

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** Steven Kueny, City Manager *SK*

**DATE:** November 14, 2013 (CC Meeting of 11/20/13)

**SUBJECT:** Public Workshop to Consider Information Regarding a Potential Power Plant Project to be Located near Los Angeles Avenue and 1300 Feet West of Gabbert Road on the Site of Tract Map 5906

**BACKGROUND**

Within the last few weeks, some members of the City Council and staff have been approached by, and individually met with, representatives of the landowner of A-B Properties and Diamond Generating Corporation (DGC). The purpose of the meeting was to inform the City of DGC's intent to propose a 290 Mega Watt natural gas-fired power project within the City of Moorpark. Specifically, the proposed site is the approximate 34-acre site of Final Map 5906 (formerly Map 5147) owned by A-B Properties. This site is currently approved for 17 one acre industrial lots and is subject to a Development Agreement. The site is located northwest of the Southern California Edison (SCE) Substation [at Los Angeles Avenue and Gabbert Road], 1300 feet west of Gabbert Road and south of the future North Hills Parkway. A location map is attached (Attachment 1).

**DISCUSSION**

The SCE process for seeking proposals was issued September 17, 2013, and requires submittal of a non-binding Notice of Intent to Offer by December 2, 2013. Submission of an Indicative Offer and Completed Offer are due by December 16, 2013. The Request for Offer Schedule is attached (Attachment 2).

City staff has not been able to fully evaluate the proposal but has the following concerns:

1. The proposal is inconsistent with the Development Agreement for the site. Power Generating facilities of this type are prohibited by the land use and zoning restrictions on the site and with a covenant recorded against the subject property.

Attached is a letter dated November 6, 2013, from City Attorney Kevin G. Ennis to Paul Burns, A-B Properties, addressing this matter (Attachment 3).

2. The eighty (80) foot height of portions of the proposed plant facility, even if the site is somewhat lowered, would be very visible throughout the community.
3. Such a use would be incompatible with the existing and planned residential uses in the immediate vicinity of the site and overlooking the site. It could also potentially adversely affect the planned siting of the Moorpark Studio project.
4. The power plant would create undetermined but anticipated significant impacts to Moorpark's air quality. Most likely, the applicants would have to buy credits for the amount of nitrogen oxide (NOx) produced by the project from the Ventura County Air Pollution Control District. While this may mitigate the impact on paper, the real impact would remain adversely affecting Moorpark for at least the next 40 years. The power plant would also generate sulfur oxide (SOx) and fine particulate (PM10) emissions that would not otherwise occur in such large quantities from the development of light industrial uses on the property.
5. At a prominent entry to the city, Moorpark is already burdened with a relatively large SCE Substation on its 40.7 acre site.

As identified in SCE's Request for Offers, the projected power needs in the Moorpark Substation area could be met by providing power to other High Voltage Substations located in Goleta, Santa Clarita, Mandalay and Ormand beach areas of Oxnard. While the proposed site may be convenient for DGC and SCE, a more remote location should be considered where air quality, land use, and aesthetic impacts would not affect such a large number of people.

The purpose of this agenda item is to allow for the City Council to be informed of the potential proposal, for the City Council to ask staff questions about the proposal and the process, and for the public to be informed and to provide comments and pose questions regarding the proposal and process. In addition, SCE, DGC and A-B Properties' representatives have been informed of this meeting and invited to participate. Also attached to this report is a portion of the written material provided to the city by DGC (Attachment 4).

For more information about the "Public Utilities Commission of the State of California (CPUC) Decision 13-02-015 Authorizing Long-Term Procurement for Local Capacity Requirements and Southern California Edison (SCE) 2013 Request for Offers (RFO)

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Local Capacity Requirements dated September 12, 2013," you may access the following website:

<http://on.sce.com/18wAjJc>

### **STAFF RECOMMENDATION**

Direct staff to inform DGC, SCE, CPUC and the California Energy Commission of the City's opposition to the Tract 5906 site for the potential power plant project.

SK:db

Attachment 1: Location Map

Attachment 2: Request for Offer Schedule

Attachment 3: Letter dated 11/6/13 from City Attorney Kevin G. Ennis to Paul Burns,  
A-B Properties

Attachment 4: Presentation to the City of Moorpark

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Seller's authorized Fuel Manager. If SCE is not the SC, then SCE will not act as the Fuel Manager.

#### C.11. *Special Purpose Entity*

SCE prefers Sellers that are special purpose entities organized for the sole purpose of owning and operating the project and which remain special purpose entities for the Term of the Agreement. Notwithstanding the foregoing, SCE will consider the ownership structure of each Seller on an individual basis, whether the Seller is organized as a special purpose entity or otherwise, and reserves the right in its sole discretion to (i) require any Seller to become a special purpose entity as a condition of executing an Agreement; and (ii) accept an Offer from any Seller who is not organized as a special purpose entity.

### D. RFO SOLICITATION AND OFFER SUBMITTAL PROCESS

#### D.1. *RFO Schedule*

<b>Timeline</b>	<b>Event</b>
September 12, 2013	RFO documents issued
<b>December 2, 2013 5:00 PM Pacific Prevailing Time</b>	<b>Deadline to submit Non-binding Notice of Intent to Offer</b>
December 16, 2013 5:00 PM Pacific Prevailing Time	Deadline to submit Indicative Offer and completed Offer Submittal Package
<b>January 30, 2014</b>	<b>Shortlist notification</b>
May 22, 2014	Deadline to complete negotiations of Agreement(s)
<b>May 29, 2014 5:00 PM Pacific Prevailing Time</b>	<b>Deadline to submit Final Offer</b>
June 26, 2014	Last date for notification of successful Offers and to sign Agreements

#### D.2. *Non-binding Notice of Intent to Offer*

Seller should provide the form "Non-binding Notice of Intent to Offer" as shown in Exhibit D.2 by the date and time identified in the applicable RFO Schedule in Section D.1. The Non-Binding Notice of Intent to Offer should be sent via electronic email to contact information in Section D.5 and the Independent Evaluator listed in Section D.6. SCE will not be responsible for information received after the submittal deadline due to unsuccessful electronic transmissions.


**RICHARDS | WATSON | GERSHON**

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 TEMECULA OFFICE  
 TELEPHONE 951.695.2373

November 6, 2013

**VIA ELECTRONIC MAIL & U. S. MAIL**

 Mr. Paul Burns  
 General Partner  
 A-B Properties  
 505 East Thousand Oaks Boulevard  
 Thousand Oaks, California 91360

Re: Proposed Development of the Amaranto Energy Center in the City of Moorpark

Dear Mr. Burns:

Our firm serves as the City Attorney for the City of Moorpark (the “City”), and I am the appointed City Attorney. I am informed that Diamond Generation Corporation (“DGC”) has presented preliminary plans to the City to seek approval of a natural gas-fired power plant, referred to as the Amaranto Energy Center, on property owned by your firm (the “Property”). I write to express the City’s concern that you are facilitating DGC’s proposed development of this power plant on the Property in direct conflict with the 2/15/13 Development Agreement (the “Agreement”).

Development on the Property, which encompasses approximately 34.53 acres north of the Union Pacific Railroad right-of-way and west of Gabbert Road, is governed by the City’s zoning regulations and the Agreement. As explained more fully below, development of non-renewable power generation facilities, including natural gas-fired power plants, is prohibited by the zoning restrictions on the Property and would constitute a breach of the Agreement. For the following reasons, the City requests that A-B Properties cease its efforts to proceed with DGC’s proposed Amaranto Energy Center.

First, Paragraph 4.1 of the Agreement provides that the permitted and conditionally permitted uses of the Property are limited to those allowed by the Project Approvals and the Agreement. Paragraph 1.4 provides that the Project Approvals include General Plan Amendment No. 97-2 and Zone Change No. 97-6. The latter, adopted by the City Council in 1998 as Ordinance No. 249, amended the zoning of the Property from Agricultural Exclusive (AE) to Limited Industrial (M-2). Paragraph 2 of the recorded Covenant, which you executed on behalf of A-B Properties, expressly

Mr. Paul Burns  
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states that the developable portion of the Property is subject to the permitted uses in the M-2 zone.

Moorpark Municipal Code Section 17.20.060 lists the permitted uses in the M-2 zone. It specifically permits “energy production from renewable resources,” subject to a conditional use permit. The Code defines “energy production from renewable resources” as “any facility or installation such as a windmill, hydroelectric unit or solar collecting or concentrating array, which is designed and intended to produce energy from natural forces such as wind, water, sunlight or geothermal heat, or from biomass, for off-site use.” Energy produced from natural gas does not fall within this definition.

Energy production from non-renewable sources and other types of energy generation facilities are not permitted uses under the Zoning Code. Therefore, the proposed natural gas-fired power plant is not a permitted use on the Property. *See Building Industrial Legal Defense Fund v. Superior Court*, 72 Cal.App.4th 1410, 1416 (1999) (uses not identified in a zoning code are non-permitted uses within the zone).

Second, Paragraph 2 of the recorded Covenant provides that “[p]rimary uses, except agricultural crops, shall be conducted within completely enclosed buildings and metal faced buildings shall not be allowed as principal buildings.” Upon reviewing the examples of modern natural-gas fired power plants provided in DGC’s proposal, we noticed that they are primarily constructed of metallic materials. In fact, DGC’s Sentinel Energy Project appears to be constructed almost entirely out of metal. Assuming the proposed facility on the Property would be constructed in a similar manner, the facility would violate the terms of the Covenant executed in favor of the City.

Third, even if a natural gas-fired power plant were a permitted use on the Property, the proposed Amaranto Energy Center would not be consistent with the development standards required within the M-2 zone. The purpose of the M-2 zone is to provide suitable areas for the development of industrial activities that include light manufacturing, processing, and fabrication. It is intended to safeguard adjoining industrial sites, nearby non-industrial properties, and the surrounding community from intensive industrial uses or development.

To effectuate this purpose, Moorpark Municipal Code Section 17.36.050(A)(3)(a) provides that “[t]he following shall be maintained at levels which are appropriate for

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the zone and geographic area and are not objectionable at the point of measurement when the use is in normal operation:

- i. Smoke, odors, vapors, gases, acids, fumes, dust, dirt, fly ash or other forms of air pollution;
- ii. Noise, vibration, pulsations or similar phenomena;
- iii. Glare or heat;
- iv. Radioactivity or electrical disturbance. The point of measurement for these factors shall be at the lot or ownership line surrounding the use.”

Given the probable size and magnitude of a 290 megawatt natural gas-fired power plant, we have significant questions and concerns as to whether the proposed facility would violate these standards.

Finally, the Agreement was intended to permit development of 17 individual buildings on the Property, not a single, large industrial project. This intent was made clear in the Mitigated Negative Declaration (MND) applicable to the Agreement. The MND reviewed the environmental impact of subdividing the Property into 17 industrial lots “for the future development of *17 industrial buildings*” (italics added). The MND estimated that the 17 buildings would have footprints ranging from 17,424 square feet to 21,257 square feet. Relying on the MND and the Agreement, the City Council approved a new Tentative Tract Map for the Property less than six months ago, which proposed re-subdividing the Property into 17 individual lots ranging in size from .82 acres to 1.53 acres.

This plan of development contemplated in the Agreement and Tentative Tract Map was made in recognition that the site is located near a rural residential neighborhood and other non-industrial properties. Given the surrounding land uses, the City believed that appropriate development on the Property would be limited to relatively small scale, light industrial uses. Development of one large natural gas-fired power plant encompassing all or nearly all of the Property contradicts the clear intent of the Agreement.

Development of the proposed Amaranto Energy Center on the Property is inconsistent with your agreement with the City and not permitted.

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Violations of the Agreement can be remedied by injunctive relief and specific performance. Additionally, in certain situations the City has the right to withhold the issuance of building permits for the Property until a violation is cured.

The City urges you to discontinue your efforts in support of the power plant and proceed to develop the Property consistent with the Agreement and Covenant.

I look forward to hearing from you on this matter.

Very truly yours,



Kevin G. Ennis  
City Attorney  
City of Moorpark

cc: Honorable Mayor Parvin and Members of the Moorpark City Council  
Steven Kueny, City Manager  
David Bobardt, Community Development Director

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# Amaranto Energy Center

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Presentation to the  
City of Moorpark

October 17, 2013

*CONFIDENTIAL*



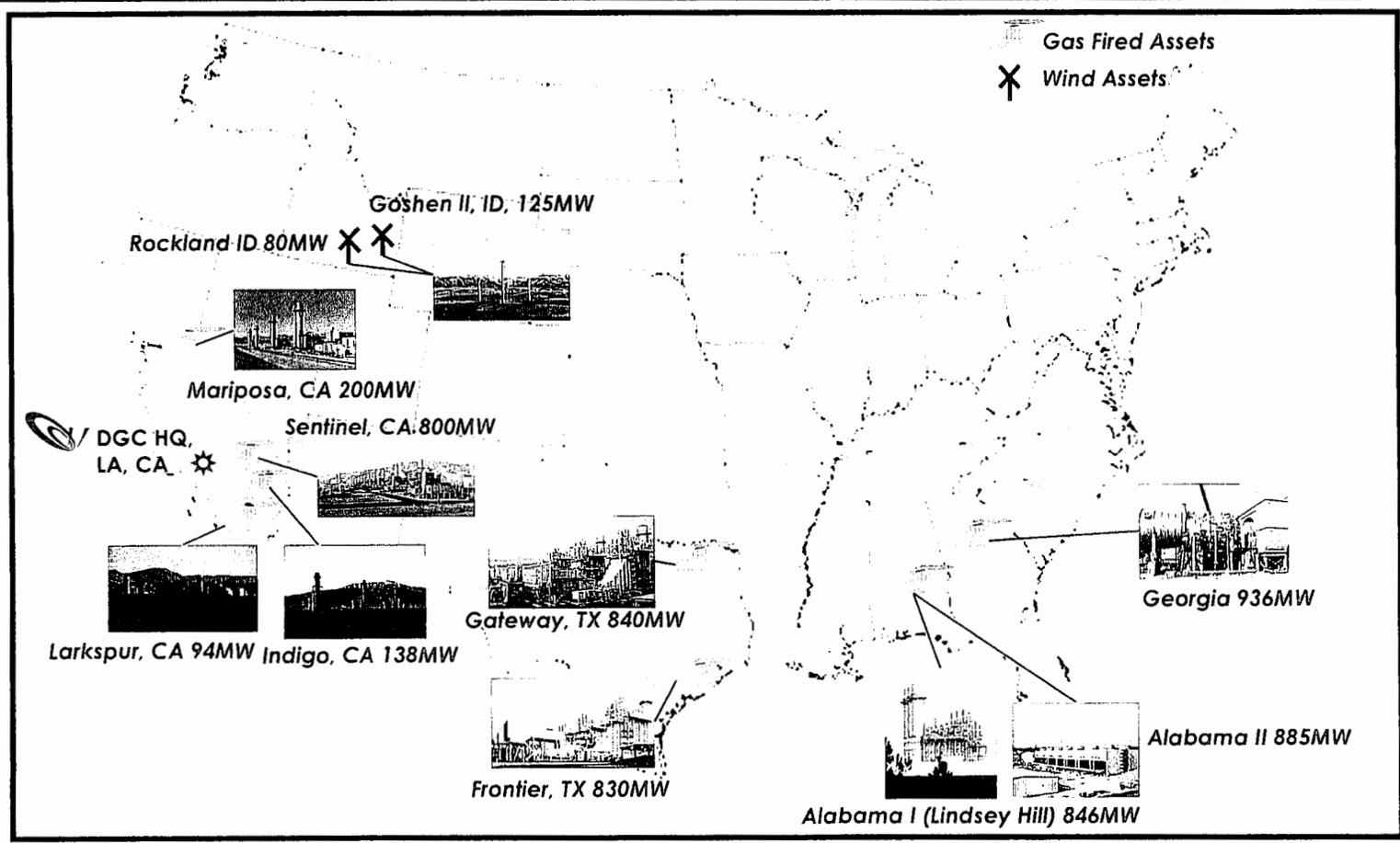
## **Amaranto Energy, LLC – A Subsidiary of Diamond Generating Corporation (“DGC”)**

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- DGC is a wholly owned subsidiary of Mitsubishi Corporation
  - Established in 1988 as Diamond Energy, Inc.
  - Reorganized in 1999 as DGC
- Headquartered in Los Angeles, CA
- Owner/operator of generation and transmission facilities in North America
- Portfolio of eleven projects in the US
  - Four projects in California with capacity of 1,232MW

# DGC's Current US Project Portfolio



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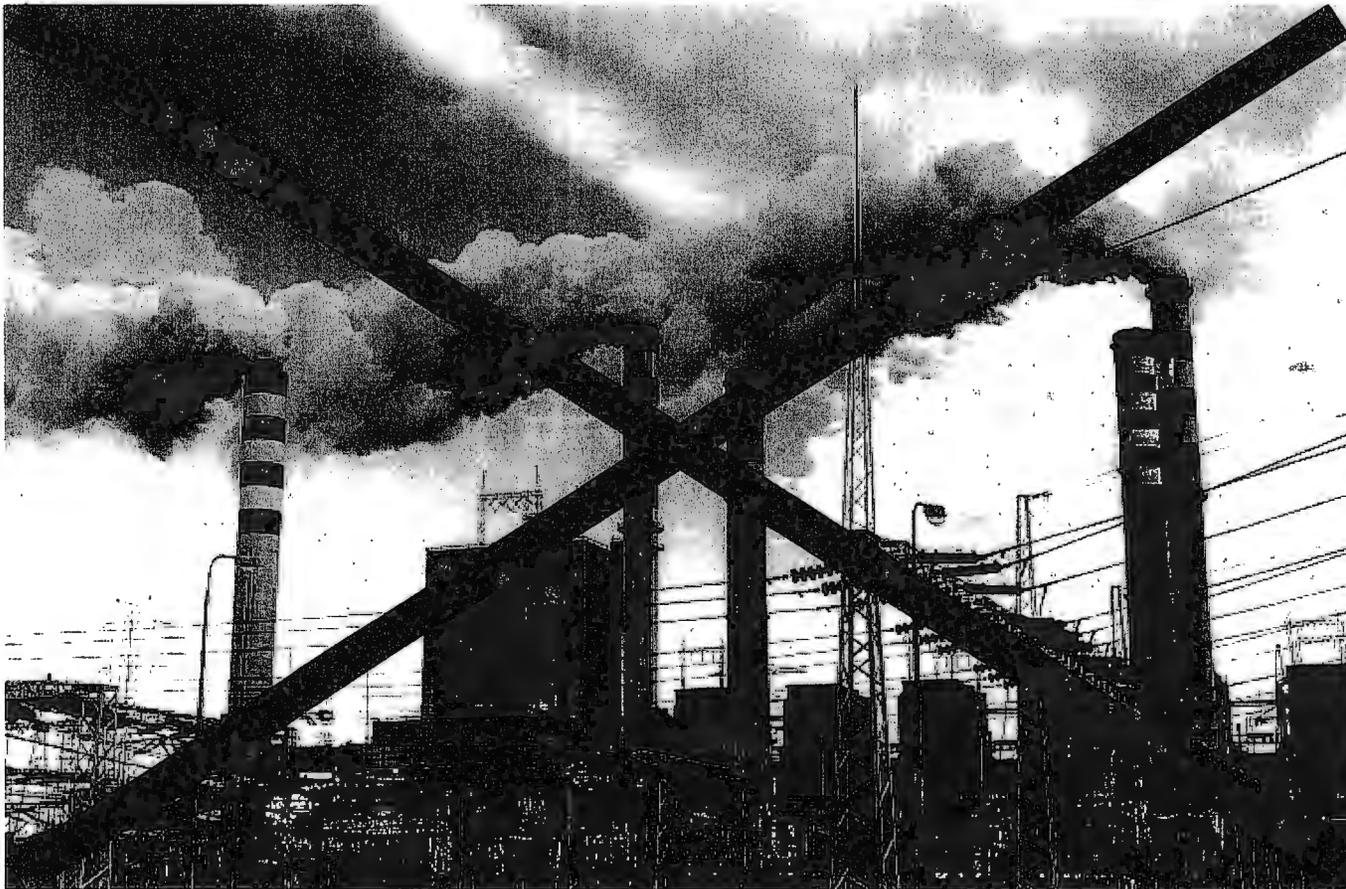
## Energy Demand in Ventura County

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- The California Public Utilities Commission (CPUC) has determined there is a need for 290 MW in the Moorpark/Ventura service area
- Other factors mean that additional capacity must be added to the Southern California grid beyond the 290 MW needed locally:
  - Recent closure of San Onofre Nuclear Generating Station
  - Potential closure of older, outdated facilities across Southern California
- Facilities such as Amaranto will be needed to facilitate the addition and integration of renewables into the system

# The Myth of the Power Plant



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the City of Moorpark

## **Amaranto Energy Center**

### **A New State-of-the-Art Gas-Fired Project**

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- Proposed 290 MW natural gas-fired power project
- Approximate cost of \$350 million to \$500 million, depending on chosen technology
- Owned and operated by Amaranto Energy, LLC, a subsidiary of DGC
- Bidding into a Southern California Edison solicitation for the long term sale of power

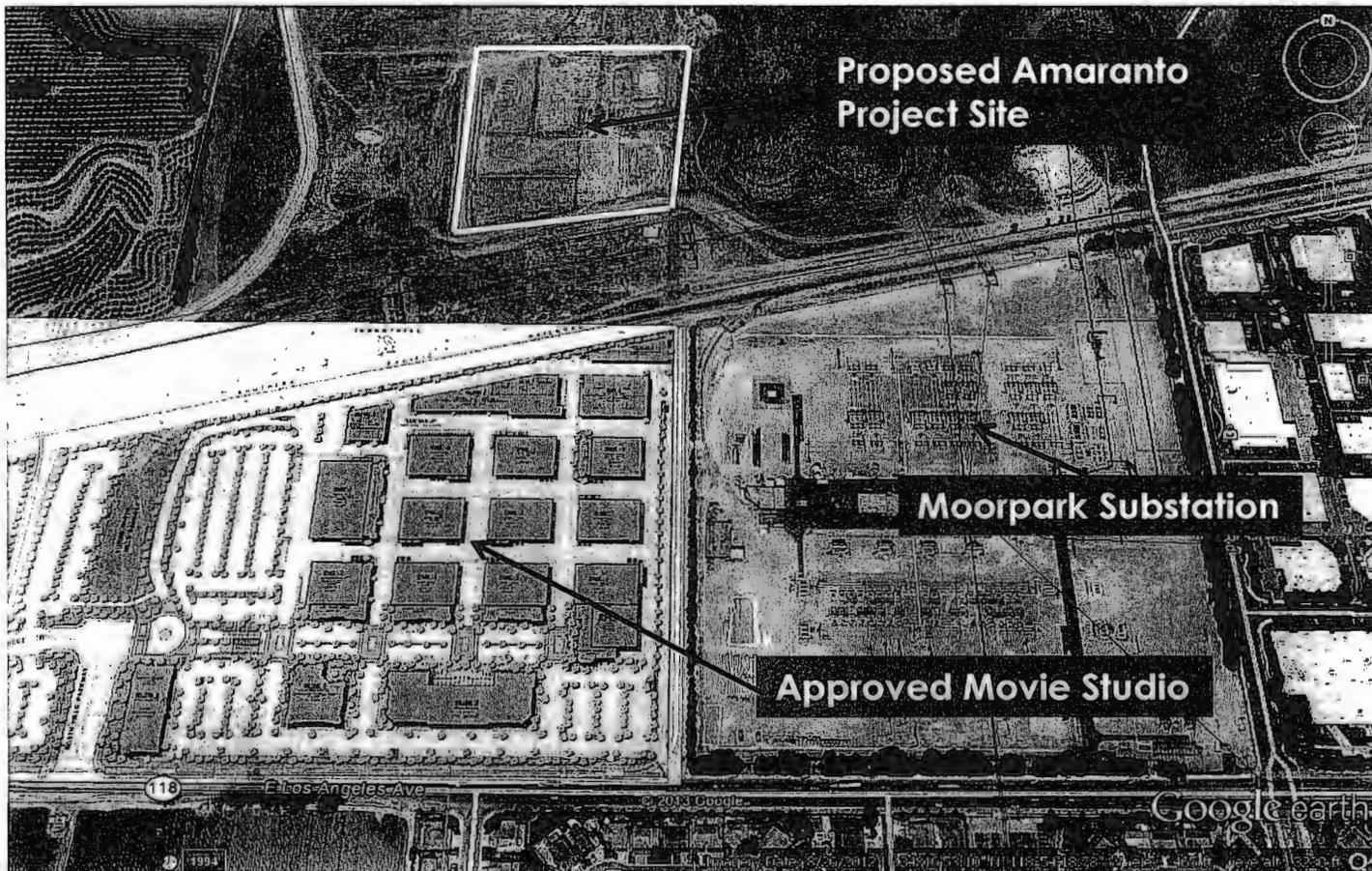
## **Amaranto: Responding to an Identified Need in the Moorpark/Ventura Area**

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- 290 MW of new generation needed in the Moorpark / Ventura area
- The Amaranto Energy Center in Moorpark will be a key component in the success of California's clean energy initiatives
  - Integrates/backups new intermittent renewable generation: the sun does not always shine/the wind does not always blow
  - Provides grid reliability
  - Helps prevent local power blackouts

# Amaranto Energy Proposed Location is Ideal for an Energy Center



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the City of Moorpark

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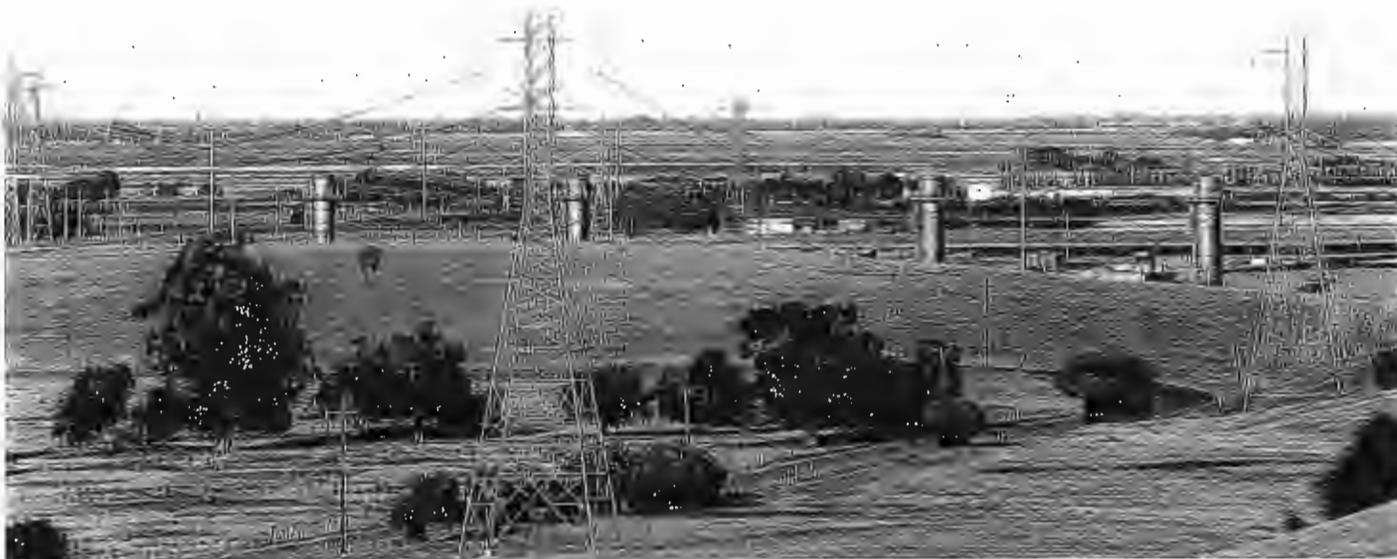


Diamond Generating Corporation

# Mariposa Energy Project: Well Sited to Reduce Visual Impacts

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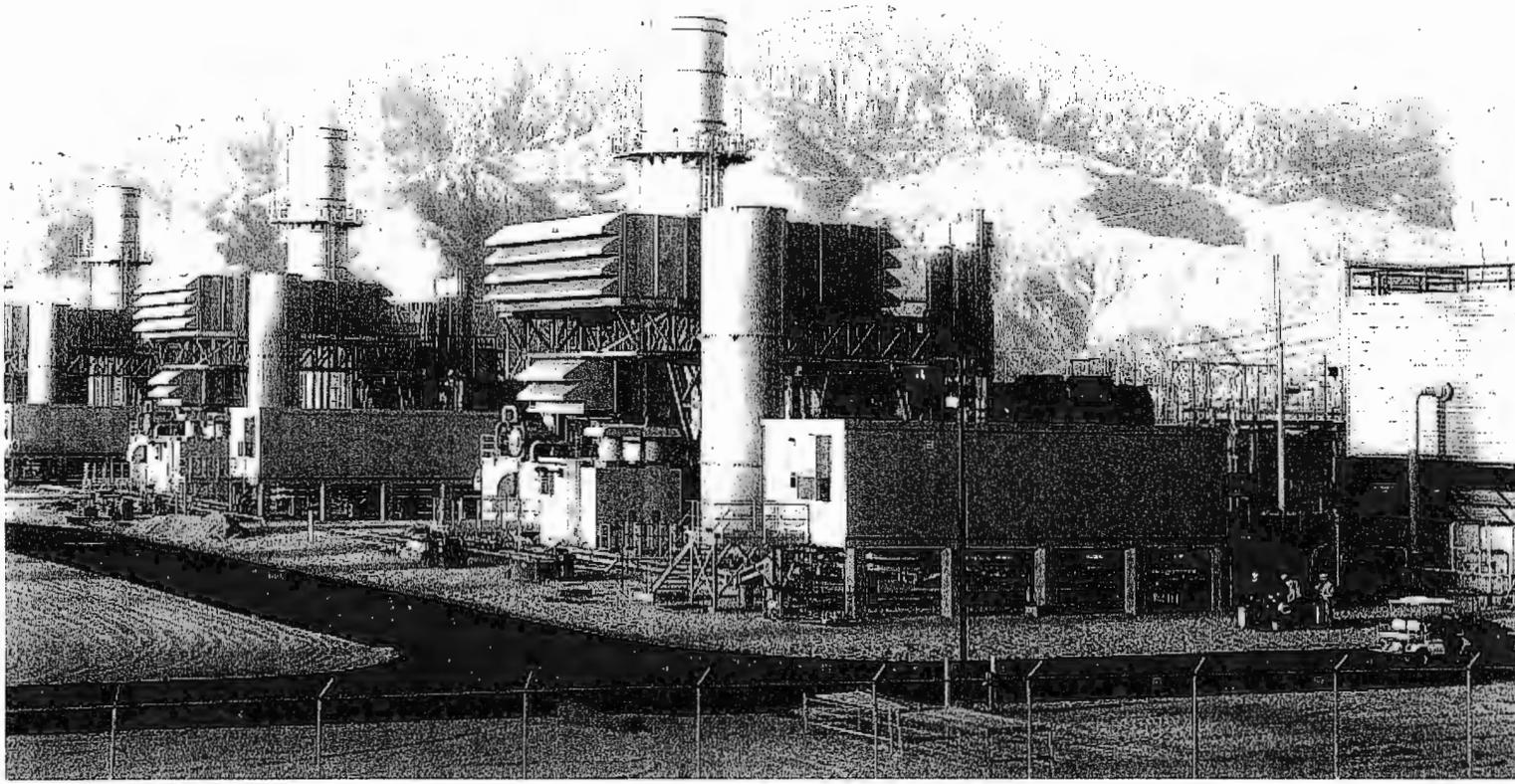
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# Sentinel Energy Project: The Newest Project in DGC's Portfolio

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Diamond Generating Corporation

# Amaranto Energy & Diamond Generating Are Good Corporate Citizens

DGC makes a point of being a good corporate citizen in the communities where we do business



## Amaranto Energy & Diamond Generating Are Good Corporate Citizens

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- DGC contributes to local charities & organizations
  - In reference to our Sentinel Project in Desert Hot Springs, Mayor Yvonne Parks said:

*"Sentinel has been a wonderful corporate partner here in Desert Hot Springs. They have provided Thanksgiving and holiday meals for needy families, supported local schools and family support groups, and have become an integral part of our community."*



# Amaranto Affords Moorpark Substantial Economic Benefits During Construction



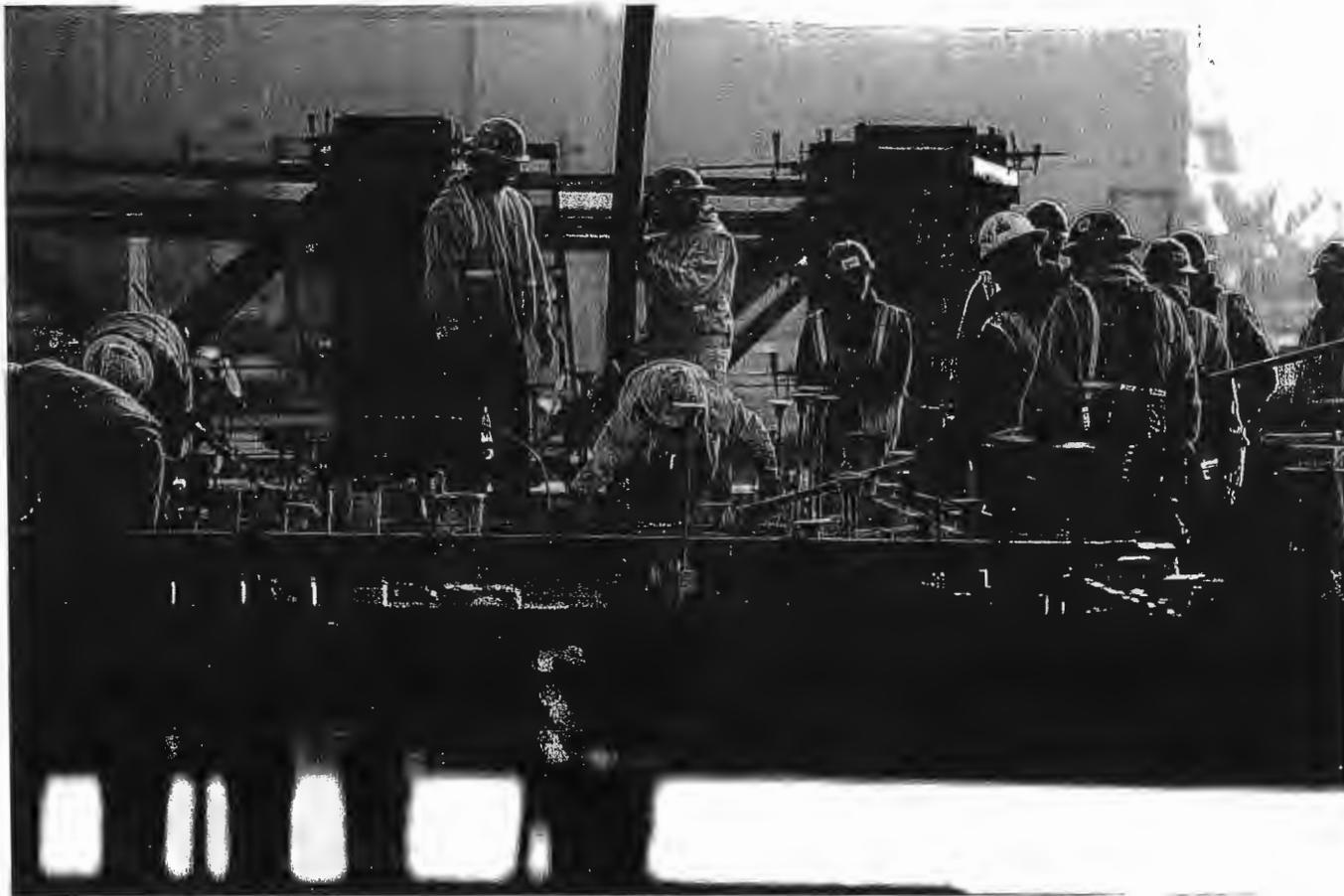
Draft Micronomics Study, September 26, 2013; all values in \$mm

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## Amaranto Energy Center Creates Jobs



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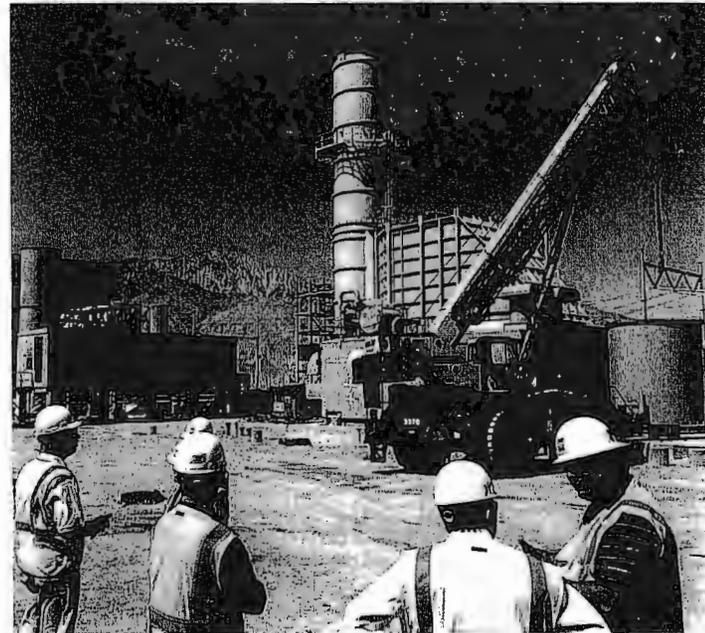
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## Amaranto Energy Socio-Economic Benefits

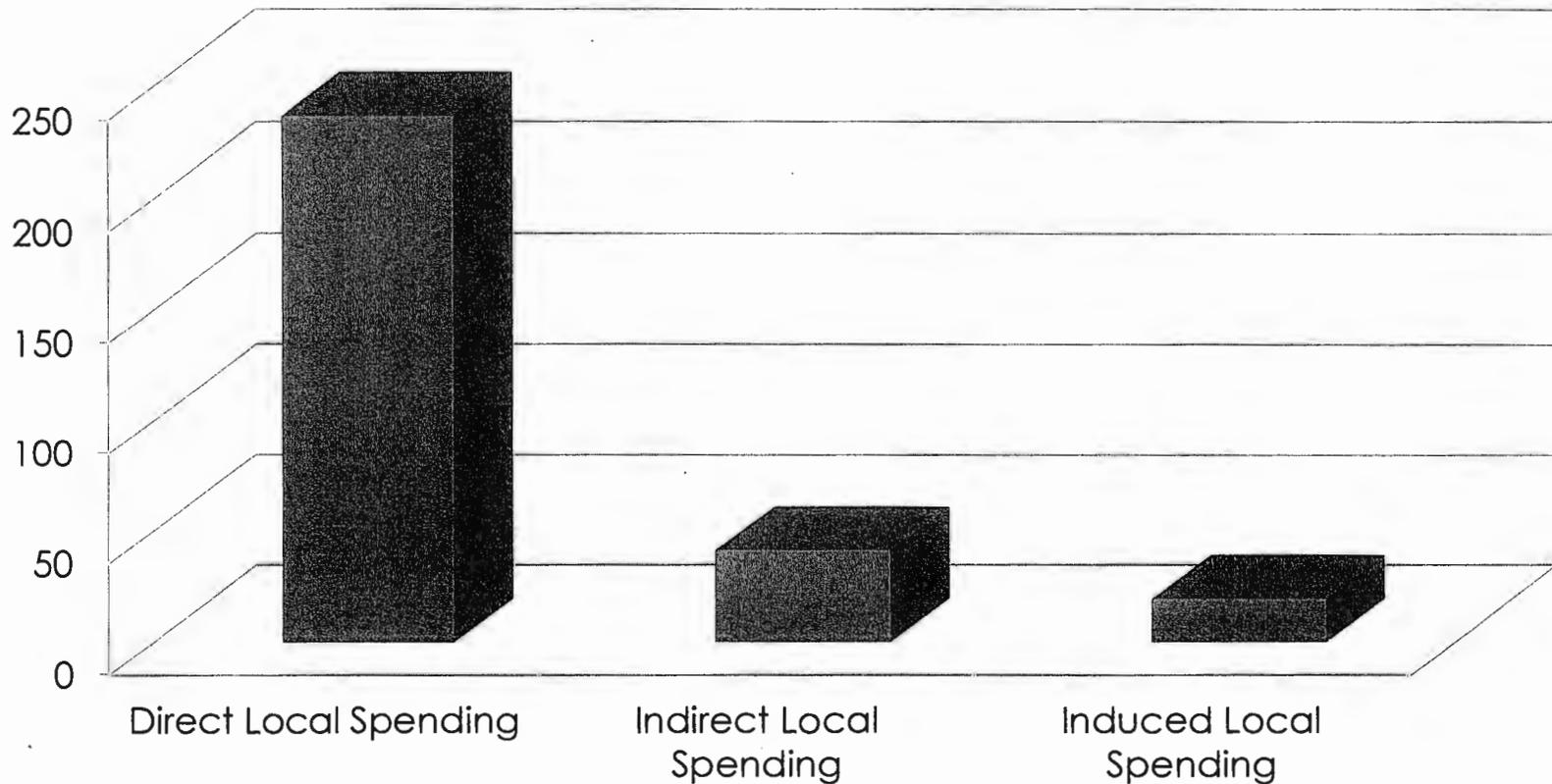
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- **Generates new local revenues**
  - \$11 million in sales tax over the project life  
→ \$1.1 million to Moorpark
  - \$96 million in property tax over the project life  
→ \$7.1 million to Moorpark
- **Creates new jobs**
  - 200 new construction jobs
  - \$114 million spent on construction labor
  - 15-25 permanent jobs
  - \$3.5 million to \$4.2 million payroll annually
  - 107 indirect & 139 induced permanent jobs



## Amaranto's Substantial Economic Benefits to Moorpark During 38-Year Plant Life



Draft Micronomics Study, September 26, 2013; all values in \$mm

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the City of Moorpark

## **Amaranto Views Moorpark as Our Partner in the Project's Development**

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- Collaborative effort between Amaranto and the City will result in benefits for all
  - Will address concerns that may be raised during our initial meetings and later in the permitting process
  - Will assist the community in attaining some of its future goals
  - Will create jobs and economic value for Moorpark
- Interested in determining and prioritizing items that are important to the City and its citizens
- Moorpark will be a Participating Agency in the CEQA process at the CEC, which focuses on compliance with local laws, ordinances, regulations and standards
- Local permits (e.g., public easements, road crossings, heavy haul permits, etc.) likely to be needed during the construction period

## Amaranto Contacts

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Paula Zagrecki Director, Finance	(213) 473-0085 (Direct) (213) 247-5867 (Mobile) p.zagrecki@dgc-us.com
Taku Futamura, Ass't Director, Portfolio & Asset Management	(213) 346-2124 (Direct) (213) 219-9306 (Mobile) t.futamura@dgc-us.com