



SUBJECT

Appeal of Planning Director Decision to Deny an Administrative Use Permit to Operate a Non-Hazardous Waste Water Treatment and Water Recycle Center at 3200 Depot Road in the Industrial (I) District, Jon Bennett for Environmental Logistics, Inc. (Applicant)/Financing & Receiving Services LLC (Owner)

RECOMMENDATION

That the Planning Commission denies the appeal and upholds the decision of the Planning Director to deny the administrative use permit for the proposed waste water treatment and water recycling center, subject to the Findings for Denial set forth in Attachment II.

SUMMARY

In October 2016, the Planning Director adopted findings for denial of an Administrative Use Permit (AUP; 201500804) to install and operate a waste water treatment facility on the site of a 10-day hazardous materials transfer facility and truck terminal that is the subject of a Code Enforcement action. The Planning Director denied the proposed project on the following grounds, in addition to other rational detailed in Attachment II:

- The use is not desirable for the public convenience or welfare in that it increases the risk of the public's and environment's exposure to pollution during the transport, processing, and discharge of waste water, sediments, and treated water.
- The proposed waste water treatment plant would impair the character and integrity of the zoning district in the case of an accidental release of un- or undertreated water, including potentially impairing the performance of the Water Pollution Control Facility (WPCF), as indicated by WPCF staff.
- The proposed facility could jeopardize the City's National Pollution Discharge Elimination System permit, would pose a relatively high degree of risk and liability for the City, and could impact the WPCF's capacity available to serve Hayward businesses.
- The proposed project is not in harmony with applicable City policies and the intent and purpose of the applicable zoning district.

BACKGROUND

In October 2011, the Planning Director conditionally approved an Administrative Use Permit (AUP; PL-2011-0147) for Environmental Logistics, Inc. to operate a 10-day hazardous materials transfer facility and truck terminal at 3200 Depot Road. A 10-day transfer facility is one that allows businesses to send their hazardous waste for transport to a properly licensed

disposal facility. By doing so, it reduces such materials from getting to landfills, reduces the likelihood of improper disposal of hazardous materials, and thereby provides a healthier community.

On February 18, 2015, Environmental Logistics, Inc., filed an application for an AUP modification to install and operate a non-hazardous waste water treatment and recycling center as part of their already approved 10-day hazardous waste transfer facility. The proposed amendment would involve installation of a waste water pretreatment system whereby they would treat waste water from sources including car washes, truck washes, cutting fluids, oil water, storm drain sediments, construction site waste water, bridge water, brine water, and mop water before discharging to the City's waste water system. The application was deemed incomplete on March 20, 2015, and an incomplete letter was issued, which indicated that not all of the conditions of approval from, or violations of, the 2011 AUP had occurred, such as conducting a use involving the acceptance of medical waste, an unapproved material, and a failure to install the required landscaping.

On August 19, 2015, City staff, including Planning, Building, Code Enforcement, Fire Department- Hazardous Materials Section and WPCF staff; conducted a joint inspection of the project site with the applicant and determined that the applicant had already installed and appeared to be operating the waste water treatment equipment associated with the proposed use, despite the AUP application being incomplete and the conditions of approval for the approved use not being satisfied. Additionally, staff noted that electrical wiring on the property did not meet Building Code requirements, the waste water treatment equipment contained waste water within the treatment apparatus (indicating it was being operated), and medical waste was present at the site, which was neither permitted nor included in the AUP application. Following the inspection, the City issued a formal Notice of Violation on August 25, 2015, citing the following violations, and ordered compliance no later than September 25, 2015:

1. Unpermitted construction and installation of waste water treatment systems;
2. Unlawful nuisance: operation of a waste water treatment facility without approved permits;
3. Violation of the current Administrative Use Permit;
4. Conformance violation (acceptance of materials not approved, such as medical waste)

Recognizing that the continued operation of the unpermitted waste water treatment facility was illegal and unsafe, Code Enforcement staff conducted two follow-up compliance inspections on October 26, 2015 and November 20, 2015. At the time of each inspection, staff found that the project remained noncompliant and the applicant made no attempt to remedy the code violations.

On November 30, 2015, the applicant submitted a revised AUP application, trying to address the items identified in the original incomplete letter. After several communications with the

applicant related to obtaining clarification of items regarding their proposed operation, staff deemed the application complete on May 27, 2016. The application was administratively denied by the Planning Director on October 20, 2016, based on an inability to make the required findings (Attachment II). As a reminder, approval of an AUP requires sufficient support for all of the findings specified in HMC § 10-1.3125 to be made.

Zoning

The proposed project site is located in the Industrial District (Attachment V), which is intended to provide for and encourage the development of industrial uses in areas suitable for these uses, and to promote a desirable and attractive working environment with a minimum of detriment to surrounding properties.

The Hayward Municipal Code does not specifically include waste water treatment as an allowed use in the Industrial District. Pursuant to the fact that our Zoning Ordinance is an exclusionary ordinance (HMC 10-1.140), whereby a proposed use that is not specifically listed as an allowed use is prohibited unless it is determined by the Planning Director, or on appeal to the Planning Commission, that the use is similar to and not more objectionable or intensive than the uses listed. In this case, the Planning Director determined that a waste water treatment facility would require an Administrative Use Permit, based on the potential that the proposed use could expose neighboring businesses, the City of Hayward waste water system (including the Water Pollution Control Facility), and the environment to point source waste water pollution. In particular, the proximity of the nearby baylands, which renders the proposed use more intensive and objectionable than other permitted uses listed in the I District, was also considered.

General Plan

The proposed project site carries an Industrial Technology and Innovation Corridor General Plan land use designation, for which the City allows professional offices; corporate campuses; research and development; traditional, advanced, and specialized manufacturing; and biotechnology and high technology uses.

General Plan goals and policies related to the proposed land use seek to prevent and remediate pollution and comply with the City's National Pollution Discharge Elimination System (NPDES) permit (General Plan Policies NR-6.7, NR-6.8, PFS-4.4, and PFS-4.11); promote sustainable business practices (Policy ED-6.10); and promote and protect the Industrial Technology and Innovations Corridor (Goal ED-6 and Policies ED-1.15, ED-1.16, ED-6.10) as stated in Attachment II.

Proposed Site and Project

The proposed project site is located at 3200 Depot Road on a 3.3-acre rectangular parcel. The site is partially developed. [Environmental Logistics](#) is proposing a new waste water treatment facility in an existing building at its 3200 Depot Road location. The facility would treat waste water and sludge from car and truck washing facilities, run-off from car dealerships, cutting

fluids, coolants, storm water sediment, mop water, food processing waste water, and local drilling muds. Chemical and mechanical means would be used to separate the sludge and contaminants from the waste water. As proposed by the applicant, the project would have three phases:

- 1) First Phase – Waste water would be collected only from facilities located in Hayward and treated at the proposed project site. Treated waste water would be delivered to the City of Hayward Water Pollution Control Facility by truck. Sludge would be appropriately disposed at landfills.
- 2) Second Phase – Waste water would be collected from areas outside the City of Hayward and delivered to the proposed project site by truck. Waste from Environmental Logistics' treatment facility would be piped to the City of Hayward Water Pollution Control Facility.
- 3) Third Phase – Waste water from all sources would be treated to the point where it would be discharged into the City waste water system.

DISCUSSION AND STAFF ANALYSIS

According to HMC Sec. 10-1.3105, "the purposes for requiring administrative use permit approval are to assure certain specified uses are permitted where there is a *community need*, and to assure said uses occur in maximum harmony with the area and *in accordance with official City policies*." Staff has determined that there is not a community need for a private waste water treatment facility that would entail transport of polluted waste water through the City to the site and while there are no other private waste water treatment facilities in the City, facilities exist at other locations in the Bay Area. Hazardous waste and environmental cleanup providers are able to provide service to Hayward businesses without locating a waste water treatment facility in the city.

Environmental Logistics, Inc. (ELI) contends that the proposed use is desirable for the public convenience or welfare; will not impair the character of the zoning district and surrounding area; will not be detrimental to the public health, safety, and general welfare; and is in harmony with applicable City policies and the intent and purpose of the Zoning district involved. Specifically, ELI states that the proposed use is desirable for the public convenience or welfare because it reduces the risk of industrial and nuisance waste water exposures to the public and the environment by offering the removal of waste waters from potential point source polluters.

While ELI states that the proposed project will not be detrimental to the public health, safety, or general welfare and is specifically designed to enhance the quality of treated waste water and minimize the risk of pollutants for untreated waste water, staff, including City's Water Pollution Source Control staff that operate the City's waste water facility and enforce regulations associated with unpermitted waste water discharge, believes the project still presents a relatively high degree of contamination risk. The transport and storage of waste water, contaminants, and sediments in the City presents multiple opportunities for the

introduction of pollution and hazardous wastes into the environment adjacent to ELI's site/facility, neighborhoods adjacent to public roadways along the path of travel to and from ELI's site/facility, and/or the Bay and baylands adjacent to roadways or via storm drains, potentially impairing the character and integrity of the zoning district and surrounding area.

As noted in the attached Findings for Denial (Attachment II), monitoring the proposed facility by City of Hayward Water Pollution Source Control staff would require a disproportionate amount of staff resources and place an undue burden on the division and subject to the plant to an unacceptable and unadvised risk. The City's Water Pollution Control Facility (WPCF) utilizes relatively unique processes compared to other treatment plants. The WPCF process is fully biological and relies on a system of "trickling filters" (TFs), which is uncommon at other facilities, to treat the wastewater. Excess presence of harmful chemicals and hazardous waste, even if unintentional, can harm the living organisms inside the TFs that treat the wastewater. If that occurs, the City will have a disaster to address since re-growing the organisms will take time. The Water Pollution Source Control (WPSC) division does not currently have the staff or fiscal resources to monitor a private waste water treatment facility in order to prevent potential impacts from the facility to the environment, residents, and nearby businesses. Diverting WPSC resources away from citywide programs that prevent the release of contamination and pollution into the waste water system would be considered detrimental to public health, safety, and general welfare.

Additionally, staff believes the proposed use is not in harmony with official City policies as outlined in the Findings for Denial (Attachment II), due to the potential for accidental release of hazardous materials into the environment, including the City waste water system, neighborhoods adjacent to roadways, the baylands, and the Bay. A release of pollutants, including toxic metals, into the waste water system could jeopardize the City's National Pollutant Discharge Elimination System (NPDES) permit, possibly resulting in penalties of up to \$25,000 per day in an egregious case or requiring resource-intensive and costly mitigation and restoration projects, depending on the nature of the violation.

In an attempt to demonstrate that the proposed use is in harmony with the intent and purpose of the zoning district involved, the appeal (Attachment III) references the City's support for the research and development of reverse osmosis technology as support for its operation, which implements the same technology. Additionally, the appeal states that permitting the waste water treatment facility is in accordance with the intent of the Industrial Technology and Innovation Corridor (ITIC) designation because the facility is state of the art, requires heavy capital investment, and implements research and development. Staff does not support this assertion and believes the intent of the ITIC designation is to promote advanced industries, which is a sector comprised of over 50 different research and development-heavy industries as identified by the Brookings Institution. Waste water treatment facilities are not considered an advanced industry. Finally, research and development of new technology is a distinct activity from the user or implementation of new technology, and the latter does not necessarily constitute a desired activity in the ITIC area.

Finally, it should be noted that although the applicant requested an AUP to install and operate a non-hazardous waste water treatment facility, the types of waste water that will be treated on the site may include hazardous materials, including petroleum products.

ENVIRONMENTAL REVIEW

Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15270(a), CEQA does not apply to projects that are disapproved by a public agency. While a formal Initial Study was not completed for the project, staff has identified possible point source pollutant risks and risk of violating the City's NPDES permit.

PUBLIC OUTREACH

In March 2015, an Official Notice of receipt of the use permit application was sent to adjacent property owners and businesses within a 300-foot radius of the proposed project site. No responses were received.

On October 19, 2016, a Notice of Decision of Denial of the AUP was sent to adjacent property owners and businesses within a 300-foot radius of the proposed project site as well as a list of interested parties

On February 26, a Notice of Public hearing for the Planning Commission meeting was mailed to adjacent property owners and businesses within a 300-foot radius of the proposed project, and to interested parties.

NEXT STEPS

Should the Planning Commission take action on the appeal at this hearing, the Commission's decision would begin a 10-day appeal period, where an appeal of the Commission's action to the City Council could be filed (or a call-up to Council by a Council member could be submitted), which would expire at 5:00 p.m. on March 20, 2017.

If the current appeal is sustained, reversing the Planning Director's denial, and there is no appeal of the Commission's action filed within that time period, then the application will come back to Planning staff for environmental analysis. (Per the California Environmental Quality Act (CEQA), environmental impact analysis is not required for projects that are denied. The applicant would be required to submit a Hazards and Hazardous Materials study, among other items if deemed necessary, to allow staff to conduct environmental impact analysis and prepared an Initial Study for the proposed use. Following the requisite public review, staff would prepare findings and conditions of approval for the Planning Commission's consideration, including all mitigation measures to reduce environmental impacts for the proposed project.

If the appeal is denied and no appeal of that action is filed, the decision of the Planning Commission would be final and Code Enforcement staff would issue a violation letter requiring that the property be clear of the unpermitted use within a certain timeframe. If the

use continues to operate illegally, Code Enforcement would escalate its response seeking all legal means to gain compliance which may include, commencing a legal action, clouding the property title and the assessment of fines until the applicant ceases the illegal uses and clears the property accordingly.

Prepared by: Laurel James, Acting Assistant Planner

Approved by:

A handwritten signature in blue ink, appearing to read "Sara Buizer".

Sara Buizer, AICP, Planning Manager

A handwritten signature in blue ink, appearing to read "David Rizk".

David Rizk, AICP
Development Services Director