

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

***Consideration of Recology East Bay’s Request to Approve a Time Extension for the 25%  
Purchase Requirement and the Three Year Initial Term of the Title Conveyance Agreement***

**Tuesday, May 20, 2014**

Prepared By: *Alejandro Ruiz*

**Applicant** – Recology East Bay

**Location** – Oakland, Alameda County

**Industry** – Biomass Processing and Fuel Production

**Project** – New Onsite Food Scrap Pre-Processing Facility for Existing Biomass Processing and  
Fuel Production Facility

**Value of Qualified Property** – \$3,703,090

**Estimated Sales and Use Tax Exclusion Amount**<sup>1</sup> – \$336,981

**Amount of Time Requested:**

- 12 months (March 31, 2015) for the 25% Purchase Requirement  
(42 months from the date of initial CAEATFA Board approval)
- 12 months (June 28, 2017) for the Initial Term of the Title Conveyance Agreement  
(Six years from the date of initial CAEATFA Board approval)

**SUMMARY**

On June 28, 2011 the CAEATFA Board approved a sales and use tax exclusion (“STE”) for Recology East Bay (“Recology” or the “Applicant”) for the purchase of \$3,703,090 of Qualified Property for a new onsite food scrap pre-processing facility in Oakland (Alameda County) for an existing biomass processing and fuel production facility (the “Project”).

The STE Program (“Program”) requires that the Applicant purchase 25% of the total approved Qualified Property within the first year. The initial 25% purchase requirement was waived by the CAEATFA Board on June 19, 2012 and extended an additional 18 months from June 28, 2012 to December 31, 2013. The second 25% purchase requirement was waived by the CAEATFA Board on December 17, 2013 and extended an additional three months from December 31, 2013 to March 31, 2014.

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<sup>1</sup> As presented in the staff summary from June 28, 2011, equivalent to a sales tax rate of 9.1%.

Additionally, the Master Regulatory and Title Conveyance Agreement’s (“Agreement”) initial term provides the Applicant with three years from the date of Board Approval to utilize its STE award. The initial term of the Agreement can be extended by the Board upon a finding that an extension is in the public interest and advances the purposes of the Program.<sup>2</sup> The first extension of the initial term was approved on December 17, 2013 and extended the initial term from June 28, 2014 to June 28, 2016.

According to the Applicant, as of March 31, 2014, Recology has purchased, but not conveyed, \$739,798 of Qualified Property (19.9% of the total award amount).

This will be the Applicant’s third request for an extension of the 25% purchase requirement and its second request for an extension of the initial term of the Agreement.

### **About the Applicant**

Recology was incorporated on June 29, 1998 in California and is headquartered in Oakland, California. Recology manufactures biomass from food scraps.

### **Project Description**

Recology’s application approved by the CAEATFA Board was for the pre-processing of food scraps to be used in biofuel production. Recology has provided biomass material (food scraps) as feedstock for the East Bay Municipal Utility District (EBMUD) for the generation of electricity and heat at the Municipal Waste Water Treatment Plant (WWTP) in West Oakland, California. The food scraps are collected from area restaurants and grocery stores through collection programs that keep the materials from going to landfills. As collected, the food scraps are too large and/or contaminated to be fed directly into the digester for purposes of generating biogas (methane). Recology collects the food scraps and pre-processes them in preparation for anaerobic digestion. EBMUD then utilizes the processed biomass in an anaerobic digester to create biogas to generate energy.

Pre-processing is currently done at a Recology facility in Vacaville and the processed material is transported to the WWTP for anaerobic digestion. Recology plans to build a food scrap pre-processing facility within the WWTP footprint. Co-locating the pre-processing facility by the anaerobic digesters on the WWTP reduces the travel required to move the food scraps. The food scraps pre-processing facility will be built, owned and operated by Recology on a portion of the existing WWTP under a land-lease agreement. At the ultimate capacity, the food scraps digestion project will generate enough renewable energy – approximately 2.5 megawatts of power – to power 3,700 California households.

### **Waiver Request**

Recology has requested that the 25% Purchase Requirement be extended from March 31, 2014 to March 31, 2015 and that the initial term of the Agreement be extended from June 28, 2016 to

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<sup>2</sup> Regulation Section 10035(b)(1)(A)

June 28, 2017 in order to allow enough time to complete construction of the Project. Recology has experienced delays in commencing project construction due to unanticipated project design changes and the long review and permitting process associated with the multi-agency jurisdiction over the project site.

Recology experienced unanticipated delays in December 2013 when a geotechnical engineering firm and drilling company tested the Project site subsurface soils to verify the design engineer's assumptions. These tests revealed that the subsurface soils were weaker than anticipated, which required a redesign of the Project's concrete slab. Moreover, the tests also revealed that some of the subsurface soils have metal concentrations that exceed levels allowed for the soil to be reused onsite. The redesign of the Project that addresses these unanticipated soil factors was completed at the end of January 2014. After the completion of the redesign, the revised plans had to be reviewed and approved by the multiple entities overseeing the Project site in order to approve a building permit for Recology.

At the time of the December 2013 extension request, Recology assumed that a building permit for the work described above was not required. Subsequently, it was notified that a building permit is required. The Project's three oversight entities – EBMUD, the Port Authority, and the City of Oakland ("Oakland") – each had to review and approve a certain aspect of the revised plan for Recology to receive the building permit. EBMUD reviewed the plan, including the environmental aspect of how to handle the tainted soil, in January 2014. The Port Authority reviewed the revised plan in February 2014. Immediately after the Port Authority's approval, Oakland began its review and issued the building permit on March 31, 2014.

Additionally, Recology had to await the approval of its Registration Permit by the Alameda County Department of Environmental Health, the local enforcement agency. This permit is intended for short-term pilot projects and will cover the Project for the first phase of construction. Recology received the Registration Permit on March 31, 2014.

Recology initiated the first phase of its Project when the contractor began demolition activities on April 21, 2014. During the first phase of construction, Recology anticipates that it will acquire \$935,000 worth of Qualified Property.

The second phase of construction will commence in the first quarter of 2016. The Applicant plans to acquire the remaining Qualified Property during this phase. The second phase of construction will occur under a Solid Waste Facility Permit from CalRecycle, which the Applicant has applied for and expects to receive in June 2015. The Applicant may also have to apply for an air permit from the Bay Area Air Quality Management District should there be a change in the stationary equipment. Additionally, Recology will also have to acquire a building permit for the second phase in March 2016.

As of March 31, 2014, Recology represents that it has purchased, but not yet conveyed, approximately \$739,798 worth of Qualified Property.

**Staff Evaluation**

Recology has indicated that the requested time extensions will allow for the completion of the Project as approved on June 28, 2011. It appears as though Recology has made progress in its Project given the fact that construction activities commenced in April 2014. Moreover, Recology appears to be committed to the Project as demonstrated by the continued acquisition of additional Qualified Property since December 2013. Extending the 25% Purchase Requirement and the initial term of the Agreement will allow Recology to complete construction of its Project and acquire the remaining Qualified Property. Based on the information presented, staff believes that extending the term of the Agreement is in the public interest and advances the purpose of the original award.

**Staff Recommendation**

Staff recommends that the Board approve Recology's request to extend the 25% Purchase Requirement to March 31, 2015 and the initial term of the Agreement to June 28, 2017 as it is in the public interest and advances the purpose of the original award.

**Attachments**

Attachment A: Recology's Letter Requesting Waiver on May 6, 2014

Attachment B: Staff Summary on December 17, 2013

**A RESOLUTION OF THE  
CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION  
FINANCING AUTHORITY APPROVING A TIME EXTENSION OF THE 25%  
PURCHASE REQUIREMENT AND THE INITIAL TERM FOR THE MASTER  
REGULATORY AND TITLE CONVEYANCE AGREEMENT FOR RECOLOGY EAST  
BAY**

**May 20, 2014**

WHEREAS, on June 28, 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 \$3,703,090 of Qualified Property for **Recology East Bay** (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;

WHEREAS, within three years of the approval by the Authority, the Applicant must make all purchases of the total amount of Qualified Property listed in the approval resolution (Regulations Section 10035(b)(1));

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 all purchases of Qualified Property be made within three years of Application approval (Regulations Section 10035(b)(1)(A));

WHEREAS, the Applicant has requested a waiver of the requirement to purchase 25% of Qualified Property within the first year, to address unanticipated design changes and permitting delays, and requests extension of the term from March 31, 2014 to March 31, 2015;

WHEREAS, the Applicant has requested a waiver of the requirement to purchase all of the Qualified Property within three years, to address unanticipated design changes and permitting delays, and requests extension of the term from June 28, 2016 to June 28, 2017; 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 in accordance with the law, 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 approval resolution, and to extend the term to March 31, 2015.

**Agenda Item – 4.B**  
**Application No. 11-SM005**

Section 2. The Authority finds that it is in the public interest and advances the purposes of the Authority to extend the initial term of the Agreement to June 28, 2017.

Section 3. This resolution shall take effect immediately upon its passage.



**Attachment A: Recology's Letter Requesting Waiver**

May 6, 2014

Deana J. Carrillo, Executive Director  
California Alternative Energy & Advanced Transportation Financing Authority  
915 Capitol Mall, Room 457  
Sacramento, CA 95814

**Re: SB 71 Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax Exclusion Program – 25% Purchase Requirement Compliance for Recology East Bay**

Dear Ms. Carrillo:

Thank you for granting us the previous two extensions. In order to comply with CAEATFA's requirement that Recology purchase twenty-five percent of the total Qualified Property approved for a sales and use tax exclusion, Recology requests a final extension of the CAEATFA 25% Expenditure Obligation from March 31, 2014 to March 31, 2015 and the initial term of the master regulatory and title conveyance agreement from June 28, 2016 to June 28, 2017.

In addition to the complexities and Here are the specifics that caused us to request a third and final extension:

1. La November, we had engineering drawing and plan to build improvements at EBMUD. The first item of work to be performed was to verify the design engineer's assumptions for subgrade soil conditions. This work was performed in December by employing a Geotechnical Engineering firm and a drilling company to drill six borings and test the subsurface soils.

Results of this investigation indicated that the subsurface soils are less competent than assumed for the design. These weaker soils required a redesign of the concrete slab.

Furthermore, the investigation also revealed that some of the subsurface soils have metal concentrations that exceed the concentrations levels allowed for onsite reuse of these soils.

The redesign of the project was completed by the end of January. Some of the elements of the redesign of the project included a thicker slab (thickness 8" vs. 6"), a thicker subgrade section (24" vs. 6"), and proper management of disturbed onsite soils (testing and potential disposal vs. onsite reuse).

These redesign elements are costly additions to the project and required suitable designing to come up with the most safe and effective way of meeting the project needs.

2. During the December request for extension, we believed that a building permit for this work would probably not be needed, and if one was needed, it could be obtained over the counter in a short time period.

Because the property has three overseeing agencies (Port Authority, City of Oakland, and EBMUD), a permit from the City is required following plan approval of the other two agencies. The revised plans

**Agenda Item – 4.B**  
**Application No. 10-SM026**

were reviewed by EBMUD during development in January and the completed building plans were submitted to the Port Authority in early February. Two weeks later, those approved plans were submitted to the City, which issued the building permit on March 31st.

3. MUD insisted that we not begin construction work until the State issued registration permit was completed and issued. We were issued our registration permit while the slab redesign issues were resolved.
4. The contractor began site work (demolition activities) on April 21st, following coordination and review of the contractor's proposed means and methods for the work by EBMUD.
5. committed to the 50% hiring local in Oakland which required additional time and effort.

After the extraordinary delays in receiving inclusion of the planned facility in the City of Oakland's Non-Disposal Facility Element (NDFE), Recology continued to experience delay in receiving the building permit from City of Oakland and the Port of Oakland. The site for the future facility is located in an area where two local governments, City of Oakland and the Port of Oakland, have overlapping jurisdiction. We have encountered delays due to the limited staffing resources of these two agencies and their interdependent and sometimes contradictory regulations. In addition, the site is leased by EBMUD and located on an old army base added environment plans submission and sign off by EBMUD and issues managing the soil contaminations and proper disposal. We are therefore requesting a third and final extension on the 25% purchasing requirement and the initial term.

The first phase of construction will occur under a Registration Permit which has been approved by LEA on March 31, 2014.

The second phase of construction will occur under a full Solid Waste Facility Permit (SWFP) for a large volume transfer station. This permit will be issued through CalRecycle and we anticipate receiving this permit in first quarter of 2015. The Solid Waste Facility Permit is nearly the last step required to break ground for the second phase of the project. We may also need to obtain a permit from the Bay Area Air Quality Management District (BAAQMD) the air district, which we will apply for concurrently. The air permit may be needed should there be a change in the stationary equipment or on-site operations technology selected.

Despite the unforeseen delays, we are glad to notify you that we have made significant progress in permitting the facility. Recology received inclusion into the City of Oakland Non Disposal Facility Element (NDFE), approval from the Alameda County Waste Management Authority (StopWaste) and completed our application for a Solid Waste Facility Permit (SWFP) from CalRecycle. Received the Building Permit from City of Oakland and the Port of Oakland; EBMUD has signed off all the necessary permits and we have started construction on April 21, 2014 by an Oakland-based contractor, in accordance with decision to support the economy in California.

Additionally, we have purchased elements of the preprocessing system for \$739,798 and the costs of construction materials of \$254,600, totaling \$995,000 which we are submitting for conveyance once the extension is granted.



**Agenda Item – 4.B**  
**Application No. 10-SM026**

Given the delays we have experienced to date, and the complexity of the location on land leased by EBMUD and on the old Oakland Army base, the time required for soliciting bids, permitting and approval by EBMUD and building the facility, our procurement schedule has been revised in anticipation of further delays and we ask for an additional 1 year extension of the initial term to June 28, 2017.

The new estimated permitting timeline is outlined below:



**Received**  
June 6, 2012

**Approved**  
February 5, 2013

**Approved**  
September 25, 2013

**Approved**  
March 31, 2014

Expected approval  
in June, 2015

Expected March, 2016

Equipment	Total Cost	Project Allocation	Project Cost
Screen	228,998	100%	228,998
Shredder & conveyer belts	510,800	100%	510,800
Bioseparator, control system & chain belt conveyer feeder	1,800,000	100%	1,800,000
Screw conveyer	250,000	100%	250,000
Polisher and slurry tanks	1,000,000	100%	1,000,000
Site construction materials	254,600	100%	254,600

The total value of the Qualified Property for the first phase of the project will be \$995,000.

Thank you for your assistance with this process and review of our request for an extension. We look forward to your response.

Sincerely,

Mark Lomele  
EVP & Chief Financial Officer

**Attachment B: Staff Summary at Board Approval**

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

*Request to Approve Project for SB 71 Sales and Use Tax Exclusion (STE)<sup>3</sup>*

**RECOLOGY EAST BAY  
Application No. 11-SM005**

**Tuesday, June 28, 2011**

Prepared By: *Heather Williams*

**SUMMARY**

**Applicant** – Recology East Bay

**Location** – Oakland, Alameda County

**Industry** – Biomass Processing and Fuel Production

**Project** – New Onsite Food Scrap Pre-Processing Facility for Existing Biomass Processing and Fuel Production Facility

**Value of Qualified Property** – \$3,703,090

**Estimated Sales and Use Tax Exclusion Amount<sup>4</sup>** – \$336,981

**Estimated Net Benefits** - \$281,113

**Application Score -**

Fiscal Benefits Points:	1,504
<u>Environmental Benefits Points:</u>	<u>330</u>
<b>Net Benefits Score:</b>	<b>1,834</b>
<u>Additional Benefits Points:</u>	<u>15</u>
<b>Total Score:</b>	<b>1,849</b>

**Staff Recommendation** – Approval

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<sup>3</sup> All capitalized terms not defined in this document are defined in the Program’s statute and regulations.

<sup>4</sup> This amount is calculated based off of the average statewide sales tax rate of 9.1%.

## **THE APPLICANT**

Recology East Bay (“Recology” or “Applicant”) was incorporated on June 29, 1998 in California and is headquartered in Oakland, California. Recology manufactures biomass from food scraps.

Recology Inc. owns Recology East Bay. Recology Inc. is owned by an Employee Stock Ownership Plan.

The corporate officers of Recology are:

Michael Sangiacomo, Chief Executive Officer

George McGrath, Chief Operating Officer

Mark Lomele, Chief Financial Officer

Art Cimento, Chief Development Officer

## **THE PROJECT**

Since 2003, Recology has provided biomass material (food scraps) as feedstock for the East Bay Municipal Utility District (EBMUD) for the generation of electricity and heat at the Municipal Waste Water Treatment Plant (WWTP) in West Oakland, California. The food scraps are collected from area restaurants and grocery stores through collection programs that keep the materials from going to landfills. As collected, the food scraps are too large and/or contaminated to be fed directly into the digester for purposes of generating biogas (methane). Recology collects the food scraps and pre-processes them in preparation for anaerobic digestion. EBMUD then utilizes the processed biomass in an anaerobic digester to create biogas to generate energy.

Pre-processing is currently done at a Recology facility in Vacaville and the processed material is transported to the WWTP for anaerobic digestion. This process requires Recology to move the unprocessed food scraps from a transfer station in San Francisco to Vacaville for pre-processing and back to Oakland for processing and digestion to generate energy, roughly 100 miles per trip cycle.

Recology plans to build a food scrap pre-processing facility within the WWTP footprint. Co-locating the pre-processing facility by the anaerobic digesters on the WWTP reduces the long-haul travel required to move the food scraps. The food scraps pre-processing facility will be built, owned and operated by Recology on a portion of the existing WWTP under a land-lease agreement. EBMUD has an existing food scraps processing facility, which was recently approved for expansion to treat up to 250 tons per day of pre-processed food scraps. The pre-processing building, ancillary facilities, processing systems, scale house and office space would occupy approximately 1.4 acres of land on the property. At the ultimate capacity, the food scraps digestion project will generate enough renewable energy – approximately 2.5 megawatts of power – to power 3,700 California households.

**ANTICIPATED COSTS OF QUALIFIED PROPERTY**

The anticipated Qualified Property purchases are listed below:

Building shell and pad	\$1,569,100
Scale house and scales	167,640
Pipes	173,000
Water connections	37,000
Mobile equipment, except dump trucks (Bobcat, loader, excavator)	461,000
Stationary equipment (conveyors, screens, grinders, fuel tank, debris boxes)	908,000
Trucks – two end dumps	152,000
Office supplies and uniforms (safety vests, glasses, gloves, masks, boots)	27,350
Replacement parts for mobile and stationary equipment	<u>208,000</u>
<b>Total</b>	<b><u>\$3,703,090</u></b>

*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**

The pre-processing facility has been designed and the Applicant has begun the Environmental Impact Review (EIR) process. Construction of the facility is anticipated to start in January 2012, and operations are scheduled to commence between May and August of 2012.

**PROJECT EVALUATION**

**NET BENEFITS**

The total cost of the Qualified Property purchases is anticipated to be \$3,703,090 and the total net benefits are valued at \$281,113 for the Project. The Project received a Total Score of 1,849 points, which exceeds the required 1,000 point threshold and a total Environmental Benefits Score of 330 points, which exceeds the 100 point threshold.

- A. **Fiscal Benefits (1,504 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 \$506,852, resulting in a Fiscal Benefits Score of 1,504 points for the Project.

- B. Environmental Benefits (330 points).** The Project will result in \$111,243 of total pollution benefits over the life of the Facility resulting in an Environmental Benefits Score of 330 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 8 permanent jobs at its Facility. CAEATFA estimates that approximately one 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 38 construction jobs at its Facility. CAEATFA estimates that approximately 4 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**

The facility requires solid waste and air permits. The process for obtaining these is estimated to be six to nine months after the environmental impact report is reviewed and approved. Recology anticipates these permits will be granted by November or December of 2011.

## **LEGAL QUESTIONNAIRE**

Staff reviewed the Applicant's responses to the questions contained in the Legal Status portion of the Application. The Executive Director, in consultation with legal counsel has determined that the legal issues disclosed do not affect the financial viability or legal integrity of the Applicant.

**CAEATFA FEES**

In accordance with CAEATFA Regulations,<sup>5</sup> the Applicant has paid CAEATFA an Application Fee of \$2,484.99 and will pay CAEATFA an Administrative Fee of \$15,000.

**RECOMMENDATION**

Staff recommends approval of Resolution No. 11-SM005 for Recology East Bay's purchase of Qualified Property in an amount not to exceed \$3,703,090 anticipated to result in an approximate sales and use tax exclusion value of \$336,981.

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<sup>5</sup> California Code of Regulations Title 4, Division 13, Article 2, Section 10036

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A TITLE  
CONVEYANCE AGREEMENT WITH RECOLOGY EAST BAY**

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority” or “CAEATFA”) has received the Application of **Recology East Bay** (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 \$3,703,090 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.



**Attachment C: Staff Summary on June 19, 2012 for the 25% Waiver Request**

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

***Consideration of Recology East Bay's Request to Waive a 25% Purchase Requirement under  
the SB 71 Program***

**Tuesday, June 19, 2012**

Prepared By: *Heather Williams*

**Applicant** – Recology East Bay

**Location** – Oakland, Alameda County

**Industry** – Biomass Processing and Fuel Production

**Project** – New Onsite Food Scrap Pre-Processing Facility for Existing Biomass Processing and  
Fuel Production Facility

**Value of Qualified Property** – \$3,703,090

**Estimated Sales and Use Tax Exclusion Amount<sup>6</sup>** – \$336,981

**Amount of Time Requested:** 18 months (December 31, 2013)

**SUMMARY**

Recology East Bay's ("Recology" or the "Applicant") Application was approved by the CAEATFA Board on June 28, 2011 for the purchase of \$3,703,090 in Qualified Property for a new onsite food scrap pre-processing facility in Oakland, Alameda County for an existing biomass processing and fuel production facility. The SB 71 Program ("Program") requires that Recology purchase 25% (\$925,772.50) of the total approved Qualified Property within the first year (Regulation Section 10035(c)(1)), the "25% Purchase Requirement." 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 it is in the public interest and advances the purposes of the Program (Regulation Section 10035(c)(1)(A)).

As of June 1, 2012 Recology has not conveyed any Qualified Property. On May 8, 2012, CAEATFA staff sent the Applicant a courtesy reminder of the 25% Purchase Requirement. Recology responded by requesting an extension of the 25% Purchase Requirement to December 31, 2013 to accommodate unforeseen delays in the Project's permitting process (Attachment A).

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<sup>6</sup> This amount is calculated based off of the average statewide sales tax rate of 9.1% at the time the Application was approved by the Board. The current anticipated STE is \$299,950, calculated at 8.1%.

## **About the Applicant**

Recology was incorporated on June 29, 1998 in California and is headquartered in Oakland, California. Recology manufactures biomass from food scraps.

## **Project Description**

Recology's Application approved by the CAEATFA Board was for the pre-processing of food scraps to be used in biofuel production. Recology has provided biomass material (food scraps) as feedstock for the East Bay Municipal Utility District (EBMUD) for the generation of electricity and heat at the Municipal Waste Water Treatment Plant (WWTP) in West Oakland, California. The food scraps are collected from area restaurants and grocery stores through collection programs that keep the materials from going to landfills. As collected, the food scraps are too large and/or contaminated to be fed directly into the digester for purposes of generating biogas (methane). Recology collects the food scraps and pre-processes them in preparation for anaerobic digestion. EBMUD then utilizes the processed biomass in an anaerobic digester to create biogas to generate energy.

Pre-processing is currently done at a Recology facility in Vacaville and the processed material is transported to the WWTP for anaerobic digestion. Recology plans to build a food scrap pre-processing facility within the WWTP footprint. Co-locating the pre-processing facility by the anaerobic digesters on the WWTP reduces the travel required to move the food scraps. The food scraps pre-processing facility will be built, owned and operated by Recology on a portion of the existing WWTP under a land-lease agreement. At the ultimate capacity, the food scraps digestion project will generate enough renewable energy – approximately 2.5 megawatts of power – to power 3,700 California households.

## **Waiver Request**

Recology has requested a waiver of the 25% Purchase Requirement due to a delay in obtaining Project permits, which the Applicant represents is a result of a change in regulations and understaffing at the local authority level.

According to the Applicant, there were significant delays in receiving a Development Permit from the Port of Oakland due to the department being understaffed as well as the Port's request to be included as a responsible agency in the Environmental Impact Review (EIR), requiring the certified EIR to be amended. Additional delays were related to the Port's review of the California Environmental Quality Act (CEQA) document.

Additionally, the Applicant represents there were setbacks in the inclusion of the planned facility in the City of Oakland's Non-Disposal Facility Element (NDFE); a change in the state regulations effective January 1, 2012 pertaining to the process for amending a NDFE, which delayed the process by which the City of Oakland reviewed and approved new facilities.

Recology recently learned that the City of Oakland did not review or comment on the EIR in 2011, prior to certification and has therefore requested additional information on how the facility intends to reduce air emissions, specifically particulate matter.

Permitting delays caused a project delay for Recology of ten months. As a result, Recology has delayed purchasing two components of its system that it had planned to purchase in June of this year. Recology has entered into an agreement to procure one element of the preprocessing system after a 30-day trial period. Components of the system have been shipped and are on the way to Recology facilities. Recology anticipates completing the procurement process for this component by mid-August of this year.

### **Staff Evaluation**

According to the Program's evaluation process at the time of initial Board approval, the Project is anticipated to produce a net benefit of an estimated \$281,113 with an anticipated fiscal benefit of \$506,851 and anticipated environmental benefit of \$111,243 over the life of the equipment (weighted average of 14.01 years). The approved Project is anticipated to support a total of 8 permanent jobs and 38 temporary construction jobs.

Recology has represented that an 18 month time extension will allow the Project to move forward. Recology has further represented that the delays in the permitting process and purchasing equipment were unanticipated and could not be reasonably avoided. Recology has also represented that the Project remains substantially the same as it was at the time of initial Board Approval. 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 and grant such extension to December 31, 2013 pursuant to Regulations Section 10035(c)(1)(A).

### **Attachments**

Attachment A: Recology's Letter Requesting Waiver dated June 6, 2012

Attachment B: Staff Summary/Project Description approved by the CAEATFA Board on  
June 28, 2011

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

**June 19, 2012**

WHEREAS, on June 28, 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 \$3,703,090 of Qualified Property for **Recology East Bay** (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 (Regulations Section 10035(c)(1));

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 Qualified Property within one year of Board Approval (Regulations Section 10035(c)(1)(A)); and

WHEREAS, the Applicant has requested a waiver for the requirement to purchase 25% of Qualified Property within one year to address unanticipated and unavoidable delays in the Project’s permitting process, and extend the term from June 28, 2012 to December 31, 2013; and

WHEREAS, granting the waiver will allow the project to proceed and the state to receive anticipated environmental and economic benefits that justified the initial approval of the project in accordance with the law, 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 approval resolution, and extend the term to December 31, 2013.

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



June 6, 2012

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

**Re: SB 71 Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax  
Exclusion Program – 25% Purchase Requirement Compliance for Recology East Bay**

Dear Ms. Solich:

In order to comply with CAEATFA's requirement that Recology purchase twenty-five percent of the total Qualified Property approved for a sales and use tax exclusion by June 28, 2012, Recology requests an extension of the CAEATFA Expenditure Obligation to December 31, 2013.

Due to extraordinary delays receiving our Development Permit from the Port of Oakland and setbacks in the inclusion of the planned facility in the City of Oakland's Non-Disposal Facility Element (NDFE), Recology has seen this project delayed by ten months. There was a change in the state regulations, effective January 1, 2012 pertaining to the process for amending an NDFE, which originally delayed the process by which City of Oakland reviewed and approved new facilities. Recology recently learned that the City of Oakland did not review or comment on the EIR in 2011, prior to certification and has therefore requested additional information on how the facility intends to reduce air emissions, specifically particulate matter (PM) which is addressed in the attached letter to the City of Oakland, prepared by Recology dated May 21, 2012.

Significant delays in the Port of Oakland's permitting process are due to the department being woefully understaffed, as well as to the Port's request to be included as a responsible agency in the certified EIR. This request required the East Bay Municipal Utility District (EBMUD), the lead agency for the preparation and certification of the EIR, amend the certified EIR. Additional delays are related to the Port's review of the California Environmental Quality Act (CEQA) document. As a result of these holdups, we have delayed purchasing two components of our system that we planned to purchase late June of this year.

We have already entered into an agreement to procure one element of the preprocessing system after a 30-day trial period. Components of the system have been shipped and are on the way to our facilities. We anticipate completing the procurement process for this component by mid-August of this year.

**Agenda Item -- 4.A.1**  
**Application No. 11-SM005**

We anticipate meeting our three year requirement. However, given the delays we have experienced to date, the time required for soliciting bids and building the facility, our procurement schedule has been revised in anticipation of further delays.

The new estimated permitting schedule is outlined below:



- August 31, 2012:      \$450,000 preprocessing system
- December 31, 2013:      \$3.1M building
- April 1, 2014:      \$720,000 mobile equipment (two loaders)
- June 28, 2014:      \$1.3M trucks and balance of equipment

Recology plans to meet our revised schedule through several face-to-face meetings and presentations with the local agencies mentioned above. We have been able to correspond with one of the agencies regarding the best way to expedite the permitting process and that has given us a level of assurance about the revised procurement schedule.

Thank you for your assistance with this process and review of our request for an extension. We look forward to your response.

Sincerely,

Mark Lomele  
Recology Chief Financial Officer and Senior Vice President



May 21, 2012

Ms. Becky Dowdakin  
Solid Waste & Recycling Program Supervisor  
City of Oakland Public Works Agency  
Environmental Services Division  
250 Frank Ogawa Plaza, Suite 5301  
Oakland, CA 94612

**Re: Recology Organic-Rich Materials Preprocessing Facility at EBMUD**

Dear Ms. Dowdakin:

On behalf of Recology East Bay Organics (REBO), this letter responds to the City of Oakland's request on May 11, 2012 for additional information on REBO's Organic-Rich Materials Preprocessing Facility and the facility's efforts to reduce air emissions and specifically particulate matter (PM). As you know, the facility will be located at East Bay Municipal Utility District's (EBMUD) Main Wastewater Treatment Plant at 2020 Wake Avenue in Oakland. As part of the project, a combined Program/Project Environmental Impact Report (EIR) was prepared and certified by the EBMUD Board of Directors on June 28, 2011.

Since certification of the EIR, REBO has further refined the project at the facility, effectively reducing air emissions, including PM, than was originally analyzed and presented in the EIR. These refinements include updating the process to remove one half of the diesel-powered rolling stock. The balance of the processing equipment is powered by electricity.

In addition to complying with all the required EIR Mitigation Measures, additional measures to be undertaken include:

1. Using Recology fleet vehicles that are fueled with B20 fuel. B20 is a biodiesel-petroleum blend in a ratio of twenty to eighty (twenty percent biodiesel). The use of B20 biodiesel results in a ten percent reduction of particulate matter compared to emissions of regular petroleum diesel;
2. Employing the best available technology to control particulate matter for our off-road equipment and Tier 4 technology as it becomes available;
3. Eventually converting our fleet to natural gas vehicles and phasing out the use of diesel vehicles over time. The use of natural gas vehicles will result in reduced air emissions, including PM.
4. Complying with all standard EBMUD construction specifications such as:
  - a) Development of a Dust Control and Monitoring Plan for the REBO facility to control construction related dust; and
  - b) Compliance with equipment and vehicle idling which limits idling of all diesel-fueled commercial vehicles (weighing over 10,000 pounds, both California and non-California based trucks) to five minutes at any location.
5. Recology using hand-outs/brochures prepared by the City of Oakland detailing the appropriate measures and technology to reduce PM to disseminate this information to non-Recology haulers entering the REBO facility.

As a leader in resource recovery and landfill diversion, Recology is committed to sustainability, being a responsible corporate partner, and to reducing our overall impacts. The measures noted above enhance Recology's efforts to reduce air emissions, including PM at the facility and demonstrate Recology's commitment to reducing air emissions.

Thank you for your assistance with this project. If you have any questions, please contact me at (415) 657-4050 or by email at [mcrosetti@recology.com](mailto:mcrosetti@recology.com).

Sincerely,



Mike Crosetti  
General Manager – Recology East Bay Organics

cc: W. Redic, City of Oakland  
A. Chakrabarti, EBMUD  
M. Thorne, Recology