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DOCKET	
06-AFC-6	
DATE	<u>OCT 01 2008</u>
RECD.	<u>OCT 01 2008</u>

7
8 STATE OF CALIFORNIA
9 State Energy Resources
10 Conservation And Development Commission

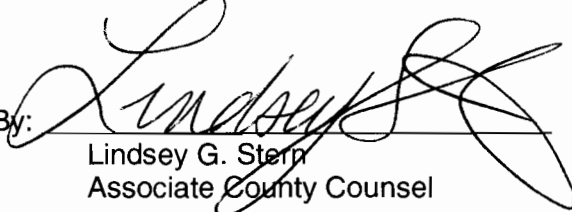
11 In the Matter of:
12
13 **EASTSHORE ENERGY CENTER,**
14

Docket No.: 06-AFC-6
County of Alameda's Comments in
Support of Revised PMPD for the
Eastshore Energy Center

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16
17 DATED: October 1, 2008

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County Counsel, in and for the County of
Alameda, State of California

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11 In the Matter of:

Docket No.: 06-AFC-6

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13 **EASTSHORE ENERGY CENTER,**
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County of Alameda's Comments in
Support of Revised PMPD for the
Eastshore Energy Center

16 On August 29, 2008, the County of Alameda ("the County") received from the California
17 Energy Commission ("the Commission") the Revised Presiding Member's Proposed Decision
18 ("rPMPD") for the Eastshore Energy Center (06-AFC-6) recommending that the Application for
19 Certification ("Application") be denied. The County strongly supports the rPMPD's
20 recommendation of denial of the Application. More specifically, the County agrees that the
21 balance of benefits leans more to the public interest of adhering to the LORS, and less to any
22 possible benefit from increased supply of electricity.

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1 Furthermore, the County respectfully provides the following comments to the rPMPD¹, as
2 set forth below.

3 **A. The Revised PMPD Appropriately Recommends Denial of the Application Because**
4 **Aviation Impacts Will Cause Unmitigable Threats to Public Safety**

5 As the County of Alameda has previously asserted, placement of the Eastshore Energy
6 Center (the "Facility") at such close proximity to the Hayward Executive Airport would create
7 adverse public health and safety impacts that cannot be mitigated.

8 Contrary to the Applicant's suggestions that the Committee may not actually want to know
9 what the project's aviation impacts will be, the County believes that the rPMPD illustrates a
10 thorough assessment of the potential dangers the Facility could create. (See e.g., Applicant's
11 supplement to motion to reopen the evidentiary record, at 7) The County appreciates the
12 rPMPD's in-depth and well-reasoned analysis of the aviation impacts throughout and specifically
13 concurs with the revisions and additions noted at pages 362 through 372 reflecting the
14 dangerous impacts of the thermal plumes. The County further concurs with the rPMPD's
15 resolution of the Applicant's dispute relating to plume height by requiring assurances that worst-
16 case conditions are accounted for. (rPMPD at 370). The rPMPD's conclusion is reasonable
17 and a fair assessment of the relative costs and benefits of the proposed Facility.

18 **B. The Revised PMPD Properly Defers to the Local Land Use Designations and**
19 **Abstains from Exercising Override Authority**

20 The County of Alameda agrees with the rPMPD's deference to the City of Hayward's
21 interpretation of its own General Plan Update and to the County of Alameda's interpretation of
22 its ALUPP. The Applicant's allegations that Hayward is biased, and thus its LORS
23 interpretations cannot be relied upon, is a clear reflection of the Applicant's position that it is
24 entitled to place the Facility wherever it so determines, and that the role of the CEC is simply to
25 rubber stamp its application. Thankfully, the rPMPD undertook a more thorough and critical
26 inquiry in concluding that the Facility would be inconsistent with LORS.

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28 ¹ The County hereby reincorporates by reference its position on Environmental Justice, Public Health and
Air Quality as it has asserted throughout these proceedings. The County restates its opposition to the

1 The County particularly joins the rPMPD in its position that the facility is inconsistent with the
2 ALUPP because it creates unmitigable aviation hazards within the traffic pattern zone and that
3 the thermal plumes constitute a "significant, adverse, unmitigable impact on public health and
4 safety in violation of CEQA" and local land use rules. (rPMPD, p. 340, 358, 373)

5 The County believes that the rPMPD comes to the appropriate balance and
6 recommendation against overriding the LORS, in stating that "the evidence before us, as
7 discussed throughout this Decision, neither persuades nor compels us to conclude that the EEC
8 is needed for public convenience or necessity." (rPMPD, p. 456) We concur that "avoiding [the
9 unmitigable aviation impacts] hazard in a heavily populated area... is more beneficial to the
10 public than are the levels of electrical system and socioeconomic benefits which the EEC would
11 provide." (rPMPD, at 456).

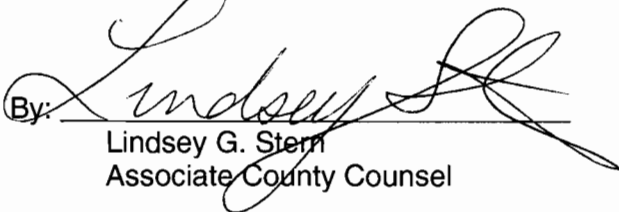
12 **III. Conclusion**

13 Intervenor County of Alameda reiterates that it concurs with the revised Presiding
14 Member's Proposed Decision recommending that the Eastshore Energy Center application be
15 denied. The additions set forth in the revised document are appropriate and reflect the serious
16 and thorough analysis undertaken by the Presiding Member in balancing competing issues and
17 coming to the proper decision. We join the Committee in its recommendation that the
18 application for certification be denied.

19 DATED: October 1, 2008

RICHARD E. WINNIE
County Counsel, in and for the County of
Alameda, State of California

BRIAN E. WASHINGTON
Assistant County Counsel

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28 use of woodstove and fireplace programs as offsets, as stated in its comments on the PMPD submitted
July 14, 2008.

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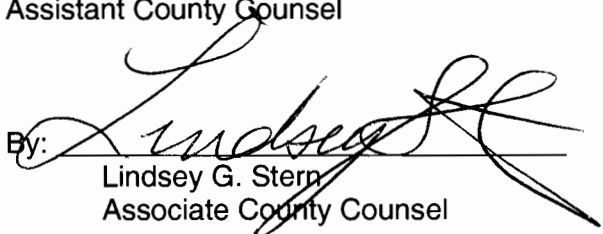
Notice of Intent to Present Oral
Comments in Support of Revised
Presiding Member's Proposed Decision.

14
15 Please be advised that the County of Alameda, by and through the Office of County
16 Counsel, will submit additional oral comments at the California Energy Commission hearing on
17 Wednesday, October 8, 2008.

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20 DATED: October 1, 2008

RICHARD E. WINNIE
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Alameda, State of California

BRIAN E. WASHINGTON,
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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

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

Docket No. 06-AFC-6

**PROOF OF SERVICE
(Revised 9/11/2008)**

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-15
Sacramento, CA 95814-5512
docket@energy.state.ca.us

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DECLARATION OF SERVICE

I, JUDY A. MARTINEZ, declare that on October 1, 2008, I deposited copies of the attached COUNTY OF ALAMEDA'S COMMENTS IN SUPPORT OF REVISED PMPD FOR THE EASTSHORE ENERGY CENTER AND NOTICE OF INTENT TO PRESENT ORAL COMMENTS IN SUPPORT OF REVISED PRESIDING MEMBER'S PROPOSED DECISION, in the United States mail at Oakland, CA, with first-class postage thereon fully prepaid and addressed to the California Energy Commission as identified on the Proof of Service listed above.

AND

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.



Judy A. Martinez