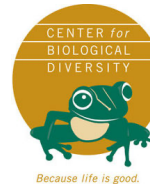




CENTRAL CALIFORNIA
ENVIRONMENTAL JUSTICE NETWORK



October 14, 2021

Jennifer K. Clark, AICP
Director, Planning and Development
Department
2600 Fresno Street, Room 3043
Fresno, CA 93721
publiccommentsplanning@fresno.gov

Jose Valenzuela
Project Planner
jose.valenzuela@fresno.gov

Luis Chavez
President, Fresno City Council
2600 Fresno St.
Room 2097
Fresno, CA 93721
Luis.Chavez@fresno.gov

Miguel Arias
Councilmember District 3
2600 Fresno St.
Room 2097
Fresno, CA 93721
district3@fresno.gov

Submitted via email and certified mail¹

**Re: Petition to Appeal Conditional Use Permit Application No. P18-03189 and
Environmental Assessment No. P18-03189**

Dear Ms. Clark and Fresno City Council:

West Coast Waste Co., Inc. is seeking to add two major public health- and environmentally-damaging components to its waste recovery facility: a Biomass Cogeneration Plant (BCP) and a wood pellet mill. Both components—herein collectively referred to here as the “Fresno Wood Combustion Project,” or “the Project”—will emit harmful air pollution such as nitrogen oxide (NO_x), sulfur oxide (SO_x), volatile organic compounds (VOCs), ammonia, and particulate matter (PM₁₀), as well as climate change-worsening greenhouse gases (GHGs). As a result, the Project will worsen air quality and environmental injustice in communities throughout the San

¹ Per the Notice of Action Granting Conditional Use Permit Application No. P18-03189, to appeal this decision any aggrieved person may file a written appeal “addressed to the Planning and Development Director (Jennifer K. Clark) and the project planner (Jose Valenzuela) identified” in the notice. The appeal request may be submitted to publiccommentsplanning@fresno.gov with a Cc to the planner named in the notice. Per Fresno Municipal Code section 15-5005(I), CEQA appeals “directly to [the] Council,” according to procedures in Code section 15-5017. For these reasons, this letter has been sent via mail and email to those named in the address block at the top of this letter.

Joaquin Valley. The effects will be worse to the communities southwind of the facility, which are located within the South-Central Fresno Assembly Bill 617 (AB617) boundaries. Following the mandate of AB617, the San Joaquin Valley Air Pollution Control District (SJVAPCD), the California Air Resources Board (CARB), and residents have been working to adopt strategies to reduce local emissions. The authorization of the Project jeopardizes these efforts to improve local air quality. The Project will also enable and perpetuate harmful biomass energy, which is more climate-damaging than coal and therefore contributes to the climate crisis.

Even with these substantially harmful impacts and a record spanning over 600 pages, the Fresno Planning and Development Department (the Department) offered the public only 15 days to comment on the Conditional Use Permit Application (CUP) No. P18-03189 and Environmental Assessment (EA) No. P18-03189. It then denied requests from groups on this letter to extend the comment period to allow adequate time for review and public participation. Clearly, the proposed Project will be damaging to public health, general welfare, and the environment, and the process to hastily approve it has virtually excluded the public from a meaningful opportunity to review and comment.

Pursuant to the City of Fresno's Municipal Code sections 15-5309, and 15-5017, we hereby petition for an appeal of the Director of the Planning and Development Department's September 30, 2021 decision to approve CUP and EA No. P18-03189 for parcel no. 330-040-42 and -49S, authorizing the Fresno Wood Combustion Project. Pursuant to Municipal Code section 15-5005(I), we are also writing to appeal the City of Fresno's adoption of EA No. P18-03189, approving the Initial Study (IS) and associated Mitigated Negative Declaration (collectively, IS/MND), for West Coast Waste Co., Inc.'s proposed additions to its waste recovery facility because these documents fail to comply with the California Environmental Quality Act (CEQA).²

We urge the Planning Department to reject the CUP and EA (IS/MND) for violating the Municipal Code, CEQA, as well as basic notice and comment procedures and other local protections. We further request that the City either deny the Project or require preparation of an Environmental Impact Report (EIR) to fully evaluate and disclose the Project's environmental impacts, as required by CEQA.

This appeal is accompanied by payment of the required fee.

I. Petitioners

The groups aggrieved by and appealing the Director's approval of the CUP and EA are as follows:

Central California Environmental Justice Network (CCEJN): Founded in 1999, CCEJN supports grassroots leadership to promote environmental health education, community organizing, collaborative dialogue, and political involvement among rural, underserved communities of color in the San Joaquin Valley. CCEJN uses education, networking, advocacy, and community monitoring, among other tools, to achieve its mission of empowering communities and securing our children's future by eliminating negative environmental impacts in low income and communities of color in the Central Valley. Regarding biomass facilities, CCEJN has worked to

² Throughout this appeal, our use of the term IS/MND refers to EA No. P18-03189.

develop community-based monitoring of biomass pollution, train residents who live near biomass facilities to identify and report environmental violations caused by biomass facilities and raise community concerns in order to prompt enforcement actions and violation penalties.

Central Valley Air Quality Coalition (CVAQ): Since 2003, CVAQ has coordinated efforts to improve public health and quality of life in the San Joaquin Valley by raising awareness about the health impacts of air pollution and by acting as a watchdog ensuring full and vigorous enforcement of the federal Clean Air Act and related regulations, particularly in environmental justice communities. The proposed Fresno Wood Combustion Project poses both an undue burden on the health of nearby sensitive receptors and also significantly contributes to our already severe regional air pollution problem.

Leadership Council for Justice and Accountability: Leadership Counsel for Justice and Accountability is located 2210 San Joaquin Street, Fresno and works alongside residents of disadvantaged communities in the San Joaquin Valley and East Coachella Valley to advocate for sound policy and eradicate injustice to secure equal access to opportunity regardless of wealth, race, income and place. Leadership Counsel works alongside residents in neighborhoods in Southeast, Southwest, South Central Fresno and other disadvantaged communities in the City and County of Fresno to advocate for access to basic infrastructure and services, safe and affordable housing, and a healthy environment in those neighborhoods and inclusive public process and has an interest in this project on those bases.

Center for Biological Diversity: The Center for Biological Diversity is a non-profit organization with offices throughout California and the United States. The Center is actively involved in environmental protection issues throughout California and North America and has over 1.7 million members and online activists dedicated to the protection of the environment, including many throughout California and in the San Joaquin Valley. The Center's mission includes protecting and restoring habitat and populations of imperiled species, reducing GHG pollution to preserve a safe climate, and protecting air quality, water quality, and public health. This mission includes safeguarding the climate, public health, and the environment from polluting industries like woody biomass power plants, which emit GHGs that worsen the climate crisis and air pollution that harms California's vulnerable communities.

II. Procedural Background

On October 26, 2018, West Coast Waste Co., Inc. filed CUP application No. P18-03189 to amend its prior CUP C-15-030 from 2016, which authorized operation of the West Coast Waste Material Recovery Facility (the Facility). Currently the Facility recycles 1,500 tons per day (TPD) of organic materials, wood waste, and wood chips for recycled use by others.

Now, West Coast Waste seeks to construct the Fresno Biomass Combustion Project, which consists of a 5 MW-wood gasification and combustion facility, a 24,000 square-foot storage building, and a wood pellet mill to turn wood waste into combustion fuel pellets for shipment overseas. As part of the application process, the Operator hired Clements Environmental LLC and Provost and Prichard Consulting Group to conduct a CEQA review of the Project. The consultants filed a Phase 1 Environmental Site Assessment on December 17th, 2020, after conducting a site visiting on October 21st, 2020.³ In June 2021, Provost released an draft

³ Clements Environmental LLC, Phase I Environmental Site Assessment 28-30 (2020).

IS/MND asserting that the Project would result in no significant environmental impact on the environment if mitigation measures were adopted for six categories of potentially significant impacts.⁴ On August 4, 2021, without conducting any further environmental analysis, the Department issued a Notice of Intent to adopt (NOI) an MND for the Project finding “no substantial evidence in the record that this project may have additional significant, direct, indirect, or cumulative effects on the environment that are significant and that were not” identified in the Master Environmental Impact Report (MEIR) issued in conjunction with the Fresno General Plan.⁵ Despite the Project representing a fundamental change of the Facility from a recycling operation to a combined power plant, wood pellet mill, and recycling facility, the Department issued a Notice of Decision (NOD) approving the EA and adopting the IS/MND on September 30, 2021.⁶ Also on September 30, 2021, the Director of the Planning and Development Department, in accordance with Special Permit Procedure of the Fresno Municipal Code section 15-5009, issued a Notice of Action approving CUP No. P18-03189 and EA No. P18-03189.⁷

III. Biomass Power Plants and Wood Pellet Production Facilities Emit High Amounts of Harmful Air Pollution

Biomass power plants—such as the proposed Fresno Wood Combustion Project—are significant sources of air pollutants, harming residents of the vulnerable communities where they are located, neighboring areas, and worsening environmental injustice.

Biomass power plants emit large amounts of harmful air pollutants. In California, biomass facilities are among the largest emitters of PM and NOx.⁸ Fine particulate matter, known as PM_{2.5}, can get deep into the lungs, enter the bloodstream, and lead to heart disease, premature death, stroke, and aggravated asthma.⁹ In 2017, two biomass plants in the San Joaquin Valley—Mount Poso Cogeneration and Rio Bravo Fresno—were the 11th and 13th greatest stationary sources of PM_{2.5} out of 153 sources.¹⁰ Biomass power plants also emit hazardous air pollutants,

⁴ Fresno Renewable Energy Station Initial Study at 3-1 (June 2021).

⁵ City of Fresno Planning and Development Department, Notice of Intent to Adopt a Mitigated Negative Declaration for Environmental Assessment P18-03189 (Aug. 4, 2021).

⁶ City of Fresno Planning and Development Department, Notice of Determination for Environmental Assessment P18-03189 (Sept. 30, 2021).

⁷ City Of Fresno Planning and Development Department, Notice of Action Granting Conditional Use Permit Application No. P18-03189 (Sept. 30, 2021).

⁸ For example, Roseburg Forest Products ranked as the 21st biggest stationary source of fine particulate matter out of 591 sources statewide in 2017, according to facility-level emissions data from the California Air Resources Board Pollution Mapping Tool, https://ww3.arb.ca.gov/ei/tools/pollution_map/pollution_map.htm.

⁹ See EPA, “Health and Environmental Effects of Particulate Matter (PM)”, <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm>.

¹⁰ Based on facility-level emissions data in each air district from the California Air Resources Board Pollution Mapping Tool, https://ww3.arb.ca.gov/ei/tools/pollution_map/pollution_map.htm.

including hydrochloric acid, dioxins, benzene, formaldehyde, arsenic, chromium, cadmium, lead, and mercury.¹¹

Producing wood pellets is a carbon-intensive and polluting activity that often gets a “pass” as clean, renewable energy based on flawed carbon accounting.¹² A well-respected and growing body of research demonstrates that wood pellets are neither carbon-neutral nor sustainable, as burning wood pellets for fuel releases as much as, or even more, carbon dioxide per unit of energy than coal.¹³

IV. The Planning and Development Department Did Not Provide Adequate Time for Public Review and Comment

The Department did not provide adequate time for the public to review the CUP application and its associated documentation. Accordingly, the Director should withdraw approval of the CUP and EA (IS/MND) because of inadequate stakeholder outreach and input.

The Department rushed approval of the CUP and IS/MND in just under two months. On August 4, 2021, the City of Fresno issued a Notice of Intent to Adopt (NOI) a MND for the Project, which was accompanied by the IS/MND. The comments closed on September 3, 2021. On September 10, 2021, the Department published an NOI which provided only until September 27 for the public to review the large amount of materials and write comments. This simply was not enough time, prompting groups on this letter to request an extension of the public comment period to November 1. The Department did not respond to this request, and instead issued a Notice of Decision to approve the CUP and IS/MND on September 30.

In addition, the Department did not account for the fact that communities nearest to the Project, such as Malaga, are comprised primarily of people of color, including immigrants and people with a primary language other than English. As of 2019, 86.3% of Malaga residents were born outside of the country.¹⁴ By not providing adequate time to review materials, multi-language notices, or direct community outreach, the Department failed to effectively notify residents and fundamentally undermined the purpose of public notice and comment. This failure may also have violated the Dymally-Alatorre Bilingual Services Act, which aims to ensure that non-English speaking Californians are able to effectively communicate and engage with government.¹⁵

Finally, the rushed approval of the CUP and IS/MND ignored the request by community members and the Air District to take the AB617 process into account. The Air District even noted this lack of coordination, recommending that the City and Planning Department “assess the emission reduction measures and strategies included in the CERP and address them in the MND”

¹¹ Partnership for Policy Integrity, Air pollution from biomass energy (updated April 2011), <https://www.pfpi.net/wp-content/uploads/2011/04/PFPI-air-pollution-and-biomass-April-2011.pdf>. In 2017, Humboldt Redwood Company’s Scotia biomass cogeneration facility reported emitting a whopping 11,574 pounds of the carcinogen benzene and 12,364 pounds of the toxin formaldehyde. Based on facility-level emissions data from the California Air Resources Board Pollution Mapping Tool, https://ww3.arb.ca.gov/ei/tools/pollution_map/pollution_map.htm.

¹² Rachel Carson Institute, “Clear Cut” (2019), <https://www.sec.gov/rules/petitions/2019/ptn4-741-exb.pdf>.

¹³ *Id.* at 5.

¹⁴ DataUSA: Malaga, CA, <https://datausa.io/profile/geo/malaga-ca/>.

¹⁵ Cal. Gov’t Code §§ 7295, 7295.2.

in order to “align the City of Fresno’s work with the air pollution and exposure reduction strategies and measures” outlined in the CERP.¹⁶ Without considering and incorporating components of the CERP, the CUP and EA must not go forward.

V. The Project’s CUP and IS/MND Fail to Conform to the Municipal Code

Under Municipal Code section 15-5306, the Director cannot grant a CUP if the project fails to conform to any of the Code’s criteria listed under that section’s Required Findings.¹⁷ The Fresno Wood Combustion Project fails to conform to several of these criteria, meaning that the Director must withdraw approval of the CUP and IS/MND.

First, Municipal Code section 15-5306(B) requires denial of a CUP if it is inconsistent with the General Plan. The City’s General Plan names “achieving healthy air quality and reduced greenhouse gas emissions” and “protect[ing] and improv[ing] public health” as 2 of its 17 goals.¹⁸ The General Plan also recognizes that environmental justice is essential and can be addressed in the Plan through procedural and geographic inequity considerations.¹⁹ The proposed Project directly undermines these goals because it will adversely impact air quality, emit climate change-causing GHGs, and worsen environmental injustice. For these reasons, the Fresno Wood Combustion Project is inconsistent with the General Plan and the CUP and IS/MND must be denied.

Second, and similarly, Municipal Code section 15-5306(C) requires denial of a CUP that would “be substantially adverse to the public health, safety, or general welfare of the community, [or] detrimental to surrounding properties or improvements.” The Fresno Wood Combustion Project—which will worsen environmental injustice, emit harmful air pollutants, and contribute to the climate crisis—violates this code section, obligating the Director to withdraw approval of the CUP and IS/MND.

Furthermore, to the extent that the following flaws also violate CEQA, those flaws also necessitate denial of the CUP and IS/MND.²⁰

¹⁶ Letter from Brian Clements, Director of Permit Services, to Jose Valenzuela, Fresno Planning and Development Dep’t, re: Draft MND for CUP No. P18-03189 (Sept. 3, 2021).

¹⁷ The Required Findings criteria named in Municipal Code section 15-5306 are:

- (A) The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code;
- (B) The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;
- (C) The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements;
- (D) The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and
- (E) The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.

¹⁸ City of Fresno General Plan at 1-6, 1-8 (Dec. 28, 2014); *see also id.* at 7-21 (objectives RC-5, RC-5-a, RC-5-b, RC-5-c, and RC-5-e describing GHG reduction strategies).

¹⁹ *Id.* at 1-11.

²⁰ Cal. Code Regs. tit. 14, § 15063(d)(5).

A. The Project will emit harmful air pollution, worsen environmental injustice, and be adverse to public health, general welfare, and safety

Because the Fresno Wood Combustion Project will worsen air quality, substantially harm public health, and worsen environmental injustice, it violates the General Plan and criteria named in the Required Findings.²¹

The Project's IS/MND notes that construction of the Project will occur over 12 months and, once operational, it will run 24 hours a day for approximately 350 days per year.²² Construction of this type of major facility will entail equipment such as industrial saws, cranes, graders, pavers, dozers, tractors, and cement mixers that will all produce noise and air pollution impacts that will harm the wellbeing of local residents.²³ Once up and running, the Project's air pollution will add to the already abysmal air quality in the San Joaquin Valley and local communities, such as Malaga, which is less than two miles from the Project site.

From the outset, the Project's IS/MND fails to demonstrate that it will not be substantially adverse to public health. The IS/MND relies on a 2016 MND to support its conclusion that the Fresno Wood Combustion Project would not significantly harm air quality.²⁴ Relying on this outdated air quality study—especially given the significant air quality degradation in the Fresno area—is irrational and cannot support the Department's conclusion that the Project will not be substantially adverse to public health. The Department similarly cannot rely on the IS/MND's conclusion that the air pollution would be similar to a BCP operating in the Mojave Desert, because the cumulative pollution in that part of the state is different than in Fresno, and the Mojave BCP does not have a wood pellet processing.

Further, the IS/MND does not provide information on the Fresno Biomass Combustion Project's air emissions in a manner helpful to the public and decisionmakers. The IS/MND describes the long-term operational emissions in terms of what West Coast Waste estimated in 2016.²⁵ Then, the charts showing emissions are shown in terms of "Reductions," but without providing the raw emissions information.²⁶ While Appendix A contains some modeling results and assumptions, this information is in a different format and with different values than the charts in the study, making an evaluation difficult, if not impossible, for the community members whose health will most likely be at risk from this project. Given the high amounts of pollutants common among other biomass facilities in California (see above), the IS/MND must explain what the air pollution impacts will be. Moreover, just because the Project claims that it will not exceed significance thresholds under CEQA, this doesn't mean that the air pollution will conform with the General Plan or not be harmful to community residents. To the contrary, any air pollution added to the existing poor air quality in the area is too much.

²¹ See Municipal Code §§ 15-5306(B), (C).

²² Fresno Renewable Energy Station Initial Study at 2-5.

²³ *Id.*

²⁴ See IS/MND No. 2016041045 for CUP C-15-030, filed by West Coast Waste Co., Inc.; *see also* Fresno Renewable Energy Station Initial Study at 3-7 ("The City made the finding that the prior project evaluated in the 2016 MND would have less than significant impact on air quality, with the implementation of mitigation measures."); *id.* at 3-17.

²⁵ Fresno Renewable Energy Station Initial Study at 3.4.2.3, page 3-13.

²⁶ *Id.* at Table 3-8, page 3-14.

The issue of additional air pollution is significant because the area of the Project—South Central Fresno—is among the areas in the country, the state, and regionally most overburdened by pollution. Permitting this project would run counter to the General Plan and lock in dangerous pollution for decades to come.

Environmental Protection Agency’s (EPA) EJScreen tool is an environmental justice screening and mapping tool that uses a “nationally consistent dataset and approach” to assist government agencies, the public, and other stakeholders in evaluating environmental justice concerns.²⁷ See Appendix I for EJScreen reports. The National Air Toxics Assessment (NATA) is used in the EJScreen and “provides information on potential health risks from breathing air toxics.”²⁸ The environmental indicators that incorporate the NATA data are “actual estimates of air toxics-related cancer risk or a hazard index,” which reflect the level of toxic pollutants in the air compared to established health-based concentrations or limits.²⁹ EPA has compiled NATA data every three or so years since 1996, and the most current data is from 2014.³⁰

According the EJScreen, the one-mile area around the Project is overwhelmingly low-income, with a high percentage of residents identifying as people of color. See Appendix I, section 1. The area also has a higher percentage of residents compared to state, regional, and national averages who are children under age five. *Id.* EJScreen’s “EJ Indices,” created by combining demographic indicators with a single environmental indicator and used “as proxies for a community’s health status and potential susceptibility to pollution,” show that the NATA cancer risk in the one-mile radius around the project site (population: 448) is in the 85th percentile for the state, the 86th percentile regionally, and the 95th percentile nationally. *Id.* Similar alarming rates of cancer risk are present when zooming out to a two-mile radius around the proposed Project site. For example, in the two-mile radius around the project site (population: 14,104), the NATA cancer risk is in the 95th percentile for the state, 96th percentile regionally, and 98th percentile nationally. See Appendix I, section 2. In the three-mile radius around the project site (population: 51,059), the NATA cancer risk is in the 96th percentile for the state, 96th percentile regionally, and 98th percentile nationally. See Appendix I, section 3. In other words, these communities are already overburdened by, and susceptible to, pollution, and adding another source—such as the Fresno Biomass Combustion Project—is unacceptable.

Similarly, CalEnviroScreen indicates that the census tracts along Highway 99 (near the proposed Project) are some of the most pollution-burdened areas in the entire state.³¹ Malaga, Calwa, and

²⁷ See EPA, “What is EJScreen?”, <https://www.epa.gov/ejscreen/what-ejscreen> and EPA, “EJ Screen Purposes and Uses,” <https://www.epa.gov/ejscreen/purposes-and-uses-ejscreen>.

²⁸ EPA, “NATA Overview,” https://www.epa.gov/sites/default/files/2018-08/documents/2014_nata_overview_fact_sheet.pdf.

²⁹ See EPA, “Overview of EJ Screen Environmental Indicators,” <https://www.epa.gov/ejscreen/overview-environmental-indicators-ejscreen>. Other environmental indicators indicate different things. For example, “[s]ome . . . quantify proximity to and the numbers of certain types of potential sources of exposure to environmental pollutants, such as nearby hazardous waste sites,” and some others “are estimates of ambient levels of air pollutants, such as PM2.5.” EPA, <https://www.epa.gov/ejscreen/overview-environmental-indicators-ejscreen>.

³⁰ EPA, “Environmental Indicators,” <https://www.epa.gov/ejscreen/overview-environmental-indicators-ejscreen>.

³¹ Cal EnviroScreen, “SB535 Disadvantaged Communities,” <https://oehha.ca.gov/calenviroscreen/sb535>.

Cecile, the communities nearest to the proposed Project, are all identified as “disadvantaged” by the state.³² Moreover, these areas are named in the AB617 process, meaning the State must put in place additional measures to reduce the areas’ pollution burden.³³ Approving the Fresno Wood Combustion Project will thwart AB617’s objectives.

In addition, the impacts of the Fresno Wood Combustion Project must be considered in the context of the cumulative pollution burden borne by nearby communities. The San Joaquin Valley is one of the nation’s most polluted air basins. According to the American Lung Association, the Fresno-Madera-Hanford area ranks fourth worst in the nation for high ozone days, second for 24-hour PM pollution, and second for annual PM pollution.³⁴ The entire San Joaquin Valley is in nonattainment (i.e., does not meet primary or secondary ambient air quality standards, or contributes to ambient air quality in a nearby area that does not meet the standards) for four criteria air pollutant standards: ozone – one hour; ozone – eight hour; PM₁₀; and PM_{2.5}.³⁵ The Valley’s nonattainment for one-hour ozone is “severe,” while its nonattainment for eight-hour ozone is categorized as “extreme”—the highest possible classification.³⁶ Moreover, Fresno County has *never* been in compliance with federal ozone standards, and it has not been in compliance with PM_{2.5} standards since 2005. According to EPA’s exhaustive scientific review, ground-level ozone pollution—commonly referred to as smog³⁷—causes “adverse health effects that range from decreased lung function and increased respiratory symptoms to serious indicators of respiratory morbidity,” such as emergency department visits and hospital admissions.³⁸ A recent peer-reviewed medical study found that even short-term exposure to high levels of ground-level ozone increases the risk of death.³⁹ Those most at risk from ozone pollution are children and older adults; people who are regularly active outside, such as laborers; and

³² *Id.*

³³ San Joaquin Valley Air Pollution Control District, <https://community.valleyair.org/selected-communities/south-central-fresno> (“It should be noted that this community includes the census tract with the highest Population Characteristics score in the entire state, which represents a number of health and socioeconomic factors [asthma, cardiovascular disease, low birth weight, educational attainment, housing burdened low-income households, linguistic isolation, poverty, and unemployment]. This community includes census tracts with health indicators that exceed the 97th percentile in a majority of the listed categories, clearly indicating that this community includes areas heavily impacted by environmental challenges.”).

³⁴ American Lung Association, “State of the Air: Fresno-Madera-Hanford”, <https://www.lung.org/research/sota/city-rankings/msas/fresno-madera-hanford-ca#ozone>.

³⁵ San Joaquin Valley Air Pollution Control District, Ambient Air Quality Standards & Valley Attainment Status, <https://www.valleyair.org/aqinfo/attainment.htm> (last visited Oct. 2, 2021).

³⁶ *Id.*

³⁷ See, e.g., EPA, “Ground-level ozone basics,” <https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics> (“Ozone at ground level is a harmful air pollutant, because of its effects on people and the environment, and it is the main ingredient in “smog.”).

³⁸ 73 Fed. Reg. 16,436 (March 27, 2008); see also EPA, “Health Effects of Ozone Pollution,” <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution>.

³⁹ “Increased exposure to ozone may increase the risk of death, Medical News Today (Feb. 2020), <https://www.medicalnewstoday.com/articles/increased-exposure-to-ozone-may-increase-the-risk-of-death#Ozone-pollution>, citing Ana M. Vicedo-Cabrera, et al., “Short term association between ozone and mortality: global two stage time series study in 406 locations in 20 countries,” *BMJ* 368 (Feb. 2020), <https://www.bmj.com/content/368/bmj.m108>.

individuals with pre-existing lung and heart diseases such as asthma.⁴⁰ The Project's IS fails to mention cumulative impacts—let alone analyze them. This is a major flaw for a Project proposed for an area that cannot take any more harmful air pollution, and granting the CUP would add to the cumulatively harmful air quality and worsen the health of residents.

The San Joaquin Valley already has five active and five idle biomass plants, and two of the idle plants—Covanta Mendota and Delano—are scheduled to come back online after acquisition by Clean Energy Systems.⁴¹ Many of these existing biomass plants are in census tracts designated as disadvantaged under SB535, as many communities fall within the 90th percentile for air pollution burden, and some are in the top percentile.⁴² Fresno's Rio Bravo biomass plant, for example, is located less than a half-mile from the Malaga Elementary School, Malaga Community Park, and surrounding homes in a majority Hispanic neighborhood with a pollution burden score of 100.⁴³

The individual and cumulative pollution impacts of each of these facilities are significant.⁴⁴ Adding another facility—such as the Fresno Wood Combustion Project—is simply unacceptable and violates the Municipal Code.

B. The Project's greenhouse gas emissions will contribute to the climate crisis

Combusting woody biomass to make electricity and producing wood pellets (along with the likely end-uses of the wood pellets, such as more combustion-based electricity) emit GHGs and contribute to the climate crisis, making these activities substantially adverse to public health, safety, and the general welfare of the community. For these reasons, the CUP and IS/MND must be denied.⁴⁵

While biomass power is often framed as a type of energy that could be helpful to combat the climate crisis, in reality it has more in common with fossil fuels than wind or solar energy.⁴⁶ At the smokestack, biomass power plants release more carbon pollution than coal for the same

⁴⁰ 73 Fed. Reg. 16,436, 16,440.

⁴¹ See, e.g., Clean Energy Systems, <https://www.cleanenergysystems.com/MendotaBECCS>.

⁴² Four active biomass plants (Rio Bravo Fresno, DTE Stockton, Merced Power, and Ampersand Chowchilla) and four idle biomass plants (Community Recycling Madera Power, Covanta Mendota, Dinuba Energy, and Covanta Delano) are in census tracts designated as disadvantaged under SB 535, <https://oehha.ca.gov/calenviroscreen/sb535>.

⁴³ Data from CalEnviroScreen 3.0. <https://oehha.ca.gov/calenviroscreen>.

⁴⁴ See, e.g., Ctr. for Biological Diversity, Forest Bioenergy Briefing Book (March 2021), https://www.biologicaldiversity.org/campaigns/debunking_the_biomass_myth/pdfs/Forest-Bioenergy-Briefing-Book-March-2021.pdf.

⁴⁵ See Municipal Code §§ 15-5306(B),(C).

⁴⁶ Sterman, John D. et al., Does replacing coal with wood lower CO2 emissions? Dynamic lifecycle analysis of wood bioenergy, 13 *Envtl. Research Letters* 015007 (2018). While biomass proponents try to discount the carbon released by biomass power plants by taking credit for the carbon absorbed by future tree growth, there is no requirement that forests cut down for biomass energy be allowed to regrow instead of being cut again and again, and or that forests won't be developed into other land uses. And even if trees are allowed to regrow, numerous studies show that it takes many decades to more than a century—if ever—for new trees to grow large enough to capture the carbon that was released. See, e.g., Booth, Mary S., Not carbon neutral: Assessing the net emissions impact of residues burned for bioenergy, 13 *Envtl. Research Letters* 035001 (2018).

amount of electricity produced.⁴⁷ Biomass power plants are California's dirtiest electricity source. The average GHG emission rate for California's current electricity portfolio is about 485 pounds carbon dioxide equivalent (CO₂e) per megawatt hour (MWh).⁴⁸ As shown in Chart 1 below, woody biomass power plants in California emitted more than *seven times* that amount, with smaller-scale gasification biomass power plants ranking as similarly carbon intensive.⁴⁹ As Chart 2 shows, the GHG emissions from California's biomass facilities range from around 2,500 to over 19,000 lbs CO₂e per net MWh, averaging 3,500 pounds CO₂e/MWh for non-cogeneration facilities.⁵⁰

The proposed Project's GHG emissions are difficult to discern in the IS/MND, meaning the finding of "no impact" is unsupported and cannot provide a sound basis for approving the Project. The document estimates that GHG emissions related to construction (estimated to last around one year) would total 1,480 MTCO₂e, and that once operational, the transportation and building GHG emissions would total 5,300 MTCO₂e.⁵¹ Long-term operational GHG emissions are not presented as a total amount, however. The IS/MND only offers what it considers to be "reductions" in the "Electricity Generation Emission Reduction from Biomass" and "Emission Reduction from Avoiding Landfilling Biomass," rather than the total GHG emissions.⁵² The IS/MND explains this by asserting that the Project "will reduce emissions as a result of diverting

⁴⁷ Searchinger, Timothy D. et al., Europe's renewable energy directive poised to harm global forests, 9 Nature Comms 3741 (2018); Sterman, John D. et al., Does replacing coal with wood lower CO₂ emissions? Dynamic lifecycle analysis of wood bioenergy, 13 Env'tl. Research Letters 015007 (2018).

⁴⁸ California Air Resources Board, California Greenhouse Gas Emissions for 2000 to 2018, Trends of Emissions and Other Indicators (2020 Edition) at Figure 9 (GHG Intensity of Electricity Generation); See also California Air Resources Board, 2000-2018 Emissions Trends Report Data (2020 Edition) at Figure 9, showing the overall GHG Intensity of Electricity Generation in 2018 of 0.22 tonnes CO₂e per MWh, which is equal to 485 pounds per MWh.

⁴⁹ Total CO₂e emissions for each facility in 2018 come from Cal. Air Res. Board Mandatory GHG Reporting Emissions data, available at <https://ww2.arb.ca.gov/mrr-data>. Data on net MWh produced by each facility in 2018 come from the Cal. Energy Comm'n, Biomass and Waste-To-Energy Statistics and Data, available at https://ww2.energy.ca.gov/almanac/renewables_data/biomass/index_cms.php. Total CO₂e produced by the 9 electricity only, non-cogeneration active woody biomass facilities with available data totaled 2,127,693 metric tons, and net MWh in 2018 from these 9 facilities totaled 1,334,346 MWh, for an average of 1.59 metric tons CO₂e per net MWh, equal to 3,515 pounds CO₂e per net MWh. The average of 3,515 pounds CO₂e per MWh includes electricity-only plants; cogeneration plants are excluded because some of their CO₂ emissions are from heat-related fuel consumption. The high CO₂e rate-per-MWh is similar for biomass facilities without cogeneration.

⁵⁰ *Id.* In contrast, solar and wind energy provide truly carbon free sources of power.

⁵¹ Fresno Renewable Energy Station IS/MND at 3-31, 3-33.

⁵² *Id.* at 3-33, Table 3-21.

biomass material from landfills and offset the necessary generation of electricity from other sources.”⁵³ This smoke-and-mirrors approach hides from the public and decisionmakers what the actual GHG emissions could be, and assumes—without evidence—that for the life of the project, there is a “necessary generation” from other sources that will be offset favorably by combustion. This assumption is belied by the comparison of biomass-generated electricity to other sources in California. For example, as noted above, biomass power is more GHG-intensive from the

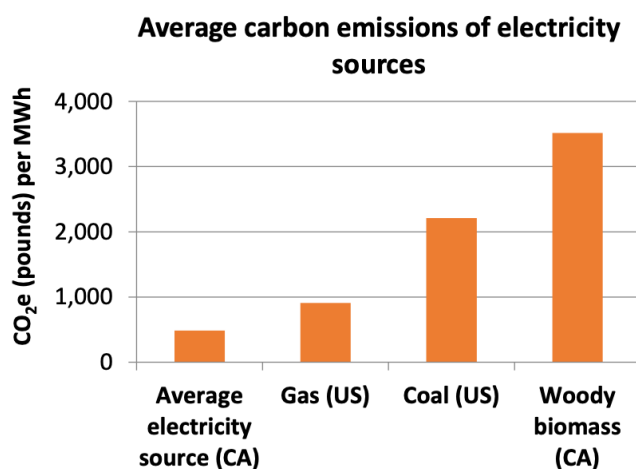


Chart 1: Woody biomass electricity facilities in California emit more than seven times as much CO₂e as the average electricity source, and more than coal.

Biomass power plant emissions in 2018	Capacity (MW)	Total CO ₂ e (pounds) per net MWh
Ampersand Chowchilla Biomass Power	12.5	2,996
Burney Forest Products (BioRAM) (cogen)	31	3,768
Collins Pine Biomass Power (cogen)	12	19,120
DG Fairhaven	15	3,877
DTE Stockton Biomass Power (cogen)	50	3,298
HL Power (BioRAM)	35.5	2,980
Humboldt Sawmill Company (cogen)	32.5	5,016
Merced Power	12.5	3,220
Mt. Poso Cogeneration (cogen)	63.6	2,507
Pacific Ultrapower Chinese Station (BioRAM)	25.7	4,418
Rio Bravo Fresno Biomass Power (BioRAM)	27.8	3,150
Rio Bravo Rocklin Biomass Power (BioRAM)	27.8	3,435
Roseburg Forest Products (cogen)	13.4	4,967
SPI Anderson Biomass Power II (cogen)	30.1	4,480
SPI Burney Biomass Power (cogen)	20	4,736
SPI Lincoln Biomass Power (cogen)	19.2	5,314
SPI Quincy Biomass Power (cogen)	35.3	6,215
SPI Sonora Standard Biomass Power (cogen)	7.5	11,540
Wheelabrator Shasta Energy (BioRAM)	62.8	3,900
Woodland Biomass Power	28	3,464
Average for non-cogeneration plants		3,515

Chart 2: California biomass power plant GHG emissions, 2018.

⁵³ *Id.* at 3-32.

smokestack than coal, as well as other fossil fuels. The IS/MND analysis is simply illogical, unsupported by facts, and cannot support a finding of no impact.

It is also important to consider that the Fresno Wood Combustion Project's GHG emissions occur in the context of a "Code Red" for the climate. The overwhelming scientific consensus has conclusively determined that without significant, rapid emissions reductions, warming will exceed 1.5°C and will result in catastrophic damage around the world.⁵⁴ Every fraction of additional warming above 1.5°C will worsen these harms, threatening people's lives, health, safety, and livelihoods; as well as the economy and national security for this generation and future generations.⁵⁵

The Project's IS/MND does not meaningfully grapple with the realities of the climate crisis, instead concluding by some stretch of logic that the facility will have "no impact" on climate change. But even if the project claims it will divert wood waste from landfills, there are other uses for wood waste besides combustion, such as chipping and mulching, and these alternatives do not contribute to the climate crisis. For failing to meaningfully consider the climate change impacts of the proposed Project, the Project's documentation cannot support a reasonable or informed approval of the CUP and IS/MND.

VI. The Project's IS/MND Violates CEQA

State and local agencies are obligated under CEQA to "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state" and to "[e]nsure that the long-term protection of the environment . . . shall be the guiding criterion in public decisions."⁵⁶ "CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language," and "[t]he purpose of CEQA is . . . to compel government at all levels to make decisions with environmental consequences in mind."⁵⁷ By "requir[ing] full environmental disclosure," the Act ensures public awareness and participation in decisions with the potential for environmental consequences.⁵⁸

Lead Agencies prepare an IS in order to "determine if the project may have a significant effect on the environment."⁵⁹ All phases of a project must be considered.⁶⁰ Both individual and cumulative impacts must be considered in order to evaluate whether these impacts "may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial."⁶¹

⁵⁴ See Intergovernmental Panel on Climate Change, 6th Assessment Report, Physical Science Basis – Summary for Policymakers (Aug. 9, 2021), https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Headline_Statements.pdf.

⁵⁵ *Id.*

⁵⁶ Cal. Pub. Res. Code § 21001.

⁵⁷ Cal. Code Regs. tit. 14, § 15003.

⁵⁸ *Cmtys. for a Better Env't v. City of Richmond*, 108 Cal. Rptr. 3d 478, 491 (Cal. Ct. App. 2010).

⁵⁹ Cal. Code Regs. tit. 14, § 15063(a).

⁶⁰ *Id.* § 15063(a)(1).

⁶¹ *Id.* § 15063(b)(1).

Should the Lead Agency determine that any aspects may cause a significant effect, they must prepare an EIR.⁶² A Negative Declaration or MND is only appropriate only when “there is no substantial evidence in light of the whole record before the public agency that the project . . . may have a significant effect on the environment;” otherwise the agency must produce an EIR.⁶³ In particular, an MND is sufficient “when the initial study has identified potentially significant effects on the environment, but . . . revisions in the project plans or proposals . . . would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur” and there is no substantial evidence the project may have a significant effect on the environment.⁶⁴

“If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared.”⁶⁵ “Substantial evidence” includes “a fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”⁶⁶ If there is “disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.”⁶⁷

CEQA also has a substantive mandate and requires effective mitigation. “[P]ublic agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.”⁶⁸ These mitigation measures must be “fully enforceable through permit conditions, agreements, or other measures.”⁶⁹

The IS/MND—and thus, the EA—fail CEQA’s requirements on several grounds. This necessitates their denial. In addition, because the project is likely to have significant impacts on the environment, the City must prepare an EIR, as required under CEQA.

A. The IS/MND fails to demonstrate that the Project will not have significant impacts on air quality

CEQA requires the disclosure and analysis of both direct and reasonably foreseeable indirect significant effects of a project.⁷⁰ The IS/MND fails this requirement, as it does not disclose and analyze the Project’s direct and indirect impacts on air quality, which are likely to be significant. *See* section V, *supra*, explaining the high amounts of harmful air pollution emitted by California biomass power plants and wood pellet production facilities. Further, the IS/MND fails CEQA because it does not consider the air quality impacts of all “phases of project planning, implementation, and operation.”⁷¹ Because of these failures and the Project’s likely significant

⁶² *Id.* (noting that an EIR must be prepared unless a previously prepared or programmatic EIR may be used).

⁶³ Cal. Pub. Res. Code § 21064.5; *see also id.* §§ 21064, 21080(c).

⁶⁴ *Id.* § 20164.5.

⁶⁵ Cal. Pub. Res. Code § § 21080(d).

⁶⁶ *Id.* § 21080(e).

⁶⁷ Cal. Code Regs. tit. 14, § 15064(g).

⁶⁸ Cal. Pub. Res. Code § 21002.

⁶⁹ *Id.* § 21081.6(b); Cal. Code Regs. tit. 14, § 15126.4(a)(2).

⁷⁰ Cal. Code Regs. tit. 14, §§ 15126.4(a), 15064(d).

⁷¹ *Id.* § 15063(a)(1).

impacts on air quality, the Director must withdraw approval of the IS/MND and require the Planning Department to prepare an EIR.⁷²

First, the IS/MND fails to disclose and analyze the wood pellet mill's direct impacts on emissions and indirect impacts on air quality and human health.⁷³ While the IS/MND estimates emissions savings from diverting waste products from the landfill, it does not estimate the corresponding emissions and health effects associated with processing those products into 200-300 TPD of wood pellets.⁷⁴ It is simply improbable and unreasonable to conclude that the daily processing of 200-300 tons of wood pellets would produce zero emissions, even if powered by energy from the biomass power plant. Without an estimate and analysis of the mill's emissions, it is impossible for the public to evaluate the Project's full costs.

Second, the IS/MND presents the Project's emissions by assuming off-site emissions reductions, but the IS/MND fails to present and consider the total impacts to local communities who will still breathe in air pollution from biomass storage, combustion, and wood pellet processing. This fails CEQA's disclosure requirements.⁷⁵ Construction of the Project would occur 15 hours a day for at least 12 months and, once completed, the biomass power plant would operate 24 hours a day for approximately 350 day per year, stopping only for maintenance and giving local communities little respite.⁷⁶ However, the IS/MND estimates that the Project will actually *reduce* the Facility's emissions of reactive organic compounds, NO_x, and PM. The IS/MND does this by assuming—without support—that the Project will offset offsite electricity generation and landfill operations.⁷⁷ The IS/MND does not even disclose where those offsets would occur. This is inadequate. A Lead Agency is obligated not only to estimate emissions but also to put “some effort to explain the nature and magnitude of the” resultant human health impacts.⁷⁸ The IS/MND's lack of health impact analysis means the “public would have no idea of the health consequences that result when more pollutants are added to a nonattainment”⁷⁹ area, and the likely local increase in criteria pollutants constitutes “a fair argument that [the] project may have a significant effect” on local air quality.⁸⁰ The IS/MND is therefore inadequate, and because of the likely significant impacts on air quality, an EIR is needed to estimate the direct and indirect impacts of air pollution on local communities by “indicat[ing] the concentrations at which such pollutants would trigger the identified symptoms” in the local population.⁸¹

Third, the IS/MND failed to consider recommendations by the San Joaquin Valley Air Pollution Control District (the Air District) to take the AB617 process into account. AB617 requires air

⁷² Cal. Pub. Res. Code §§ 21080(d), (e).

⁷³ Cal. Code Regs. tit. 14, § 15064(d) (the lead agency must consider direct and indirect physical impacts in an initial study).

⁷⁴ Fresno Project Initial Study at Tables 3-7, 3-8; *id.* at 2-3.

⁷⁵ Cal. Code Regs. tit. 14, §§ 15126.4(a), 15064(d).

⁷⁶ Fresno Project Initial Study at 2-5.

⁷⁷ *Id.* at Tables 3-8, 3-9.

⁷⁸ *See Sierra Club v. County of Fresno*, 6 Cal. 5th 502, 519 (Cal. 2018) (holding an EIR that compared pollution volumes to Air District thresholds inadequate when it failed to provide more than a general explanation of human health impacts).

⁷⁹ *Id.*

⁸⁰ Cal. Code Regs. tit. 14, § 15064(f)(1).

⁸¹ *Sierra Club v. County of Fresno*, 6 Cal. 5th 502, 519 (Cal. 2018).

districts to develop and implement Community Emission Reduction Programs (CERPs) in order to help reduce air pollution exposure in impacted, disadvantaged communities. South Central Fresno is an AB617 community. The Air District's governing board adopted the South Central Fresno CERP in September 2019. Specifically, the Air District requested that the City and Planning Department "assess the emission reduction measures and strategies included in the CERP and address them in the MND" in order to "align the City of Fresno's work with the air pollution and exposure reduction strategies and measures" outlined in the CERP.⁸² This didn't happen, and the IS/MND cannot move forward until it includes these measures.

Because of these flaws that have serious health consequences for residents, the City Council should reject the IS/MND and require a full EIR to better account for the Project's impacts on air quality.

B. The IS/MND fails to demonstrate that the Project will not have significant cumulative impacts

The IS/MND similarly fails to disclose and analyze the Project's cumulative impacts on the environment and the surrounding, already overburdened community.⁸³ See section V, *supra*, explaining the reasons why the areas surrounding the Project site are already overburdened by pollution. The IS/MND fails to mention cumulative impacts *at all*. This failure renders it deficient, and because of the likely significant cumulative impacts, the City must require an EIR for the Project.⁸⁴

CEQA requires—including at the IS stage⁸⁵—analysis of cumulative impacts, defined as the condition under which "two or more individual effects which, considered together, are considerable or which compound or increase other environmental impacts."⁸⁶ "An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable."⁸⁷ Thus, an IS is inadequate if it fails to adequately explain why "potentially possible" cumulative impacts would not occur.⁸⁸

It is imperative that any CEQA analysis of the Fresno Biomass Combustion Project adequately consider the Project's cumulative impacts. As noted earlier in this document, the San Joaquin

⁸² Letter from Brian Clements, Director of Permit Services, to Jose Valenzuela, Fresno Planning and Development Dep't, re: Draft MND for CUP No. P18-03189 (Sept. 3, 2021).

⁸³ Cal. Code Regs. tit. 14, §§ 15126.4(a), 15064(d).

⁸⁴ Cal. Pub. Res. Code §§ 21080(d), (e).

⁸⁵ Cal. Code Regs. tit. 14, § 15063(d) (During an Initial Study, "if the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the lead agency shall do one of the following: (A) Prepare an EIR . . .").

⁸⁶ See Cal. Code Regs. tit. 14, § 15355.

⁸⁷ Cal. Code Regs. tit. 14, §§ 15054(h)(1), 15063(b) ("If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment . . . the Lead Agency shall do one of the following: (A) Prepare an EIR . . .") (emphasis added).

⁸⁸ See *San Bernardino Valley Audubon Soc'y v. Metro. Water Dist.*, 71 Cal. App. 4th 382, 398-400 (Cal. Ct. App. 1999) (requiring an EIR because the IS did not explain why cumulative impacts would not occur when it was "potentially possible that there will be incremental impacts to the various species that will have a cumulative effect on [their] survival.")

Valley already has five active and five idle biomass plants, and two of the idle plants—Covanta Mendota and Delano—are scheduled to come back online after acquisition by Clean Energy Systems.⁸⁹ See section V, *supra*.

Air pollution—particularly in areas such as the San Joaquin Valley—does not occur in isolation, and the Project must be “viewed in connection with the effects of other past projects.”⁹⁰ The fact that surrounding communities are already experiencing high pollution and nonattainment with the NAAQS amounts to substantial evidence that even an “incremental” increase in pollution from the Project would have a significant cumulative effect on the health of local populations. By failing to adequately analyze the cumulative impacts of the Project along with other biomass and combustion projects in the area, decisionmakers and the public cannot properly gauge the significance of harms that the Project will produce. Thus, the IS/MND violates CEQA and an EIR must be prepared to fully analyze the Project’s cumulative impacts.

C. The IS/MND are invalid because the Project violates the General Plan

An IS must check for conformity with “with existing zoning, plans, and other applicable land use controls.”⁹¹ As described in section V, the Project is not in conformance with the General Plan because it will worsen air quality and environmental injustice. Accordingly, we incorporate by reference our arguments in section V, which point to the need to invalidate the IS/MND and order preparation of an EIR.

D. The IS/MND fails to demonstrate that the Project will not have significant impacts on climate change

The IS/MND fails to provide adequate support for its conclusion that the Project will result in net negative GHG emissions. Because biomass power generation and wood pellet production both generate significant amounts of GHGs, and because the IS/MND fails to deal with these realities and adequately analyze the project, the City must withdraw approval of the IS/MND and order preparation of an EIR.⁹²

The IS/MND overlooks the inefficiencies of biomass electricity generation and offers an opaque GHG accounting that does not provide individual GHG impacts for each component of the Project. CEQA requires that a Lead Agency consider the environmental impacts of the “whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”⁹³ According to the IS/MND, Project construction will contribute only 353 MT CO₂e, while Project operations will only produce 5,380 MT CO₂e over the long term, entirely from transportation and building and parking lot emissions.⁹⁴ Without evidence, the IS/MND concludes that the Project

⁸⁹ Four active biomass plants (Rio Bravo Fresno, DTE Stockton, Merced Power, and Ampersand Chowchilla) and four idle biomass plants (Community Recycling Madera Power, Covanta Mendota, Dinuba Energy, and Covanta Delano) are in census tracts designated as disadvantaged under SB 535, <https://oehha.ca.gov/calenviroscreen/sb535>.

⁹⁰ Cal. Code Regs. tit. 14, § 15064(h)(i).

⁹¹ *Id.* § 15063(d)(5).

⁹² Cal. Pub. Res. Code §§ 21080(d), (e).

⁹³ *Id.* § 15378(a) (defining “project”); see also *id.* § 15063(a)(1) (“All phases of project planning, implementation, and operation must be considered in the initial study of the project”).

⁹⁴ Fresno Project Initial Study at Tables 3-20, 3-21.

will reduce GHG emissions by 44,369 MT CO₂e over the long term while the entire Facility will reduce GHG emissions by 75,788 MT CO₂e.⁹⁵

This approach has several glaring flaws. As discussed above, biomass plants and wood pellet production are incredibly carbon intensive, which raises questions about how the Project will produce negative emissions. See section V, *supra*, discussing biomass and wood pellet GHG emissions. As with the analysis of air quality, the IS/MND again leans on unexplained reduced emissions from offsite electricity generation and landfills.⁹⁶ For GHG emissions, though, the IS/MND completely fails to provide the biomass plant's smokestack emissions *or* the wood pellet mill's emissions,⁹⁷ neither of which are likely to be zero even if offset by offsite emissions reductions. Further, while the IS/MND estimates emissions savings from avoiding landfill biomass, it does not also estimate the corresponding emissions from the eventual end use of the produced wood pellets,⁹⁸ which will be combustion for electricity or heat generation. These glaring omissions, as with the omission of the wood pellet mill's air quality impacts, indicate that the IS/MND only considered the Project's wished-for GHG "reductions" (offsite reductions), rather than the "whole of an action,"⁹⁹ including the direct impacts of GHG emissions and the indirect impacts on climate change. With this messy, incomplete, and likely inaccurate analysis, decisionmakers and the public cannot evaluate the relative significance of the Project's GHG's emissions or meaningfully evaluate the IS/MND's analysis of GHG savings from offset electricity generation or landfill emissions.

The IS/MND's underestimation of GHG emissions is particularly concerning given the ongoing climate crisis. In 2018, the Intergovernmental Panel on Climate Change (IPCC) issued a *Special Report on Global Warming of 1.5°C* that quantified the devastating harms that would occur at 2°C warming, highlighting the necessity of limiting warming to 1.5°C to avoid catastrophic impacts to people and life on Earth.¹⁰⁰ The IPCC 2018 *Special Report* provides overwhelming evidence that climate hazards are more urgent and more severe than previously thought, and that aggressive reductions in emissions within the next decade are essential to avoiding the most devastating climate change harms.

It is essential that projects receive critical CEQA review so that local agencies and the public can evaluate a project's environmental costs, especially GHG emissions, in the broader context of climate change. On review the City Council should withdraw approval of the IS/MND and require an EIR with a detailed breakdown of the Project's GHG emissions.

⁹⁵ *Id.* at Table 3-21.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ See *id.* at Table 3-21.

⁹⁹ *Id.* § 15378(a).

¹⁰⁰ Intergovernmental Panel on Climate Change, 2018: Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V. et al. (eds.)].

E. The IS/MND fails to demonstrate that the Project will not have significant impacts on deforestation

CEQA requires that a project evaluate all potentially foreseeable environmental impacts resulting from a project.¹⁰¹ The IS/MND fails to adequately analyze the Project's potential indirect impact on forest cover and resources as required under CEQA, rendering it unlawful.¹⁰²

The Project, a wood-burning biomass plant and wood pellet mill, will consume wood, a forest product, for both the purposes of generating electricity and producing fuel pellets for overseas use.¹⁰³ While the Project is proposed to utilize wood and organic waste that are currently sent to a landfill as waste, the IS/MND makes no effort to analyze whether the Project's development will also spur increased demand for wood.¹⁰⁴ Instead, the IS/MND considers only the direct effect of whether site developments will have a local impact on forest cover, noting that the "site and surrounding area does not contain forest land, nor is it zoned for forest land, timberland, or timberland zoned Timberland Production."¹⁰⁵ This analysis fails to include the reasonably foreseeable indirect impacts of deforestation at other sites.

To comply with CEQA, the IS/MND should have considered whether the Project will fundamentally increase local demand for wood products either by reducing the cost of disposing of wood wastes or by increasing the demand and therefore price of wood products. Either impact would make wood harvesting activities more profitable and thus lead to the indirect effect of increased deforestation at other locations, leading to potentially significant losses of forest cover. Upon review, the Council should require the preparation of an EIR to analyze off-site deforestation impacts.

F. The IS/MND fails to demonstrate that the Project's biomass ash will not have significant impacts

The IS/MND fails to provide sufficient evidence to support its conclusion that the project would not have significant impacts because of its generation of biomass ash, which is shown to have cancer-causing properties.¹⁰⁶

As a byproduct of the combustion process, the Project will produce ash.¹⁰⁷ As the IS/MND acknowledges, this ash has cancer-causing potential.¹⁰⁸ Yet the IS/MND doesn't contextualize what that cancer-causing potential means for sensitive receptors, including workers, in terms of both short- and long-term exposure. The IS/MND also improperly and irrationally relies on the 2016 MND for the previous CUP No. C-15-030 to conclude that the Project would not have significant impacts on hazardous materials.¹⁰⁹ Yet the 2016 MND didn't account for wood pellet processing and biomass combustion, and the resulting ash. Further, the Facility sometimes accepts "some incidental amounts" of hazardous materials in incoming loads of organic

¹⁰¹ Cal. Code Regs. tit. 14, §§ 15063, 15064.

¹⁰² Fresno Project Initial Study at 3-6.

¹⁰³ *Id.* at 2-5.

¹⁰⁴ *Id.* at 3-6.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at Table 3-11.

¹⁰⁷ *Id.* at 2-3.

¹⁰⁸ *Id.* at Table 3-11.

¹⁰⁹ *Id.* at 3-34.

matter.¹¹⁰ If these hazardous materials end up in the Fresno Wood Combustion Project, they could alter the cancer-causing and other harmful properties of the ash. The IS/MND did not take this into account, thereby invalidating its analysis of hazardous materials.

G. The IS/MND fails to demonstrate that the Project will not have significant impacts on noise

As with the analysis of hazardous materials, the IS/MND improperly relies on the 2016 MND to conclude that there will be no significant noise impacts because there “are no substantial changes in the [Facility].”¹¹¹ This conclusion is unreasonable because the construction and operation of the biomass plant and wood pellet mill is a substantial change in the facility. This fails to consider the construction and operation noise impacts that will result from this substantial change and therefore does not support the document’s conclusion that the project will not have a substantial noise impact.

As the IS/MND explains, typical construction equipment “will include air compressors, cement and mortar mixers, concrete/industrial saws, generator sets, cranes, forklifts, graders, pavers, paving equipment, rollers, rubber-tired dozers, tractors/loaders/backhoes, scrapers, and welders” all of which may noisily operate for as much as 15 hours a day 6 days a week for at least a year.¹¹² Furthermore, once operational the biomass power plant would essentially operate endlessly, possibly making noise or vibrations throughout the night. Again, the IS/MND has not specified crucial details about the wood pellet mill, which may similarly operate 24 hours a day and emit noise or vibrations throughout the night. Thus, the Operator should prepare an EIR that fully evaluates the noise impacts on the already disadvantage communities surrounding the Project site.

VII. Conclusion

We urge the Director to deny CUP and EA No. P18-03189 because the proposed Project violates the Municipal Code by worsening environmental injustice and severely threatening public health, safety, and the general welfare. The Project also undermines basic notice and comment procedures, as well as the processes and goals of AB617.

Further, we urge the City to deny EA No. P18-03189 because it violates CEQA, and the likely significant impacts on the environment necessitate preparation of an EIR.

Based on this timely appeal, all proceedings on the CUP and IS/MND must be stayed and the Director must forward the appeal, the Notice of Action, and all other documents that constitute the record to the decision-making body hearing the appeal within 40 days.¹¹³

Should any questions arise regarding our appeal, please contact Nayamin Martinez at nayamin.martinez@ccejn.org or 559.272.4874. Please also keep us informed as to the status of the appeal, including ensuring that we receive a copy of the staff report and Director’s recommendation for action. Fresno Municipal Code § 15-5017(C)(2). Thank you.

¹¹⁰ *Id.* at 3-36.

¹¹¹ *Id.* at 3-47.

¹¹² *Id.* at 2-5.

¹¹³ *See* Fresno Municipal Code §§ 15-5017(C)(1), (2).

Signed:

Nayamin Martinez, MPH
Director, Central California Environmental Justice Network
Ph: 559.272.4874
Email: nayamin.martinez@ccejn.org

Catherine Garoupa White, MSW, PhD
Executive Director, Central Valley Air Quality Coalition
4991 E McKinley Ave, Suite 109
Fresno, CA 93727 (Yokuts Land)
Ph: 559.960.0361
Email: catherine@calcleanair.org

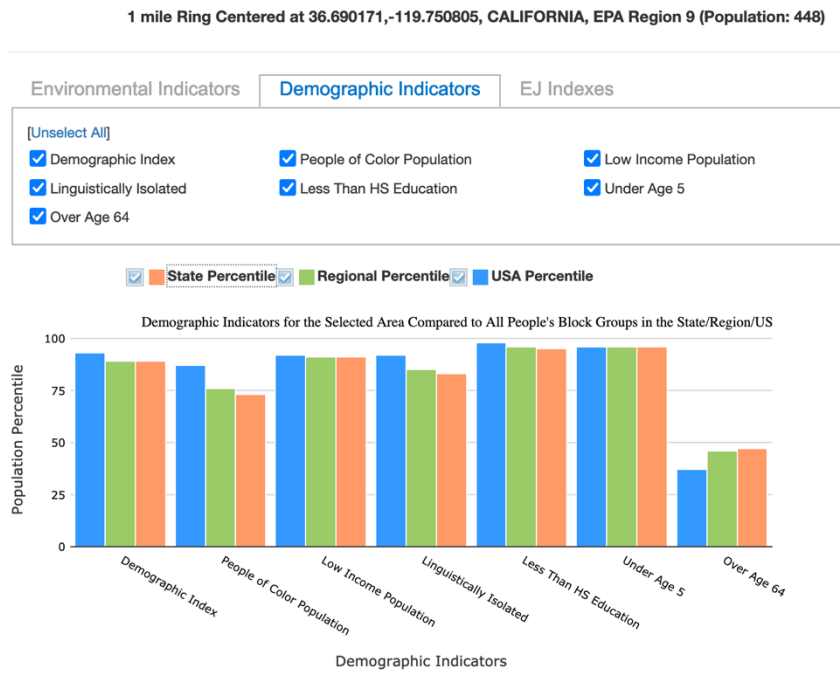
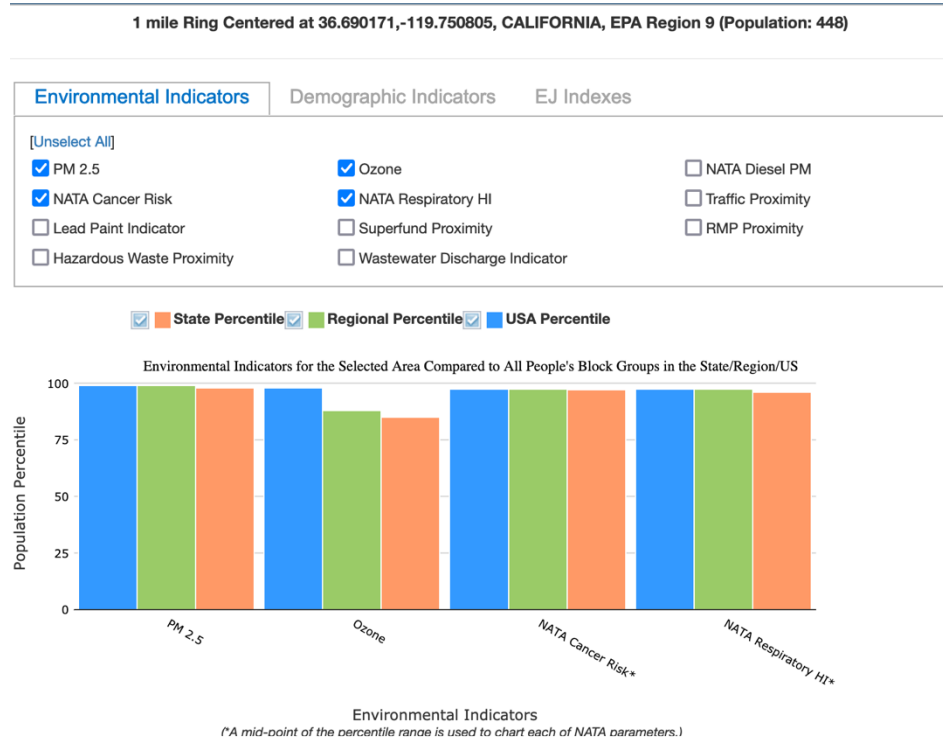
Ashley Werner
Directing Attorney, Leadership Counsel for Justice and Accountability
2210 San Joaquin Street I Fresno, CA 93721
Ph: 415.686.1368
Email: awerner@leadershipcounsel.org

Victoria Bogdan Tejeda
Staff Attorney
Center for Biological Diversity
Ph: 724.317.7029
Email: vbogdantejeda@biologicaldiversity.org

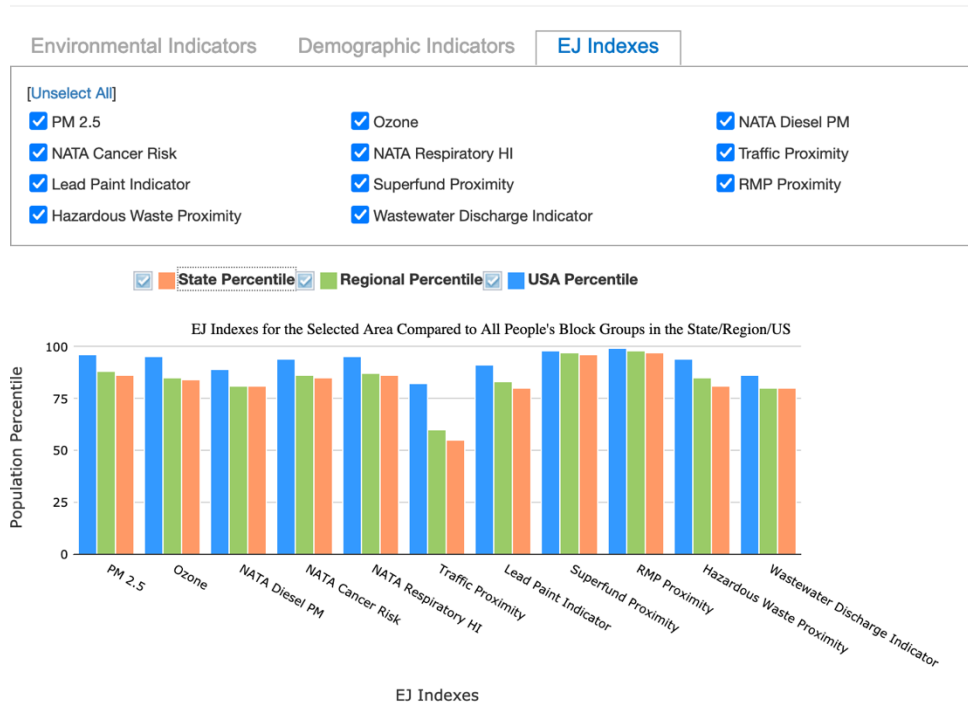
APPENDIX I

Environmental, Demographic, and EJ Indicators. Source: EPA EJScreen, <https://ejscreen.epa.gov/mapper/> (last visited Oct. 2, 2021)

1. One-mile radius around the proposed Fresno Wood Combustion Project: Environmental Indicators, Demographic Indicators, EJ Indexes

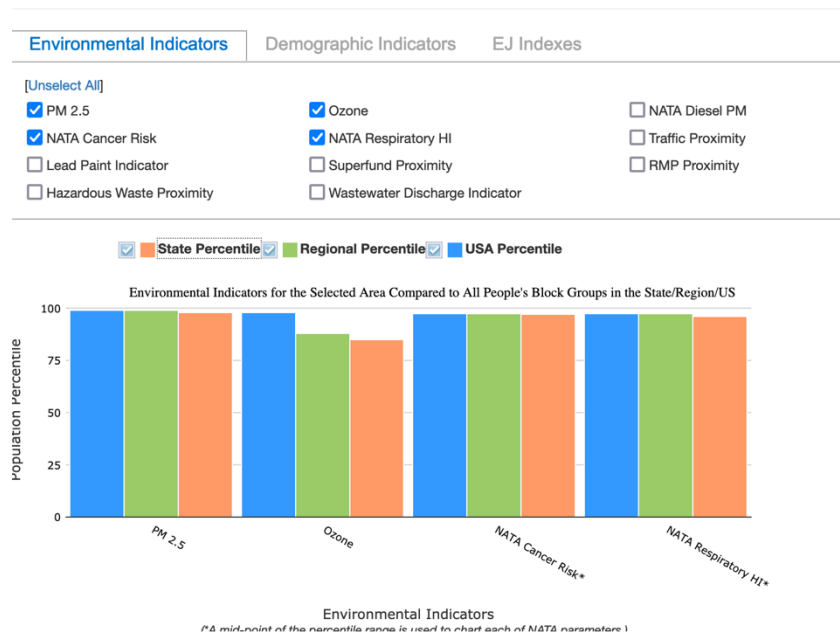


1 mile Ring Centered at 36.690171,-119.750805, CALIFORNIA, EPA Region 9 (Population: 448)



2. Two-mile radius around the proposed Fresno Wood Combustion Project: Environmental Indicators, Demographic Indicators, EJ Indexes

2 miles Ring Centered at 36.690171,-119.750805, CALIFORNIA, EPA Region 9 (Population: 14,104)



2 miles Ring Centered at 36.690171,-119.750805, CALIFORNIA, EPA Region 9 (Population: 14,104)

Environmental Indicators

Demographic Indicators

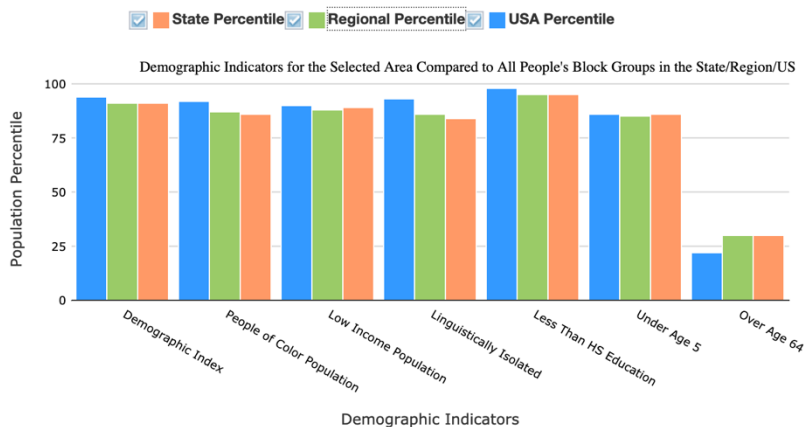
EJ Indexes

[Unselect All]

- ☒ Demographic Index
- ☒ Linguistically Isolated
- ☒ Over Age 64

- ☒ People of Color Population
- ☒ Less Than HS Education

- ☒ Low Income Population
- ☒ Under Age 5



2 miles Ring Centered at 36.690171,-119.750805, CALIFORNIA, EPA Region 9 (Population: 14,104)

Environmental Indicators

Demographic Indicators

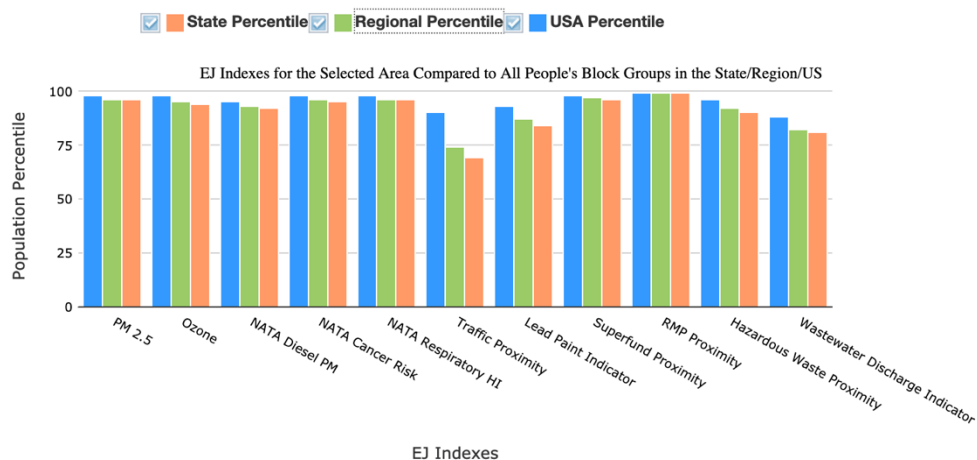
EJ Indexes

[Unselect All]

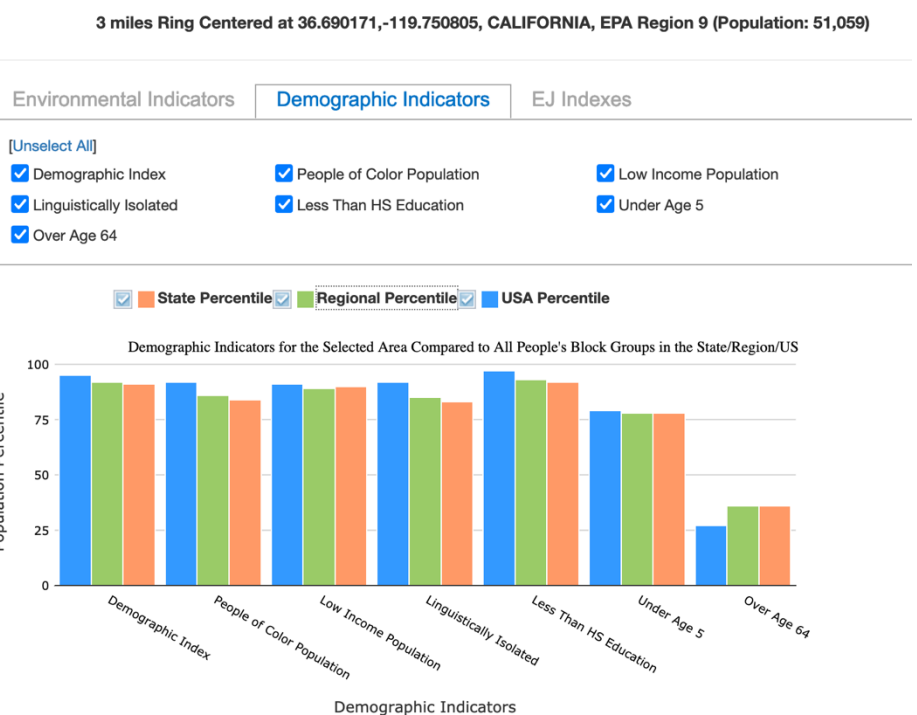
- ☒ PM 2.5
- ☒ NATA Cancer Risk
- ☒ Lead Paint Indicator
- ☒ Hazardous Waste Proximity

- ☒ Ozone
- ☒ NATA Respiratory HI
- ☒ Superfund Proximity
- ☒ Wastewater Discharge Indicator

- ☒ NATA Diesel PM
- ☒ Traffic Proximity
- ☒ RMP Proximity



3. Three-mile radius around the proposed Fresno Wood Combustion Project: Environmental Indicators, Demographic Indicators, EJ Indexes



3 miles Ring Centered at 36.690171,-119.750805, CALIFORNIA, EPA Region 9 (Population: 51,059)

Environmental Indicators

Demographic Indicators

EJ Indexes

[Unselect All]

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> PM 2.5 | <input checked="" type="checkbox"/> Ozone | <input checked="" type="checkbox"/> NATA Diesel PM |
| <input checked="" type="checkbox"/> NATA Cancer Risk | <input checked="" type="checkbox"/> NATA Respiratory HI | <input checked="" type="checkbox"/> Traffic Proximity |
| <input checked="" type="checkbox"/> Lead Paint Indicator | <input checked="" type="checkbox"/> Superfund Proximity | <input checked="" type="checkbox"/> RMP Proximity |
| <input checked="" type="checkbox"/> Hazardous Waste Proximity | <input checked="" type="checkbox"/> Wastewater Discharge Indicator | |

