



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

DOCKET 06-AFC-6	
DATE	OCT 17 2008
RECD.	OCT 21 2008

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

DOCKET No. 06-AFC-6
(AFC ACCEPTED 11/8/06)

ORDER No. 08-1008-10

COMMISSION ADOPTION ORDER

This Commission Order adopts the Commission Decision on the Eastshore Energy Center, which we decline to certify because the proposed project results in public health and safety impacts in violation of the California Environmental Quality Act (CEQA) and is inconsistent with applicable local laws, ordinances, regulations and standards (LORS).

By this Order, we incorporate as the Commission Decision the following documents: the Revised Presiding Member's Proposed Decision, the Committee Errata, and all the exhibits referenced in those documents. The Commission Decision is based upon the evidentiary record of these proceedings and considers the comments received at the October 8, 2008, business meeting. The text of the Commission Decision contains a summary of these proceedings, the evidence presented, and the rationale for the findings reached.

This Order adopts by reference the text, Conditions of Certification, Compliance Verifications, and Appendices contained in the Commission Decision. It also adopts specific findings contained in the Commission Decision which explain why we decline to override the project's nonconformance with CEQA and applicable LORS.

FINDINGS

The Commission hereby adopts the following findings in addition to those contained in the Commission Decision:

1. The Eastshore Energy Center does not comply with CEQA or applicable LORS, the noncompliances cannot be mitigated, corrected or eliminated, and the evidence of record does not establish that the proposed project is needed for public convenience and necessity. Therefore, consistent with Public Resources Code section 25523, the proposed project cannot be certified at the proposed site on Clawiter Road in Hayward, California.

2. This Commission Decision contains a discussion of the public benefits attributed to the proposed project as required by Public Resources Code section 25523(h).
3. The proposed project's benefits do not outweigh its public health and safety impacts and, therefore, we decline to override the project's CEQA violations and LORS inconsistencies as provided in Public Resources Code section 25525.
4. The evidentiary record establishes that there are no feasible alternatives to the project, which would reduce or eliminate any significant environmental impacts of the project.
5. The evidentiary record does not establish the existence of any environmentally superior alternative site.
6. If this Commission Decision to deny certification should be reversed or modified, the project owner would be required to implement the Conditions of Certification identified in the accompanying text.
7. The proceedings leading to this Decision have been conducted in conformity with the applicable provisions of Commission regulations governing the consideration of an Application for Certification and thereby meet the requirements of Public Resources Code sections 21000 et seq. and 25500 et seq.

ORDER

Therefore, the Commission **ORDERS** the following:

1. The Application for Certification of the Eastshore Energy Center, as described in this Decision is hereby **DENIED**.
2. The denial of the Application for Certification means that the project owner shall not be subject to the Conditions of Certification and Compliance Verifications enumerated in the accompanying text and Appendices, unless this Decision is reversed or modified. As a result, the project owner is prohibited from commencing ground disturbance, site preparation, or any construction activities related to developing the Eastshore Energy Center on Clawiter Road in Hayward California.
3. This Decision denying certification is adopted, issued, effective, and final on October 8, 2008.
4. Reconsideration of this Decision is governed by Public Resources Code, section 25530.

5. Judicial review of this Decision is governed by Public Resources Code, section 25531.
6. The Executive Director of the Commission shall transmit a copy of this Decision and appropriate accompanying documents as provided by Public Resources Code section 25537 and California Code of Regulations, title 20, section 1768.
7. We order that the Application for Certification docket file for these proceedings be closed effective October 8, 2008, with the exception that the docket file shall remain open for 30 additional days solely to receive material related to a petition for reconsideration of the Decision.

Dated: October 8, 2008, at Sacramento, California.



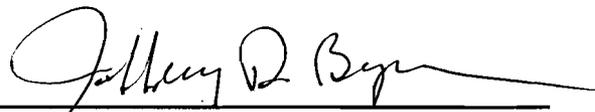
JACKALYNE PFANNENSTIEL
Chairman

-Absent -

JAMES D. BOYD
Vice Chair



ARTHUR H. ROSENFELD
Commissioner



JEFFREY D. BYRON
Commissioner



KAREN DOUGLAS
Commissioner

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
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NOTICE OF AVAILABILITY
OF THE
COMMISSION DECISION
ON THE
EASTSHORE ENERGY CENTER
CEC DOCKET NO. 06-AFC-06

The Commission adopted the Revised Presiding Member's Proposed Decision and Errata as submitted for the Eastshore Energy Center at a regularly scheduled Business Meeting held on October 8, 2008. Copies of the Commission Decision are available from:

Commission Publications Unit,
1516 9th Street, MS-13,
Sacramento, California 95814
Telephone: (916) 654-5200

Refer to Publication No. CEC-800-2008-004-CMF

The Decision will also be available on the Commission Web Site as follows:

<www.energy.ca.gov/sitingcases/eastshore>

Mailed to: 7071, 7072, 7073



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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:

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DECLARATION OF SERVICE

I, RoseMary Avalos, declare that on October 17, 2008, I deposited copies of the attached Final Commission Decision and Notice of Availability of the Commission Decision 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.


RoseMary Avalos

Attachments