

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

*Consideration of Zero Waste Energy Development Company LLC's Request
for a Second Waiver of the 25% Purchase Requirement under the SB 71 Program*

Tuesday, April 16, 2013

Prepared By: *Alejandro Ruiz*

Applicant – Zero Waste Energy Development Company LLC (“Zero Waste” or “Applicant”)

Location – San Jose (Santa Clara County)

Industry – Biogas Capture & Production

Project – New Biogas Capture & Production Facility

Value of Qualified Property – \$17,156,875

Estimated Sales and Use Tax Exclusion Amount – \$1,389,707¹

Amount of Time Requested:

- Six and one-half months (November 15, 2013) for the 25% Purchase Requirement (24 months from the initial Board approval on November 15, 2011).

SUMMARY

On November 15, 2011, the CAEATFA Board approved Zero Waste’s project for the purchase of \$17,156,875 in Qualified Property for a biogas capture and production facility in San Jose, Santa Clara County (the “Project”). The SB 71 Program (“Program”) requires Zero Waste to purchase 25% (\$4,289,219) of the total approved Qualified Property within the first year.² This requirement serves as an indicator of readiness and assists in incentivizing timely economic activity. The 25% Purchase Requirement can be waived by the Board upon a finding that a waiver is in the public interest and advances the purposes of the program.³ As of March 26, 2013, Zero Waste has conveyed \$1,484,646.09 (8.7%) of Qualified Property.

In November 2012, the CAEATFA Board approved an initial request from Zero Waste to waive the 25% Purchase Requirement for five and one-half months to accommodate unforeseen delays in the permitting process required to fully close a landfill site. This was a landfill site which the City of San Jose had indicated was closed, however, through the permitting process it was revealed that the site was not fully closed.

In March 2013, CAEATFA staff sent the Applicant a courtesy reminder of the 25% Purchase Requirement. Zero Waste responded by requesting an extension of the 25% Purchase Requirement to November 15, 2013 to accommodate additional delays in acquiring the building

¹ This amount is calculated based upon the average statewide sales tax rate at the time of approval, 8.1%.

² California Code of Regulations, Title 4, Section 10035(c)(1) – the “25% Purchase Requirement”

³ California Code of Regulations, Title 4, Section 10035(c)(1)(A)

permit, which was received two months later than anticipated at the time of the original waiver request (Attachment A).

About the Applicant

Zero Waste is a California limited liability company established in 2009. The Applicant is a development company that designs, builds, and operates integrated solid waste facilities throughout North America. Zero Waste recovers material for recycling and reuse, while transforming organic waste into green energy through an anaerobic digestion dry fermentation process.

Project Description

Zero Waste is constructing a facility which will use an anaerobic digestion system to take organic materials and, using a dry fermentation process, produce and capture methane from the controlled composting of those materials. The methane produced will fuel generators that will produce electricity. This electricity will be used to power the Project while the excess electricity will be sold to the Pacific Gas & Electric Company (“PG&E”). Organic materials for the Project will include source-separated organics, yard waste and organic mixed materials from mixed waste processing at a small materials recovery facility (MRF) on-site, as well as from other facilities. The first few stages of the process take place in an approximately 75,000 square foot enclosed process facility located in San Jose, California.

The Qualified Property in this Application will be used directly in manufacturing the biogas and for the portion of the power generation used to power the facility. The cost of the excess portion of the power generation sold to PG&E is not included in this Application.⁴

According to the Program’s evaluation process, the Project is anticipated to produce a net benefit of \$2,199,291 with an anticipated fiscal benefit of \$2,233,575 and anticipated environmental benefit of \$1,355,423 over the life of the equipment (weighted average of 27.75 years). The approved Project is anticipated to support a total of 12 permanent jobs and 162 temporary construction jobs.

Waiver Request

Zero Waste has requested a second waiver for the 25% Purchase Requirement due to additional delays in obtaining the building permit for the Project from the City of San Jose. At the time of the first waiver request in November 2012, Zero Waste anticipated receiving the building permit in November 2012. However, due to the complexity of the Project, which the Applicant

⁴ The engine cost represented herein equals 35% of the total Project engine cost as it is equal to the amount of power and heat which is required for the Project itself. The balance of power produced will be sold to PG&E, and therefore the cost associated with that power production is not being included in the amount of expenditures subject to sales and use tax exclusion. This is consistent with CAEATFA evaluation and determination of Qualified Property.

represents is unique for the entire country in terms of its size and the technology utilized, the City of San Jose staff required additional detail and explanations before issuing a permit on January 21, 2013. Since the timing of the equipment purchases coincides with the progress of construction, Zero Waste is not able to purchase the equipment needed to meet the 25% purchase requirement. Now that the Project's construction has commenced, Zero Waste anticipates that it will be able to meet the 25% purchase requirement by November 15, 2013 as it has already made payment towards some of the operating equipment, but does not yet possess title of the equipment. Moreover, the Applicant represents that the Project will be completed by December 31, 2013.

Staff Evaluation

Zero Waste has represented that a time extension until November 15, 2013 will allow the Applicant enough time to meet the 25% purchase requirement. The Applicant has further represented the additional permitting delay was not anticipated and due primarily to the complexity of the Project. Also, after the Project began construction, Zero Waste has submitted a number of transaction agreements, which seem to indicate that the Project is moving forward, although later than originally anticipated by the Applicant. Granting the waiver will allow the Project to proceed and the state to receive the anticipated environmental and economic benefits that justified the initial approval of the Project. Based on the foregoing, Staff believes that extending the 25% Purchase Requirement is consistent with the intent of the Program, is in the public interest, and advances the purposes of the Program.

Staff Recommendation: Staff recommends that the Board find it is in the public interest and advances the purposes of the Program to extend the 25% Purchase Requirement for Zero Waste Energy Development Company LLC to November 15, 2013 pursuant to Regulations Section 10035(c)(1)(A).

Attachments

Attachment A: Zero Waste's Updated Letter Requesting Waiver (March 25, 2013)

Attachment B: Zero Waste's Letter Requesting Waiver (March 21, 2013)

Attachment C: Photos of the Project construction site from February and March 2013.

Attachment D: Staff Summary for Zero Waste's first waiver request approved by the CAEATFA Board on November 13, 2012

**A RESOLUTION OF
CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION
FINANCING AUTHORITY APPROVING A TIME EXTENSION OF THE 25%
PURCHASE REQUIREMENT**

April 16, 2013

WHEREAS, on November 15, 2011 the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority”), a public instrumentality of the State of California, approved a Sales Tax Exclusion (“STE”) in the amount of \$17,156,875 of Qualified Property for **Zero Waste Energy Development Company LLC** (the “Applicant”); and

WHEREAS, on November 13, 2012, the Authority approved a time extension of the 25% purchase requirement to April 30, 2013;

WHEREAS, within one year of approval by the Authority, the Applicant must make purchases of Qualified Property totaling not less than twenty-five percent (25.0%) of the total amount listed in the approval resolution;⁵

WHEREAS, upon a finding that it is in the public interest and advances the purposes of the Program, the Authority may waive the requirement that the Applicant purchase at least twenty-five percent (25.0%) of the Qualified Property within one year of Board Approval;⁶ and

WHEREAS, the Applicant has requested a waiver of the requirement to purchase 25% of the Qualified Property within one year to address unanticipated and unavoidable delays in the Project’s permitting process, and extend the term from April 30, 2013 to November 15, 2013; and

WHEREAS, granting the waiver will allow the Project to proceed and the state to receive the anticipated environmental and economic benefits that justified the initial approval of the Project, thereby advancing both the public interest and the purposes of the Program.

NOW THEREFORE BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority, as follows:

Section 1. The Authority finds that it is in the public interest and advances the purposes of the Program to waive the requirement that the first year purchases of Qualified Property are at least twenty-five percent (25.0%) of the total amount listed in the approved resolution, and to extend the term to November 15, 2013.

Section 2. This resolution shall take effect immediately upon its passage.

⁵ California Code of Regulations, Title 4, Section 10035(c)(1)

⁶ California Code of Regulations, Title 4, Section 10035(c)(1)(A)



March 25, 2013

Saul Acosta Gomez
Executive Director
California Alternative Energy and Advanced
Transportation Financing Authority
915 Capital Mall, Room 457
Sacramento, CA 95814

Dear Mr. Gomez:

We are writing this letter to further explain our request of March 21st for an extension of the 25% Expenditure Obligation of the Company's total Qualified Property as detailed in the Master Regulatory and Title Conveyance Agreement between CAEATFA and Zero Waste Energy Development Company LLC.

Our original request for extension to April 30, 2013, which was granted, was made with the belief that the building permit would be issued in early November, 2012, however it was not received until January 21, 2013. The delay was due to the complexity of the project, which is a one of its kind in the United States, much less the City of San Jose. This is a technology that is widely used in Europe but the first of this size and design in this country. Since City staff had no experience with this kind of construction they required far more detail and explanation before they felt they could issue the permit.

Although we have ordered, and made down payments and progress payments on items of specific equipment required for the operation of the plant, these items are being manufactured and we will not have title to convey until they are complete and have been shipped. The timing of the orders and manufacture of this equipment coincides with the progress of the construction. In other words, it would not make sense to purchase and receive these items until construction has progressed to the point that the items could be installed.

Based on the construction schedule most of the costly equipment described above will be purchased in June or July which would mean that we would have no difficulty achieving the 25% requirement by November 15, 2013.

We have enclosed with this letter pictures demonstrating the progress of the construction. As you can see the progress is substantial. It was stated in our previous letter, that much of the cost of this construction has been labor which is not a taxable item.

If you have any additional questions about the project, or this request, please don't hesitate to contact me at (408) 938-4901 or send an e-mail to dond@greenwaste.com.

Saul Acosta Gomez
March 25, 2013, page 2

Thank you again for your consideration,

Yours very truly,

A handwritten signature in black ink, appearing to read "Donald J. Dean", with a long horizontal flourish extending to the right.

Donald J. Dean
Chief Financial Officer
Zero Waste Energy Development Company LLC

Cc: Tony Cone, Westhoff, Cone & Holmstedt

Enclosures

Attachment B: Request for Waiver



March 21, 2013

Saul Acosta Gomez
Executive Director
California Alternative Energy and Advanced
Transportation Financing Authority
915 Capital Mall, Room 457
Sacramento, CA 95814

Dear Mr. Gomez:

We are writing this letter to request an extension of the 25% Expenditure Obligation of the Company's total Qualified Property as detailed in the Master Regulatory and Title Conveyance Agreement between CAEATFA and Zero Waste Energy Development Company LLC.

We are requesting an extension to August 31, 2013 to meet the 25% requirement. We did not receive our building permit until January 21, 2013 due to last minute and continuing questions from the City of San Jose. The project is now well under way with a projected completion date and full commissioning by December 31, 2013.

However, much of the equipment and material which is subject to the exclusion will not be purchased until June or July. Current construction costs are largely labor which is not a taxable expenditure.

This project is the subject of a long term contract with the City of San Jose to divert commercial organics from the landfill and to produce electrical energy and compost. The CAEATFA grant is an important part of our financing for the project. We appreciate your consideration of our request.

If you have any questions about the project or this request please don't hesitate to contact me at (408) 938-4901 or send an e-mail to dond@greenwaste.com.

Thank you for your consideration,

Yours very truly,

A handwritten signature in black ink, appearing to read "Donald J. Dean", written over a horizontal line.

Donald J. Dean
Chief Financial Officer
Zero Waste Energy Development Company LLC

Cc: Tony Cone, Westhoff, Cone & Holmstedt

Attachment C: Photos of Zero Waste's Project from February and March 2013



Attachment D: November 2012 Staff Summary

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

***Consideration of Zero Waste Energy Development Company LLC's Request
to Waive a 25% Purchase Requirement under the SB 71 Program***

Tuesday, November 13, 2012

Prepared By: *Cheryl Ide*

Applicant – Zero Waste Energy Development Company LLC (“Zero Waste” or “Applicant”)

Location – San Jose (Santa Clara County)

Industry – Biogas Capture & Production

Project – New Biogas Capture & Production Facility

Value of Qualified Property – \$17,156,875

Estimated Sales and Use Tax Exclusion Amount – \$1,389,707

Amount of Time Requested:

- 6.5 Months (April 30, 2013) for the 25% Purchase Requirement (18.5 months from Initial Board Approval Date)

SUMMARY

Zero Waste’s project was initially approved by the CAEATFA Board on November 15, 2011 for the purchase of \$17,156,875 in Qualified Property for a biogas capture and production facility in San Jose, Santa Clara County (the “Project”). The SB 71 Program (“Program”) requires that Zero Waste purchase 25% (\$4,289,219) of the total approved Qualified Property within the first year.¹ This requirement serves as an indicator of readiness and assists in incentivizing timely economic activity. The 25% Purchase Requirement can be waived by the Board upon a finding that a waiver is in the public interest and advances the purposes of the program.²

As of November 1, 2012, Zero Waste has conveyed \$532,000 (3%) of Qualified Property. In September 2012, CAEATFA staff sent the Applicant a courtesy reminder of the 25% Purchase Requirement. Zero Waste responded by requesting an extension of the 25% Purchase Requirement to April 30, 2013 to accommodate unforeseen delays in the Project’s permitting process, which stem primarily from developing the project on a partially closed landfill site (Attachment A).

¹ California Code of Regulations, Title 4, Section 10035(c)(1) – the “25% Purchase Requirement”

² California Code of Regulations, Title 4, Section 10035(c)(1)(A)

About the Applicant

Zero Waste is a California limited liability company established in 2009. The Applicant is a development company that designs, builds, and operates integrated solid waste facilities throughout North America. Zero Waste recovers material for recycling and reuse, while transforming organic waste into green energy through an anaerobic digestion dry fermentation process.

Project Description

Zero Waste plans to construct a facility which will use an anaerobic digestion system to take organic materials and, using a dry fermentation process, produce and capture methane from the controlled composting of those materials. The methane produced will fuel generators, the power from which will be used internally, and the excess sold to the Pacific Gas & Electric Company (“PG&E”). Organic materials for the Project will include source-separated organics, yard waste and organic mixed materials from mixed waste processing at a small materials recovery facility (MRF) on-site, as well as from other facilities. The first few stages of the process take place in an approximately 75,000 square foot enclosed process facility located in San Jose, California.

The Qualified Property in this Application will be used directly in manufacturing the biogas and for the portion of the power generation used to power the facility. The cost of the excess portion of the power generation sold to PG&E is not included in this Application.³

According to the Program’s evaluation process, the Project is anticipated to produce a net benefit of \$2,199,291 with an anticipated fiscal benefit of \$2,233,575 and anticipated environmental benefit of \$1,355,423 over the life of the equipment (weighted average of 27.75 years). The approved project is anticipated to support a total of 12 permanent jobs and 162 temporary construction jobs.

Waiver Request

Zero Waste has requested a waiver of the 25% Purchase Requirement due to delays in permitting. Most of the delays are due to the site being situated on a landfill. When the Applicant first began the Project, the City of San Jose (the “City”) indicated the landfill was “closed,” but through the permitting process it was revealed that the landfill was not entirely closed. Closing the landfill has required additional permits and the involvement of a number of public agencies and third party evaluations, resulting in an extended and complex permitting process. A key permit that allows development on landfill sites, the Closure-Post Closure Land Use

³ The engine cost represented herein equals 35% of the total project engine cost as it is equal to the amount of power and heat which is required for the Project itself. The balance of power produced will be sold to PG&E, and therefore the cost associated with that power production is not being included in the amount of expenditures subject to sales and use tax exclusion. This is consistent with CAEATFA evaluation and determination of Qualified Property.

Development (“CPCLU”), has been partially obtained, allowing the applicant to begin site grading. The final CPCLU is expected to be obtained in November 2012.

Staff Evaluation

Zero Waste has represented that a time extension until April 30, 2013 will allow the Project to move forward. The Applicant has further represented that the permitting delays were unanticipated and could not reasonably be avoided. Granting the waiver will allow the Project to proceed and the state to receive the anticipated environmental and economic benefits that justified the initial approval of the Project. Based on the foregoing, Staff believes that extending the 25% Purchase Requirement is consistent with the intent of the Program, is in the public interest, and advances the purposes of the Program.

Staff Recommendation: Staff recommends that the Board find it is in the public interest and advances the purposes of the Program to extend the 25% Purchase Requirement for Zero Waste Energy Development Company LLC to April 30, 2013 pursuant to Regulations Section 10035(c)(1)(A).

Attachments

- Attachment A: Zero Waste’s Updated Letter Requesting Waiver (October 19, 2012)
- Attachment B: Zero Waste’s Letter Requesting Waiver (September 26, 2012)
- Attachment C: Staff Summary/Project Description approved by the CAEATFA Board on November 15, 2011

**A RESOLUTION OF
CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION
FINANCING AUTHORITY APPROVING A TIME EXTENSION OF THE 25%
PURCHASE REQUIREMENT**

November 13, 2012

WHEREAS, on November 15, 2011 the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority”), a public instrumentality of the State of California, approved a Sales Tax Exclusion (“STE”) in the amount of \$17,156,875 of Qualified Property for **Zero Waste Energy Development Company LLC** (the “Applicant”); and

WHEREAS, within one year of approval by the Authority, the Applicant must make purchases of Qualified Property totaling not less than twenty-five percent (25.0%) of the total amount listed in the approval resolution;⁴

WHEREAS, upon a finding that it is in the public interest and advances the purposes of the Program, the Authority may waive the requirement that the Applicant purchase at least twenty-five percent (25.0%) of the Qualified Property within one year of Board Approval;⁵ and

WHEREAS, the Applicant has requested a waiver of the requirement to purchase 25% of the Qualified Property within one year to address unanticipated and unavoidable delays in the Project’s environmental permitting process, and extend the term from November 15, 2012 to April 30, 2013; and

WHEREAS, granting the waiver will allow the Project to proceed and the state to receive the anticipated environmental and economic benefits that justified the initial approval of the Project, thereby advancing both the public interest and the purposes of the Program.

NOW THEREFORE BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority, as follows:

Section 1. The Authority finds that it is in the public interest and advances the purposes of the Program to waive the requirement that the first year purchases of Qualified Property are at least twenty-five percent (25.0%) of the total amount listed in the approved resolution, and to extend the term to April 30, 2013.

Section 2. This resolution shall take effect immediately upon its passage.

⁴ California Code of Regulations, Title 4, Section 10035(c)(1)

⁵ California Code of Regulations, Title 4, Section 10035(c)(1)(A)



October 19, 2012

Sent by Mail and e-mail

Cheryl Ide
Associate Treasury Program Officer
CAEATFA
915 Capitol mall, Room 457
Sacramento, CA 95814

Dear Ms. Ide:

I am writing in response to your e-mail of October 12, 2012 requesting additional information on our project and the delays in construction.

I enlisted the help of our project manager in answering your questions. She has prepared an extensive summary of the permits required and the activities involved, some of which result from the fact that the project is being constructed on a closed landfill. This summary is enclosed.

At this point the grading is essentially complete and the only remaining permits to be obtained are items 20-27 on the enclosed Project Permit Status. Receipt of these last few permits is imminent.

At this point the grading for the project is essentially complete. We expect to have the final permits by early November at which time construction will commence.

We have consulted with our Construction Manager and the Project Manager of our construction contractor and they both feel comfortable with the March 15, 2013 extension date for expenditure of 25% of the amount of the qualified property. However, since we will be commencing construction near the beginning of winter I have some concerns about delays caused by weather conditions. I would request that you amend our previous request to April 30, 2013 to prevent the necessity for further extension.

If you have any questions about this letter or the enclosures please call me at (408) 938-4901 or send an e-mail to dond@greenwaste.com.

Thank you again for your consideration of our request.

Yours very truly,

A handwritten signature in black ink that reads "Donald J. Dean". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Donald J. Dean
Chief Financial Officer

Cc: Tony Cone, Westhoff, Cone & Holmstedt

Enclosure

Zero Waste Energy Development Company
Dry Fermentation Anaerobic Digestion Facility, San Jose, CA

PROJECT PERMIT STATUS: As-of October 19, 2012

	Permit Issued or Approval Required	Awarding or Approving Agency	Date Received or Expected to be Received	Description of the Action or Need for Action Cause of Delay (as applicable)
1	Statement of Exemption from CEQA for Geologic Borings for Site Investigation	City of San Jose	Issued November 2009	<i>No significant or unexpected delay between request for review of categorical exemption from CEQA and issuance of the determination that the activity was exempt.</i>
2	Right of Entry	City of San Jose	Executed November 2009	This document was required in order for ZWED to have access rights to the site in advance of executing the lease to complete site investigation and geotechnical investigation. It took approximately 2 months to get the Right of Entry drafted, reviewed and executed.
3	Biological Clearance for Geologic Borings for Site Investigation	City of San Jose	Obtained February 2011	<i>No significant or unexpected delay between request for clearance and the date when clearance was obtained.</i>
4	Drilling Permit for Geologic Borings for Site Investigation	Santa Clara Valley Water District	Issued February 2011	<i>No significant or unexpected delay between submittal of application and issuance of permit.</i>
5	Right of Entry – Amended & Extended	City of San Jose	Executed February 2011	This document was amended and extended in order to allow ZWED continued access rights to the site in advance of executing the lease to complete surcharging activities.
6	RWQCB Erosivity Waiver	Regional Water Quality Control Board (RWQCB)	Issued March 2011	No significant or unanticipated delay between submittal of the request and issuance of the waiver.
7	Approval of the Mitigated Negative Declaration (MND) per CEQA.	City of San Jose	June 2011	The researching and drafting of the Initial Study Began in October 2009. It took 20 months from the initiation of the document to final approval. Following approval, a Notice of Determination was filed, beginning a 30-day statute of limitations on litigation. The statute of limitations expired July 21, 2011.

D-6

Agenda Item -- 4.C.1
Application No. 11-SM019

8	Execution of the Long-Term Ground Lease for the Nine Par Site	City of San Jose	June 2011	Negotiations for the Long-term Ground Lease for the Nine Par site began in June 2009. It took 24 months to negotiate and execute the lease.
9	Statement of Exemption from CEQA for Geologic Investigation Work through Surcharging	City of San Jose	Issued July 2011	<i>No significant or unexpected delay between request for review of categorical exemption from CEQA and issuance of the determination that the activity was exempt.</i>
10	Amendment to MND	City of San Jose	Approved December 2011	<i>No significant or unexpected delay between the request to draft the amendment and the finalization of the amendment to present to the San Jose City Council.</i>
11	Issuance of the Special Use Permit	City of San Jose	Issued January 2012	The original application was submitted in April 2010. It took 21 months to issue the permit. Following approval, a Notice of Determination was filed, beginning a 30-day statute of limitations on litigation. The statute of limitations expired January 12, 2012.
12	Approval of Groundwater Monitoring Plan	Regional Water Quality Control Board (RWQCB)	Approved January 2012	<i>No significant or unexpected delay in having the document reviewed and ultimately approved.</i>
13	Administrative Decision on Landfill Closure for Project Area	Regional Water Quality Control Board (RWQCB)	Issued January 2012	When lease negotiations began on the Nine Par Site, the City of San Jose as landowner was confident the landfill had been formally closed and was prepared to write a legal determination. During our process of due diligence and investigation of the site, however, it was determined the landfill was not closed. This step needed to be complete before we could submit for our Grading Permit and submit our application for a Post-Closure Land Use Change. It took more than 30 months of additional site investigation and studies, the RWQCB reviewed our proposal to issue an administrative decision.
14	Approval of the Alternative Means & Methods of Construction (AMMC)	City of San Jose	Approved May 2012	In order to design a building, an occupancy determination must be made that will then inform the Building Type allowable for a structure based on use. In order to demonstrate compliance with Uniform Building Code and demonstrate fire code compliance, an applicant must demonstrate the materials to be used during construction will meet the code. A common way to demonstrate that products (or product components) meet the safety standard is through UL Marks.

				Products that hold the UL Mark have been independently tested and deemed to have met the standard. As the first facility of its kind in the US, many components of the project and products that have been used in Europe had not undergone the extensive and expensive testing required to assign the product a UL Marks. Therefore, we had to submit to the City of San Jose an application for approval of "Alternative Means and Methods of Construction." This process began in late 2009. It took more than 30 months for the City of San Jose to provide the guidance to address how the facility should be constructed to overcome compliance issues.
15	Grading Permit	City of San Jose	Issued May 2012	Design of the grading and drainage plans began in 2009. Due to the complexity of the project and the site, all grading activities on a closed landfill will impact the cap of the landfill so we were required to receive a determination that the landfill was closed before we could submit for our grading permit. Between 2009 and early 2012, our designers worked alongside the City of San Jose and our consultants. It took more than 24 months to design plans that would meet with the approval of all interested regulators. It took more than 30 months to design acceptable plans and receive the Grading Permit.
16	<i>Partial Approval of the Closure-Post Closure Land Use Development*</i>	Local Enforcement Agency (LEA)	Partial Approval (1 of 2) received July 2012	In order to for any development to occur on a closed landfill, a Post Closure Land Use Change (PCLU) must granted; however, in order to submit a PCLU, a landfill must be officially closed. Due to the complexity of the project, LEA required a 3 rd party review be conducted, which is still underway. In order to allow grading activities to begin, the LEA granted partial approval of the PCLU that covered all grading activities <i>except</i> installation of the underground storm drains. *Please see attached Post Closure Land Use Change index that itemizes the information that needed to be finalized (stamped & signed) before being reviewed by the 3 rd party reviewers.
17	<i>Partial Approval of the Closure-Post Closure Land Use Development</i>	Local Enforcement Agency (LEA)	Partial Approval (2 of 2) received September 2012	In order to allow grading activities to be completed, the LEA granted another partial approval of the PCLU that allowed the installation of the underground storm drain system, thus allowing the remaining work under the Grading Permit to be completed.

18	Informal Section 7 Consultation	US Fish & Wildlife Service	October 2012	Delay occurred but we received approval in advance of the scheduled date for the well installation.
19	Address Assignment	City of San Jose	October 2012	<i>No significant or unexpected delay in the application for and assignment of a new street address.</i>
20	Final Approval of the Closure-Post Closure Land Use Development Application	Local Enforcement Agency (LEA)	Anticipated in late October 2012	We have provided the LEA and the 3 rd party reviewers all the documentation needed to complete the final approval of the PCLU. The 3 rd party reviewers will write a letter to LEA indicating they recommend approval and then the LEA will issue a letter to ZWED approving the application. The original application was submitted for third party review in March and we are still awaiting final approval.
21	Preliminary Jurisdictional Determination	US Army Corps of Engineers (ACoE)	Anticipated in late October 2012	The original request for a jurisdictional determination based on the completed wetland delineation was made in November, 2011. After multiple requests for a site visit and confident with our wetland delineation boundaries, we decided to downgrade our request to a Preliminary Jurisdictional Determination in hopes of gaining expediting approvals. It took more than 10 months for our delineation map to be accepted by the ACoE and we are still awaiting formal approval.
22	Right of Entry for Well Installation	City of San Jose	Anticipated October 23, 2012	With regulatory pressure on the City of San Jose from the Regional Water Quality Control Board, the City of San Jose has committed to executing another Right of Entry for ZWED to access the northern wetland area of the parcel (outside the leased area) to install the evaluation and detection monitoring wells – installation of the wells before October 31, 2012 was a condition of the Administrative Decision on Landfill Closure for Project Area issued by the RWQCB in January 2012.
23	Drilling Permit for Evaluation/Detection Monitoring Wells	Santa Clara Valley Water District	Anticipated October 23, 2012	This is a fairly routine request and the SCVWD is accurate in their estimated time for the review and issuance of routine drilling permits. No significant or unexpected delays anticipated.
24	Public Improvement Plan	City of San Jose	Anticipated in late November, 2012	The Public Improvement Plan (potable water, reclaimed water, sanitary sewer, etc...) was originally submitted in November of 2011 and the City of San Jose was non-responsive until approximately March, 2012. The City then requested the addition of a Sanitary Sewer Line Extension project that was not related to the infrastructure needed for our project. The City was planning the extension and

				determined it would be less costly for ZWED to complete and be reimbursed for the work than for the City to complete the work in the future. Additional delay was caused by this design as well as multiple delayed reviews of the plans. It has taken 12 months to reach agreement on the plans and we anticipate the plans will have all the final signatures required by the end of November 1, 2012.
25	City-Private Developer Construction Agreement	City of San Jose	Anticipated in late November 2012	The City-Private Developer Construction Agreement is the agreement that provides ZWED all the necessary regulatory coverages to complete the public improvements on behalf of the City and then relinquish the infrastructure back to the City for ownership and maintenance. All delays associated with this item mirrored those associated with the Public Improvement Plan. It took 12 months to reach agreement on the Public Improvement Plans to prepare the Construction Agreement and we anticipate the Agreement will be executed by November 1, 2012.
26	Authority To Construct Permit	Bay Area Air Quality Management District	Anticipated early November 2012	In order to begin construction on the building, an Authority to Construct permit must be issued. We submitted our application in February 2012 and anticipate approval in early November 2012.
27	Building Permit	City of San Jose	Anticipated early November 2012	In order to submit our building planset for review, the critical path was resolution on the AMMR, which took more than 30 months. Once we were on the agenda for approval of the AMMR we were able to submit our building planset for review in April, 2012 under the City's Coordinated plancheck process. Having worked with the City so closely on the AMMR process, the majority of the issues related to the plumbing, electrical and mechanical complexities of the project were resolved at the time of submittal. We anticipate approval of the planset and issuance of the permit in early November, 2012.

OCT 2 '12 AM 11:05



September 26, 2012

Christine Solich, Executive Director
California Alternative Energy and Advanced
Transportation Financing Authority
915 Capital Mall, Room 457
Sacramento, CA 95814

Dear Ms. Solich:

I have received your letter dated September 21, 2012 reminding us of the requirement to have expended 25% of the amount of the qualified property by November 15, 2012. We will be unable to meet that deadline and I am writing to request an extension.

Because of the complexity of the project and the fact that it is being built on a closed landfill site the permitting process has been extended beyond our expectations. We do have all of the discretionary permits and expect to have the building permit in November 2012 at which time the project will proceed quickly to completion.

We will have expended 25% of the amount of the qualified property by March 2013. The project was funded in June 2012 and should be complete and all qualified property purchased by November 2013.

The CAEATFA grant is an important part of our financing for the project. We would appreciate your consideration of an extension of the 25% requirement to March 15, 2013.

If you have any questions about the project or this request please don't hesitate to contact me at (408) 938-4901 or send an e-mail to dond@greenwaste.com.

Thank you for your consideration,

Yours very truly,

A handwritten signature in blue ink that reads "Donald J. Dean".

Donald J. Dean
Chief Financial Officer
Zero Waste Energy Development Company LLC

Cc: Tony Cone, Westhoff, Cone and Holmstedt

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

Request to Approve Project for SB 71 Sales and Use Tax Exclusion (STE)⁶

**ZERO WASTE ENERGY DEVELOPMENT COMPANY LLC
Application No. 11-SM019**

Tuesday, November 15, 2011

Prepared By: *Heather Williams*

SUMMARY

Applicant – Zero Waste Energy Development Company LLC

Location – San Jose (Santa Clara County)

Industry – Biogas Capture & Production

Project – New Biogas Capture & Production Facility

Value of Qualified Property – \$17,156,875

Estimated Sales and Use Tax Exclusion Amount⁷ – \$1,389,707

Estimated Net Benefits - \$2,199,291

Application Score⁸ -

Fiscal Benefits Points:	1,607
<u>Environmental Benefits Points:</u>	<u>975</u>
Net Benefits Score:	2,583
<u>Additional Benefits Points:</u>	<u>15</u>
Total Score:	2,598

Staff Recommendation – Approval

⁶ All capitalized terms not defined in this document are defined in the Program's statute and regulations.

⁷ This amount is calculated based upon the average statewide sales tax rate of 8.1%.

⁸ Point values in the staff summary may not add up correctly due to rounding in the Application worksheet.

THE APPLICANT

Zero Waste Energy Development Company LLC (“Zero Waste” or “Applicant”) was established on February 20, 2009 in California and is headquartered in San Jose, California. Zero Waste is a development company that designs, builds, and operates integrated solid waste facilities throughout North America. Zero Waste recovers material for recycling and reuse, while transforming organic waste into green energy through an anaerobic digestion dry fermentation process.

The ownership structure of Zero Waste is described in Attachment A.

THE PROJECT

Zero Waste plans to construct a facility which will use an anaerobic digestion system to take organic materials, and using a dry fermentation process, produce and capture methane from the controlled composting of those materials. The methane produced will fuel generators; the power from which will be used internally and the excess sold to PG&E. Organic materials for this project will include source separated organics, yard waste and organic mixed materials from mixed waste processing at a small materials recovery facility (MRF) on-site, as well as from other facilities. The first few stages of the process take place in an approximately 75,000 square foot enclosed process facility.

How Dry Anaerobic Digestion Works



Source: WSJ Research

The biogas produced is captured and the air from the entire facility is processed through an air circulation and control system that effectively contains, circulates and exhausts air as necessary through a specially designed bio-filter to control odors. The project will be located adjacent to the Zanker Road Landfill on a site leased from the City of San Jose.



Mixing Hall and Anaerobic Digestion Tunnels



Facility Exterior Perspective

Consistent with CAEATFA policy, the Qualified Property in this Application will be used directly in relation to manufacturing the biogas and for the portion of the power generation used to power the facility. The cost of the excess portion of the power generation sold to PG&E is not included in this Application.⁹

Additionally, in June 2010 California Pollution Control Financing Authority (“CPCFA”) approved an initial resolution for Zero Waste for an issuance of Solid Waste Disposal Revenue Bonds to assist with the financing for the project. Zero Waste has submitted an application for a final resolution which it anticipates will be scheduled for the December 13th, 2011 CPCFA board meeting.

ANTICIPATED COSTS OF QUALIFIED PROPERTY

The anticipated Qualified Property purchases are listed below:

AD System Construction	\$ 4,320,000
Building Systems	2,520,000
Air Handling Systems	660,000
Mechanical/Electrical Installation	1,296,000

⁹ The engine cost represented herein equals 35% of the total project engine cost as it is equal to the amount of power and heat which is required for the Project itself. The balance of power produced will be sold to PG&E and therefore, the cost associated with that power production is not being included in the amount of expenditures subject to sales and use tax exclusion. This is consistent with CAEATFA evaluation and determination of qualified property.

In-Vessel Composting Tunnels Construction	1,800,000
Gas Conversion – Combined Heat and Power Biogas Fueled Engines	532,000
Anticipated Qualified Property purchases continued:	
Nine Par Existing Conditions and Offsites	3,420,000
Passive Methane Collection/Monitoring	360,000
Conveyors and Screens (Bulk Handling Systems Sort System)	855,000
Rolling Stock	990,000
Decompactor and Conveyor	157,500
Screening Plant	225,000
Office Equipment	21,375
Total	<u>\$17,156,875</u>

Note: The Qualified Property purchases reported in the Application and shown here in staff's report are estimated costs. At the termination of the conveyance/reconveyance agreement a finalized Project equipment list will be prepared detailing the value of the Project equipment conveyed and reconveyed and detailing the actual tax benefit realized pursuant to Revenue and Tax Code Section 6010.8. Variations from the costs shown in the Application and in this report may occur prior to the closing due to increased costs of certain components of the Project from original estimates, and other reasons. In addition, such costs may vary after closing due also to increased costs, as well as common design and equipment modifications during construction, differences in equipment due to future changes in law or regulation, or for other reasons.

TIMELINE

Zero Waste has started construction by grading and preparing the site and is currently ordering some equipment. Zero Waste anticipates completing the facility by October 2012.

PROJECT EVALUATION

NET BENEFITS

The total cost of the Qualified Property purchases is anticipated to be \$17,156,875 and the total net benefits are estimated at \$2,199,291 for the Project. The Project received a Total Score of 2,598 points, which exceeds the required 1,000 point threshold and a total Environmental Benefits Score of 975 points, which exceeds the 100 point threshold.

- A. Fiscal Benefits (1,607 points).** The net present value of the total fiscal benefits over the lifetime of the Qualified Property is derived from the Applicant's sales taxes, personal income taxes paid by the firm's employees, firm taxes on profits, property taxes and other indirect fiscal benefits of the Applicant which amounts to an estimated \$2,233,575 resulting in a Fiscal Benefits Score of 1,607 points for the Project.

- B. Environmental Benefits (975 points).** The Project will result in an estimated \$1,355,423 of total pollution benefits over the life of the Facility resulting in an

Environmental Benefits Score of 975 points for the Project. These benefits derive from (a) the production of biomass fuel, which offsets the need for fossil fuel derived sources of energy and (b) a reduction of methane emissions from material that would otherwise be sent to a landfill.

- C. **Additional Benefits (15 of 200 points)**. Applicants may earn up to 200 additional points for their Total Score. The Applicant submitted information and received 15 additional points.
- a. **Permanent Jobs (0 of 40 points)**. The Applicant's Project will support a total of 12 permanent jobs at its Facility. CAEATFA estimates that one (1) of these jobs will be attributable to a marginal increase in jobs created due to the approved STE. Zero points were awarded because the marginal increase in jobs does not meet the required threshold.
 - b. **Construction Jobs (15 of 20 points)**. The Applicant's Project will support a total of 162 construction jobs at its Facility. CAEATFA estimates that approximately 16 of these jobs will be attributable to a marginal increase in jobs created due to the approved STE, resulting in a Construction Jobs score of 15 points for the Project.

STATUS OF PERMITS/OTHER REQUIRED APPROVALS

All local necessary discretionary permits have been obtained.

LEGAL QUESTIONNAIRE

Staff reviewed the Applicant's responses to the questions contained in the Legal Status portion of the Application. The responses did not disclose any information that raises questions concerning the financial viability or legal integrity of this Applicant.

CAEATFA FEES

In accordance with CAEATFA Regulations,¹⁰ the Applicant has paid CAEATFA an Application Fee of \$5,000 and will pay CAEATFA an Administrative Fee up to \$68,627.

¹⁰ California Code of Regulations Title 4, Division 13, Article 2, Section 10036

RECOMMENDATION

Staff recommends approval of Resolution No. 11-SM019 for Zero Waste Energy Development Company LLC's purchase of Qualified Property in an amount not to exceed \$17,156,875 anticipated to result in an approximate sales and use tax exclusion value of \$1,389,707.

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A TITLE
CONVEYANCE AGREEMENT WITH ZERO WASTE ENERGY DEVELOPMENT
COMPANY LLC**

November 15, 2011

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority” or “CAEATFA”) has received the Application of **Zero Waste Energy Development Company LLC** (the “Applicant”), for financial assistance in the form of a conveyance/reconveyance of title agreement (the “Agreement”) regarding tangible personal property for the design, manufacture, production, or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems (“Qualified Property”) as more particularly described in the staff summary and in the Applicant’s Application to the Authority (collectively, the “Project”); and

WHEREAS, the Applicant has requested the Authority to enter into the Agreement transferring title of Project equipment with an estimated cost not to exceed \$17,156,875 over a period of three years; and

WHEREAS, the Agreement will provide that the Applicant will, prior to any use of the Qualified Property, transfer title at no cost to the Authority from time to time as purchases of Qualified Property are made and the Authority will then transfer title back to the Applicant without having taken possession of the Qualified Property; and

WHEREAS, the Applicant believes that this form of financial assistance will enable it to avail itself of the benefits of an exclusion from sales and use taxes relative to the Qualified Property pursuant to California Revenue and Taxation Code Section 6010.8; and

WHEREAS, approval of the terms of the Agreement and authority for the Executive Director, Deputy Executive Director, or Chair of the Authority to execute the necessary documents to effectuate the Agreement is now sought;

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority, as follows:

Section 1. The Project constitutes a “project” within the meaning of Public Resources Code Section 26003(g)(2).

Section 2. The requested conveyance agreement constitutes “financial assistance” within the meaning of Public Resources Code Section 26003(e)(2).

Section 3. The Applicant is a “participating party” within the meaning of Public Resources Code Section 26003(f).

Section 4. The Executive Director, Deputy Executive Director, or Chair of the Authority (the “Authorized Signatories”) are hereby authorized for and on behalf of the Authority to approve any changes to the Project as the Executive Director shall deem appropriate, provided that the amount of the Qualified Property to be purchased may not be increased above the amount approved by the Authority.

Section 5. The proposed form of the Agreement between the Applicant and the Authority, as filed with the Authority prior to this meeting, is hereby approved. The Authorized Signatories are hereby authorized and directed, for and on behalf and in the name of the Authority, to execute, acknowledge and deliver to the Applicant the Agreement in substantially the form filed with or approved by the Authority, with such insertions, deletions or changes therein as the Authorized Signatory executing the same may require or approve, and with particular information inserted therein in substantial conformance with the staff summary and in the Applicant’s Application to the Authority, such approval to be conclusively evidenced by the execution and delivery thereof. The Authority understands and agrees that pursuant to the terms of the Agreement, the obligations of the Applicant may, under some circumstances, be carried out or assumed by a successor or assignee entity, or by an affiliate of the Applicant.

Section 6. Each of the Authorized Signatories, acting alone, is hereby authorized and directed to do any and all ministerial acts, including (without limitation) the execution and delivery of any and all documents and certificates they may deem necessary or advisable in order to consummate the Agreement and otherwise effectuate the purposes of this resolution.

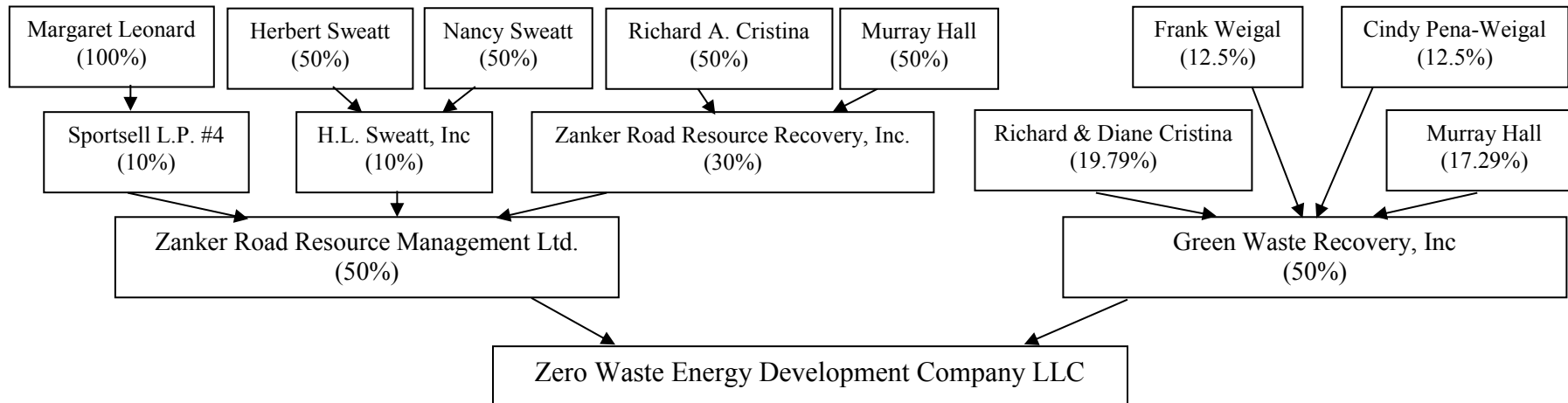
Section 7. The Applicant shall assure CAEATFA that all Qualified Property conveyance pursuant to the Agreement shall be installed, maintained and operated in compliance with all applicable local, state and federal laws.

Section 8. The Agreement shall only apply to Qualified Property that the Applicant certifies will be installed, maintained and operated at facilities within the State of California.

Section 9. The adoption by the Authority of this Resolution for the Applicant shall not be referred to in any application before any governmental agency as evidence of the feasibility, practicality or suitability of the Project or in any application for any required permission or authority to acquire, construct or operate the Project.

Section 10. This Resolution is effective immediately and will remain in full force and effect unless the Regulatory Agreement, as defined in CAEATFA Regulations Section 10035(a), is not executed within thirty (30) days of the date of this Resolution. The Executive Director may extend the thirty days if necessary.

The ownership structure, including major shareholders (10.0% or greater) of Zero Waste Energy Development Company LLC is as follows:



The corporate officers of Zero Waste Energy Development Company LLC are:

Don Dean, Chief Financial Officer
Tracy Adams, Chief Administrative Officer