

Unmitigable Impacts

Chapter 7

ENVIRONMENTAL EFFECTS THAT CANNOT BE AVOIDED

This Project will result in a significant and unavoidable odor impact. Combined with the adjacent dairy's odors, the cumulative impacts from this Project will impact nearby humans resulting in a Mandatory Finding of Significance, which is significant and unavoidable.

Under CEQA Guidelines Section 15126.2 (b), “[w]here there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the Project is being proposed, notwithstanding their effect, should be described.”¹ This analysis should include a description of any significant impacts, including those which can be mitigated but not reduced to a level of insignificance.

The geographic area of this cumulative analysis is Tulare County. This cumulative analysis is based on the information provided in the Tulare County 2030 General Plan, General Plan background Report, and/or Tulare County 2030 General Plan EIR. The potential odors from this facility plus odors from other sources (such as an adjacent dairy) are cumulatively unavoidable despite implementation of an Odor Impact Mitigation Plan (OIMP) as required by CalRecycle at the facility. To date, Harvest Power has complied with the OIMP and CalRecycle's Law Enforcement Agency (LEA) has not issued any violations or compliance orders for the facility. However; when combined, the odors generated by the existing dairy and the Project may cumulatively result in a nuisance. As a result of this impact being unavoidable, even with the implementation of Mitigation Measures, the public benefits of the project (such as benefits to air quality, conversion of waste materials to re-useable energy, and reduction of waste streams to local landfills) outweigh this isolated impact to the environment.

IRREVERSIBLE IMPACTS

Under CEQA Guidelines Section 15126.2 (c), “[u]ses of nonrenewable resources during the initial and continued phases of the Project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the Project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified. (See Public Resources Code section 21100.1 and Title 14, California Code of Regulations, section 15127 for limitations to applicability of this requirement.)”²

¹ 2012 CEQA Guidelines, Section 15126.2 (b)

² 2012 CEQA Guidelines, Section 15126.2 (c)

STATEMENT OF OVERRIDING CONSIDERATIONS

Authority to Approve Project Despite Significant Effects

As contained in CEQA Guidelines Section 15043, “[a] public agency may approve a Project even though the Project would cause a significant effect on the environment, if the agency makes a fully informed and publicly disclosed decision that:

- (a) There is no feasible way to lessen or avoid the significant effect (see Section 15091); and
- (b) Specifically identified expected benefits from the Project outweigh the policy of reducing or avoiding significant environmental impacts of the Project.”³

An agency may prepare a statement of overriding considerations. As noted in CEQA Guidelines Section 15093, “CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed Project against its unavoidable environmental risks when determining whether to approve the Project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed Project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”⁴

“When the lead agency approves a Project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.”⁵

“If an agency makes a statement of overriding considerations, the statement should be included in the record of the Project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.”⁶

Overriding Considerations for the proposed Project

The findings described earlier indicate that the cumulative odor’s environmental effects will remain significant to nearby owners despite implementation of mitigation, and the evaluation of odor reducing alternatives. Thus, the County of Tulare can conclude that there are no feasible alternatives that can reduce these potentially significant and unavoidable impacts to a less than significant level and that all feasible alternatives have some significant and unavoidable impacts. The County of Tulare can also determine that the Project results in the following public benefits as described in detail in the Final EIR that justify proceeding with the Project despite the adverse environmental impact of the residual significant effects:

³ 2012 CEQA Guidelines, Section 15043

⁴ Ibid., Section 15093 (a)

⁵ Ibid., Section 15093 (b)

⁶ Ibid., Section 15093 (c)

Imposition of Mitigation

“In California, the regulation of nuisance odors is more procedural and official than in most other states. All commercial composting facilities in California are required to “prepare, implement, and maintain” a site-specific Odor Impact Minimization Plan or *OIMP* (Title 14 California Code of Regulations, Chapter 3.1 §17863.4; California Integrated Waste Management Board (CWWMB). 2005).

The OIMP process was developed as a response to legislation that gave primary authority over odor complaints at composting facilities to the CIWMB (Health and Safety Code 41705), but required the CIWMB to develop odor regulations and procedures. The OIMP process relies on a philosophy of constant improvement, rather than prescriptive standards. California does not have numeric criteria for when an odor becomes a nuisance. Rather, a facility handling compostable organic materials is required to prepare, implement, and maintain an OIMP. The OIMP must describe design and operational procedures for minimizing odors.

The OIMP also describes meteorological conditions and a complaint response protocol. The OIMP and the facility are typically inspected monthly (although some types of facilities are inspected quarterly). The LEA determines whether or not the facility has an OIMP and is implementing the practices described in the OIMP. If the LEA finds that the facility is not implementing the procedures outlined in its OIMP, the LEA may issue a Notice and Order. If the LEA finds that the OIMP is being fully implemented, but odor impacts are still occurring, the LEA may require the operator “to take additional reasonable and feasible measures to minimize odors.”⁷

Harvest Power’s existing OIMP process includes:

- Mixing the any food materials with green materials immediately upon arrival at the site,
- Incorporating into compost windrows as soon as possible, within a maximum of 36 hours.
- Watering and turning regimes increase the temperature and speed of breakdown of the material in the windrows, diminishing odor.
- A specific protocol for neighbor notification and response to neighbor issues is also included.

Per the Cal Recycle LEA, any complaints have been addressed, and the OIMP for this project has not been challenged, and will be updated and approved concurrently with the EIR.

The updating of the OIMP serves as current mitigation measures for Mitigation Measure 3.10-1, 3.18-1, 3.8-1&2. These Mitigation Measures all require the OIMP be updated prior to the attainment of building permits. In addition, there are other conditions of the existing Solid

⁷ Comprehensive Compost Response Project, Integrated Waste Management Board, March 2017, page 6

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Waste Management Plan (SWMP) in place to control dust and visual impacts. These measures to control the dust and the impaired aesthetics also serve to manage odor. These measures include trees planted around the southern and western edge of the property, with a dust screen immediately behind that. The updated OIMP and SWMP serve as the best practicable, Best Management Practices (BMP), and legally accepted measures by the Responsible Agency in managing any “nuisance” odors.

ODOR RELATED MITIGATION MEASURE 3.10-1, 3.18-1, 3.8-1&2

Finding of No Feasible Alternatives

CEQA section 21061.1 defines “feasibility” as involving a balancing of various economic, environmental, social, and technological factors.⁸

There exists a strong odor from the existing directly adjacent odor to the east of the Project area. In addition, there is a strong odor from the dairy pond to the north of the site. Despite the BMP in place under the OIMP, as the odors from the existing and proposed Project are added to the dairy they create a significant and unavoidable impact to the rural residence to the north of the site. An updated OIMP will lessen odors to a less than significant level for direct impacts, but in the cumulative, the OIMP will not mitigate the Project’s impacts as added to the dairy impacts. Therefore, alternative mitigation measures for cumulative odor were considered for this Project.

Infeasible Alternative Mitigation Measure 1: Covering the Facility and Bio-filtering Additional Odors.

The Air District has considered covering the material, as a mitigation measure for VOC’s (not odor), under Rule 4565 – *Biosolids, Animal Manure, and Poultry Operations*. The rule allows biosolid / manure composting facilities to either cover their facilities or reduce their VOC emissions 10%. However, the Air District has also found the covering of dairies, with required bio-filtration to be infeasible.

The cost to cover compost can average at up to \$32 per square meter.⁹ To cover the 35 acres, at a rate of ½ the coverage with bio-filtration would require that approximately 69,000 square meters of compost be covered. This translates to over \$2.4 million and would be infeasible.

Infeasible Alternative Mitigation Measure 2: Reducing Off-Site Dairy Odors a) freestall covering the dairy with bio-filtration, and b) reducing odor at the dairy pond through aeration

Again, the Air District has also found the covering of dairies, with required bio-filtration to be infeasible.¹⁰ In addition, the Air District has found that Aerobic lagoon mechanical aeration to achieve a dissolved oxygen concentration of 2.0 mg/L to be infeasible due to enormous energy costs.

⁸ Pub. Resources Code, § 21081(a)(3); CEQA Guidelines, § 15091(a)(3)

⁹ Transform and Compost Systems (2008) http://www.compost.org/pdf/DGeesing_Aerated_Windrow_Composting_Uncovered.pdf

¹⁰ *Van Der Kooi Dairy, Supplemental Environmental Impact Report* (2009) – See Exhibit C

Given these infeasible odor reduction measures, the Project can not mitigate its cumulative odor impacts.

PROJECT BENEFIT STATEMENTS

Project Benefit # 1: Implementation of AB 32

AB 32 has defined plans and programs for year 2020, with the vision of year 2050 that sets a goal to reduce 80% of greenhouse gas (GHG) compared to the 1990 base year. AB 32 resulted in the adoption of the AB 32 Scoping Plan in 2008 that included a series of measures adopted by the California Air Resources Board (ARB) for high recycling/zero waste which will affect the solid waste and recycling sector and local government. The key elements of AB 32 include anaerobic digestion (AD), the increased use of compost, and extended producer responsibility (EPR). The proposed composting expansion, anaerobic digester, and Compressed Natural Gas (CNG) station meets the objectives of AB 32 measures for year 2020 and provides a mechanism for obtaining the GHG reduction goal for year 2050.

Project Benefit # 2: General Plan Update 2030 – Climate Action Plan

Legislation mandating greenhouse gas reduction and 75% diversion of recyclable materials is resulting in residential collection of co-collected (comingled) food scraps and green materials combined with increased commercial food collection. The California Energy Commission noted proposed grant awards for a Cellulosic Ethanol Biorefinery, a project involving Fermentable Sugars for Ethanol from Microalgal Biomass, and a Biorefinery Phase II upscale project, in March 2012.¹¹ The County of Tulare Board of Supervisors adopted its General Plan 2030 Update on August 28, 2012. The Update includes a Climate Action Plan (CAP) to address AB 32 and identifies specific General Plan policies that encourage solid waste reduction.

The proposed Project was developed to support and implement the efforts by Tulare County to address climate change through its General Plan and Climate Action Plan policies. The proposed Project is intended to support, and is integral to, the diversion of organic materials (green waste and food waste) into composting in order to produce products that have multiple benefits beyond reduction of agricultural waste burning. Benefits include water conservation, soil erosion control, crop disease suppression, increased crop yields. In addition, the facility will assist in meeting state greenhouse gas emissions reductions by providing an alternative to diesel trucks coming to the facility, see Objective 3.

Project Benefit # 3: Renewable Energy

The proposed Project would add energy production capabilities on the current footprint of the composting facility pad. In addition, transportation fuel will be distributed through a CNG refueling station to provide fuel for trucks using the facility, and, to a limited extent, the general

¹¹ California Energy Commission Website, http://www.energy.ca.gov/contracts/PON-11-601_NOPA.pdf

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public. By producing energy as well as compost, the facility will provide additional renewable energy resources to Tulare County.

Project Benefit # 4: Expand production of organically certified soil

The existing composting operations produce organically certified soil. With increasing demand, this facility proposes to expand production to fill the needs of this particular niche market.

Project Benefit # 5: Increase Business Operations within Tulare County

The proposed Project is intended to implement Harvest Power's strategic business plan by planning, designing, constructing and operating a facility which is economically, technologically, and environmentally feasible within Tulare County. This will increase the amount of employees at the site and increase the amount of tax base the County could receive from this project.

Project Benefit # 6: Implementation of Countywide General Plan Policies

Under General Plan Policy AG-2.11 Energy Production, the County shall encourage and support the development of new agricultural related industries featuring alternative energy, utilization of agricultural waste and solar or wind farms. This Project will support animal processing waste digestion, and its transition into biogas and then into CNG and a Combined Heat and Power CHP

Under General Plan Policy ERM-4.6 Renewable Energy, the County shall support efforts, when appropriately sited, for the development and use of alternative energy resources, including renewable energy such as wind, solar, bio-fuels and co-generation. This Project will support animal processing waste digestion, and its transition into biogas and then into CNG (bio-fuels) and CHP (co-generation).

Under General Plan Policy AQ-1.7, the County shall support statewide climate change solutions monitor and support the efforts of Cal/EPA, CARB, and the SJVAPCD, under AB 32 (Health and Safety Code §38501 et seq.), to develop a recommended list of emission reduction strategies. As appropriate, the County will evaluate each new Project under the updated General Plan to determine its consistency with the emission reduction strategies. This Project will support animal processing waste digestion, and its transition into biogas and then into CNG (bio-fuels) and CHP (co-generation). According to the EPA, GHG reduction in California through the recycling and composting of Food Scraps is 5,837,189 MTCO₂E.¹² "Diversion of food scraps from landfills offers the greatest quantity of in-state GHG emissions reductions. Food scraps are responsible for a large share of methane emissions generated by landfills, and while landfill emissions comprise only a small portion of life-cycle emissions attributable to goods and food, they nonetheless represent a real opportunity for emissions reduction. This is largely due to the large quantities of food that is wasted and sent to landfills."¹³

¹² Reducing Greenhouse Gas Emissions through Recycling and Composting, page 8

¹³ Reducing Greenhouse Gas Emissions through Recycling and Composting, page 10

As stated above, the proposed composting expansion, anaerobic digester, and CNG station accommodates AB 32 measures of 2020 and provides the framework for addressing the goal for 2050.

Under PFS-5.3 Solid Waste Reduction, the County shall promote the maximum feasible use of solid waste reduction, recycling, and composting of waste, strive to reduce commercial and industrial waste on an annual basis, and pursue financing mechanisms for solid waste reduction programs. This Project will reduce the amount of solid green waste that is going to landfills, and will recycle them, and re-use them as compost. The organic or food processing waste will be reduced through digestion and turned into energy or applied as liquid to the compost.

Acronyms

(AD)	Anaerobic Digestion
(ARB)	California Air Resources Board
(CAP)	Climate Action Plan
(CHP)	Combined Heat and Power
(EPR)	Extended Producer Responsibility
(GHG)	Greenhouse Gas
(OIMP)	Odor Impact Mitigation Plan

REFERENCES

Reducing Greenhouse Gas Emissions through Recycling and Composting, EPA, May 2011

California Energy Commission Website, http://www.energy.ca.gov/contracts/PON-11-601_NOPA.pdf

2012 CEQA Guidelines