STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

DOCKET
01-AFC-7C
DATE
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In the Matter of:	)	
	)	Docket No. 01-AFC-7C
Amendment to the Application for Certification of	)	
the Russell City Energy Center Project	)	
	)	
	)	

OPPOSITION TO THE PETITIONS TO INTERVENE OF THE COUNTY OF ALAMEDA, THE CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT AND THE GROUP PETITIONERS

Russell City Energy Company LLC ("Project Owner") respectfully submits this Opposition to the Petitions to Intervene of the County of Alameda ("County"), the Chabot-Las Positas Community College District ("Chabot") and the Group Petitioners[1]. We address in a separate pleading the Petitions for Reconsideration that have been filed by these same parties.

As set forth below, each of the Petitions to Intervene must be denied. These Petitions to Intervene were filed after the close of this proceeding and after the decision in this case became final and effective. As such, the interventions by these groups and agencies are not authorized by the Commission's regulations and thus, the Commission has no discretion to grant the Petitions. In addition, even if the Commission had the discretion to entertain these Petitions to Intervene at this time, these petitioners have failed to make the showing required by Section 1207 of the Commission's Regulations. Specifically, the petitioners have failed to show good

[1] Group Petitioners identify themselves as the California Pilots Association, Citizens for Alternative Transportation Systems, San Lorenzo Homeowners Association, Skywest Townhouse Homeowners Association, Hayward Democratic Club and Hayward Area Planning Association.

cause why a Petition to Intervene could not have been filed in a timely manner in compliance with the Commission's rules. The failure to show good cause is not surprising, given that all of the petitioners and their organizations had actual knowledge of the Commission proceedings, and many of these petitioners participated in the Commission's proceedings. Substantively, these Petitions to Intervene also fail to meet the Commission's clear and unambiguous pleading requirements by failing to set forth the grounds for the interventions, the specific position and interest of the petitioners or the extent to which the petitioners desire to participate in the proceedings. These defects are inexcusable, especially given that the petitioners are legally sophisticated entities who have assistance of counsel. Finally, even if the Commission had discretion to consider the Petitions at this time and even if the Petitions met the substantive filing requirements of the Commission's regulations, the Petitions should be denied because they would cause substantial injury to the Project Owner and other parties who have participated in good faith in the licensing of this facility since 2001.

I. BACKGROUND

On May 22, 2001, Calpine/Bechtel Joint Development filed an Application for Certification (AFC) for the Russell City Energy Center ("RCEC") project. The California Energy Commission ("Commission") conducted an extensive and exhaustive 14-month review of the RCEC and in July 2002 approved a comprehensive 244 page decision approving the Application for Certification for the RCEC project.[2]

During the original power plant licensing proceeding, Commission staff ("Staff") carried out extensive coordination with numerous local, state, and federal agencies. These included the Bay Area Air Quality Management District ("BAAQMD" or "District"), City of Hayward, East

[2] Commission Decision, Russell City Enter Center, September 11, 2002

Bay Regional Park District ("EBRPD") and Petitioner Alameda County. Through these efforts, the various parties and agencies reached mutual agreement on almost all aspects of the proposed project and upon the necessary Conditions of Certification.[3] All Conditions of Certification requested by Alameda County were incorporated into the decision, including conditions pertaining to the Alameda County Flood Control District[4], the Alameda County Public Works Agency[5] and the Alameda County Department of Public Health[6].

On November 17, 2006 the Project Owner filed a Petition for Modification to amend the certification for the Russell City Energy Center ("Amendment" or "Petition for Modification"). The Amendment requested authorization to relocate the project facilities approximately 1,300 feet north and west of the location described in the current license (300 feet boundary to boundary) and for related changes.

Upon receipt of the Amendment, the Commission provided extensive notice of the Amendment to interested agencies and the public.[7] A "Request for Agency Participation in the Review of the RCEC Project", dated November 29, 2006 was mailed to numerous governmental agencies, including at least seven Alameda County offices or agencies. A Notice of Informational Hearing and Site Visit, dated November 29, 2006 was also mailed to these same Alameda County agencies. Written notice of the Application was mailed to all property owners within 1,000 feet of the project site or 500 feet of the natural gas pipeline, and 500 feet of the new transmission alignment alternatives. In addition, the Commission's Public Adviser's office

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[3] *Id.* at 2

[4] *Id* at 153(Bio 9)

[5] *Id* at. 160, 163 (Soil and Water 1, 8)

[6] *Id.* at 169 ((Waste 4)

[7] Transcript of Commission Business Meeting, September 26, 2007; Tr. 69-71

conducted an extensive outreach effort.[8] Prior to the first informational hearing and site visit, the Public Adviser contacted the sensitive receptors in the area, local schools, daycare centers, and elder care facilities.[9] They also contacted nonprofits, youth sports groups, outdoor interest, staff of children organizations, primarily nonprofits, 401(c)(3)s and others that they were able to find. As a result of this effort, Mr. Monasmith told the Commission that "there's been the highest degree of public involvement that I've experienced in my four years with the Commission, with these two cases. And these citizens are very committed to this process. They have been very involved. They have been active in our workshops as well as in the hearings. The Presiding Members have been present in Hayward."[10]

The Commission also established a public website dedicated to this project, upon which the Commission posted notices, orders and many relevant documents. The website also included a section devoted to public participation, including a detailed written guide to public participation in the siting process.[11] The detailed guide provided specific instructions regarding how and when to file a Petition to Intervene.[12]

In addition to written notice, the Commission Staff directly contacted numerous agencies during the course of its review of the Application. On February 6, 2007 five Commission Staff met personally with Cindy Horvath, Senior Transportation Planner in the Planning Department

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[8] *Id.* at 69-71

[9] *Id.* at 69-70

[10] *Id.* at 70.

[11] "Intervening in Siting Cases: Frequently Asked Questions"
http://www.energy.ca.gov/public_adviser/intervenor_faq.html

"Energy Facilities Licensing Process - Guide to Public Participation"
http://www.energy.ca.gov/siting/guide_license_process.html

[12] *Id.*

of the Alameda County Community Development Agency and with other agency representatives, to discuss the RCEC project.[13]

The facts are indisputable that the filing of the RCEC Amendment was widely publicized within the City of Hayward and Alameda County. This proceeding has received media coverage from the Oakland Tribune, TriValley Herald, Mercury News, Contra Costa Times, KPFA radio and others. Information regarding the project was also posted on the websites of the City of Hayward and Assemblywoman Hayashi.[14] In addition, on December 6, 2006, the Director of the Alameda County Redevelopment Agency (who also serves as Director of the Community Development Agency) transmitted to the Alameda County Board of Supervisors an Annexation Agreement for the Mt. Eden subarea. The Agreement recited that the Project Owner had applied to the Commission to relocate the project onto land currently located in an unincorporated portion of the County.[15]

During the course of this proceeding several Alameda County agencies and offices, including the Alameda County Airport Land Use Commission, participated actively in the Commission's proceeding.[16] The Group Petitioners also actively participated in the proceeding. Although these Alameda County agencies and the Group Petitioners have been active in this and other Energy Commission licensing proceedings and although they are knowledgeable of Commission licensing procedures,[17] these Petitioners made an affirmative decision; they decided

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[13] Report of Conversation, Prepared by James Adams, February 9, 2007, 01-AFC-7c, Log #39238; (Set forth as Exhibit A to this Opposition.)

[14] http://democrats.assembly.ca.gov/members/a18/newsroom/20070606AD18ART02.htm

[15] Mt. Eden Redevelopment Sub-Area Annexation and Public Improvement Agreement, By and Among City of Hayward, County of Alameda and Redevelopment Agency of the County of Alameda, dated December 19, 2006, pp17-18.(Set forth as Exhibit B)

[16] See discussion, Section II.B.3.a, below.

[17] Declaration of James Sorenson; p. 1; Paragraph 3

not to petition to intervene in the proceeding prior to the July 3 deadline for filing a Petition to Intervene.

On September 26, 2007, the Commission issued a decision and order approving the Petition for Modification filed in November 2006. The order of approval was effective and final as of September 26, 2007.[18]

On October 22, 2007, ten months after the Petition for Modification was filed, more than three months after the deadline for filing a Petition to Intervene, and 27 days after the Decision on the Amendment was issued, effective and final, Chabot, the County and the Group Petitioners filed Petitions to Intervene and Petitions for Reconsideration.

II. THE PETITIONS TO INTERVENE SHOULD BE DENIED.

A. The Petitioners may not intervene after the proceeding is closed and the decision is final.

The Commission adopted the Commission Decision on the Russell City Energy Center Amendment No. 1 on September 26, 2007. By the terms of the Commission order, the Decision was adopted, issued, effective and final as of that date, and the Commission has no discretion under the Warren Alquist Act or its regulations to grant the petitions after the Decision is final. In simplest terms, there is no remaining proceeding in which to intervene. All three Petitions to Intervene were filed after the Decision was effective and final. Therefore, all three Petitions must be rejected because they were filed after the proceeding was closed.

Group Petitioners simply ignore this defect in their Petition. Nevertheless, the defect is sufficient grounds for denying the Petition by the Group Petitioners.

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[18] Final Commission Decision, Russell City Energy Center Amendment #1 (01-AFC-7C), September 26, 2007.

Chabot and the County offer several arguments in an attempt to overcome the fact that the Petitions were filed after the close of the proceeding.[19] These arguments are without merit.

Chabot asserts, without citation to any authority, "A party may intervene solely for the purpose of filing a petition for reconsideration."[20] This is not true. "It is the general rule that an intervention will not be allowed when it would retard the principal suit, or require a reopening of the case for further evidence, or delay the trial of the action, or change the position of the original parties."[21] Further, Chabot provides no citation to any Commission statute or regulation for the proposition stated. This is again not surprising because no such Commission authorities exist for Chabot's claim.

There is in fact Commission authority and it is contrary to the claims of the petitioners. These three Petitions to Intervene are governed by Section 1207[22] of the Commission's Regulations. As Chabot and the County concede, Section 1207(a) allows a party to file "a petition to intervene *in* any proceeding." (emphasis added) A petition to intervene filed after the proceeding has closed has not been filed *in* a proceeding. Further, Section 1207(b) expressly

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[19] Memorandum of Points and Authorities in Support of Chabot-Las Positas Community College District's Petition to Intervene ("Chabot Memorandum"), p. 2; See also County of Alameda, Petition to Intervene, Memorandum of Points and Authorities ("County Memorandum"), p. 2.

[20] Chabot Memorandum, p. 2; County Memorandum, p. 2.

[21] *Sanders v. Pacific Gas and Elec. Co.* (1975) 53 Cal. App. 3d 661, 668, 126 Cal. Rptr. 415

[22] Section 1207 provides in pertinent part:

(a) Any person may file with the Docket Unit or the presiding committee member a petition to intervene in any proceeding. The petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner.

(b) In a power plant siting case, the petition shall be filed no later than the Prehearing Conference or 30 days prior to the first hearing held pursuant to sections 1725, 1748, or 1944 of this Chapter, whichever is earlier, subject to the exception in subsection (c) below. The petitioner shall also serve the petition upon the Applicant.

(c) The presiding member may grant leave to intervene to any petitioner to the extent he deems reasonable and relevant, but may grant a petition to intervene filed after the deadline provided in subdivision (b) only upon a showing of good cause by the petitioner. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations.

provides that in "a power plant siting case, the Petition shall be filed no later than the Prehearing Conference or 30 days prior to the first hearing held pursuant to Sections 1725, 1748, or 1944 of this Chapter, whichever is earlier," subject to one exception. The petitioners all failed to meet the clearly articulated deadline in Section 1207(b). The sole exception is that the presiding member may grant leave to intervene after the deadline in the proceeding. However, this exception to grant a Petition after the deadline cannot be read to imply that a Petition to Intervene can be granted when it is not filed "in a proceeding", but instead, is filed after the proceeding is closed. If a Petition could be granted before a proceeding is opened or after a proceeding is closed, then the language that requires the Petition to be filed "in the proceeding" would be rendered meaningless. If the Commission were to accept the petitioners' reasoning, there would never be an end to any proceeding. Instead, vexatious litigants could simply lie in wait for an outcome they may dislike; a result that is clearly contrary to the law's preference for a statute of repose. All proceedings have a clear ending. There is no line to blur in this respect.

Chabot and the County also argue that the rules governing petitions for reconsideration do not require the party seeking reconsideration to have been admitted as a party to the proceeding prior to the issuance of the decision or order.[23] This is also untrue. Again, the Commission's regulations expressly reject petitioners' arguments. Section 1210 of the Commission's Regulations provides that a Petition for Reconsideration may be filed by *a Party* or the Commission on its own motion. The plain meaning of Section 1210 requires a person or agency filing a Petition for Reconsideration to be a party at the time they file the motion.

Chabot and the County further allege that neither Section 1207 or 1712 prohibit the filing of a Petition to intervene during the 30 day period for filing a Petition for

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[23] Chabot Memorandum, p. 2, lines 15-16; County Memorandum, p.2

reconsideration.[24] Again, this is simply not true. Section 1207 expressly provides when the Petition to Intervene can be filed – it can be filed *in* a proceeding. It is not necessary and would be redundant for the regulation to also state when a Petition cannot be filed – namely, before the proceeding is opened or after it is closed.

Finally, Chabot alleges that the "proceeding remains open for 30 days or unless and until a party files a Petition for Reconsideration, whichever comes first."[25] This is not an accurate reading of the Commission's regulations. After the decision is "issued, effective and final" the proceeding is closed. A Petition for reconsideration is a *request* to reopen the proceeding, and a request that can only be made by a party that gave the Commission something to "consider" in advance of seeking "reconsideration."

All three petitioners concede that their Petitions for Reconsideration are requests to reopen a closed proceeding, by captioning each Petition for Reconsideration as a "Petition to Re-open the Administrative Proceedings."[26] A Petition to *Reopen* is necessary only where a matter is closed. Moreover, the mere filing of a Petition to Reopen the Administrative Proceeding does not automatically reopen the proceeding. The proceeding is only reopened if the Commission grants a timely and legally sufficient Petition and votes to reopen the proceeding to reconsider what has been decided. The Petitions are neither timely nor legally sufficient in terms of their substance.

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[24] Chabot Memorandum, p. 2; County Memorandum, p. 2

[25] Chabot Memorandum, p. 2; The County similarly argues that the Proceeding is not now closed, County Memorandum, p. 2

[26] County Petition, p. 1; Chabot Petition, p. 1; Group Petitioners' Petition, p. 1

B. The Petitioners have failed to file timely Petitions to Intervene.

Section 1207 of the Commission's regulations requires that in a power plant siting case "the Petition shall be filed no later than the Prehearing Conference or 30 days prior to the first hearing held pursuant to sections 1725, 1748, or 1944 of this Chapter, whichever is earlier." A Prehearing Conference and an Evidentiary Hearing were held on July 19, 2007. The Notice of Prehearing Conference issued by the Committee stated: "Petitions to Intervene in this case shall be filed **no later than July 3, 2007**. Typically, time extensions for new Intervenors to review existing case materials are not granted since to do so could delay the proceeding."[27] (emphasis in original).

Despite the fact that the deadline for filing a Petition to Intervene in this proceeding was approximately seven and one half months after the Amendment was filed, none of the petitioners filed a timely Petition to Intervene. Even after the deadline of July 3, 2007, the petitioners had an additional window of nearly three months before the final decision, in which to Petition to Intervene upon a showing of good cause. The petitioners elected to not file a Petition, even when others did so.

1. The petitioners have not shown good cause for their failure to file a timely Petition to Intervene.

Section 1207 of the Commission regulations provide that the Presiding Member "may grant a Petition to intervene filed after the deadline provided in subdivision (b) only upon a showing of good cause by the petitioner." Each of the three Petitions, filed three weeks after the final decision in this proceeding, fails to show good cause why the petitioners did not file a Petition to Intervene prior to the deadline.

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[27] Revised Notice of Prehearing Conference and Evidentiary Hearing, June 28, 2007, p. 2

In the Commission's original proceeding regarding the Russell City project, the Commission was also presented with an untimely Petition to Intervene.[28] On June 20, 2002, on the day of the evidentiary hearing, Ms. Barbara George, speaking on behalf of Woman's Energy Matters (WEM), Petitioned to Intervene in the Russell City Energy Center Application for Certification (AFC) proceeding. Ms. George also requested a two-month extension for Women's Energy Matters to prepare its testimony and present such testimony at an evidentiary hearing.[29]

After hearing Ms. George's argument on behalf of the intervention of WEM, the Committee ruled that by failing to Petition until the day of evidentiary hearings, Ms. George's Petition was not timely. The Presiding Member further determined that she failed to make a showing of good cause for the untimely filing. Accordingly, the Committee denied her Petition to Intervene.[30] On July 10, 2002, WEM filed a timely appeal for reconsideration of the Committee's June 20, 2002 Order denying WEM's Petition to Intervene. Included with her appeal were a *Memorandum of Points and Authorities (Memorandum), and a Declaration of Barbara George*, similar in scope and tone to the Memoranda presented in this proceeding. The Committee, on July 23, 2002, denied WEM's Petition for Reconsideration, and scheduled the matter for consideration by the full Commission at the August 14, 2002, Business Meeting. After hearing argument on the matter, the Commission denied the Petition for Reconsideration filed by WEM.[31]

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[28] Commission Order Denying WEM's Petition for Review, August 14, 2002, Docket No. AFC-7; Set forth as Exhibit F to this Opposition.

[29] *Id.*

[30] *Id.*

[31] *Id.*

In the instant case, the Petitions to Intervene are submitted much *later* than the Petition of WEM in the original proceeding. If a Petition to Intervene is untimely when filed on the day of the evidentiary hearing, it is even more untimely when filed after the close of the proceeding.

Rather than make a showing of good cause for why they failed to intervene in a timely manner, the petitioners merely complain that the Commission failed to provide *personal* notice to the petitioners. As explained below, such "personal" notice to individuals or subsets of the various petitioners is not legally required.

2. Personal Notice to Chabot and the County is not legally required.

Chabot complains that the Commission "failed to solicit analyses, comments and recommendations from the District, as was required pursuant to Title 20, California Code of Regulations, Section 1714(c)."[32] The County similarly complains.[33]

Contrary to Chabot's and the County's complaint, Section 1714(c) did not require the Commission to provide specific notice to Chabot or the County. First, section 1714(c) is not applicable to this proceeding. Section 1714(c) requires the Executive Director to transmit a copy of "the notice or application" to specified agencies and to request analyses and comments thereon. The instant proceeding does not involve the submission of a notice or application. Instead, the current proceeding involves an amendment to a permit – specifically, a Petition for modification filed pursuant to Section 1769. Therefore, section 1714(c) is simply not applicable to this Amendment.

Second, Section 1714(c) applies to the distribution of notices of intent and applications for certification to certain named agencies and to all federal, state, regional, and local agencies

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[32] Chabot Memorandum, p. 4

[33] County Memorandum, p. 3

"which have jurisdiction over the proposed site and related facility, or which would have such jurisdiction but for the commission's exclusive authority to certify sites and related facilities pursuant to Chapter 6 (commencing with # 25500) of Division 15 of the Public Resources Code." Chabot is *not* an agency "which would have jurisdiction over the proposed site and related facility, or which would have such jurisdiction but for the commission's exclusive authority to certify sites and related facilities." Similarly, the County has asserted that certain subdivisions of the County have jurisdiction over the proposed site, which is located in the City of Hayward, but has not supported this assertion with citation to relevant authority.[34]

Therefore, even if section 1714 were applicable in these circumstances (and it is not), the Commission did not violate section 1714(c) by failing to distribute a copy of the Amendment to Chabot or subdivisions of the County with unidentified jurisdiction. Furthermore, as we describe more fully below, any alleged defect in notice is rendered moot where the entity has had actual knowledge of the proceeding.

3. Given that many of the petitioners had actual knowledge of the proceeding and actively participated in the hearings, they have not shown good cause as to why a Petition to Intervene could not have been filed in a timely manner.

a. The petitioners have had actual knowledge of the Amendment proceeding and actively participated in the case.

The County's Petition to Intervene, filed three weeks after the final decision in this proceeding, fails to show good cause why the County or any of its subordinate agencies did not file a Petition to Intervene prior to the deadline.

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[34] The ALUC, for example, is an advisory body – and has no permit jurisdiction over this facility. Similarly, once the Alameda County Board of Supervisors approved the annexation of the RCEC project site into the City of Hayward, it is not clear what residual jurisdiction, if any, the Board would have had over the RCEC project.

The County concedes that it has participated in other Commission siting cases.[35] Therefore, the County was knowledgeable or should have been knowledgeable of Commission practices and procedures.[36] Yet, rather than make a showing of good cause for why these County entities failed to intervene in a timely manner in this proceeding, the County's Petition merely alleges that "the Commission should have noticed the County Board of Supervisors, Redevelopment Agency, Community Development Agency, Airport Land Use Commission and the Planning Department."[37] In fact, however, the evidence of record is that the County, the Board of Supervisors and the subordinate agencies did have *actual knowledge* of this proceeding and ample opportunity to file a timely Petition to Intervene.

The Commission sent a "Request for Agency Participation" and "Notice of Informational Hearing and Site Visit" to at least seven different subdivisions of the County on November 29, 2006.[38] In addition, the Senior Transportation Planner in the Planning Department of the Alameda County Community Development Agency met in person with five Commission Staff members on February 6, 2007 to discuss the Russell City project.[39] The meeting began with a description of the Commission siting process "including the opportunities for public involvement, publication of draft documents and responding to public comments or issues raised

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[35] Declaration of James Sorenson; p. 1; Paragraph 3

[36] *Id.*

[37] County Memorandum, p. 3. Lines 7-9

[38] County Memorandum in Support of Petition to Reopen the Administrative Proceedings, p. 4, lines 9-12

[39] Report of Conversation, Prepared by James Adams, February 9, 2007, 01-AFC-7c, Log #39238; Set forth as Exhibit A to this Opposition.

during the process."[40] This meeting was followed by other communications during the first six months of 2007 between Commission Staff and the County representative.[41]

The County seeks to excuse its untimely Petition on the assertion that the Commission "should have noticed" the Airport Land Use Commission ("ALUC").[42] However, the ALUC was actively informed of this proceeding since the February 6, 2007 meeting with Commission staff, if not before.[43] Similarly, the Community Development Agency and Planning Department received the same extent of notice and information as the ALUC, through Cindy Horvath, Senior Transportation Planner and Alex Amoroso, Assistant Planning Director.[44]

As for the Board of Supervisors and the Redevelopment Agency, there is no question that they were fully aware of the proposed Russell City project in its revised location and that they were aware of this Amendment proceeding from its inception. In two memoranda dated December 4, 2006, Mr. Sorenson, acting as Executive Director of the Alameda County Redevelopment Agency, recommended approval of the Mt. Eden Annexation and Public Approval Agreement ("Annexation Agreement").[45] The Annexation Agreement that Mr.

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[40] *Id.*

[41] Letter from James Adams to Cindy Horvath and Alex Amoroso, dated July 5, 2007; 01- AFC-7C, Docket Log # 41415.

[42] County Memorandum, p. 3. Lines 7-9

[43] Letter from James Adams to Cindy Horvath, dated July 5, 2007; 01- AFC-7C, Docket Log # 41415

[44] *Id.*

[45] Memorandum from James E Sorenson, Executive Director, Alameda County Redevelopment Agency to the Alameda County Board of Supervisors, re Agenda Item No. 26 – Mt. Eden Annexation and Public Improvement Agreement, dated December 4, 2006. The letter recommends authorizing the President of the Board to execute the attached Annexation and Public Improvement Agreement between the Alameda Redevelopment Agency, the County of Alameda and the City of Hayward. The letter lists as one of the considerations *for* the annexation was that after completion of the Phase 2 annexation and confirmation of tax increment "from the proposed Calpine power plant, the RDA will reimburse the City of Hayward up to $190 million for construction of the Whitesell Drive extension." Exhibit C to this Opposition.

Sorenson transmitted to the Board of Supervisors, contains an Article exclusively *devoted to the Russell City Power Plant.*[46]

That RCEC-specific Article in the Annexation Agreement begins by reciting that "the Power Plant developer has submitted an application to and is seeking the necessary approvals from the California Energy Commission to develop the Power Plant on the Power Plant Site. The Power Plant Site is located partly within the Depot Road area of the Mt. Eden Sub-Area...and partly within the current boundaries of the City"[47]:

> Section 4.1 Power Plant Development. The Power Plant Developer has submitted an application to and is seeking the necessary approvals from the California Energy Commission to develop the Power Plant on the Power Plant Site. The Power Plant Site is located partly within the Depot Road area of the Mt. Eden Sub-Area (the "Mt. Eden Sub-Area Portion"), and partly within the current boundaries of the City (the "Current City Portion"). If developed, the Power Plant is estimated to generate approximately Eighty Million Dollars ($80,000,000) of increased property value at completion with respect to the Mt. Eden Sub-Area Portion of the Power Plant Site, and an additional approximately Three Hundred Twenty Million ($320,000,000) of increased property value at completion with respect to the Current City Portion of the Power Plant Site. It is the mutual objective of the Parties (the "Power Plant Property Tax Objective") that the increase in property value in connection with any development of the Power Plant on the Power Plant Site will be assessed and taxed.[48]

The Board of Supervisors reviewed and approved the Annexation Agreement on December 19, 2006.[49] Then the Board of Supervisors, sitting as the Board of Directors of the Redevelopment Agency, reviewed and approved the Annexation Agreement again.[50] Thus the

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[46] Memorandum from James E Sorenson, Executive Director, Alameda County Redevelopment Agency to the Board of Directors of the Alameda County Redevelopment Agency, re Agenda Item No. 27 – Mt. Eden Annexation and Public Improvement Agreement, dated December 4, 2006. This letter was the same as Mr. Sorenson's letter to the Redevelopment Agency. Exhibit D to this Opposition.

[47] Annexation Agreement, p. 17

[48] *Id.*

[49] Summary Action Minutes, Alameda County Board of Supervisors, December 19, 2006, items 26 and 27. Exhibit E to this Opposition.

[50] *Id.*

Board voted not once, but twice, to affirm that that the RCEC power plant be constructed on parcels currently in the unincorporated area of the County and that the property tax benefit of the project will be assessed and taxed. The Board of Supervisors pledged that upon receipt of these anticipated tax benefits, the County would reimburse the City for extension of Whitesell Drive.[51]

In light of the Annexation Agreement prepared by the Redevelopment Agency and approved by the Board of Supervisors, the assertion in the Petition to Intervene that the Commission was "leaving the County out of the RCEC amendment proceedings" is simply untrue. The County, acting through its duly elected Board of Supervisors, had actual knowledge of the RCEC project, as evidenced by the public record in approving the Annexation Agreement. On that basis alone, the County's Petition should be denied.

As the Annexation Agreement clearly demonstrates, the County was very much aware of the proceeding from its inception. The County was also sufficiently aware of the RCEC project details so as to be able to calculate the projected tax revenues that would accrue from the individual parcels.[52] In sum, the County was fully aware of the proceeding, fully aware of the project details and already making plans on how to assess, tax, and divide the resulting revenues from the project. The County was not left out of this proceeding.

If the County chose not to participate more actively in this proceeding and chose not to Petition to Intervene, it is not because it was unaware of the proceeding or that it did not receive a copy of the Amendment from the Commission.[53] Nor was it because it was under the mistaken

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[51] Annexation Agreement, pp. 17-18

[52] Annexation Agreement, p. 17. To calculate the relative property tax values of the RCEC project on the City and County portions of the project site, County site would have conducted a detailed analysis of the site plan and proposed facilities in the Amendment filed November 17, 2006.

[53] The RCEC Amendment was filed November 17, 2006. The Annexation Agreement that reported this filing to the Board of Supervisors was transmitted to the Board by Mr. Sorenson by memorandum dated December 4, 2006. Clearly, Mr. Sorenson had been promptly notified of the filing of the Amendment.

impression that the project was located in the City of Hayward.[54] It was because the County chose to limit its participation.

California case law supports the conclusion that persons or entities with actual knowledge of a proceeding must Petition to Intervene in a timely manner and cannot await the outcome of a decision before seeking intervention. In the case of *Allen v. California Water & Tel. Co.*, 29 Cal. 2d 466, 176 P.2d 8, 1946, the California Supreme Court affirmed an order of the Superior Court of San Diego County vacating a prior order granting the City of Coronado leave to intervene in an action. The Supreme Court held that intervention by the City of Coronado was not timely because it was not filed in the trial court "before trial" as that term is used in section 387 of the Code of Civil Procedure. The Court added that "Aside from the statutory limitation upon the time of intervention, it is the general rule that a right to intervene should be asserted within a reasonable time and that the intervener must not be guilty of an unreasonable delay after knowledge of the suit. (*Hibernia etc. Society* v. *Churchill*, 128 Cal. 633, 636 [61 P. 278, 79 Am.St.Rep. 73]; *Mack* v. *Eummelen*, 31 Cal.App. 506 [106 P. 1096]; 20 Cal.Jur. pp. 520-522, § 25; 39 Am.Jur. pp. 943-945, §§ 71, 72; 127 A.L.R. 668, 672.) The record here (affidavit in support of motion to vacate) shows that at various times between the commencement of the action and the entry of judgment, officials of the city of Coronado were informed of the pendency of the litigation, the issues involved, and of the progress of the suit. This information was given in connection with discussions over water rates and as a reason for defendant's

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[54] See Declaration of James Sorenson, Paragraph 17: "From my experience, I believe that those Alameda County agencies that did receive notice would have conducted much greater review of the Russell City Energy Center amendment had the agency referral letter not stated that it was proposed to be located in the City of Hayward, rather than in the unincorporated area of Alameda County." The Declaration does not disclose that Mr. Sorenson as Director of the Redevelopment Agency and Community Development Agency, the Board of Supervisors and all staff who prepared or reviewed the Annexation Agreement were fully aware as early as December 4, 2006 that the project was partially located in the unincorporated area of Alameda County.

inability to reduce the rates in Coronado. The litigation was also given much local publicity." For these reasons, the Court denied the City of Coronado leave to intervene.

While the three petitioners in this proceeding did not wait as long after judgment as the City of Coronado waited in the Allen case, the record in this proceeding similarly supports a finding that at various times between the commencement of the action and the entry of judgment, petitioners were informed of the pendency of the Amendment proceeding, the issues involved, and of the progress of the proceeding. The Amendment proceeding was also given much local publicity. Each of the petitioners had an opportunity to Petition to Intervene, if not before the deadline for filing Petitions, then certainly before the entry of the Final Decision. For these reasons, the Commission must deny the Petitions to Intervene.

Similar to the County, the Group Petitioners have been active participants in this proceeding and had ample opportunity to file a timely Petition to Intervene. The California Pilots Association, like the ALUC, has received regular communications from the Commission Staff[65] and has appeared and testified at the hearings.[56] Mr. Wilson, one of the declarants for the Group Petitioners states that he has been following the proceedings of the Eastshore and Russell City projects since February 15, 2007and has appeared at hearings in the RCEC proceeding.[57] Mr. Toth, another declarant for the Group Petitioners, states that he first became aware of the Russell City project in February 2007.[58] Mr. Toth alleges that he was never informed of an opportunity to participate in the re-evaluation of the public health of the project. Yet, despite

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[55] Letter from James Adams to Carol Ford, California Pilots Association, dated July 5, 2007; 01- AFC-7C, Docket Long # 41415/

[56] July 19, 2007 Evidentiary Hearing, 01-AFC-7C, Tr. 137, 202-210, passim; Transcript of September 5, 2007 Committee Conference, 01-AFC-7C; Tr. 48-51, passim; Transcript of September 26, 2007 Business Meeting; Tr. 29-30.

[57] Declaration of Andrew Wilson III, p. 1

[58] Declaration of Michael Toth, par 3.a

allegedly never having been so informed of the opportunity, Mr. Toth did participate in the proceeding by attending and speaking at workshops and hearings for the Russell City project, including the evidentiary hearing.[59] The Citizens for Alternative Transportation Systems was represented in the hearings and was represented by counsel before the Commission.[60] None of these parties, show cause for their failure to file a timely Petition to Intervene.

As for Chabot, the presence of two power plant licensing proceedings in the Hayward area should certainly be no surprise. The informational hearing for the Eastshore project, at which the Russell City project was also discussed, was held on the campus of Chabot College in January 2007.[61] Having hosted Commission proceedings on campus where RCEC was discussed in January, Chabot's claims that it did not have knowledge of the project are implausible.

Given the extensive actual knowledge of this proceeding of the petitioners, and the extensive participation by the County, Group Petitioners and Chabot, good cause has not been shown why these Petitioners did not file a timely petition to intervene.

Notice and opportunity to be heard are the hallmarks of due process. The Commission certainly fulfilled its noticing requirements under existing law. The Commission leads the State and the Nation in its efforts to promote public participation in its proceedings through the Public Adviser program, a detailed guide on public participation, open list-serves where anyone can obtain notice of proceedings, websites with stocked with relevant dockets and a Committee hearing process that does not impose arbitrary limits on what people can say or how long they can speak.

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[59] July 19, 2007 Evidentiary Hearing, 01-AFC7C, Tr. 95 & passim

[60] July 19, 2007 Evidentiary Hearing, 01-AFC-7C, Tr. 258-260; Transcript of September 5, 2007 Committee Conference, 01-AFC-7C; Tr. 33-47, 157-162; Transcript of September 12 , 2007 Business Meeting; Tr. 47-52; Transcript of September 26, 2007 Business Meeting; Tr. 51-61.

[61] Notice of Public Informational Hearing and Site Visit, Docket 06-AFC-6; January 29, 2007

In addition, the factual record supports that petitioners had actual knowledge of the RCEC proceedings and actively participated in some phases of the Commission's proceedings, exercising their opportunity to be heard at each step of the proceeding. The petitioners now invite the Commission to ignore these facts and allow the petitioners another bite at a well-known apple. The Commission should reject this invitation.

C. Petitioners have failed to state their position in the proceeding and the scope of their intended participation.

Section 1207 of the Commission's Regulations requires that a Petition to Intervene "set forth the grounds for intervention, the position and interest of the petitioner in the proceeding, [and] the extent to which the petitioner desires to participate in the proceedings" in addition to contact information for the petitioner. None of the Petitions to Intervene satisfy these few but important substantive requirements.

Chabot's Petition does not state Chabot's position in the proceeding or the scope of its intended participation. Nor does the Petition make a convincing case that Chabot has an interest in the proceeding. Given that the site is three miles from the Chabot campus, Chabot has offered no persuasive evidence that the project will result in any significant adverse impact on the campus or its residents.

While Dr. Kinnamon asserts that the Chabot campus is in the area identified as most highly impacted by the proposed siting and that placement of the plant in the proposed site would likely negatively impact the health and welfare of Chabot students, staff and community members, he offers no facts, authority or explanation to support these assertions. Moreover, Dr. Kinnamon's declaration fails to explain how he (as an individual with an Ed.D. in Higher Education Administration) is qualified to opine on the alleged environmental and public health impacts of this project.

The County's Petition does not state the County's position in the proceeding. Nor does the Petition state the County's interest in the proceeding. Given that the site is no longer within the jurisdiction of the County (the site was annexed to the City with the County's full knowledge and consent), the County has not demonstrated that it is a local agency with jurisdiction.

The County merely asserts that it wants to "allow the Commission to receive the evidence that the County would have provided had it not been left out of the RCEC amendment proceedings."[62] However, the Petition fails to identify with any specificity, much less describe, this alleged "evidence." In the absence of such a showing, the Petition must be denied.

Only the Group Petitioners state their position in the proceeding and the intended scope of participation. They are opposed to the RCEC project and state some specific objections to the final decision, but fail to assert with specificity the grounds for reconsideration by addressing any error in fact or law and fail to establish that their objections are relevant to any decision the Commission had to make in this proceeding. Further, in making these objections, the Group Petitioners acknowledge that the objections are late,[63] without any showing of good cause why these objections could not have been raised in a timely manner in the course of the proceeding.

D. Intervention would substantially impair the rights of the Project Owner.

As we have explained above, it is the general rule that a Petition to Intervene must be made in a timely manner and "the intervener must not be guilty of an *unreasonable delay after knowledge of the suit.*"[64] Further, "It is also the general rule that an intervention will not be

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[62] County Memorandum; p. 4, lines 21-25

[63] Group Petitioners' Objections to Final Decision Effective September 26, 2007; p. 2, line 11. Group Petitioners base this Intervention on their objection the August 29, 2007 order granting a one year extension in the RCEC license. That decision became effective and final on September 28, 2007. The Group Petitioners' untimely attempt to seek reconsideration of that order is yet another example of the Group Petitioners flagrant disregard of the Commission's rules.

[64] *Sanders v. Pacific Gas and Elec. Co.* (1975) 53 Cal. App. 3d 661, 668, 126 Cal. Rptr. 415; italics in original.

allowed when it would retard the principal suit, or require a reopening of the case for further evidence, or delay the trial of the action, or change the position of the original parties. [Citation.]" [65]

The concept of diligence or laches (delay plus prejudice) operates to deny intervention where it would require a reopening of the case for further evidence and where such reopening would harm or prejudice one or more of the parties to the original proceeding.[66] In the instant case, these Petitions to Intervene are for the express purpose of reopening the case for unspecified duration and for receipt of unspecified further evidence. These interventions, if granted, would substantially delay the project's ability to commence construction and to be on-line by June 2010. As the Project Owner has previously explained, the timetable for completing the project is already extremely short – any further delay in the licensing project could place the on-line date at risk.[67]

Finally, as a matter of equity, the Applicant has diligently pursued this application and the RCEC project has been selected in response to a CPUC-Administered Request for Offers. Such RFO-winning projects are, by definition, critical energy infrastructure that is vital to the stability of California's electricity grid. The RCEC amendment has already taken considerable time to process. Without ascribing motives, it is clear that further delay may have the effect of threatening the commercial operation of this much needed project.

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[65] *Id.* at p. 669.

[66] 4 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 205, p.263.

[67] Letter from Richard L. Thomas, Vice President-Project Development, Calpine Corporation to Commissioner Geesman, et.al., September 14, 2007, Docket 01-AFC-7C, Log # 42314

III. CONCLUSION

The three Petitions to Intervene have been filed, without good cause, many months after the initiation of this proceeding, after the deadline for filing timely Petitions and even after the issuance of a final decision on the Amendment. The Petitions for Intervention would result in substantial delay in the issuance of the license, could require new hearings and evidence and would put substantial burdens on the parties who participated in good faith in the original proceeding. Therefore, for the reasons set forth herein, each of the three Petitions to Intervene should be summarily dismissed.

October 31, 2007

Respectfully submitted,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By /s/ Gregg Wheatland

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Attorneys for Russell City Energy Company LLC

EXHIBIT A

CALIFORNIA ENERGY COMMISSION
REPORT OF CONVERSATION **Page 1 of 1**

Energy Facilities Siting and Environmental Protection Division	**FILE:**
	PROJECT TITLE: Russell City Energy Center

☒ **Telephone**	510-293-5011 650-876-2778 818-597-3407	☐ **Meeting Location:** Energy Commission	
NAME:	See below	**DATE:** 2/6/07	**TIME:** 2 PM
WITH:	See below		
SUBJECT:	Projects Impacts on Hayward Executive Airport		

COMMENTS: Participants

CEC - James Adams, Shaelyn Strattan, Jeri Scott, Lorne Prescott, Dave Flores
FAA - Joe Rodriguez
Hayward Airport – Ross Dubarry, Jenny Donnelley
Alameda Airport Land Use Commission (AALUC) – Cindy Horvath
ASPEN – Will Walters

DOCKET
01-AFC-7
DATE FEB 06 2007
RECD. FEB 09 2007

Summary

After introductions, there was a brief discussion (JS and LP) of the two power plant projects and our siting process including the opportunities for public involvement, publication of draft documents, and responding to public comments or issues raised during the process. Staff (JA and SS) then explained that there are potential adverse impacts from plumes that would be emitted by stacks and cooling towers at both power plants. The types of plumes, velocities, and behavior was discussed (WW). These plumes could affect aircraft flying over the power plants.

There was some discussion about airport traffic patterns and the possibility that aircraft (i.e. helicopters) have wide latitude when flying over the commercial/industrial area where the plants would be located. Airport representatives are concerned particularly about helicopters because they fly at lower altitudes (500 feet above ground). There was also discussion about the airspace above the Hayward Airport (2000 feet and up) being used by Oakland and San Francisco International Airports. It appears that plumes from the proposed power plants would not affect aircraft (commercial jets) in this airspace. Potential mitigation was discussed including publishing NOTAMS, revising the Airport Facility Diagram, and amending the sectional charts. All parties agreed that the applicants should file Form 7460-Notice of Proposed Construction and alteration with the FAA, and there should be an in-depth description of the project including the type and characteristics of the plumes. This would allow the FAA to do a rigorous analysis to determine if there would be an impact on airport operations. The analysis should be completed in 60 to 90 days.

THE AALUC rep (CH) noted that they would need the FAA's response to the 7460 Form before they could make a determination regarding the compatibility of the power plants operation with the airport land use plan. It was noted that the City of Hayward has a Council Airport Committee that may want more information about the power plants. In addition, the City's Public Works Department may want to get involved.

Staff (JA) agreed to write up a summary of the conference call and circulate it among other staff and then create a report of conversation that would be docketed and sent out to all participants in the conference call. The FAA rep (JR) requested that staff (LP and JS) send him CDs with the AFC or Amendment about the power plant projects.

cc:	**Signed:**
	Name: James S. Adams, February 9, 2007, 2007

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

Amendment to the APPLICATION FOR CERTIFICATION OF THE RUSSELL ENERGY CENTER POWER PLANT PROJECT

Docket No. 01-AFC-7C
PROOF OF SERVICE
(Revised 12/13/06)

INSTRUCTIONS: All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 01-AFC-7C
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DECLARATION OF SERVICE

I, Marci Errecart, declare that on February 14, 2007, I deposited copies of the attached February 6, 2007 Report of Conversation (ROC) re: project impacts on Hayward Executive Airport and the February 8, 2007 ROC re: Land Use and Transportation Issues of clear air turbulence (CAT) from plumes, in the United States mail at Sacramento, California 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 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.

Marci A. Errecart
[signature]

EXHIBIT B

APPROVAL VERSION

MT. EDEN REDEVELOPMENT SUB-AREA ANNEXATION AND PUBLIC IMPROVEMENTS AGREEMENT

By and Among

City of Hayward,

County of Alameda,

and

Redevelopment Agency of the County of Alameda

Dated as of December 19, 2006

C-2006-337

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Exhibit D Whitesell Drive Extension Improvements
Exhibit E Form of Hayward Agency Consent

MT. EDEN REDEVELOPMENT SUB-AREA
ANNEXATION AND PUBLIC IMPROVEMENTS AGREEMENT

This Mt. Eden Redevelopment Sub-Area Annexation and Public Improvements Agreement (the "Agreement") is entered into as of December 19, 2006 by and among the City of Hayward (the "City"), the County of Alameda (the "County"), and the Redevelopment Agency of the County of Alameda (the "Agency") on the basis of the following facts, understandings, and intentions of the City, the County, and the Agency (collectively, the "Parties"):

RECITALS

A. These recitals refer to and use certain terms with initial capital letters that are defined in Section 1.1 of this Agreement. Section references used in this Agreement are to sections of this Agreement, unless otherwise specified.

B. Pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.: the "Redevelopment Law"), the County has adopted and the Agency is responsible for implementing, among other redevelopment plans, the Redevelopment Plan for the Eden Area Redevelopment Project, as amended (the "Redevelopment Plan"). The Redevelopment Plan sets forth a redevelopment program for the Eden Area Redevelopment Project Area (the "Project Area"), including the provision of a broad range of public service infrastructure improvements to induce private investment and improve emergency response in the Project Area.

C. The Mt. Eden Sub-Area is one of five non-contiguous sub-areas constituting the Project Area and is completely surrounded by territory within the City. The attached Exhibit A is a map of the Mt. Eden Sub-Area portion of the Project Area.

D. Among the blighting conditions affecting and deterring private reinvestment in the Mt. Eden Sub-Area is the lack of adequate public infrastructure improvements, including streets, sidewalks, curbs, gutters, storm drainage facilities, sewer facilities, and other utilities and improvements.

E. The City has undertaken the process to cause annexation of a portion of the Mt. Eden Sub-Area delineated in the attached Exhibit A and referred to in this Agreement as the "Phase 1 Annexation Area." The Parties desire to cooperate to cause the timely funding and construction of a series of public infrastructure improvements more fully described in the attached Exhibit B (the "Phase 1 Improvements") to alleviate blighting conditions in, and to encourage private sector revitalization of, the Phase 1 Annexation Area.

F. The Parties also desire to establish a process for the City to annex the balance of the Mt. Eden Sub-Area delineated in the attached Exhibit A and referred to in this Agreement as the "Phase 2 Annexation Area." The Parties likewise desire to cooperate to cause the timely funding and construction of a series of public infrastructure improvements (the "Phase 2 Improvements") to alleviate blighting conditions in, and to encourage private sector revitalization of, the Phase 2 Annexation Area.

G. The Parties also desire to plan for the timely funding of construction of the Whitesell Drive Extension should the Power Plant be developed on the Power Plant Site located partly within the Mt. Eden Sub-Area.

H. Through this Agreement, the parties desire to set forth their understandings and agreements regarding a cooperative effort to achieve annexation of the Mt. Eden Sub-Area by the City, and timely funding and construction of the Phase 1 Improvements, the Phase 2 Improvements, and the Whitesell Drive Extension (collectively, the "Mt. Eden Improvements").

I. In accordance with Sections 33445 of the Redevelopment Law, the City Council of the City, the Board of Supervisors of the County, and the Agency have made the necessary findings to authorize the Agency's expenditures for the Mt. Eden Improvements described in this Agreement.

J. In considering approval of the Phase 1 Annexation, including provision of the Phase 1 Improvements, the City prepared the Environmental Impact Report for the Mt. Eden Annexation Project (the "EIR") (SCH No. 2003122009). The City certified the EIR on October 12, 2004 by Resolution No. 04-147 (the "City EIR Resolution") in accordance with the California Environmental Quality Act and its state and local implementing guidelines ("CEQA"). Through the City EIR Resolution, the City made the findings required by CEQA in connection with certification of the EIR, and adopted specified mitigation measures and a mitigation monitoring and reporting program to mitigate adverse environmental impacts of the Phase 1 Annexation and the Phase 1 Improvements. In considering this Agreement and the actions contemplated herein with respect to the Phase 1 Annexation and the Phase 1 Improvements, the Agency and County have served as "responsible agencies" under CEQA, have reviewed and approved the EIR, and have approved resolutions making the required CEQA findings (the "County/Agency EIR Resolutions"), all in accordance with CEQA.

K. Because the provisions of this Agreement with respect to the Phase 1 Annexation and the Phase 1 Improvements constitute a further action to implement the same project that was carefully analyzed in the EIR and for the additional reasons set forth as follows, the EIR has served as the document for CEQA compliance in the consideration and approval by the City, the Agency and the County of the execution and implementation of this Agreement with respect to the Phase 1 Annexation and the Phase 1 Improvements, all as authorized and required by 14 California Code of Regulations Section 15162 and Public Resources Code Section 21166. There have not been any of the following occurrences since the certification of the EIR that would require a subsequent or supplemental environmental document in connection with approval and implementation of the provisions of this Agreement with respect to the Phase 1 Annexation and the Phase 1 Improvements:

1. there have not been substantial changes in the program for the Phase 1 Annexation and the Phase 1 Improvements that is the subject of this Agreement which would require major revisions in the EIR;

2. there have not been substantial changes with respect to the circumstances under which the program of the Phase 1 Annexation and the Phase 1 Improvements is being implemented pursuant to this Agreement which would require major revisions in the EIR; and

3. there has not been the appearance of new information which was not known and could not have been known as of the date of certification and approval of the EIR which is relevant to the certification and approval of the EIR.

L. This Agreement requires that, prior to approval of the Phase 2 Annexation, development of the Phase 2 Improvements, and development of the Whitesell Drive Extension, the City (in its capacity as "lead agency" pursuant to CEQA) will prepare and process any necessary CEQA documentation (each such document, a "Supplemental CEQA Document") to consider the environmental effects of such actions. Because the physical design and terms for such actions have not yet been completed, it is premature and would be speculative to prepare and process such Supplemental CEQA Document(s) at this time. As a result, this Agreement further provides that the parties' respective obligations under this Agreement with respect to the Phase 2 Annexation, the Phase 2 Improvements, and the Whitesell Drive Extension are conditioned upon the approval or certification of the applicable Supplemental CEQA Document and the making of any necessary accompanying CEQA findings and determinations by the City (in its capacity as "lead agency" pursuant to CEQA), the County (in its capacity as a "responsible agency" pursuant to CEQA with respect to the Phase 2 Improvements only), and the Agency (in its capacity as a "responsible agency" pursuant to CEQA with respect to the Phase 2 Improvements and the Whitesell Drive Extension only), each acting through the exercise of its respective legislative discretion.

NOW, THEREFORE, the City, the County and the Agency agree as follows:

ARTICLE 1
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

(a) "2006 Legislation" means Chapter 563 of California Statutes of 2006 enacting a new Section 33413.1 of the Redevelopment Law establishing an alternative method to comply, in part, with the Affordable Housing Requirement.

(b) "Adjacent Affordable Housing Development" means the development containing seventy-seven (77) Affordable Units and one (1) manager's unit to be developed, occupied and operated at 22958 Saklan Road, Hayward, California, adjacent to the Mt. Eden Sub-Area, in accordance with the Regulatory Agreement.

(c) "Affordable Housing Requirement" means the requirement that specified percentages of all new dwelling units within the Mt. Eden Sub-Area be developed and deed restricted to constitute Moderate Income Units and Very Low Income Units, all as more fully set forth in Section 33413(b)(2)(A)(i) of the Redevelopment Law.

(d) "Affordable Unit" means a Moderate Income Unit or a Very Low Income Unit, as applicable.

(e) "Agency" means the Redevelopment Agency of the County of Alameda.

(f) "Agreement" means this Mt. Eden Redevelopment Sub-Area Annexation and Public Improvements Agreement, including all exhibits.

(g) "Alternative Means" has the meaning given in Section 6.5(b).

(h) "Annual Administrative Cost Amount" means, for a given Fiscal Year, fifteen percent (15%) of the amount remaining after subtracting from Mt. Eden Gross Tax Increment Revenue the following:

(1) An amount equal to the product of the County property tax administration fee charged to the Agency with respect to the Project Area multiplied by the Sub-Area Percentage;

(2) An amount equal to the product of any ERAF Payments, statutory pass-through payments pursuant to Section 33607.5 of the Redevelopment Law, and other statutory payments payable by the Agency with respect to the Project Area multiplied by the Sub-Area Percentage; and

(3) An amount equal to the product of the minimum required Agency deposit into the Housing Fund with respect to the Project Area required pursuant to the Redevelopment Law (currently 20% of gross Project Area Tax Increment Revenue) multiplied by the Sub-Area Percentage.

(i) "Approved Cost Certification" has the meaning given in Section 5.1.

(j) "CEQA" means the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) and its state and local implementing guidelines.

(k) "City" means the City of Hayward.

(l) "City Approvals" has the meaning given in Section 4.1.

(m) "City Approvals Condition" has the meaning given in Section 4.1.

(n) "City/Dutra Agreement" means that certain Reimbursement Agreement intended to be entered into between the City and Dutra with respect to funding of the Phase 1 Improvements and the Phase 2 Improvements.

(o) "City EIR Resolution" means Resolution No. 04-147 of the City, certifying the EIR, making findings pursuant to CEQA, and adopting a mitigation monitoring and reporting program for the Phase I Annexation and the Phase I Improvements.

(p) "City Reimbursement Payments" means the Reimbursement Payments owed by the Agency to the City, and consists specifically of the Phase 1 Reimbursement Payments, the Phase 2 Reimbursement Payments (Dutra Portion), the Phase 2 Reimbursement Payments (City Portion), and the Whitesell Drive Extension Reimbursement Payments.

(q) "County" means the County of Alameda.

(r) "County/Agency EIR Resolutions" has the meaning given in Recital J.

(s) "Current City Portion" has the meaning in connection with the Power Plant Site that is given in Section 4.1.

(t) "Dutra" means Dutra Enterprises, Inc., a California corporation, or any successor in interest.

(u) "EIR" has the meaning given in Recital K.

(v) "ERAF Payments" means any payments that the Agency is required, pursuant to the Redevelopment Law or other applicable statute, to make to the Educational Revenue Augmentation Fund created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the California Revenue and Taxation Code.

(w) "Existing Bonds" means the $34,735,000 principal amount of Redevelopment Agency of the County of Alameda, Eden Area Redevelopment Project Tax Allocation Bonds, Series 2006A, issued February 2, 2006.

(x) "Fiscal Year" means the fiscal year of the Agency which begins on July 1 and ends on the following June 30.

(y) "Future Indebtedness" means tax allocation bonds, notes, installment purchase contracts, or financing or capital leases issued or entered into by or on behalf of the Agency, loans received by the Agency from any legally authorized public or private lender, and other forms of indebtedness (with a repayment term of at least one year) entered into by or on behalf of the Agency for the purpose of paying costs of redevelopment activities, the repayment of which is secured in whole or in part by a pledge of Tax Increment Revenue, together with any financial guarantee, bond insurance, credit enhancement, standby bond purchase agreement, investment agreement, interest rate swap or hedge agreement, or other similar arrangement entered into in connection with the above described forms of indebtedness.

(z) "Future Residential Development" means any residential development within the Mt. Eden Sub-Area containing one or more dwelling units that is approved for development by the City after the date of execution of this Agreement, other than the Initial Residential Development.

(aa) "Future Residential Development Affordability Covenant" has the meaning given in Section 6.5(d).

(bb) "Hayward Agency Consent" has the meaning set forth in Section 6.5(c). The form of the Hayward Agency Consent is attached as Exhibit E.

(cc) "Housing Fund" means the Agency's low and moderate income housing fund established pursuant to Health and Safety Code Section 33334.3.

(dd) "Imputed Interest" means with respect to repayment of a given Reimbursement Amount related to a given Mt. Eden Improvement:

(1) For a given Pre-Completion Fiscal Year, the sum of:

(A) the amount calculated by applying the annualized Interest Rate to each monthly expenditure by the City during the given Pre-Completion Fiscal Year for the applicable Mt. Eden Improvement (as shown in the Approved Cost Certification for such Pre-Completion Fiscal Year) from the end of the month in which such monthly expenditure was made to June 30 of the Pre-Completion Fiscal Year; plus

(B) if applicable, the amount calculated by multiplying the Interest Rate times the outstanding principal balance of the applicable Reimbursement Amount as of the beginning of such Pre-Completion Fiscal Year.

(2) For a given Post-Completion Fiscal Year, the amount calculated by multiplying the Interest Rate times the outstanding principal balance of the applicable Reimbursement Amount as of the beginning of such Post-Completion Fiscal Year.

(ee) "Initial Residential Development" means the development within the Mt. Eden Sub-Area, generally bounded by Saklan Road, Middle Lane, Eden Avenue, and West Street, containing 149 single-family units that is proposed to be developed by KB Homes South Bay, Inc. on property currently owned by Dutra, subject to completion of the Phase 1 Annexation.

(ff) "Initial Residential Development Affordable Housing Requirement" has the meaning given in Section 6.5(a).

(gg) "Interest Rate" means a simple interest rate of six percent (6%) per annum.

(hh) "LAFCO" means the Alameda County Local Agency Formation Commission.

(ii) "Legislation Amendment" has the meaning given in Section 6.5(b).

(jj) "Moderate Income Unit" means a deed restricted dwelling unit available for occupancy by persons and families of low or moderate income (as defined in Health and Safety Code Section 50093) in a manner that enables the Agency to receive credit toward compliance with the Affordable Housing Requirement.

(kk) "Mt. Eden Annexation" means the Phase 1 Annexation and the Phase 2 Annexation, collectively.

(ll) "Mt. Eden Gross Tax Increment Revenue means, for a given Fiscal Year, the total amount of Tax Increment Revenue attributable to the Mt. Eden Sub-Area portion of the Project Area for that Fiscal Year that is allocated and paid to the Agency.

(mm) "Mt. Eden Improvement" means one of the Mt. Eden Improvements individually, as applicable.

(nn) "Mt. Eden Improvements" means the Phase 1 Improvements, the Phase 2 Improvements, and the Whitesell Drive Extension, collectively.

(oo) "Mt. Eden Net Tax Increment Revenue" means, for a given Fiscal Year, the Mt. Eden Gross Tax Increment Revenue less the sum of the following deductions:

(1) An amount equal to the product of the County property tax administration fee charged to the Agency with respect to the Project Area multiplied by the Sub-Area Percentage;

(2) An amount equal to the product of any ERAF Payments, statutory pass-through payments pursuant to Section 33607.5 of the Redevelopment Law, and other statutory payments payable by the Agency with respect to the Project Area multiplied by the Sub-Area Percentage;

(3) An amount equal to the product of the minimum required Agency deposit into the Housing Fund with respect to the Project Area required pursuant to the Redevelopment Law (currently 20% of gross Project Area Tax Increment Revenue) multiplied by the Sub-Area Percentage;

(4) An amount equal to the product of all principal, interest, and other amounts payable by the Agency in connection with the Existing Bonds multiplied by the Sub-Area Percentage; and

(5) The Annual Administrative Cost Amount.

(pp) "Mt. Eden Sub-Area" means the Mt. Eden Sub-Area of the Project Area, as identified in the Redevelopment Plan.

(qq) "Mt. Eden Sub-Area Portion" has the meaning in connection with the Power Plant Site that is given in Section 4.1.

(rr) "Party" means the City, the County, or the Agency, as applicable.

(ss) "Phase 1 Annexation" means the proposed annexation by the City of the Phase 1 Annexation Area.

(tt) "Phase 1 Annexation Area" means the portion of the Mt. Eden Sub-Area so designated in the attached Exhibit A.

(uu) "Phase 1 Improvements" means the public infrastructure improvements identified in the attached Exhibit B to be constructed in the Phase 1 Annexation Area and funded as provided in this Agreement.

(vv) "Phase 1 Interest Shortfall Amount" has the meaning given in Section 2.3(b).

(ww) "Phase 1 Reimbursement Amount" means the principal amount to be repaid by the Agency to the City pursuant to Section 2.3.

(xx) "Phase 1 Reimbursement Payment" has the meaning given in Section 2.3(a).

(yy) "Phase 2 Annexation" means the proposed annexation by the City of the Phase 2 Annexation Area.

(zz) "Phase 2 Annexation Area" means the portion of the Mt. Eden Sub-Area so designated in the attached Exhibit A.

(aaa) "Phase 2 Annexation Costs" means the costs of preparation of various documents and of other activities in connection with the Phase 2 Annexation, which shall be funded by the Agency pursuant to Section 3.1(b) below in an amount not to exceed One Hundred Thousand Dollars ($100,000).

(bbb) "Phase 2 Improvements" means the public infrastructure improvements identified in the attached Exhibit C to be constructed in the Phase 2 Annexation Area and funded as provided in this Agreement.

(ccc) "Phase 2 Interest Shortfall Amount (City Portion)" has the meaning given in Section 3.4(b).

(ddd) "Phase 2 Interest Shortfall Amount (County Portion)" has the meaning given in Section 3.4(c).

(eee) "Phase 2 Interest Shortfall Amount (Dutra Portion)" has the meaning given in Section 3.4(a).

(fff) "Phase 2 Reimbursement Amount (City Portion)" means the principal amount to be repaid by the Agency to the City pursuant to Section 3.4(b).

(ggg) "Phase 2 Reimbursement Amount (County Portion)" means the principal amount to be repaid by the Agency to the County pursuant to Section 3.4(c).

(hhh) "Phase 2 Reimbursement Amount (Dutra Portion)" means the principal amount to be repaid by the Agency to the City pursuant to Section 3.4(a).

(iii) "Phase 2 Reimbursement Payment (City Portion)" has the meaning given in Section 3.4(b).

(jjj) "Phase 2 Reimbursement Payment (County Portion)" has the meaning given in Section 3.4(c).

(kkk) "Phase 2 Reimbursement Payment (Dutra Portion)" has the meaning given in Section 3.4 (a).

(lll) "Power Plant" means the power plant facility and all related improvements proposed to be developed by the Power Plant Developer on the Power Plant Site.

(mmm)"Power Plant Developer" means Russell City Energy Company, LLC or such other entity as may develop the Power Plant or portion thereof on the Power Plant Site.

(nnn) "Power Plant Property Tax Objective" has the meaning given in Section 4.1.

(ooo) "Power Plant Site" means the site of the proposed Power Plant, which is generally located southwest of the intersection of Depot Road and Cabot Boulevard.

(ppp) Pre-Completion Fiscal Year" means, with respect to a particular Mt. Eden Improvement, any Fiscal Year in which the City or its authorized party incurs costs toward completion of such Mt. Eden Public Improvement, as shown on the Approved Cost Certification for such Fiscal Year.

(qqq) "Post-Completion Fiscal Year" means, with respect to a particular Mt. Eden Improvement, any Fiscal Year following the Fiscal Year in which the parties approve the final Approved Cost Certification for such Mt. Eden Improvement.

(rrr) "Project Area" means the Eden Area Redevelopment Project Area, as identified in the Redevelopment Plan.

(sss) "Proposed Cost Certification" has the meaning given in Section 5.1.

(ttt) "Redevelopment Law" means the California Community Redevelopment Law, codified at Health and Safety Code Section 33000 et seq.

(uuu) "Redevelopment Plan" means the Redevelopment Plan for the Eden Area Redevelopment Project adopted by the Alameda County Board of Supervisors by Ordinance No. O-2001-1 on July 11, 2000, as amended from time to time.

(vvv) "Regulatory Agreement" means that certain Regulatory Agreement and Declaration of Restrictive Covenants (Saklan Family Apartments) entered into as of December 1,

2006 by and between the City and Eden Housing, Inc., a California nonprofit public benefit corporation, and recorded against the property on which the Adjacent Affordable Housing Development will be developed pursuant to Instrument/Series No. 06455747 recorded in the land records of Alameda County on December 14, 2006.

(www) "Reimbursement Amount" means, as applicable, the Phase 1 Reimbursement Amount, the Phase 2 Reimbursement Amount (Dutra Portion), the Phase 2 Reimbursement Amount (City Portion), the Phase 2 Reimbursement Amount (County Portion), or the Whitesell Drive Extension Reimbursement Amount.

(xxx) "Reimbursement Payments" means, collectively, the Phase 1 Reimbursement Payments, the Phase 2 Reimbursement Payments (Dutra Portion), the Phase 2 Reimbursement Payments (City Portion), the Phase 2 Reimbursement Payments (County Portion), and the Whitesell Drive Extension Reimbursement Payments.

(yyy) "Sub-Area Percentage" means, for a given Fiscal Year, a ratio stated as a percentage, the numerator of which is the Mt. Eden Gross Tax Increment Revenue for such Fiscal Year, and the denominator of which is the Tax Increment Revenue for the entire Project Area for such Fiscal Year.

(zzz) "Supplemental CEQA Document" has the meaning given in Recital L.

(aaaa) "Tax Increment Revenue" means those taxes allocated and paid to the Agency pursuant to Section 33670 et seq. of the Redevelopment Law from increases in assessed valuation of the property in the Project Area above the valuation shown on the assessed valuation roll last equalized prior to the date of adoption of the Redevelopment Plan.

(bbbb) "Uncovered Units" has the meaning given in Section 6.5(d).

(cccc) "Very Low Income Unit" means a deed restricted dwelling unit available for occupancy by very low income households (as defined in Health and Safety Code Section 50105) in a manner that enables the Agency to receive credit toward compliance with the Affordable Housing Requirement.

(dddd) "Whitesell Drive Extension" means the extension of Whitesell Drive from Enterprise Avenue to Cabot Boulevard, generally as described in the attached Exhibit D, to be funded as provided in this Agreement.

(eeee) "Whitesell Drive Extension Interest Shortfall Amount" has the meaning given in Section 4.3(b).

(ffff) "Whitesell Drive Extension Reimbursement Amount" means the principal amount to be repaid by the Agency to the City pursuant to Section 4.3

(gggg) "Whitesell Drive Extension Reimbursement Payment" has the meaning given in Section 4.3(a).

Section 1.2 Exhibits. The following attachments are attached to and made a part of this Agreement by this reference:

Exhibit A	Map of the Mt. Eden Sub-Area
Exhibit B	Phase 1 Improvements
Exhibit C	Phase 2 Improvements
Exhibit D	Whitesell Drive Extension Improvements
Exhibit E	Form of Hayward Agency Consent

ARTICLE 2
PHASE 1 ANNEXATION

Section 2.1 Phase 1 Annexation. At its sole cost, the City has submitted an application to LAFCO, and shall hereafter use diligent good faith efforts, to cause completion of all administrative and procedural requirements for annexation of the Phase 1 Annexation Area as expeditiously as possible. The parties' obligations pursuant to Sections 2.2 and 2.3 shall be conditioned upon successful completion and effectiveness of the Phase 1 Annexation.

Section 2.2 Phase 1 Improvements. Prior to and as a condition of commencement of the Phase 1 Improvements, the City shall obtain any necessary City Planning Commission general plan conformance finding pursuant to Government Code Section 65402 in connection with any required acquisition of right-of-way for the Phase 1 Improvements. Within twenty-four (24) months following the Phase 1 Annexation (the "Phase 1 Improvements Completion Date"), the City shall cause completion of construction of the Phase 1 Improvements (including any necessary design and right-of-way acquisition work), subject to reasonable extension for an additional period of not exceeding twelve (12) months by mutual agreement of the Parties upon a satisfactory showing by the City that such extension is necessary despite the City's good faith efforts to complete the Phase 1 Improvements by the Phase 1 Improvements Completion Date. The City shall regularly consult with and consider in good faith the input of the Agency in connection with preparation of the initial design and any material modification of the design of the Phase 1 Improvements. The City shall promptly provide such progress and status reports as the Agency may reasonably request from time to time concerning the design and development of the Phase 1 Improvements. For each Pre-Completion Fiscal Year, the City shall deliver to the Agency a Proposed Cost Certification in accordance with Section 5.1.

Section 2.3 Phase 1 Reimbursement Payments.

(a) Reimbursement Obligation. The Agency shall reimburse to the City the Phase 1 Reimbursement Amount plus Imputed Interest thereon. The total Phase 1 Reimbursement Amount (exclusive of the addition of any Phase 1 Interest Shortfall Amount) payable by the Agency to the City shall equal the lesser of:

(1) the actual cumulative cost of design, right-of-way acquisition for, and construction of the Phase 1 Improvements as set forth in the Approved Cost Certification(s) for the Phase 1 Improvements; or

(2) Seven Million Two Hundred Forty-Nine Thousand Dollars ($7,249,000).

To meet this reimbursement obligation, the Agency shall make annual payments (each a "Phase 1 Reimbursement Payment") to the City in an amount equal to the annual Mt. Eden Net Tax Increment Revenue for the applicable Fiscal Year.

(b) Application of Payments. The annual Phase 1 Reimbursement Payments shall begin for the first Pre-Completion Fiscal Year with respect to the Phase 1 Improvements and shall end once the outstanding Phase 1 Reimbursement Amount has been reduced to zero dollars. Each annual Phase 1 Reimbursement Payment for a Pre-Completion Fiscal Year shall be paid by the Agency to the City within thirty (30) days after approval of the Approved Cost Certification for such Pre-Completion Fiscal Year pursuant to Section 5.1. Each annual Phase 1 Reimbursement Payment for a Post-Completion Fiscal Year shall be paid by the Agency to the City by June 30 of each applicable Post-Completion Fiscal Year. Each annual Phase 1 Reimbursement Payment received by the City shall be applied as of the last day (June 30) of each Fiscal Year first to pay Imputed Interest with respect to the outstanding principal balance of the Phase 1 Reimbursement Amount for that Fiscal Year, and then to reduce the outstanding principal balance of the Phase 1 Reimbursement Amount. If the Phase 1 Reimbursement Payment received by the City with respect to a given Fiscal Year is not sufficient to pay the Imputed Interest with respect to the outstanding principal balance of the Phase 1 Reimbursement Amount for that Fiscal Year, the shortfall in such interest payment (a "Phase 1 Interest Shortfall Amount") shall be added to the outstanding principal balance of the Phase 1 Reimbursement Amount as of July 1 of the succeeding Fiscal Year. If the total amount of Mt. Eden Net Tax Increment Revenue generated during a particular Pre-Completion Fiscal Year is more than sufficient to repay the outstanding principal balance of the portion of the Phase 1 Reimbursement Amount expended by the City to-date plus all Imputed Interest thereon, then the Agency may retain and use for its other redevelopment purposes any such excess amount of the Mt. Eden Net Tax Increment Revenue generated during such Pre-Completion Fiscal Year.

(c) Prepayment. The Agency may, at its sole election and without penalty, make a payment or payments to the City in addition to the payments required to be made pursuant to this Section 2.3. Any such optional payment shall be applied in the manner specified in subsection (b) above.

ARTICLE 3
PHASE 2 ANNEXATION

Section 3.1 Phase 2 Annexation.

(a) Efforts To Cause Phase 2 Annexation. Promptly following execution of this Agreement, the City shall commence, and shall thereafter use diligent good faith efforts to cause completion, within one (1) year after the approval and effectiveness of the Phase 1 Annexation, of all administrative and procedural requirements for annexation of the Phase 2 Annexation Area. Such efforts shall include, without limitation, preparation and presentation to

the City Council for consideration of approval of an application to LAFCO for the Phase 2 Annexation, together with any required Supplemental CEQA Document for such Phase 2 Annexation and the related Phase 2 Improvements, and any other required accompanying documents and agreement. It is understood that City Council approval of such LAFCO application, any Supplemental CEQA Document, and any other accompanying documents and agreements is within the City Council's legislative discretion. The parties' obligations pursuant to Sections 3.2 and 3.3 shall be conditioned upon successful completion and effectiveness of the Phase 2 Annexation, and satisfaction of the condition set forth in Section 3.4(d)(1) below.

(b) Phase 2 Annexation Costs. Within thirty (30) days after receipt of a statement from the City Manager of the City setting forth Phase 2 Annexation Costs incurred by the City (together with supporting invoices or other similar documentation), the Agency shall pay to the City the amount set forth in such statement up to a maximum cumulative payment by the Agency to the City for such stated Phase 2 Annexation Costs of One Hundred Thousand Dollars ($100,000). Phase 2 Annexation Costs incurred by the City and subject to payment by the Agency as set forth above shall include mapping, preparation of legal documents, financial analyses, and any required Supplemental CEQA Document for the Phase 2 Annexation and related Phase 2 Improvements, and other similar activities necessary for completion of the Phase 2 Annexation. If the Phase 2 Annexation is not completed and does not become effective, then promptly following City abandonment of the Phase 2 Annexation, the City shall reimburse to the Agency any portion of the Phase 2 Annexation Costs previously paid by the Agency pursuant to this subsection (b) together with interest on such Agency payment(s) determined by applying the Interest Rate to such Agency payment(s) from the time of such Agency payment(s) to the time the City makes the reimbursement to the Agency required by this sentence. If the Phase 2 Annexation is completed and becomes effective, then the City shall have no such reimbursement obligation to the Agency.

Section 3.2 Phase 2 Improvements. Prior to and as a condition of commencement of the Phase 2 Improvements, the City shall obtain any necessary City Planning Commission general plan conformance finding pursuant to Government Code Section 65402 in connection with any required acquisition of right-of-way for the Phase 2 Improvements. Within twenty-four (24) months following the Phase 2 Annexation (the "Phase 2 Improvements Completion Date"), the City shall complete or cause completion of construction of the Phase 2 Improvements (including any necessary design and right-of-way acquisition work), subject to reasonable extension for an additional period not exceeding twelve (12) months by mutual agreement of the Parties upon a satisfactory showing by the City that such extension is necessary despite the City's good faith efforts to complete the Phase 2 Improvements by the Phase 2 Improvements Completion Date. The City shall regularly consult with and consider in good faith the input of the Agency in connection with preparation of the initial design and any material modification of the design of the Phase 2 Improvements. The City shall promptly provide such progress and status reports as the Agency may reasonably request from time to time concerning the design and development of the Phase 2 Improvements. For each Pre-Completion Fiscal Year, the City shall deliver to the Agency a Proposed Cost Certification in accordance with Section 5.1.

Section 3.3 Phase 2 Improvements Funding. The Phase 2 Improvements shall be funded as follows:

(a) The City shall cause to be funded the first Three Million Six Hundred Thousand Dollars ($3,600,000) of the cost of design, acquisition of right-of-way for, and construction of the Phase 2 Improvements. It is anticipated (but not required) that this amount of funding will be obtained by the City from proceeds it receives from Dutra pursuant to the City/Dutra Agreement.

(b) The City shall cause to be funded up to the next One Million Four Hundred Thousand Dollars ($1,400,000) of the cost of design, acquisition of right-of-way for, and construction of the Phase 2 Improvements in equal amounts (50%/50%) from other funds provided by the City and from funds provided by the County in accordance with the following sentence. To that end, the County agrees to make available to the City up to Seven Hundred Thousand Dollars ($700,000) for this purpose, such funds to be made available by not later than the date of execution by the City of the construction contract for the Phase 2 Improvements through an escrow agreement in form reasonably acceptable to the City and the County.

(c) The City shall fund any cost of design, acquisition of right-of-way for, and construction of the Phase 2 Improvements in excess of the amounts set forth in subsections (a) and (b) above.

Section 3.4 Phase 2 Reimbursement Payments. Subject to satisfaction of the conditions set forth in subsection (d) below, the Agency shall make Reimbursement Payments as described in this Section 3.4.

(a) Phase 2 Reimbursement Payments (Dutra Portion). The Agency shall reimburse to the City the Phase 2 Reimbursement Amount (Dutra Portion) plus Imputed Interest thereon. The total Phase 2 Reimbursement Amount (Dutra Portion) (exclusive of any Phase 2 Interest Shortfall Amount (Dutra Portion)) payable by the Agency to the City shall equal the lesser of:

(1) the actual cumulative cost of design, right-of-way acquisition for, and construction of the Phase 2 Improvements as set forth in the Approved Cost Certification(s) for the Phase 2 Improvements; or

(2) Three Million Six Hundred Thousand Dollars ($3,600,000).

To meet this reimbursement obligation, the Agency shall make annual payments (each a "Phase 2 Reimbursement Payment (Dutra Portion)") to the City beginning in the later of: (1) the first Pre-Completion Fiscal Year with respect to the Phase 2 Improvements; or (2) the Fiscal Year in which Mt. Eden Net Tax Increment Revenue shall exceed, and retire, the amount of the unpaid Phase 1 Reimbursement Amount in accordance with Section 2.3. In such first Fiscal Year of payment, the Phase 2 Reimbursement Payment (Dutra Portion) to the City shall be equal to the Mt. Eden Net Tax Increment Revenue for such Fiscal Year less the amount of the Phase 1 Reimbursement Payment made to the City, if any, for such Fiscal Year. Each Fiscal Year thereafter, the Agency shall make a Phase 2 Reimbursement Payment (Dutra Portion) to the City in an amount equal to the amount of the Mt. Eden Net Tax Increment Revenue for the Fiscal Year until the outstanding Phase 2 Reimbursement Amount (Dutra Portion) has been reduced to zero. Each annual Phase 2 Reimbursement Payment (Dutra

Portion) shall be paid by the Agency to the City by June 30 of each applicable Fiscal Year. Each annual Phase 2 Reimbursement Payment (Dutra Portion) shall be applied as of the last day (June 30) of each Fiscal Year first to pay Imputed Interest with respect to the outstanding principal balance of the Phase 2 Reimbursement Amount (Dutra Portion) for that Fiscal Year, and then to reduce the outstanding principal balance of the Phase 2 Reimbursement Amount (Dutra Portion). If the Phase 2 Reimbursement Payment (Dutra Portion) received by the City with respect to a given Fiscal Year is not sufficient to pay the Imputed Interest with respect to the outstanding principal balance of the Phase 2 Reimbursement Amount (Dutra Portion) for that Fiscal Year, the shortfall in such interest payment (a "Phase 2 Interest Shortfall Amount (Dutra Portion)") shall be added to the outstanding principal balance of the Phase 2 Reimbursement Amount (Dutra Portion) as of July 1 of the succeeding Fiscal Year. The Agency may, at its sole election and without penalty, make a payment or payments to the City in addition to the payments required to be made pursuant to this subsection (a). Any such optional payment shall be applied in the manner specified in above in this subsection (a).

(b) Phase 2 Reimbursement Payments (City Portion). The Agency shall reimburse to the City the Phase 2 Reimbursement Amount (City Portion) plus Imputed Interest thereon. The total Phase 2 Reimbursement Amount (City Portion) (exclusive of any Phase 2 Interest Shortfall Amount (City Portion)) payable by the Agency to the City shall equal fifty (50%) of the amount by which the actual cumulative cost of design, right-of-way acquisition for, and construction of the Phase 2 Improvements as set forth in the Approved Cost Certification(s) for the Phase 2 Improvements exceeds Three Million Six Hundred Thousand Dollars ($3,600,000); provided, however, that in no event shall the total Phase 2 Reimbursement Amount (City Portion) payable by the Agency to the City (exclusive of any Phase 2 Interest Shortfall Amount (City Portion)) exceed Seven Hundred Thousand Dollars ($700,000).

To meet this reimbursement obligation, the Agency shall make annual payments (each a "Phase 2 Reimbursement Payment (City Portion)") to the City beginning in the Fiscal Year in which Mt. Eden Net Tax Increment Revenue shall exceed, and retire, the amount of the unpaid Phase 2 Reimbursement Amount (Dutra Portion) in accordance with subsection (a) above. In such first Fiscal Year of payment, the Phase 2 Reimbursement Payment (City Portion) to the City shall be equal to the fifty percent (50%) of the Mt. Eden Net Tax Increment Revenue for such Fiscal Year less the amount of the Phase 2 Reimbursement Payment (Dutra Portion) made to the City, if any, for such Fiscal Year. Each Fiscal Year thereafter, the Agency shall make a Phase 2 Reimbursement Payment (City Portion) to the City in an amount equal to fifty percent (50%) of the Mt. Eden Net Tax Increment Revenue for the Fiscal Year until the outstanding principal balance of the Phase 2 Reimbursement Amount (City Portion) has been reduced to zero. Each annual Phase 2 Reimbursement Payment (City Portion) shall be paid by the Agency to the City by June 30 of each applicable Fiscal Year. Each annual Phase 2 Reimbursement Payment (City Portion) shall be applied as of the last day (June 30) of each Fiscal Year first to pay Imputed Interest with respect to the outstanding principal balance of the Phase 2 Reimbursement Amount (City Portion) for that Fiscal Year, and then to reduce the outstanding principal balance of the Phase 2 Reimbursement Amount (City Portion). If the Phase 2 Reimbursement Payment (City Portion) received by the City with respect to a given Fiscal Year is not sufficient to pay the Imputed Interest with respect to the outstanding principal balance of the Phase 2 Reimbursement Amount (City Portion) for that Fiscal Year, the shortfall in such interest payment (a "Phase 2 Interest Shortfall Amount (City Portion)") shall be added to

the outstanding principal balance of the Phase 2 Reimbursement Amount (City Portion) as of July 1 of the succeeding Fiscal Year. The Agency may, at its sole election and without penalty, make a payment or payments to the City in addition to the payments required to be made pursuant to this subsection (b), but only after the Agency has fully satisfied its reimbursement obligations under subsection (a) above, and only if the Agency simultaneously makes an equal prepayment to the County under subsection (c) below. Any such optional payment shall be applied in the manner specified in this subsection (b).

(c) Phase 2 Reimbursement Payments (County Portion). The Agency shall reimburse to the County the Phase 2 Reimbursement Amount (County Portion) plus Imputed Interest thereon. The total Phase 2 Reimbursement Amount (County Portion) (exclusive of any Phase 2 Interest Shortfall Amount (County Portion)) payable by the Agency to the County shall equal fifty (50%) of the amount by which the actual cumulative cost of design, right-of-way acquisition for, and construction of the Phase 2 Improvements as set forth in the Approved Cost Certification(s) for the Phase 2 Improvements exceeds Three Million Six Hundred Thousand Dollars ($3,600,000); provided, however, that in no event shall the total Phase 2 Reimbursement Amount (County Portion) payable by the Agency to the County (exclusive of any Phase 2 Interest Shortfall Amount (County Portion)) exceed Seven Hundred Thousand Dollars ($700,000).

To meet this reimbursement obligation, the Agency shall make annual payments (each a "Phase 2 Reimbursement Payment (County Portion)") to the County beginning in the Fiscal Year in which Mt. Eden Net Tax Increment Revenue shall exceed, and retire, the amount of the unpaid Phase 2 Reimbursement Amount (Dutra Portion) in accordance with subsection (a) above. In such first Fiscal Year of payment, the Phase 2 Reimbursement Payment (County Portion) to the County shall be equal to the fifty percent (50%) of the Mt. Eden Net Tax Increment Revenue for such Fiscal Year less the amount of the Phase 2 Reimbursement Payment (Dutra Portion) made to the City, if any, for such Fiscal Year. Each Fiscal Year thereafter, the Agency shall make a Phase 2 Reimbursement Payment (County Portion) to the County in an amount equal to fifty percent (50%) of the Mt. Eden Net Tax Increment Revenue for the Fiscal Year until the outstanding principal balance of the Phase 2 Reimbursement Amount (County Portion) has been reduced to zero. Each annual Phase 2 Reimbursement Payment (County Portion) shall be paid by the Agency to the County by June 30 of each applicable Fiscal Year. Each annual Phase 2 Reimbursement Payment (County Portion) shall be applied as of the last day (June 30) of each Fiscal Year first to pay Imputed Interest with respect to the outstanding principal balance of the Phase 2 Reimbursement Amount (County Portion) for that Fiscal Year, and then to reduce the outstanding principal balance of the Phase 2 Reimbursement Amount (County Portion). If the Phase 2 Reimbursement Payment (County Portion) received by the County with respect to a given Fiscal Year is not sufficient to pay the Imputed Interest with respect to the outstanding principal balance of the Phase 2 Reimbursement Amount (County Portion) for that Fiscal Year, the shortfall in such interest payment (a "Phase 2 Interest Shortfall Amount (County Portion)") shall be added to the outstanding principal balance of the Phase 2 Reimbursement Amount (County Portion) as of July 1 of the succeeding Fiscal Year. The Agency may, at its sole election and without penalty, make a payment or payments to the County in addition to the payments required to be made pursuant to this subsection (c), but only after the Agency has fully satisfied its reimbursement obligations under subsection (a) above, and only if

the Agency simultaneously makes an equal prepayment to the City under subsection (b) above Any such optional payment shall be applied in the manner specified in this subsection (c).

(d) Conditions of Payment. The Agency's obligation to make any Phase 2 Reimbursement Payment (Dutra Portion), any Phase 2 Reimbursement Payment (City Portion), or any Phase 2 Reimbursement Payment (County Portion) pursuant to this Section 3.4 shall be conditioned upon:

(1) Approval or certification of any required Supplemental CEQA Document and the making of any necessary accompanying CEQA findings and determinations by the City (in its capacity as "lead agency" pursuant to CEQA), the County (in its capacity as a "responsible agency" pursuant to CEQA), and the Agency (in its capacity as a "responsible agency" pursuant to CEQA) with respect to the Phase 2 Annexation and the Phase 2 Improvements, each acting through the exercise of its respective legislative discretion;

(2) Completion and effectiveness of the Phase 2 Annexation;

(3) Compliance by the City with its obligations related to the Affordable Housing Requirement in the manner required pursuant to Section 6.5.

If each of the conditions set forth in this subsection (d) has not been satisfied and in existence as of December 31, 2111, then, at the Agency's election, the Agency may terminate its obligation pursuant to this Section 3.4 to make Phase 2 Reimbursement Payments (Dutra Portion), Phase 2 Reimbursement Payments (City Portion), and Phase 2 Reimbursement Payments (County Portion).

ARTICLE 4
POWER PLANT DEVELOPMENT AND WHITESELL DRIVE EXTENSION

Section 4.1 Power Plant Development. The Power Plant Developer has submitted an application to and is seeking the necessary approvals from the California Energy Commission to develop the Power Plant on the Power Plant Site. The Power Plant Site is located partly within the Depot Road area of the Mt. Eden Sub-Area (the "Mt. Eden Sub-Area Portion"), and partly within the current boundaries of the City (the "Current City Portion"). If developed, the Power Plant is estimated to generate approximately Eighty Million Dollars ($80,000,000) of increased property value at completion with respect to the Mt. Eden Sub-Area Portion of the Power Plant Site, and an additional approximately Three Hundred Twenty Million ($320,000,000) of increased property value at completion with respect to the Current City Portion of the Power Plant Site. It is the mutual objective of the Parties (the "Power Plant Property Tax Objective") that the increase in property value in connection with any development of the Power Plant on the Power Plant Site will be assessed and taxed:

(a) such that the entire increase in property value will be attributed to the Power Plant Site (a so-called "situs" basis of property tax assessment) and will generate the maximum potential property taxes to the City with respect to the Current City Portion of the

Power Plant Site and the maximum potential Tax Increment Revenue to the Agency with respect to the Mt. Eden Sub-Area Portion of the Power Plant Site; and

(b) such that the increased assessed valuation from development of the Power Plant is allocated in proportion to the relative value of the improvements on the Mt. Eden Portion and the Current City Portion of the Power Plant Site.

The City shall use diligent good faith efforts to accomplish the Power Plant Property Tax Objective, and to cause the Power Plant Property Tax Objective to be continuously satisfied throughout the duration of the Agency's ability to receive Tax Increment Revenue pursuant to the Redevelopment Plan. Throughout these efforts, the City shall regularly consult with and consider in good faith the input of the Agency with respect to implementing these actions to achieve the Power Plant Property Tax Objective. The Parties expressly acknowledge and agree that the Agency's ability to make the Whitesell Drive Reimbursement Payments pursuant to Section 4.3 below is dependent upon the initial accomplishment and continuing achievement of the Power Plant Property Tax Objective.

Section 4.2 Whitesell Drive Extension. Prior to and as a condition of commencement of the Whitesell Drive Extension, the City shall obtain any necessary City Planning Commission general plan conformance finding pursuant to Government Code Section 65402 in connection with any required acquisition of right-of-way for the Whitesell Drive Extension, and shall prepare and cause consideration by the City Council of any required Supplemental CEQA Document for the Whitesell Drive Extension. Unless otherwise agreed by the Parties, within twenty-four (24) months following commencement of operation of the Power Plant (the "Whitesell Drive Extension Completion Date"), the City shall complete or cause completion of construction of the Whitesell Drive Extension (including any necessary design and right-of-way acquisition work), subject to reasonable extension for an additional period of not exceeding twelve (12) months by mutual agreement of the Parties upon a satisfactory showing by the City that such extension is necessary despite the City's good faith efforts to complete the Whitesell Drive Extension by the Whitesell Drive Extension Completion Date. The City shall regularly consult with and consider in good faith the input of the Agency in connection with preparation of the initial design and any material modification of the design of the Whitesell Drive Extension. The City shall promptly provide such progress and status reports as the Agency may reasonably request from time to time concerning the design and development of the Whitesell Drive Extension. For each Pre-Completion Fiscal Year, the City shall deliver to the Agency a Proposed Cost Certification in accordance with Section 5.1.

Section 4.3 Whitesell Drive Extension Reimbursement Payments.

(a) Reimbursement Obligation. Subject to satisfaction of the conditions set forth in subsection (c) below, the Agency shall reimburse to the City the Whitesell Drive Extension Reimbursement Amount plus Imputed Interest thereon. The total Whitesell Drive Extension Reimbursement Amount (exclusive of any Whitesell Drive Extension Shortfall Amount payable by the Agency to the City) payable by the Agency to the City shall equal the lesser of:

(1) the actual cumulative cost of design, right-of-way acquisition for, and construction of the Whitesell Drive Extension as set forth in the Approved Cost Certification(s) for the Whitesell Drive Extension; or

(2) Ten Million Dollars ($10,000,000).

To meet this reimbursement obligation, the Agency shall make annual payments (each a "Whitesell Drive Extension Reimbursement Payment") to the City, beginning in the later of: (1) the first Pre-Completion Fiscal Year with respect to the Whitesell Drive Extension; or (b) the Fiscal Year in which Mt. Eden Net Tax Increment Revenue shall exceed, and retire, the amount of the unpaid Phase 2 Reimbursement Amount (City Portion) and the unpaid Phase 2 Reimbursement Amount (County Portion). In such first Fiscal Year of payment, the Whitesell Drive Reimbursement Payment to the City shall be equal to the Mt. Eden Net Tax Increment Revenue for such Fiscal Year less the sum of the Phase 2 Reimbursement Payment (City Portion) and the Phase 2 Reimbursement Payment (County Portion) made to the City and the County, if any, for such Fiscal Year. Each Fiscal Year thereafter, the Agency shall make a Whitesell Drive Extension Reimbursement Payment to the City in an amount equal to the amount of the Mt. Eden Net Tax Increment Revenue for the Fiscal Year until the outstanding principal balance of the Whitesell Drive Extension Reimbursement Amount has been reduced to zero.

(b) Application of Payments. Each annual Whitesell Drive Extension Reimbursement Payment shall be paid by the Agency to the City by June 30 of each applicable Fiscal Year. Each annual Whitesell Drive Extension Reimbursement Payment received by the City shall be applied as of the last day (June 30) of each Fiscal Year first to pay Imputed Interest with respect to the outstanding principal balance of the Whitesell Drive Extension Reimbursement Amount for that Fiscal Year, and then to reduce the outstanding principal balance of the Whitesell Drive Extension Reimbursement Amount. If the Whitesell Drive Extension Reimbursement Payment received by the City with respect to a given Fiscal Year is not sufficient to pay the Imputed Interest with respect to the outstanding principal balance of the Whitesell Drive Extension Reimbursement Amount for that Fiscal Year, the shortfall in such interest payment (a "Whitesell Drive Extension Interest Shortfall Amount") shall be added to the outstanding principal balance of the Whitesell Drive Extension Reimbursement Amount as of July 1 of the succeeding Fiscal Year.

(c) Conditions of Payment. The Agency's obligation to make any Whitesell Drive Reimbursement Payment to the City shall be conditioned upon:

(1) Approval or certification of any required Supplemental CEQA Document and the making of any necessary accompanying CEQA findings and determinations by the City (in its capacity as "lead agency" pursuant to CEQA), and the Agency (in its capacity as a "responsible agency" pursuant to CEQA) with respect to the Whitesell Drive Extension, each acting through the exercise of its respective legislative discretion;

(2) Performance by the City of all actions reasonably required on its part to obtain approval from LAFCO and effectiveness of the Phase 2 Annexation, including without limitation, City Council approval and City submission to LAFCO of a completed

application for the Phase 2 Annexation, and City approval of any modifications to such application and any conditions to such Phase 2 Annexation reasonably required by LAFCO (it being acknowledged by the Parties that the actual approval of the Phase 2 Annexation is within the ultimate control of LAFCO and not the City);

(3) Initial accomplishment and continuing achievement of the Power Plant Property Tax Objective; and

(4) Compliance by the City with its obligations related to the Affordable Housing Requirement in the manner required pursuant to Section 6.5.

If each of the conditions set forth in this subsection (c) has not been satisfied and in existence as of December 31, 2115, then, at the Agency's election, the Agency may terminate its obligation pursuant to this Section 4.3 to make Whitesell Drive Extension Reimbursement Payments.

(d) Prepayment. The Agency may, at its sole election and without penalty, make a payment or payments to the City in addition to the payments required to be made pursuant to this Section 4.3, but only after the Agency has fully satisfied its reimbursement obligations under Section 3.4. Any such optional payment shall be applied in the manner specified in subsection (b) above.

ARTICLE 5
ADDITIONAL REIMBURSEMENT PAYMENT PROVISIONS

Section 5.1 Cost Certifications. By June 30 of each Pre-Completion Fiscal Year for each Mt. Eden Improvement, the City shall submit to the Agency a certification executed by the City Manager setting forth in relevant detail the actual expenditures by the City or its authorized party during that Pre-Completion Fiscal Year for the applicable Mt. Eden Improvement, the purpose of each expenditure, and the month during that Pre-Completion Fiscal Year in which each expenditure was made (a "Proposed Cost Certification"). Each Proposed Cost Certification shall include the applicable expenditure invoices or other documentation establishing the existence, purpose and date of each expenditure shown in the Proposed Cost Certification.

Within fifteen (15) days after receipt of each Proposed Cost Certification, the Agency shall review and approve or disapprove such Proposed Cost Certification. Each Proposed Cost Certification that is approved or not acted upon by the Agency within such fifteen (15) day period shall thereafter constitute an "Approved Cost Certification" for the applicable Mt. Eden Improvement and the applicable Pre-Completion Fiscal Year.

If the Agency disapproves a Proposed Cost Certification within such fifteen (15) day period, the Agency shall so notify the City and shall set forth in reasonable detail the basis for such disapproval. The Parties shall thereafter confer until they agree on the terms, content and amount of a cost certification, which, upon such agreement, shall become the "Approved Cost Certification for the applicable Mt. Eden Improvement and the applicable Pre-Completion Fiscal Year.

Section 5.2 Annual Statements. Each year at the time it makes the applicable Reimbursement Payments, the Agency shall submit an annual statement to the City and the County setting forth the following matters with respect to the Fiscal Year just ended (the "Applicable Fiscal Year"):

(a) The amount of Mt. Eden Gross Tax Increment Revenue and Mt. Eden Net Tax Increment Revenue.

(b) The amount of the Reimbursement Payment(s) made by the Agency to the City and County, as applicable;

(c) The application of the annual Reimbursement Payment(s) made for the Applicable Fiscal Year to pay Imputed Interest on the applicable Reimbursement Amount(s) and to pay off the outstanding principal balance of the applicable Reimbursement Amount(s) in accordance with the provisions of this Agreement;

(d) The outstanding principal balance of the various Reimbursement Amounts at the end of the Applicable Fiscal Year as a result of the application of payments confirmed in subsection (c) above; and

(e) Such other matters as the Agency deems appropriate to administer the provisions of this Agreement.

Section 5.3 Indebtedness of Agency. The obligation of the Agency to make Reimbursement Payments shall constitute an indebtedness of the Agency incurred in carrying out the Redevelopment Plan and a pledge of Tax Increment Revenue to repay such indebtedness under the provisions of Article XVI, Section 16 of Article XVI of the Constitution of the State of California and under the Redevelopment Law. The Agency shall have no obligation to make any Reimbursement Payment under this Agreement from any source other than from Mt. Eden Net Tax Increment Revenue.

Section 5.4 Subordination.

(a) With Respect To Existing Bonds. The Agency obligation to make the Reimbursement Payments pursuant to this Agreement is and shall be subordinate, and the City and the County hereby subordinate their respective rights to the Reimbursement Payments, to the Agency obligation to make payments with respect to the Existing Bonds.

(b) With Respect To Future Indebtedness—City Covenant. The City shall subordinate its rights to receive the City Reimbursement Payments to the Agency's obligation to make payments with respect to Future Indebtedness upon a demonstration by the Agency to the City's reasonable satisfaction that either:

(1) The Agency shall use proceeds from the Future Indebtedness to make a mutually agreed pre-payment of its future City Reimbursement Payments to the City; or

(2) The Future Indebtedness is being issued to refund the Existing Bonds (or a previous refunding of the Existing Bonds) in a manner that will yield net debt service payment savings to the Agency.

Within thirty (30) days of receiving the Agency's request for subordination and the demonstration described above, the City shall approve or disapprove such request. The City may disapprove the request only if it reasonably finds, based on substantial evidence, that the Future Indebtedness does not satisfy one of the conditions set forth in paragraphs (1) and (2) above. If the City does not act within thirty (30) days after receipt of the Agency's request, the request to subordinate shall be deemed approved and shall be final and conclusive. The City shall execute any instrument reasonably required by the Agency to evidence the foregoing subordinations. Notwithstanding the foregoing provisions of this subsection (b), the City shall not be required to grant the subordination required by this subsection (b) with respect to a particular Future Indebtedness unless the County also grants the subordination required by subsection (c) below with respect to such Future Indebtedness.

(c) With Respect To Future Indebtedness—County Covenant. The County shall subordinate its rights to receive the Phase 2 Reimbursement Payments (County Portion) to the Agency's obligation to make payments with respect to Future Indebtedness upon a demonstration by the Agency to the County's reasonable satisfaction that either:

(1) The Agency shall use proceeds from the Future Indebtedness to make a mutually agreed pre-payment of its future Phase 2 Reimbursement Payments (County Portion) to the County; or

(2) The Future Indebtedness is being issued to refund the Existing Bonds (or a previous refunding of the Existing Bonds) in a manner that will yield net debt service payment savings to the Agency.

Within thirty (30) days of receiving the Agency's request for subordination and the demonstration described above, the County shall approve or disapprove such request. The County may disapprove the request only if it reasonably finds, based on substantial evidence, that the Future Indebtedness does not satisfy one of the conditions set forth in paragraphs (1) and (2) above. If the County does not act within thirty (30) days after receipt of the Agency's request, the request to subordinate shall be deemed approved and shall be final and conclusive. The County shall execute any instrument reasonably required by the Agency to evidence the foregoing subordinations. Notwithstanding the foregoing provisions of this subsection (c), the County shall not be required to grant the subordination required by this subsection (c) with respect to a particular Future Indebtedness unless the City also grants the subordination required by subsection (b) below with respect to such Future Indebtedness.

Section 5.5 Agreements With Respect to Dutra Funds. The Parties acknowledge and agree that:

(a) the City intends (although it is not obligated by the terms of this Agreement) to obtain the funds for construction of Phase 1 Improvements and a Three Million

Six Hundred Thousand Dollar portion of the funds for construction of the Phase 2 Improvements from Dutra pursuant to the terms of the City/Dutra Agreement;

(b) the Agency's sole obligations with respect to any such funds received by the City from Dutra shall be to repay the City the Phase 1 Reimbursement Payments pursuant to Section 2.3 and to repay the City the Phase 2 Reimbursement Payments (Dutra Portion) pursuant to Section 3.4(a);

(c) the City shall be solely responsible for repayment of any amounts it may owe to Dutra in accordance with the City/Dutra Agreement;

(d) the Agency shall have no obligations to Dutra under the terms of this Agreement, the City/Dutra Agreement, or otherwise; and

(e) Dutra shall not be a third party beneficiary under this Agreement.

ARTICLE 6
GENERAL PROVISIONS

Section 6.1 CEQA Compliance. To the extent applicable to the design and construction of the Mt. Eden Improvements, the City shall comply with and implement, or shall cause its authorized party(ies) to comply with and implement, the environmental mitigation measures set forth in: (a) the City EIR Resolution; (b) the County/Agency EIR Resolutions; and (c) any Subsequent CEQA Documents and the accompanying findings described in Sections 3.4(d)(1) and 4.3(c)(1).

Section 6.2 No City Pass-Through Payments. Notwithstanding the Mt. Eden Annexation or any property tax sharing agreement entered into between the City and the County, the Parties acknowledge and agree that the City shall not be deemed an affected taxing entity with respect to the Project Area within the meaning of Health and Safety Code Section 33353.2 and shall not be entitled to receive any statutory pass-through payments with respect to the Mt. Eden Sub-Area pursuant to Section 33607.5 or any other provision of the Redevelopment Law. Instead, the Agency shall be entitled to retain any statutory pass-through payments with the respect to the Mt. Eden Sub-Area pursuant to Section 33607.5 or any other provision of the Redevelopment Law that might otherwise be payable to the City as a result of the City's annexation of any portion of the Mt. Eden Sub-Area. If the County Auditor-Controller inadvertently makes any such payment to the City, the City shall promptly pay such payments over to the Agency.

Section 6.3 Ongoing Agency Jurisdiction. Notwithstanding the Mt. Eden Annexation, the Agency shall retain redevelopment jurisdiction and shall remain responsible for implementing the redevelopment program for the Project Area, including the Mt. Eden Sub-Area portion of the Project Area, pursuant to the Redevelopment Plan and the Redevelopment Law. Without limiting the foregoing, the Agency shall continue to have the authority, at its election, to expend funds from its Housing Fund for affordable housing activities in the Mt. Eden Sub-Area.

Section 6.4 State Law. This Agreement, and the rights and obligations of the Parties hereto, shall be construed and enforced in accordance with the laws of the State of California.

Section 6.5 Affordable Housing Requirement.

(a) Overview. As fully set forth in this Section 6.5, the parties shall cooperate to assure that the Agency is able to comply with the Affordable Housing Requirement. Assuming anticipated full residential build-out of the Mt. Eden Sub-Area with approximately three hundred seventy-five (375) new residential units, compliance with the Affordable Housing Requirement will entail assuring production of approximately thirty-four (34) new Moderate Income Units and approximately twenty-three (23) new Very Low Income Units.

The parties acknowledge and agree that the City will not require the production of any new Affordable Units within the one hundred forty-nine (149) unit Initial Residential Development, thereby creating an initial deficit toward compliance with the Affordable Housing Requirement of fourteen (14) Moderate Income Units and nine (9) Very Low Income Units (the "Initial Residential Development Affordable Housing Requirement"). To subsequently satisfy the Initial Residential Development Affordable Housing Requirement and to assure ongoing compliance with Affordable Housing Requirement as Future Residential Developments are undertaken, the parties have implemented and shall implement the following actions.

(b) Legislation. The parties have cooperated to sponsor and obtain enactment and immediate effectiveness of the 2006 Legislation to provide an alternative method for the Agency to achieve, in part, the Affordable Housing Requirement by obtaining credit for the Affordable Units to be developed in the Adjacent Affordable Housing Development, on the basis of one Affordable Unit of credit toward the Affordable Housing Requirement for each two Affordable Units developed in the Adjacent Affordable Housing Development.

In order to perfect the intention of the 2006 Legislation, the parties shall cooperate to seek enactment during the 2007 legislative session of a clean-up provision to the 2006 Legislation consisting of an amendment to Section 33413.1(c) of the Redevelopment Law (the "Legislation Amendment") that will enable the Agency to receive credits toward the Affordable Housing Requirement with respect to the Affordable Units in the Adjacent Affordable Housing Development throughout the duration of the Redevelopment Plan.

If the Legislation Amendment is enacted and becomes effective on or before January 1, 2008, then no further action shall be required pursuant to this subsection (b). If the Legislation Amendment is not enacted and/or does not become effective on or before January 1, 2008, then as soon as it is reasonably determined that such condition will not be met, the parties shall confer in good faith to seek a mutually acceptable alternative means (an "Alternative Means") to achieve the purposes of the 2006 Legislation and to assure compliance with the Affordable Housing Requirement. Among the Alternative Means to be considered are:

(1) processing of an amendment to the Redevelopment Plan to add to the boundaries of the Mt. Eden Sub-Area of the Project Area the property on which the Adjacent Affordable Housing Development will be constructed; or

(2) establishing a procedure for obtaining a sufficient number of Affordable Units in the Future Residential Developments to fully satisfy the Affordable Housing Requirement, including making up the Initial Residential Development Affordable Housing Requirement.

The parties shall diligently proceed to implement any mutually acceptable Alternative Means to achieve the Affordable Housing Requirement in a manner consistent with all applicable legal requirements.

(c) Adjacent Affordable Housing Development. Eden Housing, Inc., and its intended assignee, Saklan Avenue Limited Partnership, a California limited partnership, have secured land use entitlements from the City and are in the process of securing tax-exempt bond financing and other financing to develop and construct the Adjacent Affordable Housing Development. Construction of the Adjacent Affordable Housing Development is anticipated to commence in December, 2006.

In accordance with Section 33413.1(a)(4) of the Redevelopment Law, as of the date of execution of this Agreement, the City shall cause the Redevelopment Agency of the City of Hayward to deliver its written consent in the form attached to this Agreement as Exhibit E (the "Hayward Agency Consent"). The City acknowledges and agrees that the Agency has materially relied on the receipt of the consent, representations and agreements contained in the Hayward Agency Consent in entering into this Agreement. As set forth in the Hayward Agency Consent and as required by Section 33413.1(a)(4) of the Redevelopment Law, the Redevelopment Agency of the City of Hayward shall not count any of the Affordable Units in the Adjacent Affordable Housing Development toward its own affordable housing production or replacement housing requirements under Section 33413 of the Redevelopment Law. However, nothing in this Agreement shall preclude the City and Dutra from applying such Affordable Units toward fulfillment of the City's inclusionary housing ordinance, or preclude the City from applying such Affordable Units toward fulfillment of its regional housing needs allocation and its general plan housing element objectives.

The City has caused the recordation of the Regulatory Agreement against the property on which the Adjacent Affordable Housing Development will be developed. The City shall diligently enforce the terms of the Regulatory Agreement. The City shall not cause or permit the subordination of the lien of the Regulatory Agreement to another lien, encumbrance or regulatory agreement except as permitted and authorized pursuant to Section 33334.14(a) of the Redevelopment Law, and shall not permit the amendment of the Regulatory Agreement without the prior written consent of the Agency. The City shall provide the Agency with not less than thirty (30) days notice prior to causing or permitting any such subordination of the Regulatory Agreement or prior to any proposed amendment of the Regulatory Agreement; such notice to include the proposed nature and terms of subordination or amendment, as applicable.

The City acknowledges and agrees that the Agency is a third party beneficiary who may also enforce the terms of the Regulatory Agreement, but only if the City continues to fail to enforce such terms itself after the passage of a sixty (60) day cure period following notice by the Agency to the City of such failure on the City's part.

The parties shall use diligent good faith efforts to cause the owner and developer of the Adjacent Affordable Housing Development to commence construction of the Adjacent Affordable Housing Development as soon as is practicable, and in any event by not later than December 31, 2011, and thereafter to diligently complete construction and obtain initial and continued occupancy and operation of the Adjacent Affordable Housing Development in accordance with the terms of the Regulatory Agreement.

If the Legislation Amendment is enacted and becomes effective, and if the terms of this subsection (c) and the Regulatory Agreement are complied with, such that the Adjacent Affordable Housing Development is constructed, occupied and operated in a manner consistent with the 2006 Legislation (as amended by the Legislation Amendment) and the Regulatory Agreement, then the Agency will become entitled to take credit toward the Affordable Housing Requirement for the production of thirty-eight (38) Very Low Income Units (some of which may be counted by the Agency as Moderate Income Units to the extent there are more than enough Very Low Income Units produced to meet the Affordable Housing Requirement. These credits generated by the Adjacent Affordable Housing Development will, in turn, completely satisfy the Initial Residential Development Affordable Housing Requirement, and satisfy in advance the Affordable Housing Requirement with respect to the production of up to one hundred (100) unrestricted dwelling units in Future Residential Developments.

(d) Future Residential Developments. The provisions of this subsection (d) shall apply to any dwelling units proposed to be constructed in a Future Residential Development for which, as of the date that the developer of such units applies to the City for any necessary land use or building entitlements or approvals, compliance with the Affordable Housing Requirement has not already been achieved in advance, either through application of the credits received with respect to the Adjacent Affordable Housing Development as provided in the last paragraph of subsection (c) above or through implementation of an Alternate Means as provided in subsection (b) above. The units described in the preceding sentence are referred to as "Uncovered Units".

The City shall condition its grant of any land use and building entitlements and approvals for each Future Residential Development that would contain any Uncovered Units on the requirement that the owner of such Future Residential Development record a deed restriction, regulatory agreement, or other covenant running with the land upon which the Future Residential Development will be constructed (a "Future Residential Development Affordability Covenant"), in form reasonably approved by the Agency, obligating the owner and its successors in interest to cause the development and sale or rental of a sufficient number of Affordable Units so that there will be no deficit in the Agency's compliance with the Affordable Housing Requirement as of the date of completion of such Future Residential Development.

Thereafter, the City shall diligently enforce the terms of any Future Residential Development Affordability Covenant. The City acknowledges and agrees that the Agency shall be made a third party beneficiary who may also enforce the terms of any Future Residential Development Affordability Covenant.

(e) No Housing Fund Expenditures. Nothing in this Agreement shall require the Agency to expend any monies from its Housing Fund in order to obtain compliance with the Affordable Housing Requirement.

Section 6.6 Notices. Any notice or communication required to be given under this Agreement by a Party shall be in writing, and may be given either personally, by facsimile transmission, by reputable overnight courier or by registered or certified mail, return receipt requested. If delivered by registered or certified mail, a notice shall be deemed to have been given and received on the first to occur of: (a) actual receipt by an addressee designated below as a Party to whom notices are to be sent; or (b) five (5) days after the registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If delivered personally, by facsimile transmission or by overnight courier, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. A Party may at any time, by giving ten (10) days written notice to the other Parties pursuant to this Section 4.5, designate any other address in substitution of the address to which such notice or communication shall be given.

Notices shall be given to the Parties at their address set forth below:

Agency: Alameda County Redevelopment Agency
224 W. Winton Avenue, Room 110
Hayward, CA 94544-1215
Attention: Eileen Dalton
Phone: (510) 670-6509
Fax: (510) 670-6374

City: City of Hayward
777 B Street, 4th Floor
Hayward, CA 94541
Attention: City Manager
Phone: (510) 583-4305
Fax: (510) 583-3601

County: County of Alameda
1221 Oak Street, Room 555
Oakland, CA 94612
Attention: County Administrator
Phone: (510) 272-6984
Fax: (510) 272-3784

Section 6.7 Non-Liability of Officials. No member, official, employee or agent of the City shall be personally liable to the Agency or the County, or any successor in interest, in the event of any default or breach by the City for any amount which may become due to the Agency or County or successor or on any obligation under the terms of this Agreement. No member, official, employee or agent of the County shall be personally liable to the Agency or the City, or any successor in interest, in the event of any default or breach by the County for any amount which may become due to the Agency or City or successor or on any obligation under the terms

of this Agreement. No member, official, employee or agent of the Agency shall be personally liable to the City or the County, or any successor in interest, in the event of any default or breach by the Agency for any amount which may become due to the City or County or successor or on any obligation under the terms of this Agreement.

Section 6.8 Actions of the Parties. Except as otherwise provided in this Agreement, whenever this Agreement calls for or permits a Party's approval, consent, or waiver, the written approval, consent, or waiver of the Agency Executive Director, the City Manager, and the County's Administrator (or their respective designees) shall constitute the approval, consent, or waiver of the Agency, the City, and the County, respectively, without further authorization required from the governing board of the Party; provided, however, that the person vested with such authority may seek such further advice or authorization from the applicable governing board when she/he deems it appropriate.

Section 6.9 Indemnification.

(a) Indemnification. The City shall indemnify, defend, protect, and hold the Agency, the County and their directors, officers, agents and employees harmless from and against any and all claims, losses, demands, damages, costs, expenses (including attorneys' fees), judgments, penalties, obligations and liabilities whatsoever for or in connection with injury (including death) to any person or damage to or loss of property or pecuniary or monetary loss resulting from, arising out of or in any way related to this Agreement, regardless of how the injury or damage was caused or suffered, except to the extent caused by the negligence of the Agency, the County, or their directors, officers, agents or employees, in which case liability shall be apportioned according to fault. In the event any such claim is made naming directors, officers, agents or employees, the City shall immediately notify the Agency and the County, whereupon the Agency and the County shall have the right to elect either to be defended by the City or to retain their own counsel at the expense of the City. The provisions of this Section 4.8 shall survive any termination of this Agreement.

(b) Apportionment. In the event a judgment is entered against the Agency and/or the County and the City, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. No Party shall request a jury apportionment. Notwithstanding the foregoing, in the event that the Agency and/or the County is entitled to indemnity as provided in subsection (a) above, the City shall indemnify the Agency, the County and their directors, officers, agents and employees to the full extent provided in subsection (a) above.

Section 6.10 Nondiscrimination. The City and its contractors, subcontractors, agents, and employees shall not, because of the race, religion, creed, color, national origin, ancestry, sexual orientation, physical disability, mental disability, medical condition, marital status, or sex of any person, refuse to hire or employ the person, or refuse to select the person for a training program leading to employment, or bar or discharge the person from employment or from a training program leading to employment, or discriminate against the person in compensation or in terms, conditions or privileges of employment with respect to performance of this Agreement.

Section 6.11 No Third Party Beneficiaries. No person or entity other than the Agency, the City, the County and their permitted successors and assigns, shall have any right of action under this Agreement.

Section 6.12 Compliance With Legal Requirements. The City shall comply with all requirements of applicable federal, state and local laws, ordinances and regulations in connection with this Agreement, including, without limitation, (a) the Redevelopment Law, and (b) applicable prevailing wage and competitive bidding laws and regulations.

Section 6.13 Records.

(a) Retention by City. The City shall maintain complete and accurate financial accounts, documents and records with respect to the performance of its obligations under this Agreement, and shall make same available to the Agency's authorized agents for copying and auditing upon reasonable prior notice. Such accounts, documents and records shall be retained by the City for at least three years following completion of the Mt. Eden Improvements.

(b) Retention by Agency. The Agency shall maintain complete and accurate financial accounts, documents and records with respect to the performance of its obligations under this Agreement, and shall make same available to the authorized agents of the City and the County for copying and auditing upon reasonable prior notice. Such accounts, documents and records shall be retained by the Agency for at least three years following satisfaction of the Agency's obligations to make its final Reimbursement Payments pursuant to this Agreement.

Section 6.14 Inspection of Documents. During the regular office hours and upon reasonable prior notice, the City, the Agency and the County, by their duly authorized representatives, shall have the right to inspect and make copies of any books, records or reports of the other Parties pertaining to this Agreement.

Section 6.15 Additional Acts. The Parties each agree to take such other and additional action and execute and deliver such other and additional documents as may be reasonably requested by another Party for purposes of consummating the transactions contemplated in this Agreement.

Section 6.16 Litigation Regarding Agreement Validity. In the event litigation is initiated attacking the validity of this Agreement, each Party shall in good faith defend and seek to uphold the Agreement.

Section 6.17 Litigation Between Parties. Should a Party institute legal proceedings for the interpretation or enforcement of this Agreement, the Party prevailing therein shall be entitled to recover its reasonable attorneys' fees and costs from the losing Party. It is not necessary for recovery that the prevailing Party prevail in each and every of its claims; rather the court shall, in its discretion, apportion attorneys' fees based on the extent to which the prevailing Party prevailed and the losing Party lost.

Section 6.18 Entire Agreement; Modification. This Agreement contains all of the agreements and understandings of the Parties pertaining to the subject matter contained herein and supercedes all prior or contemporaneous agreements, representations and understandings of the Parties. This Agreement cannot be amended or modified except by written agreement of the Parties.

Section 6.19 Maintenance of Tax Increment Revenues. The Agency shall comply with all requirements of the Redevelopment Law to insure the allocation and payment to it of the Tax Increment Revenues, including without limitation the timely filing of any necessary statements of indebtedness with the appropriate officials of the County. The County and the Agency shall not amend the Redevelopment Plan or enter into any agreement with a governmental or private entity that would have the effect of reducing the Mt. Eden Net Tax Increment Revenue available to make Reimbursement Payments pursuant to this Agreement without the prior written consent of the City. The City shall promptly and reasonably consider any County and Agency request for such consent.

Section 6.20 Effective Date. This Agreement shall be effective as of the date first written above.

Section 6.21 Default and Remedies.

(a) Defaults; Cure Periods; Events of Default. Material failure by a Party to timely perform or observe the terms or provisions of this Agreement shall be considered a default by that Party under this Agreement. Upon occurrence of a default, a non-defaulting Party may provide written notice of such default, and, where appropriate, the manner in which the default may be satisfactorily cured. Receipt of such notice by the defaulting Party shall commence a fifteen (15) day cure period with respect to any monetary payment default, or a thirty (30) day cure period with respect to any non-monetary payment default; provided, however, that if a non-monetary payment default reasonably requires more than thirty (30) days to cure, then, so long as the defaulting Party has taken substantial steps to commence such cure within thirty (30) days after receipt of notice of the default, and thereafter diligently prosecutes such cure to completion, the cure period shall be such longer period as is reasonably required with diligent prosecution to cure such default, but in no event longer than ninety (90) days unless otherwise reasonably approved by the non-defaulting Party. Failure by the defaulting Party to cure the default by the end of such cure period shall constitute, and is referred to as, an "Event of Default."

(b) Remedies. Upon occurrence of an Event of Default, a non-defaulting Party may terminate this Agreement by written notice to the defaulting Party and/or may seek any remedy at law or in equity that may be available with respect to such Event of Default, including without limitation, specific performance and damages. No termination of this Agreement shall affect or render invalid those terms of this Agreement that are specified to survive termination.

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth in the opening paragraph of this Agreement.

CITY:

CITY OF HAYWARD

By: _____
Jesús Armas
City Manager

FORM APPROVED
CITY ATTORNEY
BY _____

COUNTY:

COUNTY OF ALAMEDA

By: _____
Keith Carson
President of the Board of Supervisors

AGENCY:

REDEVELOPMENT AGENCY OF THE
COUNTY OF ALAMEDA

By: _____
Keith Carson
President of the Board of Directors

I hereby certify under penalty of perjury that the President of the Board of Supervisors was duly authorized to execute this document on behalf of the County of Alameda by a majority vote of the Board on 12/19/06 and that a copy has been delivered to the President as provided by Government Code Section 25103.

ATTEST:
CRYSTAL HISHIDA GRAFF, Clerk of the Board of Supervisors
County of Alameda, State of California

By: _____ Date: 1/3/07

EXHIBIT C

ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
REDEVELOPMENT AGENCY

AGENDA ITEM NO. 26
December 19, 2006

James E. Sorensen
Agency Director

224
West Winton Avenue
Room 110

Hayward
California
94544-1215

phone
510.670.5333
fax
510.670.6374

www.
acgov.org/cda

December 4, 2006

Honorable Board of Supervisors
County of Alameda
Administration Building
1221 Oak Street
Oakland, CA 94612

Dear Board Members:

Subject: Mt. Eden Annexation and Public Improvement Agreement

RECOMMENDATION: That the Board of Supervisors:

1) Approve a Resolution making the findings required under Health and Safety Code Section 33445 that: (a) construction of the Mt. Eden public improvements are of benefit to the Eden Area Redevelopment Project and the immediate surrounding neighborhoods; (b) no other reasonable means of financing the majority of the public improvement is available to the community; and, (c) the Alameda County Redevelopment Agency's contribution to the cost of the public improvement will assist in the elimination of one or more blighting conditions in the project area; making the Responsible Agency CEQA Findings; and authorizing the President of the Board of Supervisors to execute the attached Annexation and Public Improvement Agreement between the County of Alameda Redevelopment Agency (Agency), the County of Alameda (County) and the City of Hayward (City); and,
2) Approve the intent to allocate $700,000 from County funds for this project, recognizing that the County retains the flexibility to identify and use other local resources in the future should they materialize.

DISCUSSION/SUMMARY:

The Agency is responsible for the administration of the Eden Area Redevelopment Plan, which was adopted by the Board of Supervisors in July 2000. The Plan includes the five unincorporated Sub Areas of Castro Valley, Cherryland, Foothill (Hillcrest Knolls area), Mt. Eden and San Lorenzo. The Mt. Eden Sub Area is made up of several unincorporated "islands" wholly surrounded by the City of Hayward.

The RDA, County and City have prepared the Annexation and Public Improvement Agreement to allow for the orderly annexation of Mt. Eden in two phases. The Phase 1 annexation is occurring because a land owner has

assembled about 12 acres and has gained City of Hayward approval for a 149 unit residential development project. The resulting RDA tax increment from the new residential development, which can only occur with City water and sewer services, will fund the needed streetscape public improvements needed for both the development and the City annexation. The City of Hayward has agreed to submit the Phase 2 annexation application within one year of the Phase 1 annexation approval.

In order to accomplish both Phase 1 and Phase 2 annexations, the City has agreed to construct, or have a developer construct, approximately $13.5 million of public improvements ($8.5 million for Phase 1 and $5 million for Phase 2). The majority of funding for these improvements is being advanced to the City by the largest single property owner, John Dutra ($12.1 million), with the remaining funding being provided by the County ($700,000), City ($700,000), and KB Homes ($300,000). The RDA proposes to reimburse a majority of these public improvement expenses ($10.8 million) to the City (who will reimburse Dutra and KB Homes), and fully reimburse the City and County for their respective contributions.

Other considerations for the annexations are included in the agreement and include the following: 1) the special legislation that was passed recently (AB 2161) that allows the County to receive required affordable housing production requirement credit from an affordable housing development in the City of Hayward, but directly adjacent to the Mt. Eden Sub Area; and 2) after completion of the Phase 2 annexation and the confirmation of tax increment from the proposed Calpine power plant, the RDA will reimburse the City of Hayward up to $10 million for construction of the Whitesell Drive extension.

Redevelopment Law Section 33421 authorizes redevelopment agencies to construct streets, utilities, and other public improvements necessary for carrying out the Redevelopment Plan with the consent of the legislative body. In order to give its consent, the Board of Supervisors has to find that such improvements are necessary to effectuate the purposes of the Redevelopment Plan. The requirement for findings under Section 33445 provides authority for the Redevelopment Agency to construct the public improvements necessary to stimulate private reinvestment throughout the Redevelopment Plan as well as eliminate blight. The Mt. Eden public improvements will eliminate both economic and physical blighting conditions by providing needed water and sewer connections and thereby improving property values and property owners' ability to redevelop their property. The County does not have the funds to provide the improvements, as evidenced by the many unmet needs in the County's Capital Improvement Plan.

FINANCING:

The RDA will make annual reimbursement payments from tax increment generated by the Mt. Eden Sub Area. There are several potential sources for the $700,000 County contribution which can be considered and evaluated based on circumstances at the time funds are needed. Commitment of tax increment revenue will result in no Net County Cost.

Very truly yours,

Eileen Dalton for

James E. Sorensen, Executive Director
Alameda County Redevelopment Agency

Attachments:

1. Resolution Authorizing Execution of Agreement and Making 33445 Statutory Findings
2. Mt. Eden Annexation and Public Improvement Agreement

cc: Susan, Muranishi, County Administrator
Richard E. Winnie, County Counsel
Patrick O'Connell, Auditor-Controller
U.B. Singh, CDA Finance Director
Eileen Dalton, Redevelopment Director
Jesus Armas, City Manager, City of Hayward

EXHIBIT D

ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
REDEVELOPMENT AGENCY

James E. Sorensen
Agency Director

224
West Winton Avenue
Room 110

Hayward
California
94544-1215

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acgov.org/cda

AGENDA ITEM NO. 27
December 19, 2006

December 4, 2006

Honorable Board of Directors
County of Alameda Redevelopment Agency
Administration Building
1221 Oak Street
Oakland, CA 94612

Dear Board Members:

Subject: Mt. Eden Annexation and Public Improvement Agreement

RECOMMENDATION: That the Board of Directors approve a Resolution:

1) authorizing the President of the Board of Directors to execute the attached Annexation and Public Improvement Agreement between the County of Alameda Redevelopment Agency (Agency), the County of Alameda (County) and the City of Hayward (City); and
2) making the Responsible Agency CEQA Findings.

DISCUSSION/SUMMARY:

The Agency is responsible for the administration of the Eden Area Redevelopment Plan, which was adopted by the Board of Supervisors in July 2000. The Plan includes the five unincorporated Sub Areas of Castro Valley, Cherryland, Foothill (Hillcrest Knolls area), Mt. Eden and San Lorenzo. The Mt. Eden Sub Area is made up of several unincorporated "islands" wholly surrounded by the City of Hayward.

The RDA, County and City have prepared the Annexation and Public Improvement Agreement to allow for the orderly annexation of Mt. Eden in two phases. The Phase 1 annexation is occurring because a land owner has assembled about 12 acres and has gained City of Hayward approval for a 149 unit residential development project. The resulting RDA tax increment from the new residential development, which can only occur with City water and sewer services, will fund the needed streetscape public improvements needed for both the development and the City annexation. The City of Hayward has agreed to submit the Phase 2 annexation application within one year of the Phase 1 annexation approval.

In order to accomplish both Phase 1 and Phase 2 annexations, the City has agreed to construct, or have a developer construct, approximately $13.5 million of public improvements ($8.5 million for Phase 1 and $5 million for Phase 2). The majority of funding for these improvements is being advanced to the City by the largest single property owner, John Dutra ($12.1 million), with the remaining funding being provided by the County ($700,000), City ($700,000), and KB Homes ($300,000). The RDA proposes to reimburse a majority of these public improvement expenses ($10.8 million) to the City (who will reimburse Dutra and KB Homes), and fully reimburse the City and County for their respective contributions.

Other considerations for the annexations are included in the agreement and include the following: 1) the special legislation that was passed recently (AB 2161) that allows the County to receive required affordable housing production requirement credit from an affordable housing development in the City of Hayward, but directly adjacent to the Mt. Eden Sub Area; and 2) after completion of the Phase 2 annexation and the confirmation of tax increment from the proposed Calpine power plant, the RDA will reimburse the City of Hayward up to $10 million for construction of the Whitesell Drive extension.

FINANCING:

The RDA will make annual reimbursement payments from tax increment generated by the Mt. Eden Sub Area. Commitment of tax increment revenue will result in no Net County Cost.

Very truly yours,

Eileen Dalton for

James E. Sorensen, Executive Director
Alameda County Redevelopment Agency

Attachments:

1. Resolution Authorizing Execution of Agreement and Making 33445 Statutory Findings
2. Mt. Eden Annexation and Public Improvement Agreement

cc: Susan, Muranishi, County Administrator
Richard E. Winnie, County Counsel
Patrick O'Connell, Auditor-Controller
U.B. Singh, CDA Finance Director
Eileen Dalton, Redevelopment Director
Jesus Armas, City Manager, City of Hayward

EXHIBIT E

SUMMARY ACTION MINUTES

BOARD OF SUPERVISORS

Regular Meeting **Tuesday, December 19, 2006**

COUNTY ADMINISTRATION BUILDING
SUPERVISORS' CHAMBER
1221 OAK STREET
FIFTH FLOOR, ROOM 512
OAKLAND, CALIFORNIA

SCOTT HAGGERTY, VICE-PRESIDENT	**DISTRICT 1**
GAIL STEELE	**DISTRICT 2**
ALICE LAI-BITKER	**DISTRICT 3**
NATE MILEY	**DISTRICT 4**
KEITH CARSON, PRESIDENT	**DISTRICT 5**

SUSAN S. MURANISHI
COUNTY ADMINISTRATOR

RICHARD E. WINNIE
COUNTY COUNSEL

MISSION STATEMENT

THE BOARD OF SUPERVISORS OF ALAMEDA COUNTY, THROUGH THE DEDICATION, EXCELLENCE, AND DIVERSITY OF ITS EMPLOYEES, IS COMMITTED TO SERVE THE NEEDS OF THE COMMUNITY AND TO ENHANCE THE QUALITY OF LIFE

The Board of Supervisors welcomes you to its meetings and your interest is appreciated. If you wish to speak on a matter on the agenda or during public input, please fill out a speaker slip at the front of the Chambers and turn it in to the Clerk as soon as possible. When addressing the Board, please give your name for the record prior to your presentation. If you wish to speak on a matter **not** on the agenda, please wait until the President calls for public input at the end of the Regular Calendar. **NOTE:** Only matters within the Board of Supervisors' jurisdiction may be addressed. Time limitations shall be at the discretion of the President of the Board.

Pursuant to Board Policy: (1) Signs or demonstrations are prohibited during Board meetings; (2) Any Board Member may request a **two-week** continuance on any item appearing for the first time; (3) All agenda items shall be received by the County Administrator prior to 3 p.m. on Tuesday **two** weeks before the meeting date or earlier when a Holiday intervenes.

Hearing difficulty? Please ask the Clerk for use of a personal sound receiver. The Board of Supervisors' meetings are wheelchair accessible. Call (510) 208-4949 (voice) or (510) 834-6754 (TDD) to request a sign-language interpreter. Five working days' notice is required. If you have questions regarding the agenda, please call (510) 208-4949.

Attention: The Alameda County internet address is www.acgov.org. All regular Board of Supervisors' meetings held in the Board Chamber can be heard live on the Board's web page. In order to log on, please do the following: click on the County's homepage as noted above and click on the "Board of Supervisors Meeting - LIVE! Broadcast" link. You may also access archived audio recordings, meeting agenda and minutes, as well as meeting dates on the Board's web page http://www.acgov.org/board/index.htm. All documents are archived on the web page for a period of 6 months.

Normally, the Board meets on Tuesdays and their **meeting begins no earlier than 11:00 a.m.** and may begin later, depending on the Closed Session, which normally begins at 9:00 a.m.

SUMMARY ACTION MINUTES

9:00 A.M.

CALL TO ORDER AND SALUTE TO FLAG

1235	**APPROVED MINUTES OF SPECIAL MEETINGS:**	**TUESDAY, NOVEMBER 14, 2006**
X	**REGULAR MEETING:**	**TUESDAY, DECEMBER 11, 2006**
		TUESDAY, DECEMBER 12, 2006
		TUESDAY, DECEMBER 5, 2006

CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATORS

Agency Negotiators:	Denise-Eaton May and Keith Fleming
Employee Organizations:	All Labor Organizations
Agency Negotiators:	Denise Eaton-May and Keith Fleming
Employee Organization:	Unrepresented Management
Agency Negotiators:	Denise Eaton-May and Keith Fleming
Employee Organizations:	Service Employees International Union Locals 535 and 616
Agency Negotiators:	Denise Eaton-May and Keith Fleming
Employee Organization:	Probation Peace Officers Association
Agency Negotiators:	Denise Eaton-May and Keith Fleming
Employee Organization:	Alameda County Welfare Fraud Investigators Association
Agency Negotiators:	Denise Eaton-May and Keith Fleming
Employee Organizations:	International Association of Firefighters Local 55A and 55B

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION

Initiation of litigation pursuant to Subdivision (c) of Government Code § 54956.9: (Five Cases)

Significant exposure to litigation pursuant to Subdivision (b) of Government Code § 54956.9: (Four Cases)

11:00 A.M. - SET MATTERS

1. **CONSENT CALENDAR (See Appendix, Item Numbers 40 - 67)**
13245 **Approved as recommended**

11:00 A.M. - REGULAR CALENDAR

BOARD OF SUPERVISORS' REMARKS

President Carson recognized Rodney Brooks, Chief of Staff, District 5 for his work on the AB 1998

President Carson announced the appointment of Sheldon D. Gilbert as Alameda County Fire Chief, effective 12/31/06

Supervisor Steele requested the meeting be adjourned in memory of a 16 year old boy from Livermore

PROCLAMATION/COMMENDATION

1A. *Supervisor Haggerty* – Commendation for Captain Stephen Bell of the California Highway Patrol
Presented **FILE 20710**

2. *Supervisor Miley* – Proclaim December 31, 2006 as "Sister Mable Williams Day"
Presented **FILE 20710**

PUBLIC ASSISTANCE

3. *Social Services Agency* – Approve and authorize acceptance of a grant from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Programs to support the operation of the Children's Assessment Center and authorize an appropriation equal to the granted funds, 5/1/06 – 4/30/07 ($296,168) – CAO Recommends: Approve – (4/5 Vote)
13245 **Approved as recommended** **FILE 21619**
R-2006-483F

HEALTH CARE SERVICES

4. Approve the following recommendations related to the Public Health Department, Emergency Medical Services and Division of Communicable Disease Control and Prevention:

A. Accept donation in the amount of $100 from Home Health Care Management, Inc., for the Senior Injury Prevention Programs group training
B. Accept gifts of 23 child car restraint seats with monetary value of $2,196.15 from Safe Kids Worldwide, Safe Kids Coalition Alameda County and Kiwanis Cal-Nev-Ha for Injury Prevention Safe Kids Programs; and
C. Accept donation in the amount of $343 from the Mastick Senior Center, Alameda for services rendered by its nurses in providing flu vaccination to senior at the Center

– CAO Recommends: Approve
13245 **Approved as recommended** **FILE 21620**
R-2006-503F

5. Approve standard agreements to improve School-Based/Linked Health Center facilities and develop youth advocacy program, 12/1/06 – 6/30/07:

A. Alameda Family Services formerly Xanthos, Contract No. 796 (Principal: Irene Kudaraskas; Location: Alameda) for capital and technology improvements and to implement a youth advocacy program at the Alameda and Encinal School-Based Health Centers ($30,329)
B. East Asian Youth Center Contract No. 804 (Principal: David Kakishiba; Location: Oakland) for capital and technology improvements to the Roosevelt Health Center ($10,000); and
C. Approve related budget adjustments

– CAO Recommends: Approve – (4/5 Vote)

13245 **Approved as recommended** **FILE 21621 R-2006-484F C-796 & 804**

6. Accept the State of California Department of Health Services allocation for California Children Services – Administration/Medi-Cal Program to assure eligible California children will receive quality medical, dental and support services, 7/1/06 – 6/30/07 ($8,118,532); and approve pay unit and related budget adjustments – CAO Recommends: Approve – (4/5 Vote)

13245 **Approved as recommended** **FILE 21622 R-2006-485F**

7. Approve and authorize the execution of a standard agreement (Contract No. 822) between Children's Infectious Disease Medical Group, Inc. (Principal: Parvin H. Azimi; Location: Oakland) and the Public Health Department, Field Nursing Tuberculosis Program, 7/1/06 – 6/30/07 ($54,000) – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21623 C-822**

8. Approve and authorize the execution of a standard agreement (Contract No. 824) between Nichols-Hill Pharmacy (Principal: Benjamin Yuh; Location: Oakland) and the Public Health Department, Field Nursing Tuberculosis Program, 7/1/06 – 6/30/07 ($35,000) – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21623 C-824**

9. Accept and approve the subcontracting agreement between Dental Health Foundation and Public Health Department, Community Health Services, Dental Health Program to provide oral health services for children 0-11 years old, 1/1/07 – 12/30/09 ($729,444); authorize the necessary budget and pay unit adjustments; and approve a waiver of the policy that all indirect costs must be reimbursed, and use of the County's indirect cost in the amount of $300 as in-kind match – CAO Recommends: Approve – (4/5 Vote)

13245 **Approved as recommended** **FILE 21624 R-2006-486F C-2006-334**

10. *Health Care Services Agency and General Services Agency* – Authorize the Purchasing Agent to negotiate and sign a master contract (Contract No. 900069) with SCI Consulting Group (Principal: Gerard Van Steyn; Location: Fairfield) to provide assistance to the County Service Area VC 1984-1 (Vector Control) in conducting a benefit assessment special election and related administrative services, 1/1/07 – 12/31/10 ($625,325) – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21310 C-900069**

GENERAL ADMINISTRATION

10A. *Supervisor Miley* – Authorize the Sheriff's Office to temporarily suspend the collection of the annual alcohol sales and regulatory fee until 4/1/07 to allow the Board to evaluate potential fee changes

13245 **Approved as recommended** **FILE 21625**

Community Development Agency:

11. Second reading and adoption of an ordinance amending the boundaries for Supervisorial Districts 1 and 4 to change the boundary so that all of Census Tract 4507.21 is in District 1 – (4/5 Vote) – **Continued from Tuesday, 12/5/06 (Item #13A) for second reading**

42135 **Read title, waived reading of ordinance in its entirety and adopted** **FILE 21600**
Ordinance O-2006-59 **O-2006-59**

12. Authorize the execution of a contract (Contract No. 775) with the Prescott Joseph Center for Community Enhancement (Principal: Washington Burns; Location: Oakland) to provide funding for Healthy Homes Demonstration project activities, 12/1/06 – 10/31/09 ($225,000) – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21626**
C-775

13. Authorize the execution of a contract (Contract No. 774) with Manos Janitorial Cooperative (Principal: Otto Rodriguez; Location: Oakland) to provide funding for Healthy Homes Demonstration project activities, 1/1/07 – 10/31/09 ($75,000) – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21626**
C-774

14. Authorize the execution of a contract (Contract No. 776) with the Community Energy Services Corporation (Principal: Nancy Hoeffer; Location: Berkeley) to provide funding for Healthy Homes Demonstration project activities, 12/1/06 – 10/31/09 ($97,500) – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21626**
C-776

15. Approve the following recommendations related to the City of Livermore:

A. Approve an agreement to provide construction management services for the rental rehabilitation of the properties located at 2260, 2262, 2264, 2276, 2278 and 2280 Chestnut Street in the City of Livermore

B. Authorize the Agency Director to execute the Instructions and Authorization for Payment of Rehabilitation Loan Funds to the County for Project Administration Fees to provide administration, construction management services and construction contract disbursements for a rental rehabilitation program, 7/1/06 – 6/30/07 ($150,000); and

C. Authorize the Agency Director to execute any amendments to the contract for revisions that do not significantly alter the scope of work or alter the fee schedule by more than twenty five thousand or ten percent

– CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21627**

16. Authorize the Agency Director to execute the annual renewal of the high risk pest exclusion services contract with the State of California Department of Food and Agriculture to continue the exclusion program, 7/1/06 – 6/30/07 ($411,460); and approve pay unit and budget adjustments – CAO Recommends: Approve – (4/5 Vote)

13245 **Approved as recommended** **FILE 21628**
R-2006-487F

17. Approve and authorize the execution of a contract amendment (Contract No. 808) with CSB Consulting (Principal: Cassandra Benjamin; Location: Oakland) for assistance in implementing EveryOne Home: The Alameda County-wide Homeless and Special Needs Housing Plan, extending the term from 12/31/06 to 12/31/07, and increasing the amount from $21,000 to $46,000 ($25,000 increase) – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21517**
C-808

18. Approve and authorize the execution of a contract amendment (Contract No. 805) with M. Leshin Consulting (Principal: Maryann Leshin; Location: Oakland) for creation and implementation of housing development policies and procedures for Mental Health Service Act funding, extending the term from 12/31/06 to 6/30/07, and increasing the amount from $15,002.50 to $35,487.50 ($20,485 increase) – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21629**
C-805

General Services Agency:

19. Adopt a resolution authorizing the implementation of a competitive bid process to allow for contract awards to Alameda County certified small or emerging businesses, where a sufficient pool of ready, willing and able local certified small business, has been established for the procurement of County products and services pursuant to Section 4.12.070 of the Alameda County Administrative Code – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21630**
R-2006-488

20. Accept the bid of and award a contract (Contract No. 791) to R.A.N. Electric Inc. (Principal: Alfredo Gonzalez; Location: San Leandro) for trenching and construction of conduits in preparation for installing fiber-optics cable at the existing Juvenile Justice Complex, 2200 Fairmont Drive, San Leandro, Project No. CPP06R600800000 ($76,000); approve the encumbrance of an additional $7,600 as a Supplemental Work Allowance for a total encumbered amount of $83,600; and authorize the Agency Director to issue change orders as necessary; and authorize the Agency Director to prepare the proper contract documents and bond forms for completion by the Contractor, have said documents reviewed and approved by County Counsel and executed by the Agency Director – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 20956**
C-791

Human Resource Services:

21. First reading and introduction of a salary ordinance amendment increasing salaries for District Attorney Inspectors, Public Defender Investigators, unrepresented managers and Alameda County Management Employees' Association represented managers in the Probation Department, establishing two new classes, one in the Sheriff's Office and one in the Retirement Association with salary administration criteria and adding three footnotes in the Health Care Services Agency, one in the Information Technology Department, and one County-wide, amending one footnote in the Sheriff's Office and changing the salary for the Chief Probation Officer from a five step range to a deep class range with salary increases to be determined by the Board of Supervisors – CAO Recommends: Approve

13245 **Read title, waived reading of ordinance in entirety and continued to Tuesday, 1/9/06 for second reading** **FILE 21429**

21A. Authorize and direct the Auditor-Controller on behalf of the County of Alameda to contribute $1.3 million to the Alameda County Employees Retirement Association 401(h) account to complete funding through December 31, 2006 – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21383**

22. Authorize the Purchasing Agent to negotiate and sign a time-only master contract amendment (Contract No. 900225) with Diane Akers (Location: Albany) for organizational development services, extending the term from 9/30/06 to 3/31/07, with no increase to the contract amount – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 20683**

22A. *Registrar of Voters* – Approve fiscal year 2006-2007 budget adjustments for election services reimbursement ($2,085,394) – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21631 R-2006-489F**

23. *Treasurer-Tax Collector* – Second reading and adoption of an ordinance reauthorizing the annual delegation of Investment Authority to the County Treasurer – **Continued from Tuesday 12/5/06 (Item #15) for second reading**

14235 **Read title, waived reading of ordinance in its entirety and adopted Ordinance O-2006-60** **FILE 21601 O-2006-60**

23A. *Information Technology Department* – Approve and authorize the execution of Contract No. 820 with Pyramid Business Systems, Inc. (Principal: James Kennedy; Location: Oakland) to provide staffing support for enhancements to the Assessor's automated systems, 12/20/06 – 6/30/07 ($69,000) – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21632 C-820**

County Administrator:

24. Approve the Alameda County Source Reduction and Recycling Board's request to increase the $7.28 per ton Measure D tipping fee surcharge by 2.0% or $0.15 to $7.43 per ton, effective 1/1/07

13245 **Approved as recommended** **FILE 21633**

25. Approve fiscal year 2007-2008 Budget Strategy and preliminary timetable
13245 **Approved as recommended** **FILE 21634**

25A. Approve in-principle and authorize final negotiations for contracts with the three community-based providers to provide community-based dispute resolution services, 1/1/07 – 12/31/09:

A. East Bay Community Mediation Contract No. 828 (Principal: Shar Etebar; Location: Berkeley), $235,000 annually
B. Catholic Charities of the East Bay Contract No. 826 (Principal: Solomon Belette; Location: Oakland), $45,000 annually
C. Center for Community Dispute Settlement Contract No. 829 (Principal: Diane Jeronimo; Location: Livermore), $75,000 annually

13245 **Approved as recommended** **FILE 21635**

25B. Adopt a resolution authorizing the execution of a property tax exchange agreement with the City of Hayward with respect to the proposed annexation of the Mt. Eden Phase I properties known as the Dunn Road, Depot Road and Saklan Road project areas; and authorize the Auditor-Controller to exchange the property tax revenues pursuant to that agreement
13245 **Approved as recommended** **FILE 20503**
R-2006-490
C-335

26. *Community Development Agency* – Approve a resolution making the findings required under Health and Safety Code Section 33445 that: (a) construction of the Mt. Eden public improvements are of benefits to the Eden Area Redevelopment Project and the immediate surrounding neighborhoods; (b) no other reasonable means of financing the majority of the public improvement is available to the community; and (c) the Alameda County Redevelopment Agency's contribution to the cost of the public improvement will assist in the elimination of one or more blighting conditions in the project area; making the Responsible Agency CEQA Findings; and authorize the execution of the Annexation and Public Improvement Agreement between the Alameda County Redevelopment Agency and the City of Hayward; and the intent to allocate $700,000 from County funds for this project, recognizing that the County retains the flexibility to identify and use other local resources in the future should they materialize – CAO Recommends: Approve
13245 **Approved as recommended** **FILE 20503**
R-2006-491

SITTING AS THE REDEVELOPMENT AGENCY

Community Development Agency:

27. Approve a resolution authorizing the execution of the Annexation and Public Improvement Agreement between the Alameda County Redevelopment Agency and City of Hayward; and making the responsible agency CEQA Findings – CAO Recommends: Approve
13245 **Approved as recommended** **FILE 20503**
R-2006-492
C-2006-337

28. Approve a resolution and findings to adopt a California Environmental Quality Act Categorical Exemption for the Castro Valley Redevelopment Strategic Plan; and adopt the Castro Valley Redevelopment Strategic Plan – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21214**
R-2006-493

PUBLIC PROTECTION

29. *Sheriff and Probation* – Approve and authorize the Sheriff and the Chief Probation Officer to enter into a Memorandum of Understanding for the provision of food services at Juvenile Hall, 1/1/07 – 12/31/11 – CAO Recommends: Approve

13245 **Continued to a future date** **FILE 21636**

PUBLIC WORKS

30. First reading and introduction of an ordinance amending the Alameda County Public Works Traffic Code relating to Vehicles and Traffic, which include one change to Chapter 1, Article 4, relating to Stop Intersections; two changes to Chapter 1, Article 7, relating to No Parking Zones and No Stopping Zones; two changes to Chapter 1, Article 11, relating to Passenger Loading Zones; and three changes to Chapter 1, Article 20 relating to Disabled Persons and Veterans Parking Zones in the Castro Valley, Hayward, Livermore and San Lorenzo areas – CAO Recommends: Approve

13245 **Read title, waived reading of ordinance in its entirety and continued to Tuesday, 1/9/06 for second reading** **FILE 20561**

31. Authorize the Auditor-Controller to increase net appropriations in the amount of $3,500,000 for the Lewelling Boulevard/East Lewelling Boulevard Widening Project – CAO Recommends: Approve – (4/5 Vote)

13245 **Approved as recommended** **FILE 21637**
R-2006-494F

32. Approve a resolution adopting the 2006 Alameda Countywide Bicycle Master Plan as approved by the Congestion Management Authority to improve bicycle transportation and safety in Alameda County – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21638**
R-2006-495

33. *Public Works Agency and General Services Agency* – Authorize the Purchasing Agent to approve and execute Modification No. 2 of an Agreement (ID #PBWKS 3710) with Padre Associates (Principal: Simon Poulter; Location: Concord) for the provision of broad range environmental support services, extending the contract term from 12/31/06 to 12/31/07, and increasing the amount from $20,000 to $45,000 ($25,000 increase) – **Continued from Tuesday, 12/5/06 (Item #40)**

13245 **Approved as recommended** **FILE 20769**
C-823

FLOOD CONTROL

34. Approve the project, adopt the resolution to accept and approve the plans and specification and authorize the Clerk of the Board to advertise for bids for the improvement of the inlet structure on Line B-1 at the Claremont Country Club, Oakland, Zone No. 12 Project, Specification No FC12-191 – CAO Recommends: Approve

13245 **Approved as recommended** **FILE 21657**
R-2006-496

11:30 A.M. - SET MATTERS

BOARD OF SUPERVISORS' APPRECIATION PROGRAM

35. *President Carson* – Recognizing the following employees for their daily contributions in conducting County business and providing public service

A. Pamela Callum, Social Services Agency
B. Curran Chow, Zone 7
C. Leonardo F. Cumla, Treasurer-Tax Collector

Recognized **FILE 20507**

GENERAL ADMINISTRATION

36. *President Carson* – Alameda County Youth Leadership Program was the winner of the California State Association of Counties 2007 Challenge Awards
Recognized Crystal Hishida Graff, Sandra Hou, Esther Concepcion and Mona Palacios, County Administrator's Office

36A. *Supervisor Steele* – Recognition of the Alameda County Sheriff's Department team which successfully solved the Castro Valley Jane Doe case:
A. Scott Dudek, Lead Detective
B. Ed Chicoine, Detective
C. Dorothy Kerr, Technician
D. Greg Landeros, Detective
E. Rafael Alvarez, Detective
F. Miguel Ibarra, Detective
Continued to a future date

37. *County Administrator* – Public hearing for the financing and refinancing of certain acquisition, improvement and rehabilitation costs in the maximum amount of $30,000,000 relating to student housing facilities owned and/or operated by University Students' Cooperative Association located in Berkeley; and adopt an approving resolution

51234 **Open and closed public hearing; approved as recommended** **FILE 21639**
R-2006-497

38. Presentation by the Workforce Investment Board
Presented by Dorothy Chen, Director and Kenneth Baker, Board Chair

39. Presentation by the Veteran Affairs Commission
Presented by Armando Pereira, Board Chair

COUNTY COUNSEL: REPORT ON ACTION TAKEN IN CLOSED SESSION

None

PUBLIC INPUT (TIME LIMIT: 3 MINUTES PER SPEAKER)

Michael Bell spoke regarding the Oakland Athletics' League

ADJOURNED IN MEMORY OF

16 year old boy from Livermore

APPENDIX

CONSENT CALENDAR - ITEM NUMBERS 40 - 67

(ANY BOARD MEMBER MAY PULL ANY CONSENT ITEM FOR DISCUSSION OR SEPARATE VOTE)

13245 **Approved as recommended**

PUBLIC ASSISTANCE

Social Services Agency:

40. Approve and authorize the execution of an amendment to the professional services standard agreement (Contract No. 756) with Winsor & Associates (Principal: Chris Winsor; Location: Pleasanton) for continued development and maintenance of client/server and web based computer applications in support of service delivery programs with community-based organization CalWORKs contractors, extending the term from 12/31/06 to 12/31/07, and increasing the amount from $145,000 to $215,000 ($70,000 increase)

FILE 20912
C-756

41. Approve and authorize an extension of a standard agreement (Contract No. 764) with Dell Computers Inc. (Principal: Chris Evers; Location: Austin, Texas) to support and maintain the CalWORKs Information Network (CalWIN) computerized public assistance administration system, 12/1/06 – 12/31/08 ($91,680)

FILE 21640
C-764

HEALTH CARE SERVICES

42. Approve an amendment to Master Contract C98-0627, Exhibit B scope of work with Alameda County Medical Center to provide weekend and holiday trauma physician calls, Neurosurgery calls and Anesthesia physician calls; authorize the Agency Director to sign the master contract Exhibit A & B amendment; and authorize the Auditor-Controller to pay $190,000 to reimburse hospital for services allowed by this grant

FILE 21641

43. Approve the following recommendations to integrate planning with the West Oakland Community for environmental, economic and public health needs:

A. Accept the Fund Transfer Agreement from the State Department of Transportation, 1/1/07 – 2/28/09 ($204,654)
B. Authorize the Auditor-Controller to make the necessary appropriation and revenue adjustments; and
C. Approve an amendment to Master Contract C2005-355 with the Tides Center (Principal: Edward G. Liebst Jr.; Location: San Francisco), 1/1/07 – 2/28/09 ($176,330); and authorize the Agency Director to sign the master contract Exhibit A & B amendments

– (4/5 Vote)

FILE 21642
R-2006-498F

44. Authorize the Auditor-Controller to make the necessary appropriation and revenue adjustments for the Public Health Department, Division of Communicable Disease Control and Prevention, Young Men Survey Program ($66,512 decrease)

FILE 20568
R-2006-499F

45. Approve the following master contracts amendments with community-based organizations in the Public Health Department, Office of AIDS, 3/1/06 – 2/28/07:

A. La Clinica de la Raza Contract No. C93-0674 (Principal: Jane Garcia; Location: Oakland) to provide mental health therapy and counseling for HIV/AIDS infected clients in Oakland, increasing the amount from $46,277 to $53,277 ($7,000 increase)
B. Project Open Hand Contract No. C93-0702 (Principal: James Illig; Location: Oakland) to provide food and grocery delivery services to HIV/AIDS infected clients in Oakland, increasing the amount from $106,666 to $141,381 ($34,715 increase)
C. Tri-City Health Center Contract No. C93-0687 (Principal: Kathleen Lievre; Location: Fremont) to provide mental health therapy and counseling for HIV/AIDS infected clients in Fremont, increasing the amount from $197,162 to $209,162 ($12,000 increase)

FILE 21643

46. Accept, approve and authorize the execution of grant agreement amendment between the City of Oakland and Public Health Department, Community Health Services, Health Care for Homeless Program to provide assistance to homeless and near-homeless families and individuals, 7/1/06 – 1/31/07 ($35,004)

FILE 21644
C-2006-336

47. Receive a report on continuing existence of a local state of emergency in Alameda County relative to the transmission of HIV, Hepatitis C and other blood borne pathogens through the use of contaminated needles

FILE 20466

GENERAL ADMINISTRATION

48A. *Supervisor Miley* – Approve and authorize the Auditor Controller to increase appropriations and revenue by $10,000 to District 4 to cover cost incurred for the implementation of the County-wide Violence Prevention Plan in fiscal year 2006-2007 – (4/5 Vote)

FILE 21645
R-2006-500F

48. *Alameda County Mosquito Abatement District* – Approve amended Conflict of Interest Code

FILE 21211

Auditor-Controller:

49. Approve a resolution adopting the Alameda County Board of Supervisors Expense Reimbursement Policy pursuant to AB1234

FILE 21646
R-2006-501

50. Approve the following recommendations related to appropriation limit:

A. Receive and file the letter regarding Propositions 4 and 111 appropriation limits and subject to limitation in order to satisfy the intent of the fifteen-day waiting period; and
B. Schedule a hearing on January 9, 2007 at 10:30 a.m. for the adoption of the appropriations limits and appropriations subject to limitation

FILE 21647

Community Development Agency:

51. Approve the fiscal year 2005-2006 Redevelopment Agency Annual Report for the Eden Area Redevelopment Project and the County Portion of the Alameda County – San Leandro Joint Redevelopment Project

FILE 21648

52. Approve and authorize the execution of a time-only contract amendment (Contract No. 789) with Conservation Land Group, Inc. (Principal: Kevin Knowles; Location: San Francisco) for professional services related to the formation and funding of an Alameda County Land Trust (or land trust equivalent), extending the term from 12/31/06 to 12/31/07, with no change in the contract amount

FILE 21649
C-789

53. Approve and authorize the execution of a contract amendment (Contract No. 732) with Lamphier-Gregory Inc. (Principal: Scott Gregory; Location: Oakland) to provide professional planning and environmental services for the Delco Builders/Alcorn Property Environmental Impact Report for Tract 7305 in Castro Valley, extending the term from 12/31/06 to 2/28/07, and increasing the amount from $116,432.30 to $127,432.30 ($11,000 increase)

FILE 21026
C-732

54. Approve and authorize the execution of a time-only contract amendment (Contract No.762) with Carey & Co., Inc. (Principal: Alice Carey; Location: San Francisco) to continue professional services to complete a comprehensive inventory of historic sites for unincorporated Alameda County and develop a Preservation Ordinance, extending the term from 12/31/06 to 12/31/07, with no change in the contract amount

FILE 21650
C-762

55. *Community Development Agency and General Services Agency* – Authorize the Purchasing Agent to negotiate and sign a time-only extension to Master Contract No. 900241 with Environmental Science Associates (Principal: David Full; Location: Oakland) to develop comprehensive land use plan update for the Airport Land Use Commission and the Community Development Agency, extending the term from 12/31/06 to 12/31/07, with no increase to the contract amount

FILE 21651

56. *General Services Agency* – Authorize the Purchasing Agent to execute an amendment to Master Contract No. 900248 with Bay Span, Inc. (Principal: Dana Carnes; Location: Santa Clara) to provide supplemental temporary employee services in the skilled craft and service maintenance category, 1/1/07 – 5/31/07, increasing the amount from $25,000 to $100,000 ($75,000 increase)

FILE 21611
C-900241

57. *General Services Agency, Health Care Services Agency, Social Services Agency and Probation* – Authorize the Purchasing Agent to negotiate and sign an amendment to Master Contract No. 14 with A-Para Transit Corporation (Principal: Shiv Kumar; Location: Hayward) to provide client transportation services, extending the term from 2/10/07 to 6/30/08, and increasing the amount from $373,593 to $645,519 ($271,926 increase)

FILE 21652
C-14

Human Resource Services:

58. Approve classification actions taken by the Civil Service Commission on 9/27/06

FILE 21368

59. Approve amended Conflict of Interest Code

FILE 21211

60. Adopt a salary range revision for the Fire Chief in the Alameda County Fire Department

FILE 21653

61. *Human Resource Services and General Services Agency* – Authorize the Purchasing Agent to negotiate and sign a time-only amendment to Master Contract No. 20 with AIM Computer Training (Principal: George Aleuy; Location: Emeryville) to provide computer software training services for the Alameda County Conference and Training Center, extending the term from 1/6/07 to 1/6/08, with no change in the contract amount

FILE 21654
C-20

62. *Human Resource Services and Treasurer-Tax Collector* – Approve and adopt the amendment to the Alameda County 401(a) Employee Retirement Plan document to amend the allocations for the elected department heads

FILE 21655

PUBLIC WORKS

63. Approve the amended Conflict of Interest Code

FILE 21211

BOARDS AND COMMISSIONS

President Carson:

64. Appoint Ken Brooks to the Alameda County Employees Retirement Association, term ending 12/31/08
FILE 21656

65. Accept the resignation of Joe Phan from the Alameda County Medical Center Board of Trustees
FILE 21656
R-2006-502

65A. Reappoint Ilene Weinreb to the Alameda County Medical Center Board of Trustees, term expiring 6/30/09
FILE 21656

65B. Reappoint Barbara A. Price to the Alameda County Medical Center Board of Trustees, term expiring 6/30/09
FILE 21656

65C. Appoint Valerie D. Lewis to the Alameda County Medical Center Board of Trustees, term expiring 12/19/09
FILE 21656

65D. Appoint Kirk E. Miller to the Alameda County Medical Center Board of Trustees, term expiring 12/19/09
FILE 21656

65E. Appoint Judy Hunt to Alameda County Advisory commission on Aging, term expiring12/19/10
FILE 21656

65F. Reappoint Alfred Watts to the Assessment Appeals Board, term expiring 9/1/08
FILE 21656

66. *Supervisor Steele* – Appoint Noel M. Panlilio, M.D. to the Alameda County Public Health Advisory Commission, term ending 12/19/08
FILE 21656

67. *Health Care Services Agency* – Reappoint Cleo Manspeaker to the Area 5 Developmental Disabilities Board, term ending 12/31/08
FILE 21656

END OF CONSENT

OUT-OF-STATE TRAVEL

Board of Supervisors – District Five – "National Association of Counties Annual Conference" – Washington, D.C., 3/2/07 – 3/8/07 ($2,000)

General Services Agency – Resource Conservation Program Manager – The Climate Project training – Nashville, Tennessee, 1/7/07 – 1/11/07 ($1,000)

Probation – 2 Institutional Supervisors – Interview and Interrogation Training – Reno, Nevada, 3/18/07 – 3/21/07 ($825 each)

Sheriff – Undersheriff – "National Sheriff's Association 2007 Winter Conference" – Washington, D.C., 1/29/07 – 2/4/07 ($2,421.80)

FILE 21576

No further business appearing, the meeting is adjourned.

REVIEWED BY:_____
PRESIDENT, BOARD OF SUPERVISORS

REVIEWED BY:_____
CLERK, BOARD OF SUPERVISORS

**** KEY ****

Left Margin Notes				Right Margin Notes	
1	Supervisor Haggerty	A	Abstained	C	Contract
2	Supervisor Steele	X	Excused	O	Ordinance
3	Supervisor Lai-Bitker	N	No	R	Resolution
4	Supervisor Miley	BO	Board Order	LIB	Library
5	President Carson				

File #21578
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EXHIBIT F

STATE OF CALIFORNIA - THE RESOURCES AGENCY Gray Davis, Governor
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento CA 95814
website:www.energy.ca.gov

STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:	)	Docket No. 01-AFC-7
	)	
Application for Certification	)	
of the RUSSELL CITY ENERGY CENTER	)	(AFC Accepted 7/11/01)
	)	
	)	Order No. 02-0814-02
	)	

COMMISSION ORDER DENYING WEM'S PETITION FOR REVIEW

On June 20, 2002, on the day of the evidentiary hearing, Ms. Barbara George, speaking on behalf of Woman's Energy Matters (WEM), petitioned to intervene in the Russell City Energy Center Application for Certification (AFC) proceeding. Ms. George also requested a two-month extension for Women's Energy Matters to prepare its testimony and present such testimony at an evidentiary hearing.

After hearing Ms. George's argument on behalf of the intervention of WEM, the Committee ruled that by failing to petition until the day of evidentiary hearings, Ms. George's petition was not timely. The Presiding Member further determined that she failed to make a showing of good cause for the untimely filing. Accordingly, the Committee denied her petition to intervene.

On July 10, 2002, WEM filed a timely appeal for reconsideration of the Committee's June 20, 2002 Order denying WEM's Petition to Intervene. Included with her appeal were a *Memorandum of Points and Authorities (Memorandum), and a Declaration of Barbara George* (Declaration).

The Committee, on July 23, 2002, denied WEM's Petition for Reconsideration, and scheduled the matter for consideration by the full Commission at the August 14, 2002, Business Meeting.

After hearing argument on the matter, the Commission hereby DENIES the Petition for Reconsideration filed by WEM.

It is so Ordered.

Dated August 14, 2002, at Sacramento, California.

WILLIAM J. KEESE
Chairman

ROBERT PERNELL
Commissioner

ARTHUR H. ROSENFELD
Commissioner

\\ ABSENT \\
JAMES D. BOYD
Commissioner

JOHN L. GEESMAN
Commissioner

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STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:	)	
	)	Docket No. 01-AFC-7C
Amendment to the Application for Certification of the Russell City Energy Center Project	)	

PROOF OF SERVICE

I, Karen A. Mitchell, declare that on October 31, 2007, I deposited copies of the attached *Opposition to the Petitions to Intervene of the County of Alameda, the Chabot-Las Positas Community College District and the Group Petitions* in the United States mail in Sacramento, California, with first-class postage thereon fully prepaid and addressed to all parties on the attached service list.

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

/s/ Karen Mitchell
Karen A. Mitchell

SERVICE LIST
01-AFC-7C

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