CITY OF
HAYWARD
HEART OF THE BAY

DOCKET
06-AFC-6
DATE APR 19 2007
RECD. APR 23 2007

DOCKET
01-AFC-7C
DATE APR 19 2007
RECD. APR 25 2007

April 19, 2007

Paul C. Richins
Manager, Environmental Office
Energy Facilities Siting Division
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814-5512

Re: Land Use Issues
Russell City Energy Center and Eastshore Energy Center

Dear Mr. Richins:

Below is information in response to your March 16, 2007 letter to me. In summary, and typical with local agencies, Hayward's laws, ordinances, regulations and statutes entail discretion and judgment. As explained in the following paragraphs, it is the City's position that the Russell City Energy Center is sited in an appropriate location and therefore is determined to be consistent with Hayward's Zoning Ordinance and General Plan and the Eastshore Energy Center, although proposed as a smaller plant, is not.

City of Hayward Land Use Permitting Process

In response to your inquiry, following is a summary of the process that would be required if these plants were processed through the Hayward land use permitting process. As indicated in the City's Industrial Zoning District provisions and since the operation of both plants would exceed stated thresholds for Class "B" hazardous materials as defined in the Hayward Ordinance, they would both be considered uses requiring at least administrative use permits. Additionally, if either plant involved Class "A" hazardous materials (e.g., reactive materials, poisonous or toxic materials, etc.), they would require conditional use permits. So, even though the City determined in 2001 that the Russell City Energy Center was considered a permitted primary use of "Manufacturing" in that the conversion of natural gas by mechanical equipment into electric power constitutes a form of manufacturing, because of the hazardous materials associated with its proposed operation, both it and the Eastshore Energy Center would be considered either administrative or conditional uses that would require certain findings to be made if the City were processing such projects.

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
DEVELOPMENT REVIEW SERVICES
777 B STREET, HAYWARD, CA 94541-5007
TEL: 510/583-4200 • FAX: 510/583-3649 • TDD: 510/247-3340

PROOF OF SERVICE (REVISED 3/12/07) FILED WITH
ORIGINAL MAILED FROM SACRAMENTO ON 4/23/07 TF

The findings required to be made to approve an administrative use are the same as those required to approve a conditional use. Due to the potential for negative impacts, administrative and conditional uses entail consideration of impacts and typically entail conditional approval. In fact, the Hayward Zoning Ordinance indicates that the purpose for requiring administrative or conditional use permit approvals are "to assure certain specified uses are permitted where there is community need, and to assure said uses occur in maximum harmony with the area and in accordance with official City policies." Although administrative uses are typically processed and approved at a staff level, the Planning Director would likely determine that Site Plan Review would also be required and would refer the proposed power plant projects to the Planning Commission for consideration, as allowed by the Hayward Zoning Ordinance. Any determination by the Planning Commission could be called up by a Council member or appealed to the City Council by any interested party.

In order to approve either plant if they were processed by the City, the approving authority in Hayward would be required to make all of the four findings below, which are required to be made in order to approve an administrative or conditional use. Staff's analyses to those four findings for each plant are provided in the proceeding paragraphs.

a. The proposed use is desirable for the public convenience or welfare;

The Eastshore plant would be used in periods of high energy demand to supplement power in the San Francisco Bay area. However, as communicated by Hayward residents, City Council members and Planning Commissioners, it is not evident from analysis provided by the Energy Commission staff or information supplied by the applicant that the Eastshore plant is needed at the proposed location to provide the benefits that would otherwise be achieved via location at another site in the south or east Bay near other PG&E substations in the vicinity. The City feels that the process in selecting the proposed Eastshore site, though not under the auspices of the California Energy Commission, was not a public process that entailed adequate public notification and opportunity for input. In summary, the proposed Eastshore plant at the site is not desirable, because the public convenience or welfare to Hayward could be realized via another location in the vicinity.

b. The proposed use will not impair the character and integrity of the zoning district and surrounding area;

The key words in this finding are "surrounding area." The heights of the stacks at each plant would be significant; though the Russell City Energy Center plant stacks would be in an area that already contains a stack of significant height at the Rohm and Haas chemical plant to the southeast and that is further away from areas visible from residential and public areas.

c. The proposed use will not be detrimental to the public health, safety, or general welfare; and

Although the Energy Commission staff is addressing local air quality impacts and it may be possible to mitigate air quality impacts to federal and state standards enforced by the Bay Area Air Quality Management District, including utilizing emission reduction credits on a region-wide basis that would not likely lessen impacts locally, both plants would emit pollutants in a region that is designated as a non-attainment area for state ambient air quality standards for particulate matter ($PM_{2.5}$ and PM_{10}) and designated as a marginal -attainment area of the national 8-hour ozone standard. Also, staff is concerned with the cumulative air quality impacts of both plants, given the non-attainment status of certain pollutants in this area. The difference between the two plants in staff's opinion, however, is in the location and proximity of the plants to residential areas and sensitive receptors. Aviation impacts, as you indicate, may also be a concern and are addressed later in this letter. For reasons primarily associated with air quality impacts related to proximity of residential areas, the City would not find that the Eastshore Center would be consistent with this finding.

d. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

The purpose of the Industrial (I) Zoning District is to provide for and encourage the development of industrial uses in areas suitable for same, and to promote a desirable and attractive working environment with a minimum of detriment to surrounding properties. Also, the purpose of the Hayward Zoning Ordinance is to "promote the public health, safety, general welfare and preserve and enhance the aesthetic quality of the City by providing regulations to ensure an appropriate mix of land uses in an orderly manner." In furtherance of this purpose, the City desires to "achieve a pattern and distribution of land uses which generally retain and enhance established residential neighborhoods, commercial and industrial districts, regional-serving uses, and recreational amenities, allow for the infill and reuse of areas at their prevailing scale and character, ...provide a diversity of areas characterized by differing land use activity, scale and intensity and establish Hayward as a unique and distinctive place in the heart of the San Francisco Bay Area with a high quality of life in an attractive, secure environment for the City's residents and businesses."

The Hayward General Plan contains discussion and policies that encourage the transformation of the Industrial Corridor from a manufacturing and distribution emphasis to more research and development oriented businesses. However, the General Plan also contains discussion that recognizes the importance of separation of potentially-impacting industrial land uses from residential areas:

> *On the one hand, many of the businesses that use hazardous materials are located in the Industrial Corridor. For example, high-tech businesses such as computer chip manufacturers and, to a lesser extent, some biotech industries, use highly toxic or corrosive gases. These particular classes of*

hazardous materials, if not properly stored, handled, and monitored, can pose a threat to the community. The separation of these industrial uses ***from adjacent residential uses*** *[emphasis added] makes it easier for emergency responders to mitigate and evacuate a hazardous situation. On the other hand, as portions of the Industrial Corridor are developed with more intensive uses, the increase in employee densities may result in a need for child-care facilities in closer proximity to the workforce. Such uses currently are prohibited in the Industrial District due to concerns about safety and land use compatibility. Perhaps there are portions of the Industrial Corridor, such as the newer business parks, where these facilities could be located and pose little or no safety risks.*

Furthermore, the General Plan contains the following relevant policy and strategy:

7. *Promote the transition from a manufacturing-based economy to an information-based economy in the industrial areas.*
    1. *Consider adoption of multiple zoning districts that provide for concentration of similar types of uses such as manufacturing, warehouse/distribution, or research and development/office uses.*

While multiple zoning districts have not yet been adopted for the Industrial Corridor as encouraged by the General Plan, the City seeks to concentrate similar types of uses. The City is of the opinion that heavier, potentially more-impacting industrial uses are more appropriate away from residential areas, such as at the end of Enterprise Avenue near the City's wastewater treatment facility, where the Russell City Energy Center is proposed. Also, automobile wrecking yards at the end of Depot Road are adjacent to the Russell City Center site, and the Rohm and Haas chemical plant is located in the area to the southeast of that proposed plant. Conversely, the Eastshore Energy Center site is situated in the eastern portion of the City's Industrial Corridor approximately 1,200 feet away from the nearest residence in an area that contains Life Chiropractic College, a bank (located adjacent and to the south) and a restaurant/café (located adjacent and to the north). The enclosed aerial image shows the vicinity where the two power plants are proposed. Also, your letter indicates that the two power plant sites were "only about 3,000 feet apart." Given that the entire width of the Industrial Zoning District in this area is about 6,500 feet, it is City staff's opinion that 3,000 feet is significant. In summary, due to the proximity of residential areas and location of existing heavy industrial uses, it is staff's opinion that this finding would not be made for the Eastshore Energy Center and would be made for the Russell City Energy Center.

Aviation Impacts

Regarding issues associated with aviation impacts, both energy center sites do fall within the boundaries of the Hayward Airport Airspace Drawing, as shown in the Hayward Executive Airport Master Plan, but neither is in direct alignment of any major approach

routes. Neither do the highest elevations of the stacks exceed the obstacle-free zone height limitations established by the FAA and referred to in Hayward's ordinance. Regarding the issue of exhaust plumes, City staff understands that this is a new issue being addressed by FAA and that the FAA will address this question as part of their FAA Form 7460-1 review, which is appropriate. It is City staff's understanding of the Blythe Airport circumstances that the Blythe plant was in direct line of a runway approach and takeoff zone. Staff believes the orientation and relation of the two plants to the Hayward Executive Airport's approach and takeoff areas are different than is the case in Blythe, but look forward to the FAA's analysis and comment. City staff would expect as noted in the FAA's safety evaluation that there will be recommendations regarding proper notification to pilots and potentially the need to modify the City's broad helicopter approach path from the west. We would also expect that the applicants will be required to fund any bulletins or other processes needed to meet FAA requirements.

Proposed Further Actions Regarding Consistency Determination

As stated previously, staff does not consider the proposed new site for the Russell City Energy Center significantly different than the previously proposed site to warrant further action. (See enclosed aerial). In support of this statement is the fact that on October 11, 2005, the Hayward City Council voted unanimously to enter into an agreement with RCEC-LLC authorizing construction of the Energy Center at the currently proposed location. Such action would not have taken place without a determination that the new location was consistent with local land use regulations. Moreover, I draw your attention to Resolution 05-125, a copy of which is attached, particularly to the final two paragraphs. In the second to the last paragraph, the Council is on record as expressing support for the development and construction of the RCEC at its new location. In the final paragraph, the City Council authorizes the City Manager to take appropriate steps to implement the decision of the City Council.

Conditions and Mitigations Regarding Land Use Impacts

I assume your request for conditions or mitigations to reduce the significance of any potential issues or impacts relates to land use issues only. For the reasons stated in this letter, we do not believe issues associated with inappropriate land use can be reduced or mitigated for the Eastshore Energy Center at the currently proposed site and that only relocation to a more appropriate site further from residential areas, including outside Hayward, would be acceptable. Other land use issues that are of concern relate to aesthetics/visual impacts and noise impacts. We would request that both plants comply with noise limits identified in the Hayward General Plan's *Noise Guidelines for Review of New Development*. To reduce visual and aesthetic impacts, landscape screening, which could include landscaping with a berm and/or wall, should be provided at each site, especially for the Eastshore site, which is closer to residential areas. The use of a perimeter wall to screen lower level plant facilities at both sites would also be appropriate We do not feel that the stacks at each site can be mitigated to an insignificant level, though their impacts could be mitigated somewhat if they were more of a neutral color that would blend with the background. Finally, lighting provided should meet the City's

Security Ordinance standards, with light sources shielded so as not to shine or glare off-site.

In summary, it is the City's position that the Eastshore Energy Center is not sited in an appropriate location and would represent a second power plant in the City of Hayward, which has raised great concerns by the local residents and City decision-makers. It is City staff's opinion that the California Utility Commission process in determining the Eastshore site as a possible location for an additional plant in Hayward was not a process that clearly identified the Eastshore site, which would have involved appropriate local public input and participation earlier in the siting process.

Please let me know if you have any questions or need further clarification.

Sincerely,

David Rizk

David Rizk, AICP
Hayward Planning Manager

cc: Jesús Armas, City Manager
Susan J. Daluddung, Director of Community and Economic Development Department
Robert Bauman, Director of Public Works Department
Michael O'Toole, City Attorney

Enclosure

Middle Ln
Senior Group Home
3,855ft from EEC
Courtyard Care Center
3,495ft from EEC
American Ave
Eden West
Convalescent Hospital
2,815ft from EEC
Senior Group Home
2,920ft from EEC
Hesperian Blvd
Clawiter Rd
Moh Dr
Anthony Ochoa
Middle School
Cabot Blvd
Nearest House
2,940ft
1,120ft
1,850ft
3,455ft
Depot Rd
Depot Rd
Proposed Eastshore
Energy Center
(EEC)
Thayer Ave
Montessori/
Christian School
5,070ft from
EEC
Life
Chiropractic
College West
Waterford
Apartments
Eden Gardens
Elementary School
2007 Proposed
Russell City
Energy Center
Clawiter Rd
W Jackson St
Enterprise Ave
2002 Approved
Russell City
Energy Center
Whitesell St
Corporate Ave
W Tennyson Rd
Industrial Blvd
Breakwater Ave
Point Eden Way
Investment Blvd
PG&E Eastshore
Substation
N

HAYWARD CITY COUNCIL

RESOLUTION NO. 05-125

Introduced by Council Member Jimenez

RESOLUTION AUTHORIZING THE EXECUTION
A COOPERATION AND OPTION AGREEMENT
WITH THE RUSSELL CITY ENERGY CENTER, LLC

WHEREAS, the City and Russell City Energy Center, LLC ("RCEC") have previously entered into agreements for the development of RCEC in the City of Hayward; and

WHEREAS, the City Council has previously found that the development of a modern, clean source of reliable energy is a benefit to the public health, safety and welfare; and

WHEREAS, changing circumstances have necessitated consideration alternative sites for the location of the energy center; and

WHEREAS, RCEC has proposed to construct the energy center on parcels of land owned by the City in its propriety capacity and currently used in connection with the City's waste water treatment facility ("Treatment Facility Land"); and

WHEREAS, as part of its proposal, RCEC is offering to trade comparable parcels of land to the City in exchange for the Treatment Facility Land; and

WHEREAS, the City Council hereby finds that the land to be exchanged is contiguous to the Treatment Facility Land and has been determined to be of equal or greater value; and

WHEREAS, the Council further finds that the exchange of land will be beneficial to the public good and welfare in that it will enable the City to continue to efficiently operate its sewer treatment facility and also provide a site for the construction of an energy center that will provide much needed clean energy for use by the general public; and

WHEREAS, RCEC's proposals are contained in the Cooperation and Option Agreement ("Agreement") on file in the office of the City Clerk.

NOW THEREFORE, the City Council of the City of Hayward does hereby resolve and express its support for the development and construction of the Russell City Energy Center on the land described in the Agreement.

BE IT FURTHER resolved that the City Manager is hereby authorized and directed to execute the attached Agreement, and negotiate and execute any and all related agreements and documents necessary to carry out the purpose and intent of such Agreement in forms approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA October 11, 2005

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Jimenez, Quirk, Halliday, Ward, Dowling, Henson
MAYOR: Cooper

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST: Angelina Reyes
City Clerk of the City of Hayward

APPROVED AS TO FORM:

M. O'M
City Attorney of the City of Hayward

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

APPLICATION FOR CERTIFICATION FOR THE EASTSHORE ENERGY CENTER IN HAYWARD BY TIERRA ENERGY OF TEXAS	**Docket No. 06-AFC-6** **PROOF OF SERVICE** (Revised 3/12/07)

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:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 06-AFC-6
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

APPLICANT

Greg Trewitt, Vice President
Tierra Energy
710 S. Pearl Street, Suite A
Denver, CO 80209
greg.trewitt@tierraenergy.com

Harry Rubin, Executive Vice President
RAMCO Generating Two
1769 Orvietto Drive
Roseville, CA 95661
hmrenergy@msn.com

APPLICANT'S CONSULTANTS

David A. Stein, PE
Vice President
CH2M HILL
155 Grand Avenue, Suite 1000
Oakland, CA 94612
dstein@ch2m.com

Jennifer Scholl
Senior Program Manager
CH2M HILL
610 Anacapa Street, Suite B5
Santa Barbara, CA 93101
jscholl@ch2m.com

COUNSEL FOR APPLICANT

Theodore Matula, Esq.
Vice President and General Counsel
Tierra Energy
7000 North Mopac, Suite 475
Austin, Texas 78731
theodore.matula@tierraenergy.com

Jane Luckhardt, Esq.
Downey Brand Law Firm
555 Capitol Mall, 10th Floor
Sacramento, California 95814
jluckhardt@downeybrand.com

INTERESTED AGENCIES

Larry Tobias
CA Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630
ltobias@caiso.com

Electricity Oversight Board
770 L Street, Suite 1250
Sacramento, CA 95814
esaltmarsh@eob.ca.gov

Jesus Armas, City Manager
City of Hayward
777 B Street
Hayward, California 94541
jesus.armas@hayward-ca.gov
michael.sweeney@hayward-ca.gov

INTERVENORS

***Paul N. Haavik**
25087 Eden Avenue
Hayward, CA 94545
lindampaulh@msn.com

ENERGY COMMISSION

Jeffrey D. Byron
Presiding Member
jbyron@energy.state.ca.us

John L. Geesman
Associate Member
jgeesman@energy.state.ca.us

Susan Gefter
Hearing Officer
sgefter@energy.state.ca.us

Lorne Prescott
Project Manager
lprescot@energy.state.ca.us

Caryn Holmes
Staff Counsel
cholmes@energy.state.ca.us

Public Adviser
pao@energy.state.ca.us

DECLARATION OF SERVICE

I, Terry Piotrowski, declare that on April 23, 2007, I deposited copies of the attached Letter from the City of Hayward on Land Use Issues/Russell City Energy Center and Eastshore Energy Center in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

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

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

Terry Piotrowski
[signature]