



CH2MHILL

CH2M HILL
2485 Natomas Park Drive
Suite 600
Sacramento, CA 95833
Tel 916-920-0300
Fax 916-920-8463

DOCKET

09-AFC-3

DATE APR 12 2010

RECD. APR 12 2010

April 12, 2010

382914

Mr. Craig Hoffman
Project Manager
California Energy Commission
1516 Ninth Street, MS 15
Sacramento, CA 95814-5512

Subject: Mariposa Energy Project (09-AFC-03)
Data Response Set 2A, Responses to CEC Staff
Data Requests 1 - 4

Dear Mr. Hoffman:

Attached please find 1 hard copy and one electronic copy on CD-ROM of the Mariposa Energy Project's Data Response Set 2A. This Data Response Set was prepared in response to CEC Staff Data Request Set 2A dated March 4, 2010.

If you have any questions about this matter, please contact me at (916) 286-0348.

Sincerely,

CH2M HILL

Doug Urry
AFC Project Manager

Attachment

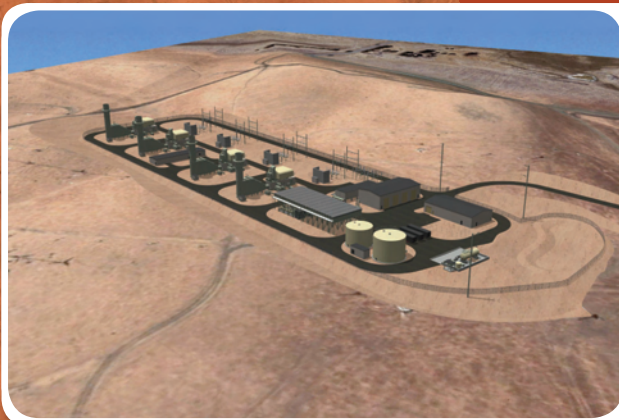
cc: B. Buchynsky, Mariposa Energy, LLC.

APPLICATION FOR CERTIFICATION
DATA RESPONSES, SET 2A
(RESPONSE TO DATA REQUESTS 1 TO 4)



SUBMITTED TO THE
California Energy Commission

FOR THE
Mariposa Energy Project
(09-AFC-03)



SUBMITTED BY



Mariposa Energy, LLC

TECHNICAL ASSISTANCE BY



CH2MHILL

APRIL 2010

Mariposa Energy Project

(09-AFC-03)

Data Responses, Set 2A

(Response to Data Requests 1 to 4)

Submitted to
California Energy Commission

Submitted by
Mariposa Energy, LLC

With Assistance from

CH2MHILL
2485 Natomas Park Drive
Suite 600
Sacramento, CA 95833

April 2010

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Introduction

Attached are Mariposa Energy's responses to the California Energy Commission (CEC) Data Request Set 2A (numbers 1 through 4) regarding the Mariposa Energy Project (MEP) (09-AFC-03) Application for Certification (AFC).

The responses are grouped by individual discipline or topic area. Within each discipline area, the responses are presented in the same order as the CEC presented them and are keyed to the Data Request numbers (1 through 4). New or revised graphics or tables are numbered in reference to the Data Request number. For example, the first table used in response to Data Request 36 would be numbered Table DR36-1. The first figure used in response to Data Request 42 would be Figure DR42-1, and so on.

Additional tables, figures, or documents submitted in response to a data request (supporting data, stand-alone documents such as plans, folding graphics, etc.) are found at the end of each discipline-specific section and are not sequentially page-numbered consistently with the remainder of the document, though they may have their own internal page numbering system.

Land Use (1 - 4)

Data Requests

1. Please provide a copy of the current Land Conservation Contract (C-89-1195) and Board of Supervisors Resolution (R-89-947) for the property.

Response:

The requested Land Conservation Contract for the MEP parcel and the related Board of Supervisors' Resolution are provided as Attachment DR1-1.

2. Please provide a current lease for the property between Diamond Generation and the property owner.

Response:

A redacted copy of lease between Diamond Generating Company and the property owner is provided in Attachment DR2-1.

3. Please provide documentation indicating the Exceptions from the Title Report listed below do not affect or lie within the 10-acre building site proposed for the MEP facility and associated linear facilities.
 - a. C.3 and C 4: Standard Pacific and Standard Oil California pipelines;
 - b. C. 10: Setback requirements concerning personal property affixed to the premises.

Response:

Exception No. 3 listed on the Title Report dated October 22, 2008 relates to an easement to Standard Pacific Gas Line Incorporated, dated February 11, 1948. The location of this easement is identified on the ALTA Land Survey prepared for MEP and included in Appendix 1 of the AFC. The referenced easement is located adjacent to the current PG&E pipeline corridor, near Kelso Road at the northwestern corner of the parcel. This easement does not coincide with MEP project features, and will not affect construction or operation of MEP.

Exception No. 4 documents a Standard Oil Company of California pipeline easement. The location of the easement was to be determined based on the location of the selected route;

however, the route was not subsequently recorded. On December 21, 2009, Mariposa Energy received a letter from Mr. Jeremy Gross with Coates Field Service, Inc., on behalf of Chevron Pipe Line Company, that documents the location of Chevron pipelines in the project area (Attachment DR3-1). One of three pipelines identified in this letter traverses the MEP parcel, and is parallel to the PG&E natural gas pipelines, along a marked pipeline corridor. On February 1, 2010 CH2M HILL contacted Mr. Gross to inquire about the Standard Oil Company easement. Mr. Gross stated that Chevron is the successor to Standard Oil, and the pipeline easement referred to in Exception No. 4 is for the same pipeline documented in the December 21, 2009 letter (see Attachment DR3-2). The MEP transmission line and water supply pipeline will both cross this pipeline; Mariposa Energy will coordinate with Chevron during final design and construction as outlined in the December 21, 2009 letter.

Exception No. 10 listed on the Title Report is a setback waiver dealing with Alameda County requirements for setbacks of wind turbines from property lines. This exception will not impact MEP. The wind development on the project parcel and parcel immediately south was decommissioned because it was not financially viable due to the wind resources at this specific location. The waiver is provided as Attachment DR3-3.

4. Provide clarification on any gas or pipeline related facilities that may be located under the project construction site or affect the project construction site.

Response:

As noted in the response to DR 3 above, natural gas and petroleum pipelines are located on the 158-acre MEP parcel, within a pipeline corridor that traverses the parcel from southeast to northwest. Both the project transmission line and water supply pipeline will cross these pipelines, requiring coordination with the pipeline owners. With the exception of remnant utility conduits associated with the abandoned wind farm, Mariposa Energy is not aware of any subsurface utilities or pipelines located on the 10-acre MEP site.

Attachment DR1-1
Land Conservation Contract C-89-1195 and Board
of Supervisors Resolution R-89-947



COPY

OFFICE OF THE
CLERK, BOARD OF SUPERVISORS

January 29, 1990

Steven Shin-Der Lee
40939 Camaro Place
Fremont, Ca 94539

Dear Sir:

RE: CHANGE OF OWNERSHIP/ADDITIONAL COMPATIBLE USE
AGRICULTURAL PRESERVE 1971-34 (PORTION ONLY)
LAND CONSERVATION AGREEMENT NO. C-89-1195
PARCEL NO. 99B-7050-1-7 (formerly portion of 99B-7050-1-2)
STEVEN SHIN-DER LEE (originally Albert & Gertrude Muller)

Enclosed for your files is a copy of each of the following documents, the original or a copy of which was duly recorded in the office of the Alameda County Recorder on December 20, 1989, under Recorder's Series No. 89-342175:

1. Land Conservation Agreement No. C-89-1195 between the County of Alameda and the property owners covering said Agricultural Preserve.
2. Certified copy of Board of Supervisors' Resolution No. R-89-947 authorizing an additional compatible use and execution of said contract.

WM:yq
Enclosures

cc: Planning Director
County Assessor
County Counsel

LAND CONSERVATION AGREEMENT



C-89-1195

THIS AGREEMENT, made and entered into this 12th day of _____

December, 1989, by and between STEVEN SHIN-DER LEE

~~CONTRACT NO. 89-1195~~ hereinafter referred to as "Owner" and the COUNTY OF ALAMEDA, a political subdivision of the State of California, hereinafter referred to as "County":

W I T N E S S E T H :

WHEREAS, Owner possesses certain real property located within County and described in Exhibit A attached hereto and made a part hereof; and

WHEREAS, said property is devoted to agricultural and compatible uses; and

WHEREAS, said property is located in an agricultural preserve heretofore established by County; and

WHEREAS, both Owner and County desire to limit the use of said property to agricultural and compatible uses in order to preserve a maximum amount of agricultural land, to conserve the State's economic resources, to maintain the agricultural economy, and to assure a food supply for future residents, to discourage premature and unnecessary conversion of agricultural land to urban uses, recognizing that such land has public value as open space and constitutes an important physical, social, esthetic, and economic asset to the County; and

WHEREAS, the placement of said property in an agricultural preserve and the execution and approval of this agreement is a determination that the highest and best use of said property during the term of this agreement or any renewal thereof is for agricultural and compatible uses; and

WHEREAS, the Owner and the County desire to enter into and intend that this agreement shall constitute an enforceable restriction to open-space land as defined and used in the California Revenue and Taxation Code;

NOW, THEREFORE, both Owner and County in consideration of the mutual promises, covenants and conditions herein contained and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. AGREEMENT SUBJECT TO THE CALIFORNIA LAND CONSERVATION ACT OF 1965.

This agreement is made and entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 of Part 1 of Division 1 of Title 5 of the Government Code of California commencing with Section 51200) including Article 3.5 of said Act entitled "Agreements" and is subject to all of the provisions thereof.

2. RESTRICTION ON USE OF PROPERTY.

During the term of this agreement, or any renewal thereof, the said property shall not be used for any purpose, other than agricultural uses for producing agricultural commodities for commercial purposes and compatible uses, which uses are set forth in Exhibit B attached hereto and incorporated herein by reference.

3. DESIGNATION OF ADDITIONAL COMPATIBLE USES.

The Board of Supervisors of County may, from time to time, during the term of this agreement or any renewal thereof, by resolution add to those uses set forth in Exhibit B other uses which are compatible with the agricultural uses within the preserve where said property is located; provided, however, said Board of Supervisors shall not eliminate, without the written consent of Owner, a compatible use during the term of this agreement or any renewal thereof. The provisions of this agreement and any resolution supplementing the uses permitted in Exhibit B are not intended to limit or supercede the planning and zoning powers of the County.

4. TERM OF AGREEMENT.

This agreement shall be effective as of the day and year first above written and shall remain in effect for a period of ten years therefrom; provided, however, each first day of January shall be the "annual renewal date" of the agreement. This agreement shall automatically be renewed on the first day of January next succeeding the date of the commencement hereof and on the first day of January of each year thereafter for an additional one-year period unless notice of nonrenewal is given as provided in paragraph 5. This agreement shall be subject to an unlimited number of one-year extensions and each such one-year extension shall be added to the term thereof so as to commence immediately following the termination date or the termination date of the most recently added one-year extension, whichever is later in time.

5. NOTICE OF NONRENEWAL.

(a) If either party desires in any year not to renew this agreement, that party shall serve written notice of nonrenewal upon the other party in advance of the annual renewal day of this agreement. Unless such written notice of nonrenewal is served by Owner at least 90 days prior to the renewal date, or by County at least 60 days prior to the renewal day, this agreement shall be considered renewed as provided in paragraph 4 above.

(b) If either party serves written notice of nonrenewal in any year within the time limits of (a) above, this agreement shall remain in effect for the balance of the period remaining since the original execution or the last renewal of this agreement, as the case may be.

6. NO COMPENSATION.

Owner shall not receive any payment from County in consideration of the obligations imposed under this agreement, it being recognized and agreed that the consideration for the execution of this agreement is the substantial public benefit to be derived therefrom, and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the property on account of the restrictions on the use of the property contained herein.

7. SUCCESSORS IN INTEREST.

This agreement and the restrictions imposed hereunder shall run with the property described in Exhibit A and shall be binding upon the heirs, executors, administrators, trustees, successors and assigns of Owner. This agreement shall also be transferred from County to any succeeding city or county acquiring jurisdiction over the property described in Exhibit A. On the completion of annexation proceedings by a city, that city shall succeed to all rights, duties and powers of the County under this agreement for that portion of the property described in Exhibit A annexed to the city. The territory described in Exhibit A is not ~~to~~ within one mile of an incorporated city in the County of Alameda on the date of execution of this agreement.

8. CONDEMNATION.

When any action in eminent domain for the condemnation of the fee title

or any lesser estate in any land described in Exhibit A is filed or when such land or any lesser estate therein is acquired in lieu of eminent domain for a public improvement by a public agency or person, or whenever there is any such action or acquisition by the federal government, or any person, instrumentality or agency acting under authority or power of the federal government, this agreement becomes null and void as to the land or any lesser estate therein actually being condemned or so acquired as of the date the action is filed or so acquired.

9. DIVISION OF LAND.

This agreement is divisible in the event the property described in Exhibit A is divided. Property described in Exhibit A shall not be divided into parcels of less than 20 acres in area except as a result of court decree or the intestate or testamentary disposition of land. Owner agrees to submit a proposed division to County for its approval, and County shall, as a condition of its approval of the division, require the execution by Owner of an agreement identical to this agreement on each parcel created by the division. Owner agrees to execute such agreement.

10. CANCELLATION.

This agreement may be canceled by the mutual agreement of the parties hereto in the manner provided in this paragraph. It is understood by the parties hereto that the existence of an opportunity for another use of the property shall not be sufficient reason for the cancellation of this agreement. A potential alternative use of the property may be considered only if there is no proximate nonrestricted land suitable for the use to which it is proposed that this property be put. The parties further understand that the uneconomic character of an existing agricultural use shall not be sufficient reason for cancellation of this agreement, but may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

(a) Upon the written request of Owner to cancel this agreement, the Board of Supervisors of the County of Alameda may adopt a resolution consenting to such request. Prior to the adoption of a resolution consenting to the request of the landowner to cancel this agreement, the Board of Supervisors of County shall hold a public hearing on the matter. Notice of the hearing shall be mailed to each and every

owner of property under agreement within the agricultural preserve in which the property described in Exhibit A is located, and shall be published pursuant to Section 6061 of the Government Code. If at the hearing, or prior thereto, the owners of 51 percent of the acreage under agreement in the agricultural preserve protest the cancellation of this agreement, the Board of Supervisors shall not consent to cancel this agreement.

(b) Notwithstanding the foregoing, the Board of Supervisors of Alameda County may consent to the cancellation of this agreement only if it finds: (1) the cancellation is not inconsistent with the purposes of the California Land Conservation Act of 1965; and (2) the cancellation is in the public interest.

11. LIABILITY OF OWNER UPON CANCELLATION.

(a) Upon cancellation of this agreement, and as soon thereafter as the property to which it relates is reassessed by Assessor, Owner shall pay to the County Treasurer, as deferred taxes, an amount equal to 50 percent of the new equalized assessed valuation of the property; provided, however, if after the date this agreement is initially entered into the publicly announced County ratio of assessed to full cash value is changed, the percentage payment shall be changed so no greater percentage of full cash value will be paid than would have been paid had there been no change in ratio. It is agreed by the parties hereto that the publicly announced County ratio at the time of this agreement is executed is 25 percent of full cash value.

(b) If the Board of Supervisors of Alameda County recommends and finds that it is in the public interest to do so, the County may waive any such payment or any portion thereof, or make any such payments or portion thereof contingent upon the future use to which the property is put and its economic return to the owner for a period of time not to exceed the unexpired term of the agreement had it not been cancelled, provided: (1) the cancellation is caused by an involuntary transfer or change in the use to which the property may be put and the property is not immediately suitable, nor will be immediately used for a purpose which produces a greater economic return to Owner; and (2) the Board of Supervisors has deter-

mined that it is in the best interests of the public or the conservation of agricultural land that such payment be either deferred or not required.

12. NOTICES.

All notices required or permitted by this agreement shall be given in writing and may be mailed or delivered in person. If mailed the address of Owner shall be the last known address on the assessment records of the County, and County's address shall be 1221 Oak Street, Oakland, California, and deposit in the mail, postage prepaid, shall be deemed receipt thereof.

13. REMEDY IF AGREEMENT HELD NOT AN ENFORCEABLE RESTRICTION.

In the event that it is finally determined that this agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Revenue and Taxation Code, except for an unenforceability arising from the nonrenewal of this agreement, for any tax year during the term hereof or any renewals thereof, then, and in that event this agreement shall be null and void, and without further effect, and the property subject to this agreement shall from that time be free from any restriction whatsoever under this agreement without any payment or further act of the parties hereto.

COUNTY OF ALAMEDA

ATTEST: WILLIAM MEHRWEIN,
Clerk of the Board of Supervisors

(Individual)

STATE OF CALIFORNIA

SS.

COUNTY OF ALAMEDA

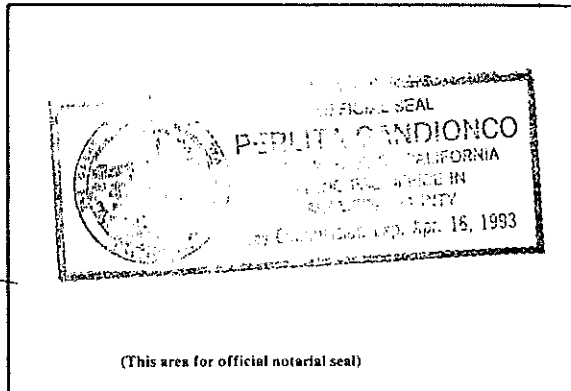
On AUGUST 25, 1989

before me, the undersigned, a Notary Public in and for said State, personally appeared STEVE SHIN DER LEE*****

_____ personally known to me (or proved to me on the basis of satisfactory evidence), to be the person _____ whose name _____ is _____ subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Signature *Perito Janderson*



LE-76 (7/82)

(This area for official notarial seal)

Exhibit A

The land referred to in this report is situated in the State of California, County of Alameda and is described as follows:

That parcel of land in the Township of Murray, County of Alameda, State of California, described as follows:

The northwest 1/4 of Section 1, Township 2, South, Range 3 East, Mount Diablo Base and Meridian.

A.P.N. 099B-7060-001-07

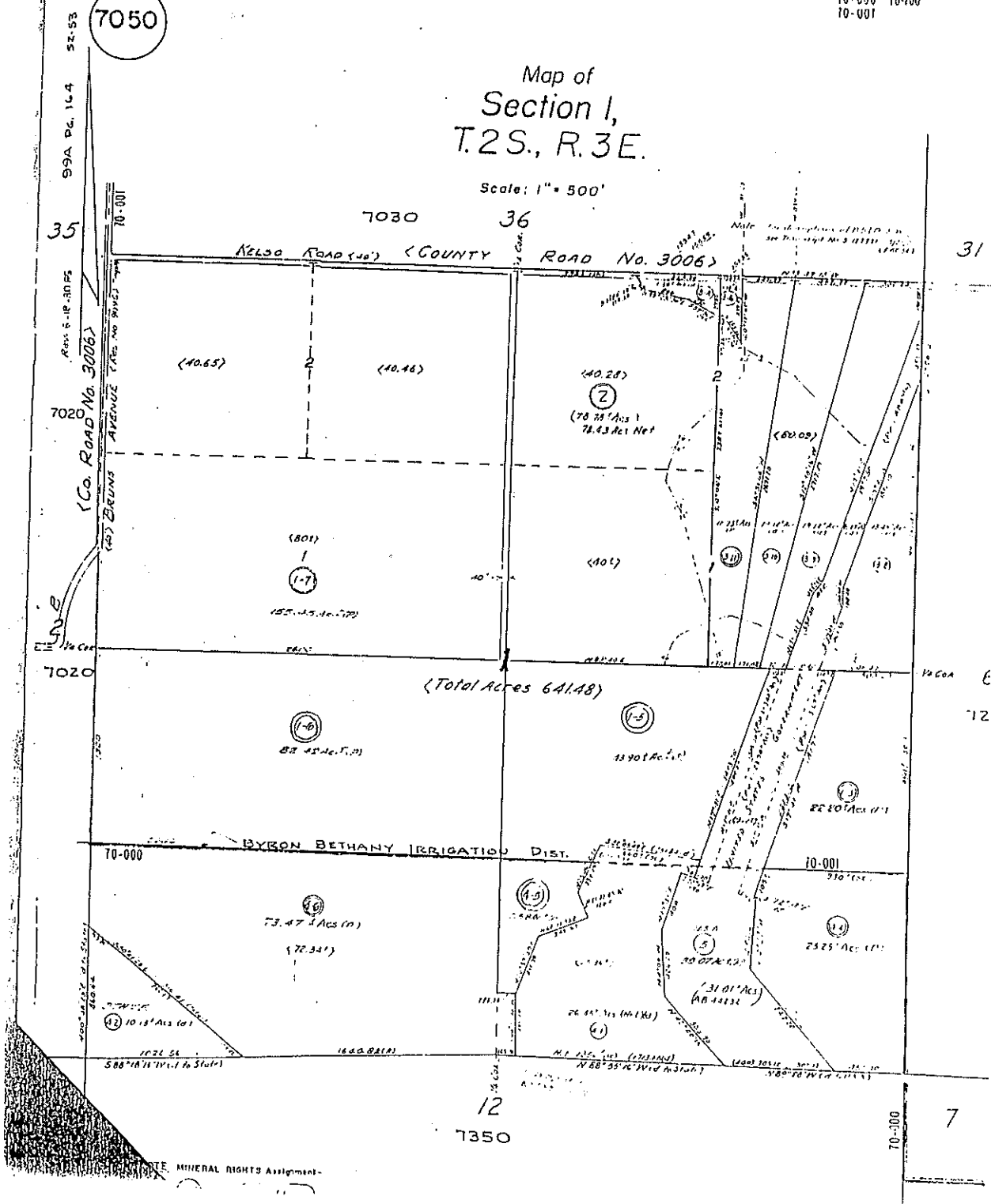
ASSESSOR'S MAP 99B

Code Area Nos.
10-000 10-700
10-001

7050

Map of
Section I,
T.2S., R.3E.

Scale: 1" = 500'



THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA

On motion of Supervisor..... Campbell , Seconded by Supervisor..... Santana
and approved by the following vote,
Ayes: Supervisors..... Campbell, Santana and Chairman Perata - 3
Noes: Supervisors..... None
Excused or Absent: Supervisors..... King and Widener - 2

THE FOLLOWING RESOLUTION WAS ADOPTED: DECEMBER 12, 1989 NUMBER R-89-947

EXECUTE LAND CONSERVATION CONTRACT - MODIFY EXHIBIT "B"

WHEREAS, this Board of Supervisors did, by Resolution No. 137426, adopted on the 4th day of February, 1971, establish an Agricultural Preserve delineated on a map entitled "ALAMEDA COUNTY AGRICULTURAL PRESERVE 1971-34," and

WHEREAS, this Board of Supervisors did, by Resolution No. 137427, adopted on the 4th day of February, 1971, authorize execution of a Land Conservation Agreement (Contract No. 5635) with Albert D. and Gertrude E. Muller, to cover their property identified by the following County Assessor's Designations:

- Parcel No. 99B-7050-1-2 (currently 99B-7050-1-6 and 99B-7050-1-7)
- Parcel No. 99B-7050-1-3
- Parcel No. 99B-7050-2
- Parcel No. 99B-7050-4-3 (currently 99B-7050-4-5 and 99B-7050-4-6)
- Parcel No. 99B-7050-4-4

and

WHEREAS, Steven Shin-Der Lee has become the successor in interest of Albert D. and Gertrude E. Muller in the property identified as Parcel No. 99B-7050-1-7 (formerly portion of Parcel No. 99B-7050-1-2) under the aforementioned Land Conservation Agreement No. 5635; and

WHEREAS, this Board of Supervisors is in receipt of the request of Steven Shin-Der Lee for execution of a new agreement due to the change in ownership and for modification of the list of approved compatible uses to allow the designation of an additional compatible use: specifically, the operation of a co-generation/waste water distillation facility; and

WHEREAS, this Board of Supervisors did review the recommendation of the County Planning Department thereon;

NOW, THEREFORE, BE IT RESOLVED that this Board of Supervisors does hereby approve the change of ownership for a portion of the property under agreement in Alameda County Agricultural Preserve 1971-34, identified as Parcel No. 99B-7050-1-7, and directs that a new agreement to reflect the revised ownership be executed and recorded; and the Board does hereby approve the modification of the Exhibit "B" for said new agreement, which lists the approved compatible uses, to allow the designation of an additional compatible use, as follows:

- "2. Co-generation/waste water distillation facility, as described by Conditional Use Permit C-5653."

and

BE IT FURTHER RESOLVED that the Chairman of this Board of Supervisors be and he is hereby authorized and directed to execute on behalf of the County of Alameda that certain Land Conservation Agreement approved by this Board of Supervisors by and between the County of Alameda and STEVEN SHIN-DER LEE, covering Parcel No. 99B-7050-1-7 located within said Alameda County Agricultural Preserve 1971-34 and as shown on that certain map marked Exhibit "C" attached hereto and made a part hereof.

0803B/AD52
File #4739
Agenda #15
12/12/89
R-89-947
C-89-1195

I CERTIFY THAT THE FOREGOING IS A CORRECT COPY OF A RESOLUTION ADOPTED BY THE BOARD OF SUPERVISORS ALAMEDA COUNTY, CALIFORNIA DEC 12 1989
ATTEST: DEC 12 1989
WILLIAM MEHRWEIN, CLERK OF THE BOARD OF SUPERVISORS
BY: *[Signature]*

EXHIBIT "B"

The use of land described in Exhibit "A" will be restricted to the following uses:

1. Grazing, breeding or training of horses or cattle.
2. Co-generation/waste water distillation facility, as described by Conditional Use Permit C-5653.

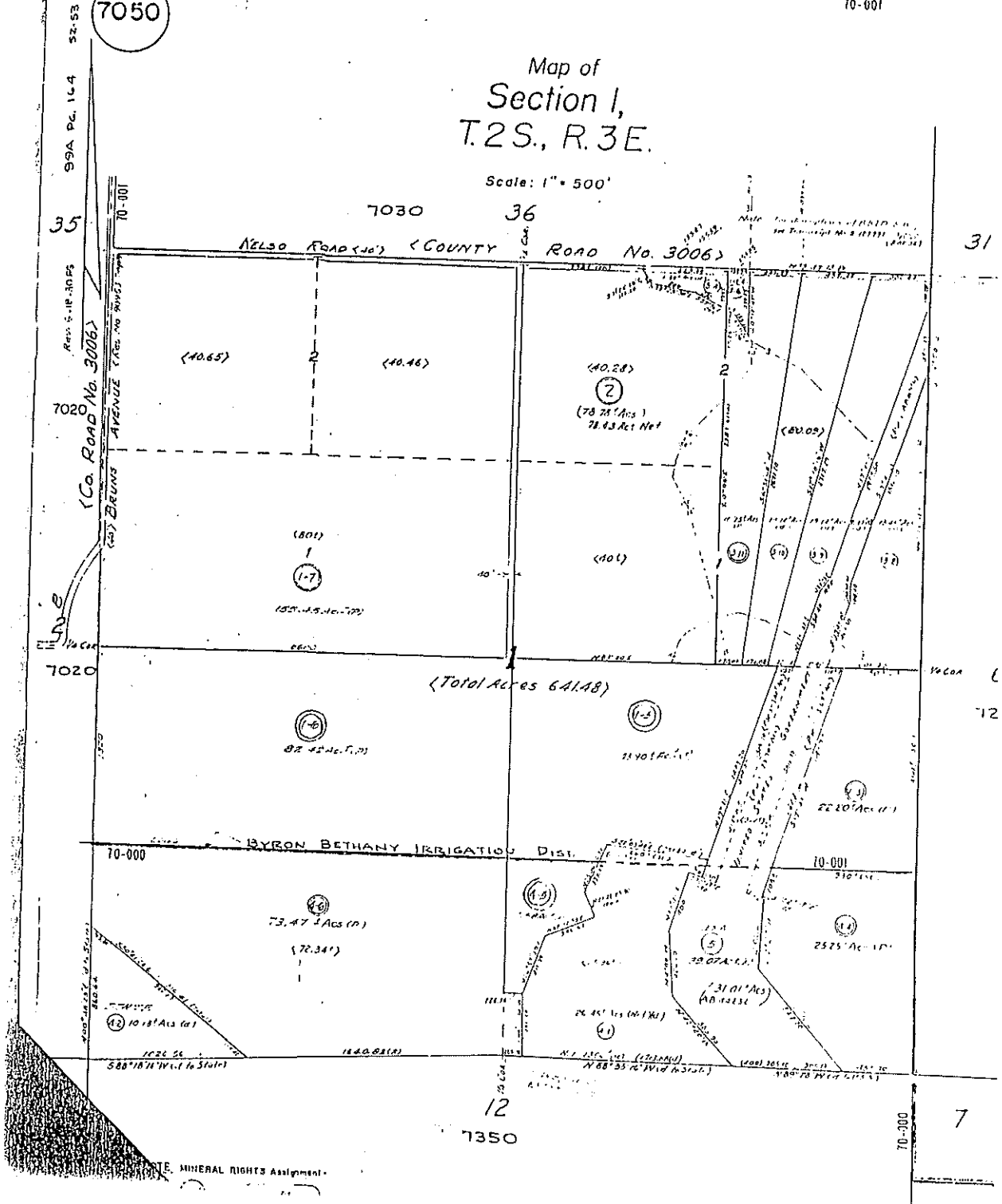
ASSESSOR'S MAP 99B

Code Area Nos.
70-000 70-100
70-001

7050

Map of
Section 1,
T.2S., R.3E.

Scale: 1" = 500'



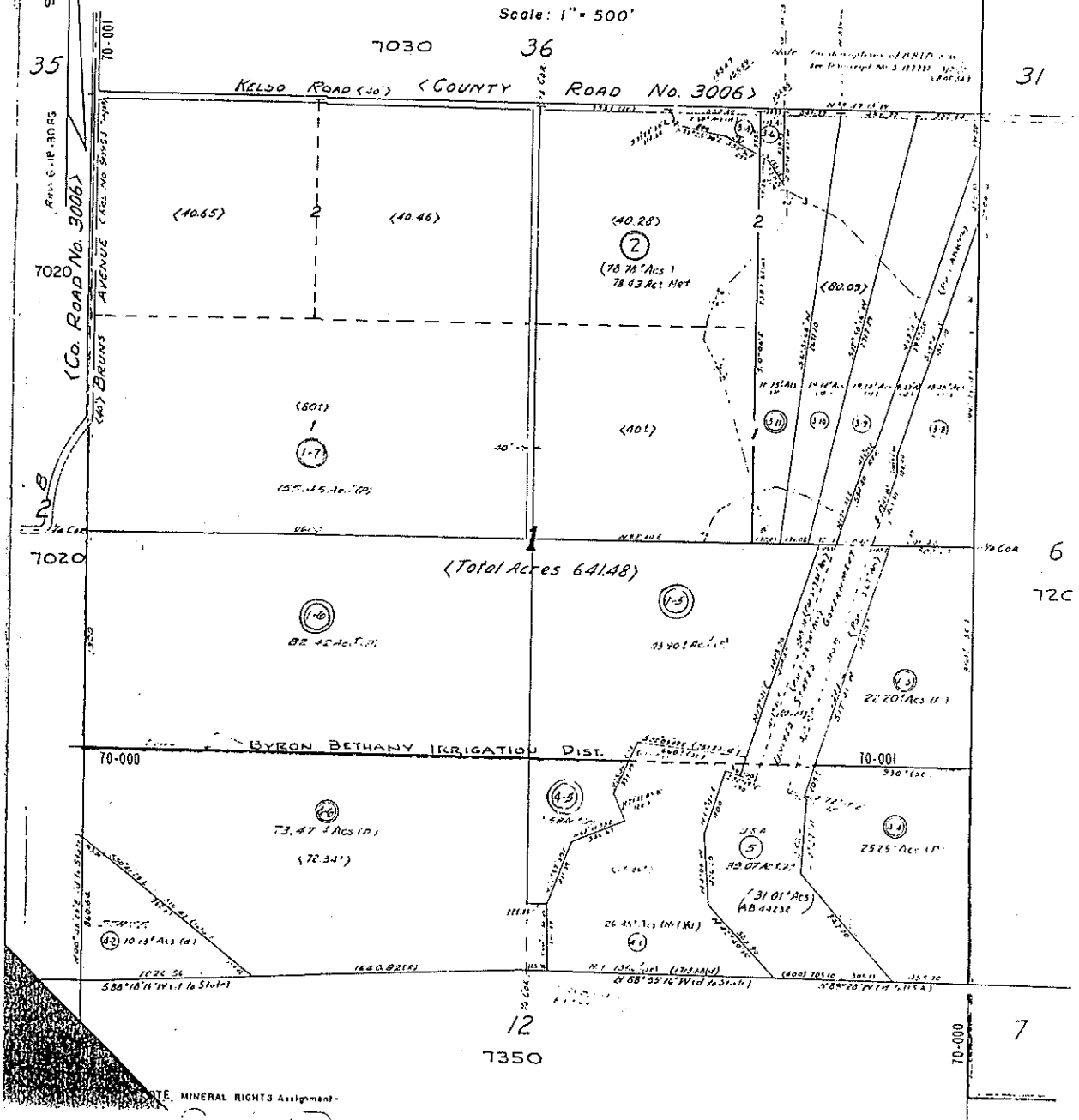
ASSESSOR'S MAP 99B

Code Area Nos.
70-000 70-700
70-001

7050

Map of
Section 1,
T.2S., R.3E.

Scale: 1" = 500'



Attachment DR2-1
MEP Lease

LAND LEASE AND RENTAL AGREEMENT

The Land Lease and Rental Lease (the "Lease") is made as of October ~~27~~²⁷, 2008, (the "Effective Date") by Steve Shin-Der Lee and Puang Jiuan-Jiuan Lee, husband and wife as joint tenants, hereinafter collectively referred to as "Lessor", and Diamond Generating Corporation, a Delaware corporation or its Assignee, hereinafter called "Lessee", the land and premises, hereinafter called "Premises", described below.

RECITALS

A. Lessee desires to enter into this Lease for to construct, operate and maintain a natural gas fired electrical plant facility of approximately 200 megawatts (the "Plant Facility") on approximately ten (10) acres of the Premises, the ("Occupied Premises"), with a Construction Lay-down Area, (the "Additional Occupied Premises") on an additional approximately five (5) acres and to construct, operate and maintain the Support Facilities (as defined in Section 25 of this Lease) for the support of the Plant Facility. Together the Plant Facility and the Support Facilities are referred to hereinafter as the "Facility".

B. Lessor is the owner of the Premises and desires to lease the Premises to Lessee to construct, operate and maintain the Facility.

Now, Therefore, the parties hereto do covenant and agree to abide by the following terms and provisions:

1. RECITALS. The Recitals contained herein are an integral part of this Lease.
2. PREMISES. The term "Premises" shall mean that land being leased by Lessor to Lessee which is that land owned by Lessor located in the County of Alameda, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein as though fully set forth herein, including all access easements to the land, and all rights of ingress and egress to the land.
3. INITIAL PAYMENT & SITING DETERMINATION PERIOD. Lessee shall pay the Lessor the sum of [REDACTED] as an initial payment the ("Initial Payment") on the Effective Date. Lessee shall have a period ("Siting Determination Period") of ninety (90) days from the Effective Date to conduct a Phase I environmental inspection, permitting and regulatory investigations, and such other due diligence investigations as it deems appropriate on the Premises. Based on the results of its investigation during the Siting Determination Period, Lessee shall select in its sole discretion, which of the three alternative areas designated in Exhibit D, attached hereto and incorporated herein as though fully, set forth herein, will become the "Occupied Premises" as defined in Section 56 below.
4. FEASIBILITY PERIOD. Lessee shall have a period of up to five (5) years ("Feasibility Period") commencing on the expiration of the Siting Determination Period for the purpose of completing the necessary due diligence to determine whether a feasible project can be constructed at the Premises, obtaining all local, County, State and Federal approvals and permits to build and operate the Facilities and to obtain project financing.

The Feasibility Period will commence upon the expiration of the Siting Determination Period and shall terminate upon the earlier to occur of (i) commencement of the Lease Term, (ii) the expiration of the Feasibility Period, or (iii) upon delivery by Lessee to Lessor of a written notice ("Option Termination Notice") that Lessee has elected to terminate this Lease prior to the expiration of the Feasibility Period.

5. RENT – FEASIBILITY PERIOD. During the Feasibility Period, Lessee shall pay Lessor on the first date of each month, monthly rent of [REDACTED] ("Feasibility Period Rent") for the Occupied Premises and the Additional Occupied Premises. If Lessee elects to terminate this Lease by delivery of the Option Termination Notice, this Lease shall terminate and no further Feasibility Period Rent shall be payable.

6. LEASE TERM. At any time during the Feasibility Period, Lessee may commence the principal term of this Lease ("Lease Term") by delivering to Lessor written notice (the "Lease Term Exercise Notice") which shall identify a date (the "Lease Commencement Date") no later than last date of the Feasibility Period, together with payment of rent for the first month of the Lease Term. The Lease Term shall be for a period of forty (40) years less one day commencing on the Lease Commencement Date and ending on the day before the fortieth (40th) anniversary of the Lease Commencement Date. The Lease Term is composed of the Construction Period and the Operational Period.

7. CONSTRUCTION PERIOD. The Construction Period will be two (2) years commencing with the Lease Term Commencement Date and ending on the second anniversary of the Lease Term Commencement Date. The Construction Period may be extended by six (6) months at Lessee's sole discretion by delivering written notice to Lessor of such election. During the Construction Period the Occupied Premises shall be as provided in Section 56 below.

8. RENT - CONSTRUCTION PERIOD. During the Construction Period a monthly rent of [REDACTED] ("Construction Period Rent"), for the Occupied Premises and the Additional Occupied Premises shall be paid by Lessee to Lessor subject to the conditions set forth below:

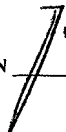
- (a) All payments shall be made by one (1) check, payable to the Lessor's agent named in this Lease.
- (b) Rent shall be due on the first day of each month after the commencement of the Construction Period.
- (c) A late penalty of five percent (5%) of the payment amount then due will be added to the rental amount for all rental payments not made within ten (10) days of the due date.

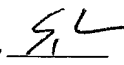
9. OPERATIONAL PERIOD. The Operational Period will commence after the end of the Construction Period, for the remainder of the Lease Term. During the Operation Period the Occupied Premises shall be as provided in Section 56 below.

10. RENT – OPERATIONAL PERIOD. During the Operational Period, Lessee shall pay to Lessor a monthly rent of [REDACTED] (“Operational Period Rent”) for the Occupied Premises. The monthly rent during the Operational Period shall be increased by twelve percent (12%) every five (5) years on the first full month after the fifth anniversary date of the commencement of the Lease Term and every five (5) years thereafter. Payments of monthly rent during the Operational Period shall be made in the manner and subject to the conditions set forth in paragraphs 8a, 8b and 8c. In order to provide the Lessor with information pertaining to the financial status of the Lessee, the Lessee will provide the Lessor, on an annual basis, starting upon the one year anniversary of the commencement of the Operational Period, with a current Dun & Bradstreet report and a letter from Lessee’s lead financial institution providing financing for the Facility, if any, indicating that all amounts due under any loan documents for the Facility have been paid and are current.

11. TERMINATION. This Lease shall be terminated as follows:

- (a) Expiration of the Lease Term(s) as provided in this Lease.
- (b) Non-payment of Rent for a sixty (60) day period after formal written demand for payment has been made by Lessor. Demand shall be made by Certified Mail - Return Receipt Requested.
- (c) Lessor recognizes and acknowledges that the Facility planned by Lessee involves the utilization of costly, and innovative equipment, and the sale of electricity to publicly regulated buyers who may not be required to purchase electric power generated by the Facility at prices or on terms which will allow Lessee to conduct an economically viable business. In recognition of such business conditions and uncertainties, Lessor agrees that Lessee shall have the right, at Lessee’s option, to terminate this Lease absolutely, and without payment of any further rent for the unexpired term of this Lease, upon sixty (60) days notice to Lessor,
- (d) If this Lease is terminated as provided herein during the Construction Period, Lessee shall be obligated to remove all improvements installed by Lessee on the Occupied Premises;
- (e) If this Lease is terminated as provided herein after the Construction Period, Lessee shall be obligated to remove all improvements installed by Lessee provided that site is returned to a condition substantially comparable to its original condition, excluding ground contours and underground improvements.
- (f) In order to provide security for the performance of obligations listed in paragraphs 11(d) and 11(e) above, Lessee shall provide a [REDACTED] performance bond or non-revocable letter of credit to the benefit of Lessor; unless an agency having jurisdiction over the Facility requires security for site clearing, then the Lessor shall be included as a party to such security and no such performance bond or letter of credit shall be





provided to Lessor for site clearing. The site clearing security for Lessor, if required, shall be posted and in full force and effect within seven (7) calendar days of the start of permanent construction on the Occupied Premises. Upon completion of site clearing, all security held by or for the benefit of Lessor and / or and agency having jurisdiction shall be released within thirty (30) days.

12. QUITCLAIM. Within thirty (30) days after any termination of this Lease, for any cause, Lessee agrees to provide and record all quitclaims necessary to clear title of the Premises from any and all clouds created by or through or as a result of this Lease.

13. USE OF THE OCCUPIED PREMISES. Lessee shall have the exclusive use of the Occupied Premises as defined in Section 56. Lessee shall use the Occupied Premises for the purpose of constructing, operating and maintaining the Facility and may use the Occupied Premises for other lawful purposes related to the construction operation and maintenance of the Facility. Lessee may, at Lessee's sole election, construct, demolish, remove, replace, alter, reconstruct, or relocate any improvements or add to or remove from existing improvements in whole or in part. All salvage from such improvements shall be the property of Lessee. Such improvements may include, but are not limited to, gas turbines, engines, generators, buildings, water storage tanks, a water well, a septic tank and drain area, electric power transmission lines, gas lines, telephone lines, water lines, chillers, cooling towers and any other such equipment or modifications. These improvements shall at all times be considered the personal property of Lessee. Lessee shall comply with all then applicable codes, ordinances, regulations and requirements for permits and approvals, including, but not limited to, any grading permit, building permits, zoning and planning requirements, and approvals from various governmental agencies and bodies having jurisdiction. Lessee shall notify Lessor fifteen (15) days prior to the commencement of initial construction that said construction is going to begin and shall also notify Lessor on the day the construction actually begins that it in fact has commenced.

Lessor agrees to provide Lessee access to the Occupied Premises over the existing improved roadway, and an extension thereof to be constructed by Lessee, for the term of the Lease. Access provided to Lessee shall extend to other parties with which Lessee contracts to provide deliveries, pickups, services, supplies, equipment, or any other item or service required by Lessee to conduct its business on the occupied Premises. Lessee must maintain the current condition of the existing improved roadway.

Lessee may make changes in the contour of the Occupied Premises to accommodate improvements contemplated by Lessee.

14. INDEMNITY. Except to the extent attributable to Lessor's negligence or willful misconduct, Lessee shall defend and indemnify Lessor against all liability and loss of any type arising out of work or operations performed on the Occupied Premises by Lessee, together with reasonable attorney's fees and all costs and expenses incurred by Lessor in negotiating, settling, defending, or otherwise protecting against such claims.

15. EASEMENTS. Lessor grants to Lessee, at no additional cost, the right of ingress and egress necessary for Lessee to perform the activities described in this Lease.

Lessee may grant easements or rights of way to public entities, public utilities, public service corporations, its sublessees and assignees and others, provided the easements or rights of way are limited to the term of this agreement. Except for existing easements over the Occupied Premises, Lessee shall have the exclusive use of the Occupied Premises. In addition, Lessor grants Lessee the right to transmit electric power over the Occupied Premises generated from the Facility in the Occupied Premises for the term of this agreement.

16. LESSOR TITLE WARRANTY. On the execution of this agreement, the Occupied Premises shall be free and clear of all liens and encumbrances other than real estate taxes and those liens and encumbrances expressly agreed to in accordance with this Lease and as set forth in Exhibit "B" attached hereto and incorporated by this reference as though fully set forth herein, including that certain lease agreement (the "ACC Lease") between Lessor and Altamont Cogeneration Corporation ("ACC") a memorandum of which is recorded in the official records of Alameda County as document number 92-107401 and recorded April 8, 1992. Any lien placed on the Occupied Premises by Lessor, or others, after the execution of this agreement shall be subject of this agreement. Lessor warrants that, with the exception of the liens and encumbrances listed in Exhibit "B", and ordinary and usual tax obligations, that Lessor holds free and clear title to the Occupied Premises, and agrees to defend the title in any instance where an attack thereon would interfere with Lessee's interests. In the event a secured party should file a notice of foreclosure on the Lessor's fees or other interest in the Occupied Premises or any similar action at law or otherwise should be instituted against Lessor, Lessee shall have the absolute right, at Lessee's sole option, to make such payments or take such other action necessary to cure Lessor's default or other otherwise to protect Lessee's interest in the Occupied Premises. In such event Lessee shall have the right to deduct such payments from the rent due hereunder.

Lessor agrees to cooperate in obtaining from ACC (or its successor in interest under the ACC Lease) a non-disturbance and recognition agreement ("ACC Recognition Agreement") satisfactory to Lessee, which agreement shall in substance constitute ACC's agreement that Lessee shall have the rights granted to it under this Lease and that the rights given to ACC under the ACC Lease shall not interfere with the exercise of Lessee's rights under this Lease.

17. OWNERSHIP OF IMPROVEMENTS. Title to all Facilities and any other improvements installed by Lessee on the Occupied Premises shall be held by Lessee and Lessor agrees to claim no interest therein. All improvements constructed on the Occupied Premises by Lessee as permitted by this Lease shall be owned by Lessee. Lessee hereby waives its right to all improvements not removed from the Occupied Premises and remaining on the Occupied Premises six (6) months after the expiration of this Lease or any extension thereof.

Lessee shall have the right at any time to subject the leasehold estate and any or all of Lessee's improvements to one or more liens as security for a loan or loans or other obligation of Lessee, provided that the Lien or security interest and all rights acquired under

them shall be subject to each and all of the covenants, conditions, and restrictions stated in this Lease and to all rights and interest of Lessor except as otherwise provided in this Lease.

18. CREDITOR'S SECURITY. Lessee may provide to creditors or lending institutions a security interest in the power plant equipment and other improvements (collateral) to be placed on the Occupied Premises. Lessor agrees that creditors, at any time, may enter upon the Occupied Premises and take possession, sever, and remove the all of Lessee's improvements, notwithstanding that it may have been affixed to or become a part of the Occupied Premises. Provided, however, such a creditor shall compensate Lessor for any and all damages caused by said removal. Lessor reasonably agrees to acknowledge and enter into a severance agreement with the creditor or lending institution if so required.

19. LESSEE'S MORTGAGE RIGHT. Lessee may, at any time and from time to time during the term of this Lease encumber to any person or entity, herein called "Leasehold Mortgagee, by deed of trust or mortgage or other security instrument all or a portion of Lessee's interest under this Lease and the leasehold estate hereby created in Lessee for any purpose or purposes; (a "Leasehold Mortgage"). provided, however, that no encumbrance incurred by Lessee pursuant to this section shall, and Lessee shall not have power to incur any encumbrance that will, constitute in any way a lien or encumbrance on the fee of said Premises or any interest of Lessor in said Premises.

- (a) Any Leasehold Mortgagee or its designee may acquire or succeed to the estate of Lessee hereunder by reason of foreclosure or similar remedial action or upon transfer of such leasehold estate in lieu of foreclosure, and upon so acquiring or succeeding shall assume only the obligations of Lessee accruing hereunder during the period when Leasehold Mortgagee holds possession of the Premises or owns Lessee's leasehold estate herein. With respect to an assignment following a foreclosure or similar remedial action, Lessor acknowledges and agrees that, upon receipt of written direction by a Leasehold Mortgagee that it has succeeded to Lessee's interest in this Lease and the Premises (the "Foreclosure Interest") or a third party has purchased the Foreclosure Interest in a foreclosure sale, Lessor will recognize such Leasehold Mortgagee or such third party, as applicable, as the proper and lawful Lessee of the Premises and as the proper and lawful successor to Lessee with respect to access to the Premises. Such Leasehold Mortgagee or third party, as applicable, shall be fully entitled to receive the rights and benefits of Lessee hereunder so long as it performs the obligations of Lessee hereunder. Lessor shall be protected and shall incur no liability in acting or proceeding in good faith upon any such foregoing written notice and direction by Leasehold Mortgagee which Lessor shall in good faith believe (i) to be genuine and (ii) a copy of which to have been delivered to Lessee. Lessor shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such foregoing notice and direction, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements.
- (b) So long as Lessee's interest under this Lease or in the Premises or any portion thereof is subject to any Leasehold Mortgage, Lessor will not execute any right,

power or remedy with respect to any default hereunder, and no notice to Lessee of any such default and no termination of this Lease in connection therewith shall be effective, unless Lessor shall have given to the Leasehold Mortgagee written notice or a copy of its notice to Lessee of such default or any such termination; provided that to be entitled to such notice and the other rights granted to a Leasehold Mortgagee in this Section 19, such Leasehold Mortgagee shall have given written notice to Lessor of the existence of its interest and the desire to receive such notice along with the name and address of where any notice to such Leasehold Mortgagee shall be sent. Any Leasehold Mortgagee shall have the same amount of time as Lessee, but at least ten (10) days following its receipt of Lessor's written notice with respect to any monetary default and at least thirty (30) days following its receipt of Lessor's written notice with respect to any non-monetary default, to cure any default by Lessee under this Lease; provided that in no event shall any Leasehold Mortgagee be obligated to cure any such default.

- (c) So long as any Leasehold Mortgage shall remain in effect, this Lease may not be amended, modified or changed, nor may it be surrendered without the prior written consent of the Leasehold Mortgagee thereunder and any such attempted amendment, modification or surrender, without such consent, shall be void.
- (d) In the event that Lessee shall fail to make any payment or perform any act required hereunder to be made or performed by Lessee, then any Leasehold Mortgagee may, but shall be under no obligation to, make such payment or perform such act with the same effect as if made or performed by Lessee. Lessee hereby constitutes and appoints each Leasehold Mortgagee as Lessee's agents and attorneys-in-fact with full power, in Lessee's name, place and stead, and at Lessee's cost and expense, to enter upon the Premises and make repairs thereon and therein, maintain the same, remove any violations of law, statutes, ordinances or rule or regulation of governing authorities and to otherwise perform any of the obligations of Lessee under this Lease.
- (e) If, in connection with a bankruptcy of Lessee, this Lease shall be rejected or disaffirmed pursuant to any bankruptcy law or other law affecting creditors' rights, then at Leasehold Mortgagee's option (provided Lessor shall have been given notice of the Leasehold Mortgage in accordance with this Section 19), Lessor will enter into a new lease of the Premises created by this Lease with Leasehold Mortgagee not less than ten (10) nor more than thirty (30) days after the request of Leasehold Mortgagee referred to below, for the remainder of the term of this Lease effective as of the date of such rejection or disaffirmance, upon all the terms and provisions contained in this Lease; provided that (i) Leasehold Mortgagee makes a written request to Lessor for such new Lease within thirty (30) days after the effective date of such rejection or disaffirmance, as the case may be, and such written request is accompanied by a copy of such new lease, duly executed and acknowledged by Leasehold Mortgagee and (ii) Leasehold Mortgagee cures all curable defaults under this Lease which can be cured without taking possession of the Premises.

- (f) Subject to the terms and conditions hereof, Lessor hereby subordinates any lien it may have in and to the Facility and other property that is or may from time to time hereafter be located at the Premises, and to which Lessee has granted or will grant a security interest to Leasehold Mortgagee (all such property and the records relating thereto shall be hereafter called the “Collateral”) to the lien of Leasehold Mortgagee; provided, however, that this subordination shall not prevent Lessor from exercising any right or remedy against Lessee to which Lessor may be entitled under the terms of this Lease or as may be provided by applicable law; nor shall it prevent Lessor from realizing upon any lien it may have on any property of Lessee, including the Collateral, so long as Lessor recognizes Leasehold Mortgagee’s prior right to the Collateral described above. Lessor recognizes and acknowledges that any claim or claims that Leasehold Mortgagee has or may have against such Collateral by virtue of any lien or security interest, are superior to any lien, security interest, or claim of any nature that Lessor now has or may hereafter have to such Collateral by statute, agreement or otherwise. The subordination provided for herein shall be effective until the discharge of such claim(s). Lessor further agrees to notify any purchaser of the Premises, and any subsequent mortgagee or other encumbrance holder, of the existence of the foregoing waiver of Lessor’s lien, which shall be binding upon the executors, administrators, successors and transferees of Lessor, and shall inure to the benefit of the successors and assigns of Leasehold Mortgagee.
- (g) Lessor consents to Leasehold Mortgagee’s security interest in the Collateral and waives all right of levy for rent and all claims and demands of every kind against the Collateral, such waiver to continue so long as any sum remains owing from Lessee to the Leasehold Mortgagee. Lessor agrees that the Collateral shall not be subject to seizure or execution by, or to any claim of, Lessor. Lessor hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent Leasehold Mortgagee from entering the Premises for the purpose of inspecting the Collateral.

20. TAXES. Lessee shall be responsible for all taxes and general and special assessments and other charges of every description (“Property Taxes”) which during the term of this Lease may be levied upon or assessed on the Premises that are attributable to the Occupied Premises or the Facility. If bills for the Property Taxes identify the Property Taxes attributable to the Occupied Premises and/or the Facility, Lessee shall pay the amount so identified. If the bills for the Property Taxes do not separately identify the Occupied Premises and/or the Facility, Lessee shall pay a prorata share of the Property Taxes assessed on Lessor’s land and improvements based on the prorata share that the Occupied Premises and the Facility is to the Lessor’s land and improvements assessed. Lessor shall be responsible for all taxes and general and special assessments and other charges of every description which during the term of this Lease that may be levied upon or assessed to the Premises that are not attributable to the Occupied Premises or the Facility. Lessee may contest the legal validity or amount of any tax, assessment, or charge’ for which Lessee is responsible under this Lease, and may institute such proceedings as Lessee considers necessary. If Lessee contests any such tax, assessment, or charge Lessee may withhold or

defer payment or pay under protest but shall protect Lessor and the Occupied Premises from any lien by adequate surety bond or other appropriate security.

Lessor appoints Lessee as Lessor's attorney-in-fact for the purpose of making all payments to any taxing authorities and for the purpose of contesting any taxes, assessments, or charges for which Lessee is responsible, conditioned on Lessee's preventing any liens from being levied on the Occupied Premises or on Lessor (other than the statutory lien of Revenue and Taxation Code Section 2187).

Lessee's obligation to pay taxes or assessments levied or charged against the Occupied Premises or improvements or against specified personal property shall not include the following, whatever they may be called: business, income, or profits taxes levied or assessed against Lessor by any federal, state, county or other governmental entity or agency; estate, succession, inheritance or transfer taxes of Lessor; corporation, franchise, or profits taxes imposed on the owner of the fee title of the Occupied Premises; or any tax or increase of any tax on the Occupied Premises resulting from the income, or an increase in the income, to the Lessor as a consequence of this Ground Lease.

21. INSURANCE. Throughout the term of this Lease, at Lessee's sole cost and expense, Lessee shall keep or cause to be kept insured all improvements owned by Lessee located on or appurtenant to the Occupied Premises against loss or damage by fire and such other risks including vandalism and malicious mischief. Lessor shall not carry any insurance the effect of which would be to reduce the protection or payment to Lessee under any insurance that this Lease obligates Lessee to carry. Lessee may include the holder of any lien on the leasehold or on Lessee's improvements, or both, as loss payee.

Lessee shall name Lessor as an additional insured on any and all insurance policies pertaining to the Occupied Premises.

Lessor shall, at Lessee's cost and expense, cooperate fully with Lessee to obtain the largest possible recovery on any claim, and all policies of fire and extended coverage insurance required of Lessee by this Lease shall provide that the proceeds shall be paid to Lessee.

Throughout the term, at Lessee's sole cost and expense, Lessee shall keep or cause to be kept in force, for the mutual benefit of Lessor and Lessee, comprehensive broad form general public liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy, disuse or condition of the Occupied Premises, improvements, or adjoining areas or ways, within Lessee's control, providing such insurance relating to the operation of the Facility is generally available commercially. Such insurance shall be for not less than \$1,000,000.00 combined single limit.

Lessee for its benefit may procure and maintain any insurance not required by this Lease, however all such insurance shall be subject to all other provisions of this Lease pertaining to insurance.

Lessor shall not be liable for, and Lessee shall defend and indemnify Lessor against, all liability and claims of liability, for damage or injury to person or property on or about the Occupied Premises from any cause arising out of Lessee's use of the Occupied Premises.

22. ASSIGNMENT AND SUBLEASING. Lessee shall have the right to assign or sublet, in whole or in part, its interest in this Lease or any of Lessee's rights or obligations hereunder, on all or any part or parts of the Occupied Premises or the improvements on the Occupied Premises or any layer of the air above the Occupied Premises or any part or any combination of any of the foregoing, with the written consent of Lessor which shall not be unreasonable withheld. Without regard for the above, Lessee may assign this Lease to a financing entity or an affiliate without Lessor's consent. Lessee agrees to provide Lessor written notice of any assignments of this Lease within 30 days after said assignment by providing Lessor a copy of the assignment or sublease. Any such assignment shall provide that the assignee shall be bound by all terms and conditions of this Lease.

23. LESSOR REPRESENTATIVE. Upon execution of this Lease, each of the parties comprising Lessor, hereby expressly appoint Steve Shin-Der Lee as the Lessor's Agent for purposes including but not limited to receiving, collecting and distributing rental payments, and signing all documents, including amendments to this Lease, and undertaking all actions on behalf of all persons designated as the "Lessor" herein.

24. LESSOR ASSISTANCE. Lessor shall cooperate with Lessee in making applications for an obtaining all building permits, zoning changes, conditional use permits subdivision maps, parcel maps, environmental impact reviews or any other approvals, contracts or agreements (collectively, "Facility Documents") deemed appropriate by Lessee for the construction, operation and maintenance of the Facility. Lessor shall assist Lessee, with such Facility Authorizations at no expense to Lessee. Should Lessor's written concurrence or signature be required for any Facility Documents, Lessor agrees to execute such permit or approval application or approve such document without delay. Where Lessor signature is not required in the application or execution of such permits and approvals, Lessor agrees that Lessee may execute such Facility Documents as required.

25. SITE LOCATION. Prior to expiration of the Feasibility Period, Lessee shall arrange with Lessor's Agent a mutually acceptable time for both parties to conduct an on-site survey of the project location. At that time, Lessee shall stake the approximate location of the perimeter of the project site, and those easements which Lessee is able to anticipate at that time necessary for site access, water access, power line interconnect, gas line interconnect, and telephone service. After this time, Lessee must obtain written approval from Lessor to materially change the location of the project and or easements. Such approval will not be unreasonably denied.

26. SUPPORT EASEMENTS and SUPPORT FACILITIES. Lessee shall have easements ("Support Easements") over all portions of the Premises as Lessee may determine is appropriate for the construction, operation and maintenance of access roads and paths, transmission lines, utility lines, gas lines, water lines, communication lines, collection lines, drainage facilities and other improvements either aboveground (which may be supported by

towers and poles) or underground (collective the "Support Facilities"), for purposes related to the portions of the Facility located on or off the Occupied Premises, provided that Lessee shall notify Lessor, three (3) months prior to the start of construction, of the proposed routing of either aboveground and underground improvements that are off the Occupied Premises.

27. UTILITIES. Lessee shall pay for all water, gas, heat, telephone and other utilities and services supplied to Lessee together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay Lessee's share of all charges jointly metered. Lessee shall have the right to construct, operate and maintain telephone lines to the nearest suitable service, and a water pipe line between Lessee's water source and the Facility.

28. QUIET POSSESSION. Upon Lessee paying rent and royalties for the Occupied Premises and observing and performing all of the covenants, conditions and provisions specified herein, within the periods and extended periods, Lessor agrees, covenants and warrants that Lessee shall have quiet possessions and exclusive use of the Occupied Premises for the entire term subject to all of the provisions of this Lease.

29. DEFAULT BY LESSEE. Each of the following events shall be a default by Lessee and a breach of this Lease:

- (a) Abandonment or surrender of the Occupied Premises or of the leasehold estate, or failure or refusal to pay rent when due by Lessee,
- (b) An assignment by Lessee for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee a bankrupt; or for extending time for payment, adjustment, or satisfaction of Lessee's liabilities; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise terminated within 180 days of the commencement of the action.

30. NOTICE OF DEFAULT AND REMEDIES. As a precondition to pursuing any remedy for an alleged default by Lessee, Lessor shall, before pursuing any remedy, give notice of default to Lessee. Each notice of default shall specify in detail the alleged event of default and the intended remedy.

If the alleged default is nonpayment of rent, taxes, or other sums to be paid by Lessee, Lessee shall have fifteen (15) days after notice is given to cure the default. For the cure of any other default, Lessee shall promptly and diligently after the notice commence curing the default and have ninety (90) days after notice is given to complete the cure plus any additional period that is reasonably required for the curing of the default.

Any subtenant of all or any part of the Occupied Premises shall have the right, at its election, to cure a curable default under this Lease, or under any lien. If any such subtenant cures all defaults that are then curable and other defaults are non-curable, or if all then

existing defaults are non-curable, then subtenant's possession and use shall not be disturbed by Lessor or by any lien holder as long as (1) the subtenant performs his sublease's provisions, (2) the subtenant attorns to Lessor and lienholder according to their respective interests, and (3) subsequent defaults are cured as set forth above if curable.

Lessor shall be entitled at Lessor's election to each installment of rent or to any combination of installments for any period before termination, plus simple interest at the prime interest rate per year from the due date of each installment. Proceeds of reletting or subrents shall be applied, when received, as follows: (1) to Lessor to the extent that the proceeds for the period covered do not exceed the amount due from and charged to Lessee for the same period, and (2) the balance to Lessee. Lessor shall make reasonable efforts to mitigate Lessee's liability under this provision.

Lessee assigns to Lessor all or any portion of subrents and other sums falling due from subtenants, licensees, and concessionaires (herein called subtenants) during any period that Lessee remains in default.

If any default by Lessee shall continue uncured following notice of default as required by this Lease for the period applicable to the default under the applicable provision of the Lease, Lessor shall have all rights and remedies provided by law or equity and may pursue any remedy not or hereafter available to Lessor under the laws or judicial decisions of the State of California.

31. LESSOR'S DEFAULT. Lessor shall not be considered to be in default under this Lease unless (1) Lessee has given notice specifying the default and (2) Lessor has failed for 15 days to execute any document which Lessor is to execute, or for 60 days to cure any other default, if it is curable, or to institute and diligently pursue reasonable corrective or ameliorative acts for non-curable defaults, provided such remedies exist.

In addition to all other rights and remedies available to Lessee in law or equity, Lessee shall have the right, but not the obligation to pay, after a default by the Lessor, any monetary obligations due under any encumbrance, charge and/or lien originated by Lessor and affecting the Occupied Premises.

32. FORCE MAJEURE. Any prevention, delay, non-performance, or stoppage due to force majeure shall excuse non-performance or failure to cure for a period equal to any such prevention, delay, non-performance, or stoppage, except for the obligations imposed by this Lease for the payment of rent and royalties, taxes and insurance. Force majeure means acts of God, riots, strikes, lockouts, labor disputes, epidemics, landslides, lightening, earthquakes, fires, storms, washouts, inability to obtain labor or materials, governmental laws, regulations, proclamations, or order of any governmental agency or court, cancellation or withdrawal of permits by governmental agencies, arrests and restraints of governments and people, civil disturbances and explosions or other causes beyond the reasonable control of the party affected thereby whether such causes exist on the date of this agreement or not and which are not caused by the willful misconduct of such party.

33. PERFORMANCE UNDER PROTEST. If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as voluntary payment and there shall survive the right on the part of said party to institute legal proceedings, for the recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

34. CONDEMNATION. It is stipulated and agreed between Lessor and Lessee that Lessee, during the term of this Lease, will have a substantial investment in any improvements added by Lessee at its sole cost and expense upon the Occupied Premises that may be taken in condemnation proceedings by any authority having the right to eminent domain. It is the intent of the parties to provide for the complete and fair compensation to Lessee, out of any award or payment in the event of the taking by condemnation of any of the Occupied Premises. Said award or payment shall be divided as follows.

- (a) For all land taken, Lessor shall be paid the fair market - value of the land in its then existing physical condition without improvements.
- (b) The difference between the fair market value of the land taken paid to Lessor as set forth in paragraph "34a", and the fair market value of the land taken in its then existing physical condition, together with the improvements thereon, shall then be divided between Lessor and Lessee as follows:
 - (1) the fair market value of the improvements belonging to Lessor shall be paid to Lessor; (2) the fair market value of the improvements belonging to Lessee shall be paid to Lessee.
- (c) For personal property taken belonging to Lessor, Lessor shall receive the fair market value.
- (d) For personal property taken belonging to Lessee, Lessee shall receive the fair market value.
- (e) Severance damage to the land shall be paid to Lessor.
- (f) Severance damage to improvements belonging to Lessor shall be paid to Lessor.
- (g) Severance damage to improvements belonging to Lessee shall be paid to Lessee.
- (h) The value of the remaining term of this Lease to Lessor shall be paid to Lessor.
- (i) The value of the remaining term of this Lease to Lessee shall be paid to Lessee.
- (j) The balance of any award shall be divided 95% to Lessor and 5% to Lessee.

The award or payment to be divided shall in all cases be the total amount covering both Lessor's interest and Lessee's interest in the property taken. The allocation in accordance with the above shall be made and determined by a professional appraiser who is certified as an "M.A.I." by the American Institute of Real Estate Appraisers. The particular appraiser to be used shall be mutually agreed upon between the parties and if no mutual agreement can be reached then the Superior Court of the County of Alameda shall be asked to appoint such an appraiser. The fees and costs of such appraiser shall be divided equally between Lessor and Lessee.

The date of valuation to be used shall be the date of execution of the deed to the condemning agency if a settlement is reached. And if no settlement is reached, then the date of valuation as required by law for the condemnation action shall be used. Lessor and Lessee, in the event litigation is required with the condemning agency, may each pursue separation courses in the litigation with separate counsel and separate appraisers; however, the final award shall be divided between them as set forth above.

It is further stipulated between Lessor and Lessee that the provisions of this section relating to condemnation shall apply in any case where the leased Premises are taken by a public body having the power of condemnation, even though the issues not be determined by the judgment of a court but are compromised in the interest of avoiding litigation prior to actual determination by court proceedings.

If a part of the Occupied Premises is condemned for public use, and the remaining part is susceptible of occupation by Lessee, this Lease shall terminate only as to the part taken, on the date title vests in the condemnor.

If the entire or a part of the leased Occupied Premises is taken or condemned so that there does not remain a portion capable of occupation by Lessee, this Lease shall terminate on the date title vests in the condemnor or on the date Lessee is deprived of its use of the Occupied Premises, whichever occurs first.

If the entire or a part of the leased Occupied Premises is taken or condemned, all compensation awarded on condemnation shall be divided in accordance herewith.

35. ESTOPPEL CERTIFICATES. At any time and from time to time, within 10 days after notice or request by either party, the other party shall execute, acknowledge and deliver to the requesting party, or to such other recipient as the notice shall direct, a statement certifying that this Lease is unmodified and in full force and effect, or if there have been modifications, that it is full force and effect as modified in the manner specified in the statement, a statement that the Lease is not in default hereunder and/or that past defaults have been fully cured. The statement shall also state the dates to which the rent and any other charges have been paid in advance. The statement shall be such that it can be relied on by an auditor, creditor, commercial banker, or investment banker of either party and by any prospective purchaser or encumbrancer of the Occupied Premises or improvements or both, or by any assignee, sublessee or encumbrancer of all or any part or parts of Lessee's interests under this Lease.

Lessor's failure to execute, acknowledge, and deliver, on request, the certified statement described above within the specified time shall constitute acknowledgement by Lessor to all persons entitled to rely on the statement that this Lease is unmodified and in full force and effect and that the rent and other charges have been duly and fully paid to and including the respective due dates immediately preceding the date of the notice of request and shall constitute a waiver, with respect to all persons entitled to rely on the statement, of any defaults that may exist before the date of the notice.

36. HOLDING OVER. If Lessee with Lessor's consent remains in possession of the Occupied Premises or any part thereof after the expiration of the term hereof or any extension hereof such occupancy shall be a tenancy from month to month subject to all the provisions of this Lease.

37. NEGATION OF PARTNERSHIP. Nothing in this Lease shall be construed to render the Lessor in any way or for any purpose a partner, joint venturer, or employee of Lessee, nor is Lessor associated in any relationship with Lessee other than that of landlord and tenant, nor shall this Lease be construed to authorize either party to act as agent for the other except as expressly provided herein.

38. WAIVER OF SETBACKS. Lessor agrees to waive any and all Alameda County, California State, local or other setback requirements benefiting the Occupied Premises, or benefiting any property owned by Lessor adjacent to the Occupied Premises, and imposed upon development of the Occupied Premises or any property bordering the Occupied Premises which is also leased to Lessee if the owner of the bordering property - if not Lessee - executes a similar waiver of setback requirements imposed upon the Occupied Premises. The waiver shall be in a form acceptable to the relevant governmental agencies and shall be a recordable document.

39. EFFECT ON OIL, GAS, AND MINERAL RIGHTS. All subsurface oil, gas, and mineral rights are expressly excluded from this agreement. Lessor, Lessor's agents, assigns, licensees, or lessees under any oil or gas lease may enter on the Occupied Premises to investigate, explore for and produce such oil, gas and minerals provided such activity is customary and does not unreasonably interfere with the operations of Lessee as specified in this agreement. Lessee shall have the right to approve the location of any oil, gas or mineral operations, but shall not unreasonably withhold such approval.

40. LESSEE'S OPTION TO PURCHASE. Right of First Refusal on the Premises. Subject to and subordinate to any preexisting option and right of first refusal, Lessor agrees that if at any time during the term of this Lease or any extension hereof Lessor shall decide to sell, trade or otherwise dispose of Lessor's interest in the Premises, or any part thereof, and receives a bona fide offer for such sale, trade or disposal which is acceptable to Lessor, then and in that event any contract which may be entered into between Lessor and such bona fide purchaser shall provide that the sale, trade or disposal of the fee shall be subject to Lessee's right to purchase as hereinafter set forth. In the event that Lessor receives a written offer or executes a contract as set forth above, Lessee shall have the option, to be exercised within fifteen (15) days after written notice to Lessee of the terms of such offer, to enter into a contract for its own account or the account of others with

Lessor, and Lessor agrees to enter into such contract with Lessee, on the same terms and conditions as said offer to purchase. Lessor shall submit to Lessee a duplicate original of the executed contract or offer embodying all the terms and conditions of said contract or offer for the purpose of the notice described in this paragraph. If after the receipt of such notice Lessee shall fail to exercise its option by executing and delivering to Lessor within fifteen days a copy of said contract or offer, Lessor shall have the right to conclude the proposed sale on the same terms and conditions, and no other, as in the contract or offer forwarded to Lessee.

Notwithstanding Lessee's failure to exercise such option, Lessee's option and right of first refusal shall remain in force and be binding upon any subsequent sale, trade or disposal of the Premises to the same extent as if said subsequent owner or owners were Lessor herein, and said subsequent owner or owners shall be required to do all things required of Lessor in this Lease prior to any such sale of the Premises.

In the event of any sale, trade or disposal of the Premises to anyone other than Lessee, the sale shall be subject to this Lease and shall be so affirmed by the Purchaser.

41. NOTICES. As used in this Lease, notice includes but is not limited to the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment, option, and election. All notices must be in writing; provided that no writing other than the check or other instrument representing the rent payment itself need accompany the payment of rent.

Notice is considered given either when delivered in person to the recipient named below, or five (5) days following the date shown on receipt for certified mail after deposit in the United States mail, first class postage and certified mail postal charges prepaid, addressed by name and address to the party or persons intended as follows:

Lessee: President
Diamond Generating Corporation
333 S. Grand Avenue, Suite 1570
Los Angeles, CA 90071

Lessor: Steve Shin-Der Lee
3643 Ferry Lane
Fremont, CA 94555

Either party may, by notice given at any time or from time to time, require subsequent or additional notices to be given to any assignee and sublessee, to another individual person, whether a party or an officer or representative, or to a different address, or all. Notices given before actual receipt of notice of change shall not be invalidated by the change.

42. COUNTERPARTS. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

43. SEVERABILITY. The invalidity or illegality, of any provision shall not affect the validity of the remainder of the Lease.

44. SUCCESSORS. Subject to the provisions of the Lease on assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding on and shall inure to the benefit of purchasers, heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.

45. GOVERNING LAW. This Lease shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be performed entirely within that state with venue in Alameda or Los Angeles Counties.

46. AMENDMENT. This Lease shall only be amended, altered, or modified by a written document signed by the parties in interest at the time of the modification.

47. RECORDING. Lessor and Lessee shall execute, acknowledge and deliver for recording purposes a "short form" memorandum of this Lease as shown in Exhibit "C" attached hereto and incorporated herein by reference.

48. RIGHT TO CONTEST. Lessee has the right to contest by appropriate judicial or administrative proceedings, without cost or expense to Lessor, the validity or application of any law, ordinance, order, rule, regulation, or requirement (hereafter called law) that Lessee repair, maintain, alter, or replace the improvements in whole or in part. Lessee shall indemnify Lessor, without request by Lessor, for any fine or penalties or other liability assessed against Lessor due to Lessee's non compliance with any law. Lessor may, but is not required to, contest any such law independently of Lessee. Lessor may, and on Lessee's notice of request shall, join in Lessee's contest.

49. ATTORNEY'S FEES. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy, the prevailing party shall be entitled to recover its reasonable attorney's fees.

50. DELEGATION OF PERFORMANCE. Lessee may at Lessee's election delegate performance of any or all covenants to any one or more assigns, subtenants, or subtenants of subtenants, and the performance so delegated shall be deemed Lessee's performance.

51. GENDER AND NUMBER. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the neuter, and each includes corporation, partnership, or other legal entity when the context so requires. The singular number includes the plural whenever the context so requires.

52. ENTIRE AGREEMENT. This Lease constitutes the complete agreement between the parties. No promise, representation, warranty, or covenant not included in this

Lease has been or is relied on by either party. Each party has relied on its own examination of this Lease, the counsel of its own advisors, and the warranties, representations, and covenants in the Lease itself. The failure or refusal of either party to inspect the Premises or improvements, to read the Lease or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

53. CONSENTS. Whenever in this Lease the consent of one party is required to the act of the other party, such consent shall not be unreasonably withheld.

54. HEADINGS. Any headings or titles to the paragraphs of this Lease are not a part of this Lease and shall have no affect upon the construction or interpretation of any part of this Lease,

55. AUTHORITY. The individual executing this Lease on behalf of Lessee represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity. The individuals executing this Lease on behalf of Lessor represent and warrant to Lessee that they are fully authorized and legally capable of executing this Lease on behalf of Lessor and that such execution is binding upon all parties holding an ownership interest in the Premises.

56. OCCUPIED PREMISES. The parties hereto agree that although the entire real property owned by Lessor is the subject of this Lease, (the "Premises"); Lessee is limited to use only a small portion for the construction and operation of the facility herein described. The project site and related easements shall herein be referred to as the "Occupied Premises." The Occupied Premises shall be comprised as follows:

- (a) During the Siting Determination Period the Occupied Premises shall be comprised of the three approximate 10-acre alternative areas designated on Exhibit D, located at 4901 Bruns Road, unincorporated Alameda County, California, 94550.
- (b) Upon Lessee's selection of one of the three alternatives, for the duration of the Feasibility Period and the Construction Period, the Occupied Premises shall be comprised of the chosen approximately ten (10) acre area and an adjacent approximately five (5) acre area of Lessee's choice.
- (c) After the termination of the Construction Period, the Occupied Premises shall be solely comprised of the approximately ten (10) acre area referred to in 56b and the Support Easements.

In addition to 56a, 56b, and 56c, the Occupied Premises shall be comprised of the Support Easements. Except where restricted by prior leases or agreements, Lessor shall retain exclusive rights to, and unrestricted use of, the Premises except for the Occupied Premises.

LESSOR: Steve Shin-Der Lee

By: *Steve Shin-Der Lee*

Date: 10/29/08

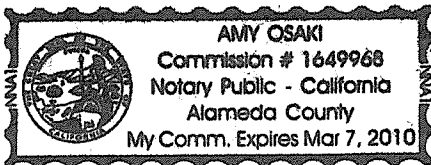
STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On October ^{29th A.M.} 27, 2008, before me, *Amy Osaki, Notary Public* personally appeared Steve Shin-Der Lee, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his /her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PURJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Amy Osaki
Notary Public



Place Notary Seal Above

LESSOR: Puang Jiuan-Jiuan Lee

By: Puang Jiuan-Jiuan Lee

Date: 10-29-08

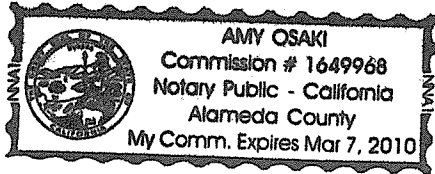
STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On October ^{29th} 27, 2008, before me, Amy Osaki, Notary Public personally appeared Puang Jiuan-Jiuan Lee, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PURJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Amy Osaki
Notary Public

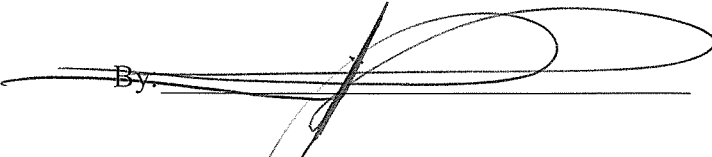


Place Notary Seal Above

TN J

SL SL

LESSEE: DIAMOND GENERATING CORPORATION

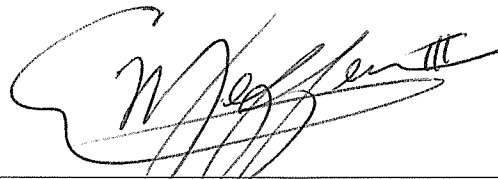
By: 
Date: October 27th, 2008

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS)
ANGELES

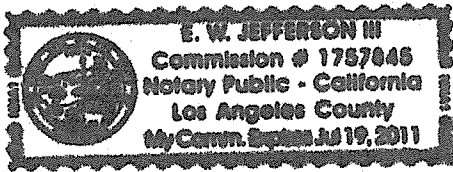
On October 27, 2008, before me, E.W. JEFFERSON III, Notary Public personally appeared Tetsuji Nakagawa, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his /~~her/their~~ signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PURJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public



Place Notary Seal Above

TN J.

SL SL

EXHIBIT A
TO LAND LEASE AND RENTAL AGREEMENT
Page 1 of 2

Description of the Premises.

That parcel of land in the Township of Murray, County of Alameda, State of California, described as follows:

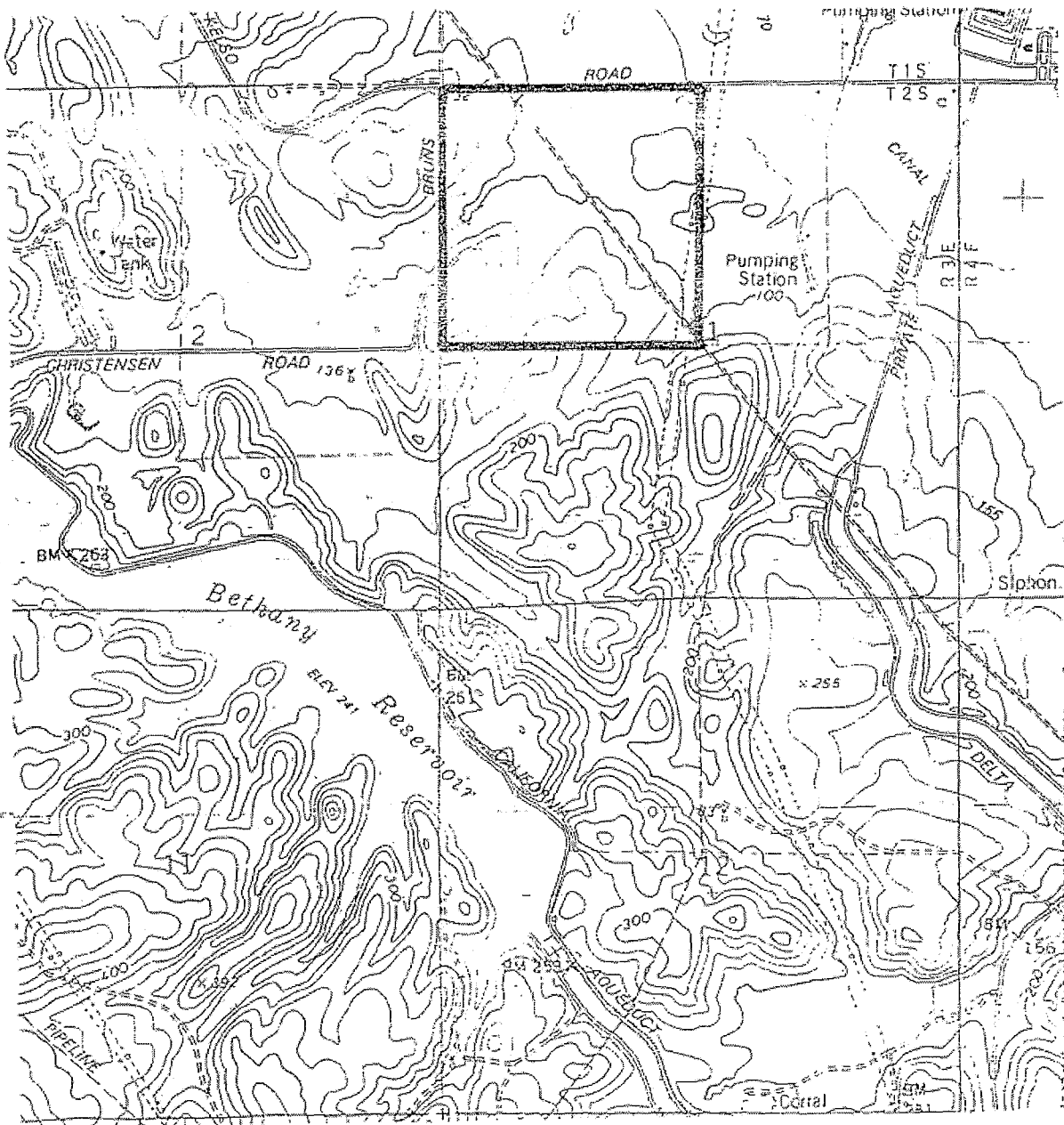
The Northwest 1/4 of Section 1, Township 2 South, Range 3 East, Mount Diablo Base and Meridian.

Assessor's Parcel No. 99B-7050-1-10



EXHIBIT A
TO LAND LEASE AND RENTAL AGREEMENT
Page 2 of 2

LOCATION OF LEASED PREMISES



SL

EXHIBIT B
TO LAND LEASE AND RENTAL AGREEMENT

1. Land Lease and Rental Agreement between Steve Shin-Der Lee, Puang Jiuan-Juan Lee, Hsiao-Chao Cheng, and Yu-Mei Lee Cheng, as Lessor, and Fayette Energy Corporation as Lessees; executed in 1989 and recorded on April 8, 1992, document number 92-107401.

2. Commitment For Title Insurance, issued by Stewart Title Guaranty Company with an Effective Date of October 22, 2008 at 7:30 AM. Order Number 2259-103230 and Your Reference Number 08332809.

A handwritten signature in black ink, appearing to be 'SIL', located in the bottom right corner of the page.

COMMITMENT FOR TITLE INSURANCE
Issued by
STEWART TITLE GUARANTY COMPANY

STEWART TITLE GUARANTY COMPANY, a Texas Corporation, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

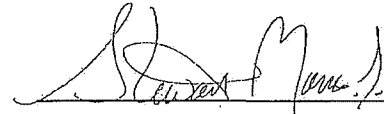
Signed under the seal for the Company, but this Commitment shall not be valid or binding until it bears an authorized Countersignature.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A.

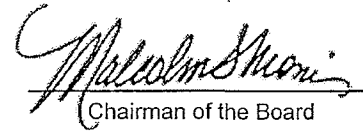
Countersigned by:



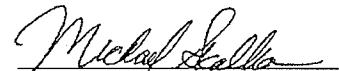
Authorized Countersignature
Stewart Title of California, Inc.



Senior Chairman of the Board



Chairman of the Board



President

SCHEDULE A

1. Effective date: October 22, 2008 at 7:30 A.M.

2. Policy or Policies to be issued:

CLTA Owner's Leasehold Policy

Proposed Insured:

Diamond Energy

3. The estate or interest in the land described or referred to in this Commitment and covered herein is:

A fee as to Parcel(s) 1; and

Leasehold Estate as created by that certain Lease dated June 23, 1989 made by and between Steven Shin-Der Lee and Puang Juan-Juan Lee, Husband and Wife and Hsiao Chad Cheng and Yu-Mei Lee Cheng, Husband and Wife, herein collectively referred to as "Lessor" and Fayette Energy Corporation a Delaware corporation, as "Lessee", for the term and upon the terms and conditions contained in an Unrecorded Assignment of Lease to Altamont Corporation, a California Corporation, dated April 12, 1990, as disclosed by Memorandum of Ground Lease, recorded April 8, 1992, Series No. 92-107401, Alameda County Records. Terms and Conditions contained in the Memorandum of Ground Lease recorded April 8, 1992, Series No. 92-107401 and in the Amendment of Lease recorded April 8, 1992, Series No. 92-107402 and 92-107403, Alameda County Records, as to Parcels 2A and 2B.

4. Title to the estate or interest in said land is at the effective date hereof vested in :

Steve Shin-Der Lee and Puang Juan-Juan Lee, husband and wife as joint tenants as to Parcel 1 as to the Fee; and

Altamont Cogeneration Corporation, a California Corporation as to Parcels 2A and 2B as to the Leasehold

5. The land referred to in this Commitment is described as follows:

See Attached Legal Description

EXHIBIT "A"

Parcel 1:

All that certain real property situated in the unincorporated Area, County of Alameda, State of California, described as follows:

The northwest 1/4 of Section 1, Township 2 South, Range 3 East, Mount Diablo Base and Meridian.

Reserving Therefrom: All oil, gas, casinghead gasoline and other hydrocarbon and mineral substances below a point of 500 feet below the surface of the land, hereinabove described together with the right to take, remove, mine, pass through and dispose of all oil, gas, casinghead gasoline and other hydrocarbon and mineral substances but without any right whatsoever to enter upon the surface of said land.

Parcel 2A:

All that certain real property situated in the County of Alameda, State of California, more particularly described as follows:

All that portion of the northwest one-quarter of Section 1, Township 2 South, Range 3 East, M.D.M., described as follows:

Beginning at a point within said northwest one-quarter of Section 1 from which an iron pipe shown on the Record of Survey filed for record in Book 13 of Maps at Page 68, Alameda County Records, as marking the northwest corner of said Section 1, bears the following two (2) courses: (1) north 00° 50' 34" east 960.98 feet to a point in the north line of said Section 1 as shown on said Record of Survey and (2) along said northern line, north 89° 09' 26" west 1057.93 feet distant; thence, from said point of beginning, north 88° 51' 02" east 255.25 feet; thence, south 25° 02' 11" east 321.64 feet; thence, south 64° 57' 49" west 233.39 feet; thence, north 25° 02' 11" west 425.00 feet to the point of beginning and containing 2.000, acres of land, more or less.

Parcel 2B:

A right of way and easement for ingress and egress, but not the exclusive right or privilege, on, over and across that portion of said Section 1 described as follows:

A strip of land of the uniform width of twenty (20) feet lying ten (10) feet on each side of the following described line:

Beginning at a point within said northwest one-quarter of Section 1 from which an iron pipe shown on the Record of Survey filed for record in Book 13 of Maps at Page 68, Alameda County

Records, as marking the northwest corner of said Section 1 bears the following three (3) courses: (1) North $25^{\circ} 02' 11''$ west 327.00 feet, (2) north $00^{\circ} 50' 34''$ east 960.98 feet to a point in the north line of said Section 1 as shown on said Record of Survey and (3) along said north line, north $89^{\circ} 09' 26''$ west 1057.93 feet distant; thence, from said point of beginning south $79^{\circ} 27' 57''$ west 59.02 feet thence, north $80^{\circ} 46' 38''$ west 121.01 feet; thence, south $89^{\circ} 49' 17''$ west 95.25 feet; thence, south $80^{\circ} 55' 32''$ west 113.36 feet; thence, south $69^{\circ} 51' 41''$ west 120.72 feet; thence, south $63^{\circ} 19' 06''$ west 157.43 feet; thence south $62^{\circ} 00' 41''$ west 130.29 feet; thence, south $52^{\circ} 19' 45''$ west 240.72 feet to the east line of Bruns Avenue, a county road 40 feet in width.

SCHEDULE B I

I. The following are requirements to be complied with:

1. A. We will require a statement of information from the parties named below in order to complete this report, based on the effect of documents, proceedings, liens, decrees, or other matters which do not specifically describe said land, but which, if any do exist, may affect the title or impose liens or encumbrances thereon.

Parties: All Parties

Note: the statement of information is necessary to complete the search and examination of title under this order. Any title search includes matters that are indexed by name only, and having a completed statement of information assists the company in the elimination of certain matters which appear to involve the parties but in fact affect another party with the same or similar name. Be assured that the statement of information is essential and will be kept strictly confidential to this file.

The failure to submit the completed statement of identity at least 10 days prior to closing may result in a delay of said closing.

B. It is our company policy that all title fees due are deducted from available proceeds. In addition, all title charges are due and payable at the time of recording.

C. All funds necessary to fulfill payoff requirements, including of taxes, must be received and available for disbursement at the time of closing.

D. If title is to be insured in the trustee(s) of a trust, (or if their act is to be insured), this Company will require a copy of the trust instrument creating such trust, and all amendments thereto, together with a written verification by all present trustees that the copy is a true and correct copy of the trust, as it may have amended, that it is in full force and effect and that it has not been revoked or terminated.

SCHEDULE B II EXCEPTIONS

II. Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

A. General and Special City and/or County taxes, including any personal property taxes and any assessments collected with taxes, for the fiscal year 2008 - 2009:

1 st Installment:	██████████	Open
2 nd Installment:	██████████	Open
Land:	████████████████████	
Improvements:	██████████	
Exemption:	██████████	
Code Area:	70-001	
Assessment No.:	099B-7050-001-10	

B. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the revenue and taxation code of the State of California.

C. Assessments, if any, for the Byron/Bethany Irrigation District, affecting said land by virtue of assessment maps or notices filed by said district.

1. Rights of the public over that portion of the premises lying within Kelso Road (County Road No. 3006) and Bruns Avenue.
2. An easement for the purpose shown below and rights incidental thereto as set forth in a document to Federal Engineering Company, a Corporation, for the purpose of transportation of oil petroleum, gas, water and other liquid substances, telegraph or telephone lines, recorded July 24, 1930 in Reel 2377, Image 418 of Official Records.

Said matter affects a portion of said land as more particularly described in said document.

An agreement modifying said easement recorded August 10, 1992 as File No. 1992-260008 of Official Records.

3. An easement for the purpose shown below and rights incidental thereto as set forth in a document to Standard Pacific Gas Line Incorporated, for the purpose of cathodic pipe protection system, recorded February 11, 1948 in Book 5204, Page 231 of Official Records.

Said matter affects a portion of said land as more particularly described in said document.

4. An easement for the purpose shown below and rights incidental thereto as set forth in a document to Standard Oil Company of California, a Corporation and Standard Gasoline Company, a Corporation, for the purpose of transportation of oil, petroleum, gas, gasoline, water or other substances, recorded July 31, 1964 in Reel 1273, Image 872 of Official Records.

Said matter affects a portion of said land as more particularly described in said document.

5. An easement for the purpose shown below and rights incidental thereto as set forth in a document to Pacific Gas and Electric Company, a California Corporation, for the purpose of transmission of electric energy, and for communication purposes, recorded August 4, 1964 in Reel 1276, Image 465 of Official Records.

Said matter affects a portion of said land as more particularly described in said document.

6. (The effect of that certain "Resolution Altering Boundaries of the Agricultural Preserve in the County of Alameda recorded February 11, 1971, Reel 2786, Image 86, Official Records.

The terms and provisions of that certain Land Conservation Agreement [commonly known as "Agricultural Preserve", executed pursuant to Section 51200, et. seq., California Government Code (Williamson Act)]

Dated: February 4, 1971

No. 1971-34

Executed by: The County of Alameda

And: Albert D. Muller, also known as Albert Muller and Gertrude E. Muller, his wife

Recorded: February 11, 1971, Reel 2786, Image 88, Official Records

7. An easement for the purpose shown below and rights incidental thereto as set forth in a document to Albert D. Muller, also known as Albert Muller and Gertrude E. Muller, his wife, for the purpose of access easement, recorded June 3, 1975 in Reel 3987, Image 681 of Official Records.

Said matter affects a portion of said land as more particularly described in said document.

8. An easement for the purpose shown below and rights incidental thereto as set forth in a document to Fayette Manufacturing Corporation, a Pennsylvania Corporation, for the purpose of electrical power, recorded April 14, 1982, as Instrument/File No. 82-053373 of Official Records.

Said matter affects a portion of said land as more particularly described in said document.

9. Item intentionally omitted.

10. The effect of that certain waiver of set-back requirements concerning personal property affixed to the premises recorded November 28, 1984 as File No. 84-236263 of Official Records.

11. The terms and provisions of that certain Land Conservation Agreement [commonly known as "Agricultural Preserve", executed pursuant to Section 51200, et. seq., California Government Code (Williamson Act)]

Dated: December 12, 1989

No. 1971-34
Executed by: The County of Alameda
And: Steven Shin-Der Lee
Recorded: December 20, 1989, Series No. 89-342175, Official Records.

12. An easement for the purpose shown below and rights incidental thereto as set forth in a document to Altamont Cogeneration Corporation, Inc., a California Corporation, for the purpose of poles, anchors, ingress, egress and cutting down and clearing of tress and branches, recorded March 20, 1992, as Instrument/File No. 1992-085273 of Official Records.

Said matter affects a portion of said land as more particularly described in said document.

An amendment to said easement recorded on June 5, 1992 as File No. 1992-179619 of Official Records.

An Assignment of Easements recorded November 24, 1992 as File No. 1992-383681 of Official Records.

13. An easement for the purpose shown below and rights incidental thereto as set forth in a document to Pacific Gas and Electric Company, a California Corporation, for the purpose of the transmission of electric energy, and for communication purposes, recorded August 10, 1992, as Instrument/File No. 1992-260009 of Official Records.

Said matter affects a portion of said land as more particularly described in said document.

14. An easement for the purpose shown below and rights incidental thereto as set forth in a document to Pacific Gas and Electric Company, a California Corporation, for the purpose of electric transmission facilities, recorded December 8, 1992, as Instrument/File No. 1992-398574 of Official Records.

Said matter affects a portion of said land as more particularly described in said document.

15. An easement for the purpose shown below and rights incidental thereto as set forth in a document to Pacific Gas and Electric Company, a California Corporation, for the purpose of pipe lines transmission facilities, recorded February 2, 1993, as Instrument/File No. 1993-034092 of Official Records.

Said matter affects a portion of said land as more particularly described in said document.

Said matter affects: The leasehold estate.

16. A "PGT-PG&E Pipeline Expansion Project Plant Restoration and Maintenance Agreement", subject to the terms, provisions and conditions contained therein, recorded May 9, 1994 as File No. 1994-176926 of Official Records.

17. The fact that said property lies within the boundary of the map of the County of Alameda Service Area PW-2006-1, as disclosed by document recorded March 6, 2007 as File No. 2007-95945 of Official Records.

Order Number: 2259-103230

Your Reference: 08332809

Policy Date:

18. Matters which may be disclosed by an inspection or by a survey of said land satisfactory to this Company, or by inquiry of the parties in possession thereof.

CONDITIONS AND STIPULATIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, the Conditions and Stipulations, and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

Order Number: 2259-103230

Your Reference: 08332809

INFORMATION

THE TITLE INSURANCE COMMITMENT IS A LEGAL CONTRACT BETWEEN YOU AND THE COMPANY. IT IS ISSUED TO SHOW THE BASIS ON WHICH WE WILL ISSUE A TITLE INSURANCE POLICY TO YOU. THE POLICY WILL INSURE YOU AGAINST CERTAIN RISKS TO THE LAND TITLE, SUBJECT TO THE LIMITATIONS SHOWN IN THE POLICY.

THE COMPANY WILL GIVE YOU A SAMPLE OF THE POLICY FORM, IF YOU ASK.

THE COMMITMENT IS BASED ON THE LAND TITLE AS OF THE COMMITMENT DATE. ANY CHANGES IN THE LAND TITLE OR THE TRANSACTION MAY AFFECT THE COMMITMENT AND THE POLICY.

THE COMMITMENT IS SUBJECT TO ITS REQUIREMENTS, EXCEPTIONS AND CONDITIONS.

**THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT.
YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.**

IF YOU HAVE ANY QUESTIONS ABOUT THE COMMITMENT, CONTACT

TABLE OF CONTENTS

AGREEMENT TO ISSUE POLICY

SCHEDULE A

1. COMMITMENT DATE
2. POLICIES TO BE ISSUED, AMOUNTS AND PROPOSED INSURED
3. INTEREST IN THE LAND AND OWNER
4. DESCRIPTION OF THE LAND

SCHEDULE B-I - REQUIREMENTS

SCHEDULE B-II - EXCEPTIONS

CONDITIONS

EXHIBIT C
TO LAND LEASE AND RENTAL AGREEMENT
Page 1 of 4

Recording requested by:

Diamond Generating Corporation
333 S. Grand Avenue, Suite 1570
Los Angeles, CA 90071

When recorded mail to:

Bo Buchynsky
Diamond Generating Corporation
333 S. Grand Avenue, Suite 1570
Los Angeles, CA 90071

MEMORANDUM OF LAND LEASE AND RENTAL AGREEMENT

This is a memorandum of an unrecorded Land Lease and Rental Agreement, (“Lease”) dated October , 2008, by and between Diamond Generating Corporation, a Delaware corporation, hereinafter called “Lessee”, and Steve Shin-Der Lee and Puang Jiuan-Jiuan Lee hereinafter called “Lessor”, concerning the certain premises (the “Premises”) in Alameda County, California, which are more particularly described in Exhibit A attached hereto and made a part hereof by reference.

The Lease is for the construction and operation of a natural gas fired electric generating facility with associated support facilities. The Lease is for a period of forty (40) years, after a five (5) year option period.

Pursuant to the terms of the unrecorded Land Lease and Rental Agreement, Lessee has a right of first refusal to purchase the Premises.

This memorandum is not a complete summary of the Lease. PROVISIONS IN THIS MEMORANDUM SHALL NOT BE USED IN INTERPRETING - THE LEASE PROVISIONS. IN THE EVENT OF CONFLICT BETWEEN THIS MEMORANDUM AND THE UNRECORDED LEASE, THE UNRECORDED LEASE SHALL CONTROL.

EXHIBIT C
TO LAND LEASE AND RENTAL AGREEMENT
Page 2 of 4

Memorandum Of Land Lease And Rental Agreement

LESSOR: Steve Shin-Der Lee

By:

Print Name

Date:

State of California

County of _____

On _____ before me, _____, Notary Public, personally appeared Steve Shin-Der Lee, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) [is][are] subscribed to the within instrument and acknowledged to me that [he][she][they] executed the same in [his][her][their] authorized capacity(ies), and that by [his][her][their] signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT C
TO LAND LEASE AND RENTAL AGREEMENT
Page 3 of 4

LESSOR: Puang Juan-Juan Lee

By:

Print Name

Date:

State of California

County of _____

On _____ before me, _____, personally appeared who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) [is][are] subscribed to the within instrument and acknowledged to me that [he][she][they] executed the same in [his][her][their] authorized capacity(ies), and that by [his][her][their] signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT C
TO LAND LEASE AND RENTAL AGREEMENT
Page 4 of 4

Memorandum Of Land Lease And Rental Agreement

LESSEE: Diamond Generating Corporation
a Delaware corporation,

BY: _____
Tetsuji Nakagawa
President

Date: _____

State of California
County of _____

On _____ before me, _____, personally appeared who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) [is][are] subscribed to the within instrument and acknowledged to me that [he][she][they] executed the same in [his][her][their] authorized capacity(ies), and that by [his][her][their] signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Exhibit A

Description of the Premises

That parcel of land in the Township of Murray, County of Alameda, State of California, described as follows:

The Northwest 1/4 of Section 1, Township 2 South, Range 3 East, Mount Diablo Base and Meridian.

Assessor's Parcel No. 99B-7050-1-10

LOCATION OF LEASED PREMISES

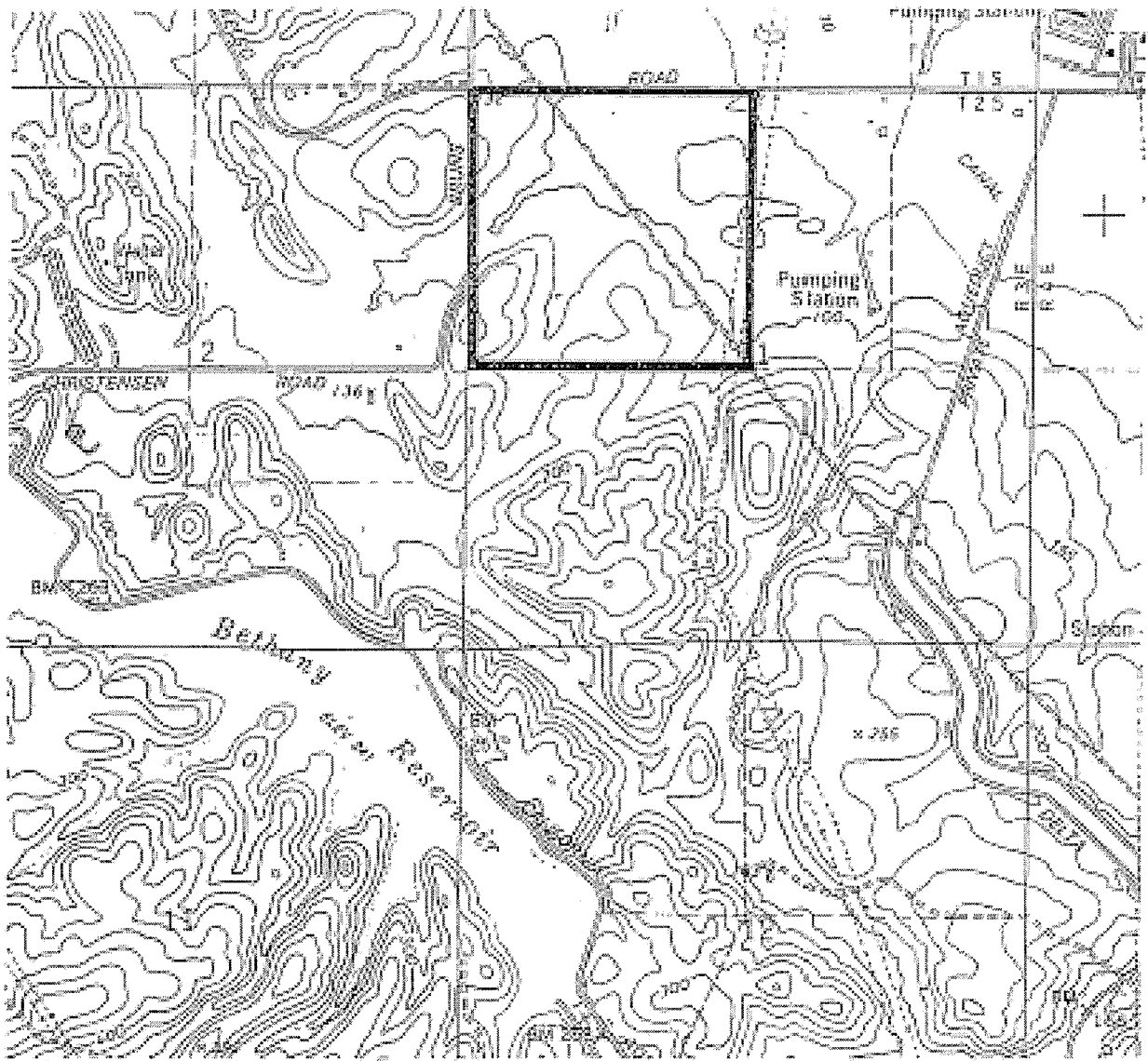
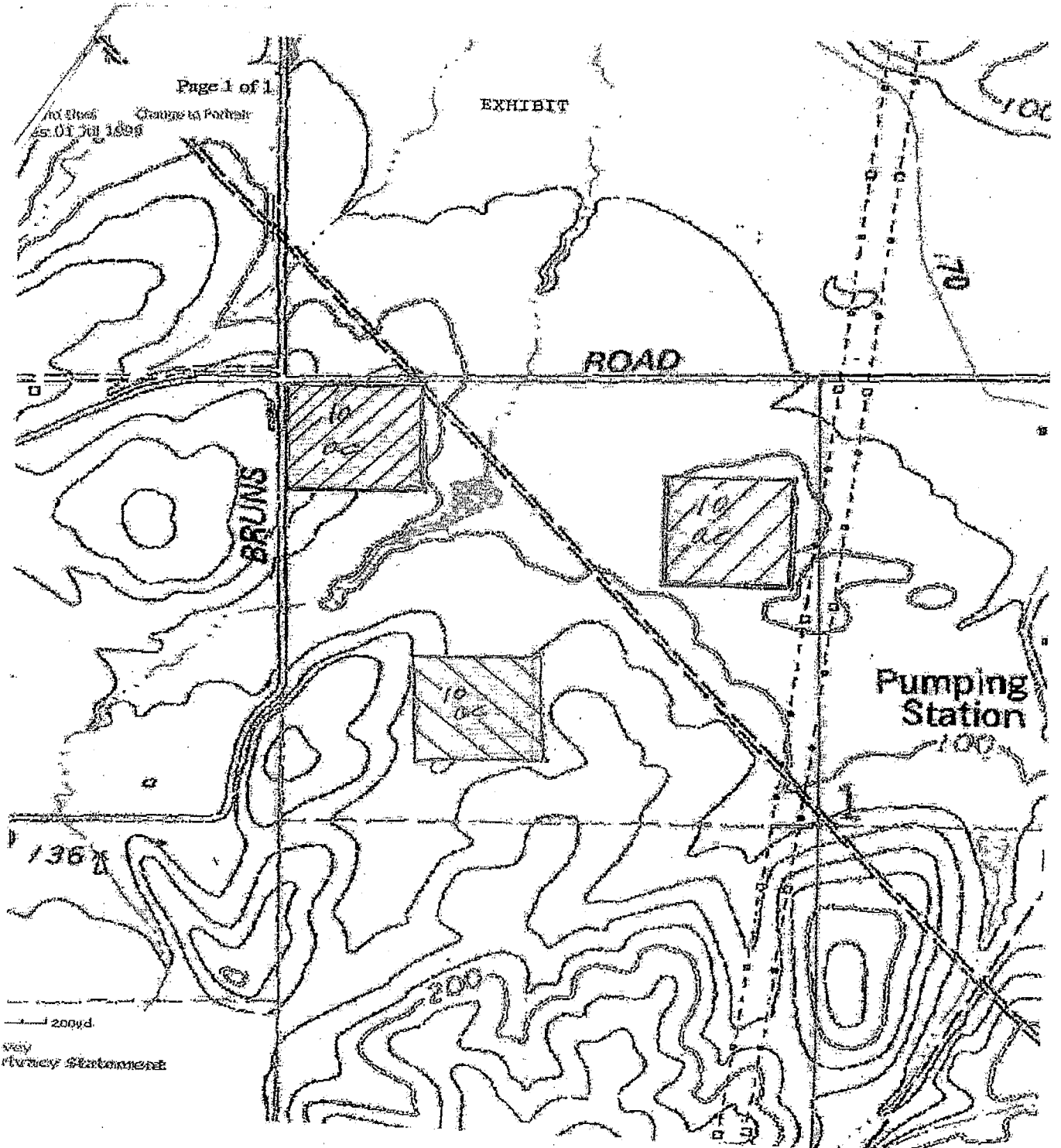


EXHIBIT D
TO LAND LEASE AND RENTAL AGREEMENT
Page 1 of 1

APPROXIMATE LOCATION OF OCCUPIED PREMISES



Attachment DR3-1
Chevron Pipe Line Letter

COATES FIELD SERVICE, INC.
1233 ALPINE ROAD, #214
WALNUT CREEK, CALIFORNIA 94596

TEL. 925-935-5101

FAX. 925 935-8367

Please reply to:

Jeremy L. Gross
Contract Conflict Inquiry Representative
Chevron Pipe Line Company
2360 Buchanan Rd.
Pittsburg, CA 94565
TEL (925) 753-2003 FAX (925) 0753-2030
jgpf@chevron.com

December 21, 2009

Doug Urry
AFC Project Manager
CH2M Hill
2485 Natomas Park Dr. Suite 600
Sacramento, CA 95833

Re: Mariposa Energy Project (09-AFC-03)

Dear Mr. Urry:

Thank you for giving us the opportunity to answer your questions. We would like to give you a little background on our pipelines and some of the safety requirements we require before allowing any work near our pipelines.

Chevron received your letter dated December 3, 2009, along with preliminary plans for the proposed Mariposa Energy Project (09-AFC-03).

Chevron operates two (2) active pipelines in the vicinity of Kelso Road & one (1) active pipeline in the vicinity of Byron Rd. The 1st pipeline is an 18" line that transports crude in the vicinity of the PGE Kelso Rd. substation. The 2nd line you will cross is a 6" products pipeline just west of "Ditch-2" on Figure 2-2 of your letter. This high pressure pipeline transports petroleum products. Extreme caution should be used when excavating, drilling, or grading around this pipeline.

You are being sent three (3) aerial images delineating the approximate location of Chevron Pipe Line Company's BAPL & KLM pipelines. Chevron assumes no responsibility for the accuracy of these images and they should be used only for the general location of our facilities. Actual depths and alignment can only be determined by field checking and potholing the pipeline. Chevron will provide a Facility Inspector to mark and help locate our pipeline. Your company would be responsible to provide a backhoe and operator and a surveyor if needed.

OKLAHOMA CITY, OK
405-528-5676
CORPORATE OFFICE

ALBANY, NEW YORK
518-438-4499



TAMPA, FLORIDA
813-623-6446

HOUSTON, TEXAS
281-583-7300

We consider your request as very preliminary fact finding. Chevron will require several weeks of lead time to provide any detailed information regarding facilities and right-of-way information. A request for more specific information should be requested through Jeremy Gross (Contract Conflict Inquiry Specialist) at (925) 753-2003, mailing address 2360 Buchanan Rd., Pittsburg, Ca. 94565.

Our pipelines are operated and maintained under Federal Regulations (D.O.T. 195) and State Regulations (California Pipeline Safety Act).

Chevron, Federal, and State regulations require 12-inches (minimum) clearance between petroleum pipeline and other cross-lines that intersect at a 90° angle (perpendicular to each other). If the intersection angle is less than 90°, the minimum clearance between the two pipelines must be 24-inches or greater.

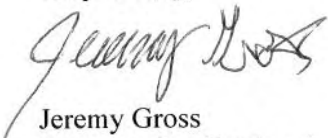
Chevron recommends that the potholing of the Chevron pipeline be done before construction plans are completed so conflicts between your proposed road reconstruction project and our pipeline can be avoided. Chevron requires that arrangements for potholing of its pipelines be made at least forty-eight (48) hours in advance with Jeremy Gross at (925) 753-2003. Chevron will provide a Facility Inspector to locate the pipelines and assist with the potholing.

Regarding restrictions on development over our pipelines, most of our easements do not restrict paving or landscaping as long as encroachment clearances are maintained. That is, no less than 24-inches of undisturbed clearance between the top of pipe and bottom of the subgrade. Deep-rooted trees and all structures are prohibited. All excavations within 24-inches of Chevron's facilities must be done by hand tools only. I would also like to add that the use of heavy vibratory equipment is prohibited over our pipelines.

Chevron must review and approve all construction plans that involve right of way encroachments. All work that would affect our pipeline needs to be coordinated with our office at 2360 Buchanan Rd., Pittsburg, Ca. 94565.

Notify Underground Service Alert (USA) at 800-227-2600 at least 48 hours prior to any excavation work. If you have any questions or need additional information, please contact me at (925) 753-2003. Thank you for the advance notice on this project, we look forward to working with you.

Respectfully,



Jeremy Gross
Contract Conflict Inquiry Specialist
For Chevron Pipe Line Company

File: Mariposa Energy Project.doc

OKLAHOMA CITY, OK
405-528-5676
CORPORATE OFFICE

ALBANY, NEW YORK
518-438-4499



TAMPA, FLORIDA
813-623-6446

HOUSTON, TEXAS
281-583-7300

Kelso Rd & Bruns Rd, Byron, CA 94514

Kelso Rd

Bruns Rd

→ WTH

153





Kelso Rd & Bruns Rd, Byron, CA 94514

Kelso Rd

Bruns Rd

Christen
Rd

M 157

M 56

M 57

M 156

07-KLM-1352

KLM-1351

KLM





Wicklund Rd

Byron Rd

Bethany Rd

Hansen Rd

erson Rd

5

4

Attachment DR3-2
Chevron Record of Conversation

From: David Stringer [David.Stringer@critigen.com]

Sent: Monday, February 01, 2010 10:03 AM

To: Urry, Doug/SAC

Subject: MEF, Chevron call

Doug:

I just spoke with Jeremy Gross at Chevron. He stated that Chevron is the successor in interest to Standard Oil and that the 1964 pipeline is the one shown on the exhibit in his letter to you dated December 21, 2009.

Jeremy is emailing an aerial showing the location of the Chevron pipelines.

Dave

Jeremy's info:

Jeremy Gross
Contract Conflict Inquiry Rep.
Chevron Pipe Line Company
2360 Buchanan Rd.
Pittsburg, CA 94565
Tel: 925-753-2003
Fax: 925-753-2030
jgpf@chevron.com

++++++

David Stringer
PLS 5590, Northern California Survey Lead



David.Stringer@critigen.com

+1 916.286.0223 Direct

+1 916.335.3924 Mobile

critigen.com

Attachment DR3-3
Setback Waiver

When Recorded Return to:
Kent Khtikian
P O Box 1149
Tracy, CA 95376
Fayette Mfg. Corp.

81-236263

RECORDED IN OFFICIAL RECORDS
OF ALAMEDA COUNTY, CALIF.
RENE C. SIMPSON, County Recorder

NOV 28 1984

ALL
7,8,9,11,12,13,14,15,16

WAIVER OF SETBACK REQUIREMENTS

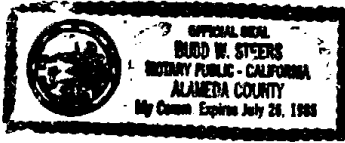
I, Leslie Karl Muller, am the record owner of the property described in Exhibit "A" attached hereto and incorporated herein (the "Premises"). I hereby waive any and all setback requirements imposed by Alameda County, the State of California, or any other governmental entity or agency, for the benefit of the Premises, upon wind energy development of any property, bordering the Premises, which is leased to the Fayette Manufacturing Corporation.

Dated: 10-5-84

Address: 3601 W. UNGER RD

STOCKTON, CA 95206

(415) 634-5573



STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

On this 5th day of OCTOBER in the year 1984 before me Budd W. Steers, a Notary Public, State of California, duly commissioned and sworn, personally appeared Leslie Karl Muller, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the BYRON, CA County of CONTRA COSTA on the date set forth above in this certificate.

Budd W. Steers
Notary Public, State of California

My commission expires 7-26-88

EXHIBIT "A"

(b)-034124)

To Waiver of Set-Back Requirements

M-236263

L-862962

That parcel of land in the Township of Murray, County of Alameda, State of California, described as follows:

The Northwest 1/4 of Section 1, Township 2 South, Range 3 East, Mount Diablo Base and Meridian.

Excepting therefrom the Eastern 40 feet thereof.



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION
FOR THE **MARIPOSA ENERGY PROJECT**
(MEP)

Docket No. 09-AFC-3

PROOF OF SERVICE
(Revised 2/8/2010)

APPLICANT

Bo Buchynsky
Diamond Generating Corporation
333 South Grand Avenue, #1570
Los Angeles, California 90071
b.buchynsky@dgc-us.com

APPLICANT'S CONSULTANTS

Doug Urry
2485 Natomas Park Dr #600
Sacramento, CA 95833-2975
Doug.Urry@CH2M.com

COUNSEL FOR APPLICANT

Gregg Wheatland
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816-5905
glw@eslawfirm.com

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

INTERVENORS

Mr. Robert Sarvey
501 W. Grantline Road
Tracy, California 95376
Sarveybob@aol.com

*Rajesh Dighe
395 W. Conejo Avenue
Mountain House, California 95391
dighe.rajesh@gmail.com

Morgan K. Groover
Development Director
Mountain House Community
Services District
230 S. Sterling Drive, Suite 100
Mountain House, CA 95391
mgroover@sjgov.org

ENERGY COMMISSION

JEFFREY D. BYRON
Commissioner and Presiding Member
jbyron@energy.state.ca.us

*ROBERT B. WEISENMILLER
Commissioner and Associate Member
rweisenm@energy.state.ca.us

Kenneth Celli
Hearing Officer
kcelli@energy.state.ca.us

Kristy Chew
Advisor to Commissioner Byron
kchew@energy.state.ca.us

Craig Hoffman
Siting Project Manager
choffman@energy.state.ca.us

Kerry Willis
Staff Counsel
kwillis@energy.state.ca.us

*Jennifer Jennings
Public Adviser
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Megan Sebra, declare that on April 12, 2010, I served and filed copies of the attached Data Response Set 2A, Responses to CEC Staff Data Request 1-4. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

[<http://www.energy.ca.gov/sitingcases/mariposa/index.html>].

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

For service to all other parties:

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at Sacramento, California, with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);

OR

depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-3
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

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



Megan Sebra