

Attachment 19

Letter submitted by Brigit S. Barnes & Associates, Inc. dated November 6,
2018 opposing the project

Attachment 11: Letter in opposition

November 6, 2018

Via Email and Hand Delivered

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Re: Recycling Industries Transfer Station; Use Permit Revisions
Draft Subsequent Initial Study/Mitigated Negative Declaration ("MND")
State Clearinghouse (SCH) #2014052082
COMMENTS ON MITIGATED NEGATIVE DECLARATION
Reservation of Rights regarding Comments on City's Peer Review

Dear Commissioners, Councilmembers, Ms. Locke, and Messers. Hayes, Kroeger, and Rodriguez:

This office represents Stop the Dump. This letter provides comments to the City's release of a Subsequent Initial Study/Mitigated Negative Declaration (the "2018 MND") to authorize a new Use Permit (New Use Permit)¹ for the Recycling Industries Recycling facility located at 140 Epley Drive, Yuba City.

¹ Based on review of public documents, initially Recycling Industries requested extensions and then sought a Revised Use Permit application. However, Mr. Rodriguez now refers to the recent RI proposal 12-01 as a "New Use Permit". Because the actual project is expanded from the 2014 Use Permit, I have kept the phrase "revised project" to describe components.

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Introduction

The Recycling Industries transfer station initially was approved and issued a Use Permit by the City of Yuba City based upon an Initial Study/ Mitigated Negative Declaration (EA-12, the "2014 MND"). A mitigated negative declaration is a truncated CEQA document prepared to document the city's determination that the project, as mitigated, would not have a significant adverse effect on the environment.

The City of Yuba City is now circulating a Subsequent Initial Study/ Mitigated Negative Declaration (the "2018 MND") to expand and supersede Recycling Industries' Use Permit (New Use Permit) to change the facility from one that primarily was receiving clean, dry self-haul recyclable materials, to one that can receive 300 tons per day of mixed municipal solid waste and curbside recycling, and up to 360 tons on a peak day. Where the prior Use Permit limited putrescent materials to only 10% of the total permit limit of 100 tons per day, and prohibited the site from receiving any large waste collection vehicles, the new permit removes these limits entirely. Putrescent material means waste that is decaying or rotting. Vehicles that can now access the site include 12-foot-tall waste collection and roll-off trucks.

These enormous changes to the transfer station will pose significant risks to our community and will directly affect the quality of life for nearby residents. Let there be no doubt - decaying and rotting waste smells. Our local air quality management district knows that. The district recommends a **one mile screening distance** for odor impacts from a transfer station. Yet this New Use Permit would eliminate the key odor control mechanism cited in the 2014 MND -- limits on putrescent waste. The latest, 2018 MND doesn't add any odor controls, set any performance standard, or require monitoring by Yuba City. The 2018 MND contains no real analysis of this key issue, and *no mitigation* to ensure odors are addressed.

The 2018 MND also attempts to sweep under the rug the increased truck traffic, and associated noise, air pollution, and greenhouse gas emissions from tripling facility capacity and allowing collection trucks to access the site. We are asked to believe that trucks will travel somewhere in the air basin, so there's no need to study their effects. As detailed in our comments below, that logic suffers from a number of fatal flaws. But regardless -- those trucks are not currently concentrated here, next to residential neighborhoods in Yuba City. Where is the analysis of concentrations of air pollution in our neighborhood? Where is the noise analysis? There isn't any!

The technical report attached to the 2018 MND says that as many as 52 vehicles might visit the facility under peak conditions in a peak *hour* (104 vehicle trips). Why does the traffic study only 104 trips per *day* and study 8 vehicles in a peak hour? There is something very wrong about this traffic report.

What about fire? The 2018 MND ignores the risk of fire from hot spots associated with decaying waste and increased acceptance of items such as lithium batteries in e-waste. No

information is provided about the high fire risk in this location. We now have PG&E shutting down electricity whenever it's windy. Will the sprinklers at this facility work when the power is shut down? And how will fire personnel get to a fire at night when semi-combo transfer trucks are parked *inside the transfer facility* and up against the roll-up door? This site does not have adequate space to maintain emergency access. Yet the MND says nothing about these issues.

It is clear to us, for all of the reasons detailed below, that a full environmental impact report is needed. We ask that the City of Yuba City send this New Use Permit back to the drawing board. We, as a community, deserve a full study and a full report before this project can be considered for approval.

1. Standard of Review

The California Supreme Court has identified the standard that a city must use to determine whether a full Environmental Impact Report must be prepared when an applicant proposes a change to a project previously approved based on a mitigated negative declaration. If a project is initially approved by a mitigated negative declaration, a "major revision" to the initial negative declaration will necessarily be required if the proposed modification **may produce** a significant environmental effect that had not previously been studied. *Friends of the College of San Mateo Gardens v. San Mateo County Community College District*, 1 Cal.5th 937, 959 (2016) (citing CEQA Guidelines, § 15162). And if the change to the initially approved project introduces "previously unstudied and potentially significant environmental effects that cannot be avoided or mitigated through further revisions to the project plans, then the appropriate environmental document would no longer be a negative declaration at all, but an EIR." *Id.* The 2018 MND improperly fails to fully identify the significant impacts to be anticipated by the expanded facility, inadequately provides for the necessary mitigation for these impacts, and fails to assure that if approved the applicant has the financial ability to fund the mitigation which will be required to protect the public.

2. City Fails to Meet Independent Judgment Test Mandated Under CEQA

In addition to these defects, Stop the Dump contends that the Mitigated Negative Declaration released for public review is fatally defective because the 2018 MND and documents just released by the City, fail to show any evidence that it has been reviewed by the City of Yuba City or that the City applied its independent judgment prior to approving the evaluations contained in the 2018 MND. In March, 2018, Arnoldo Rodriguez, Development Services Director, advised the public that Recycling Industries' application for the new use permit was contingent upon RI's funding the cost of preparation of an Initial Study for the expanded recycling center, and then funding the cost of an independent review to be performed by another environmental firm of the City's choosing. RI chose Clements Environmental to prepare the Initial Study. Then RI recommended and it appears the City hired Benchmark, as the consultant to prepare the peer review. When the 2018 MND was released for public comment on October 7, 2018, no peer review analysis was released. After informally requesting the document, my clients filed a Public Records Act request seeking the relevant documents. As of the date of this mandated comment letter, no

copy has been produced. When Ms. Martin followed up, she was advised directly on November 5, that the “peer review” ostensibly received by the City has been incorporated in the 2018 MND released to the public for comment.

A negative declaration must be prepared “directly by, or under contract to, a public agency.” (PRC § 21082.1, subd. (a).) Any draft negative declaration circulated by the lead agency must reflect its independent judgment. (PRC§ 21082.1, subd. (c)(2).) Moreover, the final negative declaration must reflect the lead agency’s independent judgment (PRC § 21082.1, subd. (c)(1); see also Guidelines, § 15025, subd. (b)), and the lead agency must make a finding that it does so. (§ 21082.1, subd. (c)(3).) Despite timely requests for the actual review documents or comments prepared by Benchmark, Mr. Rodriguez has so far refused to produce them. There is no method by looking at the 2018 MND to determine what was actually commented upon, and whether those comments and any resulting mitigation were incorporated in the 2018 MND.

Mr. Kunin, President of RI, was permitted to recommend Clements Environmental to prepare the original environmental review, and then Benchmark as the Peer Review consultant. The City accepted RI’s recommendations, and then RI paid for both reviews². Given the information presently available, it is impossible to determine whether Mr. Rodriguez received any type of “independent” review. City documents confirm that the third-party review was not complete until at least September 10, and the City actually considered proceeding with the RI produced Initial Study without the review.³ Therefore, Stop the Dump contends that the 2018 MND cannot reflect the City’s independent judgment as to the impacts anticipated to apply to the public, or whether proposed mitigation is adequate.

3. Summary of Defects in Analysis or Resulting Mitigation

Here, changes to the previously approved Recycling Industries transfer station introduce numerous unstudied and potentially significant environmental effects. An EIR is required to address the following changes:

- The revised project will remove mature landscaping the currently screens the site from view, introduce trucks twice as tall as the perimeter fence, introduce lines of trucks queuing outside the gate on public streets, and increase night lighting to enable outdoor operations up to 9:00 p.m. each night. These changes were not studied in the 2014 MND, and potentially could result in significant, unmitigated effects to the visual quality of the site and its surroundings. An EIR must be prepared to assess potential aesthetic impacts.
- The revised project will introduce new trucks to the site, increase trips by transfer trucks, increase idling, increase use of onsite emissions-generating equipment, and increase off-gassing emissions from the additional putrescent waste. On a peak day, operations will generate as many as 104 vehicle trips per hour. None of the facility’s criteria air pollutant

² Email David Kuhnen to Arnold Rodriguez May 19, 2018.

³ Email Steve Kroeger to City Council persons August 27, 2018.

and greenhouse gas emissions have been quantified, and no TAC analysis has been performed to determine whether localized concentrations of criteria pollutants and toxic air contaminants would exceed health-based thresholds, even though the revised project sits immediately west of a residential neighborhood. Increased site operations have the potential to result in significant, unmitigated effects to air quality and greenhouse gases, and must be analyzed in an EIR.

- The revised project will increase stationary source emissions of volatile organic compounds from putrescent materials. VOCs associated with off-gassing from onsite putrescent materials could exceed the emissions threshold established by the air district by a factor of **three**. This is a potentially significant impact of the proposed project, requiring mitigation. An EIR must be prepared to analyze this impact and identify mitigation to reduce the impact to a less-than-significant level.
- The revised project will increase receipt of putrescent materials from up to 10 tons per day to up to 360 tons on a peak day. The 2014 MND found that the 10 percent cap on putrescent was *the most important* odor control mechanism at the site. Now, the applicant proposes to lift this key mechanism and substantially expand site operations with no new analysis of odors, and no mitigation measure to ensure the City of Yuba City can odor issues should they arise. Sensitive land uses are located downwind of the site and within the “screening distance” for transfer stations as established by Feather River Air Quality Management District. This topic must be evaluated in an EIR.
- The revised project will include development of an acre of vacant land located near Yuba River, yet no biological or cultural resources survey has been performed. Potential impacts to cultural and biological resources on the one-acre expansion parcel must be analyzed in an EIR.
- The revised project substantially increases the likelihood of hot loads and combustible waste, including lithium batteries. By tripling the amount of waste and recyclable material that can be accepted at the site, and expanding the ability to accept electronic waste, here is an increased risk of fire and explosion that was not studied in the 2014 MND, and that has not been evaluated in the 2018 MND. The potential for fire and explosions must be analyzed in an EIR, and mitigation must be imposed to ensure these risks are reduced.
- The revised project increases receipt of waste that can adversely affect water quality. The 2018 MND does not mitigate the potential impacts of waste material, oil, sludge, and other substances coming into contact with stormwater. This topic must be evaluated in an EIR.
- The revised project will triple capacity, and associated mechanical equipment operations at the site, result in trucks queuing for longer periods of time both outside and within the facility gates, and increase truck traffic on local streets. All of these changes would increase noise associated with project operations, beyond the levels analyzed in the 2014 MND. The 2018 MND contains no noise studies or estimates. This topic must be evaluated in an EIR, and mitigation must be imposed to ensure that ambient noise levels are not substantially increased.

- The revised project will result in up to 104 peak hour vehicle trips. This level far surpasses the 50-trip threshold that Yuba City uses to determine whether a transportation impact is potentially significant. Further, the project introduces trips by large collector trucks and increased numbers of transfer trucks, in place of trips by self-haul vehicles. These large trucks have 3 to 4 times the effect on traffic compared to self-haul trucks. The traffic study in the 2018 MND recognizes that a multiplier must be applied to trucks. The 2014 MND ignores the revised project's substantial increase in peak hour trips, and instead looks only at a best-case scenario based on average daily trips spread evenly across an 11-hour period. This is improper, and violates CEQA.
- The revised project will enable site operations that block interior driveways and roadways throughout the day, impeding access to the site by emergency vehicles. To make matters worse, the project contemplates parking enormous transfer trucks inside the transfer station, and outside the transfer station blocking a door to the transfer station at night. An EIR must evaluate the effect that this clearly unsafe arrangement will have on access by the fire department in the event of a fire.
- The failure to adequately evaluate the routes through the City and through Marysville also establishes that the mitigation proposed violates the restrictions on deferred evaluation of mitigation established by *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3rd 296, because the net effect of failure to evaluate traffic routes and resulting emissions means that what mitigation should have been included after a thorough evaluation will have been improperly deferred.

CEQA does not give the City of Yuba City a choice. When there is a fair argument that the changes to the facility *may* result in a significant impact that was not studied before in the prior negative declaration, an EIR must be prepared. There could be a stack of evidence to the contrary. But CEQA so strongly favors an EIR over a negative declaration that evidence supporting a fair argument that a previously unstudied impact could occur triggers the EIR requirement no matter how much contrary evidence might exist. See CEQA Guidelines § 15064(f)(1).

4. Detail of Comments - General

The 2018 MND mischaracterizes the proposed project. The 2017 Transfer/ Processing Report for the Recycling Industries, Inc. Large Volume Transfer Station SWFP Revision (2017 TPR) states that the Recycling Industries Transfer Station will be modified and permitted to accept and process up to 300 tons of waste and recyclable materials a day and 360 tons per day on "unusual loading days." 2017 TPR at p. 1-2. The 2018 MND only studies an increase of up to 300 tons per day.

If in fact the Recycling Industries will be allowed to accept up to 360 tons of waste and recyclable materials on some days, then the 2018 MND must analyze and include this amount in its analysis. Otherwise the analysis for the project would not reflect what is actually proposed. The additional 60 tons is more than half of what the transfer station can

already accept each day and could add hundreds of more tons each year. This could result in a significant and adverse impact on the environment.

5. Aesthetics

The 2014 MND acknowledged that collection, storage and distribution of recyclables and waste materials could result in significant visual impacts that must be addressed. However, the 2014 MND determined that, in addition to the site being surrounded by a six-foot fence, mature landscaping would screen onsite materials from the surrounding public view. The 2014 MND further determined that because onsite operations would occur within an enclosed building, and offsite transport would be limited to vehicles that are covered, there would be less opportunity for loose debris on and off-site. See 2014 MND p. 11. Based on these factors, the 2014 MND found there would be a less-than-significant adverse effect on the visual quality of the site and its surroundings.

The New Use Permit introduces changes to the project that were not studied in the 2014 MND, which may result in significant unmitigated impacts to the visual quality of the site and its surroundings, as well as adverse visual impacts associated with nighttime lighting. The key changes are as follows:

- Under the New Use Permit, the mature landscaping that the 2014 MND relied upon to reach a conclusion that impacts would be less-than-significant will be removed and replaced. The 2018 MND includes no landscape plans or diagrams to enable a determination that the site would continue to be screened from view. Further, the 2018 MND includes no mitigation measures to ensure that the site is screened in the near-term when new trees are first planted, or in the long-term when the new trees have matured.
- Large waste collection trucks (packer trucks) operating on site under the New Use Permit will be roughly twice as tall as the self-haul vehicles previously permitted on the site. The 2018 MND includes no visual simulation or other analysis to show that a six-foot high fence would screen 12-foot tall packer trucks operating on the site from public view.
- The packer trucks introduced to the site under the New Use Permit would queue on the public street prior to the time that the facility opens. Commercial franchise collections often complete routes prior to 7 a.m. They will have nowhere to go except to line up on the street outside the facility gate. The 2018 MND includes no visual simulation or other analysis to show that trucks queuing on public roads will not have a significant adverse visual effect. Further, no mitigation measure in the 2018 MND prohibits truck queuing on public streets or addresses where trucks would be staged to await entry to the facility.
- All vehicles entering the site could queue on public streets throughout the day, and particularly on peak days. The 2018 MND contains no analysis of the frequency or duration of queuing associated with increasing the permit limit from 100 tons per day of materials delivered in self-haul vehicles to 300 tons per day of waste, including mixed garbage delivered in packer trucks and trucks collecting curbside recyclables, each of which that must be weighed on a single scale prior to continuing on into the facility. The

2018 MND includes no visual simulation or other analysis to show that trucks queuing on public roads will not have a significant adverse visual effect. Further, no mitigation measure in the 2018 MND prohibits truck queuing on public streets or addresses where trucks would be staged to await entry to the facility.

- Transformation of the site from one that primarily handled dry recyclables to one that accepts up to 300 tons per day of municipal solid waste and curbside recyclables has the potential to generate substantial amounts of loose debris, which may result in a significant impact to the visual quality of the site and its surroundings. Analysis of this potential impact is needed, including the potential for loose debris to escape building interiors when doors are open for truck access. Mitigation is needed to ensure a significant impact does not occur.
- The New Use Permit contemplates night-time operations, both in exterior locations (up to 9:00 p.m.) and in buildings. The 2018 MND includes no lighting plans or diagrams to enable a determination that increased nighttime lighting would not adversely affect views of the site. Further, the 2018 MND includes no mitigation measure to ensure that nighttime lighting does not produce adverse visual effects and glare.

The 2018 MND fails to recognize key project changes that may result in a significant adverse effect to the visual quality to the site and its surroundings. First, the 2018 MND does not disclose that the mature street trees on Epley Drive and Putnam Avenue *will be removed* and new trees will be planted at the site boundary. (See the 2017 Transfer/ Processing Report for the Recycling Industries, Inc. Large Volume Transfer Station SWFP Revision (“2017 TPR”) at p. 2-11.) The 2017 TPR states that street trees will be replaced with new trees and shrubs of an unspecified type and size to be determined at a future date through submission of a landscape plan. (See 2017 TPR at p. 2-12.) Newly planted trees will not and cannot screen the site to the same extent as mature trees. Further, the MND cannot rely on a landscape plan that has not been disclosed and evaluated and will be submitted in the future. Moreover, there is no mitigation measure requiring that such plan ensure that the site is screened, either in the near-term when new trees are planted or in the long-term when new trees have matured. At a minimum, mitigation must be added to require that replacement landscaping be designed and installed to screen the site from public view, and an analysis must be performed to determine whether-- even with this added mitigation-- the newly planted trees will be sufficient to screen the site under near-term and long-term conditions.

Second, the 2018 MND also fails to recognize that the appearance of on-site operations will differ substantially from operations under the previously approved transfer station, and those changes in operations will result in significant adverse impacts to the visual quality of the site and its surroundings. Under the New Use Permit, the applicant proposes to allow “packer trucks” to deliver municipal solid waste to the site. Packer trucks are large trucks used to collect and compact municipal solid waste and recyclable material. Such trucks were not allowed at the Recycling Industries transfer station under the existing Use Permit. Packer trucks are much taller than self-haul vehicles. A full-sized pick-up truck that might be used as a self-haul vehicle is about six feet tall. (See dimensions of a 2018 Chevrolet

Silverado at <https://www.gmfleet.com/chevrolet/silverado-1500-truck/features-specs-trims-dimensions.html>.) A packer truck is twice as tall, at about 12 feet in height. (See heights of collection trucks in Seattle at https://www.seattle.gov/util/cs/groups/public/@spu/@garbage/documents/webcontent/spu02_014603.pdf.) A boundary fence is unlikely to shield packer trucks from public view. The onsite operations will be visible, which could result in a significant adverse effect to the visual quality of the site and its surroundings. An analysis of this new potential impact is needed.

Third, the 2018 MND fails to recognize that under the New Use Permit, vehicles likely would queue on public streets, which could result in a significant adverse effect on the visual quality of the site and its surroundings. While signs on the street prohibit on-street parking, and the current facility permit attempts to prevent self-haul vehicles from stacking on the public streets by closing the facility gate to such vehicles when operations dictate doing so, it is not likely that such restrictions will be effective in preventing on-street stacking by packer trucks and roll-off trucks, nor would prevention of stacking appear to be feasible based on the information found in the 2018 MND.

The 2018 MND states that intake and tipping would commence at 7:00 AM seven days per week. (See 2018 MND at p. 50.) Packer trucks hauling waste often start their day beginning at 4:00 a.m. in staggered shifts, and trucks hauling waste from commercial franchises often complete their routes by 6:00 P.M. This means that packer trucks likely would queue outside the facility gate prior to 7:00 AM.

The facility is designed to have only one scale. (See 2018 MND Figure 5 at p. 10.) Inside the gate, there is driveway that the 2017 TPR states would accommodate 15 concurrently arriving queued vehicles. (See 2017 TPR at 4-27.) The TPR shows at Table 2 that on an average day 215 vehicles per day may enter the facility at Gate 1. (See 2017 TPR Table 2, at p. 1.) Assuming the *best-case* scenario that these vehicles are evenly distributed over an 11-hour day, this would result in 19 vehicles per hour. A less even distribution would increase this hourly total. Given that there is no restriction or control on the timing for vehicle arrivals, it is likely that more than 19 vehicles would arrive during some hours. Table 2 further shows that on a peak day, *52 vehicles per hour* could arrive at Gate 1. Based on this information, it is reasonable to conclude that (a) vehicles arriving early would queue before the facility opens; (b) vehicles could continue to arrive while the initial vehicles are waiting to be weighed, further lengthening the morning queue; (c) traffic arriving at the site may not be distributed evenly over the course of a day or hour, which could result in queuing outside the gate at any time of day; and (d) on peak traffic days queuing outside the gate could occur throughout the day. Please see Attachment A for photographs of vehicles queuing outside the gate at the Recology YSDI transfer facility.

An analysis of the visual impacts of vehicles queuing should be provided, including the frequency and duration of queuing as well as a simulation of how queuing would appear. Mitigation should be identified to prevent queuing and/ or provide a location for truck staging.

Fourth, the 2018 MND fails to recognize that, while the tipping and sorting operations would take place within a building, the entrance and exit doors would open frequently to enable access by trucks and other vehicles. The transformation of the facility from one that primarily handled recyclable materials to one that takes in hundreds of tons per day of municipal solid waste, would increase the likelihood that loose debris would be visible from on and off the site. This could result in a significant adverse impact to the visual quality of the site and its surroundings.

Fifth, the 2018 MND fails to recognize that the New Use Permit would result in illumination of the facility's exterior during nighttime hours. The 2014 MND assumed lighting during the night time for safety purposes. By contrast, the 2018 MND reveals that activities within buildings would occur up to 24 hours per day, and outdoor site operations could take place up to 9:00 PM. (See 2018 MND at p. 50.) The 2018 MND does not describe or analyze the extent of additional lighting that would be installed, the resulting illumination levels, and the resulting visibility of lighting from offsite locations. Instead, the 2018 MND bases its conclusion that lighting will not result in a significant impact on the assumption that new exterior lighting would be developed in compliance with the "Exterior Lighting" requirements under City of Yuba City Municipal Code Article 58. But the Municipal Code does not limit the amount of lighting that can be installed on a site. The Code states that *security lighting* must have downward shields. But other types of exterior lighting are unrestricted, and no type of lighting is required to meet a specified level of illumination. In short, existing laws and regulations impose no requirements to ensure that lighting is not visible or otherwise disruptive to offsite receptors. The plan for new site lighting should be described in the CEQA document, an analysis should be performed to determine whether lighting would spillover or otherwise result in adverse effects to offsite receptors, and mitigation should be required if such impacts are identified. Without such analysis and mitigation, the New Use Permit could create a new source of substantial light or glare that would result in a significant adverse effect on nighttime views in the area.

6. Air Quality

The 2014 MND determined that air pollutant emissions associated with self-hauling vehicles and operations of a 100 ton-per-day recycling transfer station would not be significant. The 2014 MND also found odor impact would not be significant based upon the facility's odor control plan. The 2014 MND identified the key component of that plan: "The largest component of the Odor Control Plan will be that the material received will be clean and dry, mainly fiber material. The facility will not accept putrescent material or material containing over ten percent (10%) putrescent material." (See 2014 MND at p. 15.) Putrescent means decaying or rotting.

The New Use Permit introduces changes to the project that were not studied in the 2014 MND, which may result in significant unmitigated impacts to air quality and significant effects from odors. The key changes are as follows:

- The New Use Permit introduces new sources of emissions and increases other sources of emissions such that facility operations could result in significant emissions of criteria air pollutants. The New Use Permit increases the daily throughput limit from 100 tons per day to 300 tons per day, on average, and up to 360 tons on a peak day. New types of trucks can now deliver waste to the facility. Onsite equipment of all types will operate longer hours and more frequently. More transfer trucks will transport sorted waste and recyclables from the facility to landfills or other destinations. All of these activities increase emissions of criteria air pollutants in a manner that was not studied in the 2014 MND. Yet the 2018 MND quantified only one subset of one type of onsite emissions (rubber tired loaders) and failed to quantify emissions from any other existing sources, new sources, or sources that would experience increased use. Absent such analysis, it is reasonable to conclude that the modified project could result in significant impacts to air quality.
- The New Permit will result in trucks and other vehicles idling on and adjacent to the site. This idling, along with other on-road and off-road vehicles will increase concentrations of criteria air pollutants and toxic air contaminants at the transfer station. These new and increased emission sources were not studied in the 2014 MND. The 2018 MND does not quantify concentrations of emissions from existing sources, new sources, and sources that would experience increased use. Absent such analysis, it is reasonable to conclude the modified project could result in significant concentrations of pollutants and significant effects to human health.
- The New Permit removes the existing permit limit on putrescent materials, and allows up to 300 tons per day of municipal solid waste to be delivered to the facility, on average, and up to 360 tons on a peak day. The 2014 MND did not evaluate odors associated with this volume of waste, and did not evaluate odors associated with unlimited putrescent material content. To the contrary, the 2014 MND stated that the primary odor control mechanism was the limitation on putrescent material to 10 percent. The 2018 MND does not quantify odors or otherwise demonstrate that there could be no significant effect pertaining to odors. The 2018 MND relies upon the same mechanisms as were in place at the prior facility-- misters, frequent cleaning, and removal of waste within 48 hours to say the impact will be less than significant -- without any analysis of the *change* from prior operations to eliminate the key odor control mechanism.

Given the removal of the key odor control mechanism at the site, and the potential for odors to emanate from unlimited putrescent material, this impact must be evaluated in an EIR.

Criteria Air Pollutant- Mass Emissions

The 2018 MND quantifies one subset of facility emissions- emissions associated with increased use of rubber tired loaders - and does not quantify other emissions sources for comparison to applicable significance thresholds, including emissions from truck operations, emissions from other onsite equipment, and off-gas emissions from the

increased amount of putrescent materials that are proposed to be processed onsite. Because the facility emissions from all sources are not analyzed or presented, it is reasonable to conclude that operation of the facility could result in a significant adverse effect to air quality.

The 2018 MND quantifies emissions associated with increased use of rubber-tired loader operations at an increase of 200 ton per day in tonnage. (See 2018 MND at p. 23.) Based on those calculations, the 2018 MND concludes that the project would not exceed the air district's thresholds of 25 pounds per day of ROG or NOX or 80 pounds per day of PM10. However, the air district's thresholds are to be applied to total emissions generated by a project from all sources, including on-road, off-road and stationary sources. These thresholds are not meant to be applied to only one subset of one category of emissions sources. Indirect Source Review Guidelines, Feather River Air Quality Management District at p. 13 (2010). The following sources have been omitted from the calculation:

Emissions from loader operations associated with the permitted 100-ton per day operations. The 2018 MND states that it is a subsequent MND, not a new stand-alone MND. If the MND were a new stand-alone MND, CEQA would require that emissions from full operation of the modified facility be compared to baseline emissions from existing operations of the facility. In that case, the baseline would be actual facility operations, even if such operations are lower than the facility's maximum permitted limits. (See *Communities for a Better Environment v. South Coast Air Quality Management Dist.*, 48 Cal. 4th 310, 322 (2010).

A subsequent MND, by contrast, compares total impacts of the modified project to the impacts of the initially approved project that were previously disclosed in the prior CEQA document, to determine whether the modified project would result in a new or substantially more severe significant effects. The question is whether the total combined emissions from the modified project (including the operations previously approved) would result in new or greater significant impact to the environment compared to the impacts of the initially approved project. This necessitates adding the increased emissions to the previously permitted emissions to determine the total emissions of the modified project, and comparison of those total emissions to the emissions of the initially approved project. Here, emissions from operation of loaders associated with the initial 100 tons per day of materials are not presented.

Emissions from loader operations associated with peak day operations. The 2018 MND makes another mistake in presenting emissions from loader operations. The 2018 MND presents calculations of rubber-tired loader operations associated with the 200 ton-per-day increase in waste that is proposed under the New Use Permit. But the 2017 TPR states that peak day operations could increase by 260 tons per day, not 200 tons per day. The air district's thresholds are daily thresholds, not annual thresholds, and should reflect the peak daily emissions. Indirect Source Review Guidelines, Feather River Air Quality Management District at p. 14 (2010)

Emissions from on-site equipment. The 2017 TPR lists eleven categories of equipment used at the facility: a material handler, 2 types of loaders, a tractor, three forklifts, 8-12 forklift tip bins, a yard-purpose-roll-off hoist truck, over the road roll-off hoist trucks, and at least 3 transfer trailers dedicated to operations at the facility. The MND does not quantify emissions from existing or increased use of any of these categories of onsite equipment other than the rubber tired loaders noted above.

Emissions from stationary sources. The 2018 MND does not address or quantify emissions from stationary sources. Most notably, the putrescent materials that are temporarily stockpiled onsite at the transfer station emit volatile organic compounds (VOCs) as the material decomposes. Since the revised project proposes to eliminate the 10% cap on putrescent materials, the VOC emissions could substantially increase when comparing existing operations to future operations. According to the California Air Resources Board (ARB), decomposing waste can emit approximately 0.20 pounds of VOCs per ton of material per day (see <https://www.arb.ca.gov/ei/areasrc/Composting%20Emissions%20Inventory%20Methodology%20Final%20Combined.pdf>). Assuming approximately 10 tons per day of putrescent material is stored onsite for 24 hours under existing conditions and 360 tons per day of putrescent material would be stored onsite for 24 hours under future conditions, the increase in VOC emissions from this source alone would exceed FRAQMD's ROG emissions threshold of 25 pounds per day by nearly a factor of 3 (i.e., $360 \text{ tons per day} \times 0.2 \text{ lb VOC/ton-day} \times 1 \text{ day} = 70 \text{ lb/day}$). The 2018 MND also does not quantify emissions associated with increased material handling that would be anticipated with the increased throughput.

Emissions from on-road vehicles transporting waste. The 2017 TPR estimates that, on average, 215 vehicles per day would enter and exit the facility for a total of 430 one-way trips. (See 2017 TPR Table 2 at p. 1.) Still, more vehicles would enter and exit the facility on a peak day. (See 2017 TPR Table 2 at p. 1.) Many of these vehicles would be a new type of vehicle: large packer and roll-off trucks that were not allowed to access the site under the existing permit. These trips also include increased trips by large transfer trucks. There is no calculation of emissions from on-road vehicles associated with existing or future operations of the facility.

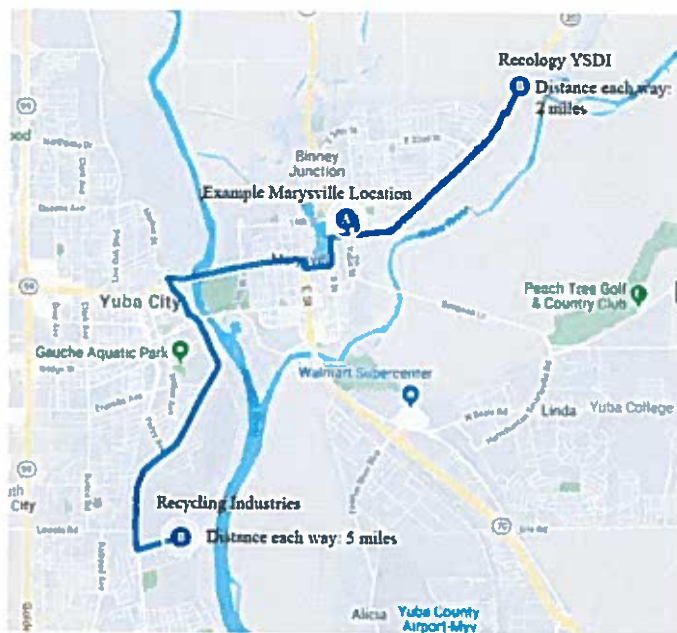
The 2018 MND attempts to cover up this omission by stating that emissions associated with use of commercial solid waste collection and transfer vehicles would not result in a cumulatively considerable net increase of any criteria pollutant because they would feature up-to-date pollution control equipment. (See 2018 MND at p. 23.) However, the MND includes no analysis to show that, even with up-to-date equipment, vehicle emissions and other sources of emissions associated with facility operations would be lower than the threshold established by the air district. There can be no dispute that up-to-date trucks and other equipment still emit substantial quantities of air pollutants.

The 2018 MND further attempts to wave away this defect by stating that the commercial collection vehicles that potentially would utilize the facility already are collecting or will collect waste generated within the air basin with or without the project. (See 2018 MND at

p. 24.) The 2018 MND also asserts that the project would result in reduced vehicle miles traveled due to the facility's proximity to customers in the City of Yuba City. This is flawed logic for several reasons:

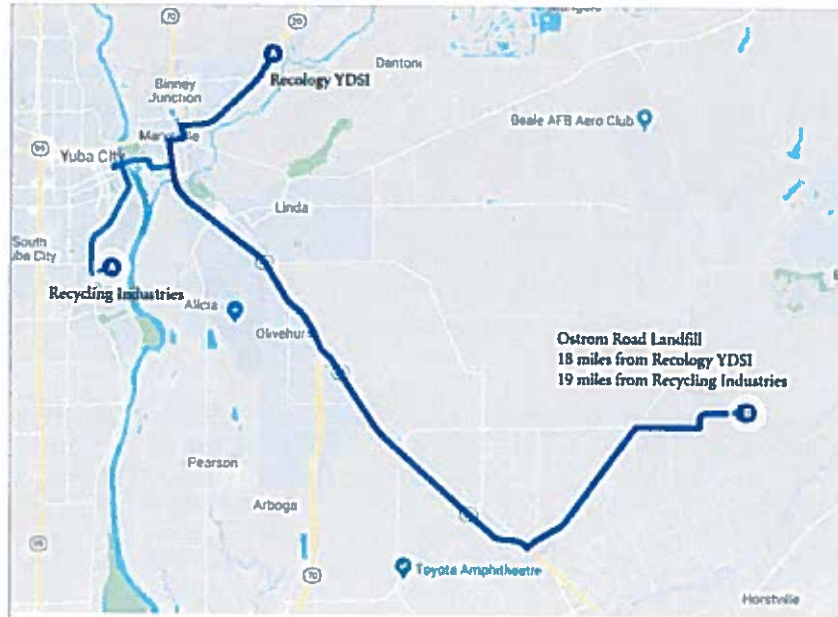
First, CEQA requires evaluation of emissions from future growth in truck activity. CEQA does not allow an agency to sweep an impact under the rug by comparing project conditions to hypothetical future no project conditions. The 2018 MND admits that the project will accommodate future growth in Yuba City waste generation and associated transport. Those trucks are not operating today.

Second, the facility could receive waste generated in locations beyond Yuba City, which may lengthen rather than shorten trips by collection trucks delivering materials from the source location to the transfer station. The 2017 TPR states that jurisdictions within the economically viable collection area for commercial packer trucks, as well as roll-off trucks hauling construction/ demolition & inert materials, include Yuba City, unincorporated Sutter County, the City of Live Oak, adjoining Yuba County, and the Cities of Marysville and Wheatland. (See 2017 TPR at p. 1-2.) If waste were collected in areas such as Marysville and Wheatland, trip lengths to the Recycling Industries transfer facility could be longer than trip lengths to the existing Recology YSDI transfer facility. Below is a map showing the difference in trip length to the Recycling Industries Transfer Station and Recology YSDI from an example location in Marysville.



Third, the 2018 MND does not consider whether trip lengths by transfer trucks delivering waste from the facility to a landfill compared to existing conditions. For example, trip lengths by transfer trucks traveling between the Recycling Industries facility and the Ostrom Road landfill would be longer than trips lengths from transfer trucks traveling between the Recology YSDI transfer facility and the Ostrom Road landfill. Each transfer truck makes a two-way trip to and from the facility. These are not the same trucks that

deliver source material to the transfer station in the first instance. Below is a map that illustrating the longer distance transfer trucks will have to travel from the Recycling Industries Transfer Station to the Ostrom Road Landfill.



Fourth, the 2018 MND does not address changes in travel distances for trucks transporting recyclable materials. The proposed project does not appear to include a recycling processing facility. If so, a transfer truck would need to take the material to a processing facility and then a different transfer truck would have to take the material to a location such as the Port of Sacramento for transport overseas. By comparison, the Recology YSDI facility includes a recycling processing facility, thereby avoiding the vehicle trips associated with transportation to the processing facility.

Emissions from idling. The 2018 MND does not address or quantify emissions from vehicle idling. As noted in these comments under the aesthetics heading, there would be one scale located onsite. Packer and roll-off vehicles entering the facility could idle while waiting to be weighed, they could idle while they are being weighed, they could idle while waiting to tip their loads, and they could idle while tipping their loads. Transfer trucks could idle while waiting to pick up loads. There is no analysis or quantification of idling emissions from existing operations, new sources and increased operations.

Total Criteria Pollutant Emissions. Under CEQA, criteria air pollutant emissions from all sources must be added together, and then compared to the significance thresholds established by the air district. Here, emissions from all sources associated with the modified facility have not been calculated and presented. The MND neglects to calculate

existing emissions from rubber tired loaders, increased emissions from peak operation of the rubber tired loaders, existing and future emissions from operation of other types of onsite equipment, existing and future emissions of stationary sources, existing and future emissions from on-road vehicles, and existing and future emissions from idling. In the absence of such quantification, it is reasonable to conclude that a significant adverse impact to air quality may result from the modified project.

Localized Concentrations of Pollutants and Health Risks

The 2018 MND appears to rely on a lack of congestion at local intersections to conclude that localized concentrations of pollutants associated with the modified project would not be significant. However, intersections are not the only location where localized concentrations of emissions can occur. As noted above, trucks and other vehicles idling on and near the project site would emit localized emissions of criteria air pollutants and toxic air contaminants. Vehicle travel and other equipment operating on-site adds to those localized concentrations of criteria air pollutants and toxic air contaminants. The CEQA document must assess whether operation of the facility in this location would result in significant localized concentrations of criteria air pollutants and toxic air contaminants. These emissions were not evaluated in the 2014 MND, and the 2018 MND fails to evaluate these emissions. As a result, it is reasonable to conclude that localized concentrations of pollutants from vehicle travel, vehicle idling, and onsite operations could result in a significant adverse effect to air quality and a significant risk to human health.

To make matters worse, there is no analysis of concentrations of pollutants inside buildings where operations would occur. Trucks, forklifts, and other types of equipment would operate within an enclosed space. No Health Risk Assessment is included in the 2018 MND, and the 2018 MND does not analyze whether such emissions would result in a significant concentration of criteria pollutants and toxic air contaminants, causing a significant risk to human health. Such evaluation must be completed prior to determining what overall risks to the immediately adjacent neighboring residences are and what mitigation to a revised project design will be necessary, because significant data re air district standards is provided in this letter so that the City is made aware of the potential impact of such contaminants. See 14 CCR §15126.2(a), *Berkeley Keep Jets Over the Bay Committee v. Board of Port Cmrs.*(2001) 91 Cal.App.4th 1344, 1368, *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1220.

Odors

The 2014 MND based its conclusion that odor impacts would not be significant on the facility's odor control plan. The MND identified the key component of that plan: "The largest component of the Odor Control Plan will be that the material received will be clean and dry, mainly fiber material. The facility will not accept putrescent material or material containing over ten percent (10%) putrescent material." (See 2014 MND at p. 15.) Putrescent means decaying or rotting. Other odor controls recognized by the 2014 MND included a misting system, daily site inspections and cleaning.

Under the New Use Permit, this key component of the Odor Control Plan will be eliminated. The facility will be allowed to accept an unlimited percentage of putrescent material, meaning decaying and rotting garbage. Further, the amount of waste will be increased from 100 tons per day to 300 tons per day, on average, and 360 tons per day on a peak day.

Yet, despite removal of the control mechanism that the 2014 MND considered to be the largest component of the Odor Control Plan, the 2018 MND asserts that odor impacts would continue to be less-than-significant. The 2018 MND relies on the assumptions that many operations would occur inside of a building, odor controls would include an overhead misting system, waste would be removed within 48 hours, and no green waste collected by curbside trucks would be transported the facility.

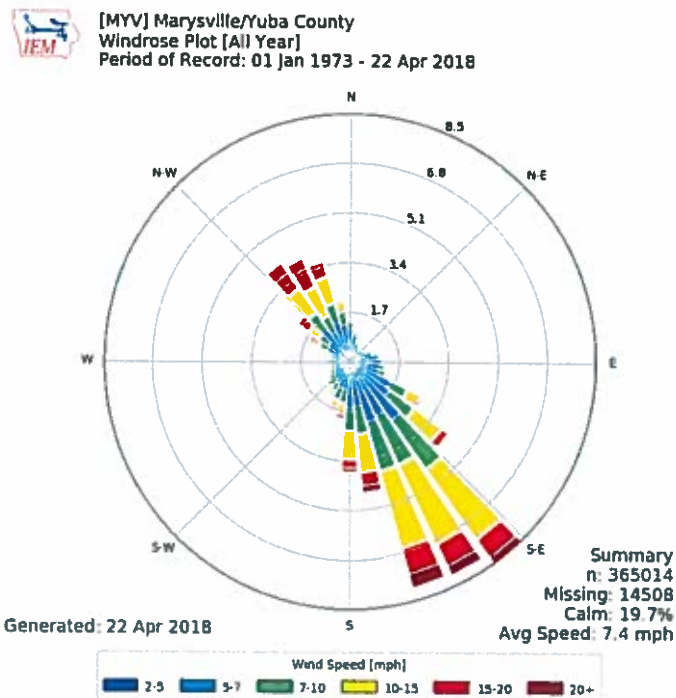
(Green waste from self-haulers would continue to be received.) (See 2018 MND at p. 24.) This is insufficient. All of these same odor controls were included in the originally approved facility. They are not new. There is no analysis of the change to the controls and change in quantity of waste, which substantially heighten the potential for odors given removal of the *largest* component of the Odor Control Plan.

The omission of an analysis of the effect of increasing putrescent material content is glaring. As noted above, building doors would be open much of the time to allow access and egress by packer trucks, roll-off trucks, transfer trucks and other equipment and vehicles. Odors would not be contained within the building. Putrescent garbage sitting on site for 48 hours smells. The fact that it is removed every 48 hours (and more waste arrives in its place) does not eliminate significant odors. There is absolutely no analysis to show that overhead misters would prevent significant odor impacts associated with 300 tons per day of putrescent waste.

FRAQMD's Indirect Source Review Guidelines include recommended odor screening distances for a variety of land uses (see <https://www.fraqmd.org/files/8c3d336a1/FINAL+version+ISR+Amendments.pdf>, Table 7-1, at p. 26). These odor screening distances are the distances between the odor source and the receptors within which an odor impact may occur. The screening distance for transfer stations is 1 mile. As shown in the figure below, numerous sensitive receptors around Recycling Industries are located within this screening distance. The closest resident is less than 0.4 miles away from the site.



According to FRAQMD's Indirect Source Review Guidelines, lead agencies are encouraged to consult with FRAQMD for projects that do not satisfy the odor screening distance criteria. However, FRAQMD also recommends that lead agencies consider other factors (e.g., topography, meteorology) in considering potential impacts and not rely solely on the screening distances as the absolute threshold of significance for an odor significance determination. In this case, sensitive receptors are located downwind of the site in the predominant wind direction, which is from the south-southeast, as shown in the windrose below that was generated using data from the nearby Yuba County Airport (see http://mesonet.agron.iastate.edu/sites/windrose.phtml?station=MYV&network=CA_ASOS) In addition, the site is located around the corner from the Yuba City Sewer Treatment Plant, which is another source of potential odors that could combine with odors from Recycling Industries to cause an odor nuisance to nearby residents.



The odor analysis in the 2018 MND is nothing more than an arm wave. It is reasonable to conclude that odors generated by the project could be significant, and an EIR must be prepared to evaluate this impact.

7. Biological Resources

The 2014 MND determined that impacts to biological resources would be less than significant.

The New Use Permit introduces a change to the project that was not studied in the 2014 MND, which may result in significant unmitigated impacts to biological resources:

- The New Use Permit will add an acre of vacant land to the facility, and will include development on this vacant land. Development of this land was not evaluated in the 2014 MND. The 2018 MND contains no survey of the acreage for biological resources. Given that the one-acre site to be added to the facility is vacant and is located near the Yuba River, it is reasonable to conclude that the modified project may result in a significant adverse effect to biological resources.

Under the New Use Permit, development would occur on one acre of vacant land located less than 1,000 feet from the Yuba River. The 2018 MND does not include a site survey by a qualified biologist. Instead, the MND simply relies upon the 2014 MND's recitation of citywide information from the prior Yuba City General Plan EIR. (See 2018 MND at pp. 25 and 26.) Given the fact that the site is undeveloped and given the site's close proximity to the Yuba River, a site-specific survey and analysis of onsite biological resources is necessary to determine whether impacts to biological resources would be significant. It is

impossible to know whether a significant impact would occur without information about the biological resources that exist on the site. In the absence of such information, it is reasonable to conclude that impacts to biological resources could be significant.

8. Cultural Resources

The 2014 MND determined that impacts to cultural resources would be less than significant.

The New Use Permit introduces a change to the project that was not studied in the 2014 MND, which may result in significant unmitigated impacts to cultural resources:

- The New Use Permit will add an acre of vacant land to the facility, and will include development on this vacant land. Development of this land was not evaluated in the 2014 MND. The 2018 MND contains no survey of the acreage for cultural resources. Given that the one-acre site to be added to the facility is vacant, it is reasonable to conclude that the modified project may result in a significant adverse effect to cultural resources.

Similar to the analysis of biological resources, the 2018 MND includes no cultural or tribal resources survey by a qualified expert. The MND simply states that a visual inspection of the project site was conducted and no historical resources were observed. There is no information as to who looked for such resources, and whether that person was qualified to make such a determination. Nor is there any information that any archeological or other database research was performed, or that any other evaluation was conducted. In the absence of site-specific information, it is reasonable to conclude that the modified project could result in significant impacts to cultural resources.

9. Greenhouse Gas Emissions

The 2014 MND did not address greenhouse gas emissions.

The New Use Permit introduces changes to the project that were not studied in the 2014 MND, which may result in significant unmitigated impacts associated with greenhouse gas emissions:

- The New Use Permit introduces new sources of greenhouse gas emissions, and increases other sources of emissions such that facility operations could result in significant emissions of greenhouse gases. The New Use Permit increases the daily throughput limit from 100 tons per day to 300 tons per day, on average, and to 360 tons on a peak day. New types of trucks can now deliver waste to the facility. Onsite equipment of all types will operate longer hours and more frequently. More transfer trucks will transport sorted waste and recyclables from the facility to landfills or other destinations. More truck idling will occur. More electricity will be used on site. All of these activities increase emissions of greenhouse gas emissions in a manner that was not studied in the 2014 MND. Yet the 2018 MND failed to quantify greenhouse gas emissions from existing or future operations

of the transfer station. Absent such analysis, it is reasonable to conclude that the modified project could result in significant impacts associated with greenhouse gas emissions.

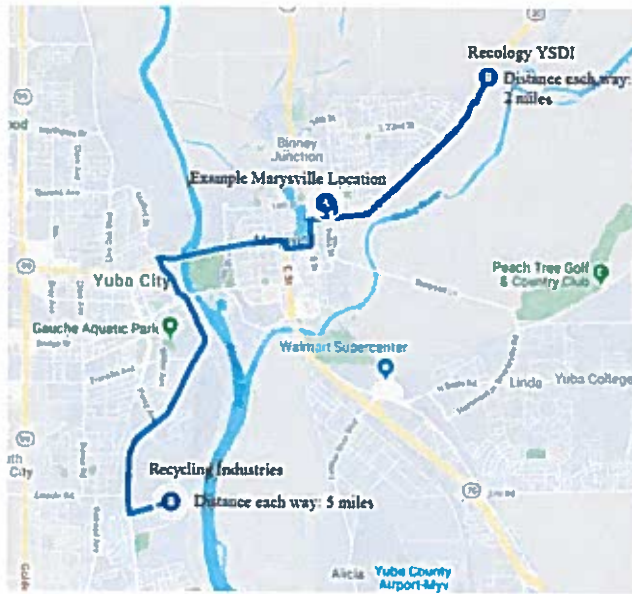
- The 2018 MND purports to apply a 10,000-metric-ton-per-year significance threshold to carbon dioxide equivalent emissions generated by the modified project. Yet no basis is provided for such threshold. An EIR must be prepared to evaluate whether such a contribution to cumulative greenhouse gas emissions would be significant.

The 2018 MND fails to quantify greenhouse gas emissions associated with existing or modified project operations. Truck and other vehicle transportation, vehicle idling, onsite equipment operation and facility electricity use all result in greenhouse gas emissions. Yet the 2018 MND does not discuss or analyze the extent to which such emissions would increase as a result of the modified project.

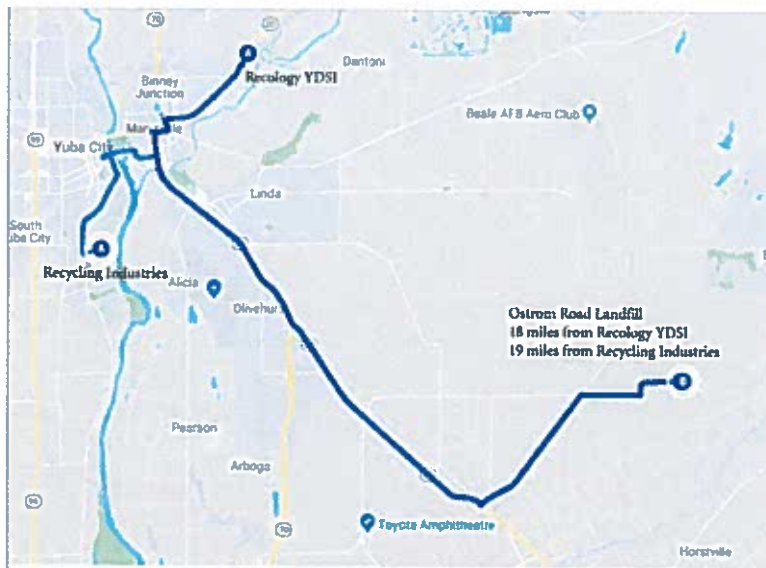
The 2018 MND discusses only one narrow subset of greenhouse gas emissions. The MND states that use of the Recycling Industries Facility would reduce the length of each collection truck trip by approximately four miles (two miles in each direction) compared to truck travel under existing conditions. This assertion suffers from flaws that are similar to the flaws that permeate the 2018 MND's Air Quality analysis.

First, CEQA requires evaluation of emissions from future growth in truck activity. CEQA does not allow an agency to sweep an impact under the rug by comparing project conditions to hypothetical future no project conditions. The 2018 MND admits that the project will accommodate future growth in Yuba City waste generation and associated transport. Those collection trucks are not operating today.

Second, the facility could receive waste generated in locations beyond Yuba City, which may lengthen rather than shorten trips by collection trucks delivering materials from the source location to the transfer station. The 2017 TPR states that jurisdictions within the economically viable collection area for commercial packer trucks, as well as roll-off trucks hauling construction/ demolition & inert materials, include Yuba City, unincorporated Sutter County, the City of Live Oak, adjoining Yuba County, and the Cities of Marysville and Wheatland. (See 2017 TPR at p. 1-2.) If waste were collected in areas such as Marysville and Wheatland, trip lengths to the Recycling Industries transfer facility could be longer than trip lengths to the existing Recology YSDI transfer facility. Below is a map comparing trip lengths for a truck traveling to and from the Recycling Industries Transfer Station and the Recology YSDI from a location in Marysville.



Third, the 2018 MND does not consider whether trip lengths by transfer trucks delivering waste from the facility to a landfill compared to existing conditions. For example, trip lengths by transfer trucks traveling between the Recycling Industries facility and the Ostrom Road landfill would be longer than trips lengths from transfer trucks traveling between the Recology YSDI transfer facility and the Ostrom Road landfill. Each transfer truck makes a two-way trip to and from the facility. These are not the same trucks that deliver source material to the transfer station in the first instance. Below is a map that illustrating the longer distance transfer trucks will have to travel from the Recycling Industries Transfer Station to the Ostrom Road Landfill.



Fourth, the 2018 MND does not address changes in travel distances for trucks transporting recyclable materials. The proposed project does not appear to include a recycling processing facility. If so, a transfer truck would need to take the material to a processing facility and then a different transfer truck would have to take the material to a location such as the Port of Sacramento for transport overseas. By comparison, the Recology YSDI facility includes a recycling processing facility, thereby avoiding the vehicle trips associated with transportation to the processing facility. In addition, the 2018 MND fails to account for GHG emissions from use of onsite equipment other than increased loader operations, nor does the MND account for GHG emissions from use of electricity.

Moreover, the 2018 MND does not quantify or address greenhouse gas emissions associated with vehicle idling, use of onsite equipment, and facility electricity use.

Finally, the 2018 MND references a 10,000-metric-ton-per-year significance threshold for carbon dioxide equivalent emissions generated by the modified project; however, neither the air district nor Yuba City have adopted such a threshold. *See* Yuba City Muni. Code § 8-9.01, Indirect Source Review Guidelines, Feather River Air Quality Management District at p. 14 (2010) An EIR must be prepared to evaluate whether such a contribution to cumulative greenhouse gas emissions would be significant.

It is reasonable to conclude that the project's contribution to cumulative GHG emission could be significant.

10. Hazards and Hazardous Materials

The 2018 MND fails to address the potential significant impact from fires at the project site caused by waste materials. Fires at waste and recycling facilities are on the rise and have become an ongoing safety concern. *See* Summer Fires Hit Several Recycling Facilities, *Recycling Today* (July 12, 2016), <http://www.recyclingtoday.com/article/recycling-fires-western-united-states-2016/>. A study estimates that, from 2016 to 2017 alone, at least 282 fires occurred at waste and recycling facilities and identifies California as one five states with the most incidents. *See* Report: At Least 282 Fires at Waste and Recycling Facilities During One Year, *Waste Dive* (March 29, 2017), <https://www.wastedive.com/news/study-at-least-282-fires-at-waste-and-recycling-facilities-during-one-year/439261/>. The factors and causes of fires at waste and recycling facilities include the increased disposal of lithium-ion batteries and other combustible material at these sites, depositing hot loads that are susceptible to catching fire, and climate change. As this waste material is pressed together and processed, materials like lithium-ion batteries can combust under pressure and start a fire. *See* Attachment B.

The chances of the Recycling Industries Transfer Station handling waste material that contains a fire hazard increases with the proposed revisions to the project. By going from 100 tons per day to 300 tons per day, there is a higher likelihood that lithium-ion batteries and other hazardous combustible material will arrive mixed with other general municipal waste and not be detected during screening procedures. Such materials could then be processed and pressed together with other waste materials and cause a fire and/or

explosion. This risk increases during the summer months when the average daytime temperature is ninety-degrees Fahrenheit. With climate change, this average is only expected to increase. Further, the project includes receipt of greater amounts of e-waste than were previously received on site.

This fire hazard in a developed industrial area is a potentially adverse significant impact that is unaddressed by the 2018 MND. While the facilities will have fire sprinklers, there is no additional discussion of any procedures or policies to prevent a fire caused by combustible waste materials. The 2018 MND should identify protocols for dealing with such fire on site and how employees will screen for combustible materials that should not be mixed with general municipal waste. On extremely hot days, additional procedures should be followed to screen for hot loads that could combust when pressed together and processed. This is especially the case, where Red Flag Warnings result in determinations by PGE to shut down all power to customers in rural counties, as occurred October 14, thus reducing the ability of local emergency services to provide adequate fire reduction services.

Please also see comments on transportation/traffic for additional information about site operations that could impede access by fire and emergency personnel.

11. Hydrology and Water Quality

The 2018 MND acknowledges that the revised project may cause potential violations of water quality standards from stormwater runoff coming in contact with solid waste, recyclables, maintenance supplies and vehicle travel-ways. To mitigate this potential significant adverse impact, the 2018 MND states that operations at the Recycling Industries transfer station will comply with the Transfer/Processing Report, the Stormwater Pollution Prevention Plan, and regulatory requirements. The 2018 MND also notes that the tipping and processing of solid waste will occur in a covered building with floor drains to capture water for treatment before being discharged to the sanitary sewer system.

This analysis is inadequate because it fails to address the potential significant impact of stormwater discharge occurring outside on the property. The Transfer/Processing Report states that only materials that will not degrade water quality will be processed outside. However, neither the Transfer/Processing Report nor 2018 MND state how Recycling Industries will ensure that certain materials are processed inside. For instance, the Transfer/Processing Reports states that E-waste and lead-acid batteries will be processed and stored indoors or in structures with shelter but does not specify how Recycling Industries will sort through waste that comes in to ensure that such materials are not present in any load and processed outside. In addition, the chance of stormwater discharges with degraded water quality is also increased if Recycling Industries is allowed to accept more than ten percent putrescible waste. Furthermore, while the tipping and processing of solid waste may occur indoors, facility roll up doors will remain open while this is occurring which may cause stormwater and other waste water to come into contact with materials. Given all of this, coupled with the increase from 100 tons per days to 300 ton per day, there is a possibility of a significant adverse impact in water quality if waste materials come into contact with stormwater on site.

In addition, the 2018 MND fails to identify specific mitigation measures that would mitigate the impact of stormwater that comes into contact with materials indoors.

The issues of how RI's operations impact water quality and storm drainage cannot be gainsaid with an assurance of future compliance. The transfer station was cited in 2013 for failure to adopt a storm water plan, and implement best management practices. The actual citation, and representative photos 3, 4, 5, 6, 13 and 15 are attached here. The facility's poor track record of permit compliance is another fact that indicates the potential for significant impacts to water quality, necessitating preparation of an EIR and imposition of mitigation measures to ensure that adequate monitoring is required.

**Storm Water Industrial General Permit Inspection Report
 Central Valley Regional Water Quality Control Board**

Insp. Date & Time:	03/05/2013	Inspected By:	Rich Muhl
WDID #	5S511024147	Site County:	Sutter
Operator Name:	Recycling Industries Inc.		
Facility Name:	Recycling Industries Inc.		
Facility Address:	140 Eoley Drive, Yuba City CA 95991		

Inspection Type:	X Compliance		
SWPPP on site?	No	SWPPP Implemented/Updated?	No
Photos Taken?	Yes	Appropriate Monitoring Program?	No
Weather: Cloudy prior to rain		Evidence of SW or Non-SW Discharge?	No

Inspection Summary / Comments:

On 5 March 2013, Central Valley Regional Water Quality Control Board staff inspected the Recycling Industries Inc. facility located at 140 Eoley Drive in Yuba City. During the site inspection, staff determined that the facility had not filed for permit coverage. Staff talked with the plant manager David Flores. Mr. Flores was very concerned and told staff that he would do whatever it takes to bring the site into compliance.

The facility is a large recycling operation. The facility recycles cardboard, plastic, aluminum, metal, and e-waste. The majority of the facility has an asphalt surface. The back portion of the facility has a gravel surface. The facility has multiple warehouses and structures to store equipment and recycled material. The facility has two entrances and exits. The main entrance in the front has an asphalt surface. No tracking was observed in the front of the facility. The back gate has a gravel surface. Staff observed tracking outside the back gate. Staff observed a lot of trash and debris throughout the facility. The area is windy which compounds the trash issue. Staff observed two storm drain inlets. Both inlets required new filters in the drain inlets (see inspection photographs).

Staff requested that the facility file for permit coverage within 15 days, prepare a SWPPP and implement BMPs throughout the facility. The facility filed for permit coverage on 18 March 2013. Staff will re-inspect the site in the near future to review the SWPPP and the onsite BMPs.

Signature _____ Date _____	Date Entered: _____ Entered By: _____ Senior Review: _____
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Photo 3. Another portion of the facility



Photo 4. One of the drain inlets onsite Note: the significant amount of material on the asphalt surface



Photo 5. Another portion of the facility Note: the boundary of the asphalt and gravel surface



Photo 6. Another portion of the facility Note: the facility had multiple warehouse buildings



Photo 13. Unprotected drain inlet onsite



Photo 15. Crusher / baler Note: the entire area is under a roof



12. Noise

The 2014 MND found that noise impacts from operations at the Recycling Industries transfer station would be less than significant because unloading and sorting operations would be confined to the interior of the building, and would be properly sound-proofed and/or muffled.

The New Use Permit introduces changes to the project that were not studied in the 2014 MND, which may result in significant unmitigated noise impacts:

- As explained above, the New Use Permit would result in trucks and other vehicles queuing outside of buildings, waiting for the facility to open, waiting to be weighed on the site's single scale, while being weighed, and waiting to tip their loads. Transfer trucks also could queue on and offsite while waiting to pick up sorted waste or recyclables. This will generate a substantial increase in idling noise that was not evaluated in the 2014 MND, and that could result in a significant noise impact.
- The New Use Permit would triple facility operations on an average day, and more than triple operations on a peak day. The 2014 MND did not evaluate operations at this magnitude. Nor did the 2014 MND evaluate noise from outdoor operations. The 2018 MND includes no quantitative noise analysis, no information about the sound attenuation from buildings with open doors or other project features, and no mitigation measure requiring the facility achieve a numeric noise threshold established to prevent a significant increase in ambient noise levels. Based on the facts in the record, it is reasonable to conclude that the modified project may result in significant noise impacts.
- The New Use Permit would add a substantial number of collection trucks to local streets and also increase the number of transfer trucks traveling to and from the facility on local streets. The 2014 MND did not evaluate this level of operations, and did not quantify noise from truck travel. The 2018 MND includes no quantitative analysis of noise and ground vibration effects from truck travel near the facility. Absent such information, and based on all of the evidence in the record, it is reasonable to conclude that the modified project may result in significant noise and vibration impacts.

Please see comments provided under aesthetics and air quality for additional detail regarding the potential for trucks and other vehicles to queue on site.

Please see comments provided under aesthetics, air quality, and transportation/traffic for additional detail regarding increased facility operations and vehicle travel.

With regard to operations at the facility, the 2017 TPR states that large roll up doors will be opened to let trucks enter and exit when tipping their loads and when picking up materials for transfer. 2017 TPR at 4-4. This means tipping and sorting operations will not be limited to an enclosed building. Sound can and will escape through the open facility doors. The increase in type and volume of operations must be analyzed to determine whether a significant noise impact would result from such operations.

The revised project also includes outdoor site operations from 6:30 a.m. to 9:00 p.m. each day. (See 2018 MND at p. 50.) The 2018 MND includes no quantification of noise from such operations.

In sum, the combination of truck idling noise, increased tipping and sorting operations, increased transfer operations, and new and increased outdoor operations may have a significant noise and vibration impact.

Finally, as explained in the transportation/traffic comments below, the New Use Permit would substantially increase vehicle trips on a peak day. These trips would include an increase in collection trucks and transfer trucks traveling on local roads to access the facility site. Trucks traveling on local roads create both noise and vibration. The 2018 MND fails to quantify noise and vibration from truck travel on local roads. Increased truck traffic on local roads may result in a significant noise and vibration impact.

13. Public Services

Please see comments above, under Hazards and Hazardous Materials [§10 above], for issues pertaining to fire protection and response times.

14. Transportation/Traffic

The 2014 MND included no traffic study. It simply stated that the Yuba City Engineering Division reviewed the project and determined that a *project of this size* would not warrant improvements beyond those constructed in the vicinity of the project. With regard to fire department access, the 2014 MND states that the Fire Department had reviewed the project plans and indicated that with the inclusion of a fire sprinkler system there was adequate emergency access.

The New Use Permit introduces changes to the project that were not studied in the 2014 MND, which may result in significant unmitigated transportation and traffic impacts:

- The New Use Permit will allow a greater number of trucks to travel to and from the site, as compared to self-haul vehicles. Because trucks are larger and have reduced acceleration and deceleration characteristics compared to passenger vehicles, trip generation associated with trucks can be expressed in terms of Passenger Car Equivalents (PCE's). The traffic study appended to the 2018 MND recognizes that commercial collection trucks and roll-off vehicles have three times the PCE of a self-haul vehicle. Transfer trucks have four times the PCE of a self-haul vehicle. (See 2018 MND Appendix C at p. 4.)
- The traffic report states that, on average, the New Use Permit would generate 104 daily vehicle trips, equating to 274 daily vehicle trips when expressed as PCEs. (See 2018 MND Appendix C Table 3 at p. 4.) However, the traffic report does not account for peak days and peak hours. The 2017 TPR shows that up to 104 trips may occur in a peak *hour* (as opposed to 104 trips in a peak day referenced in the traffic study.) (See 2017 TPR Table 2 and p. 1.) Application of the PCE multiplier would increase the 104 trips per peak hour

calculation to an even higher trip generation estimate. Trip generation at this magnitude clearly exceeds the 50-trip threshold identified in the 2018 MND and has the potential to result in significant unmitigated traffic impacts.

- The New Use Permit will triple site operations on an average day, and more than triple operations on a peak day, while increasing the size of the site by only one acre. Trucks and self-haul vehicles filling driveways within the facility will hinder emergency vehicle access to the site. Further, the 2017 TPR contemplates that during the night, transfer fleet semi-combos will be parked in the south drive-through lanes within Building 6 and in an outdoor space blocking the curtain door entry. (2017 TPR at p. 2-10.) This new parking arrangement, which was not evaluated in the 2014 MND and is not addressed in the 2018 MND, would impede emergency access to the site, particularly in the event of a fire.

In evaluating traffic effects, the 2018 MND assumes the proposed project could result in 104 total daily vehicle trips to and from the site (52 in bound and 52 outbound). The 2018 MND states this calculation is based on hauling requirements associated with a 200 ton-per-day increase in materials. However, the 2017 TPR states that the facility could receive up to 360 tons of materials on a peak day, which is a 260-ton-per-day increase in materials. The 2017 TPR recognizes that trip generation would be substantially higher on peak days and during peak hours. (See 2017 TPR Table 2 at p. 1.) The 2018 MND and associated traffic study ignore the additional increase in vehicle trip generation on peak days and during peak hours.

Further, the traffic study appended to the 2018 MND makes it clear that collection, roll-off and transfer trucks increase vehicle trip generation three-fold to four-fold compared to the same number of self-haul trucks. Truck trips are expressed in terms of PCE's to account for their increased effect on traffic congestion. The traffic study appended to the 2018 MND recognizes that commercial collection trucks and roll-off vehicles have three times the PCE of a self-haul vehicle. Transfer trucks have four times the PCE of a self-haul vehicle. (See 2018 MND Appendix C at p. 4.)

Traffic impacts are measured by changes during the peak hour. The 2018 MND states that truck activity is expected to be relatively uniform over an 11-hour period, with less truck traffic as the plant winds down at the end of the day. (See 2018 MND at p. 57.) The MND estimates the project would generate up to 8 vehicle trips, or 18 PCEs during the a.m. peak hour. (See 2018 MND at p. 57.) As noted above, the traffic study neglects to account for changes to the permit that increase the peak daily tonnage.

The information in the 2018 MND, associated traffic study and 2017 TPR conflicts with the peak hour calculation. First, 274 average daily trips spread evenly over an 11-hour day results in an increase of 25 trips per hour, not 18 trips per hour. If, as the 2018 MND states, trips are lower in the evening, then trips early in the day must be *higher* than the uniform average. There is no mitigation measure or feature built into the project to ensure that trips are spread evenly over the course of the day. Without such a mitigation measure or mechanism, it is reasonable to assume fluctuations over the course of the day could result in a substantially higher trip count during the morning peak hour.

In fact, peak hour trips would be substantially higher than has been assumed in the traffic study. Table 2 of the 2017 TPR undermines the traffic study. That table addresses both average daily conditions and peak conditions under which the 300 ton-per-day limit could be reached. Table 2 reveals that under “peak surge” conditions, there could be as many as 52 vehicles accessing the site in an hour. Each of these vehicles would make a round trip because the same vehicle would not transport materials to the facility as the vehicle that takes materials away from the facility to the landfill or to an offsite recycling exporter. The collection trucks enter, tip their loads and depart. The transfer trucks enter, pick up loads, and depart. This means peak trip generation, according to Table 2, is 104 vehicles in *one hour* not 104 vehicles in *one day*. If one were to apply the PCE multiplier that the traffic study states should be applied to truck trips, this peak hour trip generation total would be even higher.

According to the 2018 MND, the City of Yuba City employs a trip generation threshold to determine whether a traffic impact could occur, and therefore whether a traffic impact analysis is needed. (See 2018 MND at p. 57.) That threshold is 50 trips. Based on the evidence in the 2018 MND, the traffic study appended to the MND, the 2017 TPR, and reasonable assumptions from that evidence, the modified project would generate 104 trips in a peak hour, and an even higher number if a PCE multiplier were used. Under the City’s standards, a potentially significant impact could occur and a full traffic impact analysis is required, which must evaluate the full extent of peak hour trips allowed under the modified project.

Finally, the 2018 MND fails to recognize that changes to onsite truck parking and increases in onsite operations have the potential to impede emergency access to and within the site. The 2014 MND reviewed a different site configuration, with substantially lower levels of operations, and far fewer trucks. The New Use Permit will triple site operations on an average day, and more than triple operations on a peak day, while increasing the size of the site by only one acre. Trucks and self-haul vehicles filling driveways within the facility will hinder emergency vehicle access to the site. Further, the 2017 TPR contemplates that during the night, transfer fleet semi-combos will be parked in the south drive-through lanes within Building 6 and in an outdoor space blocking the curtain door entry. (2017 TPR at p. 2-10.) This new parking arrangement, which was not evaluated in the 2014 MND and is not addressed in the 2018 MND, could impede emergency access to and within the site, particularly in the event of a fire. This should be analyzed, and mitigation should be required to reduce this significant safety risk.

15. Inadequate Information to Evaluate Adequacy of Mitigation

When a lead agency determines to adopt an MND it must also adopt a mitigation monitoring and reporting program [MMRP] Pub. Recourses Code §21080. No such document had been included with the public release of the 2018 MND. Such a document summarizes the impacts, and the mitigation which will be mandated to assure that all significant impacts are reduced to a level of legal insignificance. Our letter has identified many significant areas of review which have not been evaluated in the 2018 MND, and

must be included prior to the use permit being approved by the City of Yuba City. Additionally, all such impacts must have an accurate review of the appropriate mitigation for such impacts and the City's failure to require RI to prepare such a draft program underscores its unwillingness to adequately protect the public from harm resulting from the proposed expansion. Should the City adopt the 2018 MND, as staff recommends, it will have violated CEQA because the questions of what mitigation should be required for these impacts which have not been evaluated, remain unanswered. The City of Yuba City must ensure that all potentially significant impacts of the proposed expansion are considered and where significant must require mitigation to ensure that such impacts are reduced to an insignificant level. In addition to requiring that the entire re-evaluation be reopened as an EIR, the City must ensure that all mitigation required by Recycling Industries as a condition of approval will in fact be performed. The City cannot defer analysis of impacts and formulation of mitigation measures until some time after approval by the Planning Commission. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95-96. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can. [CEQA Guidelines §15444.]

Here, the questions of whether mitigation measures will be required, of what they might consist, and how effective they will be are left unanswered, and allows for the adoption of an expanded facility without setting specific mitigation standards, because the essential evaluation is missing. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794. *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 195-96.

The City should at a minimum postpone any public hearing to allow for preparation of such program so that the Planning Commission has an opportunity to evaluate the proposed impacts and mitigation with the public's comments and concerns.

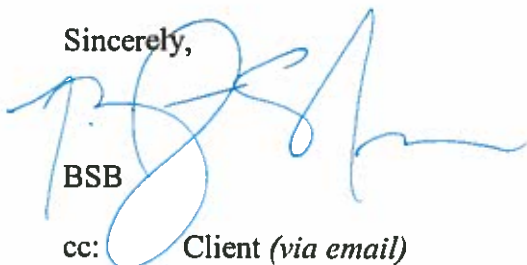
16. Inadequate evidence of RI Ability to fund Mitigation

Recycling Industries, as the proponent of the expanded facility, together with its attendant air quality, smells and traffic impacts, commits by its application to perform the mitigation measures that will finally be adopted by the City. When prepared that mitigation plan must enumerate specific measures and set specific deadlines to complete mitigation as necessary to protect the public and especially the immediately adjacent residences. Cal. Code regs. Tit. 14 §§15126.2, 15382. The City must determine that all CEQA conditioned duties applicable to the project will be carried out. Pub. Resources Code §21001.1(b). *City of Hayward v. Trustees of California State University* (2015) 242 Cal.App.4th 833, 856.

Recycling Industries cannot meet the standard of compliance with mitigation measures, especially those adopted to address specific traffic modifications to avoid queuing, etc., which tend to be very expensive, and will necessarily require financial contributions to regional funding mechanisms. RI's history with full financial compliance with governmental agencies is not good. In mid-2017 Mr. Kuhnen as General Manager of the RI facility in North Highlands, requested various modifications in its existing contract with Sacramento County to reduce the financial impact of the contract of RI, claiming that the combination of recent People's Republic of China actions and the previously negotiated contamination levels with the County were financially unsustainable. After continued negotiations with Sacramento County, the County's Waste Management Board settled the dispute, and permitted the amendment of RI's contract, allowing for a reduction of funds owed to Sacramento County by RI of \$180,154.59, and requiring a repayment of \$213,120, over a 36 month payment.⁴ If RI's business model is to enter into agreements with public agencies and then renegotiate the negative impacts of such agreements, what does that say for its willingness to meet local requirements to install essential mitigation? What does it say about Yuba City staff's willingness to approve an MND for a garbage location for this applicant?

In this present circumstance, the Planning Commission and the public have been presented with the staff-approved MND: without evaluation of significant health related and environmental impacts; without MMRP's to determine what mitigation will be required and without assurances that the applicant is capable of meeting those mitigation requirements. The Planning Commission's adoption of the 2018 MND thus violates all aspects of CEQA, and will amount to a failure to proceed in the manner required by law, amounting to a prejudicial abuse of discretion.

Sincerely,



BSB

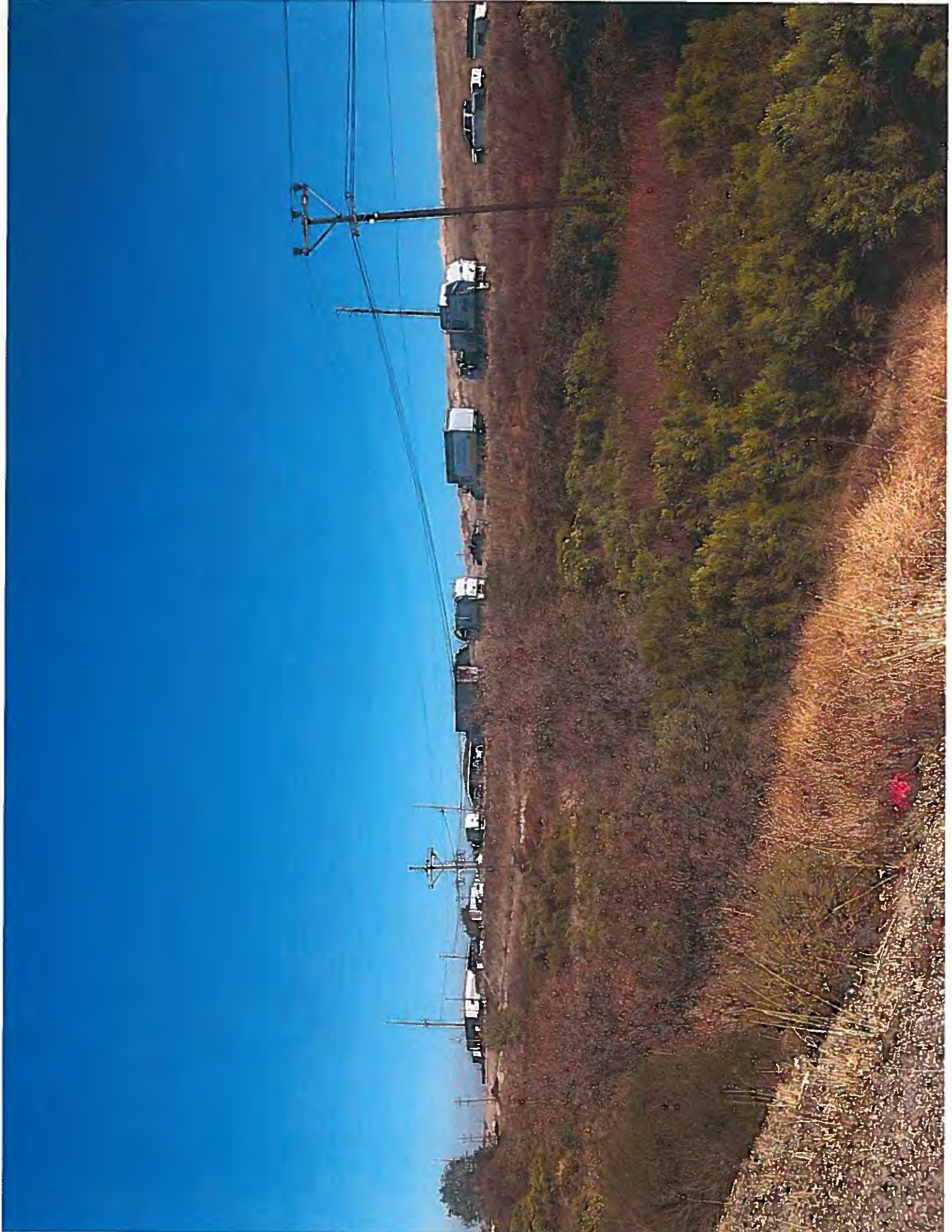
cc: Client (via email)

Martin\Planning Commission.L02.MND Comments

⁴See Dept. of Water Management and Recycling Staff Report/ Dec. 12, 2017/ Resolution 2017-0868.

ATTACHMENT A









Threats Posed by Lithium Battery Fires

CalEPA Building, Room 550

1001 I Street, Sacramento CA 95812

Thursday November 8, 2018

1-4PM

The purpose of this workshop is to raise awareness of the increase in battery related fires at waste management facilities, hear how the impacts to recycling and material recovery facilities in California, and discuss existing tools and potential solutions.

Agenda:

- **Welcome**

- **Panel 1: Danger of Battery Related Fires**
 - National Perspective:
 - RRS – *JD Lindeberg, Principal & President*
 - Fire Rover - *Ryan J. Fogelman, VP Business Development*
 - Recycler Perspective: *ERI - Aaron Blum, COO & CCO*

- **Panel 2: Current Programs and Laws**
 - Loadchecking Requirements – *Local Enforcement Agency*
 - [Dry Cell Battery Management Law](#) – *Elliot Block, Chief Counsel, CalRecycle*
 - [Rechargeable Battery Recycling Act](#) – *Valetti Lang, Chief Policy & Program Support Branch, Department of Toxic Substances Control*

- **Panel 3: Potential Solutions**

A discussion on potential opportunities to improve the state of recycling

 - Manufacturer Perspective: *Call2Recycle - Carl Smith, CEO & President*
 - Local Government Perspective: *RethinkWaste - Hilary Gans, Senior Facilities & Contracts Manager*

- **Discussion Questions**

- **Questions and Stakeholder Discussion**

- **Next Steps**

Attachment 20

Letter submitted by Mitchell Chadwick dated November 20, 2018
supporting the project



**MITCHELL
CHADWICK**

Attachment 12: Letter in support

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

November 20, 2018

VIA U.S. MAIL AND ELECTRONIC MAIL

Members of the Planning Commission
City of Yuba City
1201 Civic Center Boulevard
Yuba City, CA 95993

Re: Recycling Industries Transfer Station Expansion Project

Dear Commissioners:

I am writing on behalf of my client, Recycling Industries, Inc., regarding the proposed modifications to Use Permit 12-01 and Environmental Assessment 12-2 for a Large Volume Transfer Station (the "Project"). As you are aware, the Planning Commission will be considering the Project, and the subsequent mitigated negative declaration ("MND") studying the Project, at a hearing currently scheduled for November 28, 2018. Certain project opponents have suggested that the Project requires preparation of an environmental impact report rather ("EIR") than an MND.

However, the limited expansion of an existing industrial operation in an industrial area is precisely the type of project that an MND is appropriate for. The geographic expansion is only one acre in an area long zoned for heavy industrial uses. The Initial Study and supporting technical studies prepared for the Project indicate that the Project will not result in any significant environmental impacts after mitigation.

If an EIR were required for this Project it would be the smallest project requiring an EIR in my 32-year career. The California Supreme Court has cautioned against allowing CEQA to be used as an instrument of economic oppression. Delay and economic harm are the only purposes served by requiring an EIR for a small project such as the expansion proposed by Recycling Industries.

Preparation of an EIR will not change these conclusions. Rather preparation of an EIR will serve the objectives of Recology Inc., a direct economic competitor of Recycling Industries. As discussed herein, an MND is the appropriate CEQA document for this Project.

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I. The Project Expands an Existing Industrial Use in an Industrial Area

Recycling Industries currently operates a three-acre recycling and waste transfer facility located within an existing industrial area at 140 Epley Drive in Yuba City. Recycling Industries currently operates the site pursuant to Use Permit (“UP”) 12-01, which the City adopted via an MND on July 24, 2014. UP 12-01 provides for construction and operation of a Large Volume Transfer Station¹ with a maximum throughput of 100 tons per day (“TPD”) of mixed waste and recyclables. The site’s surrounding land uses include numerous industrial businesses.

The current Project proposes modifications to UP 12-01 including: increasing throughput from 100 TPD to 300 TPD; expanding the existing transfer and processing building from 18,000 square feet to 21,600 square feet; expanding the site from 3-acres to 4-acres; allowing packer trucks to use the site and removing the 10% cap on putrescible material (excluding source-separated green waste, which will be prohibited); and completing other minor site improvements.

II. A Mitigated Negative Declaration is Appropriate for the Project

The MND and supporting technical studies prepared for the Project indicate that the Project will not result in any significant adverse environmental impacts after mitigation. The City’s consulting firm peer-reviewed the MND and supporting studies and concurs with the conclusions. Thus, the MND and the conclusions therein are well-supported.

The MND determines that the Project will not result in significant adverse environmental impacts after mitigation for several reasons. First and foremost, existing industrial businesses and open industrial land surround the Project site, which is zoned M-2 for heavy industrial. The surrounding industrial uses include a power plant, a steel fabrication plant, a wood chipping facility, and the City’s sewer treatment plant. Notably, the sewer treatment plant is located closer to residences than Recycling Industries’ facility. As a result, the Project is ideally situated to minimize any adverse impacts.

The Project is also subject to extensive regulations and oversight. Site operations must be compliant with State standards for solid waste handling. Furthermore, the Yuba-Sutter Local Enforcement Agency (“LEA”) maintains oversight and enforcement jurisdiction, and Recycling Industries must regularly report to the LEA and facilitate site inspections for compliance. These regulatory requirements are more specifically described in the Transfer/Processing Report (“TPR”) prepared for the facility. The extensive requirements in the TPR ensure that potential impacts, such as odor, are managed and mitigated to less-than-significant levels. For example, Recycling Industries must maintain numerous odor control measures subject to inspection and enforcement by the LEA, and additional odor controls, such as an overhead misting system,

¹ The opponents call the site a dump. It is not. It is a transfer station, landfills are dumps.

ensure odor impacts are minimized to insignificant levels for an M-2 area. As a result, the Project will be subject to enforcement and regulation from multiple entities, including the City via the CUP and the LEA via the TPR.

The Project will also comply with extensive regulations regarding water quality. The facility must meet General Industrial Storm Water Permit (NPDES) standards enforced by the State Water Resources Control Board (SWRCB). In addition, a Storm Water Pollution Prevention Plan (SWPPP) and Monitoring Program Plan (MPP) has been developed and will be monitored by Bishop Environmental. Thus, water quality issues are thoroughly addressed to ensure the Project does not result in any significant environmental impacts.

Finally, the Project will not result in any significant transportation, air quality, or greenhouse gas emissions. The traffic assessment included with the MND concludes that the Project will generate about eight vehicle trips, or 18 Passenger Car Equivalent (“PCE”) trips during the morning peak hour. This is well short of the 50 peak hour trip threshold used by the City and other agencies to determine whether a traffic impact analysis is justified. (MND p. 57.) Furthermore, the City growth forecasts show solid waste generation increasing to 300 TPD by the year 2030. This waste tonnage will be generated by City residents regardless of Recycling Industries’ Project. With the Project, the additional waste and recyclables will be processed at Recycling Industries’ transfer station, and sent off-site to appropriate locations for disposal. However, without the Project, the additional waste and recyclables that would have been processed within the City will instead be shipped outside of the City to locations such as to Recology’s Yuba-Sutter facility in Marysville. In fact, the Project has the potential to reduce vehicle miles traveled and, in turn, reduce emissions such as NO_x and greenhouse gases. Thus, an MND is the appropriate level of environmental review, since the Project will not result in any significant, adverse environmental impacts.

III. Competition is the American way and good for society.

The U.S. Supreme Court has noted that competition is good for society. Specifically, competition is “the best method of allocating resources in a free market” and “that all elements of a bargain – quality, service, safety, and durability – and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.” (*National Society of Professional Engineers v. United States* (1978) 435 U.S. 679, 695.) Economic competitors to the Project have an interest in impeding the Project. These interests should not deter the City from approving the Project and facilitating an open and free market.

IV. Conclusion

Recycling Industries is a local, family business that provides quality local jobs for Yuba City. The Project is a minor expansion to an existing industrial operation that will serve the City of Yuba as it grows in the future. The City’s residents will generate waste and recyclables that will

require sorting and transfer, regardless of Recycling Industries' Project. By approving the Project, the City will facilitate local business, jobs, and reduced VMT and emissions. An MND is appropriate to support this approval, due to the mitigation measures, regulations, location, and design elements associated with the Project.

Should political reasoning prevail over the law, it will come at a cost. By requiring an EIR for such a modest project, the city will be setting an unprecedented new standard for environmental review that will undermine the city's future economic and job growth. When an existing and new businesses considers where to grow their business, they will always select the community where there is greater political certainty and lower costs.

Therefore, we respectfully request that the City reject calls for unwarranted and costly environmental review by Project Opponents motivated by anti-competitive motives and approve Recycling Industries' Project.

Sincerely,

MITCHELL CHADWICK LLP



Patrick G. Mitchell

cc: Arnoldo Rodriguez (City of Yuba)
Dave Kuhnen (Recycling Industries)

Attachment 21

Letter submitted by Mitchell Chadwick dated November 21, 2018 titled
"Reply to Stop the Dump Comment Letter on Recycling Industries'
Expansion Project



**MITCHELL
CHADWICK**

**Attachment 13: Letter submitted by Mitchell
Chadwick dated November 21, 2018 titled
“Reply to Stop the Dump Comment Letter on
Recycling Industries' Expansion Project**

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

November 21, 2018

VIA U.S. MAIL AND ELECTRONIC MAIL

Members of the Planning Commission
City of Yuba City
1201 Civic Center Boulevard
Yuba City, CA 95993

Re: Reply to Stop the Dump Comment Letter on Recycling Industries' Expansion Project

Dear Commissioners:

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. As you are aware, the Planning Commission will be considering the Project, and the subsequent mitigated negative declaration (“MND”) studying the Project, at a hearing scheduled for November 28, 2018. Since this is a modification of an existing project which has already been subject to environmental review, the MND analyzes the potential impacts of the proposed modifications. In other words, the environmental baseline is established by UP 12-01.

On November 6, 2018, a group calling itself “Stop the Dump” (“STD”) submitted a letter to the City opposing the Project and arguing that an environmental impact report (“EIR”) is required instead of an MND. However, STD’s letter mischaracterizes the Project and the extent of analysis supporting the conclusions in the MND and relies on hyperbolic rhetoric. Even the name of this organization is misleading and alarmist, as the Project involves expansion of an existing transfer station used for sorting and transferring recyclable and waste materials for transport to appropriate locations. There is no dump to stop.

It is unclear what STD hopes to accomplish by forcing the Project into an EIR, as the limited expansion of an existing industrial operation in an industrial area is precisely the type of project that an MND is appropriate for. Furthermore, the Project operations are subject to extensive State and local regulations. The MND concludes that the Project will not result in any potentially significant environmental impacts based on these regulations, mitigation measures, and conditions of approval applicable to the Project. As a result, preparation of an EIR will not change the Project. Nor will preparation of an EIR stop the project, if that is truly STD’s goal. Rather, preparation of an EIR will only cause delay and additional expenses for the applicant.

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which seems to be STD's true motive here. The California Supreme Court has admonished that CEQA is not intended to be wielded as a tool for economic oppression. If the city were to require an EIR for this minor expansion of an already small facility, it would be by far the smallest project in my 32-year land use/CEQA career requiring an EIR. STD's request for an EIR is, in fact, a ridiculous attempted abuse of CEQA principles. As discussed herein, an MND is the appropriate CEQA document for this Project.

A. The Project Expands an Existing Industrial Use in an Industrial Area

Recycling Industries currently operates a three-acre recycling and waste transfer facility located within an existing M-2 heavy industrial area at 140 Epley Drive in Yuba City. The site's surrounding land uses include numerous industrial businesses, such as a power plant, a steel fabrication plant, a wood chipping facility, and the City's sewer treatment plant. Recycling Industries operates the site pursuant to UP 12-01, which the City adopted via an MND on July 24, 2014. UP 12-01 provides for construction and operation of a Large Volume Transfer Station with a maximum throughput of 100 tons per day ("TPD") of mixed waste and recyclables. Operations are also subject to Solid Waste Facility Permit ("SWFP") No. 51-AA-008, granted with CalRecycle concurrence on May 27, 2015. Prior to this, Recycling Industries operated the site as a recycling center from 2009 to 2015 pursuant to the requirements of 14 CCR section 17402.5, subd. (d). (Transfer/Processing Report ["TPR"] pp. 1-1 to 1-2.)

The current Project proposes modifications to UP 12-01 including: increasing throughput from 100 TPD to 300 TPD; expanding the existing transfer and processing building from 18,000 square feet to 21,600 square feet (only a 20% increase); expanding the site from three-acres to four-acres (only one acre); allowing packer trucks to use the site and removing the 10% cap on putrescible material (excluding source-separated green waste, which will be prohibited); and completing other minor site improvements. These Project elements will also be reflected in revisions to the SWFP and TPR, included as Appendix A to the MND.

B. Responses to STD Comments: An MND is Appropriate for the Project

1. CEQA and the CEQA Guidelines support preparation of an MND.

Before approving a project subject to the California Environmental Quality Act ("CEQA"), a lead agency must determine the appropriate environmental review to be completed. To reach this determination, the agency prepares an initial study. (14 CCR § 15063; *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 113.) If the initial study reveals that the project will not have a significant environmental effect, the agency must prepare a negative declaration briefly describing the reasons supporting that determination. (14 CCR §§ 15063, subd. (b)(2) ["The lead agency shall prepare..."]; *Davidon Homes, supra*, 54 Cal.App.4th at p. 113.)

The Legislature has provided that an initial study and negative declaration or IS/MND serve the primary purpose of CEQA. (*Abatti v. Imperial Irr. Dist.* (2012) 205 Cal.App.4th 650, 672-673 [disagreeing with petitioner's disparaging characterization of "the extent of environmental

review that is involved in the adoption of a negative declaration”].) A negative declaration or MND will be sustained unless “it appears that the project as a whole will have a substantial adverse impact on the environment.” (*Myers v. Bd. of Supervisors* (1976) 58 Cal.App.3d 413, 430.) As stated by the California Supreme Court, CEQA “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).) Thus, the Planning Commission should reject unfounded requests for additional environmental review, which will only serve to burden the advancement of a local business.

2. Preparation of the MND complies with CEQA, and the City will exercise its independent judgment.

STD argues that the MND does not reflect the City’s independent judgment because it was prepared by RI’s consultant, Clements Environmental, and reviewed by Benchmark Resources. (STD Letter pp. 3-4.) California Public Resources Code section 21082.1 requires that a lead agency exercise independent judgment in reviewing an environmental document, but this section does not prohibit an applicant, or its consultant, from preparing the environmental document. An agency may comply with CEQA by adopting environmental materials drafted by the applicant’s consultant as long as the agency independently reviews and exercises judgment over the document. (*Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446, 1452.) For example, the CEQA guidelines affirmatively endorse preparation of EIR’s by the applicant’s consultant. (14 CCR § 15084, subds. (d)(3), (e); *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 369.) STD’s argument on this point is frivolous, as this issue has been well settled law for decades.

3. Summary of Rebuttal

STD summarizes its arguments regarding the MND on pages 4 to 6 of its letter. These arguments are addressed in further detail in the following sections of this reply letter.

4. General: Project Throughput is Limited by the CUP

Contrary to arguments by STD (STD Letter pp. 6-7.), the MND properly describes the Project as conditioned by the CUP (MND p. 3). The Project CUP limits throughput to 300 TPD. While proposed revisions to the TPR prepared in 2017 cite up to 360 TPD for unusual loading (TPR p. 1-2), the City’s CUP condition limiting the Project to 300 TPD controls. Thus, the project will be limited to the throughput amount of 300 TPD analyzed in the MND.

5. Aesthetics

STD argues that the Project may result in significant adverse aesthetic impacts. (STD Letter pp. 7-10.) However, the Project is located in a heavy industrial area, and the Project and is consistent with the City’s M-2 zoning and the character of surrounding businesses. (MND pp. 6, 15-16.)

Neighboring businesses include steel fabricators, a sawmill, and manufacturing companies. (MND p. 50.) For aesthetics, the existing environment matters.

STD argues that the project could result in adverse aesthetic impacts because the Project will serve packer trucks, which are taller than private vehicles used for self-haul trips. However, heavy trucks are neither new nor unique to the M-2 zoned industrial area in which the Project is located. In fact, truck traffic associated with these neighboring industrial operations currently use the local street system. (MND, Appendix C – Traffic Study [“Traffic Study”] p. 5.) In other words, the Project is not located in a sensitive aesthetic environment, and heavy industrial trucks are already part of the scenery. Therefore, the presence of trucks in an industrial area does not implicate significant aesthetic impacts, and STD’s claims to the contrary are frivolous.

STD also suggests that truck queuing will result in significant aesthetic impacts. Again, recycling and waste operations are highly regulated, and this precise issue of truck queuing is addressed in the TPR and incorporated in the Project design. In fact, the Project is designed to accommodate “unusual loadings” and “peak-surge” to ensure any traffic stacking is contained to internal Project site lanes intended for this purpose. (TPR pp. 4-8 to 4-9.) As noted in the MND, the Project will generate 8 peak hour trips (16 inbound and outbound) or 18 Passenger Car Equivalent (“PCE”) trips (36 inbound and outbound) at 300 TPD throughput. (MND p. 57.) The TPR requires the facility to accommodate year 2030 peak-surge traffic “as a continuous traffic flow.” As a result, the internal traffic stacking lanes will only be utilized in unusual traffic loadings, accounting for intake times with a single scale. (TPR p. 4-10; see also TPR pp. 4-27 to 4-30.) Thus, the TPR ensures there will be no significant aesthetic impacts due to truck queuing.

Nor is there a potential for loose debris to result in significant aesthetic impacts, as STD suggests. Trucks delivering materials to the Project site are subject to regulatory requirements to address debris blow-off, and the TPR requires active monitoring and clean-up of the local streets. For example, fencelines, gutters, and frontages, such as those along Burns Drive, Epley Drive, and Putman Avenue, must be inspected and cleaned by Recycling Industries. (TPR p. 4-22.) On-site litter control and sweeping requirements prevent any debris from being tracked off-site. (TPR p. 4-21.) These practices are already in place for Recycling Industries’ existing operation, and the Local Enforcement Agency (“LEA”) has not received any complaints from neighboring businesses regarding trash from debris blow-off or tracking.

STD also argues that the Project will not be sufficiently screened to avoid significant aesthetic impacts. However, the Project will be similar to existing operations on the site and consistent with the M-2 heavy industrial area. Tipping and processing will occur within the expanded transfer station, like current operations. (MND p. 16.) Any outdoor activities are screened from public view by fencing, pursuant to the TPR. (TPR p. 1-3.) The TPR also requires landscaping improvements for new onsite parking and improvements to the frontage on Epley Drive and Putman Avenue. (TPR p. 2-11 to 2-12.)

The MND addresses new lighting associated with the Project and concludes that the Project will not result in significant light or glare impacts. (MND pp. 16-17.) STD suggests otherwise, but again, the Project is an expansion of an existing industrial use in an industrial area. The Project site and surrounding industrial businesses already include lighting. Furthermore, any new lighting and building materials on the site must comply with the City Municipal Code, and State and local building standards. (MND p. 17; TPR pp. 4-25 to 4-26; *see Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906 [requiring compliance with regulations as mitigation is “common and reasonable”].)

6. Air Quality

STD argues that the Project will result in significant adverse air quality and odor impacts, but these arguments rely on mischaracterizations of the project and faulty assumptions. (STD Letter pp. 10-19.) It is not surprising that STD must rely on these tactics, as the Project involves the minor expansion of an existing operation.

i. Emissions

STD raises various assertions to argue that the MND does not properly disclose potential Project emissions. (STD Letter pp. 11-16.) However, the MND discloses both truck trips and on-site equipment operations to reach the conclusion that the Project will not result in potentially significant emissions impacts. STD ignores the simple fact that the Project is limited in scope and will not exceed relevant thresholds. The Project is estimated to generate 104 daily round trips and only 16 peak a.m. hour round trips.

STD mistakenly suggests that the MND does not disclose emissions from the initial 100 TPD for on-site equipment. (STD Letter p. 12.) The MND explains that, at 100 tons per day, the loader is expected to operate two hours per day, and at 300 tons per day, the loader is anticipated to operate six hours per day. (MND p. 23.) STD also argues that the MND does not properly disclose peak emissions from operating the loader, based on the amended TPR discussion of potential peak surge and unusual loading circumstances. While the TPR includes these calculations as required by the State, the site will not be permitted to accept more than 300 TPD per the CUP, as discussed above. Thus, the MND analyzes peak-day conditions: a loader operating for six hours to processes 300 tons of waste and recyclables. (MND p. 23.) Furthermore, the Project does not include plans for additional stationary source equipment or machinery, and any future acquisition would be subject to FRAQMD Permit to Operate (“PO”) requirements. (TPR pp. 3-2 to 3-3.)

STD confuses the Project with a greenwaste composting facility rather than a transfer station to argue that composting materials will generate significant VOC emissions. (STD Letter p. 13.) The MND explains that materials will be moved in less than 48-hours, and in most cases within 24 hours. (MND p. 24; TPR p. A-17.) Furthermore, FRAQMD commented on this very issue, and concluded that if the facility will be transferring all materials within 48 hours, “then there

should not be composting-type emissions.” (Email from Sondra Spaethe, FRAQMD Air Quality Planner, Nov. 15, 2018.) Thus, the Project does not have the potential to result in potentially significant VOC emissions.

STD also criticizes the qualitative analysis of emissions from transportation traffic associated with the Project. (STD Letter pp. 13-14.) As noted in the MND and TPR, Yuba City will generate an estimated 300 TPD of waste and recyclables by the year 2030. (MND p. 2; TPR p. 4-8.) This tonnage will need to be transported to a sorting facility regardless of whether Project is constructed. Thus, total emissions will be a matter of where that tonnage is transported. The MND and traffic study include this analysis and determine that the Project has the potential to result in reduced vehicle miles traveled (“VMT”). Perhaps tipping its hand, STD suggests that material outside of Yuba City might better be transported to Recology’s existing YSDI transfer facility. (STD Letter p. 14.) STD even lauds the fact that Recology’s site includes a recycling processing center. (STD Letter p. 15.) Recology is a direct economic competitor of Recycling Industries, has been a primary Project opponent, and made similar comments at Recycling Industries’ open house for the Project which are now echoed in the STD Letter. Importantly, and contrary to STD’s arguments, the MND traffic analysis is based on extrapolations of current traffic patterns, State vehicle regulations, and Yuba City General Plan growth patterns.

Finally, STD argues that the Project does not adequately analyze health risk impacts associated with emissions from trucks and on-site equipment. (STD Letter p. 16.) The TPR explains that operations rely exclusively on equipment that will require a PO. This equipment must meet the Air Resources Board (“ARB”) Portable Equipment Registration Program (“PERP”) rules and regulations for emissions. (TPR pp. 3-2 to 3-3.) Emissions for the loader associated with the Project are disclosed in the MND. (MND p. 23.) As noted above, the Project does not include plans for additional stationary source equipment or machinery. Furthermore, the Project is designed to handle queuing on a continuous flow basis under normal circumstances (TPR p. 4-10), and even under peak morning conditions, the Project will generate 16 round trips (36 PCEs), which is well short of the 50-trip triggering threshold for the further intensive study that STD requests (MND p. 57).

ii. Odors

STD argues that the Project will have significant adverse odor impacts due to the removal of the 10% putrescible limit, and that the MND does not sufficiently analyze this change. (STD Letter pp. 16-19.) However, the MND considers this very issue and concludes that mitigation measures and the intensive regulation of waste and recycling operations, including transfer stations, ensures that the Project will not result in significant odor impacts. (MND pp. 24-25.)

Potential odors associated with the Project are addressed extensively in the amended TPR. (See TPR § 5.4, Appendix G.) Despite this, STD argues that odor impacts will be significant because odor controls for the Project remain the same as the current site operations. While many of the same mitigation measures included with UP 12-01 remain applicable to the Project, the amended

TPR for the Project incorporates strict odor controls in accordance with State requirements, such as an advanced odor neutralization system. (TPR pp. 1-2, 5-4 to 5-6.) The buildings and storage of materials are also designed to facilitate easy and effective cleaning in order to prevent odors. (TPR p. 2-7.) Thus, the mitigation measures, including compliance with regulatory requirements, are sufficient to prevent potentially significant odor impacts.

STD also overstates the potential intake of putrescible materials and incorrectly assumes that 360 TPD of putrescible material will be stored on the site. First, the Project is limited to processing 300 TPD by the CUP, as discussed above. Second, the TPR prohibits the site from accepting certain putrescible materials that could generate excessive odors. (TPR p. 5-5; TPR Appendix G, p. G-4 to G-5.) Finally, the Project will not be processing 100% putrescible materials, because the Project may not accept source-separated greenwaste. In contrast, under the current UP 12-01, RI is permitted to accept source-separated greenwaste. As a result, the Project may actually provide an improvement to odors over baseline conditions by prohibiting source-separated greenwaste. (MND p. 24.)

7. Biological Resources

STD argues that the 1-acre lot adjacent to the existing Recycling Industries operation, which is surrounded by heavy industrial operations, could harbor potentially significant biological resources. (STD Letter pp. 19-20.) This argument stretches the imagination. The MND explains that the Project will not result in any potentially significant biological impacts because the Project is located in an urbanized area designated for development, and is not in proximity to or maintaining any connectivity with any sensitive biological resources. (MND pp. 26-27.) Thus, there is no potential for the Project to result in any potential impacts to biological resources. The STD argument on this point is frivolous.

8. Cultural Resources

STD also argues that the 1-acre lot might contain potentially significant cultural resources. (STD p. 20.) Again, the lot is located in an M-2 heavy industrial area designated for development. Furthermore, the relevant tribes were notified of the Project pursuant to AB 52, and no consultation was requested. Finally, the Project is subject to mitigation measures to avoid impacts to potential cultural resources. (MND pp. 28-29.) The STD argument on this point is frivolous.

9. Greenhouse Gas Emissions

STD reiterates its prior mischaracterizations of the Project and MND analysis to argue that the Project could result in potentially significant greenhouse gas (“GHG”) emissions. The MND explains that the Project will result in emissions far less than the 10,000 metric ton per year threshold of significance for industrial facilities. (MND p. 33.) Furthermore, the additional 200

TPD¹ of materials expected to be produced by the City of Yuba in 2030 is based on population growth, not construction of the Project. In other words, the City's waste and recyclable material production is inelastic, and those materials will be processed somewhere. As a result of the Project's location, VMT will actually be reduced by approximately four miles per packer truck trip. (MND p. 33.)

10. Hazards and Hazardous Materials

STD argues that the MND does not address potentially significant hazards and hazardous materials impacts. (STD Letter pp. 23-24.) However, the MND correctly concludes that the Project will not result in any potentially significant hazards and hazardous materials impacts. (MND pp. 36-38.) The MND acknowledges that the Project may result increased potential for hazardous materials being brought to the transfer station due to an increase in permitted throughput. The MND explains that the site is subject to a waste screening program pursuant to State regulations and further described in the TPR. (MND p. 36.) The site currently accepts batteries and e-waste, and the TPR provides procedures for handling and storage. (TPR pp. 4-17 to 4-18.) Appendix F to the TPR contains the Facility Fire Prevention and Fire Countermeasures Summary. The fire countermeasures and waste storage and handling practices ensure the risk of fire will be less than significant. (TPR pp. F-16 to F-21.)

11. Hydrology and Water Quality

STD argues that the MND does not fully address potentially significant water quality impacts associated with the Project due to stormwater runoff. (STD Letter pp. 24-27.) The MND addresses potential water quality impacts, including stormwater runoff, at length. (MND pp. 40-43.) Importantly, the Project involves expansion of a 3-acre industrial operation onto an additional acre, and stormwater control is already part of the ongoing operations. Furthermore, the Project will be subject to a Stormwater Pollution Prevention Plan ("SWPPP"). This covers vehicle travel-ways and the site exterior. (MND p. 40.) The MND conclusions are supported by technical stormwater calculations prepared by Laughlin and Spence, Civil Engineers and Surveyors, demonstrating that the Project as designed will have sufficient stormwater retention capacity. The TPR also addresses stormwater and drainage, to ensure the Project does not result in any water quality violations. (TPR pp. 2-17, 3-4, 5-7 to 5-9.) Project design and compliance with the SWPPP will ensure that the Project does not result in any potentially significant water quality impacts.

12. Noise

STD argues that the Project may result in significant noise impacts, downplaying the fact that the Project involves the expansion of an existing industrial use in an area zoned for heavy industry. (STD Letter pp. 28-29.) The MND addresses potential noise impacts associated with expanded

¹ As noted above, the CUP limits the Project to 300 TPD.

site operations, and concludes that the Project will not result in potentially significant noise impacts. (MND pp. 47-51.) The MND explains that the Project is consistent with the City General Plan for noise produced by industrial facilities, and that the Project will not exceed 65 dB at the property line. This falls well short of the 75 dB upper range, which is considered a normally acceptable level for industrial uses. (MND p. 48.) Furthermore, the TPR addresses potential noise nuisance to ensure the Project does not produce excessive noise. (TPR p. 5-4.) Thus, the increased operations associated with the expanded Project will not produce any potentially significant noise impacts.

13. Public Services

STD references its arguments regarding Hazards and Hazardous Materials to imply that the Project may have “issues pertaining to fire protection and response times.” (STD Letter p. 29.) Fire control, including local fire agency resources, response times, and incident response and command are addressed in the TPR Appendix F – Facility Fire Prevention and Fire Countermeasures Summary. (TPR pp. F-20 to F-21.) Thus, the MND properly concludes that the Project will have no significant adverse impacts on public services.

14. Transportation/Traffic

STD challenges the MND transportation and traffic analysis, but the various arguments are misplaced. (STD Letter pp. 29-31.) For example, STD is incorrect regarding the preparation of a traffic study for the MND. Transportation engineers KD Anderson & Associates, Inc., prepared a traffic assessment for the MND and concluded that the Project would not result in any significant traffic circulation or safety impacts. (MND, Appendix C.)

The MND also analyzes peak truck trips associated with the Project’s increased throughput. The MND explains that the Project will generate 52 daily vehicle trips to and from the site (104 total), and up to eight vehicle trips during the morning peak hour, or 18 Passenger Car Equivalent (“PCE”) trips to and from the site (36 trips total). Truck traffic was estimated based on the Project’s increased tonnage over current operations and vehicle capacity. More Project traffic is expected to occur in the morning, though the truck trips are expected to be relatively uniform across operations hours. (MND p. 57; compare with STD Letter p. 30.) On-site truck parking is addressed in the TPR, which ensures that adequate parking will be available. (TPR, pp. 2-10 to 2-11; compare with STD Letter p. 31.)

15. Mitigation Monitoring or Reporting Program

STD argues that additional review of mitigation measures for the Project is necessary. (STD Letter pp. 31-32.) However, the MND discloses the mitigation measures that the Project will be subject to, and the City may adopt, a mitigation monitoring or report program concurrent with the MND. (14 CCR § 15074, subd. (d).) This Project is subject to extensive State and local regulations and oversight, which are cited throughout the MND and TPR. Again, requiring compliance with existing regulations is a common and acceptable form of mitigation. (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906.)

16. Mitigation Funding

Lastly, STD suggests that Recycling Industries will not be able to fund the mitigation identified in the MND, citing business negotiations with Sacramento County. (STD Letter pp. 32-33.) Nowhere in the record does Recycling Industry's business negotiations with an agency for better pricing suggest malfeasance. Thus, it is reasonable to expect compliance with regulations, and the Project is properly mitigated. (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 246.)

Sincerely,

MITCHELL CHADWICK LLP



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