



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

DOCKET	
06-AFC-6	
DATE	OCT 09 2007
RECD.	OCT 10 2007

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

RECEIVED 9/28/07 FILED WITH
 FILED FROM SACRAMENTO ON 10/10/07
 PJ

*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



CITY OF
HAYWARD
HEART OF THE BAY

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

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 CEC 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 Clawiter 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:	Rodriquez, Quirk, Halliday, Dowling, Henson
	MAYOR:	Sweeney
NOES:	COUNCIL MEMBERS:	None



DOCKET	
06-AFC-6	
DATE	APR 19 2007
RECD.	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.

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DEVELOPMENT REVIEW SERVICES

777 B STREET, HAYWARD, CA 94541-8007
TEL: 510/593-4200 • FAX: 510/593-3649 • TDD: 510/247-3340

PROOF OF SERVICE (REVISED 3/12/07) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 4/23/07 TP

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 proceeding 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 believes 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 RCEC-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 RCEC 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 Rizk, AICP
Hayward Planning Manager

cc: Jesús Armas, City Manager
Susan J. Daluddung, Director of Community and Economic Development Department
Robert Bauman, 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:

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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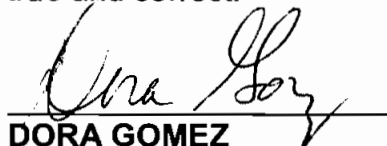
DECLARATION OF SERVICE

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