

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov

December 6, 2007

California Energy Commission
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

DOCKET
06-AFC-6
DATE <u>DEC 06 2007</u>
RECD <u>DEC 06 2007</u>

Re: **EASTSHORE ENERGY CENTER**
Docket No. 06-AFC-6

Enclosed for filing with the California Energy Commission is one (1) original of staff's Exhibit List and Exhibits 202 through 207. Note that Exhibit 200 (Eastshore Energy Center Final Staff Assessment) and Exhibit 201 (Bay Area Air Quality Management District's Final Determination of Compliance) have been previously docketed and will be offered into the record at the December 17, 2007 Evidentiary Hearing.

Consistent with the Committee's direction at the November 26, 2007 Prehearing Conference, a hard copy of this filing has been provided to Ms. Susan Geffer of the Hearing Office and Dockets. All parties have been served electronically.

Sincerely,

Handwritten signature of Bill Pfanner in cursive.

Bill Pfanner- Project Manager
California Energy CommissionPROOF OF SERVICE / REVISED 12/4/07 FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 12/4/07 *pg*

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

IN THE MATTER OF:

**APPLICATION FOR CERTIFICATION FOR THE
EASTSHORE ENERGY CENTER
115.5 MW INTERMEDIATE/PEAKING FACILITY
BY TIERRA ENERGY**

DOCKET No. 06-AFC-6

EXHIBIT LIST

Exhibit 200: Eastshore Energy Center Final Staff Assessment

Dated: Published October 9, 2007.

Docketed: October 9, 2007.

Sponsored by: Energy Commission staff.

Received into evidence on December 17, 2007.

Exhibit 201: Final Determination of Compliance. Bay Area Air Quality
Management District.

Dated: October 17, 2007.

Docketed: October 23, 2007.

Sponsored by: Energy Commission staff.

Received into evidence on December 17, 2007.

Exhibit 202: Resolution 02-2007, Alameda County Airport Land Use
Commission.

Dated: Adopted October 17, 2007.

Docketed: October 26, 2007.

Sponsored by: Energy Commission staff.

Received into evidence on December 18, 2007.

Exhibit 203: Letter from Gary Cathey, Chief, Office of Airports, California
Department of Transportation, Division of Aeronautics, regarding the Eastshore
Energy Center project.

Dated: November 1, 2007.

Docketed: November 5, 2007.

Sponsored by: Energy Commission staff.

Received into evidence: December 18, 2007.

Exhibit 204: Letter from Joseph Rodriguez, Supervisor, Environmental Planning and Compliance Section, Western-Pacific Region, Airports Division, regarding the Eastshore Energy Center, dated October 9, 2007.

Dated: October 9, 2007.

Docketed: October 12, 2007.

Sponsored by: Energy Commission staff.

Received into evidence: December 18, 2007.

Exhibit 205: Port of Oakland Letter comments on the Preliminary Staff Assessment for the Eastshore Energy Center.

Dated: September 14, 2007.

Docketed: September 17, 2007.

Sponsored by: Energy Commission staff.

Received into evidence: December 18, 2007.

Exhibit 206: E-mail from David Butterfield, Flight Standards, Western Region, to Eric Knight, California Energy Commission, dated October 16, 2007.

Dated: October 16, 2007.

Docketed: October 17, 2007.

Sponsored by: Energy Commission staff.

Received into evidence: December 18, 2007.

Exhibit 207: Letter from Gregory T. Jones, City of Hayward City Manager, Comments on the Eastshore Preliminary Staff Assessment.

Dated: October 9, 2007.

Docketed: October 10, 2007.

Sponsored by: Energy Commission staff.

Received into evidence: December 18, 2007.

Exhibit for the Eastshore Energy Center Evidentiary Hearing

Exhibit 202:Resolution 02-2007, Alameda County Airport
Land Use Commission.

Dated: Adopted October 17, 2007.

Docketed: October 26, 2007.

Sponsored by: Energy Commission staff.

Received into evidence on December 18, 2007.

**THE AIRPORT LAND USE COMMISSION OF ALAMEDA COUNTY
HAYWARD, CA**

RESOLUTION 02-2007 - AT A MEETING HELD OCTOBER 17, 2007

DOCKET 06-AFC-8
DATE _____
RECD. OCT 26 2007

Introduced by: Hauri
Seconded by: Needle

WHEREAS, County Airport Land Use Commissions (ALUCs) were established pursuant to the State ALUC law (Public Utilities Code Article 3.5, State Aeronautics Act, Section 21661.5, Section 21670 et seq., and Government Code Section 65302.3 et seq.) to protect the public health, safety, and welfare by promoting orderly expansion of airports and adoption of land use measures by local public agencies to minimize exposure to excessive noise and safety hazards near airports, and

WHEREAS, state law authorizes ALUCs to coordinate planning at the state, regional and local levels; to prepare and adopt airport land use plans; and to review and make recommendations concerning specified plans, regulations and other actions of local agencies and airport operators including General and Specific Plan amendments, adoption of a Zoning Ordinance or Rezoning, adoption of Building Regulations, revision of Airport Master Plans, and approval of plans to construct a new airport/heliport, and

WHEREAS, Tierra Energy is proposing to develop the Eastshore Energy Center that would be a nominal megawatt, gas-fired power plant, with 70-foot towers that would produce high-velocity thermal plumes in excess of 4.3 meters per second (m/s), and

WHEREAS, the power plant would generate invisible high-velocity, high-heat thermal plumes in the Hayward Airport airspace, and

WHEREAS, the Eastshore Energy Center project would be located 1 mile from the Hayward Executive Airport within the Airport Influence Area (AIA) for the airport as defined by the Airport Land Use Commission (ALUC) of Alameda County, and

WHEREAS, California Energy Commission (CEC) staff have published a Preliminary Staff Assessment on potential impacts to Hayward Airport operations which concluded that the thermal plumes from the towers will disturb airspace stability to 500 feet above ground level (AGL), and

WHEREAS, the CEC staff has asked the ALUC to provide an advisory determination of the project's compatibility with the Hayward Executive Airport operations, and

WHEREAS, The 2002 Hayward Airport Master Plan forecasts an increase in total general aviation operations of approximately 3,350 flights per year, or 280 flights per month between 2010 and 2020 over current operation levels, and

WHEREAS, the expected increase in flight operations for the Hayward Airport represents an increase in aircraft overflight of the thermal plumes to be generated by the proposed Eastshore Energy Center project, and

WHEREAS, the airspace in the vicinity of the Hayward Airport is already restricted due to Noise Abatement Flight Procedures, and the National Security NOTAM requesting pilots to

avoid overflight of power plants that will be in effect with the approved Russell City Energy Center (RCEC) project that is also within a mile and a half of the Hayward Executive Airport

NOW THEREFORE BE IT RESOLVED that the Airport Land Use Commission of Alameda County discussed their concerns regarding thermal plumes of the proposed Eastshore Energy Center project relative to aviation safety at the Hayward Executive Airport and makes the following finding:

1. The Commission recommends an alternate site for the proposed project outside of the Airport Influence Area for the Hayward Executive Airport.

ADOPTED BY THE FOLLOWING VOTE:

AYES: HAURI, GROSSMAN, PEREIRA, NEEDLE, MORRIS

NOES: NONE

ABSENT: LOCKHART, KAMENA

EXCUSED: LOCKHART

ABSTAINED: NONE

SIGNED:

DATE:

STEVE GROSSMAN
CHAIR, ALAMEDA COUNTY AIRPORT LAND USE COMMISSION

CHRIS BAZAR, ADMINISTRATIVE OFFICER
ALAMEDA COUNTY AIRPORT LAND USE COMMISSION

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

APPLICATION FOR CERTIFICATION
FOR THE EASTSHORE ENERGY CENTER
IN CITY OF HAYWARD
BY TIERRA ENERGY

Docket No. 06-AFC-6

PROOF OF SERVICE
(Revised 10/12/2007)

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 06-AFC-6
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

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Susan Gefter, Hearing Officer
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Bill Pfanner, Project Manager
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Caryn Holmes, Staff Counsel
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Public Adviser
pao@energy.state.ca.us

DECLARATION OF SERVICE

I, Dora Gomez, declare that on October 29, 2007, I deposited copies of the attached Resolution 02-2007 – At a meeting held October 17, 2007 for Eastshore (06-AFC-6) in the United States mail at Sacramento with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.


Dora Gomez

Exhibit for the Eastshore Energy Center Evidentiary Hearing

Exhibit 203: Letter from Gary Cathey, Chief, Office of Airports, California Department of Transportation, Division of Aeronautics, regarding the Eastshore Energy Center project.

Dated: November 1, 2007.

Docketed: November 5, 2007.

Sponsored by: Energy Commission staff.

Received into evidence: December 18, 2007.

DEPARTMENT OF TRANSPORTATION
DIVISION OF AERONAUTICS - M.S.#40
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*Plus your power!
 De energy @calnet!*

November 1, 2007

Mr. Bill Pfanner, Project Manager
 California Energy Commission
 1516 Ninth Street
 Sacramento, CA 95814-5504

DOCKET	
06-AFC-6	
DATE	NOV 0 1 2007
REC'D.	NOV 0 5 2007

Dear Mr. Pfanner:

The California Department of Transportation (Department), Division of Aeronautics has reviewed the proposed establishment of the East Shore Energy Center (ESEC) located in the City of Hayward. As previously stated, the Department supports projects that improve mobility or provide a net gain to the people of California. Providing clean, affordable, and efficient energy certainly qualifies. We are very concerned that the proposed creation of another power plant, and the associated high velocity thermal plumes within the traffic pattern zone buffer area of the Hayward Executive Airport (HWD), would compound and magnify the problems created by the approval of the Russell City Energy Center (RCCE). These two facilities would be located only a short distance away from each other. Our concerns with the proposed RCCE as stipulated in our letter (enclosed) dated July 17, 2007, remain unchanged. The potential hazards to navigable airspace created by the construction of this facility revolve primarily around the proximity of the power plant relative to Runway 10R/28L at HWD.

We feel the peak centerline velocities emitted from the proposed plant must be thoroughly studied and that their effects upon low flying aircraft must be evaluated. As you know, the traffic pattern altitude for HWD is only 600 feet Above Ground Level. We do not believe that the combined effects of thermal plumes created by two proposed power plants can be mitigated to the degree that flight safety would not be compromised. We do not agree that the recommended mitigation measures for RCCE are satisfactory for ESEC, as this would only further restrict a pilot's ability to maneuver an aircraft while flying to or from the airport. Aircraft pilots should not be subjugated to avoid flying in areas while configuring an aircraft for landing at or departing the airport. We support the relocation of the plant at a sufficient distance that would not negatively impair a pilot's ability to control or maneuver his/her aircraft.

"Caltrans improves mobility across California"

PROOF OF SERVICE (REVISED 10/12/07) FILED WITH
 ORIGINAL MAILED FROM SACRAMENTO ON 11/21/07

Mr. Bill Pfanner
November 1, 2007
Page 2

As previously stated, we strongly recommend that the California Energy Commission (Commission) consider permitting future power generating facilities at locations at least two to three miles from airports, and even greater distances when aligned with runways and instrument approaches. The Department appreciates the opportunity to comment on this proposal, and looks forward to working with the Commission in ensuring safe and efficient use of California resources.

Sincerely,



**GARY CATHEY, Chief
Office of Airports**

**c: Brent Shiner, Manager, Hayward Executive Airport
FAA, Burlingame, SFO-677**

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*Plan your journey
 Be energy efficient!*

July 18, 2007

Mr. James S. Adams, MA
 Environmental Office, MS 40
 California Energy Commission
 1515 9th Street
 Sacramento, CA 95814

Dear Mr. Adams:

We reviewed several documents related to the proposed Russell City Energy Center (RCEC) and have the following comments:

1. The traffic pattern altitude (TPA) for Runway 10R/28L at Hayward Executive Airport (HWEA) is 630' above Mean Sea Level (MSL).
2. The proposed RCEC is located about 1.5 nm south of and perpendicular to the approach end of Runway 10R/28L.
3. The location of the proposed power plant is within the lateral limits of Class D airspace for Hayward Executive Airport. Two-way radio contact must be established with the Air Traffic Control (ATC) facility (i.e. tower) providing ATC services prior to entry. The airspace is restricted from the surface up to but not including 1500' MSL. ATC typically expects aircraft to be at TPA *prior to entering* the traffic pattern.
4. The location of the proposed power plant is below but within the lateral limits of Class C airspace for Oakland International Airport. Two-way radio contact must be established with the ATC facility (i.e. tower) providing ATC services and an operable Mode C radar beacon transponder is required prior to entry. The airspace is restricted from 1500' MSL up to but not including 3000' MSL.
5. The location of the proposed power plant is below but within the lateral limits of Class B airspace for San Francisco International Airport. An ATC clearance is required to enter and operate within this area. The airspace is restricted from the 3000' MSL up to 10,000' MSL.
6. The location of the proposed power plant is about 5.5 nm from the approach end of Runway 29 at Oakland International Airport. An aircraft on the Instrument Landing System (ILS) glide slope to Runway 29 would be at approximate elevation of 1833 feet MSL.
7. The California Energy Commission (CEC) Staff Report titled "RCEC Staff Assessment, Part 1 & Part 2 Combined", Executive Summary states in part that:
 - Page 4.10-10: "The City of Hayward has provided staff with aircraft tracking diagrams for the month of April 2007 that show over 40 aircraft (including single engine aircraft and Helicopters) flew over or within 150 horizontal meters (480 feet) of the RCEC site. Flight elevations ranged from 470 feet above ground level (AGL) to 1,000 feet AGL."
 - Page 4.10-9: "aviation authorities have established that an exhaust plume with a vertical velocity in excess of 4.3 meters per second (m/s) may cause damage to an aircraft airframe or upset an aircraft when flying at low levels"....

Mr. James S. Adams, MA
July 18, 2007
Page 2

- Page 4.10-11: "Staff has applied the 4.3 m/s criterion as a minimum threshold determination for a potential aviation safety hazard on aircraft over a plume generating power plant."
 - Page 4.10-11, Table 4: shows 4.49 m/s velocity at 900 feet over the gas turbine and 4.44 m/s at 1,000 feet over the cooling towers.
8. Although both FAA Aeronautical Study No.s 2007-AWP-1245-OE and -1246-OE conclude that the proposed structure "... would not be a hazard to air navigation...", neither study discussed if the thermal effects from the plumes (turbulence and decreased visibility) was specifically evaluated in the analysis process. The submittal information contained in the Obstruction Evaluation/Airport Airspace Analysis database does not provide sufficient information regarding the effects of plume velocities for evaluation purposes. We suspected that only the physical exhaust stack structure(s) themselves were considered, not the associated plumes generated when the power plant is in operation. We confirmed this to be the case in a conversation with the FAA Airspace Determination Specialist on July 17, 2007.
9. FAA Safety Study Report titled "Safety Risk Analysis of Aircraft Overflight of Industrial Exhaust Plumes" (DOT-FAA-APR-420-06-1) dated JAN 2006 states in part that historically, the number of accidents due to aircraft overflying exhaust stacks is "deemed acceptable without restriction, limitation, or further mitigation" (pg. iv, P4, S2). However, to minimize the hazards of *low level flight above exhaust gas stacks*, it also recommends several amendments to the following FAA documents: Aeronautical Information Manual (AIM), Airport/Facility Directory, FAA Order 7460.2, and Advisory Circular 70/7460-2K - "Proposed Construction of Objects That May Affect Navigable Airspace". In part, the recommendations state that the AIM should be amended to read: "...overflight at less than 1000 feet vertically above plume generating industrial sites should be avoided". It also states that FAA Order 7400.2 should be amended to "consider a plume generating facility as a hazard to air navigation when expected flight paths pass less than 1000 feet above the top of the object (i.e. the exhaust stacks)". It does not appear that this recommended policy change was incorporated into the current airspace determination process.

Therefore, given the above, we share the concerns of the California Energy Commission regarding the safety of low-level flight at traffic pattern altitude over the proposed RCEC power plant near Hayward Executive Airport, California.

Sincerely,

Original Signed by

GARY CATHEY, Chief
Office of Airports

c: FAA SFO ADO

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

APPLICATION FOR CERTIFICATION
FOR THE EASTSHORE ENERGY CENTER
IN CITY OF HAYWARD
BY TIERRA ENERGY

Docket No. 06-AFC-6

PROOF OF SERVICE
(Revised 10/12/2007)

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 06-AFC-6
1516 Ninth Street, MS-4
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Bill Pfanner, Project Manager
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Caryn Holmes, Staff Counsel
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Public Adviser
pao@energy.state.ca.us

DECLARATION OF SERVICE

I, April Esau, declare that on November 5, 2007, I deposited copies of the attached Comments of the California Department of Transportation on the Eastshore Energy Center in the United States mail at Sacramento, CA with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.


April Esau

Exhibit for the Eastshore Energy Center Evidentiary Hearing

Exhibit 204: Letter from Joseph Rodriguez, Supervisor, Environmental Planning and Compliance Section, Western-Pacific Region, Airports Division, regarding the Eastshore Energy Center, dated October 9, 2007.

Dated: October 9, 2007.

Docketed: October 12, 2007.

Sponsored by: Energy Commission staff.

Received into evidence: December 18, 2007.



U.S Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
Airports Division

Airports District Office
831 Milton Road, Room 210
Burlingame, CA 94010

October 9, 2007

Mr. Bill Pfanner
Project Manager
State of California
California Energy Commission
Energy Facility Siting Division
1516 9th Street, MS 40
Sacramento, CA 95814-5504

DOCKET	
08-AFC-6	
DATE	OCT 09 2007
RECD.	OCT 12 2007

Dear Mr. Adams:

Re: August 23, 2007 Request for Comments on the Eastshore Energy Center, 70-foot Above Ground Level Exhaust Stacks, Hayward, CA

Your office has requested Federal Aviation Administration (FAA) comments as to potential airspace impacts and airport land use compatibility concerns for the proposed Eastshore Energy Center (EEC). In your letter you provided information that we consider pertinent to the airport land use compatibility evaluation of the Hayward Executive Airport (HWD). The EEC would be located within the traffic pattern for Runway 10R/28L. The published traffic pattern altitude is 600 feet for Runway 10R/28L.

In a previous letter the California Energy Commission (CEC) requested our comments regarding the proposed construction of the Russell City Energy Center (RCEC). Our July 18, 2007 letter included recommendations for mitigation to reduce impacts to the navigable airspace due to the proposed construction of the RCEC.

We note for your administrative record that the FAA has completed a prior aeronautical study for the EEC, airspace case number 2007-AWP-1614-OE, based upon the requirements established under 49 U.S.C., Section 44718, Title 14 of the Code of Federal Regulations, Part 77, Objects Affecting the Navigable Airspace. The FAA issued a "Determination of No Hazard to Air Navigation" letter to the project proponent on May 17, 2007. The FAA safety study report, *Safety Risk Analysis of Aircraft Overflight of Industrial Exhaust Plumes*, (DOT-FAA-AFS-420-06-1), included in your list of references is considered to be advisory information. The report contains recommendations for changes to FAA Order 7400.2E, *Procedures for Handling Airspace Matters*, regarding the effects of industrial plumes that have not yet been implemented for Part 77 obstruction evaluations.

The Safety Risk Analysis (SRA) study on industrial exhaust plumes (DOT-FAA-AFS-420-06-1) defined the risk of an accident or incident associated with a small aircraft flight through a plume to be acceptably low. To further reduce the risk, the SRA recommended that pilots avoid overflight of plumes at less than 1,000 feet above the site. It should be noted that the SRA is a statistical analysis of accident and incident databases. It is not based on actual flight

tests. The risk to an aircraft flying through a plume is low but not nonexistent.

The CEC approved the RCEC proposal at its September 26th hearing. The primary mitigation for the RCEC location near the Hayward Executive Airport is that pilots are expected to see and avoid the site when operating below 1,000 feet above the site. The EEC facility would require the same mitigation. The cumulative affect of both facilities within the confines of the Category B VFR airport traffic pattern and the VFR arrival and departure area would make the mitigation impractical. Due to the low visual affects of the RCEC and Eastshore plumes, pilots would be required to divert their attention from the traffic pattern and safe operation of the aircraft to acquire visual sighting of both facilities on the ground, then maneuver the aircraft around both plumes. The mitigation would be unreasonable and in some cases unattainable.

We concur in your assessment that effective enforcement of mitigation measures to reduce impacts from the EEC exhaust plumes to less than significant levels will be difficult to implement when combined with the RCEC mitigation. The potential for constraints to airport operations create a tangible impact on the future use of the Hayward Executive Airport if the facility is approved at this location.

Thank you for allowing the FAA to provide comments on your staff assessment study. If you have additional question please contact me at (650) 876-2778, extension 610.

Sincerely,



Joseph R. Rodriguez
Supervisor, Environmental Planning and Compliance Section

CC: Gary Cathey, Caltrans Division of Aeronautics
Cindy Horvath, Alameda Co. ALUC
Robert Baumann, City of Hayward

Exhibit for the Eastshore Energy Center Evidentiary Hearing

Exhibit 205: Port of Oakland Letter comments on the Preliminary Staff Assessment for the Eastshore Energy Center.

Dated: September 14, 2007.

Docketed: September 17, 2007.

Sponsored by: Energy Commission staff.

Received into evidence: December 18, 2007.



September 14, 2007

Mr. Bill Pfanner, Project Manager
California Energy Commission
1518 Ninth Street
Sacramento, CA 95814

bpfanner@energy.state.ca.us

DOCKET	
06-AFC-6	
DATE	SEP 14 2007
RECD.	SEP 17 2007

Dear Mr. Pfanner:

**SUBJECT: COMMENT LETTER – PRELIMINARY STAFF ASSESSMENT (PSA)
EASTSHORE ENERGY CENTER, APPLICATION FOR CERTIFICATION (06-
AFC-6), CITY OF HAYWARD**

Thank you for the opportunity to provide comments on the subject Preliminary Site Assessment (PSA). The proposed Eastshore project is covered by the California Environmental Quality Act (CEQA) Guidelines, Article 17, Exemption for Certified State Regulatory Programs, Sections 15250, 15251, and 15252. Public Resources Code (PRC), Section 21080.5 states, additionally, that regulatory programs implemented by state agencies shall be certified by the Secretary for Resources as being exempt from requirements for preparing Environmental Impact Reports, Negative Declarations, and Initial Studies, if the Secretary finds that the program meets the criteria contained in the PRC. The State Energy Resources Conservation and Development Commission's power plant site certification program meets the requirements of PRC, Sec. 21080.5.

The PSA is the California Energy Commission's staff independent evaluation of the proposed Eastshore Energy Center (Eastshore). Commission staff concludes that Eastshore will result in significant adverse indirect environmental impacts to Land Use and Traffic/Transportation. Eastshore would result in these significant impacts even if the Commission adopts all of the proposed mitigation measures and conditions for certification and the project proponent (Calpine) implements those measures. Port staff is concerned that Eastshore may result in impacts on OAK operations; and that it will contribute to the cumulative impacts on future air traffic conditions, i.e. traffic patterns in the surrounding airspace.

Background

The Port of Oakland (Port) is a public agency that comprises a Maritime port (marine terminals), commercial real estate areas located along the eastern shore of San Francisco Bay, the Oakland International Airport (OAK). The site for Eastshore is located approximately 12 miles southeast of OAK. Eastshore would be designed to respond to unexpected changes in regional demands from higher than expected summer temperatures, other facilities tripping off-line or sudden changes in renewable power generation. We understand that the purpose of constructing Eastshore is to provide a reliable energy source for the greater Bay Area and

530 Water Street ■ Jack London Square ■ P.O. Box 2064 ■ Oakland, California 94604-2064
Telephone: (510) 627-1100 ■ Facsimile: (510) 627-1826 ■ Web Page: www.portofoakland.com

support to the regional transmission system when there is no other generation available during peak demand hours.

The proposed Eastshore Energy Center is a facility that would cover 1.59 acres of a 6.22-acre industrial site in Hayward. Eastshore would be permitted to operate 4,000 hours annually. It would comprise: natural gas-fired, spark-ignited reciprocating engine-generator sets, modern air pollution control systems (i.e., controls for nitrogen oxides, carbon monoxide, and precursor organic compounds), 14 emissions stacks (70-foot tall), a main building/structure, security fencing, cooling system, ammonia storage tanks, raw water storage tank, emergency generator, water service connections, transformers, electrical transmission line, natural gas line, and construction lay-down and parking area.

Impact Analysis

Eastshore would generate thermal plumes at or above 500 feet above ground level. It should be noted that the recently-approved Russell City Center cooling tower will generate thermal plumes at 600 feet to 800 feet above ground level thus presenting a hazard to single engine aircraft flying below 1,000 feet. The combined effect of locating/siting two energy centers (nearby Russell City Energy Center and Eastshore) within the Hayward airspace increases the potential for serious impairment to the utility of the airport. The centers could interfere with or "unduly restrict" existing or future use of Hayward Executive Airport. Having two energy centers within the Hayward airspace would likely result in significant adverse indirect and cumulative impacts to air traffic patterns and the utility of the Hayward Executive Airport and the surrounding airspace.

Comment 1: Eastshore would result in these significant impacts even if the Commission adopts all of the proposed mitigation measures and conditions for certification and the project proponent (Calpine) implements those measures. CEQA requires decision-making agencies to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks. If the Commission approves Eastshore, which results in significant effects that are not avoided, it must state in writing the specific reasons to support approving the proposed project. This written statement, a Statement of Overriding Considerations must be adopted if the Commission approves Eastshore, pursuant to CEQA Guidelines, Section 15093.

Comment 2: The analysis in the PSA needs to discuss what the cumulative effects would be to OAK operations. How would changes to Hayward's air traffic patterns affect traffic at OAK, particularly the threshold for Runway 29?

Comment 3: What are the regional effects if air traffic has to be redirected as a result of not only one energy center (Eastshore) but two within the Hayward airspace? Will shifts in air traffic at Hayward affect OAK?

Comment 4: Commission staff states that it can not recommend certifying Eastshore without comment from the Federal Aviation Administration, California Department of Transportation Division of Aeronautics, and the Alameda County Airport Land Use Commission regarding airport operations and safety issues. Port staff believes that input from these agencies is critical

Letter: Mr. Bill Pfanner, Project Manager
Re: Comment Letter – Preliminary Staff Assessment
Eastshore Energy Center, Application for Certification

September 14, 2007
Page 3

to a complete impact analysis. The Commission should not make its decision without their participation.

Comment 5: Port staff supports locating the proposed project to an alternate site where it would not result in impacts on air traffic patterns.

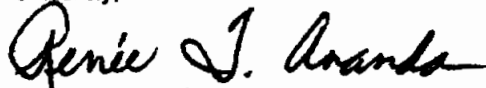
Comment 6: Port staff supports the Energy Commission staff's five conditions of certification (TRANS-1 through TRANS-5) to mitigate potential impacts, to the extent feasible, should the California Energy Commission grant certification.

Comment 7: Port staff recommends that the Energy Commission, along with the FAA and the California Department of Transportation Division of Aeronautics pursue developing policies and or guidelines that specifically address the issue of constructing energy centers in proximity to airports or within airspace. Guidelines or policies that restrict constructing energy centers within a specified radius of an operating airport would reduce the potential to have a conflict between airport use and the hazards that thermal plumes present. The Energy Commission and its staff could review and process certifications for similar projects in a standardized / consistent framework rather than a project-by-project basis.

Comment 8: The analysis of biological impacts that would result from nitrogen emissions needs to be completed. There is no determination on whether or not Eastshore would result in impacts to sensitive species and or habitat.

Please contact me at (510) 627-1351 regarding the Port's comments on the Proposed Eastshore Energy Center Application of Certification.

Sincerely,



Renée T. Ananda
Port Associate Environmental Planner
Port of Oakland
Environmental Planning, Permitting, & Compliance Dept.

cc: Steven Grossman, Director of Aviation, Aviation Administration
Deborah Ale-Flint, Assistant Director of Aviation, South Airport Administration
Douglas Mansel, Airport Operations Superintendent-Airside, Airport Operations Airside
Cindy Horvath, Senior Transportation Planner, Airport Land Use Commission
Richard Sinkoff, Manager, Environmental Planning & Permitting, Port of Oakland
Diane Heinze, Environmental Assessment Supervisor, Port of Oakland
Environmental Planning, Permitting, & Compliance Department Chron. File

Exhibit for the Eastshore Energy Center Evidentiary Hearing

Exhibit 206: E-mail from David Butterfield, Flight Standards, Western Region, to Eric Knight, California Energy Commission, dated October 16, 2007.

Dated: October 16, 2007.

Docketed: October 17, 2007.

Sponsored by: Energy Commission staff.

Received into evidence: December 18, 2007.

Bill Pfanner - Fwd: Re: FAA Comments on Eastshore Energy Center

From: Eric Knight
To: Bill Pfanner
Date: 10/16/2007 12:10 PM
Subject: Fwd: Re: FAA Comments on Eastshore Energy Center
CC: Caryn Holmes
Attachments: Caryn Holmes

DOCKET	
DATE	OCT 16 2007
R	OCT 17 2007

>>> <David.Butterfield@faa.gov> 10/10/2007 10:42 AM >>>

Eric,

I had a discussion with FAA headquarters on the October 4th regarding the TFR NOTAM for power plants and airport traffic patterns. It was reconfirmed that it is FAA policy that the TFR NOTAM does not apply to aircraft landing and departing from an airport. This applies to existing and proposed power plants. The intent is to prevent pilots from loitering over power plants. Aircraft in a traffic pattern are not considered to be loitering, no matter how many touch and goes they may make.

If you use the TFR in the CEC's position regarding the EEC proposal, the FAA will not be able to support the argument if challenged by the proponent. We removed our original concern over the TFR NOTAM in our September 18th letter to the CEC regarding the RCEC proposal, and we made no reference to it in the San Francisco ADO's letter of October 9th to the CEC regarding the EEC proposal.

David Butterfield
Flight Standards
AWO/AWP-230.9
310.725.7230
310.725.6857 FAX

"Eric Knight" <Eknight@energy.state.ca.us>

10/02/2007 02:20 PM

To: David Butterfield/AWP/FAA@FAA
cc: "Bill Pfanner" <Bpfanner@energy.state.ca.us>, "Shaelyn Strattan" <Mstratte@energy.state.ca.us>, "Paul Richins" <Prichins@energy.state.ca.us>

Subject: FAA Comments on Eastshore Energy Center

PROOF OF SERVICE (REVISED 9/28/07) FILED WITH ORIGINAL MAILED FROM SACRAMENTO ON 10/17/07

David,

Thank you for your return call last week that you will be coordinating with George Aiken

your review of the proposed Russell City Energy Center. In addition, CEC staff requests that the multi-divisional team that you are assembling at the FAA also review the proposed EEC and provide comment in this licensing proceeding. On August 17th CEC staff published its Preliminary Staff Assessment (PSA) on the EEC. The PSA and other relevant documents can be viewed and/or downloaded from the CEC's website at: <http://www.energy.ca.gov/sitingcases/eastshore/documents/index.html>. The aviation issues are addressed in the Land Use and Traffic/Transportation sections of the PSA. The attached letter provides a summary of our conclusions regarding this project's impact on air traffic safety and the utility of the Hayward airport and its airspace. Staff is now preparing our Final Staff Assessment (FSA) on the EEC, which will serve as staff's testimony for the evidentiary hearings that will be held later this year. We request that your team provide comments on the EEC by October 8, 2007, which would allow us time to incorporate the FAA's input into our FSA without significantly delaying publication of the document.

If you have any questions about the Land Use and Traffic sections of the PSA please contact Shaelyn Strattan of my staff at (916) 651-0966 or by email at mstratta@energy.state.ca.us. If you have concerns about the schedule for the EEC please contact me via phone or email.

Sincerely,

Eric Knight

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

APPLICATION FOR CERTIFICATION
FOR THE EASTSHORE ENERGY CENTER
IN CITY OF HAYWARD
BY TIERRA ENERGY

Docket No. 06-AFC-6

PROOF OF SERVICE
(Revised 09/28/2007)

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 06-AFC-6
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

APPLICANT

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710 S. Pearl Street, Suite A
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greg.trewitt@tierraenergy.com

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hmrenergy@msn.com

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jluckhardt@downeybrand.com

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jbyron@energy.state.ca.us

John L. Geesman, Associate Member
jgeesman@energy.state.ca.us

Susan Gefter, Hearing Officer
sgefter@energy.state.ca.us

Bill Pfanner, Project Manager
bpfanner@energy.state.ca.us

Caryn Holmes, Staff Counsel
cholmes@energy.state.ca.us

Public Adviser
pao@energy.state.ca.us

DECLARATION OF SERVICE

I, Maria Sergoyan, declare that on October 17, 2007, I deposited copies of the attached FAA Comments on Eastshore Energy Center in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.


Maria Sergoyan

Exhibit for the Eastshore Energy Center Evidentiary Hearing

Exhibit 207: Letter from Gregory T. Jones, City of Hayward
City Manager, Comments on the Eastshore Preliminary Staff
Assessment.

Dated: October 9, 2007.

Docketed: October 10, 2007.

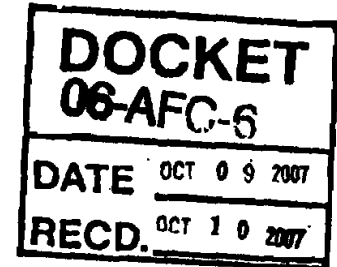
Sponsored by: Energy Commission staff.

Received into evidence: December 18, 2007.


CITY OF
HAYWARD
HEART OF THE BAY

October 9, 2007

Mr. Bill Pfanner
Project Manager
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814



Dear Mr. Pfanner:

Attached please find the City of Hayward staff comments on the draft California Energy Commission staff Preliminary Assessment related to the proposed East Shore power plant that would be located here in our fine city.

We have serious, unanswered concerns related to the consideration of a second power production facility within the City of Hayward. There are a number of areas noted in the attached technical analysis that should serve to convince staff that the construction of the East Shore plant is ill advised, and that staff should recommend rejection of further consideration of the project in Hayward. Of particular concern is staff's continued assertion that the City's own General Plan and Zoning (LORS), neither of which support the proposed use, do not need to be considered in your analysis. Our City Council has taken a strong position on the incompatibility of use issue, and we continue to be perplexed by staff's assertions. Who else is in a more qualified position than we are as to the interpretation and application of our own General Plan policies?

While we appreciate staff's initial indication that they support project rejection due to concerns over aviation related impacts, that rationale does not go far enough in describing the significant detrimental impacts of a second power plant in our city. This is particularly true when locating a plant so near residential neighborhoods and school facilities.

I would like to, however, venture beyond merely the technical analysis and evaluate the project from our community's perspective. Hayward will be doing its part (some would say more than our fair share) to support the generation of much needed power for years to come with the recently approved Russell City Energy Center project. The potential of yet another similar project within the same city impacts our residents in ways that are unacceptable. The impacts on local air quality, for example, which are described as being mitigated by "credits" enjoyed by some other fortunate community, will come at the cost of our own residents' air quality. The "fair share" argument, while perhaps not necessarily supported by scientific argument, certainly should be compelling to staff to seriously look at alternative sites for this power production need, and reject the Hayward East Shore 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

REVISED 9/29/07 FILED WITH

MAILED FROM SACRAMENTO ON 10/10/07

PS

*Mr. Bill Pfanner
Project Manager, CEC
October 9, 2007*

From an environmental perspective, the concentration of power generation is fraught with possible future consequences for those living near such concentrations. We can not stress strongly enough our position that the "co-location" of two plants in our urban community sets a dangerous course for our residents as well as for other communities where the potential for such concentration of facilities has unknown and/or unintended impacts.

Getting back to our General Plan, this is the exact reason the State of California requires each city to have a General Plan, to ensure logical, appropriate land use that recognizes competing interests as well as environmental considerations of the proximate location of various uses. There seems to be no good argument for two power plants in one city. An alternative location should be assessed and recommended to the Commission.

Thank you for the opportunity to comment on your preliminary assessment, and we look forward to staff's support of the City's recommendations in relation to that assessment.

Sincerely,



Gregory T. Jones
City Manager

Copy: Mayor and Council



October 9, 2007

Bill Pfanner
Project Manager
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

Re: City of Hayward Staff Comments on the Preliminary Staff Assessment for the Eastshore Energy Center Project (06-AFC-6)

Dear Mr. Pfanner:

Thank you for the opportunity to comment on the Energy Commission staff's Preliminary Staff Assessment (PSA) for the Eastshore Energy Center. While comments below are of a technical nature in response to the PSA and related analyses, it cannot be overstated that Hayward opposes this second power plant proposed to be located in our city and strongly supports the CEC staff's recommendation for denial. The City Council of Hayward has unanimously determined that the proposed power plant would not be consistent with the Hayward General Plan and Zoning Ordinance provisions.

Air Quality

City staff does not believe that the mitigation measure to utilize emission reduction credits to offset PM10 and other air quality impacts is acceptable, given such ERC's would not mitigate impacts to *local* air quality. The impacts to local air quality are of particular concern, given the proposed location of this plant in relation to residential neighborhoods and schools to the east.

Land Use

Page 4.5-2, last bullet: The conclusion that the "proposed project is consistent with the applicable 2002 General Plan policies and strategies..." directly conflicts with the specific determination of the Hayward City Council, as express in item 4 of the attached Hayward City Council Resolution 07-028. It would seem more appropriate to rely on the local entity's determination regarding consistency with a local general plan.

Page 4.5-8, first full paragraph: It is not accurate to state that the proposed Eastshore Energy Center site is in the western portion of Hayward's Industrial Corridor; in fact, it is in the eastern portion of the Corridor, closer to residential areas to the east. The

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
PLANNING DIVISION

777 B STREET, HAYWARD, CA 94541-8007
TEL: 510/883-4200 • FAX: 510/883-3849 • TDD: 510/247-3340

difference in location of this plant and the Russell City Energy Center in our industrial area is significant, particularly in regards to proximity to residential neighborhoods.

Page 4.5-12, first full paragraph: Hayward's General Plan was updated in March of 2002, not July of 2002 as stated.

Page 4.5-12, third full paragraph: Regarding the Hayward General Plan language that encourages separation of businesses using hazardous materials from residential areas, the PSA analysis ignores the conclusion of the Hayward City Council in determining the inappropriateness of the proposed location of the power plant to residential areas. Also, in citing other existing uses in the area that use hazardous materials, the analysis does not include reference in this paragraph to the discussion in the Hayward General Plan and the City's vision for development in this area regarding transformation of the industrial corridor.

Page 4.5-13: The discussion ignores the specific determination of the Hayward City Council that the proposed power plant at this location is not consistent with the Hayward General Plan. Again, it is appropriate to rely on the determination of the local agency, rather than the Energy Commission staff, in determining consistency with a local general plan.

Also, the conclusion that the proposed plant would not hinder other properties in the area in transitioning to high-tech businesses is speculative. A heavy industrial use at this site could very well hinder transition of other properties in the immediate area, given noise, aesthetic, emergency response and other impacts. As you know, a letter dated September 24, 2007 was submitted to Commissioner Byron from the representative of the adjacent bank to the south, expressing concerns with the proposed plant.

Page 4.5-14, last bullet: For reasons stated herein and in the attachments, staff disagrees with the assessment that the project is consistent with Strategy 2(7) of the Economic Development Chapter of the Hayward General Plan that states, "Preserve and promote the appearance of the Business and Technology Corridor to encourage quality development." Also, it is not accurate to characterize the location of the proposed plant as sited in "the center of the western section of the Industrial Corridor." The location is in the eastern portion of the Corridor, which abuts residential neighborhoods to the east. Finally, the text that references the adjacent use to the north that utilizes hazardous materials does not include reference to the previously referenced adjacent bank to the south, which does not use hazardous materials.

Page 4.5-15, last sentence under item 3: As stated above, it is appropriate to rely on the determination of the local agency, rather than the Energy Commission staff, in determining consistency with a local general plan.

Page 4.5-17, top of page, third full paragraph: The determination by the Hayward City Council as stated in Resolution 01-104 is that the previously proposed Russell City Energy Center was consistent with the Zoning Ordinance, not power plants in general, as

stated in the assessment. Such determination was made with consideration of the location of that proposal.

Pages 4.5-18 to 4.5-20, CUP findings: Information/analysis regarding the inability to make required findings to support a conditional use permit was provided previously in a letter from me dated April 19, 2007 (copy attached). City staff simply disagrees with the CBC staff that some of those findings can be made. On page 4.5-19, second full paragraph, staff disagrees that the heights of the 70-foot tall stacks would be comparable with other uses within 0.5 miles. Also, reference to facilities further west in the industrial area that have or will have heights that exceed those of the Eastshore Energy Center are not relevant in City staff's opinion, given they are located in the western portion of the industrial corridor, where heavier industrial uses are common and are less visible from residential areas.

In summary, City staff concurs that all required findings to justify a conditional use permit cannot be made.

Page 4.5-33, last bullet: For reasons previously stated, City staff does not agree with the conclusion the proposed Eastshore Energy Center would be consistent with the Hayward General Plan policies.

Visual Resources

Page 4.12-29, VIS-8 (Outdoor Storage): Minor open storage should be defined in accordance with the Hayward Zoning Ordinance (no more than 10 percent of open yard areas).

On pages 4.12-11 and 4.12-12, the City takes exception to the determination of minimal impact of new 80 foot 115 KV poles interspersed with existing 12KV poles along Clawiter Road, a major access point to our industrial area. During earlier presentations on the project, we were lead to believe the new metal poles would be erected and carry both lines so that at least one set of poles would be removed. The proponent's attachment, BIO-1 to their September 19 letter, makes it clear this is not the case. An accurate visual presentation of what this will look like should be required as well as an explanation of why there has to be multiple poles.

Worker Safety

Worker Safety -6: Attached is the list of Opticom installations and upgrades that would be requested by the Hayward Fire Department in connection with providing emergency services to the Eastshore Energy Center from City Fire Stations 1, 2, 4, and 6.

The additions include four basic installations on Industrial, one on West Winton, one relay on Harder Road, and hard wire interconnecting of four intersections on 'D' Street and Winton.

The total cost for the above is estimated at \$122,000. In addition, an annual allotment of \$25,000 would be requested for ongoing maintenance costs for these intersections and others along the response routes.

Alternatives

While the Alternatives sites analysis does include other sites outside the City of Hayward, City staff has the following concerns:

1. The basic objectives of the project indicate the desire to deliver electricity to the PG&E Eastshore substation; yet, it is not clear to staff why proximity to other substations in the Bay area, including the San Mateo substation, could not also be considered (see bottom of page 6-4 in the PSA). Such consideration may involve additional costs, but are worthy of consideration, especially since Hayward is being proposed to be burdened with two power plants.
2. Regarding criteria identified on page 6-4, criterion 2c indicates one criterion is to analyze sites that are not "adjacent" to moderate or high density residential areas or to sensitive receptors." Given air quality, noise and other impacts may affect residential or sensitive receptor sites that are not just adjacent to potential plant sites, it is appropriate to include a wider area in such analysis or criterion.
3. Middle of page 6-6 (Staff Alternative Site A in Fremont), further explanation as to why such site is not available needs to be included.

Hayward agrees with the CEC staff that there are other alternative siting locations that are environmentally superior and would reduce the impact to the Hayward area (see page 6-16, where CEC staff indicates that Staff Alternative Site D in Fremont reduces the significant impacts of the Eastshore project and environmental impacts associated with that alternative site appear less than for the other alternatives). Alternative sites need to be further analyzed to reduce impacts as noted in Congressman Pete Stark's letter regarding why Hayward has been "targeted to shoulder the environmental burden of multiple power plants"

In summary, while we strongly support CEC staff's recommendation for denial of the project, we do not find the arguments used are strong enough and are not based on the most significant impacts; specifically, regarding land use and applicable City of Hayward laws, ordinances, regulations, and standards (LORS). The cumulative impacts of two power plants on the citizens of Hayward is not adequately analyzed, nor does the alternatives section sufficiently analyze the reasons why other sites would not be sufficient, including those that are not in proximity to PG&E's Eastshore substation.

Thank you for the opportunity to comment on the PSA. Please let me know if you have any comments or questions (510-583-4004).

Sincerely,

A handwritten signature in black ink that reads "David Rizk". The signature is written in a cursive, slightly slanted style.

**David Rizk, AICP
Planning Manager**

Attachments

**cc: Greg Jones, City Manager
Fran David, Assistant City Manager
Robert Bauman, Public Works Director
Larry Arfsten, Fire Chief
Susan J. Daluddung, CED Director**

HAYWARD CITY COUNCIL

RESOLUTION NO. 07-028

Introduced by Council Member Halliday

RESOLUTION FINDING THAT THE EASTSHORE ENERGY CENTER PROPOSED AT 25101 CLAWITER ROAD IS NOT CONSISTENT WITH THE GENERAL PLAN AND INDUSTRIAL ZONING DISTRICT

WHEREAS, Eastshore Energy, LLC has made a request for the City of Hayward to make a determination that a proposed 115 megawatt power plant, to be located at 25101 Clawiter Road, is consistent with General Plan policies and the Industrial Zoning District; and

WHEREAS, the authority to license power plants in California that generate more than 50 megawatts of power rests with the California Energy Commission (CEC); the CEC is currently processing an application for this power plant and is scheduled to make a final decision in the fall of 2007; and

WHEREAS, the CEC must determine that a project conforms to Local Ordinances Regulations and Standards (LORS). A power plant is not a listed use within the Hayward Industrial Zoning District, and the Zoning Ordinance indicates that when a use is not specifically listed, it shall be assumed that such uses are prohibited unless it is determined ...that the use is similar to and not more objectionable or intensive than the uses listed; and

WHEREAS, it is staff's opinion that the proposed power plant is not consistent with the purpose of the General Plan and Industrial Zoning District.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby finds and determines:

1. The proposed power plant is not consistent with the purpose of the Industrial (I) Zoning District in that it would result in a facility that would not promote a desirable and attractive working environment with a minimum of detriment to surrounding properties, because it would have the potential to generate air quality impacts related to particulate matter and nitrogen oxides emissions and would entail fourteen 70-foot tall venting stacks, which would not be compatible with the heights of other structures in the vicinity;
2. The proposed power plant would impair the character and integrity of the zoning district and surrounding area with the introduction of highly visible 70-foot tall

venting stacks, which would be seen from residential areas to the east and would be incompatible with the heights of existing facilities in the area;

3. The proposed power plant would be detrimental to the public health, safety, or general welfare due to the potential for air quality and hazardous materials impacts related to the use and transport of aqueous ammonia and emission of particulate matter and nitrogen oxides; and
4. The proposed power plant would not be in harmony with applicable General Plan policies that seek to "promote and protect the appearance of the Business and Technology Corridor to encourage quality development" in that the 6.2-acre site proposed for the power plant is near the eastern edge of the industrial area of the City abutting residential areas that would be more appropriately developed with emerging and higher technology businesses that tend to cluster and generate higher paying jobs. Also, such uses would have higher numbers of employees than the expected 15-20 employees anticipated for operation of the plant, which would be more appropriately served by the direct connection along Chewter Road to State Route 92, an intersection planned for upgrades as stated in the General Plan.

BE IT FURTHER RESOLVED that based upon the forgoing findings, the City Council hereby determines that the proposed power plant is not consistent with the City's General Plan Policies and Industrial Zoning District provisions.

BE IT FURTHER RESOLVED, that the City Council hereby directs staff to communicate the findings and determination contained in this resolution to the California Energy Commission and work with legislators to assure that the proposed project will not adversely impact the citizens of Hayward.

IN COUNCIL, HAYWARD, CALIFORNIA March 13, 2007

ADOPTED BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Rodriguez, Quirk, Halliday, Dowling, Henson
	MAYOR:	Sweeney
NOES:	COUNCIL MEMBERS:	None



DOCKET 06-AFC-8
DATE APR 19 2007
REC'D. APR 23 2007

April 19, 2007

Paul C. Richins
Manager, Environmental Office
Energy Facilities Siting Division
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814-5512

Re: Land Use Issues
Russell City Energy Center and Eastshore Energy Center

Dear Mr. Richins:

Below is information in response to your March 16, 2007 letter to me. In summary, and typical with local agencies, Hayward's laws, ordinances, regulations and statutes entail discretion and judgment. As explained in the following paragraphs, it is the City's position that the Russell City Energy Center is sited in an appropriate location and therefore is determined to be consistent with Hayward's Zoning Ordinance and General Plan and the Eastshore Energy Center, although proposed as a smaller plant, is not.

City of Hayward Land Use Permitting Process

In response to your inquiry, following is a summary of the process that would be required if these plants were processed through the Hayward land use permitting process. As indicated in the City's Industrial Zoning District provisions and since the operation of both plants would exceed stated thresholds for Class "B" hazardous materials as defined in the Hayward Ordinance, they would both be considered uses requiring at least administrative use permits. Additionally, if either plant involved Class "A" hazardous materials (e.g., reactive materials, poisonous or toxic materials, etc.), they would require conditional use permits. So, even though the City determined in 2001 that the Russell City Energy Center was considered a permitted primary use of "Manufacturing" in that the conversion of natural gas by mechanical equipment into electric power constitutes a form of manufacturing, because of the hazardous materials associated with its proposed operation, both it and the Eastshore Energy Center would be considered either administrative or conditional uses that would require certain findings to be made if the City were processing such projects.

The findings required to be made to approve an administrative use are the same as those required to approve a conditional use. Due to the potential for negative impacts, administrative and conditional uses entail consideration of impacts and typically entail conditional approval. In fact, the Hayward Zoning Ordinance indicates that the purpose for requiring administrative or conditional use permit approvals are "to assure certain specified uses are permitted where there is community need, and to assure said uses occur in maximum harmony with the area and in accordance with official City policies." Although administrative uses are typically processed and approved at a staff level, the Planning Director would likely determine that Site Plan Review would also be required and would refer the proposed power plant projects to the Planning Commission for consideration, as allowed by the Hayward Zoning Ordinance. Any determination by the Planning Commission could be called up by a Council member or appealed to the City Council by any interested party.

In order to approve either plant if they were processed by the City, the approving authority in Hayward would be required to make all of the four findings below, which are required to be made in order to approve an administrative or conditional use. Staff's analyses to those four findings for each plant are provided in the preceding paragraphs.

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

The Eastshore plant would be used in periods of high energy demand to supplement power in the San Francisco Bay area. However, as communicated by Hayward residents, City Council members and Planning Commissioners, it is not evident from analysis provided by the Energy Commission staff or information supplied by the applicant that the Eastshore plant is needed at the proposed location to provide the benefits that would otherwise be achieved via location at another site in the south or east Bay near other PG&E substations in the vicinity. The City feels that the process in selecting the proposed Eastshore site, though not under the auspices of the California Energy Commission, was not a public process that entailed adequate public notification and opportunity for input. In summary, the proposed Eastshore plant at the site is not desirable, because the public convenience or welfare to Hayward could be realized via another location in the vicinity.

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

The key words in this finding are "surrounding area." The heights of the stacks at each plant would be significant; though the Russell City Energy Center plant stacks would be in an area that already contains a stack of significant height at the Rohm and Haas chemical plant to the southeast and that is further away from areas visible from residential and public areas.

- c. The proposed use will not be detrimental to the public health, safety, or general welfare; and

Although the Energy Commission staff is addressing local air quality impacts and it may be possible to mitigate air quality impacts to federal and state standards enforced by the Bay Area Air Quality Management District, including utilizing emission reduction credits on a region-wide basis that would not likely lessen impacts locally, both plants would emit pollutants in a region that is designated as a non-attainment area for state ambient air quality standards for particulate matter (PM_{2.5} and PM₁₀) and designated as a marginal -attainment area of the national 8-hour ozone standard. Also, staff is concerned with the cumulative air quality impacts of both plants, given the non-attainment status of certain pollutants in this area. The difference between the two plants in staff's opinion, however, is in the location and proximity of the plants to residential areas and sensitive receptors. Aviation impacts, as you indicate, may also be a concern and are addressed later in this letter. For reasons primarily associated with air quality impacts related to proximity of residential areas, the City would not find that the Eastshore Center would be consistent with this finding.

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

The purpose of the Industrial (I) Zoning District is to provide for and encourage the development of industrial uses in areas suitable for same, and to promote a desirable and attractive working environment with a minimum of detriment to surrounding properties. Also, the purpose of the Hayward Zoning Ordinance is to "promote the public health, safety, general welfare and preserve and enhance the aesthetic quality of the City by providing regulations to ensure an appropriate mix of land uses in an orderly manner." In furtherance of this purpose, the City desires to "achieve a pattern and distribution of land uses which generally retain and enhance established residential neighborhoods, commercial and industrial districts, regional-serving uses, and recreational amenities, allow for the infill and reuse of areas at their prevailing scale and character, ...provide a diversity of areas characterized by differing land use activity, scale and intensity and establish Hayward as a unique and distinctive place in the heart of the San Francisco Bay Area with a high quality of life in an attractive, secure environment for the City's residents and businesses."

The Hayward General Plan contains discussion and policies that encourage the transformation of the Industrial Corridor from a manufacturing and distribution emphasis to more research and development oriented businesses. However, the General Plan also contains discussion that recognizes the importance of separation of potentially-impacting industrial land uses from residential areas:

On the one hand, many of the businesses that use hazardous materials are located in the Industrial Corridor. For example, high-tech businesses such as computer chip manufacturers and, to a lesser extent, some biotech industries, use highly toxic or corrosive gases. These particular classes of

hazardous materials, if not properly stored, handled, and monitored, can pose a threat to the community. The separation of these industrial uses from adjacent residential uses [emphasis added] makes it easier for emergency responders to mitigate and evacuate a hazardous situation. On the other hand, as portions of the Industrial Corridor are developed with more intensive uses, the increase in employee densities may result in a need for child-care facilities in closer proximity to the workforce. Such uses currently are prohibited in the Industrial District due to concerns about safety and land use compatibility. Perhaps there are portions of the Industrial Corridor, such as the newer business parks, where these facilities could be located and pose little or no safety risks.

Furthermore, the General Plan contains the following relevant policy and strategy:

7. *Promote the transition from a manufacturing-based economy to an information-based economy in the industrial areas.*
 1. *Consider adoption of multiple zoning districts that provide for concentration of similar types of uses such as manufacturing, warehouse/distribution, or research and development/office uses.*

While multiple zoning districts have not yet been adopted for the Industrial Corridor as encouraged by the General Plan, the City seeks to concentrate similar types of uses. The City is of the opinion that heavier, potentially more-impacting industrial uses are more appropriate away from residential areas, such as at the end of Enterprise Avenue near the City's wastewater treatment facility, where the Russell City Energy Center is proposed. Also, automobile wrecking yards at the end of Depot Road are adjacent to the Russell City Center site, and the Rohm and Haas chemical plant is located in the area to the southeast of that proposed plant. Conversely, the Eastshore Energy Center site is situated in the eastern portion of the City's Industrial Corridor approximately 1,200 feet away from the nearest residence in an area that contains Life Chiropractic College, a bank (located adjacent and to the south) and a restaurant/café (located adjacent and to the north). The enclosed aerial image shows the vicinity where the two power plants are proposed. Also, your letter indicates that the two power plant sites were "only about 3,000 feet apart." Given that the entire width of the Industrial Zoning District in this area is about 6,500 feet, it is City staff's opinion that 3,000 feet is significant. In summary, due to the proximity of residential areas and location of existing heavy industrial uses, it is staff's opinion that this finding would not be made for the Eastshore Energy Center and would be made for the Russell City Energy Center.

Aviation Impacts

Regarding issues associated with aviation impacts, both energy center sites do fall within the boundaries of the Hayward Airport Airspace Drawing, as shown in the Hayward Executive Airport Master Plan, but neither is in direct alignment of any major approach

routes. Neither do the highest elevations of the stacks exceed the obstacle-free zone height limitations established by the FAA and referred to in Hayward's ordinance. Regarding the issue of exhaust plumes, City staff understands that this is a new issue being addressed by FAA and that the FAA will address this question as part of their FAA Form 7460-1 review, which is appropriate. It is City staff's understanding of the Blythe Airport circumstances that the Blythe plant was in direct line of a runway approach and takeoff zone. Staff believe the orientation and relation of the two plants to the Hayward Executive Airport's approach and takeoff areas are different than is the case in Blythe, but look forward to the FAA's analysis and comment. City staff would expect as noted in the FAA's safety evaluation that there will be recommendations regarding proper notification to pilots and potentially the need to modify the City's broad helicopter approach path from the west. We would also expect that the applicants will be required to fund any bulletins or other processes needed to meet FAA requirements.

Proposed Further Actions Regarding Consistency Determination

As stated previously, staff does not consider the proposed new site for the Russell City Energy Center significantly different than the previously proposed site to warrant further action. (See enclosed aerial). In support of this statement is the fact that on October 11, 2005, the Hayward City Council voted unanimously to enter into an agreement with RCBC-LLC authorizing construction of the Energy Center at the currently proposed location. Such action would not have taken place without a determination that the new location was consistent with local land use regulations. Moreover, I draw your attention to Resolution 05-125, a copy of which is attached, particularly to the final two paragraphs. In the second to the last paragraph, the Council is on record as expressing support for the development and construction of the RCBC at its new location. In the final paragraph, the City Council authorizes the City Manager to take appropriate steps to implement the decision of the City Council.

Conditions and Mitigations Regarding Land Use Impacts

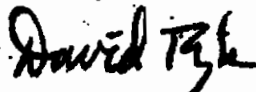
I assume your request for conditions or mitigations to reduce the significance of any potential issues or impacts relates to land use issues only. For the reasons stated in this letter, we do not believe issues associated with inappropriate land use can be reduced or mitigated for the Eastshore Energy Center at the currently proposed site and that only relocation to a more appropriate site further from residential areas, including outside Hayward, would be acceptable. Other land use issues that are of concern relate to aesthetics/visual impacts and noise impacts. We would request that both plants comply with noise limits identified in the Hayward General Plan's *Noise Guidelines for Review of New Development*. To reduce visual and aesthetic impacts, landscape screening, which could include landscaping with a berm and/or wall, should be provided at each site, especially for the Eastshore site, which is closer to residential areas. The use of a perimeter wall to screen lower level plant facilities at both sites would also be appropriate. We do not feel that the stacks at each site can be mitigated to an insignificant level, though their impacts could be mitigated somewhat if they were more of a neutral color that would blend with the background. Finally, lighting provided should meet the City's

Security Ordinance standards, with light sources shielded so as not to shine or glare off-site.

In summary, it is the City's position that the Eastshore Energy Center is not sited in an appropriate location and would represent a second power plant in the City of Hayward, which has raised great concerns by the local residents and City decision-makers. It is City staff's opinion that the California Utility Commission process in determining the Eastshore site as a possible location for an additional plant in Hayward was not a process that clearly identified the Eastshore site, which would have involved appropriate local public input and participation earlier in the siting process.

Please let me know if you have any questions or need further clarification.

Sincerely,



David Risk, AICP
Hayward Planning Manager

cc: **Jed's Armas, City Manager**
Susan J. Daluddung, Director of Community and Economic Development Department
Robert Bateman, Director of Public Works Department
Michael O'Toole, City Attorney

Enclosure

EAST SHORE ENERGY CENTER

OPTICOMS 2007

FOLDER OPTICOM 2007
ver 9/21/2007 II

INTERSECTION	SERVES STATION(S)	ESTIMATED COST
INDUSTRIAL / TENNYSON	4 BASIC INSTALL 3 DIRECTIONS	\$ 19,000
INDUSTRIAL / SLEEPY HOLLOW	4 BASIC INSTALL 4 DIRECTIONS	\$ 19,000
INDUSTRIAL / CRYER / 92 OFF RAMP	1, 2, 4 BASIC INSTALL 4 DIRECTIONS	\$ 19,000
INDUSTRIAL / DEPOT	1, 2, 4 BASIC INSTALL 4 DIRECTIONS	\$ 19,000
HARDER / WEST HARDER	2 RELAY	\$ 2,000
WEST WINTON / SAKLAN	1 BASIC INSTALL 4 DIRECTIONS	\$ 19,000
D / GRAND D / MEEK D / WINTON WINTON / SOTO	1 INTERCONNECT HARD WIRE INTERCONNECT	\$ 25,000
TOTAL ONE TIME COSTS		\$ 122,000
ONGOING ANNUAL REPAIR AND MAINTENANCE COST		\$ 25,000

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

**APPLICATION FOR CERTIFICATION
FOR THE EASTSHORE ENERGY CENTER
IN CITY OF HAYWARD
BY TIERRA ENERGY**

Docket No. 06-AFC-6

**PROOF OF SERVICE
(Revised 09/28/2007)**

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

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DECLARATION OF SERVICE

I, Dora Gomez, declare that on October 10, 2007, I deposited copies of the attached Comments from the City of Hayward regarding the Eastshore Energy (06-AFC-6) Project's PSA in the United States mail at Sacramento with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.



DORA GOMEZ

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

APPLICATION FOR CERTIFICATION
FOR THE EASTSHORE ENERGY CENTER
IN CITY OF HAYWARD
BY TIERRA ENERGY

Docket No. 06-AFC-6

PROOF OF SERVICE
(Revised 12/4/2007)

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DECLARATION OF SERVICE

I, Dora Gomez, declare that on 12/6/07, I deposited copies of the attached CEC Staff's Exhibit List and Exhibits 202 through 207 in the United States mail at Sacramento, CA, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.


DORA GOMEZ