

October 31, 2014
Project No. 2044.2001

Bay Area Concrete Recycling
24701 Clawiter Road
Hayward, CA 94545

Attention: Ms. Kimberly Douglas

Subject: **Industrial Hygiene Services: Equipment Noise Assessment**
Concrete Recycling and Rock Crushing Facility
3898 Depot Road
Hayward, CA

Transmitted via e-mail: kimberly@baconcrete.net

Dear Ms. Douglas:

INTRODUCTION

This report presents the results of a equipment noise assessment conducted by Millennium Consulting Associates (Millennium) on Thursday, October 16, 2014. The equipment noise assessment was conducted at Bay Area Concrete Recycling's (BACR) existing concrete recycling operation located at 24701 Clawiter Road in Hayward, CA. The equipment noise data will be used to estimate the noise field generated by select equipment that will be relocated to a new rock crushing facility to be constructed by BACR at 3898 Depot Road in Hayward, CA. The new facility will be used to process and recycle concrete. The waste concrete will be processed into aggregate baserock and sand. The noise assessment was conducted in substantial conformance with scope of services presented Millennium's proposal dated October 15, 2014.

NOISE ASSESSMENT SUMMARY

Assumptions

The following assumptions were made:

1. The concrete recycling operation layout and equipment operation at the Clawiter site will be similar to the equipment layout and operation at the new recycling facility.
2. The concrete crushing equipment will be stationary equipment.
3. The stationary concrete crushing equipment will be located as shown on the Administrative Use Permit Exhibit prepared by Milani & Associates, dated October 10, 2014.

4. The portable electrical generator currently in use at the Clawiter facility will not be used to power equipment at the new facility. The generator may be used to provide temporary power during periods of power interruption. However, operation of this equipment will be subject to a separate permit to be issued by the Bay Area Air Quality Management District. The electrical generator was not included in the noise assessment.
5. Mobile construction equipment currently in use at the Clawiter site will be used at the new facility.
6. Equipment Use and Operation:
 - a. Excavator(s) will be staged by the rock crushing equipment. The excavators will be used to feed raw concrete into the rock crushing equipment.
 - b. Front end loader(s) will be used to load empty trucks with processed aggregate base or sand products for offsite transport and to move incoming unprocessed concrete (concrete rubble) from unloading ramp to the Raw Material processing area.
 - c. Incoming concrete rubble is delivered by dump truck on unloading ramp.
 - d. Tracked dozer to be used to move incoming unprocessed concrete (concrete rubble) from unloading ramp to Raw Material processing area

Site Location

The BACR Depot Road Facility will be located at 3898 Depot Road in Hayward, CA, and consists of the parcel identified by APN 439-0070-014. The site is shown in relation to the city of Hayward on Figure 1, Vicinity and Surrounding Land Use. The site is bounded to the north by Depot Road. Land use across Depot Road from the site is commercial. The site is bounded to the east by existing automobile dismantling yards. The site bordered to the south by Calpine's, Russell City Energy Center (power plant). The site is bordered to the northwest by an existing auto dismantling yard and to the southwest by existing marshland.

Field Monitoring

The noise assessment was conducted on October 16, 2014. Mr. Jeremy Malson, Certified Industrial Hygienist (CIH) and Certified Safety Professional (CSP), performed the instrument set-up, calibrations, sampling and instrument removal during the assessment. Mr. Malson also performed the initial data reduction.

Noise Sampling Procedure - A Metrosonics Chameleon sound level meter was used to record spot measurements around operating equipment at the BACR Clawiter concrete recycling site. The sound level meter was calibrated before and after the survey using a Metrosonics Acoustical Calibrator at 102dB, Model CL304. The measurements were made at various distances from the equipment. In addition noise measurements were made at selected locations throughout the facility.

Due to active operations and the co-location of mobile equipment (primarily excavators) on existing unprocessed concrete piles, noise measurements could only be made at selected distances for this equipment. Measured noise data at selected locations around the site perimeter are presented in

Table 1. Noise measurements made for both the stationary and mobile equipment during the field monitoring are presented in Table 2.

Noise Attenuation Calculations

As discussed above, active operations and the co-location of mobile equipment (primarily excavators) on the existing unprocessed concrete piles limited noise measurements only at selected distances ranging from 5 feet up to 20 feet from the equipment. To estimate the noise attenuation at distances beyond where the noise measurements were made, standard noise attenuation calculations were used.¹ The result of the noise attenuation calculations are included in Table 2 for both stationary and mobile equipment.

Findings

1. For mobile equipment, at operating conditions, the estimated noise levels at a distance of 30 feet from the equipment ranged from 60.2 dBA to 65.5 dBA, except for the excavator where the estimated noise level was 71.3 dBA. The estimated noise level decreased to 68.8 dBA at a distance of 40 feet.
2. For fixed equipment, at operating conditions, the maximum noise level was estimated at 78 dBA at a distance of 40 feet. The maximum estimated noise level drop to 70.0 dBA at a distance of 100 feet.
3. Based on the Administrative Use Permit Exhibit, mobile equipment will be at least 45 feet from west, south and east property line with the concrete recycle processing area. In addition, all fixed and mobile equipment associated with the concrete recycling operation will be over 300 feet from the street.
4. Based on the Administrative Use Permit Exhibit, the truck unloading ramp will be constructed with a raised berm that will extend up to 40 feet in height along the full south perimeter of the concrete recycling operation.

Conclusions

1. Based on the findings above, the estimated noise levels of mobile equipment will be below the 70 dBA noise limit at a distance of 40 feet. The minimum setback of 44.78 feet for the toe of the unloading ramp along the west and east property boundaries should provide sufficient distance to attenuate the equipment noise to below the 70 dBA noise limit under the City of Hayward General Plan. The distance from the south property line and the presence of the berm should be sufficient to attenuate the noise from mobile sources along the south property line.

¹ The Noise Manual, AIHLA Press, 5th Addition, 2003

2. Based on the findings, the estimated noise levels of fixed equipment will be below the 70 dBA noise limit at a distance of 100 feet. The minimum setback of the fixed equipment from the west and east property boundaries exceeds 180 feet and should provide sufficient distance to attenuate the equipment noise to below the 70 dBA noise limit under the City of Hayward General Plan. The distance from the south property line and the presence of the crib block wall berm should be sufficient to attenuate the noise from fixed equipment sources along the south property line.
3. Based on the findings, noise levels associated with the concrete recycling operation at the Depot Road entrance should be well below the 70 dBA noise limit under the City of Hayward General Plan.

Limitations

The services performed by Millennium Consulting Associates have been provided in accordance with generally accepted professional practices for the nature and conditions of similar work completed in the same or similar localities, at the time the work was performed. The scope of work for the project was conducted within the limitations prescribed by the client.

Please be aware that these results are only valid for the conditions under which testing was performed. Should the design conditions change (e.g., change/addition of equipment, usage of a equipment, etc.) it may be necessary to reassess the noise levels generated to maintain compliance with local city noise ordinance(s). Should concerns be raised regarding local noise ordinance compliance, additional studies that are outside of the scope of work of this report may be warranted.

This report is not meant to represent a legal opinion. No other warranty, expressed or implied, is made. This report was prepared for the exclusive use of the aforementioned Client.

If you have any questions or need additional information, please feel free to contact Mark Milani or Jeremy Malson at (925) 808-6700.

Sincerely,

Millennium Consulting Associates
A MECA Consulting, Inc. Company



Mark Milani, P.E., CAC, QSD
Principal Engineer



Jeremy Malson, CIH, CSP
Director of IH, Northern CA

M:\Projects\Bay Area Concrete Recycling Inc. - 2044\2044.2001- BACR Depot Road Noise Assessment\Reports\2044.2001 BACR Equipment Noise Assessment Report final 10-31-14.doc

Attachments



1111 Broadway, 24th Floor
Oakland, CA 94607-4036

T: 510-834-6600
F: 510-808-4752

www.wendel.com
amoore@wendel.com

November 7, 2018

Planning Commissioners
City of Hayward
c/o Sara Buizer Planning Manager/Planning Division
777 B Street
Hayward, CA 94541

Re: Planning Commission Hearing November 8, 2018
Appeal of Denial of Temporary Concrete Recycling Facility 24701 Clawiter

Dear Chair Goldstein and Planning Commissioners:

Our offices continue to represent Bay Area Concrete Recycling ("BACR"), the applicant for a temporary outdoor Concrete Recycling Facility at 24701 Clawiter Road, in the City of Hayward ("Clawiter Road site").

Yesterday, November 6, 2018, we sent a letter to the Commission regarding BACR's appeal of the Staff's denial of the Temporary Concrete Recycling Facility at Clawiter.

In our letter, we referenced certain BACR letters that were submitted to the City – but not responded to in the Staff Report or the Chronology. One letter we referenced is the BACR October 22, 2018 document entitled "Documentation of Businesses at 24701 Clawiter Road." In our letter, we incorrectly indicated that such "Documentation of Businesses" was not referenced in the Staff's Chronology. This was in error, as the letter was referenced briefly in the Chronology (see Staff Report at Attachment IV, p. 15.).

Thank you for your consideration.

Very truly yours,

WENDEL ROSEN, BLACK & DEAN LLP

A blue ink signature of Allan C. Moore, written in a cursive style.

Allan C. Moore

cc: Jeremy Lochirco, Principal Planner

BACR/clients



1111 Broadway, 24th Floor
Oakland, CA 94607-4036

T: 510-834-6600
F: 510-808-4752

www.wendel.com
amoore@wendel.com

November 6, 2018

Planning Commissioners
City of Hayward
c/o Sara Buizer Planning Manager/Planning Division
777 B Street
Hayward, CA 94541

Re: Planning Commission Hearing November 8, 2018
Appeal of Denial of Temporary Concrete Recycling Facility 24701 Clawiter

Dear Chair Goldstein and Planning Commissioners:

Our offices continue to represent Bay Area Concrete Recycling ("BACR"), the applicant for a temporary outdoor Concrete Recycling Facility at 24701 Clawiter Road, in the City of Hayward ("Clawiter Road site"). As the City is aware, BACR has (in response to City Staff recommendation) submitted an application for a new site for the Concrete Recycling Facility at 3898 Depot Road ("Depot Road site"). Therefore, the subject application is for a *temporary facility only*, for a limited amount of time, pending the City's review and decision on the Depot Road site.

The City's planner has prepared an extensive Staff Report for your November 8, 2018 hearing. The Staff Report recommends denial of the temporary facility, based on Staff concerns regarding Staff-identified "environmental impacts."

Needless to say, we are disappointed in the Staff Report. As set forth herein, BACR has met with the Planning Staff several times, and has submitted *specific documentation* proposing mitigation measures for the "environmental impacts" referenced in the Staff Report.

We appreciate Staff's meeting with us. However, the Staff Report does not reference the BACR meetings with Staff; and, more importantly, the Staff Report does not reference/respond to the specific documentation BACR submitted to the City in response to Staff's concerns.

We fully agree that the Planning Commission has the right to review the Staff Report, and if the Commission believes the temporary permit will have impacts on the environment that cannot be addressed, the permit should be denied (or additional mitigation should be proposed).

However, the Planning Commission does not have the information necessary to make such decision – the Staff has not provided to the Commission the BACR-submitted information necessary for the Planning Commission to make a fair, balanced decision.

I. Overview/Staff Report's Failure to Recognize BACR Meetings or Submittals

The Staff Report carefully lays out the City Staff's environmental concerns about dust, noise, hazardous materials and related issues ("Staff's Environmental Concerns"). The Staff Report includes a "Chronology," documenting significant filings and Staff's Environmental Concerns.

However, the Staff Report fails, in the text or the Staff's "Chronology," to reference BACR's extensive meetings with Staff, and written responses to Staff's Environmental Concerns. Please see the following.

A. BACR Meeting with Staff September 28, 2018

BACR representatives met with Staff on September 28, 2018. At such meeting, Staff set forth Staff's Environmental Concerns, and requested BACR representatives to respond with the following: (i) BACR's specific responses to Staff's Environmental Concerns; and (ii) BACR's specific commitments to site improvements to address Staff's Environmental Concerns.

Important Note: Such meeting is not referenced in the Staff Report, nor in the Staff's Chronology.

B. BACR's Written Report dated October 4, 2018

In response to Staff's request, BACR consultants submitted a report authored by Tim Bauters, dated October 4, 2018, entitled: "Temporary Administrative Use Permit – Commitment to Site Improvements" ("Commitment to Site Improvements").

This Commitment to Site Improvements, signed by the property owner and applicants, sets forth each the following:

- (i) specific responses to the environmental concerns referenced by Staff; and
- (ii) the applicant's commitment to implement specific site improvements and other changes to the project to address these concerns.

Important Note: The Staff Report does not reference or attach the October 4, 2018 Commitment to Site Improvements. A copy of the Commitment to Site Improvements is attached hereto.

The Commitment to Site Improvements specifically includes:

- (i) Retain a licensed surveyor to complete a topographic exhibit by October 5, 2018. and complete a topographic survey.

- *retain a Civil Engineer and landscape architect by October 15, 2018 to complete a set of site improvement plans and landscape plans for the frontage improvements;
- *Preparation of a full set of Site Improvement Plans;
- *Commitment to replace existing chain link fencing and concrete curb finished/repared;
- *Commitment to install 25-ft. wide access road with concrete ultra blocks and 10ft. wide bioswale;
- *Commitments to air quality and dust control measures. (Commitment to Site Improvements at "Executive Summary," p. 4.)

The Commitment to Site Improvements further includes analysis and commitments regrading Staff's Environmental Issues:

- *Hazardous Materials;
- *Noise;
- *Air Quality and Dust Control;
- *Stormwater. (Commitment to Site Improvements, "Environmental Controls For the BACR Facility," at pp. 7-8.)

***Important Note:** Again, None of BACR's responses or commitments are referenced or addressed in the Staff Report.*

C. BACR Submittal of October 22, 2018

Staff requested that BACR submit additional materials, by October 22, 2018, evidencing the business that currently exist at Clawiter Road, and identifying further environmental controls for facilities at Clawiter Road.

In response to Staff's request, BACR's consultant Tim Bauters, PhD, PE, submitted a document dated October 22, 2018, entitled "Documentation of Businesses at 24701 Clawiter Road" ("Documentation of Businesses").

The Documentation of Businesses contains:

- *An extensive review of the current businesses at Clawiter;
- *A discussion of the environmental impacts; and
- *A summary of proposed "Additional Environmental Controls."

Important Note: The Documentation of Businesses is not discussed in the Staff Report text and is not even referenced in the Staff Chronology. Instead, Staff merely attaches the report to the Staff Report.

D. Notice of Violation and BACR Responses

The Staff Report attaches a Notice of Violation, dated October 11, 2018, at attachment VII. The Notice of Violation lists three violations at the Clawiter Road site, as follows:

- *Public Nuisance: failure to obtain building permits for certain office space at the site;
- *Building Code violations: failure to obtain the above-referenced building permits for office space at the site; and
- *Zoning Ordinance Violations: failure to obtain a permit for the concrete recycling uses at the site.

The Staff Report attaches the above Notice of Violation, but fails to set forth BACR's meetings with Staff and written response to such Notice.

BACR representatives met with Staff on these specific issues on October 31, 2018. In preparation for such meeting, BACR submitted an extensive document by Tim Bauters, sent by e-mail/attachment, dated October 30, 2018, entitled: "Technical Memorandum/Received Violations at 24701 Clawiter Road" ("Technical Memorandum"). (Copy attached hereto.)

The Technical Memorandum contains thorough responses to each of the issues in the Notice of Violation, and related issues. Please note as follows:

- *The Technical Memorandum notes that BACR has *already submitted the building permit applications referenced in the Notice of Violation*, and is waiting for comments from the City.
- *The Technical Memorandum notes that the Notice of Violation states there is a "violation" because BACR does not have a use permit from the City for its recycle facility. However, the Notice of

Violation fails to state that BACR has submitted a specific application for the AUP – and indeed that application is the subject of the November 8, 2018 Planning Commission appeal hearing. Given BACR has made applications for the AUP, and the appeal procedure is ongoing, BACR is not in violation of the City's code in this regard.

E. Misstatements in Staff Report

Respectfully, the Staff report, at Attachment I to the City's materials, pages 1-11, contains numerous errors and misstatements regarding the proposed AUP. Please note examples as follows:

1. The Staff Report in error states that Staff required a "modification" to the earlier-approved Depot Road project.

The Staff Report, at p. 3, states as follows with regard to the earlier approved Depot Road project:

Because of the nature and extent of the proposed changes [to the Project], *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 recycling facility within an industrial building. On May 1, 2018, the original AUP expired.

Respectfully, Staff's statement is in error, and infers that Staff would have allowed a modification to the existing Depot Road AUP, and that BACR simply let the AUP "expire." *The fact is that BACR applied for an amendment to the original AUP – and the City informed BACR that the City would not accept a modification to the AUP. The City instead required a new application for Depot Road.*

2. The Staff Report does not reference/incorporate each of the attachments to the Staff Report.

The Staff Report appears to have been written independently from (and without reference to) several of the attachments to the Staff Report – causing significant errors and omissions.

The Staff Report states at page 7 of 11 that "the applicant did not provide a topographic survey with this submittal." However, a topographic survey is attached in Attachment VIII to the submittal, entitled "Topographic Site Map Inclusive of Business Delineations." At

minimum, Staff could have cross-referenced this Topographic Site Map and discussed the Map in text of the Staff Report.

3. The Staff Report in error states that BACR has not complied with the BAAQMD requirements.

BACR respectfully disagrees with Staff's representation of the Air Resources Board and BAAQMD permit to operate an inert crushing operation. The Staff Report at Page 4 of 11, paragraph 5, states as follows:

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." *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. (Emphasis added.)*

The Staff Report at Attachment III clearly contradicts Staff's statement. Attachment III consists of the Air Resources Board approval for a Statewide Portable Equipment Registration (Registration No. 173997) for the equipment currently operating at the Clawiter site. The Operational Requirements of Attachment III, paragraph 22, state that *the maximum permitted annual Throughput shall not exceed 580,000 tons per year*. As indicated by Staff, BACR operated last year at a Throughput of 230,823 tons, representing roughly 40% of its maximum permitted output.

II. Conclusion/BACR's Request to Planning Commission

As shown, the Staff Report does not contain BACR's referenced documents in response to the Staff's concerns regarding environmental impacts. *The Planning Commission is not authorized to make a decision based only on Staff claims, without reference to (or analysis of) the applicant's documents.*

We note that BACR's key response document, dated October 4 and attached hereto (the "Commitment to Site Improvements," *is not even referenced or addressed in the Staff Report.*

Therefore, respectfully, *we would request that the Planning Commission refer this matter back to the Planning Staff.*

We request the Planning Commission to direct the Staff to (i) fairly discuss and address BACR's extensive submittals not referenced in the Staff Report; and (ii) work with BACR and our team of consultants with regard to the mitigation measures and environmental review as submitted by BACR.

We are confident, that given a fair review and analysis (and a fair Staff Report) by Staff, we can address the Staff's concerns regarding impacts and mitigation measures.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP



Alan C. Moore

Attachments:

1. *October 4, 2018 "Temporary Administrative Use Permit – Commitment to Site Improvements/Tim Bauters, TBI Engineering"*
2. *October 30, 2018 "Technical Memorandum Received Violations at 24701 Clawiter Road"*

cc: Jeremy Lochirco, Principal Planner

BACR/clients

October 4, 2018

TEMPORARY ADMINISTRATIVE USE PERMIT-COMMITMENT TO SITE IMPROVEMENTS

BAY AREA CONCRETE RECYCLING

Submitted To:

Bay Area Concrete Recycling LLC

24701 Clawiter

City of Hayward, CA 94545

Submitted By:

TBI Engineering

Civil Environmental Engineers

480 Tan Oak Terrace

Sunnyvale, CA 94086

Distribution:

1 copies – Bay Area Concrete Recycling LLC

1 copies – City of Hayward

Contents

Table of Contents

EXECUTIVE SUMMARY	4
EXISTING SITE SETTING, AND SITE DESCRIPTION	5
EXISTING SITE SETTING	5
SITE DESCRIPTION	5
ENVIRONMENTAL CONTROLS FOR THE BACR FACILITY	7
Hazardous Materials	7
Noise	7
Dust Control	7
Stormwater	8

LIST OF FIGURES

Figure G1	Site Location
Figure G2	Existing Conditions Aerial Photograph
Figure G3	Facility Layout
Figure G4	Traffic Flow (All existing, no changes proposed)
Figure G5	Grading and Drainage (All existing, MAJOR changes proposed in the future SITE IMPROVEMENT PLAN SET)
Figure G6	Utilities (All existing, no changes proposed)

EXECUTIVE SUMMARY

Bay Area Concrete Recycling LLC (BACR) and the site owner (S&A Investment Holdings LLC, S&A) are committed to the City of Hayward to make significant site improvements to be included in the continued temporary interim operation of a Type A inert Recycling facility.

As documented in the April AUP application package, the application for Temporary Administrative Use Permit would be to transition the existing Type A Inert Recycling Facility located at 24701 Clawiter Road to 3898 Depot Road (documented in the appeal package), in the City of Hayward in an orderly and controlled manner with “conditions” attached to this type of temporary use permit.

Bay Area Concrete Recycling and S & A Investment Holdings LLC commit to improve the following aspects at 24701 Clawiter Road:

1. Retain a licensed surveyor in the State of California to complete topographic exhibited of the entire 24701 Clawiter Site by October 5, 2018. Complete topographic survey exhibit by October 12, 2018.
2. Retain licensed Civil Engineer and landscape architect by October 15, 2018 to complete a set of site improvement plans and landscape plans for **the frontage improvements (20 ft landscape buffer and decorative screen wall and ornamental gate) alongside Clawiter Road**. Target for full set of frontage improvement plans is end of October 2018.
3. The Civil Engineer will prepare a full set of Site Improvement plans based on the completed topographic survey exhibit. The Site Improvement plans will be submitted to the City of Hayward by the end of November 2018. The site improvement plans show existing pavement and drainage infrastructure on the entire parcel and will **include a set of grading, drainage and pavement plans**.
4. The partially completed **concrete curb** to delineate the materials on the southern side of the site will have the existing chainlink fence replaced to the original condition and the concrete curb completely finished/repared to the end of the parcel to the West. The concrete curb repairs on the southern side of the site will be completed by end of October.
5. A **25 ft wide concrete access road** with concrete ultrablocks and 10ft wide bioswale will be installed alongside the entire northern portion of the site as future access to the site. This will be proposed as part of the site improvement plans to be submitted to the City of Hayward by end of November 2018.
6. BACR remains committed to air quality and dust control. BACR submitted an Authority to Construct (Permit to Operate permanently at 24701 Clawiter Road, Hayward) on June 20, 2018 to the Bay Area Air Quality Management District (BAAQMD). BAAQMD personnel recently visited the site and has deemed the

application “incomplete” with a few aspects that need to be completed. BACR has gotten the commitment from its consultant this will be re-submitted by October 12, 2018.

This commitment to site improvement package also involves the project environmental controls for the operation of the Bay Area Concrete Recycling facility as described at the end of the commitment letter.

EXISTING SITE SETTING, AND SITE DESCRIPTION

EXISTING SITE SETTING

The project is located in the City of Hayward (Figure G1) on the northwestern portion of a 4.76-acre site (parcel 439-0020-002-03) at 24701 Clawiter Road. The property is zoned Industrial and is surrounded by industrial uses. The nearest residence is approximately 1,500 feet from the property. The property has industrial uses to the north and south, Clawiter Road borders the property to the east and a Union Pacific railroad corridor borders the property to the west (Figure G2). There are two easements that are along the western portion of the property, parallel with the rail road tracks. The first being a PG&E Gas Line easement that requires a 15 foot setback and the second is a City and County of San Francisco Water Pipeline easement that requires a 40 foot setback.

The eastern portion of the site is currently utilized as a truck storage and maintenance facility by Economy Trucking. The eastern portion of the site has been graded before and is either paved with asphalt or with broken concrete (to be repaired) and the larger northwestern portion of the site remains compacted earth with an upper layer of recycled aggregate base. Operating on the southwestern portion of the site is the Slurry Separation and Reuse™ Facility, operating fully on concrete pavement. Two warehouse buildings, one of which contains office space, currently exist on the property (Figure G2).

SITE DESCRIPTION

The Type A Inert Recycling operation was developed and is operational on the northwestern (back) approximately 2.15 acre portion of the site, beginning approximately 375 feet from Clawiter Road (Figure G3). The eastern portion of the property remains to be used as a truck storage and maintenance facility by Economy Trucking. The remaining portion of the northwestern site is hard compacted ground and will accommodate the raw material stockpile, crushing equipment, and finished aggregate stockpile. No portable office structures are necessary to run BACR. A secondary contained portable bathroom facility will be available between both warehouse building structures. Adequate Parking spaces will be provided along the southeastern portion of the site and the northeastern portion of the property will also have a 10 ft landscaped area (consisting of a vegetated swale) along the northern fence line as required by the municipal code. Operating on the southwestern portion of the site

is the Slurry Separation and Reuse™ Facility, operating fully on concrete pavement.

ENVIRONMENTAL CONTROLS FOR THE BACR FACILITY

Hazardous Materials

To prevent hazardous materials from being dumped with the loads of broken concrete, site the yard manager inspects the materials received at the site for potential contamination, with particular attention to color and request source of the type A inerts. If materials are stained, or exhibit any form of petroleum contamination, they are rejected. The yard manager can use a photo ionization detector (PID) to evaluate any volatile organic compounds that may be detected from the soil contained in a load. If the levels exceed 10 particles per million (ppm), the materials are rejected and cannot be allowed to dump.

Equipment used at the operation will be powered with diesel fuel or be electric powered and all be registered with DOORS. The eastern portion of the property will remain a truck storage and maintenance facility, where a diesel refueling truck visits the site daily to refill the trucks' fuel tanks. This diesel refueling truck also supplies the Bay Area Concrete Recycling operating equipment (e.g., loader, excavators, crushing equipment, generator) with fuel. Any other petroleum product or hazardous material in small quantities necessary to operate the concrete recycling plant are stored inside one of the two existing warehouse buildings on the property (the maintenance shop).

Noise

The most substantial levels of noise generated from the operations are the diesel engines of the loader and excavator(s) that are used to move the Type A Inerts from the raw material stockpile and into the processing equipment. The crushers and vibrating screen of the crushing and screening plant are a source of noise from the operation. However, based on reports by the equipment's manufacturer, that noise is dissipated to approximately 50 decibels at a distance of 200 feet away. Therefore the noise levels will be at/or below 50 decibels at the property line. Raw Material stockpiles and finished material stockpiles can be optimally situated to block noise from areas of concern.

Air Quality and Dust Control

Dust from the processing of the materials is controlled using a state-of-the-art dust suppression system designed specifically for the crushing equipment that is used at all times at this facility and provided by Bosstek™. The misting and spray system is manually controlled using shut-off valves that enable the operator to adjust the amount of water used at each location of the crushing and screening plant in accordance with airboard regulations. The nozzles have an automated module with a solenoid and control relay activated by means of presence detector. The water used in the state of the art dust suppression system pulls water from the Slurry Separation™ and Reuse facility. There is no need to increase the existing 5/8 inch water supply currently providing the warehouses.

Near the crushing and screening a Dustboss™ DB-30 will be operated to control the

finest of the dusts by breaking concrete: potential silica particles. The Dustboss™ DB-30 will provide a small particle mist to knock down those particles to provide adequate operational conditions for workers to be present with appropriate training and those type of state-of-the-art engineering controls in-place.

Furthermore, a water truck will be used to wet the nonpaved areas of the facility during dry seasons, a regenerative sweeper will be utilized to vacuum the dust particles on the concrete or asphalt paving. The water truck will also pull water from the Slurry Separation and Reuse™ facility.

BACR submitted an Authority to Construct (Permit to Operate permanently at 24701 Clawiter Road, Hayward) on June 20, 2018 to the Bay Area Air Quality Management District (BAAQMD); BAAQMD personnel recently visited the site and has deemed the application “incomplete” with a few aspects that need to be completed. BACR has gotten the commitment from its consultant this will be re-submitted by October 12, 2018.

Stormwater

A stormwater pollution prevention plan has been prepared under the General Industrial Stormwater Permit for the Slurry Separation and Reuse™ facility through the Regional San Francisco Bay Area Regional Water Quality Control Board (WDID #2 01I026068). The northwestern portion of the facility “base earth grade” is currently graded to an approximately 1 percent grade toward the Slurry Separation and Reuse™ facility (Figure G5). The Slurry Separation and Reuse™ facility has the capacity to contain all of the stormwater generated from the site. Stormwater generated from the type A inert facility will not be released into a municipal stormwater system. The type A inert facility together with the Slurry Separation™ and Reuse facility are self-contained.

Sediment track-out from the unpaved portions of the site is a potential realistic scenario. The facility has installed a total length of 32ft long track out grates (TOG) assembly which every truck needs to drive over before transitioning on the paved portions of the site. Furthermore, a regenerative sweeper will be operated at all times the facility is in operation to assure that sediment trackout is controlled at all times on the paved portions of the facility as well as onto the public driveway.

Sincerely,
TBI ENGINEERING
CIVIL ENVIRONMENTAL ENGINEERS



Tim Bauters, PhD, P.E.
T:650-515-0393

Agreed by Bay Area Concrete Representative



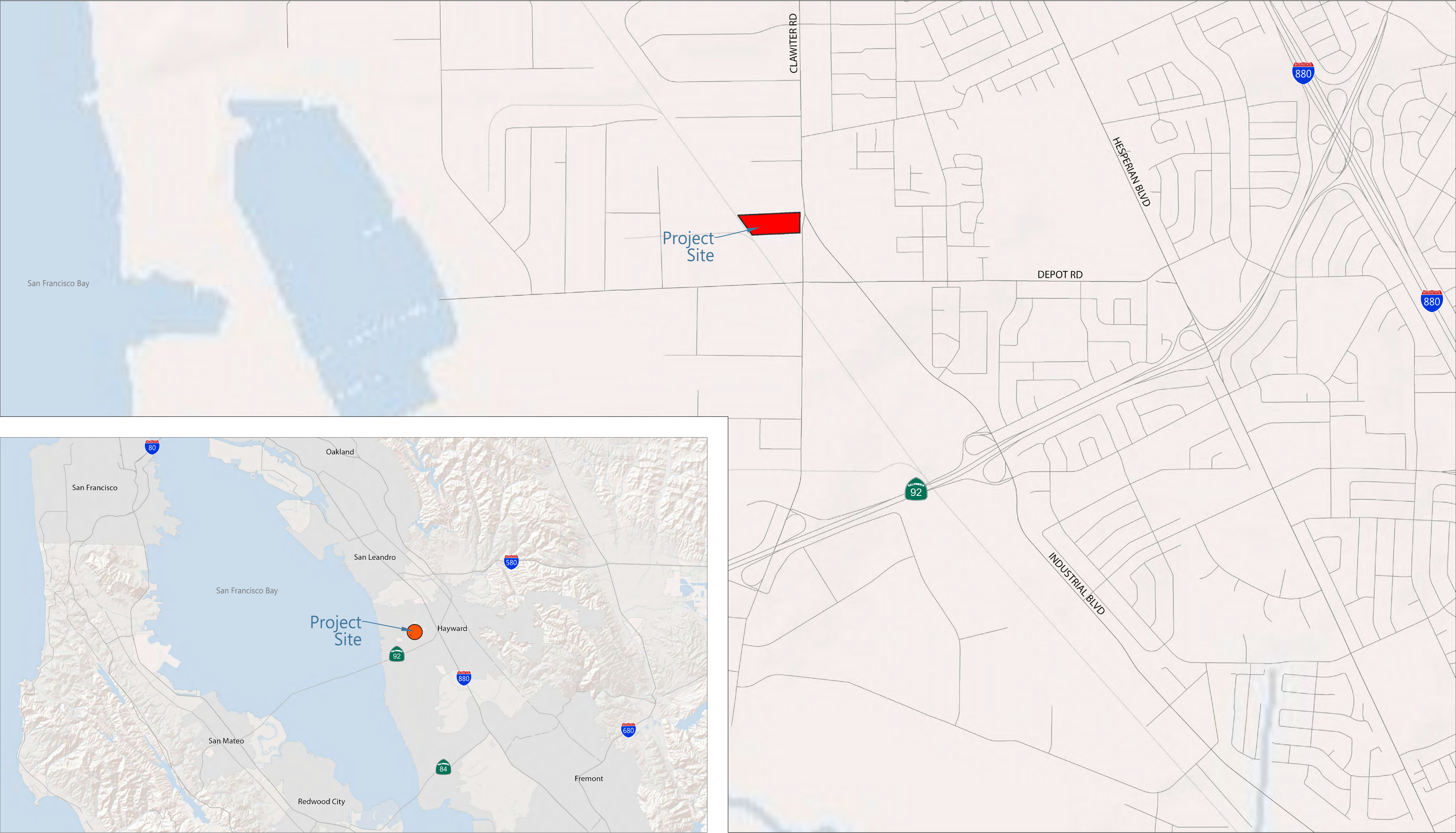
Kimberly Douglas
Account Manager

Agreed by S&A Investment Holding LLC Representative

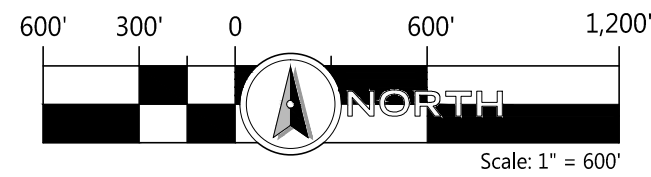


Preet Johal
Managing Member

Enclosures: Figures



DATA SOURCES: ESRI 2009; US Counties, Tele Atlas North America, Inc., 2010; U.S. Populated Place Areas, ESRI® Data & Maps, 2010; U.S. Highways, Census 2000 TIGER/Line, 2010



TBI Engineering



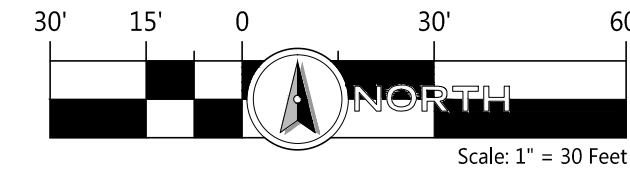
SOURCE: City of Hayward GIS Department, 2010
AERIAL PHOTOGRAPH SOURCE: Google Earth Pro 2017-09-01

PROPERTY OWNER INFORMATION
Property Owner: S & A Investment Holdings, LLC
Mailing Address: 24701 Clawiter Rd., Hayward, CA 94545-2225

SITE INFORMATION
APN: 439-0020-002-03
Zoning: I (Industrial)
General Plan: IC (Industrial Corridor)
Assessor Lot Size: 4.76 acres
Landscaping Area: 0.07 acres
Total Area of Interest: 2.15 acres

Notes:
*** See Figure G7 for detail.
(E) Existing
(N) New

LEGEND
Property Boundary
Area of Interest



TBI Engineering



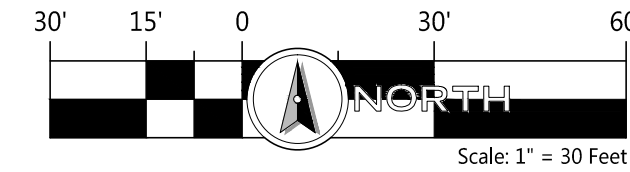
SOURCE: City of Hayward GIS Department, 2010

PROPERTY OWNER INFORMATION
Property Owner: S & A Investment Holdings, LLC
Mailing Address: 24701 Clawiter Rd., Hayward, CA 94545-2225

SITE INFORMATION
APN: 439-0020-002-03
Zoning: I (Industrial)
General Plan: IC (Industrial Corridor)
Assessor Lot Size: 4.76 acres
Landscaping Area: 0.07 acres
Total Area of Interest: 2.15 acres

Notes:
*** See Figure G7 for detail.
(E) Existing
(N) New

LEGEND
- - - - - Property Boundary
- - - - - Proposed Concrete Recycling Facility
Asphalt and Concrete Pad



TBI Engineering

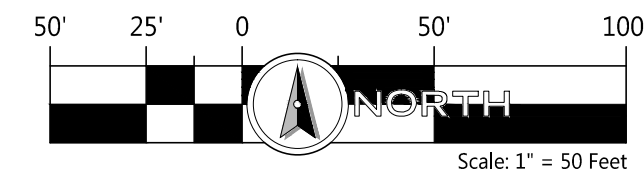
Facility Layout
BAY AREA CONCRETE RECYCLING
Figure G3



SOURCE: City of Hayward GIS Department, 2010
AERIAL PHOTOGRAPH SOURCE: Google Earth Pro 2011-10-29

PROPERTY OWNER INFORMATION
Property Owner: S & A Investment Holdings, LLC
Mailing Address: 24701 Clawiter Rd., Hayward, CA 94545-2225

SITE INFORMATION
APN: 439-0020-002-03
Zoning: I (Industrial)
General Plan: IC (Industrial Corridor)
Assessor Lot Size: 4.76 acres
Landscaping Area: 0.07 acres
Total Area of Interest: 2.15 acres



TBI Engineering

- LEGEND**
- Property Boundary
 - Proposed Concrete Recycling Facility
 - Traffic Flow



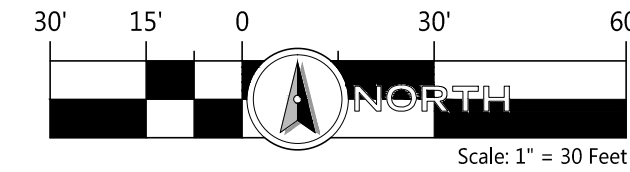
SOURCE: City of Hayward GIS Department, 2010

PROPERTY OWNER INFORMATION
Property Owner: S & A Investment Holdings, LLC
Mailing Address: 24701 Clawiter Rd., Hayward, CA 94545-2225

SITE INFORMATION
APN: 439-0020-002-03
Zoning: I (Industrial)
General Plan: IC (Industrial Corridor)
Assessor Lot Size: 4.76 acres
Landscaping Area: 0.07 acres
Total Area of Interest: 2.15 acres

Notes:
* See Stormwater Pollution Prevention Plan
** Although not shown in aerial Figure G2, the east portion of the site was paved with asphalt during summer 2012.
*** See Figure G7 for detail.
(E) Existing
(N) New

LEGEND
Property Boundary
Proposed Concrete
Recycling Facility

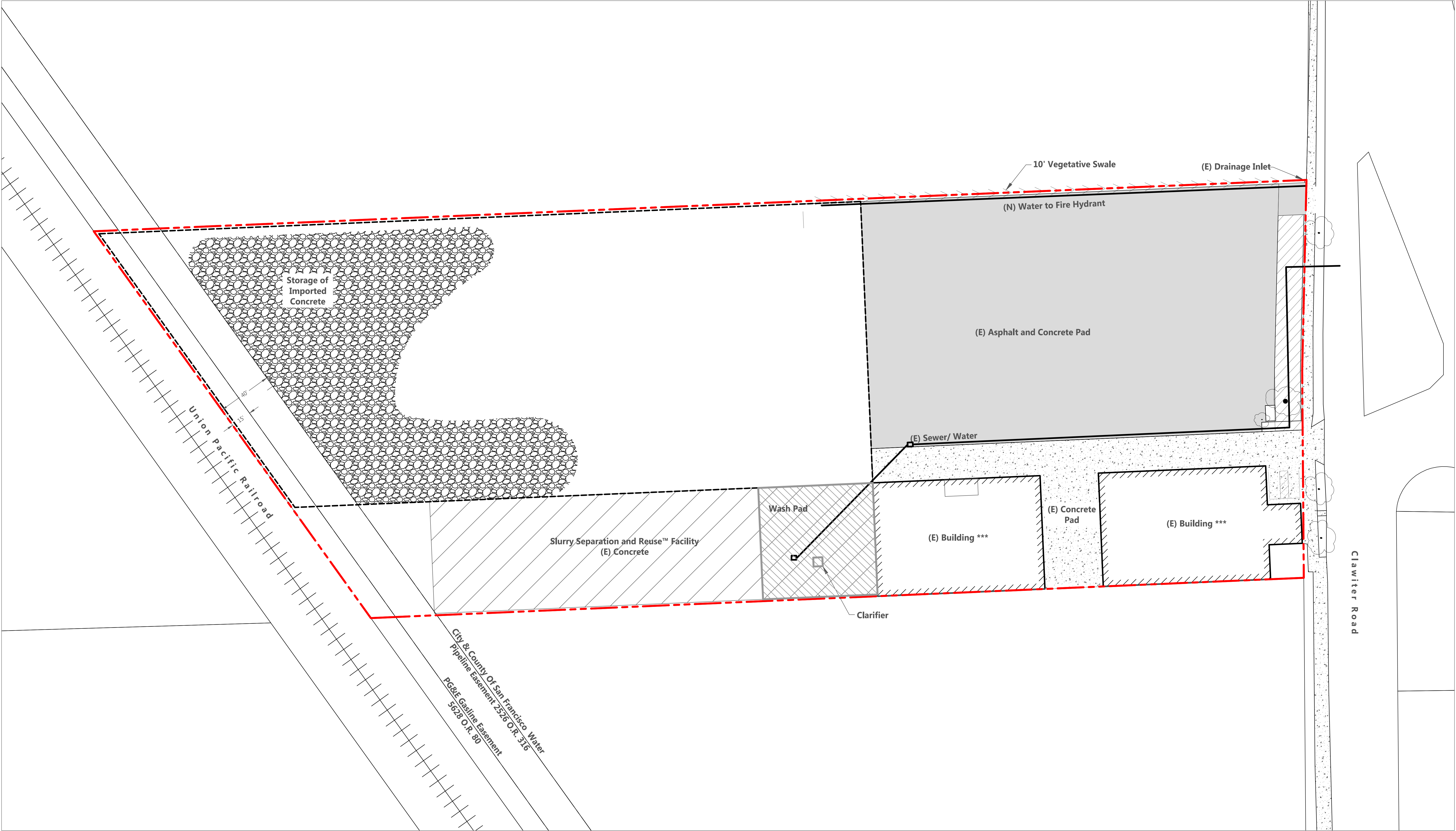


TBI Engineering

Grading and Drainage

BAY AREA CONCRETE RECYCLING

Figure G5



SOURCE: City of Hayward GIS Department, 2010

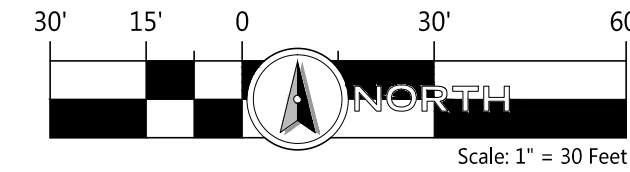
PROPERTY OWNER INFORMATION
Property Owner: S & A Investment Holdings, LLC
Mailing Address: 24701 Clawiter Rd., Hayward, CA 94545-2225

SITE INFORMATION
APN: 439-0020-002-03
Zoning: I (Industrial)
General Plan: IC (Industrial Corridor)
Assessor Lot Size: 4.76 acres
Landscaping Area: 0.07 acres
Total Area of Interest: 2.15 acres

Notes:
** Although not shown in aerial Figure G2, the east portion of the site was paved with asphalt during summer 2012.
*** See Figure G7 for detail.
(E) Existing
(N) New

LEGEND

- Property Boundary
- Proposed Concrete Recycling Facility
- Utilities
- Asphalt and Concrete Pad



TBI Engineering

October 2018

TECHNICAL MEMORANDUM

**RECEIVED VIOLATIONS AT 24701
CLAWITER ROAD**

**BAY AREA CONCRETE
RECYCLING**

Submitted To:

Bay Area Concrete Recycling LLC
24701 Clawiter
City of Hayward, CA 94545

Submitted By:

TBI Engineering
Civil Environmental Engineers
480 Tan Oak Terrace
Sunnyvale, CA 94086

Distribution:

1 copies – Bay Area Concrete Recycling LLC
1 copies – City of Hayward

ATTACHMENTS

Attachment A	Latest Received Violation
Attachment B	Full submitted package for Tenant Improvements at 24701 Clawiter Road, Receipt of submittal
Attachment C	Temporary AUP permit submittal 24701 Clawiter Road, Receipt of Complete submittal
Attachment D	Temporary AUP permit submittal 24701 Clawiter Road, Receipt of Denial

TECHNICAL MEMORADUM

As part of the Continuance for Temporary Permit AUP application by Bay Area Concrete Recycling LLC (BACR) and S&A Investment Holdings (S&A) were disappointed by the receipt of an additional notice of violation (NOV) at 24701 Clawiter Road, Hayward (Attachment A).

As the City Staff is aware, BACR, S&A and its representatives have been working closely with Planning Staff on these issues. Per Staff's request, BARC/S&A submitted: (i) extensive documentation on October 3, 2018, entitled "Temporary Administrative Use Permit – Commitment to Site Improvements"; and (ii) extensive documentation on October 22, 2018, entitled "Documentation of Businesses at 24701 Clawiter Road". Concurrently, BACR/S&A has submitted extensive documentation/responses to the Staff regarding the Depot Rd. application(s).

This technical memorandum further addresses the violations listed in Attachment A, given the multiple actions taken by BACR and S&A (owner of the parcel at 24701 Clawiter Road).

In summary there are three (3) listed violations in the violation dated October 11, 2018 at the 24701 Clawiter Road address:

1. **Property condition unlawful, detrimental to public health, safety, and/or general welfare (HMC Section 5-7.20, Public Nuisance-Unlawful):** The required correction lists the following: "correct adopted building codes as identified in this Notice of Violation. All building permits required as a result of this NOV must be finalized no later than 120 day from the date of the permit issuance." S&A had been diligently working with the City of Hayward regarding achieving the required building permits (tenant improvement in the tire shop) Application (permit) No. 201702120, and the verbally required anchorage calculation for storage racks (Application (permit) No. 201805403 submitted on October 16, 2018).
2. **Construction without the required building permit(s) (California Building Code Section 105.1, Permits Required).** The required corrective action lists "submit plans and obtain required building permit for the unpermitted first and second floor office space constructed at warehouse interior. To include all electrical, plumbing, heating and ventilation, and mechanical systems installed in un-permitted office space. OR...etc" S&A had been diligently working with the City of Hayward regarding achieving the required building permits. Unfortunately, S&A had to let go the first civil engineer and ultimately hired the design team from Design Everest Consulting Engineers (Mountain View) who submitted the entire package on October 23, 2018 inclusive of required calculations. It was identified that the City of Hayward will review this package prior to November 06, 2018 (attachment B) which is prior to the next inspection date as listed as November 11, 2018.

3. **Violation of the Zoning Ordinance, including but not limited to permitted uses and approval of a Conditional or Administrative use permit, conditions of approval, building permits or other required or approved permit (HMC Section 10-1.180, Zoning ordinance Violation, Conditional or Administrative Use Permit Requirements.)** The required corrective action lists “Concrete crushing and recycle activities not approved under last approved use permit #10920. Obtain Planning Approval and approved use permit for Concrete crushing and recycling at site OR cease all unpermitted activities at site not approved in use permit 10920 to include: concrete recycling and crushing activity.”
- ⇒ The BACR Type A inert processing facility is located on the 2 to 2.5 acres in the northwestern portion of the site. Typically raw materials, consisting of broken concrete, bricks, and asphalt are “crushed” into smaller pieces which are then resold as a Recycled Caltrans Type II Aggregate Base or potentially further screened into recycled drain rock and sand. BACR does have the majority of the other required “use permits to operate at the site”. BACR is working on appropriate permanent airboard permits versus the current temporary permits it is operating under.
 - ⇒ In discussion with the City a Temporary Administrative Use Permit (AUP) to provide “use permit” coverage until the BACR Type A inert processing facility is translocated to 3898 Depot road. A temporary AUP was submitted to the City (Application No. 201801996), and on June 1, 2018 BACR received a letter stating that the application was complete (Attachment C).
 - ⇒ This was followed by another letter by the City on July 6, 2018 which identified that the Temporary AUP was denied” (attachment D). That denial has been appealed. The City is aware of the appeal process, and therefore it would seem unfair to impose a notice of violation and potential penalties while such process is being implemented.

In summary, BACR and S&A have submitted necessary (and required) submittals at multiple time frames to address some violations as listed in the violation. The violation letter does not appear to have changed from earlier received violations while significant actions have been undertaken on behalf of the owner and affected tenant: BACR.

It is our understanding that the other businesses operating onsite Slurry Solutions and Economy Trucking Services are not affected by this violation notice; with potentially the exception being the front office as affected violations No. 1 & 2

Please feel free to contact Tim Bauters, PhD, PE (650-515-0393) should you have any questions or comments.

Sincerely,

TBI Engineering Civil Environmental Engineers

A handwritten signature in black ink, appearing to read "T Bauters", with a stylized flourish at the end.

Tim Bauters, PhD, PE
President

ATTACHMENTS

ATTACHMENT A
LATEST RECEIVED VIOLATION



CITY OF HAYWARD
DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION

777 B Street, Hayward, CA 94541-5007
(510)583-4143 - Fax: (510)583-4994 - www.hayward-ca.gov

3rd or SUBSEQUENT NOTICE OF VIOLATION: EGREGIOUS

October 11, 2018

Agent Of Service - B.A.C.: Preet Johal
24701 Clawiter Rd.
Hayward, Ca 94545

CASE NO: CE-16-3604
LOCATION: 24701 Clawiter Rd
APN: 439-0020-002-03
INSPECTION DATE: October 11, 2018

A recent inspection of the referenced property showed that the violations were not satisfactorily corrected in accordance with the Notice of Violation mailed to the property owner(s), and continue to be in violation of Hayward Municipal Code (HMC) Section 5-7.20, Public Nuisance, California Building Code, and/or other adopted City, State or Federal code(s) or ordinances. **An additional failed inspection and penalty fee of \$5,000 has been assessed for a total of \$59,500.**

The following corrections must be completed prior to the next compliance date of November 11, 2018 to avoid additional fees and penalties.

HMC or CODE	VIOLATION	CORRECTIVE ACTION
HMC Section 5-7.20, Public Nuisance - Unlawful	Property condition unlawful, detrimental to public health, safety, and/or general welfare.	It shall be unlawful for any responsible party owning, leasing, renting, occupying, or having charge or possession of any property in the City to maintain or to allow to be maintained such property in a condition detrimental to public health, safety, or general welfare or in a condition which violates any code or ordinance adopted by the City. Every owner of real property within the City shall manage that property in such a manner to avoid violation of this code. The property owner shall be responsible for violations thereof, regardless of any contract or agreement with any third party regarding the property. Where there are multiple property owners, the property owners shall have joint and several liability. Public nuisance is defined as, however not limited to, anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable or safe enjoyment of life or property of the community, or any portion thereof, or neighborhood therein. Corrective Action: Correct violations of

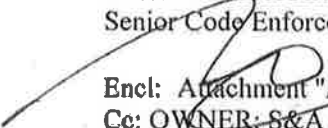
		adopted building codes as identified in this Notice of Violation. All Building permits required as a result of this Notice of Violation must be finalized no later than 120 days from the date of permit issuance.
California Building Code Section 105.1, Permits Required	Construction without the required building permit(s).	Construction without the required building permit(s). Corrective Action: Submit plans and obtain required building permit for un-permitted first and second floor office space constructed at warehouse interior. To include all electrical, plumbing, heating and ventilation, and mechanical systems installed in un-permitted office space. OR obtain demolition permit and restore warehouse section of front primary structure to original approved construction. Visit City of Hayward Permit Center located at 777 B Street, First Floor, and obtain the required approval and/or permit(s) before the next re-inspection date. Violations identified as construction/remodel projects completed without the required building permit(s) will result in a \$125 fee illegal construction and two times (2x) the required permit fees in addition to regular permit fees in accordance with the City of Hayward Master Fee Schedule.
HMC Section 10-1.180, Zoning Ordinance Violation, Conditional or Administrative Use Permit Requirements	Violation of the Zoning Ordinance, including but not limited to permitted uses and approval of a Conditional or Administrative use permit, conditions of approval, building permits or other required or approved permit.	It shall be unlawful for any person, firm, property owner, business proprietor, or corporation to cause or permit any violation to the provisions of this ordinance, or to fail to comply with any of its requirements, including plans and conditions in connection with approval of a planned development district, site plan review, conditional use permit, administrative use permit, variance, or other approved permit. Corrective Action: Concrete crushing and recycle activities not approved under last approved use permit # 10920. Obtain Planning Approval and approved use permit for Concrete crushing and recycling at site OR cease all un-permitted activities at site not approved in use permit 10920 to include: concrete recycling and crushing activity.

Failure to comply and satisfactorily eliminate all violations by the compliance date will result in **an additional failed inspection and penalty fee of \$5,000**, and/or other available legal remedies, including but not limited to abatement by the City contractor. A reinspection will be conducted on November 11, 2018 to verify compliance.

If you have any questions regarding this notice or wish to request an alternate date, please contact the inspector at (510) 583-8542 or via email at phillip.nichols@hayward-ca.gov prior to next compliance date.

PHILLIP NICHOLS

Senior Code Enforcement Inspector

 Encl: Attachment "A", Fee Inspection Schedule

Cc: OWNER: S&A INVESTMENT HOLDINGS, TRUSTEE: Agent Of Service - B.A.C.: Preet Johal,

LEGAL OWNER: Kevin Singh -S/A Investment Holdings

ATTACHMENT B
FULL SUBMITTED PACKAGE FOR TENANT IMPROVEMENTS AT 24701 CLAWITER
ROAD, RECEIPT OF SUBMITTAL



Address: 24701 Clawiter Rd

Application(Permit) No.:201702120

Submittal Date: 10/23/2018

Target Date for Completion of Review: 11/06/2018

The plans you have submitted are being sent to the affected Departments/Divisions within the City for review. Each reviewer will forward their comments to the Building Division which, in turn, notifies the applicant whether plans are approved or corrections are necessary.

To allow our staff to concentrate their efforts on plan review, correspondence/telephone calls from our office will be directed to the person listed as contact person on the application form. It is the responsibility of each applicant to keep other interested individuals well informed during the plan review process. Anyone wishing to review the status of the application can do so using our website @ <http://hayward-ca.gov/HSS>. If this is your first visit, to our new website you will need to register to create a user account. The Register link will be available upon selecting 'Hayward Self Service' on the right. After selecting 'Hayward Self Service' select 'Permits and Inspections' tab down to 'Application Reference' and enter your application number (i.e., 2014xxxxx) click search. Click 'Details' and then 'View Plan Reviews'.

Please be advised that permits will only be issued to the contractor of record, owner or agent for either. If an agent will be obtaining the permit, a letter of authorization must be presented at the time the permit is issued.

Please contact city staff member at (510) 583-4140 if you have any questions during the plan check process.

Applicants' Signature

Development Services Department
Building Inspection

777 B Street, Hayward, CA 94541-5007
Tel: 510/583-4140 Fax: 510/583-3642



CITY OF
HAYWARD
HEART OF THE BAY

Address: 24701 Clawiter Rd

Application(Permit) No.:201805403

Submittal Date: 10/16/2018

Target Date for Completion of Review: 11/07/2018

The plans you have submitted are being sent to the affected Departments/Divisions within the City for review. Each reviewer will forward their comments to the Building Division which, in turn, notifies the applicant whether plans are approved or corrections are necessary.

To allow our staff to concentrate their efforts on plan review, correspondence/telephone calls from our office will be directed to the person listed as contact person on the application form. It is the responsibility of each applicant to keep other interested individuals well informed during the plan review process. Anyone wishing to review the status of the application can do so using our website @ <http://hayward-ca.gov/HSS> If this is your first visit, to our new website you will need to register to create a user account. The Register link will be available upon selecting 'Hayward Self Service' on the right. After selecting 'Hayward Self Service' select 'Permits and Inspections' tab down to 'Application Reference' and enter your application number (i.e., 2014xxxxx) click search. Click 'Details' and then 'View Plan Reviews'.

Please be advised that permits will only be issued to the contractor of record, owner or agent for either. If an agent will be obtaining the permit, a letter of authorization must be presented at the time the permit is issued.

Please contact city staff member at (510) 583-4140 if you have any questions during the plan check process.

Applicants' Signature

Development Services Department
Building Inspection
777 B Street, Hayward, CA 94541-5007
Tel: 510/583-4140 Fax: 510/583-3642

ATTACHMENT C
TEMPORARY AUP PERMIT SUBMITTAL 24701 CLAWITER ROAD, RECEIPT OF
COMPLETE SUBMITTAL



June 1, 2018

Ms. Kimberly Douglas
c/o Bay Area Concrete Recycling
24701 Clawiter Road
Oakland, Ca. 94545

Via Email

Re: Application No. 201801996 AUP (Temporary Use) – Request to operate Concrete Recycling Facility until Depot site is approved and constructed.
24701 Clawiter Road

Ms. Douglas,

Staff reviewed your application and determined it is complete. During the Public Notice period we received 3 comments expressing concerns about the dust generated from the site. Of particular concern was the health risk associated with the exposure of silica dust to the surrounding properties as well as the dust itself being a public nuisance. We will be proceeding to make a decision shortly on your application. If you have any questions, please feel free to contact me.

Sincerely,

Carl T. Emura
Associate Planner

ATTACHMENT D
TEMPORARY AUP PERMIT SUBMITTAL 24701 CLAWITER ROAD, RECEIPT OF DENIAL



July 6, 2018

Ms. Kimberley Douglas
c/o Bay Area Concrete Recycling
24701 Clawiter Road
Hayward, Ca. 94545

Via Email

Re: Application No. 201801996 – Temporary Administrative Use Permit – to allow
temporary operation of a concrete recycling facility
24701 Clawiter Road

Ms. Douglas,

Your application has been denied. The Findings for Denial is attached for your review. You have until 5 pm, Monday, July 23, 2018 to file an appeal. If no appeal is filed, the decision will be effective Tuesday, July 24, 2018 and BACR will have to cease operation of the Concrete Recycling Facility. If you decide to appeal the decision, please provide in writing, the specific action appealed from, the specific grounds of the appeal, and the action sought. In addition, at the time you submit your appeal, please provide a check for \$8,000 for the deposit. This is not a fixed fee and additional deposits may be requested to continue processing your application/appeal. If you have any questions, please feel free to contact me.

Sincerely,

Carl T. Emura
Associate Planner

Attachment: Findings for Denial

**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.