

STOP NEWBY ISLAND LANDFILL EXPANSION

Don't let the unprecedented trash mountain continue to pollute our communities and environment



PD14-014 ENVIRONMENTAL APPEAL

Date: December 12, 2016

Pursuant to San Jose Municipal Code § 21.04.140¹ which states:

A. Any determination regarding the appropriate environmental clearance for a project made by the director, planning commission or other non-elected decision-making body may be appealed to the city council as set forth and described in this section

D. Appeals to city council of environmental determinations that a project is not subject to CEQA, is exempt from CEQA under the provisions of CEQA or this title, or should be approved in reliance on a previously certified environmental impact report or adopted negative declaration shall follow and adhere to the provisions of this section

and CEQA California Code of Regulations² Section § 15162-15164 which states:

15162. Subsequent EIRs and Negative Declarations

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

- (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or

¹ San Jose Municipal Code § 21.04.140:

https://www.municode.com/library/ca/san_jose/codes/code_of_ordinances?nodetd=TIT21ENCL_CH21.04GEPRPR_PT2PR_21.04.140APEN

² CEQA California Code of Regulations § 15160 to 15170: <http://resources.ca.gov/ceqa/guidelines/art11.html>

alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

15163. Supplement to an EIR

(a) The Lead or Responsible Agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

- (1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and
- (2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

15164. Addendum to an EIR or Negative Declaration

(a) The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

and CEQA California Code of Regulations³ Section § 15065(a)(3) which states:

The project has possible environmental effects that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

and San Jose Municipal Code § 20.10.120⁴ which states:

20.10.020 - Purpose (GENERAL PROVISIONS AND ZONING DISTRICTS)

The purpose of this title is to promote and protect the public peace, health, safety, and general welfare, and in furtherance of the foregoing to do the following:

1. *To guide, control, and regulate future growth and development in the city in a sound and orderly manner, and to promote achievement of the goals and purposes of the San José General Plan;*
2. *To protect the character and economic and social stability of agricultural, residential, commercial, industrial, and other areas in the city;*
3. *To provide light, air, and privacy to property;*
4. *To preserve and provide open space and prevent overcrowding of the land;*
5. *To appropriately regulate the concentration of population;*
6. *To provide access to property and prevent undue interference with and hazards to traffic on public rights-of-way; and*
7. *To prevent unwarranted deterioration of the environment and to promote a balanced ecology.*

and San Jose Municipal Code 20.100.940-950⁵ which states:

20.100.940 - Findings.

A. The director, the planning commission on appeal, or the city council as appropriate, may issue a planned development permit only if all of the following findings are made:

³ CEQA California Code of Regulations § 15065: <http://resources.ca.gov/ceqa/guidelines/art5.html>

⁴ San Jose Municipal Code § 20.10.120:

https://www.municode.com/library/ca/san_jose/codes/code_of_ordinances?nodeId=TIT20ZO_CH20.10GEPRZODI_20.10.020PU

⁵ San Jose Municipal Code § 20.100.940:

https://www.municode.com/library/ca/san_jose/codes/code_of_ordinances?nodeId=TIT20ZO_CH20.100ADPE_PT8PLDEPE_20.10.0940FI

1. *The planned development permit, as issued, is consistent with and furthers the policies of the general plan; and*
2. *The planned development permit, as issued, conforms in all respects to the planned development zoning of the property; and*
3. *The planned development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and*
4. *The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious; and*
5. *The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.*

20.100.950 - Amendment findings.

A. Amendments may be granted at the discretion of the director, planning commission on appeal, or city council as appropriate upon a finding that the amendment does not negate any findings required by Section 20.100.940.

B. Nothing in this section shall preclude the director, planning commission or city council from making reasonable modifications, additions or deletions to any condition in order to protect the public peace, health, safety, morals or welfare.

We are writing on behalf of 23,000 residents who have signed the “Stop Newby Island Landfill Expansion” online and inked petition to appeal 12/7/2016 San Jose Planning Commission’s decision to reuse the old EIR (based on 2005-2008 study period), i.e. “consider the Newby Island Sanitary Landfill and the Recyclery Rezoning Project Environmental Impact Report, File No. PDC07-071, in accordance with CEQA.”

Reasons for Appeal: San Jose Planning Staff and Planning Commission ignored substantial facts brought to their attention⁶ which provided a basis for the preparation of supplemental/subsequent EIR in accordance to CEQA:

1. **Significant change** in cumulative impacts of the project due to over-concentration of old and new pollution sources
2. **Significant change** in project estimated closure date from 2025 to 2041 (+16 years) which would increase the severity of impacts because they would be occurring for a longer period of time
3. **Significant change** in state regulations and diversion goals leading to excess waste processing capacity in San Jose without any landfill expansion providing superior alternatives
4. **Significant change** in unresolved odor violations and complaints (1000x CEQA threshold, 16x EIR baseline)
5. **Significant change** in cumulative impacts of the project due to incompatibility with surrounding land uses of Fremont and Milpitas with increasing receptors due to urban infills, including North San Jose Area
6. **Significant change** in cumulative impacts of the project due to severe traffic congestion including impact of inflow waste streams from outside the county
7. **New information** for leachate mound non-compliance & water contamination
8. **Significant change** in cumulative impacts of the project due to landfill waste stream and profile

Newby Island is uniquely situated at the border of Federal waters, Milpitas and Fremont, and only accessible through Milpitas roads. Within 2 miles radius of the landfill, there are protected species (such as California clapper rail and salt-marsh wandering shrew), over 10,000 school children, more than 100,000 daytime population and over 120,000 commuters. In order to ease acute housing shortage in Silicon Valley, Fremont, Milpitas and San Jose have approved thousands of new residential units that are within miles of Newby Island facility, increasing the number of receptors.

⁶ Additional description are listed in EXHIBIT A-C

As the high number of public testimonies, odor complaints and violations attest, Newby Island has an ongoing, significant, unacceptable negative effect on surrounding properties and residents.

It is not only immoral, but outright irresponsible and inconsistent with SJMC and CEQA to ignore evidence of **23 unresolved regulatory violations (11 for landfill) and 1 notice to comply** where the latest BAAQMD monthly odor trend remain at orders of magnitude above EIR baseline and compared to similar landfill operations in the region. Due to recurring problems, it is premature to effectuate a project known to create additional significant adverse impacts and rely upon unproven mitigation measures. For eg. MM AIR - 1.1, purchasing gas emission offsets, does absolutely nothing to protect the public from significant increase in air pollutants.

Impact	Mitigation and Avoidance Measures
Air Quality	
<p>Impact AIR – 1: The project would exceed BAAQMD thresholds for nitrogen oxide (NOx) and VOCs/POCs/ROGs.</p> <p>Less Than Significant Impact with Mitigation Incorporated</p>	<p>MM AIR – 1.1: As required by BAAQMD regulations, the project proponent shall be responsible for purchasing NO_x and VOCs/POCs/ROGs offsets for emissions in excess of BAAQMD’s threshold of 15 tons per year of NO_x and 15 tons per year of VOCs/POCs/ROGs or obtaining the offsets through BAAQMD’s Small Facility Banking Account. Prior to issuance of permits from the BAAQMD for the proposed landfill expansion or additional equipment (e.g., expansion of the GRS facility), the project proponent shall be required to purchase emission offsets based on projected project emissions. The offsets are a one time only purchase.</p>

2009 Draft EIR Summary page v

<h2 data-bbox="207 961 977 1003">ENVIRONMENTAL MITIGATION MEASURES</h2> <p data-bbox="224 1012 1425 1033">THE DEVELOPER SHALL COMPLY WITH THE MITIGATION MEASURES OUTLINED IN THE EIR TO SATISFACTION OF THE DIRECTOR OF PLANNING.</p> <p data-bbox="224 1037 354 1058">I. AIR QUALITY</p> <p data-bbox="240 1062 1360 1125">1. AS REQUIRED BY BAAQMD REGULATIONS, THE PROJECT PROPONENT SHALL BE RESPONSIBLE FOR PURCHASING NOX AND VOCs/POCS/ROGS OFFSETS FOR EMISSIONS IN EXCESS OF BAAQMD’S CURRENT ANNUAL EMISSION THRESHOLDS FOR NOX AND VOCs/POCS/ROGS OR OBTAINING THE OFFSETS THROUGH BAAQMD’S SMALL FACILITY BANKING ACCOUNT.</p>
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PD14-014⁷ - C-2A (Land Use Notes)

It is against SJMC §20.100.940 to approve PD permit that has unacceptable negative effect on adjacent properties. **Sound public policy must therefore be made to reduce the pollution burden, not perpetuate or increase them.**

CEQA guidelines state that an EIR shall identify an environmentally superior alternative. San Jose’s Green Vision Goal #5⁸ is to divert 100 percent of the waste from landfill by 2022. The addition of tens of new non-disposal facilities after 2012 to divert waste from landfill, as documented in 2016 Santa Clara Countywide Integrated Waste Management Plan⁹ and mandated by new state regulations, is a superior alternative to landfilling. Through these programs, the county has greatly extended the life of existing landfills (eg. Newby Island extended from 2016 to 2025, Kirby Canyon extended from 2038 to 2059, Guadalupe Mines from 2025 to 2064) since the EIR was written and now has cumulative landfill capacity in excess of 15-years planning requirement from the state. Diversion is working.

According to Republic Services Area President’s response at the December 7, 2016 public hearing, Newby Island landfill remaining life (max 150 feet) has been extended towards 2025 due to waste diversion. As such, the site can now reasonably meet the project 2025 closure date objective without needing any expansion at all. Therefore the alternatives including “no project” must be re-evaluated based on latest diversion parameters and work with other

⁷PD14-014: <http://www.sanjoseca.gov/DocumentCenter/View/62881>
⁸San Jose Green Vision Goal 5: Divert 100% of waste from Landfill and Convert Waste to Energy <http://www.sanjoseca.gov/index.aspx?NID=2950>
⁹2016 Santa Clara Countywide Integrated Waste Management Plan: <https://www.sccgov.org/sites/rwr/rwrc/Documents/10-26-16%20RWRC%20Final%20Agenda%20Packets.pdf#page=42>

municipalities to prioritize zero waste. Through our advocacy efforts, Milpitas has ended unlimited garbage collections and free dump days in favor of organics split-bins and mini-cans to accelerate waste diversion.

*EIR § 1.3¹⁰ (Project Objective): B. Increase the height of the landfill to increase its disposal capacity to allow the landfill to continue to accept historic waste volumes from the region. **No change is proposed to the landfill's estimated closure date (identified as 2025 in the landfill's Preliminary Closure and Post-Closure Maintenance Plan, July 2006) or the landfill's Solid Waste Facility Permit (Permit No. 43-AN-0003, March 1997);***

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|--|
| <ol style="list-style-type: none">2. ESTIMATED DATE OF CLOSURE IS 2025.3. POST CLOSURE END USE WILL CONSIST OF PASSIVE OPEN SPACE, ENVIRONMENTAL CONTROL, AND MONITORING FACILITIES.4. A PLANNED DEVELOPMENT PERMIT WILL BE REQUIRED TO IMPLEMENT THE PD ZONING. ANY NEW USE, INTENSIFICATION OF USE, OR NEW BUILDING NOT PERMITTED IN THE PD PERMIT ARE SUBJECT TO A PD PERMIT ADJUSTMENT OR AMENDMENT. |
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PD14-014¹¹ - C-2 (Land Use Plan)

It is only fair to suspend the expansion until full regulatory compliance is demonstrated, effective odor mitigation is proven and conditions are added such that the project adheres to the final closure date of 2025 as expressed in the EIR and PD Zoning to protect public health, safety and general welfare from the ulterior intent of the site owner to operate indefinitely.

We respectfully request San Jose City Council to **rescind permit PD14-014 and prepare a subsequent or supplemental EIR** to address changes and evaluate project alternatives in accordance to San Jose Municipal Code and CEQA California Code of Regulations.

Attached as supporting information:

EXHIBIT A: Reasons for Appeal

EXHIBIT B: Arguments against planning commissioners' justification

EXHIBIT C: Record of prior public correspondence

Together we can and we will get to zero waste by 2022. Expanding landfills is counter-intuitive to state waste diversion mandates and regional goals.

Thank You for your consideration.

Sincerely,

www.milpitas-odor.info
[fb.com/MilpitasREACH](https://www.facebook.com/MilpitasREACH)

cc: Leonid Kitainik, North San Jose resident representative

¹⁰EIR: <http://www.sanjoseca.gov/DocumentCenter/View/2172>

¹¹PD14-014: <http://www.sanjoseca.gov/DocumentCenter/View/62881>

EXHIBIT A: Reasons for Appeal

San Jose Planning Staff and Planning Commission ignored substantial facts brought to their attention¹² which provided a basis for the preparation of supplemental/subsequent EIR:

A. Public Testimonies of Negative Impact

While Newby Island sits wholly within San Jose boundary, the site is accessible only through Milpitas and Fremont roads and shares a larger perimeter with these 2 cities than it does with City of San Jose. Hence, the [negative impact of the project is disproportionately borne by Milpitas and Fremont residents and visitors](#).

Milpitas has persistently objected the project proposal since 2009 and remains resolute to stop landfill expansion to protect its residents quality of life. More than [23,000 people have signed the "Stop Newby Island Landfill Expansion" petition, including over 5,500 residents from City of San Jose](#). More than [11,000 voters](#) passed Measure L to stop sending Milpitas waste to Newby Island. There has been 4 administrative appeals and 2 lawsuits on this issue alone. Enough is enough. We need municipalities to work together diplomatically on decisions like this one which has far-reaching consequences affecting the region.

B. Regional Goal and Priority

Over 44 San Francisco Bay landfills have been closed upon reaching capacity or no longer compliant with new regulations, but none ever exceeded 160 feet. Newby Island is now the last active and largest bay landfill ever built. [The enormity of waste buried is irreversible and has polluted regional air, water and soil for many generations](#). The landfill should be decommissioned when it reaches permitted 150 feet capacity as it remains non-compliant with new federal regulation. Newby Island should not be exempted. PD14-014 permit effectuates an expansion of unprecedented magnitude in the Greater Bay Area and will forever change the character and landscape of South Bay.

70% of voters across 9 Bay Area countries approved Measure AA¹³, a first of its kind regional ballot initiative that will generate 500 million dollars for restoration of San Francisco Bay wetlands, which has been polluted by landfill, trash, toxins and threatened by sea level rise. This is an overwhelming indicator that restoring the Bay Area's most precious natural resource is a priority. It is a resounding victory for wildlife and people who want a healthy and thriving Bay for future generations.

[Expanding Newby Island, the oldest, largest and last operating municipal landfill in the bay surrounded by wildlife refuge despite environmental impacts and long history of violations, is contradictory to the will and wishes of millions of Bay Area residents](#). San Jose Mayor Liccardo was among 39 Bay Area mayors to endorse Measure AA.

C. Environmental Injustice

The expansion will perpetuate and cause [significant environmental impacts in an area already burdened by severe pollution due to the over-concentration of pollution sources](#) such as WPCP, Newby Island landfill and compost operation along with very recent additions of ZWED, Newby Island MRF expansion and Zanker landfill expansion after 2012 EIR certification. According to Cal EPA¹⁴, the pollution burden index around Newby Island is already at 90 out of 100, one of the highest in the region. Tens of thousands of children and families have a right to breathe clean air. The expansion of Newby Island landfill will worsen the area pollution and against California Statute 65040.12 to protect the public from environmental injustice. The cumulative environmental impacts must therefore be considered in a supplemental EIR.

¹² Additional description are listed in EXHIBIT B-C

¹³ Measure AA -

<http://www.yesonaaforthethebay.com/about>

<http://sfbayrestore.org/docs/Projects.pdf>

¹⁴ CAL EPA CalEnviroScreen <http://www.calepa.ca.gov/EnvJustice/>

D. Excessive number of violations above EIR baseline and threshold of significance

In the past 2 years, Newby Island site received over 33 violations from Local Enforcement Agency (LEA), CalRecycle, Bay Area Air Quality Management District (BAAQMD), RWQCB (Water Board) and Santa Clara County Environmental Health Department (SCEHD) for a wide range of regulatory issues including public nuisance, safety, surface leaks and more. *As of today, 22 BAAQMD violations, 1 SCEHD violation and 1 Notice to Comply (RWQCB) remain active and unresolved. 3 most recent violations were issued in August 2016.* This represents substantial change compared to 0 violation reported during EIR study period (2005-2008). *These findings warrant the preparation of subsequent/supplemental EIR. No permit should be granted until violations are fully resolved, operation is compliant with its existing permit and revert to baseline EIR condition.*

Excerpt from Staff Report¹⁵:

“For the 17 months between December 2014 and September 2016, BAAQMD has issued Notices of Violation (NOVs) to the facility operator for alleged violations at the landfill operation on ten separate days. Of those ten days, where NOVs were issued by BAAQMD for the landfill operation, five of the NOVs involved odor issues. The other NOVs involved operations at the site that are not the subject of this permit. BAAQMD considers these NOVs unresolved and enforcement confidential. Therefore these NOVs could be sustained or dismissed.”

Excerpt from 2012 certified EIR¹⁶:

3.4.2.1 Thresholds of Significance

For the purpose of this project, an air quality impact is considered significant if the project would:

- Violate any air quality standard or contribute substantially to an existing or project air quality violation;*
- Create objectionable odors affecting a substantial number of people.*

E. Chronic odor nuisance above CEQA and EIR threshold of significance

While ERM's report is inadequate due to limited 10-day sampling and failure to account for fugitive odor from surface leaks, its estimated odor impact of 2-4 months a year on 3 surrounding cities (San Jose, Milpitas and Fremont) represents a deplorable condition that must be immediately abated, not expanded or extended. BAAQMD's investigation of odor complaints, as summarized below, also provides *evidence that current odor situation is significantly worse than CEQA threshold and EIR baseline. It is also worse compared to other active municipal landfills. These findings warrant the preparation of subsequent/supplemental EIR.* The current operation hours and tons of waste disposed per day are much less than what is allowed by the permit. This pose a significant risk and impact if the operator increases inflows and operational hours from current conditions.

Excerpt from 2012 certified EIR¹⁴:

BAAQMD CEQA Guidelines for Odor Threshold:

- more than one confirmed complaint per year averaged over a three year period, or*
- three unconfirmed complaints per year averaged over a three year period*

“The Newby Island Sanitary Landfill (NISL) is currently permitted to operate 24 hours a day and to accept an annual average of 3,260 tons of waste disposed per day (tpd) and a daily maximum of 4,000 tpd. “

¹⁵ Staff Report for December 7, 2016 meeting: <http://www.sanjoseca.gov/DocumentCenter/View/62881>

¹⁶ EIR: <http://www.sanjoseca.gov/DocumentCenter/View/2172>

BAAQMD Data	Current Period	EIR Period	Change
Confirmed landfill odor complaints	47 in 36 months	3 in 36 months	16x EIR
Unconfirmed odor complaints	5,469 in 19 months	155 in 36 months	67x EIR
Latest month odor complaints	163	4.4	37x EIR
Open BAAQMD Violations	22 incl. 5 landfill odor, 7 surface leaks	0	Major change

Landfill Name	Total Complaints (Period 12/1/14-10/31/16)	Total Confirmed for Period	% Confirmed for Period	Public Nuisance Violations
Newby Island Landfill, San Jose	6086	240 (47 to landfill operations, 193 to compost or MRF operations)	3.9 %	11 for garbage odor (5-landfill) (6-MRF)
Guadalupe Canyon Landfill, San Jose	130	0	0	None
Kirby Canyon Landfill, San Jose	0	0	0	None
West Contra Costa County Landfill, Richmond	289	27 to sour composted material	9.3 %	3 for sour composted material

F. Superior project alternatives

The City of Milpitas and concerned residents have undertaken steps to consider San Jose's inputs and demonstrate our resolve towards stopping Newby Island expansion. In November 2016, City of Sunnyvale has offered Milpitas the use and partnership in SMaRT station geared towards zero waste and leverage existing truck routes by sending residue to Kirby Canyon Landfill located away from residential areas. This move also reduced garbage rates for all 4 cities in the partnership, [proving that sending waste away from Newby Island can be a socially, economically and environmentally superior alternative](#). Landfill expansion to unprecedented heights even when there is no shortage is counter-productive to waste diversion mandates and reduce urgency to divert trash from landfills to recycling or composting facilities. Superior alternatives must be evaluated per CEQA.

G. New state regulations, diversion goals and excess capacity

[Santa Clara Countywide Integrated Waste Management Plan¹⁷](#) documented 20 years of excess landfill capacity without Newby Island expansion. New regulations (AB341, AB1826) introduced after certified EIR mandates [additional diversion from landfill](#). These regulations will ensure that an estimated 13 million tons of food and yard waste each year, which is one-third of the waste stream will now be diverted away from landfills. Also, many non-disposal facilities are now available to process waste, providing superior alternatives. Superior alternatives must be evaluated per CEQA.

H. Change in Closure Date by 16 years

The project proponent had explicitly stated that final closure date of 2025 will remain unchanged with or without expansion based on all public documents from 2007-2013. The operator has now changed its intent to operate

¹⁷ 2016 Santa Clara Countywide Integrated Waste Management Plan:
<https://www.sccgov.org/sites/rwr/rwrc/Documents/10-26-16%20RWRC%20Final%20Agenda%20Packets.pdf#page=42>

beyond 2041. The increase in duration is a significant change to the project description and objective that must be re-evaluated as extending landfill operations for a longer period of time would increase the severity of impacts on surrounding communities.

Excerpt from 2012 certified EIR¹⁴:

“Extending landfill operations for a longer period of time under the proposed project compared to existing conditions, would increase the severity of impacts because they would be occurring for a longer period of time. “

Republic Services Area President, Mike Caprio, stated on 12/7/2016 that the current permit of 150 feet will not reach capacity until 2023-2025, and likely extend longer due to waste diversions. This is strong evidence that the original project expansion objective could already be met with a “No Project”.

I. Change in Landfill Waste Streams

New addition of MRF and ZWED have drastically changed waste streams to/from Newby Island and profile of environmental impacts on surrounding communities. 7% of Newby Island Landfill disposal tonnage is now from outside Santa Clara County including municipalities as far as Merced and Clovis in Fresno County. ERM study highlighted ZWED byproducts buried at the landfill to be most odorous. As disposal needs decreases, Republic Services may and likely will service farther municipalities with its excess landfill capacity after the expansion is approved. We have already experienced a surge of new contracts after the MRF was expanded in 2012, including San Jose’s exclusive commercial contract and recyclable processing contract from Daly City, Colma, Elk Grove and Clovis. These recyclable processing generates residual waste disposed to the landfill. As such, the cumulative impact of increased waste intake, odor and truck routes from within and outside Santa Clara County is significant.

EIR § 6.5.3.1¹⁸ Impacts from the Project (Changes in Emissions of Greenhouse Gases)

As markets, market demands, recycling programs, and recycling technologies change over time, it is likely that the materials handled by the Recyclery, the materials recovered, and the technologies used to process them will change accordingly. These future conditions cannot be foreseen at this time and may require subsequent CEQA analysis.

J. Water Quality Issues from 150 acres of unlined landfill section

Newby Island failed to meet federal/state regulations¹⁹ as 150 acres remains unlined (~60% of the site) and leachate mound had occurred from past waste loading. Notice to Comply #256488 to reduce leachate elevation to 0 MSL (as issued in 2005) remains unresolved to this day²⁰. Latest water reports show leachate elevation at 38 feet MSL and noted that additional waste loading will worsen leachate elevation. There has been detection of many carcinogens in surface and groundwater, some of which exceeded protection standards. Yet, the PD permit allows height expansion over the unlined and non-compliant sections. This permit will worsen leachate and water contamination.

K. Change in Traffic Conditions after EIR

Due to a growing economy and population growth, Newby Island’s location at I-880 and Dixon Landing Road/CA-237 is increasingly impacted by traffic congestion. Its location is now ranked as #2 worst congested traffic in the Bay Area, compared to rank #22 during EIR period. The 2011 exclusive commercial hauling contract from San Jose and the 2012 expansion of MRF have significantly increased traffic to/from Newby. Also the current average waste and truck volume is below the maximum permitted, and could increase if more and farther municipalities are serviced after the height expansion. With many new industrial, commercial and residential projects planned in Warm Springs (Fremont), Milpitas and North San Jose, the cumulative traffic impact will be very severe and warrants a supplemental EIR. City

¹⁸ Certified EIR: <http://www.sanjoseca.gov/DocumentCenter/View/2172>

¹⁹ Subtitle D (Title 40 Part 258 of the Federal Code of Regulations) and the requirements of Chapter 15 (Article 5, Title 23, Division 3) (extant Title 27) of the California Code of Regulations (CCR)

²⁰ <http://ciwqs.waterboards.ca.gov/ciwqs/readOnly/CiwqsReportServlet?reportName=facilityAtAGlance&placeID=244233>

of San Jose requested City of Milpitas to prepare an EIR²¹ for traffic impact of 22-38 trucks when it considered a new contract with Guadalupe Landfill. It is unclear if any EIR was done to study traffic impact of any of the new contracts at Newby Island, including San Jose's commercial contract which brings in 7x more waste than City of Milpitas.

San Jose's infrastructure policy explicitly states:

"Plan, maintain and operate MRF and landfill facilities in a manner that mitigates potential negative environmental and land use impacts, including increased traffic and traffic hazards."

EIR¹⁷ § 6.0: "City would require that the hours of operation be set by PD Permit with subsequent CEQA review to avoid peak hour impacts. For these reasons, cumulative traffic impacts are not discussed." "Transportation: A traffic analysis was prepared for this project. The Newby Island Sanitary Landfill (NISL) is currently permitted to operate 24 hours a day and to accept an annual average of 3,260 tons of waste disposed per day (tpd) and a daily maximum of 4,000 tpd. The project applicant is not proposing to change these permit conditions. Therefore, the Department of Public Works concludes that the subject project will be in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3) and a determination for a negative declaration can be made with respect to traffic impacts."

L. Land use incompatibility

EIR¹⁷ § 6.0: "Given the nature of the pending and approved projects in Table 6.0-1, their locations, and the impacts and scale of the proposed project, the issue areas for which cumulative impacts could be substantial include air quality, odors, biological resources, hydrology and water quality, and global climate change. "

A supplemental [EIR must consider the cumulative impacts to North San Jose²², Milpitas and Fremont land uses](#). 3 cities share the border with Newby Island, and land use planning had been based on anticipated 2025 closure. Businesses, homes, hotels, community centers and even a university continue to sprout within 0.5 mile and further landfill expansion is incompatible with surrounding land uses. New schools and thousands of new homes are also being built around the new BART stations in Warm Springs, Milpitas as well as 97,000 new jobs, 32,000 residential units and 1,000 hotel rooms are planned for North San Jose.

The odor in areas adjacent to Newby (backed by 11 public nuisance violations) had affected basic rights to property enjoyment. Property values are about 10% lower than Santa Clara County median. Technology companies have trouble attracting top notch talents. Extending the life of Newby may force the tech companies nearby to relocate to stay competitive. As a result, San Jose's tax income will be hurt.

We also highlighted the taxpayer funded, more than \$1 billion, redevelopment and modernization of the neighboring wastewater treatment plant. Key goals of that project include:

- Economic development and job growth - by generating lease, property and sales taxes from office, R&D and commercial development.
- Recreation and public benefit - community park, athletic facility, trails and nature museum.

It is imperative to evaluate the cumulative impact of the landfill in conjunction with these land use plans.

²¹ San Jose letter requiring EIR for Milpitas Disposal Contract http://www.ci.milpitas.ca.gov/_pdfs/council/2016/111416/Item_G.pdf

²² North San Jose Area Development Policy: http://sanjose.granicus.com/MetaViewer.php?meta_id=558712

EXHIBIT B: Arguments Against Planning Commissioner's Justification for Permit Approval

4 out of 5 Planning commissioners have misguided view about morality and failed to evaluate the permit appeal in accordance to SJ General Plan, SJMC and CEQA.

- *Michelle Yesney* : "every community should be taking care of its own garbage. And if we were to close one of our landfills or downsize one of our landfills, that garbage isn't going to disappear. It's either going to go to another landfill in San Jose or we're going to ship it out to the country some place and dump it on somebody else and I personally think that's immoral and unacceptable. As a community, Santa Clara County should be able to manage its own garbage"
- *Shiloh Ballard*: "irresponsible and immoral to ship our garbage to the countryside. That's someone else's community, too, even if nobody lives there, there are creatures that live there"
- *Namrata Vora*: "70% of our trash goes to landfills. We're the technology capital of the world and we are not able to figure out with both our government leaders and corporate leaders how to solve this problem. If you ship it out, you never ever going to change, so that's one of the reasons I'm going to support the measure".
- *Nick Pham*: "This is our problem and we are taking care of it. Shipping the garbage off to another city, we're basically dumping our problem to another city"

ARGUMENT: Based on their logic, then it is equally immoral and unacceptable for San Jose to dump 60% of its waste to Milpitas/Fremont border through its neighbors roads and another 30% to rural Monterey and Hollister landfills at great distance as it does today. Not forgetting San Jose's recyclables are shipped to China. If morality is most important, then San Jose needs to overhaul its entire waste management plan.

SJMC §20.100.940 states "the environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the CEQA, will not have an unacceptable negative effect on adjacent property or properties".

Commissioners failed to acknowledge that the recurring regulatory violations, ERM study, BAAQMD data, 900+ letters, 23,000 petitioners, 6000 odor complaints and hours of public hearings are testimonies that the existing project indeed create unacceptable negative effect on large number of people. It is immoral to continue hurting hundred thousands of people who bore the burden of landfill pollution for decades.

They ignored San Jose's Green Vision Goal to divert 100% of waste from landfill by 2022 and 2016 Countywide Integrated Waste Management Plan²³ approved by the Santa Clara County Recycling and Waste Reduction Commission²⁴, which concluded the following:

- The population growth in the County has been mitigated with the addition of numerous non-disposal facilities.
- The development, implementation and adoption of diversion programs (in addition to zero waste goals, AB341 and AB1826 both prompt jurisdictions to divert material from commercial activities) previously established by all jurisdictions help extend landfill capacity and will continue to do so as these programs and outreach, **help the community understand and buy into the zero waste concept and alternatives to landfilling waste.**
- If Newby Island expansion is denied, county landfill capacity would be estimated at 20 some years which is greater than the 15 years for a Siting Element revision.

The county averages 30% waste to landfill. If San Jose expands landfill, it reduces the motivation to divert waste. Worse, San Jose will increasingly become the dumping ground for others.

²³ <https://www.sccgov.org/sites/rwr/rwrc/Documents/10-26-16%20RWRC%20Final%20Agenda%20Packets.pdf>

²⁴ <https://www.sccgov.org/sites/rwr/rwrc/Pages/Recycling---Waste-Reduction-Commission-Info.aspx>

Ed Abelite: "I'd like to point out that there are many, many, many other sources of odor in the area. There's the WPCP .. \$290 million dollars to improve the WPCP odor component, there's ZWED, there's the bay, there's salt pond. To zero in on a landfill expansion is wrong. I don't believe it. Sometimes China can't accept the recycled paper that is being shipped out of there and you've got bales stacking up. Equipment fails. It's very tough to run this facility and be a good operator. I think Republic is a good operator. One of the biggest tenants of our general plan is to use the existing landfill facilities we that and embrace them expand them and use them until they can no longer be used. To find another landfill site in this day and age of CEQA and neighbors and opportunity sites would be probably as hard as trying to develop a nuclear power plant these days."

ARGUMENT: The public never put all the blame on the landfill. In fact, the public is the one that had informed San Jose staff that there are 2 records of BAAQMD confirmed complaints - 1 based on alleged source and 1 based on confirmed source by BAAQMD enforcement department. And that the staff had analyzed only alleged sources. The staff report has since corrected their data on October 24, 2016, which irrefutably shows that 94% of confirmed source is attributed to Newby Island Landfill and Recyclery, and 3% is attributed to WPCP and ZWED respectively. The public also contest that the ERM study underestimates the severity of odor as its simulations do not match field findings even when comparing the same period where odor samples were taken and therefore inadequately profile odor exposure. Odor breakthrough from landfill surface leaks were not studied even though it is a known recurring problem with evidence of high odor concentration based on prior odor studies provided by Republic Services.

Commissioner failed to recall that Republic Services' attorney had denied any odor responsibility during December 2014 public hearing, at the peak of landfill odor complaints. Republic Services only responded after multiple violations were issued by LEA, CalRecycle, and BAAQMD for that period and direct pressure from elected officials as well as City of San Jose during the permitting process. The LEA permit appeal findings documented lapse in inspector oversight during October 2014 but has since been corrected. BAAQMD odor confirmation process only investigates <10% of complaints. How is the public to rely on the same process that have not always been adequate and had failed us before? We need solutions and reliable processes to be proven before any expansion is granted.

Otherwise, Newby Island will be subjected to the same predicament that had impacted communities living near Republic Services' Sunshine Canyon Landfill since its approved expansion in 2008. That site received over 9,000 odor complaints after the expansion, 2 orders of abatement from SCAQMD to modify the permit, \$27 million in odor improvement measures, 1 class action lawsuit, and recently, a local councilman is starting the process to shut it down. It is imperative to recognize Republic Services' poor operational compliance record, its limited cooperation with the City of Milpitas in the execution of OIMP, and that full-proof odor mitigation does not exist and urban landfills expansion within an area with high population growth will create adverse impact that may never be mitigated.

EXHIBIT C: Record of Public Correspondence

Received by Planning Commission	Link
Before February 11, 2015	http://www.sanJoseca.gov/DocumentCenter/View/39918
Before May 6, 2015	http://www.sanJoseca.gov/DocumentCenter/View/42886
After May 6, 2015	http://www.sanJoseca.gov/DocumentCenter/View/44778
After June 24, 2015	http://www.sanJoseca.gov/DocumentCenter/View/45637
After August 26, 2015	http://www.sanJoseca.gov/DocumentCenter/View/61643
After October 26, 2016	http://www.sanJoseca.gov/DocumentCenter/View/62859