

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

**APPLICATION FOR
CERTIFICATION FOR THE
CHULA VISTA ENERGY UPGRADE
PROJECT**

DOCKET NO. 07-AFC-4
(AFC Filed 8/10/07)

DOCKET
07-AFC-4

DATE Mar 16 2009

RECD. Mar 16 2009

MMC ENERGY INC.'S REQUEST FOR OFFICAL NOTICE

Pursuant to 20 C.C.R. § 1213, the California Energy Commission ("Commission") may take official notice of "any generally accepted matter within the commission's field of competence, and of any fact which may be noticed by the courts of this state." MMC Energy, Inc. ("MMC") hereby requests official notice of the following documents in this proceeding, copies of which are attached hereto:

1. Excerpts from *Final Environmental Impact Report, City of Chula Vista General Plan Update*, December 2005("FEIR"): Cover page, Figures 5.8-1 and 5.11-2, page 395, Table 5.11-7, page 403, page 405-06, and page 419. ¹
2. California Public Utilities Commission D. 08-11-008, issued in R. 06-02-013 on November 10, 2008, pages 1, 12-13, and 25-26. ²

The Commission has previously granted requests for official notice of environmental impact reports. *See, e.g.*, "Committee's Grant of Request for Official Notice," In Matter of Application for Certification of the Los Esteros Critical Energy Facility, Docket No. 01-AFC-12, issued April 12, 2002 (granting official notice for draft environmental impact report issued by City of San

¹ While MMC is only requesting official notice of these pages of the Final Environmental Impact Report, the entire report is available at <http://www.chulavistaca.gov/City%5FServices/Development%5FServices/Planning%5FBuilding/General%5FPlan/DEIR.asp>

² While MMC is only requesting official notice of these pages of the decision, the entire decision is available at http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/93602.htm.

Jose.). The Commission can take official notice of both the FEIR and the decision of the California Public Utilities Commission pursuant to Cal. Evidence Code § 452.

Respectfully submitted,

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Dated: March 16, 2009

Final Environmental Impact Report



December 2005

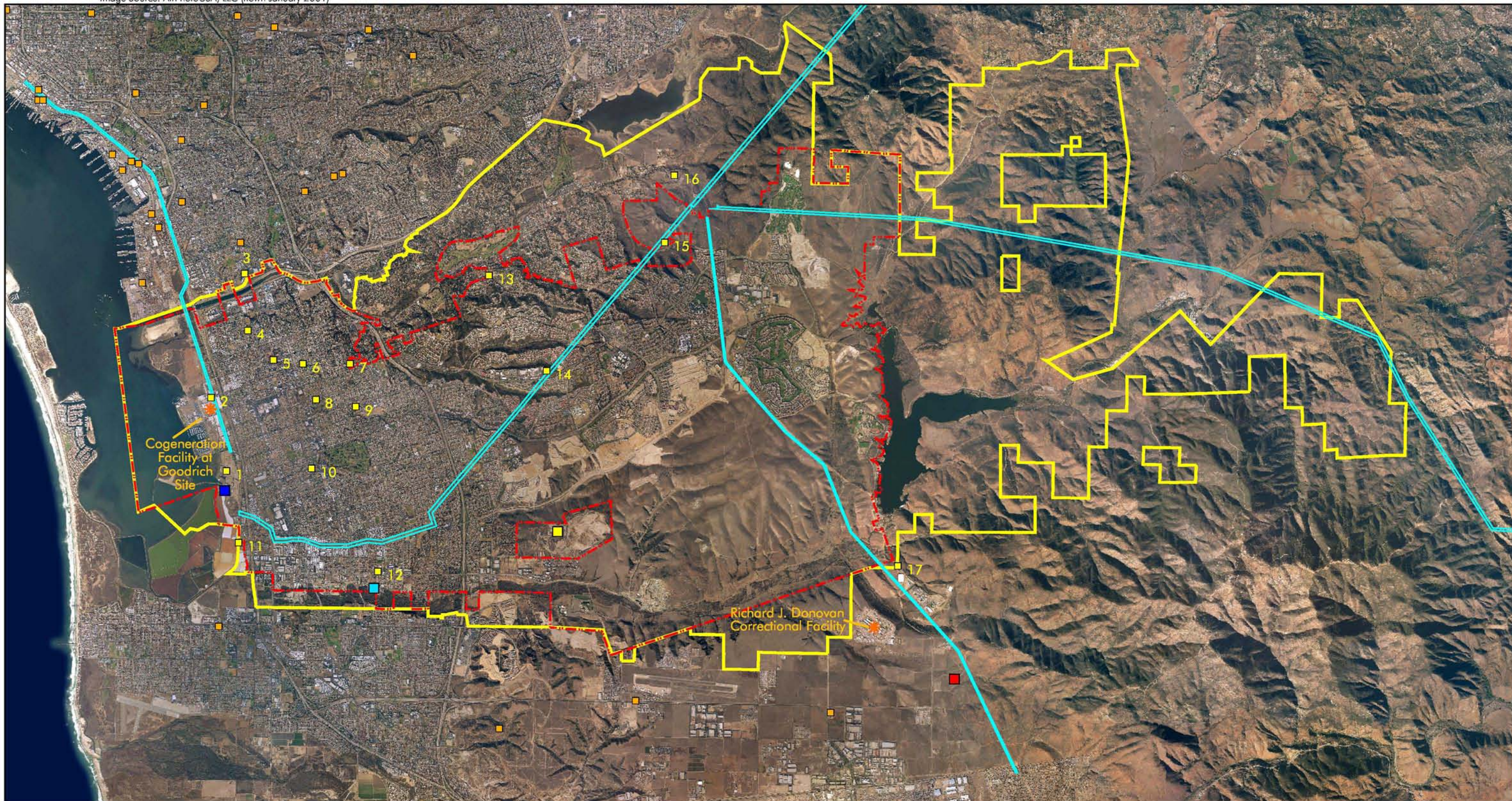


*It's Your Future,
So Get Involved*

Chula
Vista
Vision
2020

General
Plan
Update





Chula Vista municipal boundary
 Chula Vista General Plan area

SDG&E Transmission corridor 138kv & above
 Cogeneration Facilities

Electrical generating facilities

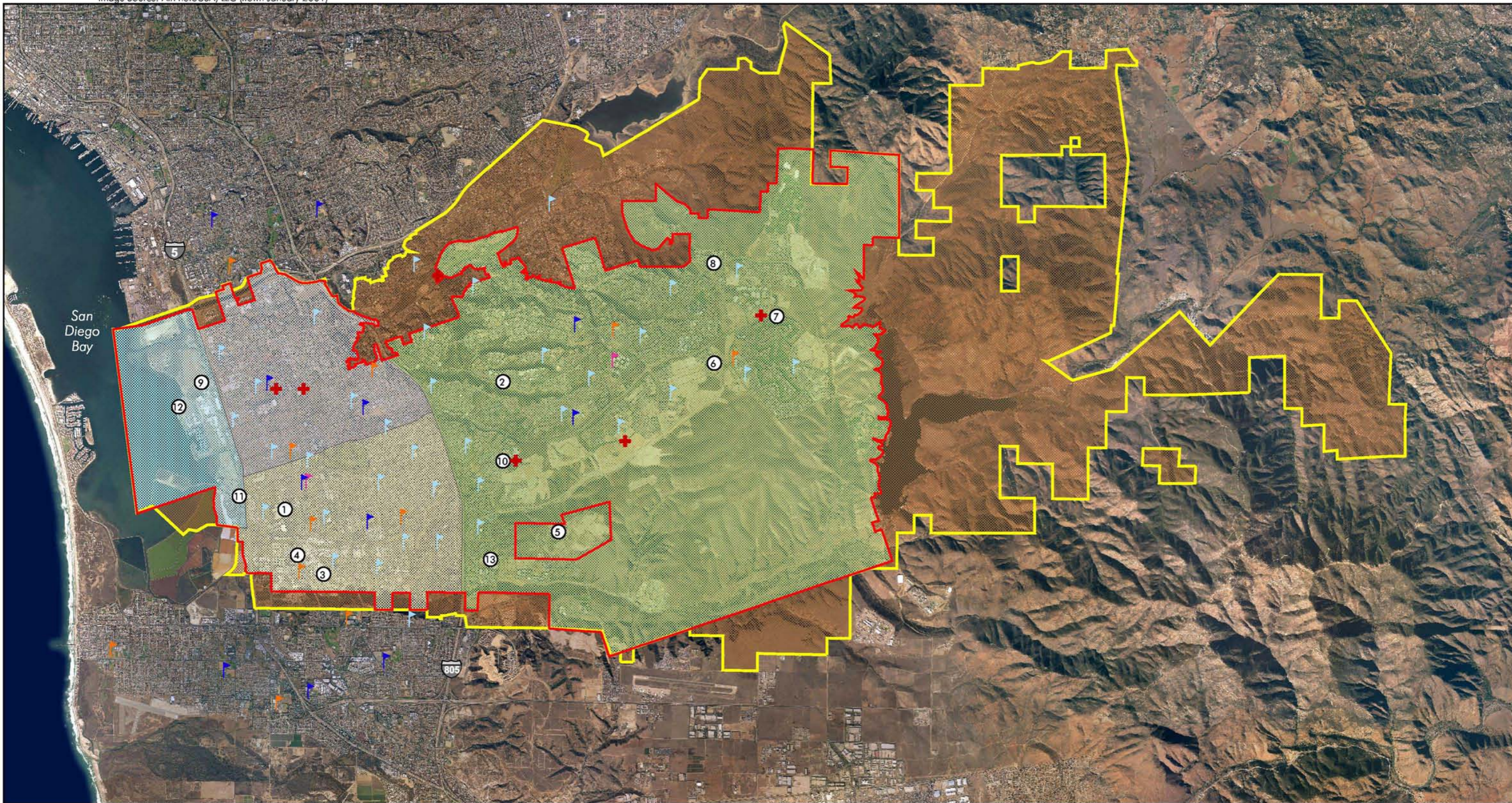
Otay Landfill
 Otoy Mesa Generating Facility
 Chula Vista Generating Station
 South Bay Power Plant

Substations outside the plan area (SEMPRA 2001)
 Substations in the plan area (SEMPRA 2001) (transformer voltage - transmission kV/distribution kV)

- | | | |
|-----------------------------|-------------------------|----------------------------|
| 1. SB Power Plant 138/69/12 | 7. El Rancho Vista 12/4 | 13. Sunnyside 69/12 |
| 2. Montgomery 69/12 | 8. Whitney 12/2.4 | 14. Telegraph Canyon 69/12 |
| 3. Sweetwater 69/12/4 | 9. Hilltop 12/4 | 15. Proctor Valley 69/12 |
| 4. Flower 12/4 | 10. North Otoy 12/4 | 16. Miguel 138/69 |
| 5. Chula Vista 12/4 | 11. Salt Works 12/2.4 | 17. Otoy Lakes 69/12 |
| 6. Church 12/4 | 12. Otoy 69/12 | |

0 Mile 1.4 N

FIGURE 5.8-1
Electrical Generation and Transmission
in Chula Vista



Chula Vista municipal boundary
Chula Vista General Plan area

Elementary School
Junior High School
High School
College/Vocational School

Medical Facility/Hospital
① Large air emission sources

Planning Areas
Bayfront
Northwest
Southwest
East
Outside of city boundary

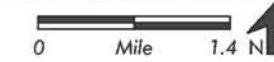


FIGURE 5.11-2
Pollution Sources, Schools, and Hospitals

Since 1990, the San Diego APCD has monitored air toxics at sampling sites in Chula Vista and El Cajon. These locations are considered to be the most appropriate in the San Diego region for toxic sampling because they are nearby and downwind of large, concentrated areas of industrial, transportation, and other air pollutant sources. Results from the monitoring show that overall emissions of air toxics have been declining, with a 75-percent reduction in estimated industrial air toxic emissions since the early 1990s (County of San Diego 2004).

Information about facilities in the San Diego region that release the largest amount of toxic air contaminants is available from the San Diego APCD. The San Diego APCD provides the information on their website and in an annual report titled “Air Toxics ‘Hot Spots’ Program Report for San Diego County.” The CARB lists more than 700 compounds to be assessed under the Air Toxics “Hot Spots” program. The list includes potentially carcinogenic substances as well as compounds that may cause health problems such as respiratory irritation or central nervous system depression.

Figure 5.11-2 presents the location of facilities in Chula Vista that release the largest amount of toxic air contaminants and their proximity to residences, schools, and hospitals located in and near the plan area. Corresponding Table 5.11-7 shows the street address of each facility and a number that can be used to locate these facilities on Figure 5.11-2.

Update Areas

As shown on Figure 5.11-2, there are no large air emission sources located within the Northwest Planning Area. Two large air emission sources, Rohr Industries/BF Goodrich and Southbay Boat Yard, occur outside and west of the Northwest Planning Area. Three large air emission sources are situated within the Southwest Planning Area: Hanson Aggregates/Nelson & Sloan, Marine Service Commercial Diving Company, and Costco Gasoline Facility #405. The South Bay Power Plant, a large air emission source, is located outside and east of the Southwest Planning Area. One large air emission source, the Otay Landfill, is located within the East Planning Area.

5.11.2 Thresholds of Significance

The proposed General Plan Update would result in a significant impact to air quality if it would:

- Threshold 1: Conflict with or obstruct implementation of the applicable air quality plan.
- Threshold 2: Violate any air quality standard or contribute substantially to an existing or projected air quality violation.

TABLE 5.11-7
FACILITIES IN CHULA VISTA MONITORED BY THE SAN DIEGO APCD
FOR LARGE AMOUNTS OF TOXIC AIR CONTAMINANTS

Number	Facility	Location
1	Costco Gasoline Facility #405	1144 Broadway
2	Costco Wholesale	895 H Street East
3	Hanson Aggregates/Nelson & Sloan	7 th & Main Streets
4	Marine Service Commercial Diving Company	609 Anita Street
5	Otay Landfill/Ogden Power Pacific, Inc.	Otay Landfill
6	Otay Water District	10391 Otay Lakes Road
7	Otay Water District	2406 Otay Lakes Road
8	Otay Water District	10770 Proctor Valley Road
9	Rohr Industries/BF Goodrich	850 Lagoon Drive
10	Sharp Chula Vista Medical Center	751 Medical Center Court
11	South Bay Power Plant	990 Bay Boulevard
12	Southbay Boat Yard	997 G Street
13	Wood Craft Company	1675 Brandywine Avenue

Inputs to URBEMIS2002 include such parameters as the air basin containing the project, land uses, trip generation rates, trip lengths, vehicle fleet mix (i.e., percentage autos, medium truck, etc.), trip distribution (i.e., percent home to work, etc.), season, and ambient temperature, as well as other parameters. A detailed description of the URBEMIS2002 model and its use may be found in the URBEMIS2002 User's Guide that may be obtained from the CARB web site at <http://www.arb.ca.gov/planning/urbemis/urbemis2002/urbemis2002.htm>.

Using the land use designations for the Preferred Plan and each of the Scenarios, along with trip generation rates developed by SANDAG (SANDAG 2002), as well as URBEMIS2002 defaults for other parameters, average daily emissions were estimated using URBEMIS2002 assuming buildout of the Preferred Plan and Scenarios in the year 2030. The results of the modeling, which include both mobile and area source emissions, are shown in Table 5.11-10. As seen in Table 5.11-10, with the exception of PM₁₀ and SO_x, emissions are anticipated to be less than those that would occur under existing conditions. (Compared to the adopted General Plan (see Chapter 10), these pollutants are projected to be reduced).

While construction activities may have relatively short-term air quality impacts, increases in multi-family residential use and improvements in reducing motor vehicle emissions are predicted to result in an improvement in air quality from non-construction daily operations in the year 2030 relative to existing conditions.

5.11.3.4 Threshold 4: Expose Sensitive Receptors to Substantial Pollutant Concentrations

In December 2004, the SDAPCD published the 2003 Air Toxics "Hot Spots" Program Report for San Diego County. This report demonstrates SDAPCD's compliance with the California Air Toxics "Hot Spots" Information and Assessment Act (AB 2588) that was enacted in 1987. The law requires larger industrial facilities to provide information regarding emission inventories and health risk assessments. If adverse health impacts exceeding public notification levels are identified, the facility must provide public notice, and if the facility poses a potentially significant public health risk, the facility must submit a risk reduction audit and plan to demonstrate how the facility will reduce health risks.

The following five facilities in the City of Chula Vista that have prepared health risk assessments in conformance with this program:

1. BF Goodrich/Rohr Industries
2. Hanson Aggregates at 7th and Main
3. Hanson Aggregates at Rock Mountain
4. Duke Energy, South Bay Power Plant (SBPP)
5. Ogden Power Pacific at the Otay Landfill

Table 5.11-11 provides the results of these health risk assessments. This table presents the maximum lifetime cancer risk, cancer burden, and chronic and acute Total Health Hazards Index (THI) for each facility. Public notification and risk reduction requirements are based on these levels. Public notification is required if the maximum incremental cancer risk is 10 in 1,000,000 or greater and a significant risk is defined as 100 in 1,000,000. In addition public notification is required and a significant risk is determined if the cancer burden, chronic THI or acute THI, is 1.0 or greater.

**TABLE 5.11-11
HEALTH RISK ASSESSMENT RESULTS**

Facility	Maximum Lifetime Cancer Risk (per million)	Lifetime Cancer Burden	Chronic THI*	Acute THI*
BF Goodrich/Rohr Industries	7.7	<0.1	<0.1	<0.1
Hanson Aggregates, 7 th & Main	4.2	<0.1	<0.1	<0.1
Hanson Aggregates, Rock Mountain	2.1	<0.1	<0.1	0.1
Duke Energy, SBPP	2.1	<0.1	<0.1	0.34
Ogden Power Pacific, Otay Landfill	1.0	<0.1	0.92	0.21

*THI = total health hazards index

None of the Chula Vista facilities addressed in the Program Report are required to perform Public Notification or Risk Reduction. All are below the Public Notification and Risk Mitigation levels.

In addition to the facilities addressed in the Program Report, a health risk assessment was conducted for the Otay Landfill as part of the environmental review process for the proposed expansion of the landfill. The health risk assessment is included in the Technical Appendices for the Final Environmental Impact Report for the Otay Landfill Development and Expansion Plan, and has been incorporated by reference in Section 1.4 of this EIR. This health risk assessment indicated that the incremental excess cancer risk of 10 in 1,000,000 was limited to an area within 1,000 feet of the landfill. The County's environmental impact report for the landfill expansion indicated that:

The project carcinogenic risk isopleth indicating a 10 in one million carcinogenic risk for a residential receptor does not extend beyond the 1,000-foot nuisance easement/buffer except to the southeast of the landfill. Since the area to the south of the facility is zoned for industrial use, no residential receptors will be located in this area (County of San Diego 2000:2-44).

Subsequent to that analysis a site specific analysis was conducted for a property to the north west of the landfill. The analysis, Health Risk and Nuisance Analyses, Two Land Parcels Adjacent to Otay Landfill, Chula Vista, California was performed by Environ in May, 2005, and has been incorporated by reference in Section 1.4 of this EIR. The analysis evaluated the potential human health risks as well as nuisance issues such as dust deposition and odor,

for two parcels of land adjacent to the Otay Landfill to the north assuming future potential uses as residential, industrial, and/or as a community park. The analysis indicated that for these limited properties no adverse health risk would occur. In these areas, the incremental excess cancer risk was below 10 in 1,000,000. In the remainder of the area adjacent to the landfill, the 1,000-foot nuisance easement/buffer still reflects the conclusion drawn in the County's environmental impact report.

In addition to pollutants from fixed sources, traffic on area roads emit TACs. Diesel-exhaust particulate matter emissions are TACs. These emissions pose a potential hazard to residents. As detailed above, a number of strategies have been developed and are being implemented to reduce diesel particulate matter and lower health risks. CARB reports that health risks can be as high as 1,700 cancers in a million at 20 meters from a high-volume freeway.

The Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles prepared by the California Air Resources Board estimated that the statewide outdoor population-weighted concentration of diesel PM would decrease by 50 percent from 1990 concentrations in the year 2010 and by 60 percent by the year 2020. Furthermore, programs are being implemented that have a stated goal to reduce the cancer risk statewide arising from exposure to diesel particulate matter 75 percent by 2010 and 85 percent by 2020. As a result, although health risks are substantial, future conditions under which the proposed General Plan Update would be developed would see a reduction in those effects. Placement of sensitive uses near high-volume freeways, however, represents a significant adverse air quality impact. Lessening this effect would require improvements in the control technologies for diesel engines as described in the Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles, actions outside the control of the City of Chula Vista.

The potential for development under the Preferred Plan or any of the Scenarios to expose sensitive receptors to substantial pollutant concentrations is self-mitigated because the adoption of Policies EE 6.4 and EE 6.10 will avoid the effect. Policy EE 6.4 states:

Avoid siting new or re-powered energy generation facilities, and other major toxic air emitters within 1,000 feet of a sensitive receiver, or the placement of a sensitive receiver within 1,000 feet of a major toxic emitter.

Policy EE 6.10 is as follows:

The siting of new sensitive receivers within 500 feet of highways resulting from development or redevelopment projects shall require the preparation of a health risk assessment as part of the CEQA review of the project. Attendant health risks identified in the HRA shall be feasibly mitigated to the maximum extent practicable in accordance with CEQA, in order to help ensure that applicable federal and state standards are not exceeded.

Threshold 4: Expose sensitive receptors to substantial pollutant concentrations.

The potential for development under the Preferred Plan or any of the Scenarios to expose sensitive receptors to substantial pollutant concentrations is self-mitigated and not significant because of Policy EE 6.4 of the proposed General Plan Update avoids the placement of a sensitive receiver within 1,000 feet of major toxic air emitters and Policy EE 6.10 requires analysis of health risk resulting from new development or redevelopment projects within 500 feet of a highway. In addition, pollutant concentrations resulting from CO hotspots is self-mitigated and not significant because the adoption of Policy LUT 14.2 requires the optimization and maintenance the performance of the traffic signal system and the street system, to facilitate traffic flow and to minimize vehicular pollutant emission levels. No additional mitigation is required.

~~The potential for development under the Preferred Plan or any of the Scenarios to result in a land use that would violate an air quality standard or contribute to an existing violation is self-mitigating through adoption and compliance with Policy EE 6.4. No additional mitigation is required.~~

Threshold 5: Create objectionable odors affecting a substantial number of people.

No odor impacts are anticipated as a result of the Preferred Plan or Scenario 1. Significant impacts would occur with the approval of Scenario 2 or 3 as a result of the placement of residential uses within the 1,000-foot buffer of the Otay Landfill.

5.11-2 No residential use shall be permitted or constructed within 1,000 feet of the Otay Landfill while the landfill is open and operating, unless a project specific analysis is completed demonstrating to the satisfaction of the Environmental Review Coordinator that odor effects are below the odor thresholds for common compounds emitted by the landfill for less than two percent of the time. One such compound would be hydrogen sulfide with an odor threshold of .0045 ppm.

5.11.6 Level of Significance After Mitigation

Because of the plan inconsistency and the timing of revisions to the RAQS, and until such time that the region is in attainment of the Ozone, PM₁₀, and PM_{2.5} standards, the impact based on Threshold 1 would remain significant and unmitigated. Because operational impacts resulting from particulates for which the region is not in conformance, air impacts as addressed in Threshold 3 remain significant and not mitigated.

Decision 08-11-008 November 6, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate
Procurement Policies and Consider
Long-Term Procurement Plans.

Rulemaking 06-02-013
(Filed February 16, 2006)

(U 39 E)

**DECISION ON PETITIONS FOR MODIFICATION
OF DECISION 07-12-052**

contract with utilities for energy and capacity and to be compensated. Joint Parties do not want the Commission to require that existing generation be allowed to participate in all RFOs.

4.5. SDG&E's June 9th, 2008 Petition for Modification

SDG&E's June 9th, 2008 PFM requests clarification of two issues: (1) what is the timing on SDG&E's authorization to procure additional local capacity resources (LCR) to address any local area reliability shortfalls between the time when the Sunrise Powerlink project (Sunrise) is approved (if it is approved) and when it is operational, and (2) whether an Independent Evaluator (IE) is required for short-term solicitations for RA capacity.

D.07-12-052 authorizes 530 MW of new local capacity, that includes 130 MW of already approved peakers, with the remaining 400 MW conditioned upon whether Sunrise is approved or not. If Sunrise is approved, D.07-12-052 found that SDG&E does not need the additional 400 MW. However, given the lag time between when a project is approved and the date it becomes operational, SDG&E is concerned that it may face a shortage of local area capacity in that time period that was unaccounted for in D.07-12-052.

Therefore, in this PFM, SDG&E requests authorization for up to 322 additional MWs (the amount of local capacity needed without Sunrise) beyond the 130 MW already approved to meet local reliability needs during the period between approval and the on-line date of Sunrise. SDG&E further states that any long-term contracts signed to meet this need will come before the Commission, thus the Commission will be able to ensure that only needed new capacity is being added.

SDG&E also requests clarification on the use of an IE for short-term RA capacity solicitations when an affiliate may be present among the bidders. D.07-12-052 requires that an IE be retained for all RFOs seeking products of more than three months in duration. SDG&E states that short-term RA capacity solicitations involve “standard local or system RA products where only a very limited set of factors is involved (local or system RA, amount, location and price),⁶ thus, minimal negotiation is involved and is based mostly upon these standard factors. Furthermore, all transactions are reported in the quarterly compliance filings, and if an affiliate is selected, the deal would be evaluated under affiliate transaction reporting. SDG&E therefore requests that short-term (from one month to one year) RA capacity transactions be exempt from the IE requirement even if an affiliate submits a bid.

There were no responses filed on SDG&E’s PFM.

4.6. PG&E and SDG&E’s June 13th, 2008 Joint Petition for Modification

PG&E and SDG&E request in their joint PFM that the IE requirements in D.07-12-052 be changed from requiring the retention of an IE for all RFOs that seek products greater than three months duration to all RFOs that seek products of two years or more in duration, using the definition of duration adopted in D.07-12-052. In solicitations where affiliate, IOU-built or IOU-turnkey bidders are present, an IE would be required regardless of the length of the contract term.

PG&E and SDG&E state that while the Commission’s goal of ensuring an impartial bidding process is appreciated, the administrative burden and excess

⁶ SDG&E June 9, 2008 PFM of D.07-12-052.

benefit from this practice in that they are properly discouraged from utilizing their resources to develop bids for products not needed by the IOU.

We continue to expect RFO product descriptions to be based on each utility's operational needs and not create false barriers to participation or otherwise limit the competitive process.

5.6. SDG&E's Need Authorization

In its PFM, SDG&E asks the Commission for procurement authority to meet its anticipated need in the time between the Commission's anticipated approval of Sunrise and the point in time when the new line is operational. In D.07-12-052, we bifurcated SDG&E's procurement authority into 530 MW [130 MW already approved peakers plus 400 MW of additional power] if Sunrise was not approved, and 130 MW [0 MW of additional power] if it was approved. SDG&E is concerned that even if Sunrise is approved, in the time period between approval and operation, SDG&E will face a shortage of local area capacity.

Whether or not to approve the SDG&E's application for a certificate of public convenience and necessity for the Sunrise Powerlink transmission project is the subject of Application 06-08-010 and we do not prejudge that matter here. The Commission's goal in conditioning the need authorization on the outcome of the Sunrise project was to minimize the amount of local area resources SDG&E procures in the event that the Sunrise project is approved and obviates the need for some or all of these resources at this time. However, history has taught us that there is a significant degree of uncertainty surrounding the approval and timing of transmission projects. Adding to this the recent challenges and delays a number of local generation resources have faced in SDG&E's territory, we share SDG&E's concerns regarding the potential for significant local area

capacity shortfalls and do not find it prudent to attempt to “finesse” the timing of this procurement.

Consequently, we authorize SDG&E to procure up to the 530 MWs of new local capacity authorized in D.07-12-052, with the stipulation that applications for this procurement should be supported by updates of the status and projected on-line date of the Sunrise Powerlink project. Subtracting the 133 MWs of resources already approved by the Commission, this results in an additional 400 MWs of authorization for local area resources through 2015.

All of the requirements associated with the types of resources and process requirements identified in D.07-12-052 remain in full force.

5.7. Independent Evaluator

In D.07-12-052, the Commission required the use of an IE for all RFOs seeking products greater than three months duration. The intent behind this directive was to ensure a transparent and fair bid selection process that was beneficial to ratepayers, especially in cases where affiliates or utilities are bidding into the solicitation. Our requirement that the utilities utilize IEs for short- and medium-term products, rather than just long-term (greater than five years), is to ensure that RFOs where affiliate or utility bids may be present are conducted in an impartial and transparent manner regardless of contract duration while also addressing the fact that an IOU may not know whether an affiliate would bid into the solicitation prior to bid evaluation and selection. However, the Commission recognizes that there are RFOs for many different types of products, including standard and non-standard products, and RFOs may happen in a matter of hours or days, making the selection and retention of an IE in some cases burdensome, costly, and ultimately unnecessary. While we appreciate WPTF’s point that sufficient time has not lapsed to make such a call, we seek to

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

**APPLICATION FOR CERTIFICATION FOR
THE CHULA VISTA ENERGY UPGRADE
PROJECT**

DOCKET NO. 07-AFC-4

**PROOF OF SERVICE
(Revised 2/10/09)**

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Declaration of Service

I, Lois Navarrot, declare that on March 16, 2009, I served and filed copies of the attached **MMC Energy Inc.'s Request for Official Notice**. 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: www.energy.ca.gov/sitingcases/chulavista. 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 e-mailed respectively, to the address below (preferred method);

OR

_____ depositing in the mail an original and 12 paper copies as follow:

California Energy Commission
Attn: Docket No. 07-AFC-4
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.

_____/s/_____
Lois Navarrot