

September 28, 2015

BARBARA J. SCHUSSMAN
BSCHUSSMAN@PERKINSCOIE.COM
D. +1.415.344.7168
F. +1.415.344.7368

President Breed and Members of the
San Francisco Board of Supervisors
San Francisco City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689

**Re: September 29, 2015 Board of Supervisors Agenda Item 41: Appeal of Final
Negative Declaration - Recology Landfill Disposal Agreement - Hay Road Landfill
in Solano County**

Dear President Breed and Members of the San Francisco Board of Supervisors:

This letter is submitted on behalf of Recology, Inc. to address the arguments raised on the appeal of the Negative Declaration for the agreement for disposal of municipal solid waste at the Recology Hay Road Landfill.

San Francisco's contract for disposal of its municipal solid waste at Waste Management, Inc.'s Altamont Landfill will expire when the tonnage limit in that contract is reached-- in January, 2016. San Francisco must have a contract in place for disposal of its solid waste.

Recology already collects, sorts and hauls San Francisco's municipal solid waste. Presently, Recology hauls the waste to the Altamont Landfill. Under the new disposal agreement, Recology will haul the same waste to the Hay Road Landfill.

As required by the California Environmental Quality Act, the Initial Study and Negative Declaration prepared to evaluate the environmental effects of sending its municipal solid waste to the Hay Road Landfill compares the effects of sending the waste to Hay Road to the conditions that exist now: sending the waste to Altamont.

The Negative Declaration explains why no significant environmental effect would occur. Essentially Recology's trucks will turn left at the eastern end of Bay Bridge to take the waste to Hay Road, rather than turning toward I-580 to take the waste to Altamont. Hay Road is a fully permitted operating landfill. The surface streets from I-80 to Hay Road already are used by garbage trucks, and have plenty of capacity to handle additional trucks transporting San Francisco waste. The change in traffic on I-80 will be negligible. Air pollutant and greenhouse gas emissions would increase slightly due to longer trip lengths for the trucks, but clearly would not exceed established CEQA significance criteria.

The appellant, which purports to be a Solano County committee, does not argue that significant impacts would occur at or near the Hay Road Landfill. Tellingly, the appellant instead focuses its attention on arguing that Waste Management, Inc.'s Altamont Landfill is "superior." The appellant points to reports prepared by SWAPE, a consulting firm.

The SWAPE reports contain legal arguments, speculation and unsubstantiated assertions, but no facts or evidence showing a significant environmental impact.

- The contentions about environmental impacts in SWAPE's reports are largely grounded on *legal* arguments about the proper baseline for CEQA review. Legal arguments are not evidence and it is improper for SWAPE to be making them.
- SWAPE's other main arguments rely on its speculation that San Francisco waste might increase in the future, necessitating more than an average of 50 loads per day over a six day week. The data SWAPE relies upon do not support its argument, as shown in the Planning Department's appeal response. Moreover, SWAPE studiously ignores a fundamental fact: the disposal agreement expressly limits Recology's truck trips to an average of 50 loads per day over a six day week. The total loads of municipal solid waste hauled to the landfill *cannot* exceed this number.
- In its September 25 report, SWAPE persists in its unfounded attempts to tie population growth to total waste and now to the total volume of waste taken to Altamont-- despite the uncontroverted fact that both these total waste streams include both nonresidential and residential waste. SWAPE criticizes the Department of the Environment for anticipating future waste reductions based on new technologies, but SWAPE offers no facts or evidence on this point. At bottom, as with its earlier arguments, SWAPE simply ignores the single most important fact: the disposal agreement does not allow the total number of loads hauled to Hay Road to exceed 50 per day over a six day week. Given that undeniable fact, none of SWAPE's speculations about future growth are relevant to the analysis of *this Project*.
- Citing information provided to it by Waste Management, Inc., SWAPE asserts that Recology's trucks now occasionally take the San Mateo Bridge enroute to the Altamont Landfill rather than the shorter Bay Bridge route assumed in the Negative Declaration. SWAPE admits, however, that trucks would not take the San Mateo Bridge route to the Hay Road Landfill under project conditions. At most, this means regional air pollutant and greenhouse gas emissions under *existing conditions* could be *higher* than were assumed in the Negative Declaration, and the *difference* in emissions under project conditions would be *less* than calculated in the Negative Declaration. SWAPE's assertion that significant impacts might occur is speculation and is not supported by any evidence.

- SWAPE criticizes some of the data and assumptions underlying the Initial Study's analysis of criteria air pollutants and GHG emissions and asserts the following different data or assumptions should have been used: additional emission factors for calculating GHGs from LNG trucks; different emission factors for calculating NOx and other criteria pollutant emissions from LNG trucks; and different mileage assumptions for use of LNG fuel. None of these arguments shows that a significant impact may occur: Even if SWAPE's suggested data and assumptions are used in the analysis, the results do not contradict the Initial Study's finding that the applicable thresholds of significance will not be exceeded. SWAPE provides no facts or other evidence to the contrary.
- SWAPE calculates project emissions assuming continuation of the existing truck fleet (Scenario 1) and assuming conversion of some of the biodiesel trucks to LNG (Scenario 2). In both scenarios, SWAPE assumes an annual average of *more than 50 trucks per day* over a six day week. The disposal agreement *does not allow these numbers of truck trips*. SWAPE's entire argument hinges on a single faulty assumption- that more annual truck trips would occur in the future than the number allowed by the agreement.
- SWAPE vaguely asserts that San Francisco's treatment of the disposal agreement as separate from independent projects at the Tunnel Avenue Transfer Facility constitutes "piece-mealing." SWAPE does not provide any facts or evidence showing these projects meet any of CEQA's standards for piece-mealing; instead, SWAPE has provided only its unsupported legal opinion and speculation.
- Several arguments advanced in support of the appeal raise policy arguments relating to various GHG reduction goals, targets contained in AB 32 and associated scoping plans, SB 743 and the related draft proposed CEQA Guidelines; Executive Order B-30-5 and San Francisco's Climate Action Plan. But the appellant and SWAPE point to no specific inconsistency with any applicable plan or policy. The assertions they make constitute argument and unsubstantiated opinion, and are not evidence of a significant impact due to GHG emissions.
- SWAPE takes inconsistent positions regarding the benefits of conversion to LNG trucks. First, SWAPE contends Recology needs to establish a contractual commitment to convert more of its truck fleet to LNG (which Recology has done). Then, SWAPE asserts that use of LNG could marginally increase *some* types of GHGs while lowering others. This later argument is apparently offered for no other reason than to muddy the record given that SWAPE has not offered any analysis supporting a conclusion that conversion to LNG trucks could result in a significant impact, and that SWAPE previously acknowledged that conversion to LNG trucks is beneficial. SWAPE's arguments rely only on speculation.

- In its September 25 report, SWAPE asserts that fluctuations in daily truck trips could cause deliveries to Hay Road to exceed the daily tonnage limit at that facility. No facts or data support this argument. Daily truck trips fluctuate under existing conditions; the disposal agreement does not alter those current patterns. Recology would control deployment of its haul trucks such that they do not exceed the daily tonnage limits at Hay Road. All of the evidence in the record indicates that the full quantity of waste allowed under the disposal agreement readily can be received at the Hay Road Landfill without exceeding any permit limits for that facility.
- Finally, SWAPE asserts that disposal of San Francisco waste at Hay Road could fill the landfill more quickly than anticipated by the local communities currently using Hay Road. SWAPE cites no fact or evidence supporting this assertion. The Final Negative Declaration explains that the estimated date for closure of the Hay Road Landfill assumes the “maximum permitted rate of waste disposal.” The disposal agreement does not cause that maximum rate to be exceeded.

In considering each of the foregoing points, it is also important to note that the consultants authoring the SWAPE reports fail to establish expertise in the matters about which they opine. According to its letterhead, SWAPE provides Technical Consultation, Data Analysis and Litigation Support for the Environment. SWAPE’s website indicates the primary author, Mr. Matt Hagemann, is a geologist with expertise in site remediation. The other author, Ms. Jaeger, is a conservation biologist who works on drinking water projects. Neither purports to have training or expertise in the calculation of greenhouse gas emissions, the calculation of criteria pollutant emissions, traffic analysis, or any other matter pertaining to waste hauling or disposal. See: <http://www.swape.com/staff/matt-hagemann/>; <http://www.swape.com/staff/jessie-jaeger/>. In addition, SWAPE does not disclose who it is representing or who engaged it to prepare those reports. That omission alone calls into question the credibility of the reports.

The appellant’s clear preference for Waste Management, Inc.’s proposal does not constitute substantial evidence supporting a fair argument that the proposed project could have a significant effect on the environment. Neither the SWAPE reports nor any other information submitted in support of the appeal show that the Negative Declaration is deficient either factually or legally. The appeal should be denied.

Very truly yours,



Barbara J. Schussman