



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479 • www.ci.milpitas.ca.gov

November 5, 2009

Janis Moore
Department of Planning, Building & Code Enforcement
200 East Santa Clara Street
San Jose, CA 95113

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

Dear Ms. Moore:

The project as defined in the draft environmental impact report (DEIR) is for a Planned Development rezoning with the purpose to allow the maximum height of the active portion of the landfill to be raised to 245 feet, adding approximately 15.12 million cubic yards to the capacity of the landfill. The new zoning would also allow changes to the uses and operations at the landfill and Recyclery. These changes include allowing the composting areas to be located anywhere on the landfill site, allowing the processing of food waste at the Recyclery, imposing a limit on the total number of inbound material-carrying vehicles to 1,546 vehicles per day for both the landfill and the Recyclery, and allowing a future solid waste transfer station at the Recyclery. The current permits that regulate the operations of the landfill and Recyclery restrict the areas for composting, prohibit processing of food waste at the Recyclery, and limit transfer station activities to recyclable materials.

Pursuant to the California Environmental Quality Act Guidelines, an EIR should be prepared with a sufficient degree of analysis to provide decision makers with information that enables them to make a decision, which intelligently takes account of environmental consequences. The Newby Island Rezoning Project DEIR failed to sufficiently analyze the significant odor impacts the project would have on the Milpitas community. The odor impacts discussed in the DEIR are identified as less than significant with no mitigation required. Yet the project's Odor Assessment (Appendix C of the DEIR) concluded that the project would increase the possibility of odors being transported off site and that mitigation measures are needed. The California Integrated Waste Management Board has also deemed odor impacts from composting facilities a significant issue and requires operators to file an Odor Impact Minimization Plan (OIMP) with the Local Enforcement Agency (City of San Jose).

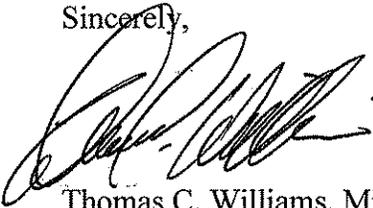
The landfill and composting activities have been a significant source of odor affecting the City of Milpitas. This fact is well documented in the 1994 settlement agreement between the City of Milpitas, City of San Jose, Browning-Ferris Industries, and the International Disposal Company of California; the 1997 McCarthy Ranch General Plan Amendment EIR; and the City of Milpitas Odor Action Plan (2004-2008). The Action Plan was created with the assistance of several stakeholders including Allied Waste Industries and the City of San Jose. One of the key findings from that effort was that the location of significant odor sources (such as composting and food

processing) has a direct connection to the levels of odor impacting the Milpitas community. This conclusion led to the relocation of the composting area to the western most section of the landfill to reduce the odor impact. The DEIR did not include any discussion of the Odor Control Action Plan or the specific odor mitigation measures included in the OIMP on file with the LEA.

The EIR should include: 1) a sufficient odor analysis that acknowledges the significant odor impacts; 2) as mitigation measures the current odor control measures being implemented; 3) additional mitigation measures that will further reduce the impact to the City of Milpitas to an insignificant level.

The following statement on page 18 of the DEIR "*This EIR provides environmental clearance for operation of a solid waste transfer station on the Recyclery property*" should be revised to state that a new EIR will be needed prior to the approval of a solid waste transfer station. Furthermore, Section 1.6 titled "Uses of the EIR" incorrectly identifies the City of Milpitas as the agency providing discretionary approval of utility connection agreements. The City of San Jose would provide water and sewer service to this site.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Williams', written over a white background.

Thomas C. Williams, Milpitas City Manager

cc: James Lindsay, Planning & Neighborhood Services Director
Greg Armendariz, Public Works Director / City Engineer
Mike Ogaz, City Attorney