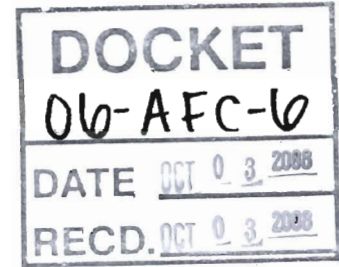


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Hayward Area Planning Association

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
Conservation and Development Commission

In the Matter of:

APPLICATION FOR CERTIFICATION FOR
THE EASTSHORE ENERGY CENTER

Docket No.: 06-AFC-6

**GROUP INTERVENORS COMMENTS IN
SUPPORT OF PRESIDING MEMBER
REVISED PROPOSED DECISION**

Hearing Date: October 8, 2008

**Location: Sacramento
Hearing Room A**

Time: 10 a.m.

Before: California Energy Commission

(Hearing Officer: Susan Geffer)

1 **THE COMMISSION SHOULD ADOPT THE RPMPD**

2 Group interveners California Pilots Association (“Calpilots”), San Lorenzo Village
3 Homes Association and Hayward Area Planning Association (“Hapa”), compliment the
4 presiding member’s revised proposed decision (“RPMPD”) and urge the Commission to fully
5 support the RPMPD properly refusing to override the numerous non-conformities with local and
6 state law. As briefed earlier by Group Intervenors, this project application additionally conflicts
7 with federal law relating to Hayward Airport’s traffic patterns and operations, and as a matter of
8 law, must be rejected.
9

10 Without waiving those arguments, comments and modifications earlier proposed by
11 Group Intervenors, the County of Alameda and Chabot-Las Positas Community College District,
12 specifically those applicable to alternatives, public health, air quality and environmental justice,
13 among other sections, this Commission should adopt the RPMPD as proposed with the following
14 corrections which may be rendered under an errata:

15 Page 5, **Air Quality:** To mitigate PM emissions, Condition **AQ-SC8**
16 requires the project owner to provide evidence of appropriate Emission Reduction
17 Credits (ERCs) and/or woodstove/fireplace retrofit credits prior to *commencement*
18 of construction.

18 Group Intervenors suggest this correction to avoid any arguments over what constitutes
19 “construction,” which may be subject to an interpretation consisting of conduct other than
20 “breaking ground.”

21 Page 8 continued summary of **Traffic and Transportation:** The Committee
22 rejected the results of the Barrick test as unreliable and denied Applicant’s motion
23 to reopen the record to allow seeking a second flyover to cure the deficiencies of
24 the that Barrick test and to explore additional undefined “tests.”

24 Group Intervenors suggest this modification to clarify that the applicant’s motion was
25 undefined, unclear, ambiguous and openended inviting a “fishing expedition.”
26
27

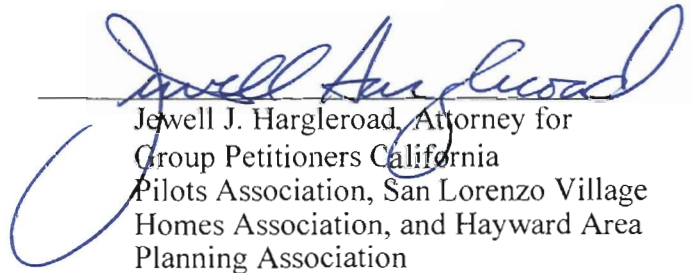
1 Page 25: Findings and Conclusions: . . . -2- As a result of PG&E's 2004
2 Request for Offers . . . the Project Owner will operate the EEC under a 20-year
3 power purchase agreement with PG&E . . .

4 As reflected on the subsequent pages, such as at pages 32 and 41, the applicant has
5 admitted that this undisclosed executory contract was terminated on May 18, 2008. Therefore
6 this finding should be struck as other references to it already have been struck or modified
7 recognizing its non-existence. Group Intervenors further have consistently objected to any
8 reference to this agreement that at the pre-hearing conference in November 2007 the applicant
9 specifically refused to produce, even under a protective order, and stated it would not rely on this
10 undisclosed contract in the evidentiary proceedings.

11 Group Intervenors further join in the County of Alameda's comments submitted today and
12 compliment the Evidentiary Committee for their diligent hard work in reviewing this application.

13 Dated: October 1, 2008

14 Respectfully Submitted,

15 
16 Jewell J. Hargleroad, Attorney for
17 Group Petitioners California
18 Pilots Association, San Lorenzo Village
19 Homes Association, and Hayward Area
20 Planning Association

1 **APPLICATION FOR CERTIFICATION**
2 **FOR THE EASTSHORE ENERGY CENTER**
3 **IN CITY OF HAYWARD**
4 **BY TIERRA ENERGY**

Docket No. 06-AFC-6
PROOF OF SERVICE
(Revised 9/11/2008)

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

8 **CALIFORNIA ENERGY COMMISSION**

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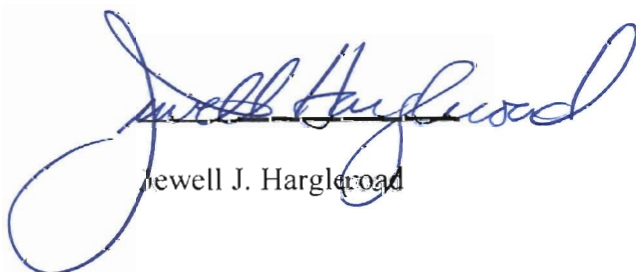
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20 **DECLARATION OF SERVICE**

21 Transmission of the above document via electronic mail was consistent with the
22 requirements of the California Code of Regulations, title 20, sections 1209, 1209.5, and
23 1210. All electronic copies were sent to all those identified on the Proof of Service list
24 above.

25 I declare under penalty of perjury that the foregoing is true and correct this 1st day of
26 October, 2008, in Hayward, California.

27 
28 Jewell J. Harglwood