

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

APPLICATION FOR CERTIFICATION FOR THE
EASTSHORE ENERGY CENTER IN HAYWARD
BY TIERRA ENERGY

DOCKET No. 06-AFC-6
(AFC ACCEPTED 11/8/06)

NOTICE OF EVIDENTIARY HEARING DATES AND HEARING ORDER

PLEASE TAKE NOTICE that the Committee designated by the Energy Commission to conduct proceedings on the Application for Certification for the Eastshore Energy Center has scheduled an Evidentiary Hearing on the following dates:

MONDAY, December 17, 2007
10 am to 1 pm
2:30 pm to 5 pm
6 pm to 8 pm (Public Comment)

- and -

TUESDAY, December 18, 2007
10 am to 1 pm
2:30 pm to 7 pm
(NOTE: Hearing time may be extended to 7 pm if needed.)

Hayward City Hall Chambers
777 B Street
Hayward, CA 94541
Wheelchair Accessible
(Map Attached)

This Notice includes the list of witnesses for each topic (**Attachment A**) and the remaining schedule for the proceeding (**Attachment B**).

BACKGROUND

At the Prehearing Conference on November 26, 2007, Applicant, Staff, and Intervenors (“parties”) indicated they were ready to proceed with the Evidentiary Hearing.

With the exceptions of air quality, public health, land use, traffic and transportation, environmental justice, alternatives, local system effects, and noise, the majority of technical topics are undisputed.

The primary dispute regarding land use and traffic and transportation is focused on the potential impacts to aircraft flying less than 1,000 feet above the Project’s exhaust stacks near the Hayward Executive Airport. The Applicant has requested an “override” of applicable state and local laws on airspace safety arguing that (1) the Project would not cause adverse impacts to aviation and/or (2) certification of the Project is required for “public convenience and necessity” pursuant to Public Resources Code, section 25525. At the Prehearing Conference, we invited the parties to submit opening briefs by **December 7, 2007**, on the legal standard for determining whether “override” is appropriate in this case. The parties shall also have the opportunity to file post-hearing (reply) briefs to identify pertinent evidence in the record that would support their respective positions on the “override” issue.

Staff will sponsor witnesses from the Bay Area Air Quality Management District (BAAQMD) to authenticate the Final Determination of Compliance and to be available for cross-examination on air quality issues.

EVIDENTIARY HEARING PROCEDURES

The purpose of the Evidentiary Hearing is to establish the factual record necessary for a decision on the Project proposal. The record is developed by the presentation of sworn testimony and documentary evidence. As we announced at the Prehearing Conference, the parties shall file and serve written, sworn testimony as well as the qualifications of their witnesses to be received by **Friday, December 7, 2007**. (See, Cal. Code of Regs., tit.20, § 1224.) Testimony on undisputed topics shall be submitted by sworn declarations filed under penalty of perjury and offered into evidence by stipulation of the parties.

The parties' witnesses who appear in person shall be available for cross-examination. Each party sponsoring a witness shall establish the expert qualifications of the witness and ask the witness to summarize his or her prepared testimony before moving the testimony and relevant documents into evidence. At the conclusion of direct testimony, the witness may be cross-examined, followed by redirect and recross examination as appropriate. Multiple witnesses may testify as a panel, if warranted.

REQUIRED FILINGS

The parties shall provide electronic copies of their written testimony, witness qualifications, documentary evidence, and Exhibit Lists to the Proof of Service list for receipt by **3 p.m. on December 7, 2007**. Written testimony for each witness shall be numbered as an Exhibit. Printed copies of the Exhibits (in the two formats described in the Notice of Prehearing Conference) shall be received by the Hearing Officer no later than **3 p.m. on December 7, 2007**. One printed copy of any Exhibit that has not been previously docketed shall also be submitted to the Docket Unit.

The rules of evidence pertaining to the Evidentiary Hearing are governed by Sections 1212-1213 of the Commission's regulations. [Cal. Code of Regs., tit. 20, §§ 1212, 1213; see also § 1702 (h).]

The Applicant has the burden of presenting substantial evidence to support the findings and conclusions required for certification of the site and related facilities. [Cal. Code of Regs., tit. 20, § 1748(e).]

PUBLIC PARTICIPATION

Members of the public may participate at the Evidentiary Hearing by providing oral or written comments on the Project. For information on how to participate, contact the Energy Commission's Office of the Public Adviser at 1-916-654-4489 or 1-800-822-6228, or email at: **[pao@energy.state.ca.us]**.

The deadline to file a Petition to Intervene in this proceeding was November 19, 2007. Robert Sarvey filed a Petition to Intervene on November 20, 2007. Although his petition was filed late, the Committee granted his Petition at the Prehearing Conference for the

limited purpose of allowing Mr. Sarvey to present testimony and proposed Conditions of Certification on the topic of air quality.

ADDITIONAL INFORMATION

If you have a disability and need assistance to participate, please contact Lourdes Quiroz at 1-916-654-5146 or e-mail at: [**lquiroz@energy.state.ca.us**](mailto:lquiroz@energy.state.ca.us)

Technical questions concerning the Project should be addressed to Bill Pfanner, the Staff Project Manager, at 1-916-654-4206 or e-mail at: [**bpfanner@energy.state.ca.us**](mailto:bpfanner@energy.state.ca.us)

Questions of a legal or procedural nature should be directed to Susan Gefter, the Hearing Officer, at 1-916-654-3893 or e-mail at: [**sgefter@energy.state.ca.us**](mailto:sgefter@energy.state.ca.us)

Media inquiries should be directed to Claudia Chandler, Assistant Executive Director for Media and Public Communications at 1-916-654-4989 or e-mail at: [**mediaoffice@energy.state.ca.us**](mailto:mediaoffice@energy.state.ca.us)

Documents concerning the Project proposal can be viewed on the Energy Commission's website at: [**www.energy.ca.gov/sitingcases/eastshore**](http://www.energy.ca.gov/sitingcases/eastshore)

IT IS SO ORDERED.

Dated December 4, 2007, at Sacramento, California.

_____/S/
JEFFREY D. BYRON
Commissioner and Presiding Member
Eastshore AFC Committee

_____/S/
JOHN L. GEESMAN
Commissioner and Associate Member
Eastshore AFC Committee

Mailed to Lists: POS, 7071, 7072, 7073

ATTACHMENT A

TOPIC & WITNESS SCHEDULE MONDAY, December 17, 2007

Topic	Witnesses	Time
Project Purpose and Description	<u>Applicant</u> : Trewitt; Stein; Scholl <u>Staff</u> : Pfanner	Declarations
Power Plant Efficiency	<u>Applicant</u> : Trewitt <u>Staff</u> : Pfanner; Baker	Declarations
Power Plant Reliability	<u>Applicant</u> : Trewitt <u>Staff</u> : Pfanner; Baker	Declarations
Transmission System Engineering	<u>Applicant</u> : Trewitt <u>Staff</u> : Pfanner; Ng; Hesters	Declarations
Transmission Line Safety and Nuisance	<u>Applicant</u> : Trewitt <u>Staff</u> : Pfanner; Odoemelam	Declarations
Facility Design	<u>Applicant</u> : Veerkamp; Trewitt <u>Staff</u> : Pfanner; Baker	Declarations
Geological/Paleontological Resources	<u>Applicant</u> : Trewitt; Stein; Scholl <u>Staff</u> : Pfanner; Pilling	Declarations
Cultural Resources	<u>Applicant</u> : Stein; Scholl <u>Staff</u> : Pfanner; Pilling	Declarations
Soil and Water Resources	<u>Applicant</u> : Stein; Scholl <u>Staff</u> : Pfanner; Latteri	Declarations
Hazardous Materials	<u>Applicant</u> : Stein; Scholl <u>Staff</u> : Pfanner; Greenberg; Tyler	Declarations
Worker Safety and Fire Protection	<u>Applicant</u> : Stein; Scholl <u>Staff</u> : Pfanner; Greenberg; Tyler	Declarations
Biological Resources	<u>Applicant</u> : Stein; Scholl <u>Staff</u> : Pfanner; Sanders	Declarations

**TOPIC & WITNESS SCHEDULE
MONDAY, DECEMBER 17, 2007**

Topic	Witnesses	Time*
Waste Management	<u>Applicant</u> : Stein; Scholl <u>Staff</u> : Pfanner; Phinney	Declarations
Visual Resources	<u>Applicant</u> : Stein; Scholl <u>Staff</u> : Pfanner; Hamblin	Declarations
Compliance	<u>Applicant</u> : Trewitt; Stein; Scholl <u>Staff</u> : Pfanner; Shaw	Declarations
Air Quality	<u>Applicant</u> : Darwin; Westbrook; Stein <u>Staff</u> : Birdsall; BAAQMD <u>Alameda</u> : Zannetti <u>Chabot</u> : Zannetti <u>Pilots Group</u> : Cross-exam <u>Sarvey</u> : Himself	120 min
Public Health	<u>Applicant</u> : Westbrook; Stein <u>Staff</u> : Greenberg; BAAQMD <u>Chabot</u> : Cross-exam <u>Pilots Group</u> : Cross-exam	30 min
Local System Effects	<u>Applicant</u> : Mackin <u>Staff</u> : Hesters All parties request cross-exam	60 min
Alternatives	<u>Applicant</u> : Stein; Scholl; Trewitt <u>Staff</u> : Phinney <u>Pilots Group</u> : Cross-exam	Declarations 60 min
Socioeconomics	<u>Applicant</u> : Stein; Scholl <u>Staff</u> : Pfanner <u>Hayward</u> : Assemblymember Hayashi; Senator Corbett <u>Chabot</u> : Ugale	Declarations Elected Officials: 20 min 15 min
Environmental Justice	<u>Staff</u> : Pfanner <u>Alameda</u> : Witt <u>Chabot</u> : Sperling, Zuliani; Arnold	Declaration 10 min 30 min

*Includes direct testimony and cross-examination; parties may yield time.

**TOPIC & WITNESS SCHEDULE
TUESDAY, DECEMBER 18, 2007**

Topic	Witnesses	Time*
Traffic and Transportation	<u>Applicant</u> : Darvin; Corbin; Blumenthal; MacDonald; Roberts; Scholl; Graves <u>Staff</u> : Adams; Strattan; Knight; Butterfield; Cathey <u>Hayward</u> : Bauman <u>Alameda</u> : Needle; Berlin <u>Pilots Group</u> : Richards; Ford; Erhard; White <u>Chabot</u> : Cross-examine	150 min
Land Use	<u>Applicant</u> : Scholl <u>Staff</u> : Adams; Strattan; Knight; Butterfield; Cathey <u>Haavik</u> : Armas <u>Hayward</u> : Mayor Sweeney; Rizk; Bauman <u>Alameda</u> : Dalton; Needle <u>Pilots Group</u> : Cross-exam	120 min
Noise and Vibration	<u>Applicant</u> : Farhang; Veerkamp; Stein; Scholl <u>Staff</u> : Khoshmashrab <u>Haavik</u> : Fancher	30 min

*Includes direct testimony and cross-examination; parties may yield time.

ATTACHMENT B

COMMITTEE SCHEDULE FOR REMAINDER OF PROCEEDING

<i>EVENT</i>	<i>DATE</i>
File testimony and exhibits; opening briefs on override	December 7, 2007
Evidentiary hearing	December 17-18, 2007
Parties file post-hearing briefs	10 days after transcript is posted on CEC website
Parties file reply briefs on contested issues	<i>If Necessary*</i>
Committee issues Presiding Member's Proposed Decision (PMPD) and Notice of Committee Conference (Minimum 30-day public review)	<i>To Be Scheduled*</i>
Parties file written comments on PMPD	<i>To Be Scheduled</i>
Committee Conference on PMPD; parties submit errata or other clarifications	<i>To Be Scheduled</i>
Close of comment period on PMPD	<i>To Be Scheduled</i>
Commission consideration of PMPD	<i>To Be Scheduled</i>

*These events will be noticed separately.

City of Hayward Civic Center Plaza

Directions From:

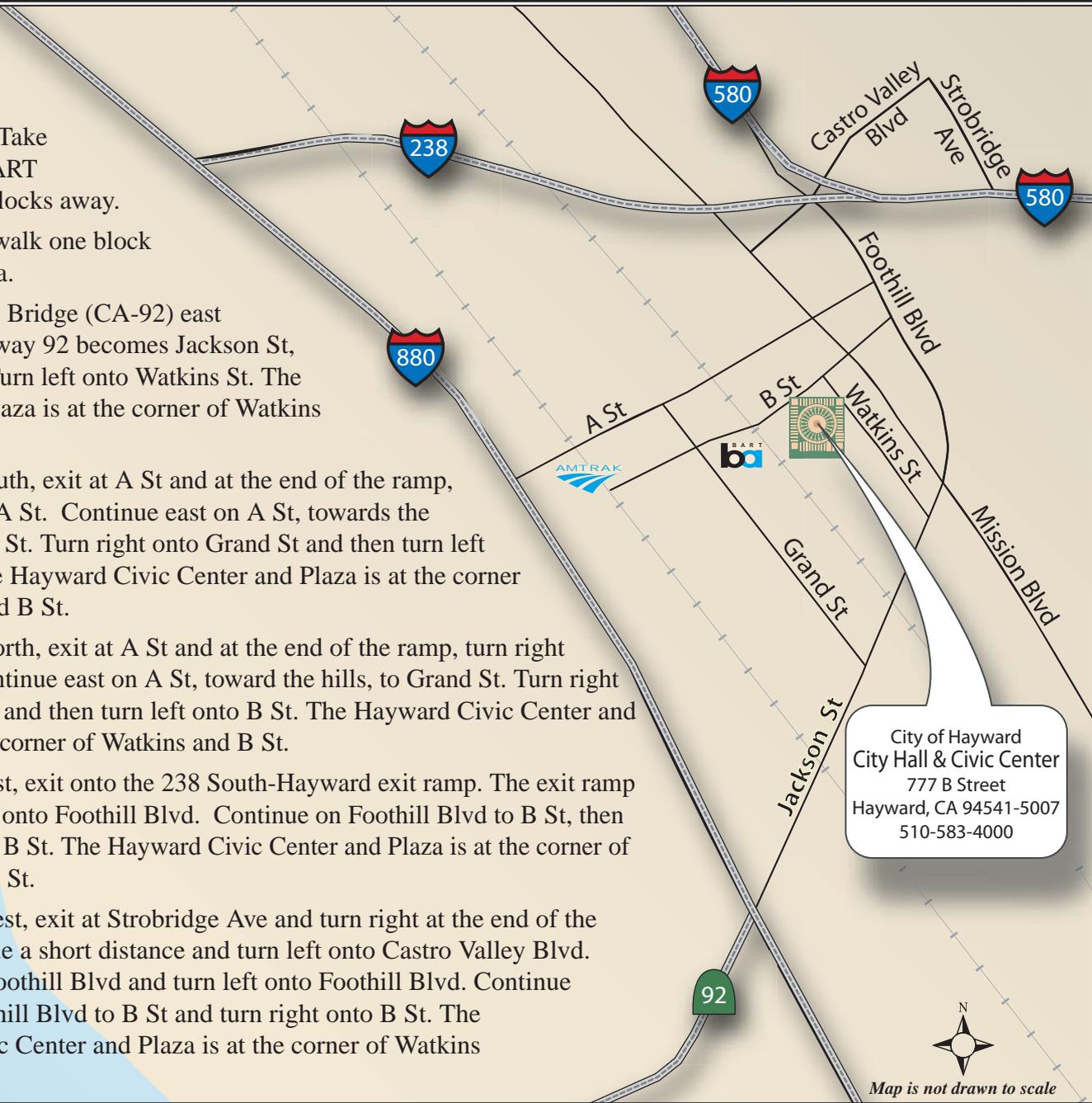
- Amtrak:** Exit at the Hayward Station. Take A.C. Transit bus #92 to the BART station, approximately six blocks away.
- BART:** Exit at the Hayward Station, walk one block east, along Civic Center Plaza.
- Peninsula:** Take the Hayward-San Mateo Bridge (CA-92) east towards Hayward. CA Highway 92 becomes Jackson St, continue east to Watkins St. Turn left onto Watkins St. The Hayward Civic Center and Plaza is at the corner of Watkins and B St.

North Bay (using I-880): Take I-880 South, exit at A St and at the end of the ramp, turn left onto A St. Continue east on A St, towards the hills, to Grand St. Turn right onto Grand St and then turn left onto B St. The Hayward Civic Center and Plaza is at the corner of Watkins and B St.

South Bay (using I-880): Take I-880 North, exit at A St and at the end of the ramp, turn right onto A St. Continue east on A St, toward the hills, to Grand St. Turn right onto Grand St and then turn left onto B St. The Hayward Civic Center and Plaza is at the corner of Watkins and B St.

North Bay (using I-580): Take I-580 East, exit onto the 238 South-Hayward exit ramp. The exit ramp will place you onto Foothill Blvd. Continue on Foothill Blvd to B St, then turn right onto B St. The Hayward Civic Center and Plaza is at the corner of Watkins and B St.

Tri Valley (using I-580): Take I-580 West, exit at Strobridge Ave and turn right at the end of the ramp. Continue a short distance and turn left onto Castro Valley Blvd. Continue to Foothill Blvd and turn left onto Foothill Blvd. Continue south on Foothill Blvd to B St and turn right onto B St. The Hayward Civic Center and Plaza is at the corner of Watkins and B St.



City of Hayward
City Hall & Civic Center
777 B Street
Hayward, CA 94541-5007
510-583-4000



Map is not drawn to scale