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DOCKET	
01-AFC-7C	
DATE	<u>SEP 19 2008</u>
RECD.	<u>SEP 19 2008</u>

10 STATE OF CALIFORNIA

11 STATE ENERGY RESOURCES

12 Conservation and Development Commission

13 In the Matter of:

14 Initially noticed as "Petition to Amend the
15 Commission Decision Approving the Application
16 for Certification for the Russell City Energy
17 Center";

18 Later Noticed as "Modification of the Application
19 for Certification for the Russell City Energy
20 Center"

Docket No.: 01-AFC-7C

GROUP OBJECTORS AGREEMENT THAT
THE COMMISSION COMMITTED ERROR
OF LAW IN GRANTING AN
UNAUTHORIZED SECOND EXTENSION
OF TIME TO COMMENCE
CONSTRUCTION

Date: September 24, 2008
Location.: Sacramento

1 On September 3, 2008, the Chair of the Commission, Jackalyne Pfannenstiel, executed an
2 “Order on Petitions for Reconsideration Concerning Extension of Construction Deadline” which
3 was mailed that same day to counsel for Group Objectors the California Pilots Association and
4 San Lorenzo Village Homes Association. Group Objectors observe that to date the petitions for
5 reconsideration, which the order states “were filed by two groups of interested persons” are not
6 docketed or posted on the Commission’s web page.

7
8 The September 3, 2008 order “directs parties to file written arguments on whether the
9 Commission should grant the petitions” and further states that the “applicant and the Staff shall,
10 and any other party to the RCEC deadline-extension proceeding may, file written arguments
11 supporting or opposing the petitions.” Although in 2007 this Commission earlier wrongfully
12 denied Group Objectors petitions to intervene and for reconsideration of its final decision granting
13 the “amendment” to the certification of this project, insofar this Order purports to be inviting
14 Group Objectors arguments, Group Objectors agree that the Commission should grant
15 reconsideration of their July 30, 2008 Order improperly extending the deadline for the
16 commencement of construction. (20 Calif. Code of Reg, §1720.) Group Objectors agree that the
17 Commission committed a prejudicial error of law under which section 1720 subdivision (a)
18 enables the Commission to vacate that order.

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20 Group Objectors refer to and incorporate their arguments already presented to the
21 Commission on July 1, 2008 and on July 29, 2008 as well as the oral presentation to the
22 Commission on July 30, 2008, including by Gary Cathey of the Division of Aeronautics of the
23 Department of Transportation. Mr. Cathey appeared before the Commission on July 30, 2008, and
24 agreed with the July 29, 2008 correspondence from Andy Richards, the District Manager of the
25 San Francisco Air Traffic Control District for the Federal Aviation Administration, that the so
26 called “mitigations” adopted for this project concerning its interference with the airspace of
27 Hayward’s general aviation airport, the reliever airport for the Oakland International Airport, are
28

1 not mitigations. Group Objectors note that although this correspondence from the FAA is
2 docketed, this important correspondence from the FAA is not posted on the web page for this
3 application. Attached are copies of Group Objectors arguments made on July 1, and July 29, 2008
4 and a copy of the FAA's July 29, 2008 letter to this Commission.

5 Group Objectors further agree that the certification for this project is against the law as
6 certification must be based on receipt of a valid permit for significant deterioration of the air (or
7 PSD). As reflected by the July 29, 2008 order of the Environmental Administrative Board, that
8 PSD permit upon which this Commission based its certification has been found to be invalid and
9 has been remanded for further proceedings before the delegated agency for the Environmental
10 Protection Agency, the Bay Area Air Quality Management District.

11 If the Commission grants reconsideration, absent properly denying the application on the
12 ground the applicant lacks the statutory entitlement to receive an extension, Group Objectors
13 remain ready and willing to present their earlier offers of proof as parties at an evidentiary hearing,
14 assuming the Commission acknowledges Group Objectors as intervenors.
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16 Dated: September 19, 2008

Respectfully Submitted,

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20 Jewell J. Hargleroad
21 Attorney for Group Objectors California
22 Pilots Association and San Lorenzo Village
23 Homes Association
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