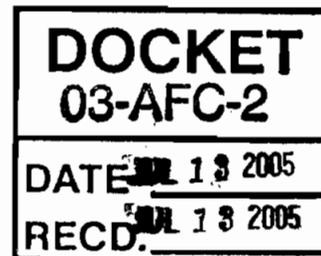




*Department of Planning, Building and Code Enforcement*

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

PROOF OF SERVICE (REVISED \_\_\_\_\_) FILED WITH  
ORIGINAL MAILED FROM SACRAMENTO ON 7/13/05

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:

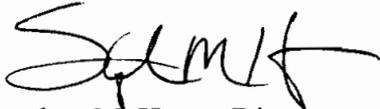
801 N. First Street  
San Jose, CA 95110

After August 22, 2005:

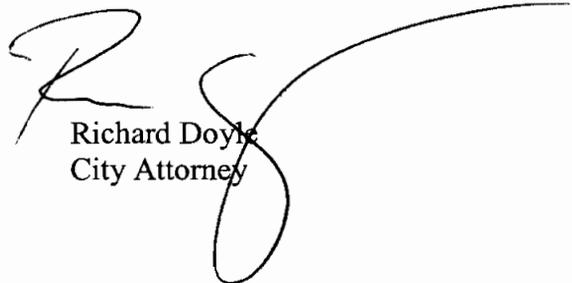
200 East Santa Clara  
San Jose, CA 95113-1905

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

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

APPLICATION FOR CERTIFICATION  
FOR THE LOS ESTEROS CRITICAL  
ENERGY FACILITY, PHASE 2  
(LOS ESTEROS 2)

DOCKET No. 03-AFC-2

(Revised 6/17/05)

**PROOF OF SERVICE**

I, **Keith A. Muntz**, declare that on **July 15, 2005**, I deposited copies of the attached **City of San Jose's Comments on the FSA** in the United States mail at Sacramento, CA with first class postage thereon fully prepaid and addressed to the following:

**DOCKET UNIT**

Send the original signed document plus the required 12 copies to the address below:

CEC DOCKET UNIT  
Attn: Docket No. 03-AFC-2  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
**doCKET@energy.state.ca.us**

In addition to the documents sent to the Commission Docket Unit, also send individual copies of any documents to:

**APPLICANT**

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

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Environmental Manager  
4155 Arbolado Drive  
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**steve4155@astound.net**

**COUNSEL FOR APPLICANT**

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County Government Center  
70 West Hedding Street  
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San Jose, CA 95110-1705

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Luis Jaimes  
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San Jose, CA 95118-3686

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Project Assessment Branch  
P.O. Box 2815  
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**mtollstr@arb.ca.gov**

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Bay Area Air Quality Mgmt. District  
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San Francisco, CA 94109

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**ddavy@ch2m.com**

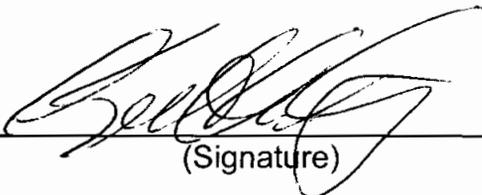
**INTERVENORS**

\* **CURE**  
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(CARE)  
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Tracy, CA. 95376  
**sarveybob@aol.com**

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

  
\_\_\_\_\_  
(Signature)

## INTERNAL DISTRIBUTION LIST

**FOR YOUR INFORMATION ONLY! Parties DO NOT mail to the following individuals. The Energy Commission Docket Unit will internally distribute documents filed in this case to the following:**

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Gary Fay  
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Bob Eller  
Project Manager  
MS-15

Dick Ratliff  
Staff Counsel  
MS-14

Margret J. Kim  
Public Adviser  
MS-12