

CITY OF YUBA CITY
STAFF REPORT

Date: January 15, 2019
To: Honorable Mayor & Members of the City Council
From: Darin E. Gale, Interim Development Services Director
Presentation By: Denis Cook, Land Use Planning Consultant

Summary:

Subject: Consideration of an appeal of the Planning Commission's approval of Use Permit 17-05 and Environmental Assessment (EA) 17-10, filed on behalf of "Stop the Dump." The site is located at 140 Epley Drive (South of Lincoln Road, east of Garden Highway (A.P.N.s 54-083-014, 015, and 023).

Recommendation: Conduct Public Hearing and after consideration:
Consistent with the last approval of a City body, adopt a Resolution denying the appeal, and approving and adopting the Subsequent Initial Study/Mitigated Negative Declaration EA 17-10 for the project and Use Permit 17-05.

Fiscal Impact: The appeal costs are a flat fee paid by the appellant to the City intended to cover staff costs.

Purpose:

Consideration of an appeal of the Planning Commission's approval of UP 17-05 and EA 17-10.

Background:

Recycling Industries (RI) currently operates a recycling center under Use Permit (UP) 07-12 at 140 Epley Drive. UP 07-12 was approved by the Planning Commission (Commission) on February 29, 2008, and the time to challenge the approval has expired. To date, the City has not received any complaints filed by neighbors or other concerned citizens about RI's current operation under UP 07-12.

In 2012, RI then submitted another application for a Use Permit, UP 12-01, to convert its recycling center into a Large Volume Transfer Station (LVTS). The City prepared an Initial Study/Mitigated Negative Declaration (IS/MND; Environmental Assessment (EA) 12-02), which analyzed the potential impacts associated with construction and operation of a LVTS with a maximum throughput of 100 tons per day (TPD) of mixed waste and recyclables.

After a public hearing on July 23, 2014, the Commission approved UP 12-01 and EA 12-02 for the project subject to compliance with an array of conditions including the following:

1. Operations to be conducted on three acres.
2. Ability to remove two metal buildings and the construction of a new 21,600 square foot building.

3. Would permit the facility to receive 100 tons or less per day of additional mixed recyclables and solid waste.
4. Would allow RI to expand existing operations for the acceptance of solid waste (i.e., putrescible material) of up to 10 percent of all delivered material.
5. Would allow for self-haul only. Packer garbage trucks (as defined below) would not be permitted.
6. The Use Permit would be reviewed annually by the Planning Commission for three years following construction of the facility.

Under approved UP 12-01, the facility operator is permitted to operate a LVTS that can accept up to 100 TPD of mixed recyclables and solid waste with a cap of 10 percent putrescible material of all material collected. Solid waste can include garbage from self-haul vehicles, commercial box vans and roll-off trucks. As conditioned, the facility is not permitted to receive packer trucks with garbage but could receive green waste in this form.

The time to challenge approval of UP 12-01 has expired. Because RI has not developed the site as approved per UP 12-01, the permit has not been effectuated and, similar to all other Use Permits, could become null and void for inaction. However, in this particular case, RI has received three extensions of UP 12-01. Table 1 provides a timeline of UP 12-01:

Table 1: UP 12-01 Timeline⁽¹⁾

	Approved	Expiration Date
<i>Original approval</i>	July 23, 2014	July 23, 2016
<i>Extension 1</i>	August 24, 2016	July 23, 2018
<i>Extension 2</i>	June 13, 2018	July 23, 2020

(1) The table reflects the dates the Commission took action, not the date the extension was requested by the applicant.

Use Permit extension requests are forwarded to the Commission for consideration and no modifications to the original Conditions of Approval as stipulated by the Commission have been considered nor approved. Also worth noting is that similar to other LVTS, the Sutter-Yuba Local Enforcement Agency (LEA) is responsible for ensuring compliance with applicable State mandated requirements. As a LVTS, the LEA requires that RI submit periodic reports has the ability to issue warnings and citations.

In 2017, Dave Kuhnen, on behalf of RI, requested authorization to amend previously approved UP 12-01. RI proposed to modify UP 12-01 and obtain a revised Large Volume Transfer/Processing Solid Waste Facility Permit (SWFP) to:

- Increase the maximum throughput from 100 tons per day (TPD) to 300 TPD of mixed waste and recyclables;
- Remove the 10 percent putrescible waste limit condition in UP 12-01. This removal would allow RI to receive waste that might contain more than 10 percent putrescible waste;

- Allow packer trucks to bring garbage to the subject site. Packer trucks are waste collection vehicles such as rear loaders, side loaders and front loaders. They are used primarily for the collection of waste that will be delivered to a disposal site for transfer, reprocessing, treatment or a landfill that is located off-site. These trucks are equipped with mechanized compaction abilities that allow the waste to be compressed or densified, thus allowing for greater route efficiencies. In the Yuba-Sutter Area, the current waste hauler uses front-loaders and side loaders as commercial compaction vehicles;
- Disallow packer trucks to deliver source separated residential and commercial green waste to the site;
- Expand the project site area from three to four acres through the addition of Assessor's Parcel 54-083-015;
- Add an inbound truck scale and modular scale-house/weighmaster office (approximately 700 square feet);
- Add, modify, and abandon driveways;
- Relocate onsite an existing 1,800 square foot (sf) metal building that had been slated for demolition;
- Expand the proposed transfer and processing building from 18,000 sf to 21,600 sf; and,
- Merge APNs 54-083-014, 54-083-015 and 54-083-023.

As part of review of RI's request to amend UP 12-01, staff notified RI that it would need to retain, at their expense, a qualified environmental consultant to prepare the necessary subsequent environmental review documents pursuant to the California Environmental Quality Act (CEQA). RI selected, and the City approved, Clements Environmental. Upon receipt of the draft Subsequent Initial Study/Mitigated Negative Declaration (IS/MND), the City retained an independent consultant, Benchmark Resources, to peer review the Subsequent IS/MND that evaluated the potential environmental impacts associated with RI's proposed changes to UP 12-01.

Planning Commission Action:

At its meeting of November 28, 2018, the Planning Commission conducted a public hearing to consider the environmental assessment and the development permit. Following the staff presentation and public input, the Commission adopted the Subsequent IS/MND for EA 17-10, which states that with the recommended mitigation measures, the proposed modification of UP 12-01 would not create any significant environmental impacts. The Commission also approved DP 17-03 and UP 17-05 with a total of 58 conditions that enables RI to modify its three-acre Large Volume Transfer/Processing Solid Waste Facility and add an additional 1-acre parcel.

While the Commission approved the project, it significantly reduced the RI's requested material volume to the amount that is presently permitted by UP 12-01. The Commission allowed the one-acre expansion to occur, and allowed for revisions to the site plan including the expansion of an 18,000 square foot building to 21,000 square feet, as well as several other restrictions. In the end, the additional conditions placed by the Commission on UP 17-05 are more restrictive in several respects than the previously approved UP 12-01, provide an improved site layout for the project, and allow RI to expand its facility from three to four acres. The full Commission's staff report and supporting documents are included as Attachments to this staff report.

Appeal:

On December 7, 2018, Stop the Dump appealed the Planning Commission's action approving the project and was timely received by the City Clerk's office. The appeal cited two grounds (see appellant letter provided as Attachment 1):

1. The Commission "erred in voting to approve the project without recirculation of the Mitigated Negative Declaration ... because mitigation measures and [the] description of project operations were added;" and
2. The "revised Conditions of Approval still require bonding, and other methods to ensure proper enforcement need to be added so that the construction and operation of the revised Recycling Center is fully enforceable."

Environmental Determination:

Pursuant to California Environmental Quality Act (CEQA) Article 19, Section 15070(b)(1) an environmental assessment including an Initial Study and Subsequent Mitigated Negative Declaration (MND) and Mitigation Monitoring Program (MMP) was prepared for the project.

Based upon the attached environmental assessment (EA 17-10), including the mitigation measures, all potentially significant impacts are reduced to less than significant. The findings of the Subsequent MND are that, with the proposed mitigations for cultural resources, greenhouse gases, and traffic, the project will not create any significant impacts on the environment. As a result, the filing of a Subsequent MND is appropriate in accordance with the provisions of CEQA.

Appeal Analysis:

Regarding the appeal, staff offers the following:

Appellant comment #1: Regarding the allegation the Commission erred in voting to approve the project without recirculating the Subsequent Mitigated Negative Declaration because additional mitigation measures and the project description were added after initial circulation.

Staff response: The appellant's letter does not provide any details as to which mitigation measures or description of project operations were allegedly added or why those items would require recirculation. That being said, recirculation is not required by CEQA as the Use Permit and mitigation measures approved were more stringent than those analyzed in the IS/MND, and were not mitigation measures or project revisions added to reduce a new, avoidable significant effect to insignificance. Further, the Planning Commission did not add these conditions of approval after determining that mitigation measures in the Subsequent MND were inadequate to ensure effects would be less than significant.

The project description originally utilized for the environmental document was based on RI's request. The environmental document analyzed that request and found that, with mitigation measures imposed, there were no potentially significant environmental impacts associated with the proposed expansion. While a reduced, smaller project than originally proposed was approved by the Commission, such reductions would serve to likewise reduce – not increase – impacts that were already less than significant based on project design and with mitigation imposed.

The CEQA Guidelines explain that recirculation of a negative declaration is required if the negative declaration has been “substantially revised after public notice of its availability.” (14 C.C.R., § 15073.5(a).) The Guidelines expand on this language, explaining that:

(b) A “substantial revision” of the negative declaration shall mean:

(1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or

(2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

(c) Recirculation is not required under the following circumstances:

(1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.

(2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.

(3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.

(4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

The Commission added multiple conditions of approval for the project at the hearing. For example, the Commission limited the project to 100 tons of material per day, prohibited the queuing of vehicles on public roadways, and required tires to be stored in a single bin no larger than 40 yards in size (these changes also resulted in corresponding changes to the description of project operations).

Notably, none of the Commission's conditions of approval were mitigation measures or project revisions added to reduce a new, avoidable significant effect to insignificance. Further, the Planning Commission did not add these conditions of approval after determining that mitigation measures in the Subsequent MND were inadequate to ensure effects would be less than significant. That is, the Planning Commission did not identify any new significant effects that required new mitigation measures or project revisions or determine that proposed mitigation was inadequate, and no changes the Subsequent MND were made or warranted.

As explained in the Subsequent MND, all environmental effects would be less than significant after incorporation of mitigation proposed in the Subsequent MND. The additional conditions of approval required by the Planning Commission will undoubtedly further reduce environmental effects, but no further mitigation was required by CEQA. Thus, the Planning Commission's incorporation of conditions of approval is consistent with the text in the CEQA Guidelines, explaining that recirculation is not required when: “Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.” (14 C.C.R., § 15073.5(c)(3).) Thus, the Planning Commission's conditions of approval

(and corresponding changes to the project description) do not meet the definition of a “substantial revision” as found in the CEQA Guidelines, and recirculation was not required.

Appellant comment #2: The “revised Conditions of Approval still require bonding, and other methods to ensure enforcement needed to be added so that the construction and operation of the revised Recycling Center is fully enforceable.” (Staff note: The appeal did not identify any specific project conditions that required bonding).

Staff response: Bonding is not a good solution in this case as bonds are typically for limited time periods to ensure that a requirement is fulfilled. For example, a proper use of bonding may be to require a bond to be kept in place while giving a land subdivider one year to finish various road improvements. If that subdivider does not complete these public improvements the City can utilize the bond money to finish the improvements. In the case of Recycling Industries, there are no public improvements that would need bonding.

Bonds can also be utilized for an ongoing operation but would be difficult to enforce and should only be utilized in extreme cases. For example, mine sites are required to post bonds to ensure that the operator reclaims the site consistent with its reclamation. RI has operated on this site for multiple years and, to staff’s knowledge, a complaint has never been received regarding violations of any conditions or otherwise operating to the detriment of others, so enforcement of conditions or otherwise controlling any public nuisance has not been an issue at this site.

The City already has adequate means to enforce the conditions of approval if and when conditions of approval or mitigation measures are violated or there are other public nuisance (e.g., odor or noise complaints) or hazardous conditions. Section 8-5.7108 of the Zoning Regulations, titled “Failure to comply with conditions” provides that “...a permit granted in accordance with this chapter may be revoked by the City Council (Section 8-5.7109) upon failure to comply with any conditions of the permit...” This process also allows the City Council to revise the original conditions of approval, if needed.

A second method of enforcement is also available. Section 8-5.7403 of the Zoning Regulations allows the Planning Director to enforce the rules of the Zoning Regulations via the infraction process, which typically result in fines being levied if voluntary compliance cannot be achieved. The City has code enforcement officers that provide this function on a daily basis.

Chapter 8 of the City’s Nuisance Abatement Code also provides for a third method of enforcement. The City can use its police powers to attenuate or eliminate public nuisance concerns (e.g., noise or odor issues) should they arise.

To conclude, in this case there are two reasons that bonding is not needed. First, RI has operated for years at his location without causing significant problems so there is no reason to suspect that will change. Even if there were such violations in the future, the City has adequate tools available to enforce the use permit without the need for bonding.

Use Permit Findings:

There is substantial evidence in the administrative record to support the Planning Commission determination that the UP, as conditioned, is consistent with the requirements of the Municipal Code requirements applicable to the UP. Specifically:

- A. The proposal is consistent with the General Plan.

Basis: The property is zoned Industrial District (M-2) which is consistent with the existing General Plan designation of Manufacturing, Processing, and Warehousing. The M-2 district permits recycling and collection facilities (including a LVTS) subject to the issuance of a Use Permit by the Commission.

- B. The site for the proposed use is adequate in size and shape to accommodate said use, public access, parking and loading, yards, landscaping, and other features required by the Municipal Code.

Basis: Under the revised project, the site has been increased from three to four acres. The expanded site will allow improved circulation and queuing, and will be adequate to accommodate the proposed LVTS facility and related operations. The proposed site plan is in conformance with the Zoning Regulations with perimeter landscaping and fencing, and will include the necessary site improvements to allow for a safe and efficient operation. Utilized areas of the site will be paved, directional signage will be provided, and stormwater runoff will be controlled. Truck loading docks will be provided to allow efficient transfer of material and prevent potential impacts to off-site circulation. The proposed flow of vehicle and truck traffic entering and exiting the site will minimize the potential for vehicular conflicts while allowing for a safe and efficient flow of traffic and facility use. The site has sufficient on-site space to prevent trucks from queuing on the public right-of-way in the event of a surge of visiting trucks to the site. To ensure that there is safe and efficient traffic movement at the site, the applicant is required to have an on-site traffic management plan as part of the Transfer/Processing Report document and will employ spotters to direct traffic. This will ensure that during material receiving hours, facility personnel will monitor and direct incoming traffic.

- C. The streets serving the site are adequate to carry the quantity of traffic generated by the proposed use.

Basis: RI is proposing to expand the facility from 100 tons per day (TPD) to a 300 TPD, however the Planning Commission, and City Council on appeal, have limited the maximum to 100 TPD. Regardless, traffic will increase in comparison to what exists today, however this increase was previously assessed per the 2014 MND for UP 12-01. In addition, the 2018 Subsequent MND EA 17-10 for Use Permit 17-05 also evaluated the potential increase of traffic associated with 300 TPD and determined that there would be less than significant impacts associated with traffic.

Estimated truck activity and employee travel associated with the project will occur while the facility is open from refuse/waste from 7am – 5pm, Monday through Saturday with ancillary operations from 6am – 9pm, Monday through Saturday Truck activity is expected to be relatively uniform across that period, but somewhat less truck travel is expected in the evening as the plant begins to wind down for the day.

Even at 300 TPD, which has not been approved, the project could generate up to eight vehicle trips during the a.m. peak hour which is well below the 50 trips threshold for a traffic study. Even if the project's peak hour PCE estimate of 18 peak hour trips was applied, this estimate is less than the 50-trip threshold used by the City of Yuba City. Based on the City's criteria, the project is not expected to have a significant impact to the local or regional street systems.

- D. The site design and size and design of the buildings will complement neighboring facilities.

Basis: The design of the site meets the requirements of the Zoning Regulations relative to the provision of adequate parking and shading and buffer landscaping. The applicant is proposing to construct a new 21,600 sf transfer/processing building. The proposed building will be similar in size and design to the buildings built immediately to the south. The proposed building will be compatible with other nearby industrial buildings and will ensure that the proposed business operations are kept inside an enclosed space. Presently the project site is surrounded by a six-foot high chain-link fence and landscaping.

- E. The establishment or operation of the use or building applied for will not be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the vicinity of the proposed use or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

Basis: The project site is suited for a LVTS. The surrounding uses are industrial in nature, while the nearest homes are located approximately 1,900 linear feet from the site, thus the operation of the LVTS facility will not be detrimental or injurious to property or improvements in the neighborhood. As detailed in the Subsequent MND and the Transfer Processing Report (TPR), the proposed LVTS must incorporate multiple components to ensure its compatibility with the surrounding properties. These components, which are mandated by the State's application process, include:

- i. Station Control Plan which addresses:
 - Nuisance controls (i.e. daily cleanup of the site);
 - Dust control measures to mitigate on-site dust;
 - Vector and bird control measures to prevent these items from becoming nuisances;
 - Litter control measures;
 - Noise control measures;
 - Odor control measures; and,
 - Traffic control measures.
- ii. Records and Reporting Plan, which addresses the types of on-going reporting required for the operation of the LVTS. This includes:
 - Employee training program;
 - Facility self-inspection program;
 - Health and safety program;
 - Hazardous waste reporting program;
 - Public complaint log; and,
 - A monitoring and inspection schedule report.

As the project is considered a Large Volume Transfer Station, the County of Yuba Environmental Management Department, Environmental Health Division (LEA), will be responsible for ensuring the project complies with all applicable State mandated requirements. Given this designation, the applicant will be responsible for monthly reporting to the LEA to ensure compliance with State requirements. Additionally, the LEA will also be responsible for enforcement of all local restrictions placed on the proposed use which includes key elements that ensure the compatibility of the use with the surrounding properties.

- F. The application satisfies at least one of the findings found in Title 6, Chapter 9, Article 6 of the Municipal Code.

Basis for Finding. Municipal Code Section 6-9.602. - Permits and entitlements, identifies findings including:

“(c) The local flood management agency has made adequate progress (as defined in California Government Code § 65007) on the construction of a flood protection by 2025 system that will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in non-urbanized areas for property located within a flood hazard zone, intended to be protected by the system.”

This project complies with this finding as the Sutter Butte Flood Control Agency (SBFCA) is the “Local Flood Management Agency” for the Sutter-Butte Basin and as such, has the responsibility to prepare an annual report demonstrating adequate progress as defined in California Government Code Section 65007(a). SBFCA has prepared Adequate Progress Report Updates for ULOP and transmitted them to the Central Valley Flood Protection Board.

Recommended Action:

Adopt a resolution denying the appeal, and approving and adopting the Subsequent Initial Study/Mitigated Negative Declaration EA 17-10 for the project and Use Permit 17-05.

Alternatives:

Direct staff to return with a resolution for final approval that would modify the project approval, or approve the appeal and deny the approval of the project, as appropriate.

Prepared By:

/s/ Denis Cook
Denis Cook
Planning Consultant

Submitted By:

/s/ Steven C. Kroeger
Steven C. Kroeger
City Manager

Reviewed By:

City Attorney

[SLC by email](#)

Attachments:

1. Letter submitted by Brigit Barnes & Assoc. dated December 7, 2018, entitled “Appeal of Planning Commission Approval”
2. Letter submitted by Mitchell Chadwick dated December 18, 2018 entitled “Recycling Industries Transfer Station Expansion – Fair Hearing”
3. Letter submitted by Brigit S. Barnes & Assoc. dated January 8, 2019, entitled in part “Supplementary Comments Responding to Updated Staff Report RE: Mitigated Negative Declaration and Proposed Use Permit”
4. Letter submitted by Mitchel Chadwick dated January 8, 2019, entitled “STD Appeal to Planning Commission Approval of Modifications to Recycling Industries UP 12-01”
5. Resolution to Deny the Appeal of the Planning Commission action regarding UP 17-05 and EA 17-10
6. Aerial photo/Location Map
7. November 28, 2018 Planning Commission Staff Report
8. Adopted Conditions of Approval
9. 11.28.18 Staff Power Point to Planning Commission
10. 11.28.18 Recycling Industries Power Point Presentations to Planning Commission
11. Comments received from responsible agencies and responses
12. Letters and email exchanges
 - a. Dept. of Resources Recycling and Recovery (CalRecycle) letter dated Nov. 5, 2018
 - b. Email chain between CalRecycle and Larry Miner of Clements Environmental
 - c. Feather River Air Quality Management District (FRAQMD) letter dated Nov. 6, 2018
 - d. Email chain between FRAQMD and Larry Miner of Clements Environmental
 - e. Sutter-Yuba Local Enforcement Agency (LEA) letter dated Nov. 5, 2018
 - f. Email chain between LEA an Larry Miner of Clements Environmental
 - g. Central Valley Regional Water Quality Control Board letter dated Oct. 30, 2018
13. List of emails expressing their opposition of the project
14. List of emails in support of the project
15. Petition submitted by RI with signatures in support of the project.
16. Letter submitted by Mat Conant and Ron Sullenger of the Sutter County Board of Supervisors dated October 30, 2018 requesting an additional 30-days to review and provide comments on the Initial Study/Mitigated Negative Declaration

17. Letter submitted by Brigit S. Barnes & Associates, Inc. dated November 1, 2018 requesting an additional 30-days to review and provide comments on the Initial Study/Mitigated Negative Declaration
18. Letter submitted by Yuba City (Arnoldo Rodriguez) dated November 5, 2018 denying a 30-day extension request to submit comments on the Initial Study/Mitigated Negative Declaration
19. Letter submitted by Brigit S. Barnes & Associates, Inc. dated November 6, 2018 opposing the project
20. Letter submitted by Mitchell Chadwick dated November 20, 2018 supporting the project
21. Letter submitted by Mitchell Chadwick dated November 21, 2018 titled "Reply to Stop the Dump Comment Letter on Recycling Industries' Expansion Project"
22. Initial Study/Mitigated Negative Declaration for Use Permit 17-03 and Development Plan 17-03:
 - a. Transfer/Processing Report
 - b. Initial Study/Mitigated Negative Declaration prepared for Use Permit 12-01 dated May 23, 2014
 - c. Traffic Study prepared by Ken Anderson & Associates, Inc. dated July 18, 2018
23. Mitigation Monitoring and Reporting Program
24. Report to the Planning Commission for Use Permit 12-01 dated July 23, 2014
25. Site Plan and building elevations
26. Notice of Intent to Adopt the Mitigated Negative Declaration
27. Notice of Public Hearing (January 15, 2019)
28. 11.28.18 Adopted Planning Commission Action Minutes
29. Link to audio recording of 11.28.18 Planning Commission Meeting