



OFFICE OF THE CITY MANAGER

DOCKET
07-AFC-4

DATE JUN 13 2008

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June 13, 2008

Christopher Meyer, Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

RE: Chula Vista Energy Upgrade Project: Document 07-AFC-4

Dear Mr. Meyer:

The City of Chula Vista is submitting this comment letter in response to the California Energy Commission's (CEC) release of a Preliminary Staff Assessment (PSA) regarding the proposed Chula Vista Energy Upgrade Project (CVEUP). The project would replace an existing 44.5 Mw peaking power plant within the City's boundaries with a nominally rated 100 Mw natural gas-fired, simple-cycle power plant. Chula Vista appreciates the Commission staff's efforts to keep the community informed and involved in the proposed project's CEC certification process through an open, transparent and inclusive public review.

This letter summarizes the City's preliminary analysis of the proposed project's environmental and public health impacts, consistency with municipal land use policies and compliance with local tax regulations (see attached document for a more in-depth evaluation of municipal land use issues). The City of Chula Vista is still in discussion with the project applicant, CEC staff and community members about the proposed project and is waiting to review the Air Pollution Control District's Final Determination of Compliance before finalizing its own analyses and comments.

Based on the issues identified during our preliminary analysis, City staff is requesting a variety of specific mitigation measures be incorporated by the CEC staff or project applicant to ensure that the project's impacts to the Chula Vista community are limited. Chula Vista is very active both at the regional and state level in energy policy and strongly promotes California's "Loading Order" prioritizing energy efficiency, demand response, renewable energy and distributed generation to meet our community's energy needs. In addition, the City has committed to reducing its greenhouse gas emissions through participation in the ICLEI Cities for Climate Protection campaign and support for the California Global Warming Solutions Act (AB32) and the U.S. Conference of Mayor's Climate Protection Agreement. Although the Chula Vista City Council has not taken a formal position concerning the CVEUP, City staff believes that the incorporation of the suggested mitigation measures (described below) into the project's Conditions for Certification would help to properly address its impacts to the community and potential inconsistency with municipal environmental policies.

PRIMARY ISSUES

City staff has identified five primary issues which it recommends be addressed as part of the Chula Vista Energy Upgrade Project's Conditions for Certification by the California Energy Commission.

1. Air Quality Mitigation

Through its environmental programs and policies, the City of Chula Vista strives to protect its community members from toxic air pollutants and to improve local air quality. Specifically, the Chula Vista General Plan (Policy E6.4) states that the City will "avoid siting new or re-powered energy generation facilities and other major toxic air emitters within 1,000 feet of a sensitive receiver." Residences, schools, daycare facilities and other sensitive receivers are particularly vulnerable to the harmful health effects from environmental contaminants. Surrounding the CVEUP, there are over 40 homes which are located within a 1,000' radius and are considered especially susceptible to toxic emissions. Currently, there is some debate on whether the new plant would be in conflict with the General Plan. The current General Plan (and Policy E6.4) was approved by City Council in 2005 and was not in existence when the original peaker plant was sited and permitted. In addition, the City continues to evaluate whether the proposed peaker plant is considered to be a "major toxic emitter."

In determining the level of air quality impacts to the community, the PSA states that the project applicants should use an annual capacity factor of 13.7% (equivalent to 1,200 hours of operation) to properly determine the new plant's emission levels. Using this factor, CEC staff estimate the incremental emissions increase as a result of the proposed project would equal 10.86 tons per year. At a rate of \$16,000 per ton plus a 20% administration fee (approximately \$208,500), the proposed project would be required to offset these emissions. In some cases, these emission mitigation fees would be administered through the Air Pollution Control District's Carl Moyer Fund and used on countywide emission offset projects. Chula Vista staff recommends that these emission reduction mitigation funds solely be used locally to offset the public health impacts to the community and that the funds be directly administered by the City of Chula Vista and the project applicant with oversight provided by the CEC. In particular, the City urges that the project's Conditions of Certification require giving preference first to emission offset projects within 1,000' of the project site, then to offset projects within the surrounding southwest Chula Vista area. The City is confident that there are adequate potential emission mitigation projects within the plant's vicinity to meet the mitigation requirements. Possible emission reduction projects could include electrification of a neighboring business' truck idling area and installation of biodiesel storage tanks at a nearby municipal facility. By directing emission reduction funds solely to the project area, the Chula Vista community is assured that the proposed project's environmental impacts are locally mitigated.

2. Future Project Expansion

Chula Vista hosts a high concentration of power generation facilities within its boundaries including the South Bay Power Plant (708 Mw), the MMC Peaker (44Mw), Goodrich (9Mw) and Otay Landfill (6Mw). Additionally, the Wildflower/Larkspur

(90Mw), Border-Calpeak (49.5Mw) and Otay Mesa Calpine (590Mw) generation facilities are very close to the City boundaries and generally within its local airshed and area of influence. While these facilities and related infrastructure are important for providing Chula Vista residents and businesses with reliable energy sources, the generation facilities primarily support the broader San Diego region's energy demands. Due to the close proximity of the proposed peaker plant to residents, businesses, schools and community facilities, staff strongly recommends that the proposed project does not lead to further fossil-fuel generation expansion at the site in the future. Staff recommends that the Conditions of Certification be amended to require the applicant (or its successors) to not expand fossil fuel generation on the site beyond the proposed 100 Mw plant.

3. Underground Transmission System Upgrades

Within the City's boundaries, there are approximately 20 miles of regional high voltage transmission line corridors and associated transmission lines, towers and poles. The City has committed significant amounts of its California Public Utilities Commission 20A allocations to underground transmission lines and to remove their related infrastructure throughout the community. The City has recently invested in undergrounding almost all transmission and distribution infrastructure along Main Street from Interstate 5 to Nirvana Avenue near the project site. The CalISO Interconnection Facilities Study Report recommends a variety of network upgrades needed to safely and reliably interconnect the proposed project. Although almost half of the plant's transmission lines are already underground, City staff is concerned that future network upgrades could cause the project to modify overhead transmission lines. Therefore, staff recommends that the Conditions of Certification be revised to commit the project applicant (or its future successors) to underground overhead transmission lines that are upgraded in association with this plant.

4. Utility Users' Tax

The City of Chula Vista imposes a Utility Users' Tax (CV Municipal Code Chapter 3.44) based on the consumption of utility services such as electricity, gas and telephone. The tax is instrumental in generating revenue for vital municipal services such as public safety (police and fire) and public infrastructure (storm drains and streets). City staff strongly encourages the California Energy Commission to require the project applicant as a Condition of Certification to commit to pay all applicable local taxes and fees including the Utility Users' Tax. This will ensure that the proposed project is truly complying with all local "laws, ordinances, regulations and standards" as required by the Commission's project review and certification process.

5. Potable Water Use

The PSA (Section 4.9-16) indicates that the applicant's use of municipal water (defined as "fresh inland water" by Title 22 and the State Water Resources Control Board Resolution 75-58) does not comply with state regulations. Furthermore, City staff also supports the PSA finding that the CVEUP has not "adequately demonstrated that the use of an alternative water supply or cooling technology is environmentally undesirable or economically feasible." As a result, City staff affirms the applicant's need to consider

offsetting the use of municipal water if reclaimed or groundwater use is infeasible. One option is to fund water conservation programs offered through the City of Chula Vista and the local water districts to mitigate the project's annual average water usage of 4.2 million gallons.

The aforementioned issues and suggested mitigation actions are the outcome of the City of Chula Vista's preliminary analysis of the Chula Vista Energy Upgrade Project. The City wishes to delay its final evaluation of the proposed project until the APCD's Final Determination of Compliance is released and City staff are able to further confer with CEC staff, the project applicant and the public on the proposed project's impacts to the Chula Vista community. Thank you for your time and consideration.

Sincerely,



 Scott Tulloch
Assistant City Manager

Attachment (1)

Cc: Bart Miesfeld, Interim City Attorney, City of Chula Vista

Chula Vista Energy Upgrade Project

Comments on the CEC Preliminary Staff Assessment (PSA)

City of Chula Vista – Advanced Planning Section

Project Description and Setting

As we understand it, the proposed project consists of the demolition of a 44.5-megawatt Peaker Plant and replacement of that Plant with a nominal 100-megawatt Peaker Plant including a 5- acre construction laydown/worker parking area. It is unclear which property to the south of the project site the laydown/worker parking area is proposed on. The property immediately to the east and south of the project site is within the boundaries of the Otay Valley Regional Park (OVRP), part of the City of Chula Vista MSCP Open Space Preserve and is currently being used for pallet storage. The property immediately to the south of the proposed site is an undisturbed habitat area that is part of the OVRP and has never been used for pallet storage. The Staff Report needs to clarify which property is proposed to be used for the laydown/worker parking areas. Please provide a graphic showing the construction laydown/working parking areas.

General Plan Consistency

The Staff Report states the project is consistent with the City of Chula Vista General Plan because the City granted a Special Use Permit (SUP) in September 2000 for the construction and operation of the existing “Peaker Plant”. The City’s General Plan Update (GPU) was adopted in December 2005, after the issuance of the SUP. The GPU contains policy EE6.4 that states:

EE6.4 - Avoid siting new or re-powered energy generation facilities and other major toxic air emitters within 1,000 feet of a sensitive receiver, or the placement of a sensitive receiver within 1,000 feet of a major toxic emitter.

Based on this policy it does not appear that the proposed Energy Upgrade Project is consistent with the City’s General Plan. The policy states that locating facilities should be *avoided* [emphasis added]. In order to determine if avoidance is possible, an analysis of other feasible sites for the use must be conducted. The Staff Report does not include an analysis that demonstrates that in fact this is the only suitable location for the project and that therefore this site cannot be avoided.

The Staff Report states that a condition is proposed (LAND-1) to require that the development of the Energy Upgrade Facility be consistent with the City of Chula Vista zoning, building and other applicable municipal code requirements. This requirement does not address the apparent inconsistency of the proposed project with the City of Chula Vista General Plan (2005) policy EE6.4.

Applicable General Plan Policies not considered by the CEC

The following are several other policies from the General Plan that are not addressed in the Staff Report. The Staff Report should include an analysis of the consistency of the project to each one of these policies:

LUT 1.6 “Attract and maintain land uses that generate revenue for the City of Chula Vista, while maintaining a balance of other community needs, such as housing, jobs, open space and public facilities.” The Staff Report must clarify if this project will generate revenue to the City and if the proposed project is fiscally positive.

LUT 1.5 “Endeavor to create a mixture of employment opportunities for citizens at all economic levels”. The project is within the IL zone and ILP designation of the General Plan, which is a job generating land use designation. The recent completion of the industrial park to the west of the project site is an example of a job generating use, and what is envisioned for this area. The proposed project would employ approximately two employees, which is much less than would be for a business park or other industrial uses, and would not have a direct employment benefit to Chula Vista residents in the immediate area.

It should be noted that on page 1-5 of the Executive Summary, the Staff Report does state that the proposed project is inconsistent with the City of Chula Vista’s General Plan including GP policy E 6.4 as well as the MSCP and the Uniform Fire Code. Please correct the inconsistency between the various sections of the Staff Report regarding this issue.

Montgomery Subarea Plan

The Project Description section of the Staff Report (page 3-3) should correctly identify the area as the Montgomery Subarea within the Southwest Planning Area, an area of which some segments are slated for redevelopment by the City.

Noteworthy Public Benefits (Page 3-5)

The last paragraph of the Project Description section of the Staff Report states, “the proposed project has important public benefit, both fiscal and non-fiscal effects”. A fiscal analysis should be prepared utilizing the City’s fiscal model. The fiscal analysis should analyze whether the proposed 100 MW Peaker Plant would have a similar or greater fiscal benefit to the City of Chula Vista compared to other Limited Industrial uses such as the recently completed industrial development to the west.

Land Use

The Land Use Table on page 4.5-2 states, "...The General Plan also includes three Redevelopment Plans for Chula Vista's Redevelopment project areas (see below)." This statement is confusing. The 2005 General Plan does not include Redevelopment Plans for Chula Vista's Redevelopment project areas. Please revise or explain further.

The Land Use Table on page 4.5-2 addresses the future Southwest Specific Plan that is identified in the General Plan. Please clarify that at this time preparation of the Southwest Specific Plan has not begun and currently the timing for preparation of this plan has not been identified.

Setting

The Project Site description on page 4.5-3 needs to be corrected to clarify where the proposed project construction laydown/worker parking area is (see comment above).

Paragraph 6 of the Project Site description includes a reference to the Montgomery Specific Plan. The Montgomery Specific Plan was deleted in the 2005 General Plan Update, therefore any reference to it in the Staff Report should be deleted.

Page 4.5-11, Land Use Table 4 states it is CEC staff's interpretation that the City of Chula Vista views a peaker power plant to be a similar use to those listed as conditionally permitted uses within the Limited Industrial Zone since a SUP was issued by the City of Chula Vista in September 2000 for the existing Peaker Plant. This is the basis for CEC staff determining consistency of the project with the City of Chula Vista General Plan. This statement is incomplete. The General Plan was updated in 2005 several years after the SUP was issued. The GPU contains policies that may render the project inconsistent, (Policy E 6.4), regardless of whether the zoning of the site would permit it.

Page 4.5-11 – 4.5-19 states that the proposed project is consistent with Chula Vista's General Plan, Zoning and other regulatory documents based on the existing Peaker Plant's SUP. This statement does not adequately address why the proposed 100 MW Upgraded Plant should be located on the site. The City's General Plan was updated in 2005 and contains policies, regarding locating of a major toxic emitter within 1,000 feet of a sensitive receiver (residents). Adequate justification must be provided to demonstrate that there are no other feasible locations to site the Upgraded Peaker Plant.

Air Quality

The project proposes to remove an existing 44.5-megawatt gas fired combustion turbine/generator and install two natural gas fired combustion turbine/generator sets. The new installation will be a nominally-rated 100 megawatt plant, which is a 55.5 megawatt increase over the existing Peaker Plant. The applicant is requesting that the Peaker Plant operate up to 4,400 hours per year. However, for purposes of calculating the actual or worst case usage of the proposed plant, the CEC staff reviewed the historical worst-case usage by SDG&E at other peaker plants within their territory. The worst-case usage for several existing peaker plants utilizing the same proposed turbine/generator equipment as

proposed ranged from 5.7%-10.5%. Using this information CEC staff determined that a 13.7% annual capacity factor or 1,200 hours of operation per year, would provide a reasonable safety margin for analysis of the impacts of the proposed Peaker Plant on Main Street. While the City of Chula Vista recognizes that this capacity is based on historical data, it does not represent the maximum capacity of the proposed Peaker Plant. We recommend that an analysis be conducted of the potential impact that could result from the plant running at maximum capacity.

By the very nature of the proposed increase in electrical output, the result will be a corresponding increase of air pollutant emissions beyond that of the existing Peaker Plant. Per the Staff Report, the new turbine/generators proposed for the Peaker Plant are considered more efficient than the existing turbine/generators. Nevertheless, the assessed incremental increase of air pollutants, after all the air pollution control measures have been implemented as part of the operation, is estimated at 10.86 tons of emissions per year, based on 1,200 hours of operation per year.

As stated in the CEC Staff Report, the San Diego Air Pollution Control District (District Rule 20) requires offsets when NO_x or VOC emissions exceed 50 tons per year. This plant will not exceed 50 tons per year and the CEC staff concurs with the APCD staff that the proposed emission levels are reduced to the lowest technically feasible levels. However this still represents an increase in emissions above the existing Peaker Plant even if the plant is not operated at full capacity.

According to the Staff Report, the upgrade project proposes to mitigate the PM 10 and particulate precursor pollutants (NO_x, SO_x, and VOC) emissions through the use of technology at the facility and funded emission reduction strategies. The impacts from the Peaker Plant are to the residents and businesses within the City of Chula Vista. Therefore, the City requests that a condition be added to require the applicant establish a fund with the City of Chula Vista that the City will use, under the oversight of the CEC, to fund mitigation programs and projects within relative close proximity to the project to help reduce the impact of the increased emissions.

Noise and Vibration

The Noise and Vibration study and subsequent analysis provided by the CEC staff conclude that the Chula Vista Peaker Plant Upgrade can be operated in compliance with all applicable noise and vibration laws, ordinances, regulations and standards if built in accordance with the conditions of certification proposed by the CEC. The Staff Report states that the CEC staff has used the City of Chula Vista noise standards for residential, commercial and industrial users to determine the noise regulations that must be applied. We concur with the use of the City of Chula Vista standards for assessing potential noise impacts associated with the project; however, we are not in agreement with the threshold of change from the ambient background noise level that was used to determine if the impact is significant or in compliance with the City regulations. The Staff Report states that when plant noise is added to the nighttime ambient value, the cumulative level is 9 dBA above the ambient value at site M-1. The Staff Report further states that it is

unlikely that the plant will operate a significant portion of the time during quiet nighttime hours and therefore concludes that this impact would be insignificant. As presented, the increase of 9 dBA would exceed the City of Chula Vista threshold (which is an increase of 3dBA) and should be mitigated. Mitigation options include prohibiting operation of the plant between the hours 10:00 p.m. to 7:00 a.m. (per the City's Municipal Code) or reducing the increase in noise levels to 3dBA or less above the existing ambient level through technology upgrades.

The Staff Report states that the applicant will be required to eliminate any pure tone (humming vibrating) noise that the Peaker Plant may produce. Conditions have been proposed to require a noise survey be performed within 30 days of the project's first achieving a sustained output of 80% percent or greater of rated capacity. This condition is inadequate. According to the historical data used for the air quality emissions analysis, the plant would likely never achieve an 80% rated capacity. The condition should be modified to require that the noise survey be conducted when the plant reaches a 13.7% annual capacity factor. The condition is also inadequate for ensuring that the impact to adjacent businesses and residences would be resolved. The condition does not include a remedy for the effected residences and businesses in the event that adequate mitigation cannot be achieved. The condition must provide for a reduction in operating hours or some other measure that would remedy the impact in the event that other mitigation is not sufficient to reduce the impact.

The Staff Report includes a provision for a noise complaint process. The City of Chula Vista finds this condition to be inadequate. The condition must define who will determine what a feasible mitigation measure is to reduce the noise as stated in NOISE 2 (4). The condition must also state how the complaint will be sufficiently resolved if there is no "feasible" mitigation measure. Finally, the condition must identify who is responsible for the ultimate decision as to whether a mitigation measure is feasible. The condition does not adequately address how the complaint will be resolved in the event that the plant is operating and no feasible mitigation measure is identified. It appears that the surrounding businesses and residences could be forced to live with the problem, a situation that is not acceptable to the City of Chula Vista.

Biological Resources

The biological resources section should include graphics depicting the vegetation communities/land cover existing on the project site and the proposed laydown areas. These graphics should also show the location of the City's Preserve relative to the project and laydown areas.

The biological resources section discusses an MSCP mapping error of the laydown areas created during the delineation of the City's MSCP Preserve. Please be aware that the conservation designation of the proposed laydown areas is not an error. Under the City's MSCP Subarea Plan, development in areas mapped as 75-100% Conservation Area is permitted but limited to no more than 25% of the mapped conservation area, thus assuring a minimum conservation level of 75% as Preserve land. Therefore, in order for

the project to be consistent with the City's MSCP Subarea Plan, use of either laydown area must be limited to 25% of the parcel and directed to the least environmentally sensitive location. The remaining 75% of the parcel will be conserved as Preserve land.

The Conditions of Certification should note that the City of Chula Vista will be notified if any of the conditions are not met and encroachment into the City's Preserve occurs during construction of the project.

Please make the following specific corrections to the Staff Report:

1. Page 4.2-3, San Diego MSCP – The City of Chula Vista designates habitat conservation areas as 100% Conservation Areas or 75-100% Conservation Areas. The conservation areas are a “hard-line Preserve”. Please correct the text accordingly.
2. Page 4.2-4, Regional Description – The text states that the CVEUP is located within the City of Chula Vista Preserve Management Area as identified in the MSCP Subarea Plans for the City. Please cite where this information is provided in the City's MSCP Subarea Plan.
3. Page 4.2-6, Site Description – A graphic should be provided showing the vegetation communities/land cover existing on the project site overlaid by the proposed site plan. In addition, this graphic should show the location the City's Preserve relative to the project site.
4. Page 4.2-6, Site Description – The assessment states that non-native ornamental trees and shrubs have been planted at the perimeter of the site to provide a visual screen. The document should specify what type of non-native trees and shrubs exist on the project site.
5. Page 4.2-7, Laydown Areas – A graphic should be provided showing the vegetation communities/land cover existing on both the laydown areas. In addition, another graphic should be included in this section showing the proposed lay down areas relative to the project site and the City's MSCP Preserve.
6. Page 4.2-7, Laydown Areas, second paragraph, last sentence – The sentence states, “The off-site laydown area is outside the boundary of the Chula Vista Subarea Plan Boundary, but within the MSCP 75-99 percent Conservation Area – Habitat Preserve.” If this laydown area is located within the City of Chula Vista and is within the City's MSCP 75-100 percent Conservation Area, then the site is within the boundary of the Chula Vista Subarea Plan. Please revise the text accordingly.
7. Page 4.2-8, Special Status Species – A graphic should be provided showing where Special Status Species were observed relative to the project site and the laydown areas.

8. Page 4.2-8, Direct Impacts, last paragraph – The assessment states, “No special status species are likely to use this area for nesting, foraging, or cover, and the site provides marginal value to common wildlife species.” There needs to be a basis for this statement. The text should indicate whether or not surveys conducted by Energy Commission staff and/or CH2MHill confirmed the presence or absence of any special status species utilizing the disturbed habitat on the project site.
9. Page 4.2-8, Direct Impacts, last paragraph – The paragraph begins with the following, “Construction of the CVEUP will result in loss of approximately 1.3 acres of disturbed habitat that currently occupies the northern portion of the site.” The last sentence of this paragraph states, “The loss of 1.3 acres of ruderal habitat is therefore considered less than significant.” The text must be consistent with the classification designation of the habitat on the project site. In addition, please be sure that the habitat community/land cover on the site is designated in accordance with the habitat communities identified on Table 5-3 of the City’s MSCP Subarea Plan. Please revise the text accordingly.
10. Page 4.2-9, top of page – The document states that the landscaping trees lining the boundary fence at the existing power plant are sufficiently large to support nesting activities by disturbance-tolerant species. Please indicate whether or not the landscaping can also provide suitable nesting habitat for raptors. If so, removal of the trees will result in a direct impact to nesting raptors and appropriate mitigation measures, such as pre-construction surveys for raptors, should be provided to reduce potential impacts to these nesting species.
11. Page 4.2-9, Construction Impacts - Noise – The assessment states that March 1st through September 15th encompasses the breeding season for listed bird species potentially nesting in the Otay River Preserve. The City’s MSCP notes the breeding season for raptors begins January 15th. Please revise the breeding season dates accordingly throughout the biological resources section.
12. Page 4.2-10, Operations Impacts – The assessment needs to indicate whether or not the project will generate runoff that will indirectly impact the adjacent Preserve.
13. Page 4.2-10, Construction Effects on Water Quality and Aquatic Organisms – The assessment states that CDFG has also proposed Best Management Practices (BMPs) for water quality protection. Please add a condition to require that the City of Chula Vista Engineering Department review and approve the proposed BMPs for the project prior to implementation to ensure compliance with the City’s Municipal Permit and other stormwater runoff standards.
14. Page 4.2-12, Introduction of Non-Native Species – The assessment should indicate that the City should have an opportunity to review and approve proposed landscape plans for the proposed project to ensure no indirect impacts to the adjacent Preserve. Please revise the text accordingly.

15. Page 4.2-13, Compliance with Laws, Ordinances, Regulations, and Standards – Given the information provided in comment number 2 above regarding the mapping error, the text under this section and under the Conclusion on page 4.2-14 should be revised accordingly. If the proposed laydown areas will temporarily and/or permanently impact more than 25% of the mapped Conservation Area it is not consistent with the City of Chula Vista MSCP. At minimum implementation of the project will require adequate mitigation for impacts to the Preserve to the satisfaction of the City of Chula Vista. Please be informed that mitigation may be in the form of habitat restoration. Further consultation with the City of Chula Vista MSCP staff may be required to determine appropriate mitigation.
16. Page 4.2-14, second paragraph – The assessment states, “The project will not result in take of listed species...” If the project may result in direct impact to nesting raptors that are protected under the City’s MSCP, then this statement is incorrect. Please revise the text as appropriate.
17. Page 4.2-15, Designated Biologist Duties – Please add the following to Bio-2, “4. Notify the City of Chula Vista if grading and/or other construction activities go beyond the limits of grading into the Preserve.”
18. Page 4.2-16, Designated Biologist Authority – Please include a statement for Bio-3 which indicates that the Designated Biologist will consult with the City of Chula Vista as to when construction should resume and any corrective action is required to be taken by the project owner.
19. Page 4.2-18, Biological Resources Mitigation Implementation and Monitoring Plan – The City requests the opportunity to participate in any pre-construction meetings that will occur prior to any construction activities. Therefore, please note under condition Bio-5 that the City of Chula Vista will also be notified prior to the start of any project-related ground disturbance activities.
20. Page 4.2-18, Pre-Construction Nest Surveys – Please revise the breeding season dates as indicated in comment number 11 above. In addition, the City requests that pre-construction survey results also be provided to the City for review and approval. Therefore, please include a statement indicating the City will be provided survey results for review and approval.

In summary, the analysis of biological impacts does not appear to be consistent with the City of Chula Vista’s MSCP Subarea Plan. Therefore, the analysis, and if necessary the conclusions, should be revised accordingly.

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

Application for Certification
For the *CHULA VISTA ENERGY
UPGRADE PROJECT*

Docket No. 07-AFC-4

PROOF OF SERVICE
(Revised: 1/3/08)

INSTRUCTIONS: All parties shall either (1) send an original signed document plus 12 copies or (2) mail one original signed copy AND e-mail the document to the address for the Docket as shown below, AND (3) all parties shall also send a printed or electronic copy of the document, which includes a proof of service declaration to each of the individuals on the proof of service list shown below:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-SPPE-1
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DECLARATION OF SERVICE

I, Candy Ureño, declare that on June 13, 2008, I deposited copies of the attached Chula Vista Energy Upgrade Project, Docket 07-AFC-4 in the United States mail at Chula Vista, California with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

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

Candy Ureño