

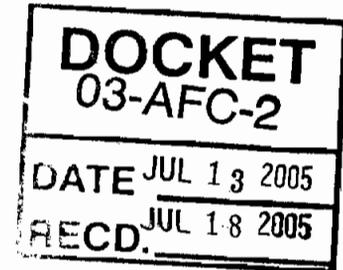
21965



Department of Planning, Building and Code Enforcement

STEPHEN M. HAASE, AICP, DIRECTOR

July 13, 2005



Mr. Bob Eller
 Acting Project Manager
 Systems Assessment & Facility Siting Division
 California Energy Commission
 1516 Ninth Street, MS-15
 Sacramento, CA 95814

Re: Final Staff Assessment Los Esteros Critical Energy Center Phase 2

Dear Mr. Eller:

The City of San Jose is nearing completion of its review of the Los Esteros Critical Energy Facility (LECEF) Phase 2, proposed by Calpine Corporation, as part of Planned Development Rezoning application File No. PDC05-001, at 800 Thomas Foon Chew Way in San Jose, CA 95134. The City acknowledges the CEC's status as a certified regulatory program under CEQA Guidelines Section 15251(k) and intends, acting as a responsible agency under CEQA Guidelines Section 15253, to use the CEC's Final Staff Assessment (FSA), when appropriate, as an EIR substitute in its consideration of the LECEF Phase 2 project.

CEQA Guidelines Section 15253(b) provides conditions under which a responsible agency must act when approving a project using an environmental analysis document prepared under a certified program in place of an EIR. Please provide documentation of the following, as it is available:

1. Pursuant to Section 15253(b)(1), the CEC's action as the first agency to grant a discretionary approval for the project;
2. Pursuant to Section 15352(b)(6), the CEC's consideration, exercising its lead agency powers, of all significant environmental effects of the project and its adoption of findings under Section 15091 for each significant effect.

In the absence of documentation of the CEC's approval action and findings concerning this project's significant environmental effects, the City is unable to function as a responsible agency and use the FSA in accordance with the provisions of the CEQA Guidelines implementing the provisions of CEQA. At this point in time in the absence of such CEC actions, the City would be

Mr. Bob Eller
Final Staff Assessment Los Esteros Critical Energy Center Phase 2
July 13, 2005
Page 2 of 2

required to act as the lead agency and prepare its own EIR for purposes of considering its discretionary actions related to the LECEF Phase 2 project, specifically the City's consideration of the Planned Development Rezoning application, File No. PDC05-001, and related permits.

Please forward the requested documentation to Rich Buikema, Senior Planner, at the following address:

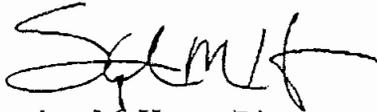
801 N. First Street
San Jose, CA 95110

After August 22, 2005:

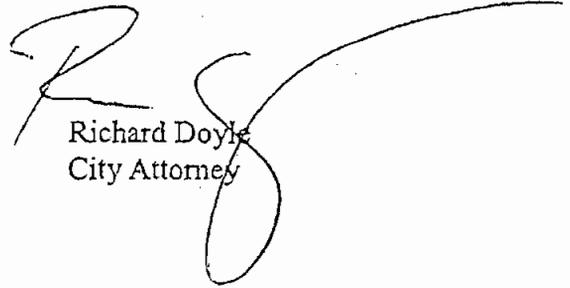
200 East Santa Clara
San Jose, CA 95113-1905

If you have any questions, please contact Rich Buikema at (408) 277-8551.

Sincerely,



Stephen M. Haase, Director
Planning, Building, and Code Enforcement



Richard Doyle
City Attorney

cc: Calpine
Rick Tetzloff, Project Manager
700 NE Multnomah, Suite 870
Portland, OR 97232

Steve De Young
Environmental Manager
4155 Arbolado Drive
Walnut Creek, CA 94598
Calpine Corporation