From: Jacob Patterson
To: Munoz, Cristal; Lemos, June
Subject: Public Comment -- 11/22/21 City Council Meeting, Item No. 8A, C&S Franchise Agreement
Date: Friday, November 19, 2021 2:19:21 PM

City Council,

Although I have no objections to entering into this franchise agreement with C&S/Redwood Waste Solutions, I have concerns and objections relating to the CEQA analysis. In reviewing the agenda materials, the City appears to be attempting to base the CEQA analysis on a superficial connection to a Class 1 categorical exemption that likely doesn't apply to the current situation and completely misplaced reference to a Class 8 categorical exemption. Moreover, there is an issue with the project definition and scope.

First, there is the underlying issue of the project definition and proper scope of the environmental review. This portion of the overall project changing the franchise contract provider for solid waste collection and transfer services for City residents appears to be improperly segmented (aka piecemealed) out of the full scope of the project, which arguably includes the new coast transfer facility proposed for 1280 North Main Street because it is a clearly foreseeable consequence of awarding this new franchise agreement--it is so foreseeable, in fact, that the entitlement application and review is already underway. The agenda materials assert that that project is "separate and distinct" and will be subject to its own CEQA review but it is arguably a component of the overall project of switching the franchise provider from Waste Management to C&S/Redwood and limiting the future CEQA review to only the new facility itself and not the replacement vehicles and equipment, including decommissioning the existing facilities, would lead to ignoring the full impacts of the overall project or the cumulative impacts of the successive related projects or project components. In my opinion, neither discretionary action can be considered an independent project from the other because both the award of the franchise agreement itself and the construction of the new solid waste facility on the coast would not happen independently of the other action. In particular, the relocation and construction of the new facility is the direct consequence of awarding this franchise agreement to a new provider as are the new vehicles and collection containers for all existing accounts in the City as well as the County's collection subarea on the coast around Fort Bragg. (These related projects or project components, including their cumulative impacts, also involve what will happen to the existing Pudding Creek facility and equipment owned and operated by Waste Management.) If the City were considering awarding the new franchise agreement to Waste Management and Waste Management intended to continue using their existing facilities and equipment, then the Class 1 categorical exemption under section 15301(b) might have applied.

In my opinion, the CEQA categorical exemption for existing facilities is likely inapplicable to this project for several reasons, many of which are actually mentioned in your staff report. Even assuming merely for argument's sake that the franchise agreement and the entitlements for the new facility could be properly segmented and evaluated as separate projects, the staff report highlights numerous additional changes from baseline conditions that have a potentially significant impact on the environment and need to be analyzed, which likely prevents reliance on a Class 1 categorical exemption even if it could apply to approving a franchise agreement. These include the potentially significant impacts of replacing all of the existing vehicles and collection containers with new vehicles and collection containers (at least three per customer account). Several specific issues need to be evaluated for potentially significant impacts. What

will happen to the existing facilities and equipment owned by Waste Management and what is involved in the manufacture and transportation of the new vehicles and equipment to the coast because of their acquisition by C&S? Although there are clearly some benefits to converting to new vehicles, particularly switching to the new trucks that combine green waste and recycling collection into a single vehicle, the disposition of the former collection trucks and collection containers and the environmental impacts of the construction and acquisition of the new vehicles and containers need to be evaluated as part of an environmental review for this project (e.g., energy, air quality, and solid waste impacts). We are talking about replacing and likely disposing of a large number of collection containers for every customer on the coast (not just the City but also the County's service area since this the result of a joint RFP and combined effort). There are always environmental impacts to demolishing or disposing of existing facilities and equipment and replacing them with entirely new facilities and equipment. There is even a question in the Initial study checklist for CEQA reviews that specifically deals with solid waste impacts within environmental reviews, albeit one that is frequently disregarded or overlooked by less experienced or knowledgeable planners, at least in my experience. The City's reference to continuing to use the same inland facilities ignores the fact that the discretionary action also involves new facilities and equipment located on the coast and all the various facilities and equipment are relevant to the environmental determination for this project even if some of the existing facilities will continue to be used

Regarding the Class 8 categorical exemption, that class of exemption doesn't apply to projects like this, which is not about the City undergoing a project for the purpose of remediating an environmental harm or protecting the environment, it is about awarding a franchise agreement to a different franchisee and service provider to continue offering the same solid waste collection and transfer services as are already provided in the City and neighboring collection area in the County. Even the aspects of this particular proposal from C&S that arguably have some environmental benefits, like the combination of the recycling and green waste collection activities into single vehicles, were not a required component of the proposals and therefore actions of the City that could be classified as for the purpose of protecting the environment. In fact, the CEQA memo lists applicable requirements with which C&S will have to comply but those are all the result of *prior* regulatory processes, primarily at the state level. This discretionary action is not the relevant regulatory process that could rely on a Class 8 categorical exemption, even if the franchisee will need to comply with those regulations. Those regulations are all already in effect or scheduled to go into effect and nothing about this current discretionary action by the City has an impact on the environmental protections that will apply to local solid waste collection and management activities and services. In addition, the agenda materials make clear that the same customer accounts and services will be involved, including using the same inland locations for solid waste transfer and disposal as are being used under the current franchise agreement with Waste Management. There is nothing in the agenda materials for this item (or prior related discussions) that suggest this new proposed franchise agreement is being done for the purpose of protecting the environment compared to current baseline conditions and none of the prior discussion about switching service providers focused on environmental concerns or preventing expected environmental harms that would happen absent the discretionary action of entering into the franchise agreement with a new provider. (This project is not considering, for example, ending the City's use of Glass Beach as the town dump which is damaging to the environment, including the marine ecosystem and local air quality, and switching to a new more environmentally friendly means of dealing with solid waste.) This project is merely switching to a different provider to provide the same services incorporating the same environmental protections contained in the various laws and regulations cited in the CEQA memo. Those regulatory requirements apply

to local waste management activities independent of and regardless of with whom we enter into a new franchise agreement.

In fact, the attempted reliance on a Class 8 categorical exemption is undermined by the City's positions taken in the staff report and CEQA memo that attempted to justify relying on the Class 1 exemption for existing facilities since that content focused on not changing the current locations or facilities (at least the inland facilities). A Class 8 categorical exemption would apply to a project like adopting an ordinance banning the local use of plastic or polystyrene packaging in order to avoid the known adverse environmental effects of plastic and polystyrene waste to the marine environment and wildlife. By approving this franchise agreement, the City is not undergoing a regulatory process that involves procedures for protection of the environment. Entering into a franchise agreement isn't really a regulatory process, the way adopting regulations or issuing a license might be considered a regulatory process; it is simply entering into a contract with a particular service provider. (The CEQA memo notes that C&S already holds the necessary licenses, the granting of which was a separate regulatory process.) If the City was imposing significant new requirements and conditions that were specifically intended to protect the environment that were not already required as a result of the State of California's existing regulatory processes, then the City might be able to try to rely on a Class 8 categorical exemption but that is not the current situation. Simply because a proposal under consideration involves an aspect that arguably results in an environmental benefit or complies with existing regulatory requirements intended to protect the environment doesn't mean the discretionary action under review is being taken for the purpose of protecting the environment. If that were the case, any project that complied with our local storm water retention regulations or tree retention policies would be claimed to be exempt from environmental review under a Class 8 categorical exemption even if it involved other negative environmental impacts or even if those requirements were already applicable to the project because of prior regulatory processes by the City or another authority.

Also, even if a categorical exemption could apply to the award of the franchise agreement, the unusual circumstances exception to reliance on categorical exemptions would apply to this project because of the unique facts and circumstances and sensitive environmental resources at the location of the proposed new facility, which are discussed below, including its prominent location along Highway One and the fact that the site provides public access to coastal resources and recreation (as well as being a coastal resource itself in the form of public community parking). The CEQA memo asserted, without any supporting analysis, that there are no exceptions to the Class 1 or Class 8 exemptions. Those unsupported assertions are not even explained in any way because there is no discussion of possible cumulative impacts or possible impacts to historic resources, unusual circumstances, etc. Omitting even a cursory discussion of the possible exceptions is not adequate CEQA analysis that is attempting to rely on categorical exemptions to avoid further environmental review.

Moreover, I would also like to highlight two related concerns about the new proposed transfer site, which are (1) the prescriptive public easement on that property based on the long-standing public use of the western-most portion of the site for public parking and coastal access, and (2) the coastal access and coastal resources provided by the site, both of which will complicate development efforts of the site as a solid waste transfer station and which have likely resulted in the site not being developed in the past for other purposes. The requirements for a prescriptive easement for continued public use of the portion of the site fronting North Main Street/Highway One appear to have been met long ago. The established and long-

standing (i.e., longer than my lifetime) public use is for parking for the public to access MacKerricher State Park, the beach at Virgin Creek in particular, which is a wonderful beach and popular surfing spot. There is an established access trail directly across Highway One from the parking area that takes up the entire frontage of the property along North Main Street, which is also the only clear access point for the solid waste collection and transfer trucks to access the new facility directly from a public road. However, I am not stating that this is an insurmountable obstacle to developing the site as a solid waste facility but continuing to provide a public parking and coastal access area on the site that provides the same or an equivalent amount of public access will make designing the new facility and managing the traffic flow to and from that facility without materially interfering with continued public access quite challenging. That will need to be included in the entitlement review for the facility but it is also a topic that should be considered within the CEQA review for this project (or these related projects).

In addition, although the staff report correctly identifies the 1280 North Main street property as outside the Coastal Zone, the site is directly adjacent to the Coastal Zone and may still fall within some oversight and jurisdiction of the Coastal Commission because the site itself provides significant coastal access and is therefore a coastal resource. I haven't done any refresher research on this topic, and I believe that Jones & Mayer explicitly excluded Coastal Act matters from the offered scope of services in their initial proposal to the City, so you may want to consult with special legal counsel with Coastal Act and Coastal Commission expertise, but I think the Coastal Commission's authority extends to development outside the Coastal Zone that directly impacts coastal resources and access to coastal resources in areas adjacent to the Coastal Zone. (This is a similar concept to a city's sphere of influence where a jurisdiction must be consulted for projects in areas outside its incorporated boundaries but which may impact the use and development of property within its explicit jurisdictional boundaries.) This specific property at 1280 N. Main Street appears to implicate that very specific issue.

In conclusion, this project, whether evaluated as a stand-alone discretionary action or as part of an overall project along with the new facility at 1280 N. Main Street, should not be determined to be exempt from environmental review based on a Class1 or Class 8 categorical exemption or the catch-all common sense exemption under CCR section 15061(b)(3) despite the agenda materials that suggest otherwise. In fact, there are several areas of study that this project implicates that arguably require further consideration in an Initial Study (and possibly an MND or EIR) despite many of these areas being discussed in the CEQA memo. If the overall project is considered as a whole, these areas of inquiry include potentially significant impacts in aesthetics, biological resources, hydrology and water quality, noise, recreation (not the standard Initial Study checklist question but an appropriate customized checklist question and threshold of significance specific to this project), utilities and service systems, cultural resources, greenhouse gas emissions, land use and planning, transportation, air quality, energy, hazards and hazardous materials, public services, and tribal cultural resources. Other specific impacts may also be relevant. (Some of those areas of inquiry primarily apply to the new coast facility rather than just the vehicle and collection bin replacement.)

Thank you for your consideration of these important matters,

--Jacob

From:	Jacob Patterson
To:	Munoz, Cristal; Lemos, June
Subject:	Re: Public Comment -- 11/22/21 City Council Meeting, Item No. 8A, C&S Franchise Agreement
Date:	Friday, November 19, 2021 9:42:30 PM

Updated Public Comment:

City Council,

I see the agenda materials are updated but I am confused because none of the issues are addressed by the additional checklist that was added to the agenda packet, which inexplicably focuses on reiterating the initial conclusions based on arguably incomplete analysis. Unfortunately, the City might be able to rely on minimally reasonable analysis for items that are explicitly addressed but it cannot rely on something that doesn't exist but is implicated by the details of the proposed project. The City uploaded an initial study checklist from staff but it still doesn't adequately address anything that was left out the first time, specifically any of the impacts associated with replacing the collection containers in a meaningful manner. This also only discusses the aspects of the project that arguably have environmental benefits but omits any discussion of something that could have a significant impact.

The checklist notes there are an estimated 1851 accounts, which means there are at least 5553 collection containers in circulation. This project involves the removal from service of at least 5553 containers and the manufacture and transportation of at least 5553 new containers. Inexplicably, this asserts that all that activity doesn't have any impact on energy consumption because it only discusses the projected reduction in energy use because of the more efficient and fewer vehicles that will be used. What about the energy use of manufacturing the new containers or recycling or destroying the existing containers? What about the solid waste impacts of removing that many containers from service? This kind of cherry-picked analysis is not justified or compliant with applicable legal requirements. and I honestly don't understand why it is being permitted. Please consider these issues when you provide direction. If you ignore them, you could ahve another Grocery Outlet situation on your hands where the City's defective planning work interferes with Council's policy objectives.

Regards,

--Jacob

From:	Annemarie
To:	Lemos, June; Munoz, Cristal; Peters, Lindy; Norvell, Bernie; Morsell-Haye, Jessica; Albin-Smith, Tess; Rafanan, Marcia
Subject:	public comment 11-22-21 City Council Meeting item # 8A, C&S Franchise Agreement
Date:	Friday, November 19, 2021 9:36:12 PM

To City Council members,

I read the documents available on your agenda posted under 8A, C&S Franchise Agreement.

I also read what Jacob Patterson wrote and believe that what he wrote makes a lot of sense. I agree with his comments. I therefore would like for you to know that I support his letter.

At the time when the city council decided to switch to another company I have to admit that I did not think about important details like switching to all new equipment with a new outfit and how this would have to be looked at in terms of CEQA. I agree that the cumulative effects are such that it can not be declared that the project is exempt from CEQA review, no matter what clause is being used.

The Franchise Agreement with C&S needs to consider the location where there would be a lot of traffic in addition to traffic from locals and tourists. A lot of traffic would be taking place close to the recreation area by the historic Pudding Creek Trestle Bridge and Pudding Creek beach. This makes dealing with no CEQA review impossible to think off. This project requires at least a Mitigated Negative Declaration (MND), if not an Environmental Impact Report (EIR).

Sincerely,
Annemarie Weibel
11-19-2021