INITIAL STATEMENT OF REASONS

FOR AMENDMENT OF REGULATIONS GOVERNING
RULES OF PRACTICE AND PROCEDURE AND APPENDIX B
Title 20, Division 2
California Energy Commission
Docket No. 04-SIT-02

December 14, 2006

I. STATEMENT OF SPECIFIC PURPOSE AND RATIONALE

The California Energy Commission (Energy Commission) was created by the Warren-Alquist State Energy Resources Conservation and Development Act (Pub. Resources Code section 25000, et seq.). The Act vests the Commission with a wide range of duties and responsibilities related to the development and conservation of energy resources in California, including a comprehensive siting process for thermal power plants 50 megawatts or greater and related transmission lines, fuel supply lines, and related facilities. (Pub. Resources Code section 25500, et seq.)

On October 6, 2004, the Energy Commission issued an Order Instituting Rulemaking (Order) to revise, as needed, the regulations governing the Rules of Practice and Procedure and Power Plant Site Certification. The Energy Commission has proposed revisions to the regulations.

The Energy Commission's siting process, including the evidentiary record and associated analysis, has been determined to be a certified regulatory program under the California Environmental Quality Act (CEQA) and the functional equivalent of preparing environmental impact reports. (Pub. Resources Code, sections 25519(c), 21000, et seq.) Consequently, while the Commission is the lead agency on all projects it approves and meets the intent of CEQA, it is not required to prepare an environmental impact report, but instead prepares a staff assessment. The staff assessment includes an independent analysis of the environmental impact, public health and safety and reliability of the proposed project. Nearly 20 technical disciplines are analyzed. In each case, staff also consults with other agencies, and reviews applicable federal, state, and local laws, ordinances, regulations and standards for project compliance.

The Energy Commission's standard licensing process is required by statute to be completed within 12 months. The process allows for and encourages public participation so that members of the public may be involved informally or on a more formal level as Intervenors with an opportunity to present evidence and cross-examine witnesses. The Energy Commission staff is an independent party in the proceedings.

The siting process begins when an Applicant submits an Application for Certification (AFC). Staff reviews the data submitted as part of the AFC and recommends to the Commission whether the AFC contains adequate information to begin the formal review. In order to determine data adequacy of the AFC, staff relies on the requirements as stated in California Code of Regulations, Title 20, Appendix B. Once the AFC is determined by the Commission to be data adequate, the discovery phase begins during which parties can request information from other parties. Generally, staff is requesting information from the Applicant. Depending on the availability of the information requested and timeliness of the response, the discovery phase can be delayed. Many years of experience of working with this process has revealed that modifications to many of the information requirements in Appendix B would create a more efficient process by providing clarification to Applicants of the information needed by staff to perform their analysis, thereby serving to help streamline the siting process which often becomes delayed at during discovery. When a project is sufficiently delayed during the discovery phase, the siting process cannot be completed in the required 12 months. A more efficient data collection process will help the Commission meet its statutory requirements, as well as save the state and Applicant time and money.

After a series of public meetings and workshops, the staff issues its staff assessment, which becomes its written testimony. A Committee of two Commissioners and a Hearing Advisor holds a prehearing conference and a public hearing on issues that remain in dispute. All parties may present testimony and cross-examine, and non-parties may provide public comment. Based on the evidence in the record, the Presiding Member of the Committee issues a Presiding Member's Proposed Decision (PMPD) for review and comment. After all comments are considered, the full Commission votes whether to accept the Decision and approve the Application for Certification. Following an approval by the Commission, a party may file for Reconsideration of the decision within 30 days.

The Rules of Practice and Procedure applicable to the siting process are found in the California Code of Regulations, Title 20, Division 2. Several of these sections require updating because specific statutes have been repealed. In addition, amendments have been proposed that would provide consistency with the Administrative Procedures Act, and help clarify the process for both parties and the public.

The specific purpose and rationale of each proposed amendment, change or deletion are stated below in section VI.

II. DOCUMENTS AND REPORTS RELIED UPON

The proposed amendments included in this rulemaking are the result of collaboration with past participants in the Energy Commission's siting process. Energy Commission staff prepared a series of draft proposals, and sought stakeholder input, both in writing, and at public workshops, before publishing the Notice of Proposed Action. The Energy Commission relied on these documents in developing this proposal. They are listed below:

Staff Proposed Revisions to Power Plant Site Certification Regulations, August 30, 2006.

Economic and Fiscal Impact Statement (STD 399) and supporting documentation filed September 15, 2006 with the Department of Finance, approved on September 26, 2006.

Public comments on draft proposal, filed October 17, 2006.

Staff Response to Comments from Interested Parties and Staff Proposed Revisions to the Rules of Practice and Procedure and Power Plant Site Certification Regulations, November 3, 2006.

Transcripts from Energy Commission workshops: September 20, 2006 & November 13, 2006.

All documents are available to the public through the Energy Commission's docket office. In addition, they will be included in the rulemaking file that will be submitted to the Office of Administrative Law after the Commission adopts changes to the existing regulations.

III. CONSIDERATION OF REASONABLE ALTERNATIVES, INCLUDING THOSE THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

Before adopting the proposed regulations, the Commission must determine that no alternative considered by it would be as effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome than the proposed action. The Energy Commission's purpose in considering this proposal is to clarify and update its regulations governing the conduct of its proceedings and data requirements in its power plant siting process. The Commission is not aware of any reasonable alternatives to the proposed regulations that would be more effective and/or less burdensome to the objectives of the proposed regulations. The Commission filed an Economic and Fiscal Impact Statement (STD 399) with the Department of Finance that was approved on September 26, 2006, showing no impact on small businesses.

TECHNOLOGY AND ALTERNATIVES

The proposed regulations would not impose any specific technology or equipment requirements.

IV. IMPACT ON BUSINESS

The Commission did not identify any significant adverse economic impacts upon business from the proposed regulations. The proposed changes to data adequacy requirements in Appendix B are designed to provide clarity to Applicants, improve

efficiency, and avoid duplication and delays in the siting process. The purpose of the proposed changes to the Rules of Practice and Procedure is to clarify procedural requirements in the siting process and to make certain sections consistent with the Administrative Procedures Act. The Commission filed an Economic and Fiscal Impact Statement (STD 399) with the Department of Finance that was approved on September 26, 2006, showing no impact on small businesses.

V. DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

There are no federal regulations addressing rules of practice and procedure or data requirements for siting a power plant applicable to a state agency. Therefore, there are no duplications or conflicts with any federal regulation or statute.

VI. DISCUSSION OF EACH PROPOSED AMENDMENT

Title 20, Division 2

§ 1002. Service on the Commission.
This change of the title to "Chief Counsel" is consistent with the correct title used.

§ 1201. Definitions.
This change to the definition of "testimony" is consistent with §1212(b).

§ 1207. Intervenors.
The proposed change encourages earlier intervention and more timely and meaningful participation. The presiding member would still retain the discretion to allow intervention at a later date.

§ 1208. Conferences; Purpose; Notice; Order.
This change creates consistency with the title, "chief counsel," actually used.

§ 1209. Form of Submissions.
Hardship status is unnecessary in light of electronic filing and the alternative specified (providing only one paper copy and electronic copies) currently contained in 1209(c). Current statutes use various terms to describe the act of filing a document. This amendment gives all of those terms the same meaning, avoiding confusion and uncertainty. Section (f) has been added to emphasize the requirement to serve other parties in a siting case at the time a document is filed at the Commission.

§ 1209.5. Electronic filing.
These are simple cleanup revisions. The reference to the FTP format for delivered documents appears obsolete and in any event there is no corresponding description of an FTP delivery method in subsection (d). In addition, the email address for the Dockets office has been corrected.

§ 1216. Ex Parte Contacts
This section has been revised to be consistent with the Administrative Procedures Act, Govt. Code Section 11430.10.

§ 1217. Informal Hearings.
Govt. Code Section 11445.20(c) provides that an agency may use an informal hearing procedure if, by regulation, the agency has authorized its use. This new section allows the Commission the discretion to hold informal hearings and is consistent with the Powers of the Chairman and presiding member as set out in Section 1203.

§1219. Effective Date of All Decisions and Orders Interim Regulations for Adjudicatory Procedure.
This section is proposed to be deleted because it is obsolete.

§ 1702. Definitions.
The proposed amendments would delete the definition of an outdated classification at the Energy Commission, "General Counsel," and add the definition of the current classification, "Chief Counsel."

§ 1708. Application, Compliance, and Reimbursement Fees.
The amendments to this section are needed to conform with filing fee revisions in the Public Resources Code.

§ 1709.7. Informational Hearing, Site Visit, and Schedule.
This change is a correction of a typographical error.

§ 1710. Noticing Procedures; Setting of Hearings, Presentations, Conferences, Meetings, Workshops, and Site Visits.
This change allows the Executive Director or a Deputy Director to sign notices for staff workshops, conferences and meetings. It is unnecessary to involve the Committee in the noticing of staff conducted meetings and workshops.

§ 1716. Obtaining Information.
This change is needed to bring closure to the period in which a petition to compel may be filed.

§ 1717. Distribution of Pleadings, Comments, and Other Documents.
This change removes the requirement for 12 paper copies to be consistent with 1210(a) and the duplication of POS requirements of 1210(c). Elimination of the requirement for 12 paper copies should remove any credible assertions of hardship.

§ 1720. Reconsideration of Decision or Order.
This section clarifies deadlines and the process for reviewing petitions for reconsideration of a Commission order. This section also specifies the grounds for reconsideration, limiting such grounds and preventing re-argument.

§ 1720.3. Construction Deadline.
This change reflects a recent statutory amendment governing construction deadlines.

§ 1720.4. Effective Date of Decisions and Orders.
Current Statutes use various terms to describe the date which begin time limitations for filing appeals and other actions. This amendment gives all of those terms the same meaning, avoiding confusion and uncertainty.

~~§1720.5. Demand Conformance.~~
This section is no longer appropriate because the statute that authorized this section has been repealed.

~~§ 1720.6. Demonstration Projects.~~
This section is no longer appropriate because the statute that authorized this section has been repealed.

§1721. Purpose of Notice and Notice of Intention Proceeding.
(b)(1): This subsection is proposed to be deleted as it is no longer appropriate because the statute that authorized this section has been repealed.

§ 1744. Review of Compliance with Applicable Laws.
This amendment conforms to section 1714.5(b).

§ 1747. Final Staff Assessment
The deletion of a need assessment is being proposed because no longer required by statute.

APPENDIX B: INFORMATION REQUIREMENTS FOR AN APPLICATION

(a) Executive Summary

(1) Project Overview
The amendments to this section are needed to ensure that a complete project description is submitted by the Applicant. Applicants to the Commission's Facility Siting process have misunderstood that the information regarding fuel and water supply routes and facilities must be evaluated, and they usually provide a generic description without discussing the specific routes and facilities proposed.

(b) Project Description
The Energy Commission must ensure that a project proposed for construction can be connected to the California electrical system in a manner that protects both public health and safety and the operation of the state's electrical system. The California Independent System Operator must review a proposed facility and determine, through a System Impact Study, the potential impacts to the electrical system from the construction and operation of the proposed facility. Item (b)(2)(E) is added to insure that the Interconnection System

Impact Study for the project's proposed interconnection to the grid is underway at the time a project is found to be data adequate by the Energy Commission. The California Independent System Operator has issued Standard Large Generator Interconnection Procedures which specify that the Interconnection System Impact Study be completed within 120 days of the completion of the Study Agreement. If the Study Agreement is left to discovery, delays in the Application for Certification (AFC) process could occur because the Interconnection System Impact Study is required to determine whether downstream transmission facilities will be required for the interconnection or and operation of the proposed project. The second paragraph is added to ensure that the potential transmission impacts of projects which connect to transmission lines outside the control of a utility or the California Independent System Operator are properly accounted for.

The changes in (b)(2)(C) & (b)(2)(D) are to correct misspelled words.

~~(c) Demand Conformance~~
This section is removed from regulation pursuant to Public Resources Code Section 25009.

(g) Environmental Information

(2) Cultural Resources

(A): The reasons for the amendments to section (A) are as follows:

1: The proposed changes to (A) identify for Applicants specifically what information is needed and to reduce extraneous information from being provided. This will facilitate early issue identification and result in fewer Data Requests during the discovery phase. The public benefits from the streamlined permitting process, and Applicants can both save money on research costs and have more options earlier in their planning.

2: Energy Commission staff needs a broad synthesis of past human activities in the project region as a background for the evaluation of cultural resources directly affected by the project. Staff also needs to focus specifically on the area close to the project location to predict the kinds of cultural resources which could be present and impacted by a project. Applicants typically provide general background summaries but neglect to focus on the local area. Specifying the 5-mile-area focus will result in staff getting the needed information in the AFC, eliminating considerable time spent by both Applicants and staff on Data Requests. This will benefit the public by ensuring a more efficient review process.

(B): The reasons for the amendments to section (B) are as follows:

1: The current requirement (B) slows down the permitting process by providing insufficient guidance to Applicants on either conducting a literature search or conducting

and reporting new archaeological and architectural surveys, and it does not require adequate qualifications for cultural resources specialists. The proposed amendments divide requirement (B) into two parts, one (new (B)) detailing the coverage, sources, and personnel qualifications for an adequate cultural resources literature search, and the other (new (C)) detailing the coverage, personnel qualifications, and technical report requirements for new archaeological and architectural surveys. These changes will provide Applicants with clear direction regarding the level of information staff needs for its CEQA analysis and the professional training and experience which staff expects cultural resources specialists to have. These changes will help Applicants hire consultants who are able to conduct the level of scientific research that produces data of the quality and reliability that staff needs. Staff will be able to make fewer and more specific Data Requests, which will save time for staff and money for the Applicants. In addition, critical issues will be identified early in the siting process.

2: The amendment of a one-mile-diameter coverage area specified for the literature search is commonly used in cultural resources management. It reflects the surrounding geographical context of the cultural resources potentially affected by a project. Learning what kinds of resources are already known to exist in the area around a proposed project provides staff with a sampling of what to expect archaeologically in the immediate project location, which aids Applicants and staff in planning mitigation measures for project impacts. Also, for historical architectural resources, whose integrity of setting can be affected even over long distances by a power plant, one mile is a reasonable distance over which to evaluate visual impacts, and similarly, .25 mile is reasonable for the visual impact of transmission lines in open country.

3: Adding the requirement that Applicants include in their literature search any cultural resources listed by cities, counties, professional societies, and museums casts a wider net inclusive of all the kinds of cultural resources that California statutes list as potentially eligible for the California Register of Historical Resources (CRHR), and therefore, within the consideration of CEQA (Sect. 21084.1).

4: To be granted access to the primary source of cultural resources data, the California Historic Resources Information System (CHRIS), cultural resources specialists are required to meet the Secretary of the Interior's Professional Qualifications Standards, as stated on p. 36 in the "CHRIS Information Center Procedural Manual," (2002). Also, staff can better rely on the information provided in the AFC being complete and correct when the specialist or director of research meets minimum professional standards. These standards are in the Code of Federal Regulations (36 CFR Part 61) and apply to persons working on projects with any federal connection. Some Energy Commission-certified power plant projects have a federal connection, so requiring these qualifications will cover the needs of those Applicants who have such projects.

5: Applicants may include in their AFCs their consultants' cultural resources significance determinations, but as the lead agency, staff needs to make its own determinations, based on detailed information presented in either the AFC or in responses to Data Requests.

Currently, AFCs do not provide the detailed level of information that staff needs to compile a complete inventory of cultural resources subject to project impacts and to make significance evaluations. To fulfill its CEQA responsibilities, staff needs to review all available information on affected cultural resources. Staff does its own additional research as necessary, but must start with reviewing copies of all CHRIS DPR 523 records and reports for cultural resources in the project vicinity.(For more information on DPR 523 forms, see "C2" below.)

6: The 45-year requirement is from the California Office of Historic Preservation's (OHP) "Instructions for Recording Historical Resources," p. 2, and reflects the first essential basis for most preservation protections of cultural resources: the age eligibility criterion for listing on the National Register of Historic Places, which is 50 years unless a younger resource is exceptional. OHP uses 45 years, rather than 50 years, for contingency planning purposes. It can take 5 years for a project to actually begin construction, by which time a 45-year-old resource has become a 50-year old resource. If such a resource was not in the inventory of resources considered for impacts 5 years before, when the project was proposed, construction could be delayed while a new evaluation takes place. Having a contingency "waiting period" for cultural resources benefits Applicants by preventing construction delays and benefits the public by ensuring that all potential cultural resources will be identified and evaluated, and impacts to significant cultural resources will be mitigated.

(C): The old section (C) has been deleted because the requested information will be included in the technical report requested as part of the new (C). The reasons for the additions to new section (C) are as follows:

1: Under CEQA, if a historical resource is potentially eligible for the CRHR it is significant and, therefore, impacts to it are potentially significant. The California Code of Regulations requires that the documentation of a resource being considered for nomination to the CRHR must be updated if it is five or more years old (CCR 4852 (e) (3)). This means staff needs information that is no more than 5 years old on resources potentially affected by the project. New surveys ensure identification of all cultural resources while verifying old survey results, which prevents wasting staff and Applicant time on unnecessary avoidance and mitigation planning for sites that no longer exist. Submitting new survey reports to the CHRIS provides a benefit to the wider public, as well, by aiding cultural resources specialists on other, future projects. The five-year limit on survey viability also means that Applicants only have to conduct new surveys if existing surveys in the area are more than 5 years old or do not fully cover the specified area around projects. This benefits Applicants by omitting unnecessary surveys.

2: Adding professional qualifications for directors of surveys to the new (C) reflects a requirement of the Office of Historic Preservation (OHP) that evaluators of cultural resources on DPR 523 detail forms meet the Secretary of the Interior's Professional Qualifications Standards. When cultural resources are evaluated for potential eligibility to the CRHR on the DPR 523 detail forms, OHP entrusts this only to cultural resources

specialists who meet the Secretary of the Interior's Professional Qualifications Standards. Also, the CHRIS only accepts new DPR 523 detail forms from evaluators who meet those qualifications. The Secretary of the Interior's Professional Qualifications Standards are the generally accepted standards for cultural resources specialists tasked with project management responsibilities all over the country.

3: The distance parameters specified for the coverage of new surveys reflect the knowledge and experience of staff regarding the vulnerabilities of all kinds of cultural resources and regarding the physical impacts of construction activities and the visual intrusions commonly associated with power plants and transmission lines. The distances specified encompass the full extent of potential impacts from construction, not just the footprint of the project. This will aid staff in meeting obligations under historic preservation law to minimize the loss of cultural resources. It will aid Applicants because they will not have to do additional surveying to satisfy Data Requests to increase survey coverage beyond the project footprint.

4: Technical reports of new surveys must be sent to the Commission in an appendix, and under confidential cover if it contains information on the locations of archaeological sites. This language must be added to protect known archaeological sites from damage caused by artifact hunters who, when they find prehistoric and historic-period archaeological deposits, dig through them randomly looking for such artifacts in order to remove and sell them. All archaeologists are expected to uphold this professional ethical standard. The CHRIS only discloses the exact locations of known archaeological sites to professional archaeologists (see Rationale "B4", above), the owners of the land where a site is located, or the Native American Heritage Commission (NAHC). The California Public Records Act exempts from public disclosure archaeological site information held by the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency (Government Code Sect. 6254.10).

5: In California, technical reports organized in a specific, systematic, consistent layout are standard in professional cultural resources management. That layout is detailed in "*Archaeological Resource Management Reports (ARMR): Recommended Contents and Format*" (February, 1990). The reasoning behind OHP's establishing the ARMR format was the recognition that regulatory and review agencies need the information in archaeological reports, and standardizing the format of reports would assure that "all needed data would be included and organized to optimize efficiency and utility" (1990: p. 1). This exactly expresses why staff has specified ARMR format for the technical reports for new surveys conducted by Applicants under new (C).

6: The technical report required is a professional cultural resources document which is the appropriate medium for conveying detailed information on new, project-driven surveys. Staff can combine that information with additional information obtained through independent research to reach its own conclusions, either agreeing or disagreeing with those of an Applicant's consultants.

(C)(i): Since Applicants have to prepare these sections for the AFC, the additional cost in time and money of putting them into the technical report is negligible. The benefit of putting them into the report is that it will make the report more readily useful to staff and to other cultural resources specialists who will acquire these reports later from the CHRIS. This benefits the wider public, as well, by aiding cultural resources specialists on other, future projects. Also, the ARMR format requires a section on background and a section on a literature search.

(C)(ii): The current requirement (B) calls for a description of literature searches and survey methodology, so this proposed amendment is not new or burdensome. Staff needs this information to evaluate the survey method and determine if it was adequate to produce reliable results. Also, the ARMR format requires a section on survey methods.

(C)(iii): The OHP and the CHRIS together oversee the development of California's state-wide inventory of cultural resources by encouraging all persons, whether amateur or professional, to fill out OHP's DPR 523 primary forms for all potential cultural resources over 45 years of age and to submit them to the CHRIS. The completion and submission of the forms is voluntary. But all professional archaeologists and architectural historians consider it their duty to add to the state-wide inventory in this way when their surveys find new sites or structures. To encourage cooperation, the CHRIS can impose a condition on cultural resources specialists under which users of the CHRIS database and reports must complete and submit records and reports of their recent investigations no later than 30 days after the final report is completed. Failure to comply with this condition could result in denial of subsequent access to CHRIS data. Most federal and state agencies require the cultural resources specialists who conduct surveys for their public projects to complete the DPR 523 primary forms for newly found resources and submit them to the CHRIS, and the same is true of many private projects.

(C)(iv): A requirement similar to this is included in the current (A). The proposed change moves the map requirement from (A) to (C)(iv), and changes it from depicting ethnographic areas to depicting all known cultural resources. Staff needs this map to compare cultural resource locations to project impact locations. Applicants can best compile such maps because they can most accurately identify project locations. The specified scale is standard in cultural resources management, used on DPR 523 forms, and used by the CHRIS to plot all their known resources. Because this map size is standard, it will be easy for Applicants to obtain, and it will facilitate the direct transfer and compilation of map locations. Also, the ARMR format requires a map at this scale depicting the cultural resources found by survey.

(C)(v): This amendment to include the names and qualifications of all persons responsible for the various aspects of the research reported in technical reports provides information required for projects which have a federal connection and affords staff a means of evaluating the quality and reliability of the data in the reports. It will serve the same purpose for other cultural resources specialists who will acquire these reports later

from the CHRIS. This is why the ARMR format requires the inclusion of the names and qualifications of the cultural resources specialists who did the reported research.

(D): Consultation with Native Americans is essential to identify all archaeological sites and all areas of Native American religious significance (PRC §§ 5097.9, 5097.94, 5097.97, & 5097.98) Current requirement (D) does not provide sufficiently detailed guidance to Applicants about obtaining information regarding archaeological and ethnographic cultural resources known only to Native Americans with traditional ties to a project area. This lack of information burdens the permitting process when staff has to provide Applicants with the missing guidance by means of Data Requests, and Applicants have to submit supplementary information. The NAHC, a state agency, exists to provide information on known Native American sacred sites and to facilitate the process of contacting Native Americans knowledgeable about a given project area. The recommended changes to requirement (D) indicate that Applicants must work through the NAHC to obtain sacred site information and to obtain the names of appropriate Native Americans to contact about Native American cultural resources in their project areas. The changes also specify what information about the project Applicants should provide to Native Americans to ensure they can make informed and useful responses. These changes assure that appropriate Native Americans are consulted regarding potential projects and given ample opportunities to convey their concerns to Applicants and the Commission.

(E): The proposed amendments are not substantive. They state more clearly what is needed in the AFC to meet CEQA requirements on mitigation for unavoidably impacted cultural resources. Applicants will find it advantageous to suggest possible mitigation measures because only they will know what resources they have which can be applied to mitigating impacts to cultural resources. Educational programs are typically included as part of the mitigation package.

(3) Land Use

(A)(ii): Critical to the siting of proposed generation facilities are the identified land uses at the proposed project site and its vicinity. Resolution of land use issues have a potential to add additional costs to developers. The proposed modification moves the required discussion from a general discussion of "trends" in zoning changes to a discussion of any general plan amendments which have actually occurred in the project vicinity. This information allows staff to better determine the actual land use impacts of the project.

(B): The proposed amendments clarify the information needed to determine the compatibility of the proposed project with all adopted land use plans for the site and vicinity. Critical to the siting of proposed generation facilities are the identified land uses at the proposed project site and its vicinity and the proposal's conformance with current land use regulations in the vicinity. Resolution of land use issues have a potential to add additional costs to developers through attorney fees, zoning change or permit applications.

(C): Section (C) has been added because good planning practices and the development requirements of local agencies require that a project be located on a single legal lot. Various local development standards, such as set-back distances, which staff must apply to the proposed project, are measured from lot boundaries. In some cases the applicant may find that all the land it owns in the project vicinity is not required for the power plant and may wish to reconfigure the lots to maximize development potential of the power plant site and the remaining lands. Addressing this issue early in the siting process will help avoid delay in the review of the application while a reconfiguration is designed. The process of merging lots is handled through the city or county having jurisdiction over the site. Early identification of the need to process a merger will help successful applicants avoid an unexpected delay of the start of construction.

(D(i) – (D)(iii): This section has been moved from Agriculture and Soils for clarity as a Land Use issue. Agricultural Land Conservation and Williamson Act contracts prohibit industrial development of agricultural land for the duration of the contract. A proposed power plant is prohibited on land containing this land use restriction. Williamson Act cancellation requires the land use agency to conduct a CEQA assessment for canceling the contract and allows for a 180-day noticing period before taking final action in canceling the contract. Providing information on the status of a Williamson Act related actions will assure that the staff can work early in the process to solve any Williamson Act related issues.

(4) Noise

(g)(4)(A) & (g)(4)(B): Missing words were inserted for clarification.

(5) Traffic and Transportation

(B): The Energy Commission has a responsibility to ensure that impacts to any nearby air facilities are identified and mitigated during the regulatory review of the project. Aircraft which pass over the cooling towers of a facility may be adversely affected by thermal plumes emanating from the power plant. The newly requested information from the applicant regarding flight paths, runway configurations, and airport influence areas is essential for staff to make LORS findings in relation to the proposed site and will enable staff to evaluate compatibility between the project and airport activities.

(C) & (D): Project truck routes and workers' commute patterns may conflict with school bus routes and other commute patterns within the community. The above addition assures that all of the facilities identified by the applicant are discussed and that the information needed to assess the potential impacts to transportation in the project vicinity are addressed.

(6) Visual Resources

(A): The changes and additions clarify the information required to assess the potential impacts of the project on visual resources and to evaluate the visual quality and character of the project's existing visual setting. Since this information is regularly requested during the discovery phase, providing this information as part of the application will reduce the Applicant's cost for responding to data requests and will streamline the review of the project by staff.

(i): The changes and additions clarify the information required to assess the potential impacts of the project on visual resources and to evaluate the visual quality and character of the project's existing visual setting. Since this information is regularly requested during the discovery phase, providing this information as part of the application will reduce the Applicant's cost for responding to data requests and will streamline the review of the project by staff.

(ii): The changes and additions clarify the information required to assess the potential impacts of the project on visual resources and to evaluate the visual quality and character of the project's existing visual setting. Since this information is regularly requested during the discovery phase, providing this information as part of the application will reduce the applicant's cost for responding to data requests and will streamline the review of the project by staff.

(B): Staff's visual resources analysis of a proposed project considers both degradation of visual quality and visual character. The addition of "character" to this requirement assures that the applicant addresses this potential visual impact. A request for the description of the method used by the Applicant to assess visual resources has been added so that staff can assess the appropriateness of the methodology used.

(C): Applicants have indicated that the preparation of the visual resources analysis can be burdensome. Requiring Applicants to consult with Energy Commission staff in the selection of the key observation points (KOPs) is the first step in reducing this burden. By consulting with staff in the selection of the KOPs, applicants will gain first hand knowledge of concerns and view areas to be protected which can focus the review and further reduce applicant costs.

(D): Applicants have indicated that the preparation of the visual resources analysis can be burdensome. The changes attempt to reduce this cost by specifying the structures to be included in the application, as well as the dimensions and appearance (e.g., color and finish) of the project structures.

(E): Over the last 10 years, the analysis of visible plumes has taken on greater importance in the Energy Commission's review process. Staff regularly requests the information in the new section (E) during discovery in order to address the project's potential visible plume impacts. If the information is provided in the application staff can move forward

with its analysis and reduce the number of data requests to which the applicant must respond.

(F): Applicants have failed to include all potential project features in their visual simulations. The proposed changes provide specificity for the information to be contained in the color simulations of the project submitted with the application. If landscaping is proposed in the application in order to mitigate impacts, simulations (and supporting data to verify their accuracy) should also be included.

(G): While the application should employ a methodology for assessing visual impacts, applicants typically provide generic language on plume impacts and present no computer modeling to support their conclusions. Applicants typically present such information during hearings to rebut staff's analysis, requiring staff to evaluate an applicant's analysis late in the process. This delay in review can lengthen the evidentiary hearings on the project and increase the expense to both the applicant and the State of California.

(H): This amendment is proposed because most applicants propose landscaping to reduce the potential impacts of the project and this information is not currently required. Therefore, staff routinely requests that applicants provide conceptual landscape plans during discovery. If landscaping is proposed in the application, a conceptual plan, and related information, must be provided.

(7) Socioeconomics

(A)(v): In order to determine the availability of housing in the project area a current vacancy rate is needed. This proposed amendment will reduce the need for additional data requests and will streamline staff's analysis.

(B): Applicants frequently provide inconsistent economic data. If the applicant provides the above information staff can verify the information provided by the applicant. This proposed amendment will reduce the need for additional data requests and will streamline staff's analysis.

(i): This change clarifies the level of information needed to accurately assess the potential employees needed for construction and operation of the project. This additional information will reduce the need for additional data requests and will streamline staff's analysis.

(ii): The proposed modification is designed to clarify and simplify the information needed to determine the potential socioeconomic impacts of non-local workers. Applicants are no longer required to determine the actual number of workers who might commute to the project site. Staff believes that, in areas where housing supplies are short, socioeconomic impacts may result from the migration of non-local workers to a project area. This change provides the necessary data to analyze this potential impact.

(v): The addition of a power plant in a local community may create additional responsibilities for emergency services in the area. Information on the potential response times for these services can be an indicator of the community's ability to handle these increased responsibilities. Staff will use this information, which has been typically requested during discovery, to assess the project's potential impacts on these services. Provision of this data in the application will reduce the applicant's cost for responding to staff's data requests.

(vii): This change clarifies the level of information needed to accurately assess the potential payroll for the facility. This additional information will reduce the need for additional data requests and will streamline staff's analysis.

(ix) (x), (xi), (xii): This section of the regulations previously required applicants to provide information regarding the potential impacts of tax revenues from the construction and operation of the project. Staff has found that the estimate provided by applicants was often inaccurate. Because of this, staff typically requests this data during the discovery phase of the siting process. The proposed modifications provide the detail needed by staff to accurately describe the potential socioeconomic benefits or impacts of a project. Further, provision of this information in the application will lessen the need for data requests and associated project delays.

(8) Air Quality

(E): The Energy Commission's 2003 Integrated Energy Policy Report (IEPR) requires the reporting of greenhouse gas emissions as a condition of licensing. This modification implements this condition.

(F)(ii): This section was added because in evaluating many projects over the years, staff has learned that during the initial commissioning phase of operation, especially for the larger combustion turbine projects, that the duration of this phase of operation can be many weeks or months. Emissions and associated impacts during this period of time are usually quite elevated in comparison to normal project operation, thus this mode of operation should be analyzed.

(I)(i): This change is needed to update the regulation to more accurately refer to the criteria pollutants which are the scope of the analysis of the proposed facility. Also there is a new criteria air pollutant (PM2.5) that must now be analyzed.

(ii): This change is needed to clarify the discussion of criteria pollutants expected in the application. The term "inert" is unnecessary and does not add clarity to the regulation. Also there is a new criteria air pollutant (PM2.5) that must now be analyzed.

(iv): This change is needed to update the regulation to analyze an operating scenario that has significant potential for impacts. Some commissioning activities occur without air pollution control installed or operational, resulting in high emission rates

(J)(i): This amendment is proposed because Applicants have sometimes failed to provide offsets for the entire quantity needed to offset the project's air quality impacts

(K): Staff believes that this information deleted is no longer necessary to perform our analysis. Removing this requirement reduces the application preparation cost for applicants. For the proposed section (K), in some instances, certain air districts do not require emission offsets for sources of air pollution, even though those sources can contribute to an air pollution problem in those districts. Staff believes that mitigation is still necessary in those circumstances, notwithstanding the district's offsetting requirements.

(9) Public Health

(A): This change is to be consistent with requirements specified in the Office of Environmental Health Hazard Assessment's "*Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments.*"

(B): The proposed change better identifies the information needed by staff to confirm the Hotspots Analysis and Reporting Program (HARP) study results and reduces the burden on applicants for providing information on the protocols used to perform the health risk analysis.

(C): Available health studies for the potentially affected area will allow staff to analyze additional health effects that may need to be considered in its public health analysis. Staff does not need map information to perform this analysis.

(D): Staff does not need a particular scaled map of population distribution to conduct its public health analysis. This allows applicants to determine the scale needed to appropriately show the requested data.

(E)(ii): This change makes the definition consistent with the State Office of Environmental Health Hazard Assessment's *Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments.*

(iii) The original section (iii) was deleted because the State Office of Environmental Health Hazard Assessment's *Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments* does not refer to subchronic exposures. The new section (iii) makes the definition consistent with the State Office of Environmental Health Hazard Assessment's *Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments.*

(10) Hazardous Materials Handling—No changes are proposed.

(11) Worker Safety—No changes are proposed.

(12) Waste Management

(A): The American Society for Testing and Materials (ASTM) periodically revises its standard for preparation of Environmental Site Assessments. This change will assure that applicants use the proper version when preparing their Site Assessment.

(13) Biological Resources

(A)(i) – (A)(vi): To improve clarity and lessen confusion, Section (A) now includes all the sensitive species and habitat information requirements, and their definitions, which were moved from Sections (G), (H), and (I).

Habitat Conservation Plan (HCP) information has been added to the Data Adequacy regulations so each application is more complete when projects are located near or within an HCP area. HCPs are an important local tool, developed in consultation with state and federal wildlife agencies, that are used to determine impacts, identify appropriate mitigation, protect habitat, and manage state and federal protected species and their remaining habitat.

California counties have sensitive species and habitat lists that include species that are neither state nor federally listed. These local sensitive species and habitats need to be identified and addressed in the application. With this information, staff will be better able to address locally rare species and lessen the need for data requests during the discovery phase of the siting process. Reducing the number of data requests reduces the cost of regulatory review to both the state and applicant.

Also in subsection (v), the California Natural Diversity Database (CNDDB) is included as a source of sensitive species lists for completeness. CNDDB, Fish and Game's official sensitive species and habitat data base, is continually updated with ecological and site-specific data for sensitive plant, mammal, fish, bird, etc. lists. These lists include all state and federally listed species; however, they also include all proposed, candidate, and other sensitive species that may be locally rare that are monitored for possible future state or federal listing consideration. This data is essential to understand potential project impacts and develop measures to mitigate the impacts to biological resources.

(B)(i) – (B)(iii): The current data adequacy regulations lack specificity and guidance on which maps and aerial photographs are useful to complete staff's analysis. This increases both the time required to complete the analysis and the cost of the environmental review. All required maps and suggested map scales are consolidated in Section (B). By requiring these items be filed with the application, applicants will save time and money since fewer data requests will likely be necessary and maps will not have to be redone during the discovery phase of the siting process.

The current regulations lack specific guidance regarding mapping wetlands and allowing for more precise measurements of their extent. Requiring better maps for measurement will also help applicants when they provide this same information to the Army Corps of Engineers if a wetlands fill permit (Section 404) is required from the Corps.

Providing map information about wetlands and adjacent habitat that occurs within 250 feet of the project will be helpful to staff and the applicant since this distance matches the distance the USFWS and Corps use when determining impacts to isolated wetlands such as vernal pools or creeks and rivers. This clarification is needed since *indirect* impacts are likely to occur if the project will affect upland areas within 250 feet of the nearby wetland.

Section 316(a) of the federal Clean Water Act requires thermal plume information for projects that discharge heated cooling water into an adjacent water body. The current data adequacy regulations lack specificity regarding what needs to be included in an Application for Certification for a complete thermal discharge impacts analysis. Including this information in the application will make the application more complete and reduce the costs of participation for both applicants and staff.

(C)(i) – (C)(ii): The new federal Clean Water Act section 316(b) regulations require updated impact analyses during the 5-year National Pollution Discharge Elimination System permit renewal, so recent impact information will be available and must be provided for a complete analysis. To provide clarity and make the regulations easier to use, Section (C) now consolidates all the general biological resources data requirements in one section. The current data adequacy regulations are incomplete regarding what information should be required of applicants for projects that propose to use or are currently using once-through cooling. Staff always asks for a current impingement and entrainments impacts analysis; however, when the data is not provided, the Commission decision is significantly delayed until the data is collected and provided.

(D)(i) – (D)(iii): The current regulations lack specificity and are incomplete regarding field survey protocols. To make the Data Adequacy regulations easier to understand, new Section (D) consolidates all terrestrial and aquatic survey protocol information requirements contained in the current regulations. Section (D) requires clarification regarding study design and sampling protocols regarding federal Section 316(b) studies being completed under new Clean Water Act regulations. Suggested California Coastal Commission language regarding wetland status is added to help clarify requirements for determining California Coastal Act compliance.

(E): For clarity, all impact information requirements are now consolidated in Section (E). CEQA requires that information on direct, indirect, and cumulative impacts be provided so staff can complete its CEQA analyses.

(E)(ii): Due to substantial changes to the Federal Clean Water Act section 316(b), subsection (ii) now includes data adequacy requirements that will help staff complete its analysis for power plant projects that currently withdraw cooling water and discharge it after its use. Staff currently attempts to get this information during Discovery; however, it would be more efficient for staff and the applicant, saving time and money, if this information is required in the data adequacy regulations.

(E)(iii): The biofouling issue is not addressed in the current data adequacy regulations; however, the chemicals used to control biofouling can impact biological resources when discharged. Anti-fouling agents often include copper-based and other metal-based chemicals which can have a negative impact on biological resources in the discharge receiving water. Requiring this information in their application will save time for the staff's analysis and time and money for the applicant during Discovery.

(F)(i) – (F)(v): Our current data adequacy regulations lack clarity regarding a complete mitigation discussion. This lack of clarity often results in more data requests during Discovery which slows staff's completion of its analysis and costs the applicants additional money. As an example, Section (F) now requires a more complete discussion of ways to minimize impacts associated with cooling water withdrawal and discharge. This has been a time-consuming issue during several recent siting cases (Moss Landing, Morro Bay, El Segundo, and Potrero) requiring multiple data requests and data request rounds. If this information is provided in their application, then staff may be able to complete its analysis more quickly and result in a more timely Commission decision.

This section also provides suggested California Coastal Commission additions that are appropriate and will help determine Coastal Act compliance. Without this critical information, Coastal Act compliance will be costly for the applicants and delay the Commission decision.

(G): Section (G) originally provided one of the sensitive species (native fish and wildlife species of commercial and/or recreational value) definitions; however, this definition has been moved to improve clarity to Section (A) so all sensitive species definitions are found in the same section.

Since the original material has been moved to Section (A), the new Section (G) now contains refinements to the language regarding compliance and mitigation monitoring requirements and the need to determine if the mitigation is effective. This is missing in the current data adequacy regulations and needs to be added for clarity and completeness.

(H): This sensitive species definition has been deleted here and moved along with the other definitions to Section (A) so the sensitive species concept, and related definitions, are located in the same section. This change makes the biological resources data adequacy regulations easier to use and helps applicants compile a more complete application.

Current data adequacy regulations are incomplete regarding other federal permits that may be required outside of the Commission licensing authority. Requiring that this information be provided as part of a complete application is essential to a better understanding of the overall project permitting schedule. Subsection (ii) is no longer necessary. To improve clarity, all sensitive species and habitat Data Adequacy information requirements and definitions are consolidated in revised Section (A).

Subsection (iii) is no longer necessary. To improve clarity, all sensitive species and habitat Data Adequacy information requirements and definitions are consolidated in revised Section (A).

(14) Water Resources

(A)(i) – (A)(iv): The number of permits which regulate discharge is broader than originally proposed in the Data Adequacy Regulations. The inclusion of this set of permits will cover most discharges and allow staff to begin discovery knowing what other agency regulations apply to the discharge of wastewaters.

(B): The proposed changes are required to ensure the discussion and description of the hydrological setting is sufficient to provide an adequate technical basis for a staff assessment. An incomplete or inaccurate technical basis for hydrological impacts is frequently a cause of delay in both the staff assessment and the licensing of power projects.

(C)(i): The proposed changes are required because the project water supply must be established as a critical path item in the staff assessment in order to assure that the project has adequate water supplies for continued operation at the proposed site.

(ii): The proposed changes will prevent incomplete or inadequate characterization of the physical and chemical characteristics of the water supply and wastewater discharge that is often the cause of unanticipated problems resulting in delays in the production of the staff assessment and licensing of power projects.

(iv): A final conceptual design is necessary to prevent delays in the staff analysis and licensing of power plants. Problems with conveyance facilities and pipelines are a frequent cause of delay.

(v), (vi): The project water supply must be established as early as possible as a critical path item in the staff assessment. An incomplete or inaccurate technical and/or legal basis for the proposed water supply is frequently a cause of delay in both the staff assessment and the licensing of power projects.

(vii): State law prohibits the waste or unreasonable use of water. The proposed amendment will promote resolution of excessive water use issues by a proposed project which is a frequent cause of delay of a project.

(viii): Any pre-treatment requirements found in the permit or contract could change the configuration of the project. For instance, if it was cost prohibitive to clean the wastewater to the permit's chemical standards, then the project may need to use zero-liquid discharge. It is necessary to know the permit conditions early in the process to avoid any amendments and major project changes. In addition, it is necessary for staff to establish that the proposed provider has the capacity to accept the wastewater and contact

stormwater and to establish that the project's discharge (with or without pre-treatment) can occur without causing additional impacts. For example, if the project's discharge were to cause a municipal utility to violate the volume limit in its own discharge permit, this would be an indirect impact of the project which must be mitigated.

(D)(i) – (D)(iv): The information on the project's potential stormwater drainage impacts provided by applicants under the previous regulation did not provide all of the information necessary for staff to fully determine the potential drainage impacts of the project. The additional information requested will allow staff to analyze the project without the need for additional data requests. This will reduce the cost to applicants for responding to data requests and will further speed staff's review of the application.

(E)(i): Water supply related issues are highly significant reasons for delays during the licensing process. As the state's demand on water resources continues to increase, unresolved water supply issues will only cause further delays.

(ii): This section was added because due to the volume and pumping rate of groundwater at power plants, interference with, and significant impacts to other users in a groundwater basin frequently cause delays in review of the potential impacts from a facility.

(iii): Unmitigated discharge related issues are common reasons for delays. Requiring that complete and detailed stormwater drainage, erosion, and sediment control information be included with the AFC will minimize such delays.

(iv): This section was added to establish consistency with State Water Policy and water conservation policy as provided in the 2003 Integrated Energy Policy Report (in conformance with Public Resources Code, Div. 15, Section 25300 et esq.).

(v): This section was added to establish consistency with State Water Policy and water conservation policy as provided in the 2003 Integrated Energy Policy Report (in conformance with Public Resources Code, Div. 15, Section 25300 et esq.).

(vi): Identification of impacts to adjacent lands or water bodies will allow for more accurate identification of any required mitigation measures early in the licensing process.

(vii): Understanding how the applicant has analyzed these issues will prevent misunderstandings and related delays in processing the application.

(15) ~~Agriculture and~~ Soils

(A)(iii) –(A)(iv): The additional items are needed to understand the potential impacts of the project to agriculture and soils in the vicinity of the project. Without this information staff would be required to burden the applicant with data requests for this additional information.

(B)(i) – (B)(ii): Deleted sections were moved to Land Use for continuity of analysis.

(C)(ii) – (C)(iii): Deleted sections were moved to Land Use for continuity of analysis.

(16) Paleontologic Resources

(A): This proposed amendment is needed to clarify that the "area" requested was the size of the area under study. Also, the word "area" was used twice in the same sentence which was confusing to applicants and the public. Region more appropriately describes the requested information.

(B): This proposed amendment clarifies that the applicant must address each geologic unit and that they must provide rationale for sensitivity assignments. This will reduce the need for staff to seek this information during discovery and will reduce the applicant's cost for responding to staff data requests.

(C): Local museums are a primary source of information regarding paleontologic resources in an area. This proposed amendment assures that applicants contact museums in the area to determine what resources may have been collected near the site. While many applicants provide this information, this addition will streamline the review process by assuring that no data request is need to obtain this information.

(D): The requirement to provide information on known paleontologic resources, on a map at a scale of 1:24,000, lacks definition on the area surrounding the project and its facilities that must be studied by the applicant. Providing information only on resources within a one-mile radius will provide the needed definition and will reduce the cost to applicants who might needlessly study a larger area.

(E): A discussion of educational programs proposed to enhance awareness of potential impacts to paleontological resources by employees, measures proposed for mitigation of impacts to known paleontologic resources, and a set of contingency measures for mitigation of potential impacts to currently unknown paleontologic resources.

(17) Geological Hazards and Resources

This section did not explicitly require the applicant to provide information regarding the submission of data relative to any proposed linear facilities. This resulted in additional requests for information during the discovery phase, and additional costs to the applicant for responding to these requests. The proposed revisions will clarify that the information is required in each application.

(18) Transmission System Safety and Nuisance—No changes were proposed.

(h) Engineering

This is a change in lettering. See **(i) Compliance with Laws, Ordinances, Regulations and Standards** discussion below.

(1) Facility Design—No changes were proposed.

(2) Transmission System Design—No changes were proposed.

(3) Reliability

(B)(i) – (B)(v): As currently written, the request for information regarding the project's maturation period makes sense only for new technologies which do not have a demonstrated operational record in California. The generating technologies currently being sited in California (such as simple cycle and combined cycle gas turbine generating plants), are well understood. The current requirement often causes delays in staff's data adequacy review, and additional costs for applicants, because it is commonly overlooked in preparing the AFC. The proposed addition makes it clear that the information is needed only for technologies which have not previously been installed and operated in California.

(4) Efficiency—No changes were proposed.

(i) Compliance with Laws, Ordinances, Regulations and Standards

(2) This discussion requirement has been moved to (i)(1)(A) to make it clear to applicants that information on conformance with all LORS for all technical areas is needed in the application. Clarity in the regulation reduces the applicants cost for compliance. This section has been updated to provide an electronic contact point for agency contacts. This additional contact information will be helpful to both the staff and to public who wish to discuss the proposed project.