City of Milpitas Response to Letter from Richard Doyle, City Attorney for the City of San Jose, received September 20, 2016

Comment number 1: The commenter asserts that the "existing facilities" categorical exemption found in CEQA Guideline section 15301 cannot be applied to the Solid Waste Collection contract because most of the projects listed as examples of exempt projects under section 15301 "involve physical alteration or maintenance of an existing physical improvement." The commenter concludes that "[t]he hauling of garbage is not an existing facility."

CEQA Guidelines section 15301 provides, in pertinent part, "Class 1 consists of the **operation**, repair, maintenance, **permitting**, leasing, **licensing**, or minor alteration of **existing public** or private structures, **facilities**, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The **types of "existing facilities" itemized below are not intended to be all-inclusive** of the types of projects which might fall within Class 1. The **key consideration** is whether the project involves **negligible or no expansion of an existing use**. (Emphasis added.)

Contrary to the commenter's suggestion, the "existing facilities" exemption can and has been applied to projects that do not involve the physical alternation or maintenance of an existing physical improvement. For example, in *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, a parking ordinance was found to be exempt under section 15301. The Court of Appeal held: "The legislation involves adjusting the particular group of persons permitted to use 'existing facilities,' in other words, the existing, unmetered, curbside parking on residential streets. The legislation involves the 'operation' of such existing facilities (in the sense that curbside parking is 'operated' by using parking permits, enforcement personnel and ticketing as a form of enforcing the legislatively prescribed use), the 'minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features' (i.e., the signage needed to identify particular curbside spots as permitted parking or not), and 'negligible or no expansion of use beyond that previously existing,' because no additional parking spaces or structures are being added to the parking stock in the relevant area." Similarly, in *Apartment Ass'n of Greater Los Angeles v City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1173, the "existing facilities" exemption was upheld for the adoption of a permanent code enforcement program. Indeed, in *Turlock Irrig. Dist. v Zanker* (2006) 140 Cal.App.4th 1047, 1065, and *North Coast Rivers Alliance v Westlands Water Dist.* (2014) 227 Cal.App.4th 832, 868, courts upheld the use of the "existing facilities" exemption for the adoption of a water conservation program and the interim renewal of existing water contracts.

Here, the City of Milpitas (City), a public entity, currently operates, permits and licenses for the transport of solid waste and other matter from residential and commercial premises within the City to a landfill outside the City. This is a fixed system of collection involving routinized transport from the same premises to the same destination. Consistent with *Santa Monica Chamber of Commerce v. City of Santa Monica*, the City currently undertakes the "operation" of an "existing facility," in the sense that it controls and regulates the routinized collection of waste via contract. The City now proposes to enter into a new contract for waste collection and has, appropriately, considered whether the routinized transport proposed by those bidding for the contract would result in a "negligible or no expansion of use," i.e. the transport of collected waste, "beyond that existing at the time of the City's determination." This was, as required by section 15301, the City's "key consideration." As detailed below, the City undertook precisely that analysis, the results of which are contained in the record and which support the City's determination that the approval of the contract is exempt from further CEQA review.

Comment number 2: The commenter requests that the City analyze traffic and noise impacts associated with the City's proposed Solid Waste Collection contract, specifically increased traffic on area freeways and City of San Jose streets and intersections.

Response regarding traffic: The City did not include a traffic-impacts-specific analysis as part of the staff report to the City Council for its consideration of a new Solid Waste Collection contract as the traffic expected to be generated in the City of San Jose is not considered significant or requiring of further analysis by the City of San Jose's own standards for the measurement of traffic.

- The increase in peak-hour traffic on area roadways and intersections generated under the proposed Solid Waste Collection contract would not exceed the City of San Jose's criterion for analysis of intersections as part of a traffic impact analysis, as outlined in the City's 2009 publication *Traffic Impact Analysis Handbook, Volume I – Methodologies & Requirements.*

- The number of daily truck haul loads associated with the six collection-service proposals received by the City of Milpitas ranges from 22 to 38 trucks[1]. Although the Guadalupe Landfill is open from 8:00 AM to 4:00 PM, it was conservatively assumed that loaded trucks would arrive over an approximate four-hour period, resulting in about six to ten trucks per hour. Further, it was assumed that that the trucks would travel the fastest legally permitted route from Milpitas to the Guadalupe Landfill, namely I-680/I-280 to State Route 87 to six-lane arterial Santa Teresa Boulevard to four- to six-lane arterial Blossom Hill Road (County Road G10) to four- to six-lane arterial Camden Avenue to access Guadalupe Mines Road and the landfill.

- The City of San Jose *Traffic Impact Analysis Handbook* for selecting intersections for study in a traffic impact analysis use a "10 trips per hour per lane" rule (i.e., analysis is required if ten or more project-generated trips would use a travel lane during one or more peak hour). The above-stated "up to ten trucks per hour" would equate to up to five trucks per hour per lane (on the four-lane segments of the haul route, and even less on the six-lane segments), i.e., below the threshold for even conducting a traffic impact analysis in the City of San Jose. Further, while the San Jose guidelines do not establish a basis for analysis of roadways, it is the City's judgment that the addition of up to ten trucks per hour over four hours (i.e., one truck every six minutes) on Guadalupe Mines Road would not be high enough to result in significant traffic impacts on this road.

- The increase in peak-hour traffic on area freeways generated under the proposed Solid Waste Collection contract would also not be high enough to result in significant traffic impacts. Traffic volume data concerning t I-680/I-280 and SR 87 from Caltrans and the Santa Clara County Valley Transportation Authority (VTA) indicate that the collection trucks that travel to the landfill during the morning peak traffic hour would do so in the non-peak (southbound) direction on SR 87, when traffic flow is not congested (the level of service is LOS C or better). While the collection trucks would be expected to travel in the peak direction on six- to eight-lane I-680/I-280 (three or four lanes in each direction) during the morning peak hour (southbound / westbound -LOS F conditions), the project-generated "up to ten trucks per hour" would represent an insignificant increase (i.e., less than 0.2%) in peak-hour traffic

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[1] Based on the annual number of trips (direct haul loads) for the range of potential solid waste hauling scenarios, from information provided by the proposers. This information is presented in Table 2 of the February 19, 2016 memo and assumes there will be 260 operating days per year.

volumes and thus not result in a significant impact. These calculations are based on the worst-case scenario, one that the City does not expect given that the collection contractor has a built-in incentive to avoid peak travel times with labor cost being the largest component of off-route truck travel. In addition, drivers of collection trucks would be expected to avoid traveling during the peak traffic hour on any roadway. There is no provision in the Solid Waste Collection contract that would mandate travel by the collection trucks during peak traffic hours.

For the reasons presented above, the analysis screening process used by the City of Milpitas provides a reasonable basis for concluding that a traffic impact analysis was not needed to draw a less-than-significant impact determination.

Response regarding noise: The City of Milpitas did not include a noise -impact-specific analysis as part of the staff report to the City Council for its consideration of a new Solid Waste Collection contract because the existing operating permit for the Guadalupe Landfill includes a 200 truck per day operational restriction and a restriction on the hours of truck traffic.[2] This 200 truck per day and hours limitation was recommended in the certified 1995 supplemental environmental impact report[3] for the operation of the Guadalupe Landfill, and adopted by the City of San Jose as mitigation measures, to ensure that truck trips to the facility would result in less than significant impacts related to noise.[4] Because the Landfill is required to abide by these limitations, the noise levels associated with truck trips to the Landfill have already been determined by the City of San Jose to be less than significant.

Comment number 3a: The commenter states that the City's CEQA analysis (on page 18 of the Council agenda) does not support its conclusion that emissions will fall well below criteria pollutant thresholds because it relies on the September 12, 2016 memo, "Results of Assessing Air Quality and Greenhouse Gas Emissions Impact of Solid Waste Diversion Scenarios," and does not take into consideration the solid waste hauling component of the Contract. The commenter further states that the September 12, 2016 analysis is limited to the "four shortlisted diversion proposals" that represent transport of single stream recyclables, green waste, food waste, and construction and demolition (C&D) waste to Newby Island Landfill and further destinations, but do not evaluate the solid waste component of the Contract.

Response: The CEQA analysis in the September 12, 2016 memo does take into consideration the solid waste hauling component of the Contract. On page one it states : "As supported by this analysis, the City of Milpitas' new and proposed contractual arrangements for hauling, landfill disposal, and diversion of solid waste materials (**the combined disposal and diversion projects considered herein**) are exempt from CEQA per CEQA Guidelines section 15301, as the contracted activities represent the continued operation of existing public facilities that involve 'negligible or no expansion of use beyond that existing at the time of the lead agency's determination.'" (Emphasis added)

While the September 12, 2016 memo does discuss in detail the transportation and lifecycle emissions associated with the diversion of materials from landfill, its conclusions are based on the analysis of the entire contract (solid waste hauling and disposal plus diverted materials hauling and processing), incorporating previous analysis contained in ESA's February 19, 2016 memo "Results of Assessing Air Quality and Green House Gas Emissions Impact of Solid Waste Transport" (note that this memo is referenced erroneously in the September 12, 2016

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[2] City of San Jose Planning Department Permit no. PDC93-013

[3] City of San Jose, Guadalupe Property Supplemental Environmental Impact Report, January, 1995, page IV-136.

[4] City of San Jose, Resolution No. 66151, Findings 42 and 43. The 1998 addendum to the EIR did not amend these findings.

memo as being dated March 2016). Tables 7 and 8 from the September 12, 2016 memo (repeated below) summarize the worst case emissions scenarios for both the solid waste hauling portion of the contract and the materials diversion portion of the contract.

Table 7: Comparison to Thresholds of Significance - Criteria Air Pollutants

Compound	BAAQMD Threshold (tpy = short tons per year)	SJVAPCD Threshold (tpy)	Diversion Project Worst Case (tpy)	Disposal Project Worst Case (tpy)	Total Project Worst Case (tpy)	Exceed threshold?
ROG	10	10	0.01131	0.02562	0.03694	No
NOx	10	10	0.16866	0.62555	0.79421	No
PM-10	15	15	0.00073	0.00201	0.00273	No
PM-2.5	10	15	0.00070	0.00192	0.00261	No

Table 8: Comparison to Thresholds of Significance - GHG Emissions

Compound	BAAQMD Threshold	SJVAPCD Threshold	Diversion Project Worst Case	Disposal Project Worst Case	Total Project Worst Case	Exceed threshold?
CO2e (metric tons per year)	1,100	NA	-5,956	987	-4,969	No

The values in Tables 7 and 8 for "Disposal Project Worst Case" are taken from Table 1 in the February 19, 2016 memo, repeated below. The "Amended Table" below converts the "kg per year" values into equivalent "tons per year" units that are commonly used for criteria air pollutants, and consistent with the units used in the September 12, 2016 memo. Values for greenhouse gas (GHG) emissions are presented in "metric tons per years" in both tables; however, the tailpipe GHG emissions values in the Amended Table are higher in three of the four hauling scenarios (those for which where biodiesel is used) due to a spreadsheet referencing error discovered as the September 12, 2016 memo was being compiled.

TABLE 1 – Proposals vs. Baseline: Summary of High and Low Values for Criteria Air and GHG Emissions

	GWR Scenarios 1 and 2		WM Disposal Scenario		Baseline	Total Bay Area
	Collection vehicles haul from City Center to Charles St MRF; Transfer trucks haul round Trip to Marina LF		Collection vehicles haul from City Center to Guadalupe Landfill		Collection vehicles haul from City Center to Newby Island Landfill	Total for On-road Motor Vehicles (a, b)
	Low	High	Low	High	n.a	n.a.
Total Criteria Air Pollutants (kg per year)						
ROG	19.42	25.16	9.62	16.53	1.91	27,620,816
NOx	459.20	596.09	85.61	246.50	28.45	54,950,295
PM-10	1.37	1.86	0.22	0.85	0.04	4,360,136
PM-2.5	1.31	1.78	0.22	0.81	0.04	2,297,596
Total GHG Emissions (metric tons per year)						
CO2e Lifecycle Emissions	831	1,082	479	822	95	n.a.
CO2e Tailpipe Emissions	528	709	67	648	75	34,870,000

AMENDED TABLE with values used in September 12, 2016 memo – Proposals vs. Baseline: Summary of High and Low Values for Criteria Air and GHG Emissions (Solid Waste Hauling)

	GWR Scenarios 1 and 2		WM Disposal Scenario		Baseline	Net highest impact
	Collection vehicles haul from City Center to Charles St MRF; Transfer trucks haul round-Trip to Marina LF		Collection vehicles haul from City Center to Guadalupe Landfill		Collection vehicles haul from City Center to Newby Island Landfill	
	Low	High	Low	High	n.a	High
Total Criteria Air Pollutants - short tons per year (tpy)						
ROG	0.02140	0.02773	0.01060	0.01822	0.00210	0.02562
NOx	0.50604	0.65689	0.09434	0.27164	0.03135	0.62555
PM-10	0.00151	0.00205	0.00024	0.00093	0.00005	0.00201
PM-2.5	0.00145	0.00196	0.00024	0.00089	0.00005	0.00192
Total GHG Emissions - metric tons per year						
CO2e Lifecycle Emissions	831	1,082	479	822	95	987
CO2e Tailpipe Emissions	660	859	552	648	75	784

Comment number 3b: The commenter states that "ESA's March 2016 memo" (actually dated February 19, 2016) relies heavily upon a 2016 analysis of transportation emissions by Edgar & Associates, which was not included with the agenda packet.

Response: While true that ESA's February 19, 2016 memo references information presented in the Edgar & Associate memo, it did not rely on that information for its final conclusions; rather, as presented in Table 3 of the February 19, 2016 (repeated below), ESA derived independent estimates for truck trips, route information, average speed, and transfer mileages using the information provided by the proposer. It then compared that data to the figures used by Edgar & Associates, and found only minor discrepancies. ESA also independently reviewed the methodology used by Edgar & Associates and concluded that it was appropriate. The Edgar & Associates analysis, which, again, was not the only basis for ESA's conclusions, is attached to these responses.

TABLE 3: Transfer Hauling Time and Mileage Analysis for GWR Scenarios

General Assumptions			
	ESA	Edgar & Assoc	Source/ESA Assumption
Average tons per load	***21.6***	22	***GWR scale house records***
Mileage Data			
Round-trip, Charles St to Marina LF	124.6	124.6	GWR GHG analysis; verified by HF&H with Google maps
One-way, Charles St to Marina LF	62.3	62.3	GWR GHG analysis; verified by HF&H with Google maps
One-way, Marina LF to Watsonville	***15.2***	15.1	***Google maps***
One-way, Watsonville to Charles St	***54.9***	55.3	***Google maps***
Round-trip with recyclables back haul	***132.4***	132.7	***Google maps***
Transfer Truck Data			
EMFAC Category	T7 Tractor	T7 Tractor	GWR emissions analysis
Truck fuel efficiency	4.2	4.2	GWR emissions analysis
Biodiesel (B20) transfer trucks	3	3	GWR emissions analysis
Diesel transfer trucks	7	7	GWR emissions analysis
Total Transfer Trucks	10	10	
Average truck speed (mph)	***40.2***	45	***GWR scale records***
Back-Haul Scenario Truck Assumptions			
Recyclables back-haul loads/day	30%	2.6 (30%)	GWR emissions analysis (Charles St/Marina LF/Watsonville/Charles St)
SW round-trip loads per day	70%	6 (70%)	GWR emissions analysis (Charles St/Marina LF/Charles St)
Total loads to Marina per day	100%	8.6 (100%)	GWR emissions analysis
Backhaul reduced trips from Marina to Charles St	35%	3 (35%)	GWR emissions analysis and email correspondence with Edgar & Assoc

Comment number 3c: The commenter states that the February 19, 2016 memo fails to identify the thresholds of significance for air quality and GHG emissions and appears to makes conclusions regarding significance that are unsupported. Further, the commenter states that the memo does not explain how the percentage increases in emissions, as presented on page 9, are derived.

Response: The February 19, 2016 memo makes no conclusions regarding significance, it only notes that emissions from solid waste hauling are negligible in the context of emissions from all on-road transportation sources in the Bay Area, including a table that shows that comparison. The percent increase values presented on page 9 (Table 9) of the February 19, 2016 memo show the ratio of estimated emissions in comparison to baseline emissions for solid waste transport, expressed as a percentage. The figures are meant to be used for comparing the proposals for solid waste hauling in terms of their relative emissions. They were not intended or presented as part of a CEQA analysis. The September 12, 2016 memo, which considers total transportation and lifecycle emissions associated with the solid waste disposal and diversion contracts, presents in Tables 7 and 8 the thresholds of significance used by Bay Area Air Quality Management District (BAAQMD) and the San Joaquin Valley Air Pollution Control District (SJVAPCD).[5]

Comment number 4: The commenter states that the air quality and emissions analysis for the solid waste hauling component does not include relevant information about number of trips, traffic delays, and idling that should inform the significance determination for air quality and GHG emissions impacts.

Response: See response to Comment number 2. The February 19, 2016 memo (Table 2, page 3) provides information on the annual number of trips (direct haul loads) and transport hours for the range of potential solid waste hauling scenarios, based on information provided by the proposers. This information is based on each proposer's calculation of the average time their trucks will spend on the road once they leave the collection routes, including traffic delays. Note that the air quality and GHG analysis considers the hauling of solid waste from the centroid of the City of Milpitas to the landfill; the local collection routes (on-route collection of solid waste and recyclables) are not analyzed because the types and amounts of materials collected will not change substantially from baseline conditions.

Comment number 5: The commenter states that the City's reliance on the so-called "common-sense" exemption found in CEQA Guidelines section 15061(b)(3) is inappropriate as the exemption applies only where it can be seen with certainly that there is no possibility that the activity in question may have significant effect on the environment. In particular, the commenter questions the use of this exemption given that the City did not consider the traffic or noise impacts of the Contract or adequately consider the Contract's greenhouse gas or air quality impacts.

Response: "[W]hether a particular activity qualifies for the commonsense exemption presents an issue of fact, and that the agency invoking the exemption has the burden of demonstrating it applies. (*Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 386, citing *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106 at 114.) "The question whether alleged physical changes are reasonably foreseeable requires an examination of the evidence presented in the administrative record." (*Wal-Mart Stores, Inc. v. City of Turlock (2006) 138 Cal.App.4th 273, 291.*) "Determining whether a project qualifies for the commonsense exemption need not necessarily be preceded by detailed or extensive fact-finding. Evidence appropriate to the CEQA stage in issue is all that is required." (*Muzzy Ranch, supra*, 21 Cal.4th 372 at 387, citing *Davidon Homes*,

[5] These are the two Air Districts having jurisdiction over the facilities being considered in the procurement process

supra, 54 Cal.pp.4th at 117.) Here, as detailed at length in the February and September 2016 memo and in this response to the City of San Jose's comments, the City has undertaken a detailed examination of the physical changes that are reasonably foreseeable from the approval of a new Solid Waste Collection Contract. Further, and contrary to other projects that are subject to a far higher degree of estimation as to subjects such as the number and length of trips, the project at issue here will be governed by an extremely specific contract governing all aspects of the successful proposer's operations. The data analyzed by the City is specified by contract, entitling the City to use of the "common-sense" exemption once it determined, by means of expert evidence, that operation of the Contract would not result in a significant impact on the environment.

Comment 6: The commenter summarizes the comments presented in Comments 1-5, expresses concern for the "burden" the Contract will place on the residents of San Jose, and asks the City to prepare an environmental impact report prior to approving the Solid Waste Collection Contract.

Response: First, the commenter is directed to Response 1-5 above. Second,, the City notes that, with or without approval of the Solid Waste Collection Contract, the Guadalupe Landfill is already fully permitted for, and will continue to experience, truck trips bringing solid waste to the site. The City's consideration of the Contract will result in no impacts related to deliveries to the Landfill that the City of San Jose has not already considered and approved via its own CEQA review of the Landfill. Finally, pursuant to Public Resources Code section 21082.2 and CEQA Guidelines section 15064(f)(4), the existence of public controversy is not enough to show that an EIR is required unless there is also substantial evidence of a significant impact. (*Leonoff v Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1359.) Here, after a close consideration of the Contract and after reviewing the comment letter, the City has determined that there is no substantial evidence of a significant impact warranting preparation of an environmental impact report.

CITY OF
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September 20, 2016

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Transmitted by first-class mail
postage pre-paid and by e-mail.

Re: **September 20, 2016 Council Agenda Item 12 – Trash Hauling Contract**

Dear Mayor Esteves and Council Members:

The City of San José respectfully requests that the Milpitas City Council ("Council") delay further consideration of the proposed trash hauling contract ("Project") until such time as a legally adequate Environmental Impact Report ("EIR") is prepared that complies with the California Environmental Quality Act ("CEQA"). The Council Agenda was first made available to the public on Friday, September 17, 2016. The City of San Jose's comments are brief and do not touch on all issues because of the very limited opportunity to evaluate and comment on this significant item.

The City of San Jose ("San Jose") reiterates its strong opposition to the Project as proposed, which would place traffic, noise, and vehicle emissions burdens on roadways within the City of San Jose by adding a significant number of vehicle miles travelled per week to already congested freeway segments, roads and intersections, and residential neighborhoods.

It is clear that the City of Milpitas has not performed adequate review of the project under CEQA. The City of Milpitas appears to rely on two exemptions in the CEQA Guidelines in satisfaction of its obligations to perform adequate environmental review of the Project under CEQA. Milpitas relies upon a Class 1 Categorical Exemption under CEQA Guidelines section 15301 for "existing facilities" for the environmental clearance for this Project. Milpitas also appears to rely upon CEQA Guidelines section 15061(b)(3) which states that a project is exempt from CEQA where "it can be seen with certainty that there is no possibility that the activity in question may

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have a significant effect on the environment..." (See March 15, 2016 Milpitas City Council Agenda, Item 12 staff report).

1. **Milpitas's Reliance on the Categorical Exemption is Improper.**

Categorical exemptions are only authorized by state law where a certain class of projects is deemed not to have a significant effect on the environment. Public Resources Code section 21084 and 14 Cal. Code of Regs. § 15300. CEQA exemptions are not appropriate where, as with the instant Project, there may be a significant effect on the environment. Where there is a reasonably possibility that a project or activity may have a significant effect on the environment, an exemption is improper. *Azusa Land Reclamation Co. v. San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1191, quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205-206.

a. **Guidelines §15310 Does Not Exempt Trash Hauling**

Milpitas describes the CEQA review of this Project as follows:

California Environmental Quality Act: As stated in the memo (included in the agenda packet) "Results of Assessing Air Quality and Greenhouse Gas Emissions Impact of Solid Waste Diversion Scenarios":

"...even when considering the emissions impact associated with the worst case scenario for the City-approved waste disposal contract (disposal project) in conjunction with the diversion project, the total emissions still fall well below the *criteria pollutant* thresholds. With respect to GHG emissions, recycling and composting provide lifecycle benefits that far outweigh the impacts from transporting and processing of both the landfilled materials and the materials diverted from landfill... the City of Milpitas' new and proposed contractual arrangements for hauling, landfill disposal, and diversion of solid waste materials (the combined disposal and diversion projects considered herein) are exempt from CEQA per CEQA Guidelines section 15301, as the contracted activities represent the continued operation of existing public facilities that involve "negligible" or no expansion of use beyond that existing at the time of the lead agency's determination." (September 20, 2016 Milpitas City Council meeting agenda, p. 18.) 1

But with this Project, Milpitas is proposing to transport solid waste to the Guadalupe Mines Landfill in southwestern San Jose. There is absolutely nothing about the act of hauling solid waste that would exempt the hauling contract and its related impacts from CEQA using the Class 1 "existing facilities" exemption.

CEQA Guidelines section 15301 is limited to providing an exemption for "existing facilities," which typically include the operation, repair, maintenance, permitting, leasing,

licensing, or minor alteration of existing public or private structure or facilities, mechanical equipment, or topographical features involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The key consideration as to whether a Project may be exempted under this category is whether the project involves negligible or no expansion of an existing use. Section 15301 lists the types of projects that may be exempt, all but one of which involve physical alteration or maintenance of an existing physical improvement.

For the sake of argument only, perhaps the Milpitas Council's March 2016 approval of the agreement for use of the Guadalupe Mines facility might fall under this exemption, but certainly the separate hauling contract cannot take advantage of this exemption. CEQA exemption categories are not to be expanded or broadened beyond the reasonable scope of their statutory language. *Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827,842; *Azusa Land Reclamation Co. v. San Gabriel Basin Watermaster*, *supra*, 52 Cal.App. 4th at pp. 1192-1193. 1 cont.

The City of Milpitas's reliance on the Class 1 categorical exemption under CEQA is entirely misplaced. The hauling of garbage is not an existing facility. The landfill where the garbage is to be hauled may be an existing facility, but the subsequent decision by the Council about where to haul (among other choices it is considering) and how to get there is not appropriately exempt as an existing facility. Rather, CEQA requires that Milpitas perform adequate environmental review of its hauling contract Project.

b. <u>Milpitas Fails To Evaluate Traffic and Noise Impacts</u>

There is absolutely no analysis of traffic on impacted freeway segments, no analysis of traffic on the City of San Jose streets and intersections where the trash will be transported (note that these trucks cannot use State Route 85 because trucks of this vehicle weight are prohibited on that highway), and no analysis of traffic and noise on the residential streets that are impacted by such transport. Milpitas has completely failed to evaluate the traffic and noise impacts, among other significant impacts, that will result from the transport of all of the solid waste from a City of 70,000 residents, not to mention its numerous industries and businesses, using an approximately 40 mile round trip per trash truck to and from the Guadalupe Mines site. 2

c. <u>The Analysis of Air Pollutants and GGE Is Inadequate.</u>

The CEQA exemption language on page 18 of tonight's Council agenda makes the poorly supported conclusion that emissions fall well below criteria pollutant thresholds. Milpitas represents that it relies upon the September 12, 2016 "Results of Assessing Air Quality and Greenhouse Gas Emissions Impact of Solid Waste Diversion Scenarios" prepared by consultant ESA Community Development as its basis for the categorical exemption. However, the September 12 analysis is limited to the "four 3a

shortlisted diversion proposals" – single-stream recyclables, green waste, food waste, and construction and demolition (C&D) waste (pp. 1-2). These four waste streams will be transported to Newby Island landfill which the report indicates is approximately 3.7 miles one-way from Milpitas (p. 2). Furthest destinations for the diverted waste are also evaluated, but nothing is evaluated for the solid waste hauling component of the contract. 3a

The "Results of Assessing Air Quality and Greenhouse Gas Emissions Impact of Solid Waste Diversion Scenarios" (9/12/16) document indicates in Footnote 1 on page 3 of the report that solid waste transport was evaluated in ESA's March 2016 memo to Milpitas. A copy of that earlier memo is attached to the March 15, 2016 Milpitas City Council agenda, but it relies heavily upon a 2016 analysis of transportation emissions by Edgar & Associates which is not included with the agenda documents for the March or September 2016 hearings (see Footnote 1, p. 4). 3b

The "Summary of Analysis" section on pages 1 and 2 of the February 19, 2016 document attached to the March 15 Council agenda appears to state that there are no cumulative significant impacts ("from all on road transportation sources in the Bay Area"). However, the "Summary of Observations" on page 9 of the February 9 report indicates that emissions for the Waste Management scenario to the Guadalupe Mines landfill site range from 504% to 867% of Baseline Scenario emissions. Emissions associated with the competitor's transport proposal to the Marina landfill are between 1000% to 4000% higher than Baseline. 3c

The February 19, 2016 ESA memorandum completely fails to identify the thresholds of significance for air quality and GGE used by ESA in its analysis. Rather, there are conclusions in the report that identify percentage increases in emissions that do not explain how the percentages are calculated. Nor does the report identify the elements used to calculate the emissions increase percentages. In short, there is insufficient information by which to verify the methodology and conclusions of the report.

The air quality and emissions analysis for the solid waste hauling component of this Project also fails because there is no evidence in the record that Milpitas and its consultants have performed a traffic impact analysis relating to the transport of solid waste to the Guadalupe Mines landfill site. The failure to include relevant information about number of trips,[1] traffic delays, idling, and the like in these reports indicates that even the air quality and GGE analysis may be incorrectly reported or underreported for the environmental impacts of the hauling contract. For all of the reasons stated above, Milpitas cannot rely on the CEQA exemption for this Project. 4

[1] The report indicates the volume of trash to be hauled, but not the number of vehicle trips or the route.

2. Milpitas's Reliance on the "Common Sense" Exemption is Improper.

Milpitas also appears to rely upon CEQA Guidelines section 15061(b)(3), which proves that a project is exempt from CEQA where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment..." (March 15, 2016 Milpitas City Council Agenda, Item 12 staff report; and September 12, 2016 "Results of Assessing Air Quality and Greenhouse Gas Emissions Impact of Solid Waste Diversion Scenarios" by ESA, Footnote 1, p.3). It is baffling how Milpitas can find "*with certainty*" that there is "*no possibility*" that the hauling of all its solid waste from Milpitas to southwestern San Jose may have a significant effect on the environment. As stated above, Milpitas completely fails to evaluate the traffic impacts of its Project. Nor does it evaluate the noise impacts, among other impacts, of this Project. Nor does it adequately address the two issues – greenhouse gas emissions and air quality -- where its consultant ESA performs some environmental analysis but does so without disclosing methodology and providing confusing results, and failing to evaluate any of the essential information that would be generally be gleaned from a traffic impact study. Rather, ESA appears to rely on Google Maps for much of its transportation and traffic related information (February 19, 2016 ESA Solid Waste Transport Analysis, Table 3, p.4). 5

The Common Sense exemption can be used "only in those situations where its absolute and precise language clearly applies." *Myers v. Bd. of Supervisors* (1976) 58 Cal.App.3d 413, 425. Milpitas bears the burden of producing evidence to support its determination that there is no possibility of significant environmental effects from the Project. There is an abuse of discretion when there is a failure to support the exemption determination with substantial evidence. *Davidon Homes v. City of San* Jose (1997) 54 Cal.App.4th 106. The showing of a party challenging an exemption under CEQA Guidelines section 15061(b)(3) is slight because that exemption requires the agency to be certain that there is no possibility the project may cause significant environmental impacts. *Id.* at p. 17. "If a reasonable argument is made to suggest a possibility that a project will cause a significant environmental impact, the agency must refute that claim *to a certainty* before finding that the exemption applies." *Id.* at p. 18 (italics in original). Because of Milpitas's failure to address potentially significant impacts of its Project,

Milpitas cannot make the appropriate findings based on substantial evidence in the record that would support its use of the Common Sense exemption. Milpitas needs to perform appropriate environmental review in the form of an EIR for its trash hauling Project.

3. CONCLUSION.

Milpitas's consideration of a project that will create a significant amount of vehicle trips and associated noise from trash trucks over a much longer haul route than is 6

currently used by Milpitas will result in a host of significant environmental impacts to area traffic, air quality, and noise, and will require San José and its residents to bear the burden of such impacts. The exemptions upon which Milpitas relies for environmental clearance under CEQA are inapplicable and inappropriate. We urge the Milpitas City Council to take a step back and to continue its consideration of the Project by directing its staff to prepare an EIR in order to rectify the severe deficiencies identified by San José. This process will adequately inform the Council, San Jose, and the public about the impacts of the Project and will allow the Council to consider mitigation measures and alternatives to the Project. San Jose looks forward to working with the City of Milpitas to ensure each of its concerns are sufficiently addressed in an appropriate environmental document. 6 cont.

Very truly yours,

RICHARD DOYLE, City Attorney

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GreenWaste Recovery, Inc.

Transportation Emissions Analysis

Prepared by:

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January 6, 2016

Greenhouse Gas Summary

GreenWaste Recovery, Inc. as part of its proposal to the city of Milpitas, will expand its solid waste transfer operations from its facility in San Jose. This operation will involve the transport of approximately 190 tons of solid waste per day to the Monterey Regional Waste Management District Landfill in Marina. The return trip will utilize the emptied trailers to retrieve recyclables from Marina and from GreenWaste's facility in Watsonville for delivery back to the San Jose facility. Through this routing, Greenwaste expects to obviate an average of three empty truck routes per day to Marina. A summary of the greenhouse gas impacts of such transportation is provided below. The proposed route change will result in a net increase of **578** Metric Tons of Carbon Dioxide Equivalent ($MTCO_2e$) of tailpipe emissions.

Table 1: Greenhouse Gas Summary

Greenhouse Gas Project Impacts ($MTCO_2e$)		
San Jose to Marina (8.6 trips per day)		
	Life Cycle	Tail Pipe
Diesel	316	232
B20	124	81
Subtotal	440	313
Marina to Watsonville (2.6 trips per day)		
	Life Cycle	Tail Pipe
Diesel	9.9	7
B20	3.9	3
Subtotal	13.8	10
Watsonville to San Jose (2.6 trips per day)		
	Life Cycle	Tail Pipe
Diesel	84	62
B20	33	22
Subtotal	118	84
Marina to San Jose (6 trips per day)		
	Life Cycle	Tail Pipe
Diesel	221	162
B20	87	57
Subtotal	307	218

Offset Empty Trips San Jose to Marina		
	Life Cycle	Tail Pipe
Diesel	47	34
B20	18	12
Subtotal	65	47

Total Project Emissions		
	Lifecycle	Tailpipe
	879	624

Net Emissions		
	Lifecycle	Tailpipe
	813	**578**

Criteria Pollutants Summary

Criteria pollutant emissions, calculated as a function of vehicle miles traveled, for each scenario are provided in the table below. The proposed route will stop in Marina to drop off waste materials. Following this, approximately 2.6 trucks per day will continue on to pick up recyclables in Watsonville before returning to San Jose. The remaining six vehicles are anticipated to haul recyclables from Marina back to San Jose. Although this backhaul is expected to reduce the number of empty truck trips from San Jose to Marina by three per day (See Table 3 below), the net result of this change is an increase in the total miles traveled. Consequently, there will be an increase in emissions of criteria pollutants as calculated by the California Air Resources Board EMFAC model. The results of this calculation are shown in Table 4 below. The methodology and parameters used are provided at the end of this document.

Table 2: Mileage Basis for Criteria Pollutants Calculation

Mileages for Criteria Pollutant Project Impacts ($MTCO_2e$)					
	Miles Traveled	Trips Per Day	Trips per Week	Annual Trips	Annual Mileage
San Jose to Marina	62.3	8.6	43	2,245	139,892
Marina to Watsonville	15.1	2.6	13	676	10,208
Watsonville to San Jose	55.3	2.6	13	676	37,383
Marina to San Jose	62.3	6	30	1,569	97,777
Total:	195	20	99	5,167	285,259

Table 3: Mileage Reduction from Backhaul

Mileage reduction from Backhaul					
	Miles Traveled	Trips Per Day	Trips per Week	Annual Trips	Annual Mileage
San Jose to Marina	62.3	3.0	15	780	48,594

Table 4: Annual Kilograms of Criteria Pollutants as a Function of Mileage

Annual Kilograms of Criteria Pollutants as a Function of Mileage							
Criteria Pollutants	ROG	TOG	CO	NO_x	CO_2	PM10	PM2_5
EMFAC EF (g/mi)	0.053	0.061	0.315	1.711	1,571	0.005	0.005
Project (kilograms)	15.21	17.32	89.84	488.05	448,133	1.52	1.45
Reduced	2.59	2.95	15.30	83.14	76,340	0.26	0.25
Net	12.62	14.37	74.54	404.91	371,793	1.26	1.21

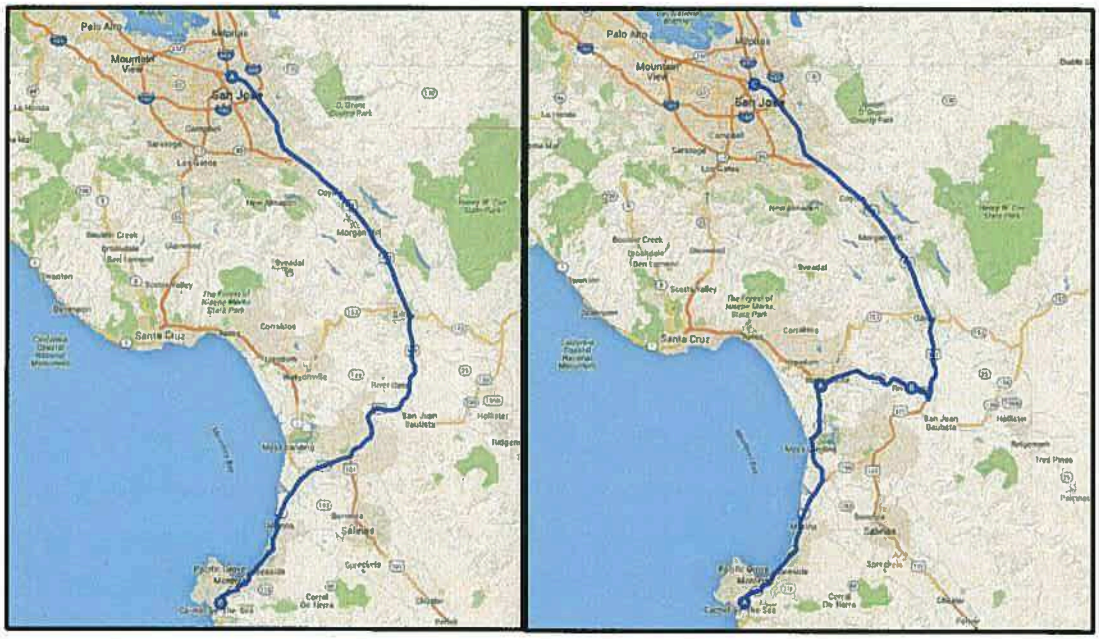
*Low Carbon Fuel Standard Methodology for determining CO_2 emissions calculated on the previous page is the preferred approach.

Background Information and Methodology

Weight and Payload: Based on estimations from GreenWaste Recovery Inc.'s proposal, approximately **190** tons per day would be transported from the GreenWaste Facility in San Jose to the Monterey Regional Waste Management District Landfill. Typical transfer loads will average around **22** tons, resulting in an average of **8.6** trips per day. Given the five day work week, this would result in **2,245** trips per year moving **49,400** tons of material.

Route: The waste materials from the Charles Street Facility in San Jose would be loaded in transfer trailers and taken directly to the Monterey Regional Waste Management District Landfill, **62.3** miles away. This route will serve to improve the efficiency of GreenWaste Recovery's existing material transportation network, as the emptied transfer trucks will be used to backhaul recyclable materials from Marina and GreenWaste's Watsonville facility **15.1** miles away. This eliminates the need to send approximately three empty transfer trailers from San Jose to pick up recyclables in Marina.

Hauling Route and Backhaul Route



Fleet: There will be ten transfer trucks used in this hauling operation, all of which will run the route and backhaul routes described above. These vehicles, each weighing 16-16.5 tons, will transport approximately 22 tons of material per trip. This fleet will consist of seven third-party vehicles, and three of GreenWaste's own Biodiesel (B20) vehicles. A table summarizing this fleet is provided below:

Table 5: Fleet Specifications

Truck	Owner	Brand	Model	Year	Fuel Type
1	MG Trucking	International	Star	2012	Diesel
2	MG Trucking	International	Star	2012	Diesel
3	MG Trucking	International	Star	2012	Diesel
4	MG Trucking	International	Star	2012	Diesel
5	MG Trucking	International	Star	2012	Diesel
6	MG Trucking	International	Star	2012	Diesel
7	MG Trucking	International	Star	2012	Diesel
8	GreenWaste	Peterbilt	384	2015	B20
9	GreenWaste	Peterbilt	384	2015	B20
10	GreenWaste	Peterbilt	384	2015	B20

Greenhouse Gas Emissions Calculation

Greenhouse Gas Analysis: Greenhouse gas emissions modelled for this project are in terms of lifecycle and tailpipe emissions from the transfer vehicles delivering materials from San Jose to Marina. As seen in Table 1, emissions from the backhaul portion of the trip are also calculated and compared with the baseline scenario under which GreenWaste sends empty transfer trailers directly to Marina to pick up recyclable loads for delivery to San Jose.

The best available methodology in the state of California for calculating greenhouse gas emissions is the Low Carbon Fuel Standard's (LCFS) GREET model. This model's emission factors are employed in this analysis, and each relies on an estimate of fuel consumption based on payload weight, fuel type, truck type, miles traveled, and vehicle tare weight. The appropriate LCFS emissions factor is then applied to the annual fuel usage to provide emissions in terms of metric tons of carbon dioxide equivalent ($MTCO_2e$). LCFS emission Factors used are summarized in the table below. Tailpipe emission for biodiesel are functions of CH_4 and N_2O emissions, and are best modelled using the Climate Registry's (TCR) General Reporting Protocol Emissions factors.

Table 6: Low Carbon Fuel Standard and TCR Greenhouse Gas Emission Factors

Low Carbon Fuel Standard and TCR Greenhouse Gas Emission Factors		
Emission Type	**Emission Factor**	**Source**
Diesel (life cycle)	102.01 gCO_2e/MJ	From; http://www.arb.ca.gov/fuels/lcfs/ca-greet/CA-GREET2.0-suppdoc-060415.pdf
Diesel (tailpipe)	74.85 gCO_2e/MJ	http://www.arb.ca.gov/regact/2015/lcfs2015/lcfsfinalregorder.pdf pg 66
Biodiesel Portion (lifecycle)	56.95 gCO_2e/MJ	http://www.arb.ca.gov/regact/2015/lcfs2015/lcfsfinalregorder.pdf pg 83
Biodiesel Portion (tailpipe)	.0000494 gCH_4 & .0000353 gN2O per g CO_2	http://www.theclimateregistry.org/tools-resources/reporting-protocols/general-reporting-protocol/

Diesel Fleet: 70% of the hauling will be performed by the diesel vehicles, which equates to **1,572** trips per year. The total weight of these vehicles is the tare weight plus the payload weight, resulting in 38.5 tons traveling 62.3 miles. According to the Center for Transportation Analysis, vehicles of this type and weight class achieve approximately 164 ton miles per gallon, or 15 gallons per trip. Annually this results in **22,988** diesel gallons of fuel for this section of the travel. Similar calculations are performed for the other sections of travel, dependent on the presence or absence of a 22 ton payload.

Biodiesel Fleet: 30% of the hauling will be performed by GreenWaste Recovery's Biodiesel vehicles, which equates to **674** trips per year. As with the pure diesel vehicles, these trucks when loaded weigh 38.5 tons. Such a fleet would require approximately **10,016** gallons of fuel annually, of which 20% is biogenic (B20 is 20% biodiesel and 80% diesel). The blend's emissions for each section of the vehicles journey is calculated in Table 1 above using the emissions factors from Table 6.

Total GHG: The annual total tailpipe emissions from the disposal hauling route is **624 $MTCO_2e$.** To collect the recyclables from Marina via sending empty truck from San Jose would result in **47 $MTCO_2e$**. This results in a net increase in GHG tailpipe emissions of **578 $MTCO_2e$** (813 $MTCO_2e$ for life-cycle emissions).

Criteria Pollutants Calculation

Calculation: In addition to Greenhouse Gases, the use of transportation vehicles produces emissions of certain criteria pollutants recognized by the State of California. To evaluate such emissions, the California Air Resources Board (CARB) has developed the Emission Factors or "EMFAC" model. Given pertinent data, this tool may be used to establish emissions factors on a per-mile basis. These emissions factors, provided in Table 4 above, are the result of applying the EMFAC model to the fleet that would transport materials for GreenWaste.

Assumptions: The parameters used in calculating these emissions are based off of the 2012 diesel fleet to remain conservative. Based on its weight class, payload, and function, these vehicles are most appropriately modelled in the heavy-heavy duty "T7 tractor trailer" category. Emission factors are based off of an average travel speed of 45 miles per hour, and use the Bay Area Air Quality Management parameters in the EMFAC model. The inputs into this model are provided in the image on the following page.

EMFAC2014 Web Database

(v1.0.7)

Data Type:
- Emissions
- (•) Emission Rates

Region: Air Basin
San Francisco Bay Area

Calendar Year:
2015
2016
2017
2018

Season: Annual

Vehicle Category: EMFAC2011 Categories
Pick
T7 single construction
T7 SWCV
T7 tractor
T7 tractor construction

Model Year: Pick
2012
2013
2014
2015

Speed: Pick
30
35
40
45

Fuel: DSL

Download Data

Sources

CRITERIA POLLUTANTS EMISSION FACTORS

California Air Resources Board, EMFAC model, http://www.arb.ca.gov/emfac/2014/

LOW CARBON FUEL STANDARD

California Air Resources Board, *Low Carbon Fuel Standard,*
http://www.arb.ca.gov/fuels/lcfs/lu_tables_11282012.pd

http://www.arb.ca.gov/fuels/lcfs/ca-greet/CA-GREET2.0-suppdoc-060415.pdf

http://www.arb.ca.gov/regact/2015/lcfs2015/lcfsfinalregorder.pdf

TAILPIPE EMISSIONS FOR BIODIESEL

The Climate Registry: General Reporting Protocol

http://www.theclimateregistry.org/tools-resources/reporting-protocols/general-reporting-protocol

ENERGY CONTENT OF FUELS

California Energy Commission, Gasoline Gallon Equivalents for Alternative Fuels,
http://www.energyalmanac.ca.gov/transportation/gge.html

TRAVEL DISTANCE, TRAVEL TIME, AND AVERAGE SPEED
Google Maps, *(Travel Time and Distance Data),*
www.google.com/maps/

GALLONS OF FUEL PER TON MILE ANALYSIS

Oak Ridge National Laboratory, Center for Transportation Analysis, Heavy Trucks
http://cta.ornl.gov/vtmarketreport/pdf/chapter3_heavy_trucks.pdf

FLEET INFORMATION TYPE AND ROUTES

GreenWaste Recovery, Inc. Personnel