

MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Dry-Fermentation Anaerobic Digestion Facility Project

PROJECT FILE NUMBER: SP09-057

PROJECT DESCRIPTION: Special Use Permit for a 270,000 ton per year dry fermentation anaerobic digestion (AD) facility to process the organic portion of solid waste. The facility includes three 60,000 square foot buildings, incidental office space, biofilters, outdoor space for aerated curing piles, screening and stockpiling finished materials, 6 power generators and 3 emergency generators on an approximately 41 gross acre site.

PROJECT LOCATION & ASSESSORS PARCEL NO.: North side of Los Esteros Road at the Terminus of Grand Avenue (2100 Los Esteros Road) APN: 015-38-005 (portion)

COUNCIL DISTRICT: 4

APPLICANT CONTACT INFORMATION: Zero Waste Energy Development Company, 1500 Berger Drive, San Jose CA 95112

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- I. **AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- II. **AGRICULTURE AND FOREST RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

III. AIR QUALITY –

Impact AIR-1: Construction of the proposed project could result in significant air quality impacts associated with dust and particulates.

The following mitigation measures have been incorporated into the project to reduce temporary air quality impacts to a less than significant level:

MM AIR-1.1: The project proposes to implement the following BAAQMD mitigation measures during all phases of construction and soil stockpiling, to prevent visible dust emissions from leaving the site:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes. Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- Post a publicly visible sign with the telephone number for contractor representative to contact regarding dust complaints. This person shall respond and take corrective action within 48 hours. The City's Code Enforcement's phone number (408-535-7770) and BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

IV. BIOLOGICAL RESOURCES –

Impact BIO-1: Construction and grading activities could contaminate adjacent aquatic and wetland habitat.

Implementation of the following measures would reduce these possible impacts to wetlands to less than significant levels.

MM BIO-1.1: The project will incorporate Best Management Practices (BMPs) to minimize impacts in the surrounding wetland environment. These measures will be outlined within the project's Stormwater Pollution Prevention Plan (SWPPP):

- No debris, soil, silt, sand, bark, slash, sawdust, cement, concrete, washings, petroleum products or other organic or earthen material shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into aquatic or wetland habitat.
- Standard erosion control and slope stabilization measures will be required for work completed in any area where erosion could lead to sedimentation of a wetland or waterbody. For example, silt fencing will be installed just outside the limits of grading and construction in any areas where such activities will occur upslope from, and within 50 feet of, any wetland, aquatic, or marsh habitat. This silt fencing will be inspected and maintained regularly throughout the duration of construction.
- Machinery will be refueled at least 50 feet from any aquatic habitat, and a spill prevention and response plan will be developed. All workers will be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur.

MM BIO-1.2: Dust suppression (*e.g.*, using watering trucks) will be implemented during all grading, construction, and soil stockpiling activities that have the potential to mobilize dust to keep dust from being transported to vegetated wetlands nearby. If soil stockpiles are to remain on the site for long periods of time prior to the start of grading, they will be hydroseeded so that vegetation will suppress dust and inhibit erosion.

Impact BIO-2: Construction of the proposed project could result in impacts to burrowing owl individuals and/or occupied burrows.

MM BIO-2.1: The following mitigation measures will avoid significant impacts to individual burrowing owls or occupied burrows:

- Pre-construction surveys for burrowing owls shall be completed on the site in conformance with CDFG protocols, no more than ~~30~~ 14 days prior to the start of any ground-disturbing activity such as clearing and grubbing, excavation, or grading, or any similar activity within 250 feet of suitable habitat that could disturb nesting owls. If no burrowing owls are located during these surveys, no additional action would be warranted. However, if burrowing owls are located on or immediately adjacent to impact areas the following mitigation measures will be implemented.
- If burrowing owls are present during the nonbreeding season (generally September 1 to January 31), a ~~150~~160-foot buffer zone, within which no new project-related activity will be permissible, shall be maintained around the occupied burrow(s). A reduced buffer is acceptable during the non-breeding season as long as construction avoids direct impacts to the burrow(s) used by the owls. During the breeding season (generally February 1 to August 31), a 250-foot buffer, within which no new project-related activity will be permissible, shall be maintained between project activities and occupied

burrows. Owls present at burrows on the site after February 1 will be assumed to be nesting on or adjacent to the site unless evidence indicates otherwise. This protected area will remain in effect until August 31, or based upon monitoring evidence, until the young owls are foraging independently.

- If ground-disturbing activities will directly impact occupied burrows, the owls occupying burrows to be disturbed shall be evicted during the non-nesting season by a qualified ornithologist. No burrowing owls shall be evicted from burrows during the nesting season (February 1 through August 31) unless evidence indicates that nesting is not actively occurring (*e.g.*, because the owls have not yet begun nesting early in the season, or because young have already fledged late in the season).
- If any roosting or breeding owls must be relocated (*i.e.*, after the nesting season has ended), mitigation of impacts to lost habitat for relocated owls shall be provided. Given the relatively low quality of foraging habitat on the project site, appropriate mitigation would consist of providing 6.5 acres of suitable habitat off-site for every pair (or single owl, if unpaired) of owls displaced by the project. This mitigation may take the form of the purchase of credits in a burrowing owl mitigation bank or the preservation and management of the required habitat acreage off-site. If mitigation is provided via off-site habitat preservation and management, a Burrowing Owl Habitat Management Plan shall be prepared by a qualified biologist and implemented. This plan shall detail the location of the mitigation site, the means of preservation of the site (*i.e.*, via a conservation easement), any enhancement and management measures necessary to ensure that habitat for burrowing owls is maintained in the long term, a monitoring program, and the size of an endowment established for the long-term maintenance of the site. The mitigation site must be managed to provide habitat that is of equal or greater habitat quality, in terms of vegetation height and density and the density of potential nesting and roosting burrows, as compared to the impact site.

Impact BIO-3: The proposed project could result in impacts to salt harvest mice/salt marsh wandering shrew individuals, and/or suitable habitat.

MM BIO-3.1: The following mitigation measure will reduce significant impacts to salt harvest mice/salt marsh wandering shrew individuals, and/or suitable habitat to a less than significant level.

- Where lights are installed, they shall be placed on the perimeter of the facility and directed downward and inward toward the facility roads and buildings, away from the marsh and adjacent grasslands, thus limiting the amount of light spilling into areas outside of the facility.

- Shielding shall be installed on each light to block illumination from shining upward or outward into the marsh and adjacent grasslands.

Impact BIO-4: The proposed project would result in the removal of over 20 non-native ordinance sized trees which is a significant biological impact.

MM BIO-4.1: The following mitigation measures will reduce significant tree impacts to a less than significant level.

- All trees that are to be removed shall be replaced at the ratio identified in Table 4.4-1:

Table 4.4-1: City of San José Standard Tree Replacement Ratios		
Diameter of Tree to be Removed	Non-Native Replacement Ratio	Minimum Size of Each Replacement Tree
18 inches or greater	4:1	24-inch box
Notes: X:X = tree replacement to tree loss ratio Trees greater than 18" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.		

- Based on the above ratio, the project is required to provide 136 replacement trees. Mitigation trees should be above and beyond standard landscaping. The species and exact number of trees to be planted on the site will be determined in consultation with the City Arborist and the Department of Planning, Building, and Code Enforcement.
- In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the City's Environmental Principal Planner, at the development permit stage:
 - The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees.
 - An alternative site(s) will be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement. Contact Jaime Ruiz, PRNS Landscape Maintenance Manager, at 975-7214 or Jaime.Ruiz@sanjoseca.gov for specific park locations in need of trees.
 - A donation of \$300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. Contact Rhonda Berry, Our City Forest, at (408) 998-7337 x106 to make

a donation. A donation receipt for off-site tree planting shall be provided to the Planning Project Manager prior to issuance of a development permit.

V. CULTURAL RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

VI. GEOLOGY AND SOILS –

Impact GEO-1: Construction of the proposed facility could result in adverse impacts due to short-term and long-term settlement of underlying refuse.

MM GEO-1: The proposed project will include one of two types of foundations as indicated in the *Geotechnical Report* to reduce impacts associated with long-term settlement due to decomposition of underlying refuse:

Grid Foundation: A shallow foundation option consisting of “floating” grids connected by control joints and hinged slabs, which may actively accommodate anticipated differential settlement without the need to drive piles.

Or,

Pile Foundation: A deep foundation option using precast concrete piles driven to a depth of approximately 100 feet depending on the size used.

The selected foundation will be subject to review and approval by the City Geologist prior to issuance of grading permits. If pile driving is selected, RWQCB oversight and approval will be required in order to drive piles in municipal solid waste.

VII. GREENHOUSE GAS EMISSIONS– The project will not have a significant impact on this resource, therefore no mitigation is required.

VIII. HAZARDS AND HAZARDOUS MATERIALS –

Impact HAZ-1: Construction of the proposed buildings and enclosed work areas on the project site could pose a risk to construction workers and future occupants of the site due to the buildup of landfill gases emissions such as methane and petroleum.

MM HAZ-1.1: According to the regulatory requirements of Title 27 of the CCR, enclosed structures proposed to be built on landfills will require combustible gas infiltration protection and monitoring features. Protection measures can include a combination of below-slab membrane and venting systems, and gas cut-offs for utility trenches or conduit penetrations. Specific protection measures will be a function of building design, occupancy, and foundation requirements. Regulations also require that automatic methane gas sensor systems be installed in building interiors. These monitoring systems can be equipped with

communication devices to notify response personnel in the event elevated combustible gas concentrations are present in the building interior.

As stipulated in the draft Field Workplan (Appendix E), a surface sweep and a bar-hole punch investigation will be completed to determine if there are any areas of concern for methane migration and accumulation in both the surface cover layer and in the upper portions of the cover soils. Five to ten exploratory borings will be completed through the cover soils into unsaturated waste to test for soil gas. The boring locations will be based on the results of the surface sweep and a bar-hole punch investigation. This analysis will test for methane, solvents, volatile organic compounds, and petroleum hydrocarbons.

These results will determine the specific locations for installing subsurface landfill gas monitoring. The results of this assessment will be disclosed in a final report and will be provided to the LEA/CalRecycle for review and approval as part of the Post Closure End Use and to the Director of Public Works for review prior to issuance of building permits.

MM HAZ-1.2: A Health and Safety Plan shall be prepared prior to initiation of site grading work in accordance with landfill industry guidelines and known site conditions. It shall include an assessment of potential hazards, provisions for air quality, combustible gas and dust monitoring, procedures for identifying and handling special wastes or liquids, requirements for protective clothing and equipment, emergency response steps and recordkeeping procedures. The Health and Safety Plan shall be submitted to the Director of Planning, Building and Code Enforcement, and Director of Public Works, prior to issuance of a grading permit.

Impact HAZ-2: Improvements to the project site could increase the risk of off-site gas migration.

MM HAZ-2.1: According to the regulatory requirements of Title 27 of the CCR, perimeter subsurface monitoring wells shall be installed around the waste deposit perimeter but not within refuse and shall be located at or near the site property boundary. The lateral spacing between adjacent monitoring wells shall not exceed 1,000 feet, unless it can be established to the satisfaction of the designated enforcement agency that the spacing shall be determined based upon the nature of the structure to be protected and its proximity to the refuse. The depth of the wellbore shall equal the maximum depth of waste above the permanent low seasonal water table, and the number and depths of monitoring probes within the wellbore shall be installed in accordance with the specified criteria (CCR 27 §20925(c)(1)(E)). Monitoring wells shall be drilled by a licensed drilling contractor, and meet the other requirements for monitoring wells construction.

As outlined in the draft Field Workplan (Appendix E), potential gas migration pathways from the landfill to adjacent off-site structures and other receptors will be identified in order to determine the locations of gas migration monitoring. As

described in the draft Field Workplan, soil-gas, soil, and groundwater samples will be collected using a direct-push technology (DPT) rig at as many as six boring locations outside of the perimeter of the waste footprint to determine the appropriate monitoring locations. Locations of all monitoring wells shall be approved by LEA and CalRecycle as part of the Post Closure End Use activity and the Director of Public Works prior to issuance of building permits.

Impact HAZ-3: Implementation of the proposed project could expose construction workers of the site to a significant risk associated with the disturbance of the NOA stockpile and asbestos-containing building materials.

MM HAZ-3.1: The applicant shall prepare an Asbestos Dust Mitigation Plan to ensure worker safety during planned construction activities. The Asbestos Dust Mitigation Plan will be reviewed and approved by the Director of Planning, Building and Code Enforcement, and the Environmental Services Department prior to issuance of a grading permit.

IX. HYDROLOGY AND WATER QUALITY –

Impact HYD-1: The proposed project will increase impervious surfaces on the site and may introduce pollutants into post-project stormwater.

MM HYD-1: Implementation of the following mitigation measures, consistent with NPDES Permit and City Policy requirements, will reduce water quality impacts to surface water quality from the increase in impervious surfaces on the site to less than significant levels:

- Prior to the issuance of a Special Use Permit, the applicant must provide details of specific proposed Best Management Practices (BMPs), including, but not limited to, bioswales, disconnected downspouts, landscaping to reduce impervious surface area, and inlets stenciled “No Dumping – Flows to Bay” to the satisfaction of the Director of Planning, Building and Code Enforcement.
- The project shall comply with Provision C.3 of NPDES permit Number CAS612008, which provides enhanced performance standards for the management of stormwater from new development.
- The project shall comply with applicable provisions of the following City Policies – 1) Post-Construction Urban Runoff Management Policy (6-29) which establishes guidelines and minimum BMPs for all projects and 2) Post-Construction Hydromodification Management Policy (8-14) which provides for numerically sized (or hydraulically sized) TCMs.
- The project shall comply with CCR, Title 27 drainage and erosion standards and minimum-slope requirements, through the requirements for a Post Closure End Use activity.

Impact HYD-2: Construction of the proposed project could cause a significant temporary increase in the amount of contaminants in stormwater runoff during construction.

MM HYD-2: Implementation of the following mitigation measures, consistent with NPDES Permit and City Policy requirements, will reduce potential construction impacts to surface water quality to less than significant levels:

Construction Measures

The following mitigation measures, based on RWQCB Best Management Practices, are included in the proposed project to ensure compliance with NPDES permit requirements to reduce construction related water quality impacts:

- During construction, burlap bags filled with drain rock will be installed around storm drains to route sediment and other debris away from the drains.
- During construction, earthmoving or other dust-producing activities will be suspended during periods of high winds.
- During construction, all exposed or disturbed soil surfaces will be watered at least twice daily to control dust as necessary.
- During construction, stockpiles of soil or other materials that can be blown by the wind will be watered or covered.
- During construction, all trucks hauling soil, sand, and other loose materials will be covered and/or all trucks will be required to maintain at least two feet of freeboard.
- During construction, all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites will be swept daily (with water sweepers).
- During construction, vegetation in disturbed areas will be replanted as quickly as possible.
- Prior to construction grading for the proposed land uses, the applicant will file a “Notice of Intent” (NOI) to comply with the General Permit administered by the Regional Board and will prepare a Stormwater Pollution Prevention Plan (SWPPP) which addresses measures that would be included in the amendment to minimize and control construction and post-construction runoff. The following measures would be included in the SWPPP:
 - Preclude non-stormwater discharges to the stormwater system.
 - Effective, site-specific Best Management Practices for erosion and sediment control during the construction and post-construction periods.
 - Coverage of soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff.
 - Perform monitoring of discharges to the stormwater system.

X. LAND USE AND PLANNING – The project will not have a significant impact on this resource, therefore no mitigation is required.

XI. MINERAL RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

XII. NOISE –

Impact NOI-1: Operation of the proposed project could cause a significant increase in the noise levels at the nearby Environmental Education Center.

MM NOI-1.1: The proposed generators shall be designed so as to minimize impacts on surrounding uses, especially the Environmental Education Center located northwest of the site. Noise barriers or acoustical enclosures shall be provided to avoid substantially increasing noise levels. If rooftop-mounted equipment is used, it shall be shielded from the noise sensitive land uses by rooftop screens or perimeter parapet walls, noise control baffles, sound attenuators, or enclosures. If the equipment is mounted at ground level, mechanical equipment enclosures or noise barriers at the western and northern borders of the project shall be incorporated. These measures would provide a minimum of 5 dBA of noise reduction, lowering project operational noise levels to 54 dBA DNL and would reduce overall noise levels to 59 dBA DNL or less at the Environmental Education Center. These measures would also lower project operational noise levels at the property line to 61 to 69 dBA DNL. Therefore, project operations would not increase noise levels at noise sensitive areas by more than 3 dBA DNL.

XIII. POPULATION AND HOUSING – The project will not have a significant impact on this resource, therefore no mitigation is required.

XIV. PUBLIC SERVICES – The project will not have a significant impact on this resource, therefore no mitigation is required.

XV. RECREATION – The project will not have a significant impact on this resource, therefore no mitigation is required.

XVI. TRANSPORTATION / TRAFFIC – The project will not have a significant impact on this resource, therefore no mitigation is required.

XVII. UTILITIES AND SERVICE SYSTEMS – The project will not have a significant impact on this resource, therefore no mitigation is required.

XVIII. MANDATORY FINDINGS OF SIGNIFICANCE – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on May 9, 2011, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only;
or
2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulation period from April 8, 2011 to May 9, 2011

Deputy

Revised 6-4-10 jam