COUNCIL AGENDA: 12-01-09
ITEM: 11.1 (a)

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: November 19, 2009

COUNCIL DISTRICT: 4
SNI AREA: N/A

SUBJECT: PDC08-054. REZONING FROM AN A(PD) PLANNED DEVELOPMENT ZONING TO AN A(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW A DRIVEWAY MODIFICATION AND A WETLANDS EXCHANGE ON A 52.5 GROSS ACRES SITE.

RECOMMENDATION

The Planning Commission voted 6-0-1 (Kamkar, absent) to recommend that the City Council adopt an ordinance to approve the subject Planned Development Rezoning from an A(PD) Planned Development Zoning District to an A(PD) Planned Development Zoning District to allow a driveway modification and a wetlands exchange on a 52.5 gross acres site located between Los Esteros Road and Grand Blvd (675 Los Esteros Road), as recommended by staff.

OUTCOME

Should the City Council approve the Planned Development Rezoning for the 52.5 gross acre site, this would allow:

1. the modification of the on-site driveway from the Los Esteros Road entrance and associated wetland mitigation,

2. an additional truck scale associated with the proposed eastern spur of the modified driveway to be located to the east of the Materials Recovery Facility, and

3. the reconfiguration of the paved parking area on the top deck of the closed landfill that would result in a more efficient on-site circulation than the figuration previously approved per Planned Development Rezoning File Number PDC06-120.

This rezoning would also allow the continued use of an existing landfill, expansion of on-site resource recovery operations, construction of a 200,000 square foot building to be used as an indoor sorting and recycling facility, an increase in daily tonnage to 5,000 tons per day, acceptance transfer off-site, future screening and sorting of green/yard waste, municipal solid

waste and food waste, the relocation and expansion of a scale house, and on-site operation to occur 24 hours per day, as previously approved Planned Development Rezoning adopted by the City Council on February 26, 2008. A Planned Development Permit will be required to effectuate the Planned Development Zoning District and to allow the continued use of existing landfill and expansion of resource materials recovery.

BACKGROUND

On November 18, 2009, the Planning Commission held a public hearing to consider the proposed Planned Development Rezoning. The Director of Planning, Building and Code Enforcement recommended approval of the proposed rezoning. The project was on the evening's consent calendar and there was no separate discussion involving the project.

The Planning Commission voted 6-0-1(Kamkar, absent) to recommend approval of the project.

ANALYSIS

The proposed Planned Development Rezoning furthers the City's recycling goals of recovering the resource value of solid waste and fostering the establishment of facilities which constructively use and reinvest such resources in the local economy, as well as promoting recycling in the City. The continued resource materials recovery operations after the closure of the existing landfill would not only help the City meet its waste diversion goals mandated by State Assembly Bill 939 and be consistent with the County's Integrated Waste Management Plan, but would also enable the City to meet its more aggressive goal of 75 percent waste diversion by 2013, and a goal of zero waste by 2022.

For further analysis please see attached Staff Report.

EVALUATION AND FOLLOW-UP

The applicant will be required to secure a Planned Development Permit from the Planning Director in order to implement the subject rezoning.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- ❑ **Criteria 1**: Requires Council action on the use of public funds equal to $1 million or greater.
  (Required: Website Posting)
- ❑ **Criteria 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. **(Required: E-mail and Website Posting)**

❑ **Criteria 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. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A notice of this Planning Commission public hearing, and subsequent City Council hearing, was mailed to the owners and tenants of all properties located within 1,000 feet of the project site, as well as over 1,000 tenants and property owners located in the Alviso area, and posted on the City website. A sign notifying the public of the proposed development was posted on site. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

This project was coordinated with the Department of Public Works, Fire Department, and Environmental Services Department.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policies and City Council approved design guidelines as further discussed in attached staff report.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

CEQA: Mitigated Negative Declaration

for JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Jodie Clark at 408-535-7800.

Attachments:
Development Standards, revised November 5, 2009

File No. PDC08-054
Revised 11/5/2009

ZANKER ROAD MATERIAL PROCESSING FACILITY – ZONING CONDITIONS

DEVELOPMENT STANDARDS

Tonnage Limits

The facility shall accept a maximum of 5,000 tons of waste per day and shall landfill on-site a maximum of 350 tons per day.

Height Limit

The maximum height of the landfill shall not exceed 50 feet above MSL. The maximum height of the stockpiles and baled materials (resource recovered) shall at no time exceed 20 feet. The maximum building height limit of the Material Recovery Facility (MRF) not to exceed 70 feet above grade.

Hours of Operation

The site can be operated 24 hours per day, 7 days per week. It will be closed on major holidays (New Year's Day, Easter, Thanksgiving and Christmas).

Landfill Closure

The on-site landfill operation shall close by the year 2021. Post-closure maintenance and monitoring of the landfill will continue for a minimum of 30 years after official landfill closure. Material Recovery Facility operation to commence after the closure of the landfill.

Proposed Uses for the Landfill After Closure

The project proposes to utilize the top deck area of the closed landfill for operations that are ancillary to the proposed MRF operations in the southern portion of the site. These ancillary operations would include1) employee parking, 2) truck/equipment parking, 3) temporary material storage, 4) a fueling station for trucks and equipment, 5) and a recovered soils and materials yard.

Access

Modify the driveway so it intersects Los Esteros Road at an angle closer to 90 degrees.

Sanitary

Possible sanitary sewer connections and options available to the project include but not limited to:

a) Truck hauling of waste water to San Jose/Santa Clara Water Pollution Control Plant;
b) Connection to existing 10-inch sanitary line located across Los Esteros Road from ZMPF;
c) Connect to sanitary sewer system in the Community of Alviso via new pipeline through designated open space land owned by Zanker Road Resources Management, Ltd.;
d) Connect to sanitary sewer system in the Community of Alviso new pipeline down Los Esteros Road right-of-way;

e) Connect to sanitary sewer system in the Community of Alviso via new pipeline down federally-owned road located north of ZMPF.

WASTE STREAM

According to Waste Discharge Requirements (WDRs) for the site only non-hazardous and non-decomposable waste would be landfilled at the site. Green waste, food waste and decomposable municipal solid waste would be processed in the MRF and transported to off-site approved facilities. No materials associated with the acceptance, screening handling, or transfer of yard/green wastes, food wastes, and MSW would be landfilled on-site at the ZMPF. As defined by Title 14, hazardous wastes, infectious wastes, liquid wastes, friable asbestos and sludges will not be accepted.

Zanker MRF Mitigation Measures

A. AIR QUALITY

a. Implementation of the measures recommended by BAAQMD and those listed below would reduce the air quality impacts associated with grading and new construction to a less than significant level. Measures to reduce diesel particulate matter and PM2.5 from construction are recommended to ensure that short-term health impacts to nearby sensitive receptors are avoided.

i. Dust (PM10) Control Measures:

1. Water all active construction areas at least twice daily and more often during windy periods.
2. Cover all hauling trucks or maintain at least two feet of freeboard.
3. Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.
4. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
5. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).
6. Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles.
7. Limit traffic speeds on any unpaved roads to 15 mph.
8. Replant vegetation in disturbed areas as quickly as possible.
9. Suspend construction activities that cause visible dust plumes to extend beyond the construction site.
10. During renovation and demolition activities, removal or disturbance of any materials containing asbestos or other hazardous pollutants will be conducted in accordance with BAAQMD rules and regulations.

B. BIOLOGICAL RESOURCES

a. Special-status Species and/or Nesting Birds

i. If possible, construction in the seasonal wetland area shall be scheduled to avoid the breeding season for special-status birds and birds protected by the Migratory Bird Treaty Act (typically between January 1st and August 31st). If this is not possible, pre-construction surveys for special-status species and/or nesting birds shall be completed by a qualified ornithologist. Between January and April (inclusive), pre-construction surveys shall be completed no more than 14 days prior to the initiation of construction activities. Between May and August (inclusive), pre-construction surveys shall be completed no more than 30 days prior to the initiation of construction activities. In the event special-status species and/or nesting birds are observed in the area to be disturbed or within 250 feet, construction buffers will be established by the ornithologist in consultation with the California Department of Fish and Game and/or USFWS, as appropriate. The contractor

shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Environmental Principal Planner and the Director of Public Works prior to the start of construction. Construction activities would not be initiated until after the California Department of Fish and Game and/or USFWS has approved the planned activities based on the review of the survey results and proposed buffers.

b. Salt Marsh Harvest Mice

i. Post-Construction Habitat Monitoring/Restoration: A formal Habitat Mitigation and Monitoring Plan will be developed for agency review and approval prior to construction. The final approved plan shall be submitted to the City's Environmental Principal Planner in the Department of Planning, Building and Code Enforcement. Pickleweed, saltgrass and other native salt marsh species will be planted in the newly constructed wetland and there will be at least five years of monitoring to ensure the successful establishment of these plantings. During the monitoring visits, a qualified biologist will estimate the success rate of establishment of these native salt marsh species. A brief monitoring report will be provided to USFWS and the City of San José on November 30th of the first year following construction. This letter report will document the results of the monitoring.

ii. Section 7 Permit: Prior to construction, the applicant shall complete consultation under Section 7 of the federal Endangered Species Act due to the presence of the Salt Marsh Harvest Mouse. Consultation with the USFWS was initiated by the project proponent in April 2009. The project proponent shall comply with conditions of the Section 7 permit.

iii. USFWS-Approved Biologist: Prior to the Project groundbreaking, the applicant will submit to the USFWS for its review the qualifications of its qualified biologist(s). The biologist(s) will be given the authority to stop any work that may result in the take of a listed species. If the biologist(s) exercises this authority, the USFWS will be notified by telephone and electronic mail within one working day. The onsite biologist will be the contact for any employee or contractor who might inadvertently kill or injure a salt marsh harvest mouse, or find a dead, injured, or entrapped salt marsh harvest mouse. The on-site biologist(s) will possess a working cellular telephone, and this phone number will be provided to the USFWS.

iv. Construction Employee Education: Prior to construction, a construction employee education program will be completed in reference to the potential endangered species on the site. At a minimum, the program will consist of a brief presentation by persons knowledgeable in endangered species biology and legislative protection to explain concerns to contractors, their employees, and agency personnel involved in the project. The program will include the following: a description of the species and their habitat needs; reports of occurrences in the mitigation area; an explanation of the status of each endangered species and their protection under the Endangered Species Act; and a list of measures being taken to reduce impacts to the species during project construction and implementation. Fact sheets conveying this information will be prepared for distribution to the above-mentioned people and anyone else who may enter the mitigation area.

v. Construction Work Mitigation Measures:

1. Prior to impacting potential salt marsh harvest mouse habitat, the area of potential impact will be flagged by construction personnel and verified by the on-site biologist.

2. After the area has been flagged, pickleweed vegetation will be cleared by hand (with no hand tools) in order to facilitate salt marsh harvest mouse detection. Areas cleared will be those within the flagged restoration area and an additional two feet beyond the flagged area to provide a bare ground buffer. Vegetation to be removed that is not pickleweed dominant will be cleared by hand with mechanical hand tools. The on-site biologist will monitor the vegetation removal to ensure that invasive species are removed, isolated from other removed marsh vegetation, and disposed of properly.
3. Once the restoration area has been cleared, temporary exclusion fencing will be placed two feet inside the vegetation clearing perimeter. This small portion of cleared vegetation between potential salt marsh harvest mouse habitat and the exclusion fence is meant to dissuade mice from climbing the fence and entering the work area. It is thought that salt marsh harvest mouse will generally avoid areas devoid of cover. Fence material will consist of heavy plastic sheeting (as it is more difficult for rodents to climb) and fence height will be at least 12 inches higher than the highest adjacent vegetation with a maximum height of four feet. The fence bottom will be attached to the ground with landscape staples. Care will be given to insure no gaps will occur either under the sheeting or at seams. Stakes will be located on the inside of the exclusion fence to deter mice from climbing stakes into the work area and facilitate mice exiting the work area.
4. Pre-construction surveys within the exclusion fence and an exclusion fence integrity check will be performed by the U.S. Fish and Wildlife Service (USFWS)-approved biologist each day prior to beginning restoration activities.
5. The exclusion fence will be temporarily removed at each of the three breach locations and replaced in the new locations once excavation is completed in each breach area.
6. The exclusion fence will be removed immediately following work completion. Vegetation saved during the vegetation clearing will be strewn over the completed work area to provide temporary cover for the mouse.
7. All work within the mitigation area during the construction phase of the project will be done under the supervision of a USFWS-approved biologist.

vi. Entrapment Prevention: In order to prevent potential entrapment of salt marsh harvest mice in work equipment, any pipes or similar objects located in salt marsh harvest mouse habitat will be capped prior to the end of the work day or inspected by the USFWS-approved biologist prior to commencement of work activities the following day. If a salt marsh harvest mouse is discovered, it will be relocated to the nearest salt marsh harvest mouse habitat by the USFWS-approved biologist.

vii. Best Management Practices: The applicant will ensure that a readily available copy of the Biological Opinion is maintained by the construction foreman/manager on the project site whenever construction activities are taking place. The name and telephone number of the construction foreman/manager will be provided to the USFWS prior to the project groundbreaking.

All food-related trash items, such as wrappers, cans, bottles, and food scraps, will be disposed of in solid, closed containers (trash cans) and removed at the end of each work day from the entire construction site in order to avoid attracting predators of the salt marsh harvest mouse to the site.

viii. Sighting Protocol: If salt marsh harvest mice, or any mouse that construction personnel may believe is this species, is encountered during project construction, the following protocol will be followed:

1. All work that could result in direct injury, disturbance, or harassment of the individual animal will immediately cease.
2. The foreman and on-site biologist will be immediately notified.
3. The on-site biologist will monitor it until he/she determines that the animal(s) are not imperiled by predators or other dangers.
4. The on-site biologist will notify the Service within one working day following any encounters with potential salt marsh harvesting mice during construction via electronic mail and telephone.

Any contractor, employee, or agency personnel who inadvertently kills or injures a salt marsh harvest mouse will immediately report the incident to the on-site biologist. The on-site biologist will contact the USFWS to report the dead or injured animal via electronic mail and telephone within one working day.

c. California Clapper Rail

i. In order to avoid potential impacts to the California Clapper Rail, it is recommended that work activities occur between September 1st and December 31st, which is outside of the California Clapper Rail breeding season. If work activities are scheduled to occur during the California Clapper Rail breeding season (January 1st through August 31st), a 600 foot buffer shall be maintained for nesting areas. Surveys for California Clapper Rail would follow the USFWS January 21, 2000, draft survey protocol (or any subsequent revision). Prior to initiating surveys, a survey protocol would be developed and provided to the USFWS for review and approval. After the surveys are completed and prior to the initiation of wetland restoration construction activities, the results of the surveys would be provided to the USFWS for review to evaluate the appropriateness of activities being proposed by the project proponent. Restoration-related construction activities would not be initiated until after the USFWS has approved the planned activities based on the review of the survey results.

d. Western Snowy Plover

i. In order to avoid potential impacts to Western Snowy Plover that may use the project site for foraging, the on-site biologist will check for presence of this species within 300 feet of the mitigation area each morning before construction is allowed to proceed. If this species is not present, wetland construction may proceed. If this species is present, the biologist will monitor the Western Snowy Plover(s) and allow construction to proceed only when the plover(s) are outside the 300 foot buffer area.

e. Central Coast California Steelhead

i. Construction Best Management Practices (BMPs) for sediment control, such as the use of silt curtains, shall be used to prevent downstream water quality impacts to waterbodies including Coyote Creek. These BMPs would also prevent any potential water quality impacts on Central Valley Chinook Salmon.

C. GEOLOGY AND SOILS

a. A detailed, design-level geotechnical investigation for the project shall be completed by the applicant and shall be reviewed and approved by the City Geologist, prior to approval of a PD Permit for any phase of the project. The geotechnical investigation shall identify and describe the specific engineering practices to be used to reduce or avoid all possible geologic hazards on the site, which shall be incorporated into the project design. It is anticipated that fill and waste under the building locations would be over-excavated. The specific approaches to be implemented will be based on additional site studies and final project design.

D. HYDROLOGY AND WATER QUALITY

a. **Post-Construction Mitigation Measures**

i. When the construction phase is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the RWQCB and the City of San José. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction stormwater management plan is in place as described in the SWPPP for the project site.

ii. All post-construction Treatment Control Measures (TCMs) will be installed, operated, and maintained by qualified personnel. On-site inlets will be stenciled in conformance with City requirements and cleaned out a minimum of once per year, prior to the wet season.

In addition to all of the foregoing, the applicant also has agreed to timely perform and effect all of the following conditions, which conditions were made a condition of City approval of this rezoning. (12/1/2009)

1. Direct the applicant, Zanker Road Resource Management, Ltd., to assist the City in analyzing traffic counts and traffic impacts at or immediately after commencement of operations of the proposed development. While staff has determined that the proposed project is in conformance with the City of San Jose Transportation Level of Service Policy, it is important to validate that the proposed project, once it is in full operation, will not cause safety risks to truck drivers who serve the site or to residents and visitors in the vicinity of the proposed project.
2. Direct the applicant to work with the City to conduct a street sweeping program for Los Esteros and Zanker Road that maintains the health, safety, and cleanliness of the road using the timetable under the direction in Item 1; and
3. Direct the applicant to work with the City during the PD permit phase of the project to generate an appropriate plan and protocol for truck parking facility.

P.C. Agenda: 11/18/09
Item No. 2.e.

STAFF REPORT
PLANNING COMMISSION

FILE NO.: PDC08-054 **Submitted: August 6, 2008**

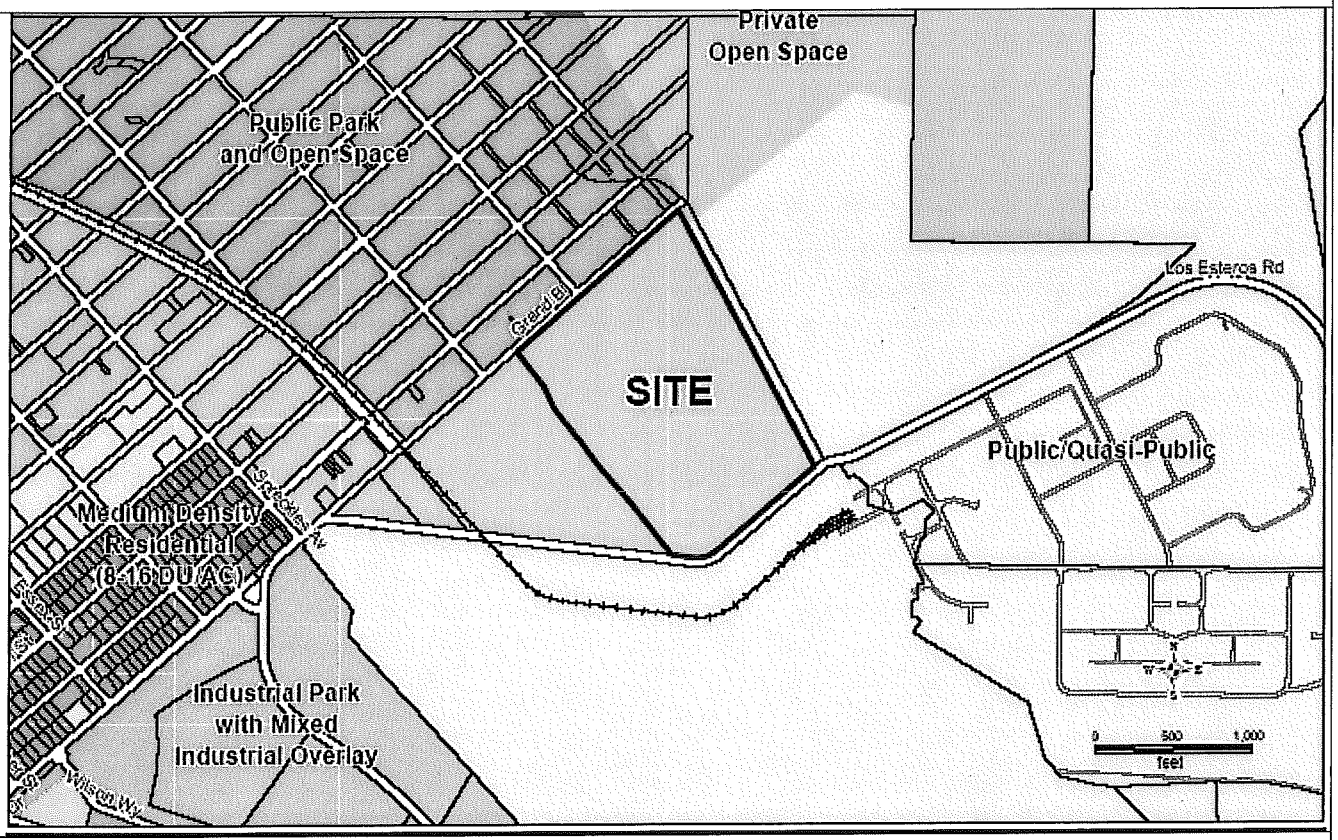
PROJECT DESCRIPTION: Rezoning from an A(PD) Planned Development Zoning to an A(PD) Planned Development Zoning District to allow a driveway modification and a wetlands exchange on a 52.5 gross acres site

LOCATION: Between Los Esteros Road and Grand Blvd (675 Los Esteros Road)

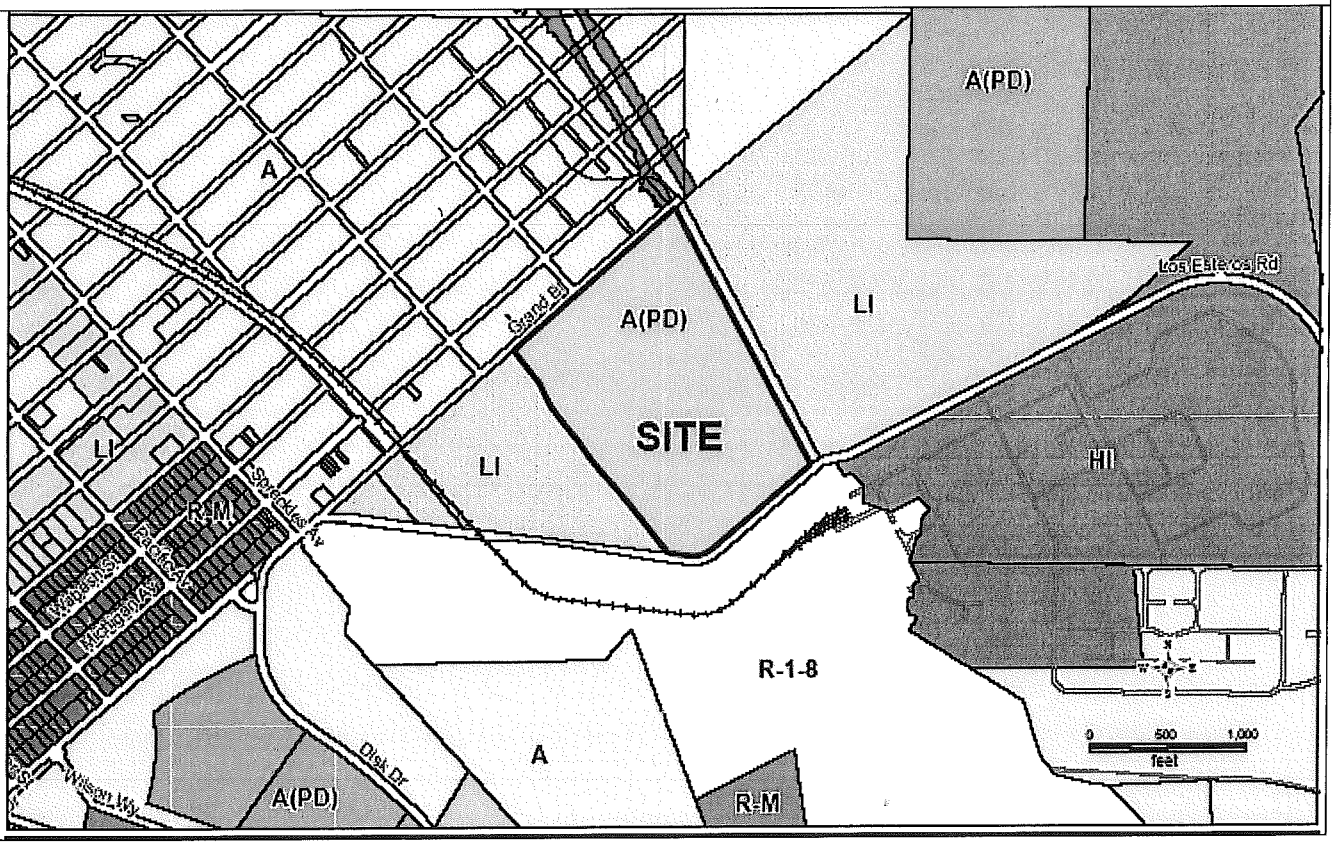
Existing Zoning	A(PD) Planned Development
Proposed Zoning	A(PD) Planned Development
General Plan	Private Open Space with a Solid Waste Disposal Site overlay
Council District	4
Annexation Date	March 12, 1968
SNI	None
Historic Resource	No
Redevelopment Area	No
Specific Plan	Alviso

AERIAL MAP

GENERAL PLAN



ZONING



RECOMMENDATION

Planning staff recommends the Planning Commission forward a recommendation to the City Council to approve the proposed Planned Development Zoning with the development standards as proposed by staff for the following reasons:

1. The proposed zoning conforms to the San José 2020 General Plan Designation of Private Open Space with a Solid Waste Disposal Site overlay.
2. The proposed zoning is compatible with existing uses on the adjacent and neighboring properties.
3. The proposed project conforms to the requirements of CEQA.

BACKGROUND

Project Description

On September 18, 2008, Erik Schoennauer of The Schoennauer Company, on behalf of the property owner Zanker Road Resource Management, Ltd., submitted a Planned Development Rezoning from an A(PD) Planned Development Zoning District to an A(PD) Planned Development Zoning District to allow a driveway modification and a wetlands exchange on a 52.5 gross acres site located between Los Esteros Road and Grand Boulevard.

On February 26, 2008, the City Council approved a Planned Development Zoning (File Number PDC06-120) to allow continued use of an existing landfill, expansion of on-site resource recovery operations, construction of a 200,000 square foot building to be used as an indoor sorting and recycling facility, an increase in daily tonnage to 5,000 tons per day, acceptance transfer off-site, and future screening and sorting of green/yard waste, municipal solid waste (MSW) and food waste, to relocate and expand the scale house and allow on-site operation to occur 24 hours per day, 7 days per week, with the ultimate closure of the existing landfill expected by 2021 on a 52.5 gross acre site. The Zanker Material Recycling Facility (PDC06-120) project was analyzed in a Final Environmental Impact Report certified in early 2008.

The purpose of this rezoning is to allow the modification of the on-site driveway from Los Esteros Road entrance. The previous driveway configuration adopted by PDC06-120 extended to the west at a sharp angle off of Los Esteros Road and continued along the southern border of the site. The modified driveway configuration would extend at a more perpendicular angle through an approximately 0.19-acre seasonal wetland area between the existing driveway and levees to the north and east, and would include a driveway spur extending to the east. The proposed access road realignment also allows the possible inclusion of additional truck scales associated with the eastern spur of the driveway. The modified driveway configuration would include an employee entrance road to connect the main entrance driveway to the rest of the project site. Pedestrian access to the site would be provided by a paved, five-foot wide walkway located alongside the modified driveway and access road.

In addition to the driveway modification, this rezoning also proposes other minor alterations to the conceptual site plan previous adopted in 2008 per Planned Development Rezoning File Number PDC06-120. The minor alterations include: 1) an additional truck scale associated with the proposed eastern spur of the modified driveway may be located to the east of the Materials Recovery Facility; and 2) alteration of the configuration and size of the paved parking area on the top deck of the closed landfill, including modifications to the

stormwater collection system. This alteration would increase the paved area on top of the landfill by approximately 22,000 square feet.

No changes to the development standards previously adopted by the City Council are proposed as part of this rezoning.

Site History

The Zanker Materials Processing Facility (ZMPF) has operated as a resource recovery facility and disposal site since 1999. The ZMPF is a 46.1-acre waste management unit (WMU), situated on a 52.5-acre parcel, which is comprised of approximately 28 acres of in-place refuse fill and a 12-acre resource recovery area. The remaining 6.1 acres within the WMU are utilized for access roads and perimeter flood protection levees. Existing operations at the ZMPF include the following:

- Acceptance and handling of mixed waste loads from general public and commercial waste haulers;
- Sorting of recyclable materials (i.e., metal, mixed paper, plastic, drywall, composition roofing, cardboard, glass, wood, dirt, concrete/asphalt, etc.) from incoming materials;
- Processing of some of these recovered recyclable materials into reusable products (i.e., co-generation wood fuel, mulch, soil amendments, baserock, fill materials, etc.);
- Temporary storage of materials and finished products;
- On-site landfilling of some of the residual non-recyclable materials, and
- Transfer and off-site disposal of wastes and residual non-recyclable materials.

Surrounding Land Uses

The project site is located adjacent to baylands, as well as other facilities that are industrial in character. The immediate project area consists of a mixture of open grasslands, waterways, marshes, and developed areas characterized by one and two story buildings, utility infrastructure, storage tanks, and railroad lines. Grasslands, waterways, and marshes are located to the north and west and long sloughs and levees, including those within the Don Edwards San Francisco By National Wildlife Refuge located across Grand Avenue. Grand Avenue runs along the northern boundary of the site and provides the vehicular and pedestrian access to the refuge. Industrial areas include a landfill facility to the northeast (Zanker Road Resource Recovery Operation and Landfill) and the San Jose/Santa Clara Water Pollution Control Plan (WPCP). The WPCP includes the treatment plant facility to the southeast, the plant buffer lands to the southwest, south and southeast, and the WPCP sludge ponds to the east and northeast. The closest residence to the project site is located approximately 2,000 feet to the southwest at the intersection of Spreckles Avenue and Grand Boulevard in the community of Alviso.

ANALYSIS

The project was analyzed on the basis of the requirements of the California Environmental Quality Act (CEQA), conformance with the San Jose 2020 General Plan, land use compatibility, and conformance with the City's recycling goals.

Environmental Review

Planning staff prepared an Initial Study for the proposed project. The Initial Study concluded that the proposed project could have significant effects on the environment, which would be reduced to a less than significant level by mitigation measures that the applicant has agreed to implement as part of the project. The public review period for the draft Mitigated Negative Declaration (MND) entitled "Zanker Material Recycling Facility Driveway Project" began on October 13, 2009 and ends on November 12, 2009 at 5 p.m. The Initial Study and

MND has been available for review on the City's website. No public comments have been received on the environmental process for this project to date.

Impacts to the wetland would be offset by removing fill materials and restoring approximately 0.7 acres of wetlands within an approximately three-acre portion of salt marsh on the Zanker Road Resource Management property, located northwest of the primary Zanker Material Recycling Facility's activity area. This area contains an existing levee composed of artificial fill. The levee would be breached in three areas to create open channels, thereby increasing the surface area of tidal waters. Portions of the wetland area would be excavated and replanted to restore natural conditions. The wetland mitigation construction work would occur in three phases: 1) flagging of potential sensitive habitat and vegetation clearing; 2) placement of an exclusion fence to prevent sensitive species, such as the slat marsh harvest mouse, from entering the construction area; and 3) excavation and fence replacement. A biological monitor would be present each day to complete checks of the work area before construction is allowed to proceed.

The environmental issues addressed in the Initial Study and MND include the analysis of biological resources. As described in the MND, the project is required to incorporate specific measures to mitigate any significant impacts to biological resources such as special-status and/or nesting birds, salt marsh harvest mice, California Clapper Rail, Western Snowy Plovers, and Central California Coast Steelhead.

Special-status and/or Nesting Birds

The project proposes to implement the following mitigation and avoidance measures to reduce or avoid impacts to special-status species and/or nesting birds that may occupy the seasonal wetland area:

- If possible, construction in the seasonal wetland area shall be scheduled to avoid the breeding season for special-status birds and birds protected by the Migratory Bird Treaty Act (typically between January 1st and August 31st). If this is not possible, pre-construction surveys for special-status species and/or nesting birds shall be completed by a qualified ornithologist. Between January and April (inclusive), pre-construction surveys shall be completed no more than 14 days prior to the initiation of construction activities. Between May and August (inclusive), pre-construction surveys shall be completed no more than 30 days prior to the initiation of construction activities. In the event special-status species and/or nesting birds are observed in the area to be disturbed or within 250 feet, construction buffers will be established by the ornithologist in consultation with the California Department of Fish and Game and/or USFWS, as appropriate. The contractor shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Environmental Principal Planner and the Director of Public Works prior to the start of construction. Construction activities would not be initiated until after the California Department of Fish and Game and/or USFWS has approved the planned activities based on the review of the survey results and proposed buffers.

Salt Marsh Harvest Mice

The project proposes to implement the following mitigation and avoidance measures to reduce impacts to salt marsh harvest mice:

- Post-Construction Habitat Monitoring/Restoration: A formal Habitat Mitigation and Monitoring Plan will be developed for agency review and approval prior to construction. The final approved plan shall be submitted to the City's Environmental Principal Planner in the Department of Planning, Building and Code Enforcement. Pickleweed, saltgrass and other native salt marsh species will be planted in the newly constructed wetland and there will be at least five years of monitoring to ensure the successful establishment of these plantings. During the monitoring visits, a qualified biologist will estimate the success rate of

establishment of these native salt marsh species. A brief monitoring report will be provided to USFWS and the City of San José on November 30th of the first year following construction. This letter report will document the results of the monitoring.

- Section 7 Permit: Prior to construction, the applicant shall complete consultation under Section 7 of the federal Endangered Species Act due to the presence of the Salt Marsh Harvest Mouse. Consultation with the USFWS was initiated by the project proponent in April 2009. The project proponent shall comply with conditions of the Section 7 permit.
- USFWS-Approved Biologist: Prior to the Project groundbreaking, the applicant will submit to the USFWS for its review the qualifications of its qualified biologist(s). The biologist(s) will be given the authority to stop any work that may result in the take of a listed species. If the biologist(s) exercises this authority, the USFWS will be notified by telephone and electronic mail within one working day. The onsite biologist will be the contact for any employee or contractor who might inadvertently kill or injure a salt marsh harvest mouse, or find a dead, injured, or entrapped salt marsh harvest mouse. The on-site biologist(s) will possess a working cellular telephone, and this phone number will be provided to the USFWS.
- Construction Employee Education: Prior to construction, a construction employee education program will be completed in reference to the potential endangered species on the site. At a minimum, the program will consist of a brief presentation by persons knowledgeable in endangered species biology and legislative protection to explain concerns to contractors, their employees, and agency personnel involved in the project. The program will include the following: a description of the species and their habitat needs; reports of occurrences in the mitigation area; an explanation of the status of each endangered species and their protection under the Endangered Species Act; and a list of measures being taken to reduce impacts to the species during project construction and implementation. Fact sheets conveying this information will be prepared for distribution to the above-mentioned people and anyone else who may enter the mitigation area.
- Construction Work Mitigation Measures:
  - Prior to impacting potential salt marsh harvest mouse habitat, the area of potential impact will be flagged by construction personnel and verified by the on-site biologist.
  - After the area has been flagged, pickleweed vegetation will be cleared by hand (with no hand tools) in order to facilitate salt marsh harvest mouse detection. Areas cleared will be those within the flagged restoration area and an additional two feet beyond the flagged area to provide a bare ground buffer. Vegetation to be removed that is not pickleweed dominant will be cleared by hand with mechanical hand tools. The on-site biologist will monitor the vegetation removal to ensure that invasive species are removed, isolated from other removed marsh vegetation, and disposed of properly.
  - Once the restoration area has been cleared, temporary exclusion fencing will be placed two feet inside the vegetation clearing perimeter. This small portion of cleared vegetation between potential salt marsh harvest mouse habitat and the exclusion fence is meant to dissuade mice from climbing the fence and entering the work area. It is thought that salt marsh harvest mouse will generally avoid areas devoid of cover. Fence material will consist of heavy plastic sheeting (as it is more difficult for rodents to climb) and fence height will be at least 12 inches higher than the highest adjacent vegetation with a maximum height of four feet. The fence bottom will be attached to the ground with landscape staples. Care will be given to insure no gaps will occur either under the sheeting or at seams. Stakes will be located on the inside of the exclusion fence to deter mice from climbing stakes into the work area and facilitate mice exiting the work area.
  - Pre-construction surveys within the exclusion fence and an exclusion fence integrity check will be performed by the U.S. Fish and Wildlife Service (USFWS)-approved biologist each day prior to beginning restoration activities.

- The exclusion fence will be temporarily removed at each of the three breach locations and replaced in the new locations once excavation is completed in each breach area.
- The exclusion fence will be removed immediately following work completion. Vegetation saved during the vegetation clearing will be strewn over the completed work area to provide temporary cover for the mouse.
- All work within the mitigation area during the construction phase of the project will be done under the supervision of a USFWS-approved biologist.

- Entrapment Prevention: In order to prevent potential entrapment of salt marsh harvest mice in work equipment, any pipes or similar objects located in salt marsh harvest mouse habitat will be capped prior to the end of the work day or inspected by the USFWS-approved biologist prior to commencement of work activities the following day. If a salt marsh harvest mouse is discovered, it will be relocated to the nearest salt marsh harvest mouse habitat by the USFWS-approved biologist.
- Best Management Practices: The applicant will ensure that a readily available copy of the Biological Opinion is maintained by the construction foreman/manager on the project site whenever construction activities are taking place. The name and telephone number of the construction foreman/manager will be provided to the USFWS prior to the project groundbreaking.

  All food-related trash items, such as wrappers, cans, bottles, and food scraps, will be disposed of in solid, closed containers (trash cans) and removed at the end of each work day from the entire construction site in order to avoid attracting predators of the salt marsh harvest mouse to the site.
- Sighting Protocol: If salt marsh harvest mice, or any mouse that construction personnel may believe is this species, is encountered during project construction, the following protocol will be followed:
  - All work that could result in direct injury, disturbance, or harassment of the individual animal will immediately cease.
  - The foreman and on-site biologist will be immediately notified.
  - The on-site biologist will monitor it until he/she determines that the animal(s) are not imperiled by predators or other dangers.
  - The on-site biologist will notify the Service within one working day following any encounters with potential salt marsh harvesting mice during construction via electronic mail and telephone.

Any contractor, employee, or agency personnel who inadvertently kills or injures a salt marsh harvest mouse will immediately report the incident to the on-site biologist. The on-site biologist will contact the USFWS to report the dead or injured animal via electronic mail and telephone within one working day.

California Clapper Rail

The project proposes to implement the following mitigation and avoidance measures to reduce impacts to salt marsh harvest mice:

- In order to avoid potential impacts to the California Clapper Rail, it is recommended that work activities occur between September 1st and December 31st, which is outside of the California Clapper Rail breeding season. If work activities are scheduled to occur during the California Clapper Rail breeding season (January 1st through August 31st), a 600-foot buffer shall be maintained for nesting areas. Surveys for California Clapper Rail would follow the USFWS January 21, 2000, draft survey protocol (or any subsequent revision). Prior to initiating surveys, a survey protocol would be developed and provided to the USFWS for review and approval. After the surveys are completed and prior to the initiation of wetland restoration construction activities, the results of the surveys would be provided to the USFWS for review to evaluate the appropriateness of activities

being proposed by the project proponent. Restoration-related construction activities would not be initiated until after the USFWS has approved the planned activities based on the review of the survey results.

Western Snowy Plovers

The project proposes to implement the following mitigation and avoidance measures to reduce impacts to Western Snowy Plovers:

- In order to avoid potential impacts to Western Snowy Plover that may use the project site for foraging, the on-site biologist will check for presence of this species within 300 feet of the mitigation area each morning before construction is allowed to proceed. If this species is not present, wetland construction may proceed. If this species is present, the biologist will monitor the Western Snowy Plover(s) and allow construction to proceed only when the plover(s) are outside the 300 foot buffer area.

Central California Coast Steelhead

The project proposes to implement the following mitigation and avoidance measures to reduce impacts to the Central California Coast Steelhead:

- Construction Best Management Practices (BMPs) for sediment control, such as the use of silt curtains, shall be used to prevent downstream water quality impacts to waterbodies including Coyote Creek. These BMPs would also prevent any potential water quality impacts on Central Valley Chinook Salmon.

All other environmental impacts of the proposed project, including aesthetics, agricultural resources, air quality, geology and soils, hazards and hazardous materials, hydrology and water quality, land use, mineral resources, noise, population and housing, public services, recreation, transportation, and utilities and service systems would create a less than significant environmental impact. The environmental impacts associated with the previously adopted Planned Development Rezoning are addressed in the Final EIR entitled, "Zanker Material Recycling Facility Project," certified by the Planning Commission on January 30, 2008. The mitigation measures from the subject rezoning and the previously adopted rezoning are included in the development plan for this project (see attached development standards).

General Plan Conformance

The site is located within the Alviso Master Plan Area. The Alviso Master Plan, adopted in 1998, is incorporated into the San José 2020 General Plan as the Alviso Planned Community. Under the Master Plan, the land use designation of the project site is Private Open Space with a Candidate Solid Waste Disposal Site overlay. The Private Open Space designation applies to privately owned lands for low intensity, open space activities. The Candidate Solid Waste Disposal Site overlay designation is applied to currently operating solid waste disposal sites in the Master Plan area. Landfill facilities may be either public or private enterprises, and may include related or ancillary activities such as recycling resources recovery or composting, that for sites located within the City's Urban Service and Urban Growth Boundary, may continue on a portion of the site after landfill closure. The underlying designation of Private Open Space is compatible with the Candidate Solid Waste Disposal Site designation.

Land Use Compatibility

The land use key compatibility issues associated with the proposed project was analyzed as part of the previous rezoning adopted by the City Council in 2008 (Planned Development Permit File Number PDC06-120). The land use compatibility issues analyzed included visual impacts, the effects of the project activity, noise and nighttime

lighting on the adjacent Wildlife Refuge and the community of Alviso, and increased truck to and from the site 24 hours per day, seven days a week. These issues would not change or create any additional land use compatibility impacts as a result of this proposed rezoning.

Aesthetics

The proposed modified driveway configuration would not result in visual impacts greater than that addressed in the previously adopted rezoning. The project site is not located along a designated scenic roadway or a City landscaped throughway. The proposed driveway modification and wetland restoration would involve ground-level improvements that would only be visible from the immediate vicinity of the project site. Landscaping proposed under this rezoning would soften and screen views of the modified driveway from Los Esteros Road. The proposed modifications to the driveway design and on-site circulation would not substantially change or have a substantially adverse impact on the visual character or quality of the site from the surrounding area.

The project also proposes to remove fill materials from an adjacent salt marsh area and restore an area of tidal channel within the marsh. Once the restoration is completed and the vegetation established, this modification to the flat bayland area would be in keeping with the visual character of the baylands in the Alviso area.

Traffic

The existing approved driveway configuration extends to the west at a sharp angle off Los Esteros Road and continues along the southern border of the site. The project proposes to modify the driveway to extend at a more perpendicular angle and would include a spur extending to the east. The modified driveway would be widened to accommodate two inbound lanes and one outbound lane. The proposed driveway configuration would include an employee entrance road to connect to the main entrance driveway to the rest of the project site such that employee traffic could be separated from truck traffic waiting at the inbound weigh scales. The configuration would allow employees to access the site without waiting in the queue of vehicles at inbound scales, resulting in more efficient on-site circulation.

The proposed project, including modification of the entrance driveway alignment and internal circulation, would not increase traffic or change truck access routes beyond what was analyzed as part of the previous Planned Development Rezoning approved in 2008 (File Number PDC06-120). Therefore, driveway modifications would not result in impacts to the residents of the community of Alviso.

Noise

Noise impacts were analyzed as part of the previous Planned Development Rezoning. The project provided benefits in reducing noise by having the recycling operations within a covered building located away from the Wildlife Refuge, and using the landfill mass and parking lot as a noise barrier. No significant noise impacts on sensitive uses in Alviso were reported for either the original or proposed project due to the approximately 2,000-foot separation between the project site and the nearest residence. The proposed driveway modification and associated wetland mitigation would not increase operations on the site, and no additional vehicle trips would be created. Therefore, the proposed project would not result in any new significant noise impacts compared to those addressed in the previous Planned Development Rezoning.

Recycling Goals

The continued use of resource materials recovery after the closure of the existing landfill is consistent with the City's goals of recovering the resource value of solid waste and fostering the establishment of facilities that constructively use and reinvest such resources in the local economy, as well as promoting recycling in the City.

The resource recovery operations would not only help the City meet its waste diversion goals mandated by State Assembly Bill 939 and be consistent with the County's Integrated Waste Management Plan, but would also enable the City to meet its more aggressive goal of 75 percent waste diversion by 2013, and a goal of zero waste by 2022.

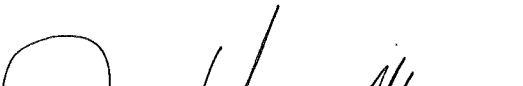
Conclusion

The proposed project to allow: 1) the modification of the on-site driveway from Los Esteros Road entrance and associated wetland mitigation; 2) an additional truck scale associated with the proposed eastern spur of the modified driveway may be located to the east of the Materials Recovery Facility; and 3) the reconfiguration of the paved parking area on the top deck of the closed landfill would be altered would result in more efficient on-site circulation than the configuration previously approved per Planned Development Rezoning File Number PDC06-120. The project has no significant unmitigated environmental impacts, and staff recommends approval of this Planned Development Rezoning to bring the facility into conformance with all required City and County regulations.

PUBLIC OUTREACH/INTEREST

- ☐ **Criteria 1**: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**
- ☐ **Criteria 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. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 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. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A notice of this Planning Commission public hearing, and subsequent City Council hearing, was mailed to the owners and tenants of all properties located within 1,000 feet of the project site, as well as over 1,000 tenants and property owners located in the Alviso area, and posted on the City website. A sign notifying the public of the proposed development was posted on site. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Project Manager: Sylvia Do **Approved by:**  **Date:** 11/10/09

Owner/Applicant:	Attachments:
Erik Schoennauer (applicant) The Schoennauer Company 2066 Clarmar Way San José, CA 95128 Zanker Road Resource Management, Ltd. (owner) c/o Paul Lineberry 1500 Berger Drive San José, CA 95112	- Development Standards - Plans

File No. PDC08-054
Revised 11/5/2009

ZANKER ROAD MATERIAL PROCESSING FACILITY – ZONING CONDITIONS

DEVELOPMENT STANDARDS

Tonnage Limits

The facility shall accept a maximum of 5,000 tons of waste per day and shall landfill on-site a maximum of 350 tons per day.

Height Limit

The maximum height of the landfill shall not exceed 50 feet above MSL. The maximum height of the stockpiles and baled materials (resource recovered) shall at no time exceed 20 feet. The maximum building height limit of the Material Recovery Facility (MRF) not to exceed 70 feet above grade.

Hours of Operation

The site can be operated 24 hours per day, 7 days per week. It will be closed on major holidays (New Year's Day, Easter, Thanksgiving and Christmas).

Landfill Closure

The on-site landfill operation shall close by the year 2021. Post-closure maintenance and monitoring of the landfill will continue for a minimum of 30 years after official landfill closure. Material Recovery Facility operation to commence after the closure of the landfill.

Proposed Uses for the Landfill After Closure

The project proposes to utilize the top deck area of the closed landfill for operations that are ancillary to the proposed MRF operations in the southern portion of the site. These ancillary operations would include1) employee parking, 2) truck/equipment parking, 3) temporary material storage, 4) a fueling station for trucks and equipment, 5) and a recovered soils and materials yard.

Access

Modify the driveway so it intersects Los Esteros Road at an angle closer to 90 degrees.

Sanitary

Possible sanitary sewer connections and options available to the project include but not limited to:

a) Truck hauling of waste water to San Jose/Santa Clara Water Pollution Control Plant;
b) Connection to existing 10-inch sanitary line located across Los Esteros Road from ZMPF;
c) Connect to sanitary sewer system in the Community of Alviso via new pipeline through designated open space land owned by Zanker Road Resources Management, Ltd.;
d) Connect to sanitary sewer system in the Community of Alviso new pipeline down Los Esteros Road right-of-way;

e) Connect to sanitary sewer system in the Community of Alviso via new pipeline down federally-owned road located north of ZMPF.

WASTE STREAM

According to Waste Discharge Requirements (WDRs) for the site only non-hazardous and non-decomposable waste would be landfilled at the site. Green waste, food waste and decomposable municipal solid waste would be processed in the MRF and transported to off-site approved facilities. No materials associated with the acceptance, screening handling, or transfer of yard/green wastes, food wastes, and MSW would be landfilled on-site at the ZMPF. As defined by Title 14, hazardous wastes, infectious wastes, liquid wastes, friable asbestos and sludges will not be accepted.

Zanker MRF Mitigation Measures

A. AIR QUALITY

a. Implementation of the measures recommended by BAAQMD and those listed below would reduce the air quality impacts associated with grading and new construction to a less than significant level. Measures to reduce diesel particulate matter and PM2.5 from construction are recommended to ensure that short-term health impacts to nearby sensitive receptors are avoided.

i. Dust (PM10) Control Measures:

1. Water all active construction areas at least twice daily and more often during windy periods.
2. Cover all hauling trucks or maintain at least two feet of freeboard.
3. Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.
4. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
5. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).
6. Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles.
7. Limit traffic speeds on any unpaved roads to 15 mph.
8. Replant vegetation in disturbed areas as quickly as possible.
9. Suspend construction activities that cause visible dust plumes to extend beyond the construction site.
10. During renovation and demolition activities, removal or disturbance of any materials containing asbestos or other hazardous pollutants will be conducted in accordance with BAAQMD rules and regulations.

B. BIOLOGICAL RESOURCES

a. Special-status Species and/or Nesting Birds

i. If possible, construction in the seasonal wetland area shall be scheduled to avoid the breeding season for special-status birds and birds protected by the Migratory Bird Treaty Act (typically between January 1st and August 31st). If this is not possible, pre-construction surveys for special-status species and/or nesting birds shall be completed by a qualified ornithologist. Between January and April (inclusive), pre-construction surveys shall be completed no more than 14 days prior to the initiation of construction activities. Between May and August (inclusive), pre-construction surveys shall be completed no more than 30 days prior to the initiation of construction activities. In the event special-status species and/or nesting birds are observed in the area to be disturbed or within 250 feet, construction buffers will be established by the ornithologist in consultation with the California Department of Fish and Game and/or USFWS, as appropriate. The contractor

shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Environmental Principal Planner and the Director of Public Works prior to the start of construction. Construction activities would not be initiated until after the California Department of Fish and Game and/or USFWS has approved the planned activities based on the review of the survey results and proposed buffers.

b. Salt Marsh Harvest Mice

i. Post-Construction Habitat Monitoring/Restoration: A formal Habitat Mitigation and Monitoring Plan will be developed for agency review and approval prior to construction. The final approved plan shall be submitted to the City's Environmental Principal Planner in the Department of Planning, Building and Code Enforcement. Pickleweed, saltgrass and other native salt marsh species will be planted in the newly constructed wetland and there will be at least five years of monitoring to ensure the successful establishment of these plantings. During the monitoring visits, a qualified biologist will estimate the success rate of establishment of these native salt marsh species. A brief monitoring report will be provided to USFWS and the City of San José on November 30th of the first year following construction. This letter report will document the results of the monitoring.

ii. Section 7 Permit: Prior to construction, the applicant shall complete consultation under Section 7 of the federal Endangered Species Act due to the presence of the Salt Marsh Harvest Mouse. Consultation with the USFWS was initiated by the project proponent in April 2009. The project proponent shall comply with conditions of the Section 7 permit.

iii. USFWS-Approved Biologist: Prior to the Project groundbreaking, the applicant will submit to the USFWS for its review the qualifications of its qualified biologist(s). The biologist(s) will be given the authority to stop any work that may result in the take of a listed species. If the biologist(s) exercises this authority, the USFWS will be notified by telephone and electronic mail within one working day. The onsite biologist will be the contact for any employee or contractor who might inadvertently kill or injure a salt marsh harvest mouse, or find a dead, injured, or entrapped salt marsh harvest mouse. The on-site biologist(s) will possess a working cellular telephone, and this phone number will be provided to the USFWS.

iv. Construction Employee Education: Prior to construction, a construction employee education program will be completed in reference to the potential endangered species on the site. At a minimum, the program will consist of a brief presentation by persons knowledgeable in endangered species biology and legislative protection to explain concerns to contractors, their employees, and agency personnel involved in the project. The program will include the following: a description of the species and their habitat needs; reports of occurrences in the mitigation area; an explanation of the status of each endangered species and their protection under the Endangered Species Act; and a list of measures being taken to reduce impacts to the species during project construction and implementation. Fact sheets conveying this information will be prepared for distribution to the above-mentioned people and anyone else who may enter the mitigation area.

v. Construction Work Mitigation Measures:

1. Prior to impacting potential salt marsh harvest mouse habitat, the area of potential impact will be flagged by construction personnel and verified by the on-site biologist.

2. After the area has been flagged, pickleweed vegetation will be cleared by hand (with no hand tools) in order to facilitate salt marsh harvest mouse detection. Areas cleared will be those within the flagged restoration area and an additional two feet beyond the flagged area to provide a bare ground buffer. Vegetation to be removed that is not pickleweed dominant will be cleared by hand with mechanical hand tools. The on-site biologist will monitor the vegetation removal to ensure that invasive species are removed, isolated from other removed marsh vegetation, and disposed of properly.
3. Once the restoration area has been cleared, temporary exclusion fencing will be placed two feet inside the vegetation clearing perimeter. This small portion of cleared vegetation between potential salt marsh harvest mouse habitat and the exclusion fence is meant to dissuade mice from climbing the fence and entering the work area. It is thought that salt marsh harvest mouse will generally avoid areas devoid of cover. Fence material will consist of heavy plastic sheeting (as it is more difficult for rodents to climb) and fence height will be at least 12 inches higher than the highest adjacent vegetation with a maximum height of four feet. The fence bottom will be attached to the ground with landscape staples. Care will be given to insure no gaps will occur either under the sheeting or at seams. Stakes will be located on the inside of the exclusion fence to deter mice from climbing stakes into the work area and facilitate mice exiting the work area.
4. Pre-construction surveys within the exclusion fence and an exclusion fence integrity check will be performed by the U.S. Fish and Wildlife Service (USFWS)-approved biologist each day prior to beginning restoration activities.
5. The exclusion fence will be temporarily removed at each of the three breach locations and replaced in the new locations once excavation is completed in each breach area.
6. The exclusion fence will be removed immediately following work completion. Vegetation saved during the vegetation clearing will be strewn over the completed work area to provide temporary cover for the mouse.
7. All work within the mitigation area during the construction phase of the project will be done under the supervision of a USFWS-approved biologist.

vi. Entrapment Prevention: In order to prevent potential entrapment of salt marsh harvest mice in work equipment, any pipes or similar objects located in salt marsh harvest mouse habitat will be capped prior to the end of the work day or inspected by the USFWS-approved biologist prior to commencement of work activities the following day. If a salt marsh harvest mouse is discovered, it will be relocated to the nearest salt marsh harvest mouse habitat by the USFWS-approved biologist.

vii. Best Management Practices: The applicant will ensure that a readily available copy of the Biological Opinion is maintained by the construction foreman/manager on the project site whenever construction activities are taking place. The name and telephone number of the construction foreman/manager will be provided to the USFWS prior to the project groundbreaking.

All food-related trash items, such as wrappers, cans, bottles, and food scraps, will be disposed of in solid, closed containers (trash cans) and removed at the end of each work day from the entire construction site in order to avoid attracting predators of the salt marsh harvest mouse to the site.

viii. Sighting Protocol: If salt marsh harvest mice, or any mouse that construction personnel may believe is this species, is encountered during project construction, the following protocol will be followed:

1. All work that could result in direct injury, disturbance, or harassment of the individual animal will immediately cease.
2. The foreman and on-site biologist will be immediately notified.
3. The on-site biologist will monitor it until he/she determines that the animal(s) are not imperiled by predators or other dangers.
4. The on-site biologist will notify the Service within one working day following any encounters with potential salt marsh harvesting mice during construction via electronic mail and telephone.

Any contractor, employee, or agency personnel who inadvertently kills or injures a salt marsh harvest mouse will immediately report the incident to the on-site biologist. The on-site biologist will contact the USFWS to report the dead or injured animal via electronic mail and telephone within one working day.

c. California Clapper Rail

i. In order to avoid potential impacts to the California Clapper Rail, it is recommended that work activities occur between September 1st and December 31st, which is outside of the California Clapper Rail breeding season. If work activities are scheduled to occur during the California Clapper Rail breeding season (January 1st through August 31st), a 600 foot buffer shall be maintained for nesting areas. Surveys for California Clapper Rail would follow the USFWS January 21, 2000, draft survey protocol (or any subsequent revision). Prior to initiating surveys, a survey protocol would be developed and provided to the USFWS for review and approval. After the surveys are completed and prior to the initiation of wetland restoration construction activities, the results of the surveys would be provided to the USFWS for review to evaluate the appropriateness of activities being proposed by the project proponent. Restoration-related construction activities would not be initiated until after the USFWS has approved the planned activities based on the review of the survey results.

d. Western Snowy Plover

i. In order to avoid potential impacts to Western Snowy Plover that may use the project site for foraging, the on-site biologist will check for presence of this species within 300 feet of the mitigation area each morning before construction is allowed to proceed. If this species is not present, wetland construction may proceed. If this species is present, the biologist will monitor the Western Snowy Plover(s) and allow construction to proceed only when the plover(s) are outside the 300 foot buffer area.

e. Central Coast California Steelhead

i. Construction Best Management Practices (BMPs) for sediment control, such as the use of silt curtains, shall be used to prevent downstream water quality impacts to waterbodies including Coyote Creek. These BMPs would also prevent any potential water quality impacts on Central Valley Chinook Salmon.

C. GEOLOGY AND SOILS

a. A detailed, design-level geotechnical investigation for the project shall be completed by the applicant and shall be reviewed and approved by the City Geologist, prior to approval of a PD Permit for any phase of the project. The geotechnical investigation shall identify and describe the specific engineering practices to be used to reduce or avoid all possible geologic hazards on the site, which shall be incorporated into the project design. It is anticipated that fill and waste under the building locations would be over-excavated. The specific approaches to be implemented will be based on additional site studies and final project design.

D. HYDROLOGY AND WATER QUALITY

a. **Post-Construction Mitigation Measures**

i. When the construction phase is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the RWQCB and the City of San José. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction stormwater management plan is in place as described in the SWPPP for the project site.

ii. All post-construction Treatment Control Measures (TCMs) will be installed, operated, and maintained by qualified personnel. On-site inlets will be stenciled in conformance with City requirements and cleaned out a minimum of once per year, prior to the wet season.

In addition to all of the foregoing, the applicant also has agreed to timely perform and effect all of the following conditions, which conditions were made a condition of City approval of this rezoning. (12/1/2009)

1. Direct the applicant, Zanker Road Resource Management, Ltd., to assist the City in analyzing traffic counts and traffic impacts at or immediately after commencement of operations of the proposed development. While staff has determined that the proposed project is in conformance with the City of San Jose Transportation Level of Service Policy, it is important to validate that the proposed project, once it is in full operation, will not cause safety risks to truck drivers who serve the site or to residents and visitors in the vicinity of the proposed project.
2. Direct the applicant to work with the City to conduct a street sweeping program for Los Esteros and Zanker Road that maintains the health, safety, and cleanliness of the road using the timetable under the direction in Item 1; and
3. Direct the applicant to work with the City during the PD permit phase of the project to generate an appropriate plan and protocol for truck parking facility.