains trucking related to the Project. In the course of planning the IRM, DTSC had previously approved the haul truck export hours of 7 a.m. to 3:15 p.m. and the Draft IRM Workplan that documents these haul truck hours. The trucking hours were arbitrarily changed with no comments, supporting data or rationale regarding this change. Potential impacts resulting from this change in haul truck export hours could include prolonging the Project schedule; impacting workers and haulers' schedules including the potential inability for some haulers to reasonable make it home at the end of the work day; increasing the possibility that haulers are not able to arrive at the disposal facility prior to closing time (even with a delayed closing time), therefore increasing the possibility that trucks with loads of waste spend the night at an unknown location between the Ascon Site and the disposal facility; and additional unnecessary Project cost.*

4. To account for additional departing haul trucks per hour, the RPs will document through appropriate traffic study that an increase from 14 haul trucks per hour to 20 trucks per hour, still within the 70 total haul trucks per day, would still be deemed less than significant. This will enable the project to proceed without undue delay if more than 14 loaded trucks (and up to 20) are ready to leave the Site in any specific hour during the day.

After the close of the public comment period, DTSC received a letter and Supplemental Analysis for Traffic Impact for the September 2009 Report dated December 3, 2009 (copy attached) from KOA Corporation (December 3 2009 Supplemental Analysis) on behalf of the responsible parties. The December 3, 2009 Supplemental Analysis discusses the expected effects of a change in truck trip generation from 14 trucks per hour to 20 trucks per hour. The responsible parties have indicated that such a change would facilitate operations by providing flexibility in loading and departing trucks, depending on actual site excavation and conditions.

This change of detail was not discussed in the Project Description or Initial Study. In order to approve such a change, DTSC evaluated whether there would be increased air, traffic or noise impacts. With regards to air quality, impacts are evaluated based on the total number of daily trips, not on a per hour basis. Thus, the change in hourly trips from 14 to 20 will not change the air quality technical analysis presented in the Initial Study. More specifically, with the removal of Mitigation Measure AQ-4, the data presented in Table 3 of the Initial Study will not change. Thus, implementation of Mitigation Measures AQ-1 to AQ-3 would adequately reduce potentially significant air quality impacts at the local and regional levels to a less than significant level. Hence, the removal of Mitigation Measure AQ-4 in the Initial Study would not materially alter the air quality findings or conclusions in the Initial Study. Regarding traffic, DTSC has concluded that the incremental increase of overall truck traffic from the project is not a significant effect based on the analysis presented in the December 3, 2009 Supplemental Analysis prepared by KOA, and thus any specific hourly increase would not be a significant impact. Last, DTSC has evaluated the potential noise increase (see attached noise worksheets) and concluded that up to 20 trucks per hour would not cause the estimated project noise levels to exceed the project's significant noise thresholds established in the Initial Study. The increase from 14 to 20 trucks per hour would result in a maximum increase of 1 dBA at the nearest sensitive receptor locations. Thus, noise impacts would remain less than significant as concluded in the Initial Study.

Since there are no new significant impacts from the increase of 14 to a maximum of 20 trucks per hour and the findings and conclusions in the Initial study would not be materially altered in the Initial Study, DTSC will amend the project description accordingly. Further, since the increase from 14 to 20 trucks per hour would not result in substantial revisions to Initial Study and no new significant

impacts would occur, this change does not need to be re-circulated for public comment