

Before The Energy Resources Conservation And Development  
Commission Of The State Of California

In the Matter Of: )  
 )  
Petition to Amend the Commission Decision )  
Approving the Application for Certification )  
For the Russell City Energy Center )  
\_\_\_\_\_ )

**Docket No. 01-AFC-7C**

**COMMISSION STAFF RESPONSE TO PETITIONS  
FOR RECONSIDERATION AND INTERVENTION**

<b>DOCKET</b>	
<b>01-AFC-7C</b>	
<b>DATE</b>	<b>OCT 31 2007</b>
<b>RECD.</b>	<b>OCT 31 2007</b>

October 31, 2007

RICHARD C. RATLIFF  
Staff Counsel IV  
California Energy Commission  
1516 Ninth Street, MS-14  
Sacramento, CA 95814  
(916) 653-1653

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**I. INTRODUCTION**

The full Commission adopted its Final Decision on this matter at the September 26, 2007, business meeting. The Commission received Petitions for Reconsideration from Alameda County on October 23, from “Group Petitioners” on October 25, and from Chabot Los Positas Community College District (“Chabot”) on October 26, 2007. These petitions were timely, inasmuch as they were filed within the 30-day statutory time limit. However, petitions for reconsideration may only be filed by “parties” to the proceeding pursuant to Public Resources Code section 25530, and none of the petitioners have party status.<sup>1</sup> Anticipating this legal barrier, each of the petitioners has filed accompanying Petitions to Intervene to become “parties” to the proceeding. The late filing of such petitions to intervene after the Final Decision is unprecedented; typically petitions to intervene are required to precede the Prehearing Conference or at least be filed 30 days prior to the first hearing. (Cal. Code Regs., tit. 20, sec. 1207(b).) However, such petitions may be granted at a later date for a showing of “good cause,” at the discretion of the presiding member, or in this case the Commission itself. (*Ibid.*)

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<sup>1</sup> A “party,” as defined by Commission regulations for power plant licensing, means the applicant, staff, and any entity or person who seeks and is granted intervenor status. (Cal. Code Regs., tit. 20, sec. 1702(j).) A party has the right to participate in discovery, cross-examine witnesses, present testimony, and file motions, petitions, objections, and briefs with regard to issues in the licensing proceeding. Aside from Staff and the applicant, local citizen Paul Haavik intervened to become a party in this proceeding.

Since all three petitions speak to the issue of notice, the question before the Commission is whether petitioners have demonstrated good cause. Petitioners, and particularly the filings of Group Petitioners, have raised numerous collateral issues, but Commission staff (“Staff”) believes the fundamental issue is one of notice and the opportunity to participate in the proceeding. Staff would restate this issue in the form of two separate questions:

1. Did Alameda County have reasonable opportunity to participate in the Russell City Amendment proceeding?
2. Did Group Petitioners, Chabot, and the general public have a reasonable opportunity to participate in the Russell City Amendment proceeding?

The answer to both of these questions is clearly yes. Petitioners not only had reasonable notice as required by law, but had ample opportunity to participate—and in many instances did in fact participate—in the extensive administrative proceeding. The petitions in reality are no more than an effort to extend the proceedings to re-litigate issues that have already been decided on an extensive record with robust public participation. New evidence is offered that could have been offered at hearings, but was not. This response will address notice and participation issues first, followed by a brief response to ancillary issues raised by the petitioners.

Based on evidence supporting affirmative answers to both of the above questions regarding whether the County and other petitioners had reasonable opportunity to participate in the proceeding, Staff recommends that the Commission deny the petitions for failure to show good cause for intervention at this late date.

## **II. DID ALAMEDA COUNTY HAVE REASONABLE OPPORTUNITY TO PARTICIPATE IN THE RUSSELL CITY AMENDMENT PROCEEDING?**

**Yes.** The Petition and supporting documents from Alameda County (“County”) imply that County officials never heard of the Russell City power plant project, that it never received proper direct mail notice, and that it did not participate in either the original licensing of the project in 2002 nor in the instant amendment proceeding. Yet the contrary is demonstrably true.

Significantly, the County received actual notice; direct mail notices of all major project events were sent to no fewer than seven of its departments, including the Department of Public Works.<sup>2</sup> The County petition barely acknowledges such notice, and appears to ridicule the fact that notice was sent to such offices as the County Mosquito Abatement District, but not to the offices of the County Planning and Community Development Agency and Redevelopment Agency (“CDA”). In this regard the mailing list for the amendment proceeding appears to reflect the previous participation of the County, through its various departments, in the underlying AFC proceeding. For instance, the County Mosquito Abatement District attended workshops in the AFC proceeding, but the CDA apparently did not.

Brushing this inconvenient fact aside, the County implies that notice only “counts” if provided to the CDA and the County Board of Supervisors. Yet both of these entities clearly had “constructive” notice of the proceeding; indeed, the CDA actively participated through its staff in the amendment proceeding and was in frequent communication with Staff from an early point in the proceeding. County employee Cindy Horvath described her dual role as a CDA senior planner and staff member for the County Airport Land Use Commission (“ALUC”) at the July evidentiary hearing (July 19 RT 232). ALUC, represented by Ms. Horvath, was involved in the proceedings from February 2007. Her participation was solicited and encouraged by Staff.

Likewise, even if the CDA and the Board of Supervisors had taken sabbatical in Europe for the past nine months and escaped any news of Hayward’s highly controversial power plant proposals, both County entities already were very aware of the Russell City amendment proposal. This is evidenced by the “Mt. Eden Annexation and Public Improvement Agreement,” an action item considered by the Alameda County Board of Supervisors on December 19, 2006. (Portions of the Agreement and the CDA cover memo are attached as Exhibit 1.) The Agreement included three parties: the County Redevelopment Agency (part of CDA), the County Board of Supervisors, and the City of Hayward. Generally speaking, it pertains to, among other things, the City’s annexation of County land for a portion of the Russell City power plant site,

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<sup>2</sup> County offices on the mailing list include its Department of Agriculture, Department of Environmental Health, Hazardous Materials Team, County Assessor, County Auditor, Department of Public Works, County Sheriff’s Department, and the County Mosquito Abatement District.

and the division of revenues between the three entities regarding the development, or “redevelopment,” of such property.

An entire Section of the Agreement, Article 4 (see Attachment 1),<sup>3</sup> describes the Russell City power plant proposal, the increased property taxes that will result, the allocation of monies between the entities, and requires the City of Hayward to “use diligent good faith efforts to accomplish the Power Plant Property Tax Objective, and to cause the Power Plant Property Tax Objective to be continuously satisfied throughout the duration of the [CDA’s] ability to receive Tax Increment Revenue pursuant to the Redevelopment Plan.” (Agreement, Sec. 4.1(b) [p. 18].) The “Power Plant Property Tax Objective” is defined by the Agreement to be “the increase in property value in connection with any development of the [Russell City] Power Plant on the Power Plant Site . . . .” (Agreement, Sec. 4.1 [p. 17].)

In addition, “[t]hroughout these efforts, the City shall regularly consult with and consider in good faith the input of the [CDA] with respect to implementing these actions to achieve the Power Plant Property Tax Objective.” (Agreement, Sec. 4.1(b) [p. 18].) **In other words, the CDA staff recommended that the County Board of Supervisors enter (and the County Board did enter) into an agreement with the City of Hayward that not only apportioned future development costs and property tax benefits from the power plant, but also required the City to make best efforts to facilitate the Russell City project’s licensing, and to consult with the County on the matter “in good faith.”** The cover memorandum urging the Alameda County Board of Supervisors to adopt findings approving the Agreement is signed by the Executive Director of the CDA, James E. Sorensen.<sup>4</sup> That cover memorandum specifically

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<sup>3</sup> Article 4 begins as follows: “Section 4.1. Power Plant Development. The Power Plant Developer has submitted an application to and is seeking the necessary approvals from the California Energy Commission to develop the Power Plant on the Power Plant Site. The Power Plant Site is located partly within the Depot Road area of the Mt. Eden Sub-Area . . . and partly within the boundaries of the City . . . . If developed, the Power Plant is estimated to generate approximately Eighty Million Dollars (\$80,000,000) of increased property value at completion with respect to the Mt. Eden Sub-Area Portion of the Power Plant Site, and an additional approximately Three Hundred Twenty Million (\$320,000,000) of increased property value at completion with respect to the Current City Portion of the Power Plant Site. It is the mutual objective of the parties (the “Power Plant Property Tax Objective”) that the increase in property value in connection with any development of the Power Plant on the Power Plant site will be assessed and taxed . . . .” (Agreement, p. 17.)

<sup>4</sup> This document clearly contradicts Mr. Sorensen’s claim in his declaration (supporting the County’s petitions) that he was confused about where the project was located because the Commission’s notice indicated that the location

refers to the “Calpine power plant” as one of the subjects of the Agreement. The Agreement is signed by Keith Carson as President of the County Board of Supervisors, and signed by him again as President of the Board of Directors for the County Redevelopment Agency.

The Agreement further undermines any tenable claim by the County that it was unaware of the project and could not have participated in the licensing proceeding. In sum, the County was aware of the project and keenly interested from the outset, received direct mail notice at several of its departments, and participated actively on certain issues through the staff of the CDA. Its claims regarding lack of notice and ability to participate are completely without merit.

### **III. DID GROUP PETITIONERS, CHABOT, AND THE GENERAL PUBLIC HAVE REASONABLE OPPORTUNITY TO PARTICIPATE IN THE RUSSELL CITY AMENDMENT PROCEEDING?**

**Yes.** Although this proceeding was an amendment to the original license, for the purposes of public participation the Commission treated the Amendment proceeding as if it were an original licensing proceeding. For example, at the outset of the filing of the Amendment petition the Commission held an “informational hearing,” an occasion at which the applicant is required to describe its project for the public, and the Staff is required to describe its analytic process and the steps by which the agency will reach a decision, as well as how to participate effectively in the public process. The purpose of this initial hearing is to get early notice to public entities and interested persons, to describe the process, and to further develop a mailing list.

In addition, representatives of the Energy Commission’s Public Adviser’s office did extensive outreach to solicit public comment and participation. (See Attachment 2 for a list of the Public Adviser outreach efforts). This included mail and e-mail outreach to numerous schools and churches and other “sensitive receptors” in the community, including Chabot. The Commission also published newspaper notice, as it would for a regular licensing proceeding, and provided notice to adjacent property owners and to agencies that had participated in the original licensing proceeding (if they had not subsequently requested to be purged from the list). In other words,

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was the City of Hayward, and that but for this “false impression” the County would have participated differently. (Sorensen Dec., p. 3; County Pet. For Reconsid., pp. 5-6.)

as is always the case, the Commission's public notice and outreach efforts went far beyond legal requirements.

During the same time period, a license application for the other power plant that is proposed to be located in the City of Hayward—Eastshore—was filed with the Commission. This second project was vociferously opposed by both the City of Hayward and many of its citizens. The effect of this gathering controversy was to elevate the issue of power plant siting to a high public profile, and as a consequence both the press and radio media reported extensively on both the Russell City Amendment and the Eastshore project. (See Exhibit 2, p.2.) No informed local citizen would be likely to be unaware of such a high profile issue so extensively covered by media.

Commission staff held at least three noticed local public workshops on the Russell City project in the City of Hayward on several issues, particularly air quality, public health, and aviation safety. These workshops were well attended by agencies and the general public. The Committee responsible for the Russell City amendment held both an evidentiary hearing and a hearing on its proposed decision in the City of Hayward; these events were also well attended and included many hours of sworn testimony and public comment regarding all issues, including those not contested by parties. These meetings were locally televised on a cable channel by the City of Hayward.

The Commission maintained and used three mailing lists to notice all agency events for the proceeding. The interested agency list included roughly 30 agencies, local, state and federal, including two County agencies (the Hazardous Materials Office and the Department of Public Works). Many (if not all) of the agencies on this list had previously participated in or contributed to the original Russell City AFC licensing decision.

The Commission maintained a second mailing "general list" which included many public citizens (approximately 86) who had expressed interest or wanted to be on such a list for all notices, plus numerous additional agencies and businesses. This list included seven offices or departments of the County (see footnote 2). The Commission maintained a third "property

owner” list that included 129 names of entities or persons owning property adjacent to or near the project.

In addition to these mailing lists, the Commission maintained an electronic e-mail list that is increasingly popular with public participants, which provides all documents for the proceeding by e-mail. This list contained 260 subscribers and includes both public citizens and agency employees.

In addition to these participation lists, the Commission maintains a website which allows easy access to all documents of the Commission and describes how one can get information and participate in Commission proceedings. The mechanisms described above that encourage public participation go far beyond the traditional CEQA local agency notice and comment process, and far exceed the efforts to solicit public involvement in adjudicatory proceedings carried out by any other state agency.

### **Group Petitioners’ Contentions**

Group Petitioners, in a veritable blizzard of variously captioned documents and declarations in support of its petitions, essentially seeks to reopen the evidentiary proceeding to consider additional evidence in the areas of air quality, public health, and aviation safety. Piggybacking on the County’s claim that the County lacked notice, Group Petitioners contend that both the public and local government “have been deprived of reviewing this project with their elected officials who have the best resources . . . to investigate and analyze significant public health and environmental risks.” (Group Pet’s Pet. to Intervene, p. 3.) This statement ignores the City of Hayward’s continuing participation in both the original licensing proceeding and the recent Amendment proceeding, and downplays the County’s clear knowledge but limited efforts to participate.<sup>5</sup>

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<sup>5</sup> The contention also greatly overestimates the resources of local agencies, as they usually have far less expertise on technical environmental issues (e.g., air quality, public health, hazardous materials, or water quality cleanup) than Commission staff and its consultants.

But in fact Group Petitioners did have reasonable notice and reasonable opportunity to participate in the Amendment proceeding. One of its entities, The California Pilots Association, actually provided witness testimony (from witness Carol Ford for Intervenor Paul Haavik) at the evidentiary hearings (July 19 RT 202), and subsequently commented on both the Presiding Member's Proposed Decision ("PMPD") and the Final Decision. The Citizens for Alternative Transportation ("CATS"), another Group Petitioner, was also represented and gave public comment at the evidentiary hearing, at prior workshops, and at the hearings on the PMPD and then the Final Decision. (July 19 RT 258-260; September 5 RT 38; September 26 RT 51-60.) The Hayward Democratic Club, represented by Tom Kersten, presented public comment at the PMPD hearing (September 5 RT 151.) Thus three of the six Group Petitioner entities actively participated in the Commission's proceeding.

The pleadings and declarations from Group Petitioners repeatedly state or imply (with no recitation of legal authority) that notice for the Amendment proceeding was legally defective because some of the Group Petitioners, or one or more of its members in the City or greater County area, did not receive direct mail notice of the project. Group Petitioners are mistaken. Direct notice is not required for licensing proceedings or any other kind of administrative proceedings for each of the vast numbers of people, organizations, and entities who live or have location in a large and densely populated urban area. No governmental entity would or could attempt to provide such direct notice. The Commission goes far beyond minimal legal requirements to solicit public participation, as described in Attachment 2.

In its Memorandum of Points and Authorities at page 17, in a summary of its wide-ranging arguments, Group Petitioners states that "as a matter of law" reconsideration is required for the following reasons:

1. *The project has not been reviewed or approved by the local jurisdictions and is not in conformance with the local or regional laws, standards, and ordinances.*

No identified evidence supports this contention. The Final Decision made factual findings of such conformity with local law based on testimony presented at hearing. (Final Decision, p. 169.) The City of Hayward, the local government with jurisdiction, supported these findings.

Contrary to Group Petitioners' contention, the County retains no jurisdiction over the power plant site.

2. *The County was not notified of any intent to build a 600 megawatt thermal power plant . . . in its Mount Eden unincorporated or redevelopment jurisdiction.*

As discussed above, the County was both aware of the project and acted on it, and apparently believed the new tax base would assist Mt Eden's redevelopment. It also had both direct and constructive notice, and its officials participated in both the AFC proceeding in 2002 and the Amendment proceeding.

3. *The project is not mitigated.*

The Final Decision includes numerous requirements for mitigation or avoidance of various impacts, as any casual reading would indicate.

4. *New information has been revealed that restriction of airspace [NOTAM alerts] is not a mitigation and there are material misassumptions [sic] concerning a pilot's ability to safely land . . .*

The "new information" is apparently that the ALUC, in the context of the ongoing Eastshore AFC proceeding, has recently issued a statement including its opinion that NOTAM warnings "are not mitigation," and that the Eastshore project should thus be denied. (See Group Petitioners' Memorandum of Points and Authorities, p. 10.) The aviation hazard issue for Russell City was adjudicated after extensive testimony from all active parties, and was subsequently commented on and testified to directly by the Federal Aviation Administration ("FAA"). The FAA endorsed a NOTAM requirement as one of several measures to reduce what it termed "acceptable risk." The Final Decision's findings of fact and conditions of mitigation are a result of a lengthy and contested hearing process. The ALUC's subsequent advisory opinions on what it believes regarding the effectiveness or advisability of NOTAMs for the Eastshore project provide no justification for re-opening the evidentiary record for Russell City. The NOTAM requirement, which was one of nine requirements in the Commission's decision to reduce the chance of mishaps due to the Russell City project's thermal plume, is a warning device reasonably expected to reduce the risk from such plumes.

5. *The methodology in calculating air emissions and mitigations is fatally flawed and as a matter of law must be reconsidered to apply the proper and current known methodology.*

This contention is pure hyperbole based on the accompanying declaration of Michael Toth regarding the BAAQMD health risk assessment. Mr. Toth has established himself as a sophisticated participant in Commission proceedings, but claims no expertise in this area, describing himself as a “software architect.” (Decl. of Michael Toth, p.1.) In his declaration he raises numerous issues regarding the BAAQMD health risk assessment, and the assumptions used for such. Mr. Toth participated at the evidentiary hearing, yet raised only one of these numerous issues (PM 2.5 contribution to cancer risk) in his comments at that hearing. That particular comment was directly addressed by the Staff witness, Dr. Alvin Greenberg, at the hearing. (July 19 RT 129-132.) The other issues are new, are speculative, and may not now be raised at such a late date to force a reopening of the proceeding.<sup>6</sup> If project opponents can merely “sandbag” an agency during its evidentiary phase and creatively produce new comments on reconsideration, agency decision-making would be paralyzed by an endless “redo” loop. Moreover, Mr. Toth’s lament that Staff’s analysis left him wanting for greater specificity is also raised for the first time. Staff would certainly have responded with more information concerning its health risk assessment had Mr. Toth made a timely request.

6. *The project will clearly have a significant detrimental effect on the environment and the “No Build Finding” [override finding?] is **unsupported by any evidence.** (Bold in original.)*

Although this garbled contention uses phrases found in no applicable statute or regulation, it apparently assumes that the project is not in conformity with state and local laws and thus requires “override” findings pursuant to Public Resources Code section 25525. The Final Decision found to the contrary, and such factual findings are supported by substantial evidence. (See, e.g., the Staff Report and the conclusions therein regarding conformity with laws,

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<sup>6</sup> Mr. Toth’s contentions are also often incorrect. Staff disagrees with virtually every paragraph of his declaration. These disagreements are too numerous to recount, but they include the erroneous assumption that Staff relied on the BAAQMD health risk assessment, and the assumption that staff made no risk assumption for acrolein’s contribution to such assessment. However, these disagreements are beside the point, as these contentions could have been raised earlier at hearing, or even at the PMPD stage, so they could be addressed, but were not. Having failed to raise these issues in a timely manner, they cannot be raised for the first time upon reconsideration.

ordinances, regulations, and standards (“LORS”), and the Final Decision.) Accordingly, no such override findings are necessary.

Chabot, drafting in the misguided slipstream of Group Petitioners, also claims that notice was legally defective in that it was not provided direct notice. As stated above, there is no legal requirement for the direct notice Chabot alludes to (and it provides no citation of legal authority), yet apparently Chabot did in fact receive direct notice by way of the Commission’s Public Advisor efforts. (See Attachment 2.) In any case, Chabot’s claim is based on air quality concerns that it believes may affect the health of its students and employees, some three miles from the project. Yet the air quality impacts (apart from very localized construction impacts) from this gas-fired facility are entirely “cumulative” in a CEQA context, and not direct; the principal emissions are NOx and volatile organic compounds that contribute to regional smog or particulates after transformation downwind from the point of emission. There is no evidence or reason to believe that such regional impacts are any greater for Chabot than they are for people and schools in Livermore or Gilroy. Contribution to such cumulatively based widespread regional impacts cannot possibly trigger a “due process” requirement for direct notice.

#### **IV. MISCELLANEOUS ISSUES RAISED BY PETITIONERS**

##### **A. County Claims**

The County asserts that the Commission violated its own regulations at the September 26, 2007, hearing, inasmuch as it did not provide the County with additional time to rebut the FAA’s letters and testimony regarding aviation safety. (County Petition for Reconsideration, p. 10.) This assertion is incorrect.

The County’s argument relies on what it calls the Commission’s “Rules of Evidence” provision that “each party shall have the right to call and examine witnesses, to introduce exhibits, and to cross examine opposing witnesses,” as provided in Section 1212(c) of Title 20 of the California Code of Regulations. Yet this provision was honored by the Commission, as it allowed all three parties (applicant, Staff, and Intervenor Paul Haavik) the opportunity to cross-examine the FAA representative. (Sept. 26 RT 17-22.) The parties and other interested persons were aware that the FAA letter was due prior to the September 26 hearing, as this final decision hearing had been

continued for two weeks at the request of the FAA to further address the issue and provide its opinion to the Commission prior to the continued hearing date. No party (nor any other person for that matter), protested the short time frame for cross-examining the FAA witness. (*Id.* at 17-86.) Section 1212(c) by its own terms acknowledges that the right to conduct cross-examination, and hence to object to short notice for cross-examination, is limited to *party* participants. Given the County's tardy interest in participating actively in the proceeding, it had no right to object to the cross-examination procedure, and it did not in any case.

The County further contends that this "haste" prevented the effective participation by the County Airport Land Use Commission, or "ALUC." This contention is so ironic that it could only have been penned by counsel entirely unfamiliar with the underlying proceeding. In fact, Staff had for many months solicited active involvement by the ALUC and was in frequent communication with its County staff, Ms. Horvath. Staff provided ALUC with all materials pertinent to aviation safety, briefed both the ALUC and its staff, and continuously solicited the ALUC's opinion on aviation safety. At the evidentiary hearing, the ALUC still had not provided its position on the project's impact on aviation safety, and Staff specifically requested forbearance for the ALUC such that the evidentiary hearing record remain open to receive further comment from both the FAA and the ALUC. (July 19 RT 234, 236-237.) The Committee agreed to leave the record open for ALUC's comments, even though ALUC had been aware of the power plant aviation issue since February. (July 19 RT 276-277.) Thus even though the ALUC did not comment in a timely manner, the Commission solicited its further comments even after the evidentiary hearing.

**B. Group Petitioners' Claims**

Citing to an "exhibit 5" that was apparently not included in her electronic filing, counsel for Group Petitioners quotes from an unnamed staff document to imply that Staff never analyzed the conformity of the Russell City Amendment project with the City of Hayward's 2002 general plan or current municipal code. (Group Pet. Mem. Of Points and Auth. ["Group Mem."], pp. 9-10.) This is incorrect; Staff did analyze the conformity of the project with both the 2002 general plan and the current municipal code. This is apparent from the first page of the Staff Report. (Staff Report, p 4.5-1.)

Group Petitioners contend that the project does not use “best available control technology”, or “BACT.” (Group Mem., p. 13.) This is incorrect. BACT is determined by the air district with jurisdiction, in this case the Bay Area Air quality Management District (“BAAQMD”), which filed its determination with the Commission stating that the project meets BACT requirements as well as all other applicable air quality requirements. (BAAQMD Amended Final Determination of Compliance, June 19, pp. 9-10.) BACT is a requirement for all major stationary source projects, not an option.

Group Petitioners contend that the Commission licensing process is inconsistent with CEQA, inasmuch as it provides for “parties,” intervention, and an evidentiary record that gives greater weight to pre-filed sworn expert testimony than to unsworn public comment. (Group Pet’s. Pet. To Intervene, pp. 5-6.) This contention misapprehends the nature of Commission power plant licensing proceedings, which are conducted in accordance with CEQA by way of a “certified regulatory program.” (See Cal. Code Regs., tit. 14, secs. 15250, 15251(j).) The Commission’s process is more formal than that of local agency proceedings, as the process must conform to the State Administrative Procedure Act provisions relevant to adjudicatory proceedings. Accordingly, the Commission process includes provisions for parties, intervention, pre-filed testimony, cross-examination of witnesses and rebuttal evidence, ex parte contact restrictions, and so forth.

These administrative mechanisms require a more formal process than that used by local agencies, with the goal of safeguarding due process. In such proceedings concerning issues of fact, witnesses for formal hearings must be identified, and witness testimony must normally be pre-filed and subject to cross-examination. This does not preclude the Commission from also relying on public comment, particularly where such comment is based on expertise about local conditions or involves agency expertise. This is entirely consistent with the CEQA Guideline definition of “substantial evidence,” which is defined to exclude “[a]rgument, speculation, unsubstantiated opinion or narrative, evidence that is clearly erroneous or inaccurate . . . .” (Cal. Code Regs., tit. 14, sec. 15384(b).) Public comment is definitely not “inadmissible,” as one Group Petitioner declarant states, yet understandably it may be given less weight than pre-filed expert testimony subject to cross-examination, which forms the heart of the evidentiary record.

Citing no legal authority, Group Petitioners contend that procedural due process requires that the project be processed as a “new project,” and not an “amendment” of an approved project. (Group Pet’s. Pet. To Intervene, p .6.) The project was treated as an amendment because the change proposed was principally to relocate the project approximately 1300 feet to a location that had previously been analyzed in the 2002 AFC proceeding as an alternative site, and no significant impacts were anticipated to result from this change. Moving the project 1300 feet to the new location within the same industrial area would avoid the two most important impacts of the original 2002 AFC license: 1) the destruction of a small fresh-water marsh at the original site (biological mitigation issue); and 2) the forced relocation of a large radio tower to a location adjacent to a nearby East Bay Regional Park in the shorelands (visual resources mitigation issue). The relocation of the project offered these advantages, with no apparent significant changes to other project impacts.

The “major amendment” approach taken by the Commission was thus reasonable, and is analogous to a supplement to an EIR, as provided by CEQA Guideline Section 15163, in that the relocation arguably involves a “substantial change” requiring EIR revisions, yet much of the previous environmental analysis in the AFC still was valid for the Amendment project and required either no or only minor revision. (See Cal. Code Regs., tit. 14, sec. 15163(a).) The Amendment proposal was publicly noticed, the information in the Staff Report merely supplemented that of the previous proceeding, and the Commission Final Decision relied on consideration of the prior AFC analysis as revised by the Amendment analysis when making its decision. (See, e.g., Commission Sept. 26, 2007, Adoption Order.) This is all entirely consistent with the CEQA concept of a supplement to an EIR, the device which presumably would have been employed if the Commission did not have a certified regulatory program.

Group Petitioners further contend that labeling the project an “amendment” misled them into believing that “nothing could be done,” undermining their opposition and participation. (Group Mem., p. 16.) This claim to naiveté is simply unfounded. Three of the “groups” in the Group Petitioners participated actively in the proceeding opposing the project, and one of them offered witness testimony. The Amendment’s noticing and all public pronouncements were to the effect

that the project was subject to CEQA, which by its own terms is applicable only to discretionary projects (that is, projects that must be affirmatively approved by an agency). Nothing in the noticing from the Commission, nor in the conduct of its staff, suggested that the Amendment proceeding was ministerial or automatic, nor did Group Petitioners behave as though it were.

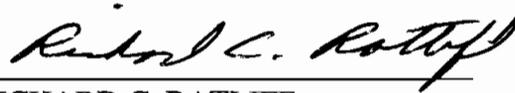
In its declarations Group Petitioners contend that the Commission must first find, for purposes of approval of the Amendment, that the project is needed. (Group Pet., Dec. of Sherman Lewis, p. 3.) As the Commission well knows, the Russell City power plant is a "Request for Offer" power plant selected through the California Public Utilities Commission's procurement process to provide power for the Pacific Gas & Electric service area. That procurement process was itself informed by the Commission's own supply/demand assessments set forth by the Commission in the 2003 Integrated Energy Policy Report after extensive public hearings and electricity forecast evidence from, among others, California's private and public utilities and the California Independent System Operator. The Russell City power plant could only receive a power purchase agreement with PG&E because it was found needed in the context of this "Request for Offer" process.

## **CONCLUSION**

The petitions should all be denied.

Dated: October 31, 2007

Respectfully submitted,



RICHARD C. RATLIFF  
Staff Counsel IV

Attachments

# **Attachment 1**



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY  
REDEVELOPMENT AGENCY

AGENDA ITEM NO. 26  
December 19, 2006

James E. Sorensen  
Agency Director

224  
West Winton Avenue  
Room 110

Hayward  
California  
94544-1215

phone  
510.670.5333  
fax  
510.670.6374

www.  
alameda.ca.us/cda

December 4, 2006

Honorable Board of Supervisors  
County of Alameda  
Administration Building  
1221 Oak Street  
Oakland, CA 94612

Dear Board Members:

**Subject: Mt. Eden Annexation and Public Improvement Agreement**

**RECOMMENDATION:** That the Board of Supervisors:

- 1) Approve a Resolution making the findings required under Health and Safety Code Section 33445 that: (a) construction of the Mt. Eden public improvements are of benefit to the Eden Area Redevelopment Project and the immediate surrounding neighborhoods; (b) no other reasonable means of financing the majority of the public improvement is available to the community; and, (c) the Alameda County Redevelopment Agency's contribution to the cost of the public improvement will assist in the elimination of one or more blighting conditions in the project area; making the Responsible Agency CEQA Findings; and authorizing the President of the Board of Supervisors to execute the attached Annexation and Public Improvement Agreement between the County of Alameda Redevelopment Agency (Agency), the County of Alameda (County) and the City of Hayward (City); and,
- 2) Approve the intent to allocate \$700,000 from County funds for this project, recognizing that the County retains the flexibility to identify and use other local resources in the future should they materialize.

**DISCUSSION/SUMMARY:**

The Agency is responsible for the administration of the Eden Area Redevelopment Plan, which was adopted by the Board of Supervisors in July 2000. The Plan includes the five unincorporated Sub Areas of Castro Valley, Cherryland, Foothill (Hillcrest Knolls area), Mt. Eden and San Lorenzo. The Mt. Eden Sub Area is made up of several unincorporated "islands" wholly surrounded by the City of Hayward.

The RDA, County and City have prepared the Annexation and Public Improvement Agreement to allow for the orderly annexation of Mt. Eden in two phases. The Phase 1 annexation is occurring because a land owner has

assembled about 12 acres and has gained City of Hayward approval for a 149 unit residential development project. The resulting RDA tax increment from the new residential development, which can only occur with City water and sewer services, will fund the needed streetscape public improvements needed for both the development and the City annexation. The City of Hayward has agreed to submit the Phase 2 annexation application within one year of the Phase 1 annexation approval.

In order to accomplish both Phase 1 and Phase 2 annexations, the City has agreed to construct, or have a developer construct, approximately \$13.5 million of public improvements (\$8.5 million for Phase 1 and \$5 million for Phase 2). The majority of funding for these improvements is being advanced to the City by the largest single property owner, John Dutra (\$12.1 million), with the remaining funding being provided by the County (\$700,000), City (\$700,000), and KB Homes (\$300,000). The RDA proposes to reimburse a majority of these public improvement expenses (\$10.8 million) to the City (who will reimburse Dutra and KB Homes), and fully reimburse the City and County for their respective contributions.

Other considerations for the annexations are included in the agreement and include the following: 1) the special legislation that was passed recently (AB 2161) that allows the County to receive required affordable housing production requirement credit from an affordable housing development in the City of Hayward, but directly adjacent to the Mt. Eden Sub Area; and 2) after completion of the Phase 2 annexation and the confirmation of tax increment from the proposed Calpine power plant, the RDA will reimburse the City of Hayward up to \$10 million for construction of the Whitesell Drive extension.

Redevelopment Law Section 33421 authorizes redevelopment agencies to construct streets, utilities, and other public improvements necessary for carrying out the Redevelopment Plan with the consent of the legislative body. In order to give its consent, the Board of Supervisors has to find that such improvements are necessary to effectuate the purposes of the Redevelopment Plan. The requirement for findings under Section 33445 provides authority for the Redevelopment Agency to construct the public improvements necessary to stimulate private reinvestment throughout the Redevelopment Plan as well as eliminate blight. The Mt. Eden public improvements will eliminate both economic and physical blighting conditions by providing needed water and sewer connections and thereby improving property values and property owners' ability to redevelop their property. The County does not have the funds to provide the improvements, as evidenced by the many unmet needs in the County's Capital Improvement Plan.

Board Letter – Mt. Eden  
December 4, 2006  
Page 3

**FINANCING:**

The RDA will make annual reimbursement payments from tax increment generated by the Mt. Eden Sub Area. There are several potential sources for the \$700,000 County contribution which can be considered and evaluated based on circumstances at the time funds are needed. Commitment of tax increment revenue will result in no Net County Cost.

Very truly yours,

  
James E. Sorensen, Executive Director  
Alameda County Redevelopment Agency

**Attachments:**

1. Resolution Authorizing Execution of Agreement and Making 33445 Statutory Findings
2. Mt. Eden Annexation and Public Improvement Agreement

cc: Susan, Muranishi, County Administrator  
Richard E. Winnie, County Counsel  
Patrick O'Connell, Auditor-Controller  
U.B. Singh, CDA Finance Director  
Eileen Dalton, Redevelopment Director  
Jesus Armas, City Manager, City of Hayward



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY  
REDEVELOPMENT AGENCY

James E. Sorensen  
Agency Director

AGENDA ITEM NO. 27  
December 19, 2006

224  
West Winton Avenue  
Room 110

Hayward  
California  
94544-1215

phone  
510.670.5333  
fax  
510.670.6374

www.  
alameda.ca.us/cda

December 4, 2006

Honorable Board of Directors  
County of Alameda Redevelopment Agency  
Administration Building  
1221 Oak Street  
Oakland, CA 94612

Dear Board Members:

**Subject: Mt. Eden Annexation and Public Improvement Agreement**

**RECOMMENDATION:** That the Board of Directors approve a Resolution:

- 1) authorizing the President of the Board of Directors to execute the attached Annexation and Public Improvement Agreement between the County of Alameda Redevelopment Agency (Agency), the County of Alameda (County) and the City of Hayward (City); and
- 2) making the Responsible Agency CEQA Findings.

**DISCUSSION/SUMMARY:**

The Agency is responsible for the administration of the Eden Area Redevelopment Plan, which was adopted by the Board of Supervisors in July 2000. The Plan includes the five unincorporated Sub Areas of Castro Valley, Cherryland, Foothill (Hillcrest Knolls area), Mt. Eden and San Lorenzo. The Mt. Eden Sub Area is made up of several unincorporated "islands" wholly surrounded by the City of Hayward.

The RDA, County and City have prepared the Annexation and Public Improvement Agreement to allow for the orderly annexation of Mt. Eden in two phases. The Phase 1 annexation is occurring because a land owner has assembled about 12 acres and has gained City of Hayward approval for a 149 unit residential development project. The resulting RDA tax increment from the new residential development, which can only occur with City water and sewer services, will fund the needed streetscape public improvements needed for both the development and the City annexation. The City of Hayward has agreed to submit the Phase 2 annexation application within one year of the Phase 1 annexation approval.

RDA Board Letter – Mt. Eden  
December 4, 2006  
Page 2

In order to accomplish both Phase 1 and Phase 2 annexations, the City has agreed to construct, or have a developer construct, approximately \$13.5 million of public improvements (\$8.5 million for Phase 1 and \$5 million for Phase 2). The majority of funding for these improvements is being advanced to the City by the largest single property owner, John Dutra (\$12.1 million), with the remaining funding being provided by the County (\$700,000), City (\$700,000), and KB Homes (\$300,000). The RDA proposes to reimburse a majority of these public improvement expenses (\$10.8 million) to the City (who will reimburse Dutra and KB Homes), and fully reimburse the City and County for their respective contributions.

Other considerations for the annexations are included in the agreement and include the following: 1) the special legislation that was passed recently (AB 2161) that allows the County to receive required affordable housing production requirement credit from an affordable housing development in the City of Hayward, but directly adjacent to the Mt. Eden Sub Area; and 2) after completion of the Phase 2 annexation and the confirmation of tax increment from the proposed Calpine power plant, the RDA will reimburse the City of Hayward up to \$10 million for construction of the Whitesell Drive extension.

**FINANCING:**

The RDA will make annual reimbursement payments from tax increment generated by the Mt. Eden Sub Area. Commitment of tax increment revenue will result in no Net County Cost.

Very truly yours,

  
James E. Sorensen, Executive Director  
Alameda County Redevelopment Agency

**Attachments:**

1. Resolution Authorizing Execution of Agreement and Making 33445 Statutory Findings
2. Mt. Eden Annexation and Public Improvement Agreement

cc: Susan, Muranishi, County Administrator  
Richard E. Winnie, County Counsel  
Patrick O'Connell, Auditor-Controller  
U.B. Singh, CDA Finance Director  
Eileen Dalton, Redevelopment Director  
Jesus Armas, City Manager, City of Hayward

APPROVAL VERSION

**MT. EDEN REDEVELOPMENT SUB-AREA  
ANNEXATION AND PUBLIC IMPROVEMENTS AGREEMENT**

)  
)  
**By and Among**

**City of Hayward,**

**County of Alameda,**

**and**

**Redevelopment Agency of the County of Alameda**

)  
)  
**Dated as of December 19, 2006**

C-2006-337

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Exhibit A Map of the Mt. Eden Sub-Area  
Exhibit B Phase 1 Improvements  
Exhibit C Phase 2 Improvements  
Exhibit D Whitesell Drive Extension Improvements  
Exhibit E Form of Hayward Agency Consent

**MT. EDEN REDEVELOPMENT SUB-AREA  
ANNEXATION AND PUBLIC IMPROVEMENTS AGREEMENT**

This Mt. Eden Redevelopment Sub-Area Annexation and Public Improvements Agreement (the "Agreement") is entered into as of December 19, 2006 by and among the City of Hayward (the "City"), the County of Alameda (the "County"), and the Redevelopment Agency of the County of Alameda (the "Agency") on the basis of the following facts, understandings, and intentions of the City, the County, and the Agency (collectively, the "Parties"):

RECITALS

A. These recitals refer to and use certain terms with initial capital letters that are defined in Section 1.1 of this Agreement. Section references used in this Agreement are to sections of this Agreement, unless otherwise specified.

B. Pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.: the "Redevelopment Law"), the County has adopted and the Agency is responsible for implementing, among other redevelopment plans, the Redevelopment Plan for the Eden Area Redevelopment Project, as amended (the "Redevelopment Plan"). The Redevelopment Plan sets forth a redevelopment program for the Eden Area Redevelopment Project Area (the "Project Area"), including the provision of a broad range of public service infrastructure improvements to induce private investment and improve emergency response in the Project Area.

C. The Mt. Eden Sub-Area is one of five non-contiguous sub-areas constituting the Project Area and is completely surrounded by territory within the City. The attached Exhibit A is a map of the Mt. Eden Sub-Area portion of the Project Area.

D. Among the blighting conditions affecting and deterring private reinvestment in the Mt. Eden Sub-Area is the lack of adequate public infrastructure improvements, including streets, sidewalks, curbs, gutters, storm drainage facilities, sewer facilities, and other utilities and improvements.

E. The City has undertaken the process to cause annexation of a portion of the Mt. Eden Sub-Area delineated in the attached Exhibit A and referred to in this Agreement as the "Phase 1 Annexation Area." The Parties desire to cooperate to cause the timely funding and construction of a series of public infrastructure improvements more fully described in the attached Exhibit B (the "Phase 1 Improvements") to alleviate blighting conditions in, and to encourage private sector revitalization of, the Phase 1 Annexation Area.

F. The Parties also desire to establish a process for the City to annex the balance of the Mt. Eden Sub-Area delineated in the attached Exhibit A and referred to in this Agreement as the "Phase 2 Annexation Area." The Parties likewise desire to cooperate to cause the timely funding and construction of a series of public infrastructure improvements (the "Phase 2 Improvements") to alleviate blighting conditions in, and to encourage private sector revitalization of, the Phase 2 Annexation Area.

the Agency simultaneously makes an equal prepayment to the City under subsection (b) above. Any such optional payment shall be applied in the manner specified in this subsection (c).

(d) Conditions of Payment. The Agency's obligation to make any Phase 2 Reimbursement Payment (Dutra Portion), any Phase 2 Reimbursement Payment (City Portion), or any Phase 2 Reimbursement Payment (County Portion) pursuant to this Section 3.4 shall be conditioned upon:

(1) Approval or certification of any required Supplemental CEQA Document and the making of any necessary accompanying CEQA findings and determinations by the City (in its capacity as "lead agency" pursuant to CEQA), the County (in its capacity as a "responsible agency" pursuant to CEQA), and the Agency (in its capacity as a "responsible agency" pursuant to CEQA) with respect to the Phase 2 Annexation and the Phase 2 Improvements, each acting through the exercise of its respective legislative discretion;

(2) Completion and effectiveness of the Phase 2 Annexation;

(3) Compliance by the City with its obligations related to the Affordable Housing Requirement in the manner required pursuant to Section 6.5.

If each of the conditions set forth in this subsection (d) has not been satisfied and in existence as of December 31, 2111, then, at the Agency's election, the Agency may terminate its obligation pursuant to this Section 3.4 to make Phase 2 Reimbursement Payments (Dutra Portion), Phase 2 Reimbursement Payments (City Portion), and Phase 2 Reimbursement Payments (County Portion).

#### ARTICLE 4 POWER PLANT DEVELOPMENT AND WHITESSELL DRIVE EXTENSION

Section 4.1 Power Plant Development. The Power Plant Developer has submitted an application to and is seeking the necessary approvals from the California Energy Commission to develop the Power Plant on the Power Plant Site. The Power Plant Site is located partly within the Depot Road area of the Mt. Eden Sub-Area (the "Mt. Eden Sub-Area Portion"), and partly within the current boundaries of the City (the "Current City Portion"). If developed, the Power Plant is estimated to generate approximately Eighty Million Dollars (\$80,000,000) of increased property value at completion with respect to the Mt. Eden Sub-Area Portion of the Power Plant Site, and an additional approximately Three Hundred Twenty Million (\$320,000,000) of increased property value at completion with respect to the Current City Portion of the Power Plant Site. It is the mutual objective of the Parties (the "Power Plant Property Tax Objective") that the increase in property value in connection with any development of the Power Plant on the Power Plant Site will be assessed and taxed:

(a) such that the entire increase in property value will be attributed to the Power Plant Site (a so-called "situs" basis of property tax assessment) and will generate the maximum potential property taxes to the City with respect to the Current City Portion of the

Power Plant Site and the maximum potential Tax Increment Revenue to the Agency with respect to the Mt. Eden Sub-Area Portion of the Power Plant Site; and

(b) such that the increased assessed valuation from development of the Power Plant is allocated in proportion to the relative value of the improvements on the Mt. Eden Portion and the Current City Portion of the Power Plant Site.

The City shall use diligent good faith efforts to accomplish the Power Plant Property Tax Objective, and to cause the Power Plant Property Tax Objective to be continuously satisfied throughout the duration of the Agency's ability to receive Tax Increment Revenue pursuant to the Redevelopment Plan. Throughout these efforts, the City shall regularly consult with and consider in good faith the input of the Agency with respect to implementing these actions to achieve the Power Plant Property Tax Objective. The Parties expressly acknowledge and agree that the Agency's ability to make the Whitesell Drive Reimbursement Payments pursuant to Section 4.3 below is dependent upon the initial accomplishment and continuing achievement of the Power Plant Property Tax Objective.

Section 4.2 Whitesell Drive Extension. Prior to and as a condition of commencement of the Whitesell Drive Extension, the City shall obtain any necessary City Planning Commission general plan conformance finding pursuant to Government Code Section 65402 in connection with any required acquisition of right-of-way for the Whitesell Drive Extension, and shall prepare and cause consideration by the City Council of any required Supplemental CEQA Document for the Whitesell Drive Extension. Unless otherwise agreed by the Parties, within twenty-four (24) months following commencement of operation of the Power Plant (the "Whitesell Drive Extension Completion Date"), the City shall complete or cause completion of construction of the Whitesell Drive Extension (including any necessary design and right-of-way acquisition work), subject to reasonable extension for an additional period of not exceeding twelve (12) months by mutual agreement of the Parties upon a satisfactory showing by the City that such extension is necessary despite the City's good faith efforts to complete the Whitesell Drive Extension by the Whitesell Drive Extension Completion Date. The City shall regularly consult with and consider in good faith the input of the Agency in connection with preparation of the initial design and any material modification of the design of the Whitesell Drive Extension. The City shall promptly provide such progress and status reports as the Agency may reasonably request from time to time concerning the design and development of the Whitesell Drive Extension. For each Pre-Completion Fiscal Year, the City shall deliver to the Agency a Proposed Cost Certification in accordance with Section 5.1.

Section 4.3 Whitesell Drive Extension Reimbursement Payments.

(a) Reimbursement Obligation. Subject to satisfaction of the conditions set forth in subsection (c) below, the Agency shall reimburse to the City the Whitesell Drive Extension Reimbursement Amount plus Imputed Interest thereon. The total Whitesell Drive Extension Reimbursement Amount (exclusive of any Whitesell Drive Extension Shortfall Amount payable by the Agency to the City) payable by the Agency to the City shall equal the lesser of:

(1) the actual cumulative cost of design, right-of-way acquisition for, and construction of the Whitesell Drive Extension as set forth in the Approved Cost Certification(s) for the Whitesell Drive Extension; or

(2) Ten Million Dollars (\$10,000,000).

To meet this reimbursement obligation, the Agency shall make annual payments (each a "Whitesell Drive Extension Reimbursement Payment") to the City, beginning in the later of: (1) the first Pre-Completion Fiscal Year with respect to the Whitesell Drive Extension; or (b) the Fiscal Year in which Mt. Eden Net Tax Increment Revenue shall exceed, and retire, the amount of the unpaid Phase 2 Reimbursement Amount (City Portion) and the unpaid Phase 2 Reimbursement Amount (County Portion). In such first Fiscal Year of payment, the Whitesell Drive Reimbursement Payment to the City shall be equal to the Mt. Eden Net Tax Increment Revenue for such Fiscal Year less the sum of the Phase 2 Reimbursement Payment (City Portion) and the Phase 2 Reimbursement Payment (County Portion) made to the City and the County, if any, for such Fiscal Year. Each Fiscal Year thereafter, the Agency shall make a Whitesell Drive Extension Reimbursement Payment to the City in an amount equal to the amount of the Mt. Eden Net Tax Increment Revenue for the Fiscal Year until the outstanding principal balance of the Whitesell Drive Extension Reimbursement Amount has been reduced to zero.

(b) Application of Payments. Each annual Whitesell Drive Extension Reimbursement Payment shall be paid by the Agency to the City by June 30 of each applicable Fiscal Year. Each annual Whitesell Drive Extension Reimbursement Payment received by the City shall be applied as of the last day (June 30) of each Fiscal Year first to pay Imputed Interest with respect to the outstanding principal balance of the Whitesell Drive Extension Reimbursement Amount for that Fiscal Year, and then to reduce the outstanding principal balance of the Whitesell Drive Extension Reimbursement Amount. If the Whitesell Drive Extension Reimbursement Payment received by the City with respect to a given Fiscal Year is not sufficient to pay the Imputed Interest with respect to the outstanding principal balance of the Whitesell Drive Extension Reimbursement Amount for that Fiscal Year, the shortfall in such interest payment (a "Whitesell Drive Extension Interest Shortfall Amount") shall be added to the outstanding principal balance of the Whitesell Drive Extension Reimbursement Amount as of July 1 of the succeeding Fiscal Year.

(c) Conditions of Payment. The Agency's obligation to make any Whitesell Drive Reimbursement Payment to the City shall be conditioned upon:

(1) Approval or certification of any required Supplemental CEQA Document and the making of any necessary accompanying CEQA findings and determinations by the City (in its capacity as "lead agency" pursuant to CEQA), and the Agency (in its capacity as a "responsible agency" pursuant to CEQA) with respect to the Whitesell Drive Extension, each acting through the exercise of its respective legislative discretion;

(2) Performance by the City of all actions reasonably required on its part to obtain approval from LAFCO and effectiveness of the Phase 2 Annexation, including without limitation, City Council approval and City submission to LAFCO of a completed

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth in the opening paragraph of this Agreement.

CITY:

CITY OF HAYWARD

FORM APPROVED  
CITY ATTORNEY  
BY M. [Signature]

By:

Jesús Armas  
Jesús Armas  
City Manager

COUNTY:

COUNTY OF ALAMEDA

By:

Keith Carson  
Keith Carson  
President of the Board of Supervisors

AGENCY:

REDEVELOPMENT AGENCY OF THE  
COUNTY OF ALAMEDA

By:

Keith Carson  
Keith Carson  
President of the Board of Directors

I hereby certify under penalty of perjury that the President of the Board of Supervisors was duly authorized to execute this document on behalf of the County of Alameda by a majority vote of the Board on 12/12/06 and that a copy has been delivered to the President as provided by Government Code Section 25103.

ATTEST:  
CRYSTAL HISHIDA GRAFF, Clerk of the Board of Supervisors  
County of Alameda, State of California



By: R. Bailey Date: 1/3/07

# **Attachment 2**

## Memorandum

To: Dick Ratliff, Staff Counsel

From: Mike Monasmith, Associate Public Adviser

Telephone: (916) 654-4489

Subject: **Russell City Energy Center**

01-AFC-7C

October 25, 2007

In regard to Russell City Energy Center (RCEC), the Public Adviser's Office (PAO) conducted traditional outreach to sensitive receptors such as elementary schools, day-care centers, elder-care facilities and hospitals. Beyond sensitive receptors, outreach was also provided to local business organizations, homeowner associations, churches, community groups, youth sports leagues and various non-profit organizations.

Local schools, day-care centers, elder-care facilities, libraries and health facilities were contacted regarding the December 2006 informational hearing and site visit for RCEC (see attached flyer). Appropriate and additional outreach activities have subsequently occurred in conjunction with, as well as apart from, outreach for the proposed Eastshore Energy Center project.

Outreach occurred primarily in Hayward, although schools and organizations within the unincorporated communities of Mt. Eden, San Lorenzo and Cherryland were also contacted (via email, letter or phone call).

### Contact List:

1 Step Closer	Good Shepherd Lutheran Church
4-H Youth Program of Hayward	Grace Lutheran Church
Alameda County Board of Education	Grant Elementary
All Saints Catholic Church	Guardian Adult Day Health Care
Alvarado Elementary	Harder Elementary
Alvarado Middle School	Hayward Adult School
Arroyo High School	Hayward Chamber of Commerce
Ashland Area Community Center	Hayward Community Gardens
Bancroft Day Care Center	Hayward High School
Bay Area Youth Center	Hayward Korean Baptist Church
Bay Area Environmental Health Collaborative	Hayward Project Elementary
Bay East Association of Realtors	Hayward Seventh Day Adventist
Bay Elementary	Hayward Unified School District
Bedford Center	Hayward West Little League
Bellaken Garden & Skilled Nursing Center	Hesperian Elementary
Bohannon Middle	Kipp Summit Academy
Bowman Elementary	Life Chiropractic Center West
Boys & Girls Club of Hayward	Lighthouse Community Center
Buddhist Center	Little League Baseball
Burbank Elementary	Longwood Elementary
CSU - East Bay	Lorenzo Manor Elementary
Calvary Lutheran School	Lorin Eden Elementary
Cambridge Community Center	Markham Elementary
Castro Valley Unified School District	Matt Jimenez Community Center
Chabot College	Montessori Children's House Daycare / School
Chavez Elementary	Mt. Eden High School
Cherryland Elementary	Muir Elementary
Christ Community Chinese Alliance Church	Ochoa Intermediate School
Christian Youth Center	Palma Ceia Elementary
Church of Christ Hayward	San Lorenzo Adult School
Church of the Cross	San Lorenzo Unified School District
Colonial Acres Elementary	Schafer Park Elementary
Communities for a Better Environment	Shepherd Elementary
Del Rey Elementary	Southgate Elementary
East Bay Chinese Church	Southland Seniors Club
Eden Housing	St. Clemens Catholic Church
Eden Japanese Community Center	St. Stephen Lutheran Church
Eden West Convalescent Hospital	Strobridge Elementary
Eden Youth Center	Temple of Hope
Eldridge Elementary	Tennyson High
First United Methodist Church of Hayward	Washington Manor Middle
Free Methodist Church of Hayward	Youth Football League
Garden Baptist Church	Zaytuna Institute
Girls Club of San Lorenzo	
Glassbrook Elementary	

Apart from PAO outreach, awareness about RCEC (and Eastshore) proceedings has been augmented by the independent work of committed and concerned community members in Hayward. These dedicated and informed individuals have had a profoundly positive effect on the public participation aspect for RCEC and Eastshore. While we certainly don't claim credit for their outreach activity, we applaud and encourage its outcome.

The City of Hayward has also been active and helpful in the Commission proceedings. For instance, their willingness to televise hearings on their local TV cable channel has been helpful in the goal of informing local residents.

Local press coverage has also been quite extensive. From consistent reports in the *Hayward Daily Review* and *Oakland Tribune* to lengthy in-depth talk-show discussion on radio stations like KPFA – “free media” exposure has been an important means by which local residents had consistent information about Commission proceedings. Press Coverage:

#### 1. News coverage October

- [County to state: Slow down on Hayward power plant \(Daily Review, 10/9/07\)](#)
- [New Wrinkle in Hayward Power Plant Planning \(Daily Review, 10/21/07\)](#)

#### 2. News coverage September

- [FAA delays Hayward plant approval \(Oakland Tribune, 9/13/07\)](#)
- [FAA: planned power plant a safety risk \(Oakland Tribune, 9/21/07\)](#)
- [Hayward mayor questions fairness of power plants \(Oakland Tribune, 9/6/07\)](#)
- [KPFA Morning news 9/6/07 \(story begins at 34:10\)](#)
- [Power companies may offer incentives for plants \(Oakland Tribune, 9/3/07\)](#)
- [State Commission OK's Hayward Power Plant \(re: Russell City, Daily Review, 9/28/07\)](#)

#### 3. News coverage August

- [Hayward power plant gets initial thumbs down \(East Bay Business Times, 8/20/07\)](#)
- [KPFA Evening News 8/20/07 \(story starts at 32:25\)](#)
- [KPFA Evening News 8/27/07 \(story begins at 38:39\)](#)
- [Power plant saga takes new turn \(Oakland Tribune, 8/25/07\)](#)
- [State energy staff recommends against Eastshore Energy Center \(Oakland Tribune, 8/17/07\)](#)

#### 4. News coverage July: [State panel may derail power plant \(Oakland Tribune, 7/3/07\)](#)

#### 5. News coverage June

- [ABC 7 news 6/6/07](#)
- [Hayward power plant plans ignite much controversy \(Oakland Tribune, 6/6/07\)](#)
- [KTVU news 6/6/07](#)
- [Operators must use credits to emit certain pollutants \(Oakland Tribune, 6/6/07\)](#)
- [Opinion: Reconsider flexing your power in Hayward \(Oakland Tribune, 6/8/07\)](#)
- [Power panel hears community concerns, \(Oakland Tribune, 6/7/07\)](#)
- [Residents, leaders upset about secrecy of process \(Oakland Tribune, 6/6/07\)](#)
- [Support for power plant irks some Hayward leaders \(Oakland Tribune, 6/30/07\)](#)

#### 6. News coverage May: [Hayward residents promise to fight plant \(Oakland Tribune, 5/22/07\)](#)

**7. News coverage April:**

- [Agency wants 2 plants on 1 site. \(Oakland Tribune, 4/12/07\)](#)
- [KPFA radio 4/17/07, story starts at 32:15](#)

**8. News coverage March**

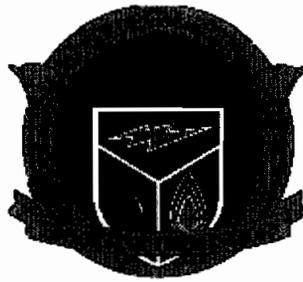
- [Hayward Considers Flipping Power Plant Switch \(Oakland Tribune, 3/5/07\)](#)
- [KPFA public radio 3/5/07 - story starts at 32 minutes, 27 seconds](#)
- [KPFA radio 3/8 re:City Council meeting. Story begins at 35 minutes.](#)
- [Power Plant Hits New Snag \(Oakland Tribune 3/23/07\)](#)
- [Power Plant May Pollute Hayward \(Oakland Tribune, 3/10/07\)](#)

**9. News coverage February**

- [ABC/KGO article 2/15/07](#)
- [Fate of Power Plant Project in Limbo \(Oakland Tribune, 2/17/07\)](#)
- [Hayward Uncertain about 2 Power Plants \(Oakland Tribune, 2/4/07\)](#)

**Letters from residents**

- [Daily Review 6/20/07](#)
- [Inside Bay Area April 17, 2007](#)
- [Inside Bay Area Feb 16, 2007](#)
- [Tri City Voice April 3, 2007](#)



## **NOTICE OF PUBLIC INFORMATIONAL HEARING & SITE VISIT**

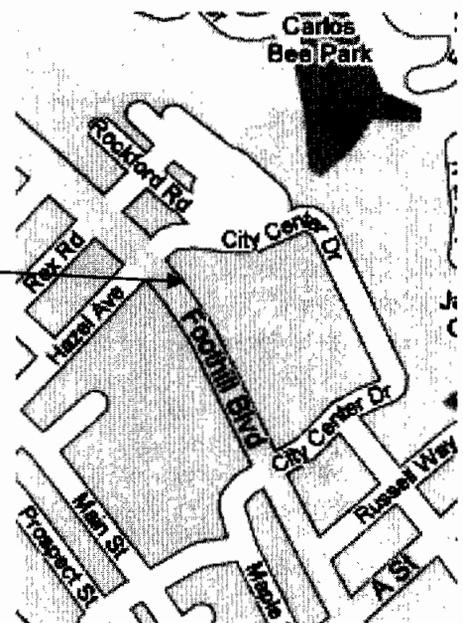
Russell City Energy Company, LLC has filed a petition to modify the California Energy Commission's decision approving the Russell City Energy Center Project. The proposed modifications would move the project facilities approximately 1300 feet to a site southwest of the intersection of Depot Road and Cabot Boulevard in Hayward, CA.

**PLEASE TAKE NOTICE** that the Energy Commission has scheduled a Public Informational Hearing and Site Visit to discuss the proposed modifications as described below:

**Friday, December 15, 2006**  
**Site Visit begins (bus leaves) at 3:30 p.m.**  
**Informational Hearing begins at 4:45 p.m.**

**Centennial Hall – Room 6**  
**22292 Foothill Boulevard**  
**Hayward, CA 94541**  
*(Wheelchair Accessible)*

The applicant will provide transportation to the site and return. For bus reservations, please contact the Energy Commission's Public Adviser prior to December 13th at: [916-654-4489](tel:916-654-4489) or [1-800-822-6228](tel:1-800-822-6228) or, e-mail at: [pao@energy.state.ca.us](mailto:pao@energy.state.ca.us).



### **Informational Hearing Purpose**

The Informational Hearing provides an opportunity for members of the community to obtain information, to offer comments, and to view the project site. The amendment process provides a public forum allowing the Applicant, Commission staff, governmental agencies, adjacent landowners, and members of the general public to consider the advantages and disadvantages of the modifications, and to propose changes, mitigation measures and alternatives as necessary.

### **Contact Information**

The Energy Commission's Public Adviser is available to assist the public in participating in the application review process. For those individuals who require general information on how to participate, please contact Mike Monasmith at: [916-654-4489](tel:916-654-4489) or [1-800-822-6228](tel:1-800-822-6228) or e-mail [[pao@energy.state.ca.us](mailto:pao@energy.state.ca.us)].

Technical questions concerning the project should be addressed to Jeri Zene Scott, the Staff Compliance Project Manager, at: [916-654-4228](tel:916-654-4228) or e-mail [[jscott@energy.state.ca.us](mailto:jscott@energy.state.ca.us)].

Questions of a legal or procedural nature should be directed to Paul Kramer, the Hearing Officer, at: [916-654-5103](tel:916-654-5103) or e-mail [[pkramer@energy.state.ca.us](mailto:pkramer@energy.state.ca.us)].

Information concerning the status of the project, as well as notices and other relevant documents, may be viewed on the Energy Commission's Internet web page [[www.energy.ca.gov/sitingcases/russellcity/compliance](http://www.energy.ca.gov/sitingcases/russellcity/compliance)].

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

Amendment to the APPLICATION  
FOR CERTIFICATION OF THE  
RUSSELL ENERGY CENTER  
POWER PLANT PROJECT

Docket No. 01-AFC-7C  
PROOF OF SERVICE  
(Revised 7/6/07)

**INSTRUCTIONS:** All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

**CALIFORNIA ENERGY COMMISSION**  
Attn: Docket No. 01-AFC-7C  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

**APPLICANT**

Michael A. Argentine, PE  
Director, Project Development  
Calpine Corporation  
104 Woodmere Road  
Folsom, CA 95630  
[margentine@calpine.com](mailto:margentine@calpine.com)

Marianna Isaacs,  
Administrative Manager  
Calpine Corporation  
3875 Hopyard Road, Suite. 345  
Pleasanton, CA 94588  
[misaacs@calpine.com](mailto:misaacs@calpine.com)

**COUNSEL FOR APPLICANT**

Gregg L. Wheatland, Esq.  
Ellison, Schneider & Harris L.L.P.  
2015 H Street  
Sacramento, CA 95814-3109  
[glw@eslawfirm.com](mailto:glw@eslawfirm.com)

**CONSULTANT TO APPLICANT**

Doug Davy, Senior Project Manager  
CH2M HILL  
2485 Natomas Park Drive, # 600  
Sacramento, CA 95833  
[ddavy@ch2m.com](mailto:ddavy@ch2m.com)

**INTERESTED AGENCIES**

Larry Tong  
East Bay Regional Park District  
2950 Peralta Oaks Court  
Oakland, CA 94605-0381  
[Ltong@ebparks.org](mailto:Ltong@ebparks.org)

Weyman Lee, PE  
Bay Area AQMD  
939 Ellis Street  
San Francisco, CA 94109  
[weyman@baaqmd.gov](mailto:weyman@baaqmd.gov)

Mark Taylor, Field Supervisor  
East Bay Regional Park District  
3050 West Winton Avenue.  
Hayward, CA 94545  
[hayward@ebparks.org](mailto:hayward@ebparks.org)

\*Alex Ameri, P.E.  
Deputy Director of Public Works  
777 B Street  
Hayward, CA 94541-5007  
[Alex.Ameri@hayward-ca.gov](mailto:Alex.Ameri@hayward-ca.gov)

Larry Tobias  
CA. Independent System Operator  
151 Blue Ravine Road  
Folsom, CA 95630  
[LTobias@caiso.com](mailto:LTobias@caiso.com)

Bob Nishimura  
Bay Area AQMD.  
939 Ellis Street  
San Francisco, CA 94109  
[bnishimura@baaqmd.gov](mailto:bnishimura@baaqmd.gov)

Electricity Oversight Board  
770 L Street, Suite 1250  
Sacramento, CA 95814  
[esaltmarsh@eob.ca.gov](mailto:esaltmarsh@eob.ca.gov)

### **INTERESTED PARTICIPANTS**

CURE c/o Marc D. Joseph  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, # 1000  
South San Francisco, CA 94080  
[mdjoseph@adamsbroadwell.com](mailto:mdjoseph@adamsbroadwell.com)

Paul N. Haavik  
25087 Eden Avenue  
Hayward, CA 94545  
[lindampaulh@msn.com](mailto:lindampaulh@msn.com)

Parker Ventures, LLC  
c/o Reneon & Roberts  
Ten Almaden Boulevard, Suite 550  
San Jose, CA 95113

### **ENERGY COMMISSION**

JEFFREY D. BYRON  
Associate Member  
[jbyron@energy.state.ca.us](mailto:jbyron@energy.state.ca.us)

JOHN L. GEESMAN  
Presiding Member  
[jgeesman@energy.state.ca.us](mailto:jgeesman@energy.state.ca.us)

Paul Kramer  
Hearing Officer  
[pkramer@energy.state.ca.us](mailto:pkramer@energy.state.ca.us)

Lance Shaw  
Project Manager  
[lshaw@energy.state.ca.us](mailto:lshaw@energy.state.ca.us)

Dick Ratliff  
Staff Counsel  
[dratliff@energy.state.ca.us](mailto:dratliff@energy.state.ca.us)

Public Adviser  
[pao@energy.state.ca.us](mailto:pao@energy.state.ca.us)

### **OTHER RECIPIENTS**

Brian E. Washington, Assistant County  
Counsel, County of Alameda  
[brian.washington@acgov.org](mailto:brian.washington@acgov.org)

Andrew J. Massey, Associate County  
Counsel, County of Alameda  
[andrew.massey@acgov.org](mailto:andrew.massey@acgov.org)

Jewell Hargleroad  
[jewellhargleroad@mac.com](mailto:jewellhargleroad@mac.com)

Laura Schulkind  
[lschulkind@lcwlegal.com](mailto:lschulkind@lcwlegal.com)

Suzanne Solomon  
[ssolomon@lcwlegal.com](mailto:ssolomon@lcwlegal.com)

## **DECLARATION OF SERVICE**

I, Lynn Tien-Tran, declare that on October 31, 2007, I deposited copies of the attached COMMISSION STAFF RESPONSE TO PETITIONS FOR RECONSIDERATION AND INTERVENTION and ATTACHMENT 1 & 2 to the Russell City Energy POS List 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**

Transmitted via facsimile transmission to those identified above with a Fax number.

**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.

  
\_\_\_\_\_  
Lynn Tien-Tran