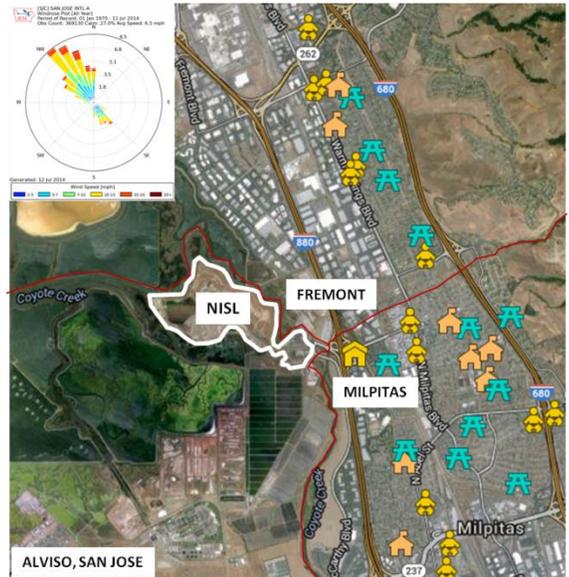


# A CALL TO REJECT NEWBY ISLAND SANITARY LANDFILL (NISL) EXPANSION PERMITS

[PD14-014, 43-AN-0003]



## INTRODUCTION

**NISL is situated at the edge of San Jose city boundary, surrounded by wetlands, Milpitas city and Fremont city.**

- Landfill started in 1930s when the area was rural
- The area is now the "Gateway to Silicon Valley", surrounded by technology parks and burgeoning population
- Within 2 miles of NISL include:
  - >10,000 children in Fremont-Milpitas schools & preschools
  - >100,000 daytime population
  - >120,000 daily commuters on I-880, I-680, CA-237, SR-262
  - Closest office, residence and park are 0.2, 0.4 and 0.5 miles from NISL respectively
  - Top employers including Cisco, KLA-Tencor, SanDisk, Samsung, Tesla, Lam Research, Boston Scientific, etc.

**Due to prevailing wind patterns towards SE, odor and pollutants from NISL have negatively impacted surrounding communities and environment for decades.**

- Reduced quality of life - lost usage of outdoor space and clean air access for several days each month
- Health concerns - residents have reported asthma, allergies, nausea, etc. Various studies have documented elevated cancer rates near landfill sites
- Suppressed home values and high commercial vacancy rates
- Milpitas city reputation is tarnished by bad rap of being "Smell-pitas", "Mil-poo-tas", "Armpit of the Bay"

**Odor issues remain chronic as regulation enforcement is split between San Jose LEA, CalRecycle and BAAQMD.**

- Milpitas and Fremont cities have no jurisdiction over NISL operations
- Impacted residents and businesses expect NISL to close when it reaches 150ft permitted height
- >50 bayfront landfills closed since 1960s. None exceeded 160ft height
- NISL and Zanker (both in San Jose) are the last active landfills along San Francisco Bay

## NISL EXPANSION: A CHRONOLOGY OF KEY EVENTS

Dates	Events
9/5/07	NISL owner proposed rezoning to increase landfill height from 150 ft to 245 ft and capacity by 15.12 million cubic yards with <b>no change in 2025 closure date</b>
9/22/09	DEIR published for public review. <b>Odor impact listed as insignificant. 26 written statements</b> documenting concerns from Milpitas, Fremont and other agencies were submitted to San Jose
5/23/12	First amendment to the DEIR was circulated. <b>Odor impact retained as insignificant</b>
6/6/12	San Jose Planning Commission voted 4-0 to certify the Final EIR, even after <b>Milpitas residents and city representatives raised odor concerns at the public hearing</b> . Milpitas City filed for an appeal.
7/17/12	A <b>class action lawsuit</b> on behalf of residents was filed against Republic Services
8/14/12	San Jose City Council voted 10-0 to uphold the final EIR and approve the rezoning
9/27/12	<b>Milpitas City filed a lawsuit</b> against San Jose for critical errors in the EIR
10/1/14	San Jose Planning Director approved zoning permit. Milpitas City filed for an appeal
11/6/14	San Jose LEA informational hearing for revised Solid Waste Facilities Permit (SWFP). <b>Over 100 residents and city officials voiced objections to the permit</b>
12/10/14	San Jose Planning Commissioner hearing on zoning permit appeal. A decision was delayed following <b>&gt;60 public statements against the permit</b> .
12/16/14	CalRecycle monthly meeting in Sacramento. <b>&gt;70 written and 50 public statements</b> against revised Solid Waste Landfill Permit. <b>A decision is due 2/7/15</b> .

## GRASSROOT MOVEMENT

**Outraged residents have started a volunteer group in Nov'14 to stop NISL expansion**

- Online petition (<http://www.tinyurl.com/stoplandfill>) has garnered **>13,000 signatures +1,000 on paper** in 2 months
- Social Media: Facebook Pages ("[Milpitas Odor Problem](#)", "[Milpitas Citizens Network](#)"), [Google Group](#)
- Over 300 residents participated in landfill expansion protest at San Jose City Hall

## NISL EXPANSION: REVISED SOLID WASTE EXPANSION PERMIT (SWFP)

- Increase height from 150ft to 245ft MSL
- Increase capacity from 50.8 million to 57.5 million cubic yard
- Decrease disposal area from 308 to 298 acres
- Extension of estimated closure date from 2025 to 2041



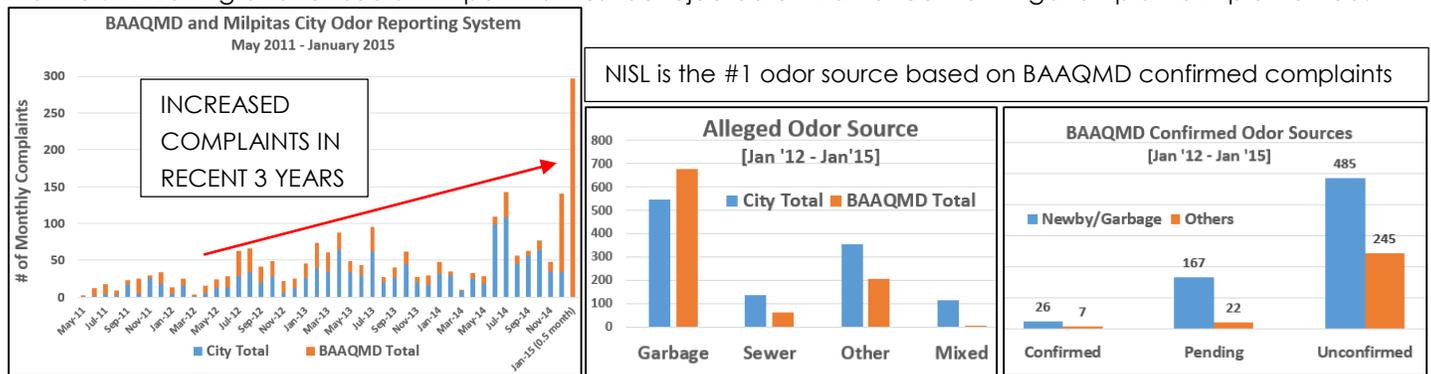
## NISL EXPANSION: PERMIT PROCESS INADEQUACIES

### 1. Odor impact omission. 8X odor complaints & 2 odor nuisance citations issued to NISL after EIR period

(Public Nuisance regulations: CA Health & Safety Code §41700, Title 27 §20760)

The 9/2005-9/2008 period assessed for the EIR documented 3 confirmed and 155 unconfirmed landfill odor complaints, which exceeded threshold of significance set in BAAQMD CEQA 1999 guidelines. The guidelines clearly stated odor impacts on residential areas and other sensitive receptors warrant the closest scrutiny. Yet, the EIR authors negligently concluded odor impact as insignificant based on the narrow scope required by CEQA (which presumes existing condition as an acceptable baseline).

In last 3 years, BAAQMD and Milpitas City logged 1223 garbage/NISL odor complaints, including 26 confirmed, representing 8X increase from EIR period. BAAQMD had issued NISL 2 citations following 297 complaints in first 2 weeks of January '15. Existing Odor Impact Mitigation Plan is ineffective as complaints are rarely investigated in a timely manner. PD zoning and revised SWFP permits must be rejected until an effective mitigation plan is implemented.



### 2. Numerous Landfill Regulation Violations after EIR study period (Title 27 §20919, 20921)

NISL has 6 violations including 5 recurring Gas Control and Monitoring violations after the EIR study period. In Dec 2009, 6 well-probes exceeded the 5% Methane concentration compliance level, with one as high as 85.6%. A revised monitoring plan on 2/18/11 retained only 3 probes and exempted 17 probes (including the probes with high readings). To protect public safety, all 20 probes for landfill perimeter gas monitoring should be reinstated to ensure full compliance with regulations. Illegal NISL activities in past 12 months should also be a basis for permit denial.

Date	Inspection Program	Concern/Violations	Regulation	Remarks
<a href="#">11/25/2014</a>	CalRecycle Focused	Violation	21600-Report of Disposal Site Info 20510-Disposal Site Records	Unapproved activities for past 12 months
<a href="#">04/21/2011</a>	CalRecycle Periodic	None		4 probes >5% threshold (but exempted)
<a href="#">01/28/2011</a>	LEA Periodic	Violation	20921-Gas Monitoring and Control	3 probes >5% threshold
<a href="#">12/20/2010</a>	LEA Periodic	Violation	20921-Gas Monitoring and Control	3 probes >5% threshold
<a href="#">11/29/2010</a>	LEA Periodic	Violation	20921-Gas Monitoring and Control	2 probes >5% threshold
<a href="#">10/26/2010</a>	LEA Periodic	Violation	20921-Gas Monitoring and Control	2 probes >5% threshold
<a href="#">07/20/2010</a>	LEA Periodic	Violation	20921-Gas Monitoring and Control	6 probes >5% threshold since December 2009

### 3. Change in SWFP closure date from 2025 to 2041 is inconsistent with EIR

All EIR documentations (2007 Notice of Preparation, 2009 DEIR, 2012 Amended EIR, Republic's Nov 2009 letter and CIWMB Nov 2009 letter) consistently specified no change to the landfill closure date of 2025 in the Preliminary Closure and Post-Closure Maintenance Plan and SWFP. Hence, the revised SWFP closure date of 2041 is in direct conflict with the EIR text. While there is no provision to place an end date in the zoning permit, there is precedence of SWFP with a closure date condition [Puente Hills SWFP 19-AA-0053:16-6-D-6]. The revised SWFP must be rejected or corrected to include a closure date condition to be no later than 2025.

**4. Land use conformance omission in ColWMP, EIR, PD Permit and SWFP**

Title 27-21570(f)(5) pursuant to CA PRC §50000.5 requires landfill site compatibility with surrounding land uses, and must be remote enough from homes, schools, airports, and other sensitive human activities. It is a fact that NISL was a non-conforming land use (RM zoning with 45ft max height) with residences, schools and parks as close as 0.4 miles when ColWMP was adopted in 1996. It is time to right a wrong, rather than perpetuate an existing problem.

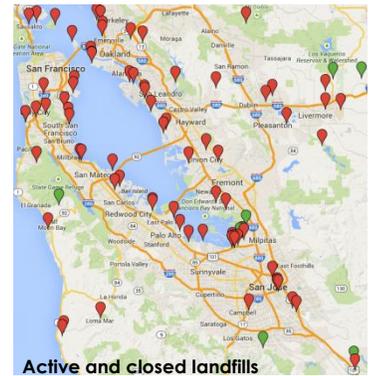
NISL expansion EIR and PD zoning permit ensured conformance within San Jose City boundary only. **Milpitas and Fremont City's land uses which forms a larger portion of NISL's perimeter were not taken into consideration.** San Jose City Planning Staff acknowledged land-use incompatibility with Fremont and Milpitas during 12/10/14 hearing. It is iniquitous to expand a landfill in a heavily populated and environmentally sensitive region.

Across the nation, new residential development encroaching on existing landfill site has resulted in closure of the landfill operations despite conformance with regulations [Eg. Puente Hills Landfill, CA; Bee Ridge Landfill, FL; Martin County Landfill, FL; Southport Landfill, FL; Live Oak Landfill, GA]. EPA estimates more than 6300 landfills were closed between 1988 and 2005, most are near population centers. Due to existing land-use incompatibility, NISL zoning and SWFP permits must be rejected.

**5. 245ft MSL is an unprecedented landfill height along San Francisco Bay**

The original NISL permit for 50.8 million yd<sup>3</sup> is already the #1 largest landfill along SF Bay. Over 50 landfills have been closed since 1960s, none exceeded 160ft. It is atrocious to expand NISL over 1.5x height and 2x capacity of other landfills in a seismically active region, within liquefaction zone and close proximity to waters.

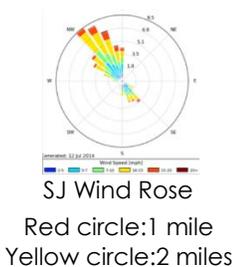
San Jose Planning Staff stuck strictly to the applicant's project design. No discretion was given based on regional profile for aesthetics. NISL site is located at the "Gateway to Silicon Valley" and highly visible from I-880, I-680, CA-237, the high-tech companies that line the region, the new SF 49ers Levi's stadium, and the many refuge and parks dotting San Francisco Bay. At 245ft, NISL will be almost as high as the 2 tallest buildings in Santa Clara County - The 88 (286ft) and San Jose City Hall (285ft).



Rank	SwisNo	Name	Place	Status	Closure Date	Capacity Cubic Yard	Height
1	43-AN-0003	Newby Island Sanitary Landfill	Milpitas(SJ)	Active	6/1/2025 (2041)	50800000 (57500000)	150ft (245ft)
2	07-AA-0001	West Contra Costa Landfill	Richmond	Closed	1/31/2006	22068000	160ft
3	01-AA-0008	Tri Cities Recycling & Disposal	Fremont	Closing	12/1/2008	19271000	150ft

**6. Alternate landfill sites and designs did not receive sufficient consideration.**

Despite regulations that call for landfill to be located away from sensitive receptors, Republic's Vasco Rd Landfill in rural Livermore was not thoroughly evaluated as an alternate site. Kirby Canyon and Guadalupe Mines in South San Jose hillsides, with open space downwind, were not given heavier weight. Lower height and much smaller footprint of the NISL expansion were also not considered. In Dec10 KTVU Fox news report, San Jose Planning Director commented that NISL is the most economical waste disposal solution for its residents. San Francisco city has been transporting waste to rural Livermore landfill since 1987 and is leading the country for landfill diversion rate. **Public safety and environment protection must be top priority over garbage fees.** To protect the welfare of surrounding residents, CalRecycle and SJ Planning Commission should require additional study into alternate sites.



**7. Risk from landfill liner failure and unknown composition**

The EIR had documented that NISL started in 1930s, where composition of some older parts of the landfill is unknown. CIWMB Nov 2009 letter also documented risk of existing landfill liner to hold the additional height and weight of the waste without compromise. These factors were not adequately addressed in the EIR. Additional study should be done to ensure no impact.

**Please reject Newby Island Sanitary Landfill expansion permits.**