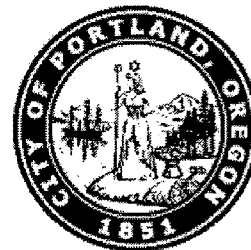


CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade
1221 S.W. 4th Avenue, Room 140, Portland, Oregon 97204
web: www.portlandonline.com/auditor/
Email: Karla.Moore-Love@portlandoregon.gov
Phone: (503) 823-4086 Fax: (503) 823-4571



NOTICE OF FINAL DECISION

TO: All Interested Persons
DATE: December 6, 2011
RE: LU 10-194818 CU AD

Appeal of Cottonwood Capital Property Management LLC, Frank Fleck and Gary Gossett against Hearings Officer's decision to approve with conditions the application of Recology Oregon Material Recovery, Inc. for a conditional use to establish a waste-related use that accepts and processes food waste that is blended with yard debris, within a fully enclosed building at 6400 SE 101st Avenue (Hearing; LU 10-194818 CU AD)

Enclosed is a copy of the Order of Council on LU 10-194818 CU AD denying the appeal of Cottonwood Capital Property Management LLC, Frank Fleck and Gary Gossett. With this decision, the City Council denies the appeal and affirms the Hearings Officer's decision approving the application of Recology Oregon Material Recovery, Inc. for a conditional use and adjustments, with modified conditions of approval. If you wish to obtain a copy of the City Council's findings and conclusions, please contact Karla Moore-Love, Council Clerk at (503) 823-4086 or by email at: Karla.Moore-Love@portlandoregon.gov

City Council's decision is the final review process available through the City. You may appeal this decision to the Oregon Land Use Board of Appeals (LUBA) by filing a Notice of Intent to Appeal with the Board within 21 days of the date of decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have appeared orally or in writing during the City's proceedings on this land review. The Board's address is: Public Utility Commission Building, 550 Capitol Street NE, Suite 235, Salem, OR 97310-2552. You may call the Land Use Board of Appeals at 1-503-373-1265 for further information on filing an appeal.

Encl.

**ORDER OF COUNCIL ON APPEAL OF
COTTONWOOD CAPITAL PROPERTY MANAGEMENT LLC, FRANK FLECK AND GARY
GOSSETT AGAINST HEARINGS OFFICER'S DECISION TO APPROVE WITH CONDITIONS
THE APPLICATION OF RECOLOGY OREGON MATERIAL RECOVERY, INC. FOR A
CONDITIONAL USE TO ESTABLISH A WASTE-RELATED USE THAT ACCEPTS AND
PROCESSES FOOD WASTE THAT IS BLENDED WITH YARD DEBRIS, WITHIN A FULLY
ENCLOSED BUILDING AT 6400 SE 101ST AVENUE (HEARING; LU 10-194818 CU AD)**

Applicant: Dave Dutra
Recology Oregon Material Recovery, Inc.
4044 N Suttle Road
Portland, OR 97217

Recology Oregon Material Recovery, Inc.
50 California Street 24th Floor
San Francisco, CA 94111

**Applicant's
Representatives:** Michael Robinson, Attorney
Perkins Coie LLP
1120 NW Couch Street, 10th Floor
Portland, OR 97209-4128

Steve Gramm, Engineering Consultant
PBS Environmental
1310 Main Street
Vancouver, WA 98660

Appellants: Cottonwood Capital Property Management, LLC,
Frank Fleck and Gary Gossett
c/o Kell, Alterman & Runstein LLP
520 SW Yamhill Street, Suite 600
Portland, OR 97204

Owner: Kevin Loftus
Jameson Partners LLC
2495 NW Nicolai Street
Portland, OR 97210

Site Address: 6400 SE 101st Avenue

Legal Description: BLOCK 4 INC PT VAC STS LOT 1-10 LAND & IMPS SEE R624825 (R022400261)
MACH & EQUIP, AMBOY; BLOCK 11 TL 6500 SPLIT MAP R215713 (R551002240), MCKINLEY PK;
BLOCK 11&12 TL 5100 SPLIT MAP R215712 (R551002230), MCKINLEY PK; TL 100 70.21 ACRES
LAND & IMPS SEE R606684 (R992222591) MACH & EQUIP SPLIT MAP R336871 (R992222590),
SECTION 21 1S 2E; TL 3200 19.55 ACRES, SECTION 22 1S 2E; TL 100 7.58 ACRES SPLIT MAP
R336673 (R992211480), SECTION 22 1S 2E, SECTION 21 1S 2E, TL 400 6.21 ACRES

Plan District: Johnson Creek Basin

Land Use Review: Type III, CU AD, Conditional Use Review and Adjustment Review

Procedure: Type III public hearing before the Hearings Officer, appealed to the City Council.

Proposal: Recology proposes to accept mixed residential yard debris/food waste at a 6.2 acres lease area (the "Subject Property") within an approximately 100 acres site (the "Site") for recycling. Currently landscape materials and wood debris, as well as building materials and other dry, non-perishable materials, are accepted at the Subject Property for recycling. The mixed yard debris/food waste will be delivered to the Subject Property via garbage collection trucks; approximately 35 total garbage trucks per day in and out of the Subject Property. Landscape material and other dry non-perishable materials will continue to be accepted from private self-haulers and the general public.

The mixed yard debris/food waste material, from residential sources, will be unloaded inside the existing large industrial building. Inside the building, the material will be sorted and mixed with additional yard and other wood waste materials that are accepted at the Subject Property. The compostable material will be loaded onto semi-trucks for shipment to an off-site composting facility. The mixed residential yard debris/food waste will be stored inside the building for no more than a 48-hour period before it is hauled to another site.

Recology intends to install a biofilter aeration system to control odors inside the building. Also inside the building, Recology proposes to install a drain system to collect and contain liquids (leachate) from the food waste materials. The leachate will be transported off-site. The facility will also include a 3,000 square foot exterior area for retail sales of exterior landscape-type materials such as compost, soil, mulch and gravel. The facility will accept food waste deliveries only between the hours of 7 a.m. to 5 p.m., Monday through Friday, and 8 a.m. to 5 p.m. on Saturday.. No new exterior improvements or alterations are proposed at the Subject Property.

A Type III Conditional Use Review is required because food waste recycling is classified as a Waste-Related use. An Adjustment Review is needed to vary from an applicable development standard. Specifically, an adjustment is requested to waive the requirement that vehicle access to the Site and Subject Property be provided from a designated Major City Traffic Street. Access to the facility is from SE Foster onto a private street, vacated SE 100th Avenue.

The appeal hearing before the City Council was opened in the Council Chambers, 1221 SW 4th Avenue on July 13, 2011 at approximately 3:15 p.m. At the conclusion of the public hearing and after hearing public testimony, Council continued the hearing to August 31, 2011 at 2:00 p.m. On August 31, 2011 at approximately 2:00 p.m. Council convened to reschedule the hearing to September 8, 2011 at 2:00 p.m. On September 8, 2011 at approximately 2:00 p.m., Council convened to continue the hearing to October 5, 2011 at 2:00 p.m. On October 5, 2011 at approximately 2:00 p.m., Council convened for deliberation and voted 4-1 to tentatively deny the appeal of Cottonwood Capital Property Management LLC, Frank Fleck and Gary Gossett and uphold the Hearings Officer's decision with conditions, including additional modifications of approval. Council directed findings be prepared for November 2, 2011 at 11:00 a.m. On November 2, 2011 at approximately 11:00 a.m., Council convened to reschedule the hearing to November 16, 2011 at 10:00 a.m. On November 16, 2011 at approximately 10:00 a.m. Council convened to reschedule the hearing to November 30, 2011 at 10:45 a.m. On November 30, 2011 at approximately 10:45 a.m. Council voted 4-1 to

deny the appeal of Cottonwood Capital Property Management LLC, Frank Fleck and Gary Gossett and uphold the Hearings Officer's decision with conditions, including additional modifications of approval and adopted findings and conclusions.

DECISION

Based on evidence in the record and adoption of the Council's Findings and Decision in Case File LU 10-194818 CU AD and by this reference made a part of this Order, **it is the decision of the City Council to deny the appeal of Cottonwood Capital Property Management LLC, Frank Fleck and Gary Gossett. With this decision, the City Council affirms the Hearings Officer's decision approving the application of Recology Oregon Material Recovery, Inc. for a conditional use with adjustments and modifies the Hearings Officer's Conditions specifically, the Council:**

Approves a Conditional Use to establish a Waste-Related use that accepts and processes food waste that is blended with yard debris, within a fully-enclosed building, as described in Exhibits A.1 through A.6, and

Approves an Adjustment to waive the Waste-Related location and access requirements (Section 33.254.030) to allow access onto the facility from a private driveway (vacated SE 100th Avenue), subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through D) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 10-194818 CU AD." All requirements must be graphically represented on the required plans and must be labeled "REQUIRED."
- B. Two signs, which identify the food waste recycling operation, must be installed on entrance gates to the facility. The signs must include 24-hour emergency contact information.
- C. An aeration and biofilter system must be installed to negate food waste odors.
- D. An internal drain and containment system must be installed to collect the liquid waste (leachate) inside the food waste processing building. The leachate must be taken to an off-site location for disposal.
- E. Prior to obtaining occupancy approval from the Bureau of Development Services, Recology must revise the Nuisance Mitigation Plan (*identified as Exhibit H in the Recology July 27, 2011 submittal to Council*) to address the control of flies and yellow jackets and submit the revised plan to the Bureau of Development Services.
- F. Prior to obtaining occupancy approval from the Bureau of Development Services, Recology must meet in good faith with the Lents Neighborhood Association for the purpose of reaching agreement on a Good Neighbor Agreement. "Good faith" shall include at a minimum scheduling and being available to meet with the Association for a minimum of 3 dates before opening of the facility, within a 3-month time period from the effective date of this decision. Facilitation shall be provided through the Office of Neighborhood Involvement or a facilitator acceptable to both parties provided by Recology. A report with a list of persons who attended the meetings, comments from both sides and any participant or observer wishing to comment on the process and outcome, and documentation of any Agreement shall be submitted to the Bureau of Development Services, the Office of Neighborhood Involvement, and City

Council offices prior to commencing use of the building for food waste processing. The Good Neighbor Agreement discussions could include potential mitigation for possible impacts on neighborhood livability.

- G. The Recology (or any successor in interest) facility may only be used to process Residential Source food wastes. No Commercial Source food waste is permitted.
- H. Organics containing food waste shall be removed from the Subject Property and Site within forty-eight (48) hours of delivery to the Subject Property.
- I. Recology (or any successor in interest) will accept food waste deliveries/deposits only between the hours of 7 am to 5 pm Monday through Friday and 8 am to 5 pm on Saturdays.
- J. Recology (or any successor in interest) will limit the number of garbage hauler trucks delivering food waste to the facility, to a maximum of 35 round trips per day.
- K. Recology (or any successor in interest) will limit the number of truck trips to and from the site per day, for the purpose of removing food waste from the site to 10 trips (or 5 round trips) per day. Recology (or any successor in interest) will transport the blended food waste from the site only between the hours of 7 am to 6 pm, Monday through Friday and 8 am to 6 pm on Saturdays.
- L. All public information, including Internet and marketing information, must include a directional map that identifies the Recology facility within the larger 100-acre industrial site and identifies the site's entrance at SE 101st and SE Foster Boulevard.
- M. Recology (or any successor in interest) trucks and any associated businesses, including commercial haulers, must be instructed to use only the SE Foster and SE 101st Avenue access; access to/from the Subject Property via SE Knapp shall not be permitted (excepting for emergency response vehicles).
- N. Recology (or any successor in interest) must document all nuisance complaints that are received, including but not limited to: litter, noise, odors, dust, traffic and vectors. For every nuisance complaint received, the facility will record, in a complaint log, the following information:
- The nature of the complaint; and
 - The date and time the complaint was received; and
 - The name, address and telephone number (if provided) of the person or persons making the complaint; and
 - The Recology (or any successor in interest) employee who received the complaint; and
 - Any actions taken by Recology (or any successor in interest) employee(s) to resolve the complaint.

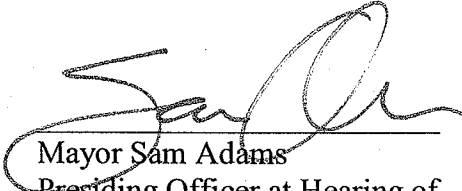
A record of all complaints and action taken must be maintained at the facility for a minimum of one (1) year. Annually, and upon request, a copy of the complaint log must be delivered by mail to the Lents Neighborhood Association Chairperson (per Office of Neighborhood Involvement website information), the East Portland Neighborhood Office and to the BDS Code Compliance Division. Recology (or any successor in interest) will provide Department of Environmental Quality Solid Waste representatives, Metro Solid Waste representatives, and the Bureau of Development Services access to review the complaint log and other required logs, records and reports.

- O. Recology (or any successor in interest) will allow unscheduled/unannounced visits into the facility by the Department of Environmental Quality Solid Waste representatives, Metro Solid Waste representatives, and City of Portland code inspectors.
- P. Confirmed violations of Title 33 odor standards (33.262.070) shall be subject to Bureau of Development Services code enforcement policies.
- Q. Between the hours of 7 am and 10 pm, Recology (or any successor in interest) shall operate in compliance with the City's Noise Control Title 18. Before Recology (or any successor in interest) may conduct the processing, sorting, grinding and cleaning operations during nighttime hours 10 pm to 7 am, they must submit to the City of Portland Noise Control Officer and the Bureau of Development Services Code Compliance Division, additional noise analysis from a licensed engineer demonstrating compliance with Title 18, specifically pertaining to reduced sound levels applicable between 10 pm and 7 am. BDS verification of violations of Title 18 shall be subject to immediate issuance of Noise Citation civil penalties.
- R. Recology (or any successor in interest) must remove all food-waste materials and collected leachate from the site prior to flooding. The site may not accept food waste until the City of Portland determines that the Johnson Creek high-water level has dropped below flood stage at the Recology facility location.

IT IS SO ORDERED:

DEC 06 2011

Date



Mayor Sam Adams
Presiding Officer at Hearing of
November 30, 2011
9:30 a.m. Session