

Newby Island Permit Appeal (PD14-014)

STOP URBAN LANDFILL EXPANSION

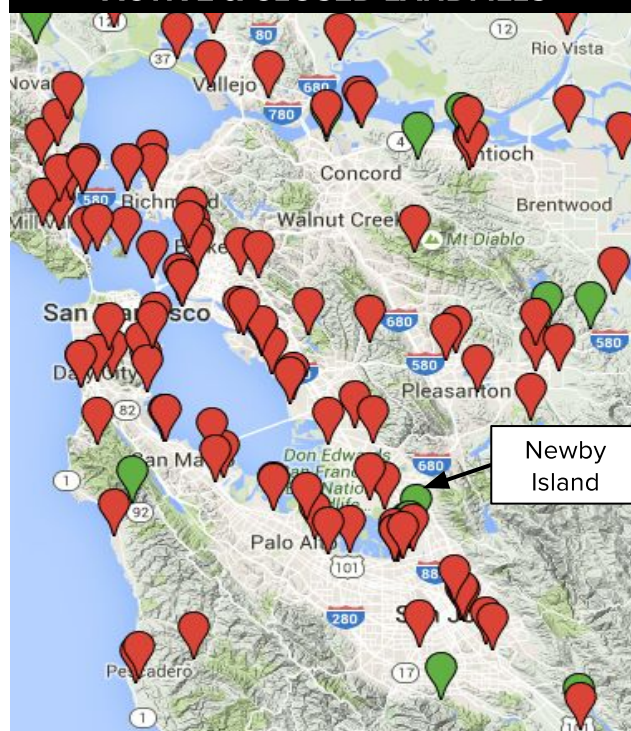
Why is Newby
Island the only
exception ?

STOP NEWBY ISLAND LANDFILL EXPANSION

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



ACTIVE & CLOSED LANDFILLS



5 active landfills within San Jose. Many more outside Bay Area. Excess landfill capacity does not warrant expansion at Newby Island

NEWBY FACTS

Last active & largest landfill on San Francisco Bay. All others closed upon reaching capacity, converted to parks

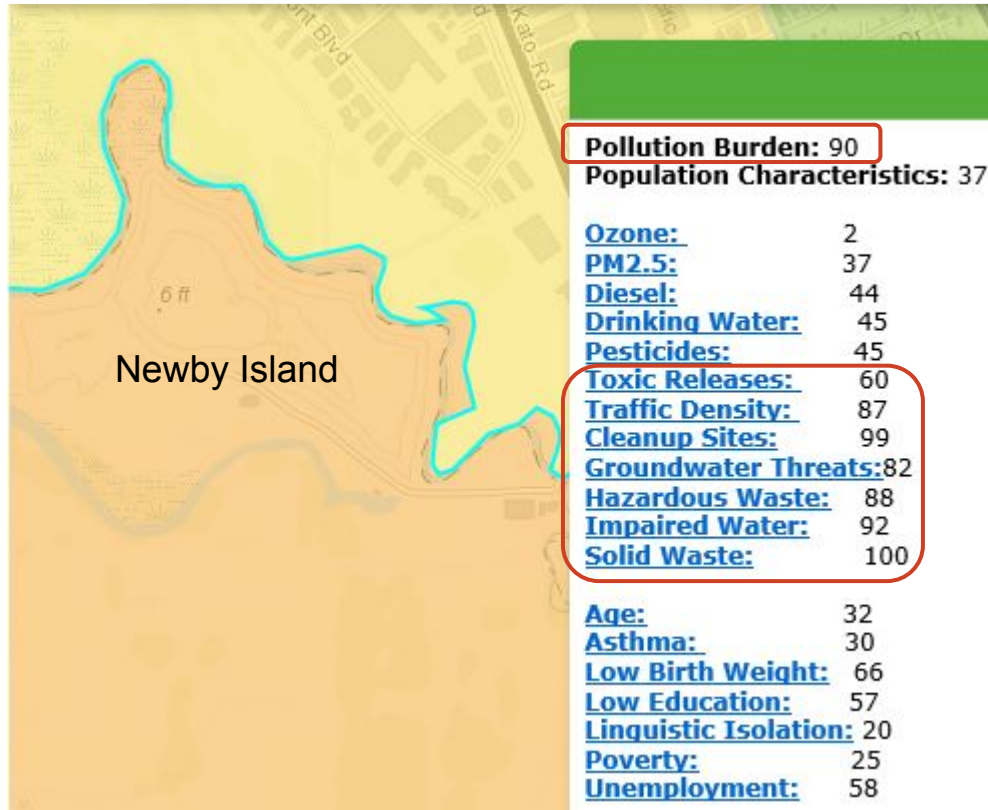
Incompatible land use within 2 miles, including >100,000 daytime population, 8 public schools, sensitive wetlands, protected species

Newby has 32 regulatory violations from 4 agencies, including 10 public nuisance in past 18 months

<10% of waste is from Milpitas. Majority from San Jose City

Landfill at Milpitas, Fremont, San Jose border, with San Jose having full jurisdiction for permitting & enforcement

Environmental Injustice



<http://www.calepa.ca.gov/EnvJustice/>

- Project has significant environmental impacts requiring mitigation.
- Over 23,000 signed the “Stop Newby Island Landfill expansion” petition.
- Chronic pollution with the addition of ZWED, MRF, Zanker Expansion in past 5 years.
- An expansion WILL worsen pollution.
- No expansion as Zero Waste to landfill is a viable option.

Policy makers have an obligation to protect public welfare

San Jose Municipal Code Section 20.10.120 states that the purpose of zoning is *"to promote and protect the public peace, health, safety, and general welfare"*

San Jose Municipal Code Section 20.100.940 states that a PD permit can only be issued if:

"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".

California Code of Regulations Sections 15162, 15163, 15164 also states that the *lead agency has the right to prepare subsequent, supplement, or addendum to a certified EIR on the basis of substantial evidence.*

California Health and Safety Code 41700 - Nuisance "A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, *nuisance, or annoyance to any considerable number of persons or to the public . . .* "

Evidence of substantial changes since 2012 EIR and PD zoning approval:

1. SWFP change of estimated closure date from 2025 to 2041
2. New state regulations, diversion goals and excess landfill capacity in county and Bay Area
3. Recurring odor violations and complaints >1000x CEQA threshold of significance and >29x over EIR period
4. Incompatible with surrounding land uses
5. Severe Traffic Congestion
6. Recurring leachate & water quality issues
7. Landfill waste stream and profile

We demand subsequent EIR to be prepared under CEQA to reevaluate impacts and project alternatives

SUBSTANTIAL CHANGE #1:

**SWFP change of estimated closure
date from 2025 to 2041
(+16 years)**

FACT #1

OVERVIEW AND DESCRIPTION OF THE PROJECT. The project proposes to rezone the 342-acre NISL and the adjacent 10-acre Recyclery from *R-M Multiple Residence, HI Heavy Industrial and A(PD) Planned Development Zoning Districts* to *A(PD) Planned Development Zoning District*. The proposed zoning would not change the lateral extent of the landfill footprint, but would raise the maximum height of the landfill to 245 feet above mean sea level (msl), adding approximately 15.12 million cubic yards to the capacity of the landfill. Presently, the landfill is designed and permitted to an elevation of 150 feet msl. The proposed zoning will update and clarify the legal non-conforming uses on NISL and will specify the allowable current and future uses. **The project will not materially extend the life of the landfill beyond 2025** as identified in the NISL Closure Plan. The Recyclery will continue to operate after the landfill closes.

Site Capacity/Life Projection. As discussed above, NISL's refuse disposal area consists of approximately 313 acres. The total facility capacity is determined based on the difference between the pre-landfill topography and the final disposal area contours. This capacity is expressed as "airspace." The existing design and associated permits specify that the landfill can only be constructed to elevation 150 feet msl. IDC estimates that the landfill property will be fully built out around 2025 (JTD, February 2007).

Remaining currently designed and permitted airspace as of March 2006 was about 10.7 million cubic yards. With the proposed redesign, approximately 26 million additional cubic yards can be landfilled at the NISL. Vertical expansion to elevation 245 feet msl would provide a maximum of approximately 15.12 million cubic yards of additional capacity.

The proposed redesign would specify filling to an elevation of 245 feet msl. **Regardless of the design, landfill activities are anticipated to be completed around 2025.**

End Use of the Site. **All of the existing and future operations will combine to leave the site in condition for final closure in 2025.** After landfill activities have ceased, final cover will be installed as will the appropriate monitoring systems. Currently, the final use for most of the NISL is planned to be passive open space indefinitely. Part of the NISL will be used for ongoing environmental control and monitoring facilities, consistent with the final closure plan. Other than the proposed height increase and associated grading changes, the currently proposed project does not propose any change in the closure plan or the planned end use. The Recyclery will continue to operate after the landfill closes.

2025 final closure date
was explicitly stated in
all project documents
from 2007-2013

2007:
Notice of DEIR Preparation

FACT #2

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);

Examples of Proposed Activities: The proposed redesign would specify filling to an elevation of 245 feet (NGVD29). According to the applicant, regardless of the design, landfilling activities are anticipated to be completed around 2025. No change is proposed to the landfilling operation itself (i.e., to the way in which waste is compacted and covered). No increase is proposed in the gate capacity (limit placed on the quantity of waste that can be brought to the landfill in a single day).

3.6.2.3 *Discussion of Impacts Assuming Landfill Closure in 2025*

According to the project proponent, the approval of the project would not change the landfill's estimated closure date of 2025 (see project objective B in **Section 1.3**). Therefore, the impact

Newby Island Sanitary Landfill is anticipated to close within the next 16 years. The impact of not having a landfill at this location will occur, therefore, at some point in time. Recycling and other forms of waste diversion have increased dramatically since AB939 was passed in 1989, and it is likely that the quantity of waste needing to be landfilled will continue to be reduced in the future. It is also possible that most of the waste generated in the County can be managed by means other than landfill burial by 2025, when the landfill at Newby Island is due to close completely. That outcome is still speculative, however. No change to the post-closure use of the main body of the landfill is proposed by this project.

2025 final closure date
was explicitly stated in
all project documents
from 2007-2013

2007:
Notice of DEIR Preparation

2009:
Draft EIR Released

FACT #3



Sent Via E-mail: janis.moore@sanjoseca.gov

November 5, 2009

Janis Moore, Planner II
Environmental Review Section
City of San Jose
Department of Planning, Building and Code Enforcement
200 E. Santa Clara Street, Tower, 3rd Floor
San Jose, CA 95113

**Re: COMMENTS ON THE DRAFT EIR FOR NEWBY ISLAND SANITARY
LANDFILL/THE RECYCLERY PLANNED DEVELOPMENT REZONING
(File No.PDC07-071)**

Dear Ms. Moore:

I am writing to you on behalf of Browning-Ferris Industries of California, Inc., the operator of the Newby Island Recyclery, and International Disposal Corp. of California, the owner and operator of the Newby Island Landfill (jointly referred to herein as "BFI"). BFI has the following comments on the Draft EIR (DEIR) for the Newby Island Rezoning.

First of all, we want to emphasize that this rezoning application was submitted in order to allow an increase of 95 feet in the height of the sanitary landfill so that we can continue to serve the South Bay cities, including San Jose, with which we have disposal contracts, as well as local residents and businesses. The rezoning is also intended to update the zoning of the Recyclery and what we call the "D Shaped" area, to reflect current uses and to allow flexibility for future recycling activity. There is absolutely no change in the closure plan for the landfill.

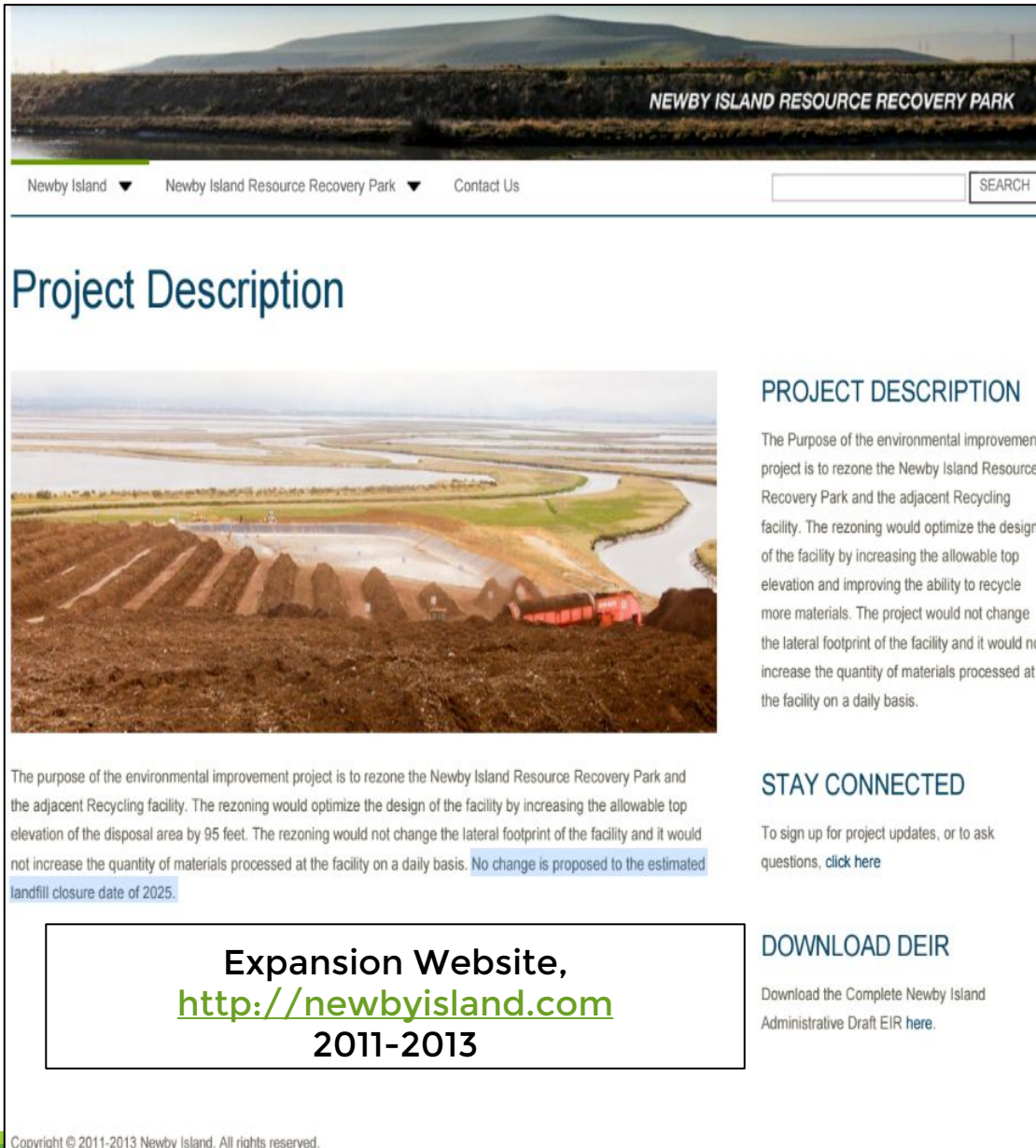
2025 final closure date
was explicitly stated in
all project documents
from 2007-2013

2007:
Notice of DEIR Preparation

2009:
Draft EIR Released

2009:
Republic Services
response to DEIR

FACT #4




NEWBY ISLAND RESOURCE RECOVERY PARK

Newby Island ▼ Newby Island Resource Recovery Park ▼ Contact Us

SEARCH

Project Description



PROJECT DESCRIPTION

The Purpose of the environmental improvement project is to rezone the Newby Island Resource Recovery Park and the adjacent Recycling facility. The rezoning would optimize the design of the facility by increasing the allowable top elevation and improving the ability to recycle more materials. The project would not change the lateral footprint of the facility and it would not increase the quantity of materials processed at the facility on a daily basis.

STAY CONNECTED

To sign up for project updates, or to ask questions, [click here](#)

DOWNLOAD DEIR

Download the Complete Newby Island Administrative Draft EIR [here](#).

The purpose of the environmental improvement project is to rezone the Newby Island Resource Recovery Park and the adjacent Recycling facility. The rezoning would optimize the design of the facility by increasing the allowable top elevation of the disposal area by 95 feet. The rezoning would not change the lateral footprint of the facility and it would not increase the quantity of materials processed at the facility on a daily basis. [No change is proposed to the estimated landfill closure date of 2025.](#)

Expansion Website,
<http://newbyisland.com>
2011-2013

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2025 final closure date
was explicitly stated in
all project documents
from 2007-2013

2007:
Notice of DEIR Preparation

2009:
Draft EIR Released

2009:
Republic Services
response to DEIR

2011-2013:
Newby Island Website

FACT #5

EIR. The landfill currently has an estimated closure date of 2025. This is based on statements from the project proponent and the landfill's post-closure plan. While the project proponent states that the approval of the project (which would increase the capacity of the landfill) would not affect the estimated closure date of 2025, increasing the capacity of the landfill extends landfill operations for a longer period of time compared to existing conditions. 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.

Proposed SWFP Changes:

	<u>Current Landfill SWFP:</u>	<u>Proposed Landfill SWFP</u>
Permitted Hours of Operation:	24 hours per day, 6 days per week (Closed on Sunday)	No Change
Public Disposal Operations:	8:00 a.m. to 4:00 p.m. 7 days per Week (Closed on Sunday)	No Change
Permitted Tons per operating Day:	4000 tons per day.	No Change
Permitted Traffic Volume:	Equivalent of 4000 tons per day.	No Change (approximately 1200 vehicle trips per day)
Permitted Area:	Total of 342 acres, Disposal of 313 acres, Composting of 6 acres.	No Change
Design Capacity:	50.8 Million Cubic Yards (mcy)	65.92 mcy
Maximum Elevation:	150 feet MSL	245 feet MSL
Maximum Depth:	40 feet below MSL	No Change
Estimated Closure Date:	2020	2025

2025 final closure date
was explicitly stated in
all project documents
from 2007-2013

2007:
Notice of DEIR Preparation

2009:
Draft EIR Released

2009:
Republic Services
response to DEIR


2011-2013:
Newby Island Website

2012:
Final EIR

FACT #6

After 7 years promising there would be no change to 2025 final closure date, Republic Services applied and was approved for SWFP in 2014, changing closure date by +16 years to 2041.

Divergence from project warrants subsequent EIR to be prepared.

	<table border="1"><thead><tr><th>Total</th><th>Disposal</th></tr></thead><tbody><tr><td>342 acres</td><td>298 acres</td></tr><tr><td></td><td>57.5 Million cy</td></tr><tr><td></td><td>245 ft</td></tr><tr><td></td><td>40 ft</td></tr><tr><td></td><td>2041</td></tr></tbody></table>	Total	Disposal	342 acres	298 acres		57.5 Million cy		245 ft		40 ft		2041
Total	Disposal												
342 acres	298 acres												
	57.5 Million cy												
	245 ft												
	40 ft												
	2041												
Permitted Area (in acres)													
Design Capacity													
Max. Elevation (Ft. MSL)													
Max. Depth (Ft. BGS)													
Estimated Closure Date													
Upon a significant change in design or operation from that described herein, this permit is subject to revocation or suspension. The attached permit findings and conditions are integral parts of this permit and supersede the conditions of any previously issued solid waste facility permit.													
5. Approval:  Approving Officer Signature Diane Buchanan, Deputy Director, Code Enforcement	6. Enforcement Agency Name and Address: City of San Jose Department of Planning, Building and Code Enforcement Code Enforcement Division, Local Enforcement Agency 200 East Santa Clara Street, T4 San Jose, CA 95113												
7. Date Received by CalRecycle: DEC 09 2014	8. CalRecycle Concurrence Date: FEB 05 2015												
9. Permit Issued Date: FEB 09 2015	10. Permit Review Due Date: FEB 9 2020	11. Owner/Operator Transfer Date:											

SUBSTANTIAL CHANGE #2:

New state regulations, new diversion goals and excess landfill capacity in Santa Clara County and Bay Area

EIR and Staff Report failed to reflect current conditions

Infrastructure Policy IN – 5.15: Expand the capacity of existing landfill sites as the preferred method for increasing the City’s landfill capacity and monitor the continued availability of recycling, resource recovery and composting capacity to **ensure adequate long term capacity**.

Analysis: NISL is a regional solid waste disposal facility that provides the collection and disposal of solid waste for San José residents and businesses. Rather than establish a new landfill site, which would be contrary to the General Plan’s solid waste policies, the proposed project conforms to the General Plan’s preferred method of allowing continued availability and promotion of recycling, resource recovery, and composting capacity to ensure adequate long-term landfill capacity.

FACT #1: Countywide Integrated Waste Management Plan documented unwarranted Newby Island landfill expansion

REFERENCE: Santa Clara County 4th Five-Year Review of the CIWMP (6/22/16)

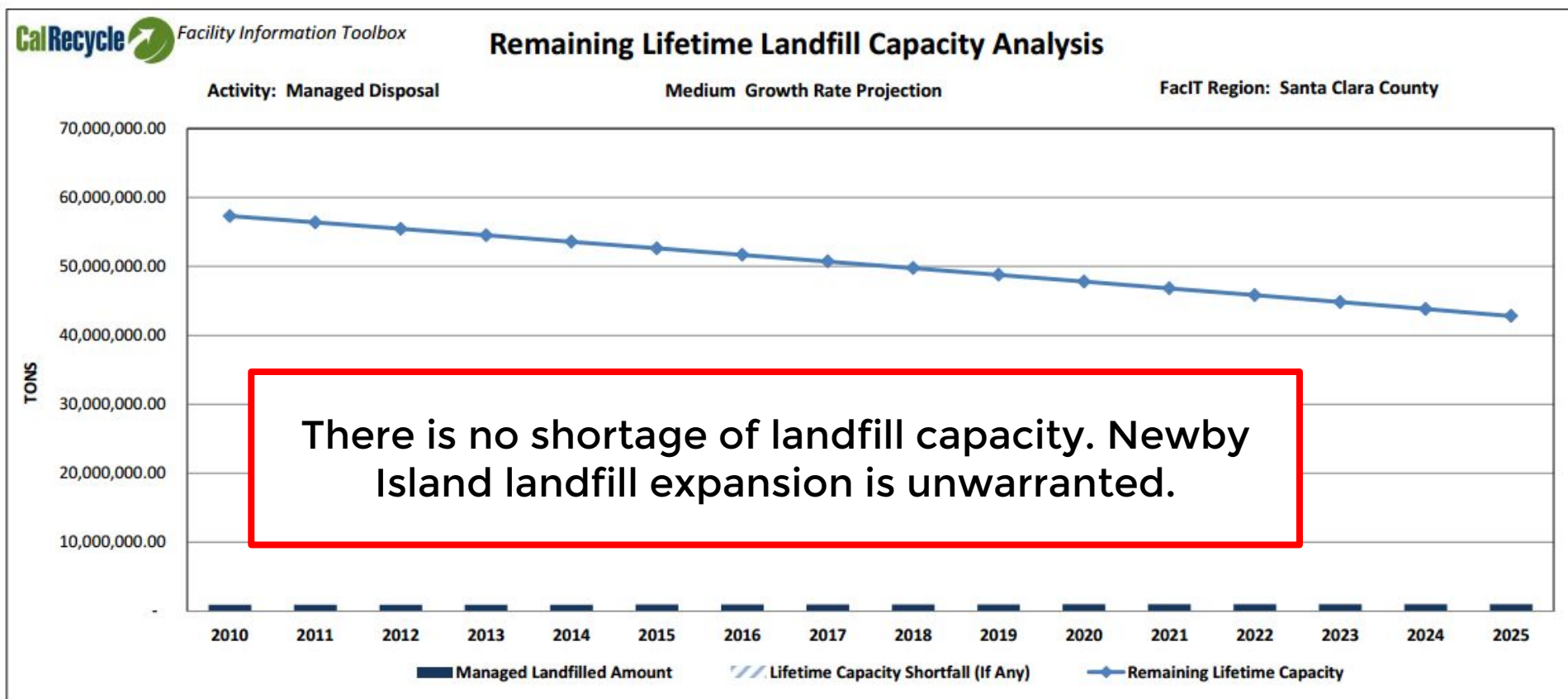
Commission is represented by 15 cities and the county unincorporated area:

- *The population growth in the County has been mitigated with the addition of numerous nondisposal 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 and the 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.***
- ***Newby Island Landfill** currently accepts about 60% of the County's waste and has listed 5-7 years site life is currently undergoing a permit process for expansion. If the expansion goes through, then the site life will be extended to 20-25 years. **If the expansion is denied**, the calculation estimates splitting the material among the remaining two landfills within the County. The volume of material to each site would almost double their current volume which would decrease the site life by half. **This reduction would be estimated at 20 some years which is greater than the 15 years** for a Siting Element revision.*

EIR must reflect substantial changes in waste diversion laws and excess capacity

FACT #2:

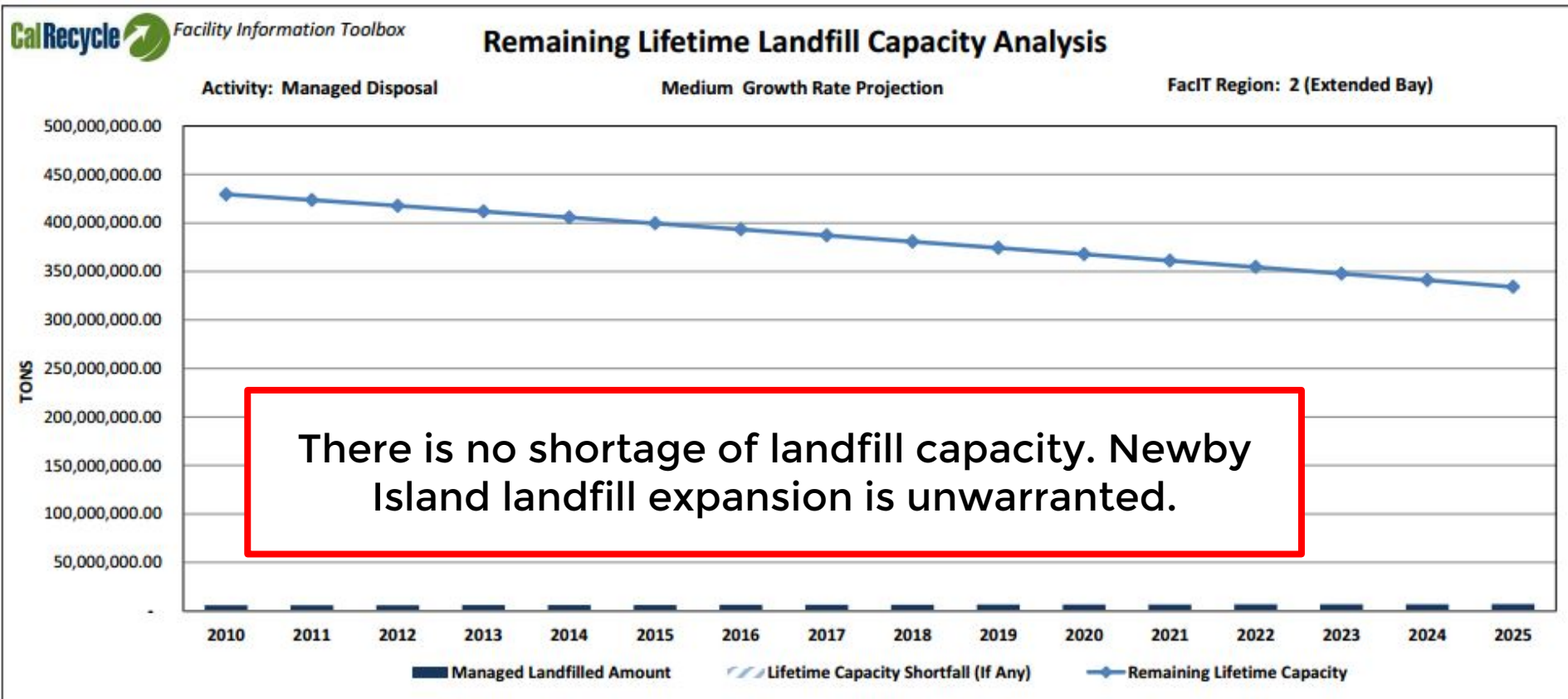
Excess landfill capacity in Santa Clara County



We demand subsequent EIR to be prepared under CEQA to reevaluate project alternatives

FACT #3:

Excess landfill capacity in Bay Area



<http://www.calrecycle.ca.gov/FacIT/Facility/Charts/DisposalGap/bregDispLife.pdf>

We demand subsequent EIR to be prepared under CEQA to reevaluate project alternatives

Countywide Nondisposal Facility Element Additions after EIR study period

1. Lam Hauling, Inc. Leo Recycle (Sixteenth Amendment 2016 - added)
2. ECO Box Recycling, Inc. (Fifteenth Amendment 06/14 - added)
3. Mission Trail Food Materials Transfer/Processing Operations (Fourteenth Amendment 03/14 - added)
4. Valley Recycling San Jose CDI Processing/Transfer Facility (Thirteen Amendment 01/14 - added)
5. Wood Processing Facility at Recology Pacheco Pass (Twelfth Amendment 08/11 - added)
6. Smurfit-Stone Recycling San Jose Facility (Ninth Amendment 3/11 - added)
7. Environmental Resource Recovery, Inc., (Valley Recycling) (Ninth Amendment 3/11 - added)
8. Green Earth Management LLC Kings Row Recycling Facility (Ninth Amendment 3/11 - added)
9. Zero Waste Energy Development Company Anaerobic Digestion Facility (Ninth Amendment 3/11 - added)
10. Recology Silicon Valley Processing and Transfer Facility (Ninth Amendment 3/11 - added)
11. GreenWaste Material Facility and Transfer Station (Eighth Amendment 2/10 - added)
12. GreenTeam of San Jose Material Recovery Facility and Transfer Station (Eighth Amendment 2/10 - added)

SUBSTANTIAL CHANGE #3:

Recurring public nuisance violations
and odor complaints trending >1000x
CEQA threshold of significance and
>29x over EIR period

San Jose Planning Staff report conclusion is fundamentally flawed

*“The ERM study indicates that landfill odors may be detectible on average a little more than **one day per month (0.4% per year)**. The BAAQMD complaint history over the recent **19** month period from December 2014 to **June** 2016 indicates that there were **five days** during that period where BAAQMD issued **odor-related Notices of Violation to the operator**. There is no information about current conditions at the landfill that indicate that there have been any significant changes rendering the baseline for environmental clearance inaccurate or otherwise requiring further environmental review. **Nor is there any indication of significant odor impact.**”*

- Staff failed to provide quantifiable threshold used to define significance.
- Current conditions should be compared against EIR baseline and other operating landfills within San Jose’s jurisdiction.

Evidence of significant odor impacts

Item	Current	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 Violations	22 incl. 5 landfill odor, 7 surface leaks	0	Major change

- ERM study **omitted impact from surface leaks**
- ERM's estimated **odor impact of 2-4 months a year on 3 surrounding cities** is a deplorable condition that requires immediate solution
- MRF expansion in 2012 has aggravated odor problem
- Ineffective landfill odor mitigation

We demand subsequent EIR to be prepared under CEQA to reevaluate project alternatives

Evidence of extreme public nuisance

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

- Total complaints and violations at Newby Island is excessively high in the region

We demand subsequent EIR to be prepared under CEQA to reevaluate project alternatives

2012 Certified EIR - "According to BAAQMD records, in the past three years (September 30, 2005 through September 30, 2008) there have been **155 unconfirmed** odor complaints and **three confirmed** odor complains about the landfill."

FACT #1:

65% of 9 counties total is not infrequent

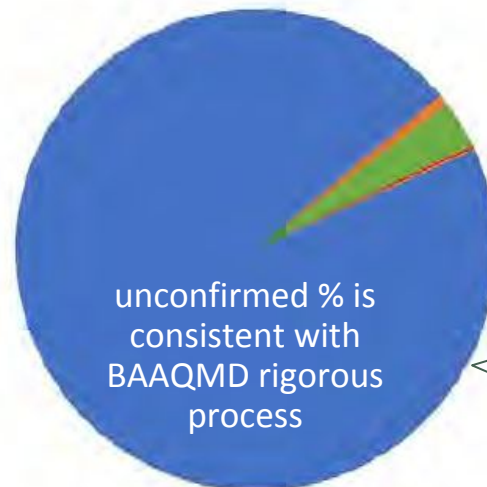
Staff Report - "Greater Milpitas area from December 2014 through March 2016, accounting for approximately 65 percent of the 7,394 total odor complaints received by the BAAQMD from its nine-county jurisdiction"

FACT #2:

Newby Island accounts for 94% of confirmed odor, 15X more Sewage Plant + ZWED

FACT #3:

46 confirmed landfill odor complaints = 29X EIR Baseline



- Newby Island Sanitary Landfill (46)
- Newby Island Recyclery/MRF (186)
- San Jose/Santa Clara Regional Wastewater Facility (10)
- ZWED (Zero Waste Energy Development) (6)
- Unconfirmed Complaints (5,469)

FACT #4:

5,469 unconfirmed odor complaints = 67X EIR Baseline

Figure 4: BAAQMD Odor Complaint Status for Greater Milpitas Area, 12/2014 through 06/2016.
Source: BAAQMD, [revised complaint confirmation](#) data, [received October 19, 2015](#)

FACT #5: Odor trend

- Despite improvement from peak, latest month had ~263 complaints or **37x EIR period**
- No expansion permit should be granted unless odor reverts to EIR baseline. This also proved the EIR is clearly stale and a subsequent EIR should be prepared.

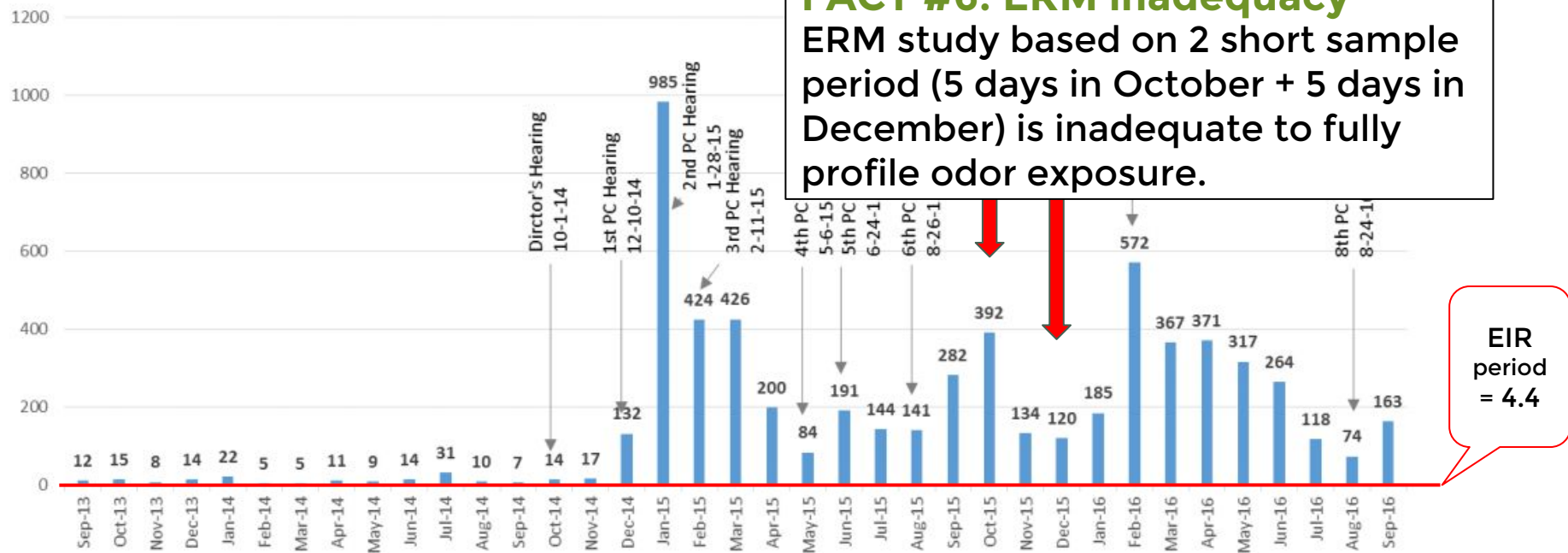


Figure 1: Odor Complaints from Greater Milpitas Area, 9/1/13 through 9/30/16. Source: BAAQMD three-year complaint summary data, received November 21, 2016.

Note: Data includes unconfirmed, confirmed, and pending odor complaints. Not all complaints are associated with the Newby Island Facility.

FACT #7: Landfill Odor Frequency

- There are 47 confirmed landfill complaints over 20 days, or 3% of the year, 7.5X higher than ERM's prediction.
- BAAQMD data must be given heavier emphasis as it covers 22 months investigation, compared to ERM study based on 10-day sampling.
- Confirmed complaints represents only a small fraction of total infractions.

PLANNING COMMISSION
December 7, 2016
Subject: PD14-014

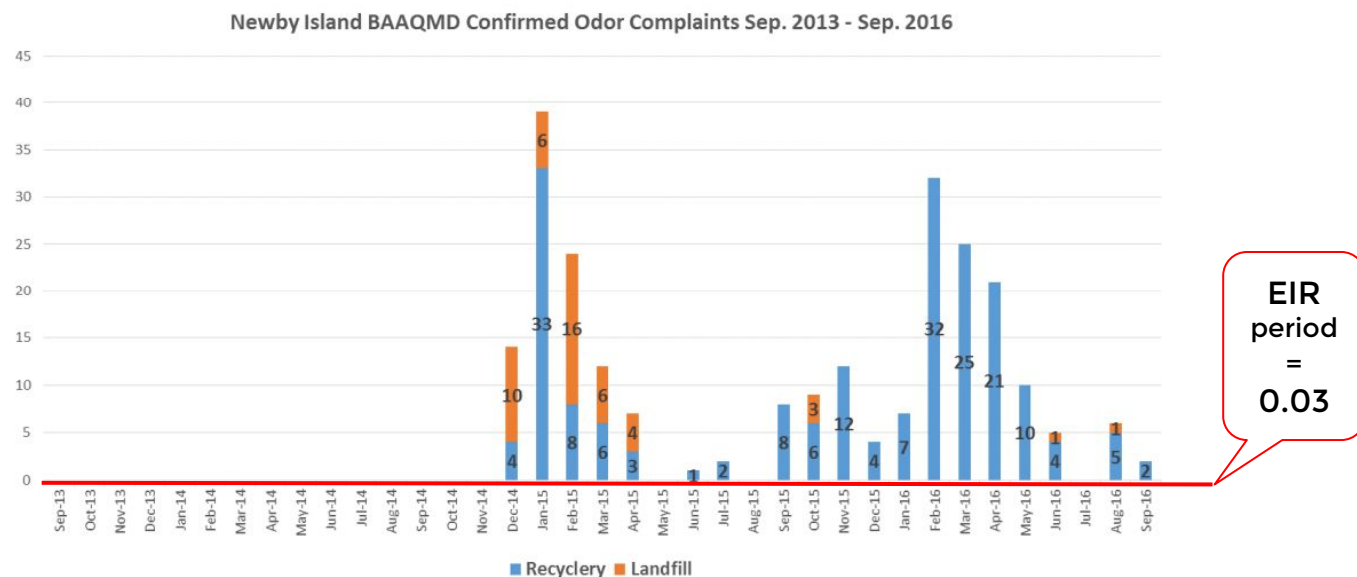












Figure 2: Confirmed Odor Complaints attributed to the Newby Island facility, 9/1/13 through 9/30/16. Source: BAAQMD three-year complaint summary data, received November 21, 2016.

Table 1. BAAQMD Notice of Violation (NOV) History for Newby Facility, 12/2014 through 09/2016

Site	Violation #	Violation Occurrence Date	Regulation violated & violation description*
A9013 (Landfill) 	A52021	12/23/2014	Public Nuisance - garbage odor
A9013 (Landfill) 	A52022	12/27/2014	Public Nuisance - garbage odor
A5472 (MRF/Compost)	A52023	1/8/2015	Public Nuisance - garbage odor
A5472 (MRF/Compost)	A52024	1/9/2015	Public Nuisance - garbage odor
A9013 (Landfill) 	A52025	1/17/2015	Public Nuisance - garbage odor
A5472 (MRF/Compost)	A52026A/B	1/29/2015**	2-1-301 - No Authority to Construct and Permit for MRF & engines
A9013 (Landfill) 	A53960A/B and A53961	2/10/2015	8-34-301.2 & 305 - 1 well leak and positive pressure 8-34-303 - 3 landfill surface leaks
A9013 (Landfill) 	A26693	10/8/2015	Public Nuisance - garbage odor
A5472 (MRF/Compost)	A54233	10/13/2015	Public Nuisance - garbage odor
A9013 (Landfill) 	A53914	10/19/2015	8-34-303 - 20 landfill surface leaks
A9013 (Landfill) 	A53968	10/20/2015	Public Nuisance - garbage odor
A5472 (MRF/Compost)	A53990	11/7/2015	Public Nuisance - garbage odor
A9013 (Landfill) 	A54138A/B	12/9/2015**	2-1-301 & 302 - No Authority to Construct and Permit for biosolids stockpile
A5472 (MRF/Compost)	A56305	2/20/2016	Public Nuisance - garbage odor
A5472 (MRF/Compost)	A52063	2/6/2016	Public Nuisance - garbage odor
A9013 (Landfill) 	A54234A/B and A54235A/B	2/11/2016	8-34-303 & state methane rule - 15 landfill surface leaks 8-34-305.1 & state methane rule - 6 wells at positive pressure
A9013 (Landfill) 	A55678 And A55679	8/16/16	8-34-303 & 17CCR section 95465 - 6 landfill surface leaks 8-34-305 & 17CCR section 95465 - 3 well heads under positive pressure
A5472 (MRF/Compost)	A55681	8/25/16	9-8-304 - Failed source test, NOx limit exceeded by 200%
A5472 (MRF/Compost)	A55682	8/30/16	9-8-204 - Failed source test, NOx limit exceeded by 600%

Source: BAAQMD



Odor Nuisance



Surface leaks

FACT #8: Violations

“BAAQMD considers these NOV unresolved and enforcement confidential. Therefore these NOV could be sustained or dismissed.”

- It is against SJ Municipal code to permit any project that is a public nuisance
- It is irresponsible to make permit decisions with unresolved public nuisance violations
- 13 landfill violations in 17 months is a substantial change from 0 violation during the EIR study period.

FACT #9: LEAKS

Summary of Odor Sample Results

Process Area	Operation	Average D/T
MRF	Receiving/Sorting	306
	Baghouse Systems	141
Working Face	ZWED Waste Dumping	1,230
	Normal Operations	244
Biosolids	Stockpiling	110
Green Waste	Grinding	587
	Stockpiling	223
Compost Windrows	Turning	1,278
	Normal	36
Landfill Gas	At Flare	>60,000

Summary of Odor Concentration Frequencies above 4 D/T

Major Process Group	Fremont Industrial	Fremont Residential	Milpitas	San Jose	Santa Clara
MRF	11.9%	2.8%	12.9%	0.0%	0.0%
Green Waste Receiving and Grinding	16.5%	2.9%	2.2%	0.1%	0.0%
Working Face	3.2%	0.6%	0.4%	0.1%	0.0%
Compost Windrows	1.9%	0.4%	1.4%	0.0%	0.0%
Biosolids Stockpiling	0.0%	0.0%	0.0%	0.0%	0.0%
Landfill Gas	0.0%	0.0%	0.0%	0.0%	0.0%

Note: The reported percent frequencies represent the percentage of time during 1 year that modeled process odor emissions might occur in each community above 4 D/T.

- ERM study did not consider landfill surface leaks, which is the most common recurring violation.
- Card-Schmidt odor study has shown concentration of 6,800 DT from landfill surface leaks.
- If the operator cannot manage leaks in existing operations, the risk of an expansion would likely be detrimental.
- 2-4 months odor impact on surrounding cities is a significant problem.

SEVERE ODOR IMPACTS ON 3 CITIES

FACT #10: MRF expansion in 2012 has aggravated odor problem

- Accounts for 75% of confirmed complaints on 113 days and 7 violations in the past 17 months.
- ERM Study projected 47 odorous days per year from the recyclery.
- No expansion should ever be permitted in this area given the dire situation.

The Mercury News August 9, 2012

News

Milpitas is new home to what's being billed as world's largest recycling plant

"The plant replaces a smaller recycling operation on the same site.

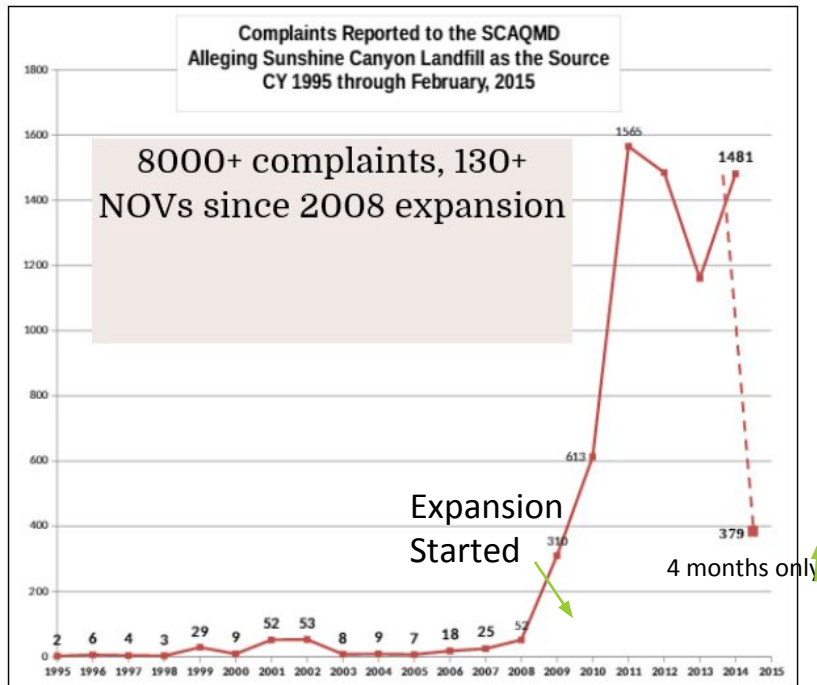
It is the result of the San Jose City Council's decision last year to award a 15-year contract to Republic to collect and process all of the trash and recycled materials from every business in San Jose."



FACT #11: Ineffective landfill odor mitigation

MYTH

Odor impact from landfill expansion is insignificant



FACT:

Expansion permit allows **indefinite** operation as long as capacity remains.

Residents have suffered chronic landfill odor episodes for many decades.

Republic has poor track record in Sunshine Canyon Landfill after expansion

- \$27 million mitigation measures
- 2 Orders of Abatement to modify permit
- Class action lawsuit

Dr. Cyrus Rangan, Director, Bureau of Toxicology and Environmental Assessment, County of Los Angeles, Public Health: "The World Health Organization, and the CDC have been coming out recently with statements saying that things like **odors** and other things of that scale **that affect people's daily quality of life or daily living are considered Public Health issues**".

SUBSTANTIAL CHANGE #4:

**Existing and planned surrounding
land uses**

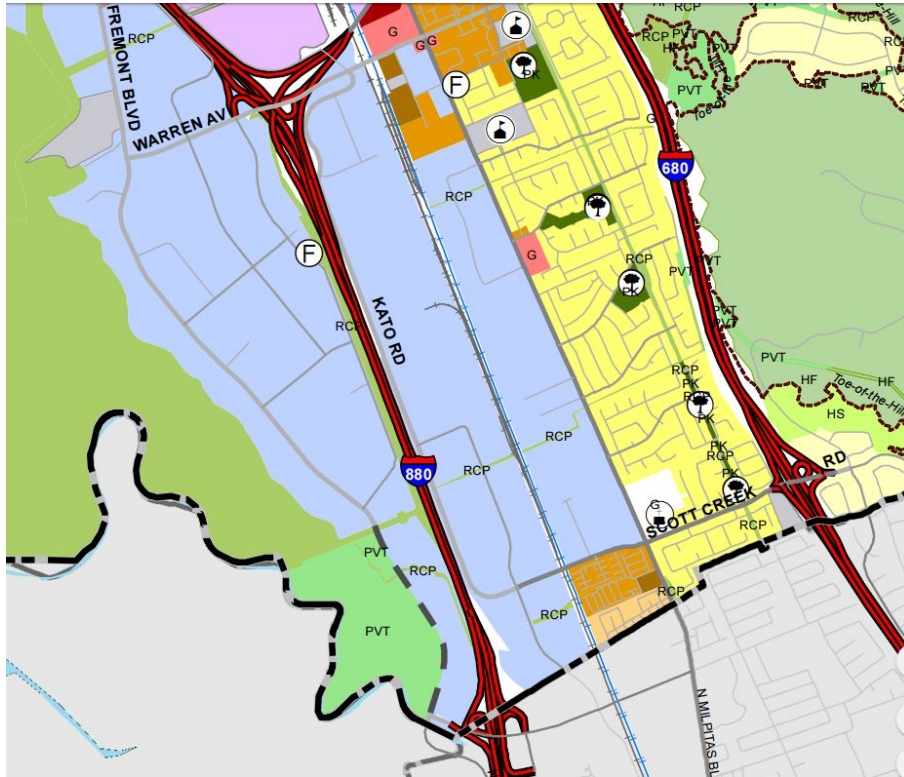
Incompatible Surrounding Land Uses

Infrastructure Policy IN – 5.9: Locate and operate solid waste disposal facilities in a manner which protects environmental resources and is **compatible with existing and planned surrounding land uses**.

*Analysis: An Environmental Impact Report was prepared for this project in conformance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. **The proposed project results in significant environmental impacts.** However, mitigation measures are incorporated to avoid and/or reduce these impacts. The proposed project would not conflict with a habitat conservation plan or natural community conservation plan. The proposed project will not significantly change primary land uses and activities existing at the site and, therefore, will not have a major impact to current and future land uses.*

Staff failed to consider Fremont and Milpitas land uses which directly borders the project

Fremont & Milpitas Land Use



SUBSTANTIAL CHANGE #5:

Severe Traffic Congestion

Staff failed to recognize change in traffic conditions

Infrastructure Policy IN – 5.10: Plan, maintain and operate MRF and landfill facilities in a manner that mitigates potential negative environmental and land use impacts, including surface water or ground water contamination; issues related to birds, insects, rodents or other wildlife; increased traffic and traffic hazards; noise and odor problems; pollution and potential littering of traffic routes; and windborne and waterborne litter.

Analysis: The approved Mitigation Monitoring and Reporting Program includes mitigation for impacts to wildlife, including pre-activity surveys and the implementation of a Nuisance Species Abatement Plan, discussed further below. No impacts to traffic, noise, odor, pollution, or litter were identified.

Congestion Ranking



I-880 to CA-237 & Dixon Landing Road is now in the top 10 most congested locations in Bay Area

EIR Baseline:
2008: Rank #22

Current condition:
2013: Rank #2
2014: Rank #2

We demand subsequent EIR to be prepared under CEQA to reevaluate project alternatives

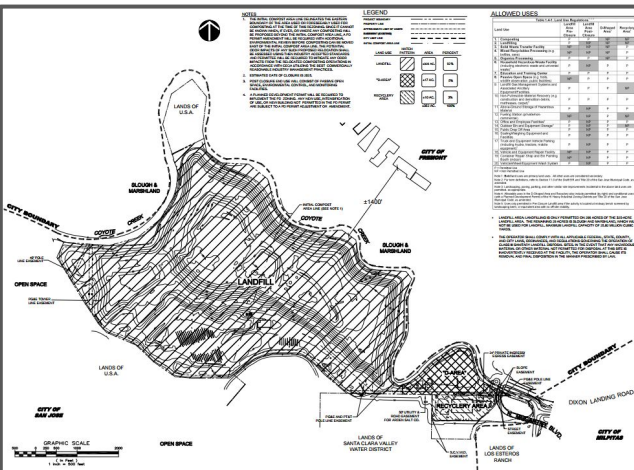
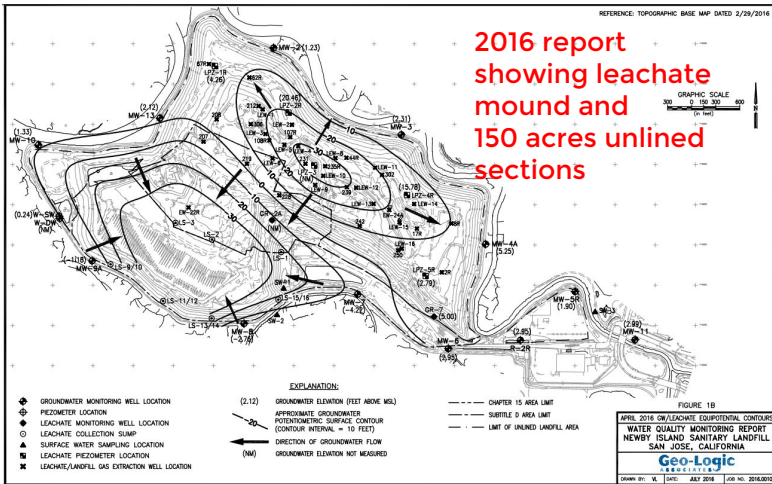
2014 Rank	Location	2014 Daily (Weekday) Vehicle Hours of Delay	2013 Rank
1	Interstate 80, westbound, a.m. — Alameda and Contra Costa Counties CA-4 to Bay Bridge Toll Plaza	8,750	4
2	Interstate 880, southbound, a.m. — Alameda County I-238 to CA-237	7,300	2
3	U.S. 101, southbound p.m. — Santa Clara County Fair Oaks Avenue to 13th Street/Oakland Road	6,550	3
2013 Rank	Location	2013 Daily (Weekday) Vehicle Hours of Delay	2008 Rank
1	Interstate 80, eastbound, p.m. — San Francisco County US-101 to east of Treasure Island Tunnel	6,900	8
2	Interstate 880, southbound, a.m. — Alameda County I-238 to Dixon Landing Road	5,600	22
3	U.S. 101, southbound p.m. — Santa Clara County Fair Oaks Avenue to 13th Street/Oakland Road	5,500	7

SUBSTANTIAL CHANGE #6:

Leachate & Water Quality Issues

LEACHATE MOUND VIOLATION

- On-going corrective action since 2005-present
 - Federal & CA regulations: leachate < 0 MSL
 - 2016 Report: leachate mound at **38 ft MSL**
 - 2014 Report:
 - Mound due to past waste loading in unlined sections
 - “an additional upward gradient is likely to be reestablished when additional waste is placed in this area.”
 - In 6/21/2016 LEA report: “MSW waste is being placed on the north unlined portion of the landfill.”
- 2012 certified EIR is based on 2008 report
 - Expansion permit = 296 acres for landfill
 - **150 acres unlined**
 - 52 acres insufficiently lined
 - It is reckless to expand on unlined area with known violation



We demand subsequent EIR to be prepared under CEQA to reevaluate impacts and project alternatives

RECURRING GROUND/SURFACE WATER CONTAMINATION

[RWQCB reports](#) show recurring exceedance of water quality protection standards every year since 2012 Certified EIR:

- 2016: Chloroform and styrene
- 2015: Total Kjeldahl Nitrogen (TKN), carbon disulfide, bromodichloromethane and chloroform
- 2014: acetone, carbon disulfide, toluene, acetone, MEK and TKN
- 2013: styrene, toluene, carbon disulfide
- 2012: Ammonia, chemical oxygen demand (COD) and TKN

Chloroform, styrene and bromodichloromethane are carcinogens

We demand subsequent EIR to be prepared under CEQA to reevaluate impacts and project alternatives

42. The beneficial uses of Coyote Creek, Mud slough, and South San Francisco Bay are as follows:

- a) Wildlife habitat;
- b) Brackish and salt water marshes;
- c) Water contact recreation;
- d) Non-water contact water recreation;
- e) Commercial and sport fishing;
- f) Preservation of rare and endangered species;
- g) Estuarine habitat; and
- h) Fish migration and spawning.

43. The present and potential beneficial uses of the deeper groundwater (below elevation -85 MSL) are as follows:

- i) Domestic and municipal water supply;
- j) Industrial process supply;
- k) Industrial service supply; and
- l) Agricultural supply.

1,4-DIOXANE IN GROUNDWATER EXCEEDS DRINKING WATER NOTIFICATION LEVEL (1 PPB)

- 1,4 dioxane has not been detected above the Notification Level in public drinking water supply wells in Santa Clara County or any other Bay Area county
- **BUT, groundwater testing** shows:
 - Zanker Road Landfill reports up to 93 ppb
 - **Newby Island Landfill reports up to 92 ppb**
 - Current screening level is 50,000 ppb for estuarine protection only
- Tighter consideration must be given to **protect all potential sources of drinking water**

Newby Island Landfill Waste Discharge Requirements:

“Some groundwater underlying and adjacent to the site **qualifies as a potential source of drinking water**, although there is no current use of the site's groundwater, nor any anticipated plans for its use.”

43. The present and potential beneficial uses of the deeper groundwater (below elevation -85 MSL) are as follows:

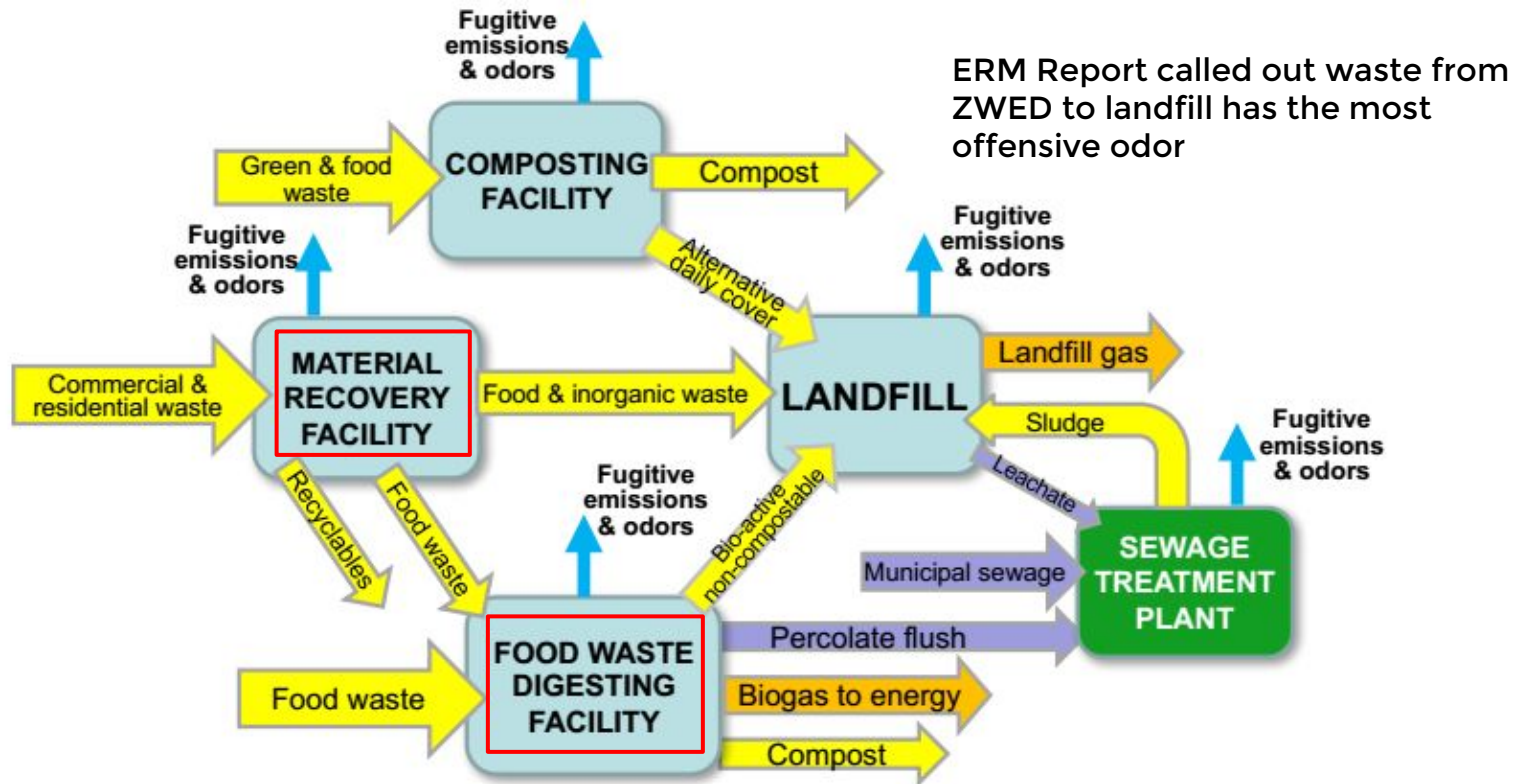
- i) Domestic and municipal water supply;

We demand subsequent EIR to be prepared under CEQA to reevaluate impacts and project alternatives

SUBSTANTIAL CHANGE #7:

Landfill Waste Streams and Profile

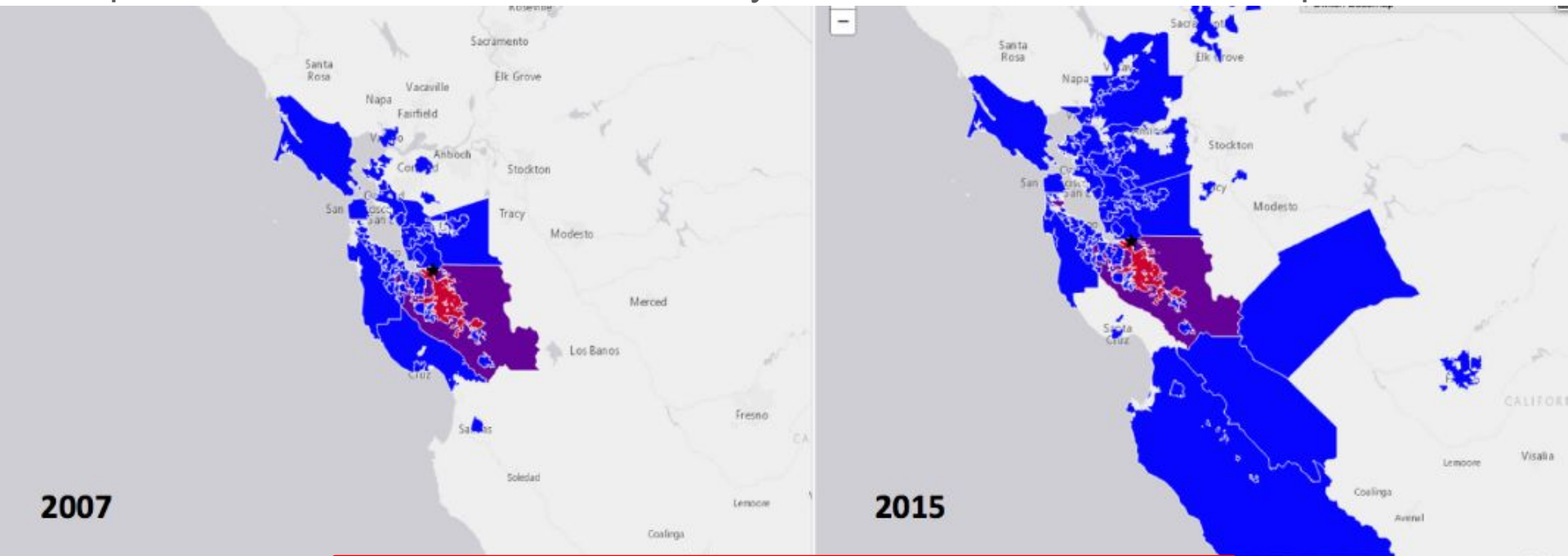
ADDITION OF MRF AND ZWED DRASTICALLY CHANGED WASTE STREAMS TO NEWBY ISLAND LANDFILL AFTER EIR STUDY



We demand subsequent EIR to be prepared under CEQA to reevaluate impacts and project alternatives

NEWBY ISLAND EXPANDING WASTE INFLOWS FROM OUTSIDE SANTA CLARA COUNTY

After EIR study period, waste inflows to Newby Island have been drastically expanded, from as far as Fresno County, more than 600 miles round trip



We demand subsequent EIR to be prepared under CEQA to reevaluate impacts and project alternatives



STOP NEWBY ISLAND LANDFILL EXPANSION

*Protect our environment and
communities today.*

Follow our efforts:
“Milpitas REACH”



It is irresponsible and against state and municipal code to permit Newby Island expansion, a public nuisance with 20 open violations, when alternatives exist.

DENY PERMIT TODAY

We demand a subsequent EIR to protect public welfare

Backup Only

MYTH #6:

A series of effective measures are in place to eliminate odors from the Newby Island

 **REPUBLIC SERVICES** <http://newbyislandfacts.com>

Industrial misters with odor eliminating additives



Milpitas Odor Information

The Newby Island Resource Recovery Park is situated along several sources of odors that impact the surrounding communities. These predominant odor

The misting system uses a high-pressure fine mist containing 95% water and 5% odor control agent. Eight systems are placed strategically throughout the site.

FACT:

Odor Mitigation System does not alleviate landfill gas hazards and interferes with monitoring

Title 27 CCR §20760:

"The detection of off-site odors may result from landfill gases that typically consist of potentially hazardous and toxic components. **Use of odor masking agents does not alleviate any hazard from landfill gas.** Their use may actually interfere with the detection and monitoring of landfill gases making it difficult to evaluate their potentially harmful effects and may delay required corrective action. "

H2S Odor Reference from CDC

Agency for Toxic Substances and Disease Registry:

<http://www.atsdr.cdc.gov/phs/phs.asp?id=387&tid=67>

“Hydrogen sulfide (H₂S) is a flammable, colorless gas that smells like rotten eggs. People usually can smell hydrogen sulfide at low concentrations in air, ranging from 0.0005 to 0.3 parts per million (ppm) (0.0005-0.3 parts of hydrogen sulfide in 1 million parts of air).”

“Hydrogen sulfide air concentrations from natural sources range between 0.00011 and 0.00033 ppm.”

“No health effects have been found in humans exposed to typical environmental concentrations of hydrogen sulfide (0.00011-0.00033 parts per million [ppm]).”

“Exposure to low concentrations of hydrogen sulfide may cause irritation to the eyes, nose, or throat. It may also cause difficulty in breathing for some asthmatics.”

- ☐ BAAQMD measured 1-6 ppb H₂S in our community
- ☐ 12-18X higher than natural air.
- ☐ It is above the detectable range of 0.5 ppb (or 0.0005 ppm)
- ☐ **Scientific evidence** that residents are experiencing odorous air