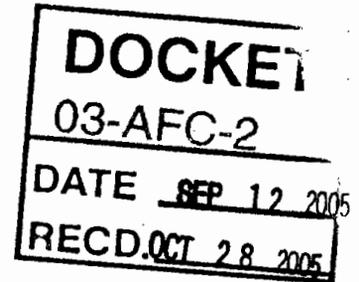


Office of the City Attorney
RICHARD DOYLE, CITY ATTORNEY

September 12, 2005

Ms. Arlene L. Ichien,
Assistant Chief Counsel
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512



Re: Los Esteros Critical Energy Facility, Phase 2 ("LECEF") - Rezoning

Dear Ms. Ichien:

Thank you for your letter of August 10, 2005 regarding the proposed LECEF project. The City of San José continues to look forward to working with your office to achieve a mutually satisfactory resolution to the issues raised or addressed in your letter.

As we discussed via telephone earlier, while we understand that your office believes that the City is not a responsible agency for this project, as the term "responsible agency" is utilized under the California Environmental Quality Act ("CEQA"), we cannot concur. We understand that the CEC has exclusive authority to certify the LECEF, that the City is not a regulatory permitting authority for the LECEF, and that the CEC is the lead agency under CEQA for the LECEF project. However, the City of San José views itself as a public agency being called upon and authorized to take a discretionary action related to the proposed certification of the LECEF: namely, to consider legislation to rezone the site of the LECEF in a manner that would allow the LECEF to operate at that site. Insofar as the City's rezoning action would constitute taking a discretionary action in connection with and in furtherance of the LECEF project, we consider ourselves a responsible agency under CEQA in connection with the LECEF project.

Ideally, we would want to utilize the environmental document of the CEC as an EIR-equivalent under State law, and as provided for under California Public Resources Code section 25519(c). However, your Office has indicated that you would like the City to take its discretionary rezoning action prior to any actions on the project by the CEC, and you have requested that the City, therefore, utilize other documents prepared by CEC staff, such as the Final Staff Assessment ("FSA") or the Presiding Members Proposed Decision ("PMPD").

Please understand that it would not be appropriate for the City to utilize a current draft FSA or a draft PMPD as an EIR-equivalent document for the LECEF project because

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 7/29/05)

PROOF OF SERVICE

DOCKET UNIT

Instructions: Send an original signed document plus 12 copies and/or an electronic copy plus one printed copy to the address below:

CALIFORNIA ENERGY COMMISSION
DOCKET UNIT, MS-4
Attn: Docket No. 03-AFC-2
1516 Ninth Street
Sacramento, CA 95814-5512
docket@energy.state.ca.us

Also send a printed or electronic copy of all documents to each of the following:

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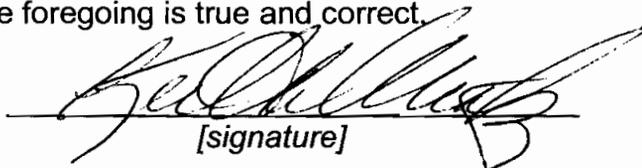
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DECLARATION OF SERVICE

I, **Keith A. Muntz** declare that on **October 28, 2005**, I deposited copies of the attached **City of San Jose's response to the Energy Commission's letter dated August 10, 2005** in the United States mail at Sacramento, CA with first class postage thereon fully prepaid and addressed those identified on the Proof of Service list above. Transmission via electronic mail was consistent with the requirements of the California Code of Regulations, title 20, sections 1209, 1209.5, and 1210.

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


[signature]

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MS-12