

REQUEST FOR APPROVAL

To: Mark De Bie, Deputy Director
Waste Permitting, Compliance and Mitigation Division

From: Wes Mindermann
Supervising Waste Management Engineer
Engineering Support Branch

Reviewed By: Steve Levine, Legal Office

Request Date: July 11, 2013

Decision Subject: **APPROVAL OF THE WARING'S DUMP SOIL CAP PROJECT, FACILITY NO. 34-CR-5017, SACRAMENTO COUNTY, SOLID WASTE DISPOSAL AND CODISPOSAL SITE CLEANUP PROGRAM (SOLID WASTE DISPOSAL TRUST FUND, FY 2012/2013)**

Action By: July 12, 2013

Summary of Request:

The Sacramento County Department of Environmental Management [Local Enforcement Agency (LEA)] requested the CalRecycle's assistance for the Department-managed remediation of the Waring's Dump (site). This request is for the approval of the remediation of the site at an estimated cost of \$262,000.

Recommendation:

Department staff have completed the evaluation and recommend the approval of the Department-managed remediation of the Waring's Dump.

Deputy Director Action:

The Department has certified the final Environmental Impact Report (EIR) for the Waring's Dump Soil Cap Project, Sacramento, California (SCH #2012122041), and has adopted mitigation measures, a Mitigation Monitoring and Reporting Program, and appropriate agency findings under the California Environmental Quality Act (CEQA). On the basis of the information and analysis in this Request for Action, and supported by the aforementioned CEQA documents, the Department hereby approves this project, as described in the final EIR, under the Solid Waste Disposal and Codisposal Site Cleanup Program.



Mark De Bie
Deputy Director

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Background:

Program Eligibility: The Program addresses cleanup of solid waste disposal and codisposal sites where the responsible party either cannot be identified or is unable or unwilling to pay for a timely remediation and where cleanup is needed to protect public health and safety or the environment. Cleanup projects are implemented through Department-managed contracts, grants, and loans. Staff uses adopted regulations and policies in determining site eligibility. Unless otherwise noted, actions proposed for this project are specifically eligible pursuant to the regulations.

Site Prioritization: The site is rated as an environment priority of A2. Priority A2 is a known condition of pollution or nuisance from solid waste based on comparison with state minimum standards with significant residential, industrial, park, recreation, or environmentally sensitive areas within one mile of the site.

California Environmental Quality Act (CEQA): The Waring's Dump Soil Cap Project is considered to be a project under CEQA Guidelines. An EIR was prepared and certified in a separate Request for Approval prior to consideration of approval of this remediation project.

Environmental Effects

The final EIR for the proposed project identified potentially significant impacts on biological resources, cultural resources, hydrology and water quality, noise, and transportation/traffic. However, with the implementation of mitigation measures incorporated into the project, all impacts would be lessened to less-than-significant levels. The final EIR was certified in a separate Request for Approval prior to consideration of approval of this remediation project.

Project Alternatives

The final EIR identified and analyzed two alternatives to the proposed project: (1) clean closure of the site and (2) the no project alternative. The clean closure alternative is not a feasible alternative because the clean closure would go beyond the mandate and financial capability of the Program. The Program is required to address sites throughout California by achieving compliance with state minimum standards adequately with available funds and maximizing the use of available funds. Removal and disposal of the estimated 86,000 cubic yards of waste material on the site and backfilling the site with clean soil is estimated to cost in excess of \$7 million.

The no project alternative is not feasible because the solid waste site would continue to remain in violation of state minimum standards and would continue to pose a greater threat to public health and safety than the proposed project.

Project Scope:

Site Location/Description: The project site is located in the south portion of the city of Sacramento, California, and is bounded by Morrison Creek to the north; 63rd Street to the west; and parcels fronting Elder Creek Road to the south and 65th Street Expressway to the east. The

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proposed project is located on 5.04 acres of privately held property comprising Assessor's Parcel Numbers (APNs) 038-0182-005 (0.89 acre), 038-0182-010 (0.67 acre), 038-0202-001 (1.9 acres), 038-0182-006 (0.67 acre), and 038-0182-007 (0.91 acre). The first three Parcels are owned by the Krishna Living Trust (Raghvendra Singh and Kiran Rawat are trustors, trustees and/or beneficiaries under the Trust) while the other two parcels are owned by Esther and Viorel Lupsa (Lupsas).

The site was initially excavated as a soil borrow source during the construction of California State Highway 99 in the late 1930s. Permission to fill the borrow pit was granted by the City of Sacramento in the late 1940s with the understanding that the fill was to consist of rubbish and construction waste. During the next decade waste materials were accepted and disposed of at the project site, much of which had been burned prior to disposal. In the mid-1960s, the adjacent Morrison Creek was widened, deepened and channelized as part of Sacramento County's flood control "Drainage Bond Project."

In response to a proposed development of the dump site in 2002, the Sacramento County LEA requested that CalRecycle provide technical assistance and perform Phase I and Phase II site investigations to determine whether the site was currently appropriate for such development or whether remedial measures would be necessary prior to any potential development to protect public health and safety and the environment. The investigation determined that the site does not meet State Minimum Standards. The recommended actions to remedy these deficiencies were to properly cover the former dump site with selected fill soils in accordance with state minimum standards, and to limit exposure of the waste materials to the public and the environment.

Enforcement Actions: A Notice & Oder (Compliance Order) was issued on January 28, 2005, to the property owners to bring the site into compliance with State Minimum Standards. The Compliance Order provided the owners with an advisement of administrative appeal rights, which the owners did not exercise.

On February 9, 2007 and March 7, 2007, separate Penalty Assessment Orders (Penalty Orders) were issued to Singh and Rawat on behalf of the Krishna Living Trust and the Lupsas, for failure to comply with the Compliance Order. In lieu of a penalty, the Penalty Orders offered an Alternative Stipulation, imposing no penalties if the owners allowed CalRecycle access for a Department-managed remediation, and limiting cost recovery to a lien upon a showing of non-substantial personal assets. On February 22, 2007, the Lupsas agreed to the Alternative Stipulation, and their lack of substantial assets was subsequently corroborated by their bankruptcy filings, intertwined with divorce proceedings. However, the Krishna Living Trust rejected the Alternative Stipulation and instead sought an Administrative Appeal of their Penalty Order.

The Administrative Appeal Hearing was conducted over five days between May 23 and July 13, 2007. On September 4, 2007, the Administrative Appeal Judge upheld the Penalty Order while modifying the amount of the penalty to the amount of \$230,430. This Administrative Decision was appealed to the California Integrated Waste Management Board (Board) and on December

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19, 2007, the Board upheld the underlying Administrative Decision in its entirety. Singh filed a petition for writ of administrative mandamus on January 18, 2008, challenging the Administrative Decisions. However, the petition was not properly served or prosecuted and the Sacramento County Superior Court dismissed the petition for lack of prosecution on April 29, 2011. The delay occasioned by Singh's pursuit of the unprosecuted writ resulted in the access agreement signed by the Lupsas lapsing, and their financial and marital straits made re-contact difficult. On January 4, 2012, Sacramento County filed a Complaint for Injunctive Relief against Singh and Rawat, personally and on behalf of the Krishna Living Trust and the Lupsas, seeking, among other relief, authorization for the County and/or its designee (i.e., CalRecycle) access to remediate the site. On June 19, 2012 the Lupsas entered into a Stipulation with the County for a Non-Monetary Judgment authorizing access for the remediation. This Superior Court action remains pending as to Singh/Rawat/Krishna Living Trust, with the next hearing to coincide with the Department's certification of the EIR, so that the Court may authorize access based upon final remediation plans. In this proceeding, the County has advised the Court that Singh has been determined to be a vexatious litigant, which limits his representational rights in judicial proceedings.

Proposed Remediation Project: The proposed project would result in grading and compaction of the existing hummocky terrain and the importation of select fill soils for placement as a compacted soil cap over the existing waste footprint. Existing ground elevations vary from 29 feet to 33 feet above mean sea level (MSL). Preliminary surface grading and compaction would be conducted to stabilize the project site into a uniform surface, graded to drain storm water off the waste mound. The depth to which preliminary grading would occur would be minimized so as to leave buried wastes undisturbed and in place to the extent possible. Any debris unearthed during the grading would be reburied such that no materials protrude from the graded surface. No debris or soil is intended to be exported offsite. However, if there are some bulky items, such as car bodies, drums or refrigerators, etc., unearthed that cannot be graded within the proposed waste mound, they would be removed and either recycled or disposed of at a proper disposal site.

Approximately 8,370 cubic yards of clean, imported soil (free of contamination from petroleum products or organics and construction debris, and not containing solely rock or solely clay material) and 17,400 square yards of erosion control seed mix would be required to provide a 15-inch thick select-soil cap and vegetation. The select soil fill would be placed and compacted on top of the compacted, graded waste materials to create the finished grade. The proposed finished select soil-capped waste mound would have side slopes varying between 1.0 percent and 3.0 percent over the area containing waste, and have a maximum elevation of 34.5 feet above MSL. An erosion control mat and hydroseed mix would be then placed/applied to the compacted soil cap.

The proposed project would substantially improve existing drainage patterns onsite by diverting storm water off the soil-capped mound and into a perimeter trapezoidal bioswale. The bioswale would drain, store, and provide eventual groundwater infiltration and evaporation outside of the Waring's Dump debris footprint. During extreme rain events, the northern edge of the retention

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swale rim would function as an emergency release into the existing ditch on the upland side of the levee and release storm water into Morrison Creek.

Fiscal Impacts:

Cost Estimate: The Solid Waste Disposal and Codisposal Site Cleanup Program's (Program) contractor has conducted a site visit with Program staff and developed a work plan with a preliminary cost estimate of \$262,000. Actual costs may vary depending on a variety of factors including, but not limited to the quantities and/or types of materials encountered, market forces, the required timeframes for cleanup, and competitive bids from subcontractors.

Funding: The Department-managed project will be performed on a time-and-materials basis under the Program's Northern California remediation contract (number DRR12034), which derives its funding from previously encumbered funds from the Solid Waste Disposal Trust Fund. The contract currently has approximately \$3.1 million in available funds from the Solid Waste Disposal Trust Fund and is adequately funded to complete this project.

Cost Recovery: Public Resources Code Section 48023 directs the Department to seek reimbursement for monies expended under the Program to the extent possible. Expended funds may be recoverable from the property owners and other responsible parties in a civil action brought by the Department [Public Resources Code Section 48023(c)] and/or by imposing a lien upon the real property owned by the property owners that is subject to the remedial action [Public Resources Code Section 48023.5(a)].

With respect to the Krishna Living Trust, at a minimum a lien will be sought upon the remediated property. While Sacramento County has obtained a Superior Court Judgment on their Penalty Order, they have not exercised their right to assert a Judgment Lien upon the remediated property. Instead, in consideration of CalRecycle's granting of the County's request for a Department-managed remediation, the County has agreed that CalRecycle's future lien for cost recovery will take precedence over any County lien arising out of the Penalty Order. Sacramento County has, however, referred the Penalty Judgment to their collections department for preliminary, non-judicial collection efforts. CalRecycle will coordinate with the County with respect to these efforts to ascertain whether they result in the identification of any substantial assets owned by the Krishna Living Trust apart from the remediated parcel. CalRecycle will use this and any other information available to determine whether it is practicable to pursue the Trust with a Superior Court cost recovery proceeding, in addition to the lien.

With respect to the Lupsas, consistent with: (a) their cooperation in executing the Alternative Stipulation on February 22, 2007, authorizing CalRecycle access for a Department-managed remediation, and limiting cost recovery to a lien upon their showing of non-substantial personal assets; (b) the subsequent corroboration of their lack of substantial assets through their bankruptcy filings; and (c) their further cooperation in executing the Stipulation with the County

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for a Non-Monetary Judgment on June 19, 2012, authorizing access for the remediation, cost recovery will be limited to the imposition of a lien on the remediated property.

Support:

Staff has not received any written support at the time this document was submitted for approval.

Opposition:

Staff has not received any written opposition at the time this document was submitted for approval.