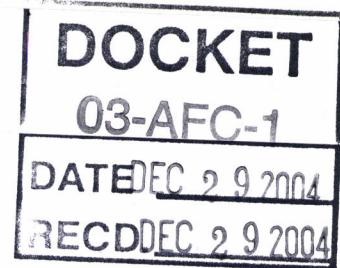


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STATE OF CALIFORNIA

Energy Resources  
Conservation and Development Commission

In the Matter of:

Application for Certification for the  
Roseville Energy Park

**DOCKET NO. 03-AFC-1**

**ROSEVILLE ELECTRIC'S  
PREHEARING CONFERENCE  
STATEMENT**

Roseville Electric (RE), the City of Roseville's electric utility, in accordance with 20 CCR § 1718.5 and the Committee Order dated December 6, 2004, hereby files its Prehearing Conference Statement. RE is prepared to proceed to evidentiary hearing on all topic areas contained in the Final Staff Assessment. The attached table (Table 1) presents a summary (by topic area) of:

- Whether or not disputes between the parties concerning the subject area exist including a description of the precise nature of each dispute;
- Identity of witnesses, and qualifications including a brief summary of the witness's testimony, and
- Time estimate for direct and cross-examination.

Table 1 includes estimates for direct examination by RE witnesses based on our belief that some topic areas can be submitted into the evidentiary record on declaration. While Table 1 does assume that some topics can be submitted into the evidentiary record on declaration, we have not yet reviewed Staff's Prehearing Conference Statement. If Staff requests live testimony on any of these topics, we reserve the right

to modify our Prehearing Conference Statement to include additional witnesses and additional time for direct and cross-examination.

According to the Committee Order, we understand the Committee has provided an opportunity for RE to engage in further discussion with Staff after the Prehearing Conference to resolve disputes. RE welcomes this opportunity and will work diligently to propose and accept reasonable solutions. After the Preliminary Staff Assessment (PSA) was published, RE prepared comments recommending modifications to Staff-proposed Conditions of Certification in a number of areas. While RE participated in two workshops to discuss issues in the case, Staff was unprepared at these workshops to discuss RE's proposed language modifying the conditions. RE requested another workshop prior to publishing the FSA, but Staff refused stating that the responses to RE's comments would be included in the FSA. RE believes that had it been given the opportunity to discuss its proposed modifications with Staff, compromise language could have been jointly developed regarding the vast majority of the conditions, thereby significantly narrowing the issues requiring adjudication by the Committee. RE continues to believe that many of these items can be resolved at the Committee-sponsored workshop and thanks the Committee for this opportunity. However, since RE is not able to accurately predict the results of the Committee-sponsored workshop, we have prepared this Prehearing Conference Statement in such a way as to preserve our right to present evidence and cross-examine Staff witnesses for all disagreements.

## **STAFF ASSESSMENT AND CONDITIONS**

Staff filed its Final Staff Assessment (FSA) on November 30, 2004. RE has reviewed the FSA and is in general agreement with most of its analysis, conclusions and recommendations. The following discussion summarizes RE's disagreement with the FSA and proposes modifications to Staff-proposed Conditions of Certification. Since RE has not yet finalized its testimony, where appropriate, RE provides an "offer of proof" to support its position.



## **AIR QUALITY**

RE and the Staff agree that the REP will not result in significant impacts to air quality and will comply with all air quality related laws, ordinances, regulations and standards (LORS). However, RE does not agree with Staff's opinion that the REP should limit its ammonia slip to 5 ppm and does not agree with some of the Staff-recommended Conditions of Certification.

### **Ammonia Slip**

RE disagrees with Staff's opinion that the REP's proposed ammonia slip of 10 ppm will result in secondary particulate matter impacts. Staff bases its recommendation to limit the ammonia slip to 5 ppm on its opinion that the 10 ppm ammonia slip will react in the environment to formulate secondary particulate matter and that this secondary particulate matter will cause or contribute to existing and future violations of the particulate matter (PM10 and PM 2.5) standards. Staff bases this prediction on its assumption that the region surrounding the REP is "ammonia limited" and therefore, the surrounding environment is more conducive to enabling the complex reactions necessary for the ammonia emissions to form secondary particulate matter. RE believes, and intends to prove, that Staff's assumption that the surrounding area is "ammonia limited" ignores the contributions of the surrounding agricultural regions and the transport of the background ammonia between and among the surrounding counties. Staff's analysis of the ammonia inventory focused solely on Placer County and ignored the large contribution to the region's ammonia inventory from the Sacramento Valley. RE believes that the surrounding environment is already "ammonia rich", thereby greatly inhibiting the formation of secondary particulate matter from REP's ammonia emissions. This is the same conclusion reached in the Cosumnes Power Plant Project located south of the REP (see page 18 of the Cosumnes Power Plant Project Decision, dated September 19, 2003 where the CEC Commission refused the Staff's request that the ammonia slip be reduced from 10 ppm to 5 ppm.)

### **Conditions of Certification**



RE provided detailed comments including suggested modifications to the recommended Conditions of Certification contained in Staff's Preliminary Staff Assessment (PSA). There is no mention in the FSA that the comments were even considered and not one suggested modification was accepted. For this reason, RE cannot fully agree with the recommended Conditions of Certification in the FSA. RE has, therefore, reproduced its comments on the PSA herein and will present testimony at evidentiary hearing if necessary to support its proposed modifications.

RE proposed modifications to Staff-proposed Condition of Certification **AQ-SC4** in its comments on the PSA. After further review, RE is proposing additional modifications to clarify the circumstances when the project owner may be required to implement additional fugitive dust mitigation. RE proposes the following:

**"AQ-SC4** The AQCMM shall continuously monitor the construction activities for visible dust plumes. Observations of visible dust plumes that have the potential to be transported **a distance of 200 feet beyond the project boundaries**~~(1) off the project site or (2) or a distance of 200 feet beyond the centerline of the construction of linear facilities and or (3)~~ within 100 feet upwind of any regularly occupied structures not owned by the project owner indicate that existing mitigation measures are not resulting in effective mitigation. The AQCMM shall implement the following procedures for additional mitigation measures in the event that such visible dust plumes are observed:...."

RE proposes the following modification to Staff--proposed Condition of Certification **AQ-SC5** to reflect that the REP does not need any federal permit issued by U.S. EPA.

**"AQ-SC5** The project owner shall submit to the CPM for review and approval any modification proposed by the project owner to any project air permit. The project owner shall submit to the CPM any modification to any permit proposed by the District ~~or U.S. EPA~~, and any revised permit issued by the District ~~or U.S. EPA~~, for the project."

RE also proposed that Staff-proposed Condition of Certification **AQ-SC6** be deleted because it imposes additional reporting burdens not necessary for



demonstration that the project is in compliance with the conditions of certification. The Placer County Air Pollution Control District (District) Final Determination of Compliance (FDOC) has sufficient monitoring requirements that will insure compliance with all applicable regulations. RE requests that any reference to **AQ-SC6** in other conditions be deleted as well.

Finally, RE requested that Staff-proposed Condition of Certification **AQ-SC7** be deleted. This proposed condition imposes a reporting requirement for greenhouse gas emissions (GHG) that is not supported by any regulatory scheme, is not required and is not necessary to mitigate any significant impact. The proposed condition is overly burdensome and therefore should be deleted. In addition, the proposed condition may interfere with the existing Climate Control Registry program, which provides incentives for stationary sources to voluntarily report GHG emissions. If the Commission License required such reporting, RE might be unable to qualify for those incentives since the reporting will not be "voluntary". RE will address this issue more fully in its testimony.

## **BIOLOGICAL RESOURCES**

### **Habitat Compensation Approach**

RE and Staff disagree on the mitigation approach for potential wetland-related impacts and impacts to annual grassland raptor foraging habitat. Throughout the proceeding, RE has attempted to convince Staff that raptor foraging habitat that is temporarily disturbed during construction can be adequately restored and therefore, permanent habitat compensation should not be required for the temporarily disturbed acreage. RE's experience is that restoration is consistent with the state and federal wildlife agency-approved mitigation approach for temporarily disturbed acreage. Staff continues to insist that restoration would result in habitat "fragmentation". In the spirit of compromise, RE is willing to provide mitigation as if these areas were permanently disturbed. Therefore, with this concession, Staff and RE agree on the total number of acres of potential wetland and annual grassland raptor foraging habitat that the REP would be required to provide as mitigation.



Staff has attempted to allow RE to either purchase suitable land or to participate in the United States Fish and Wildlife Service (USFWS) "in lieu" fund program to satisfy the project's mitigation requirements. This program allows RE to contribute funds that will be used by USFWS to develop wetland and vernal pool fairy shrimp mitigation banks. However, Staff's condition language inadvertently requires RE to overcompensate and, further, its discussion of costs for the in-lieu fund is both inappropriate and inaccurate. Staff-proposed Conditions of Certification **BIO-13**, **BIO-14**, and **BIO-15** need to be revised.

RE will present the testimony that although the REP was designed to avoid seasonal wetlands to the maximum extent feasible, development of the site will result in the direct filling of approximately 0.5 acres of seasonal wetlands that are habitat for the vernal pool fairy shrimp, a threatened species. According to USFWS standards, the REP also has the potential to indirectly impact approximately 2.5 acres of seasonal wetlands. Applying the mitigation acreage ratios that the USFWS and Staff have agreed to, REP will then be required to provide habitat compensation for 6.5 wetted acres of seasonal wetlands that provide vernal pool fairy shrimp habitat.

In addition to the potential impacts to seasonal wetlands, RE will permanently and temporarily disturb up to 14.1 acres of annual grassland raptor foraging habitat. The ratio of grassland foraging habitat compensation (14.1 acres) to wetted vernal pool habitat compensation (6.5 acres) is 2.17. The USFWS and California Department of Fish and Game (CDFG) existing practice in the area is to require separate habitat compensation for these acres and allow mitigation to occur at separate locations, at a single combined location, or in some combination. The USFWS is the federal lead agency under the Endangered Species Act for the threatened vernal pool fairy shrimp. The CDFG is the state lead agency for the California Endangered Species Act-listed Swainson's hawk, white-tailed kite, and other raptors, which do not have federal regulatory status. The WRSP development has employed the approach of separate mitigation for these separate and identifiable impacts and such approach was adopted and approved by CDFG and USFWS. However, Staff has required that the REP mitigation be accomplished together. In other words, Staff is requiring RE to purchase



land that would satisfy both the wetted acres mitigation component and the grassland foraging requirement in the same parcel. This is a Staff requirement and is inconsistent with the wildlife agencies' approaches to date.

RE is prepared to present evidence at hearing that the biological impacts from the REP can be fully mitigated using the standard wildlife agencies' approved approach. However, in the spirit of cooperation, RE believes that the dispute may be able to be resolved fairly simply with some modifications to Staff's Proposed Conditions of Certification. These modifications are based on the fact that we believe Staff misunderstands the benefit of participation in the "in lieu" fund program and therefore a description of this program is provided below.

The "in-lieu" fund program provides a means of calculating funds that would be sufficient to purchase wetted acres to be used as compensation for potential impacts to wetlands and vernal pool fairy shrimp habitat. The amount of funds is calculated based on the amount of "wetted" acres to be purchased. In the case of all wetlands, especially the shallow seasonal wetlands, in order to purchase a certain amount of "wetted" acres, a significant amount of surrounding grassland and upland habitat must also be purchased and preserved in order to be certified as a USFWS approved mitigation bank. While the amount of associated grassland and upland habitat varies from case to case, RE intends to present evidence that the actual ratios of existing vernal pool mitigation banks in the area range from 3 to over 16 and that the minimum ratio is expected to be no less than 3 acres of upland and grassland for every "wetted" acre. This minimum acreage is greater than the 2.17 ratio of vernal pools to grassland mitigation required for the REP. In addition, in the case of vernal pools, which are dry for most of the year, the vernal pool itself also provides additional seasonal habitat for species such as raptors that rely on the associated grassland and upland complexes for foraging. RE intends to prove that by participating in the "in lieu" fund, a sufficient amount of associated grassland and upland will be obtained to satisfy Staff's goal of requiring the habitat compensation lands to be acquired together. Further, it should be pointed out that the Staff's computation of the cost of mitigation via the in-lieu fund was in error, in that the Staff applied the current market price not to the wetted acres but to



the total wetted acres **plus** surrounding grassland and upland habitat acres. We further believe that including the pricing for the in-lieu fund in the CEC condition (as was done in the FSA) is not appropriate, as the actual price could be higher or lower depending upon the then-current market conditions. RE proposes modifications to the Staff-proposed Conditions of Certification below to reflect the discussion above

### **Conditions of Certification**

RE proposed modifications to Staff-proposed Condition **BIO-2** to clarify that a Biological Monitor, in addition to the Designated Biologist, could perform field inspections. Staff appears to accept the premise and modified Item 7 of the condition to make it clear that the Designated Biologist will accept responsibility for the inspections performed by the Biological Monitors. However, RE believes that a clear statement at the beginning of the condition is required to expressly authorize the Biological Monitor(s) to perform inspections. Therefore, RE proposes the following modification, which is consistent with established compliance practice and with the conditions approved for other projects.

**"BIO-2** The project owner shall ensure that the Designated Biologist ***and Biological Monitors*** shall perform....."

For clarification purposes, RE requests that Staff-proposed Condition of Certification **BIO-5** be modified by striking the term "(typical measures are)" as it is inconsistent with the language "shall identify".

RE proposed that Staff--proposed Condition of Certification **BIO-7**, which requires it obtain an incidental take permit or concurrence statement from the CDFG, be deleted because RE's understanding is that there is no need for a state-issued incidental take permit for the REP. RE will present testimony at hearing establishing the requirements for an incidental take permit and demonstrating it is not required for the REP.

Staff-proposed Condition of Certification **BIO-12** identifies typical measures that could be employed to avoid or minimize impacts to biological resources during



construction. RE believes that the option of covering excavations be specifically identified as a potential measure. This method is established practice and to avoid any confusion during the compliance phase of the project, RE requests its inclusion in Item 1 of the condition as follows:

**"BIO-12** The project owner shall manage their construction site, and related facilities, in a manner to avoid or minimize impacts to the local biological resources.

Typical measures are:

1. Temporarily fence, **cover or** and provide wildlife escape ramps for construction areas that contain steep walled holes or trenches if outside of an approved, permanent exclusionary fence. The temporary fence shall be hardware cloth or similar materials that are approved by USFWS and CDFG;

In order to reflect the discussion above relating to habitat compensation, RE proposes that Staff-proposed Conditions of Certification **BIO-13**, **BIO-14**, and **BIO-15** be replaced with the following:

**"BIO-13** To compensate for direct, indirect, and cumulative impacts to biological resources the project owner shall preserve at least 14.1 acres of grassland habitat that is associated with a vernal pool grassland ecosystem. In addition to the 14.1 acres of grassland habitat, the project owner shall preserve at least 6.5 acres of seasonal wetlands. To comply with this requirement the project owner may 1) preserve grassland habitat which contains vernal pools, 2) participate in the in-lieu fund program administered by the USFWS for vernal pool fairy shrimp habitat; or 3) both preserve some grassland and vernal pool acreage and participate in the in-lieu fund program.

**Verification:** At least 60 days prior to any site, or related facilities mobilization activities, the project owner shall enter into an agreement with the Center for Natural Land Management (CLNM) or other suitable land management organization to seek to locate and preserve (if sufficient habitat has not already been located and preserved) and manage the grassland and vernal pool habitat required by this Condition. The project owner shall pay all costs incurred by the CNLM or other suitable land



management organization resulting from the locating, preservation (if sufficient habitat has not already been located and preserved) and managing the compensation habitat required under this Condition. The project owner shall provide a copy of the agreement to the CPM. After the habitat has been secured, the project owner shall provide proof that the habitat has been preserved in perpetuity, that a suitable endowment (derived through a PAR or other suitable analysis) has been provided to manage the habitat in perpetuity, and the name of the non-profit organization designated as manager of the habitat. No more than 90 days from the date of habitat acquisition, the project owner shall also provide a habitat management plan to the CPM, CDFG, and USFWS for review and approval. All documents are to be included in the BRMIMP.

If sufficient habitat is not secured within six months from the date of initial site mobilization activities, the project owner shall provide to the CPM, copies of the check made out to the USFWS and documentation indicating USFWS acceptance of the amount to compensate via the in-lieu fund for the amount of wetted acres not otherwise preserved.

### **CULTURAL RESOURCES**

RE submitted a Draft Cultural Resource Mitigation Implementation and Monitoring Plan (CRMIMP) for Staff's review. Based on that submittal RE originally requested that Staff's Proposed Condition of Certification **CUL-3** could then be deleted as it would be unwarranted. Staff has reviewed the Draft CRMIMP and provided comments. Based on those comments RE can agree with Staff's Proposed **CUL-3** with modifications to Items 2 and 7 in the condition. RE believes Item 2 is unnecessary and cumbersome and therefore requests it be deleted.

RE believes that Item 7 of **CUL-3** requires the CRMIMP to include the statement that all materials collected as a result of survey, testing, and data recovery shall be curated at a facility meeting federal standards. Though archaeological materials have not been collected during the licensing phase, it is possible that they will be discovered during construction. In these cases, it is appropriate to collect the materials disturbed by construction for further examination. Not all finds of this nature, however, are of sufficient age or association that they are part of a significant archaeological find. Under these circumstances, curation is unwarranted and, in addition, curation facilities



will not accept such materials as part of an archaeological collection, given the shortage of curation facilities. We request Item 7 be modified as follows:

7. A discussion of the requirement that all cultural resources encountered shall be recorded on a DPR form 523 and mapped (may include photos). In addition, all archaeological materials collected as a result of the archaeological investigations (survey, testing, data recovery) ***of archaeological deposits meeting the criteria for listing in the California Register of Historical Resources*** shall be curated in accordance with The State Historical Resources Commission's "Guidelines for the Curation of Archaeological Collections," into a retrievable storage collection in a public repository or museum. The public repository or museum must meet the standards and requirements for the curation of cultural resources set forth at Title 36 of the Federal Code of Regulations, Part 79.

#### **HAZARDOUS MATERIALS**

RE has reviewed and agrees with the Conditions of Certification proposed by Staff in the Hazardous Materials Section of the FSA.

#### **LAND USE**

RE recommended modifications to Staff-proposed Condition of Certification **LAND-1** in its comments on the PSA. The stated purpose of **LAND-1** is to ensure the project complies with local LORS. RE believes that attempting to reproduce all of the requirements contained in the Roseville Zoning Ordinance is unwise and recommends that the condition simply require a demonstration of compliance with the ordinance rather than attempting to specifically list the requirements. RE therefore proposes that the condition be replaced with a specific reference to the City of Roseville Zoning Ordinance. In addition, as requested in RE's comments on the PSA, the verification language requires approval from the Planning Department, which may not be the correct department within the City for approval of the site development plan. RE also contends that the new requirement of monthly written statements from the CBO is overly burdensome and conflicts with the CBO responsibilities and reporting required in

the Engineering Conditions. Therefore RE requests **LAND-1** be replaced with the following:

**LAND-1** The project owner shall prepare a site development plan that complies with the applicable design criteria and performance standards for the Public/Quasi Public District set forth in the City of Roseville Zoning Ordinance.

Following preparation of the above site development plan, the project owner shall design and construct the project consistent with the applicable design criteria and performance standards for the Public/Quasi Public District set forth in the City of Roseville Zoning Ordinance.

**Verification:** At least 60 days prior to the start of construction, the project owner shall concurrently submit the site development plan to the CPM and the City of Roseville. The material submitted to the CPM must include documentation that the City of Roseville has been given the opportunity to review and comment on the plan and its compliance or conformance the above-referenced requirements.

### **NOISE**

RE has reviewed and agrees with the Conditions of Certification proposed by Staff in the Noise Section of the FSA.

### **PUBLIC HEALTH**

RE has reviewed and agrees with the Conditions of Certification proposed by Staff in the FSA but request that a typographical error in Staff-proposed Condition of Certification **Public Health-1** be corrected. RE requested in its PSA comments that the words "is kept to a minimum" be replaced with "is controlled". Staff agrees with this modification at page 4.7-14 of the FSA, but while the words "is controlled" have been added it appears the words "is kept to a minimum" have inadvertently not been deleted.



## **SOIL & WATER**

RE agrees with Staff that the REP will not result in soil and water-related impacts and will comply with all applicable LORS. However, RE disagrees with specific conditions of certification because they are unnecessary and unduly burdensome.

RE proposed modifications to Staff-proposed Condition of Certification **SOIL&WATER-2** that were only partially accepted by Staff. **SOIL&WATER-2** is Staff's latest version of the standard condition imposed by the Commission to ensure the project owner develops an Erosion and Sedimentation Control Plan (ESCP). The purpose of the requirement is to ensure that the project owner has contemplated and devised measures to prevent and minimize the type of erosion and sedimentation during construction that could impact local water resources. RE requested that Staff include the version of **SOIL&WATER-2** that was included in the Final Decision for the Turlock Irrigation District Walnut Energy Center Project (02-AFC-04). Staff accepted the modifications to the language in the Condition but retained the burdensome requirements in Staff's Verification without any comment why the new burdensome Verification is necessary. RE requests the Committee incorporate the version of **SOIL&WATER-2** adopted in the Walnut Energy Center Project. For the Committee's convenience that condition is reproduced below.

**SOILS&WATER-2:** Prior to beginning any site mobilization activities for any project element, the project owner shall obtain CPM approval for a site specific Drainage, Erosion and Sedimentation Control Plan that addresses all project elements and ensures protection of water quality and soil resources, demonstrates no increase in off-site flooding potential or sedimentation, meets local requirements, provides legible drawings and complete narrative, and provides for monitoring and maintenance of all mitigation measures under the Plan. The plan shall be consistent with the grading and drainage plan as required by **Condition of Certification CIVIL-1** and may incorporate by reference any SWPPP developed in conjunction with any NPDES permit.

**Verification:** No later than 60 days prior to the start of any site mobilization for any project element, the project owner shall submit the



Drainage, Erosion and Sedimentation Control Plan to the CPM for review and approval. This plan shall address appropriate methods and actions, both temporary and permanent, for the protection of water quality and soil resources, demonstrate no increase in offsite flooding potential, meet local requirements, include legible drawings, details and complete narrative, and identify all monitoring and maintenance activities. No later than 60 days prior to start of any site mobilization, the project owner shall submit a copy of the plan to City of Roseville for review and comment. Any comments shall be provided to the CPM within 30 days of receipt of the plan. The plan must be approved by the CPM prior to start of any site mobilization activities. During construction, the project owner shall provide a report in the monthly compliance report on the effectiveness of the drainage, erosion and sediment control activities, and the results of monitoring and maintenance activities. Once operational, the project owner shall provide in the annual compliance report information on the results of monitoring and maintenance activities.

RE objects to the inclusion of Staff-proposed Condition of Certification **SOIL&WATER-5** and requests that it be modified. Staff bases its recommendation to include the condition on the grounds that the City of Roseville has requested that the project owner submit a water, sewer and recycled water plan for the REP site. However, rather than limiting the condition to submittal of said plans, Staff adds additional requirements that are not part of the City's proposed conditions, most notably a requirement that only recycled water be used for hydrostatic testing and construction. RE's position relating to the use of recycled water during construction is discussed below. RE requests the following modifications to Staff-proposed Condition of Certification **SOIL&WATER-5**.

**SOIL&WATER 5:** Prior to beginning any site mobilization activities for any project element, the project owner shall submit for review and approval a master water, sewer, and recycled water plan for the REP.

**Verification:** No later than 60- **30** days prior to the start of any site mobilization activities for any project element, the project owner shall submit a copy of the master water, sewer, and recycled water plan for the REP to the City of Roseville for review and comment. ~~All City comments shall be provided to the CPM within 30 days of receipt of the plan by the City.~~ The master water, sewer, and recycled water plan must be approved by the ~~CPM~~ **City** prior to start of any site mobilization activities for any project element. ~~The master water, sewer, and recycled water plan for the~~



~~REP shall include, but shall not be limited to the following:~~

- ~~• All project water, sewer, and recycled water utilities and their points of connection to the City of Roseville's system to include the connection to the PGWWTP recycled water terminal point (located south of Phillip Road) for use of recycled water during construction and pipeline testing.~~
- ~~• All existing backbone infrastructure (i.e. off-site sewer and recycled water utilities).~~
- ~~• The location of the on-site water source (i.e. the well location) and method of storage, distribution and treatment.~~
- ~~• The point of connection of the on-site fire system to the recycled water system for additional fire protection.~~

RE objects to Staff-proposed Condition of Certification **SOIL&WATER-6**. RE submitted suggested modifications to this condition, (which was number **SOIL&WATER-4** in the PSA) which were rejected by Staff. RE's objections are based primarily on Staff's misinterpretation of the provision of the City of Roseville Municipal Code relating to the use of recycled water for construction and hydrostatic testing. Staff originally based its requirement that **only** recycled water could be used for these purposes on Section 14.17.010 B of the City of Roseville Municipal Code. However, as RE described in its comments on the PSA, the Code Section does allow for use of potable water during construction under certain circumstances when recycled water is not available or it would not be feasible to do so. RE is committed to using reclaimed water during construction, but seeks to have the ability to use fresh water under the limited circumstances should the use of recycled water not be feasible or the connections are not available. These specific circumstances are allowed under the Municipal Code. In response to RE's comments on the PSA, Staff now bases its restriction on requirements of the Recycling Act of 1991 rather than on the Municipal Code (see page 4.9-26 of the FSA). There are no such requirements in the Recycling Act of 1991. In fact, the Recycling Act of 1991 encourages the use of recycled water in exactly the manner in which the City of Roseville Code encourages its use. Further, Staff has failed to identify an impact to water resources that would occur if RE used



limited amounts of fresh water during construction as allowed by the Municipal Code and the Recycling Act of 1991. Therefore, Staff has no basis for imposing a requirement for the absolute restriction on fresh water use in construction and hydrostatic testing that is included in **SOIL&WATER-5**. RE therefore requests the Committee to simply reference the City of Roseville Municipal Code in the Condition in the manner RE proposed in its comments on the FSA. The suggested modifications are reproduced below.

**SOIL&WATER 6** The REP shall use recycled water for *cooling tower makeup and process water*. *The REP shall use reclaimed water for* construction, hydrostatic testing, ~~cooling tower makeup, process water,~~ landscape irrigation and all other nonpotable uses *in accordance with Section 14.17.010 of the City of Roseville Municipal Code*. The REP shall comply with all requirements of Title 22 and Title 17 California Code of Regulations. Prior to delivery of recycled water to the REP *for cooling tower makeup and process water*, the owner shall submit a Title 22 Engineer's Report that has been approved by the Department of Health Services and the CVRWQCB. ~~No surface or groundwater suitable for potable use shall be used in the construction or testing of any REP element.~~

RE requested modifications to Staff-proposed Condition of Certification **SOIL&WATER-7** (previously **SOIL&WATER-5** in the PSA). The reporting requirements of this condition are burdensome and are not necessary to ensure that the REP is using recycled water. RE requests that the condition be modified as follows.

**SOIL&WATER 7:** ~~Prior to the use of any water by the REP,~~ *commercial operation*, the project owner shall install metering devices as part of the water supply and distribution system to monitor and record in gallons per day, 1) total volumes of potable and recycled water supplied to the REP, ~~and 2) volumes used for cooling purposes, potable water, non-cooling process water supplies, irrigation, wash water, demineralized water and turbine injection.~~ Those metering devices shall be operational for the life of the project. An annual summary of daily *recycled and monthly potable* water use by the REP, ~~differentiating between potable and reclaimed water,~~ shall be submitted to the CPM in the annual compliance report.



**Verification:** ~~At least 60 days p~~Prior to use of any water source at the REP commercial operation, the project owner shall submit to the CPM evidence that metering devices have been installed and are operational on the potable and recycled pipelines serving the project. The project owner shall provide a report on the servicing, testing and calibration of the metering devices in the annual compliance report.

The project owner shall submit a water use summary report to the CPM in the annual compliance report for the life of the project. The annual summary report shall be based on and shall distinguish recorded daily use of ~~potable and recycled water~~ **and monthly use of potable water**. ~~Included in the annual summary of water use, the project owner shall submit copies of meter records from the City of Roseville documenting the quantities of tertiary treated recycled water provided (in gpd) by the PGWWTP and potable groundwater supplied over the previous year. The report shall include calculated monthly range, monthly average, and annual use by the project in both gallons per minute and acre feet. After the first year and for subsequent years, this information shall also include the yearly range and yearly average recycled and potable water used by the project.~~

RE requested in its comments on the PSA that **SOIL&WATER-9** (then **SOIL&WATER-7**) be modified to acknowledge that RE will neither own nor construct the gas pipeline, which will be owned and constructed by PG&E. Staff rejected RE's comments. RE requests the Committee modify the condition as follows:

**SOIL&WATER 9:** The proposed gas and sanitary wastewater pipelines shall be located below the anticipated depth of scour from a 100 year flood at all creek crossing locations. The depth of pipeline burial shall be extended a sufficient distance away from the creek banks to avoid anticipated lateral erosion. Trenched water crossings shall be constructed during the dry season using "in the dry" construction techniques that avoid trenching within open or flowing water. Creek beds at trenched crossings shall be restored to their natural contours and revegetated.

**Verification:** At least 60 **30** days prior to site mobilization for the proposed ~~gas and sanitary wastewater pipelines~~, the project owner shall submit to the CPM, an analysis (plan) prepared by a registered civil engineer. The analysis (plan) shall demonstrate that the proposed pipelines would be below the expected 100 year depth of scour at all creek crossings and will



remain at that depth for a sufficient distance from the creek banks to avoid any lateral erosion that can be reasonably expected to occur during the life of the project. The CPM must approve the analysis (plan) prior to any site mobilization activities for those pipelines.

## **TRAFFIC AND TRANSPORTATION**

### **Plume Abatement**

Staff did not propose plume abatement in its PSA. The City of Roseville reviewed the PSA and in response to Staff's request provided an opinion that plume abatement was not warranted from both the perspective of traffic and visual impact. In the PSA, Staff identified that it needed to perform further fogging analysis to determine whether or not there was a traffic-related impact to nearby roads. While RE and Staff discussed at a workshop what assumptions should be used in determining the frequency of plume formation, RE was never provided an opportunity to see the results or the modeling, nor whether its assumptions were accepted by Staff prior to the FSA. RE requested an additional workshop prior to the FSA to further discuss the results and recommendations of Staff. However, Staff would not schedule a workshop and told RE that it would first see its results and recommendations in the FSA. During the time Staff was preparing its FSA it contacted the Roseville Joint Union High School District (School District) and soon thereafter the School District wrote a letter identifying its concern of the effect of ground hugging plumes on future high school drivers that may be using nearby roadways to attend the future high school. As described below, the School District has since rescinded its recommendation that the REP should install a plume-abated cooling tower.

RE disagrees with Staff's recommendation that the REP install a plume-abated cooling tower. RE believes that Staff's analysis over-predicts the frequency of plume formation and engages in speculative impact evaluation. Specifically, Staff has estimated that for a total of 5 to 15 hours during each winter, the plume could form under conditions that could cause it to come in contact with the ground. Staff then speculates that this ground hugging plume would cause traffic-related accidents,



especially involving young drivers associated with the future high school. RE will provide testimony of experts that:

- Staff's assumptions used in its modeling over-predicts the frequency of plume formation and in fact, the frequency of ground hugging plume is less than Staff predicts.
- The model employed by Staff predicts the potential for the plumes to contact the ground during any point of time in a given hour. This does not mean that a plume will in fact form, or that the plume will be persistent for the whole hour. Staff's estimate of 5 to 15 hours is misleading because Staff assumes that the plume will form and persist for the entire hour.
- Assuming the plume will be persistent for the entire hour identified by the model ignores the fact that high winds are required to force the plume to contact the ground. Such high winds are generally erratic and would therefore cause the plume to potentially break apart, and to be neither dense, nor persistent, as assumed by Staff.
- The ground-hugging plume at the location where it may infrequently intersect roadways will not pose a traffic hazard because it will not be persistent in duration, will not be dense nor opaque, and will not engulf significant portions of the roadway.
- Staff failed to conduct an appropriate risk analysis similar to those employed by the Commission in other topical issue areas. When such an evaluation is conducted, even using Staff's over-predicted plume formation values, it yields probabilities significantly low and below other recognized significance thresholds.
- As expected from the risk analysis, research of police jurisdictions throughout California (especially Northern California) in which operational cooling towers and other plume forming industrial activities are located



have resulted in no reported accidents where a ground hugging plume from a cooling tower was either a direct or contributing cause.

- The area in and around the REP experiences tule fog, which has characteristics significantly more persistent and dense than the ground-hugging plume predicted by Staff.
- The City of Roseville retains jurisdiction for and has the associated legal responsibility for the safe design and construction of its roadways and its own facilities. Therefore it has both legal and political incentive to ensure its operations do not cause a traffic hazard. Should such hazards arise in the future, the City of Roseville will alleviate the hazard in accordance with those responsibilities.
- Staff's estimate of costs of a plume-abated tower, at \$1.3 million, is low by as much as \$1.2 million. The actual cost is approximately \$2.5 million.
- Staff's reliance on hearsay evidence from traffic engineers is misplaced as those traffic engineers were not given enough information upon which to formulate a credible opinion specifically on the potential to create hazardous traffic conditions at the REP.
- After the Roseville Joint Union High School District was presented with all of the facts (following meetings with both the Staff and the City of Roseville), it submitted a letter to the CEC withdrawing its recommendation that the Commission require a plume-abated tower as a condition of certification.
- Any potential traffic-related impact, although speculative and not supported by the evidence, could be mitigated by other means including traffic controls or installing plume abatement equipment at a later date, should the cooling tower actually result in plumes that could pose a traffic hazard.



For these reasons, RE requests Staff-proposed Condition of Certification **TRANS-7** be deleted.

### **TRANSMISSION LINE SAFETY AND NUISANCE**

RE has reviewed and agrees with the Conditions of Certification proposed by Staff in the Transmission Line Safety and Nuisance Section of the FSA.

### **VISUAL RESOURCES**

Staff did not include Condition of Certification **VIS-2** in the PSA. RE objects to the entire condition and requests that the Committee delete it. Staff has imposed specific requirements for the cooling tower and supports the requirements by stating that the condition is necessary "to ensure that the cooling tower plumes will not cause significant visual impacts". Staff has not shown that the visual impacts resulted from its modeling using RE provided parameters. Staff's analysis does not show that modification of RE provided parameters would result in visual impacts but has set the RE-provided parameters as an absolute ceiling in the condition. Staff's condition is arbitrary, imposes a regulatory burden that is not supported by its analysis, is contrary to the recommendations of the City relative to visual impacts, and is therefore unwarranted.

RE proposed revisions to Staff-proposed Condition of Certification **VIS-3** in its comments on the PSA. Staff rejected the suggested modifications on the basis that the City of Roseville Zoning Ordinance supports its version. However, Staff fails to incorporate the specific language of the ordinance relating to minimizing "light spillage and glare" on adjacent properties. Staff's language requires the lamps and reflectors to not be visible from beyond the project site. That is, the condition requires that all lamps and reflectors cannot be seen from outside the project boundary. While visibility of light can be minimized, it cannot be entirely eliminated and the REP could not comply with the conditions. RE has proposed language that is more realistic and is consistent with the ordinance and City's requirements to minimize and avoid light spillage and glare as opposed to completely eliminating the sighting of any lamp or reflector. Additionally, Staff has not found that the viewing of a single lamp or reflector is a significant



environmental impact or that complete elimination is a feasible mitigation measure. RE proposes the Committee modify **VIS-3** consistent with its comments on the PSA as follows.

**VIS-3** To the extent feasible and consistent with safety and security considerations, the project owner shall design and install all permanent exterior lighting such that a) lamps and reflectors **visibility is minimized from public viewing areas** ~~are not visible from beyond the project site~~; b) lighting does not cause excessive reflected glare; c) direct lighting does not illuminate the nighttime sky; d) illumination of the project and its immediate vicinity is minimized, and e) the plan complies with local policies and ordinances. The project owner shall submit to the CPM for review and approval and simultaneously to the City of Roseville for review and comment a lighting control plan that includes but is not necessarily limited to the following:

RE disagrees with the Staff-proposed Condition of Certification **VIS-4**. RE proposed modifications to the proposed condition in its comments in the PSA that would make it acceptable to RE, but these modifications were rejected by Staff in the FSA. RE requests the Committee revise the condition as follows.

**VIS-4** The project owner shall treat the surfaces of all **major** project structures and buildings **conventionally receiving color treatment and** visible to the public **with colors indicated in the AFC** such that a) their color(s) minimize(s) visual intrusion and contrast by blending with the landscape; b) ~~their colors and finishes~~ **surfaces** do not create excessive glare; and c) ~~their colors and finishes~~ **the treatment is** are consistent with local policies and ordinances. ~~Corrugated or embossed type aluminum lagging shall be used where lagging would be visible offsite. Structures shall have embossed or corrugated surfaces where feasible.~~ Transmission line conductors shall be non-specular and insulators shall be non-reflective and non-refractive. The project owner shall submit to the CPM for review and approval, and to the City of Roseville Planning Department for review and comment, a specific surface treatment plan whose proper implementation will satisfy these requirements. The treatment plan shall include:



- a) ~~A description of the overall rationale for the proposed surface treatment, including the selection of the proposed color(s) and finishes.~~
- b) A list of each major project structure, building, tank, and pipe; the transmission line towers and/or poles; and fencing, specifying the color(s) and finish proposed for each. Colors must be identified by vendor, name, and number; or according to a universal designation system;
- c) One set of color brochures or color chips showing each proposed color and finish;
- d) One set of 11" x 17" color photo simulations at life size scale, of the treatment proposed for use on project structures, including structures treated during manufacture, from Key Observation Points 1 and 2, whose locations are shown on Figure 2 in the Final Staff Assessment;
- e) A specific schedule for completion of the treatment; and
- f) A procedure to ensure proper treatment maintenance for the life of the project.

***The project owner may, at its own risk, order equipment with final factory surface treatment prior to approval of the treatment plan. If the CPM does not approve the treatment plan, the project owner shall have the equipment modified at its expense, as necessary, to obtain the required approval. Under no circumstances shall the project owner install equipment that has final surface treatment at the project site prior to CPM approval of the treatment plan. The project owner may order and install any equipment that has no factory surface treatment or only primer surface treatment and which will receive final surface treatment at the site, in accordance with the treatment plan.*** The project owner shall not specify to the vendors the treatment of any buildings or structures treated during manufacture, or perform the final treatment on any buildings or structures treated in the field, until the project owner receives notification of approval of the treatment plan by the CPM. Subsequent modifications to the treatment plan are



prohibited without CPM approval.

**Verification:** At least 60 days prior to **ordering** specifying the vendor the color(s) and finish(es) of the first structures or buildings that are surface treated during manufacture, the project owner shall submit the proposed treatment plan to the CPM for review and approval and simultaneously to the City of Roseville Planning Department for review and comment.

If the CPM determines that the plan requires revision, the project owner shall provide to the CPM a plan with the specified revision(s) within 30 days of receiving notification that revision is required.

Prior to the start of commercial operation, the project owner shall notify the CPM that surface treatment of all listed structures and buildings has been completed and they are ready for inspection, ~~and shall submit one set of 11" x 17" color photographs taken from the same key observation points identified in (d) above.~~

The project owner shall provide a status report regarding surface treatment maintenance in the Annual Compliance Report. ~~The report shall specify a) the condition of the surfaces of all structures and buildings at the end of the reporting year; b) maintenance activities that occurred during the reporting year; and c) the schedule of maintenance activities for the next year.~~

## **WASTE**

RE has reviewed and agrees with the Conditions of Certification proposed by Staff in the Waste Section of the FSA.

## **WORKER SAFETY AND FIRE PROTECTION**

RE requests that Staff-proposed Condition of Certification **WORKER SAFETY-2** be modified to reflect that the Cal/OSHA consultation service will not review the Project Operations and Maintenance Safety and Health Program. Since the condition requires Cal/OSHA's review, the requirement should be deleted as follows to allow compliance with the condition.

**WORKER SAFETY-2** The project owner shall submit to the CPM a copy of the Project Operations and Maintenance Safety and Health Program containing the following:



- Operation Injury and Illness Prevention Plan;
- Emergency Action Plan;
- Hazardous Materials Management Program;
- Operations and Maintenance Safety Program;
- Fire Protection and Prevention Program (Cal. Code Regs., tit. 8, § 3221); and;
- Personal Protective Equipment Program (Cal. Code Regs., tit. 8, §§ 34013411).

~~The Operation Injury and Illness Prevention Plan, Emergency Action Plan, and Personal Protective Equipment Program shall be submitted to the Cal/OSHA Consultation Service, for review and comment concerning compliance of the program with all applicable Safety Orders. The Operation Fire Protection Plan and the Emergency Action Plan shall also be submitted to the City of Roseville Fire Department for review and acceptance.~~

**Verification:** At least 30 days prior to the start of operation, the project owner shall submit to the CPM a copy of the Project Operations and Maintenance Safety & Health Program.

### **FACILITY DESIGN**

RE has reviewed and agrees with the Conditions of Certification proposed by Staff in the Facility Design Section of the FSA.

### **GEOLOGY AND PALEONTOLOGY**

RE requests the following modification to the Verification for Staff-proposed Condition of Certification **PAL-2**, as follows for clarity:

**Verification:** (1) At least 30 days prior to the start of ground disturbance, the project owner shall provide the maps and drawings to the PRS and CPM.

(2) If there are changes to the footprint of the project, revised maps and drawings shall be provided to the PRS and CPM at least 15 days prior to ***implementing the change*** ~~the start of ground disturbance.~~



(3) If there are changes to the scheduling of the construction phases, the project owner shall submit a letter to the CPM within 5 days of identifying the changes.

RE requests modifications to Staff-proposed Condition of Certification **PAL-3**.

RE requests that Item 8, which requires that the project owner identify an institution that has agreed to receive data and fossil materials collected and curate these materials, be modified. It is becoming increasingly difficult to find institutions willing to curate materials into their collections and it is usually not possible to obtain a curatorial agreement ahead of time when the amount of material to be curated and the types of fossils are unknown. Therefore RE requests Item 8 of Condition of Certification **PAL-3** be modified as follows:

8. Identification of the institution that, ***based on pre-field discussions, may be willing*** has agreed to receive any data and fossil materials collected, requirements or specifications for materials delivered for curation and how they will be met, and the name and phone number of the contact person at the institution; and

RE proposes a modification to Staff-proposed Condition of Certification **PAL-5**, which requires that the Paleontological Resource Specialist (PRS) or monitor halt or redirect construction. RE suggests adding the words "in the immediate vicinity of the find" to avoid potential misunderstandings.

**PAL-5** The project owner shall ensure that the PRS and PRM(s) monitor consistently with the PRMMP all construction-related grading, excavation, trenching, and augering in areas where potentially fossil-bearing materials have been identified. In the event that the PRS determines full time monitoring is not necessary in locations that were identified as potentially fossil-bearing in the PRMMP, the project owner shall notify and seek the concurrence of the CPM.

The project owner shall ensure that the PRS and PRM(s) have the authority to halt or redirect construction ***in the immediate vicinity of the find*** if paleontological resources are encountered. The project owner shall ensure that there



is no interference with monitoring activities unless directed by the PRS. Monitoring activities shall be conducted as follows:

### **TRANSMISSION SYSTEM ENGINEERING**

RE has reviewed and agrees with the Conditions of Certification proposed by Staff in the Transmission System Engineering Section of the FSA.

### **EXHIBIT LIST**

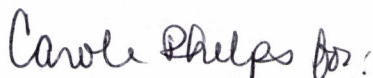
As required by the Prehearing Conference Order RE submits the attached Tentative Exhibit List for the Committee's use.

### **OUTSTANDING ISSUES AND SCHEDULE**

As directed by the Prehearing Conference Order the following is a proposed schedule for hearings and briefs. We believe that all topic areas are ready for hearing and therefore ask the Committee to schedule hearings for the week beginning January 24, 2005. We believe that only two days of hearings would be required and that the topic areas of Traffic and Transportation and Visual Resources be combined. We request the Committee direct the parties to file testimony by January 14, 2005.

We also request that the Committee schedule one round of briefs to be filed by February 7, 2005. We do not request reply briefs.

Dated, December 29, 2004



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Scott A. Galati  
Counsel to Roseville Electric



**TABLE 1**

	<b>DISPUTES BETWEEN PARTIES</b>	<b>WITNESS</b>	<b>TESTIMONY SUMMARY</b>	<b>DIRECT TESTIMONY ESTIMATE</b>	<b>CROSS- EXAM ESTIMATE</b>
<b>PROJECT DESCRIPTION</b>	None	Bob Hren, Project Director Tom Habashi, Utility Director	Brief overview of project components and objectives	25 minutes	None
<b>AIR QUALITY</b>	Yes	Greg Darvin, Atmospheric- dynamics Jim McLucas, Calpine	See Prehearing Conference Statement	30 minutes	30 minutes
<b>BIOLOGICAL RESOURCES</b>	Yes	Mark Morse, City of Roseville Doug Davy, CH2M Hill Debra Crowe, CH2M Hill Jeff Finn, DCFG	See Prehearing Conference Statement	1 hour	1 hour
<b>CULTURAL RESOURCES</b>	Yes	Doug Davy, CH2M Hill	Condition Language	25 minutes	25 minutes
<b>HAZARDOUS MATERIALS</b>	None	Karen Parker, CH2M Hill	Submitted on Declaration	5 minutes for purposes of identifying exhibits	None
<b>WORKER SAFETY AND FIRE PROTECTION</b>	Yes	.Andrea Grenier, Grenier & Associates Patricia Danby, CH2M Hill	Condition Language	10 minutes	None
<b>LAND USE</b>	Yes	John Sprague, City of Roseville Mathew Franck, CH2M Hill	Condition Language	10 minutes	None
<b>NOISE AND VIBRATION</b>	None	Mark Bastasch, CH2M Hill	Submitted on Declaration	5 minutes for purposes of identifying exhibits	None
<b>PUBLIC HEALTH</b>	None	John Lowe, CH2M Hill	Submitted on Declaration	5 minutes for purposes of identifying exhibits	None



<b>SOCIOECONOMICS</b>	None	Fatuma Yusuf, CH2M Hill	Submitted on Declaration	5 minutes for purposes of identifying exhibits	None
<b>SOIL AND WATER RESOURCES</b>	Yes	David Jones, CH2M Hill Jim McLucas, Calpine Derrick Whitehead, City of Roseville Steve Long, CH2M Hill	Condition Language, requirement to use reclaimed water during construction	25 minutes direct examination	30 minutes
<b>TRAFFIC AND TRANSPORTATION and VISUAL RESOURCES</b>	Yes	Rob Jensen, City of Roseville Jim McLucas, Calpine Greg Darwin, Atmospheric-dynamics Loren Bloomberg, CH2M Hill Thomas Priestley, CH2M Hill	See Prehearing Conference Statement	2 hours	2 hours
<b>WASTE MANAGEMENT</b>	None	Karen Parker, CH2M Hill	Submitted on Declaration	5 minutes for purposes of identifying exhibits	None
<b>FACILITY DESIGN, POWER PLANT RELIABILITY AND EFFICIENCY</b>	None	Jim McLucas, Calpine Steve Clark, Calpine	Submitted on Declaration	5 minutes for purposes of identifying exhibits	None
<b>GEOLOGY AND PALEONTOLOGY</b>	Yes	Tom Lae, CH2M Hill W. Geoffrey Spaulding, CH2M Hill	Condition Language	15 minutes for purposes of identifying exhibits	10 minutes
<b>TRANSMISSION SYSTEM ENGINEERING AND TRANSMISSION LINE SAFETY AND NUISANCE</b>	None	Russ Nichols, City of Roseville	Submitted on Declaration	5 minutes for purposes of identifying exhibits	None
<b>COMPLIANCE MONITORING AND FACILITY CLOSURE</b>	None	Andrea Grenier, Grenier and Associates	Submitted on Declaration	5 minutes for purposes of identifying exhibits	None



STATE OF CALIFORNIA

State Energy Resources  
Conservation and Development Commission

In the Matter of:

Docket No. 03-AFC-1

Application for Certification for the  
Roseville Energy Park  
By The City of Roseville

PROOF OF SERVICE

I, Carole Phelps, declare that on December 28<sup>9</sup>, 2004, I deposited copies of the attached **Roseville Electric's Pre hearing Conference Statement**, for the Roseville Energy Park Project with first class postage thereon fully prepaid and addressed to the following:

**DOCKET UNIT**

I have sent the original signed document plus  
the required 12 copies to the address below:

CALIFORNIA ENERGY COMMISSION  
DOCKET UNIT, MS-4

ATTN: Docket No. 03-AFC-1

1516 Ninth Street

Sacramento, CA 95814-5512

\*\*\*\*\*

I have also sent individual copies to:

**APPLICANT**

Tom Habashi, Executive Director

Roseville Electric

2090 Hilltop Circle

Roseville, CA 95747

Robert Hren, Project Manager

Roseville Electric

2090 Hilltop Circle

Roseville, CA 95747

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**INTERESTED AGENCIES**

Patty Dunn

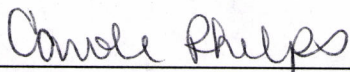
Assistant City Manager

311 Vernon Street

City of Roseville

Roseville, CA 95678

I declare under penalty of perjury that the foregoing is true and correct.



Carole Phelps