

Attachment 1

Letter submitted by Brigit Barnes & Assoc. dated December 7, 2018,
entitled "Appeal of Planning Commission Approval"

**BRIGIT S.
BARNES &
ASSOCIATES,
INC.**

A LAW CORPORATION

Brigit S. Barnes, Esq.
Annie R. Embree, Esq.
Of Counsel



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Land Use and
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December 7, 2018

YUBA CITY CLERK

Via Email and Hand Delivered

City of Yuba City
Attn: Patricia Buckland, City Clerk
1201 Civic Center Blvd.
Yuba City, CA 95993
cityclerk@yubacity.net

YUBA CITY COUNCIL

Via Email Only

citycouncil@yubacity.net

Re: Appeal of Planning Commission Approval dated November 28, 2018, Re: Recycling Industries Use Permit Revisions to UP 12-01, Now 17-03, Dev. Permit 17-05, and Env. Assessment 17-10 Recycling Industries Transfer Station; Use Permit Revisions, Draft Subsequent Initial Study/Mitigated Negative Declaration ("MND"), State Clearinghouse (SCH) #2014052082

Madame Clerk:

On behalf of Stop the Dump, which has participated in all comment periods before the City of Yuba City Planning Staff and Planning Commission, we appeal the determinations of the Planning Commission to approve use permit revisions to Use Permit No. 12-01, referred to above. Attached please find the Fee identified for non-residential appeals to the City Council in the amount of \$747.09, our check no. 7351.

The first basis for this appeal is that the Planning Commission erred in voting to approve the project without recirculation of the Mitigated Negative Declaration, as asserted by appellants and required by 14 CCR §15073.5(a), because mitigation measures and description of project operations were added. These revisions should have been included in the Supplemental MND and the entire document recirculated prior to review by the Planning Commission.

The second basis for this appeal is that the revised Conditions of Approval still require bonding, and other methods to ensure enforcement need to be added so that the construction and operation of the revised Recycling Center is fully enforceable.

Sincerely,

Brigit S. Barnes

cc. Client (via email)
Stop The Dump\City Clerk-Appeal Notice

Asset Preservation
General Business

Commercial Real Estate
Real Estate Financing

Environmental
Litigation

CITY CLERK
DEC 07 2018
YUBA CITY

Attachment 2

Letter submitted by Mitchel Chadwick dated
December 18, 2018 entitled "Recycling Industries
Transfer Station Expansion – Fair Hearing"



**MITCHELL
CHADWICK**

Patrick G. Mitchell
pmitchell@mitchellchadwick.com
916-462-8887
916-788-0290 Fax

December 18, 2018

VIA U.S. MAIL AND ELECTRONIC MAIL

Andrew Skanchy
Best, Best & Krieger
Acting City Attorney for City of Yuba City
500 Capitol Mall, Ste. 1700
Sacramento, CA 95814
andrew.skanchy@bbklaw.com

Re: Recycling Industries Transfer Station Expansion Project – Fair Hearing

Dear Mr. Skanchy:

I am writing on behalf of my client, Recycling Industries, Inc., regarding the City of Yuba City Planning Commission's decision to approve modifications to Use Permit 12-01 and Environmental Assessment 12-2 for minor changes to an approved Large Volume Transfer Station ("the Project"). As you are aware, the Planning Commission approved the Project with a unanimous 5-0 vote on November 28, 2018. A Project opposition group, Stop the Dump ("STD") filed an appeal of the Planning Commission's decision to the City Council on December 7, 2018.

The Yuba City Council is set to consider the appeal filed by STD at a hearing currently scheduled for January 15, 2019. The City Council will review the Planning Commission's decision as an administrative appellate body. Thus, Recycling Industries must be afforded constitutional due process protections, including a fair hearing. We are writing this letter because Recycling Industries will not receive a fair hearing if Councilmember Shaw participates, thus Mr. Shaw must recuse himself.

Councilmember Shaw was recently elected to the Yuba City Council on November 6, 2018, and his actions and public statements indicate that he is unequivocally biased against Recycling Industries and the Project. For example, Councilmember Shaw has been an outspoken opponent of the Project, opposed the Project as part of his election campaign, and is a member of STD. Therefore, Councilmember Shaw's involvement in any hearings regarding the Project, including the pending appeal, would deprive Recycling Industries of its constitutional due process right. As such, Councilmember Shaw must recuse himself from the hearing on the STD appeal of the Project approval.

{00036862;2 }

I. Constitutional Due Process Protections Apply to CUP Proceedings

The California Constitution provides due process and the equal protection of laws for life, liberty, and property. (Cal. Const., Article I, § 7.) These due process principles are inherent to proceedings regarding the disposition of conditional use permits, since the issuance of a conditional use permit is a quasi-judicial action. (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1187–1188.) As a result, an appeal from a decision involving the issuance of a CUP is reviewed under administrative mandamus procedures by the administrative appellate body, here the city council, subject to the due process safeguards required by the California Constitution. (*Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 191–192.)

The right to a fair hearing falls within the protections provided by due process. (*People v. Ramos* (1984) 37 Cal.3d 136, 153 [“the concept guarantees a fundamentally fair decision making process”].) To this end, “[p]rocedural due process in the administrative setting requires that the hearing be conducted ‘before a reasonably impartial, noninvolved reviewer.’[citation]” (*Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 483 [italics original].) In other words, a city council sitting in an adjudicatory capacity must be “neutral and unbiased.” (*Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1021; *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1173 [city councilmember “was not a disinterested, unbiased decisionmaker”].) If a decisionmaker demonstrates “an unacceptable probability of actual bias,” that decisionmaker must be recused to preserve the validity of the proceeding. (*Woody's Group, Inc., supra*, 233 Cal.App.4th at pp. 1021–1022.) An applicant is not required to prove actual bias. An unacceptable probability of actual bias by a decision maker is sufficient to implicate a due process violation of the right to a fair hearing. (*Id.*)

II. Councilmember Shaw has Demonstrated Actual Bias and Must Recuse Himself

Councilmember Shaw has demonstrated actual bias against Recycling Industries and the Project through both his involvement in the Project opposition group, STD, and his public statements on the matter. This is especially alarming because it is STD who has filed the subject appeal. In addition, Mr. Shaw vigorously opposed Recycling Industry’s Project while campaigning for the 2018 Yuba City Council election. Therefore, Mr. Shaw cannot be an impartial, noninvolved decisionmaker on this appeal.

Mr. Shaw’s actual bias against Recycling Industries and the Project is readily apparent, as Mr. Shaw adopted an official position against the Project during his recent campaign for City Council. For example, a screenshot taken December 6, 2018, shows a campaign flyer for Mr. Shaw that states “Stop the Dump! No Transfer Station in South Yuba City.” (Attachment A.) Similar advertisements appeared in local newspapers. (Attachment B.) In addition, a November

3, 2018, Facebook post titled “Dave Shaw for Yuba City Council” contains colorful language opposing the Project:

More bull\$#!* from inside City Hall. Almost 1000 local residents have submitted petitions stating they do not want a full garbage transfer station in South Yuba City...The Planning Commission meeting is set for November 13th...Let’s make sure they lose on Tuesday! Vote Dave Shaw for City Council!

(Attachment C.) Mr. Shaw also made statements opposing the Project in an interview with a local newspaper. (Attachment D.) These statements show that Mr. Shaw was strongly opposed to the Planning Commission’s decision on Recycling Industries’ Project, similar to the disqualifying statements made by the decisionmaker in *Woody’s Group, Inc.* (233 Cal.App.4th 1012, 1022-1023 [councilmember’s email opposing planning commission decision indicated “a position against the project”].) These statements were not “merely informational” and “clearly advocated a position against the project.” (*Nasha, supra*, 125 Cal.App.4th at p. 484.) Thus, Mr. Shaw has publicly demonstrated an actual bias against the Project.

Mr. Shaw’s bias is also evident from his involvement in STD. Mr. Shaw signed a letter dated November 1, 2018, as a member of STD. In fact, his signature is the very first signature on that letter. (Attachment E.) STD opposed the project at the Planning Commission level, and has appealed the unanimous 5-0 Planning Commission decision in favor of Recycling Industries to the City Council. Since STD is the current appellant, and Mr. Shaw is (or recently was) a member of STD, Mr. Shaw is precluded from serving as a “reasonably impartial, noninvolved reviewer.” (*Nasha, supra*, 125 Cal.App.4th at p. 484.) Therefore, Councilmember Shaw must recuse himself from this proceeding.

Thank you for your consideration.

Sincerely yours,

MITCHELL CHADWICK LLP



Patrick G. Mitchell

cc: Dave Kuhnen (Recycling Industries)

Enclosures:

Attachment A: 12-16-18 Screenshot of Shaw Campaign Post

Attachment B: Pictures of Shaw Campaign Newspaper Advertisements

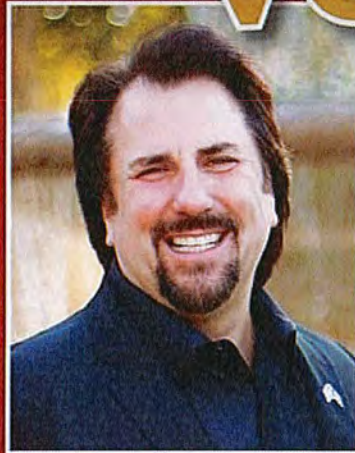
Attachment C: 11-03-18 Shaw Facebook Post

Attachment D: 04-09-18 Appeal-Democrat "Sides share stances in Yuba City 'dump' debate"

Attachment E: 11-01-18 STD Request for Extension Letter

Attachment A

VOTE!



DAVE
SHAW

YUBA CITY COUNCIL



DAVE'S TOP ISSUES:

- ✓ Safety! Move Funds from "Administration" to Police, Fire & Road Repair
- ✓ Revisit the Water & Garbage Rate Increases
- ✓ Stop the Dump! No Transfer Station in South Yuba City
- ✓ **NO** Pensions for Councilmembers

  24

VOTE DAVE SHAW FOR YUBA CITY COUNCIL!



Like

www.VoteDaveShaw.com



Comment



Share

Attachment B

Newspaper Ads:

www.yubasuttershopper.com 530-673-5631 · Shopper · PAGE 21



DAVE SHAW
YUBA CITY COUNCIL

VOTE DAVE SHAW FOR YUBA CITY COUNCIL!

- ✓ Safety! Move Funds from "Administration" to Police, Fire & Road Repair
- ✓ Revisit the Water & Garbage Rate Increases
- ✓ Stop the Dump! No Transfer Station in South Yuba City
- ✓ NO Pensions for Councilmembers

• Voted Yuba-Sutter's BEST Financial Advisor
• CEO, Shaw & Associates in Yuba City
• Veteran, Served in Desert Storm

(530) 713-8502 | www.VoteDaveShaw.com

Paid for by Dave Shaw for Yuba City Council 2018, 1995414020

VOTE!



DAVE SHAW
YUBA CITY COUNCIL

DAVE'S TOP ISSUES:

- ✓ Safety! Move Funds from "Administration" to Police, Fire & Road Repair
- ✓ Revisit the Water & Garbage Rate Increases
- ✓ Stop the Dump! No Transfer Station in South Yuba City
- ✓ NO Pensions for Councilmembers

VOTE DAVE SHAW FOR YUBA CITY COUNCIL!
www.VoteDaveShaw.com

Paid for by Dave Shaw for Yuba City Council 2018, 1995414020

Suzannah L. Pyra, 16, of the 3000 block of Nyeon Court, Live Oak, was arrested by the Yuba City Police Department at 1:17 a.m. Oct. 7 at Clark Road. She was booked into Sutter County Jail.
Fernando Ramirez, 47, of the 5300 block of Park Avenue, Marysville, was arrested by the Yuba County Sheriff's Office at 8:50 p.m. Oct. 7 at his residence. He was booked into Yuba County Jail.
Erik Rodriguez, 50, of the 2100 block of Buck River Street, Yuba City, was arrested by the Marysville Police Department at 12:30 a.m. Oct. 7 at 7th and D streets. He was booked into Yuba County Jail.
Fernando Ramirez, 76, of Ardenville, was arrested by the

You!
Many Again

3391
YUBA CITY
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DM
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Drink \$8.99
Drink \$8.99
rough 10/18/2018

PANCE
ERS
jefs.com

Attachment C



Dave Shaw for Yuba City Council



Nov 3 at 11:51 AM • 🌐

More bull\$#!* from inside City Hall. Almost 1000 local residents have submitted petitions stating they do not want a full garbage transfer station in South Yuba City... and City Hall didn't blink an eye. Get this, they are now saying the applicant is NOT REQUIRED to do an environmental impact review! That is unheard of in the garbage world. The Planning Commission meeting is set for November 14th, in a blatant attempt to fast track this in front of the City Council before the end of their term in case the incumbents (Stan Cleveland and John Buckland) are not reelected. Let's make sure they lose on Tuesday! Vote Dave Shaw for City Council!

Send Message  

Attachment D

https://www.appeal-democrat.com/news/sides-share-stances-in-yuba-city-dump-debate/article_1dcc8182-3c69-11e8-9c0b-1f4829f656b9.html

Sides share stances in Yuba City 'dump' debate

Citizens leading campaign against expanded transfer station in south Yuba City; operator says steps will eliminate concerns

By Rachel Rosenbaum/ rrosenbaum@appealdemocrat.com Apr 9, 2018



A “Stop the Dump” sign dons the lawn of Chrissy Sharp on Teesdale Road, Saturday, April 7. Sharp said she’s OK with Recycling Industries dealing with recyclables, but not their push to handle waste. She’s concerned with the possibilities of smell and rats associated with the expansion in an area surrounded by residences and parks.

Rachel Rosenbaum - Appeal-Democrat

Members of a grassroots movement opposing the proposed expansion of a Yuba City solid waste transfer station are pushing back against claims that they’re “hiding behind a keyboard.”

“Stop the Yuba City Dump” is a campaign of concerned citizens, said Dave Shaw, and not financed by competitors of Recycling Industries. Instead, he said, expenses for the website and lawn signs have been paid for out-of-pocket, and that he has given his name, as well as the name of another member, to those curious about the campaign’s origins.

Shaw lives in north Yuba City, but said he has friends in south Yuba City and is concerned with their voices not being heard. He also wanted to be clear that the campaign is not personal, as he knows Recycling Industries General Manager David Kuhnen and his family.

“Number one, the people of Yuba City, especially the people who live within a 1-mile radius, need to be informed, they need to have their voices heard,” Shaw said. “No one has a problem with the Kuhnens having a transfer station, but people are saying, ‘not in my backyard, get south of town.’”

Citizens’ concerns come from remarks made by Kuhnen at a City Council meeting last month. The council was considering comparisons between the leading contenders for the city’s solid waste collection contract – Recology and Republic Services. Kuhnen’s company is independent of those contract negotiations, though the business could be affected by the outcome.

Kuhnen said he’s completed the application process for an expansion of an existing transfer station at Epley Drive, and that he plans for it to be ready to go by January 2019. He also believes the expansion should be considered as part of the current solid waste collection negotiations between the city and Recology and Republic Services.

The proposed transfer station expansion is the focus of the “Stop the Dump” movement.

According to Kuhnen’s application to the city, Recycling Industries aims to increase its footprint from 3 to 4 acres; increase building size from 18,000 square feet to 21,000 square feet; add or modify driveway accesses; increase on-site parking; and enhance landscaping features. Fugitive dust, litter and odors would be mitigated through engineering controls and operational controls in accord with state standards, according to the application.

That application was submitted Sept. 18 and is still being processed.

In an interview with the Appeal-Democrat last month, Kuhnen said his company is currently permitted to accept up to 100 tons of garbage per day. The expansion would increase that to up to 300 tons per day.

Dave Vaughn, vice president and senior director of business and marketing for Recology, said company employees may be supportive of the “Stop the Dump” movement, but that the company itself is not promoting or funding the campaign.

But Kuhnen said there is a big difference between a transfer station and a landfill. He said his company has a transfer station.

Shaw, however, said “transfer station” and “dump” are synonymous and come with the same issues. He said residents are concerned with an effect on traffic, smell and property values.

“It’s not about what he wants to do, it’s about the location,” Shaw said. “How can there be no change when you go from clean recyclables to mixed solid waste? ... There’s material change and they keep saying there’s no material change.”

Kuhnen said some of the concerns are being addressed. He said the station will be fully enclosed, clear of wind and rain. He also said the garbage will be gone within 24 hours but on average within five hours, even with the increase up to 300 tons – though he said Yuba City only sees an average of 200 tons of garbage on a daily basis.

Kuhnen said the city has hired an outside consultant to conduct a California Environmental Quality Act (CEQA) review of the proposal, which he said is being done now. He said he’s not asking for additional traffic at this time and any noise would be inside the building. Kuhnen also said smell shouldn’t be a concern as it comes from food or green waste composting – something Recycling Industries doesn’t do.

“I’m just doing clean recyclables and a little bit of garbage,” he said. “We’ve been there since 2009... I’ve never had a complaint from anybody, no odor, nothing.”

Financial impacts

Shaw also said he was concerned with the financial implications of the expansion. He cited a Sacramento County Board of Supervisors staff report from December, which shows that the county forgave Recycling Industries of more than \$180,000 in payments owed to the county for material processing.

According to a Sacramento County staff report, that action was a result of international labor actions that began in 2015. "Labor actions at West Coast ports severely restricted exports of recycled materials affecting RI's ability to pay the county," according to the report.

Kuhnen said it was an unforeseen circumstance that affected not only Recycling Industries but other contracts with the county.

Recycling Industries has a location on Power Inn Road in Sacramento. Over a 36-month period, Recycling Industries will pay the remaining sum of \$213,120.

"How do you have the money for expansion when you can't even pay your bills?" Shaw said.

"I don't know how any of that is related to our expansion of the project," Kuhnen said. "If I wasn't financially stable, I wouldn't be going after these kinds of contracts... (I think) it's more about anger about going out to bid and trying to upset my operation."

He was referring to contention in Yuba City over the City Council's decision to take bids for solid waste management, rather than directly negotiating with Recology.

Shaw said he plans to attend future public hearings and continuing to fight the expansion.

"This is about the process and the people being heard," he said.

Darin Gale, economic growth and public affairs official for Yuba City, said in an interview last month that the expansion application still has to go through an environmental review, will be considered by the Planning Commission, and public meetings will be held. Because it's an application for a use permit, it would not be required to go before the City Council; however, the application can be contested and challenged for council consideration, he said.

Attachment E

Date: November 1, 2018

Timothy P. Hayes, City Attorney, thayes@mh3law.com
Martinez•Hayes•Hill LLP
471 Century Park Drive, Suite C
Yuba City, CA 95991

Steven C. Kroeger, City Manager, citymanager@yubacity.net
Arnoldo Rodriguez, Development Director, arodriguez@yubacity.net
Terrel Locke, Chief Deputy City Clerk, tlocke@yubacity.net
1201 Civic Center Boulevard
Yuba City, CA 95993

Re: RECYCLING INDUSTRIES TRANSFER STATION; USE PERMIT REVISIONS
DRAFT SUBSEQUENT INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (MND)
STATE CLEARINGHOUSE (SCH) # 2014052082

Request for Extension of Comment Period to December 13, 2018 or 30 days after release of the City's Peer Review of the Mitigated Negative Declaration

Gentlemen and Ms. Locke:

The voters, nearby business owners and residents who have signed this letter, and are also members of "Stop the Dump," seek an extension of the public comment period regarding the proposed Recycling Industries Yuba City Transfer Station expansion at 140 Epley Drive, in Yuba City. Many of our members did not see the legal notice in the paper and were not aware of the draft initial study/MND until recently.

The draft study contains almost 500 pages and we do not feel we have had sufficient time to digest the information and prepare comments. Furthermore, the City's peer review was not released and further hinders our ability to comment on the draft initial study/MND.

Our initial review indicates further required analysis of multiple potential impacts resulting from the proposed expansion including traffic patterns, dust, odors and other air quality impacts that will directly affect the neighboring commercial businesses and nearby residential neighborhood. In addition, we need an extension of time to further review the impact of:

- Removal of all restrictions on putrescible waste. The MND does not provide for active mitigation for these smells although the design of the system continues with roll-up doors.
- Significant disputes in whether or not the daily traffic trips have been increased, and whether the increase crosses all relevant City, and District thresholds for air quality impacts. The MND

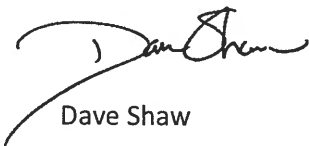
contains no defined patterns, allowing for more clear evaluation of traffic impacts. The MND also does not adequately review round trips, peak days/times, or adjust for the fact that packer truck trips have considerably more impact than car trips.

- The traffic study does not appear to address the queuing issues because it does not take into consideration the change to large off loaders waiting to enter the station, starting early in the morning.
- Unmitigated damages to public road due to heavy vehicles. No definition of the mix of deliveries between heavy vehicle use and local traffic.
- Increased fire risk as a result of the planned storage of vehicles inside the station.
- Added dust and fly-away garbage and debris.
- No emissions controls resulting in methane gas hazards.
- Because no hazardous air quality study has been included related to idling diesel trucks, the evaluation does not address potential impacts on the neighboring residents.
- Increased vectors, vermin, flies, and mosquitos and related health issues.

The members of Stop the Dump are handicapped in preparing a careful review because no peer review is included with the MND. The City is on record that the environmental documentation prepared by Recycling Industries, once received by Yuba City, would be independently reviewed so as to provide assurances to the public that all aspects of the analysis adequately considered the possible adverse impacts of such planned expansion. We are informed that a firm was retained by Yuba City to perform the peer review, but you are refusing to release it. The public and the members of Stop the Dump must be afforded sufficient time to review the proposed expansion plan, the MND, and the peer review of RI's consultants work, so that their comments are complete and meaningful.

Therefore, please extend the conclusion of the comment period to December 13th, or 30 days after the peer review is publicly released.


Sincerely,



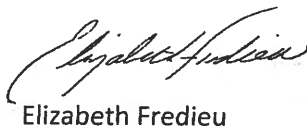
Dave Shaw



James Rik Jimerson



Michael Sandoval



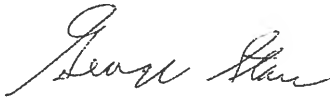
Elizabeth Fredieu



Gene Barngrover



Jeff Angove



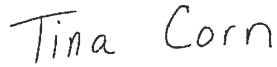
George Starr



Dona Starr



Craig Chizek



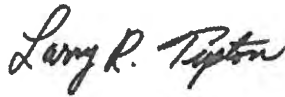
Tina Corn



Susan Meyer Morrill



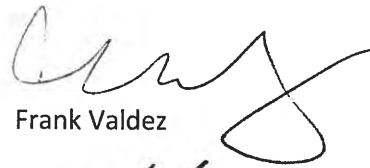
Erin Hendricks



Larry Tipton



Julia Rockenstein



Frank Valdez



Mike Elkins



Lesley Langlois



Mark Torrison



Brenda Allison

Cc:

Planning Commissioners: Daria Ali, Michele Blake, Dale Eyeler, John Sanbrook, Jana Shannon, John Shaffer

City Councilmembers: Stanley Cleveland Jr., John Mark Buckland, Mayor Preet Didbal, Manny Cardoza, Vice-Mayor Shon Harris

Attachment 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"

**BRIGIT S.
BARNES &
ASSOCIATES,
INC.**

A LAW CORPORATION

Brigit S. Barnes, Esq.
Annie R. Embree, Esq.
Of Counsel



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Land Use and
Environmental
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Jaenaly Killian

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January 8, 2019

Via Email and Hand Delivered

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tlocke@yubacity.net

Mayor Shon Harris
Vice-Mayor Manny Cardoza
Council Member Marc Boomgaarden
Council Member Grace Espindola
Council Member David Shaw
1201 Civic Center Blvd.
Yuba City, CA 95993
citycouncil@yubacity.net

Darin Gale, Interim Development Director
1201 Civic Center Blvd.
Yuba City, CA 95993
dgale@yubacity.net

Re: Stop the Dump Appeal of Planning Commission Approval of Recycling Industries Transfer Station Use Permit No. 17-05
Draft Subsequent Initial Study/Mitigated Negative Declaration ("MND") State Clearinghouse (SCH) #2014052082
SUPPLEMENTARY COMMENTS RESPONDING TO UPDATED STAFF REPORT RE: MITIGATED NEGATIVE DECLARATION AND PROPOSED USE PERMIT

Dear Councilmembers, Ms. Buckland, Ms. Locke, and Messers. Chaffin, Kroeger, and Gale:

On behalf of Stop the Dump, we thank staff for recommending restrictions in Recycling Industries' [RI] proposed expansion, which were intended especially to disallow certain packer trucks, prohibit vehicle queuing on city streets, prevent expansion of waste to 300

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tons per day, and prevent expansion of acceptance of putrescent garbage materials beyond the 10% allowed under Recycling Industries' prior Use Permit 12-01.

Once we received copies of the final mitigation conditions, we became concerned that enforcement of the City's intended limitations would not be practical. Stop the Dump [STD] timely appealed the Planning Commission approval of the Mitigated Negative Declaration [MND] and Use Permit 17-05.

During his testimony to the Planning Commission November 28, Development Director Rodriguez recognized that RI's negotiated unrestricted conditions of the proposed expansion, allowing green waste, packer trucks, expanding tonnage, and lifting restrictions on the percentage of putrescent waste could not be supported using a mitigated negative declaration, where the expansions were never considered in 2014 when RI obtained its previous entitlement for a large volume transfer station (LVTS) under Use Permit [UP] 12-01. None of these expansions or the environmental impacts of such expansions were considered by the 2014 Use Permit 12-01 under which RI currently operates. Therefore, unless the limitations contained in UP 12-01 are preserved in the updated use permit, the Mitigated Negative Declaration adopted by the Planning Commission is legally insufficient under CEQA. The City's updated conditions of approval [COA], with RI's, stated approval, attempt to resolve STD's and other citizens' concerns, but the lack of specificity of the language of certain conditions means that the City's ability to ensure enforcement and maintenance of the restrictions – such that the MND served its purposes under CEQA – is compromised.

RI has regularly sought to modify interpretations of its prior use permit by submitting applications directly to the City's Development Services Department. For these reasons, STD seeks City Council revisions to the 17-05 Use Permit November 28, 2018 conditions, which ensure that all the conditions, with the exception of revisions to condition 35 related to development director approval of minor amendment to the project Transfer Processing Report, must be reviewed publicly by the City Council to ensure that the conditions applicable to the transfer station, as amended, are retained and capable of enforcement as intended by the Planning Commission.

STD has therefore attempted to negotiate more restrictive language into the COAs with RI's attorneys, with the specific intention of assuring that RI can increase the size of its operating base to the 4 acres requested, but operational conditions remain reduced to a maximum of 100 TPD, with limited packer truck use, and green waste limitations are fully enforceable. These negotiations have been successful on many of the conditions. However, issues involving additional insurance to protect the City Condition #1, flow control #4, protections against traffic queuing #19 and 23, timeliness of negotiating the host fee #35, commencement of operations #59, and restrictions on RI's attempts to expand operations without public hearings #60, remain unresolved. A copy of a chart identifying the agreed upon revisions to use permit conditions and those remaining in dispute is attached as Exhibit A. If the COA limitations proposed by STD are accepted by the City Council, the public's concerns expressed in the

the record regarding odors, noise, idling effluent from the diesel trucks, and air quality and traffic impacts on all adjacent roads and throughout the area will be at least partially averted.

The City has incorporated the Mitigation Monitoring and Reporting Program's [MMRP] conditions into the Use Permit as requested by STD [Condition 58]. Maintaining the reduced operational options of the transfer station with enforceable conditions will ensure that the MMRP conditions incorporated into the COAs will help ensure that the City retains the ability to enforce all restrictions. Such enforcement is essential where the City has relied upon a Mitigated Negative Declaration to support the use permit approval, instead of an Environmental Impact Report. Once a project is improved, the City's role as legal agency under CEQA is completed per 14 Code of Civil Procedure §15162, and therefore only enforcement of the conditional use permit remains.

Because RI's history has included seeking extensions without substantial compliance with prior conditions at the staff level, thus evading public review of the requested expansions, STD requests that the City Council retain review and approval authority of all future expansions. Our request Nos. 59 and 60 ensure first that unlike RI's operations under UP 12-01, full compliance with the conditions will be promptly accomplished, and second that any RI supplemental requests for expansion will be reviewed by the City Council, and if determined to be discretionary, will require a full environmental review of any possible expansions. The addition of Conditions 59 and 60 ensures that STD can avoid the necessity of seeking judicial review of the Mitigated Negative Declaration approved by the Planning Commission, and seeking its recirculation. A summary of STD's analysis of the adverse CEQA effects on November 6 and November 28, 2018, related to impacts of allowing the expansion from 100 TPD to 300 TPD are summarized will be presented at the hearing assist the Council Members in understanding the details of our concerns.

The City Council, as the legislative body elected by the voters of the City, has the present authority per City Code to incorporate Conditions 59 and 60, which limit lower-level review of this use permit. A conditional use permit is an approval for a particular use subject to performance requirements or other conditions intended to assure that the special use authorized by the permit does not create conflicts or otherwise affect public health and safety — Government Code §65901. The decision whether to grant or deny a use permit is a discretionary act and the applicant, in this case, RI, bears the burden of demonstrating his entitlement to a conditional use permit. Hauser v. Ventura County Bd. Of Supervisors (2018) 20 Cal. App.5th 572, 576. Since a conditional use permit may only be granted after a public hearing after published notice and notices to affected or nearby property owners per Government Code §65905, revisions and expansions of that permit should only be granted after public notice. Such notice is not available if the community development director is permitted to determine that RI's applications "substantially comply" with the terms and scope of the prior permit. 7 Cal. Real Est. § 21:10 (4th ed.)

Re: Recycling Industries Transfer Station - Stop the Dump Appeal of Planning Commission Approval of Use Permit and Mitigated Negative Declaration

January 8, 2019

Page 4

Yuba City Code §8-5.7003 provide for use permits where the effect of the use on surrounding uses are unique and must be specially conditioned. The process assumes a public hearing and determination by the Planning Commission, which can be appealed to the City Council, which complies with Government Code §665905. Yuba City's Code does not appear to have delegated authority under Government Code section 65906 to the planning director or code enforcement officer to make decisions on use permits or variances without a hearing. However, RI has regularly sought amendments and expansions at the staff level, arguing that its proposals do not constitute amendments of its use permit, and are included within the Planning Director's authority. It is this process, which makes public review of the Community Development Director's decisions through mandated public hearings essential, especially when STD seeks by condition #60 to prevent adverse public impacts when considering possible expansion of the Large Volume Transfer Station.

Sincerely,

Brigit Barnes

Brigit S. Barnes

cc: Client (*via email*)

Exhibit A – chart

Stop The Dump\City Council.L1.Appeal.

Attachment 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”



Patrick G. Mitchell
pmitchell@mitchellchadwick.com
916-462-8887
916-788-0290 Fax

January 8, 2019

VIA ELECTRONIC MAIL

City Councilmembers
Attn: Darin Gale
Interim Director Development Services
City of Yuba
1201 Civic Center Blvd.
Yuba City, CA 95993

Re: STD Appeal to Planning Commission Approval of Modifications to Recycling Industries UP 12-01

Dear Councilmembers and Mr. Gale:

I am writing on behalf of my client, Recycling Industries, Inc., regarding the proposed modifications to Use Permit ("UP") 12-01 to expand an existing waste and recyclables transfer and sorting facility (the "Project") in a heavy industrial area, which Project was approved unanimously 5-0 by the Yuba City Planning Commission on November 28, 2018. The subsequent appeal to the City Council was filed by an anonymous group called Stop the Dump ("STD"). As you are aware and despite their anonymity, Recycling Industries worked with STD's attorney in an attempt to reach a resolution regarding STD's appeal. The two sides have made substantial progress towards a settlement that includes revisions to the conditions of approval ("COAs") adopted by the Planning Commission. However, the two sides were not able to reach final agreement on a few outstanding issues, and STD has not agreed to continue the January 15 City Council hearing date set for its appeal. In light of STD's refusal to agree to a continuance to further negotiate, we request that the City Council approve Recycling Industries' Project, as modified by the Planning Commission and including those modifications agreed to by both Recycling Industries and STD.

The remaining unresolved items between Recycling Industries and STD include requests by STD which are unreasonable, unfair, set bad precedents for CEQA review and economic development in the City, and improperly and illegally commit the City to a predetermined decision on a project application that has not yet been submitted. The unresolved revisions recommended by STD, a group whose financial backers and directors have not been disclosed, are intended to remove any return on investment for Recycling Industries for completing this Project. The primary unresolved items include COAs 1.b, 4.a, 35, and 60. Furthermore, other than preparation of an EIR for an expanded, 300 TPD operation, none of these issues were raised prior to or at the

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Planning Commission hearing by STD or anyone else. In fact, STD's counsel indicated at the Planning Commission Hearing that if Recycling Industries agreed to limit the Project to 100 TPD with a 10% cap on putrescible waste and no packer trucks, then STD's concerns would be addressed. Recycling Industries agreed to the substantially reduced project, but STD appealed regardless and raised a host of new issues that were not disclosed to the public prior to or during the Planning Commission meeting. Rather than addressing environmental concerns, the majority of the new issues raised by STD appear to be aimed at economically disadvantaging Recycling Industries while favoring Recycling Industries' primary economic competitor, Recology.

Condition 1.b – Performance Bond

Recycling Industries does not agree to accept the COA 1.b language suggested by STD, which would require a performance bond for the entire project. This provision is cost prohibitive and unnecessary, and I have never seen such a requirement for a private project in my 32-year land use career. Recycling Industries has suggested more feasible alternatives to STD, such as bonding only the public right-of-way work portion of the work (e.g. curbs).

Condition 4.a – Flow Control

Recycling Industries does not agree to accept COA 4.a as proposed by STD, which would require Recycling Industries to deliver all solid waste to a facility within Yuba-Sutter. STD's basis for this request was to preserve a vital revenue source for local jurisdictions, such as Yuba County and the City of Marysville. It is curious why a group claiming to be concerned about the Yuba City environment is now concerned about revenue for jurisdictions outside the City of Yuba and which solid waste facility Recycling Industries must use.

Recology operates the only solid waste facility within Yuba-Sutter. Thus, Recycling Industries would be forced to deal with a monopoly situation with this proposed COA. Since Recycling Industries would be forced to use Recology's facility, this provision would essentially be forcing Recycling Industries to hand over a blank check to Recology, which would then set the per ton tip fee for solid waste delivered. Recycling Industries has suggested alternate language, such as including an upper limit on the per ton tip fee. As proposed by STD, the flow control provision is monopolistic, anti-competitive, and un-American. Recycling Industries will not accept this provision without an upper-limit on the fee. Recycling Industries is happy to negotiate the fee price directly with Recology, rather than through STD's appeal.

Condition 35 – Host Fee

Recycling Industries does not agree to accept the COA 35 revision proposed by STD that requires the fee to be calculated based upon "all material that crosses the scales." Recycling Industries' current recycling operations are separate from the solid waste transfer operations presented by this project. Recycling Industries does not pay a host fee for the recycling

operations, which will remain physically separated from the solid waste transfer operation. In addition, City staff and the Planning Commission accepted general terms of a host fee agreement in 2014 and again in 2018.

It is important to note that Recycling Industries accepted the other revisions to COA 35 proposed by STD, including the requirement that modifications to the COAs must be submitted to the City Council for Approval. This unprecedented concession by my client is the basis for supporting denial of STD's Condition 60 below.

Condition 60 – EIR

Recycling Industries does not agree to accept COA 60 as proposed by STD, which would require the City to prepare a full environmental impact report (“EIR”) for any future expansion of the site. As discussed at the Planning Commission hearing, EIR's are almost never prepared for transfer stations, and much larger transfer stations have been approved with negative declarations. Planning Commissioner Eyeler even confirmed this with the State of California via his own independent research, which he explained at the Planning Commission hearing. In fact, Recology's own 300 TPD transfer station at its 9.36-acre Vallejo site was approved with a mitigated negative declaration in October 2014.

The City approved Clements Environmental to perform the CEQA review for Recycling Industries. The City then hired Benchmark Resources to independently “peer review” the work of Clements Environmental. Then the City's Community Development Director, Arnoldo Rodriguez, reviewed the document again. All three professionals reached the same conclusion that the project, as mitigated, would not result in any significant impacts.

An EIR should not automatically be required for expansion of an existing industrial use in a heavy industrial area if the CEQA initial study indicates that an EIR is not warranted. (14 CCR §§ 15063, subd. (b)(2).) As written, COA 60 is anti-competitive and sets a bad precedent for future economic development in the City. Furthermore, such a condition does not guarantee City Council approval. The City Council still has discretion and approval authority on any project subject to environmental review, which is why Recycling Industries agreed to have all future major changes or expansions approved by the City Council.

Businesses will locate elsewhere if every small project in Yuba City triggers an EIR, despite no guarantee of a project approval. Furthermore, it would be legally inappropriate for the City to predetermine that a future project application, that may never be filed, requires an EIR before the City even completes an initial study, as required by CEQA.

Revised Conditions Agreed to by Recycling Industries.

Recycling Industries has engaged in extensive discussions with STD and agreed to numerous additional provisions suggested by STD, including COAs: 1.c, 8.c, 16, 19, 32, 35 (partial), 50, 51, and 59. Thus, Recycling Industries has gone above and beyond legal requirements to ensure the Project is properly mitigated and STD's concerns addressed where feasible from an economic and business competition standpoint.

While Recycling Industries and STD identified extensive common ground between the parties, Recycling Industries vigorously disagrees with certain statements made in STD's January 8, 2019, letter. Recycling Industries categorically denies the statement in STD's letter that Recycling Industries has "regularly sought to modify interpretations of its prior use permit." Other than time extensions, Recycling Industries has requested only one modification to UP 12-01, which is the current matter before the Council. In addition, STD claims, incorrectly, that the conditions or mitigation measures are somehow unenforceable. However, at STD's request and Recycling Industries agreement, the Planning Commission adopted an additional condition of approval #58 incorporating all requirements in the Transfer Processing Report and all mitigation measures identified in the MND as a separately enforceable COA.

Conclusion

The current appeal and proposed COA revisions by STD are not business friendly and represent a mis-use of the environmental process. As the California Supreme Court has warned, the CEQA process "must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 576; 14 CCR § 15003, subd. (j).) STDs proposal does just this. For example, STD's suggestion that an EIR requirement be predetermined for any expansion of an existing industrial site in an industrial zoned area violates and impedes CEQA streamlining efforts. EIRs have become increasingly expensive, and in our experience, can cost upwards of \$500,000 and take 2-4 years to complete. Thus, the City should only require EIR's where an initial study indicates one is necessary, otherwise, the City will risk a reputation as being anti-business and anti-development.

Recycling Industries' Project, with the additional revisions suggested by STD that Recycling Industries agrees to, properly balances environmental protection with necessary economic development for the City that will generate quality local jobs and revenue for the City. Additional requests intended to interfere with the economic viability of the Project, to the benefit of Recycling Industries' economic competitors, should be rejected. City staff recommended approval of the Project, with conditions, and the Planning Commission unanimously approved the Project 5-0. The City Council should deny STD's appeal and approve the Project.

Sincerely,

MITCHELL CHADWICK LLP



Patrick G. Mitchell

cc: Shannon Chaffin (Aleshire & Wynder, LLP)
Andrew Skanchy (Best Best & Krieger)
Dave Kuhnen (Recycling Industries, Inc.)
John Wheat (Mitchell Chadwick LLP)
Brigit Barnes (Brigit S. Barnes & Associates, Inc.)

Attachment 5

Resolution to Deny Appeal of the Planning Commission Action

Attachment 5: Resolution Re Appeal (Recycling Industries, Inc.)

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY DENYING THE APPEAL OF, AND AFFIRMING THE DECISION OF, THE PLANNING COMMISSION'S APPROVAL OF USE PERMIT NO. 17-05 AND ENVIRONMENTAL ASSESSMENT NO. 17-10 (SUBSEQUENT MITIGATED NEGATIVE DECLARATION), FOR PROPERTY LOCATED AT 140 EPLEY DRIVE (RECYCLING INDUSTRIES, INC.), AND INDEPENDENTLY APPROVING AND ADOPTING ENVIRONMENTAL ASSESSMENT NO. 17-10 (SUBSEQUENT MITIGATED NEGATIVE DECLARATION) AND USE PERMIT NO. 17-05

WHEREAS, Recycling Industries (applicant) currently operates a recycling center under Use Permit (UP) 07-12 at 140 Epley Drive; and

WHEREAS, in 2014, the City approved Use Permit (UP) 12-01, which allowed the applicant to convert its recycling center into a Large Volume Transfer Station (LVTS); and

WHEREAS, prior to said approval the City also prepared an environmental assessment as required by the California Environmental Quality Act (CEQA) resulting in a finding of a mitigated negative declaration (MND) per Environmental Assessment (EA) 12-2 (2014 MND); and

WHEREAS, the applicant has yet to develop the site as approved per UP 12-01, and has received two extensions from the City such that use under the UP 12-01 must commence by no later than July 23, 2020, or UP 12-01 could become null and void for inaction; and

WHEREAS, the applicant is proposing to modify its previously approved use of the property to a revised Large Volume Transfer/Processing Solid Waste Facility Permit (SWFP); and

WHEREAS, said revisions require a Development Permit (DP), UP and appropriate Environmental Assessment (EA) of the project; and

WHEREAS, applicant submitted an application to the City for DP 17-03, UP 17-05, and EA 17-10; and

WHEREAS, an initial study was prepared for the project, resulting in a proposed Subsequent MND; and

WHEREAS, the City issued a notice of intent to adopt the Subsequent MND on November 16, 2018, and provided a review period regarding the proposed mitigated negative declaration; and

WHEREAS, under the City's Municipal Code, the Yuba City Planning Commission is authorized to review and approve the Development Permits, Use Permits and environmental assessments for associated projects on behalf of the City; and

WHEREAS, the City provided notice of the Planning Commission hearing as required by law; and

WHEREAS, the Planning Commission received and reviewed DP 17-03, UP 17-05, and EA 17-10 at a duly noticed meeting on November 28, 2018; and

WHEREAS, a public hearing was held, and the public was provided an opportunity to comment on DP 17-03, UP 17-05, and EA 17-10; and

WHEREAS, public testimony and evidence, both written and oral, was considered by the Planning Commission; and

WHEREAS, as part of this review, the Planning Commission also conducted an assessment of the proposed project as required by CEQA; and

WHEREAS, after considering all public testimony and receiving information provided to date, the Planning Commission closed public testimony and granted, with modified conditions of approval, DP 17-03 and UP 17-05, as well as EA 17-10; and

WHEREAS, said adoption also included approval of a subsequent Mitigated Negative Declaration to the 2014 MND and its initial study (Subsequent MND) for the project, consistent with CEQA Guidelines section 15162, as set forth in EA 17-10; and

WHEREAS, on December 7, 2018, an appeal of the Planning Commission's action on approving the project was timely made on behalf of "Stop the Dump" and received by the City Clerk's office; and

WHEREAS, the City provided notice of the City Council hearing on the appeal as required by law; and

WHEREAS, the City Council received and reviewed the appeals of the Planning Commission's decision granting UP 17-05, and EA 17-10 at a duly noticed meeting on January 15, 2019; and

WHEREAS, a public hearing was held, and the public was provided an opportunity to comment on the appeal to the Planning Commission decision; and

WHEREAS, and public testimony and evidence, both written and oral, was considered by the City Council; and

WHEREAS, after considering all public testimony and receiving information provided to date, the City Council closed public testimony and deliberated on the appeal based on the evidence in the administrative record; and

WHEREAS, after consideration of said public testimony and information in the record, the City Council determined that there was substantial evidence in the record that the UP complied with the City's Municipal Code and requirements for issuance of a User Permit for the operations as proposed; and

WHEREAS, the City Council did not find any substantial evidence in the record that UP 17-05 failed to comply with specific requirements of the City's Municipal Code as applicable, or which would require overturning the Planning Commission decision and denial of UP 17-05; and

WHEREAS, the City Council also determined that the proposed project will not result in any adverse effects which fall within the “Mandatory Findings of Significance” contained in Section 15065 of the State CEQA Guidelines, and with the mitigation imposed, there is no substantial evidence in the record that this project may have any direct, indirect or cumulative effects on the environment that are significant; and

WHEREAS, the City Council now desires to deny the appeal and uphold the decision of the Planning Commission to approve UP 17-05 and EA 17-10 as conditioned; and

WHEREAS, the City Council desires to approve and adopt Environmental Assessment No. 17-10 (Subsequent Mitigated Negative Declaration) and Use Permit No. 17-05.

BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF YUBA CITY AS FOLLOWS:

Section 1. Recitals. The City Council finds that all of the facts set forth in the recitals above of this Resolution are true and correct and incorporated herein.

Section 2. Administrative Record. The proceedings and all evidence introduced before the Planning Commission at the public hearing, including staff reports, attachments, and presentations, are hereby incorporated into the record of this proceeding. These documents, along with any staff reports, documents, testimony or evidence submitted to the City Council, including all documents specified under applicable State law including Public Resources Code section 21167.6(e), shall comprise the entire record of proceedings for any claims under CEQA.

Section 3. CEQA Findings.

- A. Subsequent MND. Pursuant to the authority and criteria contained in CEQA, the City, as the Lead Agency, has analyzed the proposed project and has prepared a Subsequent MND to the approved 2014 MND in order to evaluate the changes to the approved project proposed by UP 17-05, (the foregoing collectively referred to herein as the proposed modified project) and to determine whether substantial changes in circumstances surrounding the property and the approved project per UP 12-10 (if any), and new information of substantial importance (if any), require further analysis under CEQA. The City Council also finds:
- i. No substantial changes are proposed in the project which will require major revisions of the 2014 MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
 - ii. No substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
 - iii. There is no new information, which was not known and could not have been known at the time of the 2014 MND that the project will have significant effect not discussed in the 2014 MND.

The City Council has fully considered the original MND and the Subsequent MND, and finds that UP 17-05 is consistent with, and has been fully assessed by, the Subsequent MND, and that UP 17-05 is a permit anticipated for the proposed modified project in the Subsequent MND, and is consistent with the purpose and intent of the Subsequent

MND, and that the approval of EA 17-10 regarding said Subsequent MND by the Planning Commission was likewise consistent and appropriate. In this regard, based on the Council's independent judgement and analysis and record before it, the Council additionally finds as follows:

- i. The Subsequent MND reflects the Council's independent judgement and analysis;
- ii. The project mitigation imposed, as described in the Initial Study and supporting documents, will avoid any potentially significant effects to a point where no significant adverse impact on the environment would occur, and there is no substantial evidence in the record that this project may have any direct, indirect or cumulative effects on the environment that are potentially significant and adverse.
- iii. The proposed project will not result in any adverse effects which fall within the "Mandatory Findings of Significance" contained in Section 15065 of the State CEQA Guidelines.
- iv. The mitigation measures described and specifically identified in the Mitigation Monitoring and Reporting Program are feasible and shall become binding upon the entity (such as the project applicant or the City) assigned thereby to implement the particular mitigation measures as identified in the Mitigation Monitoring and Reporting Program.

The City Council finds and determines that there is substantial evidence in the administrative record to support the Planning Commission determination that the project has been adequately environmentally assessed as required by CEQA per EA 17-10. Additionally, the City Council also finds and determines that in light of the entire administrative record and the substantial evidence before it, the project has been adequately environmentally assessed as required by CEQA per EA 17-10.

- B. Findings Regarding Recirculation: The Council further finds recirculation is not required by CEQA as the Use Permit and mitigation measures approved were more – not less - stringent than those analyzed in the Subsequent 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 the applicant'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 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 below. 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 to the Subsequent MND were made or warranted.

As explained in the Subsequent MND, and as the Council finds, 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 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 the City Council finds that recirculation was and is not required.

Section 4. Adoption of Subsequent MND. Based on the foregoing, the City Council hereby adopts the Subsequent Mitigated Negative Declaration (EA 17-10) for the project, including the associated mitigation monitoring and reporting program, as the project will not result in any significant, adverse, environmental impacts with the mitigation imposed. The Department of Development Services located at Yuba City Hall at 1201 Civic Center Blvd., Yuba City, CA 95993 shall serve as the custodian of all documents or other material which constitutes the record of proceedings upon which the Council's adoption of this Subsequent Mitigated Negative Declaration is based. The Council authorizes and directs the Director of the Department of Development Services, or designee, to execute and file with the Sutter County Clerk, a Notice of Determination for the approval of the project that complies with the CEQA Guidelines.

Section 5. Findings Regarding UP. The City Council finds and determines that 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. Additionally, the City Council also finds and determines that there is substantial evidence in the entire administrative record that the UP, as conditioned, is consistent with the requirements of the Municipal Code requirements applicable to the UP. The City Council further approves, accepts as its own, incorporates as if set forth in full herein, and makes each and every one of the findings, based on the evidence in the record, as follows:

A. The proposal is consistent with the General Plan.

Basis for Finding: 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 for Finding: 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 for Finding: The applicant 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.

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 for Finding: 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 for Finding: The project site is suited for a LVTS. The surrounding uses are industrial in nature, while the nearest homes are located approximately 1,900 lineal 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 nonurbanized 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.

Section 6. Appeal Denied. For all the foregoing reasons, and each of them, the City Council finds that there was no substantial evidence submitted into the administrative record that would warrant denial of the UP, including the CEQA for the project. As such, the appeal of Use Permit 17-05 and Environmental Assessment 17-10 is denied in its entirety.

Section 7. Use Permit Approved. For all the foregoing reasons, and each of them, the City Council upholds the Planning Commission approval of Use Permit 17-05, as conditioned. Further, for all of the foregoing reasons and based upon the substantial evidence in the record before it, and given that there is no substantial evidence in the administrative record that would warrant denial, the City Council also independently approves Use Permit 17-05 as conditioned.

Section 8. Effective Date. This Resolution shall become effective immediately.

###

The foregoing Resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 15th day of January, 2019.

AYES:
NOES:
ABSENT:

Shon Harris, Mayor

ATTEST:

Patricia Buckland, City Clerk

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY

Shannon Chaffin, City Attorney
Aleshire & Wynder, LLP

Attachment 6
Aerial photo/Location Map

Attachment 1: Aerial photo/Map



Attachment 7

November 28, 2018 Planning Commission Staff Report



**CITY OF YUBA CITY
PLANNING COMMISSION
STAFF REPORT**

Meeting Date: November 28, 2018

To: Chair and Members of the Planning Commission

From: Development Services Department

Presentation By: Arnaldo Rodriguez, AICP, Director

Public Hearing: Development Permit 17-03, Use Permit 17-05 and Environmental Assessment EA 17-10: Request for Modification of Use Permit 12-01 to Increase the Maximum Throughput at a Permitted Large Volume Transfer Station from 100 tons per day (TPD) to 300 TPD.

Location: 140 Epley Drive (south of Lincoln Road, east of Garden Highway; APN 54-083-014, 54-083-015 and 54-083-023)

Project Information:

Recycling Industries, Inc. (RI and/or applicant or operator) is proposing to modify Use Permit 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 will 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.

Background:

Dave Kuhnen, on behalf of RI is requesting authorization to amend previously approved Use Permit (UP) 12-01. The Project Information Section on page 1, above, summarizes RI request.

Currently, RI operates a recycling center originally entitled per UP 07-12. This Use Permit was approved by the Planning Commission (Commission) on February 27, 2008, subject to 15 Conditions of Project Approval.

Subsequent to the approval of UP 07-12, RI submitted UP 12-01 to convert their recycling center into a Large Volume Transfer Station (LVTS). During the entitlement processing, staff drafted an Initial Study/Mitigated Negative Declaration (IS/MND; Environmental Assessment (EA) 12-02). EA 12-02 analyzed the potential impacts associated with construction and operation of a LVTS with a maximum throughput of 100 TPD of mixed waste and recyclables.

This IS/MND and related Use Permit were presented to the Commission on July 23, 2014 for consideration. After a public hearing, the Commission approved the project subject to compliance with an array of conditions. A summary of these conditions are as follows:

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 the applicant 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 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 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.

Following the approval of UP 12-01, on July 24, 2014, a Notice of Determination (NOD) was filed with the State Clearinghouse (reference SCH #2014052082), while a Solid Waste Facility Permit (SWFP) 51-AA-0008 was issued by the Yuba-Sutter County Local Enforcement Agency (LEA)

and the California Department of Resources Recycling and Recovery (CalRecycle) for a maximum throughput of 100 TPD.

Because the applicant has not developed the site as approved per UP 12-01, the permit has not been effectuated and similar to all other Use Permits, they are subject to becoming null and void for inaction. In this particular case, UP 12-01 has been the subject of three extension requests. 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 LEA is responsible for ensuring compliance with applicable State mandated requirements. As a LVTS, the LEA requires that the applicant submit periodic reports while also providing them the ability to issue warnings and citations.

General Plan & Zoning

The subject property is zoned Industrial District (M-2) and is currently occupied by five metal buildings. As part of this project, the applicant would demolish two of the five buildings and would construct a new 21,600 sf receiving and sorting building. Table 2 provides a synopsis of the zoning and surrounding land uses.

Table 2: Land Use, Zoning, & Surrounding Information

<i>Land Use Designation:</i>	Manufacturing, Processing, and Warehousing
<i>Zoning Classification:</i>	Industrial (M-2) District
<i>Surrounding Land Uses:</i>	Vacant industrial land that is utilized for the D & H Transport truck storage business is located immediately north of the site across Epley Drive. Escalera Inc. is also located across Epley Drive to northwest of the site. To the east, across Putnam Avenue are multiple industrial businesses including: Unity Forest; Sheet Metal Workers; and Bandag Tires Repair. To the immediate west of the project site is the Hilo Erectors industrial business, and to the immediate south of the site is vacant industrial land which separates the project from the recently constructed Kingsbury Bearings industrial business located further to the south. The Feather River and the levee are located over 1,500 feet to the east of the facility. The nearest residence is over 1,900 feet to the west of the project site boundary.

Public Outreach:

As part of its review of RI's most recent request, staff notified the applicant that it would need to retain, at their expense, a qualified environmental consultant to prepare an Initial Study (IS) pursuant to the California Environmental Quality Act (CEQA).¹ RI selected, and the City approved, Clements Environmental, to prepare a draft IS. Upon receipt of the draft Initial Study/Mitigated Negative Declaration (IS/MND), the City retained an independent consultant, Benchmark Resources, to peer review the IS. While Benchmark Resources is under the direct supervision of the City, RI was also responsible for all costs incurred by the independent consultant to peer review the document.

As part of the IS preparation, staff requested that RI sponsor a community meeting to solicit feedback on their proposal. Said meeting was held on June 26, 2017 at the project site. As part of the meeting, RI:

- Invited 200 nearby neighbors to the open house.
- Advertised the event in the Appeal Democrat on June 22 and 24, 2018 (1/6 page advertisement size).
- Advertised the event on Facebook.

Per RI, six people attended the meeting. RI received three support cards.

In addition, the City created a webpage dedicated to the project, met with various community members, mailed several notices of upcoming events, published notices in the Appeal Democrat, and circulated the Initial Study for public review and comment.

Staff Analysis:

As part of the current proposal, staff assessed surrounding land uses, the potential impacts of the operations to nearby business and roadways, potential environmental impacts, needs by the applicant, proximity to residences, size of the facility, hours of operation, and zoning regulations. In addition, staff considered the site's history, previous Commission action, and the ability of RI to continue to operate while also providing a community benefit.

Based on said analysis and extensive dialogue and deliberation, staff is recommending numerous conditions that would allow RI to continue to operate, provide them an opportunity to expand, while also limiting the amount of material they may accept.

The following is a summary of conditions²:

1. The facility may be increased from 3 acres to 4 acres.
2. The facility shall not receive more than 100 tons per day of mixed waste and recyclables.
3. The facility shall only receive material generated within the Sutter and Yuba Counties.

¹ Letter to David Kuhnen (RI) from Arnoldo Rodriguez, City of Yuba City, dated March 12, 2018.

² For a complete list of conditions, refer to Attachment 2, Conditions of Approval.

4. Putrescible material shall not exceed 10 percent of all material received.
5. Green Waste:
 - a. No green waste shall be accepted via a packer truck, including side, front, or rear loaders.
 - b. Self-haul green waste may be accepted and processed.
6. Except for source separated curbside recyclables, material may not be accepted via packer trucks. This includes side, front, or rear loaders.
7. Roll off bins of up to 50 yards may be accepted.
8. The facility shall be closed Sunday. The facility may operate refuse/waste between 7 a.m. – 5 p.m., Monday through Saturday for refuse/waste acceptance with ancillary operations between 6 a.m. – 9 p.m., Monday through Saturday.

Once refuse is received at the facility, it will be sorted and organized for delivery to other facilities. For example, cardboard and aluminum will be crushed and baled, whereas glass will be placed in transportation bins. Glass will not be crushed, however, there will undoubtedly be incidental crushing of bottles as they are separated. Putrescible material will be separated and will be transported to a landfill. Acceptable material includes:

- Beverage container recycling (i.e., aluminum cans)
- Electronic waste recycling (no processing will occur onsite, rather it will be shipped to processing plants)
- Tire recycling (tires will not be altered, shredded, baled, or otherwise processed)
- Green-waste (self-haul only; to be removed within 48 hours of being accepted)
- Scrap and ferrous metals
- Mattresses and bedsprings
- Rolled carpet and rolled padding
- Clean wood waste

While RI's initial request is to accept up to 300 TPD, with no limitations on putrescible material, and authorization to expand the facility by one acre, staff is recommending that conditions be imposed that allow them to expand their facility, however with restrictions as summarized in this staff report and contained in detail in the Attachment 2, Conditions of Approval.

Table 3 provides a comparison highlighting key variables between:

- Conditions as approved per UP 12-01
- RI proposal per this UP
- Staff recommendation

Note that the table is not a complete list, rather it is simply intended to highlight substantive elements.

Table 3: Comparison of Approved Permit, RI proposal, Staff Recommendation

	Approved per UP 12-01	Current RI Proposal	Staff Recommendation
Project area	3 acres	4 acres	4 acres
Max. tons per day	100	300	100
Max. putrescible material	10% of all material.	Concurs with staff.	10% of all material.
Types of deliveries	Self-haul only. No packer trucks.	Concurs with staff.	Except for source separated curbside recyclables, material may not be accepted via packer trucks. This includes side, front, or rear loaders.
Origination of waste restrictions	No restrictions.	No restrictions.	Sutter and Yuba Counties (includes incorporated cities within said counties).
Green waste	Self-haul only. No packer trucks.	Concurs with staff.	Self-haul only. No packer truck delivery. Shall be processed within 48 hours from acceptance.
Hours of operation	No restrictions.	Concurs with staff.	7 am-5 pm, Monday through Saturday with facility operating hours from 6 am-9 pm, Monday through Saturday. Closed on Sunday.
Queuing of vehicles on street	Permit is silent.	Concurs with staff.	Prohibits of queuing of vehicles or the directing of vehicles off-site to avoid queuing.
Noise	Comply with City regulations.	Concurs with staff.	Comply with City regulations and adds condition that RI shall retain an independent acoustical engineer to measure noise within a specified time at the City's request.
Tire Storage	Permit is silent.	Concurs with staff.	Shall be stored in a single bin no larger than 40 yards in size.

Environmental Assessment:

A Subsequent Initial Study/Mitigated Negative Declaration (IS/MND; Attachment 14) was prepared for the proposed project and is attached for the Commission's review and consideration. As previously mentioned, in addition to complying with all applicable local regulations and requirements, the proposed project must also comply with the applicable State standards regarding operation of a solid waste facility.

The proposed LVTS will be required to meet the State standards for solid waste handling as defined in the California Code of Regulations (CCR), Title 14, Article 3.2, Section 18221.5 and Article 6.0, Sections 17402 and 17403. The Yuba-Sutter Local Enforcement Agency (LEA) will

be responsible for ensuring the project complies with all applicable State mandated requirements in the aforementioned code sections.

As part of the State mandated requirements of CCR Title 14, the applicant has prepared a *Transfer/Processing Report* (TPR; Attachment 14a), which details how the proposed facility will comply with CCR Title 14 requirements by fully describing the design and operations of the proposal.

In addition to the proposal being subject to compliance with the provisions of CCR Title 14 under the authority of the Yuba-Sutter LEA, the following regulatory requirements also apply to the proposed facility:

- **Use Permit** – as determined by the Planning Commission.
- **County Non-Disposal Facility Element (NDFE)** - The Regional Waste Management Authority (RWMA) previously revised the NDFE to include this facility. The proposed facility is identified in RWMA's Non-Disposal Facility Element (NDFE).
- **Storm Water Permit** - The facility maintains a General Industrial Storm Water Permit (NPDES) with the State Water Resources Control Board (SWRCB). A Storm Water Pollution Prevention Plan (SWPPP) and Monitoring Program Plan (MPP) have been developed and are monitored by Bishop Environmental.
- **California Department of Conservation Processor Certification Permit** - The State of California Department of Conservation has issued a Certification for the facility to operate as a State Certified Processor to support Certified Recycling Centers and Collection Programs. State Certification Approval occurred in June 2009.
- **Hazardous Waste Generator ID Number** - The facility will not generate over 250 gallons of hazardous waste per year. Operating under this level, the facility will not be required to have a Hazardous Waste Generator ID Number.
- **Solid Waste Facilities Permit** - A Solid Waste Facilities Permit application has been submitted and will be required to be approved by the County of Yuba Environmental Management Department, Environmental Health Division (LEA), and the City of Yuba City. If approved, the LEA will submit the proposed permit to CalRecycle for State of California approval.

In compliance with the requirements of CEQA, the proposed project and the associated Draft Subsequent IS/MND were delivered to the State *Office of Planning and Research, State Clearinghouse and Planning Unit* (SCH) for review and distribution. The public review period for the IS/MND began on October 7, 2018 and closed on November 6, 2018. The State Clearinghouse file number assigned to the project is SCH# 2014052082.

As part of the public comment period, staff received various comments. These comments included letters from:

1. CalRecycle

2. Feather River Quality Air Management District
3. Yuba-Sutter Local Enforcement Agency (LEA)
4. Central Valley Regional Water Quality Control Board (CVRWQCB)

Their comment letters, including thorough responses, are outlined in Attachment 3.

Community Feedback:

As part of this most recent proposal, staff received:

- Emails expressing their opposition to the proposed use. Refer to Attachment 5.
- Emails in support of the proposed use. Refer to Attachment 6.
- A petition submitted by RI with signatures in support of the proposed use. Refer to Attachment 7.
- Letter submitted by Brigit S. Barnes & Associates, Inc. dated November 6, 2018 (refer to Attachment 11). In their letter, they expressed the following concerns:
 - Standard of Review for CEQA Review
 - City fails to meet independent judgement test mandated under CEQA
 - Summary of defects in analysis or resulting mitigation
 - Detail of comments
 - Aesthetics
 - Air quality
 - Odors
 - Cultural resources
 - Greenhouse gas emissions
 - Hazards and hazardous materials
 - Hydrology and water quality
 - Noise
 - Public services
 - Transportation/traffic
 - Inadequate information to evaluate adequacy of mitigation
 - Inadequate evidence of RI ability to fund mitigation
- Letter submitted by Mitchell Chadwick dated November 20, 2018 (refer to Attachment 12) in support of the project. They noted:
 - The project expands an existing industrial use in an industrial area
 - A mitigated negative declaration is appropriate for the project
 - Competition is the American way and good for society
- Letter submitted by Mitchell Chadwick dated November 21, 2018, in reply to the Brigit S. Barnes & Associates letter (Attachment 13). They noted:
 - The project expands an existing industrial use in an industrial area
 - CEQA and the CEQA Guidelines support preparation of an MND
 - Preparation of the MND complies with CEQA, and the City will exercise its independent judgement
 - Aesthetics

- Air quality
- Biological resources
- Cultural resources
- Greenhouse gas emissions
- Hazards and hazardous materials
- Hydrology and water quality
- Noise
- Public services
- Transportation/Traffic

Recommended Action:

The suitability of the proposed project has been examined with respect to its consistency with goals and policies of the General Plan, its compatibility with surrounding uses, and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying environmental assessment.

Yuba City Municipal Code Sections 8-5.7003 requires that findings be made in order to approve a Use Permit. Provided below is an evaluation of the findings required to approve the project. The required findings are in ***bold, italicized*** font, followed by a staff analysis.

1. The proposal is consistent with the General Plan.

Staff analysis: 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.

2. 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 this chapter.

Staff analysis: 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.

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

Staff analysis: The applicant is proposing to expand the facility from 100 TPD to a 300 TPD, however staff is recommending limiting the maximum to 100 TPD. Regardless, traffic will increase in comparison to what exists today, however this increase was previously examined per UP 12-01.

Estimated truck activity and employee travel associated with the project will occur over an 11 hour operating day between 7 a.m. to 6 p.m. 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.

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.

4. *The site design and size and design of the buildings will complement neighboring facilities.*

Staff analysis: 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.

5. *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.*

Staff analysis: The project site is suited for a LVTS. The surrounding uses are industrial in nature, while the nearest homes are located approximately 1,900 lineal 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 attached IS/MND and the 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:

- 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.

- 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 previously mentioned in the *Environmental Assessment* discussion section, since the proposed project is considered a Large Volume Transfer Station, the Yuba-Sutter 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.

Commission Action:

Based on the findings above, the environmental assessment, comments received, adopted regulations, and the General Plan, staff recommends that the Planning Commission take the following actions:

1. Adopt the Subsequent Initial Study/Mitigated Negative Declaration 17-10.
2. Determine that Development Permit 17-03 and Use Permit 17-05 are consistent with the General Plan subject to compliance with the Conditions of Project Approval as outlined in Attachment 2.
3. Approve Development Permit 17-03 and Use Permit 17-05 with the Conditions of Project Approval, as outlined in Attachment 2, modifying Use Permit 12-01 and granting a revised Large Volume Transfer/Processing Solid Waste Facility Permit.

Subject to Appeal:

The Commission's action may be appealed to the City Council per Section 8-5.7003(e) of the Yuba City Municipal Code. An appeal may be filed by "[A]ny applicant or person claiming to be

directly and adversely affected by any action of the Planning Commission...” Appeals shall be filed with the City Clerk within 10 days after the Commission’s action.

Attachments:

1. Aerial photo/Location Map
2. Conditions of Approval
3. Comments received from responsible agencies and responses
4. 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
5. List of emails expressing their opposition of the project
6. List of emails in support of the project
7. Petition submitted by RI with signatures in support of the project.
8. 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
9. 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
10. 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
11. Letter submitted by Brigit S. Barnes & Associates, Inc. dated November 6, 2018 opposing the project
12. Letter submitted by Mitchell Chadwick dated November 20, 2018 supporting the project
13. Letter submitted by Mitchell Chadwick dated November 21, 2018 titled “Reply to Stop the Dump Comment Letter on Recycling Industries’ Expansion Project”
14. Initial Study/Mitigated Negative Declaration for Use Permit 17-05 and Development Plan 17-03 including:
 - 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
15. Mitigation Monitoring and Reporting Program
16. Report to the Planning Commission for Use Permit 12-01 dated July 23, 2014

17. Site Plan and building elevations

Attachment 8
Adopted Conditions of Approval

Attachment 2: Conditions of Project Approval

(Adopted by Planning Commission November 28, 2018)

Contents

Indemnification:.....	2
Materials:	2
Delivery of Material:	3
Storage:	3
Vector Control:.....	3
Noise:	3
Odor Control:	3
Queuing:.....	3
Processing:	3
Litter Control:.....	4
Posting of Signs:	4
Host Fee:	5
Public Works:	5
Fire Department:.....	7
CalRecycle:.....	7
Feather River Air Quality Management District:	7
Sutter-Yuba Local Enforcement Agency:	7
Central Valley Regional Water Quality Control Board:.....	7

Indemnification:

1. The applicant, operator, and/or property owner ("Applicant" herein) is required to enter into an agreement with the City agreeing to indemnify, defend, and hold harmless the City of Yuba City, its officers, attorneys, agents, employees, departments, commissioners, authorized volunteers, and boards ("City" herein) against any and all liability, claims, actions, causes of action or demands whatsoever against them, or any of them, before administrative or judicial tribunals of any kind whatsoever, in any way arising from, the terms and provisions of this land use approval, including without limitation any California Environmental Quality Act (CEQA) approval or any related development approvals or conditions whether imposed by the City, or not, except for City's sole active negligence or willful misconduct. This indemnification condition does not prevent the Applicant from challenging any decision by the City related to this project and the obligations of this condition apply regardless of whether any other permits or entitlements are issued. The land use approval shall not become effective until Applicant executes a "Covenant to Indemnify."
2. In accordance with the provisions of Government Code Section 66020(d)(1), the imposition of fees, dedication, reservations or exactions for this project are subject to protest by the project applicant at the time of approval or conditional approval of the development or within 90 days after the date of imposition of fees, dedications, reservation, or exactions imposed on the development project.

This notice does not apply to those fees, dedications, reservations, or exactions which were previously imposed and duly noticed; or, where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

Materials:

3. The facility shall not receive more than 100 tons per day.
4. The facility shall only receive material generated within the Sutter and Yuba Counties.
5. Putrescible material: maximum of 10 percent of all material. Material shall be removed within 48 hours.
6. The facility shall not accept, store, or process:
 - a. Hazardous Material
 - b. Biohazardous Material
 - c. Medical Waste

If any of the above waste (hazardous, biohazardous or medical) is dumped illegally at the site, the operator shall take necessary steps to properly handle and dispose of such items listed.

7. Tires: Shall be stored in a bin no larger than 40 yards in size. A maximum of one tire bin shall be at the facility at any given time.
8. Green Waste:
 - a. No green waste shall be accepted via a packer truck, including side, front, or rear loaders.
 - b. Self-haul green waste may be accepted and processed.

- c. Shall be removed within 48 hours of being accepted.
- 9. Pallets: Shall not be stacked taller than 6 feet in height outdoors.

Delivery of Material:

- 10. Except for source separated curbside recyclables, material may not be accepted via packer trucks. This includes side, front, or rear loaders.
- 11. Roll off bins of up to 50 yards may be accepted
- 12. The facility is closed Sunday. The facility is open from to refuse/waste from 7am – 5pm, Monday through Saturday with ancillary operations from 6am – 9pm, Monday through Saturday.

Storage:

- 13. All utilized areas, including storage areas, shall be paved.
- 14. Bundled, packaged, and/or palletized material shall be stored on paved areas.

Vector Control:

- 15. Operator shall follow all controls listed in Section 5.5 of Transfer/Processing Report (TPR).

Noise:

- 16. Operator shall contract with an independent acoustical engineer to measure noise being generated by the facility within 10 working days as requested by the City. Should noise levels exceed adopted standards, said noise levels shall be reduced to acceptable levels within 24-hours.

Odor Control:

- 17. Operator shall comply with all provisions listed in Section 5.4 of TPR
- 18. Trucks shall be washed weekly off-site or on-site where solids in water can be captured before entering the City system.

Queuing:

- 19. There shall be no stacking and/or queuing of vehicles entering the facility and/or waiting to access the scale on the public right-of-way. Vehicles shall not be directed to leave the facility to avoid queuing; rather operational changes shall be implemented within 24 hours of notification by the City.

Processing:

- 20. All processing, sorting, compacting, shredding, baling, crushing, etc. of solid waste destined to a landfill shall occur indoors.
- 21. All green waste shall be stored indoors unless contained in a roll-off container and covered.

22. Storage of roll off bins destined to be dumped and processed at the site shall be properly covered, unless stored indoors.
23. Storage of construction vehicles/material is not allowed in the public right-of-way.

Litter Control:

24. Litter control shall be implemented as described in section 4.11.2 of the TPR report.
25. The transfer station operator shall manage the facility in such a manner that confines litter to the work area, which prevents litter from accumulating on other parts of the site and which prevents litter from being blown off the site.
26. The transfer station operator shall implement a program requiring transfer station users to securely containerize their load to avoid littering. The program shall be subject to the approval of the City.
27. Under windy conditions, the transfer station operator shall cover the refuse with City approved cover materials as often as necessary to control blowing litter. Other options shall be considered as necessary, including the alignment of unloading areas away from the prevailing wind direction.
28. The transfer station operator shall install portable litter fencing in the work area to intercept wind-blown debris.
29. The transfer station operator shall remove litter from the litter fencing and planting screens at least once a day. On site access areas shall be policed at least daily. The City may require more frequent policing to control the accumulation of litter.
30. The transfer station operator shall provide weekly (or more frequent) litter clean up along City right-of-way to and from the facility. The City may modify the frequency of clean up and/or area of coverage. If wind-blown litter from the transfer station reaches other properties, the Public Works Director may require the transfer station operator to remove the litter and the Director may require the operator to institute additional measures to prevent recurrence of the problem.
31. Paved roadways proximate to the site shall be cleaned as necessary when soil material has been carried by patrons of the facility onto public roadways. If the operator fails to do so upon notice, the City may clean the roadway at the operator's expense.
32. The transfer station operator shall post signs, as determined necessary by the City, along access roads to the transfer station noting littering and illegal dumping laws. The operator should periodically publish these laws and operation hours in mailings.
33. The transfer station operator shall post signs at the transfer station entrance noting the hours of operation.

Posting of Signs:

34. The transfer station operator shall post signs, at their expense, notifying patrons of littering regulations and the need to properly tarp their vehicles to minimize debris from exiting the vehicle onto the roadway and/or neighboring sites.

Host Fee:

35. Following State approval of the proposed expansion of the Large Volume Transfer Station, the applicant will negotiate a “host fee” with the City. The Host Fee will be calculated based upon the amount of garbage that is ultimately transferred to the Landfill by the applicant.
 - a. Authorize the Community Development Director (or his designee) to approve minor amendments to the project Transfer Processing Report as necessary to accommodate final approval from the State of California.
 - b. Authorize the Community Development Director (or his designee) to provide all necessary approvals required to obtain final approval from the State of California for the proposed Large Volume Transfer Station.

Public Works:

36. To help contain fugitive dust, construction sites shall be watered down during the construction phase of the project or as directed by the Public Works Department.
37. The applicant, at their expense, shall be solely responsible for all quality control associated with the project. The quality control shall include, but is not limited to, the following: survey work, potholing existing utilities, all geotechnical testing, soil reports, concrete testing, asphalt testing, and any other required special testing/inspections. The City will only perform necessary testing to insure compliance.
38. Storage of construction vehicles/material is not allowed in the travel way.
39. The improvement plans for the development of the subject property shall include all measures required to ensure that no drainage runoff resulting from the development of the property flow onto the adjacent lands or impede the drainage from those properties. The rear yards and/or side yards of the parcel shall have the same finish grade elevation as those lots within tolerances as approved by the Public Works Department. If retaining walls are required they shall be constructed of concrete or masonry block.
40. The contractor shall obtain an Encroachment Permit from the City prior to performing any work within public rights of way.
41. The Developer shall place, within the property boundary, an in-line separator on the storm drain line prior to the point of connection to the storm drain line in the City right-of-way. Property owner shall be responsible for all maintenance of the system.
42. Required Improvement Plan Notes:
 - a. "Any excess materials shall be considered the property of the contractor/owner and shall be disposed of away from the job site in accordance with applicable local, state and federal regulations."
 - b. "During construction, the Contractor shall be responsible for controlling noise, odors, dust and debris to minimize impacts on surrounding properties and roadways. The Contractor shall be responsible that all construction equipment is equipped with manufacturers approved muffler baffles. Failure to do so may result in the issuance of an order to stop work."

- c. "If any hazardous waste is encountered during the construction of this project, all work shall be immediately stopped and the Sutter County Environmental Health Department, the Fire Department, the Police Department, and the City Inspector shall be notified immediately. Work shall not proceed until clearance has been issued by all of these agencies."
 - d. "The Contractor(s) shall be required to maintain traffic flow on affected roadways during non-working hours, and to minimize traffic restriction during construction. The Contractor shall be required to follow traffic safety measures in accordance with the CalTrans "Manual of Traffic Safety Controls for Construction and Maintenance Work Zones." The City of Yuba City emergency service providers shall be notified, at least two working days in advance, of proposed construction scheduled by the contractor(s)."
 - e. "Soil shall not be treated with lime or other cementitious material without prior express permission by the Public Works Department."
43. Prior to paving, the Developer shall vacuum test all manholes to ensure no leakage will occur.
44. The curb, gutter, sidewalk, and lot drainage shall be inspected and approved by the City. Any curb, gutter and sidewalk which is not in accord with City standards or is damaged before or during construction, shall be replaced. All sidewalks along the City right-of-way shall be free of any non-control joint cracking. In addition, any concrete with cracks, chips, blemishes, and spalling greater than an inch in diameter shall be replaced from control joint to control joint.
45. The property shall petition for formation of a Zone of Benefit of the Yuba City Lighting Maintenance District for the purpose of maintaining the street lights. The Engineering Division shall be reimbursed actual costs associated with the formation of the district.
46. All public street lighting shall be dedicated to the City of Yuba City.
47. Cross easements over all property not occupied by buildings shall be reserved in deeds for all underground utilities, ingress and egress, parking, drainage, landscaping, and the maintenance thereof to the benefit of all parcels involved in the division.
48. Prior to the issuance of a building permit, the property owner shall merge the parcels in to one parcel, or shall relocate the property lines between the parcels so they do not bisect any buildings.
49. The project, including phased improvements, shall comply with the City's Storm water Management and Discharge Control Ordinance (Title 4, Chapter 21 of the Yuba City Municipal Code).
50. The applicant shall provide evidence that a Notice of Intent has been submitted and received by the local Water Quality Control Board for a General Construction Activity Storm Water Permit. Two copies of the project Storm Water Pollution Protection Plan shall be provided to the City.
51. The applicant shall provide, to the Public Works Director, the name and contact information of the individual(s) who will be responsible for cleaning any debris in the City right-of-way resulting from the transfer station's operations. The individual(s) shall be available.
52. Applicant to contact the State Water Resources Control Board to determine industrial general permit compliance.

Fire Department:

53. Obtain necessary permits from the Yuba City Fire Department.

CalRecycle:

54. Comply with letter November 5, 2018 and subsequent correspondence between CalRecycle and Larry Miner.

Feather River Air Quality Management District:

55. Comply with letter dated November 6, 2018 and subsequent correspondence between the FRAQMD and Larry Miner.

Sutter-Yuba Local Enforcement Agency:

56. Comply with letter dated November 5, 2018 and subsequent correspondence between the LEA and Larry Miner.

Central Valley Regional Water Quality Control Board:

57. Comply with letter dated October 30, 2018

Planning Commission Meeting Condition:

58. The mitigation measures identified in the initial study and mitigated negative declaration, which also include Appendix A of the Transfer Processing Report Assessment, shall be included as mitigation measures.

Attachment 9

11.28.18 Staff Power Point to Planning Commission



Planning Commission Meeting | Nov. 28, 2018

(Item 3) Recycling Industries

- Recycling Industries, Inc. (RI) is requesting authorization to amend and expand a previously approved Use Permit
- Project includes a
 - Use Permit (UP)
 - Development Plan (DP)
 - Environmental Assessment



RI Proposal

- RI is proposing a Large Volume Transfer/Processing Solid Waste Facility
 - Expand from 3 to 4 acres
 - 300 tons per day
 - No limitation on deliveries (self-haul vs. commercial packer trucks)
 - New 21,600 square foot (sf) building



Site Map



Aerial photo/Map



Site History

- Approved in Feb. 2008
- RI was previously granted Use Permit 07-12
 - 3 acres
 - 5 metal buildings
 - Recycling facility
- Applicant is currently operating under this Use Permit



Use Permit 12-01

- Approved in June 2014
- Request to establish a Large Volume Transfer Station (LVTS)
- Removal of 2 buildings & construction of a new 21,600 sf building
- 100 tons or less per day of mixed recyclables and solid waste



Use Permit 12-01

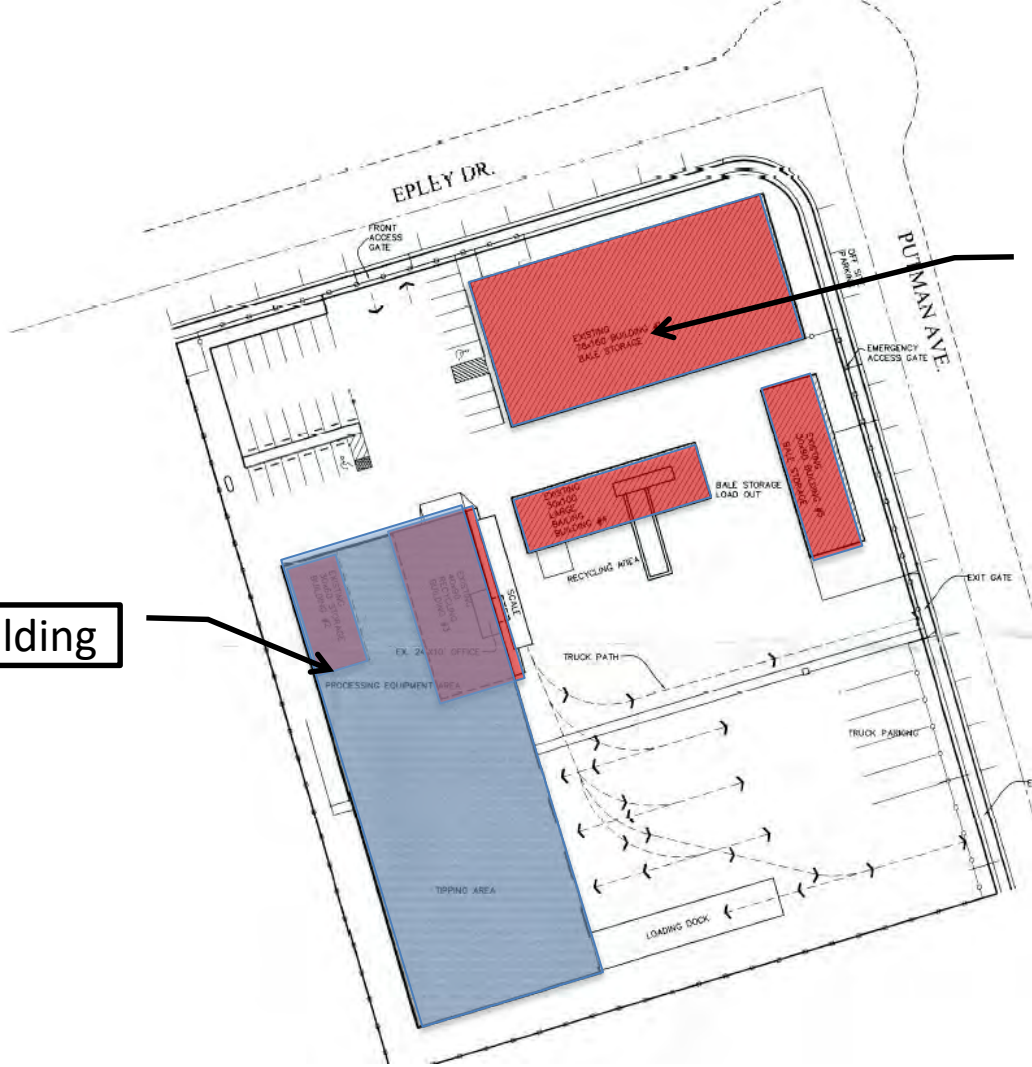
- Allowed solid waste (i.e., putrescible material) of up to 10% of all delivered material
 - Putrescible: liable to become putrid, decay/rot
- Self-haul only. Packer garbage trucks would not be permitted
- Annual review by the Commission for 3 years following construction of the facility



Site Map



New building



Existing buildings (in red)



Use Permit 12-01

Project Timeline(1)

	<i>Approved</i>	<i>Expiration Date</i>
Original application	July 23, 2014	July 23, 2016
Extension 1	August 24, 2016	July 23, 2018
Extension 2	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.



UP 12-01

- Use Permit has not been effectuated
 - May be effectuated upon obtaining a building permit



Current Proposal: UP 17-05

- 3 to 4 acres
- 300 tons
- Packer trucks and self-haul
- No limitations of putrescible material



Process

- Staff required:
 - That RI sponsor a community meeting to solicit community feedback.
 - Published in the Appeal Democrat, twice
 - RI delivered notices
 - 6 people attended the meeting



Process

- Staff required:
 - RI to retain an environmental consultant to prepare an environmental assessment
 - City reviewed and approved consultant (Clements Environmental & Ken Anderson Traffic Engineering)
 - City retained, at RI's expense, Benchmark Resources, to peer review the document



Benchmark Resources

- Land use and consulting firm specializing in permitting and CEQA review for industrial and natural resource land uses
- Role: Peer reviewed draft Subsequent Mitigated Negative Declaration (SMND) prepared by Clements Environmental and provided recommended revisions and comments to City staff



Benchmark Resources

- Review included review of the following:
 - Prior MND adopted for UP 12-01
 - Review, comment and revision of draft SMND
 - Technical Reports
 - Transfer/Processing Report (TPR) dated October 19, 2017
 - Review and approval of revised SMND that was circulated for public review
- Also assisted in preparation of staff report and reviewed comments submitted on SMND



Summary of Benchmark's Conclusions

- SMND, as revised by Benchmark and City staff, and circulated for public review is the appropriate CEQA compliance document for proposed project
- Staff report recommendations, and additional project modifications to address public comments, provide additional environmental protection beyond those provided in SMND
- Use Permit condition of approvals, requirements provided in The TPP, the Solid Waste Facility Permit, and mitigation measures will reduce potential impacts to less than significant levels



Public Review

- City filed a Notice of Intent with Sutter County, CA State Clearinghouse, public notice in the Appeal Democrat
 - Commenced a 30-day review period
- City received requests to extend the public comment period by 30-days. City denied the request/s however the hearing date was continued



Comments on CEQA document

- Received comments from 4 responsible agencies
 - All comments, including responses are outlined in Attachment 3



Comments on CEQA document

- CalRecycle

- Provided comments on the Draft IS/MND
 - Hours of operation
 - Waste types
 - RI reached out to CalRecycle and the latter indicated that they had no additional questions on Nov. 12, 2018



Comments on CEQA document

- Feather River Air Quality Management District (FRAQMD)
 - Provided comments on the Draft IS/MND
 - VOC
 - Odors
 - Backup generators



Comments on CEQA document

- **Local Enforcement Agency**
 - Provided comments on the Draft IS/MND
 - Hours of operation
 - Putrescible material clarification
 - No additional comments noted in an email to applicant on Nov. 26, 2018



Comments on CEQA document

- Regional Water Quality Control Board
 - Provided comments on the Draft IS/MND
 - Antidegradation analysis
 - Discharge permit
 - Stormwater controls
 - Putrescible material clarification



Comments on CEQA document

- Brigit S. Barnes & Associates, Inc.
 - Provided comments on the Draft IS/MND
- Mitchell Chadwick, RI's legal counsel, provided a response.



Comments on CEQA document

- Staff posed the following question to CalRecycle:
 - *“Of the number of rural cities [that] have permitted a fully operational transfer station, how many have been allowed without an EIR?”*



Comments on CEQA document

- Response from CalRecycle:
 - *“An EIR is only necessary if they [sic] a significant environmental effect cannot be mitigated and requires a Statement of Overriding Considerations for project approval. The vast majority of environmental documents prepared for a transfer station are ND’s and MND’s, it is very rare that an EIR is prepared.”*



Staff Recommendation

- After consideration and public input, staff recommends:
 - An expansion from 3 acres to 4 acres
 - Maintaining:
 - 100 tons per day
 - 10% cap on putrescible material
 - Placing limitations on type of deliveries (i.e. self-haul or commercial)



Comparison of Approved Permit, RI proposal, Staff Recommendation

	<i>Approved per UP 12-01</i>	<i>Current RI Proposal</i>	<i>Staff Recommendation</i>
Project area	3 acres	4 acres	4 acres
Max. tons per day	100	300	100
Max. putrescible material	10% of all material.	Concurs with staff.	10% of all material.
Types of deliveries	Self-haul only. No packer trucks.	Concurs with staff.	Except for source separated curbside recyclables, material may not be accepted via packer trucks. This includes side, front, or rear loaders.
Origination of waste restrictions	No restrictions.	No restrictions.	Sutter and Yuba Counties (includes incorporated cities within said counties).

Comparison of Approved Permit, RI proposal, Staff Recommendation

	<i>Approved per UP 12-01</i>	<i>Current RI Proposal</i>	<i>Staff Recommendation</i>
Green waste	No restrictions.	Concurs with staff.	Self-haul only. No packer truck delivery. Shall be processed within 48 hours from acceptance.
Hours of operation	No restrictions.	Concurs with staff.	7 am-5 pm, Monday through Saturday with facility operating hours from 6 am-9 pm, Monday through Saturday. Closed on Sunday.
Queuing of vehicles on street	Permit is silent.	Concurs with staff.	Prohibits of queuing of vehicles or the directing of vehicles off-site to avoid queuing.
Noise	Comply with City regulations.	Concurs with staff.	Comply with City regulations and adds condition that RI shall retain an independent acoustical engineer to measure noise within a specified time at the City's request.

Conditions

- Material at the facility will be sorted and will not be processed
 - Beverage container recycling (i.e., aluminum cans)
 - Electronic waste recycling (no processing will occur onsite)
 - Tire recycling (may not be altered, shredded, baled, or otherwise processed)
 - Green-waste (self-haul only; to be removed within 48 hours of being accepted)
 - Scrap metals
 - Mattresses and bedsprings
 - Rolled carpet
 - Clean wood waste

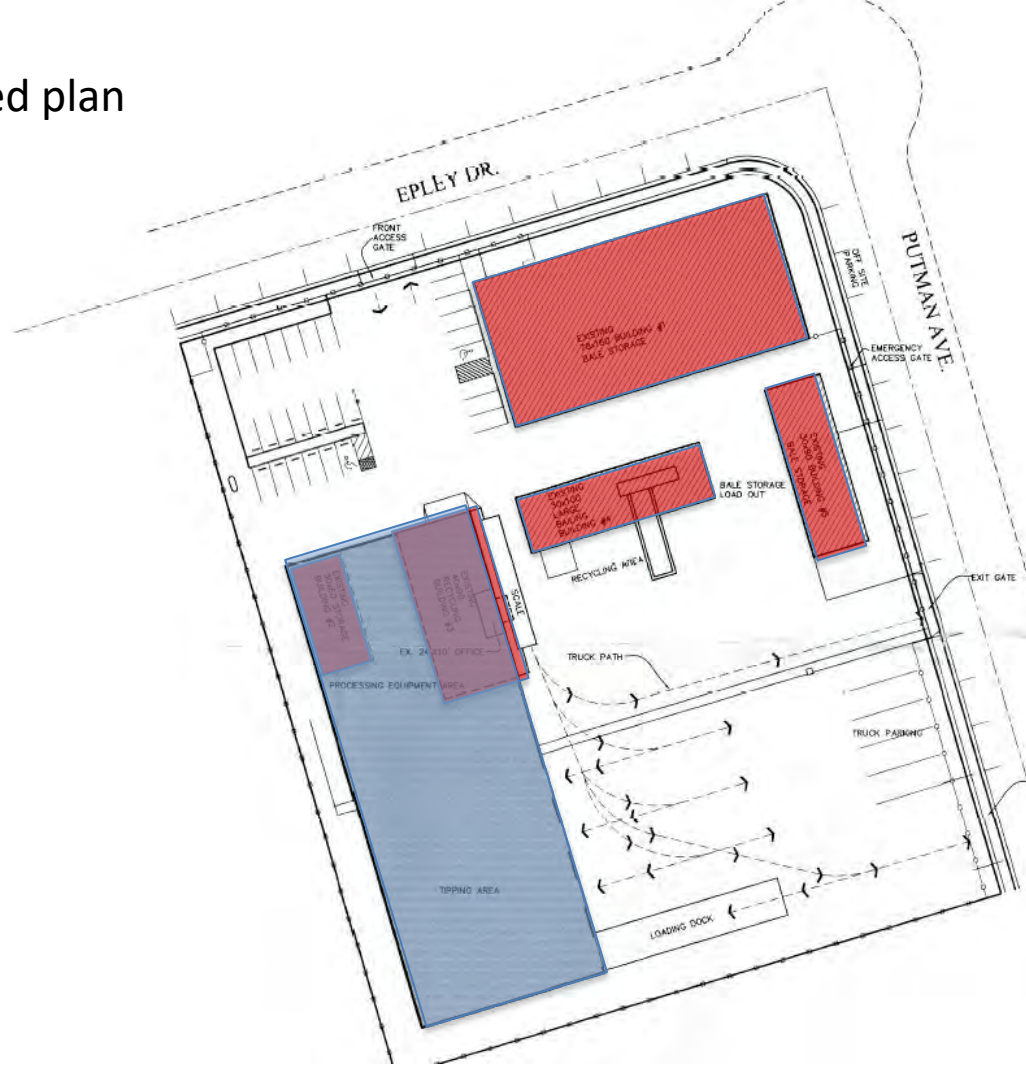


Conditions

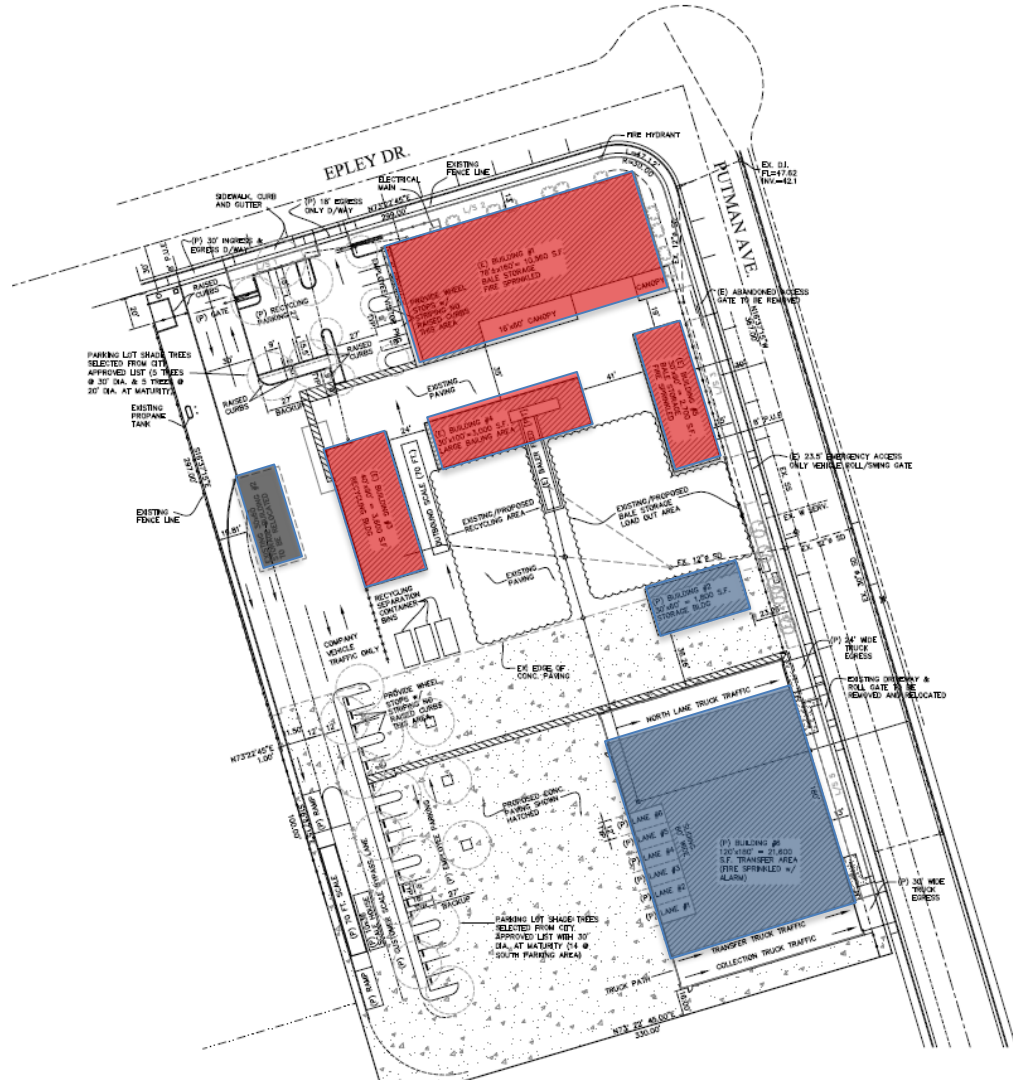
- Putrescible material to be removed within 48 hours
- Applicant to clean nearby roadways
- No queuing of vehicles on public streets
- City may require an independent acoustical study, at the City's request
- All utilized areas shall be paved



UP 17-05: Approved plan



Proposed Plan



PROCESS

- Open house; 2 notices in the newspaper
- Peer review
- Notice of Intent, Sutter County, State Clearinghouse, notice in the newspaper
- Noticed the neighborhood for the Nov. 14 meeting, notice in the newspaper
- Upon postponement, sent another notice
- Noticed this evening's meeting to neighbors and the newspaper
- Emails



Community feedback

- As of Nov. 21, received 275 emails opposing the project
- As of Nov. 21, received 15 emails supporting the project
- Received a petition from RI with 811 signatures in support
- Since Nov. 21, received 18 emails opposing the project (comments were placed on your desk)



Recommendation

- Adopt the Subsequent Initial Study/Mitigated Negative Declaration 17-10.
- Approve DP 17-03 & UP 17-05 with the Conditions of Project Approval, as outlined in Attachment 2, modifying Use Permit 12-01 and granting a revised Large Volume Transfer/Processing Solid Waste Facility Permit.



PC Action

- Action is final unless appealed to the City Council.



Site Map



Comparison of Approved Permit, RI proposal, Staff Recommendation

	<i>Approved per UP 12-01</i>	<i>Current RI Proposal</i>	<i>Staff Recommendation</i>
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Planning Commission Meeting | November. 28, 2018

(Item 2) Sullivan Expansion

- Application for a two-lot parcel map for property located between Colusa Highway and Spirit Way, just west of Harter Parkway.
- Would facilitate a 2-acre expansion by the John L. Sullivan auto dealer to the west



(Item 2) Sullivan Expansion

- General Plan Amendment, Rezone, Development Plan, & Environmental Assessment have been approved by City Council (November 20, 2018)
- General Plan Land Use Designation: Regional Commercial
- Zoning: General Commercial (C-3)



Map



CEQA

- Affirm the environmental assessment including an initial study and mitigated negative declaration was prepared under EA 18-05 for GPA 18-01, DP 18-01, and RZ 18-01.
 - Includes an addendum for the Parcel Map.



Recommendation

- Recommend that the Planning Commission:
 - Adopt Tentative Parcel Map 18-02, subject to the Conditions of Approval.



Map

