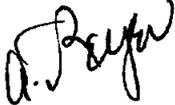


**CITY OF HAYWARD  
OFFICE OF THE CITY CLERK  
INTEROFFICE MEMO**

DATE: April 4, 2007  
TO: Mayor Sweeney and City Council  
FROM: Angelina Reyes, City Clerk   
RE: Revision to Minutes of March 6, 2007

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At the request of Mayor Sweeney, the following two revisions are provided to better reflect his discussion and dialogue with Mr. Brian Lusher and to emphasize that the City will inform the CEC of its position on this peaker plant in writing.

First Revision to Minutes of March 6, 2007. On page 4, after the 6<sup>th</sup> paragraph and prior to the opening of the public hearing add:

“Mayor Sweeney cited a portion from page 12 of the environmental analysis and asked Mr. Lusher to explain the site designation.

Mr. Lusher responded that there are ambient air quality standards at the state and federal levels and the BAAQMD has an attainment status for each pollutant. Over the years those air quality standards keep going down. Emissions of ozone precursors have come down, but not in total attainment for all.

Mayor Sweeney further stated that what it means today that without East Shore, this site is out of attainment in these two areas.

Mr. Lusher reported that there are monitoring stations and the data is also shown on their website and that this would be a regional problem. He also stated that there are other problem areas that are not in attainment. He indicated that the federal government changed the status for fine particulates.

Mayor Sweeney confirmed that this site is in the region and is also a problem area for ozone and fine particulates. He was informed that that reason for the lowering of standards was based on health concerns. Lastly, he stated that when we learn more, we become more protective of the environment.”

Second Revision to Minutes of March 6, 2007. In addition on page 7, in the third sentence of the paragraph immediately after Council Member Ward's prerogative, replace Mayor Sweeney's comment.

Replace:

"Mayor Sweeney stated that he would be supporting the original motion, commenting that the City needs to engage in this process early so that the City's concerns are conveyed to the California Energy Commission."

With:

"Mayor Sweeney stated that he would be supporting the original motion, commenting that the City needs to engage in this process early so that the City's concerns are conveyed to the California Energy Commission in written communication."

With these revisions, approval of the March 6, 2007 minutes is requested and will be incorporated into the final draft.



**MINUTES OF THE SPECIAL JOINT  
CITY COUNCIL/REDEVELOPMENT AGENCY  
MEETING OF THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, March 6, 2007 8:00 p.m.**

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**MEETING**

The Special Joint City Council/Redevelopment Agency Meeting was called to order by Mayor/Chair Sweeney at 8:00 p.m., followed by the Pledge of Allegiance led by Council/RA Member Halliday.

**ROLL CALL**

Present: COUNCIL/RA MEMBERS Rodriquez, Halliday, Ward, Dowling, Henson  
MAYOR/CHAIR Sweeney  
Absent: COUNCIL/RA MEMBER Quirk

**PRESENTATION**

**Business Recognition Award**

Independent Business Group was awarded the February 2007 Business Recognition Award. Over 85% of its customer base is in the Bay Area and 40% is in Hayward. They project that they will generate approximately \$12 million in sales for 2007. Beginning with 9 employees in 1982, the Independent Business Group now employs over 30 people. This award was presented to Independent Business Group for: locating its headquarters in Hayward; providing jobs to Hayward residents; and contributing to the social and economic well being of the City. On behalf of Independent Business Group, Mr. Ted O'Roke, Chairman of the Board and Mr. Pat Reilly, Principal and Account Executive, accepted the award and thanked Council for this honor and recognition.

**PUBLIC COMMENTS**

Juanita Gutierrez spoke on behalf of the Mt. Eden Neighborhood. She asked that the Council consider enlarging the Greenwood Park on Saklan by purchasing the adjacent convalescent home property.

Wynn Graich spoke against Ira Ruskin's proposal to support a chloramine study and its effect on humans. Chloramine is a chemical currently used to disinfect water. She expressed her concerns with regard to safe drinking water.

**CONSENT**

1. Approval of Minutes of the City Council Meeting of February 27, 2007

It was moved by Council Member Henson, seconded by Council Member Ward, and carried with Council Member Quirk absent to approve the minutes of the City Council Meeting of February 27, 2007.

**DRAFT**

2. Approval of Amendment to EBDA Joint Exercise of Powers Agreement

Staff report submitted by Deputy Director of Public Works/Utilities Ameri, dated March 6, 2007, was filed.

It was moved by Council Member Henson, seconded by Council Member Ward, and carried with Council Member Quirk absent to adopt the following:

Resolution 07-023, "Resolution Approving a Modification to the East Bay Authority's Second Amended Joint Exercise of Powers Agreement and Authorizing the City Manager to Execute the Agreement as Amended"

3. Approval of an Amended Contract with Goldfarb and Lipman LLP for Legal Services on Affordable Housing Related Matters

Staff report submitted by Redevelopment Director Bartlett, dated March 6, 2007, was filed.

It was moved by Council/RA Member Henson, seconded by Council/RA Member Ward, and carried with Council/RA Member Quirk absent to adopt the following:

RA Resolution 07-05, "Resolution Authorizing the Executive Director to Execute an Amended Contract with Goldfarb and Lipman LLP for Legal Services on Affordable Housing-Related Matters"

RA Resolution 07-06, "Resolution Amending Resolution RA 06-15, as Amended, the Redevelopment Budget Resolution for Fiscal Year 2006-2007, Relating to an Appropriation of Funds from the Redevelopment Agency's Low and Moderate Income Housing Fund, Fund 452 to Amend the Contract with Goldfarb and Lipman LLP"

**LEGISLATIVE BUSINESS**

4. East Shore Energy Center Determination of Consistency with Zoning

Staff report submitted by Planning Manager Rizk dated March 6, 2007, was filed.

City Manager Armas reported that the East Shore Energy Center is an application that will be before the California Energy Commission (CEC). Part of the application is determining whether the application is consistent with local regulations. Planning Manager Rizk made the report depicting the proposed project site, noting the gas-fired peaking power plant includes fourteen approximately seventy-foot tall vent stacks next to natural gas generator systems adjacent to the main building. He noted that the 115 mega-watt power plant would be used during peak demand



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hours, used less than 50 percent of its capacity and expected to be used during the hot summer months. He described the project as just over six acres. As the report states, the aqueous ammonia tanks will be located to the rear of the building. He noted that the proposed use is not consistent with the City's zoning district or Hayward's General Plan policies. He described the air quality impacts, aesthetic impacts and reported that the site on Clawiter is close to sensitive areas as schools and residences with the nearest residence approximately 1,100 feet away. He described the processes conducted by the CEC that utilizes Local Ordinances, Regulations and Standards (LORS) and the CEC will deliberate and determine whether the project conforms. He reported that the Planning Commission's public hearing resulted in no recommendation to the Council. He noted that three of the commissioners sided with some businesses who favored the power plant referring to the similar use of the Russell City Energy Center (RCEC). He reported on the numerous responses from the neighborhood and concerned citizens against this proposal. Lastly, he introduced Brian Lusher, of the Bay Area Air Quality Management District (BAAQMD) who was available to respond to questions.

City Manager Armas responded to Council Member Henson's question related to the LORS, explaining that the CEC analyzes the information in several areas. Council Member Henson commented on the Planning Commission minutes related to the location of the RCEC and similar uses. City Manager Armas agreed that there are some components that are similar with both energy centers, but noted that the main difference is the location of this proposed facility. Council Member Henson asked for further information on the transportation of aqueous ammonia, a hazardous material, with Fire Chief Arfsten explaining that RCEC will have roughly 12,000 gallons stored and East Shore Energy Center will have about 20,000 gallons. Transport of this hazardous material is a concern as it is an irritant. Fire Chief Arfsten reported that his staff is currently reviewing offsite consequence modules as there are other facilities that use aqueous ammonia in the industrial area.

Brian Lusher, an employee of BAAQMD, indicated that he is preparing a preliminary determination and compliance report. This analysis will be available for public comment in the next four to six weeks. He stated that RCEC had a report previously prepared and another will be out as well. The CEC will review cumulative impacts and with both facilities in proximity would meet the air toxics criteria. He stated that both energy centers meet the air quality analysis and fall below the toxics threshold. He noted that there will be a 30-day public comment period.

It was affirmed by staff that once CEC approves the proposal, East Shore would need a permit from the City to install the transmitters. Council Member Dowling asked about photo simulations of the proposed project. It was noted that information continues to be sent to CEC and simulations of the after conditions or vantage points will be included in the staff assessment.

Council Member Ward noted that the preliminary assessment lacks a level of detail that he is familiar with reviewing. He felt that impacts to traffic would be minimal, except during construction. Council Member Ward referred to a letter from John Kyle referring to the flight path over the area and it was noted that CEC has requested such information. He was of the opinion that Council should not be in a position to make final determinations on preliminary information. He

thought that perhaps some additional technical analysis as to potential impacts associated with the project should be available so that the community can fully understand the merits of the project.

There was discussion by Council as to the availability of all of the pertinent information in order to make its determination. In response to Council Member Halliday, City Manager Armas explained that there is a two-person CEC committee that reviews the application and submits its recommendation to the entire CEC and the hearing would be conducted by CEC. He recommended that Council consider approaching our State legislators to authorize cities and local agencies the ability to make determination when there is a licensed power plant in that city.

Council Member Halliday asked for further elaboration on the noise impacts and mitigation measures, in particular towards school facilities such as double paned windows. She cited previous actions that have impacted the character of this neighborhood. Planning Manager Rizk referred to the documentation that is in the review documents. The noise generated by this plant would need to be compliant with the City's decibels standards.

Council Member Rodriguez asked for clarification on the low flying airplanes. City Manager Armas indicated that CEC must file formal documents to the Federal Aeronautics Administration, the County Airport Land Use Commission and that the City's airport staff will provide comments. At her request regarding the RCEC, City Manager Armas explained that the review continues and there is currently an amendment to the application as the original site has changed to an area next to the treatment plant.

Council Member Rodriguez reported that she spoke twice with the East Shore Energy Center, Tierra Energy, the proponents and showed the number of letters that she received from the neighborhoods. She was also concerned with the cumulative effects if both facilities are in operation. She was pleased with the audience turnout and commended the residents of this neighborhood for uniting against this project.

Council Member Dowling asked Mr. Lusher to explain the preliminary report more fully. Mr. Lusher stated that there will be additional pollutants as a result, but that in accordance to the BAAQMD, the federal regulations and the CEC regulations the facility complies. Mr. Lusher affirmed that the additional emissions, cumulative impacts and explained the use of emission reduction credits and banking of credits. He further added that air quality standards have gone down in recent years.

Council Member Ward asked for clarification about mitigations and was informed that the State will incorporate the mitigation measures. Council Member Henson asked about the purchase of credits when a community already has a power plant. City Manager Armas stated that applicants will comment on precedents set by the various reviewing agencies that have deemed previous projects as acceptable.

Mayor Sweeney opened the public hearing at 9:12 p.m.

Ted Matula of Austin, Texas and Vice-President of Tierra Energy, stated that it is a renewable energy company that focuses on wind power, natural gas and fire generation. He presented the project. He announced that there will be an open house on April 16, at 7 p.m., at Life Chiropractic



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College to continue the open dialogue. He introduced the next speaker.

David Stein of CH2M Hill, representing Tierra Energy, spoke on the land use compatibility for the project including the location in the heart of the industrial corridor; stated that it is consistent and harmonious with the adjacent uses, and with the 2001 City Council Determination on Power. There are other permitted industrial uses that may have more significant impacts such as the metal stamping factory. This power plant will be a state of the art facility with perimeter landscaping. A new structure will replace the unattractive existing manufacturing building and will bring improvement to the industrial corridor. He showed the existing property, noting that East Shore will provide local reliability, a peaking resource with a fast start capability. It will only use a dry cooling technology without cooling towers and will operate only when needed. It is a compact setting with a lower profile building, attractive landscaping, with a neutral color treatment that will blend in with the surroundings, existing structures will restrict views of the site and the stacks will be designed with a small four-foot diameter. He commented on the significant noise study and how it will be controlled to insignificant levels and will be analyzed after construction to insure compliance. In regards to air quality issues, he reiterated Mr. Lusher's comments. This power plant facility will have state-of-the art controls with low emitting sources that will meet BAAQMD requirements. Mr. Stein addressed the concerns related to aqueous ammonia. It is required for control of air pollution. He commented on the safe usage and storage of ammonia with a maximum of three deliveries per month during off hours to avoid traffic on a City approved route. He indicated that the ammonia storage area would have a berm to contain any potential spill. Lastly, he listed the schedule of the construction with opportunity for residents to provide input.

Council Member Henson asked him to elaborate on the "best practices of technology." Mr. Stein commented that East Shore will be above and beyond current technologies. This technology is a standard practice, employed widely and the stacks are necessary for the release of heat. He explained the differences in operations and technologies between East Shore and RCEC, reporting that RCEC would be consistently in operation while East Shore would operate periodically. Council Member Henson asked Mr. Stein why this site was selected. Mr. Stein indicated that the Pacific Gas and Electric substation was previously identified to be in proximity to this site.

Council Member Dowling asked whether the one mile radius on the diagram was to address potential hazards and impacts. Mr. Stein responded that CEC requires this and perhaps to identify uses in that radius. Council Member Dowling asked Mr. Stein to discuss potential emissions and the storage of the ammonia. Mr. Stein stated that the ammonia would be diluted and is fairly benign. He described the accepted model that will be utilized in case of a potential spill and the minimal risk of a transport spill.

In regards to Council Member Dowling's question regarding increasing operating hours, Mr. Stein reported that there is a contract with PG&E that limits East Shore operating hours and expanding hours could be ordered by the Governor. He commented on the grid requirements, the rolling black outs that occurred in the past and support to the local substation. Council Member Dowling asked Mr. Stein, why Hayward was chosen when he had previously mentioned that energy was critical for

the knowledge based economy. He cited the cities as Emeryville, South San Francisco and Fremont have such firms, yet none of those cities have power plants. Mr. Stein responded that he was not involved in the selection of the site.

City Manager Armas indicated that he had reviewed past records of the PUC when PG&E requested permission to solicit proposals several years ago. This Clawiter site was never mentioned by name, but listed with a different name and one could not recognize that it would be situated in Hayward. He later stated that this was listed as "Black Hills" on the PG&E listing.

Council Member Rodriquez also spoke with the proponents and asked about the 14 70-foot stacks that will be located on the site, noting that Hayward already has a power plant forthcoming. In comparison, the height will be equivalent to a seven story building and this would not be what she would want to see from her home.

Paul N. Haavik, Hayward Eden Avenue resident, showed photos of a "peaker" plant in Sparks, Nevada, that he toured along with several neighbors and doctors from Life Chiropractic. He described the workings of this plant and described the site as being on 40 acres and away from residences. He commented on the noise the plant generates during operations as well as the potential emissions.

The following spoke against the East Shore Project and Tierra Energy, citing air quality impacts, traffic impacts, the increased height beyond the 70 foot proposed stacks, safety issues, the concerns for the transportation of ammonia, cumulative pollutants of hazardous materials, concerns on global warming, the potential decrease of property values, and that one power plant is enough.

Jack Wu, Monument Street  
Dr. Rachel Henderson, Bradford Avenue  
Ben Finn, Chapman Court  
David Kling, Sinclair Street  
Dan Henry Koos, Mission Boulevard  
Albert Jordan, Depot Road  
Donald Cantrell, Adrian Avenue  
Teresa Frank, teacher  
John Neath, Longwood Drive  
Andy Wilson, Greenbrier Lane  
Marcus Bonner, Occidental Road

Michael Toth, Bradford Avenue  
Linda Mateos Milistefer, Depot Road  
Jane Bjorner submitted a card but did not speak.  
Juanita Gutierrez, Occidental Road  
Shirley Huston, Ironwood Court  
Esther Ho, Thayer Avenue  
Charley Holton, Cryer Street  
Bob Williams, Depot Road  
JV McCarthy, B Street  
Carl Costa, Optimist Street  
M. Omar Arstha, Rock Springs Drive

Ed Mullins, Clearbrook Circle, spoke in favor of the proposed Tierra Plant Project stating that the applicant is willing to be a good neighbor and has scheduled a community meeting at Life Chiropractic School.

Paul Garcia spoke as a member of the business community and asked for a continuance on this project to review additional data.

Tom Gaurino, representing PG&E, reported that credits from Hunter's Point are not transferable. He indicated that the process was an open process and stated that San Francisco will be siting four



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plants. This was part of his firm's portfolio. He reported that there are about 13 to 15 "peaker" plants. He responded to Council questions related to the choice of Hayward property.

Jane Luckhardt, Tierra Energy project attorney, reiterated the community meeting scheduled and referred to her previous submittal.

Mayor Sweeney closed the public hearing at 11:11 p.m.

Council Member Halliday thanked all for their attendance; she noted that the debate was healthy between those in favor and those against the construction of the power plant. She stated that she had also met with Tierra early on and had urged Tierra to meet with the neighborhoods.

Council Member Halliday moved, seconded by Council Member Dowling, to uphold the staff recommendation that the Eastshore Energy Center is not consistent with the City's General Plan and Industrial Zoning District. She stated that this is the only opportunity to take a stand on behalf of the residents of Hayward. She commented on the zoning process, the public hearing that provides for public input, and the opportunity to listen to all sides of the issue. She emphasized on the necessity to conserve energy. Council Member Dowling seconded her motion.

Council Member Dowling spoke to the motion and suggested that Mayor Sweeney and City Manager Armas lobby our State legislators. He suggested they be offered tours in order to realize the impacts. Hayward already does its share of state required facilities such as affordable housing and group homes. He urged that staff emphasize Hayward's strong opposition to the State Energy Commission.

Prior to the vote on this motion, Council Member Ward exercised his Council Member's prerogative to continue this item for one week. He reiterated his previous comments, stating that more detail was needed in the preliminary assessments, and that technical analyses be completed so that potential impacts associated with the project be provided and available so that the community can more fully understand the merits of the project.

Council Members Rodriguez spoke on the need to timely respond. Council Member Henson agreed with his colleagues and could not accept the size of the stacks. Mayor Sweeney stated that he would be supporting the original motion, commenting that the City needs to engage in this process early so that the City's concerns are conveyed to the California Energy Commission. He expressed concern on the environmental document that was prepared.

The following resolution was not adopted.

Resolution 07-\_\_\_, "Resolution Finding that the Eastshore Energy Center Proposed at 25101 Clawiter Road is not Consistent with the General Plan and Industrial Zoning District"

**COUNCIL REPORTS**

There were no Council reports.

**ADJOURNMENT**

Mayor/Chair Sweeney adjourned the meeting at 11:28 p.m.

**APPROVED:**

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Michael Sweeney, Mayor, City of Hayward  
Chair, Redevelopment Agency

**ATTEST:**

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Angelina Reyes, City Clerk, City of Hayward  
Secretary, Redevelopment Agency