



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Public Works
Department No.: 054
For Agenda Of: July 7, 2015
Placement: Departmental
Estimated Tme: 45 minutes
Continued Item: Yes
If Yes, date from: June 16, 2015
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Scott D. McGolpin, P.E., Director ext. 3010
Director
Contact Info: Mark Schleich, P.E., Deputy Director, ext. 3605

SUBJECT: Update on Proposed Tajiguas Resource Recovery Project; First, Second and Third Supervisorial Districts

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

Recommended Actions:

That the Board of Supervisors:

- A. Receive an update on the proposed Tajiguas Resource Recovery Project
- B. Determine that the proposed action to receive an update is an administrative activity of the County, which will not result in direct or indirect physical changes in the environment and is therefore not a “project” as defined for purposes of the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15378(b)(5), Notice of Exemption included as Attachment C;
- C. Direct staff to:
 - a. Evaluate alternative means of project financing including:
 - i. A hybrid approach using private financing for the Anaerobic Digester (AD) and public financing for the Material Recovery Facility (MRF); and
 - ii. A publicly financed model supplemented with private equity investments
 - b. Present the findings of the financial evaluations to the County’s Debt Advisory Committee for their consideration; and

- c. Return to the Board in Fall 2015 with results of the review.
- D. Approve the attached resolution (Attachment A) authorizing the Resource Recovery & Waste Management Division of the Public Works Department to apply for a CalRecycle Cap & Trade Grant to offset some of the cost to construct the Anaerobic Digester component of the proposed Resource Recovery Project. The proposed Project is eligible for this grant because if approved and constructed, the project will result in a significant reduction in the production of greenhouse gasses associated with the region's waste; and
- E. Determine that the submission of the grant application and resolution is not the approval of a project that is subject to environmental review under CEQA pursuant to CEQA Guidelines Section 15378(b)(4), finding that the action is a creation of government funding mechanisms or other government fiscal activity, which does not involve any commitment to any specific project which may result in a potentially significant impact on the environment, Notice of Exemption included as Attachment C.

Summary Text:

In January 2012, the Board of Supervisors endorsed a recommended project proposed by Mustang Renewable Power Ventures (Mustang) to construct a Material Recovery Facility (MRF) and dry fermentation Anaerobic Digester (AD) to further process material currently buried at the Tajiguas Landfill. Recovered materials would be sold as commodities where markets are available, organics would be further processed to recover biogas to be converted to energy, and digestate would be composted to prepare soil amendment to be beneficially reused. The purpose of the project is to extend the permitted life of the Tajiguas Landfill and provide the region with a 20-year solid waste management plan as well as allow participating public entities to meet a variety of state mandates including the significant reduction of greenhouse gasses.

Since January 2012, staff has continued to work collaboratively with staff from the cities of Buellton, Goleta, Santa Barbara and Solvang to prepare a draft EIR, draft Waste Service Agreement, draft Joint Powers Authority (JPA) Agreement, draft Management Agreement for the JPA, draft Material Delivery Agreements, an updated proposal package to reflect changes as a result of preparing the environmental review, and held a series of negotiation sessions with Mustang. At this time, staff is recommending to continue to pursue the project, and to conduct an evaluation of alternative means of financing the project in order to decrease future costs to ratepayers.

Background:

In 2002, when the Board of Supervisors approved the expansion of the County-owned and operated Tajiguas Landfill, the Board directed staff to look into alternatives to landfilling the community's discarded waste. Since 2007, the Public Works Department Resource Recovery & Waste Management Division (RRWMD), in collaboration with its partner cities of Buellton, Goleta, Santa Barbara and Solvang, has been working on the development of a facility to further process waste currently being buried at the Tajiguas Landfill. Staff from the interested public entities formed a Subgroup that has been working together on each phase of the project.

An extensive procurement was conducted and, in January 2012, a project was selected that consists of a MRF and an AD which is capable of recovering up to 60% of the waste currently buried to be reused

and recycled, and generate renewable energy and soil amendment. The project was proposed to be a public/private partnership with a private company designing, building, owning, and operating the facility with the option for the public entities to buy the facility at the end of the contract. Each public entity would commit to deliver material to the facility through separate agreements. The selected vendor was Mustang Renewable Power Ventures (Mustang), and the team assembled by this company included Diani Building as the primary construction contractor, Van Dyk Recycling Solutions as the MRF equipment provider, MarBorg Industries as the MRF operator, BEKON as the technology provider for the AD facility, and Nursery Products as the operator of the AD facility.

In January 2012, the Board of Supervisors directed staff to initiate review of the proposed CEQA and designate the County Public Works Department as the Lead Agency, directed staff to develop a Term Sheet with the vendor highlighting the primary business terms of the future contract, and requested that the other participating jurisdictions adopt a resolution indicating their continued interest in the project. In November 2012, the Board approved a contract with the recommended consultant to prepare the EIR (Padre), another consultant to prepare the Air Quality and Biological Technical Studies for the EIR (AECOM), and allowed the \$1,000,000 of costs related to the environmental review to be paid through a \$2.45 per ton surcharge on the Tajiguas Landfill tipping fee for three future years. In December 2012, the Board approved a Term Sheet on behalf of the County with Mustang which highlighted the necessary business terms for a future contract as well as granting Mustang an exclusive right to negotiate for the proposed project. Each of the other jurisdictions approved the same Term Sheet.

Attachment B includes a chronology of the Board of Supervisors' involvement in the project to date.

Update on CEQA Review

On April 19, 2012, a Notice of Preparation (NOP) was published in three newspapers, distributed to responsible and trustee agencies and members of the public, and a copy of the NOP was also posted electronically on the RRWMD website. A public scoping meeting was held on May 14, 2012 at the County Planning Commission hearing room in Santa Barbara to accept input on the scope and content of the proposed Subsequent EIR.

Eleven technical studies were prepared and incorporated into the Subsequent EIR to evaluate the project's potential impacts to resource/issue areas such as biological resources, air quality, and cultural resources. A draft Subsequent EIR for the project was prepared and released to responsible and trustee agencies and members of the public on August 11, 2014 for a 45-day public review period (the review period was subsequently extended to October 9, 2014), and a copy of the document was also posted electronically on the RRWMD website. Notice of availability of the draft Subsequent EIR was published in the Santa Barbara News Press and Santa Maria Times, direct mailed to properties surrounding the Tajiguas Landfill and the alternative sites studied in the Subsequent EIR, and posted at the Clerk of the Board, P&D as well as the RRWMD website. A public hearing was held on September 4, 2014 at the Public Health Auditorium in Goleta and over 100 people attended and 17 provided verbal testimony. In addition, the RRWMD received 73 written comments on the draft. Comments have been reviewed and responses have been prepared and the comment letters and responses will be included in the Final Subsequent EIR. Although not required, as requested by the Planning Commission, the Final Subsequent EIR will be made available prior to the Planning Commission's Government Code Section 65402 General Plan conformity hearing on the project. Staff will bring the Final Subsequent EIR to the Board for consideration of certification after the Planning Commission hearing. The completion of EIR efforts is running parallel with the finalization of the business terms of the project.

Update on Business Negotiations

Since staff was last at the Board in December 2012, the following work efforts have been accomplished, in addition to the above-mentioned progress on the EIR:

- Completed draft Waste Service Agreement proposed to be between Mustang and a JPA made up of representatives from each of the participating jurisdictions
- Completed draft Material Delivery Agreement between the JPA and each of the participating jurisdictions
- Completed draft JPA Agreement
- Completed draft Management Agreement proposed to be between the JPA and the County for the County to provide administrative services to the JPA
- Completed and released request for an updated proposal from Mustang considering the changes that have occurred since the release of the Request for Proposal (RFP) in 2009
- Hired consultant with experience in reviewing and negotiating similar solid waste projects
- Reviewed updated proposal submitted October 2014 including revised pricing and proposed amendments to the draft Waste Service Agreement
- Held 5 negotiation sessions with vendor for a total of 22 hours
- Held 14 additional meetings with the internal Subgroup to discuss negotiations for a total of 21 hours
- Prepared cursory model of same project with largely public financing

Findings from Negotiations

Upon receipt of an updated proposal from the vendor, the Subgroup initiated negotiations in November 2014. The Subgroup held 5 lengthy negotiation sessions with the proposed vendor. However, those sessions failed to produce business terms which met many of the original objectives of the RFP and Term Sheet. At that time, the Subgroup decided to temporarily pause negotiations and reassess the proposed project.

The Subgroup determined that the proposed project continues to bring value to the community because 1) the proposed technologies have been undertaken successfully in several places throughout the country, 2) the team assembled to complete the project has considerable experience in their respective areas, and 3) the project gives the region the ability to meet numerous state mandates including the following:

- **AB 32** – Greenhouse Gas Reduction: The proposed project is one of the largest, if not the largest, proposed actions in the region to assist the community in meeting AB 32 requirements to reach pre-1990 levels by 2020. The proposed project has an estimated reduction of over 110,000 MTCO₂E (metric tons carbon dioxide equivalent) per year and is currently included in several jurisdictions' Climate Action Plans.
- **SBX1 2** – requirement of 33% statewide energy production from renewable sources by 2020. The project will generate 1 MW of renewable energy which is the equivalent of providing electricity to 1,000 homes.
- **AB 341** – requires that larger businesses recycle (those that generate more than 4 cubic yards of trash per week), and states a statewide goal of achieving 75% diversion of waste from landfills. The region currently diverts over 70% of material from landfills but implementing the project will raise the diversion level to over 80%.

- **AB 1826** – most recent legislation passed that requires mandatory recycling of organics from large commercial customers. The AD facility will provide a local facility on the South Coast that will be able to process organics while extracting biogas for further conversion to energy.
- **California Code of Regulations Title 27** - requires that a region provide 15 years of future disposal capacity. *This project is expected to extend the life of the Tajiguas Landfill to provide 20 years of local disposal capacity.*

Despite the significant benefits provided by the project, several of the evaluation criteria contained in the original RFP, specifically related to the allocation of risk and cost, have not been met. The original concept was to use private financing in order to limit public financial liability, however, the model of 100% private financing that was proposed by Mustang shifted many of the liabilities to the public sector yet maintained a high tipping fee and impact to ratepayers. The proposal that best met our criteria, including other costs that must be included for demolition of the facility and closure/post closure of the landfill (approximately \$20 per ton) reached a tipping fee of \$146 per ton. The lowest cost proposal that did not meet several of the original criteria reached \$121 per ton including other necessary costs. In the process of reviewing Mustang's proposal, it became apparent that a primary factor leading to the higher tipping fees was the cost of private funds (internal rate of return on equity, interest rate on debt service, etc.), as well as other terms and conditions associated with the proposed financing model.

To get a better understanding of the specific costs associated with the private funding, staff prepared a cursory review of a publicly financed project using revenue bonds guaranteed by waste delivery agreements. A draft of this public financing model was shared with staff of the Treasurers, Auditor-Controller and the County Executive Office to confirm model assumptions. Once the public financing model was complete, it resulted in considerable cost savings to the rate payer (approximately 25-30% less), without the public agencies taking on considerably higher levels of risk from the proposals made by Mustang. This model can be supplemented by a controlled amount of private equity investment without taking on many of the risks and liabilities associated with the 100% private financing model.

In May 2015, the Subgroup met with the City Managers of Buellton, Goleta, Santa Barbara, and Solvang and the County's CEO and presented the following options:

- 1) Continue to negotiate with Mustang under the current 100% private equity financing structure and its associated cost (\$146 per ton),
- 2) Exercise our right to terminate our participation in the project (which would mean essentially starting from the beginning), or
- 3) Subgroup's Recommendation: Further evaluate alternative means of financing the project to decrease costs to the ratepayer including a detailed evaluation of:
 - a) A hybrid approach using public financing for the MRF component of the project and private financing for the AD (to take advantage of an available Investment Tax Credit); and
 - b) A publicly financed model supplemented by private equity investments.

The City Managers approved the Subgroup's recommendation and requested that this information be presented to the respective City Councils and Board of Supervisors for approval to further evaluate the alternative means of financing the project.

Recommendation

County staff is recommending that the Board direct staff to further evaluate alternative means of financing the project to decrease costs to the ratepayer including a detailed evaluation of:

- A hybrid approach using both public financing for the MRF component of the project and private financing for the anaerobic digester (to take advantage of an available Investment Tax Credit); and
- A publicly financed model supplemented by private equity investment.

The results of the evaluation would be presented to the County's Debt Advisory Committee for their review and staff would return to the Board in late Fall 2015 to present the results of the review.

At this time, Mustang has made significant progress in designing the facilities and seeking various permits. Staff is recommending exploring the inclusion of Mustang (and its team) in the future project configuration in order to allow the community to benefit from the progress already made. In addition, there is an opportunity to receive grant funding from the state for the construction of the AD due to the significant reduction in greenhouse gas emissions associated with the facility and staff is requesting approval of the attached resolution authorizing the RRWMD to submit an application to CalRecycle's Cap & Trade Organics Grant Program to further reduce future costs. In the event your Board does not approve the project and certify the Final Subsequent EIR for the Resource Recovery Project but the grant application was successful, the grant would be respectfully declined.

Performance Measure:

None

Fiscal and Facilities Impacts:

Efforts associated with actions included in this Board Letter are currently included in the proposed budget for the RRWMD for Fiscal Year 15/16.

Special Instructions:

Please send an executed copy of the Resolution and a Minute Order to the Resource Recovery & Waste Management Division of the Public Works Department, Attn: Leslie Wells.

Attachments:

- 1) Attachment A: Resolution
- 2) Attachment B: Chronology of Board Action Items Related to Project
- 3) Attachment C: Notice of Exemption

Authored by:

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