COUNCIL AGENDA: 8-14-12
ITEM: 4.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: July 26, 2012

Approved

Date 7/31/12

COUNCIL DISTRICT: 4

SUBJECT: PUBLIC HEARING ON THE APPEAL OF THE PLANNING COMMISSION'S CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR THE NEWBY ISLAND SANITARY LANDFILL AND THE RECYCLERY REZONING PROJECT, FILE NO. PDC07-071.

RECOMMENDATION

(a) Conduct an Administrative Hearing on and consider an Appeal of the Planning Commission's certification of the Final Environmental Impact Report (FEIR) for the proposed Newby Island Sanitary Landfill and The Recyclery Rezoning Project, File No. PDC07-071.

(b) Uphold the Planning Commission's certification and adopt a resolution to certify that:
   (1) The City Council has read and considered the Final EIR;
   (2) The Final EIR has been completed in compliance with the California Environmental Quality Act (CEQA);
   (3) The Final EIR reflects the independent judgment and analysis of the City of San José; and
   (4) The Director of Planning, Building and Code Enforcement shall transmit copies of the Final EIR to any other decision-making body of the City of San José for the project.

OUTCOME

Rejection of the appeal and certification of the Final EIR will allow the City Council to consider the proposed rezoning to increase the final height of the Newby Island Sanitary Landfill, for which the Final EIR was prepared.

BACKGROUND

The Draft EIR together with the First Amendment (containing responses to comments received on the DEIR during the document's public review period) constitute the Final EIR. Section 15090 of the Guidelines for Implementation of the California Environmental Quality Act (CEQA) requires a lead agency, prior to approving a project, to certify that (1) the Final EIR has been completed in compliance with CEQA, (2) the final EIR was presented to the decision-making body of the lead agency and the decision-making body reviewed and considered the information contained in the Final EIR prior to approving the project, and (3) the Final EIR reflects the independent judgment and analysis of the lead agency.

San José Municipal Code Chapter 21.07 designates the Planning Commission as the initial decision-making body for certification of EIRs. The Planning Commission must hold a noticed public hearing to certify the Final EIR. Upon conclusion of its certification hearing, the Planning Commission may find that the Final EIR is completed in compliance with the CEQA. This EIR was certified by the Planning Commission on June 6, 2012.

When an EIR is certified by a non-elected decision-making body of the local lead agency, that certification may be appealed to the local lead agency's elected decision-making body. On June 11, 2012, the City of Milpitas filed a timely appeal of the certification of the EIR. San José Municipal Code Chapter 21.07 requires that the Director of Planning, Building, and Code Enforcement schedule a noticed public hearing on a timely appeal of the Commission's certification of the Final EIR before the City Council. The certification appeal hearing is de novo. Upon conclusion of the certification appeal hearing, the City Council may find that the Final EIR has been completed in compliance with the requirements of CEQA. If the Council makes such a finding, it will uphold the Commission's certification of the Final EIR. If the City Council finds that the Final EIR has not been completed in compliance with CEQA, the Council must require the Final EIR to be revised and the City may not take any action on the project until the project has an EIR that either the Planning Commission or City Council on appeal finds to be adequate. City Council decisions on the adequacy of the EIR are final.

The subject EIR provides environmental clearance to recognize the current landfill and related operations and practices and to increase the permitted top elevation of the landfill from 150 to 245 feet mean sea level (msl) to allow an increase in the capacity of the landfill by approximately 15.12 million cubic yards, excluding cover materials. The project also includes some refinements to the existing site plan and incremental changes in operations that may be necessary for the remaining life of the landfill. (SCH #2007122011). Existing and proposed uses are shown in Figures 1 and 2.

ANALYSIS

On June 6, 2012, the Planning Commission held a public hearing on the Final EIR for the Newby Island Sanitary Landfill and The Recyclery Rezoning project. After public testimony and discussion, the Commission voted (4-0-2-1; Commissioners Abelite and Bit-Badal absent; Yob

recused) to certify the Final EIR for the project as having been completed in compliance with the requirements of CEQA. On June 11, the City of Milpitas filed a timely appeal of the EIR certification.

The City has prepared responses to each issue raised in the appeal from the City of Milpitas. The content of the appeal, along with point-by-point responses follow. An annotated copy of the original environmental appeal is attached as an appendix. The appeal does not raise any new issues that require additional analysis and none of the issues raised change the impacts analysis that was already prepared and set forth in the Final EIR.

Text of the Environmental Appeal and Responses

Following are responses to an appeal filed by the City of Milpitas of a Final EIR prepared by the City of San José. Text identified as "Appeal" is from the "Notice of Environmental Appeal" and its attachments, dated as received by the City of San José on June 11, 2012. Text identified as "Response" is responding to the information in the Appeal. References within the text to "FEIR" are referring to the Final Environmental Impact Report for the Newby Island Sanitary Landfill and The Recyclery Rezoning Project (File No. PDC 07-071, SCH# 2007122011), which was certified by the San José Planning Commission on June 6, 2012. References within the comment letter to the "first Draft EIR" are assumed in this response to refer only Draft EIR prepared for this project, which is dated September 2009.

Attached to the appeal letter are (a) a letter from the Acting Director of Public Works for the City of Milpitas, (b) a letter from the Acting Director of Planning and Neighborhood Services for the City of Milpitas, and (c) report from CalRecovery, a consulting firm. These attachments are also referenced in the appeal letter. All issues raised in the appeal letter are addressed in detail below. In addition, individual responses to the attachments can be found at the end of the detailed response to the appeal letter.

Complete copies of the entire appeal package are attached to this set of response as Appendix A: Appeal Documents.

1. Appeal: Reason(s) for Appeal
(1) The Planning Commission is not authorized by CEQA regulations to certify the Final EIR, and the Planning Commission's resolution purporting to certify the Final EIR does not comply with CEQA regulations.
(2) The Project Description in the EIR does not comply with CEQA requirements because it fails to describe the proposed project at the level of detail required to permit a reasonable environmental analysis of the project's potential environmental effects.
(3) The statement of objectives in the EIR is not sufficient to support the development or analysis of a reasonable range of alternatives.
(4) The EIR fails to properly describe the existing environmental setting and relies on an improper environmental baseline to determine the significance of the project's potential environmental effects.

(5) The criteria used to determine the significance of the project's potential environmental impacts is arbitrary and capricious and not supported by substantial evidence in the record.
(5) The EIR fails to identify and analyze the project's potential environmental impacts, including impacts relating to land use, odors, noise, and light and glare.
(6) The conclusions in the EIR regarding the significance of the project's potential environmental impacts are not supported by substantial evidence in the record.
(6) The EIR fails to identify and adequately analyze a reasonable range of project alternatives.

1. Response: These are summary statements of the substance of the appeal. All of these points are expounded in the attachments to the list and are responded to individually below as indicated:

(1) The response to this issue is found in Response #8.
(2) The response to this issue is found in Responses #11-16.
(3) The response to this issue is found in Response #29.
(4) The response to this issue is found in Responses #11, 17-19, 21, 22, and 25-28.
(5) The response to this issue is found in Responses #19-22.
(5) The response to this issue is found in Responses #3, 19-22, and 26-28
(6) The response to this issue is found in Response #3, 11-13, 17, and 21-28.
(6) The response to this issue is found in Response #29.

2. Appeal: As you know, the City of Milpitas has, for many years, experienced significant odor problems as a result of operations at the Newby Island Sanitary Landfill. For at least the last three years, since the landfill operator first proposed the instant rezoning project, Milpitas has been negotiating diligently and in good faith with the City of San José and the operator to address this problem, without any success.

2. Response: The statement that the City of Milpitas has been negotiating "diligently and in good faith" with the City of San José since the rezoning application was filed is not clear. Nor does this comment letter explain why the negotiations and/or the success of those negotiations are relevant to the adequacy of the EIR and its evaluation of impacts from the proposed project.

Nevertheless, the EIR reflects effort on the part of City of Milpitas and City of San José staff to address odor issues. As a result of meetings between City of Milpitas and City of San José staff, the First Amendment incorporated into the EIR text a record of the process followed in developing the existing protocol for dealing with complaints about odors received from Milpitas and a summary of the protocol itself. The First Amendment also added to the EIR copies of the City of Milpitas Odor Control Action Plan and the Odor Control Minimization Plan for the Newby Island Recyclery Compost Facility. The PD zoning has added an Initial Compost Area Line and language which states that it is not presently anticipated that the composting site would be moved east of the line. If in the future the landfill operator proposes that the composting site be moved east of the line and therefore closer to receptors in the City of Milpitas, a new CEQA

analysis of potential impacts must be prepared and all feasible odor control methods are to be utilized.

3. Appeal: It is apparent that the existing odor control measures being implemented on the landfill are insufficient. This is clear from the hundreds of complaints received by Milpitas each year. The continuing odor problem is not only offensive to the population that lives and works in Milpitas, but it has had and continues to have negative impacts on economic development in Milpitas. (See June 6, 2012 comment letters from the Kathleen Phalen, Acting Public Works Director/City Engineer (hereafter, the "Phalen Letter") and Felix Reliford, Acting Director of Planning & Neighborhood Services (hereafter, the "Reliford Letter"), submitted concurrently). These impacts are well-known to San José officials. Consequently, Milpitas is puzzled and disappointed to see these impacts characterized as "less than significant" in San José's environmental impact report ("EIR") for the project. And Milpitas is frustrated that San José has declined to consider or impose any new mitigation measures or conditions of approval to reduce the significant odor problem affecting neighbors of the landfill in Milpitas.

3. Response: This comment refers only to existing conditions exclusively. Nothing is said or inferred about impacts from the proposed project which is the subject of the EIR. The conclusion in the EIR that odor impacts would be "less than significant" refers only to the proposed project (the height extension and those proposed activities that would be permitted only if the PD rezoning is approved), not to the "ongoing odor problem."

The First Amendment identifies a limit on where composting can occur (which was not in the initial proposed rezoning but will be included in the proposed rezoning that comes forward for Council consideration) and any future change in the location of the composting site that is closer to Milpitas would undergo a requisite environmental analysis. This restriction precludes increased future impacts compared to the existing conditions. Outdoor processing of mixed waste, including food waste, was approved on the Recyclery parcel as part of a Special Use Permit to expand an existing composting use in May, 2001. The DEIR identifies, as part of the Nuisance Species Abatement Plan (NSAP), the requirement that the outdoor food processing area at the Recyclery be enclosed in netting or structure. If it were enclosed in a structure, the odor from any food processing would be reduced.

The other two letters referenced in this comment as being attached to this letter (Phalen and Reliford letters) are briefly responded to individually below, as is the attached document from CalRecovery.

4. Appeal: It should be clear to San José and the landfill operator from our extensive negotiations that Milpitas is not seeking to close the landfill or unreasonably burden landfill operations. The additional odor control measures that Milpitas seeks are not extraordinary; the same and similar measures have been implemented and are being implemented at numerous other locations throughout California and nationwide. (See Report, CalRecovery Comments and

Suggestions Related to Odor Emission and Control at Newby Island Facilities, June 2012 (hereafter, the "CalRecovery Report"), submitted concurrently) What should also be clear, however, is that the status quo is unacceptable. It should be obvious to San José and the landfill operator that the existing odor problem is not "less than significant," and San José's determination to that effect in the EIR is incorrect. And unfortunately, that determination suggests that San José and the operator are not genuinely interested in reaching a reasonable, negotiated solution to this ongoing problem.

4. Response: Please refer to Response 2 above regarding negotiations between the City of San José, the landfill operator, and the City of Milpitas; to Response 29 regarding suggested odor control measures; and to Responses 3 and 19-22 regarding existing odor conditions. The EIR does not conclude that the existing odor problem is "less than significant", as the existing odor conditions are a part of the project baseline, and such a conclusion would be out of place in an EIR about a proposed project.

5. Appeal: Our skepticism of San José's good faith in attempting to resolve this problem is further fueled by its rush to certify the EIR and approve the rezoning project. Rather than provide a reasonable notice to, and a reasonable period of time for Milpitas and other interested persons to review the amendment to the Draft EIR, San José has scheduled the certification hearing at the earliest possible date; a week ahead of the City Council hearing on the rezoning application. This schedule is not merely unreasonable; as explained below, it also violates California Environmental Quality Act ("CEQA") requirements regarding the processing and approval of environmental impact reports.

5. Response: The CEQA Guidelines advise that responses to comments received from a public agency be provided to the public agency at least 10 days prior to certifying the EIR. The responses to the comments from the City of Milpitas, which are included in their entirety in the First Amendment to the Draft EIR, were sent to the City of Milpitas on May 23, 2012, which is more than 10 days prior to the Planning Commission hearing on June 6th, and the City Council hearing that was previously scheduled on June 12, 2012.

6. Appeal: Nonetheless, Milpitas remains willing to seek a reasonable and negotiated solution to the significant odor problems from operation of the landfill; and would like to continue to work with San José and the landfill operator to that end. However, such negotiations cannot continue if San José insists on pushing the operator's rezoning request to completion and approval. Therefore, to give the parties the time needed to reach a reasonable and mutually-agreeable compromise, Milpitas requests that San José: (i) defer certification hearing on the EIR and defer any action on the rezoning application; (ii) acknowledge the significance of the continuing odor problem; (iii) correct the various deficiencies (explained in detail below) in the EIR; (iii) and impose reasonable mitigation measures on any rezoning or permit to reduce odors from landfill operations.

6. Response: Because this letter files a formal appeal of the Planning Commission's certification of the EIR, a new Council hearing on the EIR has been set for August 14, 2012. Each of the comments in this letter is responded to separately. The existing presence of odors, which is the primary basis of this appeal, does not constitute a project impact.

Although this letter continues to refer to extensive and ongoing negotiations, the City of San José has not been party to any discussions that could be characterized as negotiations related to this project, and City of San José staff has not been present at any meetings or discussions about this project with anyone other than the project proponent in a year.

The Draft EIR circulation period ended in October 2009. During the 2 ½ years since then, the City has prepared substantial supplemental documentation on the biological issues, allowed the project proponent to evaluate various processing options, and participated in all of the meetings requested by the City of Milpitas staff as listed in Response 2 above. All of the additional information requested by the City of Milpitas has been included in the First Amendment to the Draft EIR.

Nothing in this comment or in this letter or in its attachments provides evidence that the proposed project would result in significant odor impacts beyond any odors caused by the existing activities. The City of San José is prepared to participate with the City of Milpitas in discussions about ways to minimize odors from existing facilities that impact sensitive receptors in the City of Milpitas. Such discussions do not, however, require delaying certification of this EIR or action on the proposed PD rezoning of Newby Island.

7. Appeal: Even if San José declines to participate in further negotiations, it is not free to approve the rezoning based on its existing CEQA process and EIR, because neither its process nor its EIR complies with mandatory CEQA requirements. Its process is improper, because CEQA does not authorize the Planning Commission to certify the EIR for this project. Rather, only the San José City Council may certify an EIR for the project. Neither the Planning Commission nor the City Council can certify the current EIR, however, because it is inadequate in numerous respects, as explained in detail below. As a result, it cannot support approval of the project, and must be revised and recirculated to comply with CEQA requirements.

7. Response: This comment is incorrect. The City of San José's process is legally adequate and the EIR is complete and complies with CEQA. Each of the specific points raised by this letter is responded to individually below.

8. Appeal: Under CEQA, the San José Planning Commission cannot certify the EIR for this project. Because the City Council will be the "decision-making body" for this project, only the City Council can certify the EIR. (See 14 Cal. Code Regs. § 15025(b).) San José's attempt to have its Planning Commission certify the EIR, rather than wait until the required City Council hearing, could be construed as an effort to minimize public review of the final EIR document and

accelerate the start of the limitations period on challenges to the EIR certification. This is plainly contrary to CEQA requirements. While San José's Planning Commission is free to make a recommendation to the City Council regarding certification of the EIR and/or action on the rezoning and planned development permit, it is not free to re-write CEQA requirements regarding the EIR process.

8. Response: This comment is not a correct summary of San José's process or its conformance with CEQA. The statement that the City's normal EIR process, which is explicitly described in the City's ordinance, could be an "effort to minimize public review of the final EIR document and accelerate the start of the limitations period on challenges to the EIR certification" is inappropriate since the legal challenge period starts with an ***action*** to approve the ***project***, not a public hearing on the EIR. If the City Council approves the rezoning, a Notice of Determination is posted and that is when the legal challenge period begins.

The section of the CEQA Guidelines referenced in this comment, Section 15025(b), states the following:

(b) The decision-making body of a public agency shall not delegate the following functions:
  (1) Reviewing and considering a final EIR or approving a Negative Declaration prior to approving a project.
  (2) The making of findings as required by Sections 15091 and 15093.

In conformance with the City of San José's CEQA Ordinance (Title 21), the Planning Commission held a public hearing at which all persons were given "full opportunity to be heard," and then certified that the Final EIR (consisting of the Draft EIR and the First Amendment to the Draft EIR) was complete, complied with CEQA, and represents the independent judgment of the City of San José. CEQA Guidelines Section 15025(b) does not prohibit the City Council from delegating the certification of the EIR to the Planning Commission.

Should the City Council deny the appeal filed by the City of Milpitas, (and subsequently decide to approve the project) and prior to approving the proposed PD rezoning, the City Council of the City of San José will need to review and consider the Final EIR and adopt specific findings regarding the project and its impacts.

The Planning Commission's action therefore is fully consistent with Section 15025(b) of the CEQA Guidelines.

9. Appeal: II. The EIR Does Not Satisfy CEQA Requirements
The EIR suffers from numerous defects which render it inadequate and unable to support approval of the project.

For example, the very title of the final EIR document, the "First Amendment to the Draft Environmental Impact Report," is misleading and inconsistent with CEQA requirements. By labeling the final EIR document as an amended "Draft" EIR, San José signaled to the public that it would provide a reasonable period of time, at least 30 days, for public review and comment on that document. This is not simply a matter of semantics. The term "draft" environmental impact report has legal significance under CEQA, and is legally distinct from a "final" environmental impact report, which term also has legal significance. (See Public Resources Code §§ 21091, 21092(b)(1); 14 Cal. Code Regs. §§ 15084, 15089.) CEQA requires that a "draft" environmental impact report be circulated for at least 30 days for public review and comment. (pub. Resources Code § 21091.) By contrast, under CEQA, a "final" environmental impact report is subject to a shorter review period, and the lead agency is not required to respond to public comments submitted during the review period for a final EIR. These terms, "draft" and "final," have technical and legal significance, such that San José's publication of an amendment to its "Draft EIR," rather than a "Final EIR," is misleading and does not comply with CEQA requirements. At a minimum, if San José intends to act on the project based on the existing CEQA document, without revisions or recirculation, it should republish the document as a "final EIR" and re-notice its hearings thereon.

9. Response: It should first be clarified that CEQA requires no public review or circulation of a Final EIR at all. Section 15089 states that the lead agency must prepare a Final EIR before approving a project. It also states that "Lead Agencies ***may*** provide an opportunity for review of the Final EIR by the public or by commenting agencies before approving the project" [Section 15089(b), italics added].

It would be inaccurate and misleading to title the First Amendment to the Draft EIR as a "Final EIR," since it is not. As stated on the very first page of the document after the cover, CEQA Guidelines Section 15132 specifies that a Final EIR must include the Draft EIR ***and*** several other components, including comments on the Draft EIR, responses to those comments, revisions to the text, and any other information added to the EIR by the Lead Agency. The First Amendment to this Draft EIR includes all of the items listed except the Draft EIR itself. Therefore, as the opening sentence on this first page states: "This document, ***together with*** the Draft Environmental Impact Report (Draft EIR) for Newby Island Sanitary Landfill and The Recyclery Rezoning Project, constitutes the Final Environmental Impact Report (Final EIR) for the proposed project" [italics added].

Lastly, since the City of San José has used this naming protocol for over 30 years and there is no record of anyone, including the City of Milpitas in the numerous environmental documents shared by the City of San José with the City of Milpitas over the decades, complaining that they had confused a "First Amendment to the Draft EIR" with a Draft EIR. For this reason, it appears that these document titles have not been and are not misleading.

10. Appeal: Beyond the misleading title given to the final EIR document, the EIR suffers numerous other substantial defects. The original Draft EIR was published nearly three years ago. Since that time, there have been significant changes to the proposed project, leading to the addition of a substantial volume of significant new and revised material to the first Draft EIR. This significant new information reflects and demonstrates the fact that the first Draft EIR did not adequately identify or analyze the potential impacts of the proposed project. Unfortunately, however, this new information does not bring the final EIR document up to minimal CEQA standards. Even taken together, the first Draft EIR and the First Amendment to the Draft EIR contain critical informational gaps, rely on improper assumptions and defective methodologies, and their analyses of potential environmental impacts remain fatally flawed in several respects.

10. Response: This comment is incorrect. Most of the information in the First Amendment to the Draft EIR (and the reason for its length) consists of:

(a) information already available in the technical appendices or elsewhere in the public record that was added at the request of commentors to make it more accessible (such as the geotechnical data in Appendix E and the *City of Milpitas Odor Control Action Plan* and the *Odor Impact Minimization Plan for Newby Island Recyclery and Composting Facility*);

(b) the often repeated explanation of the difference between existing or past conditions (such as gulls feeding on garbage) and the proposed project and why impacts from the existing landfill are not the same as impacts from the proposed landfill height expansion (see Responses C-1, C-7, C-8, C-11, C-24, F-1, F-5, G-4, M-12, M-24, M-29, M-48, M-53, O-30 for examples); and

(c) explanations of why the proposed modifications to the NSAP submitted by the project proponent were not environmentally superior to the project evaluated in the Draft EIR (see Appendix A to the First Amendment).

Project modifications are also identified and discussed in the text amendments section of the First Amendment to the Draft EIR that respond to the expressed concerns from multiple commentors that the project would benefit from greater professional input and oversight of the implementation of the *Nuisance Species Abatement Plan (*see revised Appendix D of the Draft EIR and its attached Appendix B, the modified NSAP). All of this information is focused on clarification of previously disclosed impacts and/or improving the effectiveness and feasibility of previously disclosed mitigation measures. None of these modifications or additions would trigger the need for recirculation of an EIR prior to certification, as described in Section 15088.5 of the CEQA Guidelines.

The remainder of this comment is too vague and insubstantial for a specific response to be provided, including the following:

(a) The statement that including significant new information means that the DEIR did not adequately identify or analyze the potential impacts. This is a circular argument. In addition, the new information does not meet the definition of "significant" in the Guidelines section as explained above.
(b) The DEIR and First Amendment "contain critical informational gaps" – what does this mean? Specifically what gaps occur in the DEIR or First Amendment?
(c) The DEIR and First Amendment "rely on improper assumptions" – what improper assumptions were relied on, who determined they were improper, and how do they render the EIR inadequate?
(d) The DEIR and First Amendment rely on "defective methodologies" – what methodologies would those be and how was it determined that they were defective? How do those "defective methodologies render the EIR inadequate?
(d) The analysis of "potential environmental impacts" in the DEIR and First Amendment remain "fatally flawed in several respects." Which analyses are fatally flawed, upon whose judgment were they found to be "fatally flawed", and whose judgment is being substituted for the analyses in question?

11. Appeal: A. Inadequate Project Description
The Project Description identifies three separate areas within the entire project area: (i) the landfill; (ii) the D-Shaped Area; and (iii) the Recyclery. The flat, 17-acre D-Shaped Area is distinguished from the landfill and the Recyclery "because it is visually distinctive and generally separated from most of the landfill." (First Draft EIR at 8.) Like the landfill area, the D-Shaped Area is currently zoned Multiple Residence District (R-M), for residential uses only. The D-Shaped Area is at the far eastern border of the project site, less than one-half mile from the nearest residences in the City of Milpitas.

The EIR treats the D-Shaped Area as separate from the landfill for purposes of the Project Description. (First Draft DEIR, Section 1.4, pp. 7-8.) Notably, however, it lumps the two areas together for purposes of describing the existing uses on the site. (First Draft EIR, Section 1.4.3, pp. 15-26.) By describing the existing uses of these two areas together, the EIR authors avoid having to adequately disclose that the D-Shaped Area is currently only used for parking employee vehicles and trailers that serve as office space and contain employee lockers. Instead, the EIR authors gloss over this fact and, by describing the uses of the landfill and D-Shaped Area together, misleadingly suggest that all existing landfill activities, including the most intensive odor and noise generating activities are currently occurring across both the landfill and the D-Shaped Area. (First Draft EIR, Section 1.4.3, pp. 15-26) As explained in greater detail below, the suggestion in the Project

Description that the D-Shaped Area is already being used for landfill activities (i) improperly distorts the environmental baseline used to assess the significance of the project's potential environmental impacts, and (ii) undermines the EIR's analysis of the project's environmental impacts, leading to the unsupported conclusion that relocating various odor- and noise-intensive

activities to the D-Shaped Area will not result in any new impacts on residences in Milpitas. The Project Description must be revised to clearly acknowledge and describe the existing uses of the D-Shaped Area.

11. Response: This entire comment is pointing out parts of the Project Description, Section 1.0, which includes pages 1-34 of the Draft EIR. The description of the "Existing Setting," including the existing land uses, is included in the clearly labeled Section 3.0, Existing Setting, Impacts and Mitigation (pages 45-196).

It can be noted in this context that there is no requirement in CEQA or the CEQA Guidelines for existing land uses to be identified at all in the Project Description section of an EIR. Brief summaries of both the existing and the proposed land uses were placed near each other in this section of this EIR to facilitate understanding of the types and extent of changes anticipated. In all cases, more detail is provided later in the EIR.

This comment also apparently overlooks multiple sections of text in the Project Description section, including the following:

> Section 1.2 (page 4): "The project site consists of three visually distinct subareas: ... (2) the 'D-shaped area,' which is also part of the landfill property, is approximately 17 acres north of the main driveway just west of the entrance gate, and is currently used for offices (in temporary trailers), storage, vehicle parking and wood processing but is permitted to be landfilled; and...."
>
> Section 1.4.1.1 (page 8): This section discloses that, unlike the landfill which is outside the City's Urban Service Area and is designated as *Private Open Space* with a *Solid Waste Facility Overlay*, the D-shaped area is ***inside*** the City's Urban Service Area and is designated as *Light Industrial*. This section also states very clearly that the proposed uses of the D-shaped area are listed in Table 1.4-1.

Because this property is unusually complex and has a very lengthy history, the description of existing uses is also very complex, including:

> Section 1.4.3.2 (page 20): "...Trailers that are additional office space and employee locker rooms are presently located on the D-shaped area that is part of the NISL parcel, on the north side of the main access road and directly across from the Recyclery and hauling company offices. Waste collection equipment and trucks, as well as employee vehicles, are also parked on the D-shaped area. None of these uses are allowed on the Recyclery property by its existing PD zoning and some of the uses are not allowed by either zoning or permits on the D-shaped area."

The Project Description section of the EIR is unusually detailed in the degree to which it identifies the extent of changes from existing conditions likely to occur as a result of the proposed rezoning. This includes Section 1.5 *Changes Proposed by the Project* which, although not required by CEQA, is included in the Project Description to assist the reader. This section starts by reiterating that the proposed zoning, in addition to changes in landfill height and some of the uses of the Recyclery, proposes "changing the existing and previously approved uses of the D-shaped area to a specific group of uses related to the landfill and Recyclery operations, and a waste hauling business" (page 28).

Rather than trying to "distort" changes in uses on the D-shaped area as this comment states, the Draft EIR reiterates at multiple places the uses that are proposed and the changes that will occur on that portion of the property. For example:

> Section 1.5 (on page 32): Under the heading "D-Shaped Area," it is acknowledged that "While some of the hauling company operations are already located on this site or in the area, they are not allowed by the existing zoning nor are they consistent with any of the current permits." In the following paragraph, the Draft EIR states that "Proposed new uses not presently located on the site or in the area include a public education facility (which could be an outdoor kiosk or room in a building), HHW [household hazardous waste] turn-in and storage facility, public drop-off location for waste and/or recycling, and a paint booth for bins and equipment used for the hauling company operation."
>
> On page 32, under "Other Operations," the Draft EIR includes the following: "The GRS plant (see Landfill Gas to Energy Plants and Landfill Gas Export Plant on Figure 1.0-6) may be expanded and relocated to the east, probably to the D-shaped area...."

In the following sections of the Draft EIR after the Project Description are several specific instances where existing and proposed conditions and/or land uses on the D-shaped area are explicitly referenced:

- The first and second paragraphs of Section 3.1.1.2 on page 49;
- Details of changes proposed on page 56 in Table 3.1.1;
- The last paragraph of Section 3.1.2.2 on page 58;
- Analysis leading up to Impact LU-4 on page 61;
- Discussion of Drop-Off Facilities on pages 62 and 63; and
- Existing Setting in Section 3.2.1.1 starting on page 65.

This comment is therefore incorrect in stating that proposed and existing uses on the D-shaped area are overlooked or "glossed over" in the Project Description section or in any of the subsequent sections.

12. Appeal: The Project Description also fails to adequately identify the proposed activities in the D-Shaped Area. Instead, it lists numerous current activities and facilities that may or may not be relocated to the D-Shaped Area. (First Draft EIR, Section 1.4.3, pp. 15-26.) These include a solid waste transfer station (p. 18), the four landfill scales (p. 20), the Gas Recovery System ("GRS") facility (pp. 20-21), a construction & demolition materials recycling area (pp. 21-22), the landfill maintenance shop (p. 22), leachate holding tanks and ancillary facilities (p. 23), a diesel fueling station and facilities (p. 23), a proposed household hazardous waste turn-in and storage facility (p.23), and composting and compost processing (p. 25). According to the First Draft EIR, "the project would allow [the D-Shaped Area] to be developed and used permanently for any combination of the uses listed in Table 1.4-1," which includes but is not limited to all of the foregoing uses and activities, [Footnote: While the First Amendment to the Draft EIR purports to remove composting and compost processing from the list of permitted activities in the D-Shaped Area, it acknowledges that composting and compost processing could occur in the D-Shaped Area in the future, subject to a PD permit. However, the EIR does not attempt to identify or evaluate the potential environmental impacts from such activities in the D-Shaped Area.] none of which is currently permitted anywhere on the project site.

12. Response: This comment implies that the Draft EIR should not have listed all of the uses which may be located in the D-shaped area in the future. That would be misleading and inaccurate.

The project is specifically proposing to allow many of the listed uses allowed now on the landfill and D-shaped area (i.e., many of the activities that are part of or ancillary to the legally operating landfill) except landfilling itself, to be located on the D-shaped area in the future. The Draft EIR also evaluates the impacts likely to occur from these uses *as proposed.* The project **proposes** to preclude any uses on the D-shaped area that will generate noise in excess of existing uses, for example. The list of land uses allowed on the D-shaped area (Table 1.4-1) does not include composting or organics processing – those uses are marked as not allowed on the D-shaped area and therefore are not **proposed** to be located on the D-shaped area.

The landfill-related uses are currently all allowed on the D-shaped area, but are NOT **proposed** by this rezoning to be located or allowed on the D-shaped area.

On page 26, the following statement appears: "The project does propose that no further landfilling would occur on the D-shaped area, which would allow that site to be developed and used permanently for any combination of the uses listed in Table 1.4-1." In this context, the meaning is "listed in Table 1.4-1 *under the column entitled 'D-shaped Area'*."

The final statement in this comment, "none of which is currently permitted anywhere on the project site" referring apparently to the D-shaped area, does not accurately restate the content of the Draft EIR. As stated in the Draft EIR, the D-shaped area is part of the existing legally non-

conforming landfill and the uses allowed on the landfill are presently also allowed on the D-shaped area.

13. Appeal: The ostensive reasons for failing to adequately specify which uses will be moved to the D-Shaped Area is that the project applicant wishes to preserve its flexibility with respect to its future operations, and that "details" regarding the proposed activities on the D-Shaped Area, and on the Recyclery (which is equally close to the residences in Milpitas), "are currently unknown." It is difficult to see how "details" regarding such uses are not currently available, given that all of these uses are currently occurring at various locations on the landfill site. Nonetheless, the EIR authors rely on the unavailability of such details to "explain" their failure to perform any analysis of the potential impacts of performing these same activities in the D-Shaped Area. Unfortunately, the proposed rezoning and planned development permit would allow all of these activities to be relocated to the D-Shaped Area or the Recyclery, both of which are significantly closer to the existing residences in Milpitas, even in the absence of such an analysis. This is flatly contrary to CEQA requirements. San José and the project applicant have sufficient information available to them to perform the necessary analyses, and they cannot defer such analyses simply to preserve flexibility for the project applicant's future operation of the landfill. The EIR must be revised to identify and analyze the potential impacts from conducting any new activities on the D-Shaped Area and the Recyclery, and then recirculated for public review and comments, before San José can approve the rezoning and issue the requested planned development permit.

13. Response: This comment does not identify any specific activity that would be allowed on the D-shaped area whose impact or impacts is or are not evaluated in the EIR.
As acknowledged by this commentor in this letter, the Draft EIR and First Amendment do describe the uses that may be located on the D-shaped parcel in the future (see Responses 11 and 12 above). But because this is an existing sanitary landfill that has operated on this site for over 80 years, and because of a multitude of changes that have occurred just since passage of AB 939 (such as the recycling of construction and demolition waste, collection of household hazardous waste, even the collection/processing of yard trimmings as a separate waste stream) and with even more changes likely to occur in the future in the waste management industry (particularly in the recycling of organics), it is impossible to forecast precisely which (if any) operations will need to continue without change, which will need to expand, and which will be eliminated as a result of market changes, regulatory changes, technology changes, etc. Based on just the past 25 years since passage of AB 939, there have been substantial changes already (most of the recycling operations on the project site did not exist prior to passage of AB 939).

The business entity that operates on these sites (Newby Island Sanitary Landfill and The Recyclery) does not create its own business, it handles the waste materials generated by others in ways dictated by regulations, laws, policies, and contractual requirements. Nevertheless, the Draft EIR and First Amendment describe what is known and what is anticipated.

For example, on page 31 there is a list of physical changes anticipated to occur, including changes on the D-shaped area such as relocation of the landfill maintenance shop and fueling station. In the paragraph headed "D-Shaped Area" on page 31, there is further detail about what might be placed

there, including scales, a corporation yard, offices, vehicle parking and maintenance, and equipment storage and maintenance. As is frequently the case for a planned development zoning, the exact building designs are not known but would be developed within the zoning parameters prior to approval of a PD Permit in the future. The PD zoning parameters are shown in Figure 1.0-7 and include maximum building height (50 feet) and minimum perimeter setbacks. Other restrictions are identified in relevant sections of the Draft EIR, such as noise (whose limitation is keyed to the closest sensitive receptor – endangered species habitat).

Most of the listed land uses (office, vehicle parking and maintenance, etc.) sought to be allowed on the D-shaped area under the PD Rezoning are already occurring on the D-shaped area. They are in temporary buildings now and any proposal to build permanent buildings would require additional CEQA review prior to approval of a PD Permit as stated on page 34 of the Draft EIR. Some of the uses, such as the scales, are adjacent to the D-shaped area, but are currently physically closer to the residential areas of Milpitas; relocating them to the D-shaped area would be to move them farther from residences, thereby reducing any impact to residential land uses in Milpitas.

These "physical changes" are the project whose impacts are analyzed throughout the EIR.

14. Appeal: The First Amendment to the Draft EIR modifies the Project Description in several respects, which modifications have not been subject to public review and comment, and which undermine the analyses in the EIR. For example, the First Amendment to the Draft EIR replaces the Land Use Regulation Table 1.4-1 of the First Draft EIR with a new Land Use Regulations table, intended to "clarify permitted, not permitted, and primary uses on the project site." (First Amendment to Draft EIR, p. 231.) Unfortunately, however, this new table has several ambiguities and confuses, rather than clarifies, the proposed uses on the site. The new table identifies several activities as both "Permitted" and "Not Permitted" on the D-Shaped Area, including the proposed SWTF, mixed recyclables processing, and organics processing, none of which is currently permitted or occurring on the D-Shaped Area. There is no explanation as to why these activities are designated as both "Permitted" and "Not Permitted" on this Area.

14. Response: It is not clear from this comment why the commentor thinks that the referenced uses (mixed recyclables processing, the transfer station, etc.) are listed on the new Table 1.4-1 as both "Permitted" and "Not Permitted." Under the column headed "D-Shaped Area," the table shows "NP" (defined as "Not Permitted Use") for the first six land uses listed on the table, which include those listed in this comment. There are a number of complexities in defining the uses of the various facilities, but those points are very clear in the table.

15. Appeal: The new table also indicates that composting is "Not Permitted" on the D-Shaped Area; however, elsewhere in the First Amendment to the Draft EIR, it indicates that composting may be permitted with an amendment to the anticipated PD Permit. This suggests that the planned development zoning for the site will allow composting on the D-Shaped Area, subject to a PD Permit; this is precisely the same proposal that was set forth in the first Draft EIR. Therefore, it is not clear why the first Draft EIR was amended with respect to the locations in which composting will be allowed on the site.

15. Response: This comment appears to have misinterpreted the text. This comment says that the First Amendment "indicates that composting may be permitted." Whatever text is referenced (the comment does not specify), that interpretation is inaccurate. It is true that the composting site may be moved from its present location on the landfill to another location on the landfill, as stated in the PD zoning, but nowhere does the First Amendment say that composting would be allowed on the D-shaped parcel. Table 1.4-1 defines the limits of the PD zoning for land uses, and it shows that composting is NOT allowed on the D-shaped area or on The Recyclery. It does not, however, preclude its relocation on other parts of the landfill itself, subject to the procedures and limits defined elsewhere.

16. Appeal: These deficiencies and changes in the Project Description do not satisfy CEQA's requirement for a stable, coherent project description of sufficient detail to allow for the identification and analysis of the project's potential environmental impacts. [CITATIONS] Consequently, the project description must be revised and the EIR recirculated to satisfy CEQA requirements.

16. Response: The issues raised by this commentor about the Project Description almost exclusively apply only to existing conditions, not to the proposed project. Although more detail about the project is provided in the First Amendment to the Draft EIR, there was very little change from the project described in the Draft EIR as it first circulated and the project in the First Amendment. Some of the changes, such as introduction of the compost limit line, reduce the possibility of off-site impacts. The First Amendment to the Draft EIR adds the title for the "Oversight Committee" who will advise the City of San José Director of Planning, Building and Code Enforcement and defines their role in more detail, but it does not identify any new adverse impacts or reduce the effectiveness of proposed mitigation. The Committee's title may support a greater degree of public confidence in the effectiveness of the proposed mitigation and in the consistency of oversight of the mitigation measures.

Since the additional information provided in the First Amendment is mostly additional details of the project, there is no justification for the assertion that the project description lacks sufficient detail. According to Section 15088.5 of the CEQA Guidelines, an EIR must be recirculated when significant new information is added to the EIR before certification. This section also states that "New information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial

environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement." The First Amendment to the Draft EIR does not identify either a new "substantial environmental effect" or a new feasible way to mitigate that is not proposed.

17. Appeal: B. Improper Environmental Baseline for Assessing the Significance of Potential Impacts.
As noted above, the Project Description acknowledges that the 17-acre D-Shaped Area is a separate area from existing landfill, and is situated less than one-half mile from existing residential, uses in the City of Milpitas. (First Draft EIR, p. 8.) At the same time, however, for purposes of describing existing uses of the project site, the EIR considers the D-Shaped Area part of the landfill area. (First Draft EIR, Section 1.4.3, pp. 15-26.) By arbitrarily lumping the landfill and the D-Shaped Area together for purposes of describing existing conditions on the project site, the EIR authors are able to characterize activities that presently occur only on the landfill site as "existing activities" for purposes of this D-Shaped Area, thereby suggesting that they are part of the "environmental baseline" for purposes of the EIR's analyses of environmental impacts from the project. This is plainly improper and contrary to CEQA's requirement that the "environmental baseline" reflect actual, existing conditions where the proposed activities will occur. (Communities for a Better Environment v. South Coast Air Quality Management District, 48 Cal. 4th 310 (2010).) The EIR must be revised to clarify that the "existing conditions" on the D-Shaped Area do not include activities that are currently conducted in the landfill area, but not presently, conducted in the D-Shaped Area.

17. Response: The statement that "the EIR considers the D-Shaped Area part of the landfill area" is repeated in this letter, but nowhere is it explained. This statement also implies (but never substantiates) that all of the activities that occur "only on the landfill site" are also identified or implied by the EIR to be present on the D-shaped area. This is incorrect.

The Draft EIR specifically identifies existing activities and conditions on the D-shaped area and sometimes also specifies which activities or land uses ***are not*** currently found on the D-shaped area at these locations:

- The first paragraph on page 4 (fourth line from the top);
- Table 1.4-2 on page 9 (all items in the D-shaped area column with an asterisk*);
- Section 1.4.3.2 on page 20;
- The subsection labeled "D-Shaped Area" on page 31;
- Section 3.1.1.2 on page 49;
- Subsection entitled "Existing Views" on page 65;
- The first paragraph on page 114;
- Subsection entitled "Developed," starting at the bottom of page 115;
- Subsection entitled "City of San José Ordinance and Heritage Trees" on page 123;
- Last paragraph on page 150;

- Second complete paragraph on page 160; and
- First and second paragraphs on page 168.

18. Appeal: C. Inadequate Environmental Analysis
Based in large part on the defective project description and improper environmental baseline described above, the EIR's analyses of numerous potentially significant impacts is either inadequate or missing entirely, and the authors' conclusions regarding the significance of those potential impacts are not supported by substantial evidence in the record.

18. Response: The allegations made about the project description and the "existing conditions" on the D-shaped area are inaccurate (see Responses 3 through 17 above). Also refer to Responses 19-28 below.

19. Appeal: 1. Inadequate Odor Impacts Analysis:
The odor impacts analysis in the EIR, and the resulting conclusion that odor impacts from the operation of the project will be less than significant, are defective for several reasons. First, the EIR authors incorrectly assume, for purposes of their analysis, that the existing level of odor emissions from the landfill and composting operations, if continued, would constitute a less than significant impact on the residents of Milpitas and other affected persons. This assumption is plainly incorrect, as is demonstrated by the history of odor complaints generated by the landfill and composting operations. (See Phalen Letter; see also CalRecovery Report.) Although the EIR purports to rely on the Bay Area Air Quality Management District ("BAAQMD") CEQA Guidelines to reach this determination, their use of these Guidelines cannot support this determination because (i) the Guidelines themselves are insufficient to assess the significance of the existing odors; and (ii) the EIR authors do not properly apply these Guidelines.

19. Response: The EIR does not need to rely on BAAQMD guidelines to reach a conclusion that existing conditions are not an impact from the proposed project. Impacts from existing activities that already occur, whether or not they impact residents of Milpitas, are not by definition, impacts from the proposed project. They are ***existing conditions***, against which background the proposed project's impacts should be measured. If the proposed project cannot reasonably be found to increase existing odors, then the proposed project does not have significant impacts when compared to existing conditions.

20. Appeal: The BAAQMD Guidelines and the EIR rely on the number of "confirmed" odor complaints to assess the significance of existing odor emissions.

20. Response: This is not correct. The BAAQMD Guidelines do not define how to assess the significance of "existing odor emissions," nor does the EIR. There is no basis for evaluating the significance of existing emissions because they are the existing environment against which the project's impacts are evaluated.

21. Appeal: As explained in the Phalen Letter, however, the BAAQMD and San José procedures for processing and confirming complaints is inadequate, and does not and cannot provide an accurate assessment of the significance of odor impacts. (See Phalen Letter.) The shortcomings in these procedures should be apparent from the fact that BAAQMD and the City of Milpitas receive hundreds of odor complaints per year concerning odors from the landfill operations, only three of which have been "confirmed" over the past three years. (First Draft.EIR, p. 98.) Moreover, the BAAQMD's adoption of its most recent CEQA Guidelines was recently set aside by the court, because BAAQMD itself did not comply with CEQA requirements in adopting the Guidelines. Therefore, the validity and applicability of these Guidelines is not clear.

21. Response: The BAAQMD CEQA Guidelines (1999) used in preparing this EIR were the Guidelines in effect when the CEQA analysis was begun in 2006. Those Guidelines were also still in effect when the EIR was circulated in September 2009. Although the City of San José sent a Notice of Preparation to the City of Milpitas in December 2007, no response was received. Further, neither the staff member attending the Scoping Meeting held on this EIR nor the comments from the City of Milpitas on the Draft EIR (Section 4.0-G of the First Amendment) objected to the use of BAAQMD thresholds of significance, and no suggestion was made about identifying new thresholds for odor impacts. At a meeting with Milpitas staff, it was requested that the Final EIR include a summary of the process that was followed in dealing with previous odor issues and describe the protocol that was established to deal with odor complaints from multiple sources upwind of the City of Milpitas. That information was included in the First Amendment to the Draft EIR.

The statement in this comment that the threshold or "process" is obviously flawed because so few complaints are confirmed is not a question and does not appear to require a response, since it just draws a conclusion.

This commentor is making a very late suggestion that the City of San José should invent new thresholds for odor impacts and reject the BAAQMD CEQA Guidelines because the City of Milpitas doesn't agree with the conclusion in the EIR. Since no evidence is provided that there is a potential ***new*** impact likely to occur from the proposed project (versus a disagreement about existing impacts), there is no nexus identified for redoing the CEQA analysis in order to invent new thresholds of significance that are inconsistent with CEQA and/or the CEQA Guidelines.

The law suit against the new BAAQMD Guidelines (2011) has no relevance to this EIR or the threshold of significance in effect at the time the EIR was prepared, although that threshold is very similar to that included in the later version of the BAAQMD CEQA Guidelines.

22. Appeal: The odor impact analysis and conclusion are also defective because, in reaching their conclusion, the EIR authors do not apply the appropriate threshold of significance for odor impacts. At the outset of the odor analysis, the authors declare, consistent with BAAQMD

recommendations, that the significance of potential odor impacts will be determined, consistent with BAAQMD

Guidelines, on the basis of two factors: (i) the distance between odor sources and sensitive receptors; and (ii) the history of odor complaints. (Draft EIR, Section 3.4.1.2, pp. 100-101.) As explained above, these factors dictate that the existing odor emissions from the landfill and composting operations constitute significant impacts on residents in Milpitas. However, the EIR authors then ignore these factors in determining the significance of the project's potential odor impacts, concluding instead that such impacts will be less than significant because the proposed project "would not increase odors compared to existing operations." This is not the correct threshold for determining the significance of the project's odor impacts, because it fails to consider the significance of existing odor emissions. Notably, the landfill and composting activities that appear to generate the most frequent and objectionable odors are not allowed under the existing zoning, and have not been subject to any prior CEQA review; consequently, the EIR authors have no adequate basis for assuming that the existing odors are "less than significant," and the relevant factors (distance between odor source and sensitive receptors and history of odor complaints) indicate that those odors do, in fact, constitute a significant impact on the residents of Milpitas. Nonetheless, the EIR authors conclude that the project's odor impacts will be less than significant based solely on their conclusion that the project will not increase odors compared to existing operations.

Moreover, even if the significance of the proposed project's odor emissions could properly be determined based on a comparison to existing odors, that determination would be incorrect because the conclusion that the proposed project will not increase odors compared to existing operations is incorrect, for at least two reasons. First as explained herein, the EIR fails to account for the effect of relocating various odor-emitting activities, such as composting or leachate management activities, to locations closer to the sensitive receptors in Milpitas. Second, the EIR authors' assumption that limiting the capacity of the landfill will preclude any increase in odor emissions is simply incorrect, because odor emissions could be increased without increasing landfill capacity by, among other things, shifting waste within the existing capacity limit from the landfill operations to the composting operations. (See CalRecovery Report.)

22. Response: This question/comment is somewhat confusing. Regarding the discussion in the Draft EIR about thresholds of significance, those thresholds are, as stated, the thresholds recommended by the Bay Area Air Quality Management District. The comment then states that "these factors dictate that the existing odor emissions from the landfill and composting operations constitute significant impacts on residents in Milpitas." If this statement means that existing odors ***are*** causing significant impacts to the residents of Milpitas, the statement is acknowledged. The City of Milpitas had not, prior to this letter, explicitly advised the City of San José that the existing operations of the Newby Island landfill creates existing significant odor impacts to Milpitas residents. Information provided by the City of Milpitas had focused on past conditions and the protocols in place to quickly reduce odor impacts that might occur in the

future. For example, reference is hereby made to Comment G.3 in the City of Milpitas' letter ("The landfill and composting activities *have been* a significant source of odor....", italics added.)

ALL CEQA documents must compare anticipated project-generated impacts or conditions to existing conditions. CEQA itself, the CEQA Guidelines, and case law emphasize that the project's environmental impacts must be compared to the existing conditions in order to determine if the impacts would be significant. The CEQA Statute defines "significant effect on the environment" as "a substantial, or potentially substantial, adverse *change* in the environment" (italics added) [CEQA Section 21068).

No matter what thresholds of significance are used or how they are interpreted, the conclusion in the Draft EIR to which this comment is objecting, that "The proposed project would not increase odors compared to existing operations" (Impact AIR-4 on page 105 of the Draft EIR), is the appropriate statement of impact for the project.

Further, the statement in this comment that "Notably, the landfill and composting activities that appear to generate the most frequent and objectionable odors are not allowed under the existing zoning, and have not been subject to any prior CEQA review" is not completely accurate. The sanitary landfill is a legal nonconforming use that has been present on portions of the property for over 80 years (prior to the enactment of CEQA) and was, it is assumed, allowed by the zoning of the jurisdiction in which it originated (the community of Alviso in Santa Clara County). It is not specifically allowed by the existing City RM zoning. The green waste composting operation has been present on the property since 1993 and was the subject of an Initial Study and Negative Declaration prior to its approval by the City of San José. It was initially located on the D-shaped area and its relocation to the western portion of the landfill was, in part, done to reduce possible odor impacts in Milpitas. The receiving and grinding portion of the operation has been on the Recyclery parcel since 1993, and the feedstock of the composting operation was changed from yard waste to mixed waste, which includes food waste, with the approval of a Special Use Permit in 2001.

The last part of this comment is incorrect (that the EIR fails to account for relocating the composting operation). The First Amendment to the Draft EIR specifically addresses the issue of relocating the composting operation because the November 5, 2009 comment letter received from the City of Milpitas expressed concerns that relocating the composting facility closer to Milpitas could increase odor problems, based on their previous experience (i.e., when the facility was on the D-shaped area). The project proponent therefore added a compost limit line to the proposed PD zoning documents which would limit any relocation of the compost facility to the east without substantial additional analysis and odor mitigation.

Regarding the part of this comment that the Draft EIR fails to account for changes in the leachate management system, it is simply not accurate. The discussion identifies and summarizes

existing conditions and proposed changes, and evaluates those changes in almost every section of the Draft EIR. See especially pages 23, 26, 27, 31, 32, 51, 55, 125, 131, 134, 150-177, 182, and 183.

The Draft EIR identifies that leachate is currently pumped into mobile storage tanks which can be located anywhere on the landfill (including the D-shaped area) right now and are currently located in the center of the landfill site. The tanks are emptied into tanker trucks which haul the leachate to an off-site treatment facility. The changes proposed for leachate management are (a) it might be pumped into an existing pipeline south of Newby Island that reaches to the existing Water Pollution Control Plant, or (b) the mobile storage tanks might be relocated to the D-shaped area. Since the tanks can be relocated to the D-shaped area at any time under current conditions, that is not a substantial change from current operations. Additionally, nothing about these possible changes to management of the leachate is likely to result in any noticeable increase in odor impacts.

The concept of increasing intake at the composting facility as a function of reducing organics buried in the landfill is speculation on the part of the City of Milpitas and their consultant, CalRecovery. As stated in Section 1.4.3.12 of the Draft EIR (on page 25), "The composting facility is not proposed to be expanded. Any expansion in the composting facility would require a PD Permit and subsequent CEQA review."

On page 34 of the Draft EIR, at the end of Section 1.6 Uses of the EIR, is the following statement:

> Uses not proposed as part of the project would require rezoning of the site and subsequent environmental review. Uses that are not proposed as part of the project include, but are not limited to, the following (italics added):
>
> - Placement of recycling activities on the site that are visible off-site;
> - Receiving or processing MSW at the Recyclery; and
> - *Expansion of the composting facility.*

Any variation in the composting facility would not change the requirement that the facility must comply with the existing OIMP, whatever operational modification might be required.

23. Appeal: 2. Failure to Analyze Impact of Proposed Solid Waste Transfer Facility. Section 1.4.3.1 (p. 18) of the First Draft EIR states, "[t]his EIR provides environmental clearance for operation of a solid waste transfer facility on the Recyclery property." The First Amendment to the Draft EIR indicates that a solid waste transfer facility would be both a "Permitted Use" and a "Not Permitted Use" in the D-Shaped Area, but does not indicate whether or not it would be permitted on the Recyclery property. (First Amendment to Draft EIR, Table 1.4-1 (p. 231).)

23. Response: The Draft EIR states clearly (on page 18) that this EIR provides "environmental clearance for the operation of a solid waste transfer station on the **Recyclery** [emphasis added] property." It also adds that subsequent environmental review will be necessary to evaluate impacts associated with the Solid Waste Transfer facility. Table 1.4-1 in the Draft EIR shows a "Solid Waste Transfer Facility" as a permitted primary use ("P") on the Recyclery property.

This statement is reinforced by the text added by the First Amendment to the Draft EIR to the statement on page 18 (see page 235 of the First Amendment) that the subsequent environmental review will need to be "...based on the ultimate destination of the waste being transferred."

The First Amendment to the Draft EIR does not identify a transfer facility as a permitted use on the D-shaped area; it is only identified as not permitted ("NP") in the column of Revised Table 1-4.1 labeled "D-shaped Area." The First Amendment does identify a transfer station as a permitted use on the Recyclery property.

24. Appeal: However, the Draft EIR also admits that "[d]etails about the future solid waste transfer facility (size, operation, location of where materials would be transferred to) are currently unknown." (First Draft EIR, p. 19) Nonetheless, the authors conclude that "approval of the proposed rezoning would allow for the solid waste transfer facility use on-site[.]" (First Draft EIR., pp. 19,34.) It should be obvious that San José cannot approve a new use on the site-without evaluating the potential impacts of such use, and it cannot adequately evaluate the potential impacts of such use if all details regarding the future use "are currently unknown." Given this lack of information, it is not surprising that the EIR is devoid of any analysis of the potential impacts of operating a solid waste transfer facility on the Recyclery property, or anywhere-else on the Project site. (*See* First Draft EIR, pp. 61-62 (Impacts from New Land Uses).) What is surprising, however, is that the authors conclude, absent any such analysis, that the EIR "provides environmental clearance for operation of a solid waste transfer facility," and that approval of the rezoning to allow this new use would not result in any significant environmental impacts. The former conclusion is plainly incorrect, and the latter conclusion is not supported by any substantial evidence in the record. Therefore, if San José intends to approve the operation of a new solid waste transfer station anywhere in the project area, it must revise the EIR to include an analysis of the potential environmental effects of that new use, and recirculate the revised EIR for public review and comments.

24. Response: This comment takes one statement out of context and then makes a number of conjectural statements about its accuracy. The comment also completely ignores the heading of the section in which this statement is found – "Examples of Proposed Activities."

Below is the initial statement and the brief discussion that accompanied it on page 19 of the Draft EIR:

> A solid waste transfer facility is also proposed to be included in this rezoning as a future use. Transfer stations can be used to consolidate waste from collection vehicles into larger trucks for more efficient transport to a distant sanitary landfill or other waste management facility. There is not sufficient room on the Recyclery parcel to simultaneously operate all of the uses proposed, including a solid waste transfer facility. Details about the future solid waste transfer facility (size, operation, location of where materials would be transferred to) are currently unknown. The approval of the proposed rezoning would allow for the solid waste
>
> transfer facility use on-site; however, a PD Permit will be required when sufficient details about the solid waste transfer facility are known (e.g., details regarding the receiving facility) and before construction and operation of the facility on-site could occur. Subsequent environmental review will also be required at the PD Permit stage for the solid waste transfer facility to confirm there would be no new or substantially more severe impacts than those identified in this EIR.

In other words, the EIR is disclosing what is currently believed to be true – that the City of San José and the property owner may want to operate a solid waste transfer facility at this location in the future, when the landfill has closed. Since no one could possibly know to what location the waste might need to be transferred, it cannot possibly be disclosed at this time. Nor can the size, scope, or type of transfer facility be identified this far in advance, since it is not possible to foresee how much of the future waste stream will be diverted by new and expanded recycling initiatives. It is known that a great deal of waste is hauled to this site right now to be landfilled or composted or recycled on-site. It is not unreasonable to assume that some of it will continue to be hauled to this site in the future in order to be landfilled somewhere else.

The Draft EIR does not anywhere state or imply that this amount of information will suffice for ultimate approval of a transfer facility; in fact, it specifically states that "subsequent environmental review" will occur in the future, when more information is available to make such review accurate and meaningful.

This is further reinforced by the following statement found in Section 1.6 Uses of the EIR (on page 34 of the Draft EIR):

> This EIR provides environmental clearance for operation of a solid waste transfer facility on the Recyclery property. A PD Permit will be required for the operation of that facility. Subsequent environmental review will be conducted as part of that PD Permit to analyze and disclose the impacts associated with the receiving facility.
>
> There are a number uses proposed as part of this rezoning that would require subsequent environmental review because specific details about the construction and/or operation of those uses (e.g., details regarding the receiving facility for the proposed solid waste

transfer facility) are unknown at this time. The process followed could include preparation of an Addendum to this EIR, preparation of a Negative Declaration that tiers from this EIR or preparation of a supplemental or subsequent EIR. These uses/actions that would require subsequent environmental review include the following:

...

- On-site operation of a solid waste transfer facility on the Recyclery;

....

25. Appeal: 3. Failure to Analyze Impacts of Proposed Relocation of GRS facility. The EIR also purports to provide environmental clearance for the relocation of the Gas Recovery System facility from the main landfill area to the D-Shaped Area. The EIR admits that the electric generator for the GRS facility is '"the largest single noise source" on the project site, and is audible at the Water Pollution Control Plant ("WPCP"), more than 2,800 feet away adjacent to the site's southeast property line. Approval of the project would allow the relocation of the GRS facility to the D-Shaped Area, more than 2,000 feet to the east and less than 2,800 feet from residences in the City of Milpitas. Despite the proposed relocation of the "largest single noise source" on the project site to within 2,800 feet of the nearest residences, the EIR authors assume, for purposes of the noise impact analysis, that "[i]ndividually significant noise generators have not been identified as part of any changes proposed." And based on this assumption, the authors conclude that the project will not result in any significant new operational noise impacts. (First Draft EIR, pp. 111-112.) This assumption appears to be based on the authors' improper assumption that the D-Shaped Area is part of the landfill, for purposes of describing the locations of the various activities on the site.

25. Response: The comment includes several mistakes. The GRS facility is presently located approximately 500 feet from the boundary of the D-shaped area, and some of the gas flares are actually on the D-shaped area. Placing the GRS facility on the D-shaped area would not involve moving it "more than 2,000 feet to the east," but probably only 500 feet or less (see Figure 1.0-6 in the Draft EIR). The statement in this comment about the WPCP being "more than 2,800 feet away adjacent to the site's southeast property line" is confusing. The WPCP lands actually abut Newby Island, although lands in active use by the Plant as lagoons (and where the GRS noise is audible) are about 750 feet from the existing GRS facility location (see Figure 1.0-4).

It is highly unlikely that even the GRS facility would be audible from anywhere on the D-shaped area at the nearest residential site in Milpitas because the noise levels on I-880 are so high. But in any event, other restrictions included in the project preclude any substantial new source of noise or vibration from being placed on either the D-shaped area or within 700 feet of the southerly boundary of the landfill because of the potential for disturbance to endangered species. As illustrated on Figure 1.0-9 in the Draft EIR, the entire D-shaped area is within 700 feet of endangered species habitat and no substantial new sources of noise or vibration can be relocated to that part of the Newby Island site. That restriction, more than any other aspect of the project,

is responsible for the conclusion in the Draft EIR that no significant new operational noise impacts will occur from the project.

The GRS facility might still be relocated to the D-shaped area, but only if it can provide substantial attenuation of its operating noise to a level no greater than the noise levels currently found on the D-shaped area.

26. Appeal: 4. Inadequate Land Use Impacts Analysis.
The analysis of potential land use impacts from the proposed new activities in the D-Shaped Area is incomplete and inadequate. In fact no attempt is made to identify or evaluate the potential environmental effects from the various new activities proposed for this Area. This omission appears to be intentional, flowing from the EIR authors' assumption that any and all activities that are presently occurring in the landfill area are also occurring in the D-Shaped Area. These activities include the operation of the GRS facility, operation of the leachate management system, operation of the scales, operation of the landfill maintenance shop, operation of the diesel fueling station and facilities, and the composting and organic waste processing operations. As explained above, however, this assumption is incorrect; the only existing uses of the D-Shaped Area are for parking, office trailers and employee lockers. (First Draft EIR p. 20.) Nonetheless, the EIR's authors rely on this improper assumption to conclude that continuing these activities will not have any effect on the residences in Milpitas because they are "existing activities," and they decline to even consider whether relocating these activities from the landfill area to the D-Shaped Area, thereby bringing them approximately one-half mile closer to the nearest residences, may have any effects on those residences. As a result, the EIR lacks any analysis of the potential land use impacts associated with such relocated activities. The failure to even consider the possibility of such impacts, and the resulting omission of any analysis of such impacts, renders the land use impact analysis incomplete and inadequate.

26. Response: There are a number of factually incorrect statements in this comment, upon which the conclusion in the comment is built.

It is incorrect to say that "no attempt is made" to evaluate the environmental effects of moving new activities to the D-shaped area. The commentor is referred to Section 3.0 Environmental Setting, Impacts and Mitigation, including the Basis of Impacts discussion starting on page 45; to Section 3.1 Land Use; and specifically to Section 3.1.4 (erroneously shown as 2.1.4) starting on page 63, which summarizes all of the potential land use impacts identified in the Draft EIR. Additionally, the list of page locations in Response 22 above is referenced just for impacts associated with leachate and leachate management.

It is correct to say that impacts from all of the uses listed in this comment were not evaluated – but that is because all of the uses listed in this comment are not proposed to be located on the D-shaped area. For example, composting and organics processing are not allowed with as a result of the rezoning, or EIR, on the D-shaped area.

It is also incorrect that all of the uses listed will be moved approximately one-half-mile closer to the nearest residences. All or part of the GRS facility may be moved to the D-shaped area (some of the flares are already there), a maximum distance of about 750 feet (see Response 24 above). As discussed in Response 24, all uses moved to the D-shaped area or the Recyclery site will be restricted to noise and vibration levels no greater than currently exist at those locations.

All of the scale houses are located on the main entrance road, some approximately 500 feet west of the D-shaped area and some between the D-shaped area and the Recyclery. As the landfill is built out, the scales may need to be moved along the road toward the east, or slightly onto the D-shaped area. This means that some of the scales could be moved slightly closer to Milpitas and the residential development east of I-880, and/or some of them could be moved slightly farther away; none would be moved a half mile. This comment does not suggest what, if any land use impacts might occur from moving the scales that should have been evaluated in the Draft EIR. The existing Solid Waste Facility Permit requires that the Local Enforcement Authority must certify to the state that the landfill operation does not ever cause vehicles to queue onto a public street. It is assumed that this requirement will continue to minimize the likelihood of such a situation occurring in the future.

The moveable tanks used to store leachate from the landfill may be kept on the D-shaped area, given that the tanks are kept closed and are not a source of off-site odor impacts (or any other known land use impacts).

The maintenance shop for landfill equipment may be moved to the D-shaped area and consolidated with the maintenance of the trucks and equipment for the collection company. Moving the diesel fueling station and diesel fuel tanks to the D-shaped area would require a PD Permit and subsequent CEQA review (as specifically stated on page 23 of the Draft EIR). The potential impacts of having a corporation yard on the D-shaped area are discussed in the Land Use section in the Draft EIR (see page 61), based on the level of detail currently available.

"Composting and organic waste processing operations" are not proposed for the D-shaped area and would not be allowed by the proposed PD zoning (see Table 1.4-1 on page 9 of the Draft EIR and Revised Table 1.4-1 on page 231 of the First Amendment to the Draft EIR).

27. Appeal: 5. Inadequate Noise Impacts Analysis.
The analysis of potential noise impacts from new activities in the D-Shaped Area is similarly incomplete and inadequate, for generally the same reasons-it is based on unsupported and improper assumptions and lacks any actual analysis. In this case, the authors conclude that relocating the various uses to the D-Shaped Area would not result in significant new operational noise impacts because "[i]ndividually significant noise generators have not been identified as part of any changes proposed." As explained above, this statement, which forms one of the primary assumptions for the noise impact analysis, is demonstrably false. As noted above, the project applicant intends to relocate the GSR facilities to the D-Shaped Area, which facilities are

"the largest single noise source" on the project site and are already audible at the WPCP, more than 2,800 feet away. Relocating those facilities to the D-Shaped Area would place those facilities approximately 2,100 feet from the residents in Milpitas. Nonetheless, the EIR authors declined to consider or analyze the potential noise impacts on those residents from operating the GSR facilities in the D-Shaped Area. Instead, the authors state, "it is anticipated that the noise levels from the proposed project site would not be distinguishable from the existing noise generated by 1-880," at the residences in Milpitas. (First Draft EIR, p. 110.) No noise study or noise data is offered to support this bare conclusion, however, and no effort was made to evaluate the noise impacts on residents from the relocated GSR facility. Moreover, the landfill is permitted to operate continuously, 24 hours a day, and it accepts materials for disposal and recycling from 3 am on Monday through Friday, and from 4 am on Saturday. While noise levels from the project site may be indistinguishable from 1-880 noise during peak travel hours, 1-880 noise may be minimal during off-peak hours such that noise from project operations is audible at the residences in Milpitas. Unfortunately, we do not know whether this is true, because the EIR offers no studies or data on this question.

Similarly, no attempt is made to assess the potential noise impacts from other new activities on the D-Shaped Area. Those activities include, in addition to operation of the GSR facility, operation of the leachate management system, operation of the scales, operation of the landfill maintenance shop, operation of the diesel fueling station and facilities, and the composting and organic waste processing operations. While these activities may not generate the same level of noise as the GSR facility, they may nonetheless generate noise that is audible at the residences in Milpitas. Unfortunately, the EIR fails to even consider this possibility, and offers no studies or data to support the conclusion that the project's operational noise impacts will be less than significant. As a result, the EIR's noise impact analysis is incomplete and inadequate.

27. Response: On page 125 of the Draft EIR is a list of the project assumptions that were used to evaluate biological impacts of the proposed project. The beginning of this discussion in Section 3.6.2.2 refers back to Section 1.4.3.14, "measures proposed as part of the project." The fifth bullet point on the page states that "the C&D area and any new activities that generate loud noises and vibration substantially greater than existing levels will not be located within 700 feet of California clapper rail nesting habitat...." It is pointed out (in the first paragraph on page 126) that the long-established landfill was assumed to be the baseline of existing conditions.

Back in the Project Description on page 27 is the same language, followed by a map (Figure 1.0-9) which illustrates that ALL of the D-shaped area is included in the category of "700' Buffer from Potential Clapper Rail Habitat." Therefore, any new activities that generate loud noises greater than existing levels will not be located within the D-shaped area.

Since the project cannot substantially increase noise levels on the D-shaped area or any other portion of the site within 700 feet of clapper rail habitat, the project will not result in a significant

noise impact to the residents of the City of Milpitas, who are all east of (and therefore farther from the project site than) the clapper rail habitat.

28. Appeal: 6. Inadequate Light and Glare Impacts Analysis.
The conclusion that the project will not result in any significant new light or glare impacts suffers from the same defects as the land use and noise analyses, it is based on improper assumptions and is not supported by any actual study, data, or analysis. The EIR contains several conflicting statements about the potential changes to lighting on the project site. First, the EIR states that "no changes to
lighting are proposed and no new lighting is proposed on the NISL," which the authors assume includes the D-Shaped Area. Then, however, the authors admit that "'the location of a corporation yard on the D-shaped parcel would likely require some additional nighttime lighting for safety purposes, and when equipment or vehicles are being serviced between the daytime shifts." Then, after admitting that there would be some additional lighting on the D-Shaped Area to operate the corporation yard, the authors inexplicably conclude that "this is not a change from existing conditions[.]" Nonetheless, it seems clear that operating a corporation yard in the D-Shaped Area (a new use which is not permitted under the existing zoning) would result in some additional lighting on the D-Shaped Area.

Moreover, the corporation yard is only one of several new uses and activities proposed for the D-Shaped Area. As explained above, other proposed uses of that Area include the GRS facility, the scales, diesel fueling station and facilities, and the landfill maintenance shop, among others. It seems likely that some, if not all, of these proposed activities will require new lighting or changes to lighting in the D-Shaped Area. Unfortunately, however, we do not know the extent of the new or changed lighting because no effort has been made to identify or evaluate the project's lighting needs or the potential light and glare effects from meeting those needs. As with the missing noise analysis, the EIR authors offer no studies or data to support their claim that the project will not result in any significant new light or glare impacts. As a result, their conclusion to that effect is not supported by substantial evidence in the record, and the EIR's "analysis" of light and glare impacts is incomplete and inadequate.

28. Response: This comment takes statements out of context and then criticizes the absence of information that appears to have been deliberately excluded. The statement referred to in this first comment is shown here in its entirety:

> No changes to lighting are proposed and no new lighting is proposed on the NISL. For these reasons, the proposed project would not result in significant new light or glare impacts. As the height of the landfill increases, the lighting associated with nighttime operations will be incrementally more visible. The location of a corporation yard on the D-shaped parcel would likely require some additional nighttime lighting for safety purposes, and when equipment or vehicles are being serviced between the daytime shifts. This is not a change from existing conditions (since most of the corporation yard

operations are already on the site) but would be different compared to circumstances if the operations are not allowed on site (see Section 8.0, the No Project Alternative). In addition, landfill lighting is, and would be under the

proposed project, shielded and directed downward during night operations. Lighting attached to a permanent vehicle maintenance building would be subject to City permits, the City's Outdoor Lighting Policy, and Design Guidelines.

There is no specific new lighting plan proposed at this point in time. The Draft EIR does identify and evaluate changes that might be proposed in the future, based on what is presently known. As stated previously, the maintenance shop for landfill equipment may be moved to the D-shaped area and consolidated with the maintenance of the trucks and equipment for the collection company, which may or may not require additional lighting. The GRS facility is near the D-shaped area now (some of the flares are already on the D-shaped area). The fueling facilities would need to be integrated into the site plan with the maintenance facilities and are likely to use the same lighting. All this speculation does is illustrate that no conclusive analysis can be done of the lighting until there is a site plan and a lighting plan for the site.

This comment also implies that any new lighting is automatically the source of a significant light and/or glare impact. The presence of light by itself is not an impact, most particularly, it is unlikely to create an impact to existing urban housing developments, all of which (in this case) presently face a major urban freeway. The purpose in analyzing light and glare is to minimize substantial or intrusive light or glare (the latter defined as "harsh, uncomfortably bright light"). Whatever additional work lights or safety lighting might be added to the D-shaped area behind its 14-18 foot tall berms, approximately one-half mile or more from all of the residences in Milpitas, and some distance behind a major freeway, the result is unlikely to be either a substantial or intrusive change in the existing environment of any residences in Milpitas.

As stated in the Draft EIR (on page 78), the lighting will be subject to future discretionary permits and will be evaluated for consistent with the City's policies and design guidelines.

29. Appeal: 7. Inadequate Alternatives Analysis.
The defective Project Description and Environmental Impact Analyses in the EIR also undermine the adequacy of the EIR's alternatives analysis. CEQA requires that an EIR to set forth a list of project objectives, which objectives are used to assess the feasibility and desirability of the various alternatives in the EIR. However, the project objectives may not be crafted in an artificially narrow or limited manner that limits the range of reasonable or feasible alternatives, or that improperly ensures that the proposed project is the only option that meets all or most of the project objectives. Here, the list of project objectives suffers from just this problem; it is drafted such that, as between the proposed project and the various alternatives, the only feasible option is the proposed project and does not permit the consideration of other

alternatives, such moving various activities to a new location or identifying alternative off-site waste disposal locations.

The inadequate impact analyses described above have also improperly limited the range of alternatives considered in the EIR. Under CEQA, a lead agency must consider alternatives to the proposed project that would reduce or avoid the project's significant impacts. Here, by improperly determining that the project will not result in any significant odor impacts, or noise impacts, or land use impacts, or light and glare impacts, etc., the EIR authors have dodged their obligation to develop and consider alternatives that would mitigate such impacts. As a result, the EIR contains an improperly narrow and insufficient range of alternatives.

29. Response: The criticism of the project objectives does not lend itself to any response. The objectives are provided by the project proponent and were not, in the opinion of San José staff, found to be so narrow or constricted that they do not accurately reflect the purpose of the actual project proposed. The comment implies that because the only feasible option is the proposed project, the objectives are flawed. The comment then suggests that the objectives should be modified so that they instead support a different conclusion and specifically suggests that the objectives should instead support moving some or all of the project components, including "off-site waste disposal," to new locations. The CEQA Guidelines acknowledge that one of the critical elements in alternative feasibility is "whether the proponent can reasonably acquire, control or otherwise have access to the alternative site" [Section 15126.6(f)(1)]. Finding a new location for a landfill is a difficult process all over California. It typically takes years to complete the CEQA review and permitting required. The City of San José, in its recently adopted new General Plan, is starting that process for this area but it is unlikely to be completed in the near future. The Draft EIR therefore does indeed already address the most potentially viable alternative location for off-site waste disposal – Kirby Canyon Sanitary Landfill (see page 227 of the Draft EIR).

A substantial quantity of waste is already being delivered to Newby Island under existing conditions. All of the impacts addressed in this comment are existing conditions. CEQA does not require that an EIR evaluate alternatives that will significantly change existing conditions.

FOLLOWING ARE BRIEF RESPONSES TO THREE DOCUMENTS THAT WERE ATTACHED TO THE APPEAL LETTER DATED JUNE 6, 2012:

1. Attachment – Phalan Letter: This letter is referenced in the appeal letter and those references are responded to fully above. The sole subject of this letter is the existing odor conditions at Newby Island. The letter states that the EIR concludes that there is no odor problem "due to the low number of confirmed complaints." This is not accurate. The EIR makes no judgment about existing odors at Newby Island other than to identify them. As requested by the City of Milpitas, the First Amendment to the Draft EIR also incorporates details about the history of odor complaints at Newby Island and the process which was followed by the two cities in creating the

City of Milpitas Odor Action Plan. The EIR concludes that the proposed project, as modified by the proposed Initial Compost Area Line and including the ongoing Odor Minimization Plan already in place, would not increase odors compared to existing conditions (see revised language on page 255 of the First Amendment to the Draft EIR).

The comments in this letter, which is dated June 6, 2012, are about existing conditions. Any of this information could have been provided to the City, including the LEA, at any time in the past. City of San José staff (including the LEA) met with City of Milpitas staff several times during the EIR process, including the writer of this letter on March 10, 2010, and these comments were not offered at this time.

Nothing in this letter raises an issue related to the adequacy of the EIR, no new or more significant environmental impact that might be caused by the proposed project is identified and no new or more effective mitigation measure or measures that would reduce a significant impact from the proposed project are identified.

The letter points out that the some elements of the Odor Control Plan have changed compared to what is in the text of the Draft EIR and the First Amendment to the Draft EIR. These changes were apparently implemented as recently as January 2011 and the City of Milpitas did not inform staff in the San José Planning Department of the changes.

The last paragraph of this letter states that biosolids "loading and hauling" cause a substantial number of complaints" and then adds that the existing odor control measure which is described on page 253 of the First Amendment to the Draft EIR needs to be changed. Both aspects of this comment relate to existing conditions at the landfill. This comment will be referred to the LEA for appropriate action.

2. Attachment – Reliford Letter: This letter is referenced in the appeal letter and those references are responded to fully above. This letter refers to past complaints filed by residents of Milpitas, the "odors and smell from the Landfill and Recyclery," the economic impacts of the odors on Milpitas, and discusses efforts made by Milpitas to address the issue of odors with City of San José and Landfill staff on several occasions. The final sentence points out that residents of Milpitas have lived with odors from the landfill for over 30 years and "strongly object to any suggestion that there are no significant impacts associated with odors generated from the site."

Since the Draft EIR as amended does not make any such assertion about existing conditions, the letter does not change anything said in the Draft EIR. The Draft EIR concludes that the proposed project will not make odors from the site any worse than they are under existing conditions.

3. Attachment – CalRecovery report: This report is referenced in the appeal letter and those references are responded to fully above. This report discusses existing odors, acknowledges the lists of measures already being utilized at Newby Island and suggests that the landfill consider

"use of the minimum area for the working face." As discussed in the Draft EIR in Section 8.5.3 as part of the analysis of a "Reduced Gull Access to Food Alternative," the working face of the landfill is already kept at the smallest size feasible. This was further confirmed in the analysis provided by Blue Ridge Services, Inc., which was included as Appendix D to the First Amendment to the Draft EIR.

The CalRecovery report also suggests (1) use of flexible synthetic cover systems or compost blankets for cases where odorous materials are exposed for a considerable period of time, and/or (2) installation of an enclosed receiving facility to deal with a continuous problem of delivered malodorous feedstocks. It should be noted that the measures already utilized at the facility (and listed in the CalRecovery report) include processing food waste the day it is received and covering odiferous materials with a blanket of wood chips. The project has also been revised to include use of an enclosure for processing food waste outside adjacent to the Recyclery, should that occur in the future.

These suggestions, however, relate to presumed existing odor issues and no nexus exists for requiring them of the proposed project. The suggestions will be referred to the Director of Planning, Building and Code Enforcement and to the Local Enforcement Authority (LEA) for consideration in future permits for the site.

The CalRecovery document also points out that leachate generated from composting can be a source of odor (last paragraph on page 9). The document states that leaks or escape of leachate along a transportation route or other accumulation of leachate might be adding to the odor issue.

Management of runoff from composting is done on the compost pad. Stormwater runoff from any part of the compost pad flows into a dedicated adjacent retention pond and is recycled back into the compost windrows; none of the runoff is trucked or piped away from the compost pad. Additionally, the pad was constructed with a 4-6 degree slope, which rapidly drains the pads and windrows, precluding any saturation of the bottom of the composting windrows from standing water. The compost pad and water basin are inspected monthly by the LEA. Since the water is incorporated into aerobic composting windrows, it is not allowed to become anaerobic (the condition that typically generates unpleasant odors).

Conclusion

The Newby Island Sanitary Landfill ant the Recyclery Rezoning project Final EIR meets the requirements of CEQA by disclosing the environmental effects of the project and describing reasonable alternatives to the project. Because the analysis indicates that there would be no significant environmental effects from the project, there is no need to propose mitigation to mitigate significant environmental effects. In a similar way, because there are no significant unavoidable environmental impacts, there is no need for a statement of overriding considerations with regard to the project. Finally, the appeal raises no new issues that require additional analysis, nor any new information that changes the level environmental effect of any identified

impact, and therefore, per CEQA Guidelines Section 15088.5, recirculation of the EIR prior to certification is not required.

EVALUATION AND FOLLOW-UP

The City Council consideration of the appeal of the Planning Commission's certification of a Final Environmental Impact Report is a prescribed step in the City's development review processes as set forth in Title 20 and Title 21 of the Municipal Code and Council action on the item will facilitate completion of the development review process in accordance with applicable performance measures. This particular item has not previously been to Council. Council action on the appeal of a CEQA document, depending upon the action taken by Council, will potentially allow for the consideration by the City Council of a proposed rezoning ordinance (File No. PDC07-071) for the project site. Other future Council items associated with this site are not known at this time.

POLICY ALTERNATIVES

As presented in this memorandum, Council may either uphold or not uphold the Planning Commission's certification of the Final Environmental Impact Report (EIR). A decision to not uphold the EIR would necessitate further environmental review under CEQA in order for the proposed rezoning to proceed. Other alternative actions are not provided for under Title 20 and Title 21 of the Municipal Code.

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. Per the CEQA Guidelines, a Notice of Preparation for the EIR was issued on December 5, 2007. A Scoping Meeting for the EIR was held on February 6, 2008. The Draft EIR was circulated for public comment for 45 days beginning on September 22, 2009 and running through November 5, 2009. The Notice of Availability for the Draft EIR was published in a local newspaper, the Post Record. After the First Amendment was prepared, the Planning commission held a noticed public hearing on the

Certification of the EIR on June 6, 2012. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

This preparation of this memorandum was coordinated with the Environmental Services Department and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

The CEQA analysis for the project is consistent with the State CEQA Guidelines and the Environmental Review Chapter (Chapter 21) of the City of San José Municipal Code as further discussed above and in the attached staff report.

COST SUMMARY/IMPLICATIONS

City Council action on this item is not anticipated to have any direct cost impacts to the City.

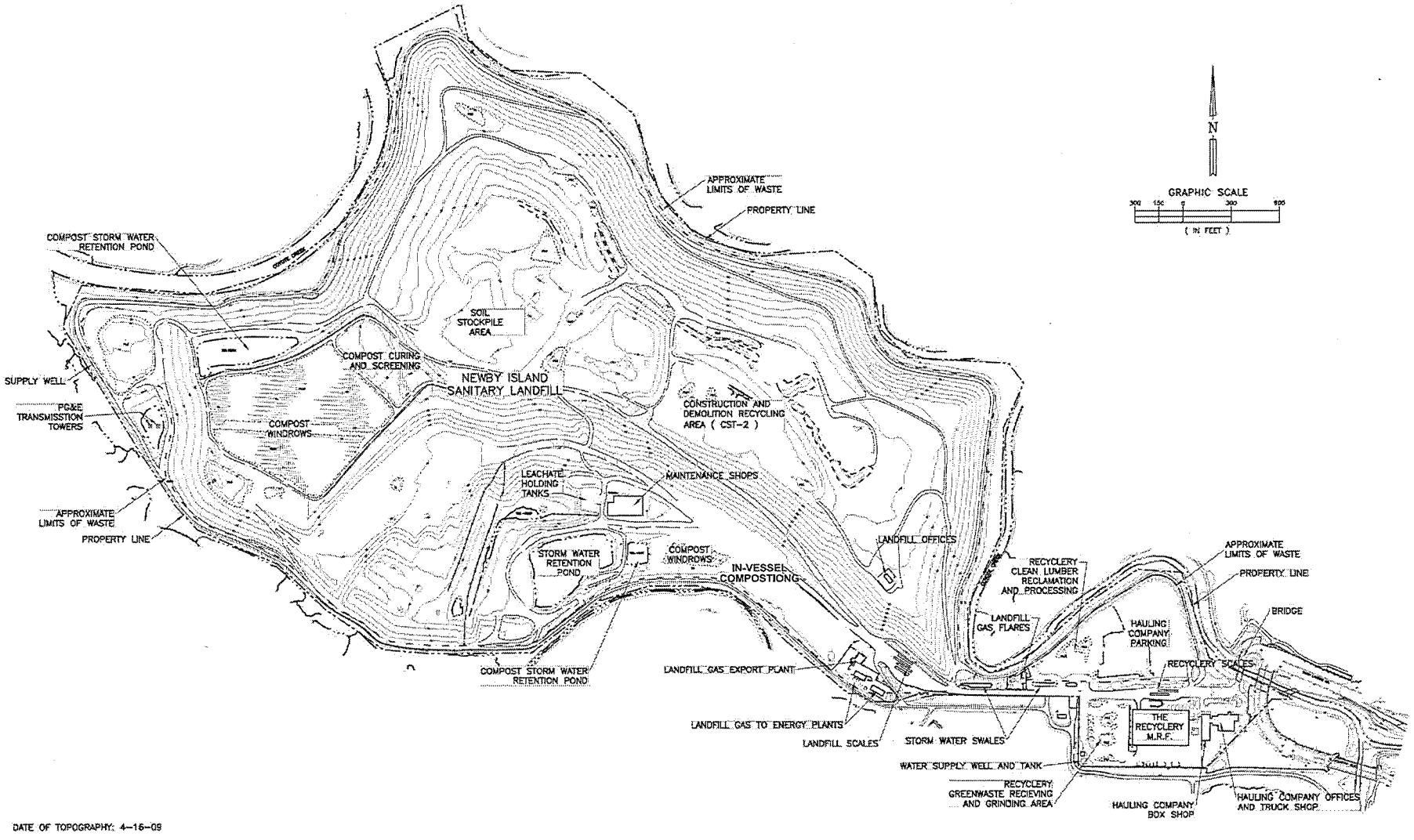
CEQA

Environmental Impact Report (pending).

/s/
JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

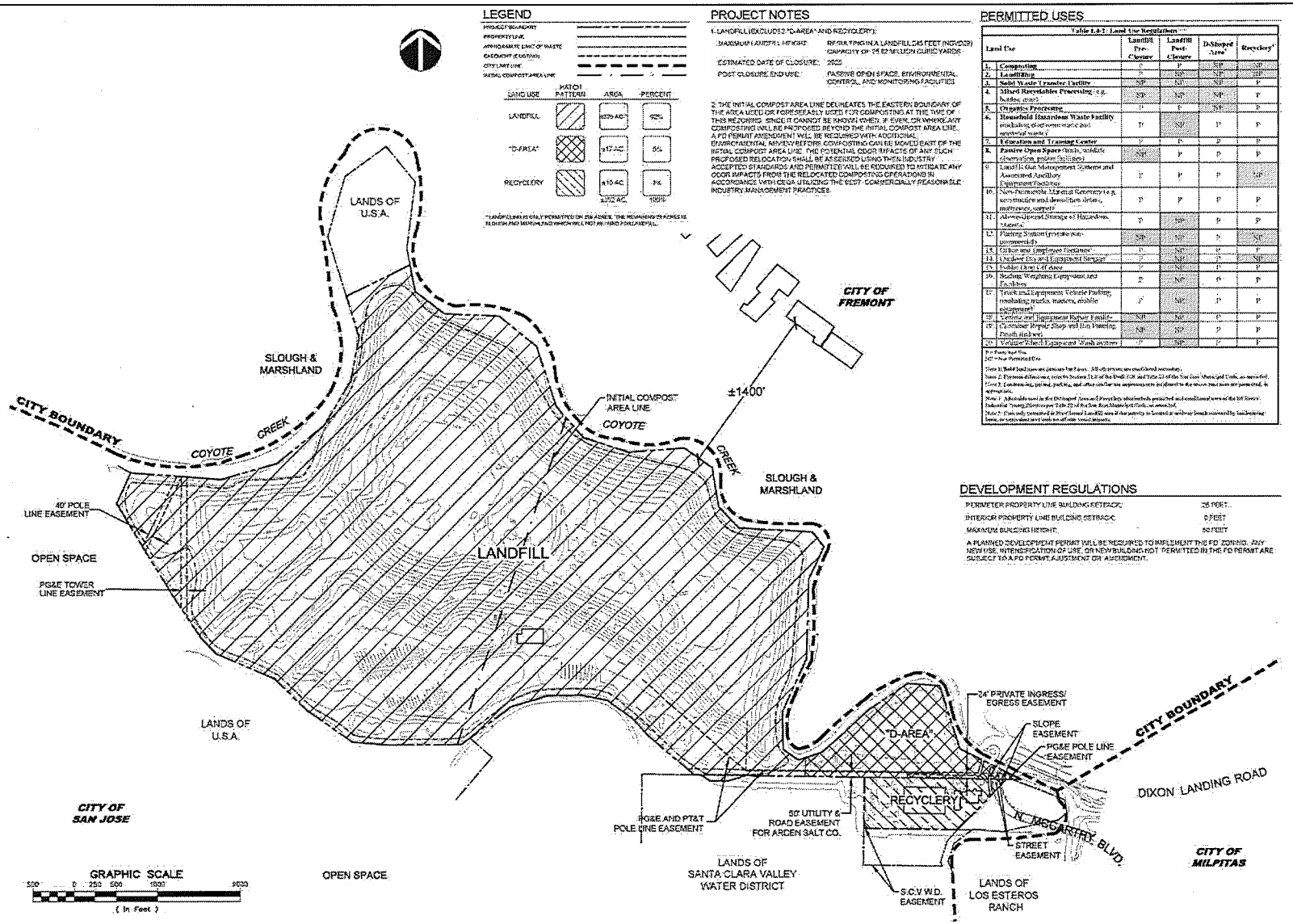
Attachments:

- Annotated Environmental Appeal from the City of Milpitas, dated June 11, 2012.
- PDC07-071 Memo Figures



EXISTING SITE PLAN

Figure 1.



Source: HMH Engineers

PROPOSED LAND USE PLAN

Figure 2.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Planning Services Division rec'd 8Walsh 6/11/12
Planning, Building and Code Enforcement
City of San José
200 East Santa Clara Street
San José, CA 95113-1905

CITY OF SAN JOSE
Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, CA 95113-1905
tel (408) 535-3555 fax (408) 292-6055
Website: www.sanjoseca.gov/planning

NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER PDC07-071 (EIR)	RECEIPT # 668473
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX) EIR	AMOUNT 100.00
	DATE 6-11-12
	BY 8Walsh

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION: Resolution by Planning Commission certifying the Final Environmental Impact Report for project described in application file No. PDC07-071

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.): See Attachment

PERSON FILING APPEAL

NAME City of Milpitas, City Attorney's Office			DAYTIME TELEPHONE ( )
ADDRESS 455 E. Calaveras Boulevard	CITY Milpitas	STATE CA	ZIP CODE 95035
SIGNATURE Daniel P. Doporto			DATE 6-11-2012

CONTACT PERSON
(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME Daniel P. Doporto			
ADDRESS 492 Ninth Street, Suite 310	CITY Oakland	STATE CA	ZIP CODE 94607
DAYTIME TELEPHONE (510) 238-1400	FAX NUMBER (510) 238-1404	E-MAIL ADDRESS ddoporto@jarvisfay.com	

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

ATTACHMENT A

to

NOTICE OF ENVIRONMENTAL APPEAL
filed June 11, 2012, appealing the resolution by the Planning Commission certifying the Final Environmental Impact Report for the project described in Application File No. PDC07-071.

Reason(s) for Appeal

(1) The Planning Commission is not authorized by CEQA regulations to certify the Final EIR, and the Planning Commission's resolution purporting to certify the Final EIR does not comply with CEQA regulations.

(2) The Project Description in the EIR does not comply with CEQA requirements because it fails to describe the proposed project at the level of detail required to permit a reasonable environmental analysis of the project's potential environmental effects.

(3) The statement of objectives in the EIR is not sufficient to support the development or analysis of a reasonable range of alternatives.

(4) The EIR fails to properly describe the existing environmental setting and relies on an improper environmental baseline to determine the significance of the project's potential environmental effects.

1

(5) The criteria used to determine the significance of the project's potential environmental impacts is arbitrary and capricious and not supported by substantial evidence in the record.

(5) The EIR fails to identify and analyze the project's potential environmental impacts, including impacts relating to land use, odors, noise, and light and glare.

(6) The conclusions in the EIR regarding the significance of the project's potential environmental impacts are not supported by substantial evidence in the record.

(6) The EIR fails to identify and adequately analyze a reasonable range of project alternatives.

For further details regarding these reasons for appeal please see Exhibits 1, 2, 3 and 4 to this Attachment A.

Exhibit 1

CITY OF MILPITAS

OFFICE OF THE CITY MANAGER

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
PHONE: 408-586-3050, FAX: 586-3056, www.ci.milpitas.ca.gov

June 6, 2012

Honorable Members of the Planning Commission
of the City of San Jose
1195 Third Street, Suite 310
Napa, CA 94559

Re: Newby Island Sanitary Landfill and Recyclery Rezoning Project
Application No. PDC07-071

Dear Commissioners:

As you know, the City of Milpitas has, for many years, experienced significant odor problems as a result of operations at the Newby Island Sanitary Landfill. For at least the last three years, since the landfill operator first proposed the instant rezoning project, Milpitas has been negotiating diligently and in good faith with the City of San Jose and the operator to address this problem, without any success. 2

It is apparent that the existing odor control measures being implemented on the landfill are insufficient. This is clear from the hundreds of complaints received by Milpitas each year. The continuing odor problem is not only offensive to the population that lives and works in Milpitas, but it has had and continues to have negative impacts on economic development in Milpitas. (*See* June 6, 2012 comment letters from the Kathleen Phalen, Acting Public Works Director/City Engineer (hereafter, the "Phalen Letter") and Felix Reliford, Acting Director of Planning & Neighborhood Services (hereafter, the "Reliford Letter"), submitted concurrently) These impacts are well-known to San Jose officials. Consequently, Milpitas is puzzled and disappointed to see these impacts characterized as "less than significant" in San Jose's environmental impact report ("EIR") for the project. And Milpitas is frustrated that San Jose has declined to consider or impose any new mitigation measures or conditions of approval to reduce the significant odor problem affecting neighbors of the landfill in Milpitas. 3

It should be clear to San Jose and the landfill operator from our extensive negotiations that Milpitas is not seeking to close the landfill or unreasonably burden landfill operations. The additional odor control measures that Milpitas seeks are not extraordinary; the same and similar measures have been implemented and are being implemented at numerous other locations throughout California and nationwide. (*See* Report, CalRecovery Comments and Suggestions Related to Odor Emission and Control at Newby Island Facilities, June 2012 (hereafter, the "CalRecovery Report"), submitted concurrently) What should also be clear, however, is that the *status quo* is unacceptable. It should be obvious to San Jose and the landfill operator that the existing odor problem is not "less than significant," and San Jose's determination to that effect in the EIR is incorrect. And unfortunately, that determination suggests that San Jose and the operator are not genuinely interested in reaching a reasonable, negotiated solution to this ongoing problem. 4

Our skepticism of San Jose's good faith in attempting to resolve this problem is further fueled by its rush to certify the EIR and approve the rezoning project. Rather than provide a reasonable notice to, and a reasonable period of time for Milpitas and other interested persons to review the amendment to the Draft EIR, San Jose has scheduled the certification hearing at the earliest possible date, a week ahead of the City Council hearing on the rezoning application. This schedule is not merely unreasonable; as explained below, it also violates California Environmental Quality Act ("CEQA") requirements regarding the processing and approval of environmental impact reports. 5

Nonetheless, Milpitas remains willing to seek a reasonable and negotiated solution to the significant odor problems from operation of the landfill, and would like to continue to work with San Jose and the landfill operator to that end. However, such negotiations cannot continue if San Jose insists on pushing the operator's rezoning request to completion and approval. Therefore, to give the parties the time needed to reach a reasonable and mutually-agreeable compromise, Milpitas requests that San Jose: (i) defer certification hearing on the EIR and defer any action on the rezoning application; (ii) acknowledge the significance of the continuing odor problem; (iii) correct the various deficiencies (explained in detail below) in the EIR; (iii) and impose reasonable mitigation measures on any rezoning or permit to reduce odors from landfill operations. 6

Even if San Jose declines to participate in further negotiations, it is not free to approve the rezoning based on its existing CEQA process and EIR, because neither its process nor its EIR complies with mandatory CEQA requirements. Its process is improper, because CEQA does not authorize the Planning Commission to certify the EIR for this project. Rather, only the San Jose City Council may certify an EIR for the project. Neither the Planning Commission nor the City Council can certify the current EIR, however, because it is inadequate in numerous respects, as explained in detail below. As a result, it cannot support approval of the project, and must be revised and recirculated to comply with CEQA requirements. 7

I. The Planning Commission Cannot Certify the EIR for this Project

Under CEQA, the San Jose Planning Commission cannot certify the EIR for this project. Because the City Council will be the "decision-making body" for this project, only the City Council can certify the EIR. (See 14 Cal. Code Regs. § 15025(b).) San Jose's attempt to have its Planning Commission certify the EIR, rather than wait until the required City Council hearing, could be construed as an effort to minimize public review of the final EIR document and accelerate the start of the limitations period on challenges to the EIR certification. This is plainly contrary to CEQA requirements. While San Jose's Planning Commission is free to make a recommendation to the City Council regarding certification of the EIR and/or action on the rezoning and planned development permit, it is not free to re-write CEQA requirements regarding the EIR process. 8

II. The EIR Does Not Satisfy CEQA Requirements

The EIR suffers from numerous defects which render it inadequate and unable to support approval of the project. 9

For example, the very title of the final EIR document, the "First Amendment to the Draft Environmental Impact Report," is misleading and inconsistent with CEQA requirements. By labeling the final EIR document as an amended "Draft" EIR, San Jose signaled to the public that it would provide a reasonable period of time, at least 30 days, for public review and comment on that

document. This is not simply a matter of semantics. The term "draft" environmental impact report has legal significance under CEQA, and is legally distinct from a "final" environmental impact report, which term also has legal significance. (*See* Public Resources Code §§ 21091, 21092(b)(1); 14 Cal. Code Regs. §§ 15084, 15089.) CEQA requires that a "draft" environmental impact report be circulated for at least 30 days for public review and comment. (Pub. Resources Code § 21091.) By contrast, under CEQA, a "final" environmental impact report is subject to a shorter review period, and the lead agency is not required to respond to public comments submitted during the review period for a final EIR. These terms, "draft" and "final," have technical and legal significance, such that San Jose's publication of an amendment to its "Draft EIR," rather than a "Final EIR," is misleading and does not comply with CEQA requirements. At a minimum, if San Jose intends to act on the project based on the existing CEQA document, without revisions or recirculation, it should republish the document as a "final EIR" and re-notice its hearings thereon. 9 cont.

Beyond the misleading title given to the final EIR document, the EIR suffers numerous other substantial defects. The original Draft EIR was published nearly three years ago. Since that time, there have been significant changes to the proposed project, leading to the addition of a substantial volume of significant new and revised material to the first Draft EIR. This significant new information reflects and demonstrates the fact that the first Draft EIR did not adequately identify or analyze the potential impacts of the proposed project. Unfortunately, however, this new information does not bring the final EIR document up to minimal CEQA standards. Even taken together, the first Draft EIR and the First Amendment to the Draft EIR contain critical informational gaps, rely on improper assumptions and defective methodologies, and their analyses of potential environmental impacts remain fatally flawed in several respects. 10

A. Inadequate Project Description

The Project Description identifies three separate areas within the entire project area: (i) the landfill; (ii) the D-Shaped Area; and (iii) the Recyclery. The flat, 17-acre D-Shaped Area is distinguished from the landfill and the Recyclery "because it is visually distinctive and generally separated from most of the landfill." (First Draft EIR at 8.) Like the landfill area, the D-Shaped Area is currently zoned *Multiple Residence District* (R-M), for residential uses only. The D-Shaped Area is at the far eastern border of the project site, less than one-half mile from the nearest residences in the City of Milpitas.

The EIR treats the D-Shaped Area as separate from the landfill for purposes of the Project Description. (First Draft DEIR, Section 1.4, pp. 7-8.) Notably, however, it lumps the two areas together for purposes of describing the existing uses on the site. (First Draft EIR, Section 1.4.3, pp. 15-26.) By describing the existing uses of these two areas together, the EIR authors avoid having to adequately disclose that the D-Shaped Area is currently only used for parking employee vehicles and trailers that serve as office space and contain employee lockers. Instead, the EIR authors gloss over this fact and, by describing the uses of the landfill and D-Shaped Area together, misleadingly suggest that all existing landfill activities, including the most intensive odor and noise generating activities, are currently occurring across both the landfill and the D-Shaped Area. (First Draft EIR, Section 1.4.3, pp. 15-26) As explained in greater detail below, the suggestion in the Project Description that the D-Shaped Area is already being used for landfill activities (i) improperly distorts the environmental baseline used to assess the significance of the project's potential environmental impacts, and (ii) undermines the EIR's analysis of the project's environmental impacts, leading to the unsupported conclusion that relocating various odor- and noise-intensive activities to the D-Shaped 11

Area will not result in any new impacts on residences in Milpitas. The Project Description must be revised to clearly acknowledge and describe the existing uses of the D-Shaped Area. 11 cont

The Project Description also fails to adequately identify the proposed activities in the D-Shaped Area. Instead, it lists numerous current activities and facilities that may or may not be relocated to the D-Shaped Area. (First Draft EIR, Section 1.4.3, pp. 15-26.) These include a solid waste transfer station (p. 18), the four landfill scales (p. 20), the Gas Recovery System ("GRS") facility (pp. 20-21), a construction & demolition materials recycling area (pp. 21-22), the landfill maintenance shop (p. 22), leachate holding tanks and ancillary facilities (p. 23), a diesel fueling station and facilities (p. 23), a proposed household hazardous waste turn-in and storage facility (p. 23), and composting and compost processing (p. 25). According to the First Draft EIR, "the project would allow [the D-Shaped Area] to be developed and used permanently for any combination of the uses listed in Table 1.4-1," which includes but is not limited to all of the foregoing uses and activities,[1] none of which is currently permitted anywhere on the project site. 12

The ostensive reasons for failing to adequately specify which uses will be moved to the D-Shaped Area is that the project applicant wishes to preserve its flexibility with respect to its future operations, and that "details" regarding the proposed activities on the D-Shaped Area, and on the Recyclery (which is equally close to the residences in Milpitas), "are currently unknown." It is difficult to see how "details" regarding such uses are not currently available, given that all of these uses are currently occurring at various locations on the landfill site. Nonetheless, the EIR authors rely on the unavailability of such details to "explain" their failure to perform any analysis of the potential impacts of performing these same activities in the D-Shaped Area. Unfortunately, the proposed rezoning and planned development permit would allow all of these activities to be relocated to the D-Shaped Area or the Recyclery, both of which are significantly closer to the existing residences in Milpitas, even in the absence of such an analysis. This is flatly contrary to CEQA requirements. San Jose and the project applicant have sufficient information available to them to perform the necessary analyses, and they cannot defer such analyses simply to preserve flexibility for the project applicant's future operation of the landfill. The EIR must be revised to identify and analyze the potential impacts from conducting any new activities on the D-Shaped Area and the Recyclery, and then recirculated for public review and comments, before San Jose can approve the rezoning and issue the requested planned development permit. 13

The First Amendment to the Draft EIR modifies the Project Description in several respects, which modifications have not been subject to public review and comment, and which undermine the analyses in the EIR. For example, the First Amendment to the Draft EIR replaces the Land Use Regulation Table 1.4-1 of the First Draft EIR with a new Land Use Regulations table, intended to "clarify permitted, not permitted, and primary uses on the project site." (First Amendment to Draft EIR, p. 231.) Unfortunately, however, this new table has several ambiguities and confuses, rather than clarifies, the proposed uses on the site. The new table identifies several activities as both "Permitted" and "Not Permitted" on the D-Shaped Area, including the proposed SWTF, mixed recyclables processing, and organics processing, none of which is currently permitted or occurring on 14

[1] While the First Amendment to the Draft EIR purports to remove composting and compost processing from the list of permitted activities in the D-Shaped Area, it acknowledges that composting and compost processing could occur in the D-Shaped Area in the future, subject to a PD Permit. However, the EIR does not attempt to identify or evaluate the potential environmental impacts from such activities in the D-Shaped Area.

the D-Shaped Area. There is no explanation as to why these activities are designated as both "Permitted" and "Not Permitted" on this Area. 14 cont

The new table also indicates that composting is "Not Permitted" on the D-Shaped Area; however, elsewhere in the First Amendment to the Draft EIR, it indicates that composting may be permitted with an amendment to the anticipated PD Permit. This suggests that the planned development zoning for the site will allow composting on the D-Shaped Area, subject to a PD Permit; this is precisely the same proposal that was set forth in the first Draft EIR. Therefore, it is not clear why the first Draft EIR was amended with respect to the locations in which composting will be allowed on the site. 15

These deficiencies and changes in the Project Description do not satisfy CEQA's requirement for a stable, coherent project description of sufficient detail to allow for the identification and analysis of the project's potential environmental impacts. [CITATIONS] Consequently, the project description must be revised and the EIR recirculated to satisfy CEQA requirements. 16

B. Improper Environmental Baseline for Assessing the Significance of Potential Impacts

As noted above, the Project Description acknowledges that the 17-acre D-Shaped Area is a separate area from existing landfill, and is situated less than one-half mile from existing residential uses in the City of Milpitas. (First Draft EIR, p. 8.) At the same time, however, for purposes of describing existing uses of the project site, the EIR considers the D-Shaped Area part of the landfill area. (First Draft EIR, Section 1.4.3, pp. 15-26.) By arbitrarily lumping the landfill and the D-Shaped Area together for purposes of describing existing conditions on the project site, the EIR authors are able to characterize activities that presently occur only on the landfill site as "existing activities" for purposes of this D-Shaped Area, thereby suggesting that they are part of the "environmental baseline" for purposes of the EIR's analyses of environmental impacts from the project. This is plainly improper and contrary to CEQA's requirement that the "environmental baseline" reflect actual, existing conditions where the proposed activities will occur. (*Communities for a Better Environment v. South Coast Air Quality Management District*, 48 Cal. 4th 310 (2010).) The EIR must be revised to clarify that the "existing conditions" on the D-Shaped Area do not include activities that are currently conducted in the landfill area, but not presently conducted in the D-Shaped Area. 17

C. Inadequate Environmental Analysis

Based in large part on the defective project description and improper environmental baseline described above, the EIR's analyses of numerous potentially significant impacts is either inadequate or missing entirely, and the authors' conclusions regarding the significance of those potential impacts are not supported by substantial evidence in the record. 18

1. Inadequate Odor Impacts Analysis.

The odor impacts analysis in the EIR, and the resulting conclusion that odor impacts from the operation of the project will be less than significant, are defective for several reasons. First, the EIR authors incorrectly assume, for purposes of their analysis, that the existing level of odor emissions from the landfill and composting operations, if continued, would constitute a less than significant impact on the residents of Milpitas and other affected persons. This assumption 19

is plainly incorrect, as is demonstrated by the history of odor complaints generated by the landfill and composting operations. (*See* Phalen Letter; *see also* CalRecovery Report.) Although the EIR purports to rely on the Bay Area Air Quality Management District ("BAAQMD") CEQA Guidelines to reach this determination, their use of these Guidelines cannot support this determination because (i) the Guidelines themselves are insufficient to assess the significance of the existing odors; and (ii) the EIR authors do not properly apply these Guidelines. 19 cont

The BAAQMD Guidelines and the EIR rely on the number of "confirmed" odor complaints to assess the significance of existing odor emissions. As explained in the Phalen Letter, however, the BAAQMD and San Jose procedures for processing and confirming complaints is inadequate, and does not and cannot provide an accurate assessment of the significance of odor impacts. (*See* Phalen Letter.) The shortcomings in these procedures should be apparent from the fact that BAAQMD and the City of Milpitas receive hundreds of odor complaints per year concerning odors from the landfill operations, only three of which have been "confirmed" over the past three years. (First Draft EIR, p. 98.) Moreover, the BAAQMD's adoption of its most recent CEQA Guidelines was recently set aside by the court, because BAAQMD itself did not comply with CEQA requirements in adopting the Guidelines. Therefore, the validity and applicability of these Guidelines is not clear. 20 21

The odor impact analysis and conclusion are also defective because, in reaching their conclusion, the EIR authors do not apply the appropriate threshold of significance for odor impacts. At the outset of the odor analysis, the authors declare, consistent with BAAQMD recommendations, that the significance of potential odor impacts will be determined, consistent with BAAQMD Guidelines, on the basis of two factors: (i) the distance between odor sources and sensitive receptors; and (ii) the history of odor complaints. (Draft EIR, Section 3.4.1.2, pp. 100-101.) As explained above, these factors dictate that the ***existing*** odor emissions from the landfill and composting operations constitute significant impacts on residents in Milpitas. However, the EIR authors then ignore these factors in determining the significance of the project's potential odor impacts, concluding instead that such impacts will be less than significant because the proposed project "would not increase odors compared to existing operations." This is not the correct threshold for determining the significance of the project's odor impacts, because it fails to consider the significance of existing odor emissions. Notably, the landfill and composting activities that appear to generate the most frequent and objectionable odors are not allowed under the existing zoning, and have not been subject to any prior CEQA review; consequently, the EIR authors have no adequate basis for assuming that the existing odors are "less than significant," and the relevant factors (distance between odor source and sensitive receptors and history of odor complaints) indicate that those odors do, in fact, constitute a significant impact on the residents of Milpitas. Nonetheless, the EIR authors conclude that the project's odor impacts will be less than significant based solely on their conclusion that the project will not increase odors compared to existing operations. 22

Moreover, even if the significance of the proposed project's odor emissions could properly be determined based on a comparison to existing odors, that determination would be incorrect because the conclusion that the proposed project will not increase odors compared to existing operations is incorrect, for at least two reasons. First, as explained herein, the EIR fails to account for the effect of relocating various odor-emitting activities, such as composting or leachate management activities, to locations closer to the sensitive receptors in Milpitas. Second, the EIR authors' assumption that limiting the capacity of the landfill will preclude any increase in odor emissions is simply incorrect, because odor emissions could be increased without increasing landfill

capacity by, among other things, shifting waste within the existing capacity limit from the landfill operations to the composting operations. (*See* CalRecovery Report.) 22 cont.

2. Failure to Analyze Impact of Proposed Solid Waste Transfer Facility.

Section 1.4.3.1 (p. 18) of the First Draft EIR states, "[t]his EIR provides environmental clearance for operation of a solid waste transfer facility on the Recyclery property." 23
The First Amendment to the Draft EIR indicates that a solid waste transfer facility would be both a "Permitted Use" and a "Not Permitted Use" in the D-Shaped Area, but does not indicate whether or not it would be permitted on the Recyclery property. (First Amendment to Draft EIR, Table 1.4-1 (p. 231).) However, the Draft EIR also admits that "[d]etails about the future solid waste transfer facility (size, operation, location of where materials would be transferred to) are currently unknown." (First Draft EIR, p. 19) Nonetheless, the authors conclude that "approval of the proposed rezoning would allow for the solid waste transfer facility use on-site[.]" (First Draft EIR, pp. 19, 34.) It should be obvious that San Jose cannot approve a new use on the site without evaluating the potential impacts of such use, and it cannot adequately evaluate the potential impacts of such use if all details regarding the future use "are currently unknown." Given this lack of information, it is not surprising 24
that the EIR is devoid of any analysis of the potential impacts of operating a solid waste transfer facility on the Recyclery property, or anywhere else on the Project site. (*See* First Draft EIR, pp. 61-62 (Impacts from New Land Uses).) What is surprising, however, is that the authors conclude, absent any such analysis, that the EIR "provides environmental clearance for operation of a solid waste transfer facility," and that approval of the rezoning to allow this new use would not result in any significant environmental impacts. The former conclusion is plainly incorrect, and the latter conclusion is not supported by any substantial evidence in the record. Therefore, if San Jose intends to approve the operation of a new solid waste transfer station anywhere in the project area, it must revise the EIR to include an analysis of the potential environmental effects of that new use, and recirculate the revised EIR for public review and comments.

3. Failure to Analyze Impacts of Proposed Relocation of GRS facility.

The EIR also purports to provide environmental clearance for the relocation of the Gas Recovery System facility from the main landfill area to the D-Shaped Area. The EIR admits that the electric generator for the GRS facility is "the largest single noise source" on the project site, and is audible at the Water Pollution Control Plant ("WPCP"), more than 2,800 feet away adjacent to the site's southeast property line. Approval of the project would allow the relocation of the GRS 25
facility to the D-Shaped Area, more than 2,000 feet to the east and less than 2,800 feet from residences in the City of Milpitas. Despite the proposed relocation of the "largest single noise source" on the project site to within 2,800 feet of the nearest residences, the EIR authors assume, for purposes of the noise impact analysis, that "[i]ndividually significant noise generators have not been identified as part of any changes proposed." And based on this assumption, the authors conclude that the project will not result in any significant new operational noise impacts. (First Draft EIR, pp. 111-112.) This assumption appears to be based on the authors' improper assumption that the D-Shaped Area is part of the landfill, for purposes of describing the locations of the various activities on the site.

4. Inadequate Land Use Impacts Analysis.

The analysis of potential land use impacts from the proposed new activities in 26
the D-Shaped Area is incomplete and inadequate. In fact, no attempt is made to identify or evaluate

the potential environmental effects from the various new activities proposed for this Area. This omission appears to be intentional, flowing from the EIR authors' assumption that any and all activities that are presently occurring in the landfill area are also occurring in the D-Shaped Area. These activities include the operation of the GRS facility, operation of the leachate management system, operation of the scales, operation of the landfill maintenance shop, operation of the diesel fueling station and facilities, and the composting and organic waste processing operations. As explained above, however, this assumption is incorrect; the only existing uses of the D-Shaped Area are for parking, office trailers and employee lockers. (First Draft EIR, p. 20.) Nonetheless, the EIR's authors rely on this improper assumption to conclude that continuing these activities will not have any effect on the residences in Milpitas because they are "existing activities," and they decline to even consider whether relocating these activities from the landfill area to the D-Shaped Area, thereby bringing them approximately one-half mile closer to the nearest residences, may have any effects on those residences. As a result, the EIR lacks any analysis of the potential land use impacts associated with such relocated activities. The failure to even consider the possibility of such impacts, and the resulting omission of any analysis of such impacts, renders the land use impact analysis incomplete and inadequate. 26 cont.

5. **Inadequate Noise Impacts Analysis.**

The analysis of potential noise impacts from new activities in the D-Shaped Area is similarly incomplete and inadequate, for generally the same reasons—it is based on unsupported and improper assumptions and lacks any actual analysis. In this case, the authors conclude that relocating the various uses to the D-Shaped Area would not result in significant new operational noise impacts because "[i]ndividually significant noise generators have not been identified as part of any changes proposed." As explained above, this statement, which forms one of the primary assumptions for the noise impact analysis, is demonstrably false. As noted above, the project applicant intends to relocate the GSR facilities to the D-Shaped Area, which facilities are "the largest single noise source" on the project site and are already audible at the WPCP, more than 2,800 feet away. Relocating those facilities to the D-Shaped Area would place those facilities approximately 2,100 feet from the residents in Milpitas. Nonetheless, the EIR authors declined to consider or analyze the potential noise impacts on those residents from operating the GSR facilities in the D-Shaped Area. Instead, the authors state, "it is anticipated that the noise levels from the proposed project site would not be distinguishable from the existing noise generated by I-880," at the residences in Milpitas. (First Draft EIR, p. 110.) No noise study or noise data is offered to support this bare conclusion, however, and no effort was made to evaluate the noise impacts on residents from the relocated GSR facility. Moreover, the landfill is permitted to operate continuously, 24 hours a day, and it accepts materials for disposal and recycling from 3 am on Monday through Friday, and from 4 am on Saturday. While noise levels from the project site may be indistinguishable from I-880 noise during peak travel hours, I-880 noise may be minimal during off-peak hours such that noise from project operations is audible at the residences in Milpitas. Unfortunately, we do not know whether this is true, because the EIR offers no studies or data on this question. 27

Similarly, no attempt is made to assess the potential noise impacts from other new activities on the D-Shaped Area. Those activities include, in addition to operation of the GSR facility, operation of the leachate management system, operation of the scales, operation of the landfill maintenance shop, operation of the diesel fueling station and facilities, and the composting and organic waste processing operations. While these activities may not generate the same level of noise as the GSR facility, they may nonetheless generate noise that is audible at the residences in

Milpitas. Unfortunately, the EIR fails to even consider this possibility, and offers no studies or data to support the conclusion that the project's operational noise impacts will be less than significant. As a result, the EIR's noise impact analysis is incomplete and inadequate. 27 cont.

6. Inadequate Light and Glare Impacts Analysis.

The conclusion that the project will not result in any significant new light or glare impacts suffers from the same defects as the land use and noise analyses, it is based on improper assumptions and is not supported by any actual study, data, or analysis. The EIR contains several conflicting statements about the potential changes to lighting on the project site. First, the EIR states that "no changes to lighting are proposed and no new lighting is proposed on the NISL," which the authors assume includes the D-Shaped Area. Then, however, the authors admit that "the location of a corporation yard on the D-shaped parcel would likely require some additional nighttime lighting for safety purposes, and when equipment or vehicles are being serviced between the daytime shifts." Then, after admitting that there would be some additional lighting on the D-Shaped Area to operate the corporation yard, the authors inexplicably conclude that "this is not a change from existing conditions[.]" Nonetheless, it seems clear that operating a corporation yard in the D-Shaped Area (a new use which is not permitted under the existing zoning) would result in some additional lighting on the D-Shaped Area. 28

Moreover, the corporation yard is only one of several new uses and activities proposed for the D-Shaped Area. As explained above, other proposed uses of that Area include the GRS facility, the scales, diesel fueling station and facilities, and the landfill maintenance shop, among others. It seems likely that some, if not all, of these proposed activities will require new lighting or changes to lighting in the D-Shaped Area. Unfortunately, however, we do not know the extent of the new or changed lighting because no effort has been made to identify or evaluate the project's lighting needs or the potential light and glare effects from meeting those needs. As with the missing noise analysis, the EIR authors offer no studies or data to support their claim that the project will not result in any significant new light or glare impacts. As a result, their conclusion to that effect is not supported by substantial evidence in the record, and the EIR's "analysis" of light and glare impacts is incomplete and inadequate.

7. Inadequate Alternatives Analysis.

The defective Project Description and Environmental Impact Analyses in the EIR also undermine the adequacy of the EIR's alternatives analysis. CEQA requires that an EIR to set forth a list of project objectives, which objectives are used to assess the feasibility and desirability of the various alternatives in the EIR. However, the project objectives may not be crafted in an artificially narrow or limited manner that limits the range of reasonable or feasible alternatives, or that improperly ensures that the proposed project is the only option that meets all or most of the project objectives. Here, the list of project objectives suffers from just this problem; it is drafted such that, as between the proposed project and the various alternatives, the only feasible option is the proposed project and does not permit the consideration of other alternatives, such moving various activities to a new location or identifying alternative off-site waste disposal locations. 29

The inadequate impact analyses described above have also improperly limited the range of alternatives considered in the EIR. Under CEQA, a lead agency must consider alternatives to the proposed project that would reduce or avoid the project's significant impacts.

Here, by improperly determining that the project will not result in any significant odor impacts, or noise impacts, or land use impacts, or light and glare impacts, etc., the EIR authors have dodged their obligation to develop and consider alternatives that would mitigate such impacts. As a result, the EIR contains an improperly narrow and insufficient range of alternatives. 29 cont.

III. Conclusion

For all the foregoing reasons, we urge the Planning Commission to recommend that the City Council decline to certify the EIR before them and deny the current rezoning and planned development permit application.

Sincerely,

Thomas C. Williams
City Manager

cc: City Council
Michael Ogaz, City Attorney

Exhibit 2

CITY OF MILPITAS

455 East Calaveras Boulevard, Milpitas, California 95035-5479 • www.ci.milpitas.ca.gov

June 6, 2012

John Davidson
Department of Planning, Building & Code Enforcement
200 East Santa Clara Street
San Jose, CA 95113-1905

RE: Final EIR for the Newby Island Rezoning Project – PDC07-071

Dear Mr. Davidson:

The City of Milpitas has reviewed your Final EIR (EIR) document and find the discussion and conclusions regarding Odor Impacts to be inadequate for the following reasons:

- The EIR essentially concludes that there is no odor problem due to the low number of confirmed complaints resulting from the Bay Area Air Quality Management District (BAAQMD) odor investigation process. This logic is flawed because, according to State Public Resources Code Sections 43200-43222 (See Attachment 1), BAAQMD is not responsible for investigating all odor complaints to their final conclusion. BAAQMD instead only performs an initial investigation of odor complaints. If the source is suspected to be or determined to be compost, BAAQMD is required to refer the odor complaint to the Local Enforcement Agency (LEA). The LEA is required to perform the full investigation and take enforcement actions. If this process is rigorously followed, BAAQMD itself is likely to issue very few confirmed complaints for compost odors. A copy of the BAAQMD Complaint Guidelines clearly describing the referral to the LEA is also attached. (See Attachment 2.)

  Furthermore, even if BAAQMD were to fully investigate these odor complaints, odors are transitory and are affected by changes in wind speed and direction. It is very difficult for an inspector to respond quickly enough to experience the odor before the wind has changed and the odor is affecting another neighborhood. If the inspector is unable to experience the odor with the complainant, then the investigation process is halted and the complaint is deemed unconfirmed. If the inspector and complainant are able to smell the odor, there is another time delay while the inspector tracks the odor to the source. If the winds have shifted again, or the source has stopped the odor-generating process, the investigation is halted and the complaint is deemed unconfirmed. Due to these factors, a confirmed complaint is a rare achievement and is not an accurate indication of the quantity of odors inflicted upon the community.

The City of San José's regulatory authority as the LEA for compost operations at the Newby Island facility. The process for investigating and enforcing odor complaints from the Newby Island facility is included as Figure 1 in the Milpitas Odor Action Plan. (See Attachment 3.) The referral to the LEA is not timely, thus rendering the possibility of a confirmed complaint to be nearly impossible. Information on LEA inspections, odor investigations, and enforcement actions are missing and must be included in the EIR. There is therefore a gap in the regulatory coverage. Reliance on current oversight and enforcement procedures is therefore inadequate to reduce odor problems to levels of less than significant.

- In addition, the newly added text on page 252 implies that BAAQMD was performing the entire investigation and enforcement process, which is not correct. The City of San Jose LEA is required to investigate compost odors that are referred by the BAAQMD. The text goes on to state that BAAQMD eventually notified Milpitas that there was no longer a need for the extraordinary commitment of BAAQMD staff time because the odor complaints had dropped to insignificant numbers. BAAQMD has never made this statement and continues to respond in accordance with its procedures. Furthermore, there is a long history of odor complaints to both BAAQMD and the City that continues to this day. (See Attachment 4.)

- Impact AIR-4 states that the proposed project (including the implementation of the Initial Compost Area Line), with the continued implementation of the current Odor Control Measures and Odor Impact Minimization Plan, would not increase odors compared to existing operations (Less Than Significant Impact). However, the Milpitas community continues to be subjected to frequent odors and has deemed the current level of odors as unacceptable. For example, there were 124 odor complaints for 2010 and 171 for 2011. For every formal complaint, there are likely to be several additional unvoiced complaints as many community members have concluded that filing complaints over the last 20 years has not led to improvement. The assumption that the currently employed odor control measures are effective and can serve as a baseline is false.

- Newly added text on page 252 of the EIR states that status reports to the Milpitas City Council were reduced from quarterly to annually in 2007. This text is inaccurate, as the City of Milpitas instated a monthly odor reporting requirement in January 2011, which continues to this day.

- Newly added text on page 252 of the EIR focuses on complaints for the Newby Island Sanitary Landfill and actions to be taken by the landfill operator. The EIR fails to include complaints for the Recyclery and actions taken by its operator.

- The food waste program is the likely source of many complaints, as pointed out by several commenters. There is regional support for expanding food compost programs, which is expected to increase the frequency of odor complaints. The conclusion that odors will therefore not increase is faulty for this reason, as well.

- Newly added text on page 251 describes selected components of the City of Milpitas Odor Action Plan. To be complete, the section would need to describe the role and responsibilities of the LEA, as well.

- Newly added text in the first paragraph of Section 1.4.3.12 on page 235 has revised the EIR text to delete the phrase "in-vessel composting has occurred on site in the past" and replaced it with the phrase "in-vessel composting currently occurs on the southern boundary of the landfill east of the compost windrows (refer to Revised Figure 1.0-7)." This text raises several questions. Is in-vessel composting an optional process? If so, what criteria does the operator employ when determining whether to use this process or windrows? What is the capacity of the in-vessel system? What is the correlation of the in-vessel process and the number of odor complaints versus windrows and the number of complaints? What is the effectiveness of this process as an Odor Control Measure? Such additional information would be needed for an adequate assessment. Furthermore, in-vessel composting processes would need to be added to the List of Odor Control Measures employed at the landfill and Recyclery as shown on page 253.

- Biosolids loading and hauling cause a substantial number of complaints. The current odor control measure is described on page 253 to be "Prohibit the load or transport of any biosolids into the landfill any time such loading and transporting results in actual odor complaints correlated to biosolids from off-site properties." What is the definition of "actual odor complaint?" This control measure is not effective, and furthermore, may not be practical. Atmospheric conditions may not be favorable for hauling activities for several days in a row. Trucks, drivers, and loaders are scheduled in advance to perform this work and it is not believable that the landfill operator simply ceases this operation until atmospheric conditions improve. Additional odor control measures are necessary and must be implemented. Furthermore, the EIR is incomplete without a discussion regarding odors resulting from biosolids handling.

Sincerely,

Kathleen Phalen, Milpitas Acting Public Works Director/City Engineer

cc: Thomas Williams, City Manager
Mike Ogaz, City Attorney

ATTACHMENT 1 Public Resources Code Sections 43200-43222

CALIFORNIA CODES
PUBLIC RESOURCES CODE
SECTION 43200-43222

43200. (a) The board shall prepare and adopt certification regulations for local enforcement agencies. The regulations shall specify requirements that a local agency shall meet before being designated as an enforcement agency. The regulations shall include, but are not limited to, all of the following:

(1) Technical expertise.

(2) (A) Adequacy of staff resources.

(B) For the purposes of this paragraph, the board shall adopt regulations for specified enforcement agencies, as defined in subparagraph (C), which meet all of the following requirements:

(i) The regulations shall not require a specific number of person-hours or staff resources for the performance of duties as a specified enforcement agency.

(ii) The regulations shall establish performance standards for specified enforcement agencies which will provide a comparable level of public health and safety and environmental protection to that required of other local agencies certified pursuant to this article.

(iii) The regulations shall establish procedures to ensure that all duties required of specified enforcement agencies pursuant to this article are actually performed.

(iv) The regulations shall require specified enforcement agency personnel to receive a comparable level of training to that required of personnel employed by other local agencies certified pursuant to this article.

(C) For the purposes of subparagraph (B), "specified enforcement agency" means a local enforcement agency which has a population of less than 50,000 persons.

(3) Adequacy of budget resources.

(4) Training requirements.

(5) The existence of at least one permitted solid waste facility within the jurisdiction of the local agency. For the purposes of this paragraph, "permitted solid waste facility" includes a proposed solid waste facility for which an environmental impact report or negative declaration has been prepared and certified pursuant to Division 13 (commencing with Section 21000) or for which a conditional use permit has been issued by a city or county.

(b) The regulations adopted pursuant to subdivision (a) shall specify four separate types of certifications for which an enforcement agency may be designated, as follows:

(1) Permitting, inspection, and enforcement of regulations at solid waste landfills.

(2) Permitting, inspection, and enforcement of solid waste incinerators.

(3) Permitting, inspection, and enforcement of transfer and processing stations.

(4) Inspection and enforcement of litter, odor, and nuisance regulations at solid waste landfills.

43201. After August 1, 1992, no enforcement agency shall be designated pursuant to this article unless the board determines that the agency fully complies with one or more of the certification types

specified in Section 43200. No enforcement agency shall, after August 1, 1992, exercise the powers of an enforcement agency pursuant to this chapter unless the agency has been certified by the board.

43202. An enforcement agency may be designated by the local governing body and certified by the board to act to carry out this chapter within each jurisdiction. If an enforcement agency is not designated and certified, the board, in addition to its other powers and duties, shall be the enforcement agency within the jurisdiction, subject to the agreement required pursuant to Section 43212.1 or 43310.1.

43203. The designation of the enforcement agency shall be made by any one of the following procedures:

(a) The board of supervisors of the county may designate the enforcement agency to carry out this chapter in the county. The designation is subject to the approval by a majority of the cities within the county which contain a majority of the population of the incorporated areas of the county, except in those counties which have only two cities, in which case the designation shall be subject to approval by the city which contains the majority of the population of the incorporated area of the county.

(b) The county and the cities within the county may enter into a joint exercise of powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for the purpose of establishing an enforcement agency to carry out this chapter in the jurisdiction of the joint powers agency.

(c) A city council may, at any time, designate an enforcement agency to carry out this chapter in the city.

(d) The board of supervisors of the county may designate an enforcement agency to carry out this chapter in the unincorporated area of the county.

43204. No enforcement agency may exercise the powers and duties of an enforcement agency until the designation is approved by the board. After August 1, 1992, the board shall not approve a designation unless it finds that the designated enforcement agency is capable of fulfilling its responsibilities under the enforcement program and meets the certification requirements adopted by the board pursuant to Section 43200.

43205. (a) Except as provided in subdivision (b), if no enforcement agency is designated and certified, the board shall be the enforcement agency and shall assume all the powers and duties of an enforcement agency pursuant to this chapter, subject to the agreement required pursuant to Section 43212.1 or 43310.1. If the board is the enforcement agency and an enforcement agency is then designated and certified by the board, the board shall continue to act as the enforcement agency for the remainder of the fiscal year, with those responsibilities terminating as of June 30, unless otherwise specified by the board.

(b) Notwithstanding subdivision (a), if no enforcement agency is designated and certified for Stanislaus County or Santa Cruz County, the board shall be the enforcement agency, and shall assume all of the powers and duties of an enforcement agency for that county, but shall not be required to enter into the agreement required pursuant to Sections 43212.1 or 43310.1.

(c) The board and the enforcement agency shall not, at any time, impose duplicative fees or charges on the owner or operator of a solid waste facility.

43206. A designation made pursuant to this article may be withdrawn in the same manner in which it was made.

43207. No local governmental department or agency, or any employee thereof, which is the operating unit for a solid waste handling or disposal operation shall be the enforcement agency, or an employee thereof, for the types of solid waste handling or disposal operation it conducts unless authorized by the board to act in that capacity.

43208. Notwithstanding any other provision of law, except as provided in Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, and Section 731 of the Code of Civil Procedure, no local governing body may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to a facility that accepts both hazardous wastes and other solid wastes and which meets any of the criteria enumerated in subdivision (a) of Section 25148 of the Health and Safety Code, and was operating as of May 1, 1981, pursuant to a valid solid waste facility permit, so as to prohibit or unreasonably regulate the operation of, or the disposal, treatment, or recovery of resources from solid wastes at any such facility. However, nothing in this section authorizes an operator of such a facility to violate any term or condition of a local land use or facility permit or any other provision of law not in conflict with this section.

43209. The enforcement agency, within its jurisdiction and consistent with its certification by the board, shall do all of the following:

(a) Enforce applicable provisions of this part, regulations adopted under this part, and terms and conditions of permits issued pursuant to Chapter 3 (commencing with Section 44001).

(b) Request enforcement by appropriate federal, state, and local agencies of their respective laws governing solid waste storage, handling, and disposal.

(c) File with the board, upon its request, information the board determines to be necessary.

(d) Develop, implement, and maintain inspection, enforcement, permitting, and training programs.

(e) (1) Establish and maintain an enforcement program consistent with regulations adopted by the board to implement this chapter, the standards adopted pursuant to this chapter, and the terms and

conditions of permits issued pursuant to Chapter 3 (commencing with Section 44001).

(2) The enforcement agency may establish specific local standards for solid waste handling and disposal subject to approval by a majority vote of its local governing body, by resolution or ordinance.

(3) A standard established pursuant to this subdivision shall be consistent with this division and all regulations adopted by the board.

(f) Keep and maintain records of its inspection, enforcement, permitting, training, and regulatory programs, and of any other official action in accordance with regulations adopted by the board.

(g) (1) Consult, as appropriate, with the appropriate local health agency concerning all actions which involve health standards.

(2) The consultation required by this subdivision shall include affording the health agency adequate notice and opportunity to conduct and report the evaluation as it reasonably determines is appropriate.

(h) Establish and maintain an inspection program.

(1) The inspection program required by this subdivision shall be designed to determine whether any solid waste facility is operating under any of the following:

(A) The facility is operating without a permit.

(B) The facility is operating in violation of state minimum standards.

(C) The facility is operating in violation of the terms and conditions of its solid waste facilities permit.

(D) The facility may pose a significant threat to public health and safety or to the environment, based on any relevant information.

(2) The inspection program established pursuant to this subdivision shall also ensure frequent inspections of solid waste facilities that have an established pattern of noncompliance with this division, regulations adopted pursuant to this division, or the terms and conditions of a solid waste facilities permit. The inspection program may include public awareness activities, enforcement to prevent the illegal dumping of solid waste, and the abatement of the illegal dumping of solid waste.

43209.1. (a) Notwithstanding any other provision of law, if an enforcement agency receives a complaint, pursuant to subdivision (b) of Section 41705 of the Health and Safety Code, from an air pollution control district or an air quality management district pertaining to an odor emanating from a compost facility under its jurisdiction, the enforcement agency shall, in consultation with the district, take appropriate enforcement actions pursuant to this part.

(b) On or before April 1, 1998, the board shall convene a working group consisting of enforcement agencies and air pollution control districts and air quality management districts to assist in the implementation of this section and Section 41705 of the Health and Safety Code. On or before April 1, 1999, the board and the working group shall develop recommendations on odor measurement and thresholds, complaint response procedures, and enforcement tools and take any other action necessary to ensure that enforcement agencies respond in a timely and effective manner to complaints of odors emanating from composting facilities. On or before January 1, 2000, the board shall implement the recommendations of the working group that the board determines to be appropriate.

(c) On or before April 1, 2003, the board shall adopt and submit

to the Office of Administrative Law, pursuant to Section 11346.2 of the Government Code, regulations governing the operation of organic composting sites that include, but are not limited to, any of the following:

(1) Odor management and threshold levels.

(2) Complaint investigation and response procedures.

(3) Enforcement tools.

(d) This section shall become inoperative on April 1, 2003, unless the board adopts and submits regulations governing the operation of organic composting sites to the Office of Administrative Law pursuant to subdivision (c) on or prior to that date.

43210. For those facilities that accept only hazardous wastes, or accept only low-level radioactive wastes, or facilities that accept only both, and to which Chapter 6.5 (commencing with Section 25100) of Division 20 or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code applies, the board and the enforcement agency have no enforcement or regulatory authority. All enforcement activities for the facilities relative to the control of hazardous wastes shall be performed by the Department of Toxic Substances Control pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20 of the Health and Safety Code; and all enforcement activities relative to the control of low-level radioactive waste shall be performed by the State Department of Health Services pursuant to Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code.

43211. (a) For those facilities that accept both hazardous wastes and other solid wastes, the Department of Toxic Substances Control shall exercise enforcement and regulatory powers relating to the control of the hazardous wastes at the facility pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The board and the enforcement agency shall, at solid waste disposal facilities, exercise enforcement and regulatory powers relating to the control of solid wastes and asbestos-containing waste, as provided in Section 44820.

(b) For purposes of this section, "asbestos containing waste" means waste that contains more than 1 percent by weight, of asbestos that is either friable or nonfriable.

43212. (a) If the board is the enforcement agency, the board may impose fees to recover its costs of operation on the local governing body, a solid waste facility operator, or a solid waste enterprise that operates within the jurisdiction of the enforcement agency, and shall collect those fees in a manner determined by the board and developed in consultation with the local governing body. Any fees imposed pursuant to this section shall bear a direct relationship to the reasonable and necessary costs, as determined by the board, of providing for the efficient operation of the activities or programs for which the fee is imposed.

(b) If the board is the enforcement agency for a county and all of the cities within that county, the local governing body shall be the county board of supervisors for purposes of this section.

43212.1. If the board is the enforcement agency, the local governing body and the board shall enter into an agreement which shall identify the jurisdictional boundaries of the enforcement agency; address the powers and duties to be performed by the board as the enforcement agency, and identify an estimated workload and anticipated costs to the board.

43213. The enforcement agency may, upon a majority vote of its local governing body, prescribe, revise, and collect fees or other charges from each operator of a solid waste facility or from any person who conducts solid waste handling if the local governing body having ratesetting authority has approved rate adjustments to compensate the solid waste hauler or solid waste facility operator for the amount of the fee or charges imposed pursuant to this section. The fee or other charge shall be based on the weight, volume, or type of solid waste which is received or handled by any such operator or person or on any other appropriate basis or any combination of the foregoing. In no case shall the fee or other charge imposed by the enforcement agency under this section exceed the actual cost of the solid waste enforcement authorized under this title.

43214. (a) The board shall develop performance standards for evaluating certified local enforcement agencies and shall periodically review each certified enforcement agency and its implementation of the permit, inspection, and enforcement program. The board's review shall include periodic inspections of solid waste facilities and disposal sites within the jurisdiction of each enforcement agency for the purpose of evaluating whether the enforcement agency is appropriately applying and enforcing state minimum standards within its jurisdiction.

(b) Following initial certification of an enforcement agency by the board, the board shall conduct a performance review of the enforcement agency every three years, or more frequently as determined by the board.

(c) In conducting performance reviews of enforcement agencies, the board shall, based on the performance standards developed pursuant to subdivision (a), determine whether each enforcement agency is in compliance with the requirements of this article and the regulations adopted to implement this article. If the board finds that an enforcement agency is not fulfilling its responsibilities pursuant to this article and if the board also finds that this lack of compliance has contributed to significant noncompliance with state minimum standards at solid waste facilities or disposal sites within the jurisdiction of the enforcement agency, the board shall withdraw its approval of designation pursuant to Sections 43215 and 43216. Notwithstanding Sections 43215 and 43216, if the board finds that conditions at solid waste facilities or disposal sites within the jurisdiction of the enforcement agency threaten public health and safety or the environment, the board shall, within 10 days of notifying the enforcement agency, become the enforcement agency until another enforcement agency is designated locally and certified by the board.

(d) The board shall find that an enforcement agency is not fulfilling its responsibilities pursuant to this article, and may

take action as prescribed by subdivision (c), if the board, in conducting its performance review, makes one or more of the following findings with regard to compliance with this part and Part 5 (commencing with Section 45000):

(1) The enforcement agency has failed to exercise due diligence in the inspection of solid waste facilities and disposal sites.

(2) The enforcement agency has intentionally misrepresented the results of inspections.

(3) The enforcement agency has failed to prepare, or cause to be prepared, permits, permit revisions, or closure and postclosure maintenance plans.

(4) The enforcement agency has approved permits, permit revisions, or closure and postclosure maintenance plans that are not consistent with this part and Part 5 (commencing with Section 45000).

(5) The enforcement agency has failed to take appropriate enforcement actions.

(6) The enforcement agency has failed to comply with, or has taken actions that are inconsistent with, or that are not authorized by, this division or the regulations adopted by the board pursuant to this division. However, nothing in this paragraph is intended to affect the authority of enforcement agencies pursuant to subdivision (e) of Section 43209.

43215. (a) If the board, in conducting the inspection and performance review required pursuant to Section 43214 or this section, finds that the enforcement agency is not fulfilling one or more of its responsibilities, the board shall notify the enforcement agency of the particular reasons for finding that the enforcement agency is not fulfilling its responsibilities and of the board's intention to withdraw its approval of the designation if, within a time to be specified in that notification, but in no event less than 30 days, the enforcement agency does not take the corrective action specified by the board.

(b) The board shall adopt regulations that establish a process for notice, public hearing, the admission of evidence, and final action by the board for partial or full withdrawal of the approval of designation pursuant to this chapter.

43215.1. The board may, upon the written request of an enforcement agency, provide legal counsel for purposes of compliance with this part.

43216. If the board withdraws its approval of the designation of an enforcement agency, another enforcement agency shall be designated pursuant to Section 43203 within 90 days and approved by the board. If no designation is made within 90 days, the board shall become the enforcement agency within the jurisdiction of the former enforcement agency.

43216.5. In addition to the procedures for board withdrawal of its approval of a local enforcement agency's designation pursuant to Sections 43214, 43215, and 43216, the board may take any actions which are determined by the board to be necessary to ensure that local enforcement agencies fulfill their obligations under this

chapter. To ensure that a local enforcement agency is appropriately fulfilling its obligations under this chapter and implementing regulations, the board may conduct more frequent inspections and evaluations within a local enforcement agency's jurisdiction, establish a schedule and probationary period for improved performance by a local enforcement agency, assume partial responsibility for specified local enforcement agency duties, and implement any other measures which may be determined by the board to be necessary to improve local enforcement agency compliance.

43217. The board shall provide ongoing training, technical assistance, and guidance to local enforcement agencies to assist in their decisionmaking processes. This assistance shall include, but is not limited to, providing all of the following:

(a) Technical studies and reports.

(b) Copies of innovative solid waste facility operation plans.

(c) Investigative findings and analyses of new solid waste management practices and procedures.

(d) A program for loaning technical and scientific equipment, to the extent that funds are available to the board to purchase that equipment.

43218. Each enforcement agency shall inspect each solid waste facility within its jurisdiction at least one time each month and shall file, within 30 days of the inspection, a written report in a format prescribed by the board.

43219. (a) The board may, at its discretion, conduct inspections and investigations of solid waste facilities in order to evaluate the local enforcement agency and to ensure that state minimum standards are met.

(b) Except as otherwise provided by Section 43220, the board, in conjunction with an inspection conducted by the local enforcement agency, shall conduct inspections of solid waste facilities within the jurisdiction of each local enforcement agency. The board shall inspect the types and number of solid waste facilities which are determined by the board to be necessary to adequately evaluate whether the local enforcement agency is ensuring compliance by solid waste facilities with state minimum standards. A written inspection report shall be prepared and submitted within 30 days of the inspection to the local enforcement agency.

(c) If the board identifies any significant violation of state minimum standards that were not identified and resolved through previous inspections by the local enforcement agency, the board shall take appropriate action as authorized by Sections 43215 and 43216.5.

(d) Notwithstanding any other provision of this section and Sections 43215 and 43216, if, as a result of a facility inspection conducted pursuant to subdivision (b), the board finds that conditions at a solid waste facility within the jurisdiction of a local enforcement agency threaten public health and safety or the environment, the board shall, within 10 days of notifying the local enforcement agency, become the enforcement agency until another local enforcement agency is designated locally and certified by the board.

43220. The board, in conjunction with an inspection conducted by the local enforcement agency, shall conduct at least one inspection every 18 months of each solid waste landfill and transformation facility in the state. A written inspection report shall be prepared and submitted within 30 days of the inspection to the local enforcement agency. If the board identifies any significant violation of state minimum standards that was not resolved through previous inspections by the local enforcement agency, the board shall take appropriate action as authorized by Sections 43215 and 43216.5 and subdivision (d) of Section 43219.

43222. Any fees or charges imposed pursuant to this part by any enforcement agency shall bear a direct relationship to the reasonable and necessary cost, as determined by the enforcement agency, of providing the efficient operation of the activities or programs for which the fee is assessed.

ATTACHMENT 2 BAAQMD Complaint Guidelines

COMPLAINT GUIDELINES
Adopted July 14, 1990
Table of Contents

Exhibits

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

COMPLIANCE & ENFORCEMENT DIVISION

Policies & Procedures

COMPLAINT GUIDELINES

For purposes of this policy, an air quality complaint is a concern that is communicated to the District alleging a realized or potential injury, detriment, annoyance or nuisance occurring as a result of the release or potential release of air contaminants or other materials, including, but not limited to, smoke, odors, dust and other particulate matter.

Community members are often the first to be aware of an emission release, and the community can be considered the "eyes and noses" of the District. In response to legitimate civic concerns, District staff will endeavor to investigate every complaint in order to achieve early intervention on potential problems and allow the District to be proactive in protecting public health. District staff will maintain the cooperative, but objective, attitude of an investigator. Informal complaints will also be investigated where the person may otherwise feel uncomfortable filing a formal complaint.

These Complaint Guidelines are intended to handle air pollution complaints that have impacts on individuals, and which may result in District enforcement actions against public nuisance, visible emissions, particulate emissions, odorous substances emissions, etc. Referrals, or "tips," from other agencies or individuals, which do not involve impacts on individual persons, are not covered under these guidelines.

Air pollution complaints are an important part of the daily workload of an Inspector. It is essential that complaint investigation and complaint processing be handled in a prompt, efficient and professional manner.

1. COMPLAINT RECEIPT AND DISPATCH

A. Public Outreach – How to Start the Complaint Investigation Process

The following methods are used by the District to inform the public about how to report a complaint:

- Telephone directory listings for the District's toll-free Complaint Line at 1-800-334-ODOR (6367) can be found in any local white page directory under the **"California, State of"** listing, under any of the following subheadings:

"Bay Area Air Quality Management District"

"Air Pollution"

"Environmental"

"Odor Complaints"

These listings are in both the blue-bordered government and red-bordered business white pages.

- Members of the public wishing to register a complaint who do not speak English can receive Over-the-Phone-Interpretation in 150 languages from a third party translator once they reach the District's toll-free Complaint Line at 1-800-334-ODOR (6367).
- Complaint Cards entitled *"To Register a Complaint"* (colored 3 x 5" cards) with instructions on how to call are distributed at public events.
- District brochures covering complaint-related topics on the following subjects are circulated at public events:
    - Complaint Procedures
    - Odors
    - Residential Woodstoves and Fireplaces
    - Requirements for Building Permits and Industrial Facilities Near Schools and Hospitals

Air quality complaints are sometimes made to other agencies or organizations that may take them but not act upon them. In order to correctly receive such complaints, the District will maintain an outreach program to communicate with and educate other possible agencies of these complaints and refer them to the District.

B. Received During Staffed Office Hours (Core Hours)

Complaints called in on the District's toll-free complaint line are normally received by telephone in the District's Communication Center (ComCenter) during core hours of 7:30 a.m. to 6:00 p.m. on Monday through Friday. Core hours for Saturday and Sunday are 8:30 a.m. to 5:00 p.m.

The complaint is entered into a District computer program. This entry creates a complaint record and reference number (C#) that automatically assigns the complaint to the area inspector or an alternate inspector. The C# will be provided to the complainant and can be used to track the progress, actions taken, and final resolution of the complaint.

Complaints will be dispatched as soon as possible according to a priority system that allows the District to respond more quickly to urgent complaint situations.

C. Received By the Answering Service

The District contracts with an answering service to take complaints during non-core hours. If a complaint is taken by the answering service at night or over the weekend, the complaint information is telephoned/faxed to the ComCenter the following morning and will be entered into the computer, assigned a C# and dispatched at that time.

During non-core hours, when the answering service receives three (3) or more complaints alleging a single company they will refer the complaints to a supervising inspector with the complaint information. If the caller is a public official acting in an official capacity, *only one call* is needed for the answering service to call the assigned supervising inspector or manager.

Each complaint will be evaluated on a case-by-case basis and a determination made whether an investigation by an inspector is warranted. If a possible public nuisance situation is developing, an inspector will be called back to work to conduct an investigation.

D. Received by the Inspector

When a complaint is received in the field, the inspector will obtain pertinent information from the complainant and begin completing a "Complaint Report" form (see Exhibit 1 and Section 7(A) below).

If a large number of people wish to make complaints at the same time, the "Complaint Declaration" form (see Exhibit 2 and Section 7(B) below) may be distributed in order to accommodate the information collection process, if the inspector has detected the air contaminant within the previous 60 minutes. The "Complaint Declaration" form can be collected by the inspector later and the process completed, as below. However, if a complaint can be confirmed immediately, a "Complaint Declaration" form may be circulated to assist solely in information gathering.

When time permits, the inspector will contact the ComCenter to submit the complaint information and obtain a C#. All complaints must be assigned a C# and this can only be done by contacting the ComCenter. The inspector will give the C# to the complainant at the time received, or will call the complainant later if that person is no longer available, provided the complainant wants the C#.

E. Complaints Received by Petition

Petitions are written complaints signed by more than one complainant, usually generated in response to an ongoing problem that is airborne in nature. However, because some petitions are initiated to *prevent* certain actions from taking place (based upon an assumption of *future* airborne problems), the following information should be verified for each petitioner contacted:

1. Date(s) on which alleged air emission took or is anticipated to take place
2. Description of harm, injury, annoyance, etc. (real or potential) suffered
3. Source of air emission (real or potential)

A petition will be assigned only one C# for tracking purposes, but all petitioners may be considered as individual complainants, based on the outcome of the investigation.

F. Complaints Received as an Area-wide Event

Area-wide complaint events are generally the result of an unusual occurrence such as a large accidental fire or an industrial incident resulting in the emission of air contaminants that are detected by the public.

Following any air pollution incident, whether or not it resulted in an area-wide complaint event, the supervising inspector responsible for the area in which the event is occurring shall arrange for the preparation of an "Incident Report" (see "Incident Response and Investigation Plan" Guidelines of this Manual).

G. Cancellation

Complaints are sometimes received which are duplicates of an already existing, or Primary, complaint. These complaints warrant investigation but not the creation of a separate reference number (C#). The information that is generated by the investigation of such complaints is always incorporated into the report for the Primary complaint, but the inadvertent creation of a separate reference number (C#) will result in cancellation, as indicated in the following cases:

- When a duplicate complaint is received on the same day (any calendar day) for the same source, from the same person. The original complaint for this person is referred to as the primary complaint.
- When a duplicate complaint is received on the same day from a person related to someone living in the same household (dwelling), where the related other party has already filed a complaint against the same source.

For these cases, if an existing Primary complaint has not yet been confirmed, but a subsequent duplicate complaint is received, that subsequent complaint is treated as a message to continue the investigation. If the follow-up investigation results in confirmation, then the Primary complaint will be confirmed.

Also for these cases, the person may be given an "Odor Log" form (see Exhibit 3 and Section 7(C) below) to use for detailed tracking purposes by the same person or a person in the same household. Inspectors will collect and attach such documents to their Primary complaint report in order to support the complaint investigation and/or for additional case development.

Other cases where District staff can investigate complaints received, but cannot take any enforcement action is where:

- the source of an air emission is affecting an individual located inside the District's boundary, but itself is located outside the District's boundary; or
- the complaint is for a non-air-pollution contaminant, e.g., noise.

For these cases, the inspector will conduct all appropriate investigation and will work with or refer the complaint to any adjacent district or applicable public agency to resolve the problem. The inspector will recommend cancellation of any associated complaint reference number (C#).

In a final cancellation category, if, after contact by District staff, a complainant wishes to withdraw his/her name from the record, the complaint can be converted to "Anonymous" or can be cancelled entirely. This action is entirely at the complainant's discretion (see "Complaint Confidentiality" at Section 3(E) below).

For cancellation of a complaint under any of the categories listed above, approval by the Air Quality Program Manager is required.

2. COMPLAINT TYPES REQUIRING SPECIALIZED PROCESSING

A. Received from Schools (H&SC 42301.8)

If the principal, or an authorized representative thereof, of a school contacts the District to request an investigation of odors or possible air pollution sources from new and modified sources (as of January 1, 1989) as the cause of impact on persons at a school, the District must respond and investigate.

The inspector who receives this complaint for investigation is also responsible for notification within 24 hours of the complaint to the following agencies:

- The city or county office responsible for administering hazardous materials policy, and
- The fire department having jurisdiction over the school.

B. Regarding Compost Operations (H&SC 41705)

Compost operations are exempt from the public nuisance provision of Regulation 1 and from the complaint applicability of Regulation 7.

A compost operation is described in the Public Resources Code (PRC), Section 40116, in the following manner:

> *"Compost" means the product resulting from the "controlled" biological decomposition of organic wastes that are source separated from the municipal solid waste stream, or which are separated at a centralized facility. Compost includes vegetable, yard, and wood wastes which are not a hazardous waste.*

"Controlled" is defined as having the ability to aerate the material at will, regulate the water content and control temperature in such a manner that would result in a product legally marketable as compost under the rules of the California Integrated Waste Management Board (CIWMB) of Cal/EPA.

Activities which do **not** constitute compostable material handling operations are listed in Section 17855 "Excluded Activities" of the California Code of Regulations (CCR), Title 14, Division 7, Chapter 3.1.

All odor complaints that allege or are determined to be compost related shall be reported to a "Local Enforcement Agency" (LEA) designated and certified pursuant to PRC Section 43200. The inspector receiving the complaint will notify, within 24 hours or by the next working day, the LEA having jurisdiction over the alleged source. In the event that the CIWMB has decertified the LEA having jurisdiction, the complaint(s) will be reported to the enforcement section of the CIWMB (PRC Section 43205).

Where the alleged source or location is known or suspected to have odor sources, ***other than compost,*** that are under District jurisdiction, the inspector will investigate all complaints at the site. In the event that ***co-mingling of odors from compost and sources under District jurisdiction*** results in a sufficient number of complaints to document a public nuisance, the case will be submitted to the Manager for determination on whether an NOV is to be issued.

The inspector will advise the complainant(s) of the LEA's jurisdiction regarding compost operations. The inspector will also advise complainants that the inspector will contact the LEA and provide all applicable complaint information, unless the complaint is canceled. Additionally, complainants will be advised to contact the LEA for future complaint handling.

C. Regarding Idling Trucks at Certain California Ports (H&SC 40720)

Assembly Bill 2650 (AB 2650) was originally introduced into legislation by Assemblyman Alan Lowenthal (Long Beach). AB 2650 required each Marine Terminal Operator (MTO) in certain ports (within District jurisdiction only the Port of Oakland is subject to these provisions) to operate in a manner that does not cause the engines on trucks to idle or queue for more than 30 minutes while waiting to enter the terminal. The bill required that citations for violations be issued to the MTO by the applicable district. AB 2650 was implemented as Health and Safety Code Section 40720 on July 1, 2003.

If a complainant calls specifically regarding trucks idling at a terminal at the Port of Oakland, thus making them subject to enforcement by the District, then ComCenter staff will take and dispatch complaints of "Idling Port Truck." For complaints regarding any idling trucks outside of this scope, the complaint will be taken as "Other."

In order to confirm idling port truck complaints, the inspector must determine if a violation of 40720(a) has occurred.

D. Regarding Idling Bus Emissions (H&SC 42403.5)

Any idling diesel-powered bus shall be subject to the provisions of H&SC Section 41700 (public nuisance), unless the operator can show that the harm caused by the emissions does not exceed the benefit accrued to bus passengers as a result of idling, e.g., heating or cooling.

E. Alleging Health Effects

District staff does not have the medical expertise to determine whether or not complaints of physical symptoms are caused by exposure to specific air contaminants. The county Health Officer affiliated with the appropriate county health department is equipped to evaluate such cases.

When a complainant verbally alleges health effect(s) (nausea, eye or throat irritation, asthma attacks, etc.) associated with an air contaminant that the inspector is investigating, the inspector will carefully record any alleged symptoms and any visible signs, as offered by the complainant (see Section 3(D)5 below).

In addition to conducting the complaint investigation, the inspector will also direct the complainant to contact the appropriate county health department. The inspector may also suggest the complainant may also wish to contact his/her own health care provider regarding the alleged health effect(s). The inspector will note all the circumstances of any referral to the county health office.

F. Regarding Indoor Air Quality

Complaints are sometimes received and dispatched for sources of air contaminants that are not directly emitted to the atmosphere. The H&SC Section 39002 sets forth the jurisdiction for each district to regulate only the "air pollution from all sources other than vehicular sources." Section 39013 states that an "air pollutant" means any discharge...into the atmosphere...." This restricts inspectors from citing sources that do not emit air contaminants into the outdoor air environment, but does not prevent response and investigation.

In order to be under District jurisdiction, the air contaminant must enter the complainant's site from the ambient air, not through interior vents or walls. Asbestos demolition and renovation operations are an exception in that the asbestos air contaminants may possibly not leave an interior building, but are still subject to District jurisdiction. For indoor air contaminants, either the Cal OSHA or local health department is the appropriate agency for referral.

G. Potential Nuisance Sites

The Director of Enforcement, or an Air Quality Program Manager, may designate any company/facility to be a potential public nuisance source when sufficient complaint activity alleges air emissions from that site. The Director may then consider enhanced response, which may include, but not necessarily be limited to, assignment of overtime coverage or shift work for field inspectors and support staff as needed to address the specifics of the situation. The Director may also send the company/facility a letter notifying them that they are being designated a potential public nuisance.

H. Regarding Gasoline Dispensing Facility

See "Gasoline Dispensing Facilities" Guidelines of this Manual.

I. Regarding Residential Woodsmoke

If a complaint is received for woodburning smoke coming from a residential fireplace or woodstove, the occupant at the residence address identified will be sent a package of informational material concerning the air pollution impacts of woodsmoke. If complaints become numerous within one day, an inspector will be dispatched for investigation.

3. FIELD INVESTIGATION

A. Assignment of Priority

Complaints will dispatched according to the Priority (P#) ranking listed in the table below. Not all "Types" of specialized complaints are designated in the table. If a Type is not listed, then the current status (ongoing vs. not ongoing) will be used as the screening factor.

P#	CURRENT STATUS OR *TYPE*	DISPATCH RESPONSE	INSPECTOR RESPONSE
1	Ongoing, *Potential Nuisance Sites*	15 minutes	30 min
2	Ongoing, *non-Nuisance*	First Available; up to 30 minutes	30 min
3	Not Ongoing, *Asbestos*	When Inspector is first available (but no later than 2 pm)	1 hr/2 hr for Asbestos
4	*Service station nozzle*	When inspector is first available (but no later than 2 pm)	24 hr
N/A	*Residential wood smoke*	Wood smoke information materials to be sent by mail	N/A

After a complaint has been dispatched the inspector must decide which of the following to do first:

1. Go directly to the alleged or suspected source, or
2. Contact the complainant via telephone or
3. Contact the complainant in person.

If there is any possibility that a violation is in progress, then the complaint response should begin with a visit to the suspected source of the contaminant.

B. Inspector Safety

Inspection staff must conduct themselves in accordance with the District Safety Policy which promotes "a safe work environment that will allow employees to perform their work without fear of possible harm to their lives and/or health....it is BAAQMD's intent to provide a safe workplace, safe equipment, proper materials and to establish and insist upon safe work methods and practices at all times." At the first sign of danger or threat to safety, inspection staff should remove themselves from harm's way as quickly and safely as possible. Any inspection staff member who believes

that he/she has been endangered is to immediately report the incident to his/her supervisor.

There may be cases during an inspector's normal activities where circumstances require a judgment call on the part of the inspector as to whether his/her safety may be compromised. In such cases where the inspector elects not to conduct the inspection activity due to safety concerns, the inspector will notify his/her supervisor to obtain guidance on how to proceed.

C. Inspector Procedures

The District investigates air pollution complaints as an impartial party to determine facts and circumstances surrounding an alleged release of an air contaminant to the atmosphere. Therefore, the inspector needs to remain objective, impartial and neutral as he/she conducts the investigation. Soliciting complaints, taking sides (with any party), leading or influencing anyone is inappropriate. The Inspector is there to document his/her observations, gather evidence and, if necessary, take appropriate enforcement action.

The following guidelines will be followed by the Inspector when interviewing the complainant:

1. **Identification:** Identify her/himself by name and by credentials on the "Investigator" badge (see Exhibit 7) in a professional and cooperative manner.

2. **Listening:** Allow the complainant to explain the details of the complaint. When facts appear, the inspector should repeat them aloud for verification and then write them down.

3. **Explaining:** Explain that:

   - he/she will conduct an investigation, to include
     - an attempt to track the source of the air contaminants
     - contact of possible sources
   - different regulations or laws may be involved and evidence will be necessary to proceed with any enforcement action, if appropriate.

4. **Questioning:** Proceed with a line of questioning, after the complainant has expressed his/herself, which will help determine the cause, nature, and source of the air pollution problem alleged in the complaint.

   Note: It may be necessary to explain to the complainant that this line of questioning is necessary to establish the nuisance aspect of

their complaint. The inspector may need to explain that he/she is not attempting to discourage or raise barriers, etc. An inspector will NOT ask a complainant if they are willing to testify in court.

5. **Impartiality/Objectiveness:** Attempt to determine the source of the air quality problem that may be revealed by a complaint, but will remain impartial in the conduct of her/his duties, and will not take "sides" during an investigation.

6. **Other Jurisdictions:** Attempt to assist the complainant to the proper agency, if the complaint is not within the District's jurisdiction, and if possible, provide the agency's phone number (see Section 1(G) above). If the complainant requests help in pursuing the complaint with the other jurisdiction, the inspector may offer to facilitate the first contact, just to get the process started.

7. **Other Information:** Advise the complainant that until the investigation is completed no promise of any legal action or commitment to any course of enforcement action can be made. The inspector will also advise the complainant that at the conclusion of the investigation they can choose to receive the following:

   - the written Complaint Report and/or
   - notification of the final disposition of any enforcement action that may result from their complaint.

D. Complaint Interview

If the inspector meets with a non-English speaking complainant, the inspector should utilize the available over-the-phone translation services or use the card "We Speak Your Language" to have a complainant point to his/her language in order to request the correct translator.

Upon arrival at the scene of the complaint situation (or at an alternative location as prearranged by the inspector and the complainant), every effort will be made to avoid obvious identification of the complainant (i.e., parking in front of the complainant's home when a representative(s) of the alleged source is in the vicinity).

In order to effectively complete the investigation, the following information should be obtained as part of the complaint interview:

1. Description of the problem and its frequency.
2. Time of day the incident or problem was first noticed.
3. Name and location of suspected release of air contaminants
4. Duration of each occurrence.

If the complainant alleges health effects, then document the description and frequency of the air contaminants or how the situation affected the complainant, including any illnesses alleged to have resulted from such incident. The inspector should attempt to document **signs and symptoms alleged** by the complainant, as explained below:

5. **Signs are observable** - Examples are: tearing eyes, running nose, coughing, sneezing, vomiting, sweating, respiratory distress, scratching, rashes etc.
6. **Symptoms are felt by the person affected and are not observable.** Examples are: nausea, burning eyes, burning throat, burning nose, tightness in chest, stomach ache, tingling sensations, itching etc. These symptoms must be described to the inspector by the complainant.
7. If fall-out or other property impacts are involved, the inspector should also examine the complainant's property, and take photographs, if possible. The pattern of fall-out of contaminants may indicate the direction from which they came. Fall-out is any material that is emitted as liquid or solid particles, or gaseous material, which becomes liquid or solid particles, and has been deposited through an airborne process onto a complainant's personal or real property.
8. Description of odors, if any involved.
9. Record of meteorological observations. The wind direction should be obtained to help determine the source of an alleged odor.
10. Any other information the complainant may have that will relate the complaint or air quality problem to a specific piece of equipment.

If the complainant is not at home the inspector will contact the complainant by voice mail, or leave a card. The doorknob business card holder (see Exhibit 4) should be used if possible.

If information is revealed that the complainant has other reasons for registering a complaint *besides personal impact of air contaminants*, the inspector will note that information in the statements in the written report.

E. Complaint Confidentiality

At the conclusion of the interview the inspector will inform the complainant of the District confidentiality policy:

> *"The District cannot ensure complainant confidentiality with respect to any matter which results in litigation, and which results from and/or relies on the complaint as a basis for the litigation. All such complainant information is discoverable and will, upon formal demand, be made known to the defendant in the action."*

If the complainant wishes to retain confidentiality, then the inspector can either offer to have the complaint changed to "Anonymous" or will notify the ComCenter to cancel the complaint (see Section 1(G) above).

If the Inspector feels, upon completion of the investigation, that a complaint is essential to initiating an enforcement action, including the issuance of an NOV, Regulation 7 applicability letter, etc., then the inspector may ask a complainant to reconsider the confidentiality issue. No coercion or pressure will be used.

No enforcement action, including the issuance of an NOV, etc. may be based upon complaints which have been cancelled due to confidentiality issues, nor will any reference to them be made in any other documents associated with such issuance.

All complaints will continue to be confidential in every other manner, and a complainant's identity may not be released without an authorization from the District Counsel's Office.

F. Inspection of the Alleged Source

To establish a complaint verification (confirmation), the party responsible for the release of an air contaminant, or for failure to follow a regulatory requirement, must be established. When at all possible, the specific source responsible should be identified.

When investigating the source the inspector should:

1. Identify her/himself by name and by credentials on "Investigator" badge (see Exhibit 7) in a professional and cooperative manner.
2. Explain that he/she is investigating a complaint. For verification purposes, the source contact may telephone the District ComCenter (or Answering Service after core hours) at 800-334-6367 to make certain a complaint was received and is being investigated.
3. Ask pertinent questions relating to the facility's activity at the date and time in question, based on information obtained from complainant
4. Inspect the equipment and compare actual operating conditions, cycles and times of operation, with the times and frequencies of complaints
5. Obtain wind data, if appropriate, from a nearby facility, e.g. airport, air monitoring station, or by using a wind gauge.
6. Inform the responsible source as early as possible of any complaint confirmation to them; or advise the alleged source of the investigation outcome if they are determined not to be responsible.

G. Complaint Confirmation Status

A complaint confirmation status must be one of the following:

1. Complaint Confirmed

A confirmed complaint means that either an inspector, or another trained employee of the District, or a complainant must be able to establish that a particular operation or combination of operations is the source of the air contaminants. This confirmation includes two elements:

- detecting the odor/air contaminant release, and
- tracing it to its source.

Confirmation may be accomplished in three (3) different ways:

a. **Face-to-Face:** Personal observation by an inspector or another trained District employee with the complainant. This would require that the Inspector or District employee had traced the air contaminant from the complainant's impacted location to the alleged source. A contaminant can be traced not only from residence or place of business, but from any area where a complainant might typically be for public use, e.g., parks, places of worship, stadiums, museums, recreational facilities, etc.

b. **Declaration:** The Complainant is unable to meet with the inspector, but, within 60 minutes of the time of the complaint, the inspector is able to detect the alleged contaminant and is reasonably assured, by corroborative evidence, that the contaminant detected is the same as alleged by the complainant, based on at least one prior face-to-face confirmation with the same complainant for the same type of contaminant. The Inspector is also able to trace the alleged contaminant from the complainant's impacted location to the alleged source. The Complainant is subsequently offered and chooses to complete a District "Complaint Declaration" Form.

c. **Other Evidence:** The identification of an operation as the source of the air contaminants by:

   i. Analysis of a sample of the air contaminant, and, in some cases, through other supporting data, such as, but not limited to, recording chart data which can be correlated

with the time of complaints; e.g., wind charts, monitoring devices, other public agency observations.

ii. Smoke emissions that are observed by the inspector and the complainant, and the source can be identified.

iii. Fall-out that is observed impacting a complainant's property and the source can be identified.

NOTE: Although these represent three primary means for confirming a complaint, the District reserves the right to use any means legally available for confirmation.

2. Complaint Unconfirmed

An unconfirmed complaint means that either the odor/air contaminant release could not be detected, or the source/facility cannot be determined. A complaint should be deemed unconfirmed in the following situations:

a. The inspector detected an odor or observed alleged fall-out, smoke or other air contaminant, with the complainant, but could not trace it to a source/facility. In these circumstances the inspector should offer the complainant the use of an "Odor Log" (see Exhibit 3), which may help the inspector locate a source/facility.

b. The inspector detected an odor downwind, or in close proximity, of the alleged source/facility, but was unable to detect an odor with the complainant.

NOTE: If a complainant completes a "Complaint Declaration" form (subject to the conditions specified in Section 1(B) above), an "Unconfirmed Complaint under these circumstances" may be changed to a "Complaint Confirmed."

c. The inspector cannot detect the odor/air contaminant.

H. Non-Specific Complaint

The *cause* of a complaint may not always involve air pollution. Although most complaints are valid, some will concern problems over which the agency has little or no control or in which air pollution plays a minor role.

Inspectors will thoroughly investigate air pollution problems that may be pertinent. This may require alerting other government agencies with more direct jurisdiction.

I. Complainant Follow-up

By the end of the day in which a complaint is received, the inspector will attempt to contact the complainant and inform him/her of the current status of the complaint investigation. If the investigation is still open at the end of the day, the inspector will keep the complainant updated at whatever reasonable time interval the complainant wishes to be advised until the investigation is completed (confirmation status and enforcement action, if any).

The inspector will ask the complainant whether or not he/she would like a copy of the:

- written Complaint Report, and/or
- notification of disposition of any related enforcement action (i.e., NOV Final Disposition) taken as a result of the complaint filing (see Section 3(C)7 and 3(I) above).

4. PUBLIC NUISANCE – REGULATION 1

"No person shall discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health, or safety of any such persons or the public, or which cause, or have a natural tendency to cause injury or damage to business or property.

For the purposes of this section, three or more notice of violations validly issued in a 30-day period to a facility for public nuisance shall give rise to a refutable presumption that the violations resulted from negligent conduct."

Regulation 1, Section 301

A. Exclusions

1. Regulation 1, Section 301, cannot apply to:
    a. Emissions from engines used to propel motor vehicles, as defined by the California Vehicle Code
    b. Aircraft
    c. Fires used for residential heating or cooking
    d. Open outdoor fires, recreational fires and outdoor cooking fires, except to the extent limited by Regulation 5
    e. Emission points which are unintended openings and from which insignificant quantities of air contaminants are emitted

f. Air contaminants where purposely emitted for specific beneficial use, e.g., smoke generated for public safety training purposes

g. Emissions from agricultural operations, except as limited by Regulation 5.

Refer to Regulation 1, Section 110, for specific details. Note: some operations could still be cited under H&SC, Section 41700 with Director of Enforcement/Air Quality Program Manager approval.

2. California H&SC, Section 41700, does not apply to odors emanating from:

   a. Agricultural operations necessary for the growing of crops or the raising of fowl or animals

   b. Operations that produce, manufacture, or handle compost, as defined in PRC, Section 40116, if the odors emanate directly from the compost facility or operations (See Section 2(B) above).

Refer to CH&SC Section 41705 for specific details.

B. Public Nuisance Violation Criteria

When sufficient complaint activity results from air emissions from a company/facility, the Director of Enforcement, or an Air Quality Program Manager, may designate that plant to be a potential public nuisance source (see Section 2(G) above). The District may then allocate staff resources to better address the developing nuisance situation. To enhance the District's response to these complaints, the Director or Air Quality Program Manager may assign overtime coverage or shift work for field inspectors and support staff as needed to address the specifics of the situation. The Director of Enforcement may send the company/facility a letter notifying them that they are being so designated.

In order to make a finding of violation for a specific incident, on a daily basis, the District must establish the following:

1. **Discharge of an air contaminant and the responsible party**

   Both the air contaminant and the responsible party must be established by: direct observation; or odor/plume survey; or fall out comparison; or evidence from monitors; or other data sources (e.g., FD run reports, CHP & police reports, Hazmat reports).

2. **Effect of the contaminant on the public, a considerable number of persons, property or business, under one or more of the following *scenarios:***

   a. Causes injury, detriment, nuisance or annoyance to the public or a considerable number of persons. Information regarding the

actual effect of the air contaminant on person(s) or the public can be obtained from medical facilities, indicating the number of persons treated and the nature of the treatment; ***OR*** information from the complainants indicating how the contaminant is injurious, detrimental, a nuisance, or annoyance can be obtained.

NOTE: A considerable number of persons or the public will be determined by any of the ways listed under ***items i, ii, or iii below***:

b. Endangers the comfort, repose, health or safety of the public or a considerable number of persons. Information from complainants can be obtained indicating how the contaminant has endangered (threatened) their comfort, repose, health or safety; ***OR*** information from a public agency or responsible government official that an action was taken to protect the safety of the public can be obtained.

NOTE: A considerable number of persons or the public may be determined by any of the ways listed under ***items i, ii, or iii below***:

c. Causes or has a natural tendency to cause injury or damage to business or property. Document a quantifiable injury or damage to business or property. "Damage" refers to quantifiable dollar losses. To prove a public nuisance based on damage to a business, the District requires documentation or proof of financial loss, such as receipts for the clean up and/or repair costs associated with remedying the alleged nuisance or other documentation of loss of business or revenue. Employee loss of time can be considered where a business owner provides written documentation demonstrating significant loss of business.

A violation can be based on one complaint only, where information from a complainant, as indicated above, must be provided. Or the District can establish "a natural tendency," if injury or damage is real and verifiable, without documentation, based on repeat occurrences. This option can only be utilized if the circumstances surrounding the prior verification can be established to have occurred again with the same degree of confidence. Such factors will be carefully reviewed before issuance of an NOV under this citation.

In order to fulfill the criteria required under subsections 2(1) and 2(b) above, the impact to a considerable number of persons must be established in one of the following ways:

i. **Daily, Complaint-Based:** A minimum of five (5) confirmed complaints in a day and at least two of which are confirmed in the presence of the Inspector. NOTE: An inspector will not solicit complaints from community members. This means an inspector will not attempt to encourage or gather complaints in the field unilaterally or act in a prejudicial manner against any facility under investigation.

However, this restriction does not apply to any organizing or soliciting that may take place between members of the public.

ii. **Public Agency-Based:** The public aspect of a nuisance does not need to rely on any complaints received by the District, if reliable information from a public agency is available documenting the number of persons impacted. Use of any such information will be only of data based on real time activity and not include any projected or modeled activity which might indicate a probability.

iii. **Other Impact-Based:** The weight of facts and evidence demonstrates that the public has been impacted over time, which may be less than the typical single-day thresholds for public nuisance on any one day. Approval to issue based on this criteria will be determined by the Director of Enforcement.

Once a finding of violation has been established pursuant to the applicable criteria listed above, issuance of any public nuisance Notice of Violation will be only after approval of the Air Quality Program Manager.

C. Further Enforcement Action

The Compliance and Enforcement Division staff will evaluate cases and confer with the District Counsel's Office to discuss options for further legal action on cases.

D. Complainant Notification of Abatement Hearing

In all actions brought before the Hearing Board for the abatement of a public nuisance, complainants involved in the nuisance will be notified of the hearing.

5. ODOROUS EMISSIONS - REGULATION 7

Section 301: General Limit on Odorous Substances
Non-specific, any odor, at emission point
Sample diluted with odor-free air (Refer to Table I of Regulation 7 for dilution rates).

Section 302: Limit on Odorous Substances at or Beyond Property Line
Non-specific, odorous ambient air
Sample diluted with four parts of odor-free air

Section 303: Limit on Odorous Compounds
Five specific, chemically identifiable odors at emission point
Maximum allowable concentrations (Refer to Table II of Reg. 7)

A. Standards Applicability

The standards of Regulation 7 are not applicable until the District receives odor complaints from ten or more individuals within a 90-day period alleging a specific facility. The complaints must allege that a person has caused odors perceived at or beyond the property line of such person's facility that are deemed to be objectionable by the complainants in the normal course of their work, travel, or residence. This also includes areas where complainants might typically be for public use, e.g., parks, places of worship, stadiums, museums, recreational facilities, etc.

All complaints received against an alleged source are investigated for confirmation, pursuant to the procedures specified at Section 3 above. However, for the purposes of Regulation 7 applicability, complaints need not be confirmed, if, based on facts and the weight of evidence through investigation, such complaints are considered legitimate and provided they are not related to one single event.

The standards remain in effect for any rolling 12 months from the date of the most recent complaint. If 12 months pass and no additional complaints are received, the facility is removed from the Regulation 7 list. However, the limits will become applicable again when the District receives alleged odor complaints from at least five or more complainants within a 90-day period.

B. Facility Notification

Once the requirements of Regulation 7 have been triggered, the facility must be notified in writing by the District that it is now subject to the provisions of Regulation 7.

A letter, which must be signed by the Director of Enforcement (see example at Exhibit 5), advises the persons responsible for the alleged source(s) that Regulation 7 is now in effect and will remain in effect for a period of 12 months from the date of the most recent complaint. A copy of Regulation 7 must accompany the letter.

Only after facility notification is accomplished can an odor bag sample be requested from the District's Technical Services Division.

C. Sampling Request

Once a facility is subject to the provisions of Regulation 7 (10 complaints have been received and proper notification has been made to the facility), upon receipt of any additional complaints, the inspector will proceed to the vicinity of the complaint to determine the viability of requesting a source test unit for the purpose of obtaining a bag sample. Factors that influence the viability of a Regulation 7 odor sampling are: commingling sources, strength of odor, wind stability, etc. The inspector may request an odor

bag sample for up to 72 hours, but should carefully weigh the factors before calling.

If an odor is present, the Inspector shall advise the supervising inspector to request the Technical Division Source Test Section staff to conduct a source test or collect odor bag samples. **All communication surrounding the request for an odor bag and potential odor panelists should be conducted in a secured manner (e.g., not by way of the ComCenter radio system. Nextel devices used in either the phone or direct connect mode are secure).**

D. Determination of Sampling Location

The inspector will be responsible for selection of an appropriate location for off-property odor sampling. The overriding basis for the selection shall be the assurance, that any sample collected, which may be deemed odorous after dilution at four to one, was emitted from the alleged source. Evaluation, by the inspector, of any odors directly upwind of the selected sampling location shall be conducted immediately prior to and immediately after sampling has been conducted.

If, in the opinion of the inspector on site, there is a potential that an odor directly upwind of the selected location may pose a potential interference to the collected sample, and no other appropriate downwind sampling location can be found to eliminate this potential interference, an upwind sample shall also be collected for evaluation pursuant to Section 404 of Regulation 7. Upon completion of sampling, the Inspector will sign the "Odor Field Data Sheet" (see Exhibit 6) provided by Source Test Section staff, verifying that all the pre-test and post-test upwind inspections were conducted.

E. Odorous Emissions Violation Criteria

See "Source Test Requests and Results Guidelines" of this Manual for processing of Source Test recommendations for Notice of Violation issuance.

6. COMPLAINT REPORTS

A. General

Verify the correct information was dispatched regarding complaint type and Site#.

Do ***NOT*** identify the complainant by either first or last name or by address within the body of the report. When referring to the complainant, identify him/her only by the C#.

B. Major Incident

In some situations, complaints are associated with an accidental release or a major incident. The inspector should follow the "Incident Response and Investigation Plan" Guidelines of this Policies and Procedures Manual and may need to prepare an Incident Report.

7. COMPLAINT FORMS

A. Complaint Report

A complaint report documenting the investigation of a complaint received will be written on the "Complaint Report" form (see Exhibit 1). If the Complainant has indicated a desire to receive a copy of the written report, that process will also be initiated. Copies of complaint reports resulting from ARB or EPA referral are sent to the referring agency.

B. Complaint Declaration

A "Complaint Declaration" form (see Exhibit 2) should be offered to a Complainant if the inspector and Complainant are unable to meet and identify the contaminant together (face to face), but the inspector is able to accomplish the following:

- Can arrive within 60 minutes of the time of the complaint occurrence at the location specified;
- Can independently detect the contaminant alleged by the complainant and trace it from the Complainant's impacted location back to the alleged source/facility;
- Is reasonably certain the contaminant detected is the same contaminant alleged by the complainant, based upon at least one prior face-to-face confirmation with the same Complainant.

If the above criteria are met, then a "Complaint Declaration" form completed and returned by the Complainant for processing will be deemed to confirm a complaint (see Section 3(G) above).

If the above conditions have already been established for at least one complainant, the "Complaint Declaration" form may also be used in public situations where many people approach an inspector at once. The forms can be distributed, retrieved, and the complainants can be interviewed at a later time.

C. Odor Log

The "Odor Log" form (see Exhibit 3) is an information-gathering tool to gather correlating information when a source is unknown or to assist in building or strengthening an existing case. It should not be used instead of making a formal complaint (via telephone) or, where applicable,

completing a "Complaint Declaration" form. An "Odor Log" form should be used for the following circumstances:

- Complainants who wish to record daily and hourly observations of an air contaminant for which a complaint has already been called in to the District. This can be used when a Complainant wants to make more than one complaint in any single calendar day (see Section 1(G) above).
- Complainants who are family members of the same household where a Primary complaint has already been received for the same source on the same day (see Section 1(G) above).
- Complainants who have stated they want to assist in the investigation where the source/facility has not been determined.

These guidelines are intended to provide staff with standardized procedures. District staff may deviate from these guidelines following approval from District management. The guidelines do not modify District regulation or other applicable law, and do not create binding requirements on the APCO or any entity outside the District. In the event of a conflict between these guidelines and District regulation, the latter will govern.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT 939 ELLIS STREET, SAN FRANCISCO, CA, (415) 771-6000

COMPLAINT #

Routing		
	Init	Date
Supv Insp		
Radio Rm Update		

COMPLAINT REPORT

☑ CHANGES

ALLEGED SOURCE

Name:

Address:

City: Zip:

DESCRIPTION

☐ Type: odor

☐ Odor Description:

☐ Occurrence Date: Time: hours ☐ On-going

☐ Pertinent Data:

COMPLAINANT

☐ Last First

Name: ☐ anonymous

☐ Address:

☐ City: Zip:

☐ Home Phone: ( ) - ☐ now

☐ Alternate Phone: ( ) - ☐ now

☐ Referral: ☐ EPA ☐ ARB ☐ Other Agency Petition - # of people:

RESPONSE

Contacted: 1-No- Do Not contact

How Contacted: Date: Time: hours

Source: ☐ confirmed as alleged ☐ unconfirmed

Show exact confirmed source if different from alleged

Name:

Address:

City: Zip:

Contact:

Location: single family dwelling

Site #: NOV# (0=NONE):

Note: Report on page 2

Inspector: I# Date:

Exhibit 1

C #

I. INTRODUCTION

II. OBSERVATIONS

III. STATEMENTS

IV. CONCLUSIONS

A confirmed complaint does not automatically indicate a violation of the state or Federal law or BAAQMD regulation.

Inspector:	#	Date of Report:

BAY AREA AIR QUALITY MANAGEMENT DISTRICT	**COMPLIANCE & ENFORCEMENT DIVISION**	***Complaint Declaration*** C#_____

Person Making Complaint
Name:
Home Address:
Mailing Address, if different:
Home Phone: Alternate Daytime Phone: (cell? Yes ☐ No ☐)

Time of Emission
Date emission was observed:
Time when emission was observed: From ____ AM/PM To ____ AM/PM
Was the emission continuous or intermittent during that time?

Location of Emission
Was this location different from the above home address? Yes ☐ No ☐
Location where the emission was observed if other than above. Give address if possible
Suspected source Company name, if known:
Direction the wind was blowing from, if noticed: N--☐ NE--☐ E--☐ SE--☐ S--☐ SW--☐ W--☐ NW--☐

Description of Emission
Odor---☐ Smoke---☐ Dust---☐ Asbestos---☐ Other---☐
If ***Other***, please describe:
If ***Odor***, please describe (*see Instructions on reverse*)
Odor Intensity: Very Strong---☐ Strong---☐ Easily Noticeable---☐ Faint---☐ Very Faint---☐

Impact of Emission
How did the emission affect you?
Other useful information, comments:
Will you testify in court? Yes ☐ No ☐

Declaration
I declare under penalty of perjury that the above information is true and correct. Executed on: _____ 20___ at _____, California _____ Signature of Complainant

See page Two for General Information and Specific Instructions

Exhibit 2

General Information

- This form should be obtained from a District Inspector during the course of complaint investigation in order to establish the connection between a complaint and the case being investigated.
- The Inspector will interview the Complainant either at the time of the complaint or when this Complaint Declaration form is collected.

Instructions

- **ALL:** Every box must be completed. If the information is not known or is not applicable, the Complainant will indicate "not known" or "not applicable" in the space provided.
- **COMPLAINANT INFORMATION:** The Complainant must list a residence location, not a post office box number. At least one of the telephone numbers must allow contact with the Complainant from 8:30 AM to 5:00 PM Monday through Friday.
- **ODOR DESCRIPTION:** If possible, the Complainant can relate the emission to a more familiar odor. Some examples are:
  - skunk, rotten eggs, sewage, tar/asphalt, sulfur
  - solvent, paint, gasoline, petroleum, oil
  - burning, burning wood, burning pot handles, burning brakes/clutch
  - garbage, dead animal, rotten meat, vomit, cooking vegetables
  - chemical, musty, metallic
- **IMPACT OF EMISSIONS:** The Complainant must state the way in which the emissions impacted or had a result/effect on him/her.
- **DECLARATION:** The Inspector will check that the signature is the Complainant's legal name.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT **Compliance and Enforcement Division**	*To Report an Air Pollution Complaint, call the Toll-Free, Multi-Lingual Complaint Line:* **1-800-334-ODOR [6367]** *To Report a Natural Gas Odor to PG&E:* **1-800-743-5000** *To Report any EMERGENCY:* **Dial 9-1-1**	**Odor Log** Week of: _____ through _____ C# _____ (if applicable)

Name of Alleged Odorous Facility:							☐ Unknown
Address of Alleged Odorous Facility:							
Address Location for Log:							
Mo/Date	**Sun. /**	**Mon. /**	**Tues. /**	**Wed. /**	**Thurs. /**	**Fri. /**	**Sat. /**
6 – 9 AM							
Intensity							
Description							
Wind From:							
9 - 12 PM							
Intensity							
Description							
Wind From:							
12 - 3 PM							
Intensity							
Description							
Wind From:							
3 - 6 PM							
Intensity							
Description							
Wind From:							
6 - 9 PM							
Intensity							
Description							
Wind From:							
9 - 12 AM							
Intensity							
Description							
Wind From:							
12 – 3 AM							
Intensity							
Description							
Wind From:							
3 - 6 AM							
Intensity							
Description							
Wind From:							

This form is an information-gathering tool to collect correlating data when a source is unknown or to assist in building or strengthening an existing case. It should not be used instead of making a complaint via telephone.

See Reverse for Instructions and Completion

Exhibit 3

Coments:	
Name of Person Completing Form:	Keep Confidential? Y___ N___
Signed	Date
Address of Person Completing Form:	

General Instructions for Completing Odor Log

The form should be filled out by only one adult in the household to insure uniformity. The location can be anywhere the odor is detected, but it must be the location used consistently per log. Each log contains a week's period, with eight 3-hour spaces for recording odors on each 24-hour day. For each log, make entries as follow:

- Under "Week of" enter Sunday's date of the week in which the log was started. Any portion of the week may be recorded or left blank.
- Next to each day of the week, enter the abbreviated month/date.
- In the first row under each time slot, labeled "Intensity," select a number (1) through (5) which indicates the strength of the odor. See **Odor Intensity** below. If you do not detect any odor during any time slot, leave that slot blank.
- In the second row under each time slot, labeled "Character," select a letter (A) through (P) which best describes the type of odor you detected. You may use more than one letter, if necessary. See **Odor Descriptions** below:
- In the third row under each time slot, labeled "Wind From," list the compass point direction from which the wind was blowing, e.g., E or NW.

Under the comments area, add any information you feel may be helpful, such as wind speed, weather conditions, further description of the odor, etc.

Odor Intensity	Odor Descriptions
1 – Very faint	A – Chemical
2 – Faint	B – Paint-like, solvent
3 – Easily noticeable	C – Natural gas, household stove
4 – Strong	D – Sewage, fecal matter, manure
5 – Very strong	E – Gasoline, diesel, kerosene, oily
	F – Tar-like, asphalt
	G – Rotten egg (H_2S), skunk
	H – Sulfur, lighting match
	I – Vomit, rotten meat, dead animal, putrid
	J – Sour, acid, vinegar
	K – Sweet, acrid, pungent
	L – Musty, metallic
	M – Burning brakes, clutch, pot handle
	N – Burning wood, cardboard, paper
	O - Compost, rotting vegetation
	P – Other, specify in comments area

Sorry! I missed you

DATE

NAME

While you were out, our Air Quality Inspector stopped by to see you

- ☐ at your request
- ☐ will call you at: ☐ will stop by to see you at:

TIME DATE

- ☐ message

- ☐ please call our office at the phone number listed below during regular business hours Mon-Fri 8:30 - 5:00. Ask for the Inspector whose name is on the business card.

Bay Area Air Quality Management District

939 Ellis Street
San Francisco CA 94109
(415) 771-6000

Please see other side.

Exhibit 4

Date_____

Facility Name
Address
City

Dear _____:

This letter is to advise you that the Bay Area air Quality Management District has received a sufficient number of complaints from citizens alleging objectionable odors from your facility during the 90-day period commencing on _____ and ending on _____.

As a result of these complaints, your facility is now subject to the provisions of District Regulation 7, Odorous Substances. A copy of the regulation is enclosed for your review. Your facility will remain subject to this regulation until such time as the District has confirmed no citizen complaint for a period of 12 months from the date of this letter.

The District would be please to discuss with you the nature of the complaints, and assist you in identifying and eliminating or reducing the offending odor from your facility. It is our hope that this matter can be resolved to everyone's satisfaction and that further enforcement action will not be necessary. Please contact _____, Supervising Air Quality Inspector, at (415) 749-xxxx to arrange such a discussion, or to obtain additional information.

Thank you for your attention to this matter.

Very truly yours,

Kelly Wee
Director, Compliance and Enforcement

KW
Enclosure

Exhibit 5

Bay Area Air Quality Management District
Source Test Section

Odor Field Data Sheet

Company Name:	**Plant #**
Plant Contact:	**Title:**
Test Date:	**Test Times:**

Sample Site Location:
Wind Velocity: **MPH Out of** **° Magnetic**

Source Test Section

I extracted this sample at the above identified time and location. I have followed all pertinent quality assurance procedures with regard to sampling methodology.

Signed: _____ **Title:** _____

Inspection Section

I have verified that other than the company identified above, there are no other odor sources upwind which may have contributed to any violation based on the sample collected during this Source Test.

Signed: _____ **Title:** _____

Exhibit 6

INVESTIGATOR

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

939 Ellis Street, San Francisco, CA 94109

COMPLIANCE and ENFORCEMENT DIVISION

The person identified here is an authorized investigator for the Bay Area Air Quality Management District, and shall have the right of entry as provided for by the California Health and Safety Code Section 41510, and Title 13, Part 3, California Code of Civil Procedures.

PHOTO

Name of Investigator

Signature

Director of Enforcement

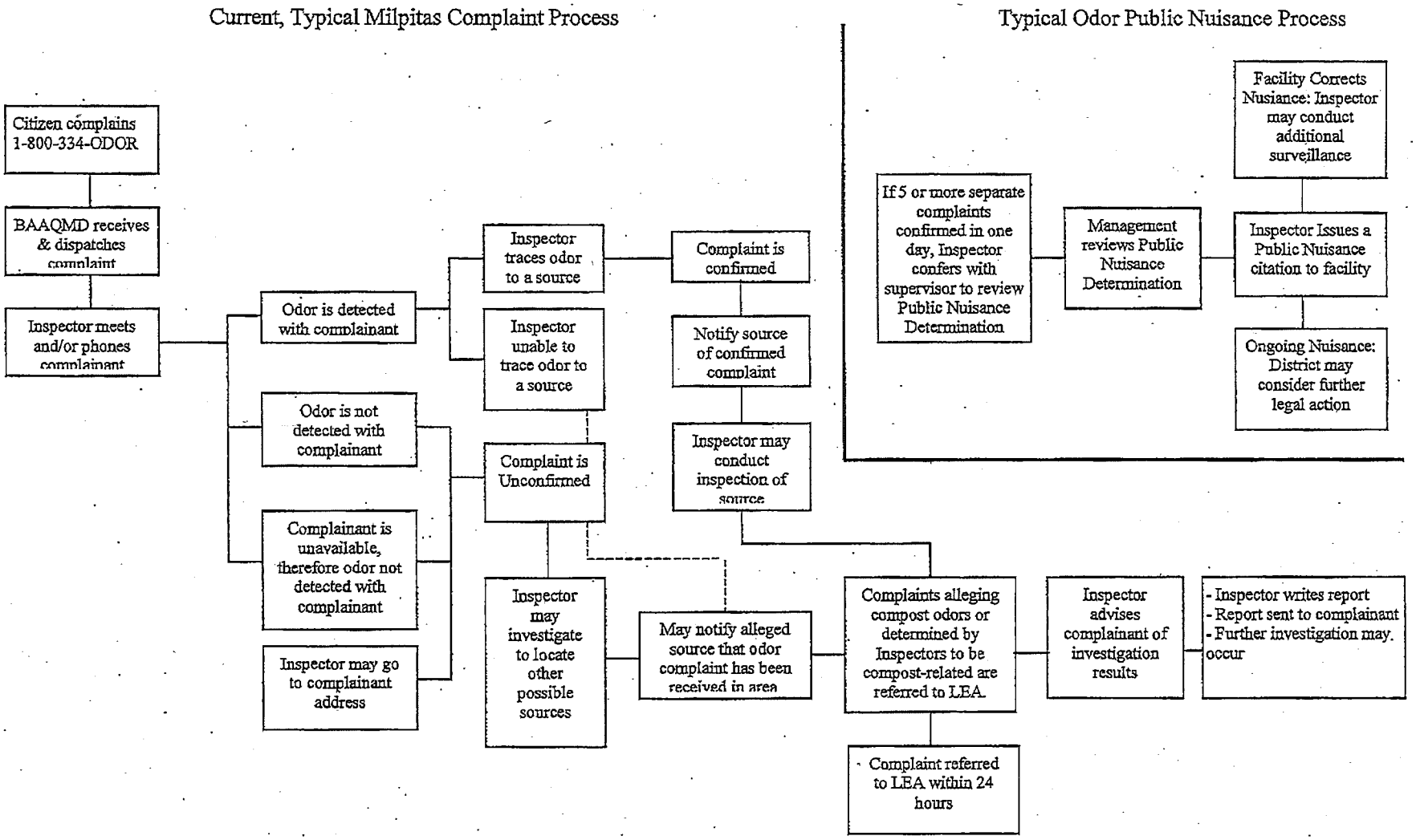
Date:

California Health and Safety Code Section 41510 provides that a District investigator, "upon presentation of his/her credentials or, if necessary under the circumstances, after obtaining an inspection warrant...shall have the right of entry to any premises on which an air pollution emission source is located for the purpose of inspecting said source including securing samples therefrom, or any records required to be maintained in connection therewith by the state board or any district".

Exhibit 7

ATTACHMENT 3 BAAQMD/LEA Odor Enforcement Process

Figure 1
BAAQMD Odor Complaint Process



ATTACHMENT 4 Odor Complaints

Summary of Milpitas Odor Complaints by Year Received by BAAQMD

2003 – 169 total complaints
2004 – 284 total complaints
2005 – 165 total complaints
2006 – 147 total complaints
2007 – 100 total complaints
2008 – 107 total complaints
2009 – 52 total complaints
2010 – 124 total complaints
2011 – 171 total complaints
2012 (as of June 5, 2012) – 42 complaints

Exhibit 3

CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA 95035-5479
GENERAL INFORMATION: 408-586-3000 www.ci.milpitas.ca.gov

June 6, 2012

Honorable Planning Commission & City Council
of the City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905

Department of Planning, Building & Code
Enforcement Department
Attn: John Davidson
200 East Santa Clara Street
San Jose, CA 95113-1905

Subject: **Comments to Final Environmental Impact Report for the Newby Island Sanitary Landfill, File No. PDC07-071**

Dear Gentlepersons:

Thank you for the opportunity to provide follow up comments on the contents of the proposed Final EIR for the Newby Island Landfill project. The City of Milpitas continues to have concerns regarding the significant odor impacts caused by the Landfill and the operations that are being proposed thereon.

As a preliminary statement, I am the Acting Director of Planning and Neighborhood Services and have been employed by the City of Milpitas for more than two decades.

- Over the past 22 years, Milpitas residents have expressed numerous complaints to the City of Milpitas regarding the odors and smells that are generated by the Newby Island Landfill and Recyclery located at I-880 Freeway, McCarthy Blvd. and Dixon Landing Road.

- The odors and smell from the Landfill and Recyclery are more notable during the summer months when the temperature and heating index rises and the odors can be smell throughout large areas of the City.

- The Landfill facility has had a negative economic impact on the Milpitas community. The City has historically suffered received complaints and comments of unwillingness to relocate into industrial, commercial and retail spaces within City limits because of the odors emanating from the Landfill area. The following exchange is typical of cases relayed to City staff. In one instance, a local real estate broker informed a planning division employee that his client had initially considered relocating to Milpitas, specifically certain vacant industrial buildings in the California Circle area across the I-880 Freeway from the Landfill. However, the broker stated that because of the odors and smells generated from the Landfill, his client ultimately chose not to relocate to Milpitas.

- Over the years on numerous occasions, the development community has expressed concerns to City Staff about developing projects within City of Milpitas because of the negative reputation and image associated with the odors and smells generated from the landfill facility. This negative reputation has caused Milpitas considerable harm in trying to convince and persuade the development community to invest in our community. It has further impeded efforts to attract businesses, residents and investors to our community. (See, e.g., Attachment).

- Milpitas has attempted to address this matter with City of San Jose and Landfill Staff on several occasions. The timing of the EIR and the findings of no significant impacts associated with odors and

smell makes this task of convincing the development community more challenging and difficult with the limited cooperation from City of San Jose.

In sum, the residents of Milpitas has been living with the odors and smell generated from the landfill facility for over 30 years and **strongly object** to any suggestion that there are no significant impacts associated with odors generated from the site.

Sincerely,

Felix Reliford
Acting Director of Planning & Neighborhood Services

7.1 out of 10

Manor

GREAT FOR	NOT GREAT FOR	WHO LIVES HERE?
Gym & Fitness	Lack of Traffic	Families with kids
Internet Access	Nightlife	Professionals
Childcare	Cost of Living	Singles
Clean & Green	Eating Out	Retirees
Medical Facilities	Peace & Quiet	Tourists

Got a burning question? Why not ask the locals! *Simply ask your question below*

What do you want to know? **Ask question**

DirtyHarry rating details *Jan 23, 2012*

"Kind of Stinky But Goo"

If you like Ranch style homes, you will love the Manor neighborhood of Milpitas. There are a ton of these kinds of homes here and despite being more than half a century old (most of these date to the 1950's when these kind of homes were in fashion) these are very well kept. Virtually anyone who grew up in a middle class suburb in the 1970's will instantly recognize and feel comforted by the neighborhood.

Located right at the crossroads of two freeways, and within a short drive of the Fremont BART station to the north, the Manor neighborhood is perfectly situated to get commuters where they are going.

Of course, as with everywhere else in Milpitas, there is an issue having to do with the stench that comes from a nearby dump. Residents say you get used to it and it is only really bad in the summer, but people's tolerances to smell vary greatly so you should definitely check it out before moving here. (The smell is actually bad enough that Google has a preset keyword phrase for : "why does Milpitas smell?" If that many people are asking on Google, it is clearly an issue.)

PROS

- Nice Ranch Homes
- Good Schools
- Well Located for Commuting

CONS

- The Smell

No Nightlife

RECOMMENDED FOR

Families with kids

Helpful | Comment | Follow | Share

The opinions expressed within this review are those of the individual reviewer and not those of StreetAdvisor. Report

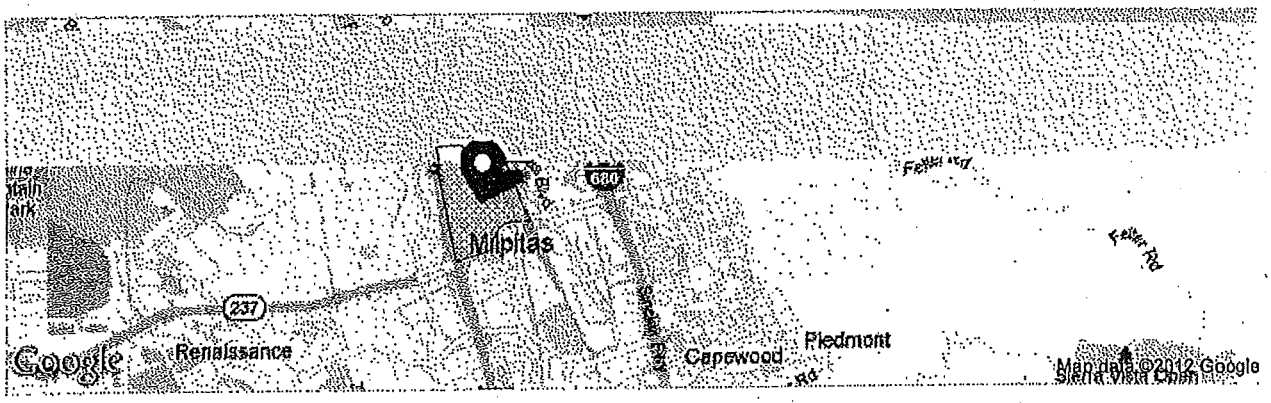


Exhibit 4

Report

CalRecovery Comments and Suggestions Related to Odor Emission and Control at the Newby Island Facilities

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Prepared for

City of Milpitas, California
455 East Calaveras Boulevard
Milpitas, California 95035

Prepared by

George M. Savage*, P.E. and Luis F. Diaz*, Ph.D.
CalRecovery, Inc.
2454 Stanwell Drive
Concord, California 94520

* Curriculum vitae included at end of report

June 2012

CalRecovery INCORPORATED

This document was prepared by or under the direction of George M. Savage, P.E., California License No. M20108

CalRecovery Comments and Suggestions Related to Odor Emission and Control at the Newby Island Facilities

Odor Complaint System and History of Complaints

The system for reporting and resolving odor complaints has been and remains cumbersome, and the timeliness of the system has always been a drawback to managing and expeditiously resolving nuisance odor complaints and odor incidents from sources in and around the city of Milpitas, at least since the time that CalRecovery has served as the City's odor management consultant (since approximately 2004). The record of confirmed and unconfirmed odor complaints filed by human receptors in the city of Milpitas (shown in Figure 1) demonstrates that the number of odor complaints annually has not changed significantly from 2005, with the exception of 2009, despite the institution of the odor complaint and resolution system.

Current Odor Control Measures

The project proponents currently employ the following methods of odor control.

Landfill Odor Control Measures (First Amendment, pg. 253)

- Use the landfill gas collection and control system to reduce odors associated with landfill gas migrating out of the landfill
- Use a water truck to dampen the unpaved surface of the landfill to reduce dust related nuisances (an odor eliminator additive is mixed with the water to eliminate odors which adhere to dust particles)
- Immediately cover odiferous loads once received on the site
- Use daily cover on all MSW placed on the landfill
- Prohibit the load or transport of any biosolids into the landfill any time such loading and transporting results in actual odor complaints correlated to biosolids from off-site properties

Recyclery Odor Control Measures (First Amendment, pg. 253)

- Use a push blower on the tipping floor to remove excess debris and dissolved organics
- Process feedstock, green waste, and food waste within 48 hours of arrival on site and any malodorous materials within 24 hours of receipt (note that according to the landfill operator, best efforts are put forth to refrain from exposing particularly malodorous materials to the ambient environment when weather conditions or other factors would increase the intensity or duration of odor events in Milpitas and other nearby sensitive receptors)
- Use a windrow turner to ensure thorough mixing of feedstock materials and re-construction of piles to maximize porosity and thorough composting
- Use water trucks to minimize dust transport (an odor eliminator additive is missed (sic) with the water to eliminate odors which adhere to dust particles)
- Patrol all windrow isles (sic) on a daily basis to ensure spilled materials are cleaned up
- Maintain windrows to have the proper carbon to nitrogen ration (sic), moisture content, and are turned regularly

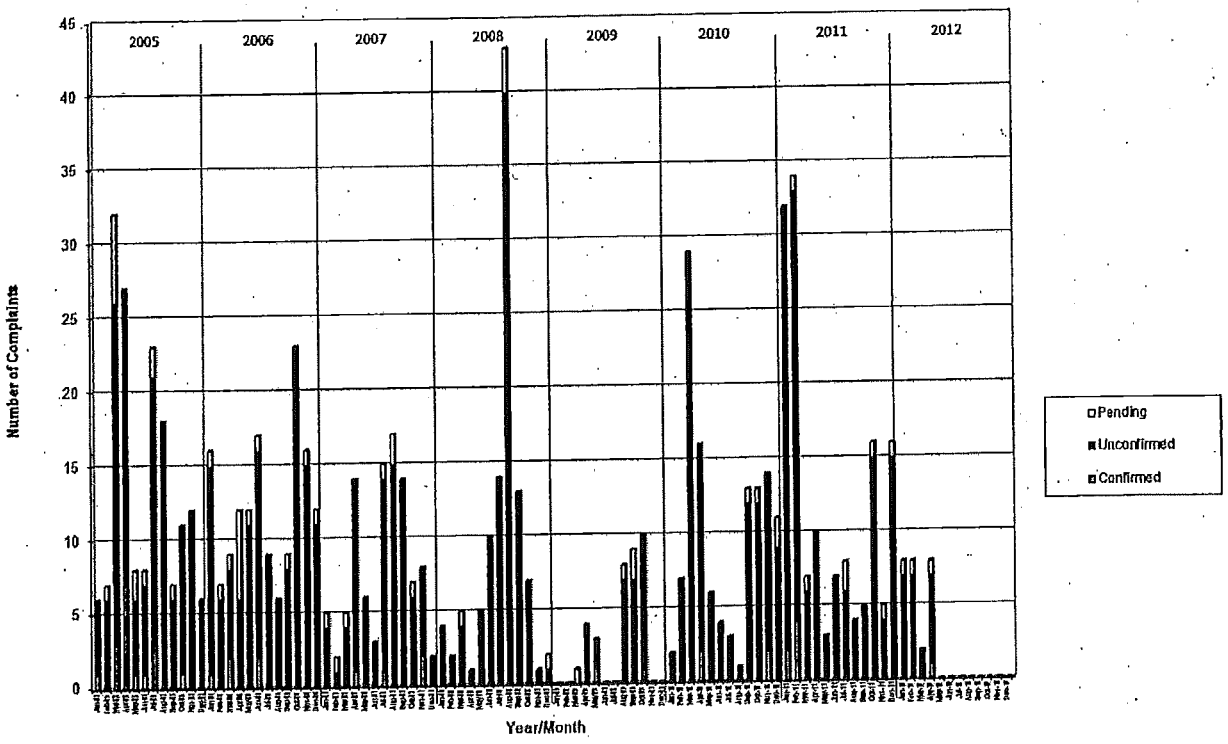

Figure 1. 2005-2012 Complaint Summary

In addition, NISL and the Recyclery have installed weather stations to track wind speed, gust, and direction. The atmospheric conditions (e.g., precipitation, wind speed, and direction) are monitored several times daily. The stations utilize an alarm and notification system, which alerts staff that the wind direction and speed is favorable for odors being carried off the site through advection to the residents of Milpitas. When an alert is triggered, staff immediately checks on-site activities for odor potential, ceases non-essential processing, and adjusts deodorant delivery system for optimum performance. The conditions are then monitored until the conditions are no longer present.

Recycling and Compost Facility Odor Control Measures (First Amendment, Appendix F)

Refer to Tables 1 and 2 (First Amendment, Appendix F) for additional odor control measures offered by the project proponents for green waste processing and composting (extracted from Odor Impact Minimization Plan for the Newby Island Recyclery Composting Facility).

While the project proponent describes a substantial number of measures (BMPs, etc.) to control odor emissions from its waste processing and composting operations, the fact remains that the turned windrow composting system used for processing substantial tonnages of green waste, due to its basic nature, is a large source of emissions with the emissions entering directly into the ambient environment. For this type of composting system, the level of off-site odor emissions is essentially uncontrolled and is basically governed by dispersion and dilution of odor intensity as the odors are dispersed or are carried by the wind off the proponent's property. The proximity of human receptors to the facilities, meteorological patterns in the area, and the magnitude of the odor emissions serve to create conditions for nuisance odor complaints. On the other hand, enclosed composting systems and technologies offer and achieve very high levels of emission capture, wherein the captured gases are treated chemically, biologically, or both so that odor intensities are reduced to concentrations much lower than those emitted by turned windrow systems. Enclosed systems are described in some more detail in the next section, Potential Additional Measures to Control Nuisance Odor Emissions from Waste Processing Facilities.

Table 1. Sources of Odor and Possible Management Techniques for Green Waste Processing and Composting

Source of Odor	Possible cause/Assessment	Management approach
Feedstock receiving (Yard waste)	Material stockpiles Material arrives with objectionable odors	Expedite material processing Increase operating shifts to move material faster Reduce incoming throughput First in, first out processing of inventory Reduce size of material stockpiles Create discreet stockpiles with greater surface to volume ratio Consider blanketing odiferous materials with a one foot layer of woody overs (water lightly to reduce odor releases)
Initial mixing of feedstock for Composting	Improperly mixed materials can limit porosity, leading to odorous conditions	Initial mix should have characteristics that enhance the movement of air into the compost windrow Increase coarseness of feedstock particle size Add coarsely ground wood or yard waste materials to produce optimum initial mix.
Material Processing (Screening of incoming feedstock and finished compost product)	Screening volatizes particles	Reduce screening activity when wind is greater than 25 mph Mist water or odor neutralizer at dust generation points. Cover screen to reduce airflow through materials.
Material Handling (compost operations)	Material handling releases odorous gases, anaerobic conditions can form odorous compounds Ammonia odor (high nitrogen level) Sulfur odor (anaerobic conditions)	Reduce handling activities during unfavorable air conditions Conduct windrow turning during conditions which favor odor dispersion in direction away from receptors Create windrows which are sufficiently mixed Turn regularly to maintain adequate porosity Maintain appropriate moisture in windrows Avoid saturating windrows

Source of Odor	Possible cause/Assessment	Management approach
	Varying odors in pile Odors generated after turning Excessive temperature	Increase surface to volume ratios of active windrows. Increase turning frequency, check temperatures, check pH, increase porosity, and/or add bulking agent of wood chips Measure oxygen/CO2 content regularly to ensure appropriate oxygen levels Conduct additional turning as required to maintain appropriate temperatures
Compost windrow aisles	Inadvertent ponding of water Uncomposted material in aisles	Absorb ponded water with wood chips, repair potholes Clean aisles of spilled material (particularly at the end of each day) Remove woody overs and spilled material from unpaved areas on a regular basis. Mechanically sweep those paved areas that require cleaning at the end of each shift. Apply water and/or odor neutralizer to reduce dust during dry conditions
Curing piles	Excessive temperatures or anaerobic conditions	Decrease pile size (height), increase windrow time prior to moving to curing to ensure sufficient decomposition

Table 2. Sources of Odor and Possible Management Techniques for Food Waste Processing and Composting

Source of Odor	Possible cause/Assessment	Management approach
Feedstock Receiving (Food Waste)	Material Stockpiles Putrescible material arrives with objectionable odors	Expedite material processing Incoming food waste processed, placed in windrows, mixed, and covered the day they are received Consider blanketing odiferous materials with a one foot layer of woody overs (water lightly to reduce odor releases)
Initial mixing of feedstock for composting	Improperly mixed materials can limit porosity, leading to odorous conditions	Initial mix should have characteristics that enhance the movement of air into the compost windrow Increase coarseness of feedstock particle size Add coarsely ground wood or yard waste materials to produce optimum initial mix.
Material Processing (Screening inbound feedstock and finished compost product)	Screening volatizes particles	Reduce screening activity when wind is greater than 25 mph. Mist water or odor neutralizer at dust generation points Cover screen to reduce airflow through materials.
Compost Operations	Material handling releases odorous gases, anaerobic conditions can form odorous compounds. Ammonia odor (high nitrogen level) Sulfur odor (anaerobic conditions) Varying odors in pile Odors generated after turning Excessive temperature	Reduce handling activities during unfavorable conditions Conduct windrow turning during conditions which favor odor dispersion in direction away from receptors Create windrows which are sufficiently mixed Turn or aerate regularly to maintain adequate porosity Maintain adequate moisture in windrows Avoid saturating windrows Make piles on a one foot bed of screened overs to increase air flow Increase surface to volume ratios of active windrows. Increase turning frequency, check temperatures, check pH, increase porosity, and/or add bulking agent of wood chips Measure oxygen/CO2 content regularly to ensure appropriate oxygen levels Conduct additional turning, aeration as required to maintain appropriate temperatures.

Source of Odor	Possible cause/Assessment	Management approach
Compost Windrow Aisles	Inadvertent ponding of water Uncomposted material in aisles	Absorb ponded water with wood chips, repair pothole Clean aisles of spilled material (particularly at the end of each day) Remove woody overs and spilled material from unpaved areas on a regular basis. Mechanically sweep those paved areas that require cleaning at the end of each shift. Apply water and/or odor neutralizer to reduce dust during dry conditions
Curing piles	Excessive temperatures or aerobic conditions	Decrease pile size (height), increase windrow time prior to moving to curing to ensure sufficient decomposition

CalRecovery also suggests that the following measures be considered for odor control at the landfill and Recyclery.

Landfill

- Use of the minimum area for the working face consistent with requirements for safe, efficient waste handling operations and traffic flow

Recyclery

- Use of flexible synthetic cover systems designed for control of odors or compost covers (blankets) in those cases where odorous materials are exposed to the ambient environment for any considerable period of time
- If there are ongoing problems associated with delivered malodorous feedstocks, consideration should be given to installation of an enclosed receiving facility, with air equipped with an air handling and treatment system to control odor emissions

Potential Additional Measures to Control Nuisance Odor Emission from Waste Processing Facilities

The project proponents mention enclosed systems for controlling odor generated by processing of organic materials. However, the discussion is very limited. Enclosed composting systems for purposes of effectively capturing and of substantially and efficiently reducing emissions of volatile organic compounds (VOCs) are commercially available from several suppliers and are used in the industry in North America and Europe. Several composting projects on the West Coast have implemented enclosed composting systems to control VOCs, odor, or both. Available commercial technologies include flexible synthetic cover systems that capture and treat odors to acceptable levels, and rigid structural enclosures wherein composting is performed in a building or reactor and the resulting odors are captured and treated. The design of enclosed systems is based fundamentally on completely enclosing the composting mass so that essentially all of the gaseous emissions are contained (captured) prior to treatment to the design emission level and then the gas is released into the environment. The capture and control efficiencies for gases (odorous, etc.) released by composting materials in enclosed composting systems are typically in the range of 60% to 90% (depending on the particular design and operating conditions), whereas in the case of open composting systems (e.g., turned windrow), such as that employed at Newby Island for much of the composted tonnage, all gaseous emissions are released directly (untreated) into the ambient environment. Enclosed types of composting systems have been and are being installed at facilities in California that need to control emission of volatile organic compounds, odors, or both to meet air emission standards and public acceptance, among other reasons.

A system employing anaerobic digestion technology can also be employed to process organic materials and to control odors, while generating a gaseous fuel as a byproduct. Biodegradable,

putrescible organic materials, in particular food materials, are well suited to processing and treatment in anaerobic digestion systems. Anaerobic digestion systems and facilities are being planned and implemented in California as a feasible method of producing renewable energy and for controlling nuisance odors. The technology has a commercial history of over 10 years in Europe for feedstocks ranging from source-separated food waste to mixed organic materials derived from municipal solid waste.

Compost Facility Processing Capacity

The Newby Island Compost Facility has a permit issued by CalRecycle: number 43-AN-0017 (attached). According to the CalRecycle Solid Waste Information System, the peak, maximum tonnage is 980 TPD. Based on an operating schedule of 6 days per week, the monthly maximum would be about 25,000 tons, which is substantially greater than the current rate of 11,000 tons per month discussed in the DEIR. At several places in the First Amendment (e.g., pg. 198), the EIR states that while the project would allow more waste to be deposited at the landfill, the project would not result in more waste being exposed at once than occurs under existing conditions. However, if the shift in the fate of the additional organic materials is from landfilling them to composting them in windrows, then the area of exposed materials would increase substantially because the area required for composting the same tonnage of material would be much greater than if the organic materials were deposited directly in the landfill using a small working face. Open composting systems, including turned windrow, because of their basic nature and design, require substantial land area; i.e., they are area-intensive. Since the rate of odor generation and intensity from composting essentially is directly related to the exposed surface area of the material, the gas (odor) emission rate would be much greater than that of an equivalent amount of material compacted into a small landfill cell (and covered at the end of each day to contain emissions from that material). Additionally, the character and intensity of odors from composting organics is substantially different than those of raw material delivered for landfill disposal. The EIR does not appear to adequately describe or analyze this potential situation.

Leachate from Composting Operations

Leachate generated from composting operations is a potential source of intense malodors. The EIR lacks a comprehensive description of quantities and characteristics of leachate generated from delivered organic feedstocks and from the material undergoing the compost processing. While the leachate may be collected and transported in a pipeline or in tanker, there is little discussion of the type of potential leaks or other means of escape of leachate at any point along the transportation chain, and measures to minimize nuisance odor emissions. Also, the odor sources and possible management techniques described in Tables 1 and 2 lack detail with regard to management and control of leachate from processing of materials, in particular after very heavy rainfall events when the bottom of the compost piles become saturated (and may remain so for days) and potentially anaerobic, and free drainage of liquid from the composting pad becomes problematical due to clogged or otherwise impaired drainage systems.

SOLID WASTE FACILITY PERMIT

1. Facility/Permit Number:
SWIS #43-AN-0017

2. Name and Street Address of Facility:
Newby Island Compost Facility
1601 Dixon Landing Road
Milpitas, CA 95035

3. Name and Mailing Address of Operator:
International Disposal Corp. of Ca., Inc.
1601 Dixon Landing Road
Milpitas, CA 95035

4. Name and Mailing Address of Owner:
Browning Ferris Industries of Ca., Inc.
1601 Dixon Landing Road
Milpitas, CA 95035
Telephone # (408) 262-1401

5. Specifications:

a. Permitted Operations: [X] Composting Facility (mixed waste) [ ] Processing Facility [ ] Composting Facility (yard waste) [ ] Transfer Station [ ] Material Recovery Facility [ ] Other:

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b. Permitted Hours of Operation:
4 A.M. to 8 P.M. Six days per week (Closed Sundays)

c. Permitted Tons per Operating Day:
Phase I Total: Type I Max 190 TPD; Type II Max 420 TPD* and no more than 27,500 avg. tons per quarter.

Phase II Total: Type I Max 280 TPD; Type II Max 700 TPD* and no more than 40,120 avg. tons per quarter.
The cumulative tonnage for both facilities (43-AN-0017 – Compost, and 43-AN-0014 – Recyclery) shall not exceed the tonnage limit allowed in the Recyclery Facility Permit SWIS #43-AN-0014. The peak maximum tonnage in this permit is 980 tpd, as defined in the linked RCSI for the facility.

*NOTE: See RCSI dated January 15, 2002, Table #2 Page 14. Limited Type II feedstock allowed to be delivered directly to the compost pad. All Type I feedstock will be delivered to the Recyclery processing area. (See Conditions # 17 (6) for Phase II requirements.)

Non-Hazardous – General	NA	Tons/Day
Non-Hazardous – Separated or commingled recyclables	NA	Tons/Day
Non-Hazardous – Other (See Section 14 of Permit)	NA	Tons/Day

d. Permitted Traffic Volume: Total: See Note Below** Vehicles/Day

** The amount of Incoming & Outgoing Vehicle Traffic is regulated by the Recyclery SWFP. All Compost Vehicle Traffic will be a subset of Recyclery Traffic, i.e. traffic is tied to Recyclery's Overall Traffic levels.

e. Key Design Parameters (Detailed parameters are shown on site plans bearing LEA and CIWMB validations):

	Total		Transfer	MRF	Composting	Transformation
Permitted Area (in acres)	~18 Acres				~18 Acres	
Design Capacity	Peak 980 tons/day				Peak 980 tons/day	

The permit is granted solely to the operator named above. Upon a change of owner or operator, the LEA shall be notified 45 days in advance so that the LEA may make a determination for a modification or revision to the permit. The attached permit findings and conditions are integral parts of this permit and supersede the conditions of any previously issued solid waste facility permits.

6. Approval:

Approving Officer Signature

DENNIS R. FERRIER, REHS, Supervising Environmental Specialist
Name and Title

7. Enforcement Agency Name and Address:
CITY OF SAN JOSE
DEPT. OF PLANNING, BUILDING and
CODE ENFORCEMENT
777 NORTH FIRST STREET, SUITE 700
SAN JOSE, CA 95112-6311

8. Received by CIWMB: JAN 22 2002

9. CIWMB Concurrence Date: JAN 28 2002

10. Permit Review Due Date: JANUARY 29, 2007

11. Permit Issued Date: JAN 29, 2002

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SOLID WASTE FACILITY PERMIT

Facility/Permit Number: SWIS #43-AN-0017

12. Legal Description of Facility: A Legal Description of the site, and site maps are contained in Permit Attachment A, "Site Legal Description and Maps". The Compost site is contained within Assessors Parcel Number 015-040-002, Located at the Western terminus of Dixon Landing Road, in Section 35 of Township 5S, Range 1W, Mt. Diablo Base and Meridian, City of San Jose, Santa Clara County.

13. Findings:

a. This permit is consistent with the County Solid Waste Management Plan or the County-Wide Integrated Solid Waste Management Plan (CoIWMP). Public Resources Code, Section 50001. The CoIWMP, dated November 1995, was adopted by the CIWMB in July 1996. (See Attachment B, "Conformance Findings".)

b. This permit is consistent with standards adopted by the California Integrated Waste Management Board (CIWMB). Public Resources Code, Section 44010.

c. The design and operation of this facility is in compliance with the State Minimum Standards for Solid Waste Handling and Disposal as determined by the Local Enforcement Agency. (The City of San Jose, Department of Planning, Building and Code Enforcement).

d. The following local fire protection district has determined that the facility is in conformance with applicable fire standards as required in Public Resources Code, Section 44151. City of San Jose Fire Department, 4 N. Second St. Suite 1100, San Jose

e. An environmental determination (pursuant to Public Resources Code, Section 21081.6) was filed with the State Clearinghouse for this facility, the date for SCH compliance is 2/23/2001 (SCH# 2001022081). The Negative Declaration was filed by the City of San Jose Department of Planning, and was adopted by the City of San Jose Planning Commission on May 1, 2001. (See Attachment C, "Environmental Determination")

f. A County-wide Integrated Waste Management Plan has been approved by the CIWMB.

g. The following authorized agent has made a determination that the facility is consistent with and designated in the applicable general plan: The City of San Jose Planning Department (See Attachment D, General Plan Conformance Finding", Public Resources Code, Section 50000.5(a).

h. The following authorized agency has made a written finding that surrounding land use is compatible with the facility operation, as required in Public Resources Code, Section 50000.5(b). City of San Jose Planning Department (See Attachement D, "General Plan Conformance Finding, and Special Use Permit").

14. Prohibitions:

The permittee is prohibited from accepting any liquid waste sludge, non-hazardous waste requiring special handling, medical waste, asbestos containing waste (A.C.W.), designated waste, or hazardous waste unless such wastes is specifically listed below, and unless the acceptance of such waste is authorized by all applicable permits. Grinding, crushing or similar processing of A.C.W material is prohibited.

The permittee is additionally prohibited from composting the following items:

Tree trunks, palm fronds, plaster and lath demolition, composition shingles, plumbing, wire fencing, any amount of material with excessive amounts of metal attached, wood painted with lead based paint, treated wood and creosote timbers.

15. The following documents also describe and/or restrict the operation of this facility (insert document date in space):

	Date		Date
[X] Report of Compost Facility Information	October 1992, rev 5/1/2001	[ ] Contract Agreements – operator and contract	N/A
[X] Land Use Permit and Conditional Use Permits: (#SP 00-06-021)	May 25, 2001	[ ] Waste Discharge Requirements (SFRWQCB Letter of Conditional Approval)	10/7/1993
[X] Air Pollution Permits and Variances: (#9554)	September 1993	[ ] Local & County Ordinances	N/A
[X] EIR or Negative Declaration: (SP 00-06-021 Neg. Dec)	May 1, 2001	[ ] Final Closure & Post Closure Maintenance Plan	N/A
[ ] Lease Agreements – owner and operator	N/A	[ ] Amendments to RFI	N/A
[ ] Preliminary Closure/Post Closure Plan	N/A	[ ] Other (list)	N/A
[ ] Closure Financial Responsibility Document	N/A		

SOLID WASTE FACILITY PERMIT

Facility/Permit Number: SWIS #43-AN-0017

16. Self Monitoring:

a. Results of all self-monitoring programs as described in the Report of Facility Information, will be reported as follows:

Program	Reporting Frequency	Agency Reporting To
The operator shall provide the LEA with monthly reports, no later than 14 days after the close of the month, which include the following information:		
1) Tons of material received for composting, per day and per month for both: a) Aerated Static Piles and In-vessel b) Conventional Windrows	Monthly	Local Enforcement Agency (or CIWMB)
2) Tons of Composted material removed from the facility per month;	Monthly	Local Enforcement Agency (or CIWMB)
3) The total amount of material in windrows, in-vessel and aerated static piles (active composting);	Monthly	Local Enforcement Agency (or CIWMB)
4) The amount of material delivered to the facility for composting, recorded as tons per jurisdiction (NOTE: or as approved by the LEA).	Monthly	Local Enforcement Agency (or CIWMB)
5) The occurrence of any operational shutdown, include the duration of the shutdown and the cause of the shutdown (fire, flood, maintenance, odors, etc.)	Monthly	Local Enforcement Agency (or CIWMB)
6) Special occurrences such as employee injuries, unscheduled shutdowns, unacceptable loads, odor problems or odor complaints, damage, etc.	Within 24 hours	Local Enforcement Agency (or CIWMB)
b. Operator shall notify the LEA upon receipt of a Notice of Violation from any regulatory Agency, and will notify LEA within 2 business days upon receipt of written notifications of complaints regarding the facility received by other agencies.	As noted	
c. All complaints regarding this facility and the operator's actions taken to resolve them shall be entered into the log of special occurrences. Notification to LEA within 1 day of any serious or major complaint is still recommended.	As noted	
d. Reports of all special/unusual occurrences and the operator's actions taken to correct these problems shall also be entered into the Log of Special Occurrences.	Within 24 hours	
e. The quantities and types of hazardous wastes, different medical waste, or otherwise prohibited wastes found in waste streams or feedstocks and the disposition of these materials.	Within 24 hours	
f. The Operator shall make available to the LEA the gate Receipt Records with vehicle count and arrival times when it is necessary for the LEA to review them onsite.	As requested	

SOLID WASTE FACILITY PERMIT

Facility/Permit Number: SWIS #43-AN-0017

17. LEA Conditions:

1) This facility shall comply with all federal, state, and local requirements and enactments, including all mitigation measures given in any certified environmental document filed pursuant to Public Resource Code, Section 21081.6.

2) The operator shall maintain a copy of the permit at the facility to be available at all times to facility personnel and enforcement agency personnel.

3) The facility operator shall supply the LEA with copies of all correspondences and reports provided to other agencies which have jurisdiction over the Composting Facility.

4) The facility is permitted to receive the following non-hazardous solid waste: Green Materials (14CCR17852(a), Agriculture Material (14CCR 17852(e), Animal Materials (14CCR 17852(j), Mixed Solid Waste (14CCR17852(s)) and food processing/manufacturing waste that contains animal material.

5) The facility operator shall notify the LEA of all nuisance or health related complaints, which are filed with the facility, the LEA should be notified immediately or on the next LEA working day.

6) The facility will be developed in phases. Each phase will process all feedstock types identified in the RFI using all three processing methods, conventional windrows, aerated static piles and in-vessel systems. The initial phase will have an average tonnage and a peak tonnage of 350 and 660 tons per day, respectively. No additional increase in inbound flow is allowed without prior written approval by the LEA. The initial phase will have a total area of 11 acres, 0.5 acres for in-vessel and 10.5 acres for aerated static piles and conventional windrows. When the full 18 acres of compost pad, static pile and in-vessel area is complete, the operator may apply to the LEA for implementation of Phase II. An RGSI Amendment will be required for LEA approval of the Phase II tonnage increase.

7) The facility's aerated static piles and in-vessel processing systems shall have a peak daily inbound of 280 tons per day. The facility's conventional windrow system shall have a peak daily inbound of 700 tons per day.

8) Design Modifications to the facility's aerated static piles and in-vessel processing systems shall have prior approval by the LEA, prior to implementation. Process water & condensates shall be controlled & disposed of to the LEA's satisfaction. Food waste composting process shall implement Quarterly reporting for Pathogen & Metals reduction as is currently done for site's windrow composting.

9) Stockpiled compost shall not be allowed to actively compost.

10) Additional information concerning the Design and operation of this facility shall be furnished upon request to the LEA.

11) This permit is subject to review by the LEA and may be suspended, revoked or modified at any time by the LEA for sufficient cause.

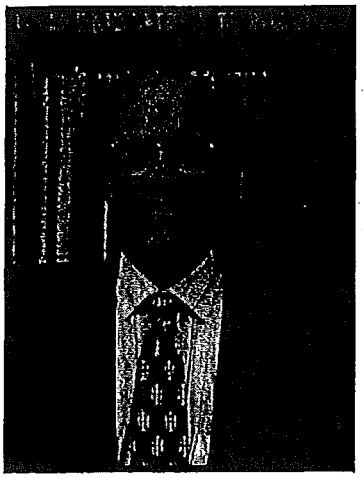
12) The LEA reserves the right to suspend or modify waste receiving & composting operations when deemed necessary due to an emergency, a potential health hazard or the creation of a public nuisance.

13) The operator shall notify the LEA in writing of any proposed significant changes in design or operations during the planning stages. In no case shall the operator undertake any changes unless the operator first submits to the LEA a notice of said changes at least 120 days before said changes are undertaken. Any significant change as determined by the LEA would require a revision of this permit.

Prohibitions:

The following are prohibited in the Composting Facility: Scavenging, Hazardous Wastes, Burning of Waste, Septic tank pumping, Medical Waste, Unapproved wastes/materials, and Standing water in the static pile or in-vessel area or windrow area is not allowed.

CalRecovery INCORPORATED



George M. Savage, Executive Vice President

Education

M.S., Mechanical Engineering, University of California, Berkeley
B.S., Mechanical Engineering, University of California, Berkeley

Other Training

Odor Emission Evaluation

Professional Registration

Registered Professional Engineer, California (No. M20108) and Wisconsin (No. 26949)

Employment

1975 to Present: Principal, CalRecovery, Inc.
1980 to 1981: Co-Instructor, Environmental Planning, San Francisco State University
1971 to 1975: Development Engineer, University of California, Berkeley

Projects Undertaken

- **Recycling of Materials and Waste.** Mr. Savage has served as principal-in-charge, participant, and/or project manager of technical and economic feasibility studies and market analyses for a number of waste recycling projects, as well as project manager for the design, procurement, and start-up of three commercial materials facilities (MRFs) for public and private clients. The projects have comprised a variety of wastes, including wood, mixed paper, food wastes, yard debris, styrene and PET plastics, corrugated, and metal and glass containers. He also has evaluated and specified numerous mechanical and labor-intensive systems for collecting and processing recyclables. The projects have ranged in capacity from 10 to 3,000 tons per day. He has conducted several generator-based waste characterization studies for the purposes of materials flow and commercial waste production, of evaluating process optimization techniques, and of developing methods of managing materials flow and waste production. With regard to design for recyclability, Mr. Savage has managed and conducted both basic and applied research and development concerning the manufacture of materials to minimize the impacts of them or their manufacturing processes on the environment. The projects have included assessing and improving the recyclability and biodegradability of new forms of packaging materials, of surface coatings, and of bags of polymeric composition.

- **Composting.** Mr. Savage has been involved in the field of composting since the mid-1970s. He has performed basic research and development on the composting of a variety of feedstocks, including biosolids, biodegradable packaging, green waste, oily waste, and mixed municipal solid waste. He also has substantial experience in the pre-processing of organic materials for use as compost feedstock or bulking agents for the composting process. He has analyzed and/or designed a number of composting systems for both public and private sector clients, including those using turned windrow and aerated static pile technology. The work has included preparation of mass, water, and energy balances; specification and selection of fixed and rolling equipment; design of aeration and leachate collection systems and treatment systems; design of post-processing systems; and preparation of general arrangement drawings. His composting experience also includes assessments of odor dispersion potential and impacts, and field measurements of odors and chemical compounds from biological processing of wastes. He has provided expert advice to several clients related to measuring the performance of composting systems, improving the performance of composting operations, and odor generation and odor complaints.

- **Air Pollution Control.** Mr. Savage has conducted research and demonstration studies on air pollution control systems for waste-fired combustion units. The studies have included processing of the air emissions, as well as of the fly ash. He has also evaluated the characteristics of air emissions from a variety of types of thermal systems, including medical waste incineration and wood-, coal-, and MSW-fired combustion units, ranging from industrial to utility capacity.

- **Expert Testimony.** Mr. Savage has served as an expert in connection with disputes involving a variety of matters related to waste management. On behalf of a Fortune 500 company, he prepared and presented expert testimony before formal arbitration proceedings involving over 200 claims on a variety of technical subjects related to solid waste processing, including the adequacy of process design, of equipment specifications and selection, and of methods of equipment installation. For a large municipality, Mr. Savage conducted analyses and was deposed concerning waste characteristics and operational procedures associated with the operation of a landfill and waste processing system by one of the municipality's contractors. In two separate engagements, he provided expert analysis and opinions regarding the design, operation, and performance of waste composting facilities; one supported the case of a large financial institution and the other supported the position of a system supplier in its dispute with the owner of the facility. He has also presented analyses and opinions of the cost of waste processing operations and their financial value in cases of potential buy-outs and mergers and in cases of disputes between two parties. In work performed for a California county and its legal counsel, Mr. Savage provided technical analysis of alleged odor generation from processing of organic residues and its impact on nearby residences.

- **Waste Characterization.** Mr. Savage has been involved in various aspects of waste sampling and analytical techniques for over 30 years. He has managed over five dozen waste characterization studies conducted throughout the United States, as well as in other countries. He has developed waste sampling protocols and conducted sampling programs for raw and processed waste in projects conducted for the EPA, DOE, American Society for Testing and Materials (ASTM), various state government units, and private clients. His work in the field has been used in the development of sampling methodologies in three test standards developed by the ASTM. The waste characterization studies have encompassed the measurement and analyses of disposed and diverted waste quantities and physical characteristics, of chemical and thermal properties, and of hazardous constituents. Mr. Savage also has analyzed the fate of wastes and the change in their characteristics due to mechanical processing, controlled biological processing, and to the physical, biological, and chemical processes that occur within land disposal sites. He has also developed methodologies for the characterization of potentially hazardous materials in the disposed waste stream for a number of clients, including the Puget Sound Council of Governments and the Chemical Specialties Manufacturers Association, and has conducted risk analyses of several compounds and of a variety of treatment technologies.

- **Waste Collection, Transfer, and Transportation.** Mr. Savage has assisted both public and private clients in the planning and implementation of waste collection systems. He has managed data collection efforts for the purpose of evaluating and planning mixed waste and recyclables collection systems. The data collection efforts have included the conduct of time and motion studies for assessing the economics of plastics collection and the required service levels for commercial waste collection. He has prepared terms and conditions for requests for proposals for residential collection of mixed waste, recyclables, and/or yard waste; clients include the City of San Jose, California and the American Samoa Power Authority. He has analyzed the technical requirements and economics of waste collection and transportation systems for various locations, including the City San Francisco, the Dominican Republic, and two private waste collection companies. Mr. Savage has performed planning studies for several proposed transfer station facilities, including the Cities of Palo Alto and Rancho Mirage, California. He has also evaluated technical and financial aspects of transfer stations; several of these evaluations have also included assessment of new or expanded materials recovery alternatives into transfer station facilities for C&D, self-haul, and other types of wastes. He has performed a number of analyses of the economics of

the transportation of mixed wastes and materials derived there from, including wood waste, yard waste, compost, paper, and metals; these studies have been conducted for the private and public sectors. In general, the transportation analyses supported the evaluation of mixed waste transfer station alternatives or the assessment of markets for recovered recyclables, organic materials, or both.

- **Construction and Demolition (C&D) Waste Management.** Mr. Savage's experience related to the C&D industry includes characterization of C&D wastes; estimating quantities and types of wastes produced by residential, commercial, and industrial C&D projects; identifying, analyzing, and recommending methods of reducing waste generation by the construction industry; and processing of C&D wastes for resource recovery. He has developed testing protocols for characterizing wastes produced by C&D contractors, and methods of certifying the recycling rates of C&D recycling facilities. For the public sector, he has provided assistance to a California municipality concerning the implementation of a deposit system to reward C&D contractors for recycling their materials. For the private sector, he has provided guidance to real estate developers related to the processing and onsite and offsite use of recovered C&D materials produced during the construction process and during demolition of structures.

- **Source Reduction.** Mr. Savage has conducted planning and implementation of source reduction strategies in both the public and private sectors. The work efforts have included technical strategies (e.g., optimum utilization of resources and remanufacturing activities), as well as the analysis and selection of policies that can influence source reduction potential. He has served as project manager for over one half dozen source reduction planning studies for large and small municipalities, including the City of New York and several jurisdictions in California. Elements of the planning studies include identification of goals and alternatives; technical, economic, and environmental analyses; and implementation and monitoring.

- **International.** Mr. Savage has participated in several projects associated with solid waste management and environmental protection. He has worked on projects in the following countries:

American Samoa	Mexico
Argentina	Morocco
Australia	New Zealand
Bangladesh	Commonwealth of Northern Mariana Islands
Brazil	Paraguay
Bulgaria	Peru
Canada	Republic of the Philippines
Chile	Saudi Arabia
Dominican Republic	South Africa
Ecuador	South Korea
Guatemala	Thailand
Guernsey	Trinidad and Tobago
Italy	Venezuela
Republic of the Marshall Islands	

- **Hazardous Waste Management.** Mr. Savage has served as project manager or a key participant for a number of activities involving hazardous waste management. The activities include characterization of hazardous wastes in municipal, commercial, and industrial waste streams; biological treatment and stabilization of organic hazardous wastes; reclamation and utilization of waste oil; and development and preparation of hazardous waste management plans. As part of his experience in hazardous waste management, he has also conducted studies and field work on the toxic characteristics of flue gas emissions and the ash discharge from incinerators handling a variety of waste feedstocks.

- **Landfill Mining.** For the U.S. EPA, Mr. Savage managed a multi-disciplinary evaluation of landfill mining and reclamation technology for remediation and reclamation of landfills and dumps. The project involved excavation and processing of landfilled wastes as components of the evaluation, as well as environmental analysis and cost analysis. Additionally, he served as the project manager of a State-sponsored study to determine the feasibility of LFMR in the state of California. He has presented seminars concerning a variety of aspects of LFMR to audiences in New Zealand; Brazil; Chapel Hill, North Carolina; and at three national conferences of landfill reclamation.

- **Landfill Design, Operation, and Performance.** Mr. Savage assisted with the remediation and closure of the island of American Samoa's dump and the design and implementation of a modern sanitary landfill. He has evaluated the operation, performance, and economics of various types of landfill compaction equipment and of landfill excavation and processing systems. Also for the EPA, he has prepared design and operational guidelines for sanitary landfills for economically developing countries, based on local conditions and on the state-of-the art operating and performance requirements of several industrialized nations. Mr. Savage also has researched, monitored, and/or managed the response of landfilled wastes (e.g., gas production and leachate characteristics) to physical, biological, and chemical processes occurring in landfill environments.

- **Design and Operation of Waste Processing Facilities and Equipment.** Mr. Savage designed and constructed a laboratory facility and a 25-ton per hour processing facility for studying various aspects of waste management, particularly solid waste processing and resource recovery. As the principal engineer in charge of facility operation and experimental study, Mr. Savage led studies of unit operations used in resource recovery (including size reduction, air classification, screening, and RDF densification), fiber recovery from solid waste, and energy recovery from biomass. He designed and supervised the construction, operation, and testing of equipment specifically for waste processing (including two air classifiers, cleaning equipment for wastepaper pulp, three trommel screens, and miscellaneous conveying equipment).

  In addition, Mr. Savage is regularly called upon to design and procure systems for resource recovery. Past design projects include the design of a processing and reclamation system for bimetal containers, a pelletized RDF facility, a wastepaper baling facility, a 100 ton per day mixed waste composting facility, a 25 ton per day recyclables processing and organics composting facility, and a 500 ton per day commercial waste recycling system. Procurement projects include those for a 1,500 ton per day waste-to-energy facility, a 3,200 ton per day RDF processing system, a 10 ton per day recyclables transfer facility, a 25 ton per day recycling and composting facility, and a 80 ton per day materials recovery facility.

- **Technical, Economic, and Environmental Evaluation of Waste Management and Resource Recovery Options.** Mr. Savage has served as project manager for a number of feasibility studies for evaluating potential waste management systems, including recycling, composting, waste-to-energy, and landfill mining and reclamation. The evaluations have been conducted for clients in the public, as well as private sectors. The system capacities for the projects ranged from 25 tons per day to 17,000 tons per day and encompassed urban, rural, and island communities.

- **Field Test Evaluations of Resource Recovery Equipment.** Mr. Savage has served as the project manager for a variety of equipment evaluations, including those conducted on shredders, air classifiers, and trommel screens. His duties have included preparation of test plans, development of special testing equipment, supervision of field test measurements, data analysis and interpretation, and report preparation. Field tests have been conducted at over three dozen sites in the United States.

- **Development and Use of Test Methods for Waste Related Projects.** Mr. Savage has prepared over three dozen test plans for evaluating and characterizing the performance of processing equipment. The scale of the equipment has ranged from low-capacity, laboratory-size units to high-capacity commercial

machines. He has also developed test procedures and methods for characterizing the physical, thermal, and chemical properties of wastes. He is the author of the ASTM standard method for characterizing municipal solid waste, a method that serves as an industry standard. Three of his test methods are test standards for the American Society for Testing and Materials (ASTM).

- **Performance Guarantees and Acceptance Testing.** Mr. Savage has developed performance criteria, test procedures, and standard test methods for waste processing projects that utilize biomass and solid waste as feedstocks. As a consequence of working with several CalRecovery clients, he has reviewed contractual documents for over one dozen projects, for the purpose of defining performance guarantees in terms of specified contract principles and of the degree of risk that is acceptable to the clients. Among clients for which performance guarantees and acceptance test methods have been developed by Mr. Savage are included the City and County of San Francisco, California; Broward County, Florida; and New York City.

- **Mass Balance and Economic Modeling of Processing and Conversion Technologies.** Mr. Savage has served as project manager of a number of DOE, EPA, and EPRI projects concerned with the mathematical formulation and computer programming of models to simulate the mass balance, energy requirements, and economics of processing equipment, materials handling equipment, and thermal and biological conversion systems.

- **Market Studies for Secondary Materials and Energy Forms.** Mr. Savage has participated in the conduct of a number of marketing studies for public and private clients involving the utilization and specification of waste-derived secondary material and energy forms. As part of his assignments, he developed product specifications, contacted potential users, estimated marketable quantities and their values, and determined the sensitivity of demand to commodity prices and other market variables.

  Specific projects include market studies and market development activities conducted for compost, PET, HDPE, and styrene resins; tin cans; aluminum; newspapers; corrugated; glass; and textiles in several locations in the United States. Mr. Savage has presented marketing discussions at a variety of conferences and seminars.

- **Design, Procurement, and Construction Monitoring of a Solid Waste Processing Facility.** Mr. Savage was the principal engineer in charge of establishing a 25-ton per hour waste processing facility that includes a 250-hp shredder, infeed and discharge conveyors, and auxiliary equipment.

- **Facility Upgrade to a Resource Recovery System.** Mr. Savage engineered and procured the equipment to upgrade a shredding facility to a resource recovery facility and supervised the installation of the equipment. The installed equipment included an air classifier, magnetic separator, glass separator, wastepaper baler, pelletizer, trommel screens, conveying equipment, and a pilot wastepaper pulp and cleaning system.

- **Wastepaper Processing.** Mr. Savage designed, constructed, and tested a pilot-scale pulp and paper making system for waste-derived wastepaper. The system included a pulping reactor, pressurized screen, hydrocyclones, and pulp press. The R&D objectives were the definition of the fundamental process parameters and the quantification of system performance, including the measurement of the characteristics of the pulp and resulting paper. Cleaning of the waste-derived pulp was a key obstacle that was addressed and overcome using specially designed processing equipment and processing sequences.

- **Research and Development in Size Reduction of Solid Waste.** Mr. Savage served as the principal engineer in charge of evaluating the process of refuse size reduction. He prepared test plans, supervised data collection, developed measurement techniques, and was responsible for data analysis and interpretation and preparation of reports.

- **Research and Development in Materials Recovery from Solid Waste.** Mr. Savage served as the principal engineer in charge of evaluating the processes of size reduction, air classification, screening, magnetic separation, glass separation, screening, and fiber recovery. His duties included data analysis and interpretation, as well as report preparation.

- **Research and Development in Energy Recovery from Solid Waste.** Mr. Savage served as the principal engineer in charge of evaluating the technical aspects of converting refuse-derived fuel to energy. His duties included the design and construction of direct combustion and gasification units, as well as their technical evaluation in terms of operation and performance.

- **Research and Development in the Densification of Refuse-Derived Fuel.** Mr. Savage served as the principal engineer in charge of evaluating the operation and performance of refuse densification equipment. His duties included the development of test plans and measurement techniques, as well as data interpretation and report preparation.

- **Graduate-Level Instructor.** Mr. Savage prepared course materials and lectured a graduate-level class in environmental planning for San Francisco State University. Lectures covered community planning and development from the standpoint of applying contemporary engineering technology, including water quality and wastewater treatment, solid waste management, air pollution control, energy production and utilization, alternative sources of energy, and integrated energy-agro-waste systems.

Member

- Solid Waste Association of North America (SWANA)
- American Society of Mechanical Engineers (ASME)
- American Society for Testing and Materials (ASTM) (Committee D20 on Plastics, Committee D34 on Waste Management, and Committee E18 on Sensory Evaluation of Materials and Products (odors))
- Pi Tau Sigma (honorary mechanical engineering society)
- U.S. Composting Council (Standards and Practices Committee)

Patents, Awards, Distinctions, Public Service

- Member, Editorial Board, *Waste Management*, 2001 to present
- Member, Editorial Board, Waste Management & Research, 1999 to 2001
- Variable Aperture Screen, Patent #5,060,806
- Member, Diversion Adjustment Method Working Group, California Integrated Waste Management Board, 1993-1994
- 1982 Award of Merit, Resource Recovery Committee, American Society for Testing and Materials
- Member, Technical Advisory Committee on Composting Regulations, California Integrated Waste Management Board, 1994-1995
- Participant, 1986 Delphi Poll on key issues facing solid waste management in the United States
- Member, Standards and Practices Committee of the US Composting Council
- Primary author of three test methods related to solid waste:

  ASTM E959 Characterizing the Performance of Refuse Size Reduction Equipment
  ASTM E929 Electrical Energy Requirements of Processing Equipment, Measuring
  ASTM D5231 Standard Method for Determination of the Composition of Unprocessed Municipal Solid Waste

Publications and Presentations

Mr. Savage has published over 400 reports and technical papers in the areas of waste and energy management, waste processing, performance guarantees, system testing, secondary materials recovery and utilization, and thermal conversion. He is co-author of *Resource Recovery from Municipal Solid Wastes*, CRC Press, Inc., 1982; *Resource Recovery Processing Equipment*, Noyes Data Corporation, 1982; *Critical Review of Energy Recovery from Solid Wastes*, CRC Press, Inc., 1984; *Unit Operations Models for Solid Waste Processing*, Noyes Data Corporation, 1986; "Engineering Studies on MSW as Substrate for Methanogenesis," *Biotechnological Advances in Processing Municipal Wastes for Fuels and Chemicals*, Noyes Data Corporation, New Jersey, 1987; "Composting of Industrial Wastes," Chapter 9, *Standard Handbook for Hazardous Waste Treatment and Disposal*, McGraw-Hill, 1989; *Material Recovery Facility Design Manual*, C.K. Smoley, 1993; *Handbook of Solid Waste Properties*, Governmental Advisory Associates, Inc., 1993; *Recycling Equipment and Technology for Municipal Solid Waste: Material Recovery Facilities*, Noyes Data Corporation, 1993; *Composting and Recycling Municipal Solid Waste*, Lewis Publishers, Inc., 1993; "Materials Handling Systems," Chapter 5, *Biosolids Composting*, Water Environment Federation, 1995; *Solid Waste Management for Economically Developing Countries*, ISWA, 1996; *Guidance for Landfilling Waste in Economically Developing Countries*, in association with U.S. EPA, ISWA, and U.S. Technology for International Environmental Solutions, 1998; *Modern Composting Technologies*, JG Press, 2005; *Solid Waste Management*, United Nations Environment Programme (UNEP) and CalRecovery, Inc., 2005; *Management and Landfilling of Solid Wastes in Developing Countries*, International Waste Working Group (IWWG), 2006; and *Compost Science and Technology*, Elsevier, 2007. In addition, Mr. Savage is often called upon to make presentations and to offer expert testimony. Examples of some of the groups he has addressed are: U.S. Environmental Protection Agency; U.S. Department of Energy; California Assembly Committee on Resources, Land Use, and Energy Legislative Oversight Hearing; American Society for Testing and Materials; Minnesota Pollution Control Agency; University of Wisconsin Professional Development Program; National Solid Wastes Management Association (NSWMA); and the Solid Waste Association of North America (SWANA).

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Publications of George M. Savage

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Books

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2. Co-author, *Resource Recovery Processing Equipment*, Noyes Data Corporation, 1982.
3. Co-author, *Critical Review of Energy Recovery from Solid Wastes*, CRC Press, Inc., 1984.
4. Co-author, *Unit Operations Models for Solid Waste Processing*, Noyes Data Corporation, 1986.
5. Co-author, "Engineering Studies on MSW as Substrate for Methanogenesis, *Biotechnological Advances in Processing Municipal Wastes for Fuels and Chemicals*," A.A. Antonopoulos, ed., Noyes Data Corporation, New Jersey, 1987.
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9. Co-author, *Material Recovery Facility Design Manual*, C.K. Smoley, 1993.
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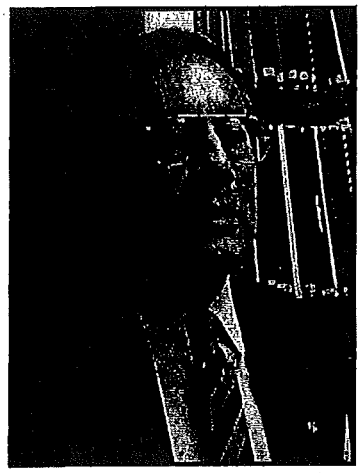

Luis F. Diaz, President

Education

Ph.D., Environmental Engineering, University of California, Berkeley
M.S., Mechanical Engineering, University of California, Berkeley
B.S., Mechanical Engineering, San Jose State University

Other Training

Odor Emission Evaluation

Employment

1975 to Present: Principal, CalRecovery, Inc.
1980 to 1981: Instructor, San Francisco State University
1972 to 1977: Research Engineer/Instructor, University of California, Berkeley

Projects Undertaken

- **Planning.** For numerous public and private entities in the United States and internationally, Dr. Diaz has provided planning assistance such as the evaluation of existing systems and conditions; the preparation of solid and hazardous waste management plans and guidelines; short- and long-range planning; and the preparation of environmental action plans.

- **Composting.** Dr. Diaz has conducted numerous projects involving the stabilization of organic residues through composting. These projects have ranged from research and development studies to ascertain the compostability of residues such as limed sludge, water hyacinths, biosolids, green waste, and oil sludges to the design and/or evaluation of full-scale composting facilities. Due to his involvement in composting since the early 1970s, Dr. Diaz has visited and evaluated most major composting facilities in the United States, Europe, Asia, and South America. His work in composting has also dealt with the marketability of the finished product, as well as the evaluation of the characteristics of composts made from yard debris, sludge, and MSW.

- **Waste Processing Design and Analyses.** Dr. Diaz has participated in the design, test, or evaluation of a variety of pieces of equipment used for processing waste streams and biomass. This includes screens, air classifiers, shredders, and densifiers. He has also been involved in the design of entire systems and sub-systems for the separation and recovery of secondary materials and/or fuel from wastes. This experience has led to the development of various computer models to simulate the performance of individual pieces of equipment as well as the entire resource recovery system. Some of the materials that have been processed include mixed municipal solid waste; fractions of MSW such as paper, plastics, metals, and glass; composted organic matter; construction and demolition (C&D) debris; and mixed waste removed from landfills (landfill mining).

- **Recycling.** Dr. Diaz has been involved in materials recovery and recycling since the early 1970s. He has participated in projects designed to evaluate the performance of recycling systems. He has also taken part in the design, operation, and evaluation of specialized systems to process source-separated materials such as plastics and wastepaper. Involvement in waste and energy management in the industrialized nations, as well as in the lesser developed countries, has allowed him a sound understanding of the applications of various techniques that take advantage of mechanical processes, labor-intensive

processes, and a combination of the two. He has also carried out recycling projects in other countries in order to assess the effectiveness of the recycling methods, as well as to improve the efficiency of recovery and the working conditions of the laborers.

- **Collection and Waste Processing.** Dr. Diaz's experience includes design and analysis of collection systems and/or processing technologies, including recycling, composting, mechanical processing, and anaerobic digestion. He also has conducted expert and third-party reviews of technical and financial aspects of various waste collection and processing alternatives for both private and public clients. Previously, Dr. Diaz also managed the CalRecovery effort to assist the City of San Jose, California in the procurement of private services to collect garbage, recyclables, and green waste, as well as to secure processing capacity (the Recycling Plus! program). This work involved cost estimation, formulation of incentive guarantees for vendor performance, preparation of RFPs, evaluation of proposals, participation in contract negotiation, and development of contract terms and conditions.

- **International.** Dr. Diaz has provided expert advice in environmental protection and in the development of non-conventional sources of energy to several international agencies such as The World Bank, Asian Development Bank, U.S. Agency for International Development, the Peace Corps, and the United Nations (UNIDO, WHO, PAHO). Dr. Diaz has participated in waste and energy management projects in the following countries:

American Samoa	England	Paraguay
Austria	Germany	People's Republic of China
Argentina	Georgia	Peru
Australia	Greece	Republic of the Philippines
Bangladesh	Guatemala	Saudi Arabia
Barbados	Guernsey, Channel Islands	Solomon Islands
Bollvia	India	South Africa
Brazil	Korea (South)	Spain
Cambodia	Italy	Switzerland
Canada	Kazakhstan	Thailand
Chile	Laos	Tonga
Colombia	Mauritius	Trinidad & Tobago
Costa Rica	Mexico	Uruguay
Dominican Republic	Mongolia	Venezuela
Ecuador	Morocco	Zimbabwe
Egypt	New Zealand	

- **Waste Characterization and Toxicity.** Dr. Diaz has participated in a number of aspects related to waste characterization and analytical techniques. He has participated in more than forty waste characterization studies conducted throughout the United States and in other countries. He has participated in the planning, coordinated the process, supervised the training of sorters, developed safety and immunization procedures for sorters, reviewed the data collected, and prepared final reports. The studies have also included proximate and ultimate analyses, heating value, trace element analyses, and concentrations of herbicides, pesticides, dioxins, and asbestos. Some of the waste streams have included mixed municipal solid waste, construction and demolition debris, selected recyclable streams, and health care wastes. The waste characterization analyses have been used to plan waste collection systems, to design recycling programs, and to calculate present and potential diversion of materials from land disposal. The waste characterization analyses have also included the measurement and analyses of the quantities of waste (disposed, recycled, and generated), of hazardous constituents, and of chemical and thermal properties. He has assessed the solid, liquid, and gaseous discharges from several industries, including pulp and paper, plastics manufacturing, and petroleum refining. Dr. Diaz also has participated in projects associated with the analysis of the fate of wastes and the change in their characteristics due to mechanical processing, controlled biological processing, and to the physical, biological, and chemical processes that take place inside the disposal sites. Dr. Diaz recently completed a risk assessment for the

treatment and disposal of healthcare wastes and evaluated the impact of treatment and disposal technologies on human health and on the environment.

- **Landfilling.** Dr. Diaz has participated in the evaluation, upgrade, design, and closure of several disposal sites in developing countries. He recently participated in various aspects of planning for the closure and post-closure care of two disposal sites and in the design of a new sanitary landfill serving Mexico City. He has made presentations in Asia, Latin America, and the Caribbean regarding the various elements of designing and implementing sanitary landfills in developing countries. He is a member of the International Solid Waste Association's (ISWA) Working Group on Sanitary Landfills and participated in the development of a course on the design and implementation of sanitary landfills for developing countries. In addition, Dr. Diaz is the principal author of the document entitled *Manual for the Design of Sanitary Landfills in Developing Countries*, prepared for The World Bank.

- **Marketing.** Dr. Diaz has carried out numerous market analyses for waste-derived materials, including compost, paper, plastics, and metals. These analyses have involved not only the evaluation of potential markets, but also development of specifications, and the procurement of letters of intent from buyers. Marketing analyses have been conducted throughout the United States, Europe, Southeast Asia, and South America.

- **Technical Assistance.** Dr. Diaz frequently is called upon to provide technical assistance to a number of public and private entities in the United States. He has also provided expert advice to international agencies, foreign governments, the Council of European Communities, and industrial concerns in other countries. The scope of services have included technical and economic evaluation of waste management processes; development of human resources; review and evaluation of proposals and contract documents; evaluation and/or preparation of bid documents; and presentations at seminars.

- **Energy from Biomass.** Dr. Diaz carried out a variety of projects in the field of energy production from biomass. These studies have covered several types of biomass, including MSW, sludge, wood, and agricultural residues and have been conducted both in the United States and in other countries. Some of these projects involved the following technologies: anaerobic digestion of agricultural residues, sludge, and fractions of MSW; gasification of wood, charcoal, and rice hulls for irrigation and refrigeration; and the production of RDF and dRDF for generation of steam and electricity. These projects have generally included the technical and economic evaluation of the feasibility to implement the processes, the performance of pilot tests, as well as the assessment of potential negative environmental impacts.

- **Hazardous Wastes.** Dr. Diaz has dealt with toxic and hazardous wastes since 1974. Since then, his involvement has covered several technical, economic, environmental, and institutional issues related to the management of toxic wastes. Some of the projects in which Dr. Diaz has been involved include: the removal of lead from industrial wastewaters; recovery, processing, and re-use of waste hydrocarbons; detoxification of oily sludges through biotreatment; and the preparation of hazardous waste management plans.

- **Health Care Wastes.** Dr. Diaz has conducted several projects that included various aspects of dealing with health care wastes. Specifically, the projects have involved the identification of the generators of the waste, quantities and types of waste generated, as well as the existing means of collecting and disposing of the wastes. The work has also included education of the staff in health care facilities and the establishment of practices leading toward the improvement of storage, collection, and final disposition of the wastes. In addition, Dr. Diaz has directed tours of health care facilities in the United States, at the request of several members of Ministries of Health from other countries. He also participates in training courses organized by the International Solid Waste Association and other entities dealing with various aspects of managing health care wastes in low- and middle-income countries.

- **Waste-to-Energy.** Dr. Diaz has participated in several projects involving the recovery of energy from municipal solid wastes. These projects range from feasibility analyses to test and evaluation of the thermal performance and the emissions from combustion equipment. The breadth and scope of the projects includes the recovery and use of landfill gas, to the use of modular incineration, to the production and use of RDF. Specific projects include: Systems Integration Modeling for the Production of RDF; Analyses of Thermal Drying and Screening on the Quality of RDF; Fuel and Fertilizers from MSW; and Economic Evaluation of Modular Heat Recovery Incinerators.

- **Wastepaper Processing.** Dr. Diaz has been actively involved in various aspects of wastepaper recovery, processing, and reuse. He has participated in several studies to determine the concentration of paper and paper products in the waste stream. In addition, Dr. Diaz has performed a number of studies to determine the marketability of paper products recovered from the waste stream. He has investigated the secondary fiber market in the United States, as well as in South America and Southeast Asia. In one project, Dr. Diaz took part in the development of a fiber recovery system. The system was capable of recovering paper fiber from mixed municipal solid waste. During the test and evaluation of the system, Dr. Diaz also studied the characteristics of the fiber recovered, as well as the various parameters necessary to design a full-scale process.

- **Landfill Mining and Reclamation.** Dr. Diaz has managed or participated in several projects involving landfill mining and reclamation (LFMR). He managed two solid waste planning studies in the Philippines that included evaluation and design of LFMR operations as waste management alternatives. Additionally, he has served as an in-house consultant concerning the quality of soil fraction recovered from LFMR systems and its potential uses and markets. Dr. Diaz also provided technical assistance in the areas of landfill processes that influence LFMR feasibility and in assessing the state-of-the-art of LFMR feasibility of LFMR for a report prepared by CalRecovery for the State of California.

- **Technology Transfer and Training.** Dr. Diaz has presented several lectures at colleges and universities in the fields of waste and energy management. He also developed and taught a graduate-level course in solid waste management at the University of the Philippines in Manila, and was co-instructor of a graduate class in Environmental Planning at San Francisco State University. He participated, with Harvard University, in a technology transfer program on solid and hazardous waste management for developing countries in the Pacific Basin. In addition, he has prepared and presented one-week seminars in Solid Waste Management to more than 60 professionals from the People's Republic of China. Dr. Diaz has provided assistance in the organization of several specialized training courses and has participated in more than 100 seminars and symposia throughout the world. Dr. Diaz has presented lectures in solid waste management at the following institutions: University of West Indies, Trinidad & Tobago; Pontificia Universidad Católica, Asunción, Paraguay; Spanish Waste Club, Madrid, Spain; University of Padova, Padova, Italy; Universität für Bodenkultur, Vienna, Austria; Bauhaus Universitat, Weimar, Germany; Technical University, Braunschweig, Germany; Rutgers University; University of Wisconsin; University of California at Berkeley; San Jose State University; and others in the United States.

Publications

Dr. Diaz has more than 400 publications in the fields of energy and waste management. He has co-authored the following books: *Organic Wastes for Fuel and Fertilizer in Developing Countries*, UNIDO, 1980; *Resource Recovery from Municipal Solid Wastes*, Volumes I and II, CRC Press, 1982; *Critical Review of Energy Recovery from Solid Wastes*, CRC Press, Inc., 1984; *Unit Operations Models for Solid Waste Processing*, Noyes Data Corporation, 1986; "Engineering Studies on MSW as Substrate for Methanogenesis," *Biotechnological Advances in Processing Municipal Wastes for Fuels and Chemicals*, A.A. Antonopoulos, ed., Noyes Data Corporation, New Jersey, 1987; "Composting of Industrial Wastes," Chapter 9, *Standard Handbook for Hazardous Waste Treatment and Disposal*, McGraw-Hill, 1989; *Material Recovery Facility Design Manual*, C.K. Smoley, 1993; *Handbook of Solid Waste Properties*, Governmental Advisory Associates, Inc., 1993; *Recycling Equipment and Technology for Municipal Solid Waste: Material Recovery*

Facilities, Noyes Data Corporation, 1993; *Composting and Recycling Municipal Solid Waste*, Lewis Publishers, Inc., 1993; *Solid Waste Management for Economically Developing Countries*, ISWA, 1996; *Modern Composting Technologies*, JG Press, 2005; *Solid Waste Management*, United Nations Environment Programme (UNEP) and CalRecovery, Inc., 2005; *Management and Landfilling of Solid Wastes in Developing Countries*, International Waste Working Group (IWWG), 2006; and *Compost Science and Technology*, Elsevier, 2007. In addition, for several years, Dr. Diaz has been co-editor of the proceedings for Sardinia's International Waste Management and Landfill Symposium and for ORBIT's bi-annual conferences.

Service to Editorial Boards

- Editorial Committee, *Waste Management*
- Editor-in-Chief (2001-2008), *Waste Management*
- Member, Editorial Board, *Resources Conservation & Recycling*
- Member, Editorial Board, *Compost Science & Utilization*
- Member, Editorial Advisory Board, *Environmental Business Journal*
- Member, Editorial Board, *Residuos*
- Member, Editorial Board, *Waste Management & the Environment*
- Member, Editorial Board, *BioCycle*
- Member, Advisory Board, *Nuclear Engineering and Technology*, Journal of the Korean Nuclear Society
- Member, Editorial Board, *Utilities Policy*
- Member, International Advisory Board, *Journal of Material Cycles and Waste Management*, Official Journal of the Japan Society of Material Cycle and Waste Management (formerly, Japan Society of Waste Management Experts)

Honors

- Visiting Professor, School of Civil Engineering, University of Leeds, UK (2002-2004)
- Chair, Working Group on Developing Countries, IWWG (2004 to present)
- Member, Executive Committee of Advisory Board, College of Engineering, San José State University (1994 to 2004)
- Recipient, Dean College of Engineering Service Award, San Jose State University, 1998
- Recipient, 1982 Engineering Award of Distinction, San Jose State University

Member

- American Society of Mechanical Engineers (ASME)
- American Society of Agricultural Engineers (ASAE)
- Soil Conservation Society of America (SCSA)
- Sigma Xi
- Working Group on Developing Countries, International Waste Working Group (IWWG)
- Institute of Waste Management, South Africa
- National Solid Waste Association of India
- Solid Waste Association of the Philippines
- Board of Directors, ORBIT Association
- Founding Member, IWWG

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Publications

1. "Methane Gas Production as Part of a Refuse Recycling System," (with F. Kurz and G.J. Trezek), *Compost Science*, 15(3):7-13, Summer 1974.

2. "Discussion of 'Domestic Cellulose Waste'," *Biotechnology and Bioengineering*, Symposium No. 5, pp. 23-26, 1975, *Compost Science*, 16(1):16, January/February 1975.

3. "Three Key Factors in Refuse Size Reduction," *Resource Recovery and Conservation*, 1(1):111-113, May 1975.

4. *Development of a Solid Waste Processing-Transfer Station in the City of Berkeley* (with P. Chiu), prepared for City of Berkeley Solid Waste Management Commission, Berkeley, California, June 1975.

5. "The Cal Recovery System: A Resource Recovery System for Dealing with the Problems of Solid Waste Management," (with G.M. Savage and G.J. Trezek), *Compost Science*, 16(5):18-21, Autumn 1975.

6. "Energy Recovery through Biogasification of Municipal Solid Wastes and Utilization of Thermal Wastes from an Energy-Urban-Agro-Waste Complex," Doctoral Dissertation, University of California, Berkeley, 1976.

7. *Market Potential of Materials and Energy Recovered from Bay Area Solid Wastes*, (with G. Savage, C.G. Golueke, and G.J. Trezek), prepared for State of California Solid Waste Management Board, Sacramento, California, and College of Engineering, University of California, Berkeley, March 1976.

8. "Health Aspect Considerations Associated with Resource Recovery," (with L. Riley, G.M. Savage, and G.J. Trezek), *Compost Science*, 17(3):18-24, Summer 1976.

9. "Feasibility of Using Power Plant Reject Heat for Urban Food and Methane Production," (with M. Olszewski), *Proceedings of 11th Intersociety Energy Conversion Engineering Conference*, Lake Tahoe, September 1976.

10. "Biogasification of a Selected Fraction of Municipal Solid Wastes," (with G.J. Trezek), *Compost Science*, 18(2):8-13, March/April 1977.

11. *Solid Waste Management at the Country Club Apartments*, prepared for Gerson Bakar & Associates and Westlake Associates, April 1977.

12. "Energy Recovery through Utilization of Thermal Wastes in an Energy-Urban-Agro-Waste Complex," L.F. Diaz and G.J. Trezek, *Waste Heat Management and Utilization*, conference proceedings, pp. V-B-109-129, University of Miami, May 1977.

13. *Public Health Aspects of Composting Combined Refuse and Sludge and of the Leachates Therefrom*, prepared for State of California Solid Waste Management Board, Sacramento, California, June 1977.

14. "Effect of Management Processes on the Quality of Compost Materials," (with C.G. Golueke), *Proceedings of the 1977 National Conference on Composting of Municipal Residues and Sludges*, Washington DC, 1978.

15. *Solid Waste Composition and Size Distribution Study*, prepared for Oakland Scavenger Company, Oakland, California, February 1978.

16. "RDF: Quality Must Precede Quantity," (with G.M. Savage and G.J. Trezek), *Waste Age*, 9(4):100-106, April 1978.

17. "Fiber Recovery from Urban Solid Waste," (with G.M. Savage and G.J. Trezek), *Proceedings of the Sixth Annual Mineral Waste Utilization Symposium*, Chicago, Illinois, May 1978.

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19. *Waste Composition Studies - 1974 and 1977*, prepared for Oakland Scavenger Company, Oakland, California, June 1978.

20. *Characterization of Waste-Fired Industrial Boilers*, prepared for Acurex, July 1978.

21. *Marketing Study for Materials Potentially Recoverable from Davis Street*, prepared for Oakland Scavenger Company, Oakland, California, September 1978.

22. *Technical Evaluation of Candidate Resource Recovery Systems*, prepared for Oakland Scavenger Company, Oakland, California, September 1978.

23. *Solid Waste Management in Metropolitan Manila*, prepared for The World Bank, December 1978.

24. *Feasibility Study for a Proposed Resource Recovery Facility Located at Davis Street - Executive Summary*, prepared for Oakland Scavenger Company, Oakland, California, December 1978.

25. "Elements of Refuse Size Reduction," (with G.M. Savage and G.J. Trezek), Eighth Annual Composting and Waste Recycling Conference (sponsored by *Compost Science/Land Utilization*), Omaha, Nebraska, April 1978, *1979 Guide: Recycling Wastes on Land, Compost Science/Land Utilization*, 20(1):16-21, January/February 1979.

26. *Compostability of Lime-Flocculated Primary Sewage Sludge*, prepared for J.B. Gilbert and Associates, January 1979.

27. *Use of Trommel Screens for Drying RDF*, prepared for Williams Brothers Urban Ore, Inc., March 1979.

28. *Study of Processing Equipment for Resource Recovery Systems, Vol. III - Field Test Evaluation of Shredders*, prepared for U.S. Environmental Protection Agency, April 1979.

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35. "How Maya Farms Recycles Wastes in the Philippines," (with C.G. Golueke), *Compost Science/Land Utilization*, 20(5):32-33, September/October 1979.

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57. "Overview of Prepared Fuels Technology," (with G.J. Trezek and G.M. Savage), *Proceedings: International Conference on Prepared Fuels and Resource Recovery Technology*, U.S. Department of Energy, Nashville, Tennessee, February 1981.

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59. "Highlights of Shredder Research in Resource Recovery Processing," (with G.J. Trezek and G.M. Savage), *Proceedings of the Seventh Annual EPA Research Symposium*, March 1981.

60. "Comparative Study of Seven Air Classifiers Utilized in Resource Recovery Processing," (with G.M. Savage and G.J. Trezek), *Proceedings: Seventh Annual Research Symposium*, EPA-600/9-81-002C, March 1981.

61. "Biomass and Solid Waste Energy Sources," presented at Department of Defense Energy Symposium, Van Nuys, California, April 1981.

62. "Quantitative Modeling of Integrated Energy-Agro-Waste Complexes," (with J.C. Glaub and C.G. Golueke), presented at the 1981 Summer Meeting, American Society of Agricultural Engineers Paper No. 81-6011, June 1981.

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64. "Unit Process Models for Potential Subsystems of Energy-Agro-Waste Complexes," (with J.C. Glaub and C.G. Golueke), *Proceedings, 16th Intersociety Energy Conversion Engineering Conference*, Paper No. 819245, August 1981.

65. *Densified Wastepaper Fuel Production Using Source Separated Mixed Wastepaper*, Feasibility Study, prepared for Garbage Reincarnation, Inc., October 1981.

66. *Pre-Test for Managing Energy and Resource Efficient Cities*, Tacloban, Philippines, prepared for U.S. Agency for International Development, October 1981.

67. *Conceptual Design and Budget Costs for the Installation of a 5 MW Wood Fired Power Plant*, prepared for U.S. Agency for International Development, November 1981.

68. *State-of-the-Art: Energy and Electric Power Systems in Developing Countries*, prepared for Coopers and Lybrand, Washington DC, November 1981.

69. "Comparative Study of Air Classifiers," (with G.M. Savage, G.J. Trezek, V. Hopkins, B. Simister, D.E. Fiscus, S.C. James, and D. Brunner), U.S. Environmental Protection Agency Project Summary No. EPA-600/S2-81-221, December 1981.

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73. *Engineering Evaluation of a Compost Operation for the Town of Woodside*, prepared for Town of Woodside, California, February 1982.

74. *Laboratory and Pilot Studies of Refuse Digestion*, prepared for Southern California Edison Company, March 1982.

75. *Integrated Energy-Agro-Waste Systems for Small-Scale Farms*, prepared for National Science Foundation, Washington DC, April 1982.

76. "Biogasification of Screened RDF and Sewage Sludge," (with C.G. Golueke and L.E. Larson), *Proceedings of Resource Recovery from Municipal, Hazardous and Coal Solid Wastes*, Miami Beach, Florida, May 1982.

77. *Metro Manila Solid Waste Management Study: Draft Final Report, Volumes I and II*, prepared for Metropolitan Waterworks and Sewerage System, Manila, Philippines, July 1982.

78. *Gasification of Densified Rice*, prepared for U.S. AID/Manila, Philippines, August 1982.

79. *Biomass Assisted/Powered Rural Refrigeration Systems*, prepared for U.S.AID/Manila, November 1982.

80. *Economic Evaluation of Various Designs and Capacities of Composting Operations*, prepared for Municipalities of Atherton, Menlo Park, Portola Valley, Redwood City, and Woodside, California, April 1983.

81. "Comprehensive Evaluation of Potential Compost Operations," (with J.C. Glaub, G.M. Savage, and C.G. Golueke), presented at 13th Composting - Waste Recycling Conference, Columbus, Ohio, May 1983.

82. *Findings of Mission to Lima, Peru on Waste Management and Material Recovery - Final Report*, prepared for The World Bank, May 1983.

83. *Findings of Mission to Manila, Philippines on Waste Management and Material Recovery - Final Report*, prepared for The World Bank, May 1983.

84. *Agricultural Waste Recycling, Volume I - Main Report, and Volume II - Annexes*, prepared for Asian Development Bank, June 1983.

85. *Solid Waste Component Santo Domingo T.A. Launching - Supervision Mission*, prepared for The World Bank, July 1983.

86. "Effect of Processing on the Finished Compost," (with C.G. Golueke), *Proceedings of the International Conference on Composting of Solid Wastes and Slurries*, University of Leeds, England, September 1983.

87. "Material Recovery from Urban Solid Wastes," (with C.G. Golueke), *Biological Reclamation and Land Utilization of Urban Wastes*, proceedings of the International Symposium on Biological Reclamation and Land Utilization of Urban Wastes, Naples, Italy, October 1983.

88. "Decisions and Strategies for Regional Resource Recovery," (with C.G. Golueke), *Biological Reclamation and Land Utilization of Urban Wastes*, Proceedings of the International Symposium on Biological Reclamation and Land Utilization of Urban Wastes, Naples, Italy, October 1983.

89. *Feasibility Evaluation of Municipal Solid Waste Composting for Santa Cruz County, California*, prepared for Santa Cruz County and the California Waste Management Board, Sacramento, California, December 1983.

90. "Solid Waste Processing for the Recovery of Secondary Materials and Energy," (with G.M. Savage), presented at Second Conference on Municipal, Hazardous, and Coal Wastes Management, Miami Beach, Florida, December 1983.

91. "Critical Review of Energy Recovery from Solid Wastes," (with G.M. Savage and C.G. Golueke), *Critical Reviews in Environmental Control*, Volume 14, Issue 3, CRC Press, Inc., 1984.

92. *Economic Analyses of Large-Scale Composting and Co-Composting*, prepared for Metropolitan Council of the Twin Cities Area, St. Paul, Minnesota, January 1984.

93. "Co-composting Refuse and Sludge," (with C.G. Golueke), *BioCycle*, 25(1):21-25, January/February 1984.

94. *Evaluation of the Sorain-Cecchini Waste Processing Plants in Rome, Italy*, prepared for U.S. Department of Energy, February 1984.

95. "Overview of Composting," (with C.G. Golueke and J.C. Glaub), presented at 1984 Western States Waste Management Conference, Fresno, California, March 1984.

96. *Composition and Properties of Municipal Solid Waste and its Components*, prepared for U.S. Department of Energy, May 1984.

97. "Processing Municipal Solid Waste for Composting," (with J.C. Glaub and G.M. Savage), presented at 14th National Composting and Waste Recycling Conference, Washington DC, May 1984.

98. *Evaluation of the Urban Ore, Inc. Berkeley Plant Waste Composting Operation*, prepared for City of Berkeley, California, July 1984.

99. *Models of Unit Operations Used for Solid Waste Processing - Final Report*, prepared for Argonne National Laboratory, Argonne, Illinois, September 1984.

100. *Proyecto de Desarrollo Municipal de Asunción - Componente Limpieza Urbana*, Informe Final, (with C.A. Equez), Asunción, Paraguay, September 1984.

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