



## CITY OF HAYWARD AGENDA REPORT

Meeting Date 05/22/08  
Agenda Item 1

**TO:** Planning Commission

**FROM:** Erik J. Pearson, AICP, Senior Planner

**SUBJECT:** **Conditional Use Permit Application No. PL-2006-0172 – John Ehde for Salem Communications (Applicant)/City of Hayward (Owner):** Request to Construct Four 199-Foot-Tall Radio Transmission Towers on a Closed Landfill and a Transmission Building on Adjacent Property in the Flood Plain and Industrial Zoning Districts.

The Property is Located at 3050 West Winton Avenue, at the Western Terminus of West Winton Avenue

### RECOMMENDATION

Staff recommends that the Planning Commission recommend approval of the following to the City Council: 1) Adoption of the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Plan; and 2) Approval of the Conditional Use Permit application, subject to the attached findings and conditions of approval.

### SUMMARY

The proposed project would allow for a significant increase in the area where a local AM radio station broadcast is received, particularly during nighttime hours, in a manner that would be consistent with the purposes of the zoning districts in which the project site is located. Also, the project would be consistent with the existing built environment of the industrial area along the Hayward shoreline, which includes radio towers and electric transmission facilities in the immediate vicinity. Finally, with recommended mitigation measures, the project would not create significant environmental impacts.

### BACKGROUND

The proposal is similar to a Conditional Use Permit (CUP) approved by the City Council in 2001, which involved the relocation of four radio towers for KFAX from the end of Enterprise Avenue to the subject site. The towers were to be relocated to make way for the Russell City Energy Center. That CUP expired and the KFAX (1100 AM) towers at the end of Enterprise are no longer proposed to be relocated.

The Zoning Map (see Attachment A) indicates that the eastern portion of the site is within the Industrial District and the remainder of the site is in the Flood Plain District. Towers have

traditionally been allowed in the Industrial District. The Flood Plain district allows broadcast studios as a permitted use, but does not specifically mention radio towers. The City Council made a determination in 2001 that radio towers are a conditionally permitted use in the Flood Plain zoning district.

The purpose of the Industrial District is to provide for industrial uses in areas that will have a minimum of detriment to surrounding properties. The purpose of the Flood Plan District is to enforce regulations that serve to protect persons and properties from the hazards of development in areas subject to tidal or flood water inundation. In staff's opinion, the KNTS radio towers would not be inconsistent with these purposes.

## **DISCUSSION**

The site, a closed landfill, consists of three parcels owned by the City of Hayward totaling approximately 18 acres. The site is located within the Hayward Regional Shoreline Park, which is managed by the East Bay Regional Park District. The site is bordered by a tidal slough and then an industrial park to the east, oxidation ponds to the south, park trails and another former landfill to the west and a parking area and a slough to the north. Beyond the slough to the north are more closed landfills and four more radio towers for KTCT. An aerial photograph of the area is included as Figure 3 in the Initial Study (Attachment H).

The proposed towers' site is a plateau rising 15 to 20 feet higher than the surrounding parking lot and trails. The landfill was closed in 1974 and was covered with a clay cap and 5 to 8 feet of clean fill. The site is mowed annually in the spring to provide access to leachate monitoring wells, which are checked regularly by the City's consultant to ensure that leachate is being properly collected and routed to the City's wastewater treatment plant to avoid groundwater contamination. The transmission building would be located at the southeast corner of the site – off the plateau on a parcel containing a City-owned wastewater pump station. The four towers would be located at approximately 200-foot intervals arranged generally in a linear pattern from east to west. Except for the fenced areas around the base of each tower, which would be 40 feet by 40 feet, the public could still enjoy access to the site.

### *Project Description*

Salem Communications proposes to construct four 199-foot-tall radio transmission towers and a 1,200-square-foot transmission building for KNTS, an AM radio station operating at 1220 KHz. KNTS is a news talk station that also broadcasts athletic events for Stanford, Santa Clara and San Jose State Universities. The station has a broadcast studio in Fremont and currently has a transmission facility located in East Palo Alto. Salem would like to relocate the transmission facility to Hayward as their lease for the property in East Palo Alto, which is 4.6 acres, will expire in less than three years. Also, in order to design a transmission facility that meets the requirements of the Federal Communications Commission (FCC) and to expand the areas where the radio broadcast may be received, a much larger site is necessary. Figure 4 in the draft Initial Study (Attachment H) shows the current and proposed broadcast areas.

Each tower would have a 1-foot-tall concrete foundation, a 3-foot-tall insulator and a 195-foot-tall steel lattice portion for an overall height of 199 feet. At the base of each tower would be a

12-foot by 12-foot concrete pad with transmission equipment and a 24-foot by 32-foot ground screen covered with 2 inches of river rock surrounded by an 8-foot-tall chain link fence topped with barbed wire. The towers would be electronically grounded by 120 equally spaced copper wire radials attached to the ground screen that would be buried six inches below the soil surface. Each radial would be 202 feet in length except where shortened due to adjacent towers, property lines, trees, the edge of the clay cap or potential wetlands. The transmitter building would include an enclosure for a generator that would be used in the event of a power failure. The building would be serviced via a gravel road from the existing public parking area for the shoreline trails as shown on Sheet 14 of the plans included in the Final IS/MND. The applicant expects to have maintenance personnel visit the site approximately once every two to three weeks to test the generator and perform general maintenance. There would be no water service to the site, so the transmission building will have a self-contained automatic fire suppression system.

#### *Construction Summary*

There would be minor impacts to park visitors during construction of the project, which is expected to last approximately nine months. Much of this time would be spent preparing the site, grading, constructing the transmission building, pre-drilling each pile location, and installing the radials and other equipment associated with the towers. As shown on Sheet 14 of the plans, access to the site will be through the Shoreline Park parking lot. Each of the four towers would be supported by three piles. The applicants' engineer has estimated that each pile may take one day to drive. Therefore, pile driving is expected to take a total of 12 days. Improvement to the existing gravel road leading from the public parking area to the transmission building would require some grading and new gravel to enable emergency and construction vehicles to serve the site.

#### *FCC & FAA Permits*

The Federal Communications Commission (FCC) issued an AM Broadcast Station Construction Permit for the proposed facility on November 15, 2005. As the permit will expire on November 15, 2008, Salem Communications is in the process of applying for an extension of the permit.

On December 13, 2005 the Federal Aviation Administration (FAA) issued a Determination of No Hazard to Air Navigation (see Appendix G of the draft Initial Study). The Determination states that the towers "would have no substantial adverse effect of the safe and efficient utilization of the navigable airspace by aircraft, or on the operation of air navigation facilities." The Determination will also expire on November 15, 2008. A mitigation measure, MM TRA-1, requiring the applicant to prepare an Airspace Analysis, is included in the Mitigation Monitoring and Reporting Program (MMRP) (Attachment D). This analysis has been completed and was the basis for the FAA's issuance of the Determination.

#### *Uncapped Refuse*

Trees were originally proposed to be planted around the perimeter of the landfill to help screen views of the transmitter building. As the soil was tested in the areas intended for tree planting, it was found that there is refuse that is not covered by a clay cap located beyond the toe of the slope of the landfill. The purpose of the clay cap is to keep rainwater from mixing with the refuse to minimize contamination of groundwater. Under the direction of the San Francisco Regional

Water Quality Control Board, the City and Waste Management of Alameda County (WMAC) are in the process of determining the extent of the uncapped refuse and the most appropriate method of addressing the issue. The proposed radio tower project involves grading and construction only in areas where the refuse is properly capped and therefore would not impact this landfill closure issue. A work session with the City Council has been scheduled for June 17, 2008 to further provide additional information regarding the status of this separate investigation.

#### *Land Lease*

The applicant and City staff have developed a draft lease for use of the property for the proposed radio towers. The term of the lease is 30 years and the annual rent would be \$60,000. In addition to the lease, Salem Communications has offered to pay the City a \$5 million fee. As noted in Attachment G, this fee was designated funding toward the construction of a new public library, however, the Council may consider allocating a portion of the fee to address unfunded costs associated with the uncapped refuse at the landfill. The Council is the reviewing body for the proposed lease and fee agreements.

### **FINDINGS FOR CONDITIONAL USE PERMIT**

Section 10-1.3225 of the Zoning Ordinance lists the findings that must be made in order to approve a conditional use permit application:

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

The area where KNTS can be heard would be significantly increased for nighttime hours. Portions of the Hayward area currently do not receive the KNTS signal at night. The proposed towers would allow the signal to be broadcast to more of the East Bay area at night. The towers would also significantly expand the broadcast area in the North Bay area during daytime and nighttime.

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

The Industrial District allows radio transmission towers and there are already several in the area. The City Council determined in 2001 that radio towers are a conditionally permitted use in the Flood Plain District. There are also electrical transmission towers in the vicinity that affect the viewshed. The conditions imposed on the project and the location of the towers compared with other towers in the area will ensure that the use will not create significant visual impacts on the surrounding area. The majority of the site is not subject to tidal or flood water inundation. The conditions imposed on the project will ensure that the use will have no significant impact on the nearby wetlands. Potential impacts to biological resources have been analyzed in the Initial Study and have been determined to be less than significant, with the mitigation measures incorporated.

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

The expected radio frequency emissions have been analyzed by an electrical engineer and, with the proposed mitigation measures, have been determined to be safe for the public. Any radio frequency interference, as conditioned, would be resolved by the applicant. The towers would be installed in accordance with requirements of the California Building Code.

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

The Conservation and Environmental Protection Element of the General Plan recognizes the site as a potential location for radio towers in the context of the relocation project that was approved in 2001 and the project is consistent with the purpose and intent of the Industrial and Flood Plain Districts.

## **ENVIRONMENTAL REVIEW**

Although an Initial Study and Mitigated Negative Declaration (IS/MND) were approved for a similar project in 2001, a new Initial Study was prepared to analyze the potential impacts of this project. Differences between the current project and the one approved in 2001 include: a different arrangement of the towers on the site; the heights of the towers have changed from 228 feet to 199 feet; the location of the transmitter building has changed and the road network and vehicle turn-around has changed. The current Initial Study finds that there will be no significant environmental impacts that cannot be mitigated. Therefore, a Mitigated Negative Declaration has been prepared. A Mitigation Monitoring and Reporting Plan (Attachment D) has also been prepared to address how identified potential significant environmental impacts will be monitored.

The draft IS/MND (Attachment H) was released for public comment in December 2006. Comments were received from the East Bay Regional Park District (EBRPD), the San Francisco Regional Water Quality Control Board, the Hayward Area Shoreline Planning Agency, the Sierra Club and three individuals. Comments received addressed issues including aesthetics, biological impacts, landfill integrity and radio frequency interference. Responses to comments are included in the Final IS/MND (Attachment I). A draft Mitigated Negative Declaration is included in Attachment H and a revised MND is included as Attachment E. In addition, the applicant and the EBRPD have reached a tentative agreement that addresses the District's concerns regarding potential impacts to the Hayward Regional Shoreline Park.

### *Aesthetics*

The potential aesthetic impact of the towers is discussed in detail in the Initial Study. Landscape screening was originally proposed to be planted to lessen the visual impact of the transmission building. However, as mentioned above, the soil in the areas surrounding the landfill is not suitable for planting trees. Planting and irrigation is not possible on the plateau, because the clay cap cannot be disturbed by tree roots and excess water on the cap can cause drainage and leachate problems.

As indicated in the Initial Study, the area viewshed is already impacted by the existence of the KTCT towers to the northwest, the KFAX towers to the south and the towers supporting PG&E's

East Shore Grant electrical transmission line, which runs parallel to the shoreline just east of the project site. The addition of four new towers would not significantly alter the visual character of the area. The towers would be visible to park visitors as they approach the Shoreline Park parking area; however, as people head out onto the trails, they would generally have their backs to the towers. Upon returning to the parking area, the towers would be in the hikers' line of sight, but the views from the shoreline to the east are not particularly scenic as they are already impacted by other towers and industrial buildings. When looking east, the towers would be viewed with a back-drop of other towers and industrial buildings (see pages 31 to 39 of the draft IS/MND and Appendix C of the Final IS/MND).

#### *Hazardous Materials*

The applicant's geotechnical consultant, MACTEC, has designed the piles that would be driven for the tower foundations. Pile locations would be pre-drilled through the refuse to prevent waste from being pushed deeper than the bottom of the landfill. To maintain the stability of each hole, casings would be advanced during the drilling. The casings would provide a tight seal with adjacent soil and would minimize any gas or liquid escaping from the landfill. The details of the pile driving and pile design are included in a letter in Appendix A of the Final IS/MND.

#### *Biological Resources*

No trees would be removed as part of this project. Pre-construction surveys would be required to determine the presence of burrowing owls, raptors and migratory birds. Mitigation measures would require the erection of fences to buffer any nests or burrows from construction activities. The discussion in the Initial Study concludes that potential impacts related to burrowing owls, raptor perching, Peregrine Falcons and possible bird collisions with the towers would all be less than significant. No burrowing owl or raptor nest have been found on the site, however, preconstruction surveys will be conducted to avoid impacts to these species. Special-status species such as the salt marsh harvest mouse, California black rail, California clapper rail, Western snowy plover and California least tern would not be threatened as a result of raptors hunting while perched on the proposed towers. The distance between the towers and the special-status species habitat is large enough that the towers would not serve as effective perching points. Peregrine Falcons do not hunt from perches and would not be expected to perch on the towers. Comments received from the HASPA and the Sierra Club assert that the draft IS/MND did not address all animal species that may be affected; however, the City's consulting biologist analyzed the potential impacts for all species listed on the California Natural Diversity Database (CNDDDB) obtained from the California Department of Fish and Game.

#### *Radio Frequency Interference*

Appendix C of the draft Initial Study is an electrical engineering analysis prepared by Hammett & Edison, Inc., which explains that radio frequency interference (RFI) may affect the operation of existing electronic and communications devices on surrounding properties. Figure 4 of this report shows the area where RFI is most likely to occur. This area is known as the Blanketing Contour and includes a portion of the adjacent industrial park and all of the Hayward shoreline area from the City boundary to the north to Highway 92 to the south. FCC rules require the operator to resolve all RFI complaints within the Blanketing Contour. A condition of approval has been included in Attachment C requiring the applicant to resolve all RFI complaints (including any outside the blanketing contour) arising due to the construction and/or operation of

the towers. Complaints are typically resolved by either installing filters or sometimes replacing affected equipment with new versions that are more interference tolerant, or can be made so. According to the applicant, Salem has never been unable to remedy any interference problems it has been invited to correct.

## **PUBLIC NOTICE**

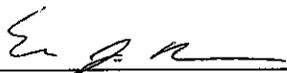
On May 30, 2006, a Referral Notice was sent to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. The Referral Notice provided an opportunity for persons to comment on the project. Staff received one phone call from the property manager of the industrial park to the east, who raised concerns about RFI. Staff also received a call from East Bay Regional Park District (EBRPD) staff raising concerns addressed in a June 14, 2001 letter (see Attachment F) associated with the previously proposed towers relocation project. The current Initial Study addresses those comments.

On September 21, 2006, staff introduced the project to the Hayward Area Shoreline Planning Agency (HASPA). The meeting was a forum for HASPA members to identify issues that needed to be addressed in the Initial Study. Issues raised included the need for additional photo-simulations, the possible escape of gas and leachate from the landfill during pile driving, status of FAA approval and potential impacts to public access, birds, and electronic equipment used by EBRPD staff. The Initial Study addresses all of these issues.

On December 22, 2006, a Notice of Availability of a Draft Mitigated Negative Declaration was published in *The Daily Review* and mailed to neighboring properties. In addition, public notice signs were placed at the site prior to the Planning Commission Hearing to help notify interested parties residing outside the 300-foot notification radius. The draft Initial Study and Mitigated Negative Declaration were also made available on the City's website and were summarized for the Hayward Area Shoreline Planning Agency at another HASPA meeting on January 11 2007.

On May 7, 2008, a notice advertising the date of the Planning Commission public hearing and the availability of the Final IS/MND was mailed to the 300-foot radius mailing list and interested parties. On May 9, 2008, the Final IS/MND was made available on the City's website and copies were distributed to parties who commented on the draft IS/MND as well as responsible agencies, Planning Commissioners and the City Council. Finally, a public notice sign was placed at the site prior to the public hearing to help notify neighbors and interested parties residing outside the 300-foot radius.

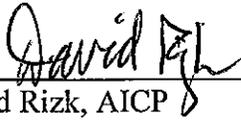
*Prepared by:*



---

Erik J. Pearson, AICP  
Senior Planner

*Recommended by:*



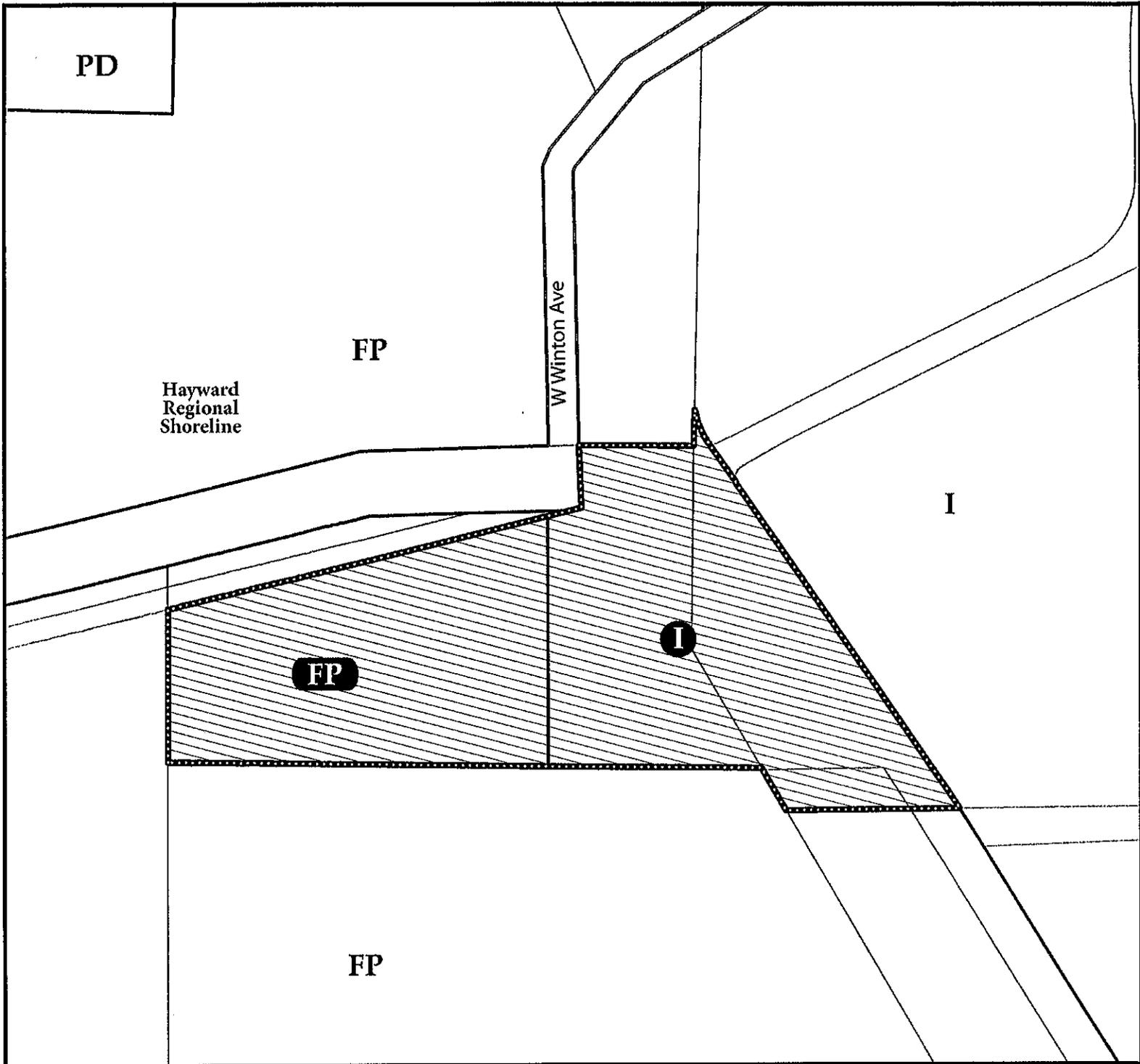
---

David Rizk, AICP  
Planning Manager

**Attachments:**

- A. Area & Zoning Map
- B. Findings for Approval
- C. Conditions of Approval
- D. Mitigation Monitoring and Reporting Plan
- E. Revised Mitigated Negative Declaration
- F. Letter from EBRPD dated June 14, 2001
- G. Memo to City Council dated November 8, 2007
- H. Draft Initial Study/Mitigated Negative Declaration dated December 2006 (distributed under separate cover)
- I. Final Initial Study dated May 2008 (distributed under separate cover)

5/15/08



# Area & Zoning Map

PL-2006-0172 UP

Address: 3050 W. Winton Avenue

Applicant: Salem Communications

Owner: City of Hayward

## Zoning Classifications

### INDUSTRIAL

I Industrial

### OPEN SPACE

FP Flood Plain

### OTHER

PD Planned Development



## **FINDINGS FOR APPROVAL**

**CONDITIONAL USE PERMIT APPLICATION NO. PL-2006-0172**  
**John Ehde for Salem Communications (Applicant); City of Hayward (Owner)**  
**3050 West Winton Avenue**  
**Request to Construct Four 199-Foot-Tall Radio Transmission Towers and Transmission Building.**

*Findings for Approval – California Environmental Quality Act:*

- A. The project will have no significant impact on the environment, cumulative or otherwise, the project reflects the City's independent judgment, and, therefore, a Mitigated Negative Declaration has been prepared.

*Findings for Approval – Conditional Use Permit*

- B. The KNTS radio towers are desirable for the public convenience and welfare in that the area where KNTS can be heard will be significantly increased for nighttime hours. Portions of the Hayward area currently do not receive the KNTS signal at night. The proposed towers would allow the signal to be broadcast to more of the East Bay area at night. The towers would also significantly expand the broadcast area in the North Bay area during daytime and nighttime.
- C. The use will not impair the character and integrity of the Industrial Zoning District and surrounding area in that the District allows radio transmission towers and there are already several in the area. There are also electrical transmission towers in the vicinity that affect the viewshed. The conditions imposed on the project and the location of the towers compared with other towers in the area will ensure that the use will not create significant visual impacts on the surrounding area.
- D. The use will not impair the character and integrity of the Flood Plain Zoning District and surrounding area in that the majority of the site is not subject to tidal or flood water inundation. The conditions imposed on the project will ensure that the use will have no significant impact on the nearby wetlands. Potential impacts to biological resources have been analyzed in the Initial Study and have been determined to be less than significant, with the mitigation measures incorporated.
- E. As documented in the Initial Study, the use will not be detrimental to the public health, safety, or general welfare in that the expected radio frequency emissions have been analyzed by an electrical engineer. The analysis concludes that, with the proposed mitigation measures, the emissions would be safe for the public. Any radio frequency interference, as conditioned, will be resolved by the applicant.
- F. The radio towers and associated equipment will be in harmony with applicable City policies and the intent and purpose of the Industrial Zoning District in that the Conservation and Environmental Protection Element of the General Plan recognizes the site as a potential location for radio towers and the project is consistent with the purpose and intent of the Industrial and Flood Plain Districts.

## CONDITIONS OF APPROVAL

**CONDITIONAL USE PERMIT APPLICATION NO. PL-2006-0172**  
**John Ehde for Salem Communications (Applicant); City of Hayward (Owner)**  
**3050 West Winton Avenue**  
**Request to Construct Four 199-Foot-Tall Radio Transmission Towers and Transmission Building.**

**General:**

1. Application No. PL-2006-0172 is approved subject to the conditions listed below. This permit becomes void one year after the effective date of approval, unless prior to that time a building permit is submitted and accepted as complete by the Building Official or a time extension of this application is approved. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division 15 days prior to expiration.
2. If a building permit is issued for construction of improvements authorized by the conditional use permit approval, said approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the use permit approval.
3. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
4. Any proposal for alterations to the proposed site plan and/or design, which does not require a variance to any zoning code, must be approved by the Planning Director prior to implementation.
5. Violation of any conditions of approval is cause for revocation of this permit, subject to a public hearing before the duly authorized reviewing body.
6. Prior to application for a Building Permit, the following changes shall be made to the plans:
  - a) A copy of these conditions of approval shall be included on a full-sized sheet(s) in the plan set.
  - b) It shall be noted that dark earth tone colors will be used on the transmission building. A color and materials board shall be submitted for approval by the Planning Director. The transmission building shall be coated with an anti-graffiti treatment.
  - c) The building elevations shall be revised to include all the architectural features (including vertical reveals and two-tone color scheme) shown on the rendering on Sheet 1 of the approved plans.
  - d) Include a note stating that the chain link fencing will be a flat gray color.

- e) A landscape plan prepared by a licensed landscape architect shall be included. This plan will require approval by the City Landscape Architect and the Director of Public Works.
  - f) A lighting plan, prepared by a qualified illumination engineer shall be included. The plan shall note that no-glare fixtures, switches, sensors and timers will be utilized. Lights about the base of the towers, if needed for safety, security, or operations, shall be shielded from public view. The use of switches, sensors, and timers will be used to minimize the time that lights not needed for safety and security are on.
7. Prior to application for a Building Permit, the developer shall file a FAA form 7460 Notice of Proposed Construction or Alteration with the FAA Western Regional Headquarters in Los Angeles.
  8. A drainage plan shall be approved by the City Engineer prior to issuance of a building permit for the radio transmitter facilities and accessory structures.
  9. Any damage to roads and/or trails shall be repaired to the satisfaction of the City's Public Works Director for City-maintained facilities or the East Bay Regional Park District for District-maintained facilities. All roads and trails shall be video-taped prior to the start of any grading or construction.
  10. Additional clay material will be added at the top of each pile casing to the satisfaction of the San Francisco Regional Water Quality Control Board.
  11. Towers and associated equipment shall be located so as to avoid any identified wetlands. No wetlands shall be filled.
  12. Best Management Practices shall be utilized to prevent erosion and sedimentation of the slough.
  13. Hydroseeding shall be applied per the Caltrans standard specifications using a native seed mixture.
  14. The owner/operator of the transmission facility shall maintain in good repair all fencing, walls, buildings, lighting, gravel areas, landscaping and driveways. The premises shall be kept clean and in an orderly fashion.
  15. Owner of the KNTS radio transmitter facilities, or their successors, shall be responsible for the maintenance of the site, including assurance that the site is mowed and seeded on a yearly basis, removing any garbage or other debris dumped on the site, and maintaining in good condition all equipment related to the radio transmission facilities.
  16. Any graffiti painted on the property shall be painted out or removed within 72 hours of occurrence.
  17. No materials or vehicles may be stored outdoors on the site.
  18. KNTS's proposed new transmitting facility at the site subject to these conditions shall be fully subject to the comprehensive regulation of radio frequency interference (RFI) as adopted by the Federal Communications Commission (FCC). As such, KNTS shall respond to and address any and all complaints of or inquiries about RFI (including any located outside the blanketing contour) as required by FCC regulations, including complaints from governmental authorities, private businesses and members of the public,

as well as to all notices and correspondence concerning RFI received by KNTS from the FCC. KNTS shall, in addition to any other record keeping requirements of the FCC, maintain a separate file, which shall be continuously available for inspection by representative of the City of Hayward, containing a record of all complaints, inquiries, notices and correspondence (in general, "complaints"), concerning RFI, whether received from the public or governmental authorities, and the actions taken by and/or response made by KNTS to such complaints.

19. Prior to issuance of a building permit, evidence shall be provided that impacts to KTCT and KFAX from the radio transmission facilities of KNTS will be fully mitigated by the owner(s) of KNTS; further, proof shall be provided that permits from all requisite permitting agencies have been obtained, including but not limited to the following agencies: the Federal Communications Commission, the Federal Aviation Administration, the Alameda County Office of Solid/Medical Waste Management and the San Francisco Regional Water Quality Control Board.
20. Towers shall be guyless, lattice-type, monopoles finished in a nonreflective anodized metal color, unless directed otherwise by the Federal Aviation Administration (FAA). There shall be as few blinking lights as possible installed in accordance with FAA requirements.
21. Horizontal elements which may extend out from the radio transmission towers, such as to support light fixtures or the fixtures themselves, shall be designed to deter raptors from perching on them.
22. Prior to final inspection all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director.
23. Access to the site during construction and for maintenance purposes is required to be surfaced with a material that prevents, to the extent possible, vehicles from tracking mud and dust onto public streets. In addition, wheels may be required to be washed before entering the public street.
24. If any refuse is brought to the surface during drilling, it shall be transported to an open sanitary landfill.
25. In the event the radio transmitter facilities become obsolete or otherwise not used for a one-year period, the facilities shall be removed from the site and the integrity of the clay and fill cap retained. Should the owner of these facilities fail to remove the equipment in accordance with this condition, the City shall remove the equipment, with all resulting costs to be borne by the owner of the facilities.
26. The owner of the radio transmission facilities shall comply with all conditions and assignments in the terms of agreement between the City of Hayward, as land owner, and Salem Communications, Inc.

**Mitigation Measures:**

27. All mitigation measures included in the Mitigation Monitoring and Reporting Program shall be implemented.

**Fire Department:**

28. Access requirements for this development shall be in compliance with the California Fire Code and Hayward Fire Department Standards.
29. The proposal to provide a semi-improved road, approximately 12 foot in width, extending from the end of West Winton Avenue to the building site, will be approved with the use of base rock and gravel in lieu of permanent paving. The Hayward Fire Department will be OK with the proposal to use base-rock since the building is an unmanned facility. However, the road will have to be compacted enough to support the 50,000 lbs. GVW (gross vehicle weight) of fire apparatus.
30. The new road shall be dedicated as a fire travel lane. Requirements to provide and install fire lane signage will be enforced. Because of the remote area, the Hayward Fire Department will require fire lane signs at approximately every 200 feet (linear) distance apart. Final site inspections may warrant additional signage.
31. If security gates are installed for the site, they shall be properly equipped with a key box or key switch, depending on the type of gate installed (manual or automated).
32. Building permits are required for the installation of the antennas and the construction of the transmitter building.
33. Building permits will also be required for the emergency generator system.
34. Additional building permits may be required for the interior equipment installation within the building.
35. Building construction requirements shall meet the current Building Code as related to the proper occupancy classification. The occupancy classification for the equipment building will be determined at time of building permit submittals. Occupancy classification will also be determined pending further review of the chemical inventory that will be within the building.
36. The transmitter building is required to have an automatic fire suppression system (clean agent type) installed. The fire suppression system is being required due to the access constraints and the lack of an available water supply.
37. Design and installation of the fire suppression system shall be in conformance with NFPA 2001 Standards. A separate fire permit with plans of the fire suppression system shall be submitted to the Hayward Fire Department for review and approval.
38. An exterior alarm bell is normally required on any building with a fire protection system installed. However, due to the location of the transmitter building, the buildings' fire suppression system shall be central station monitored.
39. A portable fire extinguisher (clean agent type, i.e. CO<sub>2</sub>) shall be installed within the building. An additional fire extinguisher will be required within 30 feet of the proposed emergency generator system.
40. A strobe light will be required on the exterior of the building. The strobe light shall be a part of the fire suppression system and shall operate upon any activation alarm of the fire suppression system.
41. At time of building permit submittals, the equipment that is to be installed within the building (i.e., battery racks/shelving, cabinets, etc.) shall be identified. If racks/shelving

are to be installed for the batteries, building permits will be required if the height of the racks/shelving exceed 6 feet.

42. A chemical inventory worksheet shall be submitted to the Hayward Fire Department at time of building permit submittals.
43. Secondary containment will be required for battery fluid storage or any other hazardous materials storage within the building.
44. Ventilation requirements shall be met for the building as required per the Fire and Building Codes. Additionally, methods to deal with and prevent the accumulation of hazardous or flammable gasses from the landfill shall be reviewed and approved by the California Regional Water Quality Control Board – San Francisco Bay Region prior to construction.
45. The transmitter building will have an emergency generator system installed. If there is an aboveground diesel tank associated with the emergency generator system, and if the tank size exceeds 60 gallons capacity, a special review will be required by the Hayward Fire Marshal. Upon review, additional requirements for the use of the tank and tank construction will be enforced.
46. Crash post protection shall be installed around the emergency generator.
47. NFPA 704 placards shall be installed on the exterior of the building in locations approved by the Hayward Fire Department.
48. Appropriate labeling requirements shall be applicable for the interior battery storage system and the exterior emergency generator system.
49. The site will require proper clearances from other agencies involved with the landfill capping. Contact the Hazardous Materials Coordinator at (510) 583-4924 for additional information regarding this requirement.
50. The project will require hazardous materials permits, which will be addressed at time of plan review.
51. Clearances shall be obtained from all appropriate agencies involved with the landfill capping. The primary agency is the California Regional Water Quality Control Board – San Francisco Bay Region. The applicant shall contact the California Regional Water Quality Control Board – San Francisco Bay Region and obtain approvals prior to any construction or grading. Issues such as piercing and protection of the integrity of the landfill cover; safety during construction; accumulation and release of gasses from landfill shall be addressed.

**Solid Waste & Recycling:**

52. A Construction and Demolition Debris Recycling Statement must be submitted with the building permit application.
53. A Construction and Demolition Debris Recycling Summary Report must be completed, including weigh tags, at the COMPLETION of the project.

---

## **4.0 MITIGATION MONITORING AND REPORTING PROGRAM**

---

## 4.0 MITIGATION MONITORING AND REPORTING PROGRAM

**TABLE 4-1  
MITIGATION MONITORING AND REPORTING PLAN**

Mitigation Measure	Timing/ Implementation	Enforcement/ Monitoring	Verification (date and initials)
<b>Aesthetics</b>			
<p><b>MM VIS-1</b>      <del>To reduce contrast of the proposed transmitter building, landscape screening shall be planted on the north, west, and south sides. Landscape planting shall be irrigated and be similar in stature to other existing trees on site (i.e. Myoporum), and sufficiently tall to screen the entire structure at maturity (approximately 5 years for irrigated Myoporum). To avoid impacts to the landfill, landscaping shall consist only of hydroseeding. This landscaping shall not disturb any wetlands or other jurisdictional areas on the project site as determined after the verification of the delineation by the ACOE. Roofing and exterior wall colors shall be dark earth tones to minimize structure contrast and blend with the surroundings. The applicant will submit the landscaping plans to EBRPD for review, but the City retains the authority for the final plans.</del></p>	<p>Prior to final design review/Applicant</p>	<p>City of Hayward Planning Division</p>	
<p><b>MM VIS-2</b>      <del>To reduce contrast of the proposed fencing surrounding Tower #2 as viewed from southbound West Winton Avenue; landscape screening shall be planted on the banks of the landfill plateau (not on the clay cap), on the north, west, and east sides. Landscape planting shall be irrigated and be similar in stature to other existing trees on site (i.e. Myoporum), and sufficiently tall to screen the entire structure at maturity (approximately 5 years for irrigated Myoporum). To avoid impacts to the landfill, landscaping shall consist only of hydroseeding. This landscaping shall not disturb any wetlands or other jurisdictional areas on the project site. The applicant will submit the building, fencing and landscaping plans to EBRPD for review, but the City retains the authority for the final plans.</del></p>			
<b>Air Quality</b>			
<p><b>MM AIR-1</b>      To the extent feasible, the project contractor shall use the following equipment and methods to reduce construction emissions of PM<sub>10</sub>:</p>	<p>During construction activities/Contractor</p>	<p>City of Hayward Public Works Department</p>	

**4.0 MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measure	Timing/ Implementation	Enforcement/ Monitoring	Verification (date and initials)
<ul style="list-style-type: none"> <li>• Water all active construction areas at least twice daily.</li> <li>• Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.</li> <li>• Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.</li> <li>• Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.</li> <li>• Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.</li> <li>• Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site.</li> <li>• Install wind breaks, or plant trees/vegetative wind breaks at windward side(s) of construction areas.</li> <li>• Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.</li> <li>• Limit the area subject to excavation, grading and other construction activity at any one time.</li> </ul> <p>MM AIR-2 During the construction phases of the proposed project, the construction contractor shall implement the following dust control measures based on Bay Area Air Quality Management District guidelines:</p> <ul style="list-style-type: none"> <li>• Whenever possible, use dust-proof chutes for loading</li> </ul>	<p>During construction activities/Contractor</p>	<p>City of Hayward Public Works Department</p>	

4.0 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Timing/ Implementation	Enforcement/ Monitoring	Verification (date and initials)
<p>construction debris onto trucks;</p> <ul style="list-style-type: none"> <li>• Use watering to control dust generation during demolition of structures (e.g. existing fencing) and break-up of pavement;</li> <li>• Suspend dust-producing activities during periods of high winds when dust control measures are unable to avoid visible dust plumes;</li> <li>• During the dry season (May-October), provide equipment and staffing for watering of all exposed or disturbed soil surfaces at least twice daily;</li> <li>• Water or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind;</li> <li>• Require daily clean-up of mud and dirt carried onto paved streets from the site;</li> <li>• Cover or wet down any fine materials transported by truck to control dust;</li> <li>• Limit the speed of all construction vehicles to 15 miles per hour while traveling on unpaved surfaces; and</li> <li>• Water all inactive portions of the site with an appropriate dust suppressant, and cover or seed these areas.</li> </ul>			
<b>Biological Resources</b>			
<p><b>MM BIO-1</b>      <u>All grading or other ground disturbing activities (i.e., grading, drilling, pile-driving, etc.) will occur outside the nesting/breeding season (January-September) where feasible. Pre-construction surveys for bird nests will be conducted prior to any project activity during the normal nesting season (January-September)</u></p>	<p>During construction activities/Contractor</p>	<p>City of Hayward Planning Division and Public Works Department and CDFG</p>	

**4.0 MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measure	Timing/ Implementation	Enforcement/ Monitoring	Verification (date and initials)
<p>within 100 feet of the project site. <del>If nesting birds active nests</del> are found during pre-construction surveys, a buffer shall be established around the active nest in which project activity will be prohibited, thus ensuring nesting species are avoided and allowed to complete their nesting cycle. The buffer distance will be established through consultation with the California Department of Fish and Game, but will be no less than 100 feet for raptor nest sites. Exclusionary fencing will be established outside the proposed project footprint to prohibit project activity ingress. All required buffers will be shown on construction plans.</p>			
<p><b>MM BIO-2</b> If construction activities are proposed to occur during non-breeding season a burrowing owl survey would still be necessary. A plan for burrow excavation and elimination (after the breeding season) would be prepared and implemented in coordination with California Department of Fish and Game.</p>	<p>During construction activities/Contractor</p>	<p>City of Hayward Planning Division and CDFG</p>	
<p><b>MM BIO-3</b> Pile drivers will be used during construction. To offset impacts of pile driving noise, both during and after the nesting season, the contractor will use a padded enclosure around the pile, or use padding on the driver.</p>	<p>During construction activities/Contractor</p>	<p>City of Hayward Planning Division</p>	
<p><b>MM BIO-4</b> To offset indirect impact of erosion and associated sedimentation to the slough, its brackish marsh vegetation, and any potential special status species utilizing this area, Best Management Practices will be utilized to ensure no runoff will escape the upland construction area. An erosion control plan will be prepared and approved by the City before the grading permit would be issued. <u>The applicant shall submit the erosion control plan to the EBRPD for review prior to grading.</u></p>	<p>During construction activities/Contractor</p>	<p>City of Hayward Planning Division</p>	
<p><b>MM BIO-5</b> <u>Jurisdictional features that are protected by both state and federal laws have been mapped within the project site. Although the current construction of the project will not directly or indirectly impact these features, the wetlands feature shall be avoided through implementation of Environmental Sensitive Area (ESA) fencing to ensure no impacts will occur. ESA fencing shall be illustrated on the engineering field plans prior to approval. #</u> <del>wetlands under state or federal jurisdiction are present, the</del></p>	<p>During construction activities/Contractor</p>	<p>City of Hayward Planning Division</p>	

4.0 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Timing/ Implementation	Enforcement/ Monitoring	Verification (date and initials)
<p>Applicant will obtain all necessary permits from the appropriate resource agencies. These permits may include:</p> <ul style="list-style-type: none"> <li>• <del>§Section 404 Permit – United States Army Corps of Engineers</del></li> <li>• <del>§401 Water Quality Certification Agreement – California Regional Water Quality Control Board (RWQCB)</del></li> </ul>			
<p><del>MM BIO-6</del> The project applicant will consult with the ACOE and the RWQCB to establish which, if any, of the potential seasonal wetlands within the upper portion of the project site qualify as jurisdictional waters of the U.S. and the state, respectively. If feasible, the project will be designed to avoid impacts to federal and state jurisdictional waters. If federal and state jurisdictional waters cannot be avoided, the City applicant will shall obtain the appropriate permits approvals, and implement associated mitigation conditions prior to issuance of grading permits or as identified in said permits and approvals.</p>	<p>During construction activities/Contractor</p>	<p>City of Hayward Planning Division</p>	
<p><del>MM BIO-7</del> <u>6</u> Site landscaping proposed for the adjacent property to the south of the project property line will be eliminated from the project plan or moved up to the sloping edge of the project site. Any landscaping/hydroseeding shall not disturb any wetlands or other jurisdictional areas on the project site.</p>	<p>During construction activities/Contractor</p>	<p>City of Hayward Planning Division</p>	
<p><del>MM BIO-8</del> <u>7</u> The underground radial grounding system would also be shortened to remain within the existing fence limits on the south and east project site boundaries, avoiding potential wetlands within adjacent slough channels and in low areas to the south of the landfill area.</p>	<p>During construction activities/Contractor</p>	<p>City of Hayward Planning Division</p>	
<p><del>MM BIO-9</del> <u>8</u> The project applicant will comply with all permit conditions and employ best management practices and measures (established by the ACOE) to minimize and compensate for potential impact to any jurisdictional waters, if they are present. There shall be a no-net-loss of wetlands acreage. In addition, acreage information and</p>	<p>During construction activities/Contractor</p>	<p>City of Hayward Planning Division</p>	

**4.0 MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measure	Timing/ Implementation	Enforcement/ Monitoring	Verification (date and initials)
<p><del>mitigation</del> avoidance details shall be noted on the design plans for the proposed project.</p> <p><b>MM BIO-10 9</b> Indirect impacts to the slough and adjacent brackish marsh vegetation that could result from erosion during the construction of the radio aerial facility will be prevented through the use of Best Management Practices (BMPs) that will include an erosion control plan that will be prepared and approved before issuance of a grading permit.</p>	<p>During construction activities/Contractor</p>	<p>City of Hayward Planning Division</p>	
<p><b>MM BIO-11 10</b> <del>All grading or other ground disturbing activities (i.e., grading, drilling, pile-driving, etc.) will occur outside the nesting/breeding season, which lasts from January to September, where feasible. Pre-construction surveys for bird nests will be conducted prior to any project activity during the normal nesting season (January-September) within 100 feet of the project site. If nesting birds active nests are found during the pre-construction nest survey, a buffer will be established around the active nest in which project activity ingress will be prohibited, thus ensuring nesting species are avoided and allowed to complete their nesting cycle. The buffer distance will be established through consultation with the California Department of Fish and Game, but will be no less than 50 feet for non-raptor nests and 100 feet for raptor nest sites. The 50 foot and 100 foot buffer zones are shown on the contour map in Appendix D of this document. Exclusionary fencing will be established outside the proposed project footprint to prohibit project activity ingress. All required buffers will be shown on construction plans. If construction activities are proposed to occur during non-breeding season (September-January), a survey is not required and no further studies are necessary.</del></p>	<p>During construction activities/Contractor</p>	<p>City of Hayward Planning Division and CDFG</p>	
<p><b>MM BIO-12 11</b> <del>If nesting trees and shrubs are removed prior to the nesting season, no further mitigation regarding impacts to nesting birds is required. If nesting trees and shrubs are removed during the nesting season, MM BIO-10 shall be implemented.</del></p>			
<p><b>MM BIO-13 12</b> To offset impacts of pile driving noise on nesting birds on the project site and adjacent lands, the contractor will use a padded enclosure around the pile, or use padding on the driver head</p>	<p>During construction activities/Contractor</p>	<p>City of Hayward Planning Division</p>	

4.0 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Timing/ Implementation	Enforcement/ Monitoring	Verification (date and initials)
<p>MM BIO-14 <u>13</u> during the breeding season for sensitive species on the proposed project site (March-September).</p> <p><del>The loss of trees and shrubs along the slopes of the landfill portion of the site would not be significant because this is not a natural habitat on the site. If landscaping is deemed necessary for other reasons such as for aesthetics, plants should be natives from local stock. If landscaping is deemed necessary for other reasons such as for aesthetics, plants should be natives from local stock.</del></p>			
<b>Hazards and Hazardous Material</b>			
<p>MM HAZ-1 Prior to the approval of a building permit, the project applicant shall prepare <del>an emergency response plan</del> <u>a Worker Hazmat Protection and Response Plan</u> to be reviewed and approved by the City of Hayward Fire and Police Departments <u>and Alameda County Environmental Health Department</u>. The response plan shall primarily outline emergency access to the site and dangers associated with RF emissions and landfill gas as well as public precautions related to any unforeseen accident. <u>The City shall provide the EBRPD with a copy of the Draft Emergency Response Plan for review and shall consider EBRPD comments prior to City approval of the Draft Emergency Response Plan.</u></p>	<p>Prior to Final Design Review/applicant</p>	<p>City of Hayward Planning Division</p>	
<b>Hydrology and Water Quality</b>			
<p>MM HYD-1 Prior to the submittal of a building permit, the project applicant shall submit grading and drainage plans to the City Public Works Department and the San Francisco Regional Water Quality Control Board for their review and approval. A licensed professional engineer shall prepare a grading plan and drainage plan for the project. The plans shall include drainage components that are designed in compliance with City of Hayward Standards.</p> <p>MM HYD-2 The project applicant shall prepare a SWPPP, specific and detailed Best Management Practices (BMPs) designed to mitigate construction and post-construction related pollutants to a level of insignificance. The City shall review and approve the final design</p>	<p>Prior to issuance of grading and building permit/Applicant</p> <p>Prior to issuance of grading and building permit/Applicant</p>	<p>City of Hayward Planning Division and Public Works Department</p> <p>City of Hayward Planning Division and Public Works Department</p>	

**4.0 MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measure	Timing/ Implementation	Enforcement/ Monitoring	Verification (date and initials)
<p>for operational period BMPs.</p> <p>At minimum, BMPs shall include practices to minimize the contact of construction materials, equipment supplies (e.g., fuels, lubricants, paints, solvents, and adhesives) with stormwater. The SWPPP shall specify properly designed centralized storage areas that keep these materials out of the rain. Measures may include, but shall not be limited to good housekeeping and spill control, revegetation of graded areas, placement of silt fencing and other measures as required.</p> <p><b>HYD-3</b> The project applicant shall place additional clay on top of each pile casing to ensure that no leakage occurs.</p>	<p>During construction activities/contractor and shown on plan drawings/applicant</p>	<p>City of Hayward Public Works Department</p>	
<b>Noise</b>			
<p><b>MM NOI-1</b> During construction the following measures, would be implemented to reduce <u>construction</u> noise impacts:</p> <ul style="list-style-type: none"> <li>• Limit construction hours to between 7:00 AM and 7:00 PM on weekdays. Any work outside of these hours including work on weekends, should require a special permit from the City of Hayward based on compelling reasons and compatibility with nearby land uses.</li> <li>• Construction equipment should be properly outfitted and maintained with noise reduction devices to minimize construction-generated noise.</li> <li>• <u>Implement mitigation measure MM BIO-3 and BIO-10.</u></li> </ul>	<p>During construction activities/Contractor</p>	<p>City of Hayward Planning Division</p>	
<b>Transportation/Traffic</b>			
<p><b>MM TRA-1</b> Prior to the issuance of a building permit the applicant shall prepare an Airspace Analysis to be reviewed by and completed to the satisfaction of the FAA.</p>	<p>Prior to Final Site Design Approval/applicant</p>	<p>City of Hayward Traffic Division</p>	
<p><b>MM TRA-2</b> Prior to construction, the project applicant shall submit a Traffic</p>	<p>Prior to issuance of grading</p>	<p>City of Hayward Traffic</p>	

4.0 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Timing/ Implementation	Enforcement/ Monitoring	Verification (date and initials)
<p>Management Plan (TMP) for the City's approval and review for the East Bay Regional Park District prior to issuance of the <u>grading and building permits</u>. During construction activities, the project applicant and the contractors working on the project sites shall adhere to all requirements of the TMP. The TMP shall include the following:</p> <ul style="list-style-type: none"> <li>• <u>Heavy equipment transport or material importation or exportation to and from the site shall not occur during peak traffic periods and shall be coordinated with the City Public Works Department and the East Bay Regional Park District field office at the Hayward Shoreline.</u></li> <li>• <u>Construction worker parking and construction equipment and material storage locations shall be specified.</u></li> <li>• <u>A sign shall be posted in the parking lot to advise shoreline visitors of the construction activities scheduling with the name and phone number of a contact person in the event of citizen concerns.</u></li> <li>• <u>Warning signs indicating frequent truck entry and exit should be posted at the main construction entrances. Flaggers shall monitor and control ingress and egress of large construction vehicles to and from the site.</u></li> <li>• <u>Identify alternative bicycle/pedestrian routes where construction activities may close sections of the sidewalk/roadway.</u></li> <li>• <u>Debris and mud on nearby streets caused by trucks shall be monitored daily and a street cleaning program shall be instituted.</u></li> <li>• <u>The route selection for movement of heavy equipment and truck traffic in the project vicinity shall be</u></li> </ul>	<p>and building permits and during construction activities</p>	<p>Division, Planning Department and East Bay Regional Park District</p>	

**4.0 MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measure	Timing/ Implementation	Enforcement/ Monitoring	Verification (date and initials)
<p><u>coordinated with the City Public Works Department to minimize traffic and physical road impacts. Truck drivers shall be notified of and required to use the most direct route between the site and I-880.</u></p> <ul style="list-style-type: none"> <li>• <u>A preconstruction assessment of access roads shall be conducted and any damage to streets caused by project construction activities and traffic shall be repaired.</u></li> <li>• <u>Construction activities shall be coordinated with City officials and property owners to minimize disruption to local traffic.</u></li> <li>• <u>Construction will be coordinated with any pertinent local emergency service providers, including local fire departments, City Public Works, paramedics, and the Sheriff's Office, if necessary.</u></li> </ul>			



**CITY OF HAYWARD**  
**DRAFT MITIGATED NEGATIVE DECLARATION**

Notice is hereby given that the City of Hayward finds that could not have a significant effect on the environment as prescribed by the California Environmental Quality Act of 1970, as amended will occur for the following proposed project:

***I. PROJECT DESCRIPTION:***

**Conditional Use Permit Application No. PL-2006-0172** –Request to Construct Four 199-Foot-Tall Radio Transmission Towers on a Closed Landfill and a Transmission Building on Adjacent Property in the Flood Plain and Industrial Zoning Districts. The property is located at 3050 West Winton Avenue, at the western terminus of West Winton Avenue.

***II. FINDING PROJECT WILL NOT SIGNIFICANTLY AFFECT ENVIRONMENT:***

The proposed project could not have a significant effect on the environment.

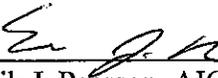
***FINDINGS SUPPORTING DECLARATION:***

1. The proposed project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Evaluation Checklist has been prepared for the proposed project. The Initial Study has determined that the proposed project, with the recommended mitigation measures, could not result in significant effects on the environment.
2. The project will not result in significant adverse impacts to any scenic resources or to the visual character of the area. The visual character of the area is already impact by the existence of other towers and a lighting plan will be required to ensure that light and glare do not significantly affect area views.
3. The project will not have an adverse effect on agricultural land since the property is a former landfill and could not be used for agricultural purposes.
4. The project, with the recommended mitigation measures, will not result in significant impacts related to changes into air quality. When the property is developed the City will require the developer to submit a construction Best Management Practice (BMP) program prior to the issuance of any grading or building permit. This program will include sprinkling the site with water as needed to keep dust to a minimum. Also, pile driving will be done while keeping the escape of gases from the closed landfill to a minimum.
5. The project will not result in significant impacts to biological resources such as wildlife and wetlands. Wetlands will be avoided and no trees will be disturbed. With the

recommended mitigation measures, the project could not result in significant impacts to biological resources.

6. The project will not result in significant impacts to known cultural resources including historical resources, archaeological resources, paleontological resources, unique topography or disturb human remains.
7. The project site is not located within a "State of California Earthquake Fault Zone", however, construction will be required to comply with the Uniform Building Code standards to minimize seismic risk due to ground shaking. Furthermore, geotechnical studies have been prepared to ensure that the foundation design is appropriate for the soil type.
8. The project, with the recommended mitigation measures, will not lead to the exposure of people to hazardous materials.
9. The project, with the recommended mitigation measures, will meet all water quality standards. Changes to drainage patterns will be minimal, however, detailed grading and drainage plans will be reviewed by the Public Works Department.
10. The project is consistent with the policies of the City General Plan and the Zoning Ordinance. The General Plan land use designations for the property are Open Space-Baylands and Industrial Corridor and the property is located within the Flood Plain and Industrial Zoning Districts.
11. The project could not result in a significant impact to mineral resources because extraction of mineral resources would be infeasible due to the property being a former landfill.
12. The project will not have a significant noise impact. Any noise impacts will be limited to the construction of the project, which will be limited to the hours of 7 a.m. to 7 p.m. Monday through Friday. Mitigation measures will be implemented to ensure that City of Hayward noise limits are not exceeded within the project.
13. The project will not result in a significant impact to public services. Mitigation measures will ensure the project does not have a significant impact on park and recreation facilities.
14. The project will generate approximately 30 vehicle trips per day during the peak of construction. After the towers are constructed, approximately 620 truck trips will deliver soil to the site over a period of two to four weeks. Once the facility is operational, it will generate less than 6 vehicle trips per month. The Federal Aviation Administration has issued a Determination of No Hazard to Air Navigation. The project, with the recommended mitigation measures, will not result in a significant transportation or traffic impacts.

**III. PERSON WHO PREPARED MITIGATED NEGATIVE DECLARATION:**

  
\_\_\_\_\_  
Erik J. Pearson, AICP, Senior Planner  
Dated: May 14, 2008

**IV. COPY OF INITIAL STUDY PREPARED BY PACIFIC MUNICIPAL CONSULTANTS IS ATTACHED**

\_\_\_\_\_  
For additional information, please contact the City of Hayward, Planning Division, 777 B Street, Hayward, CA 94541-5007, telephone (510) 583-4210, or e-mail [erik.pearson@hayard-ca.gov](mailto:erik.pearson@hayard-ca.gov) .  
\_\_\_\_\_

**DISTRIBUTION/POSTING**

- Provide copies to all organizations and individuals requesting it in writing.
- Reference in all public hearing notices to be distributed 30 days in advance of initial public hearing and/or published once in Daily Review 30 days prior to hearing.
- Project file.
- Post immediately upon receipt at the City Clerk's Office, the Main City Hall bulletin board, and in all City library branches, and do not remove until the date after the public hearing.



June 14, 2001

Ms Dyana Anderly  
City of Hayward  
777 "B" Street  
Hayward, CA 94541-5007

Subject: Comments on KFAV Tower Relocation/Russell City Energy Center  
Hayward Regional Shoreline

Dear Ms Anderly:

Thank you for providing the East Bay Regional Park District ("District") with a copy of the Mitigated Negative Declaration (MND) for the KFAV Tower Relocation Project, which is part of the proposed Russell City Energy Center Project being proposed by Calpine/Bechtel. The East Bay Regional Park District is very concerned with the environmental impacts of the proposed project. The District operates the 1,682 acre Hayward Regional Shoreline which will be impacted by the proposed relocation of the KFAV towers and the Russell City Energy Center Project. The three (3) most crucial environmental concerns for the District are:

1. Health and safety impacts on park staff and park visitors;
2. Impacts on Peregrine falcon and burrowing owl, both protected species; and
3. Impacts from powerful radio frequency interference on park communications and other electronic devices.

The proposed project may have a significant adverse impact on the environment. That impact needs to be avoided or substantially mitigated. If not, an Environmental Impact Report needs to be prepared. The following comments provide additional clarification regarding the concerns with the MND:

**Project Description Incomplete and Improperly Segmented from Russell City Energy Center**

The California Environmental Quality (CEQA) requires that the project description describe the whole action being contemplated. CEQA guidelines require that a project description be "accurate, complete and final". In this case, the KFAV towers are being relocated so that the Russell City Energy Center can be built on the site. The MND does not city mention this crucial information in the project description. The only notation of any connection between these related actions, is a statement in the Initial Study under item "IX (c)" where it mentions the Russell City Energy Center, but it fails to mention the relationship between the two actions.

**BOARD OF DIRECTORS**

*John Sutter*  
President  
Ward 2

*Ayn Wieskamp*  
Vice-President  
Ward 5

*Ted Radke*  
Treasurer  
Ward 7

*Doug Sidan*  
Secretary  
Ward 4

*Beverly Lane*  
Ward 6

*Carol Severin*  
Ward 3

*Jean Still*  
Ward 1

*Pat O'Brien*  
General Manager



The MND should describe the total project, even if portions of the project are to be considered by another CEQA lead agency. CEQA requires that a project must describe "reasonably foreseeable future phases" of a project. In this case, the Energy Center is immediately foreseeable and is a part of the same project. CEQA Guidelines Section 15165 states:

*"Where an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project."*

If the California Energy Commission prepares (CEC) its own CEQA document or uses an equivalent CEQA process, it should also describe the City's project as a required/related action and list them as a responsible agency under CEQA. It appears that the CEC process should precede the tower relocation project, not the other way around.

The MND does not provide adequate project information. It needs to provide locational information, plans and drawings, and description of the magnitude of the project, such as the power of the facility (5,000 watts? 50,000 watts? 5,000,000 watts?).

#### **Impacts to Hayward Regional Shoreline Inadequately Identified or Mitigated in MND**

The District operates the Hayward Regional Shoreline which will be impacted by the proposed relocation of the KFAX towers at the entrance to the park, which includes a recent \$500,000 acquisition for a service yard, and the Russell City Energy Center Project. The MND fails to address numerous impacts, including several potentially significant, unmitigated impacts, to this important regional facility. These are described below:

1. Item #9 Environmental Checklist Form fails to adequately describe the extent of park facilities in the area, and while it mentions trails, it does not mention the habitat and special-status species contained therein. The MND describes the environmental setting of the project as industrial and fails to acknowledge the important public uses and sensitive wildlife habitats that occur adjacent to or in the project area that would be impacted by this project.
2. Section IV Biological Resources fails to mention potential project impacts to Peregrine falcon and burrowing owl. The MND notes that surveys were done in February and March of 2001. These would have been too early for determining the presence of migratory burrowing owls. This is also way too early for most of the rare plants, even though they have identified for later survey. These surveys would likely be conducted after the City has approved the project, in which case the City should adopt mitigation measures now, so that if these plants are found after project approval, the adopted mitigation measures can be implemented. This is a potentially significant impact not addressed in the MND.
3. The City needs to employ a qualified biological monitor to protect special-status species during construction. A project foreman is neither trained nor qualified to do this work.

4. Section VII Hazards fails to identify that park users (staff and visitors) may be subject to health and safety risks from exposure to the relocated towers. The towers might be proposed adjacent to areas with frequent park users. Park users of all ages, including those with pace makers or other sensitive health conditions, might be exposed to harmful levels of radio frequencies. The potential level of exposure is unknown since the MND does not identify the magnitude of the facility and its proximity to the park.
5. Section IX Land Use Planning (b) fails to note that this project may conflict with park uses and the response to (c) is not relevant to the question. (See comments below.)
6. Section XIV Recreation and Section I Aesthetics fails to identify aesthetic, operational and access impacts to Hayward Shoreline. The MND fails to include a map of existing and proposed facilities and adjacent land uses, including Hayward Regional Shoreline. There are no illustrations showing the existing or proposed towers. There are no visual simulations to demonstrate that relocation would not result in significant visual impacts. There is no description of how the facilities would be accessed nor how it would affect existing public access and park management.
7. Section XVI Utilities and Service Systems fails to acknowledge the impact relocating the tower will have on communications in the park, specifically the use of telephones, radios, and other electronic equipment and devices. Relocation of the KFOX towers (and later construction of the Russell City Energy Center) may impair communications, including police, fire, and other emergency and safety responses, at the park. This may be a significant, unmitigatable impact.

**MND is Inadequate and an Environmental Impact Report Should be Prepared**

The City's MND has substantial deficiencies as described above. There are several potentially significant impacts to Hayward Regional Shoreline that are not addressed in the MND. The project also represents a segmentation of the larger Russell City Energy Center. The KFOX Tower Relocation should be addressed in the context of the larger Russell City Energy Center Project (which is requiring that the towers be relocated). We request that the City withdraw its proposed Mitigated Negative Declaration and instead prepare an Environmental Impact Report that addresses the KFOX Tower Relocation and the Russell City Energy Center in a single document.

Should you wish to discuss our letter, please call me at (510) 544-2622 or Larry Tong at (510) 544-2621.

Sincerely,



Brad Olson  
Environmental Specialist

- cc. Jesus Armas, City Manager  
Board of Directors  
P. O'Brien, General Manager  
R. E. Doyle, Assistant General Manager  
L. Tong, Interagency Planning Manager  
M. Taylor, Park Supervisor



CITY OF  
**HAYWARD**  
HEART OF THE BAY

ATTACHMENT B

**MEMORANDUM**

**DATE:** November 8, 2007  
**TO:** Mayor and City Council  
**FROM:** City Manager *Greg*  
**SUBJECT:** Radio Tower Proposal for the West Winton Landfill

This is an informational memorandum designed to provide the Mayor and Council with an update on the status of the Salem Communications conditional use permit application. No action from Council is warranted at this time.

**BACKGROUND**

Salem Communications proposes to construct four 199-foot-tall radio transmission towers and a 1,200-square-foot transmission building for KNTS, an AM radio station operating at 1220 KHz. KNTS is a news talk station that also broadcasts athletic events for Stanford, Santa Clara, and San Jose State Universities. The station has a broadcast studio in Fremont and currently has a transmission facility located in East Palo Alto. Salem would like to relocate the transmission facility to Hayward for several reasons. Their lease for the property in East Palo Alto, which is 4.6 acres, will expire in less than 3 years. In order to design a transmission facility that meets the requirements of the Federal Communications Commission (FCC) and to expand the areas where the radio broadcast may be received, a much larger site is necessary.

On April 11 2006, Salem Communications submitted a Conditional Use Permit application requesting approval to construct the transmission towers on a closed landfill and a transmission building on adjacent property. The Properties are located at 3050 West Winton Avenue, at the western terminus of West Winton Avenue and are in the Flood Plain and Industrial Zoning Districts. The 17-acre site is owned by the City of Hayward and is located within the Hayward Regional Shoreline Park managed by the East Bay Regional Park District. An aerial photograph and a plan showing the layout of the project are attached.

The proposal is similar to a Conditional Use Permit (CUP) approved by the City Council in 2001, which involved the relocation of four radio towers for KFAQ from the end of Enterprise Avenue to the subject site. The towers were to be relocated to make way for the Russell City Energy Center (RCEC). That CUP expired and the KFAQ towers at the end of Enterprise are no longer proposed to be relocated because of site plan changes to the RCEC site.

Office of the City Manager

777 B Street • Hayward • CA • 94541-5007  
Tel: 510-583-4300 • Fax: 510-583-3601 • Website: [www.hayward-ca.gov](http://www.hayward-ca.gov)

ATTACHMENT G

The zoning map indicates that the eastern portion of the site is within the Industrial District and the remainder of the site is in the Flood Plain District. Towers have traditionally been allowed in the Industrial District. The Flood Plain district allows broadcast studios as a permitted use, but does not specifically mention radio towers. The City Council made a determination in 2001 that radio towers are a conditionally permitted use in the Flood Plain zoning district.

## **DISCUSSION**

From December 26, 2006 through January 25, 2007, staff collected comments from the public on the draft Initial Study and Mitigated Negative Declaration (ISMND) prepared by PMC, the City's environmental consultant. PMC and Salem's consultant, Kimley Horn and Associates, have been working to address the public comments. Issues raised during the public comment period include potential impacts to aesthetics, biological resources, hazardous materials, and radio frequency interference.

### *Aesthetics*

The area viewshed is already impacted by the existence of the KTCT towers to the north, KFAX towers on Enterprise Avenue, and the towers supporting the East Shore Grant electrical transmission line, which runs parallel to the shoreline just east of the project site. It is PMC's and staff's determination that the addition of four new towers would not significantly alter the visual character of the area. The draft ISMND included a proposal to plant trees around the perimeter of the landfill to help screen views of the bases of the towers and of the transmission building. Further investigation found that there is refuse associated with the landfill in the areas where the planting would have occurred. Trees may not survive in the poor quality soil and more importantly, irrigation applied to the trees would percolate through the refuse, creating additional leachate. Therefore, it is not possible to plant landscape screening. The Public Works Department is currently working with the Regional Water Quality Control Board to determine the best course of action regarding the refuse that was discovered outside the landfill.

### *Hazardous Materials*

The applicant's geotechnical consultant, MACTEC, has designed the piles that would be driven for the tower foundations. Pile locations would be pre-drilled through the refuse to prevent waste from being pushed deeper than the bottom of the landfill. To maintain the stability of each hole, casings would be advanced during the drilling. The casings would provide a tight seal with adjacent soil and would minimize any gas or liquid escaping from the landfill. Piles would be driven through the casings and into the mud below the landfill.

### *Biological Resources*

No trees would be removed as part of this project. Pre-construction surveys would be required to determine the presence of burrowing owls, raptors, and other migratory birds. Mitigation measures would require the erection of fences to buffer any nests or burrows from construction activities. The discussion in the draft Initial Study concludes that potential impacts related to burrowing owls, raptor perching, and possible bird collisions with the towers would all be less than significant.

### *Radio Frequency Interference*

An electrical engineering analysis has been prepared by Hammett & Edison, Inc., which explains that radio frequency interference (RFI) may affect the operation of existing electronic and communications devices on surrounding properties. FCC rules require the operator to resolve all RFI complaints within the area known as the Blanketing Contour. A condition has been included in the draft conditions of approval requiring the applicant to resolve all RFI complaints arising due to the construction and/or operation of the towers. According to the applicant, Salem has never been unable to remedy any interference problems it has been invited to correct.

### *Access*

The East Bay Regional Park District (EBRPD) has asked that the access for construction and maintenance vehicles be from the south through land managed by the wastewater treatment plant. Public Works staff has indicated that the roads in this area are not suitable for construction vehicles. City staff prefers that the vehicles use the driveway through the Shoreline Park parking lot. A meeting will be held on November 28 with representatives from Salem Communications, EBRPD, and the City to resolve this issue.

### **FISCAL IMPACT**

The previous City Manager and City Attorney worked with Salem Communications to draft Lease and Fee Agreements for the project. According to the draft agreements, the City will receive \$5 million for the design and development of the new main library upon the granting of all necessary approvals for the project. The City will also collect rent in the amount of \$5,000 per month, to be adjusted annually for inflation. The term of the proposed lease is 30 years.

### **NEXT STEPS**

After the meeting on November 28, PMC will complete the Final ISMND. Staff anticipates having a Planning Commission public hearing in January and a City Council hearing in February for consideration of the conditional use permit. The Final ISMND will be released to the public approximately two weeks prior to the Planning Commission hearing. Approval of any Lease and Fee Agreements would require separate Council action.