



SUBJECT

Appeal of Denial of a Proposed Temporary Concrete Recycling Facility at 24701 Clawiter Road (APN: 439-0020-002-03) Kimberly Douglas for Bay Area Concrete Recycling, LLC. (Applicant)/S & A Investment Holdings (Owner) Requiring an Administrative Use Permit Application 201801996.

RECOMMENDATION

That the Planning Commission reject the appeal and uphold staff's decision on denial of a Temporary Use Permit for a Concrete Recycling Center, based on the analysis set forth in this report and the attached Findings for Denial (Attachment II).

SUMMARY

Bay Area Concrete Recycling (BACR) is requesting an Administrative Use Permit to temporarily continue the operation of an outdoor concrete recycling facility at the project site until such time that they receive approval of another Administrative Use Permit to operate a permanent concrete recycling facility at another location on Depot Road.

BACKGROUND

In November 2012, Mr. Singh of Bay Area Concrete Recycling (BACR) applied for a Conditional Use Permit to operate an outdoor concrete recycling facility at the subject property but due to inactivity, the planning file was closed in August 2013. In November 2013, staff became aware, through Code Enforcement complaint, that BACR was operating an outdoor concrete recycling facility at the subject site. While staff had concerns with the proposed location on Clawiter Road, staff recommended the applicant look for another site that would be more suitable, particularly on Depot Road, where similar and more heavy industrial uses were located. Since 2013, BACR has continued to operate an outdoor concrete recycling facility illegally and has not obtained the necessary use permits or made the necessary site improvements to accommodate an outdoor concrete recycling use.

In May 2015, a business license was issued to Slurry Waste Solution, which was located on the subject parcel along the southern property line, between the existing warehouse structure and the rear property line. In September 2016, the City received another Code Enforcement complaint regarding the construction of an office space within the existing warehouse without any building permits. In April 2017, the applicant filed a building permit to subsequently legalize the office conversion and bring the existing bathroom on-site to ADA compliance. While an office use at the site would be permitted as an ancillary use, the Planning Division notified the applicant that they would be subject to Site Plan Review due to the overall

intensification of uses on the property and the lack of site improvements being proposed with each expansion. To date, the applicant has yet to apply for Site Plan Review and as such, no site or public improvements have been reviewed, approved or constructed.

On April 17, 2018, the applicant subsequently applied for an Administrative Use Permit to legalize and allow a continuing operation of the outdoor concrete recycling facility until their permanent facility on Depot Road is operational. Once deemed complete, staff denied the Administrative Use Permit on July 6, 2018 and the applicant later appealed that decision on July 23, 2018. The basis for that appeal is included as Attachment III and a more detailed chronology of the project timeline is included as Attachment IV.

Depot Road Concrete Recycling Facility: While continuing to illegally operate an outdoor concrete recycling facility at Clawiter Road, Mr. Singh applied for an Administrative Use Permit (PL-2014-0225) in April 2014 to operate an outdoor concrete recycling facility at 3890 and 3898 Depot Road, which is adjacent to the Russell City Energy Center (RCEC) and across the street from Cabot Business Park. At the time the application was filed, both RCEC and Cabot Business Park property owners expressed concerns about the environmental impacts from the proposed outdoor concrete recycling facility. The Russell City Energy Center was concerned about the health risk from exposure of silica and lime to their employees and the potential increase of dust and airborne particles, which could impact operations.¹ The property owners of Cabot Business Park also expressed concerns about the possible dust and airborne impacts of the proposed use and also cited visual impacts related to the operation of an outdoor recycling operation. After several modifications to the plans and the addition of several conditions to address potential environmental impacts, the Administrative Use Permit was approved in May 2015.

While BACR originally proposed using recycled water generated from the RCEC steam turbines, Russell City later informed BACR that the water from the turbines would not be available and the applicant would need to look elsewhere. Additionally, this was the period that the State was facing a severe drought (from 2012-2017) and the conditions of approval required the applicant use recycled water to mitigate the fugitive dust particles and site landscaping. Once notified, the applicant explored several other options for recycled water, including the tapping into the East Bay Discharge Line, which runs along the western property line; extending recycled water lines from the City Sewer Treatment Plant to the Depot Road site; and using slurry water from the Clawiter site and trucking it to the Depot Road site. Since none of these options were exercised or executed by the applicant, the previously approved use permit did expire. Currently, the City does not expect that the recycled water from the City's Sewage Treatment Plant will be available to the Depot Road site until the first quarter of 2020 however the infrastructure has been installed in Depot Road.

In addition to the use of recycled water, other issues have been identified since the project application was originally approved. In particular, the City's new Water Pollution Source Control Administrator expressed concerns that PCB (Polychlorinated Biphenyl) ² may

¹ OSHA Fact Sheet "OSHA's Respirable Crystalline Silica Standard for Construction. See website below: <https://www.osha.gov/Publications/OSHA3681.pdf>

inadvertently enter into the San Francisco Bay since the area proposed for concrete recycling remains unpaved and given the proximity to the Bay, PCB could leach into the groundwater and lead to contamination of Bay waters ¹. PCBs are known to cause cancer in animals and are probable human carcinogens. Buildings that were constructed or renovated from the 1950's through the 1970's may include building products manufactured with PCBs, which were common at that time. PCB production was since banned by the United States Congress in 1979 due to the public health and safety issues associated with these products.

When the project application was approved in 2015, the Condition of Approval allowed the City the ability to add additional conditions to ensure the protection of public peace, safety and general welfare, including any other conditions related to fugitive dust and associated environmental impacts. In this case, staff noted the possible impacts to public health and the potential environmental impacts to the San Francisco Bay and required the site be paved to better control water run-off and minimize groundwater contamination. During this period, the applicant proposed design changes to the concrete recycling facility. Specifically, the height of the raw material mound that acted to block fugitive dust from the Russell City Steam Turbines was proposed to be lowered and the 20-foot high crib wall which was originally approved would be replaced by a 5-foot high ultra-block wall. In addition, the approved sprinkler system located on the top of the mound would be replaced with a Dustboss system, which would have been mounted on top of several monopoles located towards the back of the mound. Because of the nature and extent of the proposed changes, staff determined that BACR would need to apply for a modification of their originally approved use permit and be subject to additional environmental review.

In September 2017, BACR indicated a desire to enclose the concrete recycling facility within an industrial building. On May 1, 2018, the original AUP expired. The applicant since filed a new Administrative Use Permit (201803003) on June 7, 2018 to operate an 94,500 square foot Indoor Concrete Recycling Facility at the Depot Road site. Currently, the application is under review and remains incomplete following a letter issued on July 11, 2018. As such, the Clawiter site remains in operation without any land use permits and the Depot Road site remains inactive and the application incomplete. Most recently, staff also was notified that the 3890 and 3898 Depot Road parcels are being used as a truck storage facility without any necessary land use approvals. In addition to the concrete recycling use, the truck storage facility requires an Administrative Use Permit and although the applicant has been informed about this requirement, the City has yet to receive an application for the Administrative Use Permit. A subsequent complaint was filed with the City's Code Enforcement Division on September 25, 2018 and is currently under investigation.

Air Resources Board and BAAQMD Permits: In August 2016, BACR applied for a Statewide Portable Equipment Registration (Application No. 38818) for Portable Crushing and Screening Equipment from the Air Resources Board. On January 10, 2017, the Air Board approved the Permit with several operating conditions (noted in "Statewide Portable Equipment Registration No. 173997"). Below are some of the conditions that were applied to the applicant, which include general, emission, operations and inspection requirements to minimize potential environmental impacts, including:

General Requirements:

- Conditions 6 – The equipment unit shall not reside at the same location for more than 12 consecutive months.
- Condition 8 – The operation of this equipment unit shall not cause a public nuisance.³
- Condition 12 – The operator of a portable engine or equipment unit shall obtain district authorization prior to operation at any specific location where the Statewide registration is not valid.

Emission Limitations:

- Condition 16 - There shall be no visible emissions beyond the property line on which the equipment is being operated.
- Condition 19 – Open areas shall be maintained adequately wet to prevent fugitive emissions in excess of 20 percent opacity or Ringlemann 1.

Operational Requirements:

- Condition 25 – Water sprays shall be used on all stockpiled material to control fugitive particulate matter emissions, unless there are no visible emission from the transfer point.
- Condition 27 – All roads subject to vehicular traffic shall be either paved or adequately watered to minimize fugitive particulate matter emissions.

Inspection Requirements:

- Condition 44 - Within 45 days after initial issuance or renewal of a registration, the owner or operator shall contact the home district (BAAQMD) to arrange for inspection to be completed within one year of the initial registration or renewal date. If the equipment unit is operating in a district other than the home district, the owner or operator may request the home district to arrange an inspection by that other district.

Once the PERP is approved by the Air Resource Board, The Bay Area Air Quality Management District is responsible for all inspections. The Bay Area Air Quality Management District inspected the BACR facility and on May 21, 2018 a draft “Notice of Violation” prepared by Troy Hash, BAAQMD Inspector, was submitted for staff review before the violation will be issued to BACR. Among the violations included in the draft is exceeding the amount of concrete recycled in a year, the height of the process material mound and operating without an “Authority to Construct” and “Permit to Operate”.⁴ For Portable Crushing Equipment, BAAQMD limits the quantity of Throughput to 5,000 tons per year. BACR Throughput from February 2017 to 2018 was 230,823 tons.

While the City is not responsible for the enforcement and monitoring of the State and Regional Air District Permits, staff has noted that many of the conditions contained within the State Permit have not been met. Specifically, stockpiles of processed and unprocessed material have not been kept wet to prevent fugitive dust from spreading both off-site and on-site; the

³ The “Fugitive Dust Control Self-Inspection Handbook provides information on how to Control Dust. See link. https://www.arb.ca.gov/pm/fugitivedust_large.pdf

⁴ BAAQMD information on “Authority to Construct” and “Permit to Operate” <http://www.baaqmd.gov/permits/apply-for-a-permit>

paved area within the property is covered with dust such that in some areas you are not able to see the paving; water sprays have not been observed on the stockpiled material; and the driveways on site subject to vehicular traffic have not been paved. Nor have they complied with the BAAQMD's limit of through put for portable crushing equipment. As a result, dust has been tracked onto the adjacent public streets and the City has received numerous complaints about the continued operation of this recycling center use.

Hayward Water Pollution Source Control: Aside from the ongoing Code Enforcement issues related to illegal operations without permits, the City's Water Pollution Source Control (WPSC) has conducted yearly inspection of BACR. In the 2016 inspection it was noted that there was no sign of on-site surface drainage systems/utilities. There is a storm drain inlet at the very front of the facility entrance that appeared clean and free of sediment buildup. The facility is covered under the State's Industrial General Permit but as of this inspection had not filed the appropriate documents to be permitted by the State program. In February 2017 WPSC responded to a public complaint about excessive dust and excessive sediment on Clawiter Road. There were signs of sediment and tire marks on the street but no dust evident inside or outside of the facility. BACR was advised to sweep and spray the site more frequently. In February 2018, BACR receives "Stormwater Management and Urban Runoff Control Notice of Violation" for "drag-out of sediment into the roadway which may contribute to stormwater pollution or contamination."

Code Enforcement Citations: As previously noted, the applicant has received several citations for illegal land use activities on the subject parcels. The first complaint came in November 2013 and later closed in December 2016. No fines were issued during this period as any enforcement actions were on-hold while the Administrative Use Permit for the Depot Road site was under review. Once approved, the applicant was given additional time to process the building and grading plans and construct the facility. In 2016, a new Code Enforcement case was opened when the City received a complaint that the applicant was building an office within the warehouse space without the necessary building permits. Below is a list of the citations related to the outdoor concrete recycling use:

- Nov. 4, 2013. A concrete recycling facility is operating without approval of a CUP/or AUP at 24701 Clawiter Road. Dust from the operation is not being controlled and getting on adjacent property cars.
- Jan. 7, 2015. A large pile of rock and dirt is raising a large cloud of dust and dirt that is blowing everywhere.
- Sept. 21, 2016. Office is being built upstairs without Building Permits at 24701 Clawiter Road.
- Jan. 25, 2018. Trucks working on property are spilling dirt and rocks onto the sidewalk and street.
- Sept. 25, 2018. A tall cylindrical storage tank was constructed in the Waste Slurry processing area without building permits.

Since 2013, the City's Code Enforcement Division periodically fined BACR for routine violations of the Muni Code but starting in March 2017, Code Enforcement began assessing more aggressive fines for "Egregious Violations" related to the continued operation of the

outdoor concrete recycling facility. Some of the violations previously cited remain unpaid and the applicant continues to operate. Staff has included a list of violations as Attachment VII.

Public Outreach: An initial Notice of Receipt of the project application was sent to property owners, businesses and, residents within a 300-foot radius of the site on March 30, 2018. Staff received three (3) responses from nearby business owners expressing concerns about the lack of dust control, the effectiveness of the street sweeper, the impact to property and the health risk from being exposed to silica dust. One of the three responses expressed opposition to the issuance of an Administrative Use Permit for a temporary use. A list of the correspondence received is included as Attachment VI.

On September 27, 2018, public hearing notices related to the appeal of the denial of the Administrative Use Permit was published in The Daily Review and sent to all property owners, residents and businesses within 300-foot radius of the project site. Staff received one response to the notice. First, concern was expressed about the safety of his employees and guest. The stockpile encroaches on his property and large masses of concrete could tumble down on his employees. Second, concern was expressed about the amount of dust and air borne particulates created. Lastly, concern was expressed about storm water runoff and water being diverted onto his property.

PROJECT DESCRIPTION

Existing Conditions: The proposed concrete recycling use is located on the northwestern portion of a 4.76-acre site at 24701 Clawiter Road. There are two easements along the western portion of the property, parallel with the Southern Pacific Coast rail road tracks: a 15' wide PG&E easement and a 40' City/County of San Francisco Water Pipeline easement. The eastern portion of the site is currently utilized as a truck storage and maintenance facility with that area graded and containing either asphalt paving or broken concrete. The southwestern portion of the site contains a Slurry Separation and Reuse operation on concrete pavement. Additionally, the site contains two warehouse buildings, which are placed along the southern property line.

Adjacent businesses include ConXtech and DW Nicholson Corporation, both of which include indoor manufacturing and fabrication uses. To the west, there are Southern Pacific Coast Railroad tracks and light industrial warehouses. The closest residential development is located northwest of the project site, approximately 1000 feet away.

Proposed Project: The applicant, Bay Area Concrete Recycling is requesting an Administrative Use Permit to allow the continued operation of their Type A inert outdoor concrete recycling facility until such time that their Depot Road site facility is built and in operation. BACR would like to operate the recycling facility 24 hours a day, 7 days a week but has been operating the facility 5 days a week, from 5:30 am to 3:30 pm. The applicant would provide a portable toilet facility between the warehouses and states they will have adequate parking. As currently shown, only two parking spaces are identified on their plans and based on the other uses on-site, the amount of parking may not be sufficient.

The outdoor concrete recycling area is proposed to be 200'x 555' and use approximately 2.15 acres of the project site. Vehicle access is proposed from Clawiter Road, where the trucks would drop off their broken concrete/asphalt material (Type A Inert) to a stockpile location. From the stockpile, the concrete is moved with the use of a front-end loader or excavator and deposited in the portable crusher, which breaks down the larger pieces of concrete to smaller, aggregate sized material. The crusher then transfers the aggregate material via conveyor belt(s) to the finished concrete aggregate stockpile. The front-end loader then takes the aggregate base, loads it into trucks and the trucks exit the site onto Clawiter Road. Approximately half of the truck circulation path is on a paved surface while the other drive areas are unpaved and substandard. Currently, the applicant controls dust through the use of water trucks and spray systems within the equipment, but the regenerative street sweeper has not been successful in controlling dust from tracking on public streets.

The applicant did not provide a topographic survey with this submittal and therefore, any grading and drainage impacts have not been evaluated. However, the plans that were provided reflect the site only contains one drain inlet, which is not sufficient to accommodate a 4.76-acre site. The proposed continuation of this use, even on a temporary basis, does not include any permanent site improvements and since 2013, the uses on the site have expanded to the undeveloped portions of the site and have not included the appropriate and necessary site improvements. The project plans are included as Attachment V.

Landscaping: Except for two trees in the front of the property there is no other landscaping on-site. The applicant was proposing to provide a twenty-foot planting strip along the front of the property, and a 10-foot wide by 350 feet long vegetative swale along the north property line leading to the existing drain inlet in the front of the property. As proposed, the landscaping would not screen the areas proposed for stockpiles.

Sustainability Features: No buildings are being proposed and the applicant is not proposing to incorporate any sustainability features.

POLICY CONTEXT AND CODE COMPLIANCE

Hayward 2040 General Plan: The subject property is designated as Industrial Technology and Innovation Corridor (IC) in the *Hayward 2040 General Plan*.⁵ Typical building types include warehouses, office buildings, research and development facilities, manufacturing plants, business parks, and corporate campus buildings. Future changes to the Industrial Technology and Innovation Corridor are expected to include building and landscaping improvements, infill development, and the redevelopment of underutilized properties. The Corridor is expected to grow as an economic and employment center and evolve to achieve a healthy balance of traditional manufacturing and information- and technology-based uses. Allowed Uses include Professional Office Use, Corporate Campuses, Research and Development and Warehousing and Logistics, Manufacturing, Bio-technology and high-technology uses.

⁵ The Industrial Technology and Innovation Corridor
<https://www.hayward2040generalplan.com/land-use/industrial>

As noted in the staff findings (Attachment II), a 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 an outdoor heavy industrial use in this location, which is surrounded by primarily 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 an outdoor 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 outdoor 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 provide any site improvements plans to enhance the visual character of the site or surrounding area. The existing paving is in poor condition, the existing drainage system is inadequate and though the plans submitted indicate that planting will be provided, no detailed or conceptual planting plans were submitted. The submittal states that adequate parking will be provided, but the parking layout is not shown on the plan.

Zoning Ordinance: The subject property is zoned Industrial (I).⁶ The purpose of the Industrial (I) zoning district is to provide for and encourage the development of industrial

⁶ The Industrial Section of the Zoning Ordinance.

uses in areas suitable for same, and to promote a desirable and attractive working environment with a minimum of detriment to surrounding properties. Although the Industrial District does allow for Temporary Uses with the approval of an Administrative Use Permit, the project is subject to the same development and performance standards as well as the same legal findings for other administrative uses in the District. Specifically, Section 10-1-1645 of the Municipal Code (Design and Performance Standards) requires any proposed use, temporary or permanent, provide 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."*
- *"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."*

As proposed, the applicant is not proposing to make any permanent site improvements to meet the development standards of the City's Zoning Ordinance. In addition, for the City to approve the Administrative Use Permit, all of the following findings must be made:

- a. The proposed use is desirable for the public convenience or welfare;
- b. The proposed use will not impair the character and integrity of the zoning district and surrounding area;
- c. The proposed use will not be detrimental to the public health, safety, or general welfare; and
- d. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

As noted in the background section of this report, staff identified several areas of this project application which are inconsistent with the City's General Plan policies and Zoning Ordinance development standards. Staff included the analysis and findings for denial in Attachment II.

Strategic Priority: This agenda item does not support the Complete Streets Strategic Initiative. The purpose of the Complete Streets Strategic Initiative is to build streets that are safe, comfortable, and convenient for travel for everyone, regardless of age or ability, including motorists, pedestrians, bicyclists, and public transportation riders. The City has received several complaints about dust debris in the street and that their street sweeping merely moves the dust and debris around.

STAFF ANALYSIS

The Industrial District is established to provide for and encourage the development of industrial uses in an area suitable for those uses. An Administrative Use Permit is required to determine if the use will be suitable in the area that it is proposed. An application for a temporary use does not exempt the applicant from compliance with local policies or development standards, CEQA, or any other state/regional agency requirement.

In evaluating this application, staff notes that the concrete recycling facility is located in an area that is surrounded by predominately light industrial uses and any processing of materials are indoor. The outdoor concrete recycling facility is the only use in the surrounding area that material is processed outdoors. This facility has already demonstrated conflicts with surrounding land uses as is evident from complaints from surrounding businesses and individuals. The applicant has filed an application to relocate their concrete recycling facility to 3898/3890 Depot Road where they would be among other similar uses and facilities, including the Calpine Russell City Energy Center, auto wrecking yards, and the City of Hayward Sewage Treatment Plant. Since 2013, staff has continued to work with BACR to meet the policies of the General Plan and the development standards of City; however, the continued operation of the recycling facility without permanent improvements or additional measures has resulted in significant public health and safety issues for the adjacent properties as well as impacts to the environment.

As previously noted, the proposed use at the subject site must meet the same development standards and conditions that were evaluated and imposed on the Depot Road site to mitigate any possible impacts. And though each site must meet the same development standards, they are evaluated individually for the suitability of the proposed use in the context of the surrounding area. Approval of one site does not imply approval of the other, nor does it mean that possible impacts have been address on the other site.

As proposed, the plans for a temporary use do not comply with the development standards of the Zoning Ordinance and are not consistent with land use policies of the *Hayward 2040 General Plan*. The use of this site has been incrementally intensified with additional uses without any significant site or frontage improvements. Many of these improvements are required to address the adverse impacts of the operation(s) of the various uses to preserve public health, safety and welfare, as well as mitigate any possible environmental impacts, that are currently not being proposed or are in place to allow for the continued operation of this outdoor recycling use.

Staff also notes that BACR has been operating the concrete recycling facility without the necessary Air Resources Board and Bay Area Quality Management District (BAAQMD) Permits since their operations began in 2013. Based on the analysis cited above and inability for staff to make the necessary findings for approval for an Administrative Use Permit for the continued operation of the outdoor concrete recycling facility at the subject property, staff believes the Planning Commission can support the findings for denial and deny the appeal.

ENVIRONMENTAL REVIEW

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. If the Planning Commission overturns staff's decision, the applicant will need to provide additional application materials and be subject to full CEQA review.

NEXT STEPS

If the Planning Commission upholds staff's decision and rejects the appeal, the applicant may file an appeal of the Planning Commission's decision to the City Council. The Planning Commission could also uphold staff's decision and deny the appeal without prejudice. This would allow the applicant to reapply soon after rather than wait a year. If the Planning Commission sustains the appeal, the applicant would have to submit a revised application with detailed plans and reports, provide the necessary findings for approval and be subject to CEQA environmental review before it comes back to the Planning Commission.

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