



**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE  
AGENDA ITEM  
WORK SESSION ITEM

3/12/07  
~~03/06/07~~  
~~\*7~~  
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**TO:** Mayor and City Council  
**FROM:** Director of Community and Economic Development  
**SUBJECT:** Determination whether the Eastshore Energy Center proposed at 25101 Clawiter Road is consistent with the General Plan and Industrial Zoning District

**RECOMMENDATION:**

It is recommended that the City Council adopt the attached resolution, which indicates the proposed power plant is not consistent with the City's General Plan and Industrial Zoning District.

**DISCUSSION:**

The proposed 115 megawatt, gas-fired peaking power plant is to be utilized during periods of high demand, expected more frequently during the hotter, summer months. Fourteen approximately 70-foot tall engine stacks would be located by the generator systems adjacent to the main building. Two, 10,000-gallon aqueous ammonia tanks would be located to the rear of the building. The ammonia, a regulated hazardous material, would be trucked to the site and stored in tanks to be used in the gas-burning process to reduce noxious oxide emissions. Also proposed would be approximately 1.1 miles of 115 kV transmission lines along Clawiter Road that would cross State Highway 92 and connect to the PG&E Eastshore Substation. The power lines, including existing 12 kV power lines, would be supported by new, 90-foot tall transmission poles. A temporary construction laydown and parking area immediately across Clawiter Road on the northern portion of the Berkeley Farms site is also proposed.

The authority to license power plants in California that generate more than 50 megawatts of power rests with the California Energy Commission (CEC). The CEC is currently processing an application for this power plant, which has entailed and will entail future public information meetings, and is scheduled to make a final determination sometime this fall. As part of the review process, the CEC does an extensive environmental impact analysis, including assessing potential air quality and public health impacts. Final permitting by the Energy Commission requires conformance with rules and regulations of the Bay Area Air Quality Management District (BAAQMD), which is also required to issue a permit in order for the plant to be operated. The BAAQMD is continuing to assess air quality impacts, including cumulative air quality impacts, and is scheduled to release a "Preliminary Determination of Compliance" in late March. Such

determination will either recommend against the project, or propose mitigation measures to reduce air quality impacts to acceptable levels.

Additionally, as part of its review process, the CEC must determine that a project conforms to what are called LORS – Local Ordinances, Regulations and Standards. Because a power plant is not a listed use within the Hayward Industrial Zoning District, and the Zoning Ordinance indicates that when a use is not specifically listed, it shall be “assumed that such uses are prohibited unless it is determined ...that the use is similar to and not more objectionable or intensive than the uses listed,” the Council is being requested to determine whether the proposed power plant would be in conformance with the Industrial Zoning District.

This area is classified as “Industrial Corridor” in the General Plan and the site is zoned Industrial. The purpose of the Industrial Zoning District is “to provide for and encourage the development of industrial uses in areas suitable for same, and to promote a desirable and attractive working environment with a minimum of detriment to surrounding properties.” The proposed plant, due to use and storage of 20,000 gallons of a hazardous material, aqueous ammonia, would require a use permit were it processed through the local permitting process. As with other zoning districts, a variety of uses requiring different levels of review and processing are listed as being allowed in the Industrial Zoning District. Generally, more impacting uses require an administrative or conditional use permit, which allows discretion on the part of the City decision-makers in determining whether or not a use is appropriate. As reflected in the purpose of the district, location is a key consideration in that determination.

Exhibit A shows the proximity of the proposed plant to residential and educational facilities in the area, as well as nursing homes and childcare/preschool facilities. The nearest residence is approximately 1,100 feet to the northeast, with the 293 unit Waterford Apartment complex located some 1,800 feet away. The Life Chiropractic College is located directly across Clawiter Road from the plant site, and Ochoa Middle School and Eden Gardens Elementary located approximately roughly a half-mile away at 3,000 and 3,500 feet, respectively. It is staff's opinion that the proposed power plant is not consistent with the purpose of the Industrial (I) Zoning District in that it would result in a facility that would not “promote a desirable and attractive working environment with a minimum of detriment to surrounding properties,” because it would have the potential to generate air quality impacts related to particulate matter, nitrogen oxides and ammonia emissions and would entail fourteen 70-foot tall venting stacks, which would not be compatible with the heights of other structures in the vicinity.

Additionally, staff would suggest that the facility would impair the character and integrity of the zoning district and surrounding area with the introduction of highly visible 70-foot tall venting stacks, which would be seen from residential areas to the east and would be incompatible with the heights of existing facilities in the area. An oblique aerial view visual simulation of the proposed plant and stacks is provided in an attachment to the attached Planning Commission agenda report.

Also, the proposed power plant could be detrimental to the public health, safety, or general welfare due to the potential for air quality and hazardous materials impacts related to the use and transport of aqueous ammonia and emission of particulate matter, ammonia and nitrogen oxides. Although air quality impact analysis is ongoing by both CEC and BAAQMD staff, CEC staff

have requested additional information from the applicant and have expressed concerns with air quality impacts associated with particulate matter and ammonia emissions and with the applicant's air quality modeling analysis.

It is staff's opinion that the proposed power plant would also not be in harmony with applicable General Plan policies that seek to "promote and protect the appearance of the Business and Technology Corridor to encourage quality development" in that the 6.2-acre site proposed for the power plant is near the eastern edge of the industrial area of the City abutting residential areas that would be more appropriately developed with businesses that have less potential for air quality impacts and that would be more compatible with the fringe of residential areas. Such businesses include those of emerging and higher technology industries that tend to cluster and generate higher paying jobs. Such jobs and businesses are strongly supported by the Economic Development Chapter of the General Plan, which encourages the City to establish policies and strategies that, "support economic growth...maintain a healthy balance between economic growth and environmental quality...encourage businesses that create permanent, higher wage jobs to locate and/or expand in Hayward..."

Also, such uses would have more employees than the expected 15-20 employees anticipated for operation of the plant. The proposed site would be more appropriately used for a business with a higher employee count that would be served by the direct connection along Clawiter Road to State Route 92, an intersection planned for upgrades as stated in the General Plan.

#### **PLANNING COMMISSION ACTION:**

As reflected in the attached draft meeting minutes, the Planning Commission voted 3-3-1 regarding consistency and therefore, did not make a recommendation to the City Council. Commissioners against the project acknowledged concerns expressed by area residents and opined that the plant was proposed in an inappropriate location, given the proximity of the site to residents, schools and other sensitive receptors and given potential impacts of the plant, especially related to air quality and visual issues. Those three Commissioners also felt that the plant would not guarantee additional electrical power specifically for Hayward, that Hayward should not be burdened with an additional power plant and that other Bay Area cities should "do their fair share" and accommodate this plant. Acknowledging environmental issues needed to be carefully analyzed, the three Commissioners in support of the proposed plant sided with those in the business community who voiced support for the plant at the hearing, with Commissioners noting that the plant was a similar use to the Russell City Energy Center, a larger power plant that was determined in 2001 by the City to be consistent with the Industrial Zoning District.

#### **APPLICANT'S SUBMITTAL:**

Exhibit D is a submittal from the applicant's legal counsel, Jane Luckhardt of Downey Brand, LLP, which was distributed to the Planning Commissioners at the February 15 public hearing. Ms. Luckhardt states in her letter that the City previously determined that the Russell City Energy Center, another power plant, was a "manufacturing" use and determined to be consistent with the Industrial Zoning District and therefore, the Eastshore Energy Center, also proposed as a power plant, should also be determined to be consistent with the zoning classification. Also, the

attachment argues that analysis should be done regarding whether the proposed project is more objectionable or intensive than other uses listed as allowed, rather than of the project's location or individual environmental effects. Ms. Luckhardt indicates that there is no evaluation to support the implication that visual and hazardous materials impacts would make the project inconsistent with the Zoning Ordinance and General Plan. Finally, the letter argues that the proposed project would be consistent with General Plan policies in that it would attract desired businesses, such as those associated with the computer and electronics industries.

Staff would respond that location was a consideration when the Russell City Energy Center (RCEC) determination was made. In fact, the resolution adopted with such determination referenced the Rohm and Haas chemical plant, located in the western portion of the Industrial District, further away from residential areas. Also, although no specific analysis has been done, it is clear to staff that the 70-foot tall stacks would be visible from residential areas and inconsistent with the heights of structures in the area. Issues related to air quality impacts are still being analyzed and, given the amount of data requests from the CEC staff and the BAAQMD, concerns with potential impacts associated with proposed use of hazardous materials are worthy of consideration in the context of determining whether a use is "more objectionable or intensive" than other allowed uses. Therefore, for the reasons outlined in this report and in the attached resolution, staff cannot recommend that the project be determined to be consistent with the Industrial Zoning District.

**PUBLIC NOTICE:**

On February 23, nearly 650 notices of this hearing were sent to owners of properties not only within the required 300 feet radius to the subject site, but also to owners of properties within an expanded area that includes residential properties along Depot Road and to the tenants of the 293-unit Waterford Apartment complex along Depot Road. Notices were also sent to interested parties and the applicant. Also, notice was published in the local newspaper on February 24.

Prepared by:



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David Rizk, AICP  
Planning Manager

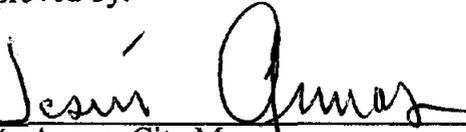
Recommended by:



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Susan J. Daluddung, Ph.D.  
Director of Community and Economic Development

Approved by:

  
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Jesus Armas, City Manager

Attachments:

- Exhibit A: Area Map
- Exhibit B: February 15, 2007 Planning Commission agenda report with attachments:
  - Attachment A: Area Map
  - Attachment B: Excerpts from information packet from applicant
  - Attachment C: Letter from Hayward City Manager to CEC staff
- Exhibit C: Draft minutes of the February 15, 2007 Planning Commission meeting
- Exhibit D: February 15, 2007 submittal from applicant's legal counsel, Jane E. Luckhardt, of Downey Brand LLP
- Exhibit E: Written correspondence from public received prior to Planning Commission meeting  
Resolution

3/1/07

# DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

*me*  
3/1/07

**RESOLUTION FINDING THAT THE EASTSHORE ENERGY CENTER PROPOSED AT 25101 CLAWITER ROAD IS NOT CONSISTENT WITH THE GENERAL PLAN AND INDUSTRIAL ZONING DISTRICT**

WHEREAS, Eastshore Energy, LLC has made a request for the City of Hayward to make a determination that a proposed 115 megawatt power plant, to be located at 25101 Clawiter Road, is consistent with General Plan policies and the Industrial Zoning District; and

WHEREAS, the authority to license power plants in California that generate more than 50 megawatts of power rests with the California Energy Commission (CEC); the CEC is currently processing an application for this power plant and is scheduled to make a final decision in the fall of 2007; and

WHEREAS, the CEC must determine that a project conforms to Local Ordinances Regulations and Standards (LORS). A power plant is not a listed use within the Hayward Industrial Zoning District, and the Zoning Ordinance indicates that when a use is not specifically listed, it shall be assumed that such uses are prohibited unless it is determined ...that the use is similar to and not more objectionable or intensive than the uses listed; and

WHEREAS, it is staff's opinion that the proposed power plant is not consistent with the purpose of the General Plan and Industrial Zoning District.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby finds and determines:

1. The proposed power plant is not consistent with the purpose of the Industrial (I) Zoning District in that it would result in a facility that would not promote a desirable and attractive working environment with a minimum of detriment to surrounding properties, because it would have the potential to generate air quality impacts related to particulate matter and nitrogen oxides emissions and would entail fourteen 70-foot tall venting stacks, which would not be compatible with the heights of other structures in the vicinity;
2. The proposed power plant would impair the character and integrity of the zoning district and surrounding area with the introduction of highly visible 70-foot tall



ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

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City Attorney of the City of Hayward