



**SOUTHWEST CHULA VISTA  
CIVIC ASSOCIATION**

PO Box 6064, Chula Vista, CA 91909, (619) 425-5771

5/18/08

RE: Comments on Land use Section of the PSA for the public record:

Mr. Christopher Myers:

CVEUP is NOT consistent with the applicable laws, ordinances, regulations, and standards pertaining to local land use planning and would generate a significant impact under the California Environmental Quality Act guidelines with respect to the act's Appendix G issues, "Land Use and Planning" and "Agriculture Resources."

CVEUP is proposed in a **LIMITED INDUSTRIAL ZONE**. These are the zoning codes relevant to this zone from the CV Municipal Code with violations highlighted in red:

**L – LIMITED INDUSTRIAL ZONE**

[http://www.codepublishing.com/ca/chulavista\\_PDF.html](http://www.codepublishing.com/ca/chulavista_PDF.html)

**19.44.010 Purpose.**

*The purpose of the I-L zone is to encourage sound limited industrial development by providing and protecting an environment free from nuisances created by some industrial uses and to insure the purity of the total environment of Chula Vista and San Diego County and to protect nearby residential, commercial and industrial uses from any hazards or nuisances. (Ord. 1281 § 1, 1970; Ord. 1212 § 1, 1969; prior code § 33.513(A)).*

As stated by Michael Meecham on 5/12/08 the carbon emissions from this plant would be between 7-and 25% of all the carbon emissions for the city. Since the city has signed the Kyoto Treaty and currently has an increase of 35% carbon emissions, this facility would have an extremely negative effect upon the total environment of Chula Vista and cause severe hardships for the citizens who will have to some how cut back 42-55% in order to have a chance of meeting our goal to lowering emissions to 1990 levels. <http://www.youtube.com/v/tIu2-GlqNIU> There will be a new regulatory document once adopted formally by the council in a few months: <http://www.chulavistaca.gov/clean/conservation/Climate/ccwg1.asp>

**19.44.020 Permitted uses.**

Permitted uses in an I-L zone are as follows:

A. Manufacturing, printing, assembling, processing, repairing, bottling, or packaging of products from previously prepared materials, not including any prohibited use in this zone;

B. Manufacturing of electrical and electronic instruments, devices and components;

C. Wholesale businesses, storage and warehousing;

D. Laboratories; research, experimental, film, electronic and testing;

E. Truck, trailer, mobilehome, boat and farm implement sales establishments;

Chula Vista Municipal Code 19.44.050 19-99 (Revised 8/06)

F. Public and private building material sales yards, service yards, storage yards, and equipment rental;

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- G. Minor auto repair;
- H. Laundries, laundry services, and dyeing and cleaning plants, except large-scale operations;
- I. Car washing establishments, subject to the provisions of CVMC 19.58.060;
- J. Plumbing and heating shops;
- K. Exterminating services;
- L. Animal hospitals and veterinarians, subject to the provisions of CVMC 19.58.050;
- M. The manufacture of food products, drugs, pharmaceuticals and the like, excluding those in CVMC 19.44.050;
- N. Electrical substations and gas regulator stations, subject to the provisions of CVMC 19.58.140;
- O. Temporary tract signs, subject to the provisions of CVMC 19.58.320 and 19.60.470;\*
- P. Any other limited manufactured use which is determined by the commission to be of the same general character as the above uses;
- Q. Agricultural uses as provided in CVMC 19.16.030. (Ord. 1356 § 1, 1971; Ord. 1281 § 1, 1970; Ord. 1212 § 1, 1969; prior code § 33.513(B)).

\* Code reviser's note: This section amended to conform with provisions of Ord. 1575, 1974.

#### **19.44.030 Accessory uses and buildings.**

Accessory uses permitted in an I-L zone include:

- A. Administrative, executive and financial offices and incidental services, such as restaurants to serve employees, when conducted on the premises;
- B. Other accessory uses and buildings customarily appurtenant to a permitted use;
- C. Retail sales of products produced and manufactured on the site;
- D. Caretaker houses;
- E. Satellite dish antennas are permitted in accordance with the provisions of CVMC 19.22.030(F)(1) through (9) and (11) through (13). (Ord. 2160 § 1, 1986; Ord. 2108 § 1, 1985; Ord. 1281 § 1, 1970; Ord. 1212 § 1, 1969; prior code § 33.513(C)).

#### **19.44.040 Conditional uses.**

Conditional uses permitted in an I-L zone include:

- A. Machine shops and sheet metal shops;
- B. Service stations, subject to the conditions in CVMC 19.58.280;
- C. Steel fabrication;
- D. Restaurants, delicatessens and similar uses;
- E. Drive-in theaters, subject to the conditions of CVMC 19.58.120;
- F. Major auto repair, engine rebuilding and paint shops;
- G. Commercial parking lots and garages;
- H. Plastics and other synthetics manufacturing;
- I. Building heights exceeding three and onehalf stories or 45 feet;
- J. Unclassified uses, as set forth in Chapter 19.54 CVMC;
- K. Trucking yards, terminals and distributing operations;
- L. The retail sale of such bulky items as furniture, carpets and other similar items;
- M. Retail distribution centers and manufacturers' outlets which require extensive floor areas for the storage and display of merchandise, and the high-volume, warehouse-type sale of goods and retail uses which are related to and supportive of existing, on-site retail distribution centers of manufacturers' outlets. Conditional use permit applications for the establishment of retail commercial uses, covered by the provisions of this subsection, shall be considered by the city council subsequent to its receipt of recommendations thereon from the planning commission;
- N. Roof-mounted satellite dishes, subject to the standards set forth in CVMC 19.30.040;
- O. Recycling collection centers, subject to the provisions of CVMC 19.58.345;



P. Hazardous waste facilities, subject to the provisions of CVMC 19.58.178;  
Q. Brewing or distilling of liquors requiring a Type 23 Alcoholic Beverage Control License; Conditional use permit applications for the use in subsection (Q) of this section shall be considered and approved by the zoning administrator. (Ord. 3031 § 1, 2006; Ord. 2542 § 4, 1993; Ord. 2252 § 10, 1988; Ord. 2233 § 10, 1987; Ord. 2160 § 1, 1986; Ord. 2108 § 1, 1985; Ord. 2031 § 1, 1983; Ord. 1927 § 1, 1980; Ord. 1698 § 1, 1976; Ord. 1356 § 1, 1971; Ord. 1281 § 1, 1970; Ord. 1212 § 1, 1969; prior code § 33.513(D)).

**As you can see not only is an electrical power plant not permitted in this zone, but it is not even a use permitted as a conditional use. The council NEVER should have approved it in 2001. In reality it is a use permitted in a General Industrial Zone, which this is NOT. Also on 5/12 the lawyer for MMC made it clear this was a "large generating plant" requiring an upgrade to the substation. This makes this essentially a totally NEW use. (<http://www.youtube.com/v/TA5yuuBqW3M>) The existing peaker is a small plant and did not require an upgrade. This again affirms that this is totally a NEW use and the fact that the old plant received a SUP is irrelevant!**

## **Chapter 19.46**

### **I – GENERAL INDUSTRIAL ZONE**

#### **19.46.010 Purpose.**

*The purpose of the I zone is to encourage sound industrial development by providing and protecting an environment exclusively for such development, subject to regulations necessary to insure the purity of the airs and waters in Chula Vista and San Diego County, and the protection of nearby residential, commercial and industrial uses of the land*

*from hazards and noise or other disturbances. (Ord. 1281 § 1, 1970; Ord. 1212 § 1, 1969; prior code § 33.514(A)).*

#### **19.46.020 Permitted uses.**

*Permitted uses in an I zone are as follows:*

*A. Any manufacturing, processing, assembling, research, wholesale, or storage uses except as hereinafter modified;*

*B. Automobile and metal appliance manufacturing and assembly, structural steel fabricating shops and machine shops;*

*C. Brick or pottery manufacturing and stone or monument works;*

*D. Trucking yards, terminals, and distributing operations;*

*E. Electrical generating plants and liquefied natural gas plants;*

*F. Temporary tract signs, subject to the provisions of CVMC 19.58.320 and 19.60.470;\*)*

**CLEARLY THE CVEUP AND THE EXISTING PLANT ARE NON-CONFORMING USES AND AS SUCH ARE A PRIORITY FOR ELIMINATING FOR CODE ENFORCEMENT. (On May 13<sup>th</sup> we were told that code enforcement was trying to eliminate all the non-conforming uses from this zone. Brad Remp is the assistant planning director overseeing code enforcement, who made this clear to several used car dealers and their supporters on the steps of city hall on 5/13/08.) The small plant was and is non-conforming. The proposed plant being a "large generating plant," requiring upgrading of the substation is even more non-conforming and belongs in an I General Industrial Zone, NOT HERE.**

#### **19.64.050 Enlargement, extension or reconstruction prohibited –Exceptions.**

**A nonconforming use shall not be enlarged, extended, reconstructed, substituted or structurally altered, except in conformity with the order of a duly constituted authority, unless the use is changed to a use permitted in the zone in which such building or**



premises is located, and except as set forth in CVMC 19.64.060 through 19.64.180. (Ord. 1212 § 1, 1969; prior code § 33.1102).

**19.64.060 Substitution or extension restrictions.**

A. When authorized in accordance with the provisions herein, a nonconforming use which is **determined by the commission** to be of the same or a more desirable nature may be substituted for another nonconforming use.

B. Whenever a nonconforming use has been changed to a conforming use, such use shall not be changed to a nonconforming use thereafter.

C. **When authorized by the commission**, in accordance with the provisions herein, a building devoted to a nonconforming use may be enlarged or completed upon the same lot or parcel where such completion is necessary and incidental to its use. (Ord. 1212 § 1, 1969; prior code § 33.1102(A)).

The Planning Commission is given the authority to allow alteration, but a non-conforming use is not allowed by right to do any alteration even minor. **The proposed plant is a totally new use, since it requires upgrading of the substation and is classified as a "large generating facility" unlike the existing one.**

As it happens the existing peaker is operating now illegally and therefore has no valid SUP as per:

**19.64.070 Cessation of use defined – Time limits.**

**A use shall be deemed to have ceased when it has been discontinued either temporarily or permanently, whether with the intent to abandon said use or not.**

A. **Cessation of Use of Building Designed for Nonconforming Use. A building or structure which was originally designed for a nonconforming use shall not be put to a nonconforming use again when such use has ceased 12 months or more.**

This peaker did not operate for two years. It was illegally restarted several times by MMC Energy. For any other business in the I-L zone this would be considered illegal. For this business it should also be considered illegal. By ceasing operations for more than a year they voided their SUP and have been operating without a permit. They are a non-conforming use with no SUP. This is in violation of zoning codes and city code enforcement policy.

There is also the matter of the General Plan approved in December of 2005. I served on the Environmental and Open Space committee for several years. We specifically were referring to this particular peaker plant (and the Southbay Power Plant or any other plant) when we insisted this be part of the General Plan. Also this proposed plant is a large generating facility and as such is fundamentally a different use than the existing peaker plant. This is not just an upgrade of an existing use, but a different use.

This is verified by the need for an upgrade of the substation: **E 6.4 Avoid siting new or re-powered energy generation facilities and other major toxic air emitters within 1,000 feet of a sensitive receiver, or the placement of a sensitive receiver within 1,000 feet of a major toxic emitter.**



There are other sections of the General Plan, which are also violated by CVEUP: Environmental Justice section in our General Plan that states: **E 23.3 Avoid siting industrial facilities and uses that pose a significant hazard to human health and safety in proximity to schools or residential dwellings.** The fact that the state of California requires the posting of a warning sign on this



facility, a hazardous materials management plan and a business plan indicate that it poses a significant hazard to human health and safety.

Also in the General Plan: **Objective - E 20 Ensure that facilities using, storing, and handling hazardous materials and waste do not result in significant adverse effects to existing and planned surrounding land uses.**

The situation around this plant now is totally different than in 2001 when it was surrounded by junkyards and other storage facilities with a variety of hazardous materials. Now to the west and soon to the east are large meat processing plants. (Will consumers think that the particulate matter might contaminate the meat?) Across a 20 foot driveway to the east is an upscale design studio and a print shop. These businesses depend upon client visits. A facility such as a large generating facility with a cheap chain link fence with slats and two 70 foot tall smoke stacks will likely have a significant adverse effect upon these businesses just due to visual blight and public perception. Will international business people wish to attend workshops at a studio adjacent to something like this or come to drop off work or view show room samples? Modello Studios bought this condo. They were told by the developer that the plant was not functioning and would be torn down within 10 years and the area redeveloped with another use. When they were in National City they hosted several international conferences of design professionals who wanted to learn their techniques of stenciling. They were hoping to do the same here, but are not sure people will come. Sir Speedy Printing gets phone and online orders, but also expects people to drop by with work. Will people be willing to come passed this plant in operation?

This is an incompatible land use with what is now adjacent to it. It was always incompatible with the homes and schools and the council realized that when RAMCOII was proposed, and fought it vigorously. The original plant was approved in a hurry without discussion of the nearby homes and schools. No one realized what it was until it was too late. Now we know and we want it gone. The council realized that when PG&E immediately asked for an expansion and people were complaining because of the noise, emissions and visual blight from Beyer Way, Montgomery Headstart, Montgomery High, Montgomery Adult, the homes on the ridge across the river and, until the warehouse was built, the residents within 350-500 feet. Now the existing plant is hidden by the warehouse although the residents can still see the plume above the warehouse when it operates. On Alcova there is a view between Heartland Meat building and the one to the North directly across to the new warehouses to the east. Since this new plant is to be further north on the parcel. They likely will have a direct view of it through this opening.

This new plant is **NOT** consistent with the current development pattern. Intensifying industrial development is totally contrary to the development plan for this area. Most of the occupants of the new warehouses are of a more retail/commercial nature. Only the one small machine shop on the west, which has a CUP and is totally contained within its building is of an Industrial Nature. An electrical generating plant belongs in a Heavy Industrial Zone not in a limited Industrial zone that is being developed with import businesses, a vitamin store, a construction supply store, a computer store, a paint store, design studio, print shop, etc. The uses on the west have their back to it, but on the east it is 20 feet away from their front doors. This is not compatible at all. It also is non-conforming to the zoning of the area. Even the electrical power lines adjacent to the uses on the east are seen as troubling by employees and quite likely potential customers. At the meeting on 5/12 no mention was made of



undergrounding these lines, but some mention was made of adding steel poles. The situation is not ugly enough? This clearly does not conform to the plans for this area.

Letting the city determine the landscaping is hardly going to make a non-conforming use conform to zoning standards.

There is an error on page 4.5-4 Southbay Recycling and the Paint and Body shop were bought by Voit over a year ago with the intention of building another warehouse type structure. They are representative of what surrounded the site in 2000, NOT of what existing land uses are becoming. Adjacent to the North is Paxton towing, NOT a salvage yard. They represent what used to be around the site, but are being phased out. The elementary school is less than 1300 feet and Albany Headstart, a pre-K and a senior lunch program are closer between the school and the substation. This power plant is the continuation of "land use conflicts" (COCV 2005a, p. LUT-131) The statement in the packet "[t]he zoning on the currently vacant site (Limited Industrial) allows public and quasi public uses like a peak load power plant through a Special Use Permit... With the approval of the Special Use Permit (and the conditions listed in the Agency Resolution) the proposed project is determined to be consistent.." is incorrect since the zoning ordinance specifically places electric power plants in I Industrial zones NOT in limited industrial. This was an inconsistent use in 2000 and it is even more so now. The 1989 General plan was in force in 2000. It did not have an environmental element at all. It was a 90- page document with little detail. It was adopted the same year that Montgomery Specific Plan was adopted, shortly after annexation. Even if the small peaker was found consistent in error, the proposed project is a large generating plant requiring an upgrade to the substation. This is a totally new use and much more inconsistent with surrounding uses now and the development plans for the area.

P36 of the Montgomery Specific Plan decried the land use conflicts in the area between industrial and residential. On page 26 it is stated "*given that the mixed land use pattern will continue to exist, a goal of the specific plan should be to minimize its negative aspects.*" Unfortunately this was not done in 2000. On page 43 under Pattern of Development: "*There will however, be a continuing change of land uses from heavy industrial to light and limited industrial uses.*" The placing of the peaker here violated this intention of the Montgomery Specific Plan. Part II page 16 "*Notwithstanding the Specific Plan's proposal that Montgomery remain an industrial center, it is essential that the existing wrecking yards, junk yards, open storage areas, salvage operations, batching plants, and other marginal or **heavy industrial uses** be, to a substantial extent, gradually phased out, or discontinued.*" Placing the peaker here in 2000 violated this land use goal. The proposed project is a "large generating facility" requiring an upgrade of the substation and therefore violates it to a greater extent. Since 2000 this phasing out has occurred on both sides of the peaker. The peaker needs to go too.

This peaker has a significant impact, as defined in the report: *"Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction, or that would normally have jurisdiction, over the project. This includes, but is not limited to, a General Plan, redevelopment plan, or zoning ordinance"*.

**It is in conflict with the current General Plan of Chula Vista and several zoning ordinances and performance standards. It also conflicts with the Montgomery Specific Plan.**

**19.66.140 Air contaminants.**

*A person shall not discharge from any source whatsoever such quantities of air contaminants, including fly ash, dust, fumes, vapors, gases, and other forms of air pollution, as per Section*



24243 of the State Health and Safety Code, or other material, which will cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to animals, vegetation, business or property. In no event shall any emission, from any chimney or other source, or any solid or liquid particles in concentrations exceed 0.4 grains per cubic foot of the conveying gas at any point. (Ord. 1212 § 1, 1969; prior code § 33.703 (H)). 19.66.150 19-186

**It clearly causes Air Pollution so it violates this performance standard. The peaker clearly produces, uses and stores dangerous and objectionable elements-oil, ammonia, etc. The sign required to be displayed and the permits needed from APCD and the County Environmental Hazardous Materials department verify this.**  
**19.66.020 Creation of dangerous or objectionable elements prohibited.**

No land or building in any district shall be used or occupied in any manner so as to create any dangerous, injurious, noxious or otherwise objectionable fire, explosion **or other hazard**; noise or vibration; smoke, dust, odor or **other form of air pollution**; heat, cold, dampness, electrical or other disturbances; glare; liquid or solid refuse or wastes; or other substance, condition or element in such a manner or in such an amount as to affect adversely the surrounding area or adjoining premises; the foregoing are hereinafter referred to as "dangerous or objectionable elements." No use shall be undertaken or maintained unless it conforms to the regulations of this chapter in addition to the regulations set forth for the district in which such use is situated. (Ord. 1212 § 1, 1969; prior code § 33.702).

**The peaker is contrary to these six goals of the current Five Year Redevelopment Plan:**

**Eliminate Blight:** Eliminate and prevent the spread of blight and deterioration and to conserve, rehabilitate, and redevelop the Project Areas in accordance with the Redevelopment Plans.

**Stimulate Economic Growth:** Attract, expand, and retain desirable business and industry which effectively increases employment opportunities for community residents and enhance the tax base of local governments.

**Jobs for the Neighborhood:** Promote local employment opportunities.

**Protect Local Businesses:** Encourage the cooperation and participation of residents, businesses, businesspersons, public agencies, and community organizations in the redevelopment/revitalization of the Project Areas.

**Promote Compatible Development:** To encourage the development of residential, commercial, and industrial environments which positively relate to adjacent land uses, upgrade and stabilize existing uses, and preserve artistically, architecturally, and historically worthwhile structures and sites. To provide for the development of distinct commercial districts, to attain consistent image and character, and to enhance their economic viability.

**Provide Quality Design:** To remove impediments to land assembly and development through acquisition and reparcelization of land into reasonably sized and shaped parcels. To expand the resource of developable land by making underutilized public and privately owned property available for redevelopment. To achieve an environment reflecting a high level of concern for architectural, landscape, and urban design principals appropriate to the objectives of the Redevelopment Plans. Create physical buffers, which ameliorate the adverse effects of changing land uses along interfaces and discourage "spot zoning" and piecemeal planning practices.

**The two 70 foot towers will create visual blight for businesses, homes and users of the OVRP. The building itself will be a significant blight for the commercial type buildings on the east and west. <http://www.youtube.com/watch?v=fOuSraebOqc>**

**A building such as this operating 20 feet away will not attract businesses to the industrial building to the east. The people who bought here thought it was going away. This does not help their business potential at all.**

**<http://www.youtube.com/watch?v=yFbu8tcCaWA>**

**One part time employee does not promote employment opportunities or security.**

**<http://www.youtube.com/watch?v=rdgO1M8blZI>**

**A peaker plant does not protect local businesses.**

**This is not compatible development. It does not positively relate to adjacent landuses, particularly on the east and south.**



**This is NOT a quality design for the area. There is no buffer with the businesses to the east. This is "spot zoning" and piecemeal planning. This heavy industrial use belongs elsewhere. Placing it here totally contradicts all the plans for this area.**

The Redevelopment Plan further states about the Montgomery area: *It is also characterized, however, by numerous light-industrial uses and large-sized parcels, particularly along Main Street, that will provide important redevelopment and economic development opportunities to the City, including the creation of new commercial and light-industrial uses, and the environmental cleanup of contaminated properties.*

**The peaker does none of this, just adds visual blight that will discourage the sale of the rest of the condos adjacent to it.**

Page 4.5-8 clearly indicates the problems the peaker will cause: In general, a power plant and its related facilities may also be incompatible with existing or planned land uses, resulting in potentially significant impacts, if they create unmitigated noise, dust, or a public health or safety hazard or nuisance; results in adverse traffic or visual impacts; or precludes, interferes with, or unduly restricts existing or future uses.

#### **Table 4**

**As previous stated there is no auto body painting shop anymore. The land now belongs to Voit and is planned for another upscale condo project which would be incompatible with a peaker plant. According to the city's zoning ordinances this use belongs in an I General Industrial zone NOT a limited industrial zone.**

**The surrounding uses have drastically changed since 2000. The peaker is now the source of blight.**

LUT 5.6 talks of revitalization. An intensification of the peaker and addition of two 70 foot towers will lower the property values and development potential in the area, since surrounding uses have radically changed since 2000.

LUT 6.8 There is no guarantee that people will not be negatively impacted by the transport of ammonia. The County gave 80% credit for containment of ammonia due to polyballs, which are an unproven controversial technology. Essentially the protection is doubtful in the event of an accident or spill.

LUT 7.3 **The minimal requirement of 1,000 feet from schools is new. The older requirement was a half mile, which was minimal.** This is not being met for 6 schools: Montgomery Headstart, Montgomery Adult, Montgomery High, Otay Elementary, Albany Headstart, and CVESD Pre-K which are all less than a half mile from the peaker. If the CEC were to get a copy of the spreadsheet maintained by Dale Parent for the CVESD staff would see that there are more cases of asthma and other respiratory problems at Otay Elementary and Montgomery Elementary than at other school sites. This is due to the contamination in the air around this neighborhood. This plant running up to 800 hours per year will make this situation worse.

<http://www.youtube.com/v/5y1GdmNfA3s>

LUT 45.5 **The proposed peaker is NOT consistent with this policy since the planned use is for upscale light industrial, NOT heavy industry. The north side of Zenith is residential and would not be compatible with heavy industrial or even many light industrial uses. The community is totally opposed to this section of the General Plan and plans to petition for an amendment. The city does not have eminent domain due to Proposition C so the lots on the north of Main St. will not be extended.**

LUT 45.6 CVEUP would violate this objective because of its heavy industrial nature. The plan calls for light industrial and an elimination of non-conforming uses such as CVEUP. ED1.3 Again CVEUP is not the kind of industrial envisioned by the General Plan.

PFS 22.4 This use does not minimize impacts to the community. Nothing is being undergrounded and there is a maze of wires all around the substation and along the driveway. Actually CVEUP should go elsewhere and the substation should be



moved to the site with under grounded wires. It is not true that this area needs 100mw more of power. Looking at the map one can see we already have almost 40 mw per square mile, which is way beyond our current and future needs. Many other areas in San Diego County have less than 10 with much larger populations. This plant could be put anywhere in the region and serve the same effect for stabilizing and providing peak energy. The eastern area of Chula Vista has the highest energy demand. The west is lower so if this logic made sense the plant would be in the east.

Staff is totally misinterpreting what happened in 2000. We were ignorant about what a peaker was. It was unclear as to where it was going to be. The only people receiving notices called and were told not to worry about it. It was just to keep the lights



on. The commissioners were told it would hardly ever operate. As soon as it was built we all realized our mistake. I taught at MOH-a year round school-and could see it operated practically every day

during the summer for the first couple of years. The plume was visible from our native plants garden and Beyer Way, which I traveled to and from school. The plant is very visible from Montgomery Adult, Montgomery Headstart and the homes on the ridge. It is a blight on the river bottom highly visible from the road. I live off of Hilltop and I can see the power poles and the roof now. I know I will be able to see the 70- foot towers as will the people living within 500 feet and the people living on Main Street. The new plant will be a bigger visual blight and further discourage revitalization of the area and reinforce the idea that we are not important to the city. The existing one is more visible from the San Diego side and the bridge. The people near by can see the plume from it and they do hear it at night as a low whine. Everyone feels they were lied to initially.

We expect the CEC staff to give a more honest and less biased report on this matter. It produces more contamination per hour. This is why it has to buy emissions credits, and this should be stated in plain language. This garbage about the city obviously doesn't consider it a major polluter because they okayed it in 2000 totally ignores how opposed the city was to an additional plant in 2001, after they knew what they were dealing with. I think they were as ignorant as we were. MMC has been amazingly dishonest in their comments for the entire time this issue has been on the table. They have been hesitant to provide data from day one. There are no redeeming features of this proposal at all. Until 5/12 they were insisting 400 hours or less per year. On 5/12 they stated up to 800 were likely <http://www.youtube.com/v/5y1GdmNfA3s>.

Our neighborhood is consistently dumped on and ignored by the city. We have the worst infrastructure and the worst image in the city. We are sick and tired of being treated this way by the city of Chula Vista. At annexation in 1985 we were promised improved roads and sidewalks. We have gotten very little of what was promised. Instead the city dumped this wretched peaker on us with totally inadequate information and oversight. The plant actually used a used generator and was never updated as required.

We already endure a bus terminal, a cement plant with visible particulate pollution, a cogeneration plant, excessive truck traffic day and night, regional traffic and the southbay power plant. We have had it. MMC's profit is not worth a further increase in cancer and asthma or a further degrading of our community visually and socially.



4.5-21 The current peaker does not have a valid permit, because the operation ceased for more than 12 months, therefore, the assumption that it is compatible with existing land uses is totally unsupported by fact. It is unfortunate but true that when dealing with minority communities in this section of Chula Vista, Community Development has been historically uninterested in the well being of residents or existing businesses. Social, economic and environmental justice issues continually arise in our neighborhood because of the continued insensitivity of staff and the city to our community. The comments written in 2000 just confirm what the community has felt for years. This near by neighborhood is 81% people of color 99% Hispanic. This would not be happening in Eastlake or Otay Ranch where the residents are more affluent and vocal. These peakers are targeted for these kinds of neighborhoods statewide, and the city's latest brilliant idea is to locate a Wastewater Treatment Plant in the Main Street area, which shows their lack of concern for our neighborhood.

The conclusion that there would be no adverse impact to the sensitive receptors- residents- from this peaker is not correct. Many of the people living closest are elderly. Many are ill and have compromised immune systems. There are also children. There is no question they are at risk from a number of other sources of contamination, but this is an additional one that need not be added to the mix. This is the testimony of Dr. H. from UCSD School of Medicine (It was turned in in writing with references on 5/13/08 <http://www.youtube.com/v/6T43FYPT1SE>. This is the oral testimony of a near-by resident: <http://www.youtube.com/v/Ux2lq9KzxT0>.

4.5-23 There is a huge misrepresentation in the Cumulative Impacts section. *A project may result in a significant adverse cumulative impact where its effects are cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects (CCR 2006, §15065[A][3]).*

The sewing manufacturing project is an existing use. Cottage industries are common in the southwest. The owners of this property live on Albany (also within 1,000 feet). The sewing is manufactured within a residential building on Main Street, by individuals seated at sewing machines.

The city has been hounding them to upgrade. They are trying to get financing to build a new two-story building. The plan is to rent out one floor to pay the expenses of the project while continuing to sew on the other floor. They have not made much progress on their plans because the city has put forth so many obstacles and expenses. They are a Spanish speaking family business. The only equipment used are sewing machines. Comparing the existence of this business in this zone to a peaker plant is ludicrous. CVEUP is totally inconsistent with the sewing use. We are not talking big machinery here. We are talking people sitting at sewing machines. The other projects are residential or commercial except for the recycling business that wants to move from a small site on the south side of Main St. to a larger site on the North side about 1300 feet away from CVEUP. None of them have any similarity to CVEUP, which is a heavy industrial use that does not belong in a light industrial zone.

Staff is totally ignoring the negative effects of past projects that contribute particulate matter and other pollutants to the air. That cement plant spreads contamination, which people need to scrape off their cars for several miles. Not to mention all the trucks it adds to the heavy truck traffic along Main Street. The effects of this peaker are cumulatively significant and the fact that they need to buy emissions credits acknowledges this. Emission credits like cap and trade are totally unacceptable to sensitive users since the health of one person is being



traded for the health of another. We refuse to accept that the health and peace of mind of our neighbors is less valuable than that of others.

How can you say it would not require a zoning amendment? It would require a CUP, which is essentially a zoning amendment. It would also ignore the safe guards we specifically built into our General Plan in 2005 to get rid of the existing generating plants in the city.

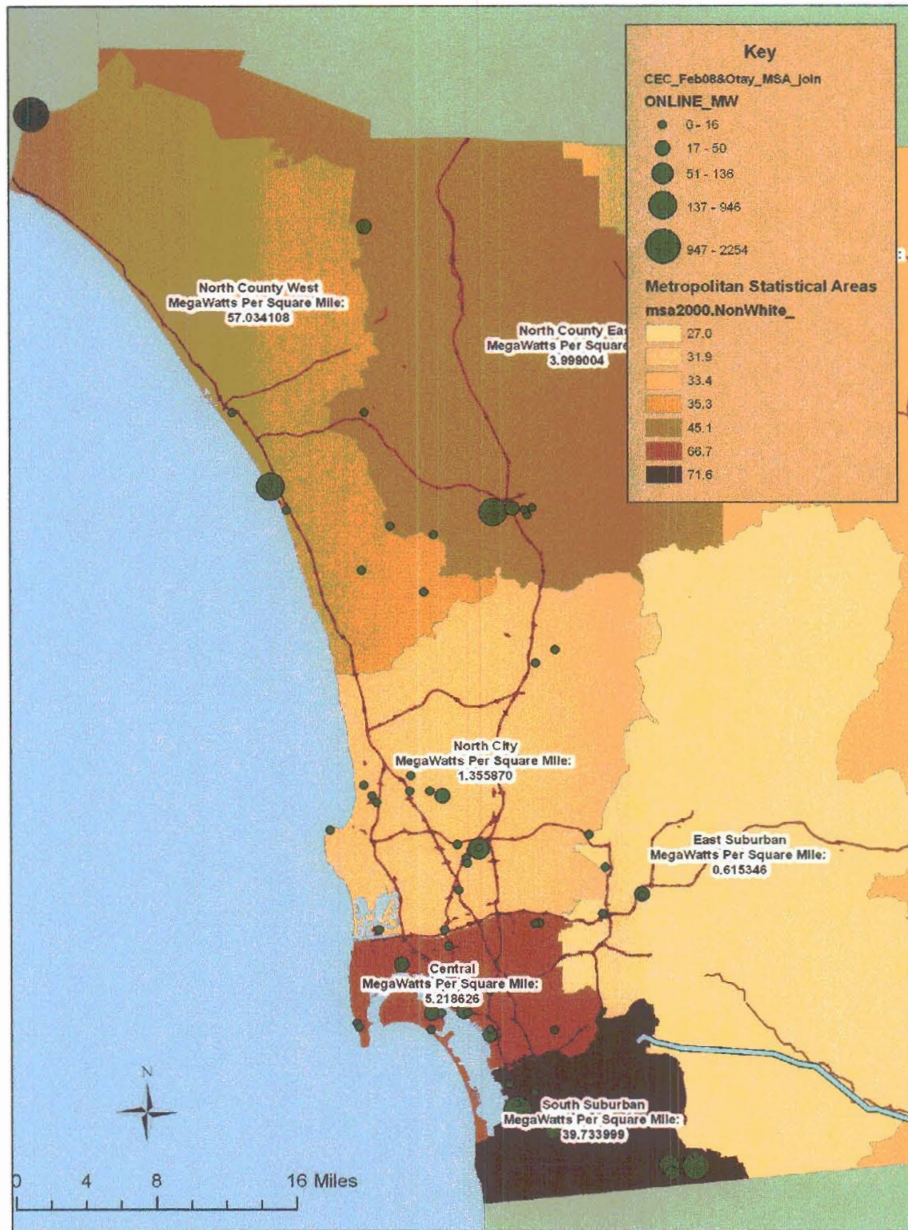
**This statement is not true and staff knows this: "The project is planned to serve the existing and anticipated electrical needs of the immediate project area by connecting to existing electric and other utility infrastructure."<sup>1</sup>** The electricity generated by this facility goes into the grid and goes where ever there is a need. It is not used locally. It would operate if there was a problem in La Jolla or congestion on the grid anywhere in at least a three county area. My solar collectors provide for my needs and then some. CVEUP is **NOT** needed locally. As staff says this area is "built out" and the use of electricity is what it is. It is not going to grow tremendously. The growth will be in the east. We don't put a high demand on the grid. The existing peaker was not used at all for the last two years and all together was not used enough to refill the ammonia tank even one time. The only result of putting CVEUP here would be an increase in profit for MMC. Some day I do believe grids will be obsolete and energy will be generated by fuel cells and other sustainable uses for small areas. This is not the case now. The project engineer admitted at the first public hearing that this peaker could be put anywhere in the greater San Diego area and still fill the exact same need. ([http://www.youtube.com/watch?v=2\\_aarWUROiU](http://www.youtube.com/watch?v=2_aarWUROiU)) Statements such as this one<sup>1</sup> in the report are deliberately misleading and dishonest. It is one thing for MMC to twist the truth and another for CEC staff to do it. Assistant City Manager Scott Tulloch and the Environmental Health Coalition confirmed with SDGE that MMC has no contract with them. Their only contract(?) is with the ISO which will fire up the plant in response to state-wide, NOT LOCAL, needs. The lawyer for MMC also confirmed this in her discussion on contracts or the lack of same: <http://www.youtube.com/v/TA5yuuBqW3M>. **We expect staff to be more honest in their final report. Staff does not work for MMC, but the people of California.**



Looking at the map below one can see how unjustly electrical generating facilities are located throughout the county. (North County is skewed by San Onofre Nuclear

Power Plant which is almost out of the County.

## MegaWatts Per Square Mile & Percent NonWhite by Metropolitan Statistical Region



Sources: CEC (Power plants)  
SANDAG: MSA map layer

Feature edit map.mxd  
Environmental Health Coalition, 2008.

We do not believe that the current project is consistent with the current development pattern in the area for the reasons already stated. The circumstances now in the immediate area are totally different than in 2000. There is a new General Plan, which specifically established a 1,000- foot buffer for electrical power plants, including this one. CVEUP is a totally different project since it is a large generating facility requiring a large generator connection agreement unlike the existing peaker. Two brand new industrial condominium structures now surround the site. The businesses on the east have front doors a mere 20 feet away. CVEUP would be a neighbor possibly creating a detrimental effect upon their businesses. In no way would it complement them or be



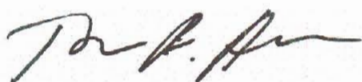
consistent with them. CVEUP is a heavy industrial use according to the city's zoning ordinances, and by the admission of their lawyer a "large generating facility" requiring an upgrade to the substation. The plant would be less visible from Beyer Way but more visible from the near-by residential and just as visible from the many homes and uses that are close by and at a higher elevation. The city also has signed the Kyoto Treaty and the burden of 7-25% of the total carbon emissions for the city would likely make meeting the Kyoto goal impossible without draconian restrictions upon the residents, other businesses and the city itself.

If Land Use 1 only involves landscaping, color and the like it is totally irrelevant to the consistency with the limited industrial zone. It can meet all the landscaping, setback, parking etc. requirements and still not be appropriate for a limited industrial zone. The zoning code says it belongs in the I General Industrial zone, which is **NOT** here.

There is no way that this use is consistent with an upscale design studio, which would be 20 feet across the driveway from it. <http://www.modello designs.com/> They were told by the salesman that the peaker was closed and would be torn down. (Since it did not operate for more than 12 months and lost its SUP, this was a good assumption, and probably what Community Development told the developer.) (You have received e-mails from Eric and some of his workers.) This is why they bought here. This was what all the new owners were led to believe. There is no way this use is consistent with the neighbors. Sir Speedy is also across the driveway. <http://www.sirspeedy.com/> Many of the other units are still empty and if CVEUP moves in might well stay empty. On the west the loading docks face toward the peaker and the businesses are noisier and more industrial types of uses.

The proposed project when considered with other uses in the area would have a cumulative effect, because it would produce 7-25% of all the CO<sub>2</sub> in the city and it would produce an increased amount of particulate matter in an area with a high rate of asthma and high diesel traffic. <http://www.youtube.com/v/tlu2-GlqNIU>

Sincerely,



Theresa Acerro  
President of Southwest Chula Vista Civic Association



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE  
STATE OF CALIFORNIA**

**Application for Certification  
For the CHULA VISTA ENERGY  
UPGRADE PROJECT**

**Docket No. 07-AFC-4**

**PROOF OF SERVICE  
(Revised: 1/3/08)**

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

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## **DECLARATION OF SERVICE**

I, Maria Sergoyan, declare that on May 19, 2008, I deposited copies of the attached Comments On Land Use Section Of The PSA For The Public Record in the United States mail at Sacramento, CA with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

**OR**

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

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

  
Maria Sergoyan