



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

**SUBJECT: RECYCLE PLUS UPDATE
ON CWS FACILITY PLANNING**

DATE: 03-12-07

Approved

Date

3-15-07

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

1. Acceptance of verbal update on California Waste Solutions' facility planning and permitting progress.
2. Direction to staff to assist CWS in securing a temporary corporation yard site as a contingency in the event that California Waste Solutions (CWS) is not able to complete permitting, facility construction or needed mitigations in time for the July 2, 2007 startup of Recycle Plus services.

OUTCOME

The approval of the recommendations contained in this memorandum will ensure that the City Council is apprised of the latest developments relating to California Waste Solutions' facility planning and permitting progress, and that contingency facilities are in place and functional in time for the July 2, 2007 startup of Recycle Plus services.

BACKGROUND

In September 2006, the City entered into an agreement with an experienced land-use consultant, David J. Powers and Associates (DJPA), to assist in the Recycle Plus transition activities by reviewing potential corporation yard site options for feasibility. At that time, Planning, Building and Code Enforcement staff and DJPA advised California Waste Solutions (CWS) to choose locations that are not in close proximity to sensitive receptors, mainly residential areas, and to identify properties and begin the planning process as soon as possible in order to ensure proper time for project review, environmental clearance and applicable permitting. The two initial properties CWS was assessing were located near the intersection of 10th Street and Burke Street, and at 1901 Junction Avenue, both in San José. Subsequently, in mid-December, CWS informed the City it would no longer be pursuing those sites, and would now focus their efforts on 1655 Berryessa Road.

Planning, Building and Code Enforcement and the Environmental Services Departments have been working with CWS to identify the actions and resources needed to permit the 1655 Berryessa site for its identified use as a corporation yard for the CWS Recycle Plus contract. Due to major stormwater protection compliance issues, Planning does not believe final studies and mitigations can be implemented in time for CWS to operate from the site beginning July 2, 2007.

ANALYSIS

CWS has been identifying alternate sites both in the City and in neighboring jurisdictions in a parallel process to permitting the Berryessa site. CWS notified ESD staff on March 6 that it had signed a lease to purchase offer for a property at 521 Charcot Avenue contingent upon securing the necessary City permits. ESD and Planning staff immediately visited the site, which is comprised of 92,000 square feet of office and warehouse space, plus approximately 4.5 acres for vehicle storage, truck maintenance and large item handling. The site has no adjacent residential properties and is already paved. Planning staff met again with ESD and CWS on March 8 to provide an update on their preliminary research of the Charcot property. CWS is scheduled to submit to Planning a detailed proposal for the use of the Charcot site so that Planning can conduct a preliminary analysis by the end of this week. CWS is also considering a location in the City of Santa Clara, and also has had discussions with Norcal to use their site once their City contract expires.

ESD staff has been reviewing contingency options in the event CWS cannot secure a corporation yard in time for their July 2, 2007 startup. Such contingencies include discussions with Norcal for use of their current facility beyond June 30, 2007, and staff is in the process of costing out various options which would include the use of Norcal's facility, trucks and equipment. Staff will verbally report out any contingency option information, as available, at the March 20, 2007 Council meeting. Staff is also assessing the feasibility of a City-owned property to provide a temporary staging area for the CWS operations until a permanent site can be found. The FMC complex, located at 1125 Coleman Avenue and managed by the Airport, is one of the City's temporary contingency sites and can be leased for use. The site is currently zoned PD (Planned Development), in which there is an existing, legal non-conforming use on the site within an adjacent parcel. Per Planning, the legal non-conforming use of the site could be expanded to accommodate the operations of CWS, potentially without the need for a separate Special Use Permit. This temporary contingency use for the FMC property will not impact the RFP process currently underway for this site. Per the City's Agreement with CWS, CWS is required to reimburse the City for any expenses incurred by the City for procuring emergency services on CWS's behalf if CWS is not able to perform part or all of the services required under the Recycle Plus agreement during the transition period from July 1, 2007 through September 30, 2007.

It is critical that Council direction be provided to allow staff to proceed with securing contingency facilities before March 31, 2007. In a letter to the City dated October 20, 2006,

Norcal agreed to wait until the end of March before committing its San José facility and equipment to other operations. After that date, Norcal is under no obligation to provide transition services to the City and is free to deploy or dispose of their facility and equipment as they see fit.

ALTERNATIVES

The City Council may decide that contingency plans for alternative sites are not needed.

PUBLIC OUTREACH/INTEREST

A community meeting has been scheduled for the 1655 Berryessa neighborhood on March 15th from 6:00 pm to 8:30 pm. This meeting will be held at the Berryessa Library and will provide nearby residents with the opportunity to learn about possible uses of the 1655 Berryessa site.

The criteria below do not apply to this recommendation.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

COORDINATION

This memorandum was coordinated with the City Attorney's Office, the Airport, and the Planning, Building and Code Enforcement Department.

COST IMPLICATIONS

A cost analysis will be presented with final contingency plan recommendations.

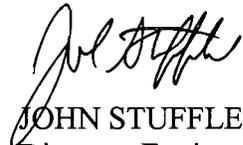
BUDGET REFERENCE

Not Applicable

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CEQA

Not a project.



JOHN STUFFLEBEAN
Director, Environmental Services

For questions, please contact Jo Zientek, Deputy Director, Integrated Waste Management Division, at (408) 535-8557.



People • Service • Environment
Norcal Waste Systems of San Jose, Inc.

October 20, 2006

Les White
City Manager
City of San Jose
200 East Santa Clara St.
San Jose, CA 95113

RE: Transition of Solid Waste Collection Service

Dear Les:

Please accept this letter as our response to conditions under which Norcal Waste Systems, Inc. could provide transition collection services for Districts A and/or C in the event they are needed after July 1, 2007. Norcal would provide transition garbage and/or recycling collection services for Districts A and/or C in the event that one or both of the new contractors are not ready to take over services on July 2, 2007. Compensation rates would be the rates set forth in Norcal's proposal in response to the 2007 San Jose Recycle Plus Request for Proposals in Forms A-2 through A-4.

We are now in the process of committing the equipment we use in San Jose to other operations. Therefore, we would require a notice of 90 days in order to be able to provide transition services. We would also require a minimum transition time commitment in 90 day segments. In other words, notification on March 31, 2007 would then commit us from July 1, 2007 through September 30, 2007.

We are required to give our affected employees 60-days notice. Our non-union employees will be making arrangements for new jobs in 2007 as well. Keeping employees for a potential transition period will require us to pay retention bonuses or similar compensation, which is yet another reason why we need 90 days notice if we are to adequately staff a transition period.

If Norcal were to collect single stream recyclables during a transition period and deliver to California Waste Solutions (CWS), we would require certain additional assurances. For example, Norcal has incurred liability over the course of its Recycle Plus Contract for various problems that we believe were the responsibility of CWS or the City, not Norcal. Therefore, we request that Norcal's contractual arrangement be with the City only and that the City contract separately with CWS for processing of recyclables. In addition, we request assurances that during a transition period Norcal would have: no responsibility for administrative charges for any claimed failure to meet contractual performance, diversion or other operating standards; no responsibility to pay CWS any amounts, including for any claimed "excessive" contamination or for claimed labor expenses; no responsibility to pay the cost of residual disposal; and compensation if truck waiting times at CWS are unreasonably long.

We look forward to the City addressing the steps that would enable Norcal to provide transition services in the event they are needed starting in July 2007.

Sincerely,

Dan Day, Norcal Waste Systems

A Norcal Waste Systems Company
1120 Berryessa Road, San Jose CA 95133
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