

**CITY OF HAYWARD
PLANNING DIVISION
ADMINISTRATIVE USE PERMIT
APPLICATION NO. PL-201801996
FINDINGS FOR DENIAL**

EFFECTIVE DATE: JULY 24, 2018

Section 1. Background

1. On April 17, 2018, Kimberly Douglas for Bay Area Concrete Recycling, LLC. (Applicant) filed an application with the Development Services Department requesting to operate a temporary outdoor Concrete Recycling Facility at 24701 Clawiter Road (APN 439-0020-002-03) in the City of Hayward. The project site is within in the Industrial (I) Zoning District and is designated IC, Industrial Corridor in the *Hayward 2040 General Plan*.
2. Pursuant to Section 10-1.3105 of the Hayward Municipal Code (HMC), Administrative Use Permit (AUP) approvals are to assure certain specified uses are permitted where there is community need, and to assure said uses occur in maximum harmony with the area and in accordance with official City policies. Given that the project site is located within the Industrial zoning district, the project requires a Temporary AUP to allow the temporary (continued) operation of a concrete recycling facility until the 3898 Depot Road site receives approval for and Administrative Use Permit for an Indoor Concrete Recycling facility and the facility constructed.

Section 2. Findings for the Administrative Use Permit

Per Section 10-1.3120 of the Hayward Municipal Code, the Planning Director may approve, conditionally approve, disapprove, or refer an Administrative Use Permit application to the Planning Commission, with or without a recommendation. Except for referrals, action must be based on the findings listed below in Section 10-1.3125, as stated below. The Planning Director may approve or conditionally approve an application when all the following findings are met:

A. The use is desirable for the public convenience or welfare.

The temporary (continued) operation of an Outdoor Concrete Recycling Facility, is not desirable for the public welfare in that the facility has been operating without the necessary land use or regulatory permits and has been cited by the City's Code Enforcement Division and deemed a public nuisance since it began operations in 2013. Though an application was submitted for an Administrative Use Permit on November 16, 2012, it was terminated for lack of action on the application. Subsequently, staff received a complaint in November 4, 2013 regarding dust not being controlled and complaints continue to be reported to the City and the problem continues to persist. Section. 10-1.150 Nuisance of the Municipal Code states:

"No use or expansion of any existing use shall be conducted in a manner that is detrimental to or incompatible with adjacent properties so as to create any dangerous, noxious, or objectionable conditions which are a nuisance to owners or users of adjoining property or to the general public. The following hazards, pollutants, and disturbances are examples of conditions that constitute a nuisance, and include but are not limited to: fire, explosion, odor, gases, smoke, dust, liquid

or solid refuse or wastes, noise, vibration, electrical interference, glare, heat, cold, and dampness. ”

Many of the improvements required to address the adverse impacts of the operation of an outdoor concrete recycling facility, including environmental issues are not in place and have not been adhered to. To continue the operation of a use that has already been deemed a public nuisance to a date uncertain would not be in the best interest of the public welfare. In addition, the temporary and continued operation of an Outdoor Concrete Recycling Facility is not desirable for the public convenience or welfare in that the site improvements necessary to ensure public safety and welfare have not been proposed as part of this temporary use application and the proposed temporary operation would not upgrade or improve the site to meet all local land use, regulatory guidelines and environmental regulations.

B. The use will not impair the character and integrity of the zoning district and surrounding area.

The temporary (continued) operation of the Outdoor Concrete Recycling Facility, has impaired the character and integrity of the Industrial District and surrounding area in that the City has received several complaints about environmental impacts related to air quality and water quality impacts from dust and dirt being tracked onto public streets and washed into the public sewer system. Though the concrete crushing machinery has a dust suppression system, the lack of operational and environmental oversight has resulted in dust emissions from unloading and loading the trucks, moving concrete rubble around the site, and loading the concrete crushing machinery.

The existing site does not have the necessary site improvements to minimize the tracking of dust and the applicant is not proposing to make additional site improvements related to this Administrative Use Permit. Per Section 10-1-1645 of the Hayward Municipal Code (Minimum Design and Performance Standards), the proposed use in the Industrial District requires the following:

- *“Parking and driveway surfaces shall be paved with an all-weather dustless material(s), such as concrete or asphaltic surface, as approved by the Planning Director.”*
- *“All open areas not landscaped shall be treated or paved with an all-weather, dustless material, such as an asphaltic surface, as approved by the Planning Director. Surface shall be permanently maintained, including replacement where necessary.”*

Much of the existing project site is unpaved and contains multiple businesses (trucking facility, outdoor sludge treatment) which further contribute to the air quality impacts with dust becoming airborne or being washed into the public sewer system. The previous attempts to street sweep the dust has not been successful and have only drawn more complaints from surrounding neighbors and property owners related to the recycling operation.

The project site is located along Clawiter Road, a major arterial road in the Industrial District, which is surrounded principally by light industrial uses. The operational nature of this heavy industrial use is noisy and not compatible with the adjacent light industrial land uses in the project vicinity. Additionally, the stockpile of concrete rubble and recycled concrete is visually

intrusive and the applicant is not proposing any measures to screen the piles from the street such as a high wall or trees. Section 10-1-1645 of the Hayward Municipal Code requires the following:

- *“Trash and recycling facilities shall be adequately screened from view, utilizing a decorative wood or masonry wall or combination thereof (unless waived by the Planning Director or other approving authority) compatible with the design of the primary building.*

These site improvements are not in place and it has been demonstrated that the temporary and continued operation of the outdoor concrete recycling facility without the necessary site improvements would continue to impair the character and integrity of the surrounding area.

C. The use will not be detrimental to the public health, safety, or general welfare.

The temporary use and continued operation of the Outdoor Concrete Recycling Facility at this location is detrimental to the public health, safety, or general welfare in that the air quality impacts from dust created by the concrete recycling process poses a potential health risk. Concrete is being crushed and much of this particulate material, crystalline silica dust, is becoming airborne and creating a public health and safety issue. If any employees or persons in the project vicinity is over-exposed to crystalline silica dust, it can lead to lung disease and other respiratory issues. Several residents and property owners in the immediate project vicinity have raised concerns about the potential health risks associated with the continued illegal operation of this outdoor concrete recycling operation.

In addition, the existing concrete recycling facility has been operating without the necessary Bay Area Quality Management District (BAAQMD) permit, which is intended to minimize public health and environmental impacts for the operation of a facility of this size. The continued operation of this use, on a temporary basis, does not provide the necessary improvements to the site to ensure that impacts to public health, safety and general welfare are minimized.

D. The use is not in harmony with applicable City policies and the intent and purpose of the zoning district involved.

The temporary and continued operation of an Outdoor Concrete Recycling Facility at this location is not in harmony with applicable City policies in that it is not consistent with land use goals and policies of the *Hayward 2040 General Plan* in that:

“...This goal and its supporting policies are designed to maintain and improve the Industrial Technology and Innovation Corridor and expand the economic and employment base of Hayward. The policies support land use changes that will help Hayward transition from a manufacturing-based economy to an information- and technology-based economy.”

The temporary and continued operation of a heavy industrial use (Outdoor Concrete Recycling Facility) in this location, which is surrounded by light industrial uses, would not help the City to transition from a manufacturing-based economy to an information- and technology-based economy, consistent with General Plan Policy LU-6.1: Land Uses, which states:

“The City shall encourage employee-intensive uses, such as professional office, corporate campuses, research and development, traditional and specialized manufacturing, throughout the Industrial Technology and Innovation Corridor.”

Additionally, the temporary and continued operation of heavy-industrial land use at this location would not encourage employee-intensive uses and is incompatible with the existing

light industrial land uses in the area. Specifically, General Plan Policy LU-6.5 states that:

“The City shall protect the Industrial Technology and Innovation Corridor from the encroachment of uses that would impair industrial operations or create future land use conflicts.”

The facility has demonstrated conflicts with surrounding land uses, which are approved for light industrial uses. Additionally, the proposed temporary nature of this heavy industrial use does not result in the significant property upgrades that were envisioned in the City’s General Plan, including Land Use Policy LU-6.6, which states that:

“The City shall encourage property owners to upgrade existing buildings, site facilities, and landscaped areas to improve the economic viability of properties and to enhance the visual character of the Industrial Technology and Innovation Corridor.”

As proposed, the project application does not propose any site improvements to enhance the visual character of the site or surrounding area. In conclusion, the temporary and continued use of this land use on the subject property would not be in harmony with adopted land use policies.

- E. The denial of Administrative Use Permit Application No. 201801996, to temporarily operate an Outdoor Concrete Recycling Facility is statutorily exempt from environmental review per Section 15270(a) (Projects that are Disapproved) of the California Environmental Quality Act (CEQA) Guidelines;

Section 3. Decision

Administrative Use Permit No. 201801996 is hereby denied. This decision is subject to a 15-day appeal period and will become effective on July 24, 2018.