

**DOCKET**  
**06-AFC-6**

**DATE** AUG 0 8 2008  
**RECD.** AUG 0 8 2008

1 Jewell J. Hargleroad (SBN 130285)  
Law Office of Jewell J. Hargleroad  
2 1090 B Street, No. 104  
Hayward, California 94541  
3 (510) 331- 2975  
jewellhargleroad@mac.com

4 Attorneys for Group Intervenors California  
5 Pilots Association, San Lorenzo Village Homes Association,  
Hayward Area Planning Association  
6

7 STATE OF CALIFORNIA

8 STATE ENERGY RESOURCES

9 Conservation and Development Commission

10 In the Matter of:

11 APPLICATION FOR CERTIFICATION FOR  
12 THE EASTSHORE ENERGY CENTER

Docket No.: 06-AFC-6

**GROUP INTERVENORS AMENDED  
OPPOSITION TO APPLICANT'S  
MOTION TO REOPEN THE  
EVIDENTIARY HEARING AND  
OBJECTION TO STAFF 'S NEW  
"RESPONSE" AND EEC'S  
"SUPPLEMENT" FILED ON JULY 28,  
2008**

1           **GROUP INTERVENORS AMENDED OPPOSITION TO APPLICANT'S MOTION TO**  
2           **REOPEN THE EVIDENTIARY HEARING AND OBJECTION TO STAFF 'S NEW**  
3           **"RESPONSE"**

4           On July 28, 2008, Group Intervenors California Pilots Association, San Lorenzo Village  
5           Homes Association and Hayward Area Planning Association filed its opposition to the applicant's  
6           Motion to reopen the evidentiary hearing for the purpose of repeating an otherwise objectionable  
7           helicopter flyover test with a fixed wing aircraft.

8           At the hearing on the applicant's motion on July 21, 2008, CEC staff opposed the motion  
9           to reopen the record without qualification. When filing its opposition on July 28, 2008, Group  
10          Intervenors joined in CEC's staff's arguments as presented on July 21, 2008.

11          In filing the subsequent briefs on July 28, 2008, however, CEC Staff modified its position  
12          by proposing for the first time that "if the applicant files documentation by August 15th from the  
13          FAA and CalTrans Aeronautics Division indicating their interest in such a test as a means of  
14          addressing issues associated with the Eastshore Energy Center's thermal plumes, as well as their  
15          commitment to participate in the development of the test protocol, staff will withdraw its objection  
16          to the motion." (Staff Response served July 28, 2008, p. 2.)

17          Group Intervenors object (1) to this belated new and different proposal raised on the last  
18          day on which briefs are due and (2) to the proposal on substantive and procedural grounds. First,  
19          Group Intervenors object to any so called "test" which is tied to any applicant's project application  
20          as inappropriate and raising the appearance of impropriety. Any empirical data that may be  
21          collected and reviewed by the FAA or Caltrans Aeronautics must be performed *objectively*  
22          without tying any results or funding to a pending application for a particular project.

23          Additionally, the usefulness of any research tied to a particular project is highly  
24          questionable given the variation in technology, engines, atmosphere, aircraft, plume types, etc.  
25          The ability to conduct useful research would be tainted by the conflict of interest between this  
26          27

1 applicant's private interest and the public's interest in ensuring the health and safety of its  
2 communities, including its airspace, as set forth in both state and federal law.

3 Group Intervenors therefore amend their earlier joinder in Staff's Opposition and object to  
4 this inappropriate and last minute "proposal" by and revision to Staff's earlier position.

5 **GROUP INTERVENORS OBJECTION TO EEC'S**  
6 **"SUPPLEMENT" FILED ON JULY 28, 2008**

7 On July 28, 2008, without any authorization and on the last day scheduled for filing  
8 oppositions to its motion as earlier filed, the applicant for Eastshore Energy Center  
9 "supplemented" its motion to reopen the evidentiary record. Group Intervenors object to this  
10 unauthorized belated filing that should be struck and disregarded.

11 Without addressing all of the new multiple arguments, Group Intervenors disagree that any  
12 "second overflight test will alleviate zoning and general plan concerns" as asserted by this  
13 supplement, p. 2. Further, as already briefed in March 2008, this application not only violates  
14 local law, but also both state and federal law as already earlier briefed by Group Intervenors.

15 Dated: August 8, 2008

16 Respectfully Submitted,

17  
18  
19 \_\_\_\_\_  
20 Jewell J. Hargleroad, Attorney for  
21 Group Intervenors California  
22 Pilots Association, San Lorenzo Village  
23 Homes Association, and Hayward Area  
24 Planning Association  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF SERVICE**

I, Jewell J. Hargleroad , declare that on August 8, 2008 I transmitted electronic copies of the attached

GROUP INTERVENORS AMENDED OPPOSITION TO APPLICANT’S MOTION TO REOPEN THE EVIDENTIARY HEARING AND OBJECTION TO STAFF ‘S NEW “RESPONSE” FILED ON JULY 28, 2008

addressed to those identified on the Proof of Service list below 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 below.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 8, 2008 in Hayward, California.

\_\_\_\_\_  
Jewell J. Hargleroad

1 EASTSHORE PROOF OF SERVICE AS REVISED ON JULY 31, 2008

2 CALIFORNIA ENERGY COMMISSION

3 Attn: Docket No. 06-AFC-6  
4 1516 Ninth Street, MS-15  
5 Sacramento, CA 95814-5512  
6 docket@energy.state.ca.us

7 APPLICANT

8 Greg Trewitt, Vice President  
9 Tierra Energy  
10 710 S. Pearl Street, Suite A  
11 Denver, CO 80209  
12 greg.trewitt@tierraenergy.com

13 APPLICANT'S CONSULTANTS

14 David A. Stein, PE  
15 Vice President  
16 CH2M HILL  
17 155 Grand Avenue, Suite 1000  
18 Oakland, CA 94612  
19 dstein@ch2m.com

20 Jennifer Scholl  
21 Senior Program Manager  
22 CH2M HILL  
23 610 Anacapa Street, Suite B5  
24 Santa Barbara, CA 93101  
25 jscholl@ch2m.com

26 Harry Rubin, Executive Vice President  
27 RAMCO Generating Two  
28 1769 Orvieto Drive  
Roseville, CA 95661  
hmrenergy@msn.com

COUNSEL FOR APPLICANT

29 Jane Luckhardt, Esq.  
30 Downey Brand Law Firm  
31 555 Capitol Mall, 10th Floor  
32 Sacramento, CA 95814  
33 jluckhardt@downeybrand.com

34 INTERESTED AGENCIES

35

1 \*California ISO  
P.O. Box 639014  
2 Folsom, CA 95763-9014  
e-recipient@caiso.com  
3

4 INTERVENORS  
Greg Jones, City Manager  
5 Maureen Conneely, City Attorney  
City of Hayward  
6 777 B Street  
Hayward, California 94541  
7 greg.jones@hayward-ca.gov  
michael.sweeney@hayward-ca.gov  
8 maureen.conneely@hayward-ca.gov  
david.rizk@hayward-ca.gov  
9

10 Pillsbury Winthrop Shaw Pittman LLP.  
Att: Diana Graves, Esq  
11 Att: Michael Hindus, Esq  
Att: Todd Smith  
12 50 Fremont Street  
San Francisco, CA 94120  
13 diana.graves@pillsburylaw.com  
michael.hindus@pillsburylaw.com  
14 ronald.vanbuskirk@pillsburylaw.com  
todd.smith@pillsburylaw.com  
15

16 Paul N. Haavik  
25087 Eden Avenue  
17 Hayward, CA 94545  
lindampaulh@msn.com  
18

19 James Sorensen, Director  
Alameda County Development Agency  
20 Att: Chris Bazar & Cindy Horvath  
224 West Winton Ave., Rm 110  
21 Hayward CA 94544  
james.sorensen@acgov.org  
22 chris.bazar@acgov.org  
cindy.horvath@acgov.org  
23

24 Charlotte Lofft & Susan Sperling  
Chabot College Faculty Association  
25 25555 Hesperian Way  
Hayward, CA 94545  
26 clofft@chabotcollege.edu  
ssperling@chabotcollege.edu  
27

1 Jay White, Nancy Van Huffel,  
2 Wulf Bieschke, & Suzanne Barba  
3 San Lorenzo Village Homes Assn.  
4 377 Paseo Grande  
5 San Lorenzo, CA 94580  
6 jwhite747@comcast.net  
7 slzvha@aol.com  
8 wulf@vs-comm.com  
9 suzbarba@comcast.net

10 Richard Winnie, Esq.  
11 Alameda County Counsel  
12 Att: Andrew Massey, Esq.  
13 Lindsey G. Stern, Esq.  
14 Brian Washington  
15 1221 Oak Street, Rm 463  
16 Oakland, CA 94612  
17 richard.winnie@acgov.org  
18 andrew.massey@acgov.org  
19 Lindsey.stern@acgov.org  
20 Brian.Washington@acgov.org

21 Libert Cassidy Whitmore  
22 Att: Laura Schulkind, Esq.  
23 Att: Arlin B. Kachalia, Esq.  
24 153 Townsend Street, Suite 520  
25 San Francisco, CA 94107  
26 lschulkind@lcwlegal.com  
27 akachalia@lcwlegal.com

28 Robert Sarvey  
501 W. Grantline Rd  
Tracy, CA, 95376  
Sarveybob@aol.com

ENERGY COMMISSION

Jeffrey D. Byron  
Commissioner and Presiding Member  
jbyron@energy.state.ca.us

Public Adviser  
pao@energy.state.ca.us

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

Eric Knight, Project Manager  
eknight@energy.state.ca.us

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