



Legislation Details (With Text)

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Title: Consideration of Conditional Use Permit Application No. P18-03189, a request to add a Biomass Cogeneration Plant (BCP) and a wood pellet mill to the existing West Coast Waste Material Recovery Facility (MRF) located on the south side of East North Avenue, between South Cedar Avenue and South Golden State Boulevard in Fresno, California (Council District 3).

1. RECOMMEND ADOPTION (to the City Council) of Environmental Assessment No. P18-03189, an Initial Study Subsequent Mitigated Negative Declaration (ISMND) dated August 4, 2021, for the proposed project in accordance with the California Environmental Quality Act (CEQA); and,

2. RECOMMEND DENIAL (to the City Council) of the appellant's appeal and UPHOLD the action of the Planning and Development Department Director to approve Conditional Use Permit Application No. P18-03189, a request to construct a small biomass Cogeneration Plant (BCP) and wood pellet mill at the existing West Coast Waste Material Recovery Facility (MRF), subject to conditions of approval dated September 30, 2021.

Sponsors: Planning and Development Department

Indexes:

Code sections:

Attachments: 1. Exhibit A - Vicinity Map, 2. Exhibit B - Aerial Photograph, 3. Exhibit C - Planned Land Use Map, 4. Exhibit D - Zoning Map, 5. Exhibit E - Project Information Tables, 6. Exhibit F - Noticing Buffer Map, 7. Exhibit G - Master Application/Owner's Letter of Authorization, 8. Exhibit H - Operational Statement, 9. Exhibit I - Exhibits (Site Plan, Elevation Photos, Floor Plans), 10. Exhibit J - Notice of Intent to Take Action, 11. Exhibit K - Opposition Letter in Response to NOI, 12. Exhibit L - P18-03189 Approval Letter, 13. Exhibit M - Notice of Action, 14. Exhibit N - Coalition Appeal Letter, 15. Exhibit O - Public Hearing Notice, 16. Exhibit P - Comments in Response to Public Hearing Notice, 17. Exhibit Q - Applicant Analysis and Response to Concerns, 18. Exhibit R - Environmental Assessment, 19. Exhibit S - Fresno Municipal Code Findings, 20. Exhibit T - Conditions of Approval for P18-03189

Date	Ver.	Action By	Action	Result
12/1/2021	1	Planning Commission	TABLED	

REPORT TO THE PLANNING COMMISSION

December 1, 2021

FROM: Mike Sanchez, Assistant Director
Planning & Development Department

THROUGH: PHILLIP SIEGRIST, Supervising Planner
Development Services Division

BY: JOSE VALENZUELA, Planner III
Development Services Division

SUBJECT

Consideration of Conditional Use Permit Application No. P18-03189, a request to add a Biomass Cogeneration Plant (BCP) and a wood pellet mill to the existing West Coast Waste Material Recovery Facility (MRF) located on the south side of East North Avenue, between South Cedar Avenue and South Golden State Boulevard in Fresno, California (Council District 3).

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EXECUTIVE SUMMARY

Chip Clements, on behalf of West Coast Waste, Inc., has filed Conditional Use Permit Application No. P18-03189 pertaining to ± 18.16 acres of industrial property located on the south side of East North Avenue, between South Cedar Avenue and South Golden State Boulevard. The subject property is located in the IH (*Heavy Industrial*) zone district.

Conditional Use Permit Application No. P18-03189 proposes to add a Biomass Cogeneration Plant (BCP) and a wood pellet mill to the existing West Coast Waste Material Recovery Facility (MRF). The majority of the BCP equipment will be stored within a $\pm 24,000$ square-foot metal building to be located on a ± 2.1 -acre portion of the ± 18.16 -acre subject property. The proposed BCP will generate renewable electricity via a fully enclosed gasification/combustion process to create steam to run a turbine generator. Energy generated by the turbine will be used to offset grid power used by the new process and to power new electric grinders with excess energy to be sold to PG&E.

On September 30, 2021, the Planning & Development Department Director approved the Conditional Use Permit Application No. P18-03189 subject to conditions of approval dated September 30, 2021 (**Exhibit L**, Approval Letter and **Exhibit T**, Conditions of Approval).

The Director's decision to approve the request was appealed by Nayamin Martinez of Central California Environmental Justice Network, Catherine Garoupa White of the Central Valley Air Quality Coalition, Ashley Werner of Leadership Counsel for Justice and Accountability, and Victoria Bogdan Tejada, of Center for Biological Diversity, on October 14, 2021 (**Exhibit N**, Appeal Letter). Therefore, the subject application is being considered by the Planning Commission.

Staff recommends upholding the Planning & Development Department Director's approval based on substantial evidence detailed in this staff report that specific Findings made by the Director in approval of the Conditional Use Permit contained in Section 15-5306 remain valid.

BACKGROUND

Conditional Use Permit Application No. P18-03189 is a major amendment to the previously approved Conditional Use Permit Application Nos. C-04-174 and C-15-030, which authorized the establishment of a green waste facility at the ±18.16-acre IH (*Heavy Industrial*) zoned subject property.

The subject property is designated for Heavy Industrial planned land uses under the Fresno General Plan. The Heavy Industrial planned land use designation is intended to accommodate the broadest range of industrial uses on sites identified in the Fresno General Plan. It includes manufacturing, assembly, wholesaling, distribution, and storage activities that are essential to the development of a balanced economic base. The subject property is located in the IH (*Heavy Industrial*) zone district which is consistent with the Heavy Industrial planned land use designation. The existing facility and current operations as well as the proposed improvements are consistent with the Heavy Industrial planned land use designation for the subject site.

Development under this application proposes to add a Biomass Cogeneration Plant (BCP) and a wood pellet mill to the existing West Coast Waste Material Recovery Facility (MRF). The majority of the BCP equipment will be stored within an approximately 24,000 square-foot metal building on an approximately 2.1-acre portion of the ±18.16-acre property.

Currently, the MRF accepts 1,500 tons per day (TPD) of clean (pre-sorted) and green organic materials, wood waste, and wood chips suitable for recycled use by others. Some of this material cannot be recycled and must be disposed at a local landfill. The project will divert a maximum of 200 TPD of this waste organic and wood material from disposal at a local landfill which instead will be utilized as feedstock in the new BCP.

The proposed BCP will generate renewable electricity via a fully enclosed gasification/combustion process to create steam to run a turbine generator. The turbine will generate approximately five (5) megawatts (MW); of which 1.2 to 2.0 MW will be used to offset grid power used by the new process and to power new electric grinders. The remaining 3 MW will be sold to PG&E through an interconnection at the north edge of the site on South Golden State Frontage Road.

The project has already secured Power Purchase and Interconnect Agreements with PG&E. Excess heat and energy generated from the BCP will be used for previously approved, but not yet constructed, anaerobic digesters to be located south of the existing 30,000 square-foot building. Ash, a byproduct of the BCP, will be captured and blended into mulch, soil amendments, and compost, for eventual sale.

Fresno Municipal Code

Pursuant to Section 15-6706 of the FMC (Transportation, Communication, And Utilities Use Classifications), the existing primary use of the site, as established under Conditional Use Permits C-04-174 and C-15-030, is considered a Waste Transfer Facility. As a use, the proposed Biomass Cogeneration Plant is accessory to the overall primary use but is considered as Utilities, Major pursuant to Section 15-6706 of the FMC.

Pursuant to Table 15-1302 (Land Use Regulations - Employment Districts) of the Fresno Municipal Code (FMC), the existing primary use of a Waste Transfer Facility is permitted in the IH zone district

subject to an approved Conditional Use Permit and additional regulations pursuant to Section 15-2732 (Hazardous Waste Management) of the FMC as applicable. Utilities, Major are permitted by right in the IH zone district and not subject to additional regulations. The proposed Biomass Cogeneration Plant is considered accessory to a primary use and is subject to additional regulations pursuant to Section 15-2703 (Accessory Uses) of the FMC.

Given the conditions of approval dated September 30, 2021, Conditional Use Permit Application No. P18-03189 meets all provisions of the FMC, including but not limited to setbacks, parking, and landscaping, and complies with all applicable design guidelines and development standards for Utilities, Major in the IH zone district.

Approval of Conditional Use Permit Application No. P18-03189 requires compliance with the conditions of approval September 30, 2021, as well as the mitigation measures contained in the mitigated negative declaration (EA No. P18-03189) prepared for the proposed project. However, future proposed uses not permitted by right and/or subject to additional regulations for special uses may be subject to an approved conditional use permit and/or other entitlements or environmental analyses prior to commencing operation.

Other Agencies

All comments received from the applicable agencies have been incorporated into the conditions of approval for Conditional Use Permit Application No. P18-03189. Given the conditions of approval, the project will comply with all department comments and conditions and all zoning requirements as incorporated into the conditions of approval dated September 30, 2021 (**Exhibit T**).

Public Notice and Input

District 3 Plan Implementation Committee

The project was reviewed by the Council District 3 Project Review Committee on October 22, 2019. Some members expressed support for the project; other members expressed opposition and felt it should be located elsewhere. The Committee inquired about the environmental impacts of the project, with the applicant informing the committee that the project was pending completion of environmental analyses (resulting in the Mitigated Negative Declaration proposed for the project). The applicant also mentioned that the project would be required to acquire permits from the Air District and Fresno County and to be compliant with the conditions of the respective permits issued. Committee Member Fuentes motioned for approval of the project, seconded by Minami. The motion carried, 3 yes votes to 2 no votes.

Notice of Environmental Assessment

A public notice of the attached mitigated negative declaration finding for Environmental Assessment Application No. P18-03189 was published and filed on August 4, 2021.

During the 30-day public comment period, comments were received from the San Joaquin Air Pollution Control District on September 3, 2021, related to the Environmental Assessment. This letter acknowledges that specific annual project related emissions from construction and operation emissions of criteria pollutants are not expected to exceed any of the District's significance thresholds as identified in the District's Guidance for Assessing and Mitigating Air Quality Impacts.

However, the letter also includes recommendations to further lessen air quality impacts from construction-related diesel exhaust emissions; including but not limited to demonstration of compliance with District Rule 2201 (New and Modified Stationary Source Review). Accordingly, these recommendations are included as conditions of approval for the proposed project.

Notice of Intent to Take Action

Pursuant to FMC Section 15-5905-A, the Planning and Development Department mailed a Notice of Intent to Take Action to surrounding property owners within 1,000 feet of the subject site on September 10, 2021, in accordance with FMC Section 15-5007 (**Exhibit J**). FMC Section 15-5305 requires a 10-day protest period prior to the date of action. Due to a typo included in the notice for this project, the 10-day protest period was extended by 7 days which ended on September 27, 2021.

One letter/email in opposition to the project was received on September 23, 2021 (**Exhibit K**). Concerns were related to environmental issues and insufficient time to comment. In addition, the protestor requested to further extend the comment period to November 1, 2021.

Notice of Action

The Planning & Development Department Director approved the Conditional Use Permit Application No. P18-03189 on September 30, 2021. In accordance with FMC Section 15-5009-B, staff sent a Notice of Action to the applicant and to the protester requesting notification (**Exhibit M**).

In response to the mailed Notice of Action, one formal appeal letter, dated October 14, 2021, was received from Nayamin Martinez of Central California Environmental Justice Network, Catherine Garoupa White of the Central Valley Air Quality Coalition, Ashley Werner of Leadership Counsel for Justice and Accountability, and Victoria Bogdan Tejeda, of Center for Biological Diversity. The appeal letter, attached as **Exhibit N**, listed several reasons for the appeal primarily related to the environmental assessment prepared for the project. Pursuant to FMC Section 15-5017-A-1 & 15-5017-A-3, the Director has referred this application to the Planning Commission for review.

Notice of Planning Commission Hearing

In accordance with Section 15-5007 of the FMC, the Planning and Development Department mailed notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property on November 19, 2021 (**Exhibit O**).

In response to the Notice of Planning Commission Hearing, one comment letter, dated November 19, 2021, was received from Lucas Williams of the Environmental Law and Justice Clinic at Golden Gate University School of Law, on behalf of the appellant group. The comment letter, attached as **Exhibit P**, listed concerns related to the environmental assessment prepared for the project.

Analysis of Comments & Concerns

The comments and concerns expressed in the letters and emails that were received in response to the Notice of Intent to Take Action, Notice of Action, and Notice of Public Hearing primarily included impacts to the surrounding neighborhood related to Greenhouse Gas pollution, Environmental Justice, Construction, Water impacts, Forest impacts, and the City's notification procedures about the subject project to surrounding disadvantaged communities. The applicant provided an analysis and

response to these concerns in their letter dated October 7, 2021, and supplemental “fact sheet” (**Exhibit Q**).

LAND USE PLANS AND POLICIES

The Fresno General Plan and Roosevelt Community Plan designate the subject site for Heavy Industrial planned land uses and is intended to accommodate the broadest range of industrial uses on sites identified in the General Plan. It includes manufacturing, assembly, wholesaling, distribution, and storage activities that are essential to the development of a balanced economic base. Small-scale commercial services and ancillary office uses are also permitted.

Fresno Airport Land Use Compatibility Plan

The proposed project is not located within an area of influence under the Fresno County Airport Land Use Compatibility Plan (ALUCP). Therefore, the proposed project and use is consistent with the Fresno County Airport Land Use Compatibility Plan.

Fresno General Plan

The Fresno General Plan designates the subject property for Heavy Industrial planned land uses and provides objectives to guide in the development of this project. The Heavy Industrial planned land use designation accommodates the broadest range of industrial uses including manufacturing, assembly, wholesaling, distribution, and storage activities that are essential to the development of a balanced economic base. The following are applicable objectives and policies from the Fresno General Plan.

- Objective ED-1: Support economic development by maintaining a strong working relationship with the business community and improving the business climate for current and future businesses.
- Objective ED-3: Attract and recruit businesses and offer incentives for economic development.
- Policy ED-3-a: Create, adopt, and implement programs to expand existing businesses and attract new businesses.

Commentary: While this policy focuses specifically on creating programs, the intended focus of supporting desirable businesses and industries, defined as those that possess a high growth potential as well as water and renewable resource technologies, is considered applicable to the subject business and proposed operations.

- Objective LU-1: Establish a comprehensive citywide land use planning strategy to meet economic development objectives, achieve efficient and equitable use of resources and infrastructure, and create an attractive living environment.
 - Policy LU-1-a: **Promote Development within the Existing City Limits as of December 31, 2012.** Promote new development, infill, and rehabilitation of existing building stock in the Downtown Planning Area, along BRT corridors, in established neighborhoods generally south of Herndon Avenue, and on other infill sites and vacant land within the City.

- Objective LU-2: Plan for infill development that includes a range of housing types, building forms, and land uses to meet the needs of both current and future residents.
 - Policy LU-2-A: **Infill Development and Redevelopment.** Promote development of vacant, underdeveloped, and re-developable land within the City Limits where urban services are available by considering the establishment and implementation of supportive regulations and programs.
- Objective LU-7: Plan and support industrial development to promote job growth.
 - Policy LU-7-c: **Efficiency of Industrial Uses.** Promoted industrial land use clusters to maximize the operational efficiency of similar activity.
- Objective RC-8: Reduce the consumption of non-renewable energy resources by requiring and encouraging conservation measures and the use of alternative energy sources.
- Objective RC-11: Strive to reduce the solid waste going to landfills to zero by 2035.
 - Policy RC-11-a: **Waste Reduction Strategies.** Maintain current targets for recycling and re-use of all types of waste material in the City and enhance waste and wastewater management practices to reduce natural resource consumption.

The proposed project is consistent with the objectives and policies of the Fresno General Plan, as it will utilize land within an industrial area where the necessary infrastructure and facilities are available to serve the property. The proposed project supports the City's desire to promote economic development while contributing to reduction of non-renewable energy resources through alternative energy sources and waste diversion. The proposed project promotes economic development and preserves and protects resources by developing on an existing site within the city limits on lands appropriately zoned for the proposed operations. The proposed project will contribute to the strengthening of Fresno's economic base and will promote job growth. The prevention and reduction of generated waste through source reduction, recycling, reuse, or composting generates a host of environmental, financial, and social benefits, including conserving energy, reducing disposal costs, and reducing the burden on landfills and other waste disposal methods. Furthermore, the project supports development of green industries in the region, including but not limited to solar, biofuels, recycling, and other forms of alternative energy production.

Roosevelt Community Plan

The subject property is designated for Heavy Industrial planned land uses by the Roosevelt Community Plan. Upon reviewing the policies contained in the Roosevelt Community Plan, staff has determined that there are no policies that are applicable or are more restrictive than those contained in the FMC or the Fresno General Plan.

ENVIRONMENTAL FINDINGS

An environmental assessment initial study was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA) Guidelines. This process included the distribution of requests for comment from other responsible or affected agencies and interested organizations.

Preparation of the environmental assessment necessitated a thorough review of the proposed project and relevant environmental issues and considered previously prepared environmental and technical studies pertinent to the Roosevelt Community Plan area, including the Fresno General Plan Master Environmental Impact Report (MEIR SCH No. 2012111015). These environmental and technical studies have examined projected sewage generation rates of planned urban uses, the capacity of existing sanitary sewer collection and treatment facilities, and optimum alternatives for increasing capacities; groundwater aquifer resource conditions; air quality and greenhouse gas generation, water supply production and distribution system capacities; traffic carrying capacity of the planned major street system; and, student generation projections and school facility site location identification.

The proposed Conditional Use Permit has been determined to not be fully within the scope of the recently updated MEIR SCH No. 2012111015 as provided by the CEQA, as codified in the Public Resources Code (PRC) Section 21157.1(d) and the CEQA Guidelines Section 15177(c). It has been further determined that all applicable mitigation measures of SCH No. 2012111015 have been applied to the project, together with project specific mitigation measures necessary to assure that the project will not cause significant adverse cumulative impacts, growth inducing impacts and irreversible significant effects beyond those identified by SCH No. 2012111015 as provided by CEQA Section 15178(a). In addition, pursuant to Public Resources Code, Section 21157.6(b)(1), staff has determined that no substantial changes have occurred with respect to the circumstances under which the MEIR was certified and that no new information, which was not known and could not have been known at the time that the MEIR was certified as complete, has become available. Therefore, it has been determined based upon the evidence in the record that the project will not have a significant impact on the environment and that the filing of a mitigated negative declaration is appropriate in accordance with the provisions of CEQA Section 21157.5(a)(2) and CEQA Guidelines Section 15178 (b)(1) and (2).

Based upon the attached environmental assessment and the list of identified mitigation measures, staff has determined that there is no evidence in the record that the project may have a significant effect on the environment and has prepared a mitigated negative declaration for this project. As previously mentioned, a public notice of the attached mitigated negative declaration finding for Environmental Assessment Application No. P18-03189 was published on August 4, 2021, which commenced a 30-day public comment period. Comments were received from the San Joaquin Air Pollution Control District on September 3, 2021, related to the Environmental Assessment. The Air District's comments were incorporated into the conditions of approval dated September 30, 2021. The applicant should demonstrate compliance prior to the issuance of building permits.

Project specific mitigation measures include compliance with SJVAPCD rules and guidelines; compliance with cultural resources monitoring during construction; payment of applicable traffic impact fees (including, but not limited to, the Traffic Signal Mitigation Impact [TMSI] Fee, the Fresno Major Street Impact [FMSI] Fee, and the Regional Transportation Mitigation Fee [RTMF]); and compliance with handling of hazardous and hazardous materials in accordance with State and local regulations. The Environmental Assessment is attached as **Exhibit R**.

FRESNO MUNICIPAL CODE FINDINGS

The required findings for a Conditional Use Permit under Section 15-5306 are as follows:

- 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.
- F. The proposed use is consistent with the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5.

Based upon analysis of the application, staff concludes that the required findings made by the Director to approve the special permit under FMC Section 15-5306 (A, B, C, D, E & F) are appropriate. These findings are attached as **Exhibit S**.

CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Fresno County Airport Land Use Compatibility Plan, Fresno General Plan, Roosevelt Community Plan, compliance with the specific provisions of Development Code; its compatibility with surrounding existing or proposed uses; and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above. Upon consideration of this evaluation, it can be concluded that Conditional Use Permit Application No. P18-03189, a request to construct a Cogeneration Power Plan with Wood Pellet Mill, is appropriate for the subject property.

Attachments:

- Exhibit A - Vicinity Map
- Exhibit B - Aerial Photograph
- Exhibit C - Planned Land Use Map
- Exhibit D - Zoning Map
- Exhibit E - Project Information Table
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