Paul N. Haavik
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DOCKET
06-AFC-6
DATE NOV 3 0 2007
RECD. DEC 0 3 2007

November 30, 2007

California Energy Commission
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

Re: Docket No. 06-AFC-6 Eastshore Energy Center

Dear Docket Unit:

Enclosed for filing with the California Energy Commission (1) original of the **Intervener's Prehearing Conference Statement and Witness Testimony, for the Eastshore Energy Center (06-AFC-6) and Exhibit list.**

The proof of service has been satisfied to all parties, electronically. A hard copy of this submittal has been sent to Ms. Susan Gefter, Hearing Officer.

Sincerely,

Paul N. Haavik

Paul N. Haavik
25087 Eden Avenue
Hayward, CA 94545
510-427-9057

State of California
Energy Resources Conservation
And Development Commission

In the matter of	)	Docket No. 06-AFC-6
	)	
	)	
Eastshore Energy Center	)	
	)	Intervener's Prehearing Conference Statement Witness Testimony

Paul N. Haavik, Intervener, in accordance with 20 CCR sub-section 1718.5 and the Committee Order dated March 12, 2007, hereby files the Prehearing Conference Statement and Witness Testimony in the matter of the Eastshore Energy Center. The intervener is prepared to proceed to the evidentiary hearing on all topic areas in the Final Staff Assessment. The attached table (table 1) presents a summary (by topic area) of:

Whether or not disputes between the intervener and parties concerning the subject area exists including a description of the nature of each dispute;

Identity of witnesses and testimony.

Time estimate for direct and cross-examiation.

List of Exhibits for reference.

All topic areas are complete and ready to proceed to evidentiary hearings except for Noise and Vibration.

The Noise and Vibration may be incomplete and require further sound testing. Mitigation of a sound wall may also be appropriate.

The topic areas that remain disputed are:

Land Use: The Eastshore Energy Center(EEC) does not conform to the laws, ordinances, regulations and standards. The premise that a Power Purchase Agreement with PG & E Company necessitates the location of this project at its current location is historically false. Mr. Jesus Armas will testify to the chronological events leading to the submission of the AFC.

Noise and Vibration: The CEC staff has not provided any independent testing. The testing has been provided by the applicant. Further testing and possibility of construction of a sound wall is required. Ms. Beth Fancher, Facilities Manager, Fremont Bank will provide testimony. CEC Staff testimony of Shahab Khoshmashrab will be cross-examined as to sources of testing used by the CEC for the Noise and Vibration section.

It is anticipated that 30 – 45 minutes be provided for testimony and final statements. Several items are for information only.

This intervener requests the opportunity to cross-examine all witnesses Including the Noise and Vibration Testimony of Shahab Khoshmashrab.

It is respectfully recommended that at the conclusion of the evidentiary hearing that the Committee can provide a determination in a timely manner.

Sincerely,

Paul N. Haavik,
Intervener

TABLE 1

Topic Area	Disputes w/parties	Witness	Testimony	Direct Est.	Cross Est.
Land Use	Yes	Armas	Attached	30 min	Unkn
Noise and Vibration	Yes	Fancher	Attached	10min	Unkn
Noise and Vibration	Yes	Khoshmashrab On File			10min

THERE IS NO DUPLICATION OR CONFLICT BY ANY OF THE PARTIES FOR THESE WITNESSES FOR DIRECT TESTIMONY OR CROSS EXAMINATION.

Exhibits List

06-AFC-6

Eastshore Energy Center

Prehearing Conference and Hearing

#300-Docket Log # 43249 Document-Noise and Vibration

#301-Docket Log # 42726 Document-City of Hayward PSA Response by City of Hayward

#302-Docket Log # 42411 Document-Letter from Bank of Fremont by Terrence Stinnett

#303-Docket Log # 40800 Document-Letter from City of Hayward by Jesus Armas regarding Location feasibility

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#308-Docket Log # 38929 Document-Letter from City of Hayward, by Jesus Armas for Items of Discussion by the Hayward

#309-Docket Log # 38254 Document-Report of Conversation with Lorne Prescott and Jesus Armas, City of Hayward

#310-Testimony of Jesus Armas

#311-Testimony of Beth Fancher

All DOCUMENTS ARE ATTACHED. DOCKET LOG NUMBER IS FOR REFERENCE ONLY.

EXHIBIT #310

TESTIMONY OF JESUS ARMAS
November 19, 2007

My name is Jesus Armas. I hold a Bachelor of Arts degree in Political Science and a Masters in Public Administration, and have over thirty years of local government experience. Most recently, from February, 1993 until early July, 2007, I served as the City Manager for the City of Hayward. In this capacity, I was responsible for the management of the City and implementation of policy decisions and direction provided by the Hayward City Council. As part of my duties, I met regularly with private and public sector individuals desiring to submit development applications with the City. These meetings generally preceded the submittal of a formal land use application as the affected party desired to ascertain City policy with respect to land use issues in advance of submitting a formal application. The presubmittal meeting afforded the interested party an opportunity to ascertain whether the proposed use would be consistent with existing general plan and zoning designations and to identify issues likely to surface during the application review process. By conducting this due diligence, applicants were better informed of City policies and better able to decide whether to process a formal application.

In June of 2006, at the request of Tierra Energy, I met with company representatives. At that time, I was informed that Tierra Energy had plans to develop and construct a 115-megawatt power plant on a 6.2-acre parcel at 25101 Clawiter Road, Hayward, Californian. This plant was identified as the Eastshore Energy Center. At that meeting, I was informed that in early April 2006 PG&E had awarded a power purchase agreement (PPA) to a predecessor company to develop Eastshore. I also learned that Tierra Energy acquired the project and related PPA in late April 2006. Finally, Tierra Energy representatives reported that it was in the process of purchasing the 6.2- acre site, with escrow scheduled to close later in the summer. (Subsequently, I learned that Tierra Energy gained title to the site on August 3, 2006.)

During this initial meeting, I advised Tierra Energy representatives that this was first time anyone had informed the City that a second power plant was proposed to be constructed in Hayward. I also indicated that I had been monitoring closely the PPAs awarded by PG&E because of its impact on the proposed Russell City Energy Center. In fact, I listened to PG&E's announcement that it had awarded six PPAs. (It is worth noting that in both the oral presentation and in the written documentation related to the award of the PPAs, PG&E identified the general location of each power plant, save one. The exception was a facility labeled Black Hills, which lacked a geographic location. Owing to the name and the absence of any other information that would indicate its proposed location, it was impossible to discern its location. Only much later was it learned that it was to be constructed in Hayward as the Eastshore facility).

I also informed Tierra Energy representatives that power plants are not a permitted use, nor are they listed as an allowed use in any zoning district in the City. Because the zoning is exclusionary, meaning that any use not enumerated is not allowed, I informed Tierra Energy that a formal land use application would need to be submitted to the City. The application would serve as the basis for a determination relative to the appropriateness of the proposed location, in light of surrounding uses and activities. I also advised Tierra Energy officials that this was the same process followed by the owner of the RCEC, which resulted in public hearings before the Hayward Planning Commission and Hayward City Council. (Following a staff analysis and recommendation, as well as consideration of public testimony, both the Commission and Council determined that the proposed location for the RCEC was appropriate and consistent with applicable land use regulations.)

During this initial meeting, as well as in subsequent sessions with Tierra Energy representatives, I voiced my reservations about the appropriateness of proposed location. This concern stemmed from awareness of the proximity of the Clawiter location to nearby residences, educational institutions and other incompatible activity.

In late October, 2006, Tierra Energy filed a development application, which served as the basis for a staff evaluation and subsequent determination regarding land use consistency. Based on this analysis, a recommendation of non-consistency was submitted to the Hayward Planning Commission in February of 2007 and Hayward City Council in March 2007. Because of a tie vote, the Commission was unable to present a formal recommendation to the Council. During its hearing on the application, the Council heard testimony from the applicant as well as nearby residents, business owners and other interested parties. Ultimately, the Council voted unanimously, with one absence, to accept the staff recommendation of non-consistency. This determination was subsequently conveyed to the California Energy Commission.

EXHIBIT #311

TESTIMONY OF BETH FANCHER
November 19, 2007

My name is Beth Fancher. I have lived in Newark and worked throughout the Bay Area since 1979.

My work history has been with multiple high tech companies like Flextronics and Apple Computer. I worked in Quality Assurance as an assembler advancing to quality assurance inspector of electronic pc boards and assemblies and then to supervisor for about 14 years. I then took a job at Etec System in Hayward which was bought out by Applied Materials. I worked there as a Facilities Supervisor and Project Coordinator for 10 years. I have worked for **Fremont Bank** for 4.5 years as a Facilities Supervisor at the 25151 Clawiter location in Hayward. I have a high school education.

My responsibility is to maintain all of the buildings totaling 29. This includes any relocations and supporting remodels and new branches. In addition we take care of employee safety.

Our total staff is 240 employees at the 25151 Clawiter location and 47 employees at the 3108 Diablo Ave location in Hayward. The hours of operation at the Clawiter location is 24 hrs. We have an Item Processing department that works through the night. The Diablo hours are 6:00 a.m. to 9:00 p.m

Our campus has a patio area in the center of our complex at the Clawiter location that breaks and lunches are enjoyed. We have walkers that take their breaks and a portion of their lunch to take walks and get some exercise and fresh air. We have our health fair and a summer barbeque in the summer outdoors. We support our employees in improving and maintaining their physical health and mental attitudes by encouraging them to take time away from their desks.

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE EASTSHORE ENERGY CENTER IN CITY OF HAYWARD BY TIERRA ENERGY	**Docket No. 06-AFC-6** **PROOF OF SERVICE** **(Revised 11/20/2007)**

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 06-AFC-6
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

APPLICANT

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Caryn Holmes, Staff Counsel
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Public Adviser
pao@energy.state.ca.us

DECLARATION OF SERVICE

I, Paul N. Haavik, declare that on November 30, 2007, I deposited copies of the attached Pre-Hearing Conference Statement, Testimony, Exhibits, Witnesses and Cross Examination Witness in the United States mail at Hayward, CA, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

/S/
Paul N. Haavik

Exhibits List

06-AFC-6

Eastshore Energy Center

Prehearing Conference and Hearing

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#310-Testimony of Jesus Armas

#311-Testimony of Beth Fancher

All DOCUMENTS ARE ATTACHED. DOCKET LOG NUMBER IS FOR REFERENCE ONLY.

EXHIBIT #300

State Of California

The Resources Agency of California

Memorandum

Date : November 6, 2007
Telephone: (916) 654-3913

To : Bill Pfanner

File: Eastshore Energy Center (06-AFC-6)

DOCKET
06-AFC-6
DATE NOV 06 2007
RECD. NOV 06 2007

From : California Energy Commission - Shahab Khoshmashrab
1516 Ninth Street
Sacramento, CA 95814-5512

Subject : **Response to Applicant's Comments on Noise and Vibration PSA**

The applicant submitted several comments regarding **Noise and Vibration** as described by the PSA (CH2MHill letter from David Stein to Bill Pfanner dated September 19, 2007). Staff has reviewed those comments and incorporated appropriate revisions. The following text summarizes the staff's responses to those comments.

ABZ49

1. On p.4.6-6 and p.4.6-7; staff's calculations that support the values in **NOISE Table 2** and **NOISE Table 3** should be included in an appendix to this section.

   Staff's Response: Staff has included these calculations at the end of this memorandum, in **Staff Calculations**.

2. Top of p.4.6-9; staff's calculations that document the L_{90} should be included in an appendix to this section.

   Staff's Response: Staff has included these calculations at the end of this memorandum, in **Staff Calculations**.

3. Under the discussion of **CEQA Impacts** on p.4.6-9; as the Eastshore project will not be operating continuously during the large majority of days, it will not contribute to elevated background noise levels to the degree staff suggests.

   Staff's Response: As explained above in **CEQA Impacts**, a power plant operates as, essentially, a steady, continuous, broadband noise source, unlike the intermittent sounds that make up most of the noise environment. Power plant noise therefore contributes to, and becomes a part of, background noise levels, or the sound heard when most intermittent noises stop. Where power plant noise is audible, it tends to define the background noise level. For this reason, staff typically compares projected power plant noise to existing ambient background (L_{90}) noise levels at affected sensitive receptors.

   Based on the AFC, the project would be permitted to operate up to 4,000 hours a year. Thus, it is very possible that on a frequent basis the project would operate continuously for several hours at a time. For this length of time, expect during startup and shutdown, the noise will be steady state and will become part of the background noise. Therefore, for the purpose of evaluating the project's noise impacts at the residential receptors, staff remains adamant about treating the project's nighttime operational noise as part of the background levels. However, as explained above (in **Operation Impacts and Mitigation**), because the Bank

operates during the daytime hours, staff has evaluated the project's operational noise impact at this location using the ambient L_{eq} level. Typically, daytime ambient noise consists of both, intermittent and constant noises. The noise that stands out during this time is therefore best represented by the average noise level, or L_{eq}.

4. On p.4.6-13 and p.4.6-14, Condition of Certification **NOISE-4**; the 1st paragraph, should be changed from "...measured near monitoring location R1..." to "...measured at or near monitoring location R1..."

   Staff's Response: NOISE-4 has been revised to reflect this request.

5. **NOISE-4**, Verification; the applicant requests flexibility on testing with 30 days, e.g., "...or when otherwise approved by the CPM..."

   Staff's Response: NOISE-4 has been revised to reflect this request.

Staff Calculations:

A. The values of 63 dBA L_{dn} and 67 dBA L_{dn} shown in **NOISE Table 2** are given in the AFC (EEC 2006a, AFC § 8.5.4.1, p.8.5-8) and were not calculated by staff.

B. The average ambient noise level of 44 dBA L_{90} at R1 shown in **NOISE Table 2** is the average noise of the four quietest consecutive hours of the nighttime between midnight and 4:00 a.m. given in Table 8.5-5 of the AFC:
   Inverse log of [(log of 44+log of 44+log of 44+log of 45)/4] = 44 dBA

C. The average ambient noise level of 50 dBA L_{90} at R2 shown in **NOISE Table 2** is the average noise in the daytime hours between the hours of 7:00 a.m. and 10:00 p.m. given in Table 8.5-6 of the AFC:
   Inverse log of [(log of 51+log of 50+log of 53+log of 50+log of 49+log of 48+ log of 48+log of 49+log of 51+log of 50+log of 50+log of 52+log of 52+log of 49+log of 48+log of 49)/16] = 50 dBA

D. The average ambient noise level of 60 dBA L_{eq} at R1 shown in **NOISE Table 2** is the average noise in the daytime hours between the hours of 7:00 a.m. and 10:00 p.m. given in Table 8.5-5 of the AFC:
   Inverse log of [(log of 58+log of 61+log of 60+log of 64+log of 62+log of 60+log of 57+log of 58+log of 60+log of 60+log of 60+log of 60+log of 61+log of 59+log of 59+log of 61)/16] = 60 dBA

E. The average ambient noise level of 62 dBA L_{eq} at R2 shown in **NOISE Table 2** is the average noise in the daytime hours between the hours of 7:00 a.m. and 10:00 p.m. given in Table 8.5-6 of the AFC:
   Inverse log of [(log of 59+log of 65+log of 62+log of 60+log of 61+log of 62+ log of 55+log of 58+log of 68+log of 62+log of 62+log of 61+log of 63+log of 60+log of 59+log of 65)/16] = 62 dBA

F. The highest predicted noise level of 62 dBA at R1 shown in **NOISE Table 3**:
   $S_2 = S_1 - 20 \log_{10} (r_2/r_1)$

Where S_1 is sound level at distance r_1 from a point source, and
S_2 is sound level at distance r_2 from that point source
$62 = 71 - 20 \log_{10} (1{,}100/375)$
Where 71 dBA is the value at 375 feet, given in Table 8.5-8 of the AFC.

EXHIBIT #301

CITY OF
HAYWARD
HEART OF THE BAY

DOCKET
06-AFC-6
DATE OCT 09 2007
RECD. OCT 10 2007

42726

October 9, 2007

Mr. Bill Pfanner
Project Manager
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

Dear Mr. Pfanner:

Attached please find the City of Hayward staff comments on the draft California Energy Commission staff Preliminary Assessment related to the proposed East Shore power plant that would be located here in our fine city.

We have serious, unanswered concerns related to the consideration of a second power production facility within the City of Hayward. There are a number of areas noted in the attached technical analysis that should serve to convince staff that the construction of the East Shore plant is ill advised, and that staff should recommend rejection of further consideration of the project in Hayward. Of particular concern is staff's continued assertion that the City's own General Plan and Zoning (LORS), neither of which support the proposed use, do not need to be considered in your analysis. Our City Council has taken a strong position on the incompatibility of use issue, and we continue to be perplexed by staff's assertions. Who else is in a more qualified position than we are as to the interpretation and application of our own General Plan policies?

While we appreciate staff's initial indication that they support project rejection due to concerns over aviation related impacts, that rationale does not go far enough in describing the significant detrimental impacts of a second power plant in our city. This is particularly true when locating a plant so near residential neighborhoods and school facilities.

I would like to, however, venture beyond merely the technical analysis and evaluate the project from our community's perspective. Hayward will be doing its part (some would say more than our fair share) to support the generation of much needed power for years to come with the recently approved Russell City Energy Center project. The potential of yet another similar project within the same city impacts our residents in ways that are unacceptable. The impacts on local air quality, for example, which are described as being mitigated by "credits" enjoyed by some other fortunate community, will come at the cost of our own residents' air quality. The "fair share" argument, while perhaps not necessarily supported by scientific argument, certainly should be compelling to staff to seriously look at alternative sites for this power production need, and reject the Hayward East Shore site.

REVISED 9/28/07 FILED WITH
MAILED FROM SACRAMENTO ON 10/10/07

Office of the City Manager
777 B Street • Hayward • CA • 94541-5007
Tel: 510-583-4300 • Fax: 510-583-3601 • Website: www.hayward-ca.gov

From an environmental perspective, the concentration of power generation is fraught with possible future consequences for those living near such concentrations. We can not stress strongly enough our position that the "co-location" of two plants in our urban community sets a dangerous course for our residents as well as for other communities where the potential for such concentration of facilities has unknown and/or unintended impacts.

Getting back to our General Plan, this is the exact reason the State of California requires each city to have a General Plan, to ensure logical, appropriate land use that recognizes competing interests as well as environmental considerations of the proximate location of various uses. There seems to be no good argument for two power plants in one city. An alternative location should be assessed and recommended to the Commission.

Thank you for the opportunity to comment on your preliminary assessment, and we look forward to staff's support of the City's recommendations in relation to that assessment.

Sincerely,

Gregory T. Jones
City Manager

Copy: Mayor and Council

CITY OF
HAYWARD
HEART OF THE BAY

October 9, 2007

Bill Pfanner
Project Manager
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

Re: City of Hayward Staff Comments on the Preliminary Staff Assessment for the Eastshore Energy Center Project (06-AFC-6)

Dear Mr. Pfanner:

Thank you for the opportunity to comment on the Energy Commission staff's Preliminary Staff Assessment (PSA) for the Eastshore Energy Center. While comments below are of a technical nature in response to the PSA and related analyses, it cannot be overstated that Hayward opposes this second power plant proposed to be located in our city and strongly supports the CEC staff's recommendation for denial. The City Council of Hayward has unanimously determined that the proposed power plant would not be consistent with the Hayward General Plan and Zoning Ordinance provisions.

Air Quality

City staff does not believe that the mitigation measure to utilize emission reduction credits to offset PM10 and other air quality impacts is acceptable, given such ERC's would not mitigate impacts to *local* air quality. The impacts to local air quality are of particular concern, given the proposed location of this plant in relation to residential neighborhoods and schools to the east.

Land Use

Page 4.5-2, last bullet: The conclusion that the "proposed project is consistent with the applicable 2002 General Plan policies and strategies…" directly conflicts with the specific determination of the Hayward City Council, as express in item 4 of the attached Hayward City Council Resolution 07-028. It would seem more appropriate to rely on the local entity's determination regarding consistency with a local general plan.

Page 4.5-8, first full paragraph: It is not accurate to state that the proposed Eastshore Energy Center site is in the western portion of Hayward's Industrial Corridor; in fact, it is in the eastern portion of the Corridor, closer to residential areas to the east. The

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
PLANNING DIVISION

777 B STREET, HAYWARD, CA 94541-5007
TEL: 510/583-4200 • FAX: 510/583-3649 • TDD: 510/247-3340

difference in location of this plant and the Russell City Energy Center in our industrial area is significant, particularly in regards to proximity to residential neighborhoods.

Page 4.5-12, first full paragraph: Hayward's General Plan was updated in March of 2002, not July of 2002 as stated.

Page 4.5-12, third full paragraph: Regarding the Hayward General Plan language that encourages separation of businesses using hazardous materials from residential areas, the PSA analysis ignores the conclusion of the Hayward City Council in determining the inappropriateness of the proposed location of the power plant to residential areas. Also, in citing other existing uses in the area that use hazardous materials, the analysis does not include reference in this paragraph to the discussion in the Hayward General Plan and the City's vision for development in this area regarding transformation of the industrial corridor.

Page 4.5-13: The discussion ignores the specific determination of the Hayward City Council that the proposed power plant at this location is not consistent with the Hayward General Plan. Again, it is appropriate to rely on the determination of the local agency, rather than the Energy Commission staff, in determining consistency with a local general plan.

Also, the conclusion that the proposed plant would not hinder other properties in the area in transitioning to high-tech businesses is speculative. A heavy industrial use at this site could very well hinder transition of other properties in the immediate area, given noise, aesthetic, emergency response and other impacts. As you know, a letter dated September 24, 2007 was submitted to Commissioner Byron from the representative of the adjacent bank to the south, expressing concerns with the proposed plant.

Page 4.5-14, last bullet: For reasons stated herein and in the attachments, staff disagrees with the assessment that the project is consistent with Strategy 2(7) of the Economic Development Chapter of the Hayward General Plan that states, "Preserve and promote the appearance of the Business and Technology Corridor to encourage quality development." Also, it is not accurate to characterize the location of the proposed plant as sited in "the center of the western section of the Industrial Corridor." The location is in the eastern portion of the Corridor, which abuts residential neighborhoods to the east. Finally, the text that references the adjacent use to the north that utilizes hazardous materials does not include reference to the previously referenced adjacent bank to the south, which does not use hazardous materials.

Page 4.5-15, last sentence under item 3: As stated above, it is appropriate to rely on the determination of the local agency, rather than the Energy Commission staff, in determining consistency with a local general plan.

Page 4.5-17, top of page, third full paragraph: The determination by the Hayward City Council as stated in Resolution 01-104 is that the previously proposed Russell City Energy Center was consistent with the Zoning Ordinance, not power plants in general, as

stated in the assessment. Such determination was made with consideration of the location of that proposal.

Pages 4.5-18 to 4.5-20, CUP findings: Information/analysis regarding the inability to make required findings to support a conditional use permit was provided previously in a letter from me dated April 19, 2007 (copy attached). City staff simply disagrees with the CEC staff that some of those findings can be made. On page 4.5-19, second full paragraph, staff disagrees that the heights of the 70-foot tall stacks would be comparable with other uses within 0.5 miles. Also, reference to facilities further west in the industrial area that have or will have heights that exceed those of the Eastshore Energy Center are not relevant in City staff's opinion, given they are located in the western portion of the industrial corridor, where heavier industrial uses are common and are less visible from residential areas.

In summary, City staff concurs that all required findings to justify a conditional use permit cannot be made.

Page 4.5-33, last bullet: For reasons previously stated, City staff does not agree with the conclusion the proposed Eastshore Energy Center would be consistent with the Hayward General Plan policies.

Visual Resources

Page 4.12-29, VIS-8 (Outdoor Storage): Minor open storage should be defined in accordance with the Hayward Zoning Ordinance (no more than 10 percent of open yard areas).

On pages 4.12-11 and 4.12-12, the City takes exception to the determination of minimal impact of new 80 foot 115 KV poles interspersed with existing 12KV poles along Clawiter Road, a major access point to our industrial area. During earlier presentations on the project, we were lead to believe the new metal poles would be erected and carry both lines so that at least one set of poles would be removed. The proponent's attachment, BIO-1 to their September 19 letter, makes it clear this is not the case. An accurate visual presentation of what this will look like should be required as well as an explanation of why there has to be multiple poles.

Worker Safety

Worker Safety -6: Attached is the list of Opticom installations and upgrades that would be requested by the Hayward Fire Department in connection with providing emergency services to the Eastshore Energy Center from City Fire Stations 1, 2, 4, and 6.

The additions include four basic installations on Industrial, one on West Winton, one relay on Harder Road, and hard wire interconnecting of four intersections on 'D' Street and Winton.

The total cost for the above is estimated at $122,000. In addition, an annual allotment of $25,000 would be requested for ongoing maintenance costs for these intersections and others along the response routes.

Alternatives

While the Alternatives sites analysis does include other sites outside the City of Hayward, City staff has the following concerns:

1. The basic objectives of the project indicate the desire to deliver electricity to the PG&E Eastshore substation; yet, it is not clear to staff why proximity to other substations in the Bay area, including the San Mateo substation, could not also be considered (see bottom of page 6-4 in the PSA). Such consideration may involve additional costs, but are worthy of consideration, especially since Hayward is being proposed to be burdened with two power plants.
2. Regarding criteria identified on page 6-4, criterion 2c indicates one criterion is to analyze sites that are not "adjacent" to moderate or high density residential areas or to sensitive receptors." Given air quality, noise and other impacts may affect residential or sensitive receptor sites that are not just adjacent to potential plant sites, it is appropriate to include a wider area in such analysis or criterion.
3. Middle of page 6-6 (Staff Alternative Site A in Fremont), further explanation as to why such site is not available needs to be included.

Hayward agrees with the CEC staff that there are other alternative siting locations that are environmentally superior and would reduce the impact to the Hayward area (see page 6-16, where CEC staff indicates that Staff Alternative Site D in Fremont reduces the significant impacts of the Eastshore project and environmental impacts associated with that alternative site appear less than for the other alternatives). Alternative sites need to be further analyzed to reduce impacts as noted in Congressman Pete Stark's letter regarding why Hayward has been "targeted to shoulder the environmental burden of multiple power plants"

In summary, while we strongly support CEC staff's recommendation for denial of the project, we do not find the arguments used are strong enough and are not based on the most significant impacts; specifically, regarding land use and applicable City of Hayward laws, ordinances, regulations, and standards (LORS). The cumulative impacts of two power plants on the citizens of Hayward is not adequately analyzed, nor does the alternatives section sufficiently analyze the reasons why other sites would not be sufficient, including those that are not in proximity to PG&E's Eastshore substation.

Thank you for the opportunity to comment on the PSA. Please let me know if you have any comments or questions (510-583-4004).

Sincerely,

David Rizk, AICP
Planning Manager

Attachments

cc: Greg Jones, City Manager
Fran David, Assistant City Manager
Robert Bauman, Public Works Director
Larry Arfsten, Fire Chief
Susan J. Daluddung, CED Director

HAYWARD CITY COUNCIL

RESOLUTION NO. 07-028

Introduced by Council Member Halliday

RESOLUTION FINDING THAT THE EASTSHORE ENERGY CENTER PROPOSED AT 25101 CLAWITER ROAD IS NOT CONSISTENT WITH THE GENERAL PLAN AND INDUSTRIAL ZONING DISTRICT

WHEREAS, Eastshore Energy, LLC has made a request for the City of Hayward to make a determination that a proposed 115 megawatt power plant, to be located at 25101 Clawiter Road, is consistent with General Plan policies and the Industrial Zoning District; and

WHEREAS, the authority to license power plants in California that generate more than 50 megawatts of power rests with the California Energy Commission (CEC); the CEC is currently processing an application for this power plant and is scheduled to make a final decision in the fall of 2007; and

WHEREAS, the CEC must determine that a project conforms to Local Ordinances Regulations and Standards (LORS). A power plant is not a listed use within the Hayward Industrial Zoning District, and the Zoning Ordinance indicates that when a use is not specifically listed, it shall be assumed that such uses are prohibited unless it is determined ...that the use is similar to and not more objectionable or intensive than the uses listed; and

WHEREAS, it is staff's opinion that the proposed power plant is not consistent with the purpose of the General Plan and Industrial Zoning District.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby finds and determines:

1. The proposed power plant is not consistent with the purpose of the Industrial (I) Zoning District in that it would result in a facility that would not promote a desirable and attractive working environment with a minimum of detriment to surrounding properties, because it would have the potential to generate air quality impacts related to particulate matter and nitrogen oxides emissions and would entail fourteen 70-foot tall venting stacks, which would not be compatible with the heights of other structures in the vicinity;

2. The proposed power plant would impair the character and integrity of the zoning district and surrounding area with the introduction of highly visible 70-foot tall

venting stacks, which would be seen from residential areas to the east and would be incompatible with the heights of existing facilities in the area;

3. The proposed power plant would be detrimental to the public health, safety, or general welfare due to the potential for air quality and hazardous materials impacts related to the use and transport of aqueous ammonia and emission of particulate matter and nitrogen oxides; and

4. The proposed power plant would not be in harmony with applicable General Plan policies that seek to "promote and protect the appearance of the Business and Technology Corridor to encourage quality development" in that the 6.2-acre site proposed for the power plant is near the eastern edge of the industrial area of the City abutting residential areas that would be more appropriately developed with emerging and higher technology businesses that tend to cluster and generate higher paying jobs. Also, such uses would have higher numbers of employees than the expected 15-20 employees anticipated for operation of the plant, which would be more appropriately served by the direct connection along Clawiter Road to State Route 92, an intersection planned for upgrades as stated in the General Plan.

BE IT FURTHER RESOLVED that based upon the forgoing findings, the City Council hereby determines that the proposed power plant is not consistent with the City's General Plan Policies and Industrial Zoning District provisions.

BE IT FURTHER RESOLVED, that the City Council hereby directs staff to communicate the findings and determination contained in this resolution to the California Energy Commission and work with legislators to assure that the proposed project will not adversely impact the citizens of Hayward.

IN COUNCIL, HAYWARD, CALIFORNIA March 13, 2007

ADOPTED BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Rodriquez, Quirk, Halliday, Dowling, Henson
	MAYOR:	Sweeney
NOES:	COUNCIL MEMBERS:	None

CITY OF
HAYWARD
HEART OF THE BAY

DOCKET
06-AFC-6
DATE APR 19 2007
RECD. APR 23 2007

April 19, 2007

Paul C. Richins
Manager, Environmental Office
Energy Facilities Siting Division
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814-5512

Re: Land Use Issues
Russell City Energy Center and Eastshore Energy Center

Dear Mr. Richins:

Below is information in response to your March 16, 2007 letter to me. In summary, and typical with local agencies, Hayward's laws, ordinances, regulations and statutes entail discretion and judgment. As explained in the following paragraphs, it is the City's position that the Russell City Energy Center is sited in an appropriate location and therefore is determined to be consistent with Hayward's Zoning Ordinance and General Plan and the Eastshore Energy Center, although proposed as a smaller plant, is not.

City of Hayward Land Use Permitting Process

In response to your inquiry, following is a summary of the process that would be required if these plants were processed through the Hayward land use permitting process. As indicated in the City's Industrial Zoning District provisions and since the operation of both plants would exceed stated thresholds for Class "B" hazardous materials as defined in the Hayward Ordinance, they would both be considered uses requiring at least administrative use permits. Additionally, if either plant involved Class "A" hazardous materials (e.g., reactive materials, poisonous or toxic materials, etc.), they would require conditional use permits. So, even though the City determined in 2001 that the Russell City Energy Center was considered a permitted primary use of "Manufacturing" in that the conversion of natural gas by mechanical equipment into electric power constitutes a form of manufacturing, because of the hazardous materials associated with its proposed operation, both it and the Eastshore Energy Center would be considered either administrative or conditional uses that would require certain findings to be made if the City were processing such projects.

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DEVELOPMENT REVIEW SERVICES
777 B STREET, HAYWARD, CA 94541-5007
TEL: 510/583-4200 • FAX: 510/583-3649 • TDD: 510/247-3340

PROOF OF SERVICE (REVISED 3/12/07) FILED WITH ORIGINAL MAILED FROM SACRAMENTO ON 4/23/07 TP

The findings required to be made to approve an administrative use are the same as those required to approve a conditional use. Due to the potential for negative impacts, administrative and conditional uses entail consideration of impacts and typically entail conditional approval. In fact, the Hayward Zoning Ordinance indicates that the purpose for requiring administrative or conditional use permit approvals are "to assure certain specified uses are permitted where there is community need, and to assure said uses occur in maximum harmony with the area and in accordance with official City policies." Although administrative uses are typically processed and approved at a staff level, the Planning Director would likely determine that Site Plan Review would also be required and would refer the proposed power plant projects to the Planning Commission for consideration, as allowed by the Hayward Zoning Ordinance. Any determination by the Planning Commission could be called up by a Council member or appealed to the City Council by any interested party.

In order to approve either plant if they were processed by the City, the approving authority in Hayward would be required to make all of the four findings below, which are required to be made in order to approve an administrative or conditional use. Staff's analyses to those four findings for each plant are provided in the proceeding paragraphs.

a. The proposed use is desirable for the public convenience or welfare;

The Eastshore plant would be used in periods of high energy demand to supplement power in the San Francisco Bay area. However, as communicated by Hayward residents, City Council members and Planning Commissioners, it is not evident from analysis provided by the Energy Commission staff or information supplied by the applicant that the Eastshore plant is needed at the proposed location to provide the benefits that would otherwise be achieved via location at another site in the south or east Bay near other PG&E substations in the vicinity. The City feels that the process in selecting the proposed Eastshore site, though not under the auspices of the California Energy Commission, was not a public process that entailed adequate public notification and opportunity for input. In summary, the proposed Eastshore plant at the site is not desirable, because the public convenience or welfare to Hayward could be realized via another location in the vicinity.

b. The proposed use will not impair the character and integrity of the zoning district and surrounding area;

The key words in this finding are "surrounding area." The heights of the stacks at each plant would be significant; though the Russell City Energy Center plant stacks would be in an area that already contains a stack of significant height at the Rohm and Haas chemical plant to the southeast and that is further away from areas visible from residential and public areas.

c. **The proposed use will not be detrimental to the public health, safety, or general welfare; and**

Although the Energy Commission staff is addressing local air quality impacts and it may be possible to mitigate air quality impacts to federal and state standards enforced by the Bay Area Air Quality Management District, including utilizing emission reduction credits on a region-wide basis that would not likely lessen impacts locally, both plants would emit pollutants in a region that is designated as a non-attainment area for state ambient air quality standards for particulate matter ($PM_{2.5}$ and PM_{10}) and designated as a marginal -attainment area of the national 8-hour ozone standard. Also, staff is concerned with the cumulative air quality impacts of both plants, given the non-attainment status of certain pollutants in this area. The difference between the two plants in staff's opinion, however, is in the location and proximity of the plants to residential areas and sensitive receptors. Aviation impacts, as you indicate, may also be a concern and are addressed later in this letter. For reasons primarily associated with air quality impacts related to proximity of residential areas, the City would not find that the Eastshore Center would be consistent with this finding.

d. **The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.**

The purpose of the Industrial (I) Zoning District is to provide for and encourage the development of industrial uses in areas suitable for same, and to promote a desirable and attractive working environment with a minimum of detriment to surrounding properties. Also, the purpose of the Hayward Zoning Ordinance is to "promote the public health, safety, general welfare and preserve and enhance the aesthetic quality of the City by providing regulations to ensure an appropriate mix of land uses in an orderly manner." In furtherance of this purpose, the City desires to "achieve a pattern and distribution of land uses which generally retain and enhance established residential neighborhoods, commercial and industrial districts, regional-serving uses, and recreational amenities, allow for the infill and reuse of areas at their prevailing scale and character, ...provide a diversity of areas characterized by differing land use activity, scale and intensity and establish Hayward as a unique and distinctive place in the heart of the San Francisco Bay Area with a high quality of life in an attractive, secure environment for the City's residents and businesses."

The Hayward General Plan contains discussion and policies that encourage the transformation of the Industrial Corridor from a manufacturing and distribution emphasis to more research and development oriented businesses. However, the General Plan also contains discussion that recognizes the importance of separation of potentially-impacting industrial land uses from residential areas:

> *On the one hand, many of the businesses that use hazardous materials are located in the Industrial Corridor. For example, high-tech businesses such as computer chip manufacturers and, to a lesser extent, some biotech industries, use highly toxic or corrosive gases. These particular classes of*

hazardous materials, if not properly stored, handled, and monitored, can pose a threat to the community. The separation of these industrial uses from adjacent residential uses [emphasis added] makes it easier for emergency responders to mitigate and evacuate a hazardous situation. On the other hand, as portions of the Industrial Corridor are developed with more intensive uses, the increase in employee densities may result in a need for child-care facilities in closer proximity to the workforce. Such uses currently are prohibited in the Industrial District due to concerns about safety and land use compatibility. Perhaps there are portions of the Industrial Corridor, such as the newer business parks, where these facilities could be located and pose little or no safety risks.

Furthermore, the General Plan contains the following relevant policy and strategy:

7. *Promote the transition from a manufacturing-based economy to an information-based economy in the industrial areas.*
   1. *Consider adoption of multiple zoning districts that provide for concentration of similar types of uses such as manufacturing, warehouse/distribution, or research and development/office uses.*

While multiple zoning districts have not yet been adopted for the Industrial Corridor as encouraged by the General Plan, the City seeks to concentrate similar types of uses. The City is of the opinion that heavier, potentially more-impacting industrial uses are more appropriate away from residential areas, such as at the end of Enterprise Avenue near the City's wastewater treatment facility, where the Russell City Energy Center is proposed. Also, automobile wrecking yards at the end of Depot Road are adjacent to the Russell City Center site, and the Rohm and Haas chemical plant is located in the area to the southeast of that proposed plant. Conversely, the Eastshore Energy Center site is situated in the eastern portion of the City's Industrial Corridor approximately 1,200 feet away from the nearest residence in an area that contains Life Chiropractic College, a bank (located adjacent and to the south) and a restaurant/café (located adjacent and to the north). The enclosed aerial image shows the vicinity where the two power plants are proposed. Also, your letter indicates that the two power plant sites were "only about 3,000 feet apart." Given that the entire width of the Industrial Zoning District in this area is about 6,500 feet, it is City staff's opinion that 3,000 feet is significant. In summary, due to the proximity of residential areas and location of existing heavy industrial uses, it is staff's opinion that this finding would not be made for the Eastshore Energy Center and would be made for the Russell City Energy Center.

<u>Aviation Impacts</u>

Regarding issues associated with aviation impacts, both energy center sites do fall within the boundaries of the Hayward Airport Airspace Drawing, as shown in the Hayward Executive Airport Master Plan, but neither is in direct alignment of any major approach

routes. Neither do the highest elevations of the stacks exceed the obstacle-free zone height limitations established by the FAA and referred to in Hayward's ordinance. Regarding the issue of exhaust plumes, City staff understands that this is a new issue being addressed by FAA and that the FAA will address this question as part of their FAA Form 7460-1 review, which is appropriate. It is City staff's understanding of the Blythe Airport circumstances that the Blythe plant was in direct line of a runway approach and takeoff zone. Staff believes the orientation and relation of the two plants to the Hayward Executive Airport's approach and takeoff areas are different than is the case in Blythe, but look forward to the FAA's analysis and comment. City staff would expect as noted in the FAA's safety evaluation that there will be recommendations regarding proper notification to pilots and potentially the need to modify the City's broad helicopter approach path from the west. We would also expect that the applicants will be required to fund any bulletins or other processes needed to meet FAA requirements.

Proposed Further Actions Regarding Consistency Determination

As stated previously, staff does not consider the proposed new site for the Russell City Energy Center significantly different than the previously proposed site to warrant further action. (See enclosed aerial). In support of this statement is the fact that on October 11, 2005, the Hayward City Council voted unanimously to enter into an agreement with RCEC-LLC authorizing construction of the Energy Center at the currently proposed location. Such action would not have taken place without a determination that the new location was consistent with local land use regulations. Moreover, I draw your attention to Resolution 05-125, a copy of which is attached, particularly to the final two paragraphs. In the second to the last paragraph, the Council is on record as expressing support for the development and construction of the RCEC at its new location. In the final paragraph, the City Council authorizes the City Manager to take appropriate steps to implement the decision of the City Council.

Conditions and Mitigations Regarding Land Use Impacts

I assume your request for conditions or mitigations to reduce the significance of any potential issues or impacts relates to land use issues only. For the reasons stated in this letter, we do not believe issues associated with inappropriate land use can be reduced or mitigated for the Eastshore Energy Center at the currently proposed site and that only relocation to a more appropriate site further from residential areas, including outside Hayward, would be acceptable. Other land use issues that are of concern relate to aesthetics/visual impacts and noise impacts. We would request that both plants comply with noise limits identified in the Hayward General Plan's *Noise Guidelines for Review of New Development*. To reduce visual and aesthetic impacts, landscape screening, which could include landscaping with a berm and/or wall, should be provided at each site, especially for the Eastshore site, which is closer to residential areas. The use of a perimeter wall to screen lower level plant facilities at both sites would also be appropriate We do not feel that the stacks at each site can be mitigated to an insignificant level, though their impacts could be mitigated somewhat if they were more of a neutral color that would blend with the background. Finally, lighting provided should meet the City's

Security Ordinance standards, with light sources shielded so as not to shine or glare off-site.

In summary, it is the City's position that the Eastshore Energy Center is not sited in an appropriate location and would represent a second power plant in the City of Hayward, which has raised great concerns by the local residents and City decision-makers. It is City staff's opinion that the California Utility Commission process in determining the Eastshore site as a possible location for an additional plant in Hayward was not a process that clearly identified the Eastshore site, which would have involved appropriate local public input and participation earlier in the siting process.

Please let me know if you have any questions or need further clarification.

Sincerely,

David Rizk

David Rizk, AICP
Hayward Planning Manager

cc: Jesús Armas, City Manager
Susan J. Daluddung, Director of Community and Economic Development Department
Robert Bauman, Director of Public Works Department
Michael O'Toole, City Attorney

Enclosure

EAST SHORE ENERGY CENTER

OPTICOMS 2007

FOLDER OPTICOM 2007
ver 9/21/2007 II

INTERSECTION	*SERVES STATION(S)*		*ESTIMATED COST*
INDUSTRIAL / TENNYSON	4	BASIC INSTALL 3 DIRECTIONS	$ 19,000
INDUSTRIAL / SLEEPY HOLLOW	4	BASIC INSTALL 4 DIRECTIONS	$ 19,000
INDUSTRIAL / CRYER / 92 OFF RAMP	1, 2, 4	BASIC INSTALL 4 DIRECTIONS	$ 19,000
INDUSTRIAL / DEPOT	1, 2, 4	BASIC INSTALL 4 DIRECTIONS	$ 19,000
HARDER / WEST HARDER	2	RELAY	$ 2,000
WEST WINTON / SAKLAN	1	BASIC INSTALL 4 DIRECTIONS	$ 19,000
D / GRAND D / MEEK D / WINTON WINTON / SOTO — INTERCONNECT	1	HARD WIRE INTERCONNECT	$ 25,000
	TOTAL ONE TIME COSTS		$ 122,000
ONGOING ANNUAL REPAIR AND MAINTENANCE COST			$ 25,000

EXHIBIT # 302

FREMONT BANK
Success through Partnership

September 24, 2007

DOCKET 06-AFC-6
DATE SEP 24 2007
RECD. SEP 24 2007

42411

Copy by Facsimile (bpfanner@energy.state.ca.us)
Original by Mail

California Energy Commission
Attention: Mr. William Pfanner
Project Manager
1516 Ninth Street, MS-15
Sacramento, CA 95814-5512

Re: Eastshore Energy Center
Docket No. 06-AFC-6

Dear Commissioner Byron:

The purpose of this letter is to set forth some of the concerns that Fremont Bank has with regard to the proposed construction of an energy generating plant at the intersection of Clawiter and Depot in Hayward, California commonly referred to as the Eastshore Energy Center. We hereby request that this letter be entered on the docket in the above-referenced matter.

Fremont Bank's Operations Center is located at 25151 Clawiter in Hayward. The proposed Eastshore Energy Center and Fremont Bank's Operations Center share a common property boundary line, which is the southern boundary of the Eastshore Energy Center's property line and the northern boundary of Fremont Bank's property line.

Fremont Bank's Operations Center houses a total of 287 employees, of which 240 are located in its main building, which is immediately to the south of, and adjacent to, the Eastshore Energy Center, and another 47 employees in a second building, which is located directly across the street to the south of the bank's main building. A total of 186 of the employees are female and 101 are male.

Fremont Bank's primary concerns relate to (i) the noise level that will be generated by the Eastshore Energy Center, (ii) air quality and the possible exposure of its employees to hazardous materials and (iii) fire danger to its employees and its main building, which houses the bank's computers and records relating to its operations and its clients.

Noise

With regard to the noise level, the northern side of the bank's main building is only approximately 71 feet from the proposed project's southern boundary line. In the Preliminary Staff Assessment dated August 2007 ("PSA") the ambient noise monitoring

Corporate Headquarters 39150 Fremont Boulevard Fremont, CA 94538 Tel: (510) 792-2300

PAGE 1/4 * RCVD AT 9/24/2007 10:50:37 AM [Pacific Daylight Time] * SVR:RE-FAX/14 * DNIS:2402 * CSID:5107902584 * DURATION (mm-ss):02-24

site designated as "Location R2" is described as being "Located at the southern property boundary of the proposed project side adjacent to the commercial building directly south of the site." (See PSA, pg. 4.6-5) However, in discussing the Construction Impact and Mitigation the PSA uses noise levels for Site R1, which is at 1,100 feet from the project site. Furthermore, at page 4.4-6 of the PSA it is stated that while the applicant provided noise estimates at a distance of 375 feet, staff has translated these figures into a predicted noise level at 1,100 feet, which is stated to be the "most sensitive receptor location". However, the PSA does not state the results of the applicant's noise estimate at 375 feet,which information would be a much better estimate of the noise level at Site R2. In addition, the PSA states that the increase in the noise level at Site R1 would be less than 5 dba, and would only occur during daytime hours. (See PSA, pg. 4.6-7). There is no statement as to the estimated increase in the noise level at Site R2. Furthermore, whereas Site R1 is a residential site, where presumably most of the inhabitants living at that site would not be present during the daytime hours when construction would be taking place, Fremont Bank's employees occupy the bank's Operations Center during the very same hours that construction would be ongoing. Because of the failure of the PSA to address the noise levels at the site of the bank's Operations Center, it is impossible to determine the impact of the increase in the noise level at that site. Accordingly, staff's conclusion, stated at page 4.6-7, that "the project construction will create less than significant adverse impacts at the most noise-sensitive receptor", is flawed.

In addressing the noise levels once the generating plant commences operations, the PSA states that "Project operating noise is predicted not to exceed 49 dBa at monitoring location R1 (representing the most sensitive residential receptors) during full load operation." (See PSA, pg. 4.6-8) Once again, the PSA is totally silent as to the predicted noise level at monitoring location R2. Therefore, it is impossible to determine the predicted noise level at the bank's Operations Center, which is the closest occupied building to the project site.

Air Quality And Exposure To Hazardous Materials

At page 4.1-22 of the PSA with regard to Construction Impacts and Mitigation it is stated that "maximum modeled project construction impacts are predicted to occur at the eastern fence line (Life Chiropractic College) and decreases rapidly with distance." Air Quality Table 15 demonstrates that during the construction phase the level of both PM10 and PM2.5 pollutants will be substantially in excess of the applicable standard. Furthermore, there is no estimate of the levels of the pollutants at the southern fence line where the bank's Operations Center is located. A similar issue exists with regard to Operational Impacts and Mitigation discussed commencing at page 4.1-23, wherein it is stated that the maximum modeled impacts are predicted to occur directly across Clawiter Road at the site of the Life Chiropractic College. (See PSA, pg. 4.1-25) Again, there is no discussion of the impact upon the site of the bank's Operations Center.

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The failure to reveal the impact upon the bank's Operations Center is of particular concern given the fact that the PSA states in the last paragraph on page 4.1-24 as follows:

> Staff believes that particulate matter emissions from the project's routine operation would cause a significant impact because those emissions would contribute to existing violations of PM10 and PM2.5 ambient air quality standards. The particulate matter emissions can and should be mitigated to a level of insignificance. Significant secondary impacts would also occur for PM10 and PM2.5, and ozone because emissions of particulate matter precursors (including SOx) and ozone precursors (NOx and POC) <u>would also contribute to existing violations of these standards</u>. (Emphasis added)

The PSA also recognized that the project's particulate matter emissions would be cumulatively considerable because they will contribute to existing violations of the PM10 and PM2.5 ambient air quality standards. (See PSA, at pg. 4.1-33)

Fremont Bank is also concerned about the ability of the applicant to purchase emission reduction credits ("ERC"). While it is recognized that such credits can be obtained from sites located in the entire basin because the air quality is considered to be a regional issue, it is submitted that at least the greatest majority of ERC's should have to come from the local area that is impacted the most by the pollution to be caused by the operation of the project, as apparently recognized in the PSA. (See PSA, at page 4.1-43-44.

The presence of aqueous ammonia at the project site is of concern to Fremont Bank. Although it appears from the discussion commencing at page 4.4-8 of the PSA that all appropriate precautions to prevent a spill of aqueous ammonia will have to be taken, no system if full proof, and a spill at the site of the storage tank could have an adverse impact upon the bank's employees housed in the Operations Center.

<u>Fire Danger</u>

The PSA states at page 4.14-11 that "[f]ires and explosions of natural gas or other flammable gasses or liquids are rare." The fact that such events are rare does not mean that such events do not happen. It is submitted that a natural gas explosion at the project site would adversely impact not only the power plant, but surrounding sites as well, including, in particular, the bank's adjacent Operations Center. Such an explosion and the likely resulting fire at the site, as well as adjacent sites impacted by such an explosion, could overwhelm the ability of the Hayward Fire Department to effectively respond to such an emergency situation in sufficient time to minimize damage to adjacent sites, as well as to the project site.

As noted at page 4.14-3 of the PSA, the closest Hayward Fire Department station has only a single fire engine and three fire fighters available to respond to an emergency at the project site. As noted, the three closest stations have a total of only four fire

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engines and one truck with 16 fire fighters available to respond to a situation at the project site.

As also noted at page 4.14 of the PSA, as of the date of the PSA "HFD Chief Larry Arfsten has indicated that his department is not yet sufficiently knowledgeable about the proposed project to fully discuss mitigation measures." As of September 6th, the date of the latest workshop held in Hayward, that situation had not changed.

In our opinion, it is imperative that the Hayward Fire Department address the issue of its ability to adequately respond to a major explosion and fire occurring at the project site in such a manner as to minimize the possible loss of life and property damage occurring at surrounding sites such as the bank's Operations Center.

In addition, it is submitted that before any action is taken to approve the construction of the project, information needs to be developed as to the extent of the adverse consequences to surrounding sites that could result from a major explosion and fire occurring at the project site, irregardless of the possibility of such an event taking place.

Conclusion

Under the present circumstances, it is the position of Fremont Bank that it opposes the construction of the Eastshore Energy Center at the proposed site.

Very Truly Yours

FREMONT BANK

By: Terrance L. Stinnett

Terrance L. Stinnett
General Counsel

cc: Greg Trewitt (greg.trewitt@tierraenergy.com)
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Caryn Holmes, Esq. (cholmes@energy.state.ca.us)
Michael Monasmith (pao@energy.state.ca.us)
Jesus Armas (jesus.armas@hayward-ca.gov)
Michael Sweeney (michael.sweeney@hayward-ca.gov)
Paul Heavik (lindampaulh@msn.com)
Hon. Pete Stark (petemail@mail.house.gov)

TLS:tls

PAGE 4/4 * RCVD AT 9/24/2007 10:58:37 AM [Pacific Daylight Time] * SVR:RE-FAX/14 * DNIS:2462 * CSID:5107902584 * DURATION (mm-ss):02-24

EXHIBIT #303

CITY OF
HAYWARD
HEART OF THE BAY

May 31, 2007

DOCKET
01-AFC-7C
DATE JUN 01 2007
RECD. JUN 01 2007

06-AFC-6
40800

William Pfanner, Project Manager
Energy Facilities Siting Division
California Energy Commission
1516 Ninth Street
Sacramento, CA 94814-5512

Dear Mr. Pfanner:

This is in response to your letter dated May 14 seeking comments from the City relative to the feasibility of locating the proposed Eastshore Energy facility on City-owned land "adjacent to the new RCEC [Russell City Energy Center]. In a very literal sense, there is no City-owned land available adjacent to the RCEC on which to construct another facility. This is the case because adjacent to RCEC to the west are a series of oxidation ponds used in the wastewater treatment process while to the east of the RCEC is the wastewater treatment plant itself.

Having said that, to the east of the wastewater plant is City-owned property comprising approximately 5.3 acres. The property is currently utilized as a temporary transfer station to hold debris and other material removed from city streets before it is hauled to a disposal site in San Leandro. Over the long term, this site has also been identified as a possible location on which to undertake limited organic recycling operations. In the meantime, it should be noted that under contract to RCEC LLC, the City has agreed to allow this site to be used for storage of construction material and equipment or as a parking lot while the RCEC is under construction. Moreover, it is has been reported that the proposed construction timetables for RCEC and Eastshore overlap, creating significant logistical and scheduling conflicts.

A number of months ago, City staff discussed with Tierra Energy representatives whether this site would be suitable for the Eastshore Energy Center. Tierra Energy responded in the negative citing a number of reasons. According to Tierra Energy, the site is too small (it seeks a minimum six-acre parcel), and that the dimensions of the parcel are inadequate for its needs. The parcel is also traversed by an overhead transmission line, which according to Tierra Energy significantly reduces the useable area of the parcel. Tierra Energy representatives also indicated that relocating the transmission line is cost-prohibitive.

In light of the contractual obligations to RCEC LLC and in consideration of the comments expressed by Tierra Energy, the only City-owned property in proximity to RCEC is not available for use by the Eastshore Energy Center.

Very truly yours,

Jesús Armas
City Manager

PROOF OF SERVICE (REVISED 5/1/07) FILED WITH ORIGINAL MAILED FROM SACRAMENTO ON 6/4/07

OFFICE OF THE CITY MANAGER
777 B STREET, HAYWARD, CA 94541-5007
TEL: 510/583-4300 • FAX: 510/583-3601 • TDD: 510/247-3340

EXHIBIT #304

CITY OF
HAYWARD
HEART OF THE BAY

DOCKET
06-AFC-6
DATE APR 0 4 2007
RECD. APR 1 0 2007

40102

April 4, 2007

Lorne Prescott
Project Manager
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

Re: Determination that the Eastshore Energy Center is not Consistent with the City of Hayward's Industrial Zoning District and General Plan

Dear Mr. Prescott:

As you know, the Hayward City Council determined on March 13, 2007 that the Eastshore Energy Center is not consistent with Hayward's Industrial Zoning District and General Plan. A copy of the adopted resolution is enclosed for your reference and files.

Please let me know if you have any questions.

Sincerely,

David Rizk

David Rizk, AICP
Planning Manager

cc: Jesús Armas, City Manager
Susan J. Daluddung, Director of Community and Economic Development Department
Robert Bauman, Director of Public Works Department
Angelina Reyes, City Clerk
Michael O'Toole, City Attorney

Enclosure

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
PLANNING DIVISION
777 B STREET, HAYWARD, CA 94541-5007
TEL: 510/583-4200 • FAX: 510/583-3649 • TDD: 510/247-3340

HAYWARD CITY COUNCIL

RESOLUTION NO. 07-028

Introduced by Council Member Halliday

RESOLUTION FINDING THAT THE EASTSHORE ENERGY CENTER PROPOSED AT 25101 CLAWITER ROAD IS NOT CONSISTENT WITH THE GENERAL PLAN AND INDUSTRIAL ZONING DISTRICT

WHEREAS, Eastshore Energy, LLC has made a request for the City of Hayward to make a determination that a proposed 115 megawatt power plant, to be located at 25101 Clawiter Road, is consistent with General Plan policies and the Industrial Zoning District; and

WHEREAS, the authority to license power plants in California that generate more than 50 megawatts of power rests with the California Energy Commission (CEC); the CEC is currently processing an application for this power plant and is scheduled to make a final decision in the fall of 2007; and

WHEREAS, the CEC must determine that a project conforms to Local Ordinances Regulations and Standards (LORS). A power plant is not a listed use within the Hayward Industrial Zoning District, and the Zoning Ordinance indicates that when a use is not specifically listed, it shall be assumed that such uses are prohibited unless it is determined ...that the use is similar to and not more objectionable or intensive than the uses listed; and

WHEREAS, it is staff's opinion that the proposed power plant is not consistent with the purpose of the General Plan and Industrial Zoning District.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby finds and determines:

1. The proposed power plant is not consistent with the purpose of the Industrial (I) Zoning District in that it would result in a facility that would not promote a desirable and attractive working environment with a minimum of detriment to surrounding properties, because it would have the potential to generate air quality impacts related to particulate matter and nitrogen oxides emissions and would entail fourteen 70-foot tall venting stacks, which would not be compatible with the heights of other structures in the vicinity;

2. The proposed power plant would impair the character and integrity of the zoning district and surrounding area with the introduction of highly visible 70-foot tall

venting stacks, which would be seen from residential areas to the east and would be incompatible with the heights of existing facilities in the area;

3. The proposed power plant would be detrimental to the public health, safety, or general welfare due to the potential for air quality and hazardous materials impacts related to the use and transport of aqueous ammonia and emission of particulate matter and nitrogen oxides; and

4. The proposed power plant would not be in harmony with applicable General Plan policies that seek to "promote and protect the appearance of the Business and Technology Corridor to encourage quality development" in that the 6.2-acre site proposed for the power plant is near the eastern edge of the industrial area of the City abutting residential areas that would be more appropriately developed with emerging and higher technology businesses that tend to cluster and generate higher paying jobs. Also, such uses would have higher numbers of employees than the expected 15-20 employees anticipated for operation of the plant, which would be more appropriately served by the direct connection along Clawiter Road to State Route 92, an intersection planned for upgrades as stated in the General Plan.

BE IT FURTHER RESOLVED that based upon the forgoing findings, the City Council hereby determines that the proposed power plant is not consistent with the City's General Plan Policies and Industrial Zoning District provisions.

BE IT FURTHER RESOLVED, that the City Council hereby directs staff to communicate the findings and determination contained in this resolution to the California Energy Commission and work with legislators to assure that the proposed project will not adversely impact the citizens of Hayward.

IN COUNCIL, HAYWARD, CALIFORNIA March 13, 2007

ADOPTED BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Rodriquez, Quirk, Halliday, Dowling, Henson
	MAYOR:	Sweeney
NOES:	COUNCIL MEMBERS:	None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Ward

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

_____
City Attorney of the City of Hayward

EXHIBIT #305

DOCKET
06-AFC-6
DATE APR 19 2007
RECD. APR 23 2007

39945

CITY OF
HAYWARD
HEART OF THE BAY

April 19, 2007

Paul C. Richins
Manager, Environmental Office
Energy Facilities Siting Division
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814-5512

Re: Land Use Issues
Russell City Energy Center and Eastshore Energy Center

Dear Mr. Richins:

Below is information in response to your March 16, 2007 letter to me. In summary, and typical with local agencies, Hayward's laws, ordinances, regulations and statutes entail discretion and judgment. As explained in the following paragraphs, it is the City's position that the Russell City Energy Center is sited in an appropriate location and therefore is determined to be consistent with Hayward's Zoning Ordinance and General Plan and the Eastshore Energy Center, although proposed as a smaller plant, is not.

City of Hayward Land Use Permitting Process

In response to your inquiry, following is a summary of the process that would be required if these plants were processed through the Hayward land use permitting process. As indicated in the City's Industrial Zoning District provisions and since the operation of both plants would exceed stated thresholds for Class "B" hazardous materials as defined in the Hayward Ordinance, they would both be considered uses requiring at least administrative use permits. Additionally, if either plant involved Class "A" hazardous materials (e.g., reactive materials, poisonous or toxic materials, etc.), they would require conditional use permits. So, even though the City determined in 2001 that the Russell City Energy Center was considered a permitted primary use of "Manufacturing" in that the conversion of natural gas by mechanical equipment into electric power constitutes a form of manufacturing, because of the hazardous materials associated with its proposed operation, both it and the Eastshore Energy Center would be considered either administrative or conditional uses that would require certain findings to be made if the City were processing such projects.

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DEVELOPMENT REVIEW SERVICES
777 B STREET, HAYWARD, CA 94541-5007
TEL: 510/583-4200 • FAX: 510/583-3649 • TDD: 510/247-3340

PROOF OF SERVICE (REVISED 3/12/07) FILED WITH ORIGINAL MAILED FROM SACRAMENTO ON 4/23/07

The findings required to be made to approve an administrative use are the same as those required to approve a conditional use. Due to the potential for negative impacts, administrative and conditional uses entail consideration of impacts and typically entail conditional approval. In fact, the Hayward Zoning Ordinance indicates that the purpose for requiring administrative or conditional use permit approvals are "to assure certain specified uses are permitted where there is community need, and to assure said uses occur in maximum harmony with the area and in accordance with official City policies." Although administrative uses are typically processed and approved at a staff level, the Planning Director would likely determine that Site Plan Review would also be required and would refer the proposed power plant projects to the Planning Commission for consideration, as allowed by the Hayward Zoning Ordinance. Any determination by the Planning Commission could be called up by a Council member or appealed to the City Council by any interested party.

In order to approve either plant if they were processed by the City, the approving authority in Hayward would be required to make all of the four findings below, which are required to be made in order to approve an administrative or conditional use. Staff's analyses to those four findings for each plant are provided in the proceeding paragraphs.

a. The proposed use is desirable for the public convenience or welfare;

The Eastshore plant would be used in periods of high energy demand to supplement power in the San Francisco Bay area. However, as communicated by Hayward residents, City Council members and Planning Commissioners, it is not evident from analysis provided by the Energy Commission staff or information supplied by the applicant that the Eastshore plant is needed at the proposed location to provide the benefits that would otherwise be achieved via location at another site in the south or east Bay near other PG&E substations in the vicinity. The City feels that the process in selecting the proposed Eastshore site, though not under the auspices of the California Energy Commission, was not a public process that entailed adequate public notification and opportunity for input. In summary, the proposed Eastshore plant at the site is not desirable, because the public convenience or welfare to Hayward could be realized via another location in the vicinity.

b. The proposed use will not impair the character and integrity of the zoning district and surrounding area;

The key words in this finding are "surrounding area." The heights of the stacks at each plant would be significant; though the Russell City Energy Center plant stacks would be in an area that already contains a stack of significant height at the Rohm and Haas chemical plant to the southeast and that is further away from areas visible from residential and public areas.

c. The proposed use will not be detrimental to the public health, safety, or general welfare; and

Although the Energy Commission staff is addressing local air quality impacts and it may be possible to mitigate air quality impacts to federal and state standards enforced by the Bay Area Air Quality Management District, including utilizing emission reduction credits on a region-wide basis that would not likely lessen impacts locally, both plants would emit pollutants in a region that is designated as a non-attainment area for state ambient air quality standards for particulate matter ($PM_{2.5}$ and PM_{10}) and designated as a marginal -attainment area of the national 8-hour ozone standard. Also, staff is concerned with the cumulative air quality impacts of both plants, given the non-attainment status of certain pollutants in this area. The difference between the two plants in staff's opinion, however, is in the location and proximity of the plants to residential areas and sensitive receptors. Aviation impacts, as you indicate, may also be a concern and are addressed later in this letter. For reasons primarily associated with air quality impacts related to proximity of residential areas, the City would not find that the Eastshore Center would be consistent with this finding.

d. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

The purpose of the Industrial (I) Zoning District is to provide for and encourage the development of industrial uses in areas suitable for same, and to promote a desirable and attractive working environment with a minimum of detriment to surrounding properties. Also, the purpose of the Hayward Zoning Ordinance is to "promote the public health, safety, general welfare and preserve and enhance the aesthetic quality of the City by providing regulations to ensure an appropriate mix of land uses in an orderly manner." In furtherance of this purpose, the City desires to "achieve a pattern and distribution of land uses which generally retain and enhance established residential neighborhoods, commercial and industrial districts, regional-serving uses, and recreational amenities, allow for the infill and reuse of areas at their prevailing scale and character, ...provide a diversity of areas characterized by differing land use activity, scale and intensity and establish Hayward as a unique and distinctive place in the heart of the San Francisco Bay Area with a high quality of life in an attractive, secure environment for the City's residents and businesses."

The Hayward General Plan contains discussion and policies that encourage the transformation of the Industrial Corridor from a manufacturing and distribution emphasis to more research and development oriented businesses. However, the General Plan also contains discussion that recognizes the importance of separation of potentially-impacting industrial land uses from residential areas:

> *On the one hand, many of the businesses that use hazardous materials are located in the Industrial Corridor. For example, high-tech businesses such as computer chip manufacturers and, to a lesser extent, some biotech industries, use highly toxic or corrosive gases. These particular classes of*

hazardous materials, if not properly stored, handled, and monitored, can pose a threat to the community. The separation of these industrial uses ***from adjacent residential uses*** *[emphasis added] makes it easier for emergency responders to mitigate and evacuate a hazardous situation. On the other hand, as portions of the Industrial Corridor are developed with more intensive uses, the increase in employee densities may result in a need for child-care facilities in closer proximity to the workforce. Such uses currently are prohibited in the Industrial District due to concerns about safety and land use compatibility. Perhaps there are portions of the Industrial Corridor, such as the newer business parks, where these facilities could be located and pose little or no safety risks.*

Furthermore, the General Plan contains the following relevant policy and strategy:

7. *Promote the transition from a manufacturing-based economy to an information-based economy in the industrial areas.*
    1. *Consider adoption of multiple zoning districts that provide for concentration of similar types of uses such as manufacturing, warehouse/distribution, or research and development/office uses.*

While multiple zoning districts have not yet been adopted for the Industrial Corridor as encouraged by the General Plan, the City seeks to concentrate similar types of uses. The City is of the opinion that heavier, potentially more-impacting industrial uses are more appropriate away from residential areas, such as at the end of Enterprise Avenue near the City's wastewater treatment facility, where the Russell City Energy Center is proposed. Also, automobile wrecking yards at the end of Depot Road are adjacent to the Russell City Center site, and the Rohm and Haas chemical plant is located in the area to the southeast of that proposed plant. Conversely, the Eastshore Energy Center site is situated in the eastern portion of the City's Industrial Corridor approximately 1,200 feet away from the nearest residence in an area that contains Life Chiropractic College, a bank (located adjacent and to the south) and a restaurant/café (located adjacent and to the north). The enclosed aerial image shows the vicinity where the two power plants are proposed. Also, your letter indicates that the two power plant sites were "only about 3,000 feet apart." Given that the entire width of the Industrial Zoning District in this area is about 6,500 feet, it is City staff's opinion that 3,000 feet is significant. In summary, due to the proximity of residential areas and location of existing heavy industrial uses, it is staff's opinion that this finding would not be made for the Eastshore Energy Center and would be made for the Russell City Energy Center.

Aviation Impacts

Regarding issues associated with aviation impacts, both energy center sites do fall within the boundaries of the Hayward Airport Airspace Drawing, as shown in the Hayward Executive Airport Master Plan, but neither is in direct alignment of any major approach

routes. Neither do the highest elevations of the stacks exceed the obstacle-free zone height limitations established by the FAA and referred to in Hayward's ordinance. Regarding the issue of exhaust plumes, City staff understands that this is a new issue being addressed by FAA and that the FAA will address this question as part of their FAA Form 7460-1 review, which is appropriate. It is City staff's understanding of the Blythe Airport circumstances that the Blythe plant was in direct line of a runway approach and takeoff zone. Staff believes the orientation and relation of the two plants to the Hayward Executive Airport's approach and takeoff areas are different than is the case in Blythe, but look forward to the FAA's analysis and comment. City staff would expect as noted in the FAA's safety evaluation that there will be recommendations regarding proper notification to pilots and potentially the need to modify the City's broad helicopter approach path from the west. We would also expect that the applicants will be required to fund any bulletins or other processes needed to meet FAA requirements.

Proposed Further Actions Regarding Consistency Determination

As stated previously, staff does not consider the proposed new site for the Russell City Energy Center significantly different than the previously proposed site to warrant further action. (See enclosed aerial). In support of this statement is the fact that on October 11, 2005, the Hayward City Council voted unanimously to enter into an agreement with RCEC-LLC authorizing construction of the Energy Center at the currently proposed location. Such action would not have taken place without a determination that the new location was consistent with local land use regulations. Moreover, I draw your attention to Resolution 05-125, a copy of which is attached, particularly to the final two paragraphs. In the second to the last paragraph, the Council is on record as expressing support for the development and construction of the RCEC at its new location. In the final paragraph, the City Council authorizes the City Manager to take appropriate steps to implement the decision of the City Council.

Conditions and Mitigations Regarding Land Use Impacts

I assume your request for conditions or mitigations to reduce the significance of any potential issues or impacts relates to land use issues only. For the reasons stated in this letter, we do not believe issues associated with inappropriate land use can be reduced or mitigated for the Eastshore Energy Center at the currently proposed site and that only relocation to a more appropriate site further from residential areas, including outside Hayward, would be acceptable. Other land use issues that are of concern relate to aesthetics/visual impacts and noise impacts. We would request that both plants comply with noise limits identified in the Hayward General Plan's *Noise Guidelines for Review of New Development*. To reduce visual and aesthetic impacts, landscape screening, which could include landscaping with a berm and/or wall, should be provided at each site, especially for the Eastshore site, which is closer to residential areas. The use of a perimeter wall to screen lower level plant facilities at both sites would also be appropriate We do not feel that the stacks at each site can be mitigated to an insignificant level, though their impacts could be mitigated somewhat if they were more of a neutral color that would blend with the background. Finally, lighting provided should meet the City's

Security Ordinance standards, with light sources shielded so as not to shine or glare off-site.

In summary, it is the City's position that the Eastshore Energy Center is not sited in an appropriate location and would represent a second power plant in the City of Hayward, which has raised great concerns by the local residents and City decision-makers. It is City staff's opinion that the California Utility Commission process in determining the Eastshore site as a possible location for an additional plant in Hayward was not a process that clearly identified the Eastshore site, which would have involved appropriate local public input and participation earlier in the siting process.

Please let me know if you have any questions or need further clarification.

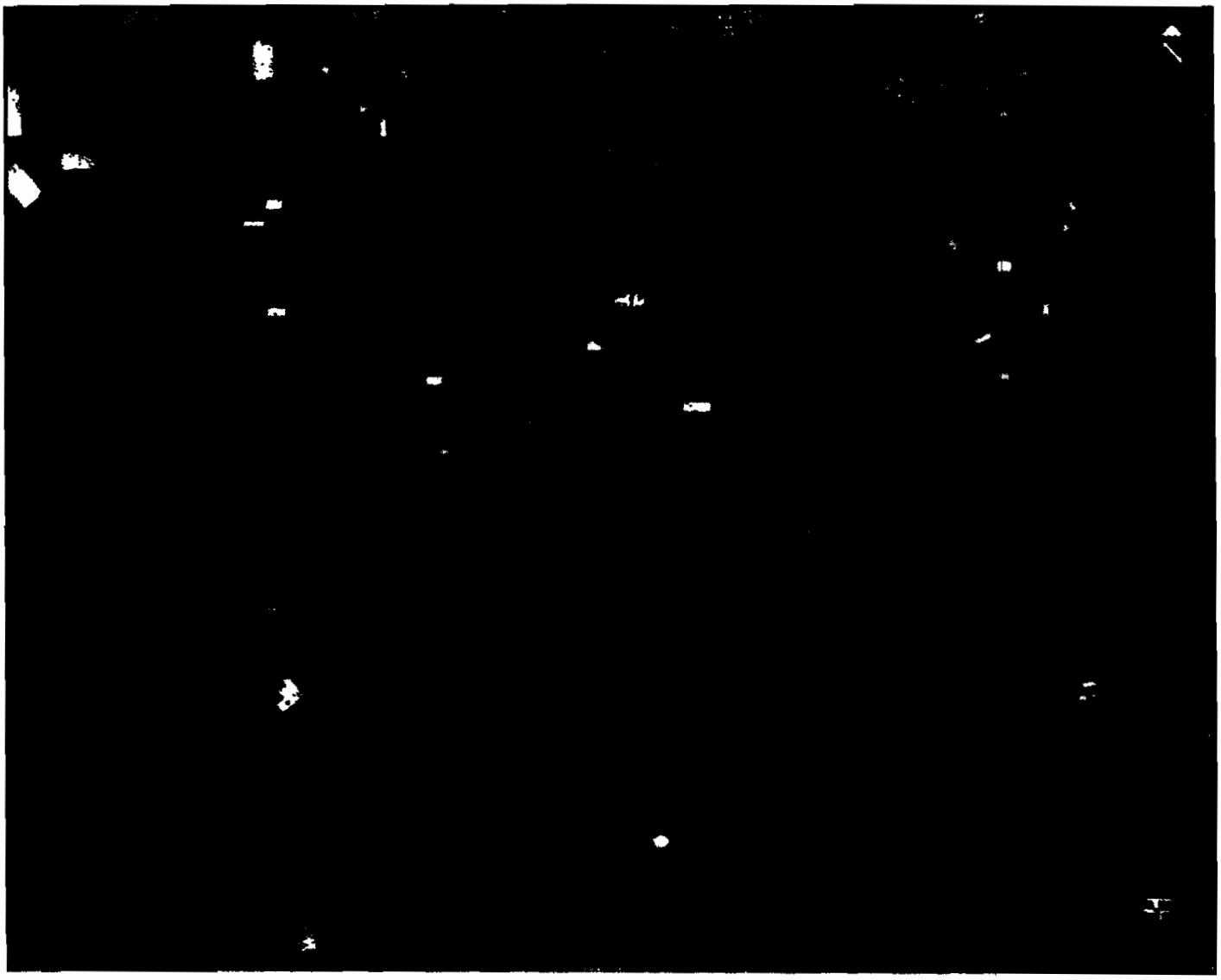
Sincerely,

David Rizk

David Rizk, AICP
Hayward Planning Manager

cc: Jesús Armas, City Manager
Susan J. Daluddung, Director of Community and Economic Development Department
Robert Bauman, Director of Public Works Department
Michael O'Toole, City Attorney

Enclosure



HAYWARD CITY COUNCIL

RESOLUTION NO. 05-125

Introduced by Council Member Jimenez

RESOLUTION AUTHORIZING THE EXECUTION
A COOPERATION AND OPTION AGREEMENT
WITH THE RUSSELL CITY ENERGY CENTER, LLC

WHEREAS, the City and Russell City Energy Center, LLC ("RCEC") have previously entered into agreements for the development of RCEC in the City of Hayward; and

WHEREAS, the City Council has previously found that the development of a modern, clean source of reliable energy is a benefit to the public health, safety and welfare; and

WHEREAS, changing circumstances have necessitated consideration alternative sites for the location of the energy center; and

WHEREAS, RCEC has proposed to construct the energy center on parcels of land owned by the City in its propriety capacity and currently used in connection with the City's waste water treatment facility ("Treatment Facility Land"); and

WHEREAS, as part of its proposal, RCEC is offering to trade comparable parcels of land to the City in exchange for the Treatment Facility Land; and

WHEREAS, the City Council hereby finds that the land to be exchanged is contiguous to the Treatment Facility Land and has been determined to be of equal or greater value; and

WHEREAS, the Council further finds that the exchange of land will be beneficial to the public good and welfare in that it will enable the City to continue to efficiently operate its sewer treatment facility and also provide a site for the construction of an energy center that will provide much needed clean energy for use by the general public; and

WHEREAS, RCEC's proposals are contained in the Cooperation and Option Agreement ("Agreement") on file in the office of the City Clerk.

NOW THEREFORE, the City Council of the City of Hayward does hereby resolve and express its support for the development and construction of the Russell City Energy Center on the land described in the Agreement.

BE IT FURTHER resolved that the City Manager is hereby authorized and directed to execute the attached Agreement, and negotiate and execute any and all related agreements and documents necessary to carry out the purpose and intent of such Agreement in forms approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA October 11, 2005

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Jimenez, Quirk, Halliday, Ward, Dowling, Henson
MAYOR: Cooper

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST: Angelina Reyes
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Exhibit # 306

STATE OF CALIFORNIA – THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov

01-AFC-7C

DOCKET
06-AFC-6
DATE MAY 14 2007
RECD. MAY 14 2007
40407

May 14, 2007

Jesus Armas, City Manager
City of Hayward
777 B Street
Hayward, CA 94541

RE: Eastshore Energy Center – Feasibility of common site for both Eastshore and Russell City power plants

Dear Mr. Armas:

In its Revised Scheduling Order of April 5, 2007, the California Energy Commission (Energy Commission) Eastshore Energy Center Committee (Committee) directed staff to analyze viable site alternatives to the proposed Eastshore Energy Center (Eastshore) location. As directed by the Committee, staff has contacted the Russell City Energy Center (RCEC) proponent regarding the feasibility of one site for both projects, potential cumulative impacts of two sites, alternative interconnection locations, and other relevant information.

The RCEC was originally certified for construction at 3636 Enterprise Avenue in Hayward. On October 11, 2005, when relocation of the RCEC was under initial discussion, the Hayward City Council adopted Resolution #05-125, supporting a proposed exchange of property between the RCEC applicant and the City of Hayward for a new site, also located on Enterprise Avenue. The Energy Commission is seeking your input regarding potential City-owned land adjacent to the new RCEC site that might be available to construct the Eastshore project. We believe the land proposed as the lay-down area by the RCEC (east of the wastewater treatment facility) may be available for purchase from the City of Hayward. We would appreciate any input from the City regarding the availability of this site, or any other City-owned land in close proximity to the RCEC, as well as any information regarding easements or encumbrances that could impact the potential siting of a combined RCEC and Eastshore facility.

Staff requests your input on the questions (identified above) as raised by the Committee. It would be helpful if we could receive your input no later than May 25, 2007. Please contact me at (916) 654-4206 if you have any questions. If you will need additional time, please let us know when you will be able to respond.

Thank you for your assistance.

Sincerely,

William Pfanner

William Pfanner, Project Manager
Energy Facilities Siting Division

cc: Docket (06-AFC-6)

AGENDA
HAYWARD CITY COUNCIL
777 B STREET
Hayward, CA 94541
March 6, 2007

DOCKET 06-AFC-6
DATE MAR 0 2 2007
RECD. MAR 0 5 2007
39463
EXHIBIT #307

WORK SESSION
ROOM 2A

5:00 p.m. 1. Public Comments *(The Public Comments section provides an opportunity to address the City Council on items listed on the agenda, as well as other items of interest. The Council welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Council is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.)*

5:05 p.m. 2. Mid-Year Budget Review

5:35 p.m. 3. Seventy-five Percent Diversion Goal

6:00 p.m. 4. Council Announcements, Referrals, Future Agenda Items

CLOSED SESSION
ROOM 2B

CONFERENCE WITH REAL PROPERTY NEGOTIATOR - Pursuant to Government Code Section 54956.8:

Property: 552 B Street
Negotiating Party: City/Terry and Michelle Daniel
Under Negotiation: Instructions to Negotiator

SPECIAL JOINT CITY COUNCIL/REDEVELOPMENT AGENCY MEETING
COUNCIL CHAMBERS

8:00 P.M. CALLED TO ORDER - Pledge of Allegiance – Council Member Halliday

ROLL CALL

PRESENTATION: Business Recognition Award

PUBLIC COMMENTS *(The Public Comments section provides an opportunity to address the City Council on items not listed on the agenda. The Council welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Council is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.)*

CONSENT

1. Approval of Minutes of the City Council Meeting of February 27, 2007 — Motion
2. Approval of Amendment to EBDA Joint Exercise of Powers Agreement — Resolution
3. Approval of an Amended Contract with Goldfarb and Lipman LLP for Legal Services on Affordable Housing Related Matters — RA Resolutions(2)

The following order of business applies to items considered as part of Public Hearings and Legislative Business:

- *Staff Presentation*
- *City Council Questions*
- *Public Input*
- *Council Discussion and Action*

PLEASE TAKE NOTICE *that if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing.*

PLEASE TAKE FURTHER NOTICE *that the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.*

LEGISLATIVE BUSINESS

4. East Shore Energy Center Determination of Consistency with Zoning — Resolution

COUNCIL REPORTS ***(Oral reports for items related to Council Member activities associated with external agencies.)***

ADJOURNMENT

NEXT REGULAR MEETING - 8:00 P.M., TUESDAY, MARCH 13, 2007

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or TDD (510) 247-3340.

An online version of this agenda is available on the Internet at ***www.hayward-ca.gov***

CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 03/06/07
AGENDA ITEM 4
WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Determination whether the Eastshore Energy Center proposed at 25101 Clawiter Road is consistent with the General Plan and Industrial Zoning District

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution, which indicates the proposed power plant is not consistent with the City's General Plan and Industrial Zoning District.

DISCUSSION:

The proposed 115 megawatt, gas-fired peaking power plant is to be utilized during periods of high demand, expected more frequently during the hotter, summer months. Fourteen approximately 70-foot tall engine stacks would be located by the generator systems adjacent to the main building. Two, 10,000-gallon aqueous ammonia tanks would be located to the rear of the building. The ammonia, a regulated hazardous material, would be trucked to the site and stored in tanks to be used in the gas-burning process to reduce noxious oxide emissions. Also proposed would be approximately 1.1 miles of 115 kV transmission lines along Clawiter Road that would cross State Highway 92 and connect to the PG&E Eastshore Substation. The power lines, including existing 12 kV power lines, would be supported by new, 90-foot tall transmission poles. A temporary construction laydown and parking area immediately across Clawiter Road on the northern portion of the Berkeley Farms site is also proposed.

The authority to license power plants in California that generate more then 50 megawatts of power rests with the California Energy Commission (CEC). The CEC is currently processing an application for this power plant, which has entailed and will entail future public information meetings, and is scheduled to make a final determination sometime this fall. As part of the review process, the CEC does an extensive environmental impact analysis, including assessing potential air quality and public health impacts. Final permitting by the Energy Commission requires conformance with rules and regulations of the Bay Area Air Quality Management District (BAAQMD), which is also required to issue a permit in order for the plant to be operated. The BAAQMD is continuing to assess air quality impacts, including cumulative air quality impacts, and is scheduled to release a "Preliminary Determination of Compliance" in late March. Such

determination will either recommend against the project, or propose mitigation measures to reduce air quality impacts to acceptable levels.

Additionally, as part of its review process, the CEC must determine that a project conforms to what are called LORS – Local Ordinances, Regulations and Standards. Because a power plant is not a listed use within the Hayward Industrial Zoning District, and the Zoning Ordinance indicates that when a use is not specifically listed, it shall be "assumed that such uses are prohibited unless it is determined ...that the use is similar to and not more objectionable or intensive than the uses listed," the Council is being requested to determine whether the proposed power plant would be in conformance with the Industrial Zoning District.

This area is classified as "Industrial Corridor" in the General Plan and the site is zoned Industrial. The purpose of the Industrial Zoning District is "to provide for and encourage the development of industrial uses in areas suitable for same, and to promote a desirable and attractive working environment with a minimum of detriment to surrounding properties." The proposed plant, due to use and storage of 20,000 gallons of a hazardous material, aqueous ammonia, would require a use permit were it processed through the local permitting process. As with other zoning districts, a variety of uses requiring different levels of review and processing are listed as being allowed in the Industrial Zoning District. Generally, more impacting uses require an administrative or conditional use permit, which allows discretion on the part of the City decision-makers in determining whether or not a use is appropriate. As reflected in the purpose of the district, location is a key consideration in that determination.

Exhibit A shows the proximity of the proposed plant to residential and educational facilities in the area, as well as nursing homes and childcare/preschool facilities. The nearest residence is approximately 1,100 feet to the northeast, with the 293 unit Waterford Apartment complex located some 1,800 feet away. The Life Chiropractic College is located directly across Clawiter Road from the plant site, and Ochoa Middle School and Eden Gardens Elementary located approximately roughly a half-mile away at 3,000 and 3,500 feet, respectively. It is staff's opinion that the proposed power plant is not consistent with the purpose of the Industrial (I) Zoning District in that it would result in a facility that would not "promote a desirable and attractive working environment with a minimum of detriment to surrounding properties," because it would have the potential to generate air quality impacts related to particulate matter, nitrogen oxides and ammonia emissions and would entail fourteen 70-foot tall venting stacks, which would not be compatible with the heights of other structures in the vicinity.

Additionally, staff would suggest that the facility would impair the character and integrity of the zoning district and surrounding area with the introduction of highly visible 70-foot tall venting stacks, which would be seen from residential areas to the east and would be incompatible with the heights of existing facilities in the area. An oblique aerial view visual simulation of the proposed plant and stacks is provided in an attachment to the attached Planning Commission agenda report.

Also, the proposed power plant could be detrimental to the public health, safety, or general welfare due to the potential for air quality and hazardous materials impacts related to the use and transport of aqueous ammonia and emission of particulate matter, ammonia and nitrogen oxides. Although air quality impact analysis is ongoing by both CEC and BAAQMD staff, CEC staff

have requested additional information from the applicant and have expressed concerns with air quality impacts associated with particulate matter and ammonia emissions and with the applicant's air quality modeling analysis.

It is staff's opinion that the proposed power plant would also not be in harmony with applicable General Plan policies that seek to "promote and protect the appearance of the Business and Technology Corridor to encourage quality development" in that the 6.2-acre site proposed for the power plant is near the eastern edge of the industrial area of the City abutting residential areas that would be more appropriately developed with businesses that have less potential for air quality impacts and that would be more compatible with the fringe of residential areas. Such businesses include those of emerging and higher technology industries that tend to cluster and generate higher paying jobs. Such jobs and businesses are strongly supported by the Economic Development Chapter of the General Plan, which encourages the City to establish policies and strategies that, "support economic growth...maintain a healthy balance between economic growth and environmental quality...encourage businesses that create permanent, higher wage jobs to locate and/or expand in Hayward..."

Also, such uses would have more employees than the expected 15-20 employees anticipated for operation of the plant. The proposed site would be more appropriately used for a business with a higher employee count that would be served by the direct connection along Clawiter Road to State Route 92, an intersection planned for upgrades as stated in the General Plan.

PLANNING COMMISSION ACTION:

As reflected in the attached draft meeting minutes, the Planning Commission voted 3-3-1 regarding consistency and therefore, did not make a recommendation to the City Council. Commissioners against the project acknowledged concerns expressed by area residents and opinned that the plant was proposed in an inappropriate location, given the proximity of the site to residents, schools and other sensitive receptors and given potential impacts of the plant, especially related to air quality and visual issues. Those three Commissioners also felt that the plant would not guarantee additional electrical power specifically for Hayward, that Hayward should not be burdened with an additional power plant and that other Bay Area cities should "do their fair share" and accommodate this plant. Acknowledging environmental issues needed to be carefully analyzed, the three Commissioners in support of the proposed plant sided with those in the business community who voiced support for the plant at the hearing, with Commissioners noting that the plant was a similar use to the Russell City Energy Center, a larger power plant that was determined in 2001 by the City to be consistent with the Industrial Zoning District.

APPLICANT'S SUBMITTAL:

Exhibit D is a submittal from the applicant's legal counsel, Jane Luckhardt of Downey Brand, LLP, which was distributed to the Planning Commissioners at the February 15 public hearing. Ms. Luckhardt states in her letter that the City previously determined that the Russell City Energy Center, another power plant, was a "manufacturing" use and determined to be consistent with the Industrial Zoning District and therefore, the Eastshore Energy Center, also proposed as a power plant, should also be determined to be consistent with the zoning classification. Also, the

attachment argues that analysis should be done regarding whether the proposed project is more objectionable or intensive than other uses listed as allowed, rather than of the project's location or individual environmental effects. Ms. Luckhardt indicates that there is no evaluation to support the implication that visual and hazardous materials impacts would make the project inconsistent with the Zoning Ordinance and General Plan. Finally, the letter argues that the proposed project would be consistent with General Plan policies in that it would attract desired businesses, such as those associated with the computer and electronics industries.

Staff would respond that location was a consideration when the Russell City Energy Center (RCEC) determination was made. In fact, the resolution adopted with such determination referenced the Rohm and Haas chemical plant, located in the western portion of the Industrial District, further away from residential areas. Also, although no specific analysis has been done, it is clear to staff that the 70-foot tall stacks would be visible from residential areas and inconsistent with the heights of structures in the area. Issues related to air quality impacts are still being analyzed and, given the amount of data requests from the CEC staff and the BAAQMD, concerns with potential impacts associated with proposed use of hazardous materials are worthy of consideration in the context of determining whether a use is "more objectionable or intensive" than other allowed uses. Therefore, for the reasons outlined in this report and in the attached resolution, staff cannot recommend that the project be determined to be consistent with the Industrial Zoning District.

PUBLIC NOTICE:

On February 23, nearly 650 notices of this hearing were sent to owners of properties not only within the required 300 feet radius to the subject site, but also to owners of properties within an expanded area that includes residential properties along Depot Road and to the tenants of the 293-unit Waterford Apartment complex along Depot Road. Notices were also sent to interested parties and the applicant. Also, notice was published in the local newspaper on February 24.

Prepared by:

David Rizk

David Rizk, AICP
Planning Manager

Recommended by:

Marcel Bartlett for

Susan J. Daluddung, Ph.D.
Director of Community and Economic Development

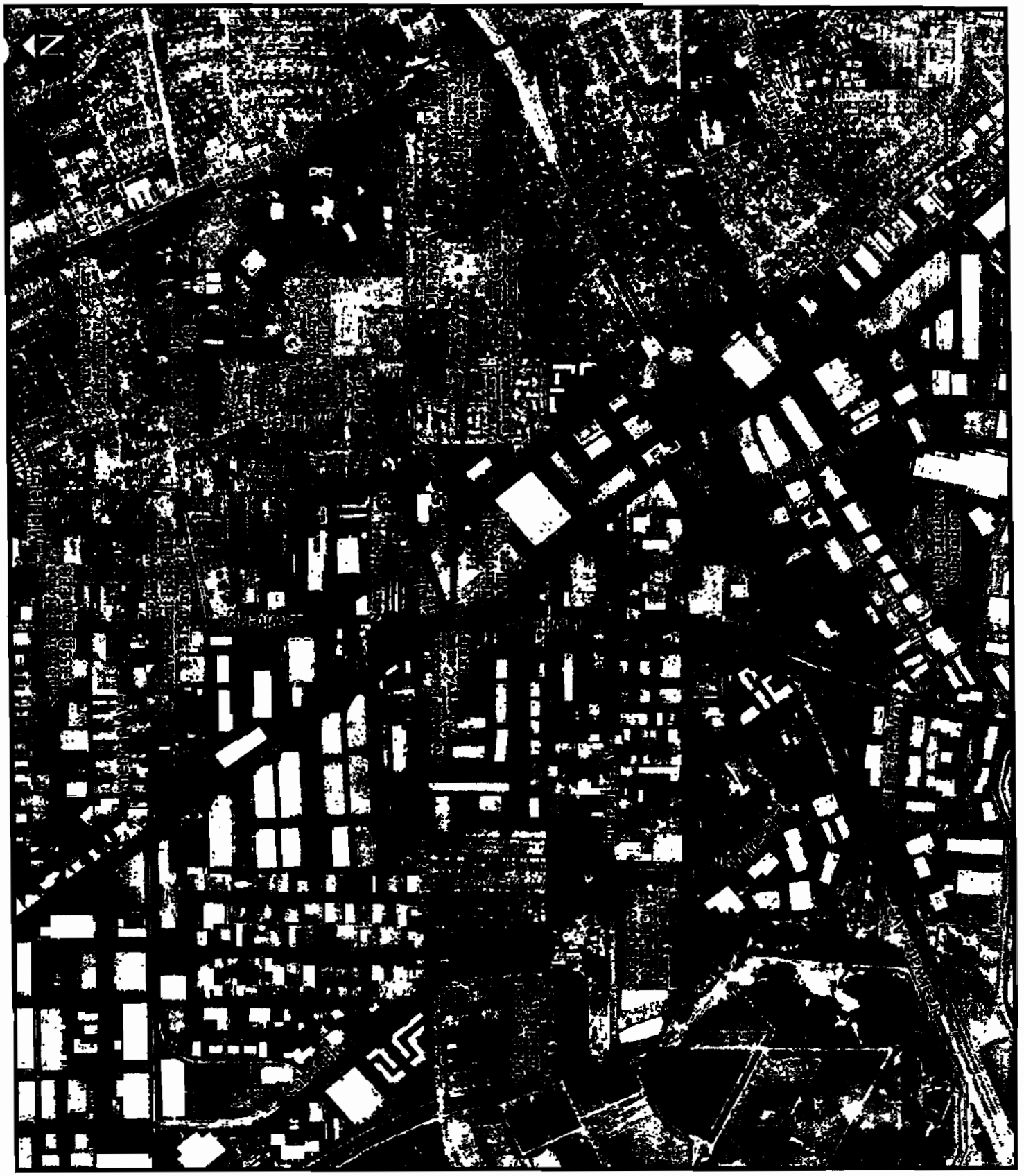
Approved by:

Jesús Armas, City Manager

Attachments:

Exhibit A:	Area Map
Exhibit B:	February 15, 2007 Planning Commission agenda report with attachments:
	Attachment A: Area Map
	Attachment B: Excerpts from information packet from applicant
	Attachment C: Letter from Hayward City Manager to CEC staff
Exhibit C:	Draft minutes of the February 15, 2007 Planning Commission meeting
Exhibit D:	February 15, 2007 submittal from applicant's legal counsel, Jane E. Luckhardt, of Downey Brand LLP
Exhibit E:	Written correspondence from public received prior to Planning Commission meeting
	Resolution

3/1/07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CITY OF HAYWARD
AGENDA REPORT

Meeting Date 02/15/07
Agenda 1

TO: Planning Commission

FROM: Planning Manager

SUBJECT: Request by Eastshore Energy, LLC, for the City of Hayward to make a determination that a proposed 115 megawatt power plant (Eastshore Energy Center) proposed at 25101 Clawiter Road is consistent with General Plan policies and the Industrial Zoning District

RECOMMENDATION:

It is recommended that the Planning Commission recommend to the City Council that the Eastshore Energy Center is not consistent with the General Plan or the Industrial Zoning District.

DISCUSSION:

Summary of Process

The authority to license power plants in California that generate more then 50 megawatts of power rests with the California Energy Commission (CEC). The CEC is currently processing an application for this power plant, which was submitted by Tierra Energy in September of 2006. The CEC is scheduled to make a final determination on licensing this plant in November of this year, and construction is expected to begin in early 2008 and last for approximately 18 months. The plant is scheduled to begin full operation in late spring of 2009. On January 29, CEC staff conducted an informational workshop, site visit and hearing, and is continuing to receive and respond to information submitted by the applicant and the public, and will continue to process the application request during the next several months. At this point in the review process, City staff is seeking direction as to whether the Eastshore Energy Center power plant at the proposed site is consistent with the Industrial District of the Zoning Ordinance and applicable General Plan policies.

As part of the licensing process, the CEC must determine that a project conforms to what are called LORS – Local Ordinances, Regulations and Standards. Because a power plant is not a listed use within the Hayward Industrial Zoning District, and the Zoning Ordinance indicates that when a use is not specifically listed, it shall be "assumed that such uses are prohibited unless it is determined ...that the use is similar to and not more objectionable or intensive than the uses listed," the Commission is being requested to

make a recommendation to the City Council regarding the proposed project's conformance with the General Plan policies and Industrial Zoning District designation.

The CEC is also processing a request from Calpine to amend their license approved in September of 2002, for the 600 megawatt Russell City Energy Center (RCEC), proposed at the end of Enterprise Avenue in Hayward. The amendment essentially entails a relocation of the proposed site approximately 1,300 feet to the northwest, resulting in a project site partially on the City's wastewater treatment facility site and partially on private property off Depot Road. The City Council in 2001, upon a recommendation from the Planning Commission, determined that the RCEC at its proposed location was consistent with a "Manufacturing" use, which is a permitted primary use listed in the Industrial Zoning District. Such determination was based largely on a determination that the RCEC power plant at that location was "similar to other existing uses in the Industrial District, such as the production of chemicals at the Rohm & Hass, Inc., plant," which is located to the southeast of that previously proposed site.

Attachment A is a map that shows the location of the proposed Eastshore Energy Center, as well as the previously and currently proposed locations of the Russell City Energy Center, along with distances from the EEC to residential and educational facilities and areas.

Project Description

A summary of the proposed power plant is attached, which includes sections from the full application packet that describe the project and summarize environmental impacts issues. The gas-fired intermediate/peaking power plant is to be utilized during periods of high demand, expected more frequently during the hotter, summer months. The project would entail construction of a 36-foot tall main building measuring approximately 30,000 square feet that would house 14 generators. Fourteen approximately 70-foot tall engine stacks would be located by the generator systems adjacent to the main building. Two radiator banks/shelters, each approximately 185 feet long and 20 feet tall, would be located along the north side of the property by the plant stacks, and a 115 kV electrical switchyard and related facilities would be located in the front of the site. Two, 10,000-gallon aqueous ammonia tanks would be located to the rear of the building. The ammonia, a regulated hazardous material, would be trucked to the site and stored in tanks to be used in the gas-burning process to reduce noxious oxide emissions. Also proposed would be approximately 1.1 miles of 115 kV transmission lines along Clawiter Road that would cross State Highway 92 and connect to the PG&E Eastshore Substation. The power lines, including existing 12 kV power lines, would be supported by new, 90-foot tall transmission poles. A temporary construction laydown and parking area immediately across Clawiter Road on the northern portion of the Berkeley Farms site is also proposed.

The use of the power generated by the facility, equal to demand of 95,000 homes, would be for the San Francisco Bay area and determined by the State in coordination with PG&E through its Power Purchase Agreement with Tierra Energy.

Promoting Knowledge-Based Industries

Changes in development activity have had an impact on Hayward's Industrial Corridor with resulting new industries. This transition is reflected in the growth in employment in certain job sectors. A report issued in 2000 by the Bay Area Economic Forum, *Leading the Transition to a Knowledge-Based Economy,* focused on those industry clusters that drive innovation, economic growth, and job generation in the region. An industry cluster is a group of businesses that tend to locate and grow in close relation to one another. By examining these clusters, researchers can anticipate growth and contractions in a regional economy.

In the Bay Area, the knowledge-based industry clusters consist of the computer and electronics industry, telecommunications, multimedia, movie/TV production, biotechnology, environmental technology, and travel and tourism. The number of Bay Area jobs in these clusters is projected to grow by 59 percent between 1995 and 2020, as compared to 45 percent for all jobs in the region. In Hayward, high value jobs that are technology related are limited compared to neighboring cities.

Given the physical and operational characteristics of a power plant, staff is concerned with the proposed location of the Eastshore Energy Center, because it may represent a deterrent to future knowledge or technology-based industries locating in this area of Hayward. Associated with this concern, many of the biotechnology firms in Hayward are concentrated in the areas in the vicinity of the Clawiter Road and Industrial Boulevard corridors, particularly in areas in close proximity to Highway 92.

Relevant policies and objectives from the General Plan are found in the Economic Development Chapter, and are noted below:

2. **Create a sound local economy that attracts investment, increases the tax base, creates employment opportunities for residents and generates public revenues.**
   5. Ensure that an adequate supply of land is zoned for industrial and business park uses; limit uses that would erode the integrity of the Business and Technology Corridor.
   7. Promote and protect the appearance of the Business and Technology Corridor to encourage quality development.

Zoning and General Plan Consistency

This area is classified as "Industrial Corridor" in the General Plan and the site is zoned Industrial. The purpose of the Industrial Zoning District is "to provide for and encourage the development of industrial uses in areas suitable for same, and to promote a desirable and attractive working environment with a minimum of detriment to surrounding properties." As with other zoning districts, a variety of uses requiring different levels of review and processing are listed as being allowed in the Industrial Zoning District. Generally, more impacting uses require an administrative or conditional use permit, which allows discretion on the part of the City decision-makers in determining whether

or not a use is appropriate. As reflected in the purpose of the district, location is a key consideration in that determination.

A determination relative to conformity is being requested as to whether the proposed Eastshore Energy Center (EEC) at this location is consistent with the General Plan policies and the uses that would be allowed at this location in the Industrial Zoning District. The proposed plant, due to the presence and amount of on-site storage and use of aqueous ammonia, would require an administrative use permit were it processed through the local permitting process. Also, a project of this magnitude would typically be referred to the Planning Commission for consideration. Such process would allow City decision-makers to determine whether the plant would be desirable for the public convenience or welfare, whether it would impair the integrity and character of the surrounding area and whether the use would be in harmony with applicable City policies. Attachment A shows the proximity of the proposed plant to residential and educational facilities in the area. The nearest residence is approximately 1,100 feet to the northeast, with the 293 unit Waterford Apartment complex located some 1,800 feet away. The Life Chiropractic College is located directly across Clawiter Road from the plant site, and Ochoa Middle School and Eden Gardens Elementary located approximately roughly a half-mile away at 3,000 and 3,500 feet, respectively.

Staff would suggest that the facility at this location is not consistent with the City policies and would be more appropriately sited further west in the Industrial Corridor, where more traditional, greater-impacting industrial uses are more common.

Although there are no height limitations in the Industrial Zoning District, staff is also concerned with the visual impacts that the fourteen, 70-foot tall stacks would generate along this eastern section of the Industrial Corridor. The stacks would be visible from various locations throughout the area, including from the residential areas to the east.

Environmental Review

According to the State Law, power plant projects are not subject to the California Environmental Quality Act. Instead, they are subject to a similar process performed by the California Energy Commission (CEC). The CEC reviews every aspect of the project, conducts numerous hearings, and determines what the various potential impacts of the project may be. The review areas include, but are not limited to: Environmental Information, Air Quality, Biological Resources, Cultural Resources, Land Use, Noise, Public Health, Worker Health and Safety, Socioeconomics, Agriculture and Soils, Traffic and Transportation, Visual Resources, Hazardous Materials Handling, Waste Management, Water Resources, Geologic Hazards and Resources, Paleontological Resources and Alternative Sites Analyses. As part of the review process, which will continue for the next several months until the decision hearing before the California Energy Commission, there will be public hearings and community meetings to facilitate the public input.

As mentioned previously, a series of meetings was held recently, including a data response/issue resolution workshop, which was attended by City staff. Members of the

CEC staff summarized concerns and responses to various environmental topic areas, including those related to air quality. A member of the Bay Area Air Quality Management District staff was also present at the workshop. City staff will continue to closely monitor the process and provide input to CEC staff related to areas of concern.

As indicated in the attached letter to CEC staff, City staff has already relayed concerns associated with a variety of issues, including cumulative impact and alternative sites analyses, given another power plant is proposed in Hayward. Staff feels alternative site location criteria were identified in the application without setting a foundation or providing background information for such analysis. For example, no alternative sites were identified outside Hayward, including near the Fremont PG&E substation, nor was there included a detailed analysis why a minimum six-acre site is required. All six of the alternative sites identified in the application are located further from residential areas than is the proposed site. Those six sites are PG&E land adjacent to PG&E's Eastshore Substation, a private "pallet" yard property located west of the proposed site near the west end of Depot Road, the City's wastewater treatment facility site along Enterprise Avenue and three industrial/commercial buildings/storage yard sites (located along Depot Road, at 26599 Corporate Avenue and at 26460 Corporate Avenue).

Staff will continue to work with CEC staff to ensure concerns are addressed throughout the application review process.

PUBLIC NOTICE:

Notice of this hearing was sent to property owners within 300 feet of the subject site and to the applicant on February 5 and published in the local newspaper on February 7. Also, notices were sent to owners of residential properties along Depot Road, including to the tenants of the 293-unit Waterford Apartment complex.

CONCLUSION:

In staff's opinion, the use at the proposed location is not in conformity with the policies and purpose of the General Plan and the uses that would be allowed at this site in the Industrial Zoning District, for the reasons outlined in this report.

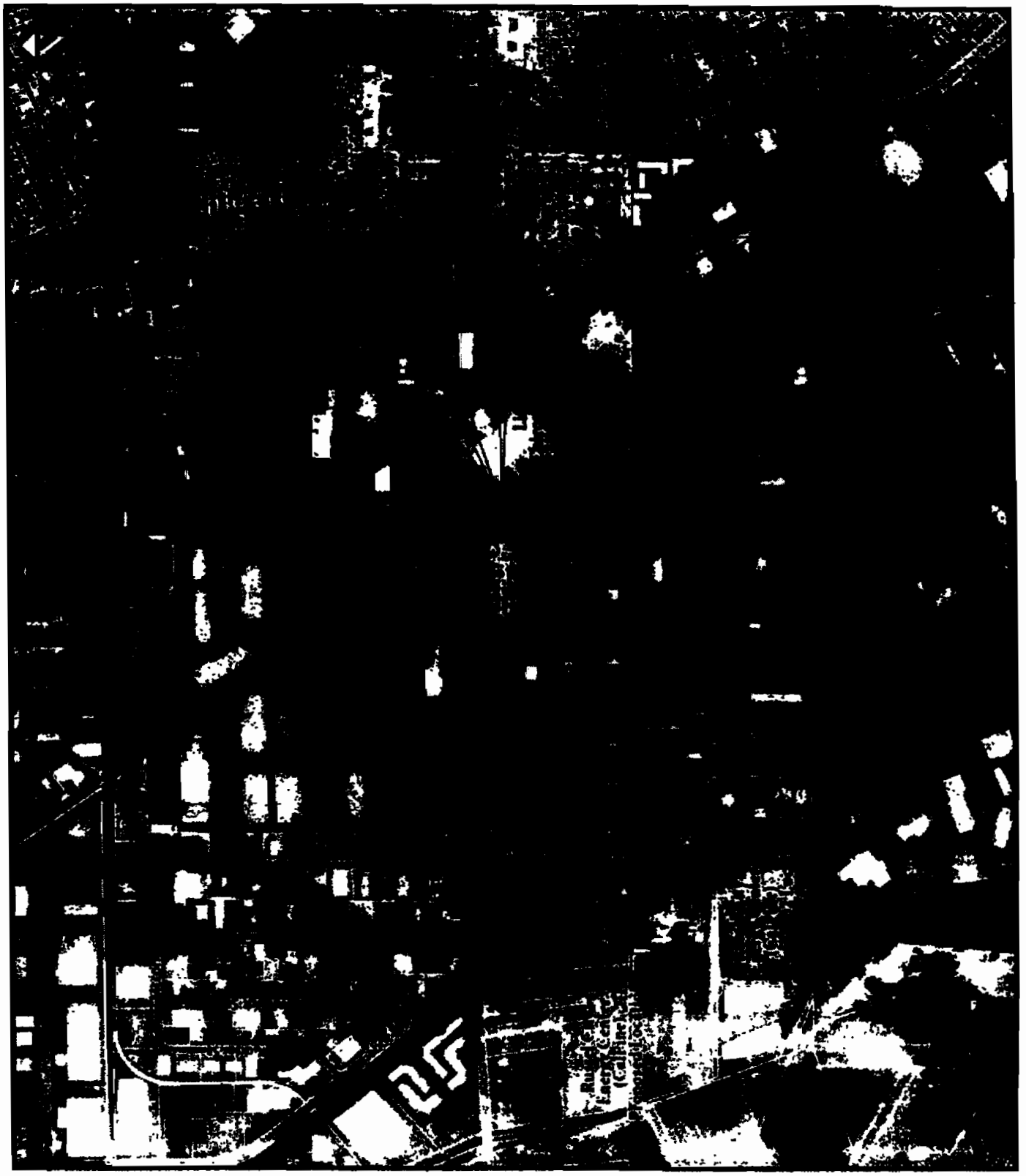
Prepared by:

David Rizk

David Rizk, AICP
Planning Manager

Attachments:

Attachment A:	Area map
Attachment B:	Excerpts from information packet from project proponent
Attachment C:	Letter from Hayward City Manager to CEC staff



Attachment A

City of Hayward Application for a Development Permit

Eastshore Energy Center

Submitted by:

Eastshore Energy, LLC

November 1, 2006

CH2MHILL

155 Grand Avenue, Suite 1000
Oakland, California 94612

ATTACHMENT B

Contents

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Section 1.0 Introduction

Eastshore Energy has had several meetings during the course of 2006 with the City Manager of Hayward to discuss aspects of the proposed power project at 25101 Clawiter Road. This document is being submitted as a request from the City Manager of the City of Hayward, California at a meeting held on July 12th, 2006. The document is being submitted to provide specific information responses to the requirements of the City of Hayward Development Permit Application.

The information is organized consistent with the order of the Development Application Instructions. As the City is aware, the Eastshore Energy Center is subject to the jurisdiction of the California Energy Commission (CEC). The CEC review process incorporates an evaluation of all applicable laws, ordinances, regulations and standards (LORS), including City of Hayward requirements. An Application for Certification (AFC) was submitted to the CEC on September 22, 2006. If a certification license is granted by the CEC, all other State and local requirements will be incorporated in the license as conditions of certification.

This document is intended to provide an overview of the Eastshore LLC's expected compliance with City of Hayward Development Application requirements by including narrative discussions or figures from the AFC to address the application requirements. All referenced figures from the Eastshore Energy AFC have been attached to this document. As part of this submittal, Eastshore Energy, LLC has also attached a copy of the Eastshore Energy Center AFC, Volumes 1 and 2. The AFC and associated appendices provide additional project information not included in this submittal. As part of the CEC licensing process, engineering design has been performed for a permit level of detail only, and it is expected that additional project details will be performed during final design. As additional details are developed, Eastshore Energy, LLC will supply the appropriate information to the City. It is expected that the final engineering design drawings and plans will be submitted for review to the Chief Building Official following issuance of the CEC license.

PLANNING DIVISION
APPLICATION FOR A DEVELOPMENT PERMIT

777 B STREET, HAYWARD, CA 94541-5007
(510) 583-4200 • TDD (510) 247-3340 • FAX (510) 583-3649

APPLICATION NUMBER _____
TYPE _____
TAKEN BY _____
DATE _____

INITIAL FEE _____
ADDITIONAL TIME & MATERIAL CHARGES NOT TO EXCEED _____
[redacted]

APPLICANT(S) Trewitt (LAST NAME) Greg (FIRST NAME)

COMPANY NAME (IF APPLICABLE) Eastshore Energy, LLC

STREET 710 S. Pearl Street

CITY Denver STATE CO ZIP CODE 80209 PHONE NO. 303-722-0450

FAX NO 303-722-0103 E-MAIL Greg.Trewitt@Tierraenergy.com CELL PHONE 303-909-8408

APPLICANT'S INTEREST IN PROPERTY: ☒OWNER ☐LESSEE ☐OPTIONEE ☐OTHER _____

INVOICES TO BE DIRECTED TO: X☐OWNER ☐APPLICANT ☐OTHER _____
(Please provide address if other, see note 2)

PROPERTY OWNER(S) Trewitt (LAST NAME) Greg (FIRST NAME) PHONE NO. 303-722-0450

STREET 710 S. Pearl Street CITY Denver STATE CO ZIP CODE 80209

FAX NO. 303-722-0103 E-MAIL Greg.Trewitt@Tierraenergy.com CELL PHONE 303-909-8408

TYPE OF PERMIT(S): ☐SITE PLAN REVIEW ☐GENERAL PLAN AMEND. ☐PARCEL MAP ☐TRACT MAP ☐VARIANCE

☒USE PERMIT ☐ADMIN. USE PERMIT ☐ZONE CHANGE FROM ____ TO ____ ☐OTHER _____

PROJECT ADDRESS/LOCATION 25101 Clawiter Road, Hayward, CA 94545

ASSESSOR'S MAP NO. 439-075-180(plantsite) 439-080-010 (const. laydown area) **ZONING DISTRICT(s)** Indus

PROJECT DESCRIPTION (attach additional sheets if necessary)

construction and operation of a high efficiency, nominal115.5 MW intermediate/peaking natural gas-fired power generation facility.

I HEREBY CERTIFY THAT I AM THE OWNER OF RECORD OF THE PROPERTY DESCRIBED ABOVE AND, FURTHER THAT I APPROVE OF THE PROPOSED USE CONTAINED HEREIN. SEE NOTE 2.

OWNER SIGNATURE X _____ [redacted]

I HEREBY STATE THAT THE FOREGOING STATEMENTS AND ANSWERS AND ALL DATA, INFORMATION AND EVIDENCE SUBMITTED HEREWITH ARE IN ALL RESPECTS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE AND CORRECT.

APPLICANT SIGNATURE X _____

STAFF REMARKS

[redacted]

THIS IS YOUR RECEIPT WHEN MACHINE VALIDATED

[redacted]

Pink – Applicant Goldenrod – Accounting

ATTACHMENT A

FIRE DEPARTMENT QUESTIONNAIRE

Business Name: Eastshore Energy, LLC Site Address: 25101 Clawiter Road

Please check the appropriate spaces below:

1. **Will any of the following processes occur in this facility?**

- [x] Combustible fiber, generation or storage
- [ ] Dry cleaning
- [ ] Dry ovens
- [ ] Electroplating
- [ ] Laboratory facility
- [ ] Liquefied petroleum gas storage
- [ ] Semi-conductor fabrication
- [ ] Spray painting
- [ ] Tire recapping or storage
- [ ] Welding
- [ ] Wood-working shop
- [ ] Vehicle repair

- [ ] Rack or pallet storage over 12 feet in height
- [x] Free standing storage over 15 feet in height
- [ ] Area of storage over 1000 square feet

2. **Will your business store, transport, or handle any of the following?**

- [ ] Acutely Hazardous Materials
- [x] Carcinogens
- [ ] Combustible liquids
- [x] Compressed gasses
- [x] Corrosives
- [ ] Cryogens
- [ ] Explosives
- [ ] Fertilizer
- [x] Flammable gases
- [x] Flammable liquids
- [ ] Flammable solids
- [x] Hazardous waste
- [ ] Highly toxic material
- [ ] Irritants
- [ ] Organic coating
- [ ] Organic peroxide
- [ ] Oxidizers
- [ ] Radioactive material
- [ ] Reactive materials
- [ ] Pesticides
- [ ] Poisonous gases/liquids
- [ ] Pyrophoric
- [ ] Sensitizers
- [x] Solvents
- [x] Toxic materials
- [ ] Unstable materials
- [ ] Water reactive
- [x] Other health hazards
- [ ] Other regulated materials

3. **Is this project to be constructed on any of the following sites?**

- [ ] Site which is contaminated or possibly contaminated with a hazardous material
- [ ] Former service station site
- [ ] Site which is known to have had underground storage tanks
- [ ] Commercial nursery
- [x] Former site known to have had a business which used or stored hazardous materials
- [ ] Former site use unknown

Completion of this form should be verified in the Fire Prevention Office. If any boxes in item number 2 are checked, you will need to complete a Chemical Inventory Worksheet Packet. If your business uses water for any purpose other than landscape irrigation and sanitary services (i.e., sinks, toilets, and showers), discharges cooling water of any type into the municipal sewer system, or discharges any wastes other than those from sanitary services into the municipal sewer system or stormwater system, then you are required to contact Wastewater Source Control at 293-8699, for approval.

I have read the above and certify that to the best of my ability, a designated representative of the owner/tenant, the information is true.

GREG TREWITT
Print Name

Signature

VICE President
Title

Oct 31st, 2006
Date

Section 2.0 Plans

A number of figures and plans were developed for the Eastshore Energy AFC. Figures from the AFC have been included in this application to address the requested information. Following each numbered Site Plan requirement, a narrative response is also included to address site plan requirements.

Readers Note: All figure references reflect the figure references in the Eastshore Energy Center AFC.

Section 2.1 Site Plan

1. The parcel(s), including all property lines, adjacent streets to centerline, and/or land uses within 20 feet of the property.

   Refer to Figure 1.2-1 for the project location and adjacent city streets.

   Refer to Figure 1.2-3 for the general site arrangement showing the parcel and property lines.

   Refer to Figures 8.4-1 and 8.4-2 for land use designations and zoning designations within 1-mile from the project site.

2. Location of proposed structure(s) and existing structures to remain. Show distance between buildings and from buildings to property lines (including setbacks for second story if different from ground floor.)

   Refer to Figures 1.2-2A and 1.2-2B for existing site conditions and an artists rendering of Eastshore Energy Center. These figures show the project area and surrounding uses.

   Refer to Figures 1.2-3, 1.2-4A, and 1.2-4B for the site general arrangement and site elevations.

3. Location of proposed and to be retained wall(s) and fences within the site.

   Refer to Figure 1.2-3 for the general site arrangement.

4. Existing and proposed easements, and above- and below-ground utilities (such as fire hydrants, power poles, electrical boxes, etc.) and tanks.

   Refer to Figure 1.2-3 for the general site arrangement.

5. Parking and Traffic Circulation:
   a. Existing and proposed streets on the frontage of and within the development. Include any sidewalks, curbs, curb cuts, striping and medians. Show existing off-site parking restrictions, existing and proposed driveways, bus stops, loading zones, and parking spaces on frontage streets. Show traffic circulation arrows and traffic control signs. Show radii of all curb returns.

      Refer to Figure 1.2-3 for the general site arrangement showing the internal traffic control, circulation, and parking areas. Additional details regarding internal site circulation and parking will be refined during the final design phase of the project.

      Refer to Figure 8.10-2 for local transportation facilities.

      Refer to Figure 8.10-3 and 8.10-4 for existing morning and afternoon peak-hour turning movements.

      No project improvements are planned for Clawiter Road and there will be no changes to the existing site access from Clawiter Road.

b. Dimensioned parking layout - angle of parking, dimensions of stalls, internal driveways and flares, and approaches from streets, aisles, designation of standard and compact car parking stalls, loading spaces, and walkways. (See attachments E and F.)

Refer to Figure 1.2-3 for the general site arrangement showing the parking areas. Additional details regarding internal site parking will be refined during the final design phase of the project.

c. Handicapped parking and access to building(s), if required.

Refer to Figure 1.2-3 for the general site arrangement showing the parking areas. The site arrangement does not identify ADA parking spaces. However, if required, the parking area could be revised to accommodate this requirement.

d. Identify all surface materials.

Site surface materials will be both paving and gravel for the plant site and some areas of limited gravel on the offsite construction laydown area.

6. Location and dimensions of trash/recycle enclosure(s), including identification of materials and/or equipment stored, if any.

Refer to Figure 1.2-3 for the general site arrangement. Additional details regarding trash/recycle enclosure(s) will be refined during the final design phase of the project.

Several hazardous materials, including one regulated substance (aqueous ammonia), will be stored in amounts above the threshold quantity at the generating site during operation. Non regulated hazardous materials include biocide, citric acid, cleaning chemicals/detergents, corrosion inhibitor, diesel no.2, hydraulic oil, lube oil, mineral insulating oil, and sulfuric acid.

Many of the hazardous materials that will be stored onsite are corrosive and are a threat to humans (particularly workers onsite) if inhaled, ingested, or contacted with the skin.

Eastshore will have 19 percent aqueous ammonia solution in two stationary above ground storage tanks. The capacity of each tank will be approximately 10,000 gallons.

The ammonia unloading area will be a bermed area approximately 26 feet by 10 feet by 6 inches.

7. Location and dimensions of group and private usable open space (residential only).

Not applicable.

8. Location and design of signs.

Additional details regarding signs at the entrance of the site along Clawiter Road as well as internal site signs will be refined during the final design phase of the project.

9. Location of existing trees and other natural site features, such as rock outcrops.

Refer to Figures 8.2-1 for regional biological resources, including regional parks, wildlife refuges, and creeks. Refer to Figures 8.4-1 and 8.4-2 for land use designations and

zoning designations within 1-mile from the project site. Refer to Figure 8.9-1 for surrounding soil designations.

10. Location of landscape areas.

    Refer to Figures 8.11-2a through 8.11-2g for landscape character photos surrounding the project site.

11. A "Planning Data Summary" that includes the following information:
    a. Total lot area and percent of lot covered by structures.

       The project will be located on a 6.22-acre industrial parcel, of which 1.59 acres will be covered by structures.

    b. Type of construction and occupancy use of proposed building (from the Uniform Building Code).

       Occupancy will include the following:

       - 14 nominal 8.4-MW (gross) Wartsila 20V34SG natural gas-fired, spark-ignited reciprocating engine-generator sets
       - 14 state-of-the-art air pollution control systems representing best available control technology (BACT), one system per engine, consisting of a selective catalytic reduction (SCR) unit for oxides of nitrogen (NO_x) control and an oxidation catalyst unit for carbon monoxide (CO) and precursor organic compounds (POC) control
       - 14 approximately 70-foot tall stacks, each with a separate continuous emissions monitoring system (CEMS)
       - An acoustically engineered main building enclosing the 14 engines, workshop and control room
       - Closed-loop cooling system consisting of multiple fan-cooled radiator assemblies outside the main engine building
       - Two 10,000-gallon aqueous (19 percent by weight) ammonia storage tanks and handling system serving the SCR units
       - One approximately 35,000-gallon raw water storage tank
       - One nominal 225-kW diesel-fired emergency black start generator
       - Miscellaneous ancillary equipment
       - Onsite water and wastewater service interconnections
       - Onsite 115-kV switchyard, including switchgear and step-up voltage transformers
       - Approximately 1.1 miles of 115-kV, single-circuit transmission line connecting to PG&E's Eastshore Substation

- Approximately 200-foot offsite natural gas line connection to PG&E Line 153
- Chain-link security fencing to enclose the facility, with a secured entrance on Clawiter Road
- A 4.65-acre temporary construction laydown and parking area immediately across Clawiter Road from the Eastshore site

c. Total gross floor area of each structure.

Building Gross Floor Area	Width, ft	Length, ft	SF
Control Room and Offices	88.5	35	3,098
Maintenance Store Room	69 33	34	2,357
Employee Changing Room	16.5	20.5	338
Compressor Room	53.5	22	1,177
Switchgear Room	88.6	34 8	3,083
Engine Hall A	160.9	68.9	11,086
Engine Hall B	164	68.9	11,300
Switchyard Control Building	15	25	375
TOTAL			32,814

The "floor area" does not apply to most of the items above (i.e., Compressor Room, Switchgear Room, Engine Hall A, Engine Hall B, and Switchyard Control Building). Floor area only applies to the those portions of engine hall considered "habitable", including the control room and associated office space on the second floor and the maintenance shop area on the first floor. The gross floor area is 5,793 square feet.

d. Minimum number of parking spaces required, and number and type proposed, both open and covered. (Contact a planner at 583-4200 for requirement.)

As discussed above, the total square footage for habitable space (i.e., Control Room, Office, Maintenance Store Room, and Employee Changing Room) is 5,793 square feet. Using this square footage, 12 parking spaces are required. Six stripped parking spots are currently shown on the general site arrangement (Figure 1.2-3) and are intended to cover shift workers. Additional parking can be accommodated between the radiators on the north side of the facility and this will be refined during the final design phase of the project.

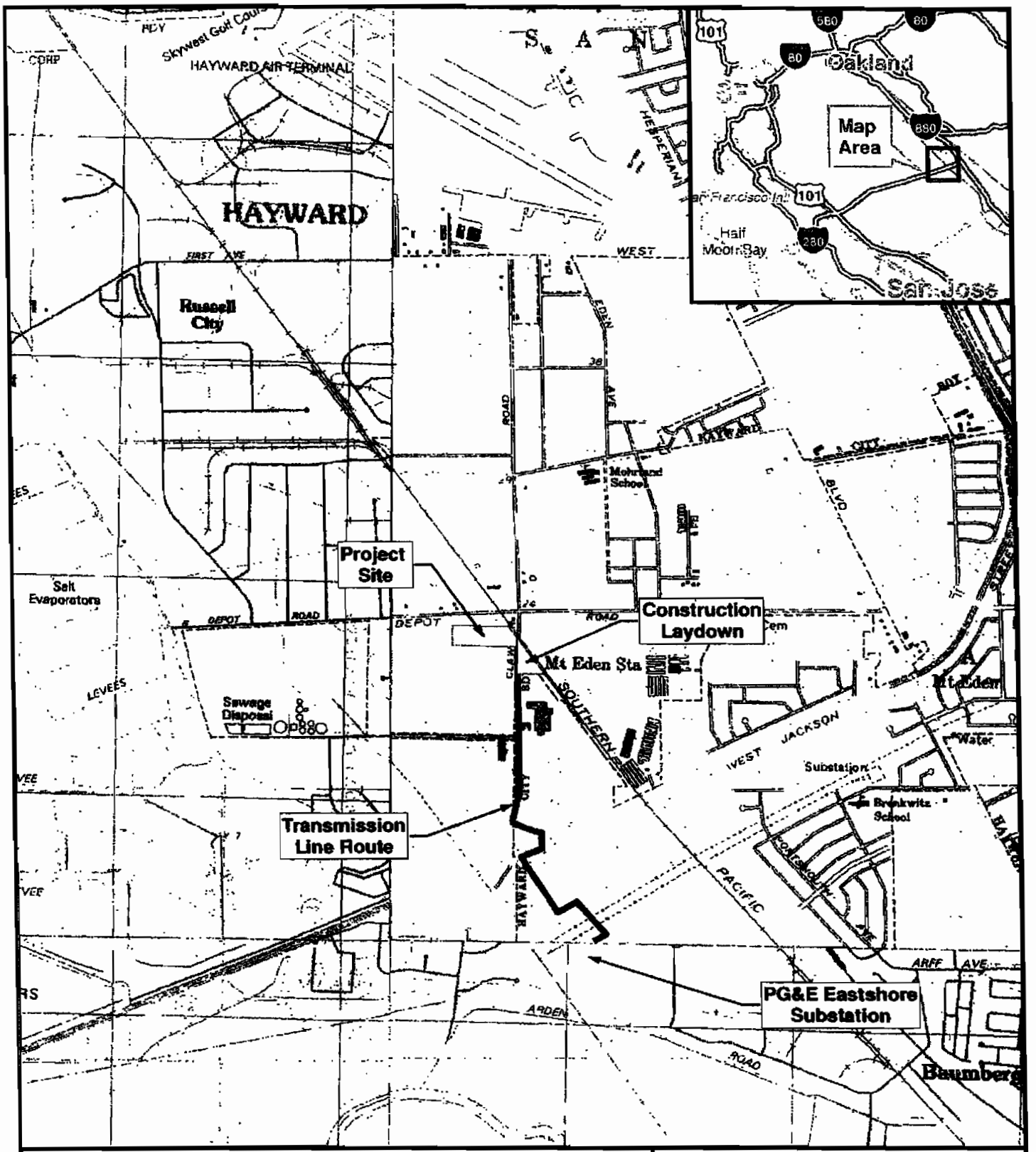
e. For residential development only:

- Density is the square feet of lot area per dwelling unit. Show maximum allowed by ordinance and what is proposed;

  Not applicable.

- Total square feet of private and group usable open space required and proposed) for multi-family residential development.

  Not applicable.



LEGEND

Site Location

Transmission Line Route

N

0 1,000 2,000 4,000 Feet

SCALE IS APPROXIMATE

FIGURE 1.2-1
PROJECT LOCATION
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

CH2MHILL

FIGURE 1.2-2A
EXISTING SITE CONDITIONS
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

CH2MHILL

E5072008008BAO Eastshore AFC Fig 1 2-2A EXISTING SITE CONDITIONS m 08-25-06 dash

FIGURE 1.2-2B
ARTIST RENDERING OF EASTSHORE ENERGY CENTER
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

CH2MHILL

ES072006008BAO Eastshore AFC Fig 1.2-2b rendering ai 09-07-06 dash

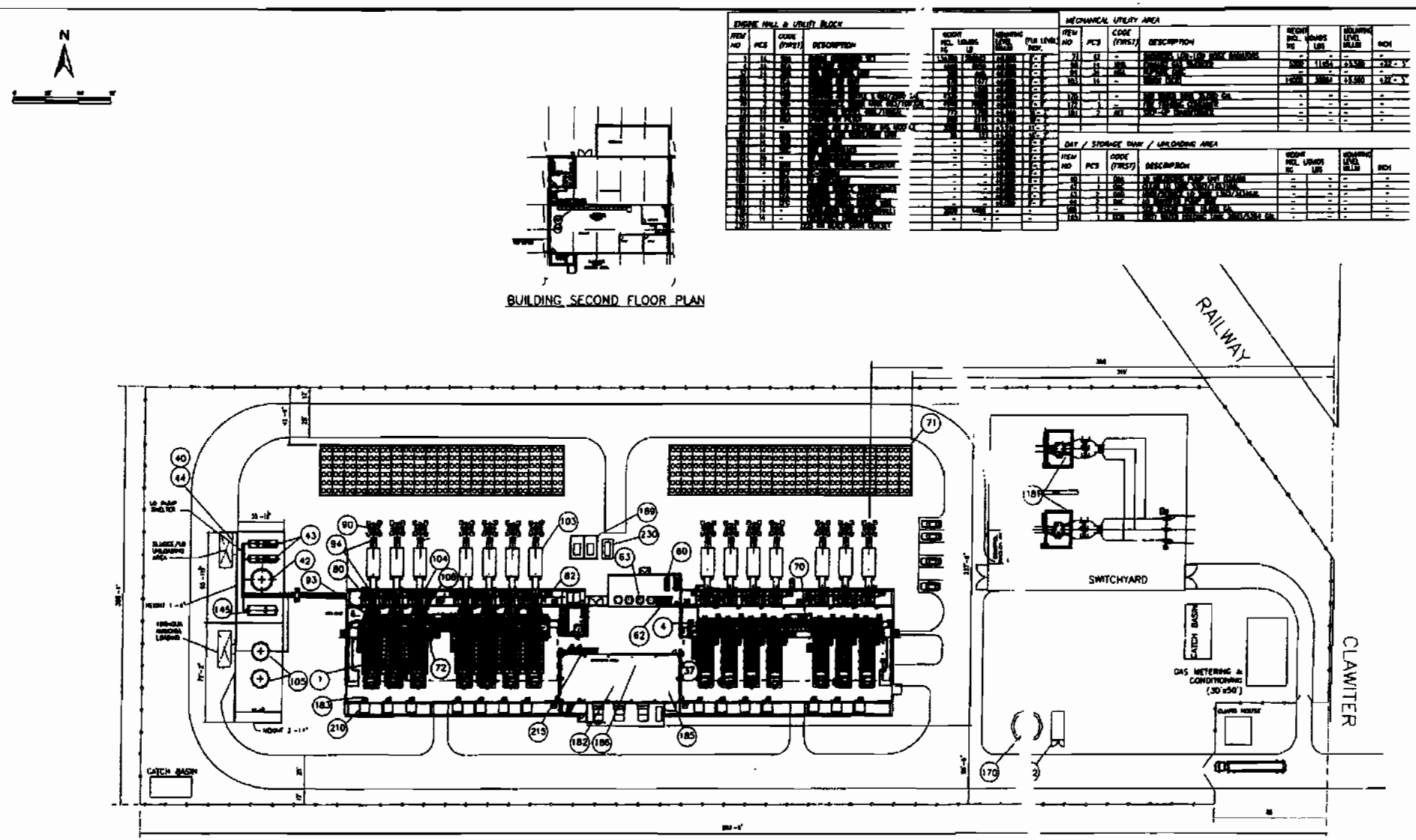
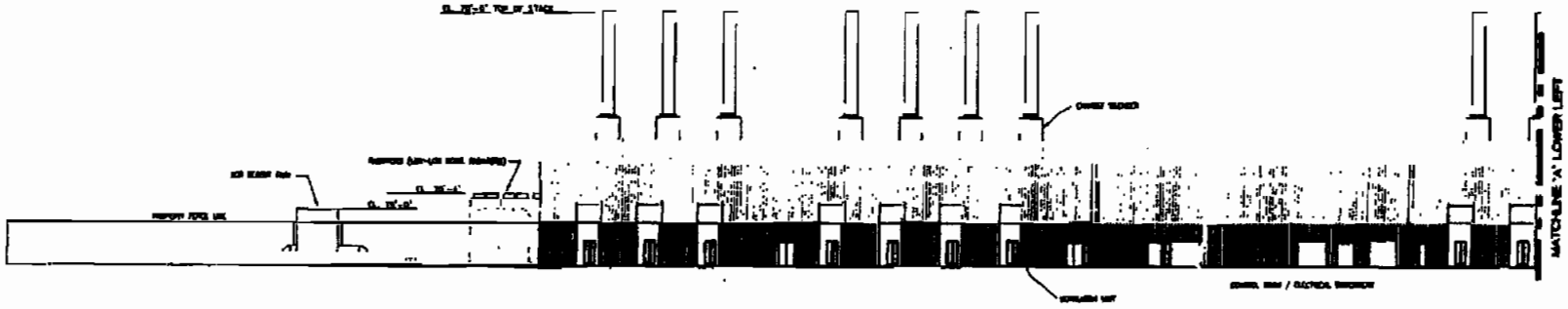


FIGURE 1.2-3
SITE GENERAL ARRANGEMENT
EASTSHORE ENERGY CENTER
HAYWARD CALIFORNIA
ALAMEDA COUNTY

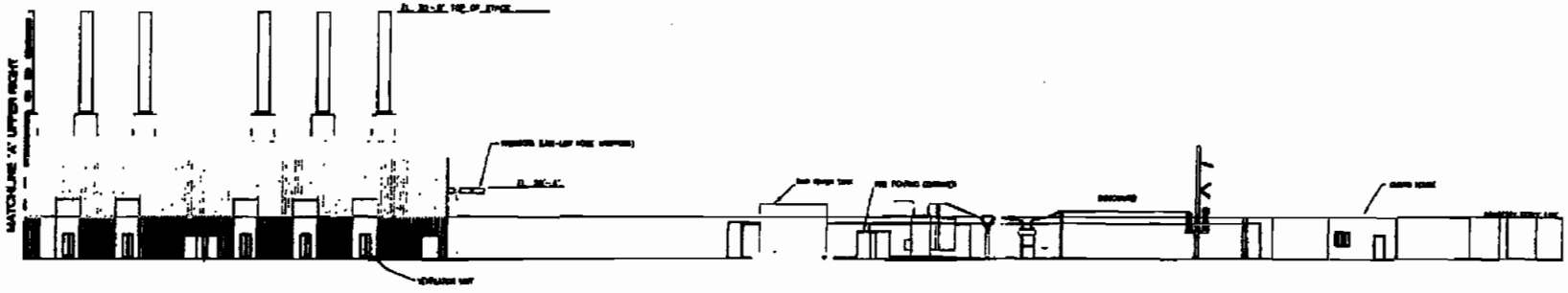
Stantec

CH2MHILL

ES072006008BAO Fig 1.2-3 Site General Arrangement 08-25-06 dash



PLANT ELEVATION LOOKING NORTH



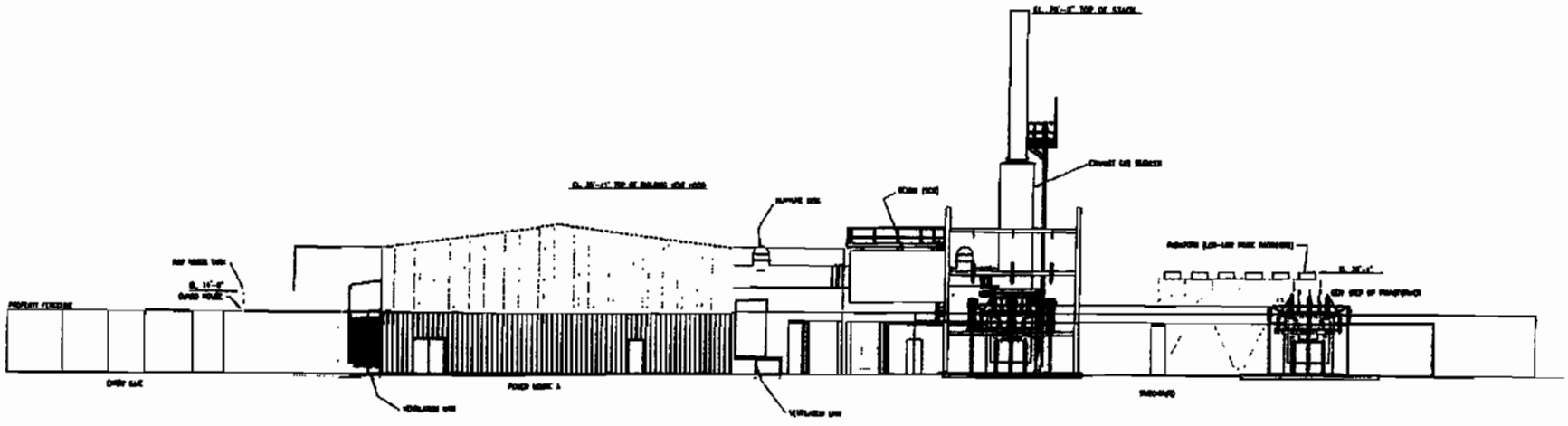
PLANT ELEVATION LOOKING NORTH - CONTINUE

FIGURE 1.2-4A
SITE ELEVATION DRAWING - VIEW LOOKING NORTH
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA
ALAMEDA COUNTY

Stantec

CH2MHILL

ES072000008BAO_Fig 1 2-4a Site Elevation Drawing 09-25-06 dash



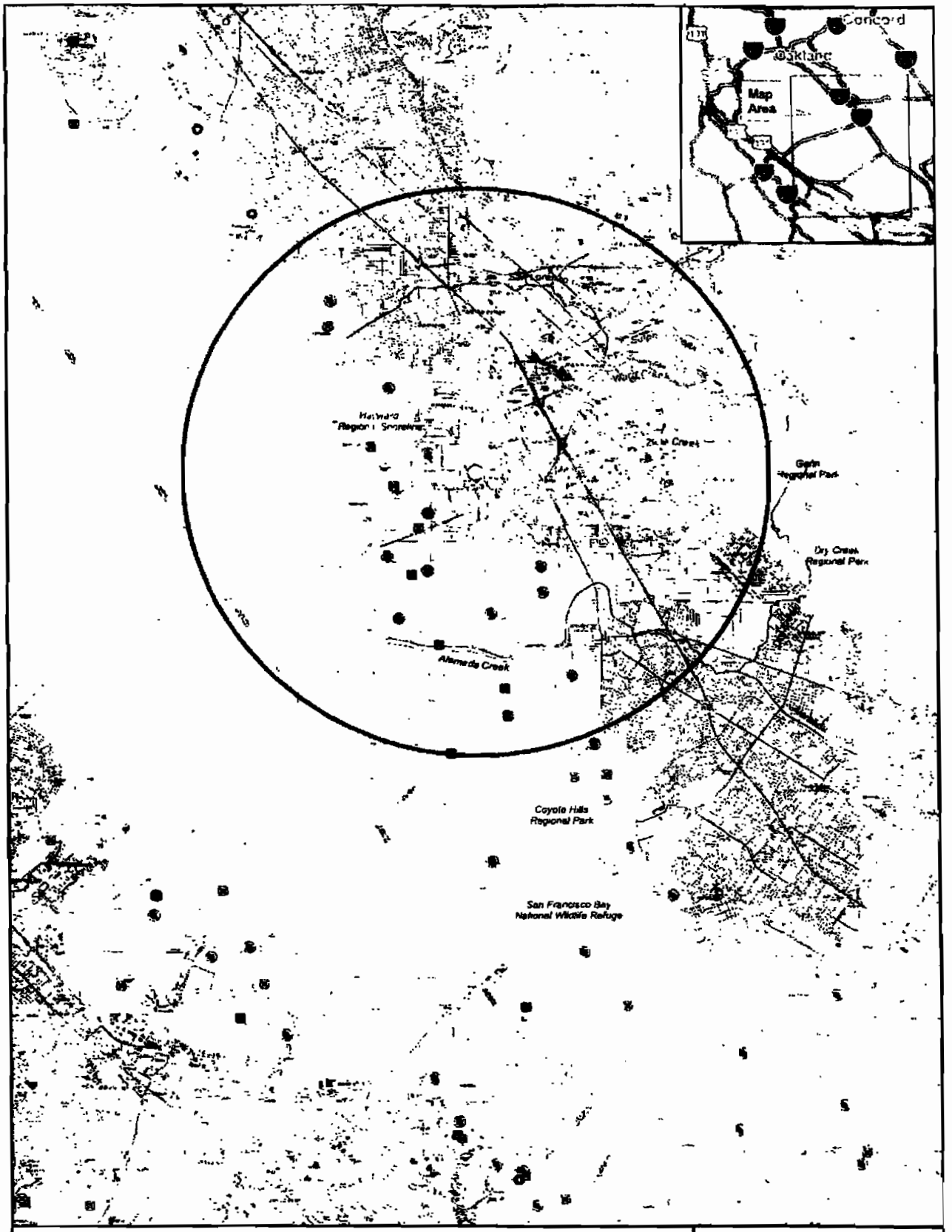
PLANT ELEVATION LOOKING WEST

Stantec

FIGURE 1.2-4B
SITE ELEVATION DRAWING - VIEW LOOKING WEST
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA
ALAMEDA COUNTY

CH2MHILL

ES072008006BAO_Fig 1 2-4b Site Elevation Drawing West 06-23-06 dsh



LEGEND

- CNDDB Arc
- Bay checkerspot butterfly
- California black rail
- California clapper rail
- California least tern
- California red-legged frog
- California seablite
- California tiger salamander
- Contra Costa goldfields
- Myrtle's silverspot
- Bank Swallow
- Western Snowy Plover
- Santa Cruz tarplant
- Salt-Marsh Harvest Mouse
- Site Location
- 1 Mile Buffer
- 5 Mile Buffer
- Salt Evaporators

N

SCALE IS APPROXIMATE

Miles

0 0.5 1 2

FIGURE 8.2-1
REGIONAL BIOLOGICAL RESOURCES
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

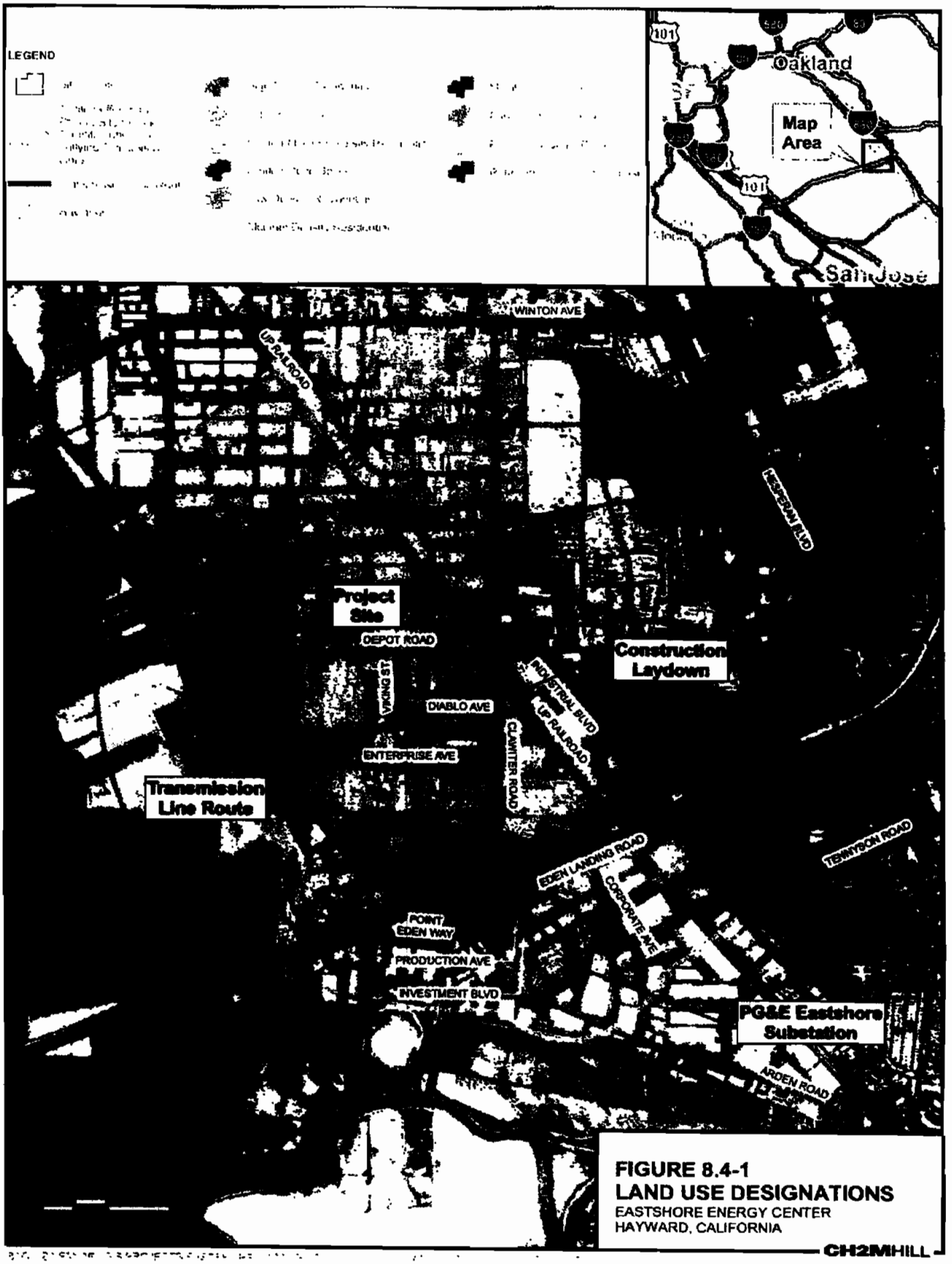


FIGURE 8.4-1
LAND USE DESIGNATIONS
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

CH2MHILL

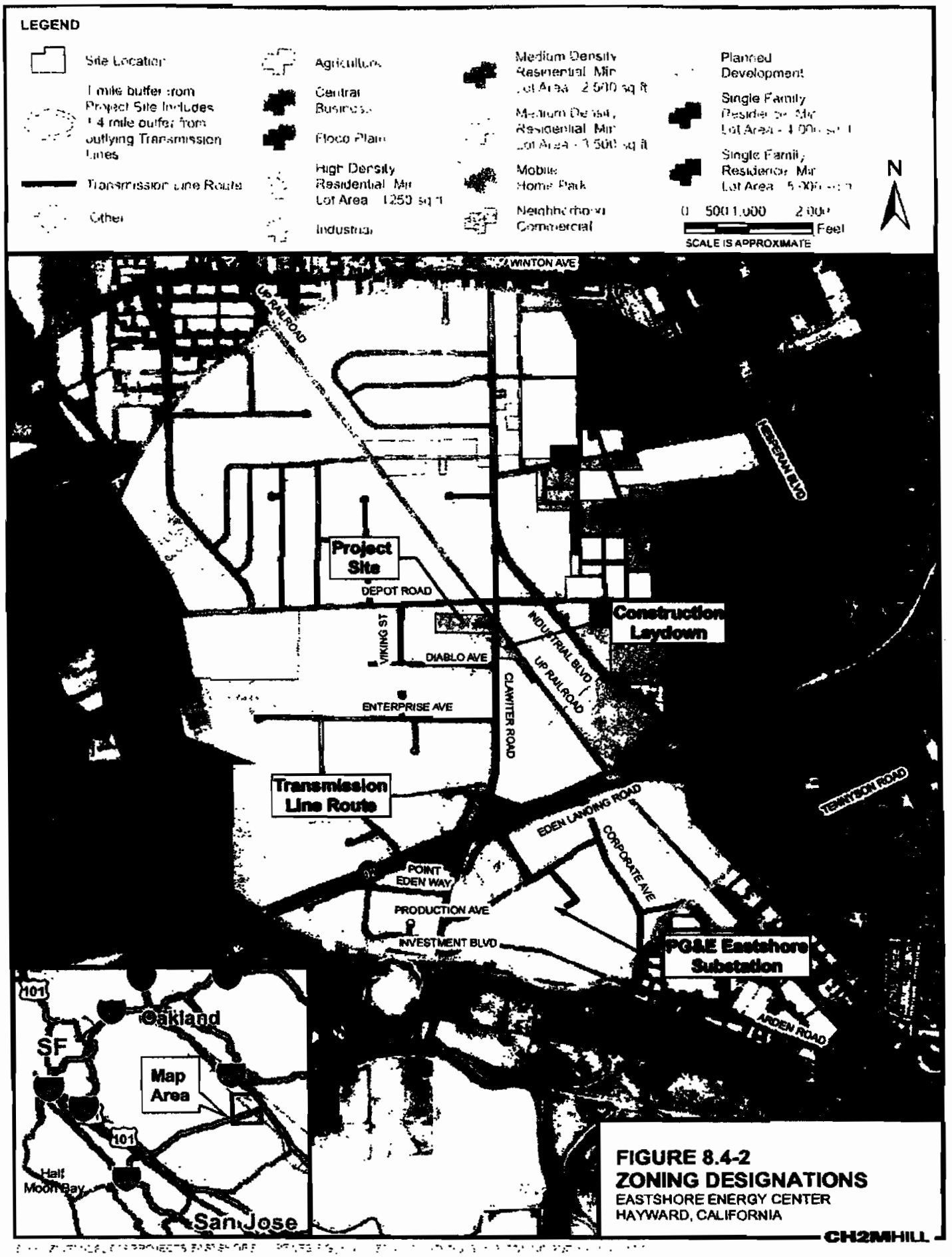
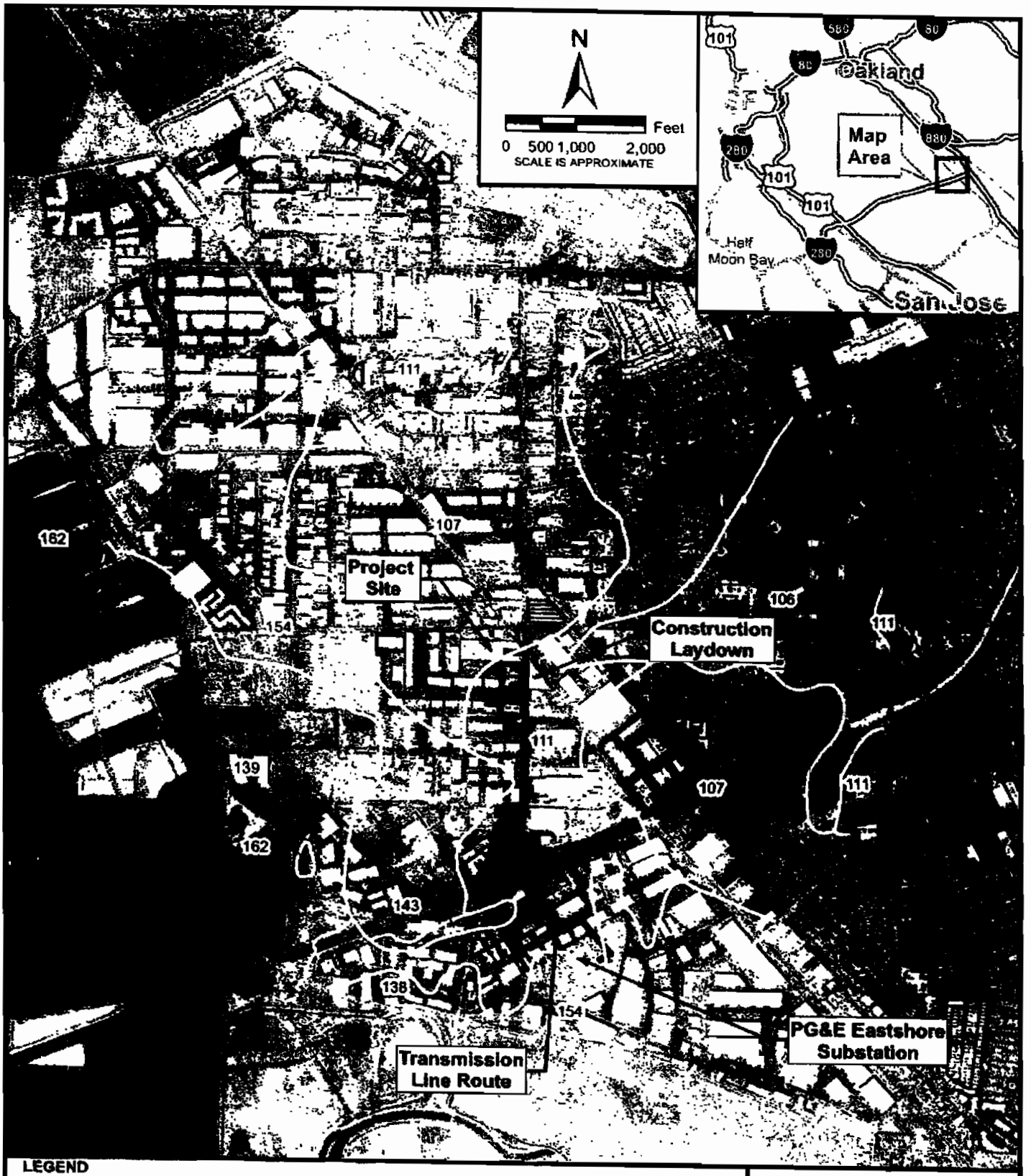


FIGURE 8.4-2
ZONING DESIGNATIONS
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

CH2MHILL



LEGEND

Site Location

1 mile buffer from Project Site
Includes 1/4 mile buffer from outlying Transmission Lines

Soil Map Unit Boundary

Transmission Line Route

Soil Map Unit Key

106 Botella loam, o to 2 percent slopes
107 Clear Lake clay, 0 to 2 percent slopes, drained
111 Danville silty clay loam, 0 to 2 percent slopes
138 Reyes clay, ponded
139 Reyes clay, drained
143 Sycamore silt loam, drained
154 Willows clay, drained
162 Water

FIGURE 8.9-1
SOILS MAP
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

CH2MHILL

LEGEND

- Site Location
- Transmission Line Route
- Railroad
- Highway
- Major Road
- Airport

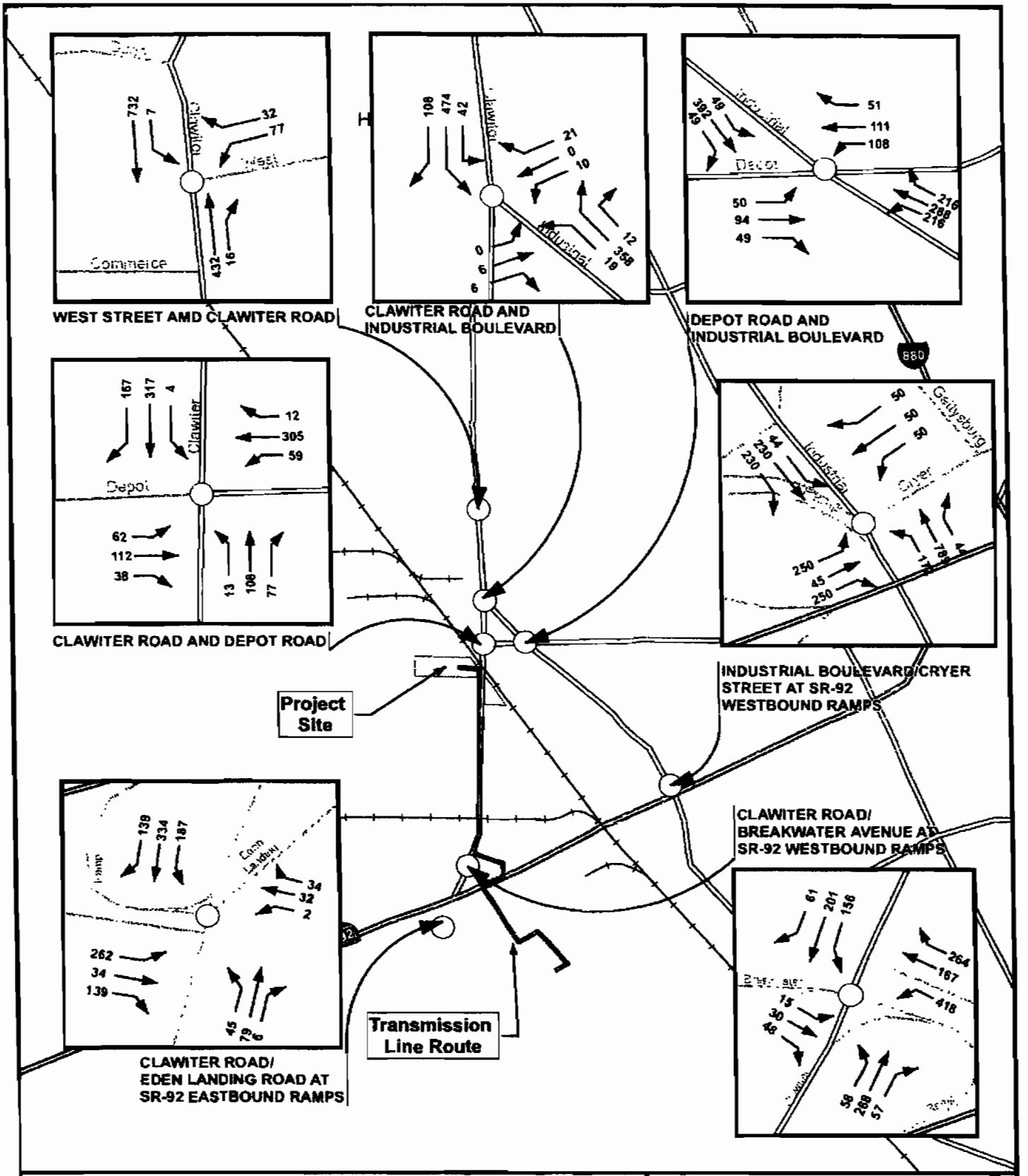
N

0 500 1,000 2,000 Feet

SCALE IS APPROXIMATE

FIGURE 8.10-2
LOCAL TRANSPORTATION FACILITIES
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

CH2MHILL



LEGEND

- Site Location
- Transmission Line Route
- Railroad
- Highway
- Major Road
- Streets

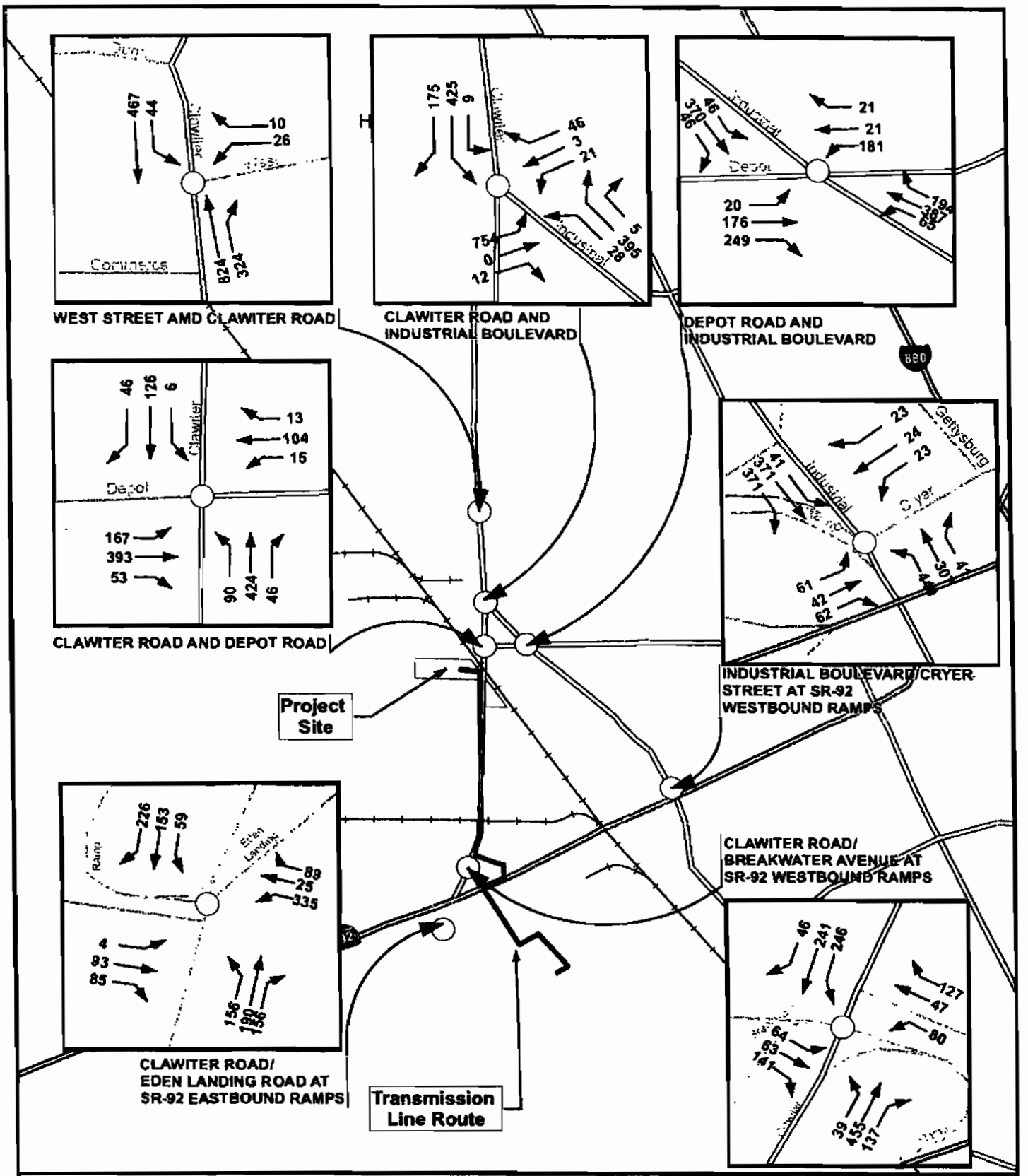
N

0 500 1,000 2,000 Feet

SCALE IS APPROXIMATE

FIGURE 8.10-3
EXISTING MORNING PEAK-HOUR TURNING MOVEMENT
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

CH2MHILL



LEGEND

Site Location
Transmission Line Route
Railroad
Highway
Major Road
Streets

N

0 500 1,000 2,000 Feet

SCALE IS APPROXIMATE

FIGURE 8.10-4
EXISTING AFTERNOON PEAK-HOUR TURNING MOVEMENT
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

CH2MHILL

Photo 1: View looking southwest toward the power plant site from the mailbox at the nearest residence, 2765 Depot Road.

Photo 2: View looking northwest toward the existing building at the power plant site from the Fremont Bank Operations Center parking lot located adjacent to, and on the south side of, the power plant site.

FIGURE 8.11-2a
LANDSCAPE CHARACTER PHOTOS
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

Photo 3: View looking south toward the existing building at the power plant site (the building that would be demolished as part of the project), from Depot Road.

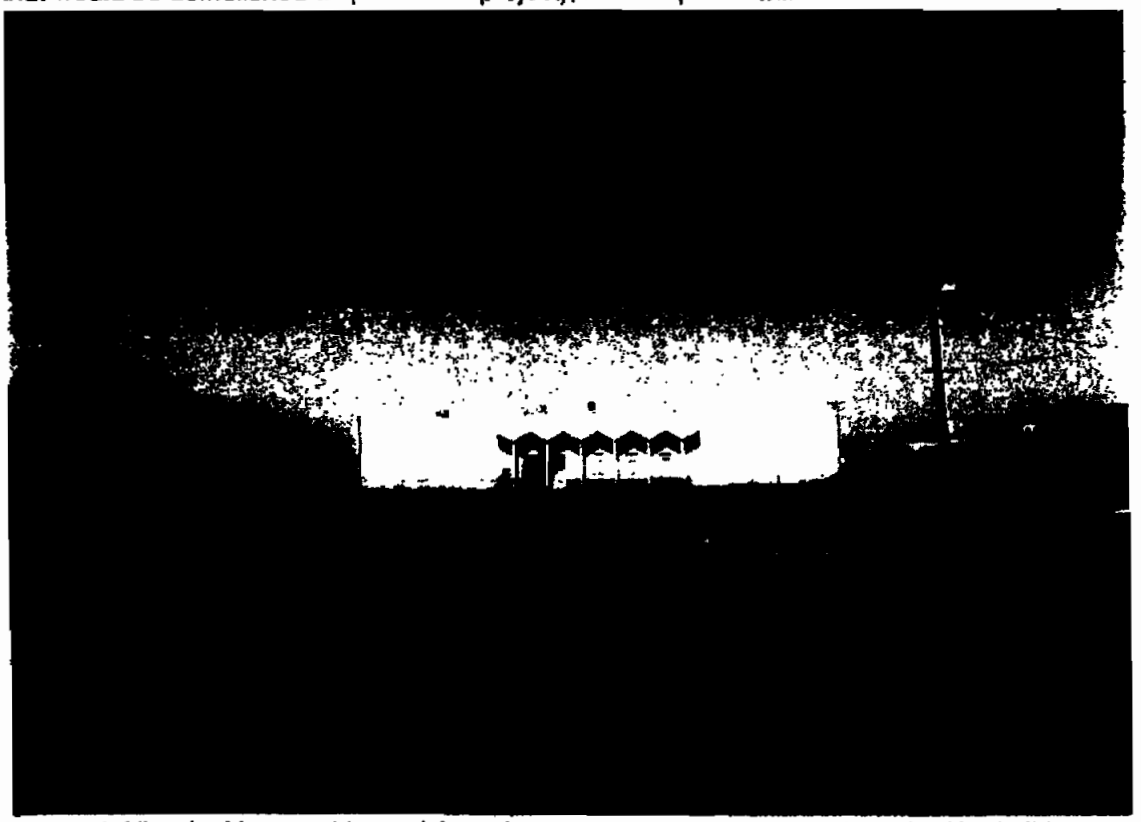


Photo 4: View looking west toward the existing building at the power plant site (the building that would be demolished as part of the project), from the east side of Clawiter Road.

FIGURE 8.11-2b
LANDSCAPE CHARACTER PHOTOS
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

CH2MHILL

Photo 5: View looking east along Depot Road from the south side of the road from a location east of Viking Street.

Photo 6: View looking northeast toward the construction laydown area from Diablo Industrial Park at the Clawiter Road/Diablo Avenue intersection.

FIGURE 8.11-2c
LANDSCAPE CHARACTER PHOTOS
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

Photo 7: View looking west toward the Fremont Bank Operations Center (the building adjacent to, and on the south side of, the project site), from the proposed project construction laydown area.

Photo 8: View looking north from along the west side of Clawiter Road from Alameda Electrical Distributors, Inc., 25823 Clawiter Road (south of Enterprise Avenue).

FIGURE 8.11-2d
LANDSCAPE CHARACTER PHOTOS
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

CH2MHILL

Photo 9: View looking south along Clawiter Road from the southwest corner of the Clawiter Road/Diablo Avenue intersection.

Photo 10: View looking north along Clawiter Road from Galaxy Tire and Wheel, Inc., 25858 Clawiter Road, located on the east side of the road.

FIGURE 8.11-2e
LANDSCAPE CHARACTER PHOTOS
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

Photo 11: View looking northwest along Production Avenue from its intersection with Investment Boulevard.

Photo 12: View looking southeast from between two buildings located on the south side of Investment Boulevard toward the existing PG&E Eastshore electrical substation that would be the southern terminus of the project.

FIGURE 8.11-2f
LANDSCAPE CHARACTER PHOTOS
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

Photo 13: View looking northeast from Arden Road toward the existing PG&E Eastshore electrical substation.

FIGURE 8.11-2g
LANDSCAPE CHARACTER PHOTOS
EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA

CH2MHILL

Section 2.2 Grading, Utility and Drainage Plan

1. On sloping sites, show existing and proposed grades (i.e., topographical and spot elevations), including grades of abutting properties. Contours may be used. Contours for steep slope are to be drawn at a minimum of 2-foot intervals.

   Refer to Figure 916-C-101, Rev C for the Paving and Drainage Plan. Refer to Figure 916-C-102, Rev A for the Laydown Area - Drainage Plan.

   Refer to Volume 2, Appendix 8.14 of the AFC for Storm Drain Calculations and the SWPPP Overview.

2. Drainage - show by arrows the direction of storm drainage runoff and the existing drainage facility that will receive the runoff, e.g., channel, creek, storm drain, or gutter.

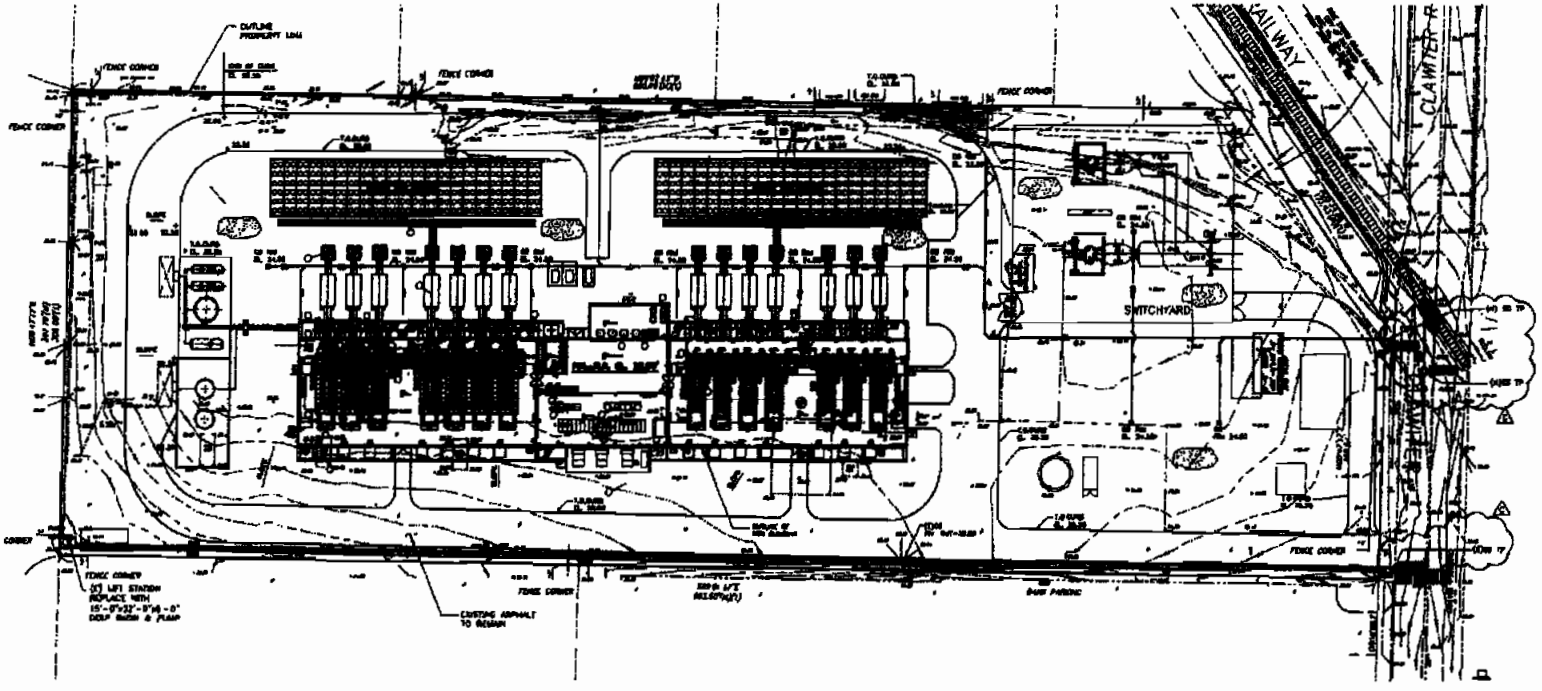
   Refer to Figure 916-C-101, Rev C for the Paving and Drainage Plan. Refer to Figure 916-C-102, Rev A for the Laydown Area - Drainage Plan.

   Refer to Volume 2, Appendix 8.14 of the AFC for Storm Drain Calculations and the SWPPP Overview.

3. Utilities – show the location of transformers, water connections, sanitary sewer, storm lines, telephone/cable television equipment room and service entrance locations, and street and parking lot lighting.

   Refer to Figure 916-C-101, Rev C for the Paving and Drainage Plan. Refer to Figure 916-C-102, Rev A for the Laydown Area – Drainage Plan.

   Refer to Volume 2, Appendix 8.14 of the AFC for Storm Drain Calculations and the SWPPP Overview.



LEGEND

NOTE:

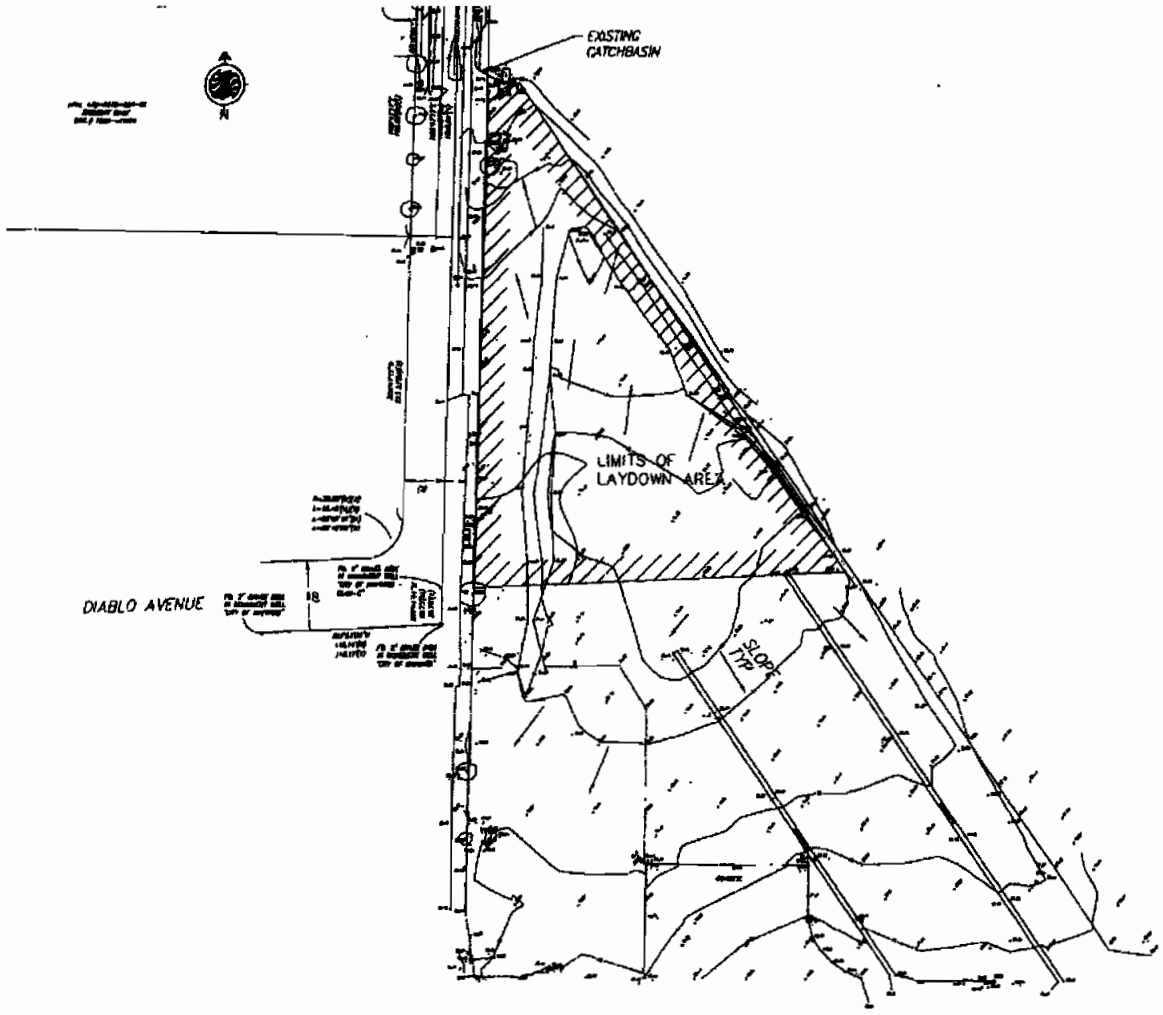
Stantec

PREPARED FOR: TIERRA ENERGY

PROJECT:

EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA
PAVING & DRAINAGE PLAN

SCALE	PROJECT NUMBER	DRAWING NUMBER	REV
1"=30'-0"	20100918	916-C-101	C



REV	DATE	DESCRIPTION	REV	DATE	DESCRIPTION

PREPARED BY: Stantec, WALNUT CREEK, CALIFORNIA

PREPARED FOR: TIERRA ENERGY

PROJECT:

TITLE: EASTSHORE ENERGY CENTER
HAYWARD, CALIFORNIA
LAYDOWN AREA–DRAINAGE PLAN

SCALE	PROJECT NUMBER	DRAWING NUMBER	REV
1"=40'-0"	20100915	918-C-102	A

Section 2.3 Floor Plans

Show all interior improvements and indicate use of each room (minimum scale 1' = 1/4").

Not applicable.

Section 2.4 Elevations

Show all exterior building elevations (all sides), fences, walls, trash enclosures, and signs. Show lighting, external building materials and colors, and building height dimensions (minimum scale = 1' = 1/8" except for ground level commercial elevations which must be 1' = 1/4").

Refer to Figures 1.2-3, 1.2-4A, and 1.2-4B for the site general arrangement and site elevations.

Section 3.0 Environmental Impact Analysis

Sixteen areas of possible environmental impact from the proposed project were investigated during preparation of the Eastshore AFC (attached to this application). Detailed descriptions and analyses of these areas are presented in Sections 8.1 through 8.16 of the AFC and summarized below. With the implementation of reasonable and feasible mitigation measures, it is expected that here will be no significant environmental effects.

Air Quality

The Eastshore site is located in an area designated as attainment for state and federal nitrogen dioxide (NO_2), CO, and sulfur dioxide (SO_2) ambient air quality standards. The area is currently designated as nonattainment for ozone and fine particulate matter (PM_{10} and $PM_{2.5}$).

An assessment of the impact to air quality was performed using detailed air dispersion modeling. Potential air quality impacts from Eastshore will be mitigated by the state-of-the-art combustion and post-combustion emission control technologies summarized in Table 3-1 that will comply with the Bay Area Air Quality Management District BACT requirements.

TABLE 3-1
Summary of Proposed Air Pollution Control Technology

Pollutant	Proposed BACT	Emission Concentration ppm by volume at 15% O_2
NO_x	Lean Burn Combustion, Selective Catalytic Reduction	5
POC	Lean Burn Combustion, Oxidation Catalyst	25
CO	Lean Burn Combustion, Oxidation Catalyst	13
SO_2	PUC-regulated Natural Gas	<0.153 grains per 100 scf sulfur in natural gas
$PM_{10}/PM_{2.5}$	Lean Burn Combustion	2.426 lb/hr

Emission reduction credits will be obtained to offset increases in emissions of nonattainment pollutants or their precursors, including POC and NO_2. Any SO_2 and $PM_{10}/PM_{2.5}$ emissions that could create a significant adverse impact will be mitigated consistent with CEC practice and CEQA requirements to reduce these impacts to less than significant levels. With the use of advanced lean-burn combustion control technology, post-combustion pollution control systems, and emission offsets, Eastshore will cause no significant adverse air quality impacts.

Refer to Section 8.1 of the Eastshore Energy Center AFC for additional air quality information.

Biological Resources

The Eastshore site is located in an industrial area of Alameda County. Preliminary surveys, habitat evaluations, and aerial photographs indicate that the site is not located in a sensitive area. Land uses within 1 mile of the Eastshore site are largely industrial, with some commercial and residential uses. The highly developed nature of the Eastshore site vicinity

would not support most special-status species except a few plant species, other transient uses by migratory birds, and mammals.

Because the area around the Eastshore site is highly developed, no direct impacts to sensitive biological resources are expected to occur from construction. Impacts during operation are expected to be less than significant. Therefore, no significant impacts to biological resources are expected to occur.

Refer to Section 8.2 of the Eastshore Energy Center AFC for additional biological resources information.

Cultural Resources

A survey of the proposed Eastshore site and appurtenant linear facilities was conducted. The surveyed area is located in a heavily industrial and commercial area. The Eastshore site was previously covered by asphalt, buildings and parking areas. The linear natural gas supply and 115-kV transmission line routes are contained entirely in existing disturbed city streets, asphalted parking areas, or previously disturbed areas. No undisturbed ground or vegetation was visible within the Eastshore site or transmission line route during the survey.

Given the amount of previous ground disturbance in the area for buildings, utilities, and other infrastructure, it is likely that resources in the area would have been disturbed or destroyed. The archaeological sensitivity of the Eastshore site and linear facility routes is considered low.

The gas, sanitary sewer, and potable water, and transmission lines will be constructed entirely in previously disturbed areas, and entirely in the existing disturbed city streets. Further, both the CHRIS literature search and CH2M HILL's survey failed to identify significant archaeological sites. There are no historic architectural resources within 0.5 mile of the Eastshore site and 0.25 mile of the linear features. No impacts on architectural resources are expected to occur from construction and operation of Eastshore.

Although significant archaeological and historic archeological sites were not found during the field survey, subsurface construction could encounter buried archaeological remains. For this reason, Eastshore Energy, LLC, proposes to implement measures to mitigate potential adverse impacts that could occur if there were an unexpected discovery of buried culturally or historically significant resources.

Refer to Section 8.3 of the Eastshore Energy Center AFC for additional cultural resources information.

Land Use

The Eastshore site and all linear project components are located in the City and are subject to policies stipulated in Hayward General Plan. Specifically, the land use element of the General Plan defines planning areas and establishes the descriptions, limits, and directions for growth. All Eastshore components are located in areas designated as Industrial Corridor

under the General Plan, and are zoned for industrial use. The Eastshore project will comply with the Zoning Ordinance land use designation and the General Plan policies for the City.

The Eastshore site is immediately west of the Union Pacific Railroad (UPRR) tracks at the western edge of Hayward Area Shoreline Planning Agency jurisdiction, and more than 1 mile from the lands considered to be San Francisco Bay shoreline. Eastshore is consistent with the relevant key Hayward Area Shoreline Planning Agency objective of promoting industrial infill development in designated industrial areas.

The proposed electric transmission line route from the switchyard to the PG&E Eastshore Substation is designated and zoned for industrial use. The areas covered by the natural gas, water, and sewer lines are all designated in the General Plan and Zoning Ordinance as industrial use.

Eastshore would be constructed in an existing industrial area and compatible with adjacent land uses. The transmission line would be installed in an industrial area in the City, and would be compatible with adjacent land uses. It is anticipated that Eastshore would not contribute to a significant impact to land use in the project vicinity. Therefore, Eastshore, as proposed, would not result in a significant cumulative land use impact.

Refer to Section 8.4 of the Eastshore Energy Center AFC for additional land use information.

Noise

The Eastshore project, as proposed, will produce noticeable noise during operations, but the noise levels will comply with City's requirements for industrial and residential uses. Noise will also be produced at the Eastshore site during construction.

The closest residential receptor to the Eastshore site is located at 2765 Depot Road, approximately 1,100 feet away. Adjacent parcels are industrial or commercial in nature.

Construction will occur during an 18-month period. General construction noise levels projected at 1,500 feet from the Eastshore site are estimated to be between 48 and 59 decibels, A-weighted (dBA). These results are conservative because the only attenuating mechanism considered was divergence of the sound waves in open air. Shielding effects of intervening structures were not included in the calculations. Construction noise might be audible at the nearest residences, but is not anticipated to exceed current exposure levels, and the noisiest construction activities will be confined to the daytime hours.

Ambient noise measurements determined that the noise level that is exceeded during 90 percent of the measurement period (L_{90}) nighttime noise level at the nearest residence (i.e., sensitive receptor) is 45 dBA. Noise modeling was used to determine the contribution to the nighttime ambient levels Eastshore would make during operation. Noise from operations is predicted not to exceed 50 dBA at the closest residential receptor. This is consistent with CEC's 5-dBA-over-background significance criterion and complies with the City criterion of 3 dBA above the existing L_{dn}. Ground and airborne vibration are not expected to be perceptible offsite.

No significant noise impacts are expected to occur from construction and operation of Eastshore Energy Center.

Refer to Section 8.5 of the Eastshore Energy Center AFC for additional noise information.

Public Health

Potential impacts associated with emissions of chemical substances of potential concern into the air from the Eastshore project were addressed in a health risk assessment. Health risks potentially associated with the estimated concentrations of chemical substances in ambient air were characterized in terms of excess lifetime cancer risks (for substances listed by the California Office of Environmental Health and Hazard Assessment [OEHHA] as cancer causing) or comparison with reference exposure levels for non-cancer health effects (for substances listed by the California Office of Environmental Health and Hazard Assessment as non-cancer causing).

The maximum exposed individual resident excess lifetime cancer risk was estimated to be 8.5 in 1 million, less than the 10 in 1 million significance threshold above which public health impacts require additional emission controls.

No significant public health impacts are expected to occur from the construction and operation of Eastshore.

Refer to Section 8.6 of the Eastshore Energy Center AFC for additional public health information.

Worker Health and Safety

During construction, workers will be exposed to construction hazards, and during plant operation, operators will be exposed to operation safety hazards. To evaluate these hazards and control measures, a hazard analysis was performed. The analysis identifies the hazards anticipated during construction and operation, and indicates which safety programs should be developed and implemented to mitigate and appropriately manage those hazards. Programs are overall plans that set forth the method or methods that will be followed to achieve particular health and safety objectives. For example, the Fire Protection and Prevention Program will describe procedures to protect against and prevent fires. Each program or plan will contain training requirements that are translated into detailed training courses. Upon completion of construction and commencement of operations at the Eastshore project, the construction health and safety program will transition into an operations-oriented program that reflects safety hazards and necessary controls during operation. As a consequence of the development and implementation of these plans and programs, workplace accidents would be minimized in both severity and frequency so that there would not be a significant impact to worker health and safety from the construction and operation of Eastshore.

Refer to Section 8.7 of the Eastshore Energy Center AFC for additional worker health information.

Socioeconomics

Total construction personnel requirements for the Eastshore project and the linear facilities will average 125 workers per month for 18 months, with a peak total work force of 235 during month 12. This translates into 2,246 person-months. The construction payroll is estimated at $33.8 million. The estimated indirect and induced employment within Alameda County would be 17 and 90 jobs, respectively. Indirect and induced income impacts are estimated at $733,300 and $3,828,200, respectively. The total local sales tax expected to be generated during construction is $166,250 (i.e., 8.75 percent of local sales). During construction, there would be no significant adverse impacts to population, housing, schools, or public services and utilities.

The Eastshore project will be operated by 13 full-time employees. Estimated indirect and induced employment in Alameda County would be 4 and 7 permanent jobs, respectively. The Eastshore project will bring $2,366,100 in operational payroll to the region. During operations, additional sales tax revenues of approximately $116,480 will be obtained by the City and Alameda County. During operation, there would be no significant adverse impacts to population, housing, schools, or public services and utilities. Therefore, the Eastshore project would benefit the local economy.

Potential environmental justice impacts were also analyzed in accordance with Executive Order (EO) 12898 (Appendix 8.8A). As reported in the series of environmental analyses prepared for Eastshore, and further confirmed through discussions with the environmental professionals who prepared those sections, no significant adverse impacts are expected after proposed mitigation measures are implemented. Consequently, none of the impacts of the Eastshore project can be described as high and adverse in the context of EO 12898. Because no high and adverse impacts are expected to result from the construction and operation of the Eastshore project, no high and adverse human health or environmental effects of the Eastshore project are expected to fall disproportionately on minority or low-income populations. The Eastshore project can, therefore, be considered consistent with the policy established in EO 12898.

Refer to Section 8.8 of the Eastshore Energy Center AFC for additional socioeconomic information.

Agriculture and Soils

Based on review of aerial photographs and documentation from a nearby project (Calpine/Bechtel, 2001), there are no commercial agricultural land uses in the area of the proposed Eastshore site (includes a 1-mile buffer of all facilities). There are no important farmlands (as defined for the Farmland Mapping and Monitoring Program) mapped in the same area (CDC, 2004). The proposed gas and electrical corridors will follow existing roadway or railroad ROW through urban areas. The potable water supply and sanitary sewer pipeline connection already exist on the Eastshore site.

The soils found in the Eastshore site, laydown area, and along the linear features are nearly level (or very slightly sloped). Construction activities could affect soil resources by increasing soil erosion and soil compaction. However, best management practices will be

used to minimize erosion at the site during construction. Therefore, Eastshore will not cause adverse impacts to agricultural production or soil loss.

Refer to Section 8.9 the Eastshore Energy Center AFC for additional soils and agriculture information.

Traffic and Transportation

During the peak construction period, approximately 212 daily construction worker round trips are expected. To analyze the worst-case scenario, a focused assessment of the impacts on the surrounding roadways – an Intersection Capacity Utilization analysis – was conducted for the seven intersections that would be most directly affected by Eastshore construction traffic. In general, the addition of the forecasted peak project traffic (424 daily vehicles) is not anticipated to result in a significant change to roadway operations throughout the day. Therefore, the construction of Eastshore is not expected to have significant impacts on roadway intersections.

Three segments are predicted to have unacceptable LOS E and LOS F operations during the peak hour: I-880 between Winton Avenue and SR-92, I-880 between SR-92 and Tennyson Road, and Clawiter Road between Industrial Boulevard and SR-92 westbound ramps. Because these roadways are over capacity, anything that adds a significant number of trips may be considered an impact. The assumed worst-case overlap of construction of the nearby Russell City Energy Center would further exacerbate this impact.

To mitigate the potential impacts, a traffic control plan will be prepared in accordance with the California Department of Transportation Manual on Uniform Traffic Control Devices and Work Area Traffic Control Handbook. After construction is complete, no permanent alterations to the area roadways are proposed. Implementation of a traffic control plan for the affected area for the short duration of construction in that area is adequate to minimize the traffic impacts to an acceptable level. Therefore, with the implementation of a traffic control plan, the construction of Eastshore is not expected to have significant impacts on roadway intersections.

The addition of traffic associated with Eastshore operations during the peak commuter morning and afternoon hours will not result in an Intersection Capacity Utilization value significantly higher than without Eastshore. Therefore, the operation of Eastshore will not have significant impacts on roadway intersections.

Refer to Section 8.10 the Eastshore Energy Center AFC for additional traffic and transportation information.

Visual Resources

The landscape surrounding the Eastshore site is composed almost exclusively of industrial and commercial facilities. The site is flat and open, and contains no features considered to be scenic resources. Several industrial and commercial facilities throughout the area are tall rectangular buildings that generally block views toward the Eastshore site. The Eastshore project features will include a power house (including control room) that will be approximately 417 feet long, 71 feet wide and 36 feet high. The engine stacks will be 70 feet

tall and 4 feet in diameter. There will be two radiator banks on the northern portion of the Eastshore site. Each bank will be approximately 185 feet long, 33 feet wide, and 20 feet high to the top of the fan shrouds. The exteriors of all major equipment will be the shades of off-white, beige, tan, and gray used on the adjacent buildings. This color treatment will optimize Eastshore's visual integration with the surrounding environment.

There are no residences in close proximity to the Eastshore site. The nearest residence is approximately 1,100 feet away on Depot Road. The nearest residential neighborhood is approximately 0.6 mile away, east of Industrial Boulevard. A key observation point (KOP1) toward the site was selected in consultation with CEC Visual Resources staff and evaluated. A computer simulation determined that the Eastshore project would not be visible from this view and, therefore, would have no impact on the overall quality of the view. In general, to the extent to which they would be visible, the elements of Eastshore would be consistent with the existing components of the view. They would have very little effect on the character of the views, and would not alter the view's existing low level of visual quality. The lighting associated with Eastshore would be limited, and would not pose a hazard or adversely affect day- or nighttime views toward the site. Eastshore is in general conformance with the LORS related to visual resources in the City plans and zoning ordinance provisions that pertain to this area. Therefore, the Eastshore project will not cause any significant impacts to visual resources.

Refer to Section 8.11 the Eastshore Energy Center AFC for additional visual information.

Hazardous Materials Handling

Hazardous materials to be used during construction and operation were evaluated for hazard characteristics. Hazardous materials to be used during construction of the Eastshore project (and its associated linear facilities) will include gasoline, diesel fuel, motor oil, hydraulic fluid, solvents, cleaners, sealants, welding flux, various lubricants, paint, and paint thinner. The quantities of hazardous materials that will be onsite during construction will be small, relative to the quantities used during operation. Several hazardous materials, including one regulated substance, will be stored at Eastshore during operation. Only aqueous ammonia will be stored in amounts above the threshold quantity during the operations phase, and a risk management plan will be prepared that is consistent with the California's Accidental Release Prevention Program requirements. Sufficient monitoring will be performed during construction and operation to ensure that the proposed mitigation measures are satisfied and effective in mitigating potential environmental effects.

An offsite consequence analysis will be performed to assess the impact to humans if a spill or rupture of the aqueous ammonia storage tank were to occur. The results of this analysis will be compiled and submitted during discovery. Based on prior experience with similar facilities, the general public is not expected to be exposed to ammonia concentrations above levels considered to represent a significant impact during a worst-case release scenario. Eastshore will confirm that the facility will not pose a significant risk to the public during discovery.

Refer to Section 8.12 of the Eastshore Energy Center AFC for additional hazardous materials and handling information.

Waste Management

During construction, the primary waste generated will be solid nonhazardous waste. However, some nonhazardous liquid waste and hazardous waste (solid and liquid) will also be generated. Most of the hazardous wastes will be generated at the Eastshore site, but a limited quantity of hazardous waste may be generated during construction of the Eastshore project linears. The types of waste and their estimated quantities are described in the waste management section of the AFC. The primary waste generated during operation will be nonhazardous wastewater. Other nonhazardous solid waste will also be generated, as well as varying quantities of liquid and solid hazardous waste. Handling and mitigation of these wastes is also described in the waste management section of the AFC.

The handling and management of waste generated by the Eastshore project will follow the hierarchical approach of source reduction, recycling, treatment, and disposal. The first priority will be to reduce the quantity of waste generated through pollution prevention methods (e.g., high-efficiency cleaning methods). The next level of waste management will involve the reuse or recycling of wastes (e.g., used oil recycling). For wastes that cannot be recycled, treatment will be used, if possible, to make the waste nonhazardous (e.g., neutralization). Residual wastes that cannot be reused, recycled, or treated will be disposed of offsite.

Refer to Section 8.13 of the Eastshore Energy Center AFC for additional waste management information.

Water Resources

The Eastshore project will use an extremely small quantity of water, approximately 1.6 acre-feet of potable water per year. This water consumption is comparable to only 2 – 3 single family households. Potable water will be supplied to the site by the City. Potable water uses at Eastshore will include maintenance (fire fighting systems and engine closed-loop cooling); service (turbo washing, power house and plant uses, and personnel uses); and miscellaneous uses, such as equipment washing and irrigation. Wastewater, also in very small quantities, will be collected and discharged to the City sanitary sewer.

Proposed mitigation measures are prescribed by stormwater and erosion control management programs mandated under the National Pollutant Discharge Elimination System (NPDES). These programs have been in place for a number of years and the prescribed measures have proven effective. Under the General NPDES Permit for Construction, for example, various specific measures are prescribed, and a program of monitoring is required. Compliance with these programs will ensure that all residual impacts associated with Eastshore are mitigated to a level of less than significant.

Refer to Section 8.14 of the Eastshore Energy Center AFC for additional water resources information.

Geologic Hazards and Resources

Five principal faults lie within a 25-mile radius of the Eastshore site. Ground shaking presents the most significant geologic hazard to Eastshore and its linear facilities. Liquefaction might also affect linear facilities as a result of ground shaking. The Eastshore site and the linear facilities will need to be designed and constructed to withstand strong earthquake shaking as specified in the 2001 California Building Code for Seismic Zone 4 in accordance with City requirements. Proposed mitigation measures will be implemented in the design of the facilities to reduce risk associated with these hazards.

Refer to Section 8.15 of the Eastshore Energy Center AFC for additional geological resources information.

Paleontological Resources

Paleontological resources (fossils) are the remains or traces of prehistoric animals and plants. The literature review, archival searches, and field survey conducted for this inventory documented only three previously recorded fossil sites within 3 to 5 miles of the Eastshore site. The occurrence of fossils near the Eastshore site in similar geologic environments indicates a potential for additional similar, scientifically important fossil remains to be encountered by earth-moving activities during construction. The Eastshore site lies on alluvial deposits that are at least in part equivalent to the Temescal Formation. The potential of encountering sediments of high paleontological sensitivity is likely when these activities extend to a depth sufficient to encounter undisturbed sediment of Rancholabrean age. Although excavation at the site will generally be shallow (less than 6 feet below ground surface), the possibility exists that disturbance would uncover resources of high paleontological sensitivity.

Mitigation measures have been proposed to reduce or mitigate potential project-related adverse impacts to significant paleontological resources. These mitigation measures are described in the paleontological resources section of the AFC. No impact to paleontological resources would occur as a consequence of operation, so no mitigation is proposed during operation of Eastshore.

Refer to Section 8.16 of the Eastshore Energy Center AFC for additional paleontological resources information.

Section 4.0 Additional Materials/Information

Consistent with the direction provided for the inclusion of additional materials/information in the Application, a color rendering has been included to address these requirements. The simulated color rendering of the Eastshore Energy Center is provided as Figure 1.2-2B included in Section 2.0 of this submittal.

CITY OF
HAYWARD
HEART OF THE BAY

January 12, 2007

Lorne Prescott
Project Manager
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

Re: Eastshore Energy Center – Items for Discussion with Hayward Staff

Dear Mr. Prescott:

As we discussed, below is a summary of the issues we would like to discuss with CEC staff related to the proposed Eastshore Energy Center in Hayward.

Traffic and Transportation

- The traffic study prepared for the project used a different methodology to determine impacts to levels of service (ICU versus Highway Capacity Manual that is used by Hayward), which makes it difficult to compare project impacts to existing or future impacts without the project, as anticipated by City
- Incorrect method (ICU) was applied to analyzing an unsignalized intersection significantly impacted by construction traffic when properly analyzed
- Lack of information regarding cumulative impacts both during construction of both the Eastshore Energy Center and the Russell City Energy Plant, particularly related to the impacts at nearby intersections, especially Clawiter/Depot and Clawiter/Route 92.

Utilities

- More detailed analysis and specific ways to monitor discharged effluent to City's wastewater treatment plant

Hazardous Materials

- Lack of analysis related to impacts of potential need for additional staffing for Hayward Fire Department related to the operation of the plant
- Phase I analysis does not have the professional's stamp and more importantly, doesn't identify local underground plumes of contamination in the area; concern that analysis is not specific to proposed project and area
- Local regulations do not allow above-ground storage of more than 600 gallons of flammable material (two 10,000-gallon aqueous ammonia tanks are proposed)

- Lack of analysis of air quality impacts should accidental release of aqueous ammonia occur

Air Quality

- Analysis does not adequately identify number and proximity to sensitive receptors in the area (schools, day care centers, convalescent homes), nor adequately analyze potential air quality impacts to such residents/businesses associated with normal plant operations and accidental releases of hazardous materials
- Cumulative air quality impacts associated with operation of both the proposed plant and the Russell City Energy Center

Land Use

- More analysis should be included that addresses compatibility of proposed plant and associated hazardous materials to the area and the City's plans that envision more high-tech, business park-type uses along this portion of the City's Industrial Corridor

Aesthetics

- More analysis should be provided that addresses visual impacts and compatibility of fourteen, 70-foot tall stacks in an area that does not have such structures
- More analysis should be provided that addresses visual impacts and compatibility of 90-foot tall 115-kV distribution line towers along Clawiter Road and 200-foot high over-crossing over State Route 92
- Clarification of whether proposed 115-kVdistribution line towers will replace existing 40 to 50-foot tall 12-kV poles (one section says existing poles will be replaced - bottom of page 8.11-6), another section says they may be replaced – top of page 1-4)
- Generally, the rationale and justification for rejecting the alternatives is limited and not particularly meaningful. A more expansive discussion is in order

Alternative Sites Analysis

- Expanded discussion as to why other sites in the East Bay and general vicinity were not considered should be included (page 9-4, for instance, indicates the new plant would need to be in close proximity to PG&E's Eastshore substation, but no reasons for such reqnirement are given)
- More explanation why other sites in the area were not considered should be provided, especially in regards to minimum six-acre site size requirements

Cumulative Impacts Analysis

- Expanded analysis that incorporates impacts of proposed Russell City Energy Center should be included, since that plant is proposed to be in operation

Benefits to the Local Community

- A summary of the benefits to Hayward and its residents should be included (Note that page 9-1 indicates one of the project objectives is to "provide much-needed reliable local power supply ..to the Eastshore substation to meet the area's

demand." Will the local community actually benefit from the proposed plant, in terms of energy availability and production?)

Please let me know if you have any questions or need further clarification. I can be reached at 510.583.4305 or at jesusa@hayward-ca.gov. I look forward to your response and the upcoming January 29 data response workshop.

Sincerely,

Jesús Armas
City Manager

cc: Larry Arfisten, Fire Chief
Robert Bauman, Public Works Director
Susan J. Daluddung, Community and Economic Development Director
Greg Trewitt, Tierra Energy

FAX REPORT

x header name: Millstefr/Haavik
ax number: 510-782-5394

Date	Time	Type	Identification	Duration	Pages	Result	Status
2007-11-27	08:22:36	Received		0:40	0	No fax	None

*** Archived: Received fax has been printed and archived.**
*** Printed: Received fax has been printed but not archived.**

EXHIBIT #308

CITY OF
HAYWARD
HEART OF THE BAY

January 12, 2007

DOCKET
06-AFC-6
DATE JAN 12 2007
RECD. JAN 16 2007
38929

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Project Manager
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

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OFFICE OF THE CITY MANAGER
777 B STREET, HAYWARD, CA 94541-5007
TEL: 510/583-4300 • FAX: 510/583-3601 • TDD: 510/247-3340

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Sincerely,

Jesús Armas
City Manager

cc: Larry Arftsten, Fire Chief
Robert Bauman, Public Works Director
Susan J. Daluddung, Community and Economic Development Director
Greg Trewitt, Tierra Energy

#38254

CALIFORNIA ENERGY COMMISSION
REPORT OF CONVERSATION

EXHIBIT #309

Systems Assessment and Facilities Siting Division

		FILE: Eastshore Project Files	
		PROJECT TITLE: Eastshore Energy Project	
☒ **Telephone**	654-4640	☐ **Meeting Location:**	
NAME:	Lorne C. Prescott	**DATE:** 10/23/2006	**TIME:** 1:00 pm
WITH:	Lorne C. Prescott, Jesus Armas, City Manager, City of Hayward (510) 583 4305, Eileen Allen, Facilities Siting Program Manager		
SUBJECT:	**10/23/06 Phone Conversation with the City Manager of the City of Hayward**		

Mr. Armas had indicated in his letter to the Commission that he was "deeply troubled about the lack of time provided to the City" for review of the Eastshore AFC.

Lorne called the City Manager's Office and indicated to Mr. Armas that we wished to discuss his concerns and to explain the CEC process for review/approval of an AFC.

Lorne said that the Commission would approach this project the same way the Russell City project was handled. He said that during the data adequacy phase the CEC would seek inputs from local agencies (such as the City of Hayward) w.r.t major issues not identified in the AFC and any other concerns that might not have been identified by the applicant. Lorne indicated that the DA phase was time constrained by CEC regulations. He also mentioned that if the project was deemed data adequate at the November 8 business meeting the 1 year clock would begin for the CEC review process.

Lorne indicated that during the DA phase the Commission is looking for input from agencies that would reflect important, emergent issues such as major new development projects near the project site or hazardous wastes proximate to the site that were not documented in the Eastshore AFC.

Lorne also stated that if the project was deemed data adequate on November 8th the CEC would continue to coordinate with local agencies for their input throughout the discovery/staff analysis phase(s).

Mr. Armas indicated that he understood that the request for inputs from local agencies (during the DA phase) was not intended to solicit "substantive" details. He mentioned that he understood that the "substantive" details would be discussed later in the CEC's review process. He also indicated that in his belief, his agency had not been provided sufficient time to review and comment on the AFC, even at the relatively high level required during the data adequacy phase. He said that the current review by his staff had not indicated anything that he would define as "substantive" in nature but there were "glaring issues" that would require discussion for resolution later in the process. He indicated that his agency would need more time to complete their analyses and they would provide feedback by the end of November.

Eileen reiterated that the CEC process was subject to time constraints that were part of our regulations and that the COH would have opportunities later in the process to provide

commission staff with their issues and concerns regarding LORS compliance.

Mr. Armas then compared his experiences with the Russell City project applicant to the Eastshore project applicant. He said that the Eastshore applicant did not approach the City of Hayward to discuss the project location prior to PG&E's award of contract. He said that the Eastshore applicant had secured site control before talking to the City of Hayward. He also indicated that the fact that the Eastshore applicant had secured a contract with PG&E was not sufficient reason for the City of Hayward to jump through hoops to accommodate them. He went on to explain that the Russell City applicant had submitted a Determination of Consistency (with the City's zoning) for the proposed power plant to the COH staff for review and comment. He indicated that after review, staff provided comments in favor of the project to the COH Board. He indicated that up to this point, the only dialogue that has taken place has been between Eastshore project attorneys and COH staff. In his opinion this is not acceptable. Mr. Armas believes that the same formal process adopted by the Russell City applicant for dialogue with the COH should be applied to the Eastshore project.

Mr. Armas said that he or a member of his staff would be prepared to comment on the Eastshore AFC at the November 8th business meeting.

cc:	**Signed:**
	Name: Lorne C. Prescott

EXHIBIT #310

TESTIMONY OF JESUS ARMAS
November 19, 2007

My name is Jesus Armas. I hold a Bachelor of Arts degree in Political Science and a Masters in Public Administration, and have over thirty years of local government experience. Most recently, from February, 1993 until early July, 2007, I served as the City Manager for the City of Hayward. In this capacity, I was responsible for the management of the City and implementation of policy decisions and direction provided by the Hayward City Council. As part of my duties, I met regularly with private and public sector individuals desiring to submit development applications with the City. These meetings generally preceded the submittal of a formal land use application as the affected party desired to ascertain City policy with respect to land use issues in advance of submitting a formal application. The presubmittal meeting afforded the interested party an opportunity to ascertain whether the proposed use would be consistent with existing general plan and zoning designations and to identify issues likely to surface during the application review process. By conducting this due diligence, applicants were better informed of City policies and better able to decide whether to process a formal application.

In June of 2006, at the request of Tierra Energy, I met with company representatives. At that time, I was informed that Tierra Energy had plans to develop and construct a 115-megawatt power plant on a 6.2-acre parcel at 25101 Clawiter Road, Hayward, Californian. This plant was identified as the Eastshore Energy Center. At that meeting, I was informed that in early April 2006 PG&E had awarded a power purchase agreement (PPA) to a predecessor company to develop Eastshore. I also learned that Tierra Energy acquired the project and related PPA in late April 2006. Finally, Tierra Energy representatives reported that it was in the process of purchasing the 6.2- acre site, with escrow scheduled to close later in the summer. (Subsequently, I learned that Tierra Energy gained title to the site on August 3, 2006.)

During this initial meeting, I advised Tierra Energy representatives that this was first time anyone had informed the City that a second power plant was proposed to be constructed in Hayward. I also indicated that I had been monitoring closely the PPAs awarded by PG&E because of its impact on the proposed Russell City Energy Center. In fact, I listened to PG&E's announcement that it had awarded six PPAs. (It is worth noting that in both the oral presentation and in the written documentation related to the award of the PPAs, PG&E identified the general location of each power plant, save one. The exception was a facility labeled Black Hills, which lacked a geographic location. Owing to the name and the absence of any other information that would indicate its proposed location, it was impossible to discern its location. Only much later was it learned that it was to be constructed in Hayward as the Eastshore facility).

I also informed Tierra Energy representatives that power plants are not a permitted use, nor are they listed as an allowed use in any zoning district in the City. Because the zoning is exclusionary, meaning that any use not enumerated is not allowed, I informed Tierra Energy that a formal land use application would need to be submitted to the City. The application would serve as the basis for a determination relative to the appropriateness of the proposed location, in light of surrounding uses and activities. I also advised Tierra Energy officials that this was the same process followed by the owner of the RCEC, which resulted in public hearings before the Hayward Planning Commission and Hayward City Council. (Following a staff analysis and recommendation, as well as consideration of public testimony, both the Commission and Council determined that the proposed location for the RCEC was appropriate and consistent with applicable land use regulations.)

During this initial meeting, as well as in subsequent sessions with Tierra Energy representatives, I voiced my reservations about the appropriateness of proposed location. This concern stemmed from awareness of the proximity of the Clawiter location to nearby residences, educational institutions and other incompatible activity.

In late October, 2006, Tierra Energy filed a development application, which served as the basis for a staff evaluation and subsequent determination regarding land use consistency. Based on this analysis, a recommendation of non-consistency was submitted to the Hayward Planning Commission in February of 2007 and Hayward City Council in March 2007. Because of a tie vote, the Commission was unable to present a formal recommendation to the Council. During its hearing on the application, the Council heard testimony from the applicant as well as nearby residents, business owners and other interested parties. Ultimately, the Council voted unanimously, with one absence, to accept the staff recommendation of non-consistency. This determination was subsequently conveyed to the California Energy Commission.

EXHIBIT #311

TESTIMONY OF BETH FANCHER
November 19, 2007

My name is Beth Fancher. I have lived in Newark and worked throughout the Bay Area since 1979.

My work history has been with multiple high tech companies like Flextronics and Apple Computer. I worked in Quality Assurance as an assembler advancing to quality assurance inspector of electronic pc boards and assemblies and then to supervisor for about 14 years. I then took a job at Etec System in Hayward which was bought out by Applied Materials. I worked there as a Facilities Supervisor and Project Coordinator for 10 years. I have worked for **Fremont Bank** for 4.5 years as a Facilities Supervisor at the 25151 Clawiter location in Hayward. I have a high school education.

My responsibility is to maintain all of the buildings totaling 29. This includes any relocations and supporting remodels and new branches. In addition we take care of employee safety.

Our total staff is 240 employees at the 25151 Clawiter location and 47 employees at the 3108 Diablo Ave location in Hayward. The hours of operation at the Clawiter location is 24 hrs. We have an Item Processing department that works through the night. The Diablo hours are 6:00 a.m. to 9:00 p.m

Our campus has a patio area in the center of our complex at the Clawiter location that breaks and lunches are enjoyed. We have walkers that take their breaks and a portion of their lunch to take walks and get some exercise and fresh air. We have our health fair and a summer barbeque in the summer outdoors. We support our employees in improving and maintaining their physical health and mental attitudes by encouraging them to take time away from their desks.