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PLANNING DIVISION

Writer's Email Address:
kabbott@lobbcliff.com

November 2, 2016

Via Email and Overnight Delivery: Arlynne.Camire@hayward-ca.gov
Arlynne J. Camire, AICP
Associate Planner
City of Hayward
Development Services Department
Planning Division
777 B Street
Hayward, CA 94541

RE: Administrative Use Permit No. 2015005
Request to operate a non-hazardous waste water treatment and Water recycling center at 3200 Depot Road (APN: 439-0075-06-03)
Our File No.: 7479.000

REQUEST FOR APPEAL

Dear Ms. Camire:

Environmental Logistics, Inc. ("ELI") hereby requests for an appeal to the Planning Division as follows. The appeal fee of $6,000 is enclosed.

1. **Action Appealed From:** On October 19, 2016, the City of Hayward Planning Director denied ELI's application for Administrative Use Permit No. 2015005/201500804 – Request to operate a non-hazardous waste water treatment and water recycling center at 3200 Depot Road (APN: 439-0075-06-03) ("Application"). A copy of the written denial is attached to this letter as Exhibit A.

2. **Grounds for Appeal:** The proposed use as stated in the Application (1) is desirable for the public convenience or welfare; (2) will not impair the character and integrity of the zoning district and surrounding area; (3) will not be detrimental to the public healthy, safety, or general welfare; and (4) is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

Additional information regarding these grounds is found in previous letters to the Planning Division, which are attached as Exhibits B and C to this letter. ELI reserves the right to provide additional information in the course of the appeal.

3. Relief Sought: ELI requests that the Application be approved, either fully or conditionally with reasonable conditions requested by the City.

Please do not hesitate to contact me if you have any questions.

Cordially,

Kevin Abbott
Lobb & Cliff, LLP

KA:sp
cc: Jon Bennett – Via E-mail

EXHIBIT A

CITY OF
HAYWARD
HEART OF THE BAY

October 20, 2016

Emailed on October20, 2016 to
jon_bennett@environmentallogistics.org
mbarragan@environmentallogistic.org, and
mgrayson@environmentallogistics.org

Mr. Jon Bennett
Environmental Logistics, Inc.
3200 Depot Road
Hayward, CA 94545

Re: Administrative Use Permit No. 201500804-Request to operate a non-hazardous waste water treateatment and water recycling center at 3200 Depot Road (APN: 439-0075-06-03).

Dear Mr. Bennett,

On Wednesday, October 19, 2016, the Planning Director denied your application request. Attached are the Findings for Denial.

The decision of the Planning Director is subject to a 15-day appeal period and your permit will be final effective Friday, November 4, 2016 if no one appeals the decision by 5:00 pm on Thursday, November 3, 2016. The Planning Division will notify you if an appeal is filed. If you choose to appeal the Planning Director's decision, please submit a $6,000 applicant fee and a written request that cites specific grounds of the appeal. If appealed, a public hearing will be scheduled before the Planning Commission for a decision.

Sincerely,

Arlynne J. Camire, AICP
Associate Planner

Attachments: Findings for Denial

CITY OF HAYWARD
PLANNING DIVISION
ADMINISTATIVE USE PERMIT
October 19, 2016

ADMINISTRATIVE USE PERMIT NO. 201500804-Jon Bennett for Environmenal Logistics, Inc (Applicant/Owner)-Request to operate a non-hazardous wastewater treatment and wast water recycling center.

The project is located at 3200 Depot Road, in the Industrial (I) Zoning District. APN: 439-0075-06-03

FINDINGS FOR DENIAL

A. Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15270(a), CEQA does not apply to projects that are disapproved by a public agency.

B. The proposed wastewater treatment plant and wastewater recycling center is not desirable for the public convenience or welfare in that pollution can be released into the environment during transport of wastewater to the proposed water treatment plant and wastewater by-products to disposal facilities outside the City of Hayward. The undesirability of the proposed use is especially apparent in light of the proposed project's close proximity to San Francisco Bay. In Phase 1, Environmental Logistics proposes to accept wastewater from only Hayward businesses. In Phase 2, businesses located outside of the City of Hayward would be served and would require wastewater to be transported from outside the City. The transportation of wastewater and potentially hazardous solid wastes, sludge, and oil by products of processed wastewater could potentially introduce pollution to the environment not only adjacent to the facility in the Industrial Zoning District, but in residential neighborhoods adjacent to the path of travel via public roadways including Interstate 880, Highway 92, and City of Hayward streets. In addition, there is a risk of pollutants falling onto roadways adjacent to baylands. Furthermore, pollutants could enter the Bay and baylands via storm drains. The close proximity of the Bay to the proposed site would limit response time in the event of a spill as the discharge would not have to travel a significant distance before entering the Bay. Detection of a discharge may also be inhibited by dilution of the discharge in the adjacent Bay leading to larger discharges. The monitoring of the proposed facility by City of Hayward Water Pollution Source Control staff would result in an undue burden on staff by demanding a disproportional amount of staff time and resources thereby challenging staff to maintain the citywide programs to current and acceptable standards.

C. The proposed wastewater treatment plant and wastewater recycling center would impair the character and integrity of the zoning district and surrounding area in the event of an accidental release of wastewater that is not treated to EPA standards posing a serious risk to adjacent users as well as citizens along the transportation

routes. In this scenario, unacceptable levels of hazardous materials are released to the City of Hayward Water Pollution Control Facility, impacting and impairing the performance of the Water Pollution Control Facility. The health, safety, and welfare of the public would be negatively impacted by the proposed use as evidenced by the record.

D. The proposed wastewater treatment facility and wastewater recycling center could be detrimental to the public health, safety, or general welfare in that the Clean Water Act's national pollution discharge elimination system (NPDES) program permit for the City of Hayward Water Pollution Control Facility (WPCF) may be violated due to the introduction of new or increased contributions of pollutants if the proposed waste water facility accidentally released toxins to the WPCF. In turn, the wastewater treatment and wastewater recycling facility, even with the level of control proposed, poses a relatively high degree of risk and liability for the City due to the potential to violate the NPDES permit. Furthermore, accepting wastewater that originates from businesses located outside the City could impact the WPCF's capacity available to serve businesses within the City of Hayward.

E. The proposed wastewater treatment plant and wastewater recycling center is not in harmony with applicable City policies and the intent and purpose of the zoning district involved. In addition, approval of the proposed wastewater treatment plant and wastewater recycling center is not in conformance with the following General Plan Goals and Policies:

NR-6.7 Toxic Metal Waste Remediation
The City shall protect baylands by ensuring that proper measures are in place to safely remove toxic metals in sewage prior to disposal.

The City maintains a NPDES program permit. To maintain the permit, toxic metals are required to be removed from sewage and the treated water is released to the Bay and baylands. There is a high degree of risk that the proposed waste water facility could accidentally release toxic metals to the Water Pollution Control Facility. Even with the level of control proposed, a relatively high degree of risk exists.

NR-6.8: NPDES Permit Compliance
The City shall continue to comply with the San Francisco Bay Region National Pollutant Discharge Elimination System (NPDES) Municipal Regional Stormwater Permit.

The NPDES program permit for the City of Hayward Water Pollution Control Facility (WPCF) may be violated due to the introduction of new or increased contributions of pollutants if the proposed waste water treatment facility accidentally released toxins to the WPCF. In turn, the wastewater treatment and wastewater recycling facility, even with the level of control proposed, poses a relatively high degree of risk and liability for the City due to the potential to violate the NPDES permit. This is contrary to the general plan requirement to comply with the program permit requirements.

ED-1.15 Industrial Technology and Innovation Corridor
The City shall protect the viability of the Industrial Technology and Innovation Corridor as its main employment base by discouraging the intrusion of uses that would erode the integrity of the corridor and maintaining zoning for manufacturing; professional, scientific, and technical services; research and development; and supporting uses.

ED-1.16 Industrial Technology and Innovation Corridor Strategies
The City shall develop, maintain, and implement strategies to facilitate economic investment by improving and promoting the Industrial Technology and Innovation Corridor.

The Industrial Technology and Innovations Corridor is expected to grow as an economic and employment center and evolve to achieve a healthy balance of traditional manufacturing, and information and technology based uses. It is anticipated that to reach this balance, uses that are anticipated to erode the integrity of the Industrial Technology and Innovations Corridor are discouraged, and in the event that a discretionary approval is required, such as in this case, staff will thoroughly examine if the proposed use is compatible with adjacent uses and will not cause harm to the public or to existing businesses. After a thorough examination, staff has determined that the proposed waste water treatment plant and waste water facility could have a negative impact due to the potential of a release of hazardous toxins into the environment and affecting health, and welfare of the Corridor, neighborhoods adjacent to roadways, the baylands and the Bay.

GOAL ED-6 Achieve recognition as the most desirable and business-friendly place to locate and conduct business in the East Bay.

ED-6.10 Sustainable Business Practices
The City shall promote sustainable business practices that reduce the use of energy and water resources and reduce overhead expenses for businesses.

As a policy to achieve the above goal, the City will conditionally approve and permit healthy businesses that will operate with sustainable business practices. The City encourages businesses to participate in the Alameda County Green Business program. The proposed practice of accepting wastewater from businesses outside of the City of Hayward is contrary to sustainable business practices. Processed waste water will be released into the storm drain and to the Water Pollution Control Facility. This practice has the potential of concentrating wastes in the local community to the detriment of the health, safety, and welfare of the citizens of Hayward.

PFS-4.4 Water Pollution Control Facility Operation and Maintenance
The City shall operate and maintain the WPCF to ensure that wastewater discharge meets all applicable NPDES permit provisions.

The NPDES program permit provisions to be met at the City of Hayward Water Pollution Control Facility (WPCF) may be violated due to the introduction of new or increased contributions of pollutants if the proposed waste water facility accidentally released toxins to the WPCF. In turn, the proposed wastewater treatment facility, even with the level of control proposed, poses a relatively high degree of risk for the City due to the potential to violate the NPDES permit.

PFS-4.11 Industrial Pretreatment
The City shall enforce appropriate industrial pretreatment standards and source control to prevent materials prohibited by Federal and State regulations from entering the wastewater system and to ensure compliance with the City's local discharge limits. The City shall work with the business community to maintain and implement programs to ensure compliance with all Federal, State and local discharge requirements.

City of Hayward Water Pollution Source Control staff monitor industrial businesses to assure that pretreatment standards are met. However, with the monitoring of the proposed waste water treatment facility, Water Pollution Source Control staff would experience an undue burden by demanding a disproportional amount of staff time and resources thereby challenging staff to maintain the citywide programs to current and acceptable standards.

EXHIBIT B

LOBB CLIFF

June 9, 2016

Via E-mail and U.S. Mail: Arlynne.Camire@hayward-ca.gov
Arlynne J. Camire, AICP
Associate Planner
City of Hayward
Development Services Department
Planning Division
777 B Street
Hayward, CA 94541

Micah.Hinkle@hayward-ca.gov
Micah Hinkle

RE: Administrative Use Permit No. 2015005
Applicant Meeting of 6/2/2016
Our File No.: 7479.000

Dear Ms. Camire:

Our firm is general counsel for Environmental Logistics, Inc. (ELI). ELI appreciates the insights staff provided which illuminate a few remaining details to enable the City Planning Director to approve the project. ELI values the dialogue, exchange of ideas, and has directed my firm to provide this letter to further alleviate staff questions and concerns.

ELI is confident the information provided below in concert with the application and other documentation provided over the past 13 months clearly demonstrates this projects overwhelming benefit to the City of Hayward and the Industrial Technology and Innovation Corridor (ITIC). The ELI proposed project will be successfully operated in agreement with Hayward and in full support of the strategies and goals of the ITIC, including development of economic investment, viability of ITIC employment, preservation of City resources and sustainable business practices.

We are providing additional facts identified by the staff during the meeting and in written communication to enable the staff to develop an informed and positive opinion.

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www.LobbCliff.com

Information includes technological, operational and financial investment efforts undertaken by ELI to support the Industrial Technology & Innovation Corridor goals of viability and sustainability.

The ELI commitment to complete the project incorporates the latest advanced commercially viable technology to recover, process and produce reusable water from industrial and other nuisance process waters. The ELI project focuses on managing nuisance water(s) generated by the City of Hayward BMPs, the Hayward business community and those who seek a convenient, commercially viable, economic and sustainable option for compliance with emerging enforcement of the Federal Clean Water Act. The ELI project adds a safeguard to protect the valuable resource of the City of Hayward's water and wastewater infrastructure and provides multiple benefits to encourage growth and economic investment into Hayward's ITIC.

ELI's state of the art facility greatly reduces the risk that untreated wastewaters pose to the fragile infrastructure and natural resources of the City of Hayward. The proposed project fulfills all aspects of the Hayward Industrial Corridor by providing all businesses including biomedical, research and development, manufacturing, and scientific discipline, a cost effective and convenient option for the proper management of business generated and accumulated nuisance water. The ELI plant would provide a vital role for all Hayward businesses including those few large businesses with the financial ability to construct and operate onsite wastewater treatment technology. For large businesses with onsite treatment the ELI plant is a critical "back up" as treatment facilities inherently need to go offline for preventive maintenance and more importantly go down from unexpected maintenance or mechanical failure. The City's risk to infrastructure vulnerability and adverse impacts associated with such episodes is greatly reduced by the ELI project. Businesses in the City of Hayward and the ITIC including Advanced Technology, Biomedical, and R&D understand they have an inherent need for redundancy during planned and unplanned events. The ELI plant provides this redundancy so that all stakeholders with or without the ability to process wastewater onsite can quickly adapt and avert potentially catastrophic events.

1. Capacity of the Wastewater Treatment Plant:

ELI has evaluated potential impacts of the project on current and future resources of the Hayward POTW. ELI's research provides clear evidence that a no

impact finding will result. Data supporting non-impact includes the City of Hayward's own reporting, state historical reporting data and current outfall data which all indicate an abundance of current and future excess capacity. The City of Hayward's POTW total design capacity (TDC) is 18.5 million gallon per day (MGD), of which Hayward is currently using less than half as explained below. Hayward's Average daily water flow (ADWF) from the latest data (May 2016) indicates an ADWF of 9.2 MGD. As such Hayward has currently a daily excess capacity (CDEC) of 9.3 MGD. The ELI proposed average is 0.075 MGD. Accordingly, abundant capacity for the ELI proposed project exists as the ELI proposed project equates to 0.5% of design capacity and less than 0.9% of daily excess capacity. Additional factors including drought and State mandated water conservation measures have greatly reduced demand of the POTW by an estimate 27% since 2010. Important to note are the not yet fully implemented 2015 executive orders of the Governor and the State Water Resources Control Board. These requirements cause further reduction of water use by 30%, which could directly reduce Hayward ADWF by an estimated 2.5 MGD.

Newly implemented water usage, conservation measures and other factors have resulted in a significant reduction of ADWF. An overwhelming abundance of available capacity for the ELI proposed project exists. The facts are undeniable that the ELI project would have an ***insignificant*** impact to the total design capacity and more importantly to current daily excess capacity. The ELI proposed usage to the Hayward POTW is less than 0.5% of TDC and more importantly less than 0.9% CDEC. Looking forward, incorporating state mandate reduction, the ELI project is estimated to require only 0.5% TDC and less than 0.7% daily excess capacity. Additionally, the joint outfall utilized by Hayward and her sister cities is operating at 37% ADWF, allowing for an abundance of increased capacity should Hayward ever have the need for more capacity.

In terms understandable to local business, the ELI proposed project equates to a fraction of a fraction of current available daily capacity. Looking forward, the ELI project equates to even less than that fraction of a fraction as available excess capacity is expected to increase with mandated reduction of water usage. Notwithstanding the obvious conclusion that the ELI project has an insignificant impact on POTW capacity is the fact that an abundance of additional capacity exists at the joint outfall. *All of which leaves business and concerned stakeholders to wonder why capacity was raised as a concern?*

2. Economic Benefit to the City:

The ELI project is in full agreement with the Industrial Technology and Innovation Corridor's (ITIC) stated goals. The ELI project provides innovative wastewater technology for the management of water(s) generated by manufacturing, biomedical, scientific, R&D and other local businesses located within Hayward and the emerging ITIC. The ELI project affords businesses and the City with a cost effective option to conveniently manage nuisance water. Ancillary benefits for the city include reduced risk of natural resources, reduce risk to the environment and reduced burden on the Hayward infrastructure. Hayward will benefit economically by reduced burden of potentially off-spec water discharged to infrastructure and increased collection of fees for pretreated water from ELI to POTW. ELI's primary objective is to accept nuisance wastewater from dischargers within the ITIC, businesses within the City of Hayward, BMP water from Hayward and sister city operations. Unintended ancillary economic benefit to Hayward is that business sewer charges are mainly based on usage and not on actual discharge, as such most nuisance water within the city limit may be accounted twice for proper fee assessment (at the actual user and once again as ELI discharges).

The City of Hayward's Annual Report of Storm Water Program Implementation, identifies that the City has one thousand (1,000) industrial storm water potential significant polluters. Each one having the potential to discharge polluted storm water, process water and nuisance water that if not captured and properly treated, would be deleterious to waters of the US. The report clearly identified businesses within the City of Hayward, including businesses located in the ITIC, next to the ELI proposed project that are in requirement of a cost effective, convenient and local management option for the proper handling of polluted water. The ELI project will encourage compliance and participation in the protection of human health and the environment.

ELI's proposed project in agreement with Industrial Technology and Innovation Corridor ED-6.10 promotes sustainable business, reduces energy, conserves water resources and reduces overhead expense for businesses. ELI also closely screens, monitors and tracks collected nuisance water, making all data available to Hayward for regulatory QA/ QC and other needs. ELI believes this extra level data and security is valuable to the community at large in determining the outstanding players from lower

performing actors that could affect Hayward's valuable resources and the waters of the U.S.

3. **Quality of the Wastewater/Minimizing Risk of Pollutants:**

ELI is very cognizant of City's concerns about the wastewater that may be collected and discharged. ELI will not accept water that will negatively impact its ability to meet or exceed prerequisite discharge limits. ELI has a robust system of profiling, screening, finger printing, tracking and process technology to identify and rapidly correct any irregularity, long before it becomes an undue tax on the resources of the City of Hayward. Categorical industries that have the potential to adversely impact treatability, waste defined in 42 CFR and waste meeting the definition of hazardous in CCR Title 22 will not be accepted. Procedures to safeguard against unauthorized acceptance include profiling, fingerprinting and state certified analysis on industries with constituents of concern. The vast majorities of potential customers generate small amounts of nuisance water, ponded water, car wash water, contact water, wash water and miscellaneous nonhazardous wastewaters and if discharged directly into lakes, rivers and streams would pose a concern under the Federal Clean Water Act.

ELI requires each generator to provide detailed information of the process generating, the industry generated, any concentrations of concern, the physical properties and other critical data, along with certification under penalty of perjury that the wastewater provided does not contain any elevated constituents which would cause the water to be regulated under 40 CFR or Title 22.

As wastewater enters the facility, it is sampled, compared to approved profile data, screened for various parameters including pH, BS&W Electrical Conductivity (TDS), reactivity, temperature to ensure only compatible, acceptable waters are received. A treatment formula for each load is identified and after treatment prior to discharge, a batch sample is taken for comparison and further screening to confirm that desired water treatment was successful.

The ELI staff has over 70 years' experience in management, compliance, implementation, enforcement and protection of the waterways of the US. ELI is fully knowledgeable of acceptable criteria of the San Francisco Bay region National Pollutant Discharge. ELI in full agreement of NR-6.8 has selected and made major

investments into the most advanced commercially viable wastewater treatment technology. ELI has incorporated advanced prescreening methods, requires full generator profiling, strict adherence to manufacturer treatment procedures and incorporated conformational analysis to safeguard and reduce risk of NPDES Permit.

Additionally, and in furtherance of NR-6.8, the ELI proposed project will be in full conformance with the US-EPA 40 CFR Part 437 regulations which promote centralized wastewater treatment (CWT) facilities in the local and surrounding industrial communities to work hand in hand as joint public/ private sector to provide services for the local industrial establishments in order to minimize risk of illegal and illicit discharges of industrial waste-streams into the POTWs.

4. **Protection of the viability of the Industrial Technology and Innovations Corridor:**

The ELI proposed project fully supports ITIC goals, including proactive efforts to attract and retain manufacturing, professional, scientific, technical services, research and development, technology based and supporting services. The ELI project is in full agreement with ED-1.15 and ED-1.16. ELI's main focus and state of the art facility fits perfectly within the Industrial Technology and Innovation Corridor. ELI's proposal includes heavy capital investment, installation of the latest commercially viable technology, to produce sustainable and environmentally viable solutions for the proper management of regularly generated nuisance water. ELI customers and neighboring businesses within the ITIC include pharmaceutical, scientific laboratories, technology, electronic manufacturer, food manufacturing and energy sectors all of which are supported and greatly benefited by the ELI project.

The ELI project maintains and promotes the ITIC goals within the environmental field(s), especially the emerging markets of wastewater treatment, wastewater technology, water conservation and implementation of research and development within the water management sector. In agreement with ED1.15, the ELI proposed project will create high paying employment within the Industrial Technology and Innovation Corridor and creates ancillary employment outside the ITIC. The ELI project employs professionals in the discipline science, and chemistry, Waste Water Technician I, II & III, Operational and Plant Manager, an EH&S, Profiling, laboratory assistants and clerical personnel.

The ELI facility is located in an area of numerous existing heavy industrial and commercial users. The ELI project is compatible with existing land uses and in full agreement of ED-1.15, ED-1.16 and ED-6.10. The ELI investment in technology, environmental expertise and locally available services is ideal to support and attract Industrial Technology and Innovation Corridor future businesses and to maintain the integrity and resources of the ITIC.

5. City's Outreach for Enhancing Direct Potable Reuse:

ELI was pleasantly surprised to learn that Hayward is proactively supporting a start-up technology very similar to available technology through the engineers who developed the ELI project. The City recently assisted a startup company which was selected for a $1M grant award funding research and development of a Pre-RO membrane filter. The project's goal is to introduce a fail-safe low energy technology for enabling direct potable reuse. The additional source of water could add a new source of water sorely needed in the impending California drought conditions. The project is similarly related to ELI, as wastewater protection through advanced technology appears correctly to have the full support of the City of Hayward. ELI believes its project offers many more benefits to local businesses and the ITIC. The ELI project is in full agreement with NR-6.8, ED-1.15, ED-1.16 and ED-6.8.goals and mission statement. The ELI proposal has the very real ability of quickly supporting existing local businesses and most notably the 1000 that are specifically identified by City of Hayward Source Control as having a significant discharge potential of source pollution.

The ELI project is truly "Shovel Ready" and poised to begin its mission of protecting the US waterways, while assisting neighboring businesses to comply with the Clean Water Act. ELI is utilizing cutting-edge technology as its core operations. ELI has invested heavily into advanced, commercially viable technology to treat wastewater from sources which generally fail both point and non-point source classifications. ELI will collect such wastewater that otherwise would enter into local storm drains, percolate into local ground waters or directly enter into waters of the US, that have potential to adversely impact beneficial waters.

The ELI plant as discussed is a pilot concept in conformance with US-EPA 40 CFR 437 regulations which establishes goals to minimize risk of illicit discharge to the

water ways of the US. ELI expects the proposed operation to be a leader in advancement in Clean Water technology. ELI believes looking forward, all communities will support similar technology proposed by ELI as every city has their own list of 1000 potential sources of pollution. The ELI business outreach program will encourage strong environmental stewardship in agreement with ITIC goals. The ELI project will offer cost effective, highly convenient solutions for process water, nuisance water and pollutant contaminated storm water. ELI in agreement with ITIC goals will employ highly trained personnel and encourage manufacturers, biomedical, biotech, R&D and others to invest into the Industrial Technology Innovation Corridor.

The Regional Board NPDES Permits both for the City wastewater treatment plant and the MS4/industrial storm water programs are designed to implement the water quality control plans and protect waters for all beneficial purposes. Our project even though relatively small in volume, would remove the most common sources of nuisance water potential from the POTW or illicit disposal and add more recoverable recycled water for beneficial use.

Technology developed for the ELI project engineered by:
http://www.ecologixsystems.com/
Local startup pilot supported by Hayward:
https://www.youtube.com/watch?v=dKDSi3iGSS8

ELI's organization has made a significant capital investment into the City of Hayward. ELI employees live in Hayward, ELI is a property owner in Hayward, ELI pays taxes to Hayward and ELI has great friends and good neighbors in Hayward. Again, ELI sincerely appreciates Hayward and feels strongly that the ELI project as proposed will protect and serve the community for years to come.

ELI looks forward to your favorable opinion and expedited approval so that ELI can implement this far overdue project.

Cordially,

J. Mark Lobb
Lobb & Cliff, LLP

JML:sp

cc: Jon Bennett,
Environmental Logistics, Inc.
3200 Depot Road, Hayward, CA 94545

EXHIBIT C

LOBB CLIFF

July 25, 2016

Via Email and U.S. Mail: Arlynne.Camire@hayward-ca.gov
Arlynne J. Camire, AICP
Associate Planner
City of Hayward
Development Services Department
Planning Division
777 B Street
Hayward, CA 94541

Micah.Hinkle@hayward-ca.gov
Micah Hinkle

RE: Administrative Use Permit No. 2015005
Applicant Meeting of 6/2/2016 and 6/30/2016
Our File No.: 7479.000

Dear Ms. Camire and Mr. Hinkle:

As you know, our firm is general counsel for Environmental Logistics, Inc. (ELI). ELI appreciates the opportunity to provide additional clarifications and information necessary for the staff and City Planning Director to make the findings identified below and gain their support for Administrative Use Permit No. 2015005.

1. Finding: Proposed Use is Desirable for the Public Convenience or Welfare:

The proposed use is desirable for public convenience and welfare by reducing risk to public and environment from release of industrial and nuisance wastewaters. The proposed use supports existing and emerging companies in the Industrial Technology and Innovation Corridor (ITIC), creates a source of jobs, and provides direct economic benefit to the City of Hayward.

The ELI project is in full agreement with the ITIC stated goals. The ELI project provides innovative technology for the management of waste waters generated by manufacturing, construction, biomedical, scientific, R&D, energy, and other businesses located within Hayward and the emerging ITIC. The ELI project affords businesses and the City with a cost-effective option to conveniently manage nuisance water. Benefits to the City include reduced risk to natural resources, the environment, and reduced burden on the Hayward infrastructure.

Hayward will benefit economically by reducing the risk of potentially off spec. water being discharged to infrastructure and through increased collection of fees from all cleaned up processed water released by ELI to the POTW.

ELI's project offers a significant and direct revenue benefit to the City of Hayward. The City of Hayward's WATER AND WASTEWATER SERVICE RATES, effective October 1, 2016, doesn't address already cleaned up/processed water, so the "Other Users" rate of $4.92/100 CFW was used as a baseline. Based on an increased rate of 100,000 gallons/day (13,369/CFW) the revenue generated would be $171,672 per year. ELI proposes to offer a 50% increase in its effluent release rate to $7.38/100 CFW, independent of where the wastes were generated. This would provide an additional $85,836 in revenue which would bring the total revenue being brought into Hayward, by ELI's proposed project (for a release rate of 100,000 gallons/day) to $257,508 per year. Revenues at higher discharge rates would scale accordingly. Clearly a strong economic incentive to the City of Hayward for the project.

An unintended ancillary economic benefit to Hayward is that business sewer charges are mainly based on usage and not on actual discharge, as such most nuisance water within the city limit may be accounted for twice, at the actual user and once again as ELI discharges.

The City of Hayward's Annual Report of Storm Water Program Implementation, identifies that the City has one thousand (1,000) industrial storm water potentially significant polluters. Each one having the potential to discharge polluted storm water, process water and nuisance water if not captured and properly treated; would be deleterious to the waters of the US. The report clearly identified businesses within the city of Hayward, including businesses located in the ITIC, next to the proposed project that are in need of a cost effective, convenient and local management option for proper handling of polluted water.

ELI's project will be a state of the art facility. It will provide the local business community with a modern, up to date compliance option for current and emerging state and federal water quality rules and regulations. ELI knows that when a solution to compliance is local, affordable and safe for the environment, illegal discharges diminish.

ELI's project enhances and supports local Hayward companies that provide materials, equipment, chemicals/supplies, engineering, confirmatory laboratory analysis and support services. Forensic Analytical a certified analytical lab, located less than a mile from our facility at 3777 Depot Road will be performing confirmatory analytical on processed waters providing increased revenues and direct benefit to a neighbor in the ITIC.

ELI's proposed project will create high paying employment in the ITIC and will create ancillary employment opportunities outside ITIC. The ELI project will employ professionals in the disciplines of science, chemistry, wastewater processing; including but not limited to Technicians 1, 2 and 3, Operations Manager, Plant Manager, and Environmental Health and Safety personnel.

ELI's innovative expansion of a local business is consistent with Planning Division Guiding Principle #4, to be a business friendly community that has a robust and diversified economy based on projects that show innovation, diversity and local entrepreneurship.

ELI also intends to develop programs in support of California State University East Bay Environmental Engineering Department to provide students under an intern type program with hands on water treatment and processing experience. This experience not only would strengthen the Environmental Engineering program but will also enhance the placement of students after graduation. This program supports Planning Division, Guiding Principle #6 to "Foster a reputation as a great college town and a community that offers a range of opportunities for life-long learning"

2. **Finding: The Proposed Use Will Not Impair the Character of the Zoning District and Surrounding Area:**

The ELI project from its inception was designed to be in consistent with the City of Hayward Economic Development Plan Goals and the Industrial Technology Innovation Corridor (ITIC) Baseline Profile in the 2015, Interim Report.

The ELI proposed project fully supports Economic Development Goal 1.15, by maintaining zoning which will support, attract and retain manufacturing, professional, scientific, technical services, research and development, technology based and supporting services. The proposed facility is located in a core industrial area of Hayward in the ITIC.

ELI's focus and state of the art facility fit perfectly with the Industrial Technology and Innovation Corridor and align directly with the Economic Development Goal, 1.16 in protecting the viability of the ITIC. ELI's proposal includes significant capital investment, and installation of the latest commercially available technology. The project provides a sustainable and environmentally viable solution for the management of planned and unplanned releases of nuisance waters. ELI's customers and neighboring businesses include diverse mix of industries and companies within the ITIC, including but not limited to, technology, pharmaceutical, scientific, analytical, research and development, laboratories, electronic, manufacturing, food companies, construction, service companies and energy sector, all of which are supported and benefit by ELI's proposed project.

ELI was pleasantly surprised to learn that the City of Hayward is proactively supporting a start-up technology for water treatment, through the engineers that developed the ELI project. The City recently assisted a startup company which was selected for a $1 million grant award, funding research and development of a pre-RO membrane filter. The projects goal is to introduce a fail-safe low energy technology for enabling direct potable reuse. The project is similarly related to ELI as emerging wastewater cleanup technologies appear correctly to have the full support of the City of Hayward.

The proposed ELI plant is consistent with and in conformance with US-EPA 40 CFR 437 regulations, which establishes goals to minimize the risk of illicit discharge to the waterways of the U.S. ELI expects that their proposed operation to be a leader in Clean Water Technology. Looking Forward ELI believes all major cities and progressive communities will support similar technology to that proposed by ELI, as every city has their own list of high risk potential sources of pollution. The ELI business outreach program will also encourage strong environmental stewardship in agreement with ITIC goals.

3. **Finding: The Proposed Use Will Not Be Detrimental to the Public Health and Safety and General Welfare:**

ELI's proposed project is designed specifically to protect public health and safety, general welfare and the environment. The ELI project is designed to support Hayward businesses, the ITIC corridor and to assure compliance with emerging enforcement of the Federal Clean Water Act.

ELI's state of the art facility greatly reduces the risk that unintended wastewaters pose to the City of Hayward wastewater treatment infrastructure and natural resources. The proposed project will support a diverse section of businesses in the ITIC and surrounding areas. It also will enhance growth and support economic investment into the ITIC.

Examples of companies and industries that potentially generate non-hazardous nuisance, process water and storm waters; include but are not limited to:

Manufacturing
Construction
Research and Development
Technology
Bio-Medical
Food Manufacturing
Trenching and Excavation Companies
Car Dealerships (runoff from lot washing)
Emergency pump outs at all types of building and facilities
Environmental Cleanup Companies
Truck, Car & Bus washing facilities
Well Drilling and Excavation
Energy Facilities, Calpine Russel City Facility
Transit Companies, AC Transit
Transporting & Logistic Companies

Companies in these industries are in the ITIC or surrounding areas, and clearly would derive direct benefit from ELI's project.

Permitting ELI to test screen and reduce contaminate levels for non-hazardous nuisance and wastewaters, clearly would not adversely affect the integrity of the corridor. In fact the opposite is true. It supports a number of companies and industries in the ITIC; and by providing further treatment of non-hazardous nuisance and waste waters; it reduces the chances that the Hayward's treatment facility could exceed NPDES limits. One specific recent example involves Berkeley Farms in Hayward, where we provided cleanup and management of a spill of milk products to a drainage ditch leading directly to the bay. In this instance, ELI supported Berkeley Farms, a neighbor in the Technology and Innovation Corridor (ITIC) by stopping these materials from entering the bay and transported 100,000 gallons of material in vacuum tankers to Redwood City for disposal. This cost Berkeley Farms considerable additional money in transportation and disposal costs, compared to processing the material at ELI less than a mile away from the spill. Instead, it had to be transported out of Hayward where the spill occurred, across the bay to Redwood City. This is also not a green or environmentally sound approach for management of Hayward wastewaters.

ELI has evaluated potential impacts of the project on current and future resources of the Hayward POTW. ELI's research provides clear evidence that a no impact finding will result. Data supporting nonimpact includes the City of Hayward's own reporting, state historical reporting data, and current outfall data, all of which indicate an abundance of current and future excess capacity.

The City of Hayward's POTW total design capacity is 18.5 million gallons per day (MGD), of which Hayward is currently using less than half as explained below. Hayward's Average Daily Water Flow (ADWF) from the latest data (May 2016) indicates and ADWF of 9.2 MGD. As such Hayward has currently a daily excess capacity (CDEC) of 9.3 MGD. The ELI proposed average release is .1 MGD. Accordingly, abundant capacity for the ELI proposed project exists as the ELI proposed project equates .5% of design capacity and less than .9% of daily excess capacity. Additional factors including drought and state mandated water conservation measures have greatly reduced demand on POTW by an estimated 27% since 2010. It is important to be aware of not yet fully implemented 2015 executive orders of the Governor and the State Water Resources Control Board. These requirements cause further reduction of water use by 30%, which could directly reduce Hayward ADWF by an estimated 2.5 MGD.

Looking forward, incorporating state mandated reductions; the ELI project is estimated to require .5% of total daily capacity and .7% of daily excess capacity. An overwhelming abundance of available capacity for the ELI project exists. The facts are undeniable that the ELI project would have an insignificant impact to the current daily excess capacity.

Additionally, the joint out fall utilized by Hayward and her sister cities is operating at 37% ADWF, allowing for an abundance of increased capacity, should Hayward ever have the need for more capacity. All of which leaves business and concerned stakeholders to wonder why capacity was raised as a concern?

ELI's proposed project is specifically designed to enhance the quality of wastewater and to minimize the risks of pollutants. ELI will not accept water that will negatively impact its ability to meet or exceed prerequisite discharge limits. ELI has a robust system of profiling, screening, finger printing, tracking and process technology to identify and rapidly correct any irregularity, long before it becomes an undue tax on the resources of the City of Hayward. Profiles must be submitted and approved by ELI prior to any waters being picked up or transported off the generators site. Categorical industries that have the potential to adversely impact treatability, waste defined in 42 CFR and waste meeting the definition of hazardous in CCR Title 22 will not be accepted.

Procedures to safeguard against unauthorized acceptance include profiling, fingerprinting and state certified analysis on industries with constituents of concern, including Cam 17 metals, Volatile Organic Compounds (VOC's), Semi Volatile Organic Compounds (SVOC's), Total Petroleum Hydrocarbons (TPH) and PH.

ELI is a full service environmental service company and is the County of Alameda emergency response contractor and is expertly qualified to respond to any types of spills that might occur during transit.

As wastewater enters the facility, it is sampled, compared to the approved profile and screened for various parameters including CAM 17 metals, TPH, PH, BS &W conductivity (TDS) and temperature to assure only compatible and acceptable water are received. A treatment formula for each load is identified. After treatment, prior to discharge, a batch sample is taken for further QA/QC and analyzed to confirm that the desired treatment levels have been obtained.

ELI has incorporated advanced prescreening methods, requires full generator profiling, strict adherence to manufacturer treatment procedures and incorporated confirmation analysis to safeguard and reduce any risk of exceeding NPDES Permit requirements.

The ELI proposed project will be in full conformance with US-EPA 40 CFR Part 437 regulations which promote centralized wastewater treatment (CWT) facilities in the local and surrounding industrial communities to work hand in hand as joint public/private sector, to provide services for local industrial establishments in order to minimize risk of illegal and illicit discharge of industrial waste streams into POTW's.

4. <u>Finding: The Proposed Use is in Harmony with Applicable City Policies and the Intent and Purpose of the Zoning District Involved.</u>

ELI carefully reviewed Hayward's Economic Development Strategic Plan and the Industrial Technology and Innovation Corridor Baseline Profile before consideration was given to expanding our current facility, located at 3200 Depot Road in Hayward to include non-hazardous wastewater treatment.

Hayward's Economic Development Strategic Plan includes:

1. Ensuring efficient and predicable business processes;

2. Creating and sustaining a safe, clean, green and fiscally sound business environment that benefits residents, businesses, and the region;

3. Promoting Hayward for its central location prime business sites, great climate, excellent transportation, water and public safety services, as well as for other strengths that distinguish Hayward from other municipalities;

4. Actively recruiting and retaining businesses especially supporting emerging sectors that create quality good paying jobs like biotech industries and food processing businesses;

5. Fostering an educated and job ready local workforce by driving the improvement of academic performance of Hayward students by connecting businesses, learning institutions, and community agencies.

Hayward's General Economic Development Strategic Plan includes six goals that are supportive of ELI's project and submittal of Administrative Use Permit No: 2015005. These goals and plan elements to be considered in the review process include:

1. Creating a diversified and robust economy

2. Supporting entrepreneurship

3. Business expansion and retention

4. Improving the City's image

5. Supporting a town-grown economy

6. Becoming business friendly

ELI anticipated that the permitting and approval process would be fact based and be consistent with plan goals.

ELI is a local successful business located in the city that wants to expand existing capabilities. The entrepreneurial project will support companies and industries that are currently in the ITIC and companies that Hayward hopes to attract to the ITIC.

The planning process should be actively recruiting and retaining businesses, especially supporting emerging sectors that create quality good paying jobs like biotech and food processing

businesses. In addition water treatment technology is also an emerging business sector itself, providing technical high paying jobs which will boost the local economy.

The proposed project will also directly increase revenues to the City based on revenues generated on release of clean process water discharge.

The ELI project is in full conformance with the Industrial Technology and Innovation Corridor Baseline Profile, 2015 Interim Report. Our project would be a direct contributor to the Advanced Industries Sector, connecting other businesses, and offers major opportunities for economic development. As part of the Advanced Industries Sector, it will offer significant opportunities for workers of all education levels.

It cannot be disputed that ELI's expansion of capabilities, to include non-hazardous nuisance and wastewater treatment is of direct benefit to food processing and numerous other companies in the ITIC. The ELI project further reduces non-hazardous components of wastewater, reduces the likelihood of illegal and detrimental releases to the environment, and helps assure that Hayward is in compliance with the Federal Clean Water Act. The Clean Water Act requires that all municipal, industrial and commercial facilities that discharge wastewater or storm water directly from a point source (a conveyance such as a pipe, ditch or channel) into water of the United States (such as a lake, river, bay or ocean) are complying with National Pollutant Discharge Elimination System (NPDES) Permits.

ELI's organization has made a significant capital investment into the City of Hayward. ELI employees live in Hayward, ELI is a property owner in Hayward, ELI pays taxes in Hayward and ELI has great friends and neighbors in Hayward. ELI appreciates Hayward and feels strongly that the ELI project as proposed will protect and serve the community for years to come.

We hope that the supplemental information provided will clearly support the findings that the City staff need to make to provide a conditional; approval of Administrative Use Permit No. 2015005.

Cordially,

J. Mark Lobb
Lobb & Cliff, LLP

JML:sas
cc: Jon Bennett,
Environmental Logistics, Inc.
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