



Renne Sloan Holtzman Sakai
Public Law Group™

350 Sansome Street, Suite 300
San Francisco, CA 94104
t: 415.678.5600
f: 415.678.3838

Memorandum

To: City Council via City Manager

From: David Kahn, City Attorney *DEK*

Date: August 29, 2013

Re: Brisbane Soil Processing and Brisbane Recycling Center Interim Use Permit Update

The Facilities Sub-Committee¹ met on August 26, 2013 to discuss permit and compliance issues arising from operations of Brisbane Soil Processing (“BSP”) and Brisbane Recycling Center (“BRC”).² The Sub-Committee will be providing a report from the meeting, and requested a short summary memo of the discussions and progress made at the August 26 meeting.

The major compliance issues identified were the dust emissions and stockpile heights on both the BSP and BRC sites. Although most discussion at the Council meetings has centered on BSP soil stockpiles and dust emissions from that site, the video of blowing dust submitted prior to the August 19 Council meeting by a citizen was actually of the BRC site at the north end of the Baylands rather than the BSP site. During the discussion it became clear that addressing dust emissions from the Baylands operations will require enforcement and additional permit conditions for both BSP and BRC. Accordingly, the Sub-Committee requested staff to research the history of the BRC permit and to provide a summary similar to what was done for BSP.

Dust Control

Extensive discussion took place of ways to address the dust problems from the BSP and BRC sites. Current permit conditions requiring the BRC site to stop operating if winds exceed a certain threshold, and requiring the BSP site to stop operations if there is uncontrolled dust until it is fixed have not been effective in preventing dust releases. Staff discussed options for more effective dust control, including substantial adjustment to the watering schedule, installation of a dedicated pipe and sprinkler system on the BRC site, and covering portions of the stockpiles with tarps. Staff noted that some potential solutions could remedy the dust problem and have the consequence of creating different but equally problematic visual and aesthetic issues. The Sub-Committee concurred with staff’s conclusion that immediate action is required to address the

¹ Mayor Miller and Mayor Pro-Term Conway.

² The meeting was noticed pursuant to the Brown Act, and one member of the public attended and provided comments.



Memo to: City Council via City Manager

Brisbane Soil Processing and Brisbane Recycling Center Interim Use Permit Update

August 29, 2013

Page 2

dust issues on the BSP and BRC sites, and that may include both interim requirements and new permit conditions if the permit is extended. Staff scheduled a meeting on August 29 with representatives from BAAQMD, the property owner and both site operators to discuss and develop corrective actions. Although the outcome of that meeting is not known at the time this Memo is being written, and staff will provide a verbal update of the meeting at the September 3 Council meeting. Staff also discussed researching and using the City's administrative citation process as part of its enforcement options to address uncontrolled dust from the sites, and intends to discuss this with BAAQMD.

Soil and Concrete Stockpile Heights

Both the BSP and BRC sites have similar permit conditions limiting stockpile height to 25 feet from surrounding grade. However, the site and operational conditions of the sites differ and may require different remedies.

On the BSP site, a 25 foot stockpile height limit may have been acceptable in past years when the underlying grade had been raised 10 or 20 feet, but the substantial increase in dirt in the last several years resulting from the San Francisco Central Subway project and BSP's acceptance of excavated dirt from that Project has now raised the underlying grade to a level where a 25 foot stockpile on top of that grade has a significant mass and visual impact that differs from when the 25 foot height limit would be calculated from a lower base grade.

Several facts about the BSP site became clear in the Sub-committee meeting. Notwithstanding the current height of the BSP dirt stockpiles, the final grade of the area will be established by the approved plans and can be set at a significantly lower elevation. However, any project approval and final grade is likely several years away, at minimum, and the dirt pile heights need to be addressed immediately to prevent further height increases. An option that was discussed as a possible solution would be to use both new and existing dirt as soil cover on OU 1, on the eastern side of the site. Based on the minimum projected sea-level rise by 2050, fill of at least four and a half feet will be required to prevent flooding. In addition, any remediation required by the DTSC is likely to require minimum dirt cover of three feet. If the appropriate approvals and permits can be obtained to permit use of fill dirt in OU 1, consistent with the Baylands EIR and other required environmental review, the dual goals of reducing the existing dirt piles and beginning to address sea level rise impacts could be accomplished. But this option is likely one or more years away as discussions with DTSC and determination of the environmental review process will take time.

It became clear during the discussions that if a permit extension is approved, subject to additional conditions, it should be for a period of no more than two years, to allow reassessment at that time of new solutions and the effectiveness of the interim remedies.

In discussions of regulating site elevations and/or dirt pile height in the short term, the importance of having some objective information to both establish baseline elevations and



Memo to: City Council via City Manager
Brisbane Soil Processing and Brisbane Recycling Center Interim Use Permit Update
August 29, 2013
Page 3

analyze view corridors became apparent. The Sub-Committee suggested that a number of objective viewpoints, perhaps the same as in the EIR, should be selected and BSP required to retain a consultant to prepare a view corridor study showing the impact of the current heights on view corridors and allowing an assessment of what the maximum permitted heights should be. In addition, an objective lateral offset distance should be set from Tunnel Road and Lagoon Way with a reduced height in that lateral offset to prevent the massing and view impacts from large dirt piles directly adjacent to the roadways. Another idea is to investigate immediate hydroseeding of the piles prior to the rainy season in those areas that are not being actively managed.

The BRC stockpiles are recycled concrete that is used in roadway construction. Several ideas were identified to address the stockpile height at BRC. It appears that a number of the stockpiles exceed twenty-five feet from surrounding grade, and the operator has been advised to either demonstrate compliance or provide a plan to the City's satisfaction demonstrating when and how compliance will be achieved. An update will be provided at the September 3 meeting. The property owner believes that one of the reasons for the accumulation of materials on site is that the number of daily truck trips is limited and BRC could sell and dispose of substantially more recycled material if the permit was modified to allow additional truck trips. While this could achieve the goal of reducing the stockpile, it will need to be weighed against the environmental impact of additional truck trips. Another idea was to consider a temporary concrete batch plant at the BRC site which would process and dispose of the recycled material more efficiently than trucking it off the site.³ One of the Sub-Committee members noted that a number of years ago the idea of a batch plant was floated, and there was substantial opposition from the community.

Action Plan

Staff is meeting with the regulatory agencies immediately to address the dust control problems on both BSP and BRC sites. These new dust control measures will be implemented as soon as feasible, and prior to consideration or approval of any permit extension.

The Sub-Committee will follow up on the ideas outlined in this memo for both stockpile height reduction and objective analysis of view corridor impacts in the next several weeks and anticipates reporting back to the full Council.

³ This would require amending the current zoning regulations.