

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY**  
**BOND FINANCING PROGRAM**  
**Meeting Date: July 17, 2012**  
***Request for Initial Resolution***

Prepared by: *Mario Wong*

<b>Applicant:</b> California Waste Solutions, Inc. and/or its Affiliates	<b>Amount Requested:</b> \$66,000,000
<b>Project Location:</b> San Jose (Santa Clara County) Oakland (Alameda County)	<b>Application No.:</b> 860(SB) <b>Initial Resolution No.:</b> 12-06

**Summary.** California Waste Solutions, Inc. and/or its Affiliates (the “Company”) requests approval of an Initial Resolution for an amount not to exceed \$66,000,000 to finance an expansion and upgrade of its sort line and the purchase of equipment, rolling stock and containers. The Company has also proposed to purchase approximately 12 acres of land in Oakland to relocate its West Oakland operations to a new site.

**Borrower.** The Company collects and processes residential recyclables in areas of San Jose and Oakland. The Company was incorporated in 1992 and has approximately 190 employees throughout its several sites.

The principal stockholders of the Company are as follows:

David Duong	42.00%
Linda Duong	32.50%
Victor Duong	25.50%
<b>Total:</b>	<b><u>100.00%</u></b>

**Legal Questionnaire.** Staff has reviewed the Company’s responses to the questions contained in the Legal Status portion of the Application. The Company has responded affirmatively to Question 2 regarding allegations of serious harm to employees, the public or the environment.

Applicant disclosed that on February 22, 2005, a baler operator employed by the Applicant at its Oakland facility died after clearing a jam in the baler he was operating. Cal/OSHA conducted an investigation and issued four citations to the Applicant. All of the citations were appealed and a settlement was approved on February 6, 2008. The case is now closed.

The Applicant disclosed this information in its previous application to CPCFA. Staff recommendation at that time was that there was no indication that this issue threatened the ongoing financial liability of the Applicant, and to approve the Initial and then Final Resolution requests. Bonds were issued on June 27, 2007 in the amount of \$25,905,000.

The Applicant also disclosed that in September 2007, the United States Environmental Protection Agency (USEPA) commenced three Administrative Actions against it. The Applicant states that it has implemented new procedures to address the issues raised in the Administrative Action and, without admission of fault, paid the fines in full and there have been no further actions from the USEPA.

**Project Description.** The San Jose City Council recently extended the Company's Franchise Agreement by 8 years. This will require the Company to expand and upgrade its sort line and the purchase of additional equipment, rolling stock and containers. The objective is to maximize collection of recyclables and increase diversion of residential solid waste from landfills. The Company will collect, sort and process the recyclables.

Additionally, the Company plans to purchase approximately 12 acres in the North Gateway of the Oakland Army Base and use additional, surrounding acreage to relocate its West Oakland operations. If this is approved by the City of Oakland, the relocation will enable the Company to operate more efficiently, and support Oakland's long-term waste-reduction plans in West Oakland.

**Volume Cap Allocation.** The Company anticipates applying to the Authority for volume cap allocation in 2013.

**Financing Details.** The Company anticipates the issuance of negotiated tax exempt bonds.

**Financing Team.**

**Underwriter:** Westhoff, Cone & Holmstedt  
**Bond Counsel:** Law Offices of Leslie M. Lava  
**Issuer's Counsel:** Office of the Attorney General

**Staff Recommendation.** Staff recommends approval of Initial Resolution No. 12-06 for California Waste Solutions, Inc. and/or its Affiliates for an amount not to exceed \$66,000,000.

*Note: An Initial Resolution approval is not a commitment that the Board will approve a Final Resolution and bond financing of the proposed Project.*

Initial Resolution No. 12-06  
Application No. 860 (SB)

**RESOLUTION OF OFFICIAL INTENT TO ISSUE BONDS TO  
FINANCE SOLID WASTE DISPOSAL/RECYCLING FACILITIES FOR  
CALIFORNIA WASTE SOLUTIONS, INC. AND/OR ITS AFFILIATES**

**July 17, 2012**

**WHEREAS**, the California Pollution Control Financing Authority (“Authority”), a public instrumentality, is authorized and empowered by the provisions of the California Pollution Control Financing Authority Act (“Act”) to issue bonds for the purpose of defraying the cost of facilities for the disposal of solid and liquid waste products, including solid waste disposal recovery and recycling facilities; and

**WHEREAS**, California Waste Solutions, Inc., a California corporation (“Applicant”), and/or its Affiliates (as hereinafter defined) (collectively, “Company”) have submitted an application (the “Application”) to the Authority requesting the Authority assist in financing (i) the acquisition of certain land, (ii) the construction or improvement of one or more buildings to house recycling facilities, (iii) the construction of site improvements, (iv) the acquisition of rolling stock and drop boxes, bins, carts and containers and/or (v) the acquisition and installation, if any, of equipment for the collection, processing, transfer and recycling of solid waste and other equipment functionally related thereto, all as more fully described in the Application (collectively, “Facilities”), which Facilities will be owned and/or operated by the Company, and have presented an estimate of the maximum cost of such Facilities as shown in Exhibit “A” attached hereto; and

**WHEREAS**, the Authority desires to encourage the Company to provide solid waste disposal/recycling facilities which will serve the public of the State; and

**WHEREAS**, the Authority deems it necessary and advisable to further the purposes of the Act that the Facilities be acquired at the earliest practicable date, but the Company requires satisfactory assurances from the Authority that the proceeds of the sale of bonds of the Authority will be made available to finance such Facilities; and

**WHEREAS**, the Company expects to incur or pay from its own funds certain expenditures in connection with the Facilities prior to the issuance of indebtedness for the purpose of financing costs associated with the Facilities on a long-term basis; and

**WHEREAS**, subject to meeting all the conditions set forth in this resolution the Authority reasonably expects that debt obligations in an amount not expected to exceed \$66,000,000 will be issued and that certain of the proceeds of such debt obligations will be used to reimburse the Company for its prior expenditures for the Facilities; and

**WHEREAS**, Section 1.103-8(a)(5) and Section 1.150-2 of the Treasury Regulations require the Authority to declare its reasonable official intent to reimburse prior expenditures for the Facilities with proceeds of a subsequent borrowing;

**NOW, THEREFORE, BE IT RESOLVED** by the California Pollution Control Financing Authority as follows:

**Section 1.** The Authority finds and determines that the foregoing recitals are true and correct. For purposes of this Resolution, an “Affiliate” of the Applicant means any person or entity which meets the definition of “participating party” in the Act and controls, is controlled by, or is under common control with, the Applicant, as shown by the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through majority equity ownership, contract or otherwise.

**Section 2.** The Authority declares its official intent to issue, at one time or from time to time, an aggregate of up to \$66,000,000 principal amount of bonds of the Authority for the Facilities; including for the purpose of reimbursing to the Company costs incurred for the Facilities prior to the issuance of the bonds.

**Section 3.** The bonds will be payable solely from the revenues to be received by the Authority pursuant to a loan agreement or other agreements to be entered into between the Authority and the Company in connection with the Facilities. Each bond shall contain a statement to the following effect:

“Neither the faith and credit nor the taxing power of the State of California or any political subdivision thereof or any local agency is pledged to the payment of the principal of, premium, if any, or any interest on this bond.”

**Section 4.** The bonds shall be issued subject to the conditions that (i) the Authority and the Company shall have first agreed to mutually acceptable terms for the bonds and of the sale and delivery thereof, and mutually acceptable terms and conditions of the loan of the proceeds thereof to the Company; (ii) all requisite governmental approvals shall have first been obtained; (iii) a Final Resolution shall have been received from the Authority; and (iv) an allocation shall have been received from the California Debt Limit Allocation Committee.

**Section 5.** The Executive Director of the Authority is hereby directed to indicate the willingness of the Authority to proceed with and effect such financing in order to assist the Company by defraying the cost of the Facilities, subject to due compliance with all requirements of the law and the obtaining of all necessary consents and approvals and meeting all other requirements of the Authority.

**Section 6.** It is intended that this Resolution shall constitute “some other similar official action” towards the issuance of bonds within the meaning of Section 1.103-8(a)(5) of the Treasury Regulations and “official intent” within the meaning of Section 1.150-2 of the Treasury Regulations, each as applicable under Section 103 of the Internal Revenue Code of 1986, as amended. It is also intended that this statement of “official action” or “official intent” by the

**Agenda Item 4.A.1.**

Authority shall continue in full force and effect even if this Resolution ceases to be effective for other purposes.

**Section 7.** This Resolution shall take effect immediately upon its passage and remain in full force and effect thereafter; provided that, subject to Section 6, this Resolution shall cease to be effective on July 17, 2015 unless prior thereto the Authority specifically adopts a further resolution extending the effective date of this Initial Resolution, which it will do only after receiving a specific request for such action from the Company, accompanied by an explanation of the status of the project and any additional information requested by the Authority to supplement the Company's application.

**EXHIBIT A**

**NUMBER:** 12-06

**LOCATIONS:** 1158 Berryessa Road, San Jose, CA 95132

1005 Timothy Drive, San Jose, CA 95113

1819 and/or 1820 Tenth Street, San Jose, CA 94607

3300 Wood Street, Oakland, CA 94608

APN No. 18-507-4-4, Oakland, CA 94607

APN No. 18-507-8, Oakland, CA 94607

**TYPE:** Solid Waste Disposal/Recycling

**AMOUNT:** Up to \$66,000,000