WILDLIFE CORRIDOR CONSERVATION AUTHORITY

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MEMORANDUM

Date: January 31, 2007

To: The Governing Board Members

From: Joseph T. Edmiston, FAICP, ASLA (Hon), Executive Officer

Subject: **Agenda Item XI: Update by James DeStefano, Diamond Bar City Manager, regarding the City's recent proposed acquisitions and annexations/sphere of influence amendments in relation to the Aera property.**

Background: Mr. James DeStefano, Diamond Bar City Manager, will give an update regarding the City's recent proposed acquisitions and annexations/sphere of influence amendments in relation to the Aera property. As background, issues pertaining to this item were discussed at the August 30, 2006 Wildlife Corridor Conservation Authority (WCCA) meeting, and it was suggested that the Diamond Bar City Manager be invited to speak at the subsequent WCCA meeting.

The attached figure (previously provided to Board members via email) summarizes some recent activities pertaining to the Aera property. Additional background information is provided in attachments for tonight's meeting and in the August 30, 2006 Board meeting books (Items XVIII and XIX). Although not attached to the staff report, the entire Planning and Pre-Annexation Agreement Between the City of Diamond Bar and Aera Energy, LLC adopted by the Diamond Bar City Council on December 19, 2006, can be found on the web at:
http://www.ci.diamond-bar.ca.us/docs/15636151220068.2.pdf.

Agenda # 8.2
Meeting Date: Dec 19, 2006

CITY COUNCIL AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

VIA: James DeStefano, City Manager

TITLE: Consider Resolution No. 2006-XX Approving a Planning and Pre-Annexation Agreement between the City and Aera Energy, LLC

RECOMMENDATION:

Adopt Resolution

FINANCIAL IMPLICATION:

There is no financial impact to the City. All costs including staff time associated with the tasks outlined in the agreement shall be paid by Aera Energy LLC (Developer). It should be noted that the time spent by the City Manager and Assistant City Manager to negotiate the Pre-Annexation Agreement, Developer Agreement and Tax Allocation Accord with Los Angeles County is not reimbursable as outlined in Section 5.1 of the attached agreement.

The City engaged the services of Keyser Marston Associates, Inc. to provide a cost benefit analysis of the proposed annexation. The preliminary results show that, at project build out, annexing the Project Area would result in a positive impact to the City's General Fund of approximately $1 million annually. This financial analysis will be refined through out the process to ensure the annexation does not negatively impact the City's General Fund.

BACKGROUND:

Aera Energy LLC owns approximately 2,935 acres of land immediately south of the City's municipal boundary. For the past 100 years this land has been operated as a working oil field. The oil field is nearing the end of its useful life cycle and the Developer has proposed a development project to replace the oil operations.

For a considerable amount of time, the Developer has been processing with the counties of Orange and Los Angeles to develop entitlements for the entire 2,935 acres. Recent discussions between the City and Developer have identified potential areas of mutual benefit associated with this project. Developer is now seeking to process entitlements for a portion of the total acreage (1,940 acres) through the City. The

remaining acreage, approximately 995 acres, will be processed for entitlements by the counties of Los Angeles and Orange.

PROJECT SUMMARY

The following is a summary of the project, as presented by Aera Energy LLC, which would ultimately be annexed into the City. Approval of the attached Planning and Pre-Annexation Agreement does not constitute approval of the project as proposed by Aera.

- 2800 residential units
- 200,000 sq. ft. of commercial development
- 1 Fire Station (Location to be TBD)
- 1 K-8 School
- Opportunity for new parks and additional open space

DISCUSSION:

The attached Planning and Pre-Annexation Agreement represents formal authorization by the City Council for staff to begin to pursue annexing a portion of the Area property into the City. The area being considered for annexation is 1,940 acres (Project Area) of the entire 2,935 acre site. If approved by the City Council, the Agreement authorizes staff to begin to the lengthy entitlement and annexation processes but does not commit the City to any future approval of either the proposed project or ultimately annexing the area. Either the Developer or the City can terminate the agreement with ten (10) days written notice to the other party. If such termination should occur, Developer is required to pay all expenses incurred up to the date the notice is received by the City.

If neither party terminates the agreement, there are several tasks that need to be accomplished in order to process entitlements through the City and annex the property into Diamond Bar. These tasks include working with the Developer to:

- Process and certify an Environmental Impact Report
- Draft a General Plan Amendment permitting the development of the Project
- Develop a Specific Plan which will constitute pre-zoning of the Project Area
- Create a master tentative tract map, and
- Negotiate a Development Agreement

In addition, the City must negotiate a Tax Allocation Accord with the County of Los Angeles to share the property tax generated by the development. Also, the City will need to file applications with the Local Area Formation Commission (LAFCO) to modify the City's Sphere of Influence to include this property for ultimate annexation into Diamond Bar.

The Agreement includes a number of significant elements the City Council needs to be aware of such as:

Term of the Agreement:	5 years from the effective date of agreement
Affordable/Work Force Housing	A portion is required to be built in the Project Area that is within City limits
"Green" Construction	Environmental friendly construction practices and products may be required as part of Developer Agreement
Vested Rights	The vested rights, subject to CEQA, would last for 25 years.
Public Financing	Developer has right to encumber the Project Area with public financing bonds, Landscaping and Lighting assessment Districts or other similar financing mechanisms.
Assignability	Developer has the right, without City approval, to assign its rights, as will be defined in a future Developer Agreement, to one or more third parties.
City Costs	All costs including staff time except for the City Manager or Assistant City Manager will be paid by Developer.

As was stated above, the approval of this Agreement is merely the beginning of a fairly lengthy process. Throughout the process, there will be opportunities for public participation and discussion. If approved by the Council tonight, the agreement will be signed by the Mayor and City staff will immediately proceed with the tasks identified above.

PREPARED BY:

_____

David Doyle, Assistant City Manager

Attachments

1. Resolution No. 2006-XX approving a Planning and Pre-Annexation agreement between the City and Aera Energy, LLC
2. Planning and Pre-Annexation agreement between the City and Aera Energy, LLC

RESOLUTION NO. 2006-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DIAMOND BAR, CALIFORNIA APPROVING A PLANNING AND PRE-ANNEXATION AGREEMENT BETWEEN THE CITY OF DIAMOND BAR, CALIFORNIA AND AERA ENERGY LLC.

WHEREAS, Aera Energy LLC owns 2,935 acres of land of which a portion is adjacent to the City's southern municipal boundary; and

WHEREAS, Aera Energy LLC has an interest in developing the property; and

WHEREAS, recent discussions between Aera Energy LLC representatives and City staff have identified areas of mutual interest between the parties; and

WHEREAS, Aera Energy LLC is requesting the City to process the entitlements for a 1,940 acre portion of the property (Project Area); and

WHEREAS, the City's initial financial analysis, assuming receipt of 5.25% of the County's property tax revenue; shows the annexation of the Project Area at build out will result in a positive impact to the City's General Fund of approximately $1 million annually; and

WHEREAS, the City and Aera Energy LLC have negotiated the attached Planning and Pre-Annexation agreement over the last several weeks to outline the responsibilities of each party throughout the entitlement and annexation process.

NOW, THEREFORE the City Council of the City of Diamond Bar does resolve as follows:

1. The Planning and Pre-Annexation Agreement between the City and Aera Energy LLC is approved and the Mayor is authorized to sign the Agreement
2. City staff is directed to retain, at Aera's expense, consultants and other professional experts to review and provide comments on the Environmental Impact Report, assist with creation of the Development Agreement, and facilitate annexation of the Project Area.

PASSED, APPROVED AND ADOPTED this 19th day of December 2006.

_____

Steve Tye, Mayor

PLANNING AND PRE-ANNEXATION AGREEMENT
BETWEEN
THE CITY OF DIAMOND BAR
AND
AERA ENERGY, LLC

This PLANNING AND PRE-ANNEXATION AGREEMENT ("Agreement") is made and entered in the County of Los Angeles ("County") on the 19th day of December 2006 by and between the CITY OF DIAMOND BAR, a general law city and California municipal corporation ("City") and AERA ENERGY LLC, a California limited liability corporation ("Developer") (collectively, the "Parties").

RECITALS

A. Developer owns real property identified in the attached Exhibit "A," which is incorporated by reference, which consists of approximately 2,935 acres ("Total Project Area").

B. For some considerable period of time, Developer has been processing with the Counties of Los Angeles and Orange, as co-lead agencies, to obtain development entitlements for the Total Project Area.

C. Recent discussions between City and Developer have identified potential areas of mutual benefit and the Parties have mutually agreed to process entitlements for the development of a portion of the Total Project Area within the jurisdictional boundaries of the City. Upon execution of this agreement by the Parties, Developer shall file an application with City which, if approved by the City Council and the Los Angeles County Local Area Formation Commission ("LAFCO"), would, among other things, cause approximately 1,940 acres of the Total Project Area to be annexed to the City's corporate territory as designated on the attached Exhibit "B," which is incorporated by reference ("Aera Project Area" or "Project Area").

D. As contemplated by Developer at the time of executing this Agreement, Developer will develop the Aera Project Area as a master-planned community - within the framework of the "AESP" (defined in Recital E below) to be developed as provided more fully below - consisting of residential housing, various public infrastructure facilities, recreation and open space uses, and neighborhood retail and commercial uses (collectively, the "Aera Project").

E. In order to cause the Project Area to be annexed to the City's territorial limits, LAFCO must amend the City's Sphere of Influence boundary and approve the reorganization of the Aera Project Area which will result in, at least, detachment from the territorial limits of Los Angeles County. City intends to satisfy all conditions of LAFCO approval related to the above mentioned sphere of influence amendment and to

initiate annexation proceedings with LAFCO, as provided by Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code §§ 56000 et seq.; "Cortese-Knox-Hertzberg"), pursuant to which the Aera Project Area ultimately will be annexed in whole to the City's boundaries. As required by Cortese-Knox-Hertzberg, however, City must first prezone the Project Area for those uses intended to be developed within the Project Area (the "Prezoning"). Moreover, the General Plan requires that, before annexation, a specific plan be developed for the Project Area, in accordance with the requirements of Government Code §§ 65450 et seq., that reflect the land use buildout and other development policies to be described in the General Plan ("AESP" or "Specific Plan").

F. The General Plan must be amended ("GPA") to include and designate the Project Area for not less than 2,800 market rate dwelling units. Accordingly and as more fully set forth below, in preparing and considering the AESP and the Prezoning, and conducting the requisite environmental review under the California Environmental Quality Act ("CEQA"), Public Resources Code §§ 21000 et seq., City will evaluate as the "Proposed Project" the potential for including within the Project Area 2,800 market rate residential dwelling units through a General Plan amendment.

G. Developer's application with the City for the Aera Project includes applications for City's approval of the GPA; the Prezoning; the AESP; the "Development Agreement" (defined below); and for initiation by the City of annexation proceedings with respect to the Project Area (collectively, and including the GPA application, the "Applications").

H. As City and Developer both desire to facilitate the annexation and entitlement of the Project Area area, they have entered into this Agreement to establish a process pursuant to which (i) the AESP and Prezoning will be developed, and considered by City, together with certain other actions described below including the GPA; (ii) the Parties will undertake to negotiate and agree upon a development agreement between City and Developer in accordance with Government Code §§ 65864 et seq. (the "Development Agreement"); (iii) the Parties will undertake and complete required environmental review under CEQA; (iv) subject to the timely achievement of all of the foregoing, annexation of the Project Area will be sought from LAFCO as required by Cortese-Knox-Hertzberg (the "Annexation"); and (v) the Parties will take such further actions as may be necessary or appropriate towards the entitlement of the Project Area, such as tentative subdivision maps and other permits and approvals.

I. City and Developer acknowledge that a precondition to the Annexation is that the City and County of Los Angeles reach an accord on the division of real property taxes that are generated from the development of the Aera Project (the "Tax Allocation Accord").

AGREEMENT

8.2 ADOPT RESOLUTION NO. 2006-82: APPROVING A PLANNING AND PRE-ANNEXATION AGREEMENT BETWEEN THE CITY OF DIAMOND BAR, CALIFORNIA AND AERA ENERGY LLC.

CM/DeStefano stated that this agreement would provide for consideration of annexing a vacant 2000-acre property generally located between the boundaries of the City of D.B., unincorporated area of Rowland Heights and the Orange County/Los Angeles County line.

ACM/Doyle reported that the item before Council is a planning and pre-annexation agreement between the City and Aera Energy LLC, aka the developer. Aera (formerly Shell Oil) owns approximately 3000 acres south of the City that has been used as a working oil field for the last 100 years. The oil field is coming to the end of its life schedule and the property owner is considering a development project for the site. The proposed project includes a variety of residential housing products, commercial properties, parkland, considerable open space, a new fire station and a new K through 8 School. As a result of discussions between the City and the developer there is now a mutual desire to annex a portion of the proposed development project into the City and for the developer to process a portion of the project through the City for entitlement purposes. The document before the Council tonight for which staff is recommending approval is a resolution authorizing the City to enter into a pre-annexation agreement with Aera. The agreement represents a formal roadmap for the City and developer to proceed through an entitlement process and ultimately for the City to consider annexing a portion of that project with the remaining acres to be processed by LA and Orange Counties. He emphasized that this agreement does not commit the City to any approvals of the project or any discretionary approvals that the Council holds within its power. This is merely an agreement for the City to proceed through a lengthy process that would include numerous opportunities for public participation and comment on various aspects of the proposed project and the elements contained therein. The City welcomes all public participation from D.B. as well as from its neighboring community of Rowland Heights. In addition to the aforementioned, the agreement guarantees that the developer will reimburse the City for all costs associated with proceeding through this lengthy process. If Council approved the agreement tonight the City will commence to develop and Environmental Impact Report including all CEQA required public participation; General Plan Amendment including all required public hearings before the Planning Commission and/or City Council; development of a Specific Plan; creation of a Master Tentative Tract Map; and, negotiating a development agreement between the City and the developer. Ultimately, the City would need to develop a property tax sharing agreement with the County of Los Angeles and file the appropriate LAFCO applications for what ultimately would be annexation. This pre-annexation agreement includes the following elements: The term of the agreement is for five years; this pre-annexation development agreement puts the developer on notice that the City has concerns that will need to be addressed throughout the process, one of which is to make sure that the project's fair-share of affordable housing (workforce, senior or other such housing) is built within the City limits. The developer may encumber the property with public financing mechanisms such as Community Facilities Districts or Landscaping and

Lighting Assessment Districts to help pay for the infrastructure and/or the maintenance and long-term care of the medians, landscape or other types of landscape amenities that are ultimately put in place.

ACM/Doyle explained that the developer has the ability to terminate the agreement within 10 days of notice to the City and would be required to pay any costs associated with the process up to the point of providing notice. The City does not have that type of discretionary termination clause. However, the City has all of its discretionary approvals within its rights. As such, the City may effectively terminate the agreement at any time by voting no on any of the discretionary permits or approvals that the developer seeks.

George Basey, Vice President, Aera Energy LLC, made a power point presentation outlining the proposed project area. He commended staff for working over the past years to prepare the planning and pre-annexation agreement. The proposed project is approximately 3000 acres with the SR57 running along the easterly portion of the property. Harbor Blvd. and Fullerton Rd. confines the property on the west boundary and the SR60 is to the north. Ninety percent of the property is in Los Angeles County and 10 percent lies in Orange County. A portion of the property east of the SR57 (300 acres) lies within D.B.'s Sphere of Influence, along with some area south of the City. Aera remains committed to ensuring that more than half of its land will be set-aside as permanent open space at no cost to the taxpayers. In addition, about 700 acres is dedicated to an unimpeded open space linkage through the property to facilitate wildlife movement to off-site protected lands. A maximum of 3600 residential units are proposed for the entire property. Ingress for the eastern portion is proposed from the Brea Canyon Rd. inter-change area and Tonner Canyon Interchange area in Orange County. Minor road connections are also proposed from Harbor Blvd. and Berry St. in Orange County. No roads are proposed to connect through the property. Furthermore, there are no public road connections being proposed from the property north to Pathfinder Rd. Aera is excited to work with D.B. toward the ongoing planning of a portion of the property subject to the agreement before the Council tonight. Aera respectfully requests the Council's approval of the Planning and Pre-Annexation Agreement and remain committed in efforts to reach out to all of the other stakeholders willing to work and dialogue with Aera.

C/Herrera asked for clarification about roads being proposed from the project into LaHabra Heights.

Mr. Basey responded that no roads were proposed to go from the project into LaHabra Heights and pointed to an area proposed to accommodate a total of 75 residential units that would take access onto Harbor Blvd., an area that is outside of the D.B. planning area and under the purview of Los Angeles County.

C/Herrera asked if any part of the D.B. proposal included roads leading into the City of LaHabra.

Mr. Basey responded "no."

C/Herrera asked if there were any roads that would lead into Rowland Heights.

Mr. Basey responded "no."

C/Herrera asked if there were any roads that would lead into Brea.

Mr. Basey responded "no."

M/Tye asked Mr. Basey to again display the graphic that showed a road leading west on Brea Canyon Rd. into Brea.

Mr. Basey explained that the project area stops at the County line and those connections would be on the Orange County side.

In response to CM/DeStefano Mr. Basey displayed an aerial photograph that defined the area that was the subject of the Planning Agreement before the Council. The area is roughly 1940 acres of the 3000 acres and the balance would remain with Los Angeles and Orange Counties.

M/Tye asked for public comments.

Robert Lewis, 2231 No. 8 Fullerton Rd. and Vice President of the Rowland Heights Water District said that statements he makes tonight are his own and are not to be construed as opinions offered by the Rowland Heights Water District. Mr. Lewis said he was disappointed because Aera had stressed that it was "committed to building a new community that will balance the interests, desires, needs of the environment, our neighbors, local officials and our future community residents. Nothing short of this will do." The fact that there is now a Planning and Pre-Annexation Agreement is, in his opinion, an attempt to indicate that perhaps the process is being closed off after so many years of discussing a very good project. Rowland Heights is also interested in controlling its future and suggested that D.B. think bigger and bolder and annex Rowland Heights into D.B. in its entirety which would render D.B. one of the 10 largest cities in the County of Los Angeles and greatly enhance its fiscal base and resources to address its traffic problems, its environmental needs, housing needs and all other common problems. Aera is offering to pay the cost of the planning and annexation. What he is suggesting is that instead of adopting this agreement go back to staff and request a discussion of annexing the entire revenue-rich community service district introducing economy of scale and unifying communities into one City staff with one agenda and one direction to move forward to address all problems in the regional area of the San Gabriel Valley.

Lawrence Permaul, Senior Counsel, Colantuono & Levin, representing the Hillside Open Space Education Coalition (HOSEC), an organization of neighboring cities and communities including Brea, LaHabra, LaHabra Heights and Whittier as well as the Hacienda Heights Improvement Association and the Rowland Heights Community Coordinating Counsel stated that HOSEC is dedicated to the preservation of open space in the hillside areas bordering Los Angeles and Orange

Counties in order to safeguard the environment, maintain high quality of life and reduce traffic congestion. Mr. Permaul said he provided CA/Jenkins with a letter that more thoroughly explained the position of HOSEC. HOSEC believes that the annexation of the Aera property to D.B. for development of thousands of homes and hundreds of thousands of square feet of commercial and institutional uses in an environmentally sensitive and visually prominent hillside area is of grave concern. HOSEC learned of this agenda item within the last few days and does not believe there has been adequate time for interested stakeholders to review the information and properly respond. Some of the exhibits that were represented to be attached to the agreement were not available online and were not available in the short period of time HOSEC had to review the information. These concerns have been echoed by Supervisor Don Knabe's office and despite the fact that there has been little time to review the information and respond accordingly there seems to be organized opposition to the particular agreement that is before the Council tonight. He believed that if Council were to postpone decision on the agreement and seek additional public input it would find many concerns among constituents and stakeholders.

Dickie Simmons, representing Supervisor Knabe, said he earlier this evening presented each Council Member with a copy of a letter that the Supervisor respectfully requested he read tonight to wit: "The Aera project has generated much concern and conversation over the past few years on plans to develop properties known as the Shell properties in the southeastern portion of Los Angeles County. Although conceptual plans have been discussed there still has not been any definitive plan presented for public review and comment. I know that your city has previously expressed a desire to explore the possibility of annexation of the Aera properties to the City of Diamond Bar and that this pre-annexation agreement is on tonight's agenda. I must say that I am very disappointed with the notice and timing of this agenda item. My office did not receive notice until after the item had been formally placed on the agenda. I would have appreciated the opportunity to reach out to my constituents to make sure that they were aware of the item, particularly the week before Christmas. As you move forward with your plans I would like to respectfully request that this Council do everything in its power to ensure the timely and thorough notification of these processes as you proceed, that they do not circumvent our residents of Rowland Heights, Hacienda Heights and surrounding communities, and that adequate notice and opportunity to discuss in open forums are made available to one and all so that there is a complete airing of the Aera project during each stage of the annexation entitlement process. My position on land development remains as clear tonight as it has for years - there must be a clear balance between construction and development and the preservation of the very few large tracts of open space that we have left in this part of the County. Any project that would call that balance into question including the development of the Aera land needs thorough examination before proceeding. Thank you for your consideration. Sincerely, Don Knabe."

Lynn Evancamp, Rowland Heights, said she did not have a clear picture of where the traffic would flow as a result of the project and that Rowland Heights residents are concerned about traffic.

CM/DeStefano responded to speaker Evancamp's concerns about traffic, that as D.B. understands the project through concept drawings shown this evening, the road network shown in the drawing indicates that all of the traffic flowing to and from the site would come from Brea Canyon Rd. and obviously, Brea Canyon Rd. as it sits today would not be sufficient to handle that level of traffic and would appear that improvements would be necessary for Brea Canyon Rd. Staff has not seen environmental material that the developer has created. Those documents are part of the next steps within the environmental documents and staff presumes the documentation would contain sufficient traffic studies to understand any and all impacts and proposed mitigation measures.

Mr. Basey stated that a lot of the details and information would be forthcoming during the planning process. In general, the concept would focus circulation from the project primarily onto Brea Canyon Rd. The Environmental Impact Report will examine the existing conditions of the roadway, layer in the proposed traffic volumes from the project, identify levels of impact and identify the packages of mitigations which the project would need to bear. Clearly, some of the trips will go elsewhere but his comments were regarding primary points of ingress/egress to the site.

CA/Jenkins responded to questions and comments made by the attorney representing HOSEC. (Verbatim) Mr. Doyle In his preliminary comments was exactly right in describing this agreement as a "roadmap." It is in fact nothing more than a path, a process. And, in particular, it does not approve anything. If you approve this agreement and you do nothing else there will be no development of any kind - there will be no change in the physical environment. And it is for that reason that it is my view that this is not a project within the meaning of CEQA and that this agreement is specifically exempt from the requirements of CEQA. However, note that each and every discretionary decision that would have to be made once we go down the path contemplated in this process would be a project within the meaning of CEQA and hence, obviously, we're going to have to comply with CEQA and we're going to have to do it earlier rather than later. And I think our Supervisor Knabe should be satisfied to know that each and every step of the way we will be obligated to give full notice to conduct public hearings at which all members of the public and all interested parties will have the opportunity to participate. In effect we have a property owner who owns a piece of property outside our boundaries and who has a proposed project. He has come to us and said would you consider taking our land and our project into your City and our response by way of this agreement is simply said, we will consider it. We won't guarantee anything but will consider it – we want you to pay the majority of our costs in considering it – we may deny it – we may not go very far into the process but we will consider it. As we consider it we will of course comply with CEQA. In that regard I just want to point the City Council to Section 6.05 of the agreement, which appears on Page 13 and is – the heading of which is "Nature of Commitment." And this paragraph says that this agreement represents the City's commitment only to plan, review and consider the Phase 1 Approvals, the Phase 2 Approvals, and the Phase 3 Approvals - collectively, the "Project Approvals." Nothing in this agreement is or should be construed to be a covenant, promise or commitment by City or any

agency, board or commission of the City to grant any project approval or to enter into the development agreement on any particular terms or conditions. Nothing herein can be deemed a covenant, promise or commitment by Developer, or its successors in interest, to annex the Aera Project Area, or any part thereof, or to construct any Project Improvements on the Project Area. The purpose of this agreement is merely to set forth the Parties' understanding regarding the manner in which the Parties intend to proceed with cooperative efforts to provide a planning and processing framework in furtherance of the Project, reserving final discretion and approval of the Project Approvals to the Diamond Bar City Council, subject to environmental review in accord with CEQA." And that paragraph 6.05 really says it all very succinctly.

Some portions of the letter from the attorneys for HOSEC simply reflect the author's opinion about the merits of the agreement and this opinion is expressed in isolation, in a vacuum without the benefit of having sat down with the representatives of Aera over the course of what must be two or three months of serious negotiations in a process where there was give and take. While it is very nice that someone comes along Monday morning and says well, if I had done it I would have done it differently. Well, that's fine but that's not what we have here so choices have been made along the way. In other respects the letter really grossly misrepresents the agreement and mischaracterizes many of its terms. And since this is really my only public opportunity to comment on that I would just like to take a few more moments if you'll indulge me just to pointed out a couple of those mischaracterizations which I think are really pretty egregious under the circumstances. For example, on Page 2 the first bullet point says that the agreement does not discuss alternatives. Well, this is not an EIR. It will be an EIR and it will discuss alternatives to the project – it has to discuss alternatives to the project. That's not the purpose of this agreement. Second, it says the agreement attempts to specify mitigation measures for the project. No, it doesn't. The letter states that Section 4.03 commits the City to requiring no mitigations beyond those stated in the article. This is a misreading of Section 4.03. If we turn to Section 4.03 we'll see it refers only to "public facilities" – public facility mitigations. It says nothing about mitigations of the project itself. The next bullet point on Page 2 says Section 4.08 appears to pre-commit you to waive the requirements of your grading and other ordinances. Well, it doesn't appear to do that at all. In fact, if you read Section 4.08 it says that some aspects of the project <u>may</u> be inconsistent with the City's grading ordinance and other ordinances and as part of the project applications the applicant <u>may</u> ask the City Council to amend some of its ordinances and the City Council will consider it. What does that mean? It means you'll <u>consider</u> it and you'll either say yes or no within your absolute discretion and nothing can bind your discretion. There is nothing in 4.08 that appears to pre-commit you to waive the requirements of your grading ordinance and frankly I don't know why that sentence appears in this letter at all.

On Page 3 the letter states the agreement gives the developer too much control over the EIR. This is entirely the author's opinion. What is contemplated here as far as the preparation and review of EIR provides that the City will give its complete independent review of the EIR, which is what CEQA requires and is a perfectly acceptable and perfectly lawful methodology for the review and certification of an

EIR. There is absolutely nothing inappropriate about it.

On Page 4 the first bullet point makes reference to the "assignment" indicating that the paragraph allowing for assignment would allow the developer to take all the benefit of this deal. This is a complete misstatement. There is no "deal" involved here. Once again, this agreement provides for a process – it doesn't make a "deal." Any development agreement that is negotiated with this developer, if we even get that far, will have a much different type of assignment clause. For purposes of a pre-annexation agreement nothing further or more elaborate than what is included in this agreement is necessary because we have reserved the right to exercise our discretion at any point in the process if we determine not to go forward with any of the discretionary approvals. Consequently, if this developer is to assign it to another developer it's not nearly the concern it would be if we had negotiated a "development agreement" that accorded the developer true vested rights. Then we would want to have more say over an assignment. The third bullet point regarding public debt is very misleadingly worded. As Mr. Doyle indicated, there is a possibility that this developer would want to have a Mello-Roos District all over the property. The reference to "public debt" contains an inference that somehow our general public will be saddled with some new debt when in fact a typical Mello-Roos District of the kind contemplated, a Community Facilities District, would merely place debt on the parcels within the project only and no place else. The fourth bullet point on Page 4 criticizes the agreement for giving the developer complete control over the phasing of the project. I would represent to you that every private project and every development agreement that is approved gives the developer control over phasing. After all, it's the developer's project. The whole point of a development agreement is to allow the developer to phase a project over time based on market conditions, financing and other considerations. Furthermore, nothing in this agreement sets forth what the terms of the ultimate development agreement in this regard are going to be. The last bullet point on Page 4 states that Section 4.10.7 limits Diamond Bar's power to condition build out of the project to protect the health and safety of the community. I challenge you to read Section 4.10.7 and come to that same conclusion.

On Page 5 the author references Section 6.03(c) requiring the City to indemnify the developer for any negligence by the City in the entitlement process. Again, I would urge you to read Section 6.03(c), which is a standard indemnification requirement that simply says virtually the opposite – "<u>except</u> for the negligence or willful misconduct of the City the developer <u>must</u> defend and indemnify the City from and against any and all damages, etc. etc." What does that mean? It means that the developer is obligated to defend and indemnify the City with regard to any liability except for liability created by the City's negligence. That's a standard provision in most agreements. Nothing in Section 6.03(c) says anything about negligence in the entitlement process. Frankly, I'm not aware of what type of negligence might arise in an entitlement process. I'm not sure why that criticism is even in the letter.

In conclusion I don't believe that the protests made by HOSEC and its attorneys has merit. I don't believe that this agreement is project within the meaning of CEQA. I think the comments are mistaken, erroneous or reflect a mischaracterization of the

agreement or reflect simply the author's disagreement with various points that were negotiated during the negotiation process.

I'd be happy to answer any questions that the Council may have about this.

M/Tye agreed with CA/Jenkins.

MPT/Tanaka said he was confident with staff's reports and interpretation by the City's legal counsel that all the Council was approving at this point was a process, and that there would be ample opportunity for public input and for comments from interested stakeholders. He was also comfortable that there would be no financial impact to the City.

C/Herrera agreed with MPT/Tanaka's comments and said that for some individuals to claim they were caught unaware and did not know about the Aera project was quite unreasonable since for the 11 years she has served on this City Council people have talked about the Aera development. HOSEC was created two years ago by a coalition of cities that wanted to stop the development that everyone knew was coming.

C/Herrera moved, C/Chang seconded, to Adopt Resolution No. 2006-79 Approving a Planning and Pre-Annexation Agreement between the City of Diamond Bar, California and Aera Energy LLC. Motion carried by the following Roll Call vote:

AYES:	COUNCIL MEMBERS:	Chang, Herrera, MPT/Tanaka, M/Tye
NOES:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	Zirbes

9. **COUNCIL SUBCOMMITTEE REPORTS/COUNCIL MEMBER COMMENTS:**

C/Chang thanked residents for their input this evening and encouraged them to participate in public meetings as often as possible. Last week the City recognized and thanked its Senior Volunteers for assisting the City and helping to deter crime. He thanked staff for the wonderful community Snow Fest event. He and other Council Members attended the Senior's Christmas party. Yesterday the Council held a special economic development meeting to discuss ways in which various sites could be used to help revitalize the City's economy. He wished everyone Happy Holidays and a very Happy, Healthy and Prosperous 2007.

C/Herrera stated that Council Members attend many community events in the City and that the City's staff and City Council look very careful at all issues that come before the City as to how they could benefit the residents of D.B. Council and staff have no interest in making decisions that may hurt the residents and the City, and always have the best interest of the community at hand and heart. Opportunities come with annexing the Aera property. A resident asked where all of the cars would go. Most individuals travel to their jobs and a great majority of people work in

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

822 KENNETH HAHN HALL OF ADMINISTRATION / LOS ANGELES, CALIFORNIA 90012
Telephone (213) 974-4444 / FAX (213) 626-6941

DON KNABE
SUPERVISOR, FOURTH DISTRICT

December 19, 2006

The Honorable Steve Tye
Mayor
City of Diamond Bar
21825 East Copley Drive
Diamond Bar, California 91765

Dear Mayor Tye:

The AERA project has generated much concern and conversation over the past few years on plans to develop properties known as the Shell Properties in the southeastern portion of Los Angeles County. Although conceptual plans have been discussed, there still has not been any definitive plan presented for public review and comment.

I know that your City has previously expressed a desire to "explore" the possibility of annexation of the AERA properties to the City of Diamond Bar, and that this **"Pre-Annexation Agreement"** is on tonight's agenda. I must say that I am very disappointed with the notice and timing of this agenda item. My office did not receive notice until after the item had been formally placed on the agenda. I would have appreciated the opportunity to have reached out to my constituents to make sure they were aware of the item, particularly the week before Christmas.

As you move forward with your plans, I would like to respectfully request that this Council do everything in its power to ensure the timely and thorough notification of these processes as they proceed, that they do not circumvent our residents of Rowland Heights, Hacienda Heights, and surrounding communities, and that adequate notice and opportunity to discuss in open forums are made available to one and all, so that there is a complete "airing of the AERA Project" during each stage of the annexation entitlement process.

My position on land development remains as clear tonight as it has for years. There must be a clear balance between construction and development and the preservation of the very few large tracts of open space we have left in this part of the County. Any project that would call that balance into question, including development of the AERA land, needs thorough examination before proceeding.

Thank you for your consideration.

Sincerely,

DON KNABE
Supervisor, Fourth District
County of Los Angeles

DK:lr

c: Each Councilmember

C/Herrera asked if Mr. Gabey intended to contribute investment money or was expecting the City to foot the entire amount.

CM/DeStefano indicated that talks have not progressed to that level of detail but said he knew that Mr. Gabey was aware he would have to contribute a substantial portion of the total investment dollars necessary to complete the project.

C/Herrera felt the City should consider the larger 20-25 acre project over the smaller 8 or 10 acres occupied by Kmart to maximize the full potential of the area. She asked if there was consideration of connecting the upper and lower portions of the mall with a driveway.

CM/DeStefano responded Yes. The concept included removing one of the buildings inside the Jolly Bagel shopping center and replacing it closer to the old Sheriff's substation or looking at a broader opportunity to create an entirely new palate by removing all of the buildings and proposing a much more intense development.

2) HONDA PROPERTY

CM/DeStefano stated that at this point the owner is still 10-12 months away from relocating to the City of Industry, a site that has not yet commenced construction. The owner proposes to sell or lease the 5-acre property and believes the value of the property to be about $10 to $12 million including the Burger King site. The owner does not favor relocating from D.B. However, it is a Honda dealership requirement. The graphic shows potential freeway modification for new on/off ramps at the Grand/SR57 merge through the Honda storage lot. The new ramp would replace the existing on/off ramp at Grand Avenue. The City commented back that the new on/off ramp probably has merit but not at its proposed location because it slices and erodes the Honda property even further. The City of Industry and D.B. have a strong interest in widening the Grand Avenue Bridge to add capacity and to review the existing on/off ramps and merging of the SR60 and SR57. Old Brea Canyon Road is owned by the City of Industry, which gives D.B. an opportunity to talk with Industry about vacating the property to D.B. and pushing the road further west. The next step for D.B. is to assist the property owner's broker in promoting the site for the types of land uses that would be most acceptable to D.B. It is unlikely that the site would ever be used as a new car dealership again. Rather, it would likely be a satellite new car store or used car, recreational vehicle, motorcycle or a boat sales facility. It may also be developed with hotel and restaurant uses.

3) CRESTLINE PROPERTY

CM/DeStefano explained that the unincorporated area has been considered for annexation to D.B. for about two years. Residents are confused about their

jurisdiction. Planning staff continues to move forward with the annexation process that will take about two years to finalize. D.B. needs to amend its General Plan, to provide zoning for the properties, apply for the annexation, schedule a vote of the property owners and develop an environmental document for certification.

CDD/Fong responded to C/Chang that the few residents who attended the community meetings were in favor of annexation and looked forward to having D.B. take care of their streets.

CM/DeStefano stated that ingress/egress for the existing developed property is via Brea Canyon Cutoff. There is no other access proposed and no other access that is feasible. This property is adjacent to the 100 acres that D.B. is looking to purchase from the City of Industry and is adjacent to the Aera Energy property. LAFCO gave preliminary approval for the potential of this property to become part of D.B. because it makes sense for many reasons.

4) SITE D

CM/DeStefano stated that Site D is the 28-acre site located at Diamond Bar Blvd. and Brea Canyon Rd. and is declared excess property that is owned by the School District. D.B. was in escrow with Lewis to purchase the property. However, the agreement with Lewis expired and the property went back on the market. D.B. has discussed with the School District its desire to create a specific plan for the site with 50 percent commercial development because residential is not as promising as a freeway-oriented and residential serving commercial site at that location. The School District is interested in a residential plan because it would meet their objectives to generate the highest value possible. Last week staff and CA/Jenkins met with the School District's Superintendent and attorney to finalize the details of a Memorandum of Understanding (MOU). If the MOU comes together the way staff believes it will the matter would be placed on the Council's January 16 agenda for approval. Incorporated within the MOU is the City's interest in processing a specific plan for the property in an expeditious manner that would include the City fronting the cost for the specific plan estimated at about $250,000. The School District would reimburse the City upon sale of the property.

CM/DeStefano responded affirmatively to C/Herrera's questions regarding the specific plan changing the land use and the City's General Plan. The General Plan land use is currently Public Facility and the zoning is Single Family Residential, neither of which would fit with the desires of either the City or the School District. The entire process is likely to take about a year to conclude.

6) TRES HERMANOS

CM/DeStefano referred to the vacant land between Diamond Bar and Chino Hills of which D.B. has approximately 700 acres from Grand Ave, to the south side of Diamond Ranch High School. Chino Hills has about 1700 acres from Grand Ave. south to the Boy Scout property. Both Cities have set aside the property for future development opportunities and both Cities have limited residential build out opportunities. The Tres Hermanos Conservation Authority was created a few years ago to look at the possibilities for the property owned by the City of Industry. It has not been determined whether City of Industry wishes to pursue a water use on the property. Staff was directed by the Authority Board to prepare an RFP (Request for Proposal) to obtain the services of a consultant to help Chino Hills and D.B. determine the best use for the property. A final draft RFP was prepared for consideration about September 2006. However, the Authority Board has not met since that time and will not be meeting until late January or February to consider the RFP.

C/Chang felt consensus was not forthcoming and that a project would be too costly.

CM/DeStefano said that the City of Industry has talked about master planning the entire 8000 acres. However, D.B. is fundamentally interested in the Tres Hermanos property and at this time there is no interest in the Tonner Canyon property. At this point, the two cities do not yet know if City of Industry is a willing participant.

7) REED/CITY OF INDUSTRY PROPERTY

CM/DeStefano explained that Los Angeles County has a "no net loss" policy for recreation space meaning that the current golf course would have to be relocated. Thus, the City has focused on the Reed property along Pathfinder Rd. area in Rowland Heights and very recently the Industry property became available as a potential replacement site.

ACM/Doyle stated that the City is in escrow on two properties and conceptual plans were presented to the City Council. It appears that the properties could accommodate a golf course. There are a lot of moving pieces and the City is looking at a number of alternatives in the area and that this is a very preliminary effort toward looking at the properties as a potential relocation for the golf course. Staff is in the process of setting a meeting with the County's Parks staff to discuss the various options, look at conceptual designs and they just received a proposal to do the metes and bounds study which means that the property must be identified to complete the 18-hole course. The land mass is provided to the County so that the County can appraise the mass and determine the value against the appraised value of the current site to make certain there is no net loss. Staff is most concerned about setting up public meetings in D.B. and

Rowland Heights to provide the public with the facts. Newspaper articles and rumors are outside the scope of what D.B. has talked about and what D.B. has considered. In fact, the opposite is true. ACM/Doyle further stated that he has been interviewing consultants to help with the public outreach slated to begin mid-January/early February. During the time the appraisal is being done, the City needs to work with the County to formulate the agreement, look at environmental impacts for both the new and current courses and look at what potential development possibilities exist from parkland and recreational uses to what types of commercial developments might be feasible in accordance with the possible freeway improvements. No decisions have been made to date and staff is making every effort to move the project forward.

CM/DeStefano explained that the Reed/City of Industry property would afford additional acreage necessary to accommodate a hillside facility in place of the current flat course.

ACM/Doyle also explained that the effort would be to maintain as much of the slope and oak areas as possible to lessen impacts and buffer the homeowners associations.

CM/DeStefano stated that staff spoke with a member of the adjacent residential neighborhoods who was opposed to a housing project proposed by a developer through the County. D.B. is not proposing any homes on the golf course and the City has been so stating that fact from the very beginning. There has been some discussion that homes might be appropriate and if D.B. were a private land developer it would make sense because it would help offset the costs of building a golf course. However, D.B. is not doing that. D.B. is tying this golf course development with the existing D.B. golf course and there is the likelihood of housing on the existing site and development on the existing site can help offset the cost of building a new golf course. It is true that the two properties are not connected and the connection point for those two properties is the Aera Energy property. Staff is talking with Aera to acquire a portion of their property to bridge the gap. Aera may have plans for homes on a portion of their 3000 acres that exists in the area. However, this is not intended to be a golf course that has homes rimming it nor is it intended to be a golf course that has access to Pathfinder Rd. The two most probably access points are from the Aera Energy property and the other from Brea Canyon Rd. south of the Crestline property. This proposal is at a very, very preliminary stage with many unknowns. If the project does not move forward the City can cancel the Reed escrow but it makes sense to move forward with the purchase of the Industry property. This will be a long process with many decisions to be made along the way to determining whether or not to relocate the golf course.

ACM/Doyle responded to C/Herrera that the escrow period for the Reed property contains an option for continuing it to May 2008, the same timeframe put on the Industry property.

CM/DeStefano stated that it is the City's intent to have the golf course be in the City of D.B. and if the City were to acquire the properties and pursue a new golf course D.B. would move forward with annexation of the property.

MPT/Tanaka asked what the benefit would be to D.B. in annexing the golf course since the revenue does not flow to the City.

ACM/Doyle responded that any sales tax generated would flow to the City.

CM/DeStefano explained that the sales tax revenue from the current golf course is minimal and a new contemporary golf course would generate significantly more sales. However, the revenue would not be substantial. Because the current golf course is in the City, staff believes it is important that the relocated golf course be in the City as well and that the name remain the same.

ACM/Doyle said the City has obtained information about sales tax leaks and surveyed residents about what kinds of opportunities they would like to see at the current site. Preliminary sketches for possible land use would include buffering for existing residents, open space, parkland, retail opportunities and so forth.

CM/DeStefano explained how the next round of freeway improvements would impede upon the current golf course. It appears that there is adequate room to increase capacity for the SR57/60 merge and eliminate much of the weaving problems. More study is required and the City of Industry is heading that effort as a benefit to them and to the region.

M/Tye asked if it made sense to move the westbound onramp closer to the freeway to spare the Honda property would it not make sense to move the eastbound off-ramp closer to the freeway to spare property.

CM/DeStefano said that it may, but in lieu of having the eastbound Grand Ave. traffic make a left turn to get onto the northbound freeway and stacking on Grand Ave., the engineers believe that the free flow of traffic with the proposed type of movement would be far superior. Indeed, the penalty for the free flow of traffic is the need for acres of property to make it work.

C/Herrera felt that a minimum of two public meetings per community should be scheduled as quickly as possible.

C/Chang concurred.

8) **AERA ENERGY**

CM/DeStefano reported that tomorrow staff would present Council with a five-year pre-annexation agreement with Aera Energy for approximately 2000 acres. The remainder of the Aera property is closer to Brea and LaHabra Heights. Within the 2000 acres Aera is proposing a maximum 2800 dwelling units plus

commercial, public safety facilities, schools, parks, open space, etc. A very preliminary financial study reveals merit to the proposal; however, the analysis is not yet complete and is based on preliminary information. He said he would not be recommending a multi-year agreement with steps to implement the terms of the agreement unless it was financially rewarding for the City.

9) TARGET PROPERTY

CM/DeStefano reported that Chili's is in escrow and has submitted plans to build a restaurant on the Golden Springs/Grand Ave. corner on the Target pad. Panda Express is in escrow to purchase the second pad and should be presenting their proposal for build out in the near future.

C/Herrera felt that for a small city D.B. had undertaken a multitude of very dynamic and exciting projects that were very impressive. She commended staff for doing such a great job with respect to economic development efforts.

C/Chang agreed and recommended the City put the information on its website.

MPT/Tanaka said he was excited about the projects but cautioned Council that the City should not take on more than it can support.

C/Herrera felt it was important to rely on consultants and the City's engineers to keep the City fully informed about all possibilities involving projects.

C/Zirbes said he heard a lot of good things this morning and has been in touch with staff regarding the progress of these items. He thanked everyone for participating.

PUBLIC COMMENTS: None Offered.

ADJOURNMENT: With no further business to come before the City Council, M/Herrera adjourned the Special Meeting at 10:50 a.m.

_____
TOMMYE CRIBBINS, City Clerk

The foregoing minutes are hereby approved this _____ day of _____, 2007.

_____
STEVE TYE, Mayor

Agenda # 6.6
Meeting Date: December 5, 2006

CITY COUNCIL AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

VIA: James DeStefano, City Manager

TITLE: Authorize City Manager to enter into purchase agreement with the City of Industry for the purchase of three (3) parcels APN # 8269-008-0270, 8269-050-026 and 8269-053-024, authorize the deposit of $15,000 into escrow, and appropriate $15,000 from General Fund reserves.

RECOMMENDATION:

Approve and appropriate funds.

FINANCIAL IMPACT:

The attached purchase agreement specifies that the City will deposit $15,000 into escrow within 3 days after signing the agreement. The purchase price for the properties is $150,000 but the City could be reimbursed the entire purchase price if LAFCO approves the realignment of city boundaries. The realignment of the municipal boundaries would result in four (4) parcels currently located in the City being annexed into the City of Industry. The financial implication of this proposed change is the loss of property tax ($7,000) and sales tax ($4,600) associated with these properties.

There are sufficient funds in the General Fund reserves for the escrow deposit.

DISCUSSION:

The attached purchase agreement specifies the conditions for the City to acquire approximately 120 +/- acres of property from the City of Industry. The agreement includes an escrow period until May 31, 2008. This escrow period will allow the City to perform its due diligence records review and conduct the necessary environmental assessment prior to purchase. After the property is acquired by the City, it shall be used for a public purpose.

The City and the seller have agreed that the City will support the seller's LAFCO application to realign municipal boundaries. As described above, the realignment of municipal boundaries will result in an

$11,000 annual loss to the City. It is important to note that realignment of the municipal boundary can only be accomplished with an affirmative vote of a majority of the affected property owners.

The City Attorney has reviewed and approved as to form the attached purchase agreement.

PREPARED BY:

_____
Assistant City Manager

Attachment:

1. Purchase and Sale Agreement

City of Diamond Bar

21825 Copley Drive • Diamond Bar, CA 91765-4178

(909) 839-7000 • Fax (909) 861-3117
www.CityofDiamondBar.com

October 24, 2006

City of Industry
Attn: Phil Iriarte, City Manager
15651 E. Stafford Street
Industry, CA 91744-0366

Mr. Iriarte:

It's my understanding that Mayor Herrera and City Manager DeStefano spoke to you and Mayor Perez about the purchase of approximately 100 acres owned by the City of Industry and located in Rowland Heights (3 separate parcels).

Enclosed for your review and signature are two purchase agreements that will initiate the sale of these parcels. As you will see, the City is offering to purchase these properties for $150,000. In addition, the City will support Industry's application to LAFCO to realign the municipal boundaries adding 4 parcels to the City of Industry as shown on Attachment A of the purchase agreement. If Industry's LAFCO application is successful, which we firmly believe it will be, Industry will reimburse the Diamond Bar the $150,000 purchase price.

If these terms are acceptable to the City of Industry, please sign and return both purchase agreements to me. The City of Diamond Bar will then execute the agreements and a completed original will be and escrow papers will be provided to you. If you have any questions or concerns, please contact me at 909-839-7012.

Sincerely

David Doyle
Assistant City Manager

CC: Mayor & City Council
James DeStefano, City Manager

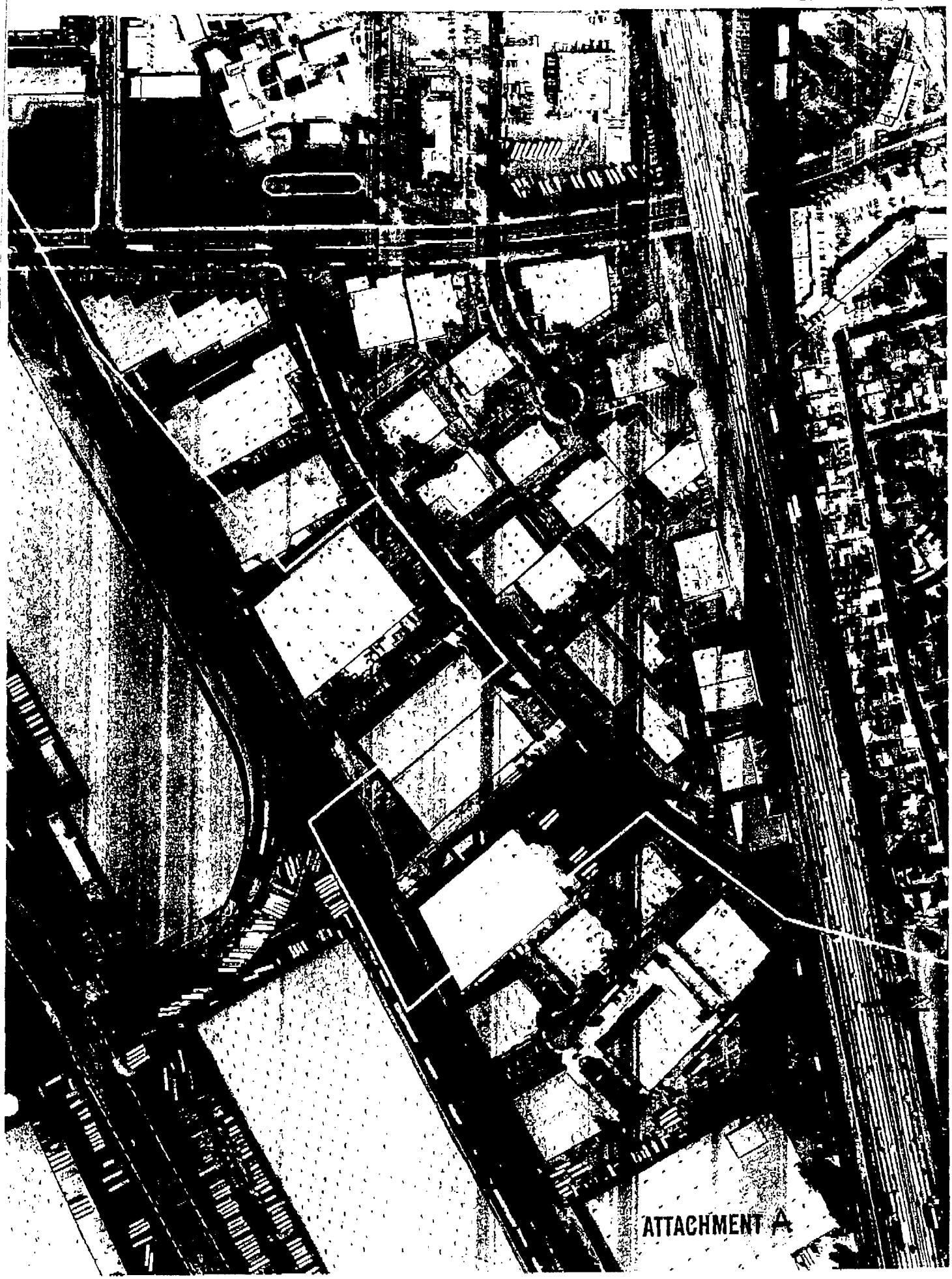
Carol Herrera
Mayor

Bob Zirbes
Mayor Pro Tem

Wen P. Chang
Council Member

Jack Tanaka
Council Member

Steve Tye
Council Member


ATTACHMENT A