



CITY OF MILPITAS
OFFICE OF THE CITY MANAGER

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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.

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.

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.

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.

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.

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.

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.

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 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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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.)

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).) 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 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 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 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.

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.

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.

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.

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.

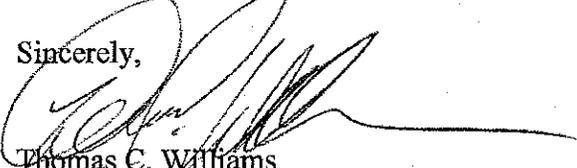
The inadequate impact analyses described above have also improperly limited the range of alternatives considered in the EIR. Under CEQA, a lead agency must consider alternatives to the proposed project that would reduce or avoid the project's significant impacts.

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.

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