

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

***Consideration of Bowerman Power LFG, LLC's Request to Waive a 25% Purchase
Requirement under the SB 71 Program***

Tuesday, November 15, 2011

Prepared By: *Cheryl Ide*

Applicant – Bowerman Power LFG, LLC (“Bowerman” or the “Applicant”)

Location – Irvine, Orange County

Industry – Landfill Gas

Project – New Landfill Gas and Capture and Production Facility

Value of Qualified Property – \$9,240,000

Estimated Sales and Use Tax Exclusion Amount¹ – \$840,840

Amount of Time Requested: 1 Year (November 17, 2012)

SUMMARY

Bowerman was approved by the CAEATFA Board on November 17, 2010 for the purchase of \$9,240,000 in Qualified Property for a landfill gas facility in Irvine, Orange County. The SB 71 Program (“Program”) requires that Bowerman purchase 25% (\$2,310,000) of the total approved Qualified Property within the first year (Regulation Section 10035(c)(1)), the “25% Purchase Requirement.” This requirement serves as an indicator of readiness and assists in incentivizing timely economic activity. The 25% requirement can be waived by the Board upon a finding that a waiver is in the public interest and advances the purposes of the program. (Regulation Section 10035(c)(1)(A)).

As of November 4, 2011 Bowerman had not conveyed any qualified property. On September 9, 2011, CAEATFA staff sent the Applicant a courtesy reminder of the 25% Purchase Requirement. Bowerman responded by requesting an extension of the 25% Purchase Requirement to November 17, 2012 to accommodate unforeseen delays in the Project’s permitting process (Attachment A).

About the Applicant

Bowerman Power LFG, LLC is a Delaware limited liability company formed in 2008 and plans to develop landfill gas-to-electricity project in Irvine, California.

¹ This amount is calculated based off of the average statewide sales tax rate of 9.1% at the time the Application was approved by the Board. The current anticipated STE is \$748,440, calculated at 8.1%.

Project Description

Bowerman's Application approved by the CAEATFA Board was for the production of an alternative source gas within a 20 MW renewable power facility. The plant will process landfill gas ("LFG") into a renewable biogas fuel suitable for combustion in a series of gas-driven electric-generating turbines. The Facility will be operated at the Landfill which is located in Irvine, California. The Facility will consist of two unique processes, one for the collection and purification of the LFG, and the second for the actual generation of electricity from this fuel source. The Qualified Property, consisting of equipment to collect and clean raw LFG to a saleable medium British thermal unit ("Btu") product for electric generation, qualifies as eligible equipment to receive the sales and use tax exclusion.

According to the Program's evaluation process, the Project is anticipated to produce a net benefit of an estimated \$565,704 with an anticipated fiscal benefit of \$1,008,052 and anticipated environmental benefit of \$398,492 over the life of the equipment (weighted average of 29.29 years). The approved project was anticipated to support a total of 6 permanent jobs and 24 temporary construction jobs.

Waiver Request

Bowerman has requested a waiver of the 25% Purchase Requirement due to delays in permitting. According to the Applicant, the project was moving forward at the end 2010, with a plant site selected, civil engineering performed, and environmental studies completed. However, permit delays ensued when the land was surveyed and revealed the selected site was inhabited by the California Gnatcatcher, recognized as a species of special concern by the California Department of Fish and Game ("CDFG") and listed as a threatened species by the U.S. Fish and Wildlife Service ("USFWS").

In July 2011, Bowerman was able to work with Orange County Waste and Recycling ("OCW&R") to have the plant site located at an existing flare site, thus avoiding impacts to the California Gnatcatcher and its habitat. Attachment B provides a map reflecting the previous and new site locations. In a July meeting with CDFG, USFWS and OCW&R, Bowerman Power received concurrence from the three agencies that no mitigation was needed for the plant site being located at the existing flare site. This put an end to the need for a long permitting process for habitat restoration and the project once again regained forward progress.

According to Bowerman, the engineering design, equipment specification, plant design, interconnect agreements and funding allocation are now proceeding with the purchase of equipment expecting to start by August 2012.

Staff Evaluation

Bowerman has represented that a one year time extension will allow the project to move forward. Bowerman has further represented that the permitting delays were unanticipated and could not be reasonably avoided. Granting the waiver will allow the project to proceed in accordance with the

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law and in a manner designed to avoid impacts on endangered or threatened species. Based on the foregoing, staff believes that extending the 25% Purchase Requirement is consistent with the intent of the Program, is in the public interest, and advances the purposes of the Program.

Staff Recommendation: Staff recommends that the Board find it is in the public interest and advances the purposes of the Program to extend the 25% Purchase Requirement to November 17, 2012 pursuant to Regulations Section 10035(c)(1)(A).

Attachments

Attachment A: Bowerman's Letter Requesting Waiver

Attachment B: Map of Bowerman Project Site

Attachment C: Staff Summary/Project Description approved by the CAEATFA Board on November 17, 2010

**A RESOLUTION OF
CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION
FINANCING AUTHORITY APPROVING A TIME EXTENSION OF THE 25%
PURCHASE REQUIREMENT**

November 15, 2011

WHEREAS, on November 17, 2010 the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority”), a public instrumentality of the State of California, approved a Sales Tax Exclusion (“STE”) in the amount of \$9,240,000 of Qualified Property for **Bowerman Power LFG, LLC** (the “Applicant”); and

WHEREAS, within one year of approval by the Authority, the Applicant must make purchases of Qualified Property totaling not less than twenty-five percent (25.0%) of the total amount listed in the approval resolution (Regulations Section 10035(c)(1));

WHEREAS, upon a finding that it is in the public interest and advances the purposes of the Program, the Authority may waive the requirement that the Applicant purchase at least twenty five percent (25.0%) of Qualified Property within one year of Board Approval (Regulations Section 10035(c)(1)(A)); and

WHEREAS, the Applicant has requested a waiver for the requirement to purchase 25% of Qualified Property within one year to address unanticipated and unavoidable delays in the Project’s environmental permitting process, and extend the term from November 17, 2011 to November 17, 2012; and

WHEREAS, Granting the waiver will allow the project to proceed and the state to receive the anticipated environmental and economic benefits that justified the initial approval of the project in accordance with the law and in a manner designed to avoid impacts on endangered or threatened species, thereby advancing both the public interest and the purposes of the program.

NOW THEREFORE BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority, as follows:

Section 1. The Authority finds that it is in the public interest and advances the purposes of the Program to waive the requirement that the first year purchases of Qualified Property are at least twenty-five percent (25.0%) of the total amount listed in the approval resolution, and extend the term to November 17, 2012.

Section 2. This resolution shall take effect immediately upon its passage.

Attachment A: Bowerman's Letter Requesting Waiver

BOWERMAN POWER LFG, LLC
680 ANDERSEN DRIVE, SUITE 590
PITTSBURGH, PA 15220

September 14, 2011

California Alternative Energy & Advanced Transportation Financing Authority
(CAEATFA)
915 Capital Mall, Room 457
Sacramento, CA 95814

ATTN: Ms. Christine Solich, Executive Director

Via Email: caeatfa@treasurer.ca.gov

SUBJECT: SB 71 Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax Exclusion Program - 25% Purchase Requirement Compliance for Bowerman Power LFG, LLC

Dear Ms. Solich,

Bowerman Power LFG, LLC ("Bowerman Power") is requesting a waiver of the purchase expenditure requirements set forth in Section 10035 (C)(1) of SB 71 Sales and Use Tax Exclusion Program. The CAEATFA Board approved financial assistance on November 17, 2010 for the Bowerman Power landfill gas to electric project.

Time Extension Requested

A time extension of one year to November 17, 2012 is requested in order to comply with the 25% purchase requirement set out in Section 10035(C)(1). The remainder of the purchases will be made within the following year, 2013, thus having all of the purchases made within three years of the November 17, 2010 approval.

Shown below are the anticipated purchase dates and costs of the qualified property:

Qualified Property	Anticipated Purchase Date	Cost
Gas compressor	September 2012	\$3,060,000
Pre-Treatment System	September 2012	\$2,805,000
Gas Blowers and Coolers	September 2012	\$1,390,000
Distribution Control System	January 2013	\$510,000
Gas Collection System Enhancement and Piping	April 2013	\$1,400,000
Other Miscellaneous Equipment	July 2013	\$75,000

Reason Extension is Needed

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The project was moving forward at the end of last year, 2010, with a plant site selected, civil engineering performed, and environmental studies completed. The environmental studies showed a 7-10 acre impact to coastal scrub and chaparral habitats. These habitats are potential home for the California Gnatcatcher. The California Gnatcatcher is listed as a Species of Special Concern by the California Department of Fish and Game (CDFG) and listed as Threatened by the U.S. Fish and Wildlife Service (USFWS). What would have been a routine purchase of mitigation credits turned into a very complex situation because of the Orange County Waste and Recycling (OCW&R) landfill property being located in a habitat reserve and its mitigation credits being very limited. Bowerman Power worked with OCW&R, USFWS and CDFG to try to purchase these mitigation credits as well as investigating other options, but all of these options had permitting delays of two to three years, which would have devastating effects on the viability of the project. In July 2011, Bowerman Power was able to work with OCW&R to have the plant site located at an existing flare site, thus avoiding impacts to the California Gnatcatcher and its habitat. In a July meeting with CDFG, USFWS and OCW&R, Bowerman Power received concurrence from the three agencies that no mitigation was needed for the plant site being located at the existing flare site. This put an end to the need for a long permitting process for habitat restoration and the project once again regained forward progress, albeit delayed.

Meeting New Timeline

The impacts to critical habitat and the California Gnatcatcher were the only outstanding regulatory permit issues for the project. The appropriate environmental documents have been certified and the crucial South Coast Air Quality permit has been issued. Only ministerial permits remain to be obtained. The engineering design, equipment specification, plant design, interconnect agreements and funding allocation are now proceeding. The purchase of equipment is expected to start by August 2012.

Additional Information

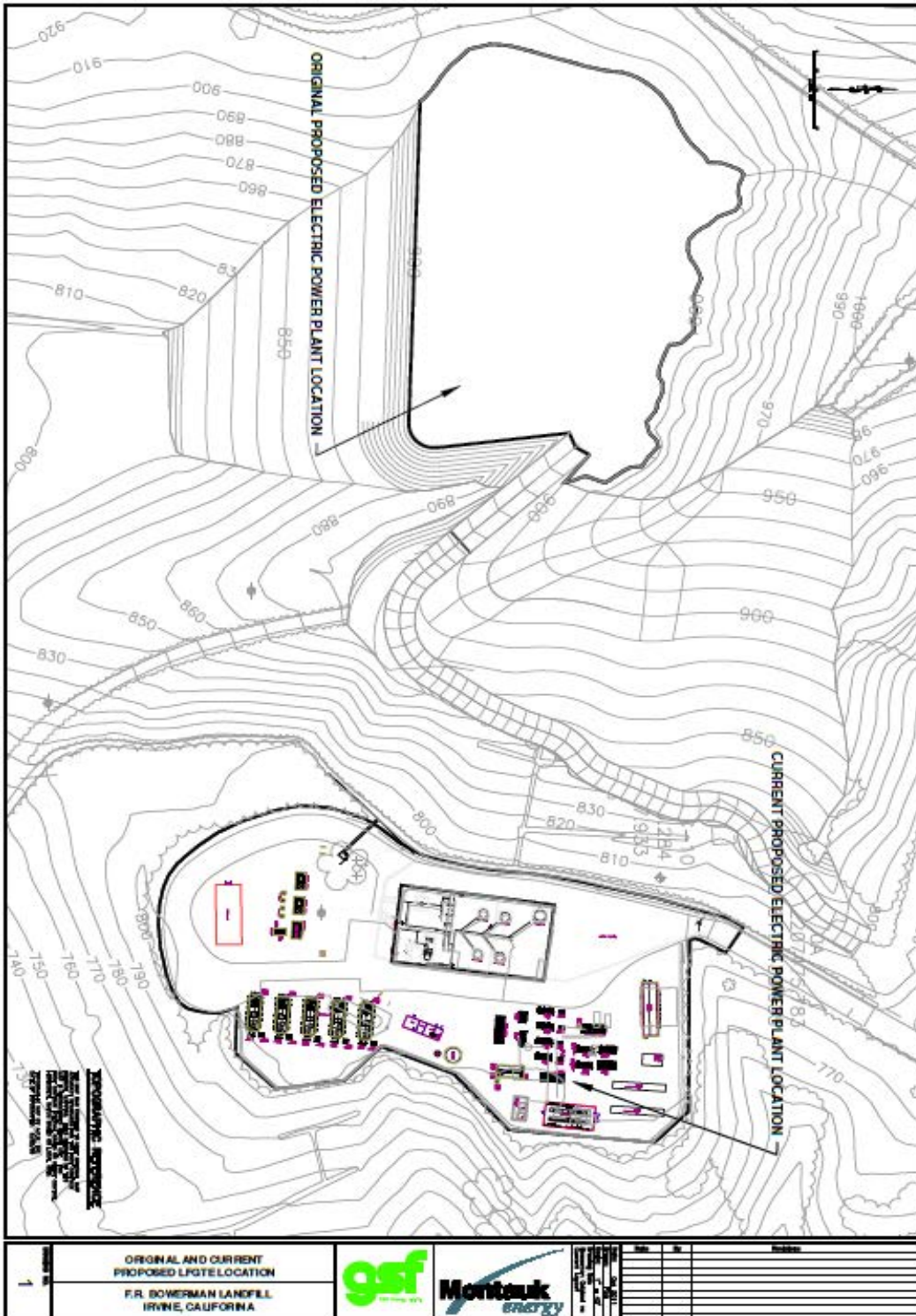
In 1996, Bowerman Power's affiliate, GSF Energy, LLC, acquired the landfill gas rights for the Frank R. Bowerman Landfill in Irvine California. This landfill is one of the largest in the United States and is owned and operated by OCW&R . The plans are to develop a major electric generation project that would be one of the largest LFG-to-electricity projects in California and the U.S. Landfill gas will be recovered and treated to provide usable fuel for the gas turbines. Currently, this landfill gas is being flared, creating greenhouse gas emissions and providing no beneficial use. Initially, the project would provide 20 MW or more of renewable power using environmentally advanced Solar Mercury 50 generation technology. The project will be a major source of new green energy to serve the greater Los Angeles area. The project will be designed to be expandable in order to accommodate increases in landfill gas production at Bowerman over the coming decades.

I thank you and the Board for considering allowing an extension of time to comply with the 25% purchase requirements of SB 71. If you have any questions or if there is information that I did not fully address, please email me at dherrman@montaukenergy.com or call me at 412-747-8714 and I will quickly respond.

Yours Very Truly,

David Herman

Attachment B: Map of Bowerman Project Site



Attachment C: Staff Summary at Board Approval

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

Request to Approve Project for SB 71 Sales and Use Tax Exclusion²

**BOWERMAN POWER LFG, LLC
Application No. 10-SM001**

Wednesday, November 17, 2010

Prepared By: *Martha Alvarez*

SUMMARY

Applicant – Bowerman Power LFG, LLC

Location – Irvine, Orange County

Industry – Landfill Gas

Project – New Renewable Power Facility

Value of Qualified Property – \$9,240,000

Estimated Sales and Use Tax Exclusion Amount³ – \$840,840

Application Score

Fiscal Benefits Points:	1,199
<u>Environmental Benefits Points:</u>	<u>474</u>
Net Benefits Score:	1,673
<u>Additional Benefits Points:</u>	<u>0</u>
Total Score:	1,673

Staff Recommendation – Approval

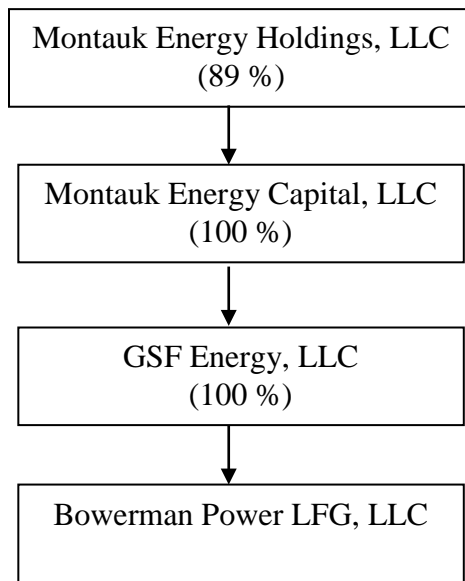
THE APPLICANT

² All capitalized terms not defined in this document are defined in the Program's statute and regulations.

³ This amount is calculated based off of the average statewide sales tax rate of 9.1%.

Bowerman Power LFG, LLC (“Bowerman” or the “Applicant”) is a Delaware limited liability company formed in 2008 and qualified to do business in California. Bowerman’s parent company, GSF Energy, LLC (“GSF”) currently holds the gas rights to the Frank R. Bowerman Landfill (“Landfill”). The Landfill, owned by the County of Orange, is one of the largest landfills in the United States and, according to the Applicant, receives in excess of 2,000,000 tons of waste per year. Montauk Energy Capital, LLC (“Montauk”), who owns 100 percent of GSF’s membership shares, first got involved at the Landfill when it acquired GSF in 1996. According to the Applicant, back then the Landfill was one of seven landfill gas (“LFG”) development projects in California in which Montauk possessed a financial interest. At the Landfill, Montauk, through Bowerman, has plans to develop a major electric generation project that would be one of the largest landfill gas-to-electricity projects in California and the United States, where the plant will process landfill gas into commercial grade natural gas for combustion in a series of electric turbines. The Facility will be operated at the Landfill which is located in Irvine, California.

Chain of ownership of Bowerman Power LFG, LLC is as follows:



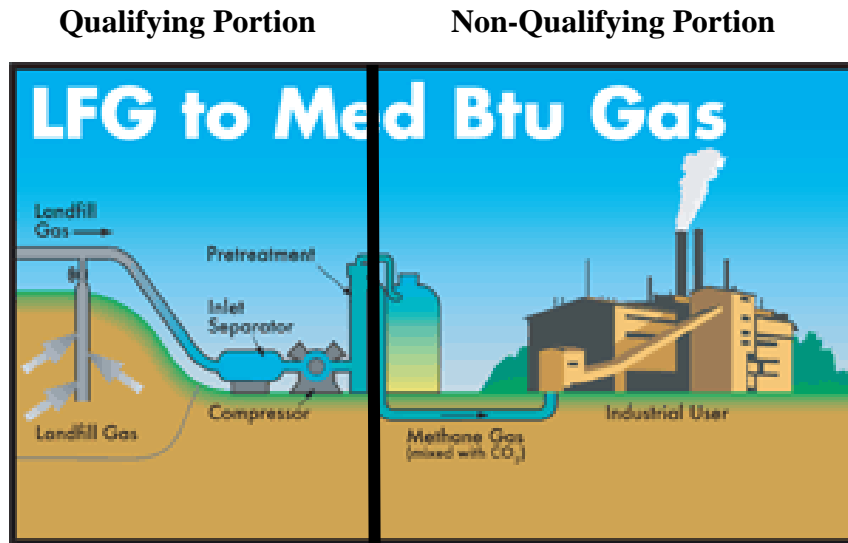
THE PROJECT

Bowerman plans to construct an initial 20 MW renewable power facility using environmentally advanced Solar Mercury 50 generation technology. The Project will be fueled entirely from LFG processed at the Landfill.

The Facility will consist of two unique processes, one being the collection and purification of the LFG, and the second being the actual generation of electricity from this fuel source. The Qualified Property, consisting of equipment to collect and clean raw LFG to a saleable medium British thermal unit (“Btu”) product for electric generation, qualifies as eligible equipment to receive the sales and use tax exclusion. The LFG is collected through a series of wells drilled

into the Landfill. These wells are connected to a central header system which is currently diverted to flares for combustion.

As part of the Facility, Bowerman will construct improvements to the LFG collection system to treat the raw LFG resulting in the product meeting required specifications for combustion in the turbines. The Project will be designed to be expandable to accommodate expected substantial increases in LFG production at the Landfill over the coming decades.



Landfill Gas-to-Medium Btu Gas Processing Project at Montauk

ANTICIPATED COSTS OF QUALIFIED PROPERTY

The anticipated Qualified Property purchases are listed below:

Gas Compressors	\$3,060,000
Pre-Treatment System	2,805,000
Gas Collection System Enhancement and Piping	1,400,000
Gas Blowers and Coolers	1,390,000
Distribution Control System	510,000
Other Miscellaneous Equipment	75,000
Total	<u>\$9,240,000</u>

Note: The Qualified Property purchases reported in the Application and shown here in staff's report are estimated costs. At the termination of the conveyance/reconveyance agreement a finalized project equipment list will be prepared detailing the value of the Project equipment conveyed and reconveyed and detailing the actual tax benefit realized pursuant to Revenue and

Tax Code Section 6010.8. Variations from the costs shown in the Application and in this report may occur prior to the closing due to increased costs of certain components of the Project from original estimates, and other reasons. In addition, such costs may vary after closing due also to increased costs, as well as common design and equipment modifications during construction, differences in equipment due to future changes in law or regulation or for other reasons.

TIMELINE

Bowerman intends to initiate construction in the third calendar quarter of 2011. Based on current estimates, the Facility will begin commercial operations in the first quarter of 2013.

PROJECT EVALUATION

NET BENEFITS

The total cost of the Qualified Property purchases is anticipated at \$9,240,000 and the total net benefits are estimated at \$565,704 for the Project. The Project received a Total Score of 1,673, which exceeds the required 1,000 point threshold, and a total Environmental Benefits Score of 474, which exceeds the 100 point threshold.

- A. **Fiscal Benefits (1,199 points)**. The net present value of the total fiscal benefits over the lifetime of the Qualified Property is derived from the Applicant's projected sales taxes, personal income taxes paid by the Applicant's employees, corporation taxes on profits, property taxes and other indirect fiscal benefits of the Applicant which amounts to an estimated \$1,008,052, resulting in a Fiscal Benefits Score of 1,199 points for the Project.

- B. **Environmental Benefits (474 points)**. CAEATFA staff estimated that the Project will result in an environmental benefits value of \$398,492 over the life of the Facility resulting in an Environmental Benefits Score of 474 points for the Project. These benefits derive from the production of biogas, which offsets the need for use of fossil methane.

- C. **Additional Benefits (0 of 200 points)**. Applicants may earn up to 200 additional points for their final score. The Applicant submitted information and received 0 additional points.
 - 1) **Permanent Jobs (0 of 40 points)**. The Applicant's Project will support a total of 6 permanent jobs at the Facility. CAEATFA staff estimated that approximately 1 of these jobs will be attributable to a marginal increase in jobs created due to the approved sales and use tax exclusion. Zero (0) points were awarded because the marginal increase in jobs created does not meet the required threshold.

- 2) **Construction Jobs (0 of 20 points)**. The Applicant's Project will support a total of 24 construction jobs at the Facility. CAEATFA staff estimated that approximately 2 of these jobs will be attributable to a marginal increase in jobs created due to the approved sales and use tax exclusion. Zero (0) points were awarded because the marginal increase in jobs created does not meet the required threshold.

STATUS OF PERMITS/OTHER REQUIRED APPROVALS

Bowerman has received its air pollution environmental permit from the South Coast Air Quality Management District and is seeking a water discharge permit in order to begin construction. Prior to commercial operation, the Facility will require storm water, sewer, hazardous waste and storage tank permits.

LEGAL QUESTIONNAIRE

Staff reviewed the Applicant's responses to the questions contained in the Legal Status portion of the Application. The responses did not disclose any information that raises questions concerning the financial viability or legal integrity of this Applicant.

CAEATFA FEES

In accordance with CAEATFA regulations,⁴ the Applicant paid CAEATFA an Application Fee of \$4,620 and will pay CAEATFA an Administrative Fee of up to \$36,960 if approved for a sales and use tax exclusion.

RECOMMENDATION

Staff recommends approval of Resolution No. 10-SM001 for Bowerman Power LFG, LLC's purchase of Qualified Property in an amount not to exceed \$9,240,000, anticipated to result in an approximate sales and use tax exclusion value of \$840,840.

⁴ California Code of Regulations Title 4, Division 13, Section 10036

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A TITLE
CONVEYANCE AGREEMENT WITH BOWERMAN POWER LFG, LLC**

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (the “Authority”) has received the Application of **Bowerman Power LFG, LLC** (the “Applicant”), for financial assistance in the form of a conveyance/reconveyance of title agreement (the “Agreement”) regarding tangible personal property for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems (“Qualified Property”) as more particularly described in the staff summary and in the Applicant’s Application to the Authority (collectively, the “Project”); and

WHEREAS, the Applicant has requested the Authority to enter into the Agreement transferring title of Project equipment with a cost not to exceed \$9,240,000 over a period of three years; and

WHEREAS, the Agreement will provide that the Applicant will, prior to any use of the Qualified Property, transfer title at no cost to the Authority from time to time as purchases of Qualified Property are made and the Authority will then transfer title back to the Applicant without having taken possession of the Qualified Property; and

WHEREAS, the Applicant believes that this form of financial assistance will enable it to avail itself of the benefits of an exclusion from sales and use taxes relative to the Qualified Property pursuant to California Revenue and Taxation Code Section 6010.8; and

WHEREAS, approval of the terms of the Agreement and authority for the Executive Director, Deputy Executive Director or Chair of the Authority, to execute the necessary documents to effectuate the Agreement is now sought.

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority, as follows:

Section 1. The Project constitutes a “project” within the meaning of Public Resources Code Section 26003(g)(2).

Section 2. The requested conveyance agreement constitutes “financial assistance” within the meaning of Public Resources Code Section 26003(e)(2).

Section 3. The Applicant is a “participating party” within the meaning of Public Resources Code Section 26003(f).

Section 4. The Executive Director, Deputy Executive Director, or Chair of the Authority (the “Authorized Signatories”) are hereby authorized for and on behalf of the Authority to approve any changes to the Project as the Executive Director shall deem appropriate, provided

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Application No. 10-SM001

that the amount of the Qualified Property to be purchased may not be increased above the amount approved by the Authority.

Section 5. The proposed form of the Agreement between the Applicant and the Authority, as filed with the Authority prior to this meeting, is hereby approved. The Authorized Signatories are hereby authorized and directed, for and on behalf and in the name of the Authority, to execute, acknowledge and deliver to the Applicant the Agreement in substantially the form filed with or approved by the Authority, with such insertions, deletions or changes therein as the Authorized Signatory executing the same, may require or approve, and with particular information inserted therein in substantial conformance with the staff summary and in the Applicant's Application to the Authority, such approval to be conclusively evidenced by the execution and delivery thereof. The Authority understands and agrees that pursuant to the terms of the Agreement, the obligations of the Applicant may, under some circumstances be carried out or assumed by a successor or assignee entity, or by an affiliate of the Applicant.

Section 6. Each of the Authorized Signatories, acting alone, is hereby authorized and directed to do any and all ministerial acts, including (without limitation) the execution and delivery of any and all documents and certificates they may deem necessary or advisable in order to consummate the Agreement and otherwise effectuate the purposes of this Resolution.

Section 7. The Applicant shall assure CAEATFA that all Qualified Property conveyed pursuant to the Agreement shall be installed, maintained and operated in compliance with all applicable local, state and federal laws.

Section 8. The Agreement shall only apply to Qualified Property that the Applicant certifies will be installed, maintained and operated at facilities within the State of California.

Section 9. The adoption by the Authority of this Resolution for the Applicant shall not be referred to in any application before any governmental agency as evidence of the feasibility, practicality or suitability of the Project or in any application for any required permission or authority to acquire, construct or operate the Project.

Section 10. This Resolution is effective immediately and will remain in full force and effect unless the Regulatory Agreement, as defined in CAEATFA Regulations Section 10035(A), is not executed within thirty (30) days of the date of this Resolution. The Executive Director may extend the thirty days if necessary.