

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS REGARDING ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES, APPROVING CERTAIN MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING FINDINGS CONCERNING ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, FOR THE PLANNED DEVELOPMENT REZONING FOR NEWBY ISLAND SANITARY LANDFILL AND THE RECYCLERY REZONING PROJECT FOR WHICH AN ENVIRONMENTAL IMPACT REPORT HAS BEEN PREPARED

WHEREAS, the City of San José (“City”), as lead agency, has completed and certified that certain Final Environmental Impact Report for the Newby Island Sanitary Landfill and the Recyclery Rezoning Project (the “Final EIR”), which project is more fully described in the Final EIR (“Project”), and the Final EIR has been assigned State Clearinghouse No. 2007122011; and

WHEREAS, a Draft Environmental Impact Report for the Project (the “Draft EIR”) was completed and released for public and agency review on September 21, 2009. The Draft EIR assesses the potential environmental effects of implementation of the Project, identifies means to eliminate or reduce potential adverse environmental impacts resulting from implementation of the Project, and evaluates a reasonable range of alternatives to the Project. The Draft EIR includes a CD-ROM of Appendices referred to and described in the Draft EIR. The Final EIR comprises the Draft EIR, together with the First Amendment to the Draft EIR, which First Amendment is an additional volume that includes the comments on the Draft EIR submitted by interested public agencies, organizations and members of the public, written responses to the environmental issues raised in those comments, amendments to the text of the Draft EIR reflecting changes made in response to comments and other information, and other minor changes to the text of the Draft EIR; and

WHEREAS, prior to the adoption of this Resolution, the Planning Commission of the City of San José, pursuant to the provisions of Title 21 of the San José Municipal Code, has certified that the Final EIR for the Project was completed in accordance with the requirements of the California Environmental Quality Act, together with related state and local implementation guidelines (collectively, “CEQA”).

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

WHEREAS, the Project as a whole requires City approval of a Planned Development (PD) Rezoning; and

WHEREAS, CEQA requires that, in connection with the approval of a project for which an environmental impact report has been prepared which identifies one or more significant environmental effects of the project, the decision-making body make certain findings and determinations regarding those effects;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

THAT THE CITY COUNCIL does hereby find and certify that the Final EIR has been prepared and completed in compliance with CEQA. In making this certification, this Council further certifies that it has independently reviewed and considered the Final EIR and all other information in the record, prior to acting upon or approving the Project, and has found that the Final EIR represents the independent judgment of the City of San José as Lead Agency for the Project; and

THAT THE CITY COUNCIL does hereby make the following findings with respect to the significant effects on the environment of such Project, as more fully identified in the Final EIR, with the stipulation that all information in these findings is intended as a summary of the full administrative record supporting the Final EIR, which full administrative record should be consulted for the full details supporting these findings; and

THAT THE CITY COUNCIL does hereby adopt and impose the mitigation measures set forth in Exhibit A (the Mitigation Monitorin and Reporting Program) to this Resolution as conditions of approval of the Project; and

THAT THE CITY COUNCIL does hereby adopt the Mitigation Monitoring and Reporting Program for the Newby Island Sanitary Landfill and the Recyclery Rezoning Project accompanying this Resolution.

FINDINGS

CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS

A. INTRODUCTION

These CEQA findings are adopted by the City Council of the City of San Jose as lead agency for the Project. These CEQA findings are adopted in connection with the approval and adoption of an Ordinance approving City File No. PDC07-071, a

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

Planned Development Rezoning from R-M Multiple Residence and A(PD) Planned Development Zoning Districts to A(PD) Planned Development Zoning District to allow a landfill, recyclable processing, and composting uses at an existing landfill and materials recovery facility (Newby Island Sanitary Landfill and Recyclery), to increase the maximum height of the landfill from 150 feet to 245 feet, and to increase the landfill capacity by 15.12 million cubic yards on a 352 gross acre site.

B. ENVIRONMENTAL REVIEW OF THE PROJECT

Pursuant to CEQA, the City determined that an environmental impact report would be prepared for the Project. The City issued a Notice of Preparation, which was circulated to responsible agencies and interested groups and individuals for review and comment.

The Draft EIR was prepared for the Project to analyze its environmental effects. The Draft EIR was circulated for public review and comment from September 21, 2009 to November 5, 2009.

The City received numerous comments on the Draft EIR. Working with its environmental consultants, David Powers and Associates, the City prepared responses to all those comments that raised environmental issues. The responses describe the disposition of significant environmental issues raised by the comments and sometimes make changes and additions to the Draft EIR in response to those comments. The comments, responses to comments, resulting changes to the Draft EIR and additional information are all included in a First Amendment to the Draft EIR which was completed and made available to the public on May 24, 2012. The Draft EIR, the First Amendment to the Draft EIR, and all the appendices to the EIR comprise the Final EIR referenced in these findings as the "EIR" or the "Final EIR." The Final EIR is hereby incorporated into this Resolution by this reference as if fully set forth herein.

The Planning Commission held a hearing on the Final EIR and the Project on June 6, 2012. During these hearings, members of the public had the opportunity to submit comments and express their concerns and interest related to the Project and the Final EIR.

In making these findings, the City Council recognizes that the environmental analysis of the Project raises several controversial environmental issues, and that a range of technical opinion exists with respect to those issues and that there are differing and conflicting expert and other opinions regarding the Project, its impacts, and the feasibility of reducing or avoiding those impacts. These differences of opinion and expert opinion relate to the research or analytical methodologies the EIR employed, such as those relating to biological resource issues. The City Council has, by its review of the evidence and analysis presented in the EIR, and other evidence in the record, acquired an understanding of the breadth of this technical opinion and of the scope of

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

the environmental issues presented by the Project. In turn, this understanding has enabled the City to make informed, carefully considered decisions after taking account of the various viewpoints on these important issues. These findings are based on full appraisal of all viewpoints expressed in the EIR and in the record as well as other relevant evidence in the record of proceedings for the Project.

C. THE RECORD

The record upon which all findings and determinations related to the Project and the EIR are based includes the following:

- a. The EIR, and all documents referenced in or relied upon by the EIR.
- b. All information (including written evidence and testimony) provided by City staff to the Planning Commission, and the City Council relating to the EIR or the proposed approvals for the Project.
- c. All information (including written evidence and testimony) presented to the Planning Commission, or the City Council by the environmental consultant and sub consultants who prepared the EIR, or incorporated into reports presented to these Commissions or the Council.
- d. All information (including written evidence and testimony) presented to the City by other public agencies relating to the EIR or the Project.
- e. All applications, letters, testimony and hearing presentations given by any of the project sponsors or their consultants to the City in connection with the Project.
- f. All information (including written evidence and testimony) presented to the City by members of the public relating to the EIR or the Project.
- g. For documentary and information purposes, all City-adopted land use plans and ordinances, including, without limitation, general plans, specific plans, and ordinances.
- h. The Mitigation Monitoring and Reporting Program for the Project.

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

- i. All other documents comprising the record of proceedings pursuant to Public Resources Code section 21167.6(e).

These findings are based upon the evidence in the entire record of the City's proceedings relating to the Project. The City concludes that all the evidence supporting these findings was presented in a timely fashion, and early enough to allow adequate consideration by the City. Some findings are based on specific references, as noted below. References to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the findings. The reference to certain parts of the EIR set forth in these findings are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

The custodian of the documents and other materials that constitute the record of proceedings on which the City's decision is based is the Director of Planning, Building and Code Enforcement, or his designee. Such documents and other materials are located at 200 East Santa Clara Street, San José CA 95113-1905.

D. CERTIFICATION OF THE EIR

In accordance with CEQA, the City Council, by this Resolution, acknowledges: that the Final EIR has been previously certified by the City's Planning Commission as having been completed in compliance with CEQA, that the Final EIR was presented to the City Council as the decision-making body for the proposed rezoning Project and that the members of the City Council reviewed and considered the information contained in the Final EIR prior to taking action on the Project. Preparation of the Final EIR has been overseen by the Director of the Department of Planning, Building and Code Enforcement, who also participated in its preparation. The City Council further finds and determines that the conclusions and recommendations in the Final EIR document represent the independent conclusions and recommendations of the City and that the Final EIR and these findings represent the independent judgment and analysis of the City. By these findings, the City Council confirms, ratifies and adopts all of the findings and conclusions of the Final EIR, except as they may be specifically modified by these findings.

The City Council recognizes that the Final EIR may contain clerical errors. The City Council has reviewed the entirety of the Final EIR and bases its determinations on the substance of the information it contains.

By adopting these findings, the City Council certifies that the Final EIR is adequate to support its review and approval of the Project and that it is adequate for each discretionary approval or other entitlement or approval required for construction and operation of the Project.

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

Since the Draft EIR was completed, certain changes and refinements to the Project have been made at the request of the City to improve and enhance it and other changes have been made to incorporate mitigation measures, or to make the Project more environmentally beneficial. Such changes, modifications and refinements to the Project have no adverse effect on physical impacts of the Project and do not raise additional environmental concerns. The City Council is fully apprised of these modifications, and determines that the impacts of the Project as it is approved are within the range of impacts studied in the Final EIR and the Final EIR is adequate to support approval of the Project. By adopting these findings, the City Council certifies that the Final EIR is adequate to support approval of each component of the Project with such modifications.

E. ABSENCE OF SIGNIFICANT NEW INFORMATION

The City Council recognizes that the Final EIR incorporates information obtained and produced after the Draft EIR was completed, and that it contains additions, clarification, and modifications. The City Council has reviewed and considered the information in the Final EIR, and the City Council finds and determines that neither the Final EIR, nor any of these modifications, adds significant new information to the Draft EIR that would require recirculation of the Final EIR under CEQA. No information has revealed the existence of (1) a significant new environmental impact that would result from the Project or an adopted mitigation measure; (2) a substantial increase in the severity of an environmental impact; (3) a feasible Project alternative or mitigation measure not adopted that is considerably different from others analyzed in the Draft EIR that would clearly lessen the significant environmental impacts of the Project; or (4) information that indicates that the public was deprived of a meaningful opportunity to review and comment on the Draft EIR. The City Council further finds and determines that the changes and modifications made to the Project and to the EIR after the Draft EIR was circulated for public review and comment do not collectively or individually constitute significant new information within the meaning of Public Resources code section 21092.1 or CEQA Guidelines section 15088.5.

F. MITIGATION MEASURES AND MMRP

As set forth in this Resolution, the City Council has adopted the mitigation measures described in Exhibit A as conditions of approval of the Project.

The mitigation measures comprise the measures necessary to avoid or reduce significant environmental impacts where it is feasible to do so. The mitigation measures incorporated into and imposed upon the Project will not have new significant environmental impacts that were not analyzed in the Final EIR.

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

It is the City's intent to adopt all mitigation measures recommended by the Final EIR. In the event a mitigation measure recommended by the Final EIR has been inadvertently omitted from Exhibit A (the Mitigation Monitoring and Reporting Program" or "MMRP"), that mitigation measure is hereby adopted and incorporated from the Final EIR into those documents by reference and adopted as a condition of approval of the Project.

Public Resources Code section 21081.6, and CEQA Guidelines section 15097 require the City to adopt a mitigation monitoring or reporting program to ensure that the mitigation measures and revisions to the Project identified in the Final EIR are implemented. By this Resolution, the MMRP has been adopted by the City Council. The City Council hereby finds and determines that the MMRP satisfies the requirements of CEQA.

The mitigation measures recommended by the Final EIR as reflected in the conditions of approval are specific and enforceable. As appropriate, some mitigation measures define performance standards to ensure no significant environmental impacts. The MMRP adequately describes conditions, implementation, verification, a compliance schedule and reporting requirements to ensure the Project complies with the adopted mitigation measures. The MMRP ensures that the mitigation measures are in place, as appropriate, throughout the life of the Project.

The mitigation measures set forth in Exhibit A and the corresponding conditions of approval are based upon the mitigation measures set forth in the Final EIR.

Any mitigation measures that were suggested by commenters to the Draft EIR and were not adopted as part of the Final EIR are hereby expressly rejected for the reasons stated in the responses to the comments set forth in the Final EIR.

G. FINDINGS REGARDING ENVIRONMENTAL IMPACTS

In accordance with Public Resources Code section 21081 and CEQA Guidelines sections 15091 and 15092, the City hereby adopts the findings and conclusions set forth in the Final EIR regarding the environmental impacts that will result for the Project and also adopts the findings and conclusions regarding the effect of mitigation measures in reducing or avoiding such impacts. The City hereby ratifies, adopts and incorporates the analyses, explanations, findings, responses to comments, and conclusions of the Final EIR as they may be augmented or specifically modified by these findings. These findings do not repeat the full discussions of environmental impacts contained in the Final EIR; the Final EIR's discussions and the potential environmental impacts of the Project, the significance of those impacts prior to mitigation, the mitigation measures for those impacts, and the significance of the environmental impact with mitigation are summarized in Exhibit A.

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

As set forth in Exhibit A, all environmental impacts of the Project are less-than-significant, or will be mitigated to a less-than-significant level by the mitigation measures adopted as conditions of approval. Unless expressly otherwise specified, the Project proponent shall be responsible for undertaking, timely completing, and otherwise maintaining and ensuring compliance with all of the mitigation measures adopted as conditions of approval of Project.

SIGNIFICANT ENVIRONMENTAL IMPACTS

Air Quality

Impact: **Impact AIR – 1:** The Project's operating emissions would exceed BAAQMD annual thresholds for nitrogen oxide (NO_x) and VOCs/POCs/ROGs. **(Significant Impact)**

Mitigation: **MM AIR – 1.1:** As required by BAAQMD regulations, the Project proponent shall be responsible for purchasing NO_x and VOCs/POCs/ROGs offsets for emissions in excess of BAAQMD's current annual emission thresholds for NO_x and VOCs/POCs/ROGs or obtaining the offsets through BAAQMD's Small Facility Banking Account.

Finding: Implementation of MM AIR – 1.1 would reduce the Project's impacts from NO_x and VOCs/POCs/ROGs emissions to a **less than significant level**.

Facts in Support of Finding: Implementation of MM AIR – 1.1 would reduce the Project's NO_x and VOCs/POCs/ROGs emissions impacts by requiring the Project to offset those emissions to below the threshold of significance (15 tons per year for each pollutant).

Biological Resources

Impact: **Impact BIO – 7:** If burrowing owls locate on the landfill surface in the path of ongoing operations, the proposed height expansion and associated extension of the landfill's operating life would result in significant impacts to burrowing owls and their burrows if present on-site. **(Significant Impact)**

Mitigation: **MM BIO – 7.1:** *Pre-activity Surveys.* To avoid take of burrowing owls in violation of the Migratory Bird Treaty Act (MBTA), the Project Proponent

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

shall complete surveys for burrowing owls in potential habitat in conformance with the California Department of Fish and Game (CDFG) protocol, no more than 15 days prior to the start of any new ground-disturbing activity (*i.e.*, any activity that is not already ongoing at the same location as part of the current landfill operations) associated with the expansion of the landfill, such as filling or grading in previously undisturbed ruderal/grassy areas.

If no burrowing owls are located during these surveys, no additional action is warranted. If these surveys detect burrowing owls on or within 250 feet of the location proposed for landfilling, grading, or other activities, then any ongoing activity can continue as long as it does not increase in intensity, or encroach closer to an existing burrow, based on a review of proposed/ongoing activities in the burrow's vicinity by a qualified biologist, and as long as the existing burrow is not destroyed and owls are not in danger of being harmed. If activity would increase in intensity or proximity to an occupied burrow, based on a review of proposed/ongoing activities in the burrow's vicinity by a qualified biologist, the following measures shall be implemented:

- *Buffer Zones.* If burrowing owls are present during the breeding season (generally 1 February to 31 August), a 250-foot buffer, within which no new Project-related activity shall be permissible, shall be maintained between Project activities and occupied burrows. Owls present at burrows on the site after 1 February shall be assumed to be nesting on or adjacent to that location unless evidence indicates otherwise to the qualified biologist. This protected area shall remain in effect until 31 August or, based upon monitoring evidence, until the young owls are foraging independently.
- *Relocation.* If ground-disturbing activities would directly impact an occupied burrow, the owl(s) shall be evicted outside the nesting season to avoid impacts to the bird(s). No burrowing owls shall be evicted from burrows during the nesting season (1 February through 31 August) unless evidence indicates that nesting is not actively occurring (*e.g.*, because the owls have not yet begun nesting early in the season, or because young have already fledged late in the season).

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

Finding: Implementation of MM BIO – 7.1 would reduce the Project’s impact to burrowing owls to a **less than significant level**.

Facts in Support of Finding: Expansion of landfilling into inactive areas requires approval by the Local Enforcement Agency (“LEA”). The LEA can require that the expansion area be properly prepared to receive additional waste, consistent with local state and federal laws. The actions in MM BIO – 7.1 are necessary to comply with the MBTA and will be required by the LEA.

Impact: **Impact BIO – 13:** The approval of the Project would increase the landfill’s capacity, which would extend the useful life of the landfill and its availability to gulls, corvids, and other nuisance species as a food resource. The proposed Project would result in significant indirect impacts to sensitive wildlife from nuisance species at the landfill and Recyclery. **(Significant Impact)**

Mitigation: The following mitigation measures are incorporated by reference and are described in full in the Final EIR.

MM BIO – 13.1: The Nuisance Species Abatement Plan (NSAP) for the Project, as discussed in more detail in the Final EIR, shall be fully implemented at the landfill and the Recyclery as long as the landfill and/or Recyclery are in operation. The NSAP includes standard nuisance species abatement measures (maintaining the minimum size working face of the landfill consistent with existing practice and permits; compacting and covering refuse; covering and rapid processing of tires; minimizing surface water; trapping or shooting medium-sized mammals; using rodenticides within buildings; and minimizing cover near nuisance species food sources and sensitive habitats) that must be implemented, as well as adaptive nuisance species abatement measures (pyrotechnics, paintball guns, vehicles, trained dogs, trained falcons, human disturbance, distress call recordings, predator calls, decoys of distressed birds, visual distraction/deterrent devices, vegetation management, physical barriers and roots deterrents, rodent trapping, a mobile component to gull abatement, use of radio-controlled drones, and mosquito larvicides) that are to be used as necessary.

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

Measures to control access to food waste by gulls and other nuisance species must be implemented at the outdoor food waste processing area at the Recyclery, including a building enclosure or netting.

As outlined in the NSAP, monitoring shall be conducted by qualified biologists (which may include abatement personnel) to determine the effectiveness of initial abatement measures, and abatement techniques shall be adapted as determined by these biologists as necessary to ensure effectiveness. Regular monitoring reports to document the success of the abatement program (monthly memos and annual reports) shall be prepared by monitoring biologists and submitted to the Director of Planning, Building, and Code Enforcement. The monitoring and reporting criteria are outlined in detail in the NSAP.

For each group of nuisance species addressed by the NSAP, success of the NSAP is defined as maintaining or reducing abundance of nuisance species using the landfill relative to baseline levels identified in the NSAP.

The Director of Planning, Building, and Code Enforcement will assemble and select members of an NSAP Oversight Committee, which will consist of qualified biologists (including representatives from the Don Edwards San Francisco Bay National Wildlife Refuge and a Bay-area bird observatory), City of San José staff, and others chosen at the Director's discretion. The NSAP Oversight Committee will review annual monitoring reports and provide recommendations to the Director regarding any changes in success criteria (including levels of abundance that should be considered the baseline against which monitoring results will be compared), abatement measures, monitoring measures, or other program components that should be made. This committee will be provided copies of monthly status reports and may also be consulted by the Director to discuss nuisance species abatement issues identified in monthly reviews. Meetings of the NSAP Oversight Committee shall include biologists that were retained to monitor wildlife at the landfill and Recyclery and who prepared the reports. Additional details regarding the success criteria for nuisance species, including gulls, corvids, mammals, and mosquitoes identified in the NSAP are provided in the Final EIR.

If the Director of Planning, Building, and Code Enforcement (in consultation with the NSAP Oversight Committee) determines that the

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

NSAP is being implemented successfully for that year of operation, no additional mitigation of this impact is necessary. If the Director determines that the abatement program is not being implemented consistently and successfully, and adaptive management is inadequate to achieve the desired success criteria, then MM BIO – 13.3 shall be implemented.

MM BIO – 13.3: If the landfill operator is not meeting the success criteria specified in the NSAP, the operator shall be required to contribute to one or multiple ongoing predator control programs and/or provide habitat at an off-site, South Bay location(s) to benefit the sensitive species that are being adversely affected by nuisance species supported by the landfill. Such sensitive species may include, without limitation, species associated with managed ponds, such as the western snowy plover, terns, American avocets, and black-necked stilts, and/or species associated with tidal salt marshes, such as the California clapper rail, salt marsh harvest mouse, and salt marsh wandering shrew.

It is possible that the NSAP abatement measures will be partially successful and thus will reduce the Project's contribution to nuisance species' populations, even if success criteria are not achieved; such an outcome would affect the amount of off-site mitigation that will need to be provided. It is also possible that abatement measures may be fully successful for one group of nuisance species (e.g., gulls and corvids) but not another (e.g., mammals), thus potentially affecting the suite of sensitive species that must be targeted by off-site mitigation. As a result, it is not possible at this time to identify the sensitive species that must be targeted by off-site mitigation, the type of habitat mitigation required (e.g., salt pond management vs. tidal marsh restoration), or the amount of mitigation required.

If off-site mitigation is determined to be necessary, the Director of Planning, Building, and Code Enforcement, in consultation with qualified biologists as described in the NSAP and government agencies (e.g., CDFG and USFWS) as appropriate, will determine the specific type and amount of off-site mitigation required. The type of mitigation required will depend on the type of nuisance species for which abatement measures are found to be inadequate, and the type of sensitive species potentially adversely affected by depredation or encroachment by the nuisance species. If off-site habitat restoration/management is required, success of

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

this mitigation measure would be achieved by presence of the target species in the restoration area within five years of site acquisition and restoration, coupled with management of the site that is directed at the species' habitat and life-history requirements.

Finding: Implementation of MM BIO – 13.1 and 13.2 (if necessary) would reduce the Project's indirect impacts to sensitive wildlife from nuisance species at the landfill and Recyclery to a less than significant level.

Facts in Support of Finding: All future activities on the site will be subject to approval of a PD Permit by the Director of Planning, Building, and Code Enforcement. Conformance with the conditions of the permit will be monitored by City Staff and biologists that regularly report to the Oversight Committee and the Director of Planning, Building, and Code Enforcement. If the results of the monthly monitoring show the on-going abatement is not successful, the abatement techniques shall be adapted accordingly to be more effective. If the results of the annual report show the abatement is not successful, the landfill operator shall be required to offset the Project's impact by providing off-site habitat for the impacted species or contributing funds to ongoing predator control programs that benefit the impacted species.

Impact: **Impact BIO – 14:** The Project proposes to increase the capacity of the landfill, which would extend landfill activities and operations for an undetermined period of time. The extended duration of landfill activities and operations may result in significant impacts to the California clapper rail if the landfill operations continue to occur within 700 feet of its suitable habitat and significant impacts to the salt marsh harvest mouse, and salt marsh wandering shrew if the landfill operations continue to occur within 100 feet of their suitable habitat. **(Significant Impact)**

Mitigation: The following mitigation is incorporated by reference and described in full in the Final EIR.

MM BIO – 14.1: Before landfill activities may continue beyond the point of current permitted capacity (50.8 million cubic yards), the need for and extent of off-site mitigation for potential project impacts on the habitat of California clapper rails located within 700 feet of landfill activities during the extended project lifetime and on the habitat of salt marsh harvest mice

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

and salt marsh wandering shrews located within 100 feet of landfill activities during the extended Project lifetime shall be determined by a qualified biologist based on the performance standards and criteria described below. If impacts are determined to exist based on such performance standards and criteria, the landfill operator shall implement off-site mitigation to the extent determined to be necessary by the Director of Planning, Building, and Code Enforcement in accordance with the standards and criteria described herein. At this time it is not possible to determine the precise type and extent of mitigation, if any, that is appropriate to address the environmental impacts that may be created by the continuation of landfill activities because the mitigation that is necessary will depend on several, currently unknown, factors.

Within thirty days of January 1, 2018 or by the date that the landfill has filled 48 million cubic yards, whichever event first occurs, the landfill operator shall have a qualified biologist complete an assessment of the impacts of continuing landfill activities on California clapper rails, salt marsh harvest mice, and salt marsh wandering shrews prior to the point at which current permitted capacity is reached (50.8 million cubic yards) and before accepting any new waste beyond current permitted capacity. That assessment shall consider (a) the types and locations of Project activities at the landfill that will continue beyond the point of current permitted capacity, (b) the distribution and quality of habitat in the surrounding marsh, (c) the distribution of clapper rails, salt marsh harvest mice, and salt marsh wandering shrews in the marsh (and more widely, in the South Bay, if appropriate), to the best and most complete extent that this can be determined or reasonably estimated, and (d) the use of the affected marsh by clapper rails, salt marsh harvest mice, and salt marsh wandering shrews (e.g., for breeding or non-breeding use), and other relevant factors based upon information known at the time.

The biologist shall then determine the effect of continuing landfill activities on clapper rails, salt marsh harvest mice, and salt marsh wandering shrews. This assessment will be based on consideration of the types of landfill activities that will occur in proximity to habitat suitable for these species; currently, "in proximity to" means within 700 feet of habitat suitable for the clapper rail and within 100 feet of habitat suitable for the salt marsh harvest mouse and salt marsh wandering shrew, although these distances may be refined during the assessment by more up-to-date

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

information on effects of human activities on these species if more information is available when the assessment is performed. The biologist will consider any landfill activities involving the movement of heavy equipment, loud noise, and substantial vibrations, and new lighting to represent an impact if (a) those activities would not be performed during regular landfill closure or post-closure activities, and (b) they occur in proximity to suitable habitat as described above.

The biologist will also take into account the anticipated duration (beyond the point of current permitted capacity – 50.8 million cubic yards) of activities that will adversely affect these species. Because these impacts are indirect and temporary (not permanent, but indefinite), the impacts of continuing landfill operations will cease after landfill capacity is reached and the landfill is closed. As a result, in determining the impacts to these species' habitat and/or populations, the biologist will consider the duration of the impact based on the predicted closure date as of the time that current landfill capacity is reached.

The type, location, and duration of landfill activities shall be identified by the landfill engineer responsible for Newby Island Sanitary Landfill (NISL), based on landfill contract information and the landfill engineer's professional knowledge and experience. Such information shall be provided to the Director of Planning, Building, and Code Enforcement and the consulting biologist.

The biologist's assessment will determine the extent of impacts of continuing activities on the California clapper rail, salt marsh harvest mice, and salt marsh wandering shrew in terms of either impacts to these species' populations (i.e., an estimate of the number of individuals/pairs affected) or the extent of impacts to these species' habitats, taking into account both habitat acreage and quality.

As part of this assessment, the biologist shall also conduct a survey of comparable salt marsh and brackish salt marsh habitat in the South Bay which are similar to the varying types of habitat within the 700 foot buffer (for clapper rails) and 100 foot buffer (for salt marsh harvest mice and wandering shrews) as measured from the then projected future landfill activities. This survey shall: (a) consider the quality of the varying types of comparable habitat in comparable South Bay areas and contrast it with

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

the quality of the habitat within the buffer areas adjacent to the landfill; (b) determine to the extent practicable and allowed by then current laws and regulations the populations of average number of each of these special status species in the comparable South Bay habitats; and (c) determine to the extent practicable and allowed by then current laws and regulations the number of these special status species within their respective buffer areas around the landfill. Taking differences in habitat quality into consideration, the biologist shall then reach a professional judgment as to whether the special status species in the habitat areas adjacent to the landfill are less numerous than in the comparable South Bay habitat areas. If the biologist makes this determination, the landfill operator shall be required to provide off-site mitigation for the species in question on a one to one acreage ratio for the area of affected habitat adjacent to the landfill. If more than one species is determined to be affected, the landfill operator need only provide off-site mitigation for the single largest buffer area of any impacted species—i.e., if clapper rails and salt marsh harvest mice are both determined to be affected, the landfill operator shall provide mitigation based on the area of clapper rail habitat affected—as long as the mitigation habitat is suitable for all affected species.

A report of this assessment and the biologist's findings shall be submitted to the Director of Planning, Building, and Code Enforcement. If the Director of Planning, Building and Code Enforcement determines, based on the findings of the biologist's report or any other reasonable information available, that significant impacts to those species (including deprivation of viable habitat or ongoing disturbance of animals in proximity to landfill activities) have not occurred from landfill activities up to that point in time and will not occur from continued landfill operations past the point of current permitted capacity, the landfill owner will not be required to provide suitable off-site habitat for the species being impacted for the remaining useful landfill life.

If, based on the findings of the biologist's report and any other reasonable information available, the Director of Planning, Building, and Code Enforcement determines that the continued operation of the landfill past the point of current permitted capacity will result in significant impacts to those sensitive species, off-site mitigation shall be provided by the landfill operator to compensate for impacts to these species. Such mitigation shall be required to be implemented by the landfill operator using a one to

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

one acreage ratio (i.e., the area of the largest affected habitat adjacent to the landfill to the area of mitigation habitat to be provided by the landfill operator). This off-site mitigation may take one or several forms, including, but not limited to:

- Restoring tidal marsh habitat suitable for use by these species;
- Enhancing tidal marsh habitat suitable for use by these species [e.g., via the control of invasive plants or alteration of the hydrologic regime (such as restoration of a muted tidal marsh to a fully tidal condition)]; and/or
- Enhancing populations of these species by increasing reproduction and survivorship (e.g., by controlling predatory or competitive animal species, in addition to the abatement required at the landfill itself).

This mitigation may take the form of direct implementation by the landfill owner or a monetary contribution to similar efforts being performed by others, preferably in the area, such as efforts by the CDFG or U.S. Fish and Wildlife Service (USFWS). The mitigation, if required, must be described and in place prior to the landfill reaching its current permitted capacity of 50.8 million cubic yards.

The same off-site mitigation can serve to mitigate impacts to California clapper rails, salt marsh harvest mice, and salt marsh wandering shrews in a single location as long as the mitigation implemented will benefit all three species. However, performance criteria for each species must be satisfied. For habitat restoration, performance criteria would include the presence of the target species within five years of the development of vegetation suitable for each of those species within the restoration area and management of the site in accordance with the species' habitat and life-history requirements. For habitat enhancement or for measures, such as predator or competitor control, targeting increased reproduction and survivorship, performance criteria would include an increase in populations of the target species, within five years of implementation of the enhancement measures, commensurate with the estimated impact of the project. The precise location and means of providing such mitigation cannot be known at this time, as a variety of factors (including tidal marsh restoration and other activities that occur between now and the point current landfill capacity is reached) will influence available mitigation opportunities. Prior to the point at which waste exceeding the current

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

landfill capacity is accepted by the landfill, the applicant shall have a qualified biologist prepare and implement a Mitigation Plan, which shall be submitted and reviewed by the Director of Planning, Building, and Code Enforcement and the NSAP Oversight Committee, detailing the following:

1. A summary of habitat and population impacts;
2. Goals of the mitigation;
3. A description of the type of mitigation (e.g., habitat restoration, habitat enhancement, and/or predator/competitor control);
4. The location of the mitigation site(s) and description of existing site conditions
5. Mitigation design (for habitat restoration and enhancement efforts), including:
 - Existing and proposed site hydrology, geomorphology, and geotechnical stability, as applicable,
 - Grading/restoration plan,
 - Soil amendments and other site preparation elements as appropriate,
 - Maintenance activities, and
 - Remedial measures and adaptive management measures;
6. Monitoring Plan (including final and performance criteria (which will include the minimum performance criteria mentioned above), monitoring methods, data analysis, reporting requirements, and monitoring schedule)
7. A contingency plan for mitigation elements that do not meet performance or final success criteria

The Mitigation Plan shall be submitted to the Director of Planning, Building, and Code Enforcement, in consultation with the NSAP Oversight Committee, for review and approval. Once approved, the landfill operator shall fully implement and comply with such Mitigation Plan prior to accepting any new waste beyond the current permitted capacity of 50.8 million cubic yards.

Finding: Implementation of MM BIO – 14.1 would reduce the project’s impacts, should they occur, to the California clapper rail, salt marsh harvest mouse, and salt marsh wandering shrew as a result of extending the life of the landfill, to a less than significant level.

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

Facts in Support of Finding: Implementation of MM BIO – 14.1 would reduce the Project’s impact to the California clapper rail, salt marsh harvest mouse, and salt marsh wandering shrew from extending the life of the landfill to a less than significant level by requiring the landfill operator to offset the impact (if determined to be significant) by implementing or funding off-site mitigation in proportion to the impact that benefits the impacted species.

Geology and Soils

Impact: **Impact GEO – 1:** Since the makeup of the buried waste on the landfill and D-shaped area is unknown, the construction or development of structures on the landfill or D-shaped area could result in significant geological impacts. **(Significant Impact)**

Mitigation: **MM GEO – 1.1:** In order to construct or relocate buildings or structures anywhere on the Project site, a design-level geotechnical report by a qualified professional that documents testing of conditions on the site shall be prepared prior to approval of a PD Permit for any such building or structure, to the satisfaction of both the Director of Planning, Building, and Code Enforcement and the City Geologist.

Specifically for improvements on the D-shaped area, the design-level geotechnical study shall a) identify the extent of the potentially liquefiable soils by completing closely spaced CPT soundings to more accurately locate potentially liquefiable soils, and b) identify the necessary measures needed to avoid and/or mitigate liquefaction impacts, in accordance with local building codes. Possible measures include deep soil mixing, jet grouting, dynamic deep compaction, removal and replacement, vibrocompaction/ vibroreplacement, and/or in-situ cementitious shear panels.

Finding: Implementation of MM GEO – 1.1 would reduce geologic impacts from development of structures on the landfill to a less than significant level.

Facts in Support of Finding: Since there are no specific new buildings or permanent structures currently identified for the Project, it is not possible to address the specific design or mitigations that might be required. Adequate analysis to implement measures to meet the standards set forth can and

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

will be prepared prior to approval of any permits and be included as a condition in those permits.

Global Climate Change

Impact: **Impact C-GCC:** A significant impact would occur if the landfill were to be flooded as a result of projected sea level rise in combination with a 100-year flood event of 13.6 feet. **(Significant Impact)**

Mitigation: **MM C-GCC – 1.1:** As part of the landfill’s annual capacity survey report to the LEA (as well as CalRecycle), the landfill operator shall also evaluate the status of sea level rise to ensure that the perimeter levee would provide at least two feet of freeboard above estimated sea-level resulting from currently predicted sea level rise in combination with a 100-year flood event.

Finding: Implementation of MM C-GCC – 1.1 would reduce the Project’s impact from projected sea-level rise and a 100-year flood to a less than significant level.

Facts in Support of Finding: While estimates have been made about the likely extent and timing of projected sea level rise, the information is still not precise. Because the landfill must report annually on physical conditions at the landfill, the annual report is a logical and relevant mechanism for the City, Regional Board, and State of California to monitor the status of sea level rise relative to the landfill.

ALTERNATIVES

H. FINDINGS RELATING TO ALTERNATIVES

1. Findings Regarding Discussion and Analysis of Alternatives in the EIR

The EIR evaluates a broad range of potential alternatives to the proposed Project. The EIR examines the environmental impacts of each alternative in comparison with the proposed Project and the relative ability of each alternative to satisfy Project objectives. The discussion and analysis of alternatives in the Draft EIR is

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

augmented by a further discussion of alternatives in the Responses to Comments section of the First Amendment to the Draft EIR. That discussion provides additional information about the range of alternatives examined in the Draft EIR, further describes the relationship between alternatives examined in the Draft EIR and Project objectives, and addresses several variations on the alternatives that were suggested in comments on the Draft EIR.

The City Council finds that the range of alternatives analyzed in the EIR reflects a reasonable attempt to identify and evaluate various types of alternatives that would potentially be capable of reducing the proposed Project's environmental effects, while accomplishing most but not all of the Project objectives. The City Council further finds that the EIR evaluated a reasonable range of alternatives to the Project and that the alternatives analysis is sufficient to inform the City and the public regarding the tradeoffs between the degree to which alternatives to the proposed Project could reduce environmental impacts and the corresponding degree to which the alternatives would implement goals and objectives for redevelopment and reuse of the site, as reflected in City policies. By these findings, the City adopts the EIR's analysis and conclusions regarding alternatives eliminated from further consideration, both during the scoping process and in response to comments.

In making these findings, the City Council certifies that it has independently reviewed and considered the information on alternatives provided in the EIR and the responses to those comments in the Final EIR. The discussion and analysis of these alternatives is not repeated in these findings, but the discussion and analysis of the alternatives in the EIR is incorporated in these findings by reference. In making these findings relating to alternatives, the City Council finds and determines that all the evidence supporting the findings set forth below was presented in a timely fashion, and early enough to allow adequate consideration by the City.

2. Overview of The City's Findings Relating to Alternatives

The EIR describes and evaluates three alternatives to the proposed Project. Most of these alternatives offer one or more environmental advantages in comparison with the proposed Project in terms of their ability to reduce or avoid significant impacts. As set forth above, the City has adopted mitigation measures that substantially mitigate all of the significant environmental effects of the proposed Project. The City Council finds that Project impacts will be mitigated to a level that the City finds is acceptable.

As explained in more detail below, the City Council finds that the Project should be approved with mitigation incorporated, instead of one of the alternatives to it because, in comparison with the alternatives, the Project best implements City goals, policies and programs and, unlike the alternatives, has the ability to be successfully accomplished within a reasonable period of time taking account of environmental,

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

economic, social, technological and other relevant factors. The collection of attributes presented by the Project thus comprises a reasonable accommodation of the social, economic and environmental interests at stake.

3. Project Objectives

The overall goal of the Project is to provide increase capacity at an existing landfill, and to allow the applicant to continue to provide recycling opportunities to the City of San Jose and surrounding communities. To implement such City policies, goals and strategies, the Project applicant's objectives include, among others, the following:

- A. Optimize use of the permitted footprint of the landfill for disposal capacity;
- B. Increase the height of the landfill to increase its disposal capacity to allow the landfill to continue to accept historic waste volumes from the region. No change is proposed to the landfill's estimated closure date (identified as 2025 in the landfill's *Preliminary Closure and Post-Closure Maintenance Plan*, July 2006) or the landfill's Solid Waste Facility Permit (Permit No. 43-AN-0003, March 1997);
- C. Enable the Project site to continue to provide nearby waste disposal and recycling solutions for the City of San José and surrounding municipalities, thereby avoiding the environmental impacts that would be associated with trucking solid waste to more distant facilities;
- D. Create a comprehensive zoning district that recognizes and allows for the existing landfill, recycling, and waste diversion activities with flexibility to allow for future technologies/innovations to be used on the site; and
- E. Produce additional landfill gas for use as a renewable energy source for power generation by the on-site power plant.

In considering whether to approve the Project, the City deems the Project applicant's objectives and goals subordinate to the City's goals, policies and objectives relevant to the site, as those goals are described in the EIR. The ability of the proposed Project or alternative to achieve the applicant's objectives is not controlling, and is largely relevant to the analysis set forth below to the extent the applicant's objectives are compatible with and implement City goals, policies and objectives relevant to reuse of the site.

4. Discussion and Findings Relating to Feasibility of Alternatives Evaluated In The EIR

As explained below, the City Council finds that the Project, with the addition of Mitigation Measure BIO - 13.1, which controls gulls' access to food waste, is the most feasible and environmentally superior alternative. In making these findings, the City Council notes that the determination whether a proposal is feasible involves a determination of whether it is capable of being successfully accomplished within a

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

reasonable period of time, taking into account environmental, economic, legal, social, technological and other relevant factors. A key factor is the degree to which the Project and alternatives to the Project will implement relevant City goals and policies.

The City Council finds that when looked at as a whole, and considering the benefits presented by the Project together with its potential environmental impacts, the Project as conditioned and mitigated offers a reasonable and desirable means for achieving important City goals, policies and objectives including, among others:

- Sustainable City: The purpose of the sustainable strategy is to minimize waste, conserve natural resources, and environmental protection.
- Solid Waste Goal No. 1: This strategy seeks to recover the resource value of solid waste and foster the establishment of facilities in San Jose which constructively use and reinvest such resources in the local economy.
- Solid Waste Goal No. 2: Extend the life span of existing landfills by promoting source reduction, recycling, composting, and transformation of solid wastes.
- Solid Waste Goal No. 3: Locate and operate solid waste disposal facilities in a manner which protects environmental resources.
- Solid Waste Goal No. 4: Locate and operate solid waste disposal facilities in a manner compatible with existing and planned surrounding land uses.

The Project comprises a feasible and reasonable method of achieving these City goals, policies and objectives while offering benefits to the public that would not otherwise occur in the absence of the Project. As explained in more detail below, the City Council finds that the alternatives to the Project, with mitigation measures incorporated, will not achieve these important City objectives to the same degree as the proposed Project. Further, as explained in the findings for each alternative below, unlike the Project, some of the alternatives would impede achievement of City policies and objectives relating to environmental sustainability, energy, and solid waste.

Further factual findings relating to each alternative are set forth below.

No Project Alternative

Description: NISL and the Recyclery are fully permitted by the CIWMB to operate as (1) a sanitary landfill taking in up to 4,000 tons per day of solid waste for disposal; (2) a materials recovery facility and recycling transfer station taking in up to 1,600 tons per day; and (3) a composting facility permitted for 980 tons per day of source separated green waste and food waste.

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

If the proposed rezoning project is not approved, the sanitary landfill will continue to accept MSW in tonnages consistent with its current SWFP and recent operations. As its current permitted capacity is approached, the landfill may accept less and less waste in order to service its existing contracts at this landfill. Alternatively, the landfill operator could choose to close the landfill early and haul contracted waste to a more distant landfill. At this time, the landfill operator has indicated that their plan is to reduce incoming tonnages in order to allow contracted waste to be placed at Newby Island for the length of the existing contracts (2023). Recycling activities on the landfill site are tied to the landfill operation as part of its legal nonconforming status. Parts of the landfill are used for the office and storage uses which are not allowed by existing zoning or City permits and would have to be removed.

The D-shaped area is designated for *Light Industrial* uses in the City's General Plan and therefore the currently unpermitted uses would need to be discontinued, or re-zoning and new permits would need to be approved to allow industrial uses that are compatible with the NISL, WPCP, and the Recyclery consistent with the City's General Plan.

The current uses of the Recyclery which are not consistent with the existing PD Zoning including outdoor processing of food waste, would be discontinued under the No Project Alternative. The Recyclery can continue to operate after the landfill closes under existing zoning and permits.

Comparison to the Project: Assuming that the Project is not approved and the landfill restricts its incoming wastes to contractual wastes only, people with non-contractual waste would need to find alternative landfills to dispose of their waste. Alternative landfills could be Kirby Canyon Landfill, Guadalupe Sanitary Landfill, or other landfills outside of the County. As discussed in Section 3.12 Energy of the Draft EIR, it is generally most efficient for local non-contractual waste to be delivered to NISL. Another scenario is that without the extension of capacity allowed by the proposed Project, the landfill continues receiving wastes at current levels until capacity is reached (which is estimated to be in 2016) and waste (contractual and non-contractual) from San José, Milpitas, Santa Clara and other cities will need to be hauled greater distances to be landfilled. The landfill operator has indicated they would use Forward Landfill in Manteca. Non-

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

contractual waste would likely be directed to closer landfills by the generators. This will use more energy and will generate more air pollution. The increased costs of transporting waste greater distances might encourage more waste diversion, which would be a positive impact. In addition, the City of San José would need to approve land use permits for modifications to the landfill, D-shaped area, or the Recyclery to allow transfer of waste from collection vehicles to transfer trucks in order to deliver the waste to Forward Landfill. As long as there is waste being generated, however, it will have to be landfilled somewhere. Once NISL closes, the County's landfill capacity will be substantially diminished. While the use of a solid waste transfer facility on the Recyclery is analyzed in this EIR to the extent feasible, specific details regarding a solid waste transfer facility (size, operation, location of where materials would be transferred to) are unknown at this time. Therefore, under the proposed Project, a PD Permit and additional environmental review will be required when sufficient details regarding the solid waste transfer facility are known to confirm there would be no new or substantially more severe impacts. If the proposed Project is not approved and a solid waste transfer facility is required, additional rezoning, development permits, and CEQA review will, therefore, be required.

The County or one of the cities in the County may choose to locate and permit a new landfill somewhere in Santa Clara County. Without knowing where that might occur, it is nevertheless likely that opening a new landfill at an outlying location will have some new adverse environmental impacts. New Baylands landfills are contrary to City and Regional Board policies. Previous candidate landfill sites identified in San José's General Plan were located in the foothills east and south of San José. Those locations would all require longer travel distances from the waste generators in the urban areas of Santa Clara County than is required to use NISL. A new landfill may result in increased travel distances and more air pollution, as well as any site specific impacts.

Recycling and other forms of waste diversion have increased dramatically since AB 939 was passed in 1989, and it is likely that the quantity of waste needing to be landfilled will continue to be reduced in the future. It is also possible that most of the waste generated in the County can be managed by means other than landfill burial by the time NISL reaches its existing permitted capacity. That outcome is still speculative, however. No

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

substantial change to the post-closure use of the main body of the landfill is proposed by this Project.

The No Project Alternative would result in lesser shade and shadow impacts, as well as visual and aesthetic impacts because the existing permitted height is less than the proposed height. The No Project Alternative would result in similar impacts to trails as the proposed Project. Since the proposed Project would extend the life of the landfill, the No Project Alternative might result in earlier completion of the San Francisco Bay Trail loop around the landfill in comparison to the proposed Project. This Alternative would also result in similar land use compatibility, transportation, noise, geology and soils, hydrology and water quality, hazards and hazardous materials, cultural resources, utilities and service systems, and growth inducing impacts as the proposed Project.

As discussed above, the No Project Alternative would likely result in greater air quality and energy impacts with the need to transport waste to more distant locations once NISL reaches capacity. The No Project Alternative could result in greater impacts to biological resources because the regular enforcement and monitoring of substantially more aggressive abatement measures would not necessarily be required, as they would be under the proposed Project with the Nuisance Species Abatement Plan (NSAP) discussed in Section 3.6 Biological Resources of the Draft EIR.

Finding: The No Project Alternative would likely result in greater air quality and energy (fuel) impacts with the need to transport waste to more distant locations sooner once NISL reaches capacity. The No Project Alternative could result in greater impacts to biological resources because the more aggressive enforcement and monitoring of abatement measures would not necessarily be required, as they would be under the proposed Project with the NSAP. The No Project Alternative would not meet any of the Project objectives. For these reasons, this alternative is rejected as infeasible and not environmentally superior.

Location Alternative

Description: The Location Alternative consists of expanding the capacity of Kirby Canyon Landfill by 15.12 million cubic yard (*i.e.*, the same amount proposed for NISL). Kirby Canyon Landfill is an existing landfill located at 910 Coyote Creek Golf Drive in San José that is owned by Waste

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

Management (not Allied Waste). Under the Location Alternative, if the proposed Project is not approved and NISL continues to take in waste at current levels (and the landfill would likely reach capacity in 2016), waste (non-contractual) that would otherwise have been delivered to NISL could be delivered to Kirby Canyon Landfill. There is capacity remaining at Kirby Canyon Landfill. The original EIR for Kirby Canyon assumed that waste from the City of San José would be disposed there, so it is anticipated that no new significant impacts would occur under the landfill's existing capacity. If this Alternative were to be approved instead of the Project, additional rezoning and environmental review would be required to analyze the impacts of expanding Kirby Canyon Landfill if the current capacity is inadequate. Under the Location Alternative, if the proposed Project was not approved and NISL reduced incoming waste to just contractual waste, the non-contractual waste that would typically be delivered to NISL could be delivered to Kirby Canyon Landfill. Note that Allied Waste does not own or have control of Kirby Canyon Landfill, therefore, the feasibility of implementing this Alternative is low.

Comparison to the Project: The Location Alternative would avoid the Project's impacts to biological resources, especially those from gulls because it is not located on the Bay. Because Kirby Canyon Landfill is not proximate to large colonies of endangered birds, the secondary effects of gull predation would be much less, and there is less possibility of cumulative gull impacts from other landfills. However, Kirby Canyon is located in serpentine habitat, which is known to contain endangered species. Expansion of Kirby Canyon Landfill is likely to result in significant impacts to those species (bay checkerspot butterfly, Metcalf canyon jewel flower, Mt. Hamilton thistle, and others).

A height expansion at Kirby Canyon would result in similar land use effects in terms of increase in shade and shadow and land use compatibility. Kirby Canyon Landfill is not, however, located near a Refuge or the San Francisco Bay Trail, but it is near Juan Bautista de Anza National Historic Trail, Bay Area Ridge Trail, and Coyote Creek/Llagas Creek Trail. The expansion of Kirby Canyon Landfill would not significantly impact these trails. The Kirby Canyon EIR identified visual impacts to parts of Morgan Hill and Coyote Valley, although they were not considered significant. The EIR also identified one or more faults very close to the landfill. A higher landfill might result in new significant

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

impacts. The Location Alternative would have similar visual and aesthetic, air quality, geology and soils, hydrology and water quality, hazards and hazardous materials, cultural resources, utilities and service systems, and energy impacts as the Project.

While the Location Alternative would not increase traffic, it would change the flow of traffic from NISL to Kirby Canyon Landfill. As a result, the haul vehicle noise would increase at Kirby Canyon Landfill but it is not anticipated that it would result in significant traffic impacts or noise impacts given that Kirby Canyon Landfill is not located adjacent to sensitive receptors (*i.e.*, residences).

Finding: The Location Alternative would result in different but likely significant impacts to endangered species associated with serpentine soils, compared to the proposed Project, and is not, therefore environmentally superior. The Location Alternative would redirect traffic to Kirby Canyon, which would increase haul vehicle noise at Kirby Canyon Landfill; however it is not anticipated that this would result in significant traffic or noise impacts. Allied Waste (the operator of NISL) does not own or have control of Kirby Canyon Landfill, therefore, the feasibility of implementing this Alternative is unlikely. This alternative would not meet Project objectives of optimizing the permitted footprint of NISL for disposal capacity, increasing the height of NISL to increase its disposal capacity, or creating a comprehensive zoning district that recognizes and allows for the existing landfill, recycling, and waste diversion activities (as well as future technologies and innovations) on-site. For these reasons, this alternative is rejected as infeasible.

Reduced Gull Access to Food Alternative

Description: The more exposed waste, the more food is available to support more gulls (as well as other nuisance species). If the working face of the landfill could be substantially reduced and the outside food processing area at the Recyclery was enclosed, the numbers of gulls foraging would also reduce accordingly. The Reduced Gull Access to Food Alternative would therefore substantially reduce the size of the existing working face to maintain or reduce the abundance of gulls (as well as other nuisance species) at the landfill to baseline conditions and enclose the currently outdoor food processing area west of the Recyclery building.

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

Comparison to the Project: The Reduced Gull Access to Food Alternative would reduce the Project's impact related to the abundance of gulls at the working face of the landfill by reducing the amount of exposed waste at the working face of the landfill, and at the Recyclery by completely enclosing the outdoor food processing area west of the building. However, according to Allied Waste, by reducing the working face of the landfill, a separate tipping area would need to be created and the gulls would be redirected from the working face to the new tipping area.

The Reduced Gull Access to Food Alternative would result in similar land use, visual and aesthetic (since the building or structure constructed to enclose the processing area would likely be smaller or of similar size to the existing Recyclery building and shielded or blocked from views off-site by the existing Recyclery building), transportation, noise, hazards and hazardous materials, cultural resources, and utilities and service systems impacts as the Project.

This alternative could result in greater air quality, energy, water quality, and geology and soils impacts compared to the proposed project. A smaller working face means a smaller area for trucks to come in and dump their waste. Therefore, this Alternative could result in longer truck queues to dump waste at the landfill (which would be why the landfill would use a separate tipping area) and could result in an incremental increase in air quality impacts since the trucks would have to idle for a longer period of time before being able to dump their load at the landfill. Longer queues might require that the landfill increase its current operating hours as well, which would not be an environmental issue. In addition to increased air quality impacts, this Alternative could also result in safety hazards. According to Allied Waste, reducing the working face would hinder a driver's ability to maintain safety protocols regarding separation distances between haul vehicles. Trucks may queue closer to each other and result in greater safety hazards to workers and collection vehicle drivers in the event vehicles roll over while tipping.

Allied Waste also stated that the landfill might need to reduce the amount of incoming waste to maintain a smaller working face. Non-contractual waste might have to be delivered to alternative landfills, which could increase fuel consumption and air pollution (depending on the location of

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

the alternative landfill). This would reduce the landfill's ability to serve the public.

According to Allied Waste, substantially reducing the size of the working face could reduce the landfill operator's ability to properly place and compact the waste. To compact waste disposed of at the landfill, standard industry practice requires the use of one or more bulldozers to move and spread the waste and heavy compactor vehicles to compact the waste. The safe use of this equipment requires both time and space in order to properly process waste received at the landfill's working face. According to Allied Waste, restricting the landfill's working face would result in a reduced ability to properly place and compact waste during the operating day which could cause voids or gaps in the landfill mass. Voids or gaps in the landfill mass could create pathways for landfill gas to escape and leachate to seep to the surface. Therefore, this Alternative could result in greater air quality and surface water quality impacts than the proposed project. The voids and gaps could also affect the stability of the landfill and compromise the environmental control systems (e.g., leachate collection and landfill gas collection piping) within and on top of the landfill. In addition, according to Allied Waste, the compaction techniques and procedures for a reduced working face could differ from what is described in NISL's CIWMB approved Operations Plan and result in regulatory noncompliance. While this alternative could result in greater air quality, energy, water quality, and geology and soils impacts in comparison to the proposed project, it is not anticipated that the new or additional impacts would be significant and unavoidable.

Finding: The Reduced Gull Access to Food Alternative might result in incrementally greater air quality, energy, water quality, and geology and soils impacts than the proposed project depending on how much the working face is reduced. These greater impacts, however, are not likely significant and unavoidable. Reducing the working face of the landfill could result in safety hazards, reduce the landfill's ability to serve the public, reduce the landfill operator's ability to properly place and compact waste (which could result in voids or gaps and landfill instability), and result in regulatory noncompliance. According to Allied Waste, if the working face is reduced, a new tipping area would need to be created. Since gulls would feed on the waste at the working face and tipping area, this alternative may not ultimately reduce gulls at the landfill. The City does not have the expertise

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

to conclusively determine whether reducing the working face would reduce gulls at the landfill. The landfill operator, however, believes that reducing the working face further is infeasible and would not actually reduce the number of gulls on-site. For this reason, this alternative is rejected as infeasible.

I. STATEMENT OF OVERRIDING CONSIDERATIONS

a. Impacts That Remain Significant

As discussed in Section G, the City has found that no impacts of the Project remain significant following adoption and incorporation into the Project of the mitigation measures described in the Final EIR, and therefore a statement of overriding considerations is not required under CEQA.

///

///

///

///

///

///

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

