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Th10a

July 9, 2014

TO: Coastal Commissioners and Interested Parties

FROM: Alison Dettmer, Deputy Director
Tom Luster, Senior Environmental Scientist

SUBJECT: Addendum for 12-AFC-02 – Commission's 30413(d) review and report on the AES Huntington Beach Energy Project

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This addendum provides correspondence received on the above-referenced document, as well as staff's response to the correspondence and proposed revisions to the Commission's report, which are shown below in ~~strikethrough~~/**bold underline**. The proposed modifications do not change staff's recommendation that the Commission **approve** submittal of the report to the Energy Commission.

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CORRESPONDENCE RECEIVED AND PROPOSED REVISIONS TO 30413(D) REPORT

- July 3, 2014 letter and exhibits from AES Southland, LLC (attached)

The AES Southland letter raises several issues related to the Commission's authority and jurisdiction in this CEC review. The attached memorandum from Commission's legal staff addresses these issues. Staff also recommend the following revisions to the report:

Section I.C – Land Use and Alternatives, page 6, last paragraph:

> "Part of this tank farm site consisted of wetlands that AES removed without benefit of a coastal development permit, which is the subject of a Coastal Commission ~~enforcement proceeding~~ **staff investigation of a potential violation**.[1] Commission staff estimated

[1] "See Commission staff's August 3, 2012, Data Adequacy letter for 12-AFC-02 and Commission staff report for Poseidon Water – Appeal #A-5-HNB-10-225 and Application No.: E-06-007, November 2013, available at: http://documents.coastal.ca.gov/reports/2013/11/W19a-s-11-2013.pdf "

that the wetlands covered about 3.5 acres of the site; however, it appears that some of the remainder of this site could be used for the power plant expansion."

Section I.D – Wetlands and Environmentally Sensitive Habitat Areas (ESHA), page 11, beginning of second paragraph:

"Regarding the AES tank farm area, we understand that it is currently devoid of wetland characteristics; however, as noted above, AES's removal of wetland vegetation in that area several years ago is the subject of a Commission ~~enforcement action~~ **staff investigation of a potential violation**."

TO: Commissioners and Other Interested Persons

FROM: Robin M. Mayer, Attorney, Legal Division

RE: Memorandum in response to correspondence from AES Southland, LLC regarding possible Commission action on the California Energy Commission's Application for Certification (12-AFC-02) – Huntington Beach Energy Project, reviewed pursuant to Coastal Act section 30413(d)

DATE: July 8, 2014

This memorandum responds to the July 3, 2014 letter sent to the Coastal Commission by Huntington Beach Energy Project applicant AES Southland ("AES"). As explained more thoroughly below, AES's letter ignores the existence of a Memorandum of Agreement ("MOA") between the Coastal Commission and the Energy Commission. Coastal Commission reporting on power plant applications before the Energy Commission is a longstanding practice, which is aided by cooperation between the two agencies. The MOA, signed by both Commissions in 2005, resolves the issue AES tries to revive.

The Energy Commission's enabling legislation, the Warren-Alquist Act, contains several provisions regarding the treatment of coastal impacts. Most pertinently, the Energy Commission's written decision must include conditions to meet Coastal Act objectives as specified by Coastal Commission's report, unless the Energy Commission finds that conditions are infeasible or would result in greater impact on the environment. (Pub. Resources Code, § 25523.) The Energy Commissions must also condition for public access and any necessary setbacks for projects in the coastal zone. (§ 25529.)

The Coastal Act sets out the Coastal Commission's responsibilities. The Coastal Commission is required to *report* on Notices of Intent ("NOIs") to apply for certification of a power plant in the coastal zone. (Pub. Resources Code, § 30314, subd. (d).) The Coastal Commission may *participate* in any power plant proceeding before the Energy Commission, and that participation may be extensive, with the ability to provide evidence and to direct and cross-examine witnesses. (*Id.*, subd. (e).)

As AES noted, the plain language of section 30314, subdivision (d) refers to the NOI process rather than the AFC process. This distinction is technical. After all, it is a notice of intention to file *an application for certification*. The Warren-Alquist Act currently allows applicants for gas-fired power plants to opt out of the NOI process. (Pub. Resources Code, § 25540.6, subd. (a)(1).) Nevertheless, an AFC submitted by itself *contains* the alternatives analysis that used to be in the NOI. For example, Energy Commission staff refers to the AFC as the "starting point"

for alternatives analysis in the Final Staff Assessment for the Huntington Beach Energy Project.[1] A main purpose of the MOA was to take the technical distinction of NOIs/AFCs off the table and to ensure the Coastal Commission's role in avoiding, minimizing, and mitigating for impacts to the coastal zone.

AES's letter ignores the MOA.[2]

Section II of the MOA states the Coastal Commission is responsible, during an *AFC* proceeding, for reviewing thermal power plant projects proposed in the coastal zone and *providing a report* to the Energy Commission. The report must specify provisions (conditions) regarding the proposed site and related facilities to meet the objectives of the Coastal Act.

The MOA clarifies that Warren-Alquist Act Section 25523 as well as an Energy Commission regulation requires the Energy Commission to adopt the specific provisions from the Coastal Commission report as conditions in its final *AFC* decision that licenses a power plant, unless the Energy Commission finds that a condition is infeasible or would cause greater adverse effect on the environment. (Pub. Resources Code, § 25523, subd. (b); Cal. Code Regs., tit. 20, § 1752 subd. (d).) The MOA is more than nine years old, and AES is pressing for an issue that is long settled.

The Carlsbad proceeding cited by AES is inapposite. The Coastal Commission waived reporting on the particular project due to budgetary constraints at the time; it did not waive its right to report on future projects. The Energy Commission has relied on the Coastal Commission report in other proceedings before and after the MOA, such as in Morro Bay (00-AFC-12) and Humboldt Bay (06-AFC-07).

Beyond this relationship, the Energy Commission must comply with the Coastal Act as it must comply with any other state law. (Pub. Resources Code, § 30003.) Furthermore, the Coastal Commission is one of many agencies that have input into CEC licensing process. For example, the Department of Fish and Wildlife requires the Energy Commission to consult regarding endangered species. (See Draft Environmental Impact Report, Harvest Power Project, pp. 3.4-5, 3.4.6.)[3] Like the DFW, the Coastal Commission is ultimately responsible for preventing and mitigating all impacts in its jurisdiction, the coastal zone, including impacts from power plants. (See Pub. Resources Code, § 30001.5(a).)

[1] See, e.g. Huntington Beach Energy Project, Final Staff Analysis, May XX, 2014, pp. 6-1, available at http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-02/TN202405_20140602T085620_Final_Staff_Assessment.pdf.
[2] The CCC staff report for the MOA itself is at http://www.coastal.ca.gov/energy/4-2005-Th5a.pdf
[3] Available at http://www.energy.ca.gov/business_meetings/2013_packets/2013-06-12/Item_19_Final_EIR_Harvest_Power/Harvest%20DEIR%20Chapters/3.4%20Biological%20Resources%20Harvest.pdf.

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July 3, 2014

California Coastal Commission
45 Freemont, Suite 2000
San Francisco, CA 94105-2219

RE: Agenda Item # 10 (July 10, 2014 Commission Meeting)
Coastal Commission Staff's Draft Comment Letter Regarding the California Energy Commission's Application for Certification for the Huntington Beach Energy Project (12-AFC-02 - AES Southland Development, LLC)

Dear Chairman Kinsey and Commissioners:

AES Southland ("AES") is in receipt of Coastal Commission Staff's ("Staff") June 27, 2014 recommendations to the full Coastal Commission ("Commission") regarding Staff's "Draft 30413(d) Report for the Proposed AES Southland, LLC Huntington Beach Energy Project- Application for Certification #12-AFC-02 ("Comments"). AES submits these comments to clarify legal and factual inaccuracies set forth in the draft Comments for the Commission's consideration. AES' counsel will also be in attendance at the Commission's July 10, 2014 meeting to present these comments.[1]

I. The Coastal Act Clearly Delineates the Coastal Commission's Role in AFC Proceedings Before the California Energy Commission

The Comments should not be treated as a "30413(d) Report" as contemplated by Public Resources Code section 30413(d), which is only applicable to notice of intention ("NOI") proceedings before the California Energy Commission ("CEC"). Section 30413(d) provides that "the [Coastal] commission shall analyze each notice of intention and shall, prior to completion of the preliminary report required by Section 25510, forward to the [CEC] a written report on the suitability of the proposed site

[1] AES also disagrees with and objects to the various recommendations in the Comments. The specific recommendations in the Comments need not be adopted because each of the issues identified in the Comments has been fully addressed in the CEC proceeding, all impacts of the project have been mitigated or reduced to the full extent feasible, and the project is consistent with applicable laws, ordinances, and regulations (LORS). The CEC docket for Application for Certification #12-AFC-02 contains complete information addressing each of these issues.

and related facilities specified in that notice."[2] The Huntington Beach Energy Project ("HBEP") is undergoing an AFC-only proceeding before the CEC; the language of Section 30413(d) is abundantly clear on its face that the requirements for a "report" from the Coastal Commission pertain to NOI proceedings.[3]

While NOI proceedings are required for certain kinds of powerplant siting (*e.g.*, nuclear facilities or coal plants), new thermal natural-gas fired powerplant facilities like HBEP are statutorily exempt from the NOI process. A primary purpose of the NOI process is to conduct a site selection process. Existing powerplants with a "strong relationship to the existing industrial site" are exempt from this site selection process.[4] (Pub. Resources Code § 25540.6(a)(1).[5]) The NOI process is simply inapplicable because HBEP is undergoing an AFC-only proceeding before the CEC.

Staff mistakenly assumes that if the Coastal Commission chooses to participate in the HBEP AFC proceedings before the CEC, the requirements of Section 30413(d) apply. AES acknowledges that the Coastal Commission may choose to participate in the HBEP AFC proceedings. (*See* Pub. Resources Code § 30413(e).) However, such participation is governed by Public Resources Code section 30413(e) rather than section 30413(d). Regardless of the title of Staff's draft Comments, any comments or "report" provided by the Coastal Commission in the HBEP AFC proceedings should be treated as

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[2] Section 25510 is only relevant to NOI proceedings as it provides the timeline within which the CEC shall issue to the public a summary and hearing order on an NOI to file an application. ("25510. After the conclusion of such hearings, and no later than 150 days after filing of the notice, the commission shall prepare and make public a summary and hearing order on the notice of intention to file an application. The commission may include within the summary and hearing order any other alternatives proposed by the commission or presented to the commission at a public hearing prior to preparation of the summary and hearing order. The summary and hearing order shall be published and made available to the public and to interested local, regional, state, and federal agencies.").

[3] An NOI Proceeding does not contain a full permitting process. As set forth in Section 25502, a NOI is "an attempt primarily to determine the suitability of the proposed sites to accommodate the facilities and to determine the general conformity of the proposed sites and related facilities with standards of the commission and assessments of need." The NOI process culminates in a decision that fundamentally indicates which sites are feasible for a power plant of the nature proposed. (Pub. Resources Code § 25516.6.)

[4] Pub. Resources Code, § 25540.6(b).

[5] Projects that are exempt from the NOI process are required to provide details regarding site selection criteria, any alternative sites that the applicant considered for the project, if applicable, and the reasons why the applicant chose the proposed site. (Pub. Resources Code § 25502.)

participation by the Coastal Commission pursuant to Section 30413(e) and not as an official "report" as defined in Section 30413(d).

As further evidence in support of AES's arguments set forth herein, on August 2, 2004, the Legislative Counsel provided an opinion stating that the plain language of Section 30413(d) applies only to NOI proceedings. (*See generally* Exhibit A attached hereto; *see* Exhibit A at pp. 6-7.) Specifically, the Legislative Counsel determined that "the report made by the Coastal Commission pursuant to subdivision (d) of Section 30413 is submitted only in response to a NOI, and the AFC-only procedure does not include a NOI proceeding." The Legislative Counsel concluded that "the statutory requirement that the Energy Commission include such specific provisions in its decision on an AFC . . . is inapplicable in an AFC-only procedure established under Section 25540.6." (Exhibit A at p. 7 (emphasis added); *see also* Exhibit B attached hereto.[6])

Recommended Action

AES reiterates that any "report" or comments provided to the CEC shall be treated as comments and not as a formal 30413(d) Report, as the latter is only applicable in NOI proceedings. Because this document constitutes comments pursuant to Section 30413(e) of the Coastal Act, it is within the Commission's discretion whether to approve the comments and submit them to the CEC. Even if the Commission determines that action on Staff's draft comments shall be taken, AES respectfully requests that the Motion and Resolution be revised as follows[7]:

> Motion
> I move that the Commission adopt the attached ~~report~~ **comments** and direct staff to forward ~~this report~~ **such comments** to the California Energy Commission pursuant to Coastal Act section 30413**(e)**~~(d)~~.
> Resolution
> The Commission hereby adopts the attached ~~report~~ **comments** regarding the proposed ~~upgrade and expansion of the~~ Huntington Beach Energy Project ~~on grounds that the report includes the findings and conditions necessary to comply with the Commission's obligations under Coastal Act section 30413(d)~~.

[6] As recently as July 2012, in a brief filed with the California Supreme Court (*City of Carlsbad v. California Energy Resources and Development Commission, et al.*(Case No. S203634), the CEC Chief Counsel argued in opposition to the City of Carlsbad that 30413(d) reports are not relevant in AFC-only proceedings. (*See* Exhibit B at pp. 16-20.) Attached as Exhibit 4 to that filing is a 1990 document filed by the Coastal Commission in a NOI proceeding wherein the Coastal Commission also noted that its role in AFC-only proceedings is dictated by Section 30413(e). (*See* Exhibit B attached hereto.)

[7] AES maintains that regardless of whether these proposed revisions are made to the motion and resolution, since HBEP is an AFC-only proceeding, Staff's comments are not a 30413(d) report and shall not be treated as such by the CEC.

AES welcomes and appreciates Coastal Commission participation in the HBEP AFC proceedings currently pending before the CEC as provided by Section 30413(e) of the Coastal Act.

II. All References to an "Enforcement Action" Should Be Stricken

Throughout the Comments, Staff erroneously refers to a "Coastal Commission enforcement proceeding." (Comments at pp. 6, 11 and fn. 3.) AES requests that references to any Coastal Commission enforcement proceeding be stricken from any comments approved by the Commission because (1) there are no enforcement actions pending against AES, and (2) such statements are not relevant to the Commission's review of the application for certification for HBEP and the CEC's consideration of the HBEP application.

HBEP is a proposed new natural gas-fired, combined-cycle, air-cooled, 939-megawatt electrical facility, located on 28.6 acres within the footprint of the existing Huntington Beach Generating Station ("HBGS"). HBEP is subject to the exclusive siting jurisdiction of the CEC pursuant to the Warren-Alquist Act. (Pub. Resources Code, § 25500, et seq.) In that capacity, the CEC acts as lead agency for evaluating the environmental impacts of the proposed project. (Pub. Resources Code, § 25519(c).) The CEC's review and evaluation concerns whether the proposed site and proposed facility are suitable for certification. (Pub. Resources Code, § 25519.) The analysis the CEC conducts, therefore, must pertain to the proposed project and not to alleged prior actions or activities that do not impact the environmental analysis of the proposed project. In support of that evaluation, the CEC accepts comments and input from various agencies, such as the Coastal Commission. (*See, e.g.,* Pub. Resources Code §§ 25519(d), 25521, 30413(e).) In order to be relevant to the CEC's analysis, comments and input must be related to the application and any decision the CEC must make on that application. (*Ibid*.) Comments pertaining to alleged and unsupported past activities would only be relevant to the extent they impact the environmental analysis of the proposed project. The purported "enforcement proceeding" does not impact the environmental analysis of the proposed project and, therefore, is not relevant to any decision the CEC must make in the proceeding.[8]

Moreover, the statements in the Comments misstate and mischaracterize the facts. There is no evidence supporting the assertion that an enforcement action is pending, let alone evidence that a violation has occurred. In a letter submitted to the CEC in August of 2012, Staff alluded to an "investigation" of activities at the HBGS site. However, neither Staff nor the Coastal Commission has ever directly communicated with AES regarding this supposed investigation, Staff has not notified AES that it has initiated an investigation, much less an enforcement action, and no notice of violation has ever been issued. The characterization in the Comments that there is an enforcement action pending is, therefore, inaccurate. Because it is both inaccurate and irrelevant to the proposed HBEP proceeding, references to such "enforcement action" should be stricken from any comments approved by the Commission.

[8] While identification of existing and historic wetlands on the site may be relevant to the CEC's environmental review, enforcement actions related to disturbance of any such wetlands is not relevant to the environmental analysis.

Recommended Action

Delete all references to Coastal Commission enforcement action on pages 6 and 11 and in footnote 3 of the Comments.

As previously stated, AES will have counsel in attendance at the July 10, 2014 Coastal Commission meeting. We will be happy to respond to any questions the Commission may have regarding these issues at that time.

Respectfully submitted,

Stephen O'Kane
Vice-President, AES Southland Development, LLC
Manager of Sustainability and Regulatory Compliance, AES Southland, LLC

Attachments

cc: Alison Dettmer, California Coastal Commission
Tom Luster, California Coastal Commission
Melissa A. Foster, Stoel Rives LLP
Kristen T. Castaños, Stoel Rives LLP
Jeffery D. Harris, Ellison, Schneider & Harris L.L.P.
Rob Oglesby, California Energy Commission

EXHIBIT A

LEGISLATIVE COUNSEL'S LETTER DATED AUGUST 2, 2004

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August 2, 2004

Honorable Patricia C. Bates
4116 State Capitol

CALIFORNIA ENERGY COMMISSION: CALIFORNIA COASTAL COMMISSION: CERTIFICATION OF SITE AND RELATED POWER FACILITIES - #12178

Dear Ms. Bates:

You have asked several questions with respect to the certification of a site and related power facilities under Section 25540.6 of the Public Resources Code.[1] The first question is whether, on an application for certification pursuant to Section 25540.6, the California Coastal Commission is required to submit a report pursuant to subdivision (d) of Section 30413 of the Public Resources Code.

Generally, and with certain exceptions, the Warren-Alquist State Energy Resources Conservation and Development Act (Div. 15 (commencing with Sec. 25000); hereafter the Energy Act) requires every person proposing the construction of a thermal powerplant and related facility to obtain certification of the site and related facility from the California Energy Resources Conservation and Development Commission (hereafter the Energy Commission; see Secs. 25110 and 25120, and Sec. 25500).

By way of background, under the Energy Act the procedures for certification of a site and related power facilities are contained in Chapter 6 (commencing with Section 25500) of Division 15, and generally require the filing of a notice of intention (hereafter NOI) to submit an application for certification of a site and related facility (Sec. 25502), followed by the filing of an application for certification (hereafter AFC) of a site and related facility (Sec. 25519). For five specified types of projects, however, the requirement of a NOI is eliminated and the only procedure required is an application for certification of a site and related facility (Sec. 25540.6; hereafter the AFC-only procedure). The NOI proceeding primarily determines the suitability of the proposed sites to accommodate the facility and to meet the demand for electrical energy

[1] All section references are to the Public Resources Code, unless otherwise indicated.

and capacity (Sec. 25502), whereas the AFC proceeding considers whether a particular site and related facility are suitable for certification (Sec. 25519).

In the NOI proceeding, the Energy Commission is required to prepare and make public a summary and hearing order on the NOI (Secs. 25502 and 25510). Following the summary and hearing order on the NOI, the Energy Commission is required to commence adjudicatory hearings culminating in the final report of the commission which is, in turn, subject to a hearing or hearings (Secs. 25513 and 25515). If the NOI is approved by the Energy Commission, the AFC proceeding is commenced upon the filing of an application for certification of a site and related facility (Secs. 25516 and 25519). The Energy Commission is required to hold hearings and issue a written decision on the AFC, stating its findings (Sec. 25523). The Energy Commission's decision is subject to reconsideration (Sec. 25530), and judicial review by the Supreme Court of California (Sec. 25531).

The power of the Energy Commission to certify sites and related power facilities is declared to be "exclusive," and a certificate issued by the Energy Commission in accordance with the power facility and site certification program prescribed by Chapter 6 (commencing with Section 25500) is in lieu of any permit, certificate, or similar document required by a state, local, or regional agency for use of the site and related facilities, and supersedes any applicable statute, ordinance, or regulation of any state, local, or regional agency (Sec. 25500; *City of Morgan Hill v. Bay Area Air Quality Management Dist.* (2004) 118 Cal.App.4th 861, 879).

The California Coastal Act of 1976 (Div. 20 (commencing with Sec. 30000; hereafter the California Coastal Act) establishes the California Coastal Commission (Secs. 30105 and 30300; hereafter the Coastal Commission) with specified jurisdiction over prescribed areas along the state's coastline designated as the coastal zone (Art. 3 (commencing with Sec. 30330), Ch. 4, Div. 20; Secs. 30103 and 30103.5). The Coastal Commission participates in proceedings with respect to the certification of a site and related power facility to be located in the coastal zone (Sec. 30413).

Section 30413 reads as follows:

> "30413. (a) In addition to the provisions set forth in subdivision (f) of Section 30241, and in Sections 25302, 25500, 25507, 25508, 25510, 25514, 25516.1, 25523, and 25526, the provisions of this section shall apply to the commission and the State Energy Resources Conservation and Development Commission with respect to matters within the statutory responsibility of the latter.
>
> "(b) The commission shall, prior to January 1, 1978, and after one or more public hearings, designate those specific locations within the coastal zone where the location of a facility as defined in Section 25110 would prevent the achievement of the objectives of this division; provided, however, that specific locations that are presently used for such facilities and reasonable expansion thereof shall not be so designated. Each such designation shall include a description of the boundaries of those locations, the objectives of this division which would be so affected, and detailed findings concerning the significant

adverse impacts that would result from development of a facility in the designated area. The commission shall consider the conclusions, if any, reached by the State Energy Resources Conservation and Development Commission in its most recently promulgated comprehensive report issued pursuant to Section 25309. The commission shall transmit a copy of its report prepared pursuant to this subdivision to the State Energy Resources Conservation and Development Commission.

"(c) The commission, after it completes its initial designations in 1978, shall, prior to January 1, 1980, and once every two years thereafter until January 1, 1990, revise and update the designations specified in subdivision (b). After January 1, 1990, the commission shall revise and update those designations not less than once every five years. Those revisions shall be effective on January 1, 1980, or on January 1 of the year following adoption of the revisions. The provisions of subdivision (b) shall not apply to any sites and related facilities specified in any notice of intention to file an application for certification filed with the State Energy Resources Conservation and Development Commission pursuant to Section 25502 prior to designation of additional locations made by the commission pursuant to this subdivision.

"(d) Whenever the State Energy Resources Conservation and Development Commission exercises its siting authority and undertakes proceedings pursuant to the provisions of Chapter 6 (commencing with Section 25500) of Division 15 with respect to any thermal powerplant or transmission line to be located, in whole or in part, within the coastal zone, the commission shall participate in those proceedings and shall receive from the State Energy Resources Conservation and Development Commission any notice of intention to file an application for certification of a site and related facilities within the coastal zone. The commission shall analyze each notice of intention and shall, prior to completion of the preliminary report required by Section 25510, forward to the State Energy Resources Conservation and Development Commission a written report on the suitability of the proposed site and related facilities specified in that notice. The commission's report shall contain a consideration of, and findings regarding, all of the following:

"(1) The compatibility of the proposed site and related facilities with the goal of protecting coastal resources.

"(2) The degree to which the proposed site and related facilities would conflict with other existing or planned coastal-dependent land uses at or near the site.

"(3) The potential adverse effects that the proposed site and related facilities would have on aesthetic values.

"(4) The potential adverse environmental effects on fish and wildlife and their habitats.

"(5) The conformance of the proposed site and related facilities with certified local coastal programs in those jurisdictions which would be affected by any such development.

"(6) The degree to which the proposed site and related facilities could reasonably be modified so as to mitigate potential adverse effects on coastal resources, minimize conflict with existing or planned coastal-dependent uses at or near the site, and promote the policies of this division.

"(7) Such other matters as the commission deems appropriate and necessary to carry out this division.

"(e) The commission may, at its discretion, participate fully in other proceedings conducted by the State Energy Resources Conservation and Development Commission pursuant to its powerplant siting authority. In the event the commission participates in any public hearings held by the State Energy Resources Conservation and Development Commission, it shall be afforded full opportunity to present evidence and examine and cross-examine witnesses.

"(f) The State Energy Resources Conservation and Development Commission shall forward a copy of all reports it distributes pursuant to Sections 25302 and 25306 to the commission and the commission shall, with respect to any report that relates to the coastal zone or coastal zone resources, comment on those reports, and shall in its comments include a discussion of the desirability of particular areas within the coastal zone as designated in such reports for potential powerplant development. The commission may propose alternate areas for powerplant development within the coastal zone and shall provide detailed findings to support the suggested alternatives." (Emphasis added.)

To ascertain the meaning of a statute, we begin with the language in which the statute is framed (*Leroy T. v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 434, 438; *Visalia School Dist. v. Workers' Comp. Appeals Bd.* (1995) 40 Cal.App.4th 1211, 1220). When the language of a statute is clear, its plain meaning should be followed (*Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 38).

With respect to a NOI proceeding, subdivision (d) of Section 30413 requires the Coastal Commission to analyze each NOI proposing a site and related facilities to be located within the coastal zone, and to prepare a written report for the Energy Commission on the suitability of the proposed site and related facilities that considers specified matters and makes certain findings. Subdivision (d) of Section 30413 requires the Coastal Commission to submit this report to the Energy Commission prior to the Energy Commission preparing and making public a summary and hearing order on the NOI pursuant to Section 25510.

Section 25540.6 establishes the AFC-only procedure for certification in certain circumstances, and reads as follows:

"25540.6. (a) Notwithstanding any other provision of law, no notice of intention is required, and the commission shall issue its final decision on the

application, as specified in Section 25523, within 12 months after the filing of the application for certification of the powerplant and related facility or facilities, or at any later time as is mutually agreed by the commission and the applicant, for any of the following:

"(1) A thermal powerplant which will employ cogeneration technology, a thermal powerplant that will employ natural gas-fired technology, or a solar thermal powerplant.

"(2) A modification of an existing facility.

"(3) A thermal powerplant which it is only technologically or economically feasible to site at or near the energy source.

"(4) A thermal powerplant with a generating capacity of up to 100 megawatts.

"(5) A thermal powerplant designed to develop or demonstrate technologies which have not previously been built or operated on a commercial scale. Such a research, development, or commercial demonstration project may include, but is not limited to, the use of renewable or alternative fuels, improvements in energy conversion efficiency, or the use of advanced pollution control systems. Such a facility may not exceed 300 megawatts unless the commission, by regulation, authorizes a greater capacity. Section 25524 does not apply to such a powerplant and related facility or facilities.

"(b) Projects exempted from the notice of intention requirement pursuant to paragraph (1), (4), or (5) of subdivision (a) shall include, in the application for certification, a discussion of the applicant's site selection criteria, any alternative sites that the applicant considered for the project, and the reasons why the applicant chose the proposed site. That discussion shall not be required for cogeneration projects at existing industrial sites. The commission may also accept an application for a noncogeneration project at an existing industrial site without requiring a discussion of site alternatives if the commission finds that the project has a strong relationship to the existing industrial site and that it is therefore reasonable not to analyze alternative sites for the project." (Emphasis added.)

Because Section 25540.6 eliminates the requirement for a NOI in an AFC-only procedure, the Coastal Commission is not required to submit in that procedure the report required in a NOI proceeding under subdivision (d) of Section 30413. The intent of the Legislature in enacting Section 25540.6 was to establish an expedited certification procedure for specified types of facilities by removing the NOI requirement and shortening the AFC process to 12 months (Assembly Rules Committee, Office of Assembly Floor Analyses, 3rd reading analysis of Senate Bill No. 1805 (1977-78 Regular Session), as amended August 22, 1978).

In addition, the failure of the Legislature to change the law in a particular respect when the subject is generally before it, while changes in other aspects of that subject are made, is indicative of an intent to leave the law as it stands in the aspects not amended (*Cumero v. Public Employment Relations Bd.* (1989) 49 Cal.3d 575, 596). In that regard, when Section

25540.6 was enacted in 1978 (Stats. 1978, c. 1010), the Legislature also amended Section 30413 (Stats. 1978, c. 1013), but did not amend Section 30413 to require in a proceeding under Section 25540.6 that the Coastal Commission submit the report required by subdivision (d) of Section 30413.

Accordingly, we conclude that in an AFC-only proceeding conducted pursuant to Section 25540.6 of the Public Resources Code, the California Coastal Commission is not required to submit the report that is required by subdivision (d) of Section 30413 of the Public Resources Code in a NOI proceeding.

You have also asked whether, in an AFC-only proceeding conducted pursuant to Section 25540.6 of the Public Resources Code, the California Coastal Commission in its review and comment under subdivision (d) of Section 25519 of the Public Resources Code is prohibited from submitting the information it would submit in a report required by subdivision (d) of Section 30413.

With respect to an AFC-only proceeding, subdivision (d) of Section 25519 requires the Energy Commission to transmit a copy of the AFC to the Coastal Commission for its review and comments, if the site and related facility are proposed to be located in the coastal zone, and the Coastal Commission may participate in the proceeding on the AFC as an interested party (see Sec. 25508 and subd. (e), Sec. 30413). Nothing in those provisions or in any other statutory provision prohibits the Coastal Commission from submitting to the Energy Commission, in its review and comments in an AFC-only proceeding, information similar to that contained in the report that the Coastal Commission is required, pursuant to subdivision (d) of Section 30413, to submit in a NOI proceeding. Moreover, the AFC-only procedure established by Section 25540.6 specifically requires three of the five types of projects exempted from the NOI requirement to include in the AFC a discussion of the applicant's site selection criteria, any alternative sites that the applicant considered for the project, and the reasons why the applicant chose the proposed site (subd. (b), Sec. 25540.6). These items are similar to the considerations regarding alternative proposed sites that the Coastal Commission is required to address in its report required by subdivision (d) of Section 30413 in a NOI proceeding.

Accordingly, we conclude that, in an AFC-only proceeding conducted pursuant to Section 25540.6 of the Public Resources Code, the California Coastal Commission in its review and comment under subdivision (d) of Section 25519 of the Public Resources Code is not prohibited from submitting the information it would submit in a report under subdivision (d) of Section 30413.

Finally, you have asked whether, on an application for certification made pursuant to Section 25540.6 of the Public Resources Code, the California Energy Commission is required by subdivision (b) of Section 25523 to include in its decision specific provisions to meet any comments the California Coastal Commission submits in its review and comments submitted to the Energy Commission pursuant to subdivision (d) of Section 25519 of the Public Resources Code.

The Energy Commission is required to prepare a written decision after the public hearing on an AFC that includes several items (Sec. 25523). Section 25523 specifically requires the Energy Commission, in the case of a site to be located in the coastal zone, to include in that

decision specific provisions to meet the objectives of the California Coastal Act, as may be specified in the report submitted by the Coastal Commission pursuant to subdivision (d) of Section 30413, unless the Energy Commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or that the provisions proposed in the report would not be feasible (subd. (b), Sec. 25523).

However, the requirement that the Energy Commission include, in its decision on an AFC, specific provisions to meet the objectives of the California Coastal Act as may be specified in the report that the Coastal Commission is required to submit under subdivision (d) of Section 30413, does not apply in the instance of an AFC-only procedure established by Section 25540.6. The report made by the Coastal Commission pursuant to subdivision (d) of Section 30413 is submitted only in response to a NOI, and the AFC-only procedure does not include a NOI proceeding (see discussion above). Therefore, we conclude that the statutory requirement that the Energy Commission include such specific provisions in its decision on an AFC, unless they would result in greater adverse effect on the environment or would not be feasible, is inapplicable in an AFC-only procedure established under Section 25540.6.

Accordingly, we conclude that on an application for certification made pursuant to Section 25540.6 of the Public Resources Code, the California Energy Commission is not required by subdivision (b) of Section 25523 to include in its decision specific provisions to meet any comments the California Coastal Commission submits in its review and comments to the Energy Commission pursuant to subdivision (d) of Section 25519 of the Public Resources Code.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

Maria H. Hilakos Hanke by MC

By
Maria Hilakos Hanke
Deputy Legislative Counsel

MHH:kg

EXHIBIT B

CALIFORNIA ENERGY COMMISSION'S PRELIMINARY OPPOSITION FOR WRIT OF MANDATE AND RELATED APPENDIX (IN PERTINENT PART), DATED JULY 9, 2012

CONFORMED
COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF CARLSBAD, Petitioners, v. CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION, et al. Respondent, and CARLSBAD ENERGY CENTER, LLC Real Party in Interest.	Case No.: S203634 California Energy Commission Docket No. 07-AFC-6

SUPREME COURT
FILED

JUL - 9 2012

Frank A. McGuire Clerk

Deputy

RESPONDENT CALIFORNIA ENERGY COMMISSION'S PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE

Exempt from Filing Fees, Gov. Code § 6103

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF CARLSBAD, Petitioners, v. CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION, et al. Respondent, and CARLSBAD ENERGY CENTER, LLC Real Party in Interest.	Case No.: S203634 California Energy Commission Docket No. 07-AFC-6

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
(Cal. Rules of Court, rule 8.208)

Respondent California Energy Commission ("Commission") is not an "entity" pursuant to Rule of Court 8.208, subdivision (C)(2), because it is a government agency. Real Party in Interest, Carlsbad Energy Center, LLC, is a private corporate entity, and is believed by the Commission to be an interest of the energy company NRG, Inc. Respondent California Energy Commission is unaware of any other entity in this proceeding that has a financial or other interest in the outcome of the proceeding.

Date: July 9, 2012

MICHAEL J. LEVY
Counsel for Respondent
California Energy Commission

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To the Honorable Chief Justice of California and the Honorable Associate Justices of the California Supreme Court:

PRELIMINARY OPPOSITION
TO PETITION FOR WRIT OF MANDATE

Respondent California Energy Resources Conservation and Development Commission ("Energy Commission" or "Commission") respectfully requests that the Supreme Court deny the Petition for Writ of Mandate in this matter.

I. INTRODUCTION

This case involves the Energy Commission's decision to license the Carlsbad Energy Center Project ("CECP"), a thermal power plant facility. CECP was licensed after an administrative proceeding that lasted nearly five years and after a very thorough environmental review. The process included numerous public events including public workshops, lengthy discovery, multiple pre-hearing conferences, at least three separate rounds of trial-type hearings where all parties were able to present evidence and cross-examine witnesses regarding any issues, and two (sequential) lengthy opinions proposed by the Commission committee overseeing the process.

Petitioner City of Carlsbad ("City") participated actively throughout this lengthy process. Numerous government agencies also provided their comments and testimony, including the local air district, the Regional Water Quality Control Board, and state and federal wildlife agencies, as well as the California Independent System Operator. As might be expected from such a proceeding, the administrative record and environmental analysis for the project is very large, and includes thousands of pages of materials, charts, computer runs, photo simulations, and transcripts. The

Commission's decision contains more than 200 conditions of certification designed to ensure that environmental impacts are mitigated and that the health and safety of the public is protected.

With the required mitigation set forth in its conditions, the Commission concluded that CECP would result in no substantive significant adverse environmental impacts that are not fully mitigated. Although the Commission found that the project complied with most applicable laws, ordinances, regulations, and standards ("LORS"), the City made changes to its ordinances late in the proceeding with the purpose of obstructing the project. The Commission therefore made findings pursuant to its statute that the project is necessary for public convenience and necessity, regardless of not being consistent with the City's ordinances. The Commission made similar public convenience and necessity "override" findings directed to alleged inconsistencies with the California Coastal Act and the California Fire Code.

The City has been—and continues to be—unequivocally opposed to the project. It has raised nearly every conceivable objection to CECP in an effort to frustrate its licensing. All of the substantive issues raised by petitioners have been addressed by the Commission within its process.

The Commission ultimately licensed CECP, for reasons succinctly summarized in a brief from Commission staff regarding the significant environmental and electric reliability benefits of the project:

> The record shows that CECP will replace aging and inefficient infrastructure—the once-through-cooling ("OTC") boiler facilities of Encina Power Station ("EPS") units 1-3 (which *will* be decommissioned when CECP goes on line—contrary to the City's claim) and, to some degree, the use of units 4-5 (which would

remain for the time being). Units 1-3 were built in the 1950s and are quite inefficient. They must be kept running at a low level, burning gas and pumping ocean water, so they can be ramped up to provide emergency backup for the system on the few occasions for which they are needed. CECP will provide a newer, more efficient, fast-ramping facility that need not be kept running to be available on short notice. It will not use OTC, thus avoiding its attendant biological damage. It will generate energy more efficiently, with fewer emissions (of both criteria pollutants and greenhouse gases) per megawatt hour, making the electric generating system more efficient and less damaging to the environment. Its power will be consumed in accordance with the laws of physics, which means at the nearest load—the City of San Diego and such places as the City itself. It will increase electric reliability for the City and the San Diego region as a whole. Its fast ramping capability will allow it to integrate renewable power from wind and solar sources much more effectively than the older units it replaces, a benefit to the environment consistent with state and federal energy policy. Ultimately, it would be part of the overall infrastructure necessary for the closure of the EPS facilities which rely on OTC. It would thereby facilitate the State Water Board's newly adopted policy for such power plants, which can only be closed when modern replacement generation is ready. These benefits, detailed later in this brief, are very significant benefits not only to the City, but to the region and the State as a whole. (Pet. App., Exh. A, pp. 8.1-24 and 25.)[1]

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[1] The Commission's three-volume appendix ("CEC Appendix" provides pertinent parts of the record, including the "Final Staff Assessment," or "FSA," comprising part of the comprehensive environmental analysis for

ISSUES PRESENTED FOR REVIEW

1. **Should the Court Dismiss the Petition, Where the City Violated Rules of Court 8.25 by Failing to Serve the Petition on Respondents Before Filing With the Court?**

2. **Can the Energy Commission License the CECP Without a Report from the California Coastal Commission?**

3. **Is CECP Consistent With the California Coastal Act?**

4. **Did the Energy Commission Need to Further "Consult" with the City Regarding "Override" of City Ordinances?**

5. **Did the Energy Commission Properly "Override" any Claimed Inconsistency with the California Fire Code?**

II. JURISDICTION OF THE SUPREME COURT

Public Resources Code section 25531, subdivision (a), states that "The decisions of the [energy] commission on any application for certification of a site and related [power] facility are subject to judicial review by the Supreme Court of California."

IV. SCOPE OF REVIEW

The scope of review of Energy Commission power facility licenses is set forth in Public Resources Code section 25531, subdivision (b), which provides the narrowest scope of review that is consistent with the California Constitution:

> No new or additional evidence may be introduced upon review and the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination

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the project. The Final Decision is Exhibit A of Petitioner's Appendix. Page numbers correspond to the page numbers in the original documents..

> of whether the order or decision under review violates any right of the petitioner under the United States Constitution or the California Constitution. The findings and conclusions of the commission on questions of fact are final and are not subject to review, except as provided in this article. These questions of fact shall include ultimate facts and the findings and conclusions of the commission.

(Pub. Resources Code, § 25531, subd. (b).) For purposes of this Statement, the Commission assumes that the Court's inquiry as to "whether the commission has regularly pursued its authority" includes a determination as to whether the Commission's findings are supported by substantial evidence in the record. (*See Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.)

V. STATEMENT OF THE CASE

A. The Energy Commission's Power Facility Certification Process

In California, the construction of any thermal power plant with a generating capacity of at least 50 megawatts ("MW," one million watts) requires a license ("certificate," in the language of the statute) from the Energy Commission. (Pub. Resources Code, §§ 25110, 25120, 25500.)[2] The Commission's certificate takes the place of all other state, regional, and local permits that otherwise would be required. (§ 25500.)

The Commission's Application for Certification ("AFC") process involves an extensive examination of all aspects of proposed power facilities, including environmental, health, safety, and other factors. (See §§ 25519 - 25523, 25525 – 25529; Cal. Code Regs., tit. 20, §§ 1741 – 1755.) The Commission serves as lead agency under the California Environmental Quality Act ("CEQA"). (§ 25519, subd. (c).) The process focuses on two

[2] Unless otherwise indicated, section citations in this Preliminary Opposition are to the Public Resources Code.

critical findings that the Commission must make: (1) whether a proposed facility will comply with all applicable laws, ordinances, regulations, and other standards ("LORS") (§ 25523, subd. (d)(1)); and (2) whether it will cause any significant, unmitigable, adverse environmental impacts. (§§ 21080.5, subds. (d)(2)(A), (d)(3)(A), 21100, subd. (b).) The Commission may not approve a project that does not comply with applicable LORS, or that has a significant, unmitigable, adverse environmental impact, unless the Commission also determines that the project has overriding benefits. (§§ 21002, 25525; Cal. Code Regs., tit. 20, §§ 1752, subds. (b), (*l*), 1755, subds. (b) - (d).)

The Commission solicits participation by all state, local, and federal agencies with an interest in issues regarding power plant siting. (§ 25519, subds. (c) through (k).) This includes the California Coastal Commission ("Coastal Commission"). As will be discussed further below, the Coastal Commission's participation in the licensing ("Application for Certification," or "AFC") process is discretionary; it is only required to file a report on compliance with the Coastal Act in Notice of Intent or "NOI" proceedings, a process which was not relevant to the CECP.

The AFC process consists of several phases intended to foster full public involvement and ensure that the decision-makers have all relevant information. The phases include (1) determining whether the AFC has enough information so that meaningful analysis may begin; (2) development and exchange of additional information by all parties, through data requests and public workshops; (3) publication of a thorough, detailed assessment of all aspects of the project by the Commission's staff of independent technical experts; (4) evidentiary hearings on contested issues, before a committee if two commissioners, in which any party may present

direct and rebuttal testimony and cross-examine witnesses; (5) publication of a proposed decision and comments thereon, with revisions in response to comments if appropriate; (6) consideration and the adoption of a final decision by the full Commission at a public hearing, and (7) if a party sets forth specific grounds for reconsideration addressing alleged errors of fact or law in the Commission's decision, an opportunity for reconsideration. (§§ 25523, 25525, 25530; Cal. Code Regs., tit. 20, §§ 1716, 1718, 1720, 1742.5 - 1755.) In the AFC process, the Commission's staff functions as an independent party to the proceeding. (Cal. Code Regs., tit. 20, §1712.5.)

The AFC process is entirely separate from the "Notice of Intent" (or "NOI") process which some kinds of facilities must satisfy *before* an AFC can be filed. The NOI process is a site screening process that focuses on the screening of alternative site locations, and is subject to separate statutory provisions and agency regulations. (Compare §§ 25502-25516.6 [NOI statutory requirements] with §§ 25517-25529 [AFC statutory requirements].) The City's Petition incorrectly conflates these two processes, thereby confusing and misstating the statutory duties of the Coastal Commission with regard to Commission proceedings.

In conducting licensing proceedings, the Energy Commissioners exercise the considerable technical and scientific expertise the Legislature requires them to have:

> One member of the commission shall have a background in the field of engineering or physical sciences and shall have knowledge of energy supply or conversion systems; . . . one member shall have background and expertise in the field of environmental protection or the study of ecosystems; one member shall be an economist with background and experience in the field of natural resource management . . . .

(§ 25201.)

B. The Commission's Certified Regulatory Program Under CEQA

As is the case for nearly all discretionary governmental permits in California, the Commission's power plant certification process is subject to CEQA. (See §§ 21080, subd. (a), 25519, subd. (c).) In general, CEQA requires all state agencies to prepare an environmental impact report ("EIR") on any project they propose to carry out or approve that may cause a significant adverse environmental impact. (§ 21100, subd. (a).) However, when a state regulatory program requires the preparation of a written document that is the "functional equivalent" of an EIR, CEQA also provides that the Secretary of the Resources Agency may exempt the program from the portions of CEQA requiring an EIR. (§ 21080.5, subd. (a).) Such "certified regulatory programs" remain subject to the substantive provisions of CEQA, including the requirements that significant adverse impacts be mitigated where feasible. (§ 21080.5, subd. (d); Cal. Code Regs., tit. 14, § 15250.) However, many of the procedural requirements of CEQA do not apply to a certified regulatory program which, as in the Commission's case, may provide substantially greater opportunity for the public to probe assumptions that form the basis for the agency's analysis and to provide alternative analyses. The Resources Secretary certified the Commission's power facility certification program in 1981 and re-certified it in 2000, and the Commission's environmental review of CECP was conducted under the certified program. (See Cal. Code Regs., tit. 14, § 15251, subd. (k).)

C. The Carlsbad Energy Center Project

For nearly 60 years, the Encina Power Station ("EPS") has operated on the California coast in the City of Carlsbad. It expanded in the 1970s, and is now proposing to expand, within its current boundaries, by adding the CECP. EPS is strategically located from an electric reliability standpoint; it provides essential electric reliability services in an urban "load pocket" in the San Diego region. However, EPS is an aging and obsolescent facility, with old "legacy" boiler units that are inefficient, and it is cooled by ocean water, imposing adverse impacts on marine biota. (Pet. Exh. 1 [Final Dec.] p. 3-19; CEC Exh.1 [FSA], p. 618.) It is the State's policy to close and, if necessary, replace these old facilities with newer, smaller, more efficient ones. (Pet. Exh. 1 [Final Dec.] p.3-22 [Finding No. 9].) New power plant facilities are smaller, use modern technology that reduce air emissions, and do not rely on marine cooling, thereby reducing environmental impacts. (*Id.* at pp. 3-19, 22 [Final Dec.].)

CECP is proposed for the EPS site, and is such a modernization project. It is smaller but far more efficient than the aging EPS units (and also more efficient than the typical electric generating "peakers"), has "fast start" capability, and can flexibly ramp its generation up and down to meet fluctuating demand. (*Id.* at pp. 2-2, 2-4, 3-2, 3-19 and 20,) This meets a critical reliability need in the San Diego "load pocket" (also called a "local capacity area" or "reliability area"), and will help integrate the fluctuating and growing contribution of renewable electric generation sources. (*Id.* at pp. 3-2, 3-20.) CECP also has the advantage of utilizing existing industrial and electric infrastructure, including transmission lines, switchyards, natural gas lines, and the EPS industrial site. (*Id.* at 3-20, 9-10 [Finding No. 5.f.]; CEC Exh.1 [FSA] at pp. 6-1, 6-4, 9-4 to 9-5.)

Even with such important and obvious benefits, CECP has been vigorously opposed by the City, which envisions opportunities for redeveloping the property in ways that will benefit its economy. The City has participated in the licensing proceeding and made every effort to frustrate the licensing of CECP. These efforts included incorrect claims that City ordinances did not allow the project, firm statements that no City reclaimed water was available for sale to the project, insistence that impractically wide fire access roads of unprecedented width be required, amendments to the general plan and zoning law to create inconsistencies with the project, and a last-minute ordinance adoption stating that the Commission—not the City—should provide "primary" emergency services. (*Id.* at pp. 2 and 3 [Findings No. 4 and 13].)

The City's aggressive opposition has required redesign of some features of the project and lengthened the licensing proceeding. In response to the City's position that it would (or could) not provide the reclaimed water necessary for CECP, the project was re-designed to use a reverse osmosis system to desalinate sea-water for project use. (CEC Exh. 1 [FSA] pp. 4.9-6, 4-9-14, 4.9; CEC Exh. 7.)

The Commission has acknowledged the City's local preferences and considered its various claims, but found that the project has no substantive environmental impacts[3] that cannot be mitigated to a level that is less than significant. The Commission originally proposed findings that CECP would be consistent with all applicable laws, but the City then changed various

[3] The Commission found that the nonconformity of the City's newly amended land use provisions resulted in a significant impact merely by virtue of the nonconformity, and made override findings, despite no underlying environmental impact. (Pet. Exh. 1, pp. 9-3, 9-10 [Finding No. 2].)

ordinances to obstruct such a finding. (See §D., below.) The Commission subsequently, and after further environmental analysis, found that the project has important local and statewide value and is necessary for the "public convenience and necessity," overriding inconsistency with City ordinances, and also overriding alleged noncompliance with the provisions of the California Coastal Act, the California Fire Code, and the "non-substantive" CEQA impact for land use ordinance noncompliance.

The Commission's overrides are based on the important benefits CECP provides. As the California Independent System Operator and others testified, CECP provides generation necessary for local and regional electric reliability, provides flexible support for the integration of fluctuating but growing renewable energy such as wind and solar generation, and will allow the shutdown of aging facilities that are less efficient, emit higher levels of pollution, and use once-through cooling with ocean water. (Pet. Exh. 1, p. 3-19, 9-3 to 9-4.) State policy adopted by the State Water Resources Control Board is to greatly reduce the use of once-through cooling in the near future, either by closing or radically revising older electric generating units such as those at EPS. (*Id.* at 7.2-10, 9-3.) CECP is essential for satisfying this policy in the near term. Finally, the CECP site in Carlsbad presently has elevated strategic value to the electric system given the uncertain and faltering generation from the San Onofre nuclear units. (5/31/12 Adoption Hearing Tr., pp. 290-291.[found at http:/www.energy.ca.gov/business_meetings/2012_transcripts/2012-05-31_transcript.pdf])

The City intervened to become a "party" to the CECP proceeding, and raised myriad objections to the project, both substantive and procedural. The City's opposition is partly responsible for the unprecedented length of the

CECP proceeding, as the Commission repeatedly attempted to address the various issues the City continued to raise, as detailed in the section below. The City's issues have been addressed in the lengthy administrative proceeding, and the objections raised in their petition are without merit.

D. The CECP Proceeding at the Commission

The application for CECP was filed on September 12, 2007. The original application proposed to use reclaimed water purchased from the City. In 2008, after several Commission staff workshops, the City stated publicly that it would have insufficient water to sell to CECP; in response the applicant amended its application in September 2008 to meet its water needs using ocean water provided by a reverse osmosis system. (CEC Exh. 1[FSA] pp. 4.9-14, 15.)

After repeated consultation with the City regarding its land use provisions, the Commission staff ("Staff") issued its preliminary environmental analysis ("Preliminary Staff Assessment," or "PSA") for public comment in December 2008. After public comment and additional workshops, as well as a comprehensive report on air quality impacts and requirements from the air pollution control district, Staff issued its Final Staff Assessment ("FSA"), a comprehensive environmental analysis required by CEQA, in November 2009. All parties filed testimony, and after a pre-hearing conference, four days of evidentiary hearings on all topics were held in February 2010. A principal issue at these hearings was whether CECP complies with the City's local ordinances and the California Coastal Act. (CEC Exh. 5 [evidentiary hearing excerpt].)

The CECP proceeding adjudicates an "Application for Certification" (as distinguished from a "Notice of Intent" site selection proceeding), and thus there is no statutory requirement for participation by the California Coastal Commission. Since the Coastal Commission informed the Commission that is did not intend to participate in the review of CECP (CEC Exh. 3), Staff independently analyzed compliance with the Coastal Act, as did Applicant and the City, with differing conclusions. Staff and the Applicant (and ultimately the Commission) found that CECP would comply with all Coastal Act provisions.

The two-Commissioner Committee[4] for CECP issued the Presiding Member's Proposed Decision ("PMPD") on May 9, 2011, and subsequently held additional evidentiary hearings on the topics of Air Quality, Land Use, Worker Safety and Fire Protection, seismic safety, and Soil and Water, in response to issues raised by the City and other parties. As a result of the evidentiary hearings, the Committee published an errata to the PMPD in June 2011.

On June 30, 2011, the full Commission held a hearing to consider adoption of the PMPD as its Final Decision. However, pursuant to objections from various intervenors, including the City, that the environmental analysis was incomplete, the Commission remanded the Decision to the Committee for additional environmental analysis on the discrete issues subject to objection. The Staff subsequently filed additional analysis regarding project alternatives (alternative power plants proposed in

[4] Pursuant to § 25211 and related regulations, Commission power plant siting proceedings are normally conducted by two members of the Commission, who comprise the "Committee" for the project, and who propose a Decision (the "Presiding Member's Proposed Decision") to the full Commission for adoption, rejection, or revision.

proceedings at the California Public Utilities Commission), electric grid reliability considerations raised by the California Independent System Operator, and Land Use Conditions of Certification 2 and 3. The Committee then requested additional topics for analysis, and all parties filed additional testimony on these topics and others. A final evidentiary hearing on these topics was held in December 2011.

The Committee issued its "Revised" PMPD ("RPMPD"), in essence a draft decision, in March 2012. After an extensive comment period, as well as objections from the City, the full Commission considered and adopted the RPMPD at a hearing on May 31, 2012, making it the Commission's "Final Decision." (The Final Decision is part of City's Appendix.) The Final Decision made "override" findings for the recently amended City land ordinances. Although the Final Decision concluded that CECP complies with the Coastal Act, it also concludes that the project is warranted even if the intervenors' position was accepted that the CECP was not in conformance with substantive Coastal Act provisions, and therefore included "override" findings. Similarly, the Commission made "override" findings for a singular provision in the State Fire Code that the City insists gives it authority to require infeasibly broad fire access roads, which the Commission found, based on an elaborate evidentiary record, were unrelated to public safety or safe provision of emergency services. (CEC Exh. 6, pp. 22-24.)

The numerous public workshops held by Staff, and the various evidentiary hearings and comment hearings held by the Committee, all occurred in the City of Carlsbad.

VI. ARGUMENT

A. The Court Should Dismiss the Petition for Failure to Comply with Rule 8.25.

The Rules of Court require the City to serve its Petition on Respondents and Real-Parties in-Interest *prior* to filing it with the Court. (Cal. Rules of Court, rule 8.25(a)(1).) The City failed to comply with this requirement.

The facts are straightforward. The City's proof of service states that it served respondent California Energy Commission by depositing a copy of the Petition with the United States Postal Service on June 27, 2012. In fact, the petition was delivered to the Commission via United Parcel Service (UPS) "ground service" on July 2, 2012, and was not delivered to UPS by the City until 8:24 pm on June 28th, 2012, after the close of business. (Applicant's[5] App., pp. 2, 3.) Moreover, the docket of this Court indicates that the Petition was filed prior to the close of business on June 28th, 2012. Thus, the City served the Commission *after* the Petition was filed with this Court, not the day before it filed, as the proof of service indicates. Rule of Court 8.18 states that the reviewing court clerk must not file any record or other document that does not conform to these rules. However, in this case, the clerk could not have known that the Petition would not comply with Rule 8.25 because the proof of service wrongly indicated that the Petition had been served when in fact it had not. Had the proof of service correctly indicated that service had not been completed, the filing could not have been made. We therefore request that the court dismiss the Petition for failure to comply with the Rules of Court.

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[5] Applicant is the tern used in this brief for real party in interest Carlsbad Energy Center, LLC.

B. No Coastal Commission Report or Participation is Required for the Energy Commission's AFC Licensing Process, and Coastal Act compliance was Thoroughly Considered.

For many years, the Energy Commission has encouraged Coastal Commission participation in its power plant licensing process. However, shortly after the CECP application was filed, the Coastal Commission's Executive Director informed the Energy Commission by letter that it would not participate in several new licensing proceedings, including the CECP proceeding. (CEC Exh. 3[October 16 letter from Peter Douglas, Executive Director for Coastal Commission].) The letter stated that "substantial workload and limited resources" were an important consideration, but further explained that the principal environmental issue of interest to the Coastal Commission was no longer in play:

> We note that all the projects listed above [including CECP] are proposing to end the environmentally destructive use of seawater for once-through cooling and instead employ dry cooling technology, which the Coastal Commission has strongly supported during past power plant reviews. This move away from once-through cooling removes what has been the single most contentious and environmentally damaging aspect of past project proposals. It also reduces the Coastal Commission's concerns about the type and scale of impacts associated with these proposed projects and about the ability of these projects to conform to Coastal Act provisions. Although each of these proposed projects have the potential to cause other types of adverse effects to coastal resources, we trust that the Energy Commission staff will continue to thoroughly review these projects as it has done in the past AFC proceedings....

(*Ibid.*)

The City contends that the Energy Commission cannot license a power plant in an AFC proceeding absent a report from the Coastal Commission regarding consistency with the Coastal Act. (Pets. Brf., pp. 3-

4.) The City is incorrect, and its citations to the applicable law do not support its claim.

The City cites three statutory provisions to support its claim. The first is Section 25519, subdivision (d), which requires the Energy Commission to transmit a copy of any AFC to the Coastal Commission "for its review and comments." (Pet. Brf., p. 3.) It is undisputed that the Energy Commission did so, and solicited Coastal Commission participation. But nothing in that statutory provision requires a report from the Coastal Commission.

The City also cites Section 25523, subdivision (b), a part of the Energy Commission's statute, and Section 30413, subdivision (d), a corresponding provision in the Coastal Commission's statute, as authority that a Coastal Commission report was required before CECP could be licensed. (Pet. Brf, pp. 4-9.) Again, these statutes do not require what the City alleges. Initially, we defer to the Coastal Commission's interpretation of its statutes that Section 30413in its entirety is directory and not mandatory. (See Coastal Commission's Preliminary Opposition filed in this proceeding.) More fundamentally, the City has conflated the requirements of NOI proceedings (described above) with those of the AFC licensing proceedings, thereby confusing these requirements. The City's interpretation is inconsistent with the statutes themselves, and with the Coastal Commission's long-standing interpretation of its statutory duties under these provisions.

Section 25523 addresses the findings that the Energy Commission must make when it licenses a project (AFC proceeding). Subdivision (b) requires, for projects licensed in the coastal zone, "specific provisions to

meet the objectives of [the Coastal Act] *as may be specified* in the report submitted by the California Coastal Commission pursuant to subdivision (d) of Section 30413, unless the [Energy] Commission specifically finds that the adoption of the provisions specified in the report would result in a greater adverse effect on the environment or . . . would not be feasible." (Emphasis added.)

Section 30413, subdivision (d), of the Coastal Act describes the report referenced in Section 25523, subdivision (b), as follows:

> (d) Whenever the [Energy] Commission exercises its siting authority and undertakes proceedings [for any power plant or transmission line] within the coastal zone, the [Coastal] Commission shall participate in those proceedings and shall receive from the [Energy] Commission *any notice of intention* to file an application for certification . . . . The [Coastal] Commission shall *analyze each notice of intention and shall, prior to completion of the preliminary report required by Section 25510, forward to the [Energy] Commission a written report on the suitability of the proposed site . . . specified in that notice.* The [Coastal] Commission's report shall contain a consideration of, and findings regarding, all of the following: . . . . (Emphasis added.)

The language of Section 30413 make it abundantly clear that the requirements for a "report" from the Coastal Commission involves "notices of intent," or the "NOI" as it is commonly referred to. NOI proceedings are required for certain kinds of power plant siting (e.g., nuclear facilities or coal plants), but not new gas-fired turbines. (§ 25540.6, subd. (a)(1).) Thus, the Carlsbad proceeding was not preceded by an NOI process that involved site selection, nor the report referened by Section 30413. Accordingly, Section 25510 (titled "Summary and Hearing Order on Notice of Intention to File the Application") is irrelevant to the Carlsbad AFC proceeding, and no Coastal Commission report is statutorily required.

More important, the finding in Section 25523, subdivision (b), is inapplicable to CECP because it did not require any "report submitted by the Coastal Commission pursuant to . . . Section 30413."

The above distinction between the statutory duty to provide the report in the NOI, compared to the discretionary ability to provide such a report in an AFC, is subject to long-standing legal interpretation by the Coastal Commission. A legal memorandum from the Coastal Commission's attorney in 1990 described the NOI/AFC distinction as follows:

> The Coastal Commission is required to submit a report during the NOI process to the Energy Commission on the suitability of the proposed coastal zone sites. The report must address a number of subject areas, pursuant to Public Resources Code section 30413(b). . . . Section 30413 provides that the Coastal Commission shall submit the report to the Energy Commission prior to the time that the Energy Commission completes its preliminary report on the issues presented in the NOI . . . .[Para.] The Energy Commission will consider, but not be bound by the Coastal Commission's recommendations in making its determination *as to which of the sites proposed in the NOI have greater relative merit.* [Para.] *The Coastal Commission's role in the AFC Process. The Coastal Commission's role with respect to the AFC . . . would be similar to that discussed above with respect to the NOI.* [Fn. omitted.] *The major difference is that the Coastal Commission is not required to submit a report to the Energy Commission. The Coastal Commission is nevertheless authorized, "at its discretion, to participate fully" in the proceeding pursuant to section 30413(e).* (CEC Exh. 4 (Memorandum of Deputy Chief Counsel Dorothy Dickey to Commissioner David Malcolm (May 23, 1990), pp. 3-4 [Emphasis added].)

Testimony at the evidentiary hearings for CECP established that Ms. Dickey was the Coastal Commission's legal expert on how the Coastal Act provisions apply to power plant siting, that the memorandum was

apparently reviewed by the agency's chief counsel, and that no further agency letters, interpretations, or adopted regulations have occurred during the past 20 years that would have affected the legal analysis provided in the memorandum. (CEC Exh. 5, pp. 249-250[excerpt from 2/1/10 evidentiary hearing transcript].)

The City argues that the 2005 Memorandum of Agreement (MOA) between the Coastal Commission and the Energy Commission, providing for the Coastal Commission participation in power plant AFCs for coastal projects, creates a legally binding duty that the Coastal Commission must provide its "30413 report" before an AFC license can be issued. (Pets. Brf., p. 8.) Again, the City is incorrect. Such an interagency agreement does not change existing statutory law, or create new statutory duties. The Energy Commission has sought to encourage Coastal Commission participation in its proceeding for coastal facilities, both by proposing and signing the MOA, and by directly requesting participation, but these acts in no way legally bind the Coastal Commission to participate, nor does the lack of that participation put a stop to the power plant licensing process at the Energy Commission.

In sum, no participation or report is required from the Coastal Commission in an AFC proceeding, and no authotities render the energy Commission's certificate infirm in the absence of such a report.

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C. The Energy Commission Found CECP to Conform to the Coastal Act based on Substantial Evidence in the Record, But Overrode the Noncompliance that was Alleged by the City.

1. The Commission Concluded That CECP Conforms to the Coastal Act Based on Persuasive Substantial Evidence.

The City posits that because the Coastal Commission did not participate in the proceeding, the City provided the only analysis of CECP's conformity with Coastal Act provisions, which must lead to a finding that CECP does not conform. (Pets. Brf., pp. 10-11.) The City's claim is simply incorrect.

Both the Applicant and Commission Staff provided extensive analysis of CECP conformity with the Coastal Act in testimony and documents that were the subject of lengthy hearings. This analysis was anchored to additional environmental analysis of the substantive areas (e.g., Air Quality, Visual Resources, Biological Resources, Soil and Water Resources, Air Quality, Hazardous Materials Management, Cultural Resources) that are key to the protective provisions in Chapter 3 of the Coastal Act, such as visual resources and marine biological resources, that would be addressed by the Coastal Commission. (CEC Exh. 1 [FSA].) The Staff analyses also addressed the substantive issues that are the subject of Section 30413 when the Coastal Commission files such a report: project compatibility with coastal resources, including "aesthetic values," adverse "impacts to fish and wildlife," conformance with land use requirements, and mitigation of impacts. (§ 30413, subd. (d).) The FSA analyses were far more substantive than the largely superficial and partisan analysis prepared by the City, so it is hardly surprising that the Energy Commission relied on these more comprehensive analyses in its Final Decision.

Commission Staff analyzed compliance with the Coastal Act in the comprehensive analysis that it is required to provide regarding project impacts and project compliance with local law--the Final Staff Assessment. The Land Use section, prepared by an analyst with many years of experience analyzing coastal projects (CEC Exh. 5, pp 173-174), addressed the Coastal Act and concluded that "the project would be consistent with the land use related policies of the Coastal Act based on staff's review of the project and applicable Coastal Act policies." (CEC Exh. 1 [FSA], pp. 4.5-1, 4.5-11, 4.5-19, 4.5-36; CEC Exh. 6, p. 11.) The analysis goes further to discuss various Chapter 3 topics, including coastal access, environmentally sensitive habitats, industrial facilities, coastal dependent facilities, and the Coastal Rail Trail. (CEC Exh. 1 [FSA], pp. 4.5-5 through 20.) The conclusion of CECP consistency was in turn grounded on substantive analysis of the environmental resources that the Chapter 3 of the Coastal Act identifies as critical to coastal protection: public access and recreation (§§ 30210-30224), marine and aquatic resources (§§ 30230-30236), agricultural land and species habitat (§§ 30240-30242); and cultural resources (§ 30244).

Staff addressed all of these issues thoroughly in its FSA, supplemented by further testimony for hearings. The FSA alone provides some 50 pages of analysis of Visual Resource project impacts with numerous pictorial simulations, discussions of cumulative impacts, and discussion of the various criteria by which state and federal agencies evaluate visual impacts. (CEC Exh. 1 [FSA], 4.12-1 to 4.12-47.)

By comparison, the City's "conformance report" visual analysis is four pages in length and conclusory by nature, with no simulations or criteria. The FSA's Biological Resources analysis is 25 pages in length; the

City's report a mere two pages of partisan"analysis." (*Ibid.*, [FSA] partisan 4.2-1 through 4.2-26.) The FSA's Cultural Resources section is 30 pages in length, and the Air Quality section more than 90 pages, while the City's report addresses neither. Each of these FSA sections was prepared by persons with documented experience and expertise in the respective areas of analysis, whereas the City analysis was sponsored by a single City planning staffer.

Nor was the Energy Commission Staff the only party providing such analysis. Applicant also provided a comprehensive environmental analysis of many hundreds of pages in its application filing, along with hundreds of pages more analysis in its testimony for hearings. All of this analysis was sponsored by expert witnesses and subject to cross-examination. This included witness testimony on CECP's compliance with Chapter 3 provisions of the Coastal Act, as well as resource subject analyses (such as visual and biological resource assessments by experts in these areas) similar to that provided by the FSA. The City's argument is no more than a baseless claim that, because it presented some evidence, the Energy Commission was bound to accept the City's conclusions.[6]

The Energy Commission was understandably persuaded by different evidence, evidence that is substantial and of a more thoroughgoing nature, that was presented by Staff and other parties. The Final Decision concluded that "CECP is consistent with the Coastal Act," but "given the vociferous opposition from the City of Carlsbad and other project

[6] The City's bold contention at page 21 of its verified Petition that "the Decision is devoid of any evidence contradicting the City's report that the CECP does not conform with . . . the Coastal Act," and that any "finding to the contrary is not supported by any evidence" is simply breathtaking given the volume of evidence pervading the administrative record.

proponents," the Energy Commission adopted override findings "for any inconsistencies that might be found." (Pet. Exh. 1, p. 8.1-10.) The Final Decision goes on to explain why CECP is consistent with regard to biological resources, sensitive habitat, and public access provisions of the Coastal Act. (*Id.*, at 8.1-10 through 14.) In other words, the Energy Commission found that CECP is consistent with the Coastal Act Chapter 3 requirements, but overrode any alleged inconsistencies as a precaution to legal challenge by the City.

2. The City Relies on a Dated and Irrelevant Document Regarding a Very Different Project to Assert Impacts and Lack of Conformity.

The City attempts to buttress its argument that the project has significant conflicts with the Coastal Act by filing a 1990 report from the Coastal Commission for an NOI proceeding that considered available siting alternatives for San Diego coastal power plants, (Pets. Brf., pp 4-5, 14; Pets. Exh. C.) This report does not support the City's claims.

The 1990 report dealt with a different generation technology, a different project site, a different visual profile, and different impacts, as even a casual reading of it makes clear. The principal impact that the Coastal Commission was concerned with in the 1990 report was the fact that the NOI project it analyzed would have used now-obsolete "once-through cooling" (OTC) technology, which "would significantly increase the entrainment of species that use the lagoon as a nursery." (Pets., Exh. C, p. 2.) Because this impact could not be mitigated, it found the entrainment impacts "not fully mitigable." (*Id.*, at p. 16.) It also found impacts could not be mitigated from the "thermal plume" of heated water that would be expelled to the ocean by increased OTC (*id.*, at pp. 17-21); need for

dredging in Agua Hedionda Lagoon that would damage marine biota (*id.*, at p. 24); impacts to public access from the outfall structure (*id.*, at pp. 29-30); and risk of devastating impacts from oil spills due to off-loading of oil next to the lagoon. (*Id.*, at pp. 36-39.) None of these impacts have any relevance to CECP, as it is a modern, dry-cooled facility, does not utilize OTC, and does not burn oil—the relevant impact-causing factors considered in the 1990 report.

With regard to visual impacts, the 1990 report was for a much larger and more visually prominent project, at a different and more visible site within view of beaches, that could not be visually screened. (*Id.*, at pp. 33-34.) The 1990 report recommended "landscape screening" and "lowering the height of structures," as well as lowering the plant grade" (meaning placing the project in a lower area). (*Id.*, at pp. 22-23; 32-34.) CECP, conversely, has chosen a site where it has incorporated all of these recommended measures. The structure and stacks are smaller and lower, and the project is located in an area below grade (30 feet), at a less prominent site, relatively well-screened by landscaping. (CEC Exh. 5, p. 180; CEC Exh. 6, p. 19.]

In short, the 1990 report has virtually no relevance to the impacts of the CECP project. These distinctions and issues of relevance were discussed in Staff and Applicant testimony, and subject to cross-examination at hearings. As a result, the Final Decision properly did not give weight to the document.

3. CECP is "Coastal Dependent."

The issue of whether a project is in fact "coastal dependent" only arises where there is inconsistency with Chapter 3's provisions. As already

discussed, CECP is consistent with Chapter 3 of the Coastal Act, and on that basis it is eligible to be permitted. Nevertheless, CECP is also "coastal dependent," as it must be "by the sea to be able to function at all," according to the definition in Section 30101 of the Coastal Act.

A facility that is not consistent with Chapter 3 provisions may still be permitted as a "coastal dependent facility" pursuant to Section 30260 if alternative locations are "infeasible or more environmentally damaging," there is a benefit to "public welfare," and environmental effects "are mitigated to the maximum extent feasible." Since the Energy Commission has made these findings in its Final Decision (see, e.g., Pet. Exh. 1, p. 3-22 [Findings 10 and 12]; p. 9-10 [Finding 5]; p. 1-2 [Findings 2 and 3].)[7] Therefore CECP can also (despite any lack of conformity) be licensed as a "coastal Dependent facility" pursuant to section 30260, if it must be on, or adjacent to, "the sea to be able to function at all." (§ 30101.)

The Energy Commission determined that CECP must be on the sea in order to function because the City, which is the only source of reclaimed water that could be available for the project, has made it clear during the proceeding that it would not supply Applicant such water for the project. (CEC Exh. 7 [2008 letter from City to Mike Monasmith].) Because it has no other feasible source of water for its project, rendering the original proposed project infeasible, Applicant redesigned the project to include a reverse osmosis system drawing off the current OTC outfall structure to process the relatively small amounts of water this dry-cooled project will require. (CEC Exh. 1 [FSA], pp. 4.9-6, 15-16.) This use of ocean water is

[7] The Final Decision includes more than 200 "Conditions of Certification," many of them elaborate and detailed, specifying project mitigation that is

actually a non-additive "re-use" of a small amount of water already in the OTC system for the existing units not yet to be retired, does not cause additional marine entrainment, and (as Staff testified) is not a significant impact to water quality (*Id.,* at pp. 4.9-18, 19, and 27) or biological resources. (*Id.*, at pp. 4.2-16-18.) This substantial evidence informs the discussion (at Pets. Exh. 1, pp. 7.2-8 through 7.2-12) and supports the findings (at 7.2-14) in the Final Decision concluding that there is no adverse impact from the CECP desalination system.[8]

The City's casual suggestion that it might expand its system to provide reclaimed water to CECP, negating CECP's coastal dependency (Pets. Brf., p. 26), is entirely inconsistent with its adamant opposition to the project, and to its 2008 representation that it would not or could not provide such water. CECP is a project costing more than a half billion dollars, and it could not possibly be financed and constructed if its very feasibility was left in the hands of such an unyielding foe.

The City's argument that CECP's dry-cooled technology does not itself require a coastal location (Pets. Brf., p. 22) is correct, but entirely beside the point. The critical project objectives of the CECP are to provide

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the basis for findings that potential adverse environmental impacts have been mitigated to a level that is less than significant.

[8] City makes the specious argument that water is "available" if only the project is moved to another location away from Carlsbad (Pets. Brf., pp. 24, 26), ignoring the fact that Applicant owns the current site, with its significant transmission, switchyard, and natural gas infrastructure, and cannot feasibly relocate to a similar "greenfield" location. The argument ignores as well the significant electric system benefits of the Carlsbad location at the current facility that would be lost with an inland or less strategic coastal location. These benefits are discussed in the Final Decision (Pets. Exh. 1, pp. 3-13 and 14, 22; 9-3 to 9-9) and supported by copious evidence that was presented at hearing.

electric reliability services to the load pocket in which it is located, and to allow retirement of at least some of the aging EPS "legacy boiler" facilities using OTC for cooling, thereby harming marine biota. (CEC Exh. 1 [FSA] pp. 6-3and 6-4.) A different location would satisfy neither of these critical project goals. (*Id.*, at pp. 6-18 to 6-19.)

Thus, the Energy Commission's Final Decision took a "belts and suspenders" approach to the issue of Coastal Act compliance. It found (1) that CECP complies with the Chapter 3 substantive provisions and the Section 30413, subdivision (d) provisions; (2) that even if CECP did not comply with such provisions, it is a "coastal dependent" facility that would not be feasible without its coastal location; and (3) that even if the Final Decision findings regarding (1) and (2) should be determined incorrect as a matter of law, as the City advocates, the project offers such environmental and electric reliability benefits that "public convenience and necessity" requires the override of any nonconformity with the Coastal Act pursuant to Section 25525. These determinations are all supported by a variety of substantial evidence, and the City's arguments fail to overcome any of them.

4. CECP is A Necessary Precedent to Achieving the Coastal Improvements that the City Claims are Required for Coastal Act Consistency.

With absolutely no citation to the Coastal Act or any other source of law, the City repeatedly contends that the Commission's extensive environmental analysis of CECP impacts on coastal resources is inadequate because it ignores the "temporal aspect" of some idealized, more pristine coastline that could occur in the future and is the goal of the Coastal Act. (Pets. Brf., pp. 5, 16-18.) Stated differently, the City contends

that use of a CEQA "baseline" (current conditions) environmental analysis is inconsistent with analysis of Coastal Act consistency, which is instead based on some unstated coastal ideal. By this undefined "temporal" standard, the City claims that the existing EPS power plants at the site will magically disappear, making the CECP an unacceptable blight on a newly pristine coastal landscape.

As stated above, the City's idealized "standard of review" is not found in the Coastal Act. If it were, one might fairly question whether any structures in the Coastal Zone could be approved by the City of Carlsbad or any other permitting agency. Rather, the Coastal Act Chapter 3 criteria are very broadly stated. Some examples: "maximum access . . . shall be provided (§30210); "development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization" (§30211); recreational areas on the ocean should be protected (§ 30220 *et seq.*); "marine resources shall be maintained, enhanced, and where feasible restored" (§30230); biological productivity and water quality should be protected (§ 30231); oil spills and hazardous substance spills avoided (§30232); new dikes and dredging permitted subject to permit conditions (§ 30233); commercial fishing and recreational boating maintained and encouraged (§30234); environmentally sensitive habitat areas protected from development (§ 30240); agricultural uses maintained (§ 30241.5); new development located contiguous with existing development (§30250); scenic qualities considered and protected "to be visually compatible with surrounding areas" (§ 30251); coastal-dependent industrial facilities "shall be encouraged to locate or expand within existing sites and permitted reasonable long term growth" (§30260).

The Energy Commission's environmental analysis reasonably concluded, based on abundant substantial evidence, that none of these Chapter 3 goals (nor any others) are inconsistent with CECP.

In other words, nothing in Coastal Act Chapter 3 inherently conflicts with CECP, and nothing in Chapter 3 supports the City's "temporal" notion of some future idealized coastline where anthropomorphic development ceases to exist. Nor does Chapter 3 support the City's notion that there is somehow a different "standard of review" for development projects that is inconsistent with the CEQA notion of "current conditions" as the "baseline" for analysis. (See, e.g., Cal. Code Regs., tit. 14, § 15125.)

However, even if one assumes that the City's unwarranted (if vaguely defined) standard is correct, CECP satisfies it. The City argues that the Energy Commission erred by doing the visual analysis using an existing condition baseline, because the older, much more visually obtrusive EPS units will eventually disappear. (Pets. Brf., p. 16-17.) What this argument ignores is that these older, larger, uglier, more obtrusive facilities will only be closed and allowed to disappear if *something*—CECP or a similar project—replaces their current essential role in providing electric reliability to the City and the local region. (Pets. Exh. 1, p. 3-22 [Commission finding, based on CAISO testimony, that units 4-5 must continue to operate indefinitely unless CECP is constructed].) As a necessary precedent to the closure of the older and larger facilities, CECP is a project that will enable a future coastal region with smaller, less visually obtrusive, and more environmentally friendly electric power infrastructure.

In other words, CECP is consistent with a future vision of an aesthetically more pleasing coastline, and consistent with future redevelopment (which the City desires) of much of the land that the aging EPS facility currently occupies. (Pets. Exh. 1, p. 8.1-35 [Finding Nos. 8 and 9].) By greatly reducing OTC from units 1-3, which would immediately close, CECP will result in restoration and enhancement of marine resources, consistent with section 30230. (CEC Exh. 1 [FSA] pp. 3-2; 6-18.) Even by the City's innovative "temporal" standard, CECP will result in an improved coastal environment in the future using any of the applicable criteria in Chapter 3.

5. The California Coastal Commission is not a Real Party in Interest.

A real party in interest ordinarily is one who has a real, actual, material, or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action. (67A Corpus Juris Secundum (2012) Parties, § 23.) More succinctly stated, a real party in interest is "[a] person entitled under the substantive law to enforce the right sued upon and who generally, but not necessarily, benefits from the action's final outcome." (Black's Law Dict. (9th ed. 2009) p. 1232, col. 2.).)

In this matter, the Coastal Commission has no interest in the subject matter of the action nor does it have a legal right to enforce the claim in question. Pursuant to the statutory scheme governing licensing of the project, it is the Energy Commission that has exclusive authority to grant the entitlement that is the subject of this action. (Pub. Resources Code, §25500.) The fact that the City – or the Coastal Commission for that matter – has the right to initiate an action against the Commission claiming that the Commission failed to comply with provisions governing the Coastal Commission's role in Commission licensing proceedings does not make the Coastal Commission a real party in interest. The city's petition is directed at the Energy Commission's actions and at the license granted by the

Energy Commission. The Coastal Commission should not be named as a real party, and should therefore be dismissed from this proceeding.

D. The Energy Commission has Fully Consulted with the City Regarding the Necessity to Override Inconsistency with City Ordinances.

The City has participated in the CECP proceeding practically since the day it was filed with the Commission. The docket is replete with documents, letters, testimony, and pleadings from the City contending that the CECP is inconsistent with the City's complex web of land use ordinances. Staff has made special efforts to understand the City's ordinances. In the early days of the proceeding this meant meeting and discussing the ordinances with City planning staff and the City Attorney. When Staff disagreed with various interpretations from the City, the City intervened and became a party to the CECP proceeding. As a party, it has attended every workshop and hearing, and pressed its case regarding its ordinances.

Ironically, the City *wants* it ordinances to be inconsistent with CECP. When it failed to convince the Commission that existing ordinances were inconsistent, it then went to the effort to change several ordinances to actually make them inconsistent. (Pets. Exh. 1, p. 8.11-1.) The City has viewed inconsistency with its land use provisions as a strategy for blocking the licensing of CECP.

Having gone to substantial effort to adopt changes to create inconsistency, the City now contends that Section 25523, subdivision (d)(1) requires that the Energy Commission itself, sitting as a state body, is obligated to "consult" with it, for no purpose other than to continue to

obstruct the project.[9] The City has indicated, both in its brief and at hearing, that such consultation is in essence a process requiring a complex three-stage administrative minuet: First, action by the Commission to make findings of noncompliance; second, consultation with the affected agency; and third, a "re-do" of the Final Decision adoption, again with override findings.

No such minuet is required by the statute. As has always been its practice, Commission staff consults with any agency with laws or regulations that could be subject to a Commission override, in an attempt to avoid the necessity for override, including possible changes in either the law or the project that would avoid a conflict. Often conflict and the need for override have been effectively avoided in this manner. But when the local agency is intentionally attempting to obstruct a project by making its ordinances inconsistent with the project, Staff consultation, or any consultation, is clearly an act of futility, as the Commission found in its Final Decision. (Pets. Exh. 1, p. 8.1-35 [Finding No. 11].)

Even so, Staff and the Commission committee assigned to the CECP proceeding have discussed in forums both formal and informal the City's views on the project, and the City's desire that its laws be

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[9] As pertinent, Section 25523 provides: "The Commission shall prepare a written decision after the public hearing . . . which includes all of the following: (d)(1) Findings regarding the conformity of the proposed site with . . . applicable local, regional, state, and federal standards, ordinances, or laws. If the Commission finds that there is noncompliance with a state, local, or regional ordinance or regulation . . . it shall consult and meet with the state, local, or regional governmental agency concerned to attempt to correct or eliminate the noncompliance. If the noncompliance cannot be corrected or eliminated, the commission shall inform the state, local, or regional governmental agency if it makes the [override] findings required by Section 25525.

inconsistent with CECP. The City has now accomplished this inconsistency, and the Commission has adopted the required findings for override. Any further action would be unproductive, inconsistent with the expeditious licensing of power plants required by Legislature, and would have difficulty complying with the Bagley-Keen Open Meeting Act.

The Warren-Alquist Act emphasizes expeditious power plant licensing. (See, e.g., Pub. Resources Code, §§ 25009 [State's need to "ensure the timely construction of new electricity generating capacity"], 25531, subd. (a) [judicial review of AFC decisions exclusively in this Court], 25540.6, subd. (a) [most AFCs, including natural gas facilities like CECP, must be reviewed and licensed within 12 months] , 25901, subd. (a) [30-day statute of limitations for judicial review].) A three-step requirement for post-decision consultation, even if was not pointless, would add significant time to a process that is already very difficult to complete within the prescribed statutory timeframe of 12 months. CECP has already been in the licensing process nearly five years.

The linchpin of the City's argument is its claim that when the Warren-Alquist Act uses the term "commission," the Act does not mean the agency entity, with its various staff, but rather can mean only *the five appointed Commissioners themselves*. Yet a check on the statute's use of the term indicates that the word "commission" is variously used to describe either the agency entity (including its staff) or, in some cases, the five appointed Commissioners themselves.[10]

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[10] The State Administrative Procedure Act makes a distinction between the "Agency," defined to include agency staff and other actors for the agency, and "Agency Head," meaning the actual decision-making body vested with the ultimate legal authority of the agency. (Compare Govt. Code, §§ 11405.30 and 11405.40.) Unfortunately, no such distinction is

A word check of term "commission" as used in the Warren-Alquist Act indicates that it is used in the statute no less than 1400 times, assigning and placing countless and various duties on "the commission" and virtually none at all on "staff" or "commission staff." Most of these duties, including the preparation of environmental documents and reports to the Legislature, are obviously intended for agency staff. To give a singular example, Section 25519, subdivision (c), states that "the commission shall be the lead agency," and refers to environmental "documents prepared by the Commission," although such documents are in fact prepared by agency staff.[11] Clearly the term was used by the Legislature in most instances to describe the collective agency entity, as any other interpretation would be impractical, while at other times it means the decision-makers themselves. Thus, the context of the term and the duty assigned is important to determining whether the duties assigned to "the commission" can reasonably be interpreted to mean the five decision-makers rather than the agency staff.

In the context of the duty to "consult" with an agency whose laws are inconsistent with a facility to be licensed, it would be highly impractical to the point of absurdity for the decision-makers of the agency to conduct such a task themselves. The Bagley-Keene Open Meeting Act requires that the decision-making body must meet in a noticed public meeting. (Govt. Code, §§11120 et seq.) The State Administrative Procedure Act includes

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defined in the Warren-Alquist Act, which conflates the duties of these differing entities.

[11] The courts also use the term "commission" without differentiating the agency head from the agency itself. (See, e.g., *City of Morgan Hill v. Bay Area Air Quality Management Dist.*(2004) 118, Cal.App.4th 861, 879 [refers to the "Commission's FSA," meaning the "Final Staff Assessment" prepared by the Commission staff, analyzing the environmental impacts of the project and its consistency with applicable law].)

fundamental due process requirements that would seemingly require such a meeting to occur in the presence of the permit applicant and other parties with due process rights at stake in the decision. (See, e.g., Govt. Code, §11425.10, subd. (a).) The City has suggested that such a meeting may have to occur in some grand convocation with its own City Council, doubling the administrative and logistical burden for arranging such a bizarre and unnecessary meeting.

Such consultation by the decision-making body is impractical, time-consuming, and burdensome from an administrative standpoint, is unnecessary, and offers no advantages compared to viewing the consultation task as one for agency staff. Agency staff has expertise with the project and the local agency involved, is not required to meet in formal and noticed meetings in the presence of other parties with due process claims, and is capable of assisting any agency that wants to conform its laws to the project to do so.

Indeed, during its entire existence, the Energy Commission has relied on its staff to consult with local agencies on conflicts regarding local ordinances or statutes, often beginning with informal meetings or discussions early in the proceeding during the process of soliciting interested agency comments. This approach has been both efficient and successful. The strained reading that the City would give to Section 25523, subdivision (d)(1), would require the agency to move from a practical and successful approach to one that results in delay and uncertainty, is subject to manipulation, consumes precious state resources, and is arguably unworkable, with absolutely no benefit to the decision-making process.

While review of an agency's statutory interpretations is *de novo,* an agency's interpretation of its own statutes is nevertheless entitled to "consideration and respect";

> An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, unlike quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to "make law," and which, if authorized by the enabling legislation, bind this and other courts as firmly as statutes themselves, the binding power of an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation."

(Yamaha Corp. of Am. V. State Bd. Of Equalization (1998) 19 Cal.4th 1, 7.) In the context of the Energy Commission's power plant licensing process, the Energy Commission's interpretation of Section 25523, subd. (d)(1), is reasonable and should be affirmed. The City's petition posits neither reason nor authority why it should not be accorded respect.

E. The City Fails to Present any Evidence that the Energy Commission's Override of the California Fire Code is Invalid.

The City presents a series of incomprehensible sentences directed at the Commission's override findings regarding the California Fire Code. Although the heading for this section of the Petition alleges that the Commission did not "effectively" override the Fire Marshall, the City then states in the discussion that the Commission failed to override the State Fire Code. (Petition, p. 27.) The City further states that a specific portion of the Fire Code that establishes the "requirements" of the Fire Marshall -- Section 503.2.2 of Title 24 -- should have been overridden, rather than the opinion of the Fire Marshall. In addition to creating confusion about

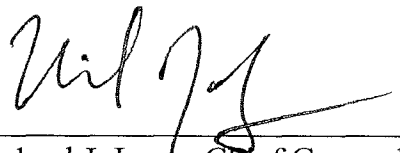
whether the City is arguing that it is the Fire Marshall, his opinion, his requirements, or the Fire Code itself that the Commission should have overridden, these statements misstate the record. The very section that the City argues should have been overridden is in fact the exact section that the Commission *did* override – Section 503.2.2. (Pets. Exh. 1, p. 9-2, 9-9, 9-11.) The City's baffling discussion fails to provide any facts or argument supporting a claim that the Commission did not comply with applicable legal requirements.

VII. CONCLUSION

For the foregoing reasons, the City's Petition should be denied.

Date: July 9, 2012

By:



Michael J. Levy, Chief Counsel
Attorney for Respondent State Energy Resources Conservation and Development Commission

CERTIFICATE OF LENGTH OF BRIEF

Pursuant to Rule 8.204 subdivision (c)(1) of the California Rules of Court, I certify that this Statement In Opposition is 11,504 words long, not counting the Table of Contents, the Table of Authorities, and this Certificate.

MICHAEL J. LEVY
Counsel for Respondent
California Energy Commission

CONFORMED
COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF CARLSBAD, Petitioners, v. CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION, et al. Respondent, and CARLSBAD ENERGY CENTER, LLC Real Party in Interest.	Case No.: S203634 California Energy Commission Docket No. 07-AFC-6

RESPONDENT CALIFORNIA ENERGY COMMISSION'S APPENDIX TO PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE

("CEC APPENDIX")

VOLUME I of III
Exhibit 2 to 7

Exempt from Filing Fees, Gov. Code § 6103

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Attorneys for Respondent California Energy Resources Conservation and Development Commission

STATE OF CALIFORNIA—THE RESOURCES AGENCY

GEORGE DEUKMEJIAN, *Governor*

CALIFORNIA COASTAL COMMISSION
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FRANCISCO, CA 94105-3973
543-8555
ng Impaired/TDD (415) 896-1825

May 23, 1990

Commissioner David L. Malcolm
625 Third Avenue
Chula Vista, CA 92010

Dear Commissioner Malcolm:

I am responding to your request at the May meeting for an explanation of the Coastal Commission's role in power plant siting. I understand that you expressed a particular interest in the Commission's role with respect to the two power plants proposed in Chula Vista, which are the subject of separate proceedings at the Energy Commission.

Background

San Diego Gas and Electric (SDG&E) has submitted a Notice of Intent (NOI) to the Energy Commission which indicates, pursuant to Public Resources Code section 25113 SDG&E's intention to file a future application for a combined cycle power plant, fueled by natural gas with a capacity of approximately 460 megawatts. The Energy Commission's NOI process will evaluate 5 sites, one of which is in Chula Vista at the existing South Bay Power Plant. SDG&E has also submitted an Application for Certification (AFC) to the Energy Commission for a second power plant project. That project is a 140 megawatt expansion of the existing South Bay Power Plant in Chula Vista.

The Coastal Commission's role with respect to both power plant proposals is limited to providing advice to the Energy Commission, because that Commission has exclusive jurisdiction over thermal power plants of 50 megawatts or greater. 1/ The Energy Commission preempts the jurisdiction of all other state and local agencies (including the Coastal Commission)

1/ There are limited exceptions to the general premise that the Energy Commission preempts the Coastal Commission's permitting jurisdiction over new thermal power plants and power plant expansions. Some exceptions are:

- power plants with a capacity of below 50 megawatts. (See Public Resources Code section 25120.)
- power plants granted a Small Power Plant Exemption by the Energy Commission, under Public Resources Code section 25541. Such an exemption may only be granted for power plant projects of between 50

APPENDIX A

when it certifies a new or expanded power plant pursuant to Public Resources Code section 25500. In relevant part, section 25500 provides:

> In accordance with the provisions of this division, the [Energy] commission shall have the exclusive power to certify all [thermal power plant] sites and related facilities in the state, whether a new site and related facility or a change or addition to an existing facility. The issuance of a certificate by the [Energy] commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.

The Coastal Act expressly recognizes the Energy Commission's exclusive jurisdiction over most power plant projects. Section 30600(a) exempts projects subject to section 25500 (which is quoted above) from the general requirement that any person who wishes to undertake a development in the coastal zone must obtain a coastal development permit. Section 30413(d) provides that the Coastal Commission shall participate in the Energy Commission's siting proceedings whenever a power plant is proposed in the coastal zone.

The Coastal Commission's Role in the NOI Process.

The Energy Commission will evaluate SDG&E's 5 proposed sites during the NOI process. It will determine whether two or more of those sites would be acceptable for future consideration in an Application for Certification proceeding.

The Coastal Commission is required to submit a report during the NOI process to the Energy Commission on the suitability of the proposed coastal zone sites. The report must address a number of subject areas, pursuant to Public Resources Code section 30413(b). Those subject areas are:

---

and 100 megawatts. (Public Resources Code section 25541; Calif Code of Regs., Title 20, section 1936.)

- transmission line development beyond the location of the "point of junction with [the] interconnected transmission system", which is the limit of the Energy Commission's certification jurisdiction over the transmission line. (Public Resources Code sections 25107, 25110, and 25500, 60 Ops. Cal. Atty. Gen. 289.).

Of the three exceptions noted, only the last is potentially applicable to the two projects proposed by SDG&E. In the event that SDG&E proposes any transmission line development beyond the point of interconnection in the coastal zone, the utility would be required to obtain a coastal development permit, unless the development constitutes repair or maintenance under Public Resources section 30610(d). (See also section 13252(a)(3) of Title 14 of the California Code of Regulations.)

(1) The compatibility of the proposed site and related facilities with the goal of protecting coastal resources.

(2) The degree to which the proposed site and related facilities would conflict with other existing or planned coastal-dependent land uses at or near the site.

(3) The potential adverse effects that the proposed site and related facilities would have on aesthetic values.

(4) The potential adverse environmental effects on fish and wildlife and their habitats.

(5) The conformance of the proposed site and related facilities with certified local coastal programs in those jurisdictions which would be affected by any such development.

(6) The degree to which the proposed site and related facilities could reasonable be modified so as to mitigate potential adverse effects on coastal resources, minimize conflict with existing or planned coastal-dependent uses at or near the site, and promote the policies of this division.

(7) Such other matters as the commission deems appropriate and necessary to carry out the provisions of this division.

Section 30413 provides that the Coastal Commission shall submit the report to the Energy Commission prior to the time that the Energy Commission completes its preliminary report on the issues presented in the NOI. (Public Resources Code section 30413(d).) The Energy Commission staff has requested that the Commission submit a report that addresses those subjects by August 6, 1990. They have indicated that the Coastal Commission may elect to submit further analysis in early to mid-1991, when the formal adjudicatory hearing process occurs. The Energy Commission will include the Coastal Commission's comments in the final report it will produce at the end of the NOI process. (Public Resources Code section 25514(b).)

The Energy Commission will consider (but will not be bound by) the Coastal Commission's recommendations in making its determination of which of the sites proposed in an NOI have greater relative merit. If the Energy Commission approves the NOI, SDG&E would not have approval to commence construction of a power plant. That approval can only be obtained through the Application for Certification (AFC) process.[2/]

2/ Regardless of what the Coastal Commission has recommended in the NOI proceeding, if the Energy Commission has approved a site in the coastal zone as one of the two (or more) sites of greater relative merit in its decision on the NOI, the Energy Commission may not accept an AFC for a project at the coastal site unless the Energy Commission determines that the approved coastal site has greater relative merit than the other approved site(s). (Public Resources Code section 25516.1.)

The Coastal Commission's Role in the AFC Process

The Coastal Commission's role with respect to the AFC for SDG&E's currently proposed 140 megawatt power plant expansion in Chula Vista would be similar to that discussed above with respect to the NOI.[3] The major difference is that the Coastal Commission is not required to submit a report to the Energy Commission. The Coastal Commission is nevertheless authorized, "at its discretion, to participate fully" in the proceeding pursuant to section 30413(e). (See also Public Resources Code section 25519(d).) The proceeding will commence soon and will be conducted using formal trial-type procedures. The Energy Commission will consider, but is not bound by the Coastal Commission's recommendations in making its determination whether to approve an AFC for the South Bay Power Plant expansion.[4] If the AFC is approved, SDG&E will have approval to construct the power plant.

Conclusion

I hope that this letter explains the Coastal Commission's role in power plant siting.

Very truly yours,

Dorothy F. Dickey

DOROTHY F. DICKEY
Deputy Chief Counsel

3/ That project does not require a separate NOI because Public Resources Code section 25540.6 exempts various types of power plant projects from the NOI process. The two exemptions that are apparently relevant to SDG&E's proposal are those for modification of an existing facility, (subsection (b)) and for a power plant that demonstrates technologies not previously built or operated on a commercial scale (subsection (e)). Because an NOI is not required to precede the AFC for the South Bay Power Plant expansion, the limitation concerning coastal sites which is discussed in footnote 2 is not applicable.

4/ Public Resources Code section 30413(b) requires that the Coastal Commission designate specific locations in the coastal zone in which siting of a thermal power plant would be objectionable. The designated locations may not include "specific locations that are presently used for such facilities and reasonable expansion thereof"; thus the site proposed by SDG&E (an existing power plant site) was not so designated. In the event that a utility proposes a project on a site that has been designated by the Coastal Commission, the Energy Commission would be prohibited from approving an AFC for that site unless the Energy Commission makes specific findings. (Public Resources Code section 25526(a).) Those findings are that the proposed power plant "is not inconsistent with the primary uses of such land and that there will be no substantial adverse environmental effects and ... the approval of any public agency having ownership or control of such land is obtained."

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Th10a

June 27, 2014

TO: Commissioners and Interested Parties

FROM: Alison Dettmer, Deputy Director – Energy, Ocean Resources, and Federal Consistency Division
Tom Luster, Senior Environmental Scientist – Energy, Ocean Resources, and Federal Consistency Division

RE: Report to Commission and possible Commission action regarding the California Energy Commission's Application for Certification (12-AFC-02) – AES Southland, LLC Huntington Beach Energy Project, reviewed pursuant to Coastal Act section 30413(d)

On July 10, 2014, Commission staff will brief the Commission on the proposed upgrade and expansion of the Huntington Beach Energy Project ("HBEP"), which is being reviewed by the California Energy Commission ("CEC"). The proposed project would replace the existing Huntington Bay Generating Station and construct a new, approximately 900-megawatt generating facility within the same site.

Pursuant to the Warren-Alquist Act, the CEC has sole permitting authority for locating or expanding power plants with a greater than 50-megawatt capacity, including those located in the coastal zone; therefore, the project does not require a coastal development permit. Nevertheless, section 30413(d) of the Coastal Act expressly authorizes the Coastal Commission to participate in the CEC's proceedings and provide findings with respect to specific measures necessary to bring the project into conformity with Coastal Act policies. Pursuant to section 25523(b) of the Warren-Alquist Act, the CEC must include those specific provisions in its final project decision unless it finds that they are infeasible or would cause greater adverse environmental impacts.

Attached for the Commission's consideration is a draft transmittal letter to the CEC and an accompanying report that sets forth recommended findings on the proposed project's conformity to relevant policies of the Coastal Act and the City of Huntington Beach's Local Coastal Program. The report also includes recommended specific provisions that, if included by the Energy Commission as conditions of its project approval, would allow the project to conform to the extent feasible to applicable Coastal Act and LCP policies. The recommended provisions, which are detailed in the attached letter and report, relate to land use, wetlands and environmentally sensitive habitat areas, site hazards, and public access.

Staff believes its recommended conditions are feasible and are necessary to ensure the proposed project will be consistent, to the extent feasible, with relevant policies of the Coastal Act and Local Coastal Program.

Should the Commission wish to forward the attached letter and report to the CEC, staff recommends the Commission adopt the following Motion and Recommendation. Passage of this motion will result in adoption of the following resolution and attached report and direction to the staff to forward the attached report to the California Energy Commission. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion

I move that the Commission adopt the attached report and direct staff to forward this report to the California Energy Commission pursuant to Coastal Act section 30413(d).

Resolution to Approve Report

The Commission hereby adopts the attached report regarding the proposed upgrade and expansion of the Huntington Beach Energy Project on grounds that the report includes the findings and conditions necessary to comply with the Commission's obligations under Coastal Act section 30413(d).

Staff recommends the Commission **approve** the Motion and Resolution.

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DRAFT

July 10. 2014

Andrew McAllister
Commissioner and Presiding Member
California Energy Commission
1516 Ninth Street
Sacramento, California 95814

RE: Coastal Commission's 30413(d) Report for the Proposed AES Southland, LLC Huntington Beach Energy Project – Application for Certification #12-AFC-02

Dear Mr. McAllister:

Attached for the California Energy Commission's ("CEC's") consideration is the Coastal Commission's report assessing the proposed Huntington Beach Energy Project ("HBEP") for conformity to the Coastal Act's Chapter 3 resource protection and use policies and the policies of the City of Huntington Beach's certified local coastal program ("LCP"). The assessment provides findings and recommended conditions that will allow the proposed project to be built and operated consistent, to the extent feasible, with those policies.

The project, proposed by AES Southland, LLC (hereafter "AES" or "the applicant"), involves demolishing the existing Huntington Beach Generating Station and replacing it with the new HBEP that would include two independently operating power blocks producing a total of up to 939 megawatts of electricity. This new facility would end the current power plant's reliance on its "once-through cooling" system that uses large volumes of seawater to cool the existing generating units.

Pursuant to the Warren-Alquist Act, the CEC has sole permitting authority for locating or modifying power plants with a greater than 50-megawatt capacity, including those located in the coastal zone. Nevertheless, section 30413(d) of the Coastal Act expressly authorizes the Coastal Commission to participate in the CEC's proceedings and provide findings with respect to specific measures to bring a power plant project located within the coastal zone into conformity with Coastal Act and LCP policies. Warren-Alquist Act section 25523(b) requires the CEC is to include the Coastal Commission's recommended specific provisions in its final project decision unless it finds that they are infeasible or would cause greater adverse environmental impacts. Staff of the two Commissions have developed a Memorandum of Agreement that describes the manner in which the two Commissions will coordinate their respective reviews and identifies the process for the CEC to consider the Coastal Commission's findings and recommended specific provisions (provided in the report's Attachment 2).

The proposed facility is also within an area that, in the 1980s, both the Coastal Commission and the CEC designated as suitable for energy facility expansion. At the time, that designation was meant to allow for reasonable expansion of existing facilities like this along the coast. With time, the state's electrical grid has developed a reliance on having some of these generating facilities located at or near these coastal locations. While we generally support the proposed HBEP being constructed at this site and recognize its role in providing grid support, we also recognize that it will be subject to several relatively severe site hazards during its expected 30-year operating life. These hazards, described in the attached report, include seismic events, floods, tsunamis, and the expected effects of sea level rise along this stretch of the coast. We therefore urge the CEC to take these hazards into consideration, not only through adopting our recommended conditions, but through implementing a planning process to start identifying less hazardous sites for future energy facility locations and expansions.

For this proposed project, the Coastal Commission has focused its Coastal Act section 30413(d) review on the project's potential adverse effects in five key issue areas: (1) land use and alternatives, (2) environmentally sensitive habitat areas ("ESHA") and wetlands, (3) hazards associated with flood, tsunami, and sea level rise, (4) geologic hazards, and (4) public access to the shoreline. As described in the attached report, the Coastal Commission recommends the CEC adopt several specific provisions in its final decision to ensure the proposed project is consistent to the maximum extent feasible with relevant Coastal Act and LCP policies. Our recommendations are summarized immediately below:

- **Land Use and Alternatives:** the entire power plant site and some of the surrounding area has been designated by both the CEC and Coastal Commission as suitable for reasonable expansion of energy facilities. The HBEP as currently proposed does not fully use the area available to it and instead proposes to use offsite areas for staging and construction parking, which may result in increased adverse effects on wetlands public access to the shoreline. We recommend the CEC evaluate whether AES can site more of its proposed expansion activities within the onsite and adjacent designated areas and whether this will result in an overall reduction of the proposed project's adverse effects on coastal resources.

- **Wetlands and Environmentally Sensitive Habitat Areas (ESHA):** the site is adjacent to the recently restored Magnolia Marsh, which provides known or potential habitat for several sensitive species. To more fully conform to Coastal Act and LCP policies, we recommend modifying several of the FSA's proposed conditions:

    - The LCP requires development be at least 100 feet, and further, if feasible from wetlands or ESHA. We recommend that **Condition BIO-7** be modified to ensure all project-related development is at least 100 feet from those areas and that **Condition GEN-2** be modified to ensure that approved project plans reflect any resulting changes in the components of the energy facility.

    - The FSA does not evaluate expected levels of groundwater pumping during project construction; however, the volumes and extent of this dewatering could affect nearby wetlands and ESHA. We recommend that **Condition GEO-1** be

modified to require AES to conduct a geotechnical investigation that identifies expected dewatering volumes and the spatial extent of drawdown effects of that dewatering. If the investigation shows that dewatering is likely to affect nearby wetlands or ESHA, we further recommend the CEC ensure AES implements necessary mitigation measures – e.g., sheet piles, slurry walls, alternative dewatering methods, etc. – that will avoid these effects, and that any structural mitigation measures are included on the final design plans required pursuant to **Condition GEN-2**.

- The project will result in relatively high noise and vibration levels in the adjacent ESHA/wetland areas that are likely to affect nearby listed sensitive bird species. **Condition BIO-9** requires that noise levels during breeding and nesting season (February 1 through August 31) not exceed 60 decibels or 8 decibels above ambient levels. We recommend this condition be modified to also limit noise levels to no greater than 65 decibels within 100 feet of any active nest site.

  Project-related pile driving is likely to exceed these standards, so we also recommend that **Condition BIO-9** be modified to allow pile driving only outside of breeding and nesting season.

- **Flood, Tsunami, and Sea Level Rise:** The HBEP is considered a "critical facility" and is meant to provide reliability to the regional electrical grid. However, the facility and project site are subject to several types of flood or tsunami events, as well as sea level rise. To ensure the HBEP meets requirements applicable to critical facilities and relevant LCP provisions, we recommend three new conditions:

  - Proposed **Condition Soil&Water8** would require AES to submit documentation that the facility is protected from the 500-year flood event, and that any changes to the facility design be included in the final project design submittals required pursuant to the FSA's **Condition GEN-2**.

  - Proposed **Condition GEO-3** would require AES to submit a Facility Hazard Emergency Response Plan, developed in coordination with local government entities and property owners, that includes measures needed to protect the facility from expected tsunami runup levels, 100-year and 500-year flood events, as well as the increase in sea level rise expected during the project life. This Plan is to also include concurrence from nearby property owners that the Plan accurately reflects expected hazards and from the City that the Plan is consistent with its hazard mitigation planning efforts. AES is to also include any structural or non-structural mitigation measures proposed to address these hazards in its final project design submittals required pursuant to **Condition GEN-2**.

  - The LCP prohibits shoreline protective devices for projects located in a tsunami runup zone. Proposed **Condition GEN-9** therefore would prohibit AES from constructing such devices.

- **Geologic Hazards:** The facility and site are subject several relatively extreme seismic hazards, including ground shaking, liquefaction, and lateral spread. The FSA's **Condition GEO-1** requires AES to conduct a site-specific geotechnical investigation, but results of that study are not yet available. We therefore recommend that **Condition GEO-1** be modified so that if the studies and analyses conducted show that mitigation measures necessary to address the site's geologic hazards would result in greater or more significant adverse effects to coastal resources than have thus far been identified, these studies and analyses be provided for additional public comment and review by the CEC.

  We also recommend a new proposed **Condition GEO-4**, which, similar to proposed **Condition GEO-3**, would require AES to provide documentation from the City that the facility's mitigation measures resulting from the above site investigations are consistent with the City's hazard mitigation plans.

- **Public Access:** The project as currently proposed would result in several adverse effects on public access to the shoreline, due primarily to its effects on traffic and nearby parking. One of its proposed construction parking locations would occupy up to 225 parking spaces used for beach parking, and we recommend that the FSA's **Condition TRANS-3** be modified to delete this parking area from the project's parking plans. We also recommend the project's traffic assessment be modified to include two nearby projects – the proposed Poseidon desalination facility and the Ascon Landfill cleanup project – both of which are expected to occur during the HBEP's construction period and that could substantially increase nearby traffic and affect public access to the shoreline. This modified assessment should be incorporated into the project's traffic plan as required pursuant to **Condition TRANS-3**.

The Coastal Commission recommends the CEC adopt the specific provisions more fully described in the attached report as part of any final approval of 12-AFC-02. The Commission has determined that these specific provisions are necessary to bring the proposed project into conformity with relevant provisions of the Coastal Act and the LCP.

Thank you for your consideration of the Coastal Commission's findings and recommendations.

Sincerely,

STEVE KINSEY
Chair
California Coastal Commission

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Coastal Commission Report
to
California Energy Commission
on
Application for Certification 12-AFC-02
– AES Huntington Beach Energy Project –

Reviewed pursuant to
Coastal Act Section 30413(d)

TABLE OF CONTENTS

ATTACHMENTS

EXHIBITS

I. FINDINGS AND RECOMMENDED SPECIFIC PROVISIONS

A. PROJECT DESCRIPTION

The Huntington Beach power plant is an existing electrical generating facility located in the City of Huntington Beach (see **Exhibit 1 – Area Map**). It is owned and operated by AES Southland, LLC (hereafter, either "the applicant" or "AES"). The power plant site covers about 60 acres in the southeast portion of the City and borders the Pacific Coast Highway, the Magnolia Marsh wetlands, and a flood control channel (see **Exhibit 2 – Site Plan**). A switchyard within the site is owned and operated by Southern California Edison.

The existing facility includes five electrical generating units, four of which are currently operational. The facility's existing generating units are cooled using a "once-through cooling" process in which AES pumps in up to several hundred million gallons per day of seawater from an open intake located about 2500 feet offshore. As the seawater is pumped through the facility, it removes excess heat from the generating units and is then discharged back into the Pacific Ocean through an outfall pipe.

Proposed Huntington Beach Energy Project ("HBEP")
In June 2012, AES submitted its Application for Certification ("AFC") to the Energy Commission. AES is proposing to upgrade and expand the facility on about 28.6 acres of its site with new equipment that would produce about 936 MW of electrical power (see **Exhibit 3 – Conceptual Aerial View**). The proposed HBEP is more fully described in the CEC's Final Staff Assessment ("FSA"), available here: http://docketpublic.energy.ca.gov/PublicDocuments/12-AFC-02/TN202405_20140602T085620_Final_Staff_Assessment.pdf

The main project components include demolition of the existing generating units, and construction of two new power blocks, each capable of generating up to about 470 megawatts. The new facility will be air-cooled and will therefore no longer rely on using seawater for cooling. Visually, the new facility will have an overall lower profile than the existing facility – for example, the existing facility includes two boiler exhaust stacks about 200 feet high, while the proposed HBEP would have a maximum height of about 120 feet. AES has proposed a visual enhancement and screening plan that includes three surfboard sculptures leaning against the HBEP and a mesh screen around part of the facility that resembles a wave (see **Exhibits 4a and 4b – Proposed Visual Amenities**). In April 2014, the City adopted a resolution supporting these proposed visual enhancements.

AES proposes to construct the HBEP in stages by first demolishing some of the generating units to provide a footprint for one of the new power blocks, then demolishing some of the remaining units to allow for construction of the second power block, and then completing demolition of the existing generating units and support structures. During the construction period, AES proposes to locate its construction laydown area on about six acres of this site, along with about 16 acres of its Alamitos Generating Station, located about 15 miles north in the City of Long Beach. The CEC's review anticipates an expected construction period of about eight years and a power plant operating life of 30 years, which would extend to between 2050 and 2055.

B. REGULATORY FRAMEWORK AND STANDARD OF REVIEW

Pursuant to the Warren-Alquist Act, the CEC has exclusive siting authority over thermal electric power plants of 50 megawatts or greater capacity proposed to be built in California. According to section 25500 of the Warren-Alquist Act, "The issuance of a certificate by the [Energy] commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law." Section 25523(a) of the Warren-Alquist Act additionally requires the CEC to assess the manner in which the proposed facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety. Moreover, section 25523(d)(1) of that Act requires that the CEC make findings regarding the conformity of the proposed project with all applicable laws, including federal laws, such as the Coastal Zone Management Act.[1]

The CEC evaluates and makes its determination regarding proposed facilities through its Application for Certification (AFC) process. When the CEC is considering licensing a facility pursuant to its AFC process, it is the lead state agency for purposes of the California Environmental Quality Act (CEQA), and the FSA includes analyses similar to those normally provided in an Environmental Impact Report (EIR). The FSA provides the CEC staff analysis of the proposed project, examines engineering, environmental, public health, and safety aspects of the facility, and includes proposed conditions of certification, which are similar to mitigation measures identified in an EIR.

While the CEC has exclusive jurisdiction over siting proposed power plants as described above, both the Coastal Act and the Warren-Alquist Act provide a role for the Coastal Commission to play in the CEC's review of power plants proposed to be located in the coastal zone. Both Acts include mechanisms authorizing the Coastal Commission to evaluate whether the proposal conforms to Coastal Act policies and to inform the CEC of the results of this evaluation. Section 30413(d) of the Coastal Act requires the Coastal Commission to 1) "participate in proceedings" that the CEC undertakes pursuant to its siting authority "with respect to any thermal powerplant…to be located…within the coastal zone," and 2) submit to the CEC a report (hereinafter, the "30413(d) report") on the proposed project's conformity with the Coastal Act's resource protection and use policies, and the policies and implementing ordinances of the certified local coastal program ("LCP") (in this case, the certified LCP of the City of Huntington Beach). Additionally, Warren-Alquist Act Section 25523(b) requires the CEC to include in its decision on the AFC any "specific provisions" provided by the Coastal Commission in its 30413(d) report to bring the proposed project into conformity with the policies of the Coastal Act. That section also establishes that the CEC may omit the specific provisions of the Coastal Commission's report only if the CEC finds that adopting the provisions would result in greater adverse impact on the environment or that such provisions would not be feasible. Staff of the two Commissions have prepared a Memorandum of Agreement that describes the manner in

[1] The CEC does not review or issue NPDES permits, and the power plant operator must still obtain those permits from the State or Regional Water Quality Control Boards, as the federal Environmental Protection Agency delegated that authority to just those Boards.

which the two Commissions will coordinate their respective reviews and identifies the process for the CEC to consider the Coastal Commission's findings and recommended specific provisions (see **Attachment 2 – Memorandum of Agreement**).

Coastal Act section 30413(d) directs that the Coastal Commission's report consider and make findings regarding the following:

> *(1) The compatibility of the proposed site and related facilities with the goal of protecting coastal resources.*
>
> *(2) The degree to which the proposed site and related facilities would conflict with other existing or planned coastal-dependent land uses at or near the site.*
>
> *(3) The potential adverse effects that the proposed site and related facilities would have on aesthetic values.*
>
> *(4) The potential adverse environmental effects on fish and wildlife and their habitats.*
>
> *(5) The conformance of the proposed site and related facilities with certified local coastal programs in those jurisdictions, which would be affected by any such development.*
>
> *(6) The degree to which the proposed site and related facilities could reasonably be modified so as to mitigate potential adverse effects on coastal resources, minimize conflict with existing or planned coastal-dependent uses at or near the site, and promote the policies of this division.*
>
> *(7) Such other matters as the commission deems appropriate and necessary to carry out this division.*

This report is the Coastal Commission's analysis of the proposed project's conformity with the Chapter 3 policies of the Coastal Act and the certified LCP. For this proposed project, the Coastal Commission has focused on the following issue areas: (1) land use, (2) wetlands and environmentally sensitive habitat areas (ESHA), (3) flood, tsunami, and sea level rise, (4) geologic hazards, and (5) public access and recreation. The Coastal Commission's analysis relies largely on the information contained in the CEC staff's Final Staff Assessment ("FSA"), the evidentiary record of this AFC proceeding that has been compiled thus far, and on information identified in the Substantive File Documents described in Attachment A to this report.

C. LAND USE AND ALTERNATIVES

AES proposes to construct the HBEP on part of its existing power plant site. As noted in the FSA's Land Use Section (page 4.5-7), the City's LCP and Land Use Element designate the site as "Public," with allowable uses including public utilities and infrastructure. The site is also within the City's "Subarea 4G – Edison Plant" designation, which allows utility uses and wetland conservation. The FSA's Alternatives Section (at pages 6-7 and 6-8) further identifies the site and adjacent areas as being designated by both the Energy Commission and Coastal Commission as suitable for energy facility expansion.

That designation results from studies and mapping conducted by the two Commissions to identify areas within the state's coastal zone that were unsuitable for locating or expanding power plants due to the presence of sensitive coastal resources.[2] Those studies and mapping effort also identified areas that were suitable for reasonable expansion of existing power plants. For this Huntington Beach site, the identified expansion area includes the entirety of the power plant site as well as the adjacent Plains America Tank Farm.

Despite this designation, AES is currently proposing to use only a portion of the area designated for the HBEP's expansion. Of the approximately 58 acres of the AES power plant site, all of which is within the designated area, the proposed expansion would use only 28.6 acres. Approximately 10 acres are occupied by the existing Southern California Edison substation, which will remain, but there is at least one on-site area, along with the above-mentioned Plains America Tank Farm area that are within the designated expansion area, that appear to be at least partially available for the proposed project and that, if used, could help reduce project-related adverse impacts:

- The AES site includes an 11-acre former tank farm area. AES stated in its AFC application that it intends to lease this area to Poseidon Water for construction of a desalination facility; however, it is unclear when this might occur, and it appears that at least part of this site may be available for at least short-term use during the approximately eight years of planned project construction.

  Part of this tank farm site consisted of wetlands that AES removed without benefit of a coastal development permit, which is the subject of a Coastal Commission enforcement proceeding.[3] Commission staff estimated that the wetlands covered about 3.5 acres of the site; however, it appears that some of the remainder of this site could be used for the power plant expansion.

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[2] See Coastal Commission, *Designation of Coastal Zone Areas Where Construction of an Electric Power Plant Would Prevent Achievement of the Objectives of the California Coastal Act of 1976*, adopted September 1978, revised 1984, re-adopted December 1985, San Francisco, CA, and Energy Commission, *Opportunities to Expand Coastal Power Plants in California*, Staff Report P700-80-001, June 1980, Sacramento, CA.

[3] See Commission staff's August 3, 2012, Data Adequacy letter for 12-AFC-02 and Commission staff report for Poseidon Water – Appeal #A-5-HNB-10-225 and Application No.: E-06-007, November 2013, available at: http://documents.coastal.ca.gov/reports/2013/11/W19a-s-11-2013.pdf

- Across the flood channel adjacent to the AES site is the Plains America Tank Farm, an approximately 32-acre site that is within the area designated as suitable for power plant expansion. AES is proposing to use about 1.9 acres of that site for construction parking, but similar to the AES tank farm site above, much more of the Plains America site may be available for use for the proposed expansion project, which would likely reduce expected project impacts.

Instead of fully using these areas designated for expansion, AES is proposing to locate several project components offsite and outside the designated area. These include locating three of its five proposed construction parking sites outside the area and locating about 16 acres of project staging at AES's Alamitos Energy Facility about 15 miles north of the expansion site. This approach frustrates the intent of designating the facility site and the surrounding area for consolidation and expansion of energy facilities. It also increases the proposed project's adverse impacts on public access to the shoreline by increasing project-related traffic along 15 miles of coastal highway and using up to 225 parking spaces the City established to provide beach access (see additional discussion in this report's Section I.G – Public Access). This approach will also result in increased adverse effects and potential spills to wetlands adjacent to the Alamitos site and the Pacific Coast Highway route, which include Los Cerritos, the Seal Beach National Wildlife Refuge, Bolsa Chica, and the Huntington Beach wetland complex.

Project-related adverse effects could be avoided or substantially reduced if AES was able to use more of the adjacent areas designated for energy facility expansion. To more fully use the two sites mentioned above, AES may have to remove all or some of the several decommissioned fuel oil storage tanks and associated pipelines; however, the cost and effort of removing this equipment is well within the scope of the project and is similar to work done as part of other AFC proceedings.

Coastal Commission Recommended Specific Provisions
Based on the information available in the AFC record, use of all or part of these areas appears to provide a feasible method to potentially reduce project-related impacts. The Commission therefore recommends the following Specific Provisions to allow Coastal Act and LCP conformity:

- First, CEC staff should determine the availability of these sites for the proposed project by reviewing documentation showing the legal status of the AES and Plains America Tank Farm sites. If all or part of the sites are available for use during this project, CEC staff should prepare a modified staff assessment that identifies whether use of one or both sites will reduce the project's overall expected adverse impacts. The modified assessment should evaluate whether using all or part of the sites for construction staging or parking would reduce the project's expected adverse impacts, including reducing adverse effects on traffic and public access to the shoreline along the 15 miles between HBEP and Alamitos. The assessment should also consider whether use of all or part of either site may be limited due to land use or other conflicts with relevant LCP policies as described below in Section I.D – Wetlands and Environmentally Sensitive Habitat Areas (ESHA).

- Next, should this modified assessment show that all or part of the two sites are available and their use would reduce project-related impacts, we recommend the CEC provide additional opportunity for public review and comment on the modified assessment and possible new or modified conditions.

Conclusion
The Commission finds that the CEC's implementation of the above-recommended Specific Provisions would allow the proposed project to be consistent to the extent feasible with relevant policies of the Coastal Act and LCP.

D. WETLANDS AND ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHA)

Coastal Act Section 30231 states:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Coastal Act Section 30240 states:

> *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
> *(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

LCP Policy C 6.1.4 states:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain organisms and for the protection of human health shall be maintained and, where feasible, restored.*

LCP Policy C 6.1.20 states:

> *Limit diking dredging, and filling of coastal waters, wetlands, and estuaries to the specific activities outlined in Policy 30233 and 30607.1 of the Coastal Act and to those activities required for the restoration, maintenance, and/or repair of the Municipal Pier and marina docks. Conduct any diking dredging and filling activities in a manner consistent with Section 30233 and 30607.1 of the Coastal Act.*

LCP Policy C 7.1.2 states, in relevant part:

> *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values…*

LCP Policy C 7.1.3 states:

> *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

LCP Policy C 7.1.4 states:

> *Require that new development contiguous to wetlands or environmentally sensitive habitat areas include buffer zones. Buffer zones shall be a minimum of one hundred feet setback from the landward edge of the wetland, with the exception of the following:*
>
> *A lesser buffer may be permitted if existing development or site configuration precludes a 100 feet buffer, or conversely, a greater buffer zone may be required if substantial development or significantly increased human impacts are anticipated. In either case, the following factors shall be considered when determining whether a lesser or wider buffer zone is warranted. Reduced buffer zone areas shall be reviewed by the Department of Fish and Game prior to implementation.*
>
> *a) Biological significance of adjacent lands: The buffer should be sufficiently wide to protect the functional relationship between the wetland and adjacent upland.*
> *b) Sensitivity of species to disturbance: The buffer should be sufficiently wide to ensure that the most sensitive species will not be disturbed significantly by permitted development, based on habitat requirements of both resident and migratory species and the short and long term adaptability of various species to human disturbance.*
> *c) Susceptibility of parcel to erosion: The buffer should be sufficiently wide to allow for interception of any additional material eroded as a result of the proposed development based on soil and vegetative characteristics, slope and runoff characteristics, and impervious surface coverage.*
> *d) Use existing cultural features to locate buffer zones: The buffer zones should be contiguous with the environmentally sensitive habitat areas and make use of existing features such as roads, dikes, irrigation canals, and flood control channels where feasible.*

LCP Policy C 7.1.5 states, in relevant part:

> *Notify County, State and Federal agencies having regulatory authority in wetlands and other environmentally sensitive habitats when development projects in and adjacent to such areas are submitted to the City.*

LCP Policy C 7.2.7 states:

> *Any areas that constituted wetlands or ESHA that have been removed, altered, filled or degraded as the result of activities carried out without compliance with Coastal Act requirements shall be protected as required by the policies in this Land Use Plan.*

LCP Policy I-C 8(c) states, in relevant part:

> *For proposed projects within the Coastal Zone, utilize the development review/environmental review process to accomplish the following:*
>
> 1. *Examine each development's potential to affect habitat. To the maximum extent feasible project impacts on habitat shall be minimized through avoidance. In the event mitigation is necessary, mitigation shall be provided on-site if feasible or within the general vicinity if on-site mitigation is not feasible. Determine the necessity for Mitigation Agreements or other coordination with the California Department of Fish and Game, California Coastal Commission and/or federal agencies to obtain necessary permits for developments that appear to affect habitat.*
> 2. *Permit resource dependent and incidental public service related land uses within wetlands and environmentally sensitive habitat areas only if consistent with the following Coastal Act policies: Section 30233 and Section 30240.*
> 3. *Require improving the natural biological value, integrity and function of coastal wetlands and dunes through native vegetation restoration, control of alien plants and animal,* [sic] *landscape buffering and development setbacks.*
> 4. *…*
> 5. *Review any development proposed for non-wetland areas to ensure that appropriate setbacks and buffers are maintained between development and environmentally sensitive areas to protect habitat quality…*

The findings below separately assess two types of project-related impacts – first, direct wetland impacts within the potential project footprint, and then indirect impacts to adjacent wetlands and ESHA that are likely to occur during facility construction and operations. Both the Coastal Act and the City's LCP include policies requiring the protection of biological productivity in wetlands and environmentally sensitive habitat areas. The policies require that development adjacent to environmentally sensitive areas be sited and designed to prevent impacts which would significantly degrade those areas. The LCP requires buffer zones be established around wetlands to protect them from proposed development.

Direct Wetland Impacts

The FSA states that there are no wetlands within the proposed project footprint, which appears to accurately reflect current conditions within the proposed site. However, as noted above in this report's Section I.C – Land Use and Alternatives, the Commission recommends that CEC staff evaluate whether other areas within or adjacent to the power plant site are available for the proposed project and whether the use of these areas might reduce project-related impacts to coastal resources. These areas include the 11-acre AES tank farm within the power plant site and the adjacent 32-acre Plains America Tank Farm, of which AES plans to use approximately 1.9 acres.

Regarding the AES tank farm area, we understand that it is currently devoid of wetland characteristics; however, as noted above, AES's removal of wetland vegetation in that area several years ago is the subject of a Commission enforcement action. Pursuant to LCP Policy C7.2.7, the areas formerly containing wetlands remain subject to the LCP's wetland and ESHA protection policies.[4] The adjacent Plains America Tank Farm area appears to have similar wetland characteristics within part of its 32 acres, and may have similar limitations on its use. As stated in the previous section, we recommend that the CEC staff evaluation assess the effect of these policies on the potential use of these sites, and that the evaluation be provided for additional public review and comment as part of this AFC proceeding.

Indirect Impacts to Wetlands and ESHA

Several components of the project as currently proposed are inconsistent with LCP Policy C7.1.4, which requires new development to be located at least 100 feet from wetlands.[5] Additionally, project construction and operations are expected to cause adverse indirect impacts to nearby wetlands and ESHA due to dewatering, noise, and vibration. These impacts are described below, along with recommended conditions to ensure the project avoids and minimizes these impacts to the extent feasible, as required by relevant LCP and Coastal Act provisions.

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[4] For a more complete description of site characteristics and Commission jurisdiction, see the November 2013 Coastal Commission staff report, available here: http://documents.coastal.ca.gov/reports/2013/11/W19a-s-11-2013.pdf

[5] "Development," as defined in Section 30106 of the Coastal Act and in the LCP, means "on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line."

Background
The HBEP site is part of an extensive area of coastal wetlands and dunes that formerly extended for several miles along this area of the coast. The project site is adjacent to the Magnolia Marsh, which provides a mix of wetlands and environmentally sensitive habitat areas (see **Exhibit 5 – Huntington Beach Wetlands Conservancy Site Plan**). Similar habitat extends onto the HBEP site adjacent to the flood control channel.

Much of this habitat complex is being restored and protected by the Huntington Beach Wetlands Conservancy, including restoration of the adjacent Magnolia Marsh starting in 2009. One of the main goals of the Conservancy's restoration plan is to "maximize salt marsh/tidal habitats with no net harm to threatened and endangered (T&E) species existing on site such as the Belding's Savannah Sparrow." The Magnolia Marsh and other nearby wetland areas provide known or potential habitat for at least several dozen listed sensitive species.[6] The habitat types within and immediately adjacent to the project site include coastal scrub and salt panne, which is noted as particularly important to the endangered Belding's Savannah Sparrow (see **Exhibit 6 – Huntington Beach Wetlands: Vegetation Communities** and **Exhibit 7 – Sensitive Species Habitats**). Although the Magnolia Marsh area has been identified as being subject to significant negative stressors due to nearby industrial uses,[7] a 2010 survey identified 26 separate sparrow territories in the Magnolia Marsh, which represents about 25% of the territories in the full Huntington Beach wetland complex.[8] The Magnolia Marsh restoration project is expected to provide suitable breeding habitat for the endangered Light-footed Clapper Rail, which also breed nearby.[9]

Required Buffer
LCP Policy C7.1.4 requires a minimum 100-foot buffer between new development and ESHA/wetland areas. The proposed project layout includes locating structures and development activities within 100 feet of nearby ESHA and wetlands, which results in non-conformity to this LCP policy. The proximity of these activities and the habitat areas also exacerbates some of the other indirect adverse impacts described below, including potential dewatering of wetland habitat during project construction, and adverse effects of noise, vibration, and project lighting on listed sensitive species known or potentially occurring in those areas during both construction and operations. The FSA includes proposed **Condition BIO-7**, which identifies a number of measures that, if implemented, will reduce the project's indirect impacts on nearby wetlands (see FSA, pp. 4.2-62 to 4.2-65).

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[6] From Moffatt & Nichol, *Huntington Beach Wetlands: Habitats and Sensitive Species*, August, 2004. See also California Energy Commission, *Final Staff Assessment for 12-AFC-02 – Biological Resources, Table 2*, May 2014.

[7] See Solek, Christopher, and Eric Stein, *An Evaluation of Wetland Restoration Projects in Southern California using the California Rapid Assessment Model (CRAM): A Final Report to the Southern California Wetlands Recovery Project*, Technical Report 659, February 2012.

[8] See Zembal, Richard, and Susan Hoffman, *A Survey of the Belding's Savannah Sparrow (Passerculus sandwichensis beldingi) in California – Final Report to California Department of Fish and Game, South Coast Region*, September 2010.

[9] See September 12, 2012 USFWS comment letter regarding potential adverse effects of proposed AES power plant replacement, California Energy Commission Application For Certification No. 12-AFC-02.

Coastal Commission Recommended Specific Provision

- To ensure the project conforms to the extent feasible with LCP Policy C7.1.4, we recommend the Energy Commission modify **Condition BIO-7** to require that AES move all project-related development to be at least 100 feet, and further, if feasible, from nearby areas that meet the Coastal Commission's definition of wetlands or ESHA. We also recommend that the project plans required pursuant to **Condition GEN-2** reflect this change in the project layout.

  This recommended modification would also require AES to submit a revised project plan showing that all project-related development is at least 100 feet from those areas. From the proposed project layout presented in the AFC, it appears this would require moving a few structures and development activities no more than a few dozen feet further inward on the site, which appears feasible based on the amount of space available within the project site.

Avoiding Effects of Construction Dewatering on Adjacent ESHA/Wetland Areas
Groundwater levels beneath both the HBEP and the adjacent wetlands are within a few feet of the ground surface. Results from groundwater monitoring wells on the HBEP site indicate that groundwater levels fluctuate with tidal levels in the adjacent flood control channel and show that the site's groundwater is responsive to and directly connected to groundwater in nearby areas, including the adjacent wetlands. The FSA notes that excavation needed to construct project foundations will likely require dewatering and removal of liquefiable soils, though it does not identify the expected depths, amounts, or possible adverse impacts of these activities.

Analyses conducted by Commission staff for the adjacent proposed Poseidon project site, which has similar groundwater and liquefaction characteristics, show that liquefiable soils extend to a depth of about 20 feet below grade. The dewatering volumes needed to excavate those soils to construct two of that project's proposed structures were estimated at 740,000 gallons per day and 1.28 million gallons per day, respectively, which would occur over several months and total about 84 million gallons. Site geotechnical data provided by Poseidon showed that the radius of influence from its expected dewatering operations – that is, the distance within which groundwater levels would be reduced – would be up to 225 feet from the dewatering locations and would encompass parts of the adjacent ESHA/wetland areas. Based on these analyses, Commission staff recommended conditions for the proposed Poseidon project that required additional geotechnical investigations and implementation of dewatering methods that avoided potential drawdown in those habitat areas. The HBEP site's similar characteristics make it likely to have similar drawdown potential, though it is unclear from documentation provided in the AFC review where the dewatering would occur and what drawdown levels to expect.

Coastal Commission Recommended Specific Provisions
Drawdown that affects nearby ESHA/wetland areas would be inconsistent with LCP Policies 6.1.4, 7.1.2, and 7.1.3, which require that habitat values be maintained and protected. To ensure project dewatering is done in a manner consistent with these policies, the Commission recommends the CEC modify FSA **Condition GEO-1** to

require AES to conduct a geotechnical investigation that identifies expected dewatering volumes and the spatial extent of drawdown expected from that dewatering. If the investigation shows potential drawdown effects to nearby ESHA/wetland areas, the Condition would also require AES to identify and implement methods to avoid those effects, such as installing sheet piles, slurry walls, or other similar barriers, or conduct alternative dewatering methods that would avoid drawing down groundwater in these sensitive areas. The Commission also recommends that these structural mitigation methods be included on any relevant final design plans required pursuant to FSA **Condition GEN-2**. These modifications provide a feasible method to avoid potential adverse dewatering impacts to adjacent habitat areas.

Reducing Effects of Project Noise and Vibration on Adjacent ESHA/Wetland Areas
The FSA (see page 4.2-34, Biological Resources, Table 3) identifies expected construction noise levels at several locations within nearby ESHA/wetland areas. At the closest locations within the adjacent Magnolia Marsh, noise levels from project construction are expected to range from the mid-60 dBA level to greater than 70 dBA. It notes that the loudest of the construction activities would be pile driving, with levels of 104 dBA at 50 feet, 86 dBA at 375 feet, and 73-78 dBA at more than 1000 feet.[10]

The FSA notes that these noise levels during project construction could discourage sensitive species from using nearby habitat areas and adversely affect their breeding or nesting behavior, and that chronic exposure to excessive noise has been demonstrated to adversely affect foraging behavior, reproductive success, population density, and community structure. Although avian species may be more sensitive to noise during breeding and nesting season, several types of "take" or harm identified above could occur any time of year due to the relatively high noise levels expected from both project construction and operation.

Commission staff contacted staff of the California Department of Fish and Wildlife (CDFW) regarding guidance on acceptable noise levels and mitigation measures for construction projects near habitat areas used by sensitive avian species.[11] Both CDFW and the U.S. Fish and Wildlife Service have developed and implemented recommended measures on a number of such projects, and the agencies' work with CalTrans has resulted in a more detailed set of thresholds than the above-referenced "typical noise threshold," for use in identifying potential "take" or harm to sensitive species.[12] These thresholds range from "hearing damage" to "masking," which is a level preventing or reducing communication among individuals, and can result from proximity to construction equipment like that being used for this project.

[10] dBA is a measure of the relative loudness of sounds through the air, in decibels. Decibels describe the intensity of sound, and are logarithmic – for example a 60 dBA sound is perceived as twice as loud as a 50 dBA sound. Typical sound levels include 30-35 dBA in quiet, rural areas, 70-75 dBA for freeways from about 50 feet away, and 100 dBA for a jet taking off from 1000 feet away.

[11] Commission staff personal communication with CDFW staff, September 19 and October 18, 2013.

[12] See, for example, Dooling, Robert, and Arthur Popper, *The Effects of Highway Noise on Birds*, prepared for California Department of Transportation, September 2007.

The conclusions and recommendations of CDFW and USFWS essentially identify potential harm or "take" when noise levels are above ambient and greater than about 60 dBA. These sound levels are considered harmful to avian species and could result in "take" of special status species that use these ESHA/wetland areas, such as Belding's Savannah Sparrow, California Least Tern, and Light-footed Clapper Rail. Mitigation measures employed by both CDFW and USFWS generally require that applicants conduct monitoring to ensure sound levels remain below thresholds known to result in take and conduct nesting surveys and ongoing monitoring to identify and avoid potential adverse effects to nesting birds. The USFWS has recommended several mitigation measures be implemented for the project, including considering which will generate construction-related noise at levels similar to Poseidon's project, including considering the entire wetlands area adjacent to that project a sensitive receptor and that the project include design features that maintain noise levels at or below ambient conditions.[13]

CDFW has also identified several bird species as being particularly sensitive to vibration, including the Light-footed Clapper Rail, and CDFW specifically prohibits pile driving during their nesting season due to its relatively high levels of both noise and vibration.[14]
While the FSA describes the expected decibel levels from pile driving, it does not identify the expected increase in groundborne noise and vibration levels (VdB) that would occur in the ESHA/wetland areas during project operations, particularly during pile driving.[15]
To reduce noise effects on nearby avian species, the FSA's proposed **Condition BIO-9** would require AES to implement a Noise Monitoring Plan during breeding and nesting season (February 1 to August 31 each year). The Plan would require continuous noise monitoring at three specified locations and would require noise levels not exceed 8 dBA above ambient levels or 60 dBA, whichever is greater. It would also require that monitoring devices be reviewed daily during any construction occurring within 400 feet of the project's fenceline with the Magnolia Marsh areas and during any pile-driving activities. If construction noise exceeds these levels, AES would be required to implement noise-reduction measures, such as installing temporary sound walls or other similar barriers, moving noise-generating activities further from the ESHA/wetland areas, and avoiding pile driving or confining pile driving to project areas furthest from the Marsh areas.

Coastal Commission Recommended Specific Provisions

We generally concur with the FSA's proposed approach to avoiding and reducing noise-related effects in the nearby ESHA/wetland areas. However, we recommend two modifications to **Condition BIO-9** to ensure consistency with LCP provisions requiring protection of these habitat areas and to be consistent with previous City and Coastal Commission determinations regarding noise impacts on wildlife.

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[13] See September 10, 2012 letter from USFWS to California Energy Commission regarding Application for Certification 12-AFC-02.

[14] Commission staff personal communication with CDFW staff, October 18, 2013.

[15] Groundborne noise and vibration is measured using "VdB," or vibration decibel levels, to distinguish it from airborne sound. Very low VdB levels can be imperceptible, but levels of around 100 VdB and higher can cause structural damage.

- **Recommended modified noise threshold:** First, we recommend the **Condition BIO-9** allowable noise threshold be modified as follows:

  "The project owner shall prepare and implement a Wildlife Noise Monitoring Plan throughout construction and demolition activities taking place during the bird breeding season (February 1 to August 31). Sound levels in Upper Magnolia and Magnolia marshes shall not exceed 8 dBA above ambient levels or 60 dBA (hourly average Leq), whichever is greater. **In addition, sound levels within the marshes and within 100 feet of active nests (as identified during the nesting surveys required pursuant to Condition BIO-8) shall not exceed 65 dBA.**"

This would be consistent with the City's approach in other nearby projects where the City has cited the 60 dBA threshold as causing adverse impacts to avian species and where it has prohibited noise- and disturbance-generating construction activities adjacent to the Magnolia Marsh during the Belding's Savannah Sparrow breeding season (see, for example, City of Huntington Beach CDPs #2006-005 and #PW-08-003, both for nearby construction projects). It would also be consistent with conditions of the Commission's recent approval of a bridge construction project in the nearby Bolsa Chica Wetlands requiring that noise levels not exceed 65 dBA within 100 feet of any active nests (see the Commission's May 2013 approval of CDP 5-12-191). This recommended condition appears feasible, given that it has been implemented in similar construction projects in and near nearby ESHA/wetland areas.

- **Recommended prohibition on pile driving during nesting season:** Regarding vibration effects, we recommend that **Condition BIO-9** be modified to require AES schedule and conduct all pile driving activities outside the February 1 through August 31 breeding and nesting season. **Condition BIO-9** currently lists pile driving avoidance as one of several feasible noise reduction techniques that AES could implement if its activities exceed the noise threshold; however, as noted above, the FSA already anticipates that expected noise levels will exceed that threshold. Additionally, pile driving is expected to cause substantial vibration levels (VdB), in the nearby marsh areas, though the FSA does not identify those expected levels. Given the expected threshold exceedance and the additional unquantified but likely significant vibration-related effects, this modification would further reduce expected adverse project-related effects on nearby ESHA and wetland areas.

Conclusion

The Commission finds that the CEC's implementation of the above-recommended Specific Provisions would allow the proposed project to be consistent to the extent feasible with relevant policies of the Coastal Act and LCP.

E. FLOOD, TSUNAMI, AND SEA LEVEL RISE HAZARDS

Coastal Act Section 30253 states, in relevant part:

> *New development shall do all of the following:*
> *(a)Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
> *(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

LCP Policy I-C.20, Environmental Hazards Element, states:

> *Enforce and implement the policies and programs of the Environmental Hazards Element of the General Plan to the extent that these programs and policies are not inconsistent with the City's Local Coastal Program.*

The relevant and applicable policies and programs of the above-cited Environmental Hazards Element are listed below. [Figures in parentheses at the end of each Environmental Hazards Policy refer to the Implementation Program applicable to each Policy.]

> Environmental Hazards Policy 5.1.1 states: *Identify tsunami and seiche susceptible areas, and require that specific measures be taken by the developer, builder, or property owner, during major redevelopment or initial construction, to prevent or reduce damage from these hazards and the risks upon human safety (see Figure EH-8). (I-EH 1 and I-EH 4)*
>
> Environmental Hazards Program I-EH 4, Development Review or Environmental Review Process, states: *During development review (site plan, tract map, etc.) and/or environmental review, require:*
>
> *a. building structures proposed in liquefaction, unstable soil/slope conditions, flood prone areas, high water tables, peat or other geologic hazards prone areas to determine potential problems and to require mitigation measures;*
> *b. a potential seismic/geologic damage assessment to be conducted for essential public utilities (gas, water, electricity, communications, sewer) and require that appropriate mitigation measures be incorporated;*
> *c. critical or sensitive facilities and uses to be located in areas where utility services and continuous road access can be maintained in the event of an earthquake;*
> …
> *g. that proposed critical, essential, and high-occupancy facilities be subject to seismic review, including detailed site investigations for faulting, liquefaction, ground motion characteristics, and slope stability, and application of the most current professional standards for seismic design;*
> *h. that proposed projects located in the tsunami hazard areas (Figure EH-9):*
> - *are designed to minimize beach/bluff erosion and the need for sand replenishment along city beaches; and*

- *consider design options which reduce the potential for damage to private property and threats to public safety, i.e., raised foundations, ground floor parking with upper level uses.*

LCP Coastal Element Hazards Section C10.1.19 states:

> *Identify tsunami and seiche susceptible areas (Figure C-30), and require that specific measures be taken by the developer, builder or property owner during major redevelopment or initial construction, to prevent or reduce damage from these hazards and the risks upon human safety. Development permitted in tsunami and seiche susceptible areas shall be designed and sited to minimize this hazard and shall be conditioned to prohibit a shoreline protective device.*

The HBEP site is subject to adverse effects from floods, tsunamis, and sea level rise. These hazards are described separately below, along with recommended Specific Provisions to allow consistency with relevant Coastal Act and LCP policies.

Sea Level Rise

The project site is within an area of the Orange County coastline that has been singled out as being particularly susceptible to sea level rise. It has a wide range of critical infrastructure, including the existing proposed power plant and proposed HBEP, that will be affected unless significant effort is taken to protect, replace, or remove it. A recent study found that the Orange County coastline has structures worth more than $17 billion (in 2000 dollars), including the power plant, that are vulnerable to a 4.5-foot rise in sea level, which is a level expected before the end of this century.[16] Another recent study found a more immediate danger in the area of the HBEP site where up to 5,000 nearby homes are at risk due to sea level rise by 2020.[17]

California has adopted the 2013 *State of California Sea-Level Rise Guidance Document* ("*State Guidance Document*), based on guidance from the 2012 NRC Report, *Sea Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future*.[18] These documents, considered the current best-available science on sea level rise projections, anticipate sea level rise of up to two feet by 2050 and up to 5.5 feet by 2100 along this part of the Orange County shoreline. These projections are also consistent with the Commission staff's recently published draft guidance for incorporating sea level rise hazards and projections into LCP and coastal development permit review.

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[16] Heberger, Matthew, et al., *The Impacts of Sea-Level Rise on the California Coast*, prepared by the Pacific Institute for the California Climate Change Center – California Energy Commission, California Environmental Protection Agency, Metropolitan Transportation Commission, California Department of Transportation, the California Ocean Protection Council, March 2009.

[17] See Climate Central, *Surging Seas: Sea Level Rise Analysis*, June 2013.

[18] For more information on the NRC Report, go to http://www.nap.edu/catalog.php?record_id=13389 and on the OPC Guidance, go to: http://www.opc.ca.gov/webmaster/ftp/pdf/docs/2013_SLR_Guidance_Update_FINAL1.pdf .

The *State Guidance Document* cautions that its sea level rise projections likely underestimate the amount of increase and that uncertainties about these projections increase as planning timeframes increase – i.e., they are likely more accurate for the immediate couple of decades and less so for subsequent decades. It notes that the rate of sea level rise is not expected to be linear and that it is likely to rise faster later in this century. The *State Guidance Document* recommends that state agencies during project evaluation consider the projected lifespan of the facility, its cost, and the impact or consequence of damage or loss of the facility. It also recommends that consideration be given to the project's adaptive capacity, impacts, and risk tolerance for projects with an expected timeframe beyond 2050.[19]

Importantly, and as noted in the *State Guidance Document*, the expected increase in water levels are likely to occur not just at some point several decades in the future, but also during shorter-term events in the very near future, such as storm waves, or during recurring events like El Nino. The *State Guidance Document* notes that, "[w]here feasible, consideration should be given to scenarios that combine extreme oceanographic conditions on top of the highest water levels projected to result from SLR over the expected life of a project." It also states that water levels during these large, short-term events along some parts of the coast have already exceeded sea level rise levels projected for 2030 and have reached levels projected for 2050.

The FSA evaluates the proposed project based on a 30-year operating life, which would extend until between approximately 2045 and 2055, depending on the eventual project construction schedule. This would subject the facility to hazards associated with a sea level rise of up to about two feet, which is expected by about 2050. As illustrated in **Exhibit 8 – Predicted Sea Level Rise**, a two-foot water level increase could result in the facility becoming an "island" separated from nearby inland areas during high tides, floods, storm surges, or other similar events. The increase in sea level will also alter shoreline processes, such as the rate and location of beach erosion, though the extent of these changes has not yet been determined. Additionally, the site is already subject to tidally-influenced high groundwater tables, with monitoring wells having shown groundwater at or above the existing grade.[20] Groundwater levels are expected to rise with those of sea level, with the higher groundwater table affecting the facility's foundations, and increasing its susceptibility to hazards such as liquefaction and lateral spread. The facility would also likely be subject to other secondary or indirect effects, such as salt water intrusion into foundations, changes in the flood channel hydraulics, potential increased sedimentation in the flood channel with an associated loss of flood conveyance, and others. As discussed below, although site elevations are above most expected flood and tsunami runup levels, those levels and the associated risks will increase with sea level rise. Therefore, although the project site is about one-half mile from the current shoreline, site conditions and its location make it likely that, unless mitigated, the facility will be affected by the predicted higher water levels during its operating life.

[19] See also California Emergency Management Agency, California Natural Resources Agency, and Federal Emergency Management Agency, *California Adaption Planning Guide: Planning For Adaptive Communities*, September 2012.

Flooding

The FSA describes the proposed project as having final grades of between 12 and 16 feet above sea level. It notes that the project site is within an area classified as "Zone X" by the Federal Emergency Management Agency (FEMA), a designation describing an area that is protected by levees from the 100-year flood but is still within the 500-year flood zone. The City's Environmental Hazards Chapter, completed in 1996, additionally identifies the project site as being within a City-designated Flood Zone (see FSA, Soil and Water Resources, Figure 2 – Huntington Beach Flood Zones (FEMA, 2009).

The HBEP site is within an area that has been subjected to numerous severe floods. It is adjacent to the Huntington Beach Flood Control Channel, which was built in the 1960s in response to local flooding and is managed by the Orange County Flood Control District. The District recently upgraded a section of the Flood Channel near the project site to handle projected 100-year flood events. The site is also within the Prado Dam Failure Inundation Zone (see **Exhibit 9 – Prado Dam Failure Inundation Zone**), which the City established in recognition of the potential failure of the Prado Dam, an earthen structure in the upper Santa Ana River watershed built before modern seismic-resistant designs. Failure of the dam would flood over 100,000 acres, including most of the area of Huntington Beach surrounding the proposed project, with an inundation area of up to 15 miles wide and water levels of greater than 30 feet in some areas. Maximum water levels at the HBEP site from that event are estimated to reach elevations of between 10 and 15 feet.

For structures such as the HBEP that are proposed to be located in flood-prone areas, the LCP's Environmental Hazards Program I-EH 4 requires, during development or environmental review, that potential problems in flood-prone areas be identified and mitigation measures be required. The City has also developed several planning documents to help implement the Environmental Hazards Chapter of its LCP. These include the City's FEMA-approved Flood Management Plan, which describes the policies and actions the City is to implement to ensure its eligibility for FEMA flood insurance and other similar programs. FEMA has established that planning and siting for "critical facilities," which include police and fire stations, hospitals, and electrical facilities such as the proposed project, be based on avoiding risks from the 500-year flood event.[21] The City has also adopted the Huntington Beach/Fountain Valley Hazard Mitigation Plan, which identifies the power plant as a critical facility.[22]

The site and proposed facility are subject to three different types of flood risks. First, although the site is protected from the 100-year flood event by sheet piling on the adjacent flood control channel, those structures are not designed to resist the area's seismic forces. The site and facility could experience a 100-year flood event if those structures are damaged. Second, the project site is within the 500-year flood zone, and, as noted above, a critical facility such as the power plant is to be protected from the 500-year flood elevation and its risk assessment is to be based on that

[21] See, for example, *Design Guide for Improving Critical Facility Safety from Flooding and High Winds*, FEMA Publication 543, January 2007, as well as CalEMA criteria described at: http://hazardmitigation.calema.ca.gov/plan/local_hazard_mitigation_plan_lhmp

[22] Available at: http://hazardmitigation.calema.ca.gov/docs/lhmp/Huntington_Beach_Fountain_Valley_Cities_of_LHMP.pdf

500-year event. These events and their associated risks are reasonably foreseeable, since during the project's eight years of construction and its 30-year operating life, it would have about a 1 in 3 chance of experiencing the 100-year flood and a 1 in 14 chance of experiencing the 500-year flood event.[23] Finally, as noted above, the facility is within the Prado Dam Inundation Zone, which would result in flood elevations of between 10 and 15 feet at the HBEP site.

Commission staff used data from the adjacent flood control channel and from a hydrologic analysis of the adjacent Huntington Beach wetlands that show a 100-year flood elevation of between about 9 to 10.2 feet in a nearby portion of the flood channel.[24] Data were not available for the 500-year flood event from the City or provided in the FSA, though it is presumably higher. Adding the two feet of projected increase in sea level rise puts the 100-year flood elevation at between 12 and 13 feet, which is in the same range as expected tsunami elevations described below and somewhat lower than inundation from a Prado Dam failure.

Flooding from any of these events could cause significant adverse impacts. For example, below grade facility components could be subject to complete inundation, potentially resulting in plant outages. Additionally, debris carried by a flood could damage above-grade components of the facility, or conversely, structural debris from the facility could damage nearby structures or property. Potential and likely risks include temporary or permanent loss of electricity production to the area, damage to adjacent properties, and increased public costs to provide measures that would protect the facility from these flood events. These flood risks will increase with the expected increase in sea level rise during the project's operating life. The degree of flood protection provided at the site is already influenced by the tides – that is, flood waters are released more slowly during a high tide than during a low tide and back up into the channel and surrounding areas during a high tide – and this effect will increase with sea level rise.

Tsunami Hazards

Although the site is located about one-half mile inland from the shoreline, it is subject to significant tsunami hazards. The site sits within a Tsunami Runup Zone the City designated in 1996 that extends about a mile inland from the shoreline (see **Exhibit 10 –Tsunami Runup Zone**).[25] At the time of that designation, the City identified expected tsunami elevations of up to five feet for a 100-year event and up to 7.5 feet for a 500-year event. More recent data and updated studies show the site is subject to higher runup levels and more severe tsunami risks. The 2009 California Geological Survey *Tsunami Inundation Map* for the Huntington Beach area shows the site within a tsunami runup zone in this part of the City that extends more than two miles inland, with expected water levels within parts of that zone of up to 16 feet above mean sea

[23] The calculation used to determine these probabilities is $r = 1-(1- 1/T)^N$, with T = the return period (i.e., the 100- or 500-year event), N = the expected life of the facility (i.e., eight years construction and 30 years operation), with r equal to the probability that the event will occur at least once in N years. During a 38-year facility life, there is about a 32% probability it would experience a 100-year event and about a 7% probability it would experience a 500-year event.

[24] See Federal Emergency Management Agency, *Flood Profiles, Huntington Beach Channel (D01)*, December 15, 2009, and Moffatt & Nichol, *Hydrologic and Hydraulic Baseline Report*, prepared for Huntington Beach Wetlands Conservancy, August 18, 2004.

[25] This map is the Figure C-30 referenced in LCP Policy C 10.1.19 above.

level (see FSA Soil and Water Resources, Figure 3 – 2009 Tsunami Inundation Map for Huntington Beach).[26]

This 2009 Map is based not on 100- or 500-year probabilities, but on the maximum expected inundation an area could experience from either far-field tsunamis (i.e. those tsunamis that are generated far from Huntington Beach) and from locally generated or near-field events.[27] For each mapped area of the coast, the CGS identified expected inundation levels for every 30-meter grid within the modeled runup zone. The site's tsunami risk and its expected tsunami runup elevations are also based in part on nearby seafloor bathymetry and other characteristics offshore of Huntington Beach that create a tsunami amplification area.[28]

The City's LCP requires that proposed projects within its designated Tsunami Runup Zone be evaluated for consistency with several of the Environmental Hazards policies identified above. In addition, Coastal Element section C10.1.19 requires that development located in tsunami or seiche susceptible areas be designed to prevent or reduce damage from these events. This LCP policy also prohibits the installation of shoreline protective devices as mitigation against tsunamis or seiches.

As noted in the FSA, the CGS modeling used to develop the tsunami runup maps shows a projected runup elevation at the power plant site of approximately 11 feet above mean sea level (msl). This elevation would result from at least two events – a magnitude 7.6 earthquake on the nearby offshore Catalina fault or a magnitude 9.2 event in Alaska's Aleutian Islands. With up to two feet of sea level rise expected during the project life, the maximum expected runup elevation would increase to about 13 feet above mean sea level. Final grades of the proposed project would have elevations ranging from about 12 to 16 feet above mean sea level; however, several important facility components and foundations will be below grade. The site may also be subject to seiches running up the flood control channel, though modeling for those events is apparently not available.[29]

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[26] A more recent study suggests even greater inundation levels at or near the site. A September 2013 report, *Science Application for Risk Reduction (SAFRR) Tsunami Scenario*, published by the California Natural Resources Agency, Department of Conservation, and California Geological Survey and the United States Geological Survey and Department of Interior, describes a tsunami scenario for the California coast that would result from a 9.1 earthquake in the Aleutians. The modeled tsunami would inundate large areas of the coastline, including areas with significant economic and infrastructure importance. This study used multiple coarse- and fine-grained models to identify likely inundation depths and water velocities, which were used to determine likely levels of damage along key parts of the coast, such as the Ports of Long Beach and Los Angeles. The study did not identify specific runup elevations along the Huntington Beach shoreline, but noted that in nearby Newport Beach, tsunami elevations could reach up to about 20 feet above msl with velocities of up to about 60 feet per second (or roughly 45 miles per hour).

[27] Tsunami inundation analyses used in land use planning often refer to 100-year and 500-year events, based on FEMA's methods for floodplain mapping. For several reasons, however, determining tsunami probabilities is significantly more difficult than predicting flood events. Tsunamis occur less frequently than floods, their historic and prehistoric records are often less exact, and the events that generate them can occur over a much larger area.

[28] See Legg, Borrero, and Synolakis, *Evaluation of Tsunami Risk to Southern California Coastal Cities*, Federal Emergency Management Agency and Earthquake Engineering Research Institute, January 2003.

[29] A seiche is a wave generated by the same types of events that cause a tsunami, but that occurs within an enclosed water body such as a bay, reservoir, or, in this case, a flood control channel.

As evidenced by recent tsunami events worldwide and in California, an 11- to 13-foot tsunami can cause significant adverse impacts. At this site, it would result in partial inundation and possible damage to below-grade facility components. It is also likely that damaged structural components could contribute structural debris to the tsunami and worsen the damage at the facility and at nearby structures and properties. Smaller tsunamis can also prove damaging – for example, the Orange County Multi-Hazard Mitigation Plan describes a one- to three-foot tsunami as being highly destructive[30] – and at this site, a smaller tsunami could create the same "island" effect as described in the flood hazard discussion above.

Tsunami mitigation

Other than locating proposed facilities outside of tsunami runup areas, the simplest approach to preventing or reducing tsunami-related hazards is to elevate structures above expected runup levels. However, elevating the facility's proposed structures would require significant amounts of fill and would likely redirect tsunami energy away from the facility and towards other nearby structures and properties, including the adjacent flood control levees. Additional fill could also be used to create berms around the structures while keeping the structures at the same proposed elevation; however, this approach would similarly redirect tsunami energy towards other nearby properties.

Either of these approaches would likely increase tsunami-related damage and safety risks and would therefore not conform to the LCP's Environmental Hazards Policy 5.1.1. Additional fill would also involve increased truck traffic, with the associated adverse effects on public access and air quality. The additional fill could also affect the groundwater regime beneath the project site and in the adjacent wetlands and flood control channel.

Other possible mitigation approaches include incorporating tsunami-resistant design features into structures that are subject to inundation. These features include enclosing below-grade structures within reinforced concrete walls to resist tsunami forces, protecting tanks against uplift due to tsunami buoyant forces, and others.[31] Another standard approach for facilities in tsunami-prone areas is to develop and implement a safety plan that includes on-site signage, training for facility personnel to know how to recognize tsunami watches and warnings that may be issued, and identifying an evacuation site.

Coastal Commission Recommended Specific Provisions to Avoid and Reduce Flood- and Tsunami-related Effects

To address these hazards and their associated risks to the proposed facility, and to allow consistency with relevant provisions of the Coastal Act and LCP, the Commission recommends the CEC include the new and modified conditions shown below as part of any approval of the AFC. Proposed **Condition Soil&Water8** will ensure that the

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[30] See the Municipal Water District of Orange County, *Orange County Regional Water and Wastewater Multi-Hazard Mitigation Plan*, February 2012.

[31] See, for example, the 2008 Federal Emergency Management Agency's (FEMA's) *Guidelines for Design of Structures for Vertical Evacuation from Tsunamis*.

proposed critical facility is sited to be protected from both the current and future predicted 500-year flood elevation. Proposed **Condition GEO-3** is meant to allow consistency with the health, public safety, and damage prevention components of Environmental Hazard Policy EH 5.1.1 and Environmental Hazards Program I-EH 4 by requiring AES to submit a Facility Hazard Emergency Response Plan prepared in coordination with other nearby property owners and government entities that identifies the hazards to the facility and to nearby structures owned by others, and that identifies measures that will be implemented to avoid or reduce these hazards. This recommended Condition also requires AES to provide documentation from these other nearby landowners and government entities that the plan accurately reflects expected hazards. It further requires AES provide documentation from the City that the proposed project is consistent with the goals and objectives of the City's Flood Management Plan, which is meant to help the City implement its LCP's Environmental Hazards Chapter. To address specific tsunami-related LCP policies, proposed **Condition GEO-3** also ensures the facility includes adequate life safety measures, as required by LCP Policy I-EH 4(g). **Condition GEO-3** also requires AES to submit for CPM approval a project design approved by a structural engineer identifying structural elements that allow project personnel to immediately remove themselves to one or more locations that will not be subject to tsunami inundation or that will be safe from inundation. Finally, recommended **Condition GEN-9** prohibits the project owner from constructing a shoreline protection device, as required pursuant to the LCP's Coastal Elements Hazards Section C10.1.19.

- **Recommended New Condition SOIL&WATER8: Flood Damage Prevention. Prior to the start of construction, AES shall submit for CPM review and approval, certification from a licensed engineer that the proposed facility is elevated above, or protected from, a 500-year flood event at the project site that includes an additional 24 inches of sea level rise. The engineer's determination shall describe the methods and include the calculations used to determine the elevation of the current 500-year flood event at the site and those used to determine the elevation of a future 500-year flood event with the additional 24 inches of sea level rise expected during the facility's thirty year operating life.**

  The elevations and proposed changes to the facility design shall be incorporated into the final project design submittals required pursuant to Condition GEN-2.

- **Recommended New Condition GEO-3: Flood and Tsunami Hazard Mitigation Planning. Prior to the start of construction, AES shall submit for CPM review and approval, a Facility Hazard Emergency Response Plan developed in coordination with the City of Huntington Beach, Southern California Edison, and the Orange County Flood Control District. The Facility Hazard Emergency Response Plan shall include, at a minimum:**

  1. **Results of hydraulic and hydrodynamic modeling using methods approved by the Federal Emergency Management Agency (FEMA) or the**

National Oceanic and Atmospheric Administration (NOAA) showing the effects of the facility's proposed structures on other nearby structures (including, but not limited to, structures associated with the existing adjacent power plant, the on-site Southern California Edison substation, and the Orange County Flood Control Channel) during: (1) a tsunami runup of 11 feet above mean sea level with an additional two feet of sea level rise (for a total runup of 13 feet above mean sea level); (2) the 100-year flood event with an additional two feet of sea level rise; and (3) the 500-year flood events as determined pursuant to Condition SOIL&WATER8.

2. **Concurrence from Southern California Edison and the Orange County Flood Control District that the modeling efforts accurately reflect expected hazard levels at these nearby structures, and concurrence from the City of Huntington Beach that the Plan is consistent with the City's most recent Hazard Mitigation Plan and Multi-Hazard Mitigation Plan prepared pursuant to California Government Code Sections 8685.9 and 65302.6 and 44 CFR 201.6 et. seq.**

3. **Structural and non-structural measures AES will implement to avoid, or if infeasible to avoid, to reduce any identified adverse effects of tsunami and flood events and to ensure human safety. Structural measures shall include either those that allow facility personnel immediate vertical evacuation to safe areas above tsunami runup elevations or those that allow facility personnel to remain inside structures that are not subject to inundation. The structural measures identified and required by this Plan shall be determined by a licensed structural engineer to be fully tsunami-resistant.**

Changes to the facility resulting from the above analyses shall be incorporated into the final project design submittals required pursuant to Condition GEN-2.

- **Recommended new Condition GEN-9: No Shoreline Protective Device. In the event that the approved development, including any future improvements, is threatened with damage or destruction from coastal hazards, or is damaged or destroyed by coastal hazards, protective structures (including but not limited to seawalls, revetments, groins, deep piers/caissons, etc.) shall be prohibited. By acceptance of the CEC approval, the project owner waives any right to construct such protective structures, including any that may exist under Public Resources Code Section 30235.**

Conclusion

The Commission finds that the CEC's implementation of the above-recommended Specific Provisions would allow the proposed project to be consistent to the extent feasible with relevant policies of the Coastal Act and LCP.

F. GEOLOGIC HAZARDS

Coastal Act Section 30253 states, in relevant part:

> *New development shall do all of the following:*
> *(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
> *(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

LCP Policy C1.1 states:

> *Ensure that adverse impacts associated with coastal zone development are mitigated or minimized to the greatest extent feasible.*

LCP Policy C 10.1.3 states:

> *Require seismic/geologic assessment prior to construction in the Alquist-Priolo Earthquake Fault Zone as shown in Figure C-28.*

LCP Policy C 10.1.4 states:

> *Require appropriate engineering and building practices for all new structures to withstand ground shaking and liquefaction such as those stated in the Uniform Building Code.*

LCP Policy I-C.20, Environmental Hazards Element, states:

> *Enforce and implement the policies and programs of the Environmental Hazards Element of the General Plan to the extent that these programs and policies are not inconsistent with the City's Local Coastal Program.*

The relevant and applicable policies and programs of the above-cited Environmental Hazards Element are listed below. Figures in parentheses at the end of each Environmental Hazards Policy refer to the Implementation Program applicable to each Policy.

> Environmental Hazards Policy 1.1.4 states: *Evaluate the levels of risk based on the nature of the hazards and assess acceptable risk based on the human, property, and social structure damage compared to the cost of corrective measures to mitigate or prevent damage. (I-EH 3 and I-EH 4)*

> Environmental Hazards Policy 1.2.1 states: *Require appropriate engineering and building practices for all new structures to withstand groundshaking and liquefaction such as stated in the Uniform Building Code (UBC). (I-EH 5)*

Environmental Hazards Program I-EH-1, Studies/Mapping/Master Plans, states, in relevant part:

a. Conduct, prepare and/or update the following as funding permits:

...

- *an assessment of potential damage to essential utility and transportation infrastructure and public service facilities due to geologic/seismic hazards. The findings of the assessment should be utilized in the review of proposed development projects, and used for maintaining and updating emergency preparedness plans;*

Environmental Hazards Program I-EH-3, Alquist-Priolo Earthquake Fault Zone, states:

a. Continue to implement the Alquist-Priolo Earthquake Fault Zone requirements.
b. Implement the fault classification system suggested by Leighton & Associates (April 17, 1986) with regard to faults in the City susceptible to fault rupture, and establish a study requirement based on risk and structure importance.

Environmental Hazards Program I-EH 4, Development Review or Environmental Review Process, states:

During development review (site plan, tract map, etc.) and/or environmental review, require:
d. building structures proposed in liquefaction, unstable soil/slope conditions, flood prone areas, high water tables, peat or other geologic hazards prone areas to determine potential problems and to require mitigation measures;
e. a potential seismic/geologic damage assessment to be conducted for essential public utilities (gas, water, electricity, communications, sewer) and require that appropriate mitigation measures be incorporated;
f. critical or sensitive facilities and uses to be located in areas where utility services and continuous road access can be maintained in the event of an earthquake;
…
i. that proposed critical, essential, and high-occupancy facilities be subject to seismic review, including detailed site investigations for faulting, liquefaction, ground motion characteristics, and slope stability, and application of the most current professional standards for seismic design;

Environmental Hazards Program I-EH-5 – Ordinances:

a. Enforce the most current Uniform Building code adopted by the State of California.
b. *Prepare ordinances prohibiting the location of critical or sensitive facilities or high occupancy facilities within a predetermined distance of an active or potentially active fault.*

The proposed HBEP site and vicinity is subject to several types of relatively severe geologic hazards, including surface fault rupture, ground shaking, liquefaction, and lateral spread. The analysis provided below shows that there is a significant probability that the project would experience one or more of these hazards during its expected operating life. In addition, the expected increase in sea level described above will increase the risk from some of these hazards during the project's operating life. The site's seismic setting and its specific seismic hazards are briefly described below, followed by several recommended conditions to allow the proposed facility to more fully conform to relevant Coastal Act and LCP policies.

Seismic setting

The proposed facility is located within a seismically-active region that includes the underlying Newport-Inglewood Fault Zone (NIFZ), which extends about 50 miles from Newport Beach to Los Angeles. It consists of a series of known faults, and geologists believe there are additional unknown faults in a zone that ranges up to somewhat more than a mile wide. The NIFZ is generally thought to be contiguous with the Rose Canyon Fault Zone which underlies parts of San Diego, trends offshore at La Jolla, and continues north to meet the NIFZ. Just offshore of the facility site is the epicenter of the geologically recent 1933 Long Beach earthquake, which was a magnitude 6.3 event on the NIFZ that resulted in significant loss of life and extensive property damage.

The City's 1996 Environmental Hazards Chapter states that faults within the NIFZ have an expected maximum earthquake of magnitude 7, an expected maximum ground acceleration of up to 1g, and potential surface fault rupture of more than ten feet in earthquakes of between magnitude 6.0 and 7.5. Other more recent reports calculate that the NIRC fault could generate a quake of up to magnitude 7.5[32] or an offshore magnitude 7.4 earthquake.[33] Various entities consider the entire NIRC fault zone as active.[34] Within that NIFZ, the California Geological Survey (CGS) has designated several specific fault segments as being within an Alquist-Priolo Earthquake Fault Zone, including a portion of the NIFZ's North Branch Fault about one-half mile from the HBEP site.[35]

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[32] See *City of Huntington Beach Draft Hazard Mitigation Plan*, 2011.

[33] Grant, L., and Shearer, P., *Activity of the Offshore Newport-Inglewood Rose Canyon Fault Zone, Coastal Southern California*, from Relocated Microseismicity, Bulletin of the Seismological Society of America, Vol., 94, No. 2, pp. 747-752, April 2004.

[34] See, for example, Pischke, Gary, *Earthquakes and Folds on the Rose Canyon Fault Zone*, in *The Seismic Risk in the San Diego Region: Special Focus on the Rose Canyon Fault System*, edited by Glenn Roquemore, the Southern California Earthquake Preparedness Project, 1989.

[35] Section 1613A.2 of the California Building Code defines an "active earthquake fault" as "a fault that has been the source of earthquakes or is recognized as a potential source of earthquakes, including those that have exhibited surface displacement within Holocene time (about 11,000 years) as determined by California Geological Survey (CGS) under the Alquist-Priolo Earthquake Fault Zoning Act , those included as type A or type B faults for the U.S. Geological Survey (USGS) National Seismic Hazard Maps, and faults considered to have been active in Holocene time by an authoritative source, federal, state or local governmental agency."

The HBEP would be located within a few hundred feet of the NIFZ's South Branch Fault (see **Exhibit 11 – Mapped South Branch Fault Beneath Project Site**). The South Branch Fault is less well understood than some other segments of the NIFZ, due in part to the extensive development and areas of fill existing along the fault route, both of which tend to mask surface expressions of faulting and make investigations at depth more difficult. A 1981 study noted that the NIFZ in the immediate project area had not been designated as active mainly because of the difficulty in identifying evidence for faulting.[36] When investigating the NIFZ for designation within an Alquist-Priolo Earthquake Fault Zone, the CGS found sufficient evidence to designate just the above-referenced segment of the NIFZ's North Branch near the proposed project site. Results of geodetic studies published in 2001 found evidence suggesting that the South Branch may be active.[37] Additionally, a 2007 study of another nearby project's potential pipeline routes described the South Branch Fault as "potentially active."[38]

More recently, the City noted that additional studies of the South Branch and other fault traces could result in Alquist-Priolo Earthquake Fault Zone designations. The City had already classified the South Branch Fault as a "Category C" fault, which requires special studies and subsurface investigation for nearby proposed developments. In 2010, the City's *Beach and Edinger Corridor Specific Plan EIR*, which is a planning document for an area of the City near the HBEP site, discussed the hazards associated with the South Branch Fault and acknowledged the potential for surface fault rupture.[39] The City's 2011 Hazard Mitigation Plan describes the South Branch Fault as "active," and identifies critical infrastructure near that fault that may be subject to damage from seismic activity.

In addition to the NIFZ, the site and facility are subject to potential seismic events and significant hazards from other regional faults, including the Compton-Los Angeles Blind Thrust Fault, the Elysian Park Blind Thrust Fault, and the Palos Verdes, Whittier-Elsinore, Serra Madre-Cucamonga, and San Andreas fault systems and others.[40] For example, the project site has been

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[36] See Guptill, Paul, and Edward Heath, *Surface Faulting Along the Newport-Inglewood Zone of Deformation*, California Geology, July 1981, referencing Hart, E. W., *Fault hazard zones in California: California Division of Mines and Geology Special Publication 42 Revised Edition*, 1980.

[37] See Bender, E., et. al, *Surface Motion Detection from a Small Aperture Geodetic Network, Southern Los Angeles Basin*, from 97th Annual Meeting of Pacific Section American Association of Petroleum Geologists, 2001. The report explains that geodetic stations installed across a potential restraining bend along the south branch of the Newport-Inglewood fault zone appeared to be converging at a high rate. Assuming that surface motions accurately depict subsurface conditions, this may indicate that strain is accumulating at depth, which could indicate the South Branch Fault is active.

[38] See ENSR Corporation, *Topic Report 6 – Geological Resources*, for Woodside Natural Gas, Inc., OceanWay Secure Energy, August 2007.

[39] The EIR states, "[t]his does not mean there is no threat of surface rupture along the other fault traces [including the South Branch]: only that the current state of our knowledge about them does not indicate whether a threat is present." It further states that "it is prudent to consider the possibility of surface rupture in the design and construction of development in the Specific Plan Area south of Ellis Avenue," an area that includes the South Branch Fault.

[40] See Magorian, D. Scott, *Preliminary Review of Geotechnical Constraints and Geologic Hazards Poseidon Resources Orange County Desalination Project – North and West Tank Options*, September 7, 2002, and Municipal

identified as subject to "Very Heavy" damage from a magnitude 6.9 earthquake on the Newport-Inglewood Fault, "Moderate to Heavy" damage from a magnitude 6.6 earthquake on the San Joaquin Fault (which is approximately 2.2 miles from the site), and "Moderate" damage from earthquakes on any of several other faults, including a magnitude 6.8 earthquake on the Peralta Hills fault (about 10 miles distant), a magnitude 7.5 earthquake on the Puente Hills fault (19.5 miles distant), and a magnitude 6.8 earthquake on the Whittier fault (20.7 miles distant).[41]

Site Seismic Hazards

The HBEP site is subject to several types of seismic hazards, as described below.

Surface Fault Rupture

The FSA notes that the proposed HBEP site is likely not subject to surface fault rupture. However, AES's July 2012 site assessment identified the above-referenced South Branch Fault trace as being located below the northeast corner of the power plant site, and stated it was proposing to locate its new generating units to provide a 500-foot buffer from the mapped fault and the location of potential surface fault rupture.

As noted in the Land Use and Alternatives discussion above, the Commission recommends that Energy Commission staff evaluate whether that part of the power plant site could be used for construction staging or parking that would reduce the project's effects on offsite coastal resources. That evaluation should include consideration of potential surface fault rupture and geologic stability.

Ground Shaking

The FSA identifies a range of potential ground motions at the site expected from several different seismic events and based on different modeling approaches.[42] They range from 0.598 g up to 2.4 g, which is a relatively severe level of ground movement. Structural measures needed to respond to ground motions at the upper end of this range could require substantial alterations to the facility as it is currently proposed.

Liquefaction and Lateral Spread

Liquefaction occurs in certain soils during seismic events. It results in the soil losing its strength and acting similar to a liquid, often resulting in collapse or damage to overlying structures. Lateral spread occurs when soils that are on flat to gently sloping surfaces above liquefiable soils and adjacent to an unsupported slope move in response to a seismic event – it is essentially a landslide that occurs on nearly flat ground.

Water District of Orange County, *Orange County Regional Water and Wastewater Multi-Hazard Mitigation Plan, Orange County*, California, February 1, 2012.

[41] See the 2012 *Orange County Regional Water and Wastewater Multi-Hazard Mitigation Plan*.

[42] See FSA's Geology & Paleontology Section, page 5.2-20, Table 3.

The proposed project site is within an area the City has designated as having "Very High" liquefaction potential (see **Exhibit 12 – Map of Liquefaction Potential in Huntington Beach**). The FSA notes that conditions within the power plant site are likely conducive to liquefaction, though less so for lateral spread. As noted above, the power plant site's liquefaction and lateral spread hazards are likely to be exacerbated by the increased surface and groundwater levels associated with predicted sea level rise during the HBEP facility life. The City additionally notes in its Environmental Hazards Chapter that earthquake intensities are likely to be higher in liquefaction-prone areas than in nearby non-liquefaction prone areas. It is not clear whether the range of ground motions noted above incorporate this potential for higher intensities.

Initial geotechnical investigations conducted at the adjoining AES Tank Farm for the proposed Poseidon project showed that site to be underlain by liquefiable soils extending to about 20 feet below the ground surface.[43] Those investigations also concluded that the site had a high potential for lateral spread, due to its soil characteristics, high groundwater levels, and its location along several hundred feet of the sloping sides of the adjacent flood control channel that were not designed to resist lateral spread.[44] Poseidon considered several methods to reduce liquefaction and lateral spread effects, including building the facility on stone columns, constructing below-grade buttress walls, and over-excavating soils subject to liquefaction, and the SEIR for that project required Poseidon to conduct additional geotechnical investigations prior to constructing the facility.

The FSA includes several proposed conditions to address the above-identified risks. Proposed **Condition GEO-1** would require AES to conduct geotechnical engineering analyses and prepare an engineering report that more specifically describes the site's seismicity and anticipated geologic hazards. **Condition GEO-1** also requires that report to include recommended measures to respond to the identified hazards. Proposed **Condition GEN-1** requires AES to design and construct its facility consistent with the requirements of the state's Building Codes, and proposed **Condition GEN-5** requires AES to use licensed engineers, engineering geologists, and other similarly accredited personnel to review the various geotechnical analyses, design the facility plans, and consult as needed during construction. This approach is largely consistent with relevant Coastal Act and LCP policies listed above. However, we are recommending several modifications to these proposed conditions to allow fuller conformity to those policies.

Coastal Commission Recommended Specific Provision

As noted above, it is not yet clear whether the upcoming geotechnical investigations and the resulting proposed mitigation measures will require substantial changes to the facility and cause additional and as-of-yet unknown and unquantified adverse effects on coastal resources. For example, if conditions beneath the HBEP footprint are similar to those beneath the adjacent AES tank farm site, the project could require significant dewatering,

[43] See SEIR, Appendix C – *Updated Preliminary Review of Geological Constraints and Geologic Hazards*, page 13.

[44] See Magorian, D. Scott, *Preliminary Review of Geotechnical Constraints and Geologic Hazards Poseidon Resources Orange County Desalination Project – North and West Tank Options*, September 7, 2002, and Magorien, D. Scott, *Updated Preliminary Review of Geotechnical Constraints and Geologic Hazards, Poseidon Resources Seawater Desalination Project, Huntington Beach, California*, February 2, 2010.

construction of stone columns or buttresses, placement of sheet piles, excavation, as well as other measures, any of which could change the project's anticipated coastal resource effects and its conformity to Coastal Act and LCP policies. Placement of buttress walls, for instance, could alter or reduce groundwater flow beneath the site and affect nearby wetlands, while extensive excavation could require significantly increased truck traffic and adversely affect public access to the shoreline. Additionally, given the site's potential for relatively severe ground motion, results of the upcoming studies could show that the facility will require extraordinary means of construction to ensure its stability. We are therefore recommending the following modifications, as shown in strikethrough/bold underline below:

- In recognition that hazards to the site and proposed facility are not yet fully identified, the Commission expects that some of the current evaluation regarding project effects on coastal resources may be understated and may require additional review to determine the project's conformity to relevant Coastal Act and LCP provisions. We recommend that project changes resulting from the upcoming studies undergo additional public review, if those changes are likely to increase adverse coastal resource effects or reduce the project's conformity to relevant Coastal Act and LCP provisions. We recommend the following modification to the FSA's proposed Condition GEO-1:

  "A Soils Engineering Report as required by Section 1803 of the California Building Code (CBC 2013), shall specifically include laboratory test data, associated geotechnical engineering analyses, and a thorough discussion of seismicity; liquefaction; dynamic compaction; compressible soils; corrosive soils; and tsunami. In accordance with CBC 2013, the report should also include recommendations for ground improvement and/or foundation systems necessary to mitigate these potential geologic hazards, if present. **If the analyses or recommendations show that the project will cause greater or more significant adverse effects to coastal resources than identified and evaluated in the Presiding Member's Final Decision for this AFC, the project owner shall submit the analyses and recommendations for additional public review to be conducted by the CEC staff.**

  Verification: The project owner shall include in the application for a grading permit a copy of the Soils Engineering Report which addresses the potential for strong seismic shaking; liquefaction; dynamic compaction; settlement due to compressible soils; corrosive soils; and tsunami, and a summary of how the results of the analyses were incorporated into the project foundation and grading plan design for review and comment by the Chief Building Official (CBO). A copy of the Soils Engineering Report, application for grading permit and any comments by the CBO are to be provided to the CPM at least 30 days prior to grading."

Site Seismic Hazards – Coastal and Geologic Hazards and Risks to a Critical Facility

LCP Environmental Hazards Policy 1.1.4 requires evaluating the risk to the proposed project from the above-described hazards. It also requires evaluating the risk of human, property, and social structure damage resulting from these hazards, identifying a level of "acceptable" risk, and comparing the risks to the costs of corrective measures to mitigate or prevent these damages. These analyses are particularly important for this proposed critical facility that, despite its location on a relatively hazardous site, is meant to support regional electrical grid reliability.

The City has not conducted a facility-specific risk assessment for the project; however, it has developed several hazard mitigation plans that address hazards and risks to critical infrastructure in the City. The findings of these hazard mitigation plans can be applied to the proposed project to determine the project's consistency with the hazard planning and risk assessment required pursuant to the above LCP policies.

Pursuant to state and federal requirements, local jurisdictions prepare Hazard Mitigation Plans to identify the suite of natural hazards known or expected to affect a community, identify actions that will reduce losses from those hazards, and establish a coordinated process for implementing the plan and these actions.[45] These requirements also require the Plans be in place for local jurisdictions to be eligible for certain disaster recovery funding. The above-cited FEMA guidance states that these Plans are to describe how a local government will integrate the mitigation elements identified in its Plan into that government's local land use decisions.

The Plans are to include:

- A risk assessment of the type, location, and extent of all natural hazards that can affect the local jurisdiction, along with a description of previous occurrences and the probability of future occurrences.
- A description of the local jurisdiction's vulnerability to these hazards, including the type and number of critical facilities and infrastructure located in hazard areas and an estimate of potential costs should these facilities be lost or damaged due to these hazards.
- Mitigation measures needed to avoid or reduce hazards and potential effects of the loss of critical facilities.
- A description of land uses and development in the local jurisdiction to allow the Plan's mitigation options to be considered as part of land use decisions.

The City has prepared three plans that address these concerns – the aforementioned Flood Management Plan, prepared pursuant to FEMA requirements and meant to help implement the City's Environmental Hazards Element of its LCP, a 2012 Hazard Mitigation Plan, and a Multi-Hazard Mitigation Plan [n.d.] prepared with the neighboring City of Fountain Valley. The Plans identify a number of hazards at the project site, including those described above – flooding, tsunami, seismic events, and others.

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[45] See guidance from the California Emergency Management Agency regarding compliance with AB 2140 at http://hazardmitigation.calema.ca.gov/docs/AB2140_Letter_to_Local_Government.pdf , and Federal Emergency Management Agency, pursuant to 44 CFR 201 *et. seq*. regarding Federal Emergency Management Agency requirements.

Additionally, and given the number of site hazards, it is highly probable that the facility will experience one or more of the identified hazards during its operating life. Considering only those hazards with an expected recurrence interval or return period – e.g., a "100-year flood" – the site and facility have the following probabilities of any one of these hazards occurring during the project's expected 30-year operating life:

Hazard:	**Probability:**[46]
100-year flood:	**26%** (approximately 1 in 4 chance).
100-year tsunami:	**26%** (approximately 1 in 4 chance).
500-year tsunami:	**6%** (approximately 1 in 14 chance).
500-year flood:	**6%** (approximately 1 in 14 chance).

However, because the site and the proposed facility are subject to multiple hazards, the probability is much greater that they will experience not just one hazard – i.e., just a 100-year flood – but any one of the several hazards. For example, the probability that the site will experience either a 100-year tsunami or a 100-year flood is about twice as high than if the site was subject to just one or the other of those events. Looking at just the above four events, there is a greater than even chance that the site would experience at least any one of them during its operating life – that is, the probability that the site will experience a 100-year flood or a 500-year flood or a 100-year tsunami or a 500-year tsunami is somewhat greater than 50%.[47] The actual probability is somewhat higher, as the list above does not include all the site hazards for which recurrence intervals can be developed – for example, any damaging seismic events resulting from the above-referenced regional faults for which recurrence intervals have been calculated. Risks from damage to the facility that result from these hazards include short- or long-term disruption of electrical power from the facility, loss of grid support provided by the facility, release of chemicals or structural debris to nearby properties and habitats, and others.

While the FSA's proposed conditions reduce the facility's risk, the site's hazards still make the facility highly vulnerable to damage and result in risks that must be addressed pursuant to Environmental Hazards Policy 1.1.4. Additionally, addressing the risks associated with some of the hazards will require coordination with multiple nearby landowners and local governments – for example, the site's flood protection relies on levees and sheet piles constructed and managed by the Orange County Flood Control District; however, as noted above, those structures are not designed to withstand the area's seismic forces, so the facility's reliability is dependent on ongoing system improvements made by the Flood Control District.

[46] The calculation used is $r = 1-(1- 1/T)^N$, with T = the return period (e.g., a 100-year event), N = the expected operating life of the facility (i.e., 30 years), and r = the probability that the event will occur at least once in N years.

[47] This combined probability is the sum of the individual probabilities minus the probabilities of the site experiencing more than one of the hazards during its operating life. The calculation is ((0.26 + 0.26 + 0.06 + 0.06 - (0.26 * 0.26) – (0.26 – 0.06) – (0.26 * 0.06) - (0.06 * 0.06)) = .5376, or just over 50% probability.

Coastal Commission Recommended Specific Provision

To allow conformity to the LCP's Environmental Hazards Policy 1.1.4, the Commission recommends the following additional condition:

"**Condition GEO-4: Prior to issuance of the project grading permit, the project owner shall provide to the CPM documentation from the City of Huntington Beach showing that the project is consistent with the City's most recent Flood Management Plan, Hazard Mitigation Plan, and Multi-Hazard Mitigation Plan prepared pursuant to California Government Code Sections 8685.9 and 65302.6 and 44 CFR 201.6 et seq.**"

Conclusion

The Commission finds that the CEC's implementation of the above-recommended Specific Provisions would allow the proposed project to be consistent to the extent feasible with relevant policies of the Coastal Act and LCP.

G. PUBLIC ACCESS

LCP Policy C 2.5 states:

> *Maintain and enhance, where feasible, existing shoreline and coastal resource access sites.*

Coastal Act Section 30211 states:

> *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

The proposed facility is to be built within an industrial site about one-half mile from the shoreline where public access is not available and not warranted. However, the project, as proposed, would cause two main types of adverse effects on public access. First, AES proposes to use over 200 parking spaces near the shoreline that are typically used for public access to the beach. Second, it would increase and interrupt traffic on streets used for public access to the shoreline in this area of Huntington Beach and along about 15 miles of the Pacific Coast Highway between the HBEP site and AES's Alamitos Power Plant site. These two adverse effects and the Commission's proposed mitigation measures are described below.

Beach Access Parking

AES expects a maximum of 331 workers on-site during the peak construction period. AES has proposed using one onsite and four offsite parking areas, and is planning to provide shuttle service to transport workers between the offsite areas and the project site (see **Exhibit 13 – Proposed HBEP Construction Parking**). The proposed parking areas, which are listed below, would provide more than three times the expected parking needed for the project.

Parking Area Location	Parking Area Size	Number of Spaces (approximate)
Onsite at HBEP	1.5 acres	130
Plains All-American Tank Farm, adjacent to HBEP	1.9 acres	170
Graded area west of HBEP on Newland Street	3 acres	300
Graded area at PCH and Beach Street	2.5 acres	215
Huntington Beach City Parking Area at PCH and Beach Street	N/A	225
Total Number of Spaces:		**1040**

The Huntington Beach City Parking Area described in the AES proposal is located about one-half mile from the power plant site and is used extensively by beachgoers. The 225 spaces AES proposes to use at this location would reduce parking that is meant to provide public access to the shoreline along this stretch of the coast.

The FSA's proposed **Condition TRANS-3** would require AES to prepare a Traffic Control Plan to address the project's traffic- and parking-related impacts. The required Plan would include a Parking/Staging Plan that is to ensure all project-related parking during construction and operation be either on-site or in the designated off-site parking areas. However, **Condition TRANS-3** does not yet ensure conformity to the City's LCP to the extent feasible.

> **Coastal Commission Recommended Specific Provision:**
> As noted above, LCP Policy C2.5 requires that existing shoreline access sites be maintained and enhanced, where feasible. The Commission therefore recommends that **Condition TRANS-3** be modified to delete the Huntington Beach City Parking Area from the project's parking plans. This feasible modification ensures continued availability of beach parking, allows AES to still have more than three times the expected parking needed, and would allow conformity to LCP Policy C 2.5.[48]
>
> Additionally, and as described above in the Land Use and Alternatives section of this report, the Commission recommends the CEC evaluate whether additional space is available for short- or long-term use at the on-site AES Tank Farm or at the adjacent Plains America Tank Farms. Each of these tank farm areas is larger than the total of all five of AES's currently proposed parking area, and using all or some of the tank farm space could further reduce the project's cumulative and off-site impacts.

[48] Alternatively, Condition TRANS-3 could be modified to require that the Parking/Staging Plan specify that the Huntington Beach City Parking Area be used only if there is insufficient parking space available in the other four proposed parking areas.

Project-Related Traffic

Project-related traffic during approximately eight years of demolition, remediation, and construction activities at the facility site will occur along several thoroughfares, all of which provide access to the shoreline. These include the Pacific Coast Highway (PCH), Newland Avenue, Brookhurst Street, Magnolia Street, and Beach Boulevard. Because AES proposes to stage some of its equipment at its Alamitos Power Plant site, located about 15 miles north of Huntington Beach, the traffic effects would extend along that entire stretch of the PCH. AES also expects to require up to 112 "oversize" trips to transport the largest power plant components from the Port of Long Beach to the project site. AES expects its average daily construction traffic to include about 734 one-way trips, with most (662) due to the workers' commutes and the remainder due to deliveries (48 delivery/haul trucks and 72 cars or trucks that would accompany the deliveries).

The FSA identifies relatively minor reductions of no more than a few seconds delay in the Traffic Levels of Service (LOS) at nearby intersections during peak construction and peak traffic times.[49] However, at least two of the studied intersections are already at LOS E and LOS F, and the City's Circulation Element Policy CE2.1.1 requires a minimum LOS standard at peak hours to be no lower than LOS D. To address this issue, the FSA includes **Condition TRANS-3**, which would require AES to prepare a Traffic Control Plan in consultation with the City and with other agencies, noting that AES would need to monitor the affected intersections and use alternate routes during construction.

> **Coastal Commission Recommended Specific Provision**
> To ensure compatibility with LCP Policy C2.5, the Commission recommends that **Condition TRANS-3** be modified to require that project-related traffic needing to use any alternative routes at least maintain existing levels of public access to the shoreline.
>
> We also recommend a modification to the traffic analysis presented in the FSA. The FSA evaluated cumulative traffic impacts expected to result from this project and 26 other projects that are proposed, under review, or approved in the area between the power plant site and the Alamitos Power Plant staging area. However, that analysis does not appear to include two projects – the proposed Poseidon desalination facility and the Ascon Landfill cleanup – that are immediately adjacent to the HBEP site and could involve significant amounts of traffic. The Poseidon project is expected to generate up to about 225 trips per day and would use the same power plant access points and several of the same roads that AES plans to use for its project. The Ascon Landfill cleanup, which the FSA analysis mentions but does not include in its traffic analysis, is expected to involve up to about 200 truck trips per day for about a year starting in 2015.[50] Traffic associated with either of these projects could substantially change the FSA's analysis and further decrease the Levels of Service on nearby roads.

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[49] The Level of Service refers to a method used to quantify existing baseline traffic conditions and the level of traffic congestion that may be present at certain times of day or under certain conditions. Levels of Service range from Level A, which allows the free flow of traffic, to Level F, which produces jammed conditions and significant delays.

[50] See DTSC's Ascon Landfill Draft EIR at: http://www.dtsc.ca.gov/SiteCleanup/Projects/Ascon.cfm

To ensure the AES project and these other projects do not create unanticipated cumulative traffic impacts, we also recommend the Traffic Control Plan required pursuant to **Condition TRANS-3** incorporate traffic that may be generated by these two projects, either or both of which could occur concurrently with the AES project.

Conclusion

The Commission finds that the CEC's implementation of the above-recommended Specific Provisions would allow the proposed project to be consistent to the extent feasible with relevant policies of the Coastal Act and LCP.

ATTACHMENT A – SUBSTANTIVE FILE DOCUMENTS

Coastal Commission, *Designation of Coastal Zone Areas Where Construction of an Electric Power Plant Would Prevent Achievement of the Objectives of the California Coastal Act of 1976*, adopted September 1978, revised 1984, re-adopted December 1985, San Francisco, CA

Coastal Commission, staff report for Poseidon Water Huntington Beach Desalination Facility – Appeal #A-5-HNB-10-225 and Application No.: E-06-007, November 2013, available at: http://documents.coastal.ca.gov/reports/2013/11/W19a-s-11-2013.pdf

Energy Commission, *Opportunities to Expand Coastal Power Plants in California*, Staff Report P700-80-001, June 1980, Sacramento, CA.

Energy Commission, Final Staff Assessment and associated docketed documents for 12-AFC-02, Application for Certification for AES Southland, LLC Huntington Beach Energy Project, filed prior to June 2014.

ATTACHMENT B

MEMORANDUM OF AGREEMENT

Between
The California Energy Commission and
the California Coastal Commission
Regarding
The Coastal Commission's Statutory Role
in the Energy Commission's AFC Proceedings

PURPOSE:

The purpose of this agreement is to ensure timely and effective coordination between the Energy Commission and the Coastal Commission during the Energy Commission's review of an Application for Certification (AFC) of a proposed site and related facilities under Energy Commission jurisdiction. The agreement recognizes the exclusive authority of the Energy Commission to certify sites and related facilities subject to the siting and timing requirements of the Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code Section 25500 et seq.). The agreement also recognizes the Coastal Commission's role in AFC proceedings as described in the Warren-Alquist Act, Public Resources Code section 25523(b), and in the California Coastal Act, Public Resources Code section 30413(d).

This agreement describes the manner in which the two Commissions and their staffs will coordinate during AFC reviews in four main issue areas:

I. Timing of the Coastal Commission's 30413(d) Report
II. Information Necessary to Complete the Coastal Commission's 30413(d) Report and How the Information will be Obtained
III. Staff Coordination During AFC Proceedings
IV. Supplemental Coastal Commission Review For Substantial Project Changes

This agreement additionally establishes the process for resolving disagreements between the two Commissions and staffs and describes the process for canceling the agreement. It also includes three attachments:

A. Energy Commission Power Plant Permitting Timeline for Coastal Projects
B. List of Coastal Act Provisions and Information Needed During AFC Review of Proposed Coastal Power Plants
C. Staff Coordination and Timeline for Producing 30413(d) Report During AFC Proceedings

WHEREAS:

I. Pursuant to requirements of the Warren-Alquist Act, the Energy Commission has exclusive authority to certify thermal power plants with a generating capacity of 50 megawatts or more and certain electric transmission lines. The AFC process may or may not be preceded by a Notice of Intention (NOI) process to determine an appropriate site for a proposed facility. During the NOI and AFC processes, Energy Commission staff acts as an independent party and is responsible for conducting an assessment of the environmental effects, safety, and reliability of the facility, and the facility's conformity with applicable laws. The AFC timeline is described in Attachment A.

II. Pursuant to requirements of Sections 25523(b) and 30413(d), the Coastal Commission is responsible, during the AFC proceeding for each project, for reviewing thermal power plant projects proposed in the coastal zone and providing a report to the Energy Commission specifying provisions regarding the proposed site and related facilities to meet the objectives of the California Coastal Act. As stated in Section 30413(d), the report is to include findings on all of the following:

1) The compatibility of the proposed site and related facilities with the goal of protecting coastal resources.
2) The degree to which the proposed site and related facilities would conflict with other existing or planned coastal-dependent land uses at or near the site.
3) The potential adverse effects that the proposed site and related facilities would have on aesthetic values.
4) The potential adverse environmental effects on fish and wildlife and their habitats.
5) The conformance of the proposed site and related facilities with certified local coastal programs in those jurisdictions which would be affected by any such development.
6) The degree to which the proposed site and related facilities could reasonably be modified so as to mitigate potential adverse effects on coastal resources, minimize conflict with existing or planned coastal-dependent uses at or near the site, and promote the policies of this division [the California Coastal Act].
7) Such other matters as the commission deems appropriate and necessary to carry out this division.

Section 25523(b) and section 1752(d) of the Energy Commission's regulations (Cal. Code Regs., tit. 20, § 1752 subd. (d)) require the Energy Commission to then adopt the specific provisions specified in the Coastal Commission's report as conditions of certification in its final AFC decision unless the Energy Commission finds that any such provisions either would be infeasible or would cause greater adverse effect on the environment.

III. Each Commission believes it is in the best interest of the state and in the mutual interest of both Commissions to complete the necessary AFC review in a manner that is both timely and comprehensive in order to assure the compliance of each Commission with its respective statutory and regulatory requirements.

IV. Staff of each Commission have interacted in past and current AFC reviews to help each Commission fulfill its respective responsibilities, and have developed a common understanding of the statutory and regulatory requirements of each Commission during the AFC review. Both the Energy Commission and the Coastal Commission have recognized this relationship in recent AFC decisions and 30413(d) reports.

V. Each Commission believes it is useful to enter into this Memorandum of Agreement to ensure a shared understanding of their respective roles and responsibilities during the AFC review, to maintain clear communication and expectations between the two Commissions and their staffs, and to assure that the reviews and analyses necessary during an AFC review are completed in a thorough and timely manner.

THEREFORE:

The Energy Commission and the Coastal Commission agree to the following:

I. Timing of the Coastal Commission's Section 30413(d) report

A. In accordance with the California Coastal Act and the Warren-Alquist Act, the Coastal Commission must provide its report to the Energy Commission in time for the Presiding Member's Proposed Decision (PMPD) to consider the report's specific provisions to meet the objectives of the Coastal Act. In addition, the Energy Commission must incorporate those specific provisions as conditions of certification in both the PMPD and the final decision, subject to the exceptions under Section 25523(b).

B. The PMPD must, by regulation (Cal. Code Regs., tit. 20. § 1751), be based exclusively on the hearing record of the AFC proceeding. Therefore, in order for the Coastal Commission's report to be the basis of conditions of certification in the Energy Commission's decision, the Coastal Commission will provide the report in time to be entered into the Energy Commission's hearing record at an evidentiary hearing in the AFC proceeding.

C. Decisions by the Coastal Commission to approve a 30413(d) report for submittal to the Energy Commission are subject to the provisions of California's Open Meetings Act (Government Code Section 11120 et seq.), which requires the Coastal Commission to hold a noticed public hearing for such actions, and are additionally subject to applicable provisions of the Coastal Commission's regulations (CCR, Cal. Code Regs., tit.14, § 13001 et seq.).

D. The Coastal Commission will provide a report addressing the factors in Section 30413(d) as early as feasible after it receives the information necessary to complete the report and holds the necessary public hearing, and in time for the parties to prepare for the AFC hearings required pursuant to section 1748 of the Energy Commission's regulations (Cal. Code Regs., tit.20, § 1748). (See Attachment C)

E. The ability of the Coastal Commission to meet the hearing schedule of an AFC proceeding (see Attachment A) depends largely on receipt by the Coastal Commission and its staff of information necessary to produce that report. To ensure that the Coastal Commission receives information needed for the report in timely fashion, the two Commissions and staffs will coordinate as described in subsequent sections of this Agreement.

II. Information necessary for the Coastal Commission to complete its 30413(d) reports for proposed projects in California's coastal zone

A. Section 1704 and Appendix B of the Energy Commission's siting regulations in Title 20, California Code of Regulations, section 1701 et seq., contain the informational requirements that an AFC must meet to be accepted as complete. Pursuant to Section 1709 (Cal. Code Regs., tit. 20, § 1709), the Energy Commission reviews any siting application that is submitted to it to ensure that it satisfies the informational requirements of Section 1704 and Appendix B, and, on the basis of such review, determines whether the application is complete.

B. The Coastal Commission is to include in its report to the Energy Commission findings as specified in Section 30413(d) of the Coastal Act, which will be based in large part on information obtained by the Energy Commission about a proposed project and its likely effects on coastal resources.

C. For projects undergoing AFC review that are proposed to be located in the coastal zone, the Energy Commission recognizes that the Coastal Commission is likely to need different information about certain aspects of a proposed project than might be required of proposed projects outside of the coastal zone for purposes of meeting the informational requirements. The Coastal Commission may need this different information to evaluate the potential effects of a proposed project on various coastal resources or to determine the conformity of the proposed project to policies of the Coastal Act or certified Local Coastal Programs and, on the basis of such evaluation, to specify, pursuant to Section 30413(d), the findings and specific provisions required to bring a proposed project into conformity with the objectives of the California Coastal Act.

D. A list of the standard minimum information needed for any 30413(d) report, along with the applicable Coastal Act provisions that create the need for this information, is provided in Attachment B. The information includes the following:

- Entrainment: For projects involving the use of ocean water, analysis of the proposed project's entrainment impacts based on recent and applicable entrainment data from the proposed project site.
- Coastal erosion: Evaluation of any new or modified shoreline protective devices that may be needed during the anticipated operating life of the proposed project.
- Public access: Analysis of the proposed project's effects on public access to the shoreline.
- Visual resources: Evaluation of the proposed project's effects on coastal visual resources.

E. The Energy Commission recognizes that its siting regulations (Appendix B of Title 20, Section 1701 et seq.) currently provide for requiring most, if not all, of the standard information needed by the Coastal Commission. Energy Commission staff will make Attachment B available to potential applicants interested in the AFC process for coastal projects and will encourage them to provide all the information in their applications. To the extent information identified in Attachment B may go beyond the scope of the Energy Commission's informational requirements in its siting regulations, Energy Commission staff will undertake a rule-making to amend the Energy Commission's regulations to clarify or require additional information that is relevant to the Coastal Commission's report and needed to find the AFC for a coastal project complete.

F. In addition to the standard information needed for coastal power plants, Coastal Commission staff will develop project-specific information requests as specified in this Agreement during the initial review and discovery phases for each AFC process. The process for requesting this project-specific information is described in Attachment C of this MOA as set forth below.

III. Coordination During AFC Proceedings

A. The AFC review process includes a number of steps during which it would be mutually beneficial for the two staffs to coordinate, exchange information, or discuss issues. This coordination, as detailed in Attachment C, includes early notice from Energy Commission staff to Coastal Commission staff about preliminary AFC submittals, requests by both staffs for additional information as needed during the discovery phase of the AFC review process, and ongoing involvement by Coastal Commission staff as feasible and necessary during the various phases of the Energy Commission's AFC process.

B. Coastal Commission staff will keep Energy Commission staff informed of the status of the data requests relevant to the 30413(d) report and any other matters related to the report and its issuance by the Coastal Commission. Energy Commission staff will include such information in its monthly status reports to the AFC committee. In the case of delinquent data responses, the staffs of the two Commissions will confer about whether to file a motion to compel responses and whether to seek a day-for-day slip in the AFC schedule, pending receipt of all the information requested in the outstanding data requests.

C. Coastal Commission staff will prepare a draft 30413(d) report for consideration at a noticed public hearing of the Coastal Commission. Coastal Commission staff will provide notice of that hearing to the Energy Commission, the AFC applicant, intervenors, and other interested parties to allow those parties an opportunity to comment in writing or verbally to the Coastal Commission before or during the hearing on the findings and provisions proposed to be submitted in the 30413(d) report.

D. Upon approval by the Coastal Commission of a 30413(d) report, Coastal Commission staff will submit the report to the Energy Commission. A representative of the Coastal Commission or its staff will sponsor the report into the Energy Commission's evidentiary record and be available at appropriate Energy Commission workshop(s) and hearing(s) to answer any questions about the report.

E. Energy Commission staff will ensure that Coastal Commission staff is timely informed of all project changes that occur or are proposed during Energy Commission review. Coastal Commission staff will determine whether changes to the proposed project are substantial enough to require supplemental review as described in the following Section IV.

F. The staffs of both Commissions shall work together to refine the timeline in Attachment C, pending a rulemaking to amend Appendix B in the Energy Commission's siting regulations, to coordinate further their roles and responsibilities with respect to the submittal of the 30413(d) report in accordance with the terms and objectives of this Agreement.

IV. Supplemental Coastal Commission Review Upon Substantial Changes to Proposed Projects

A. If a proposed project changes substantially between the time the Coastal Commission issues its 30413(d) report and the time the Energy Commission's AFC committee closes the evidentiary record or re-opens the record to accept additional evidence, the Coastal Commission shall be provided the opportunity to supplement its original report, pursuant to a schedule to be established by the AFC committee, taking into account the time needed for the Coastal Commission to adopt a supplement. The Coastal Commission will review the changed project and provide any new or modified specific provisions that the Coastal Commission determines to be necessary or appropriate to ensure the report will include the determinations required by Section 30413(d) with respect to the changed project. The Energy Commission will include those new or modified provisions in its final decision, except where it finds a provision would result in greater adverse environmental impact or would be infeasible.

For purposes of this agreement, a substantial change is defined as a change to the proposed site or related facilities that would affect coastal resources in a manner substantially different from what was reviewed by the Coastal Commission in its initial 30413(d) report.

B. When Coastal Commission staff determines that a substantial change has occurred, it will notify the Energy Commission's AFC committee as soon as possible within 15 days of receiving information of the substantial change of its intent to supplement its 30413(d) report for the Energy Commission's AFC committee to consider under Section 25523(b). The Coastal Commission or its staff may also determine that, even if a substantial change has occurred, there is no need to supplement the original 30413(d) report.

V. Resolving disagreements

If there are disagreements between the two Commissions or their staffs regarding the provisions of this agreement or other matters related to the 30413(d) report, representatives of each staff will meet to discuss the issues in dispute and shall work towards agreement.

If agreement is not reached within twenty-one days of this initial meeting, the Executive Directors of the two Commissions or their representatives shall confer to attempt to resolve the disagreement.

VI. Amendments

This agreement may be amended by mutual agreement of the two Commissions.

VII. Cancellation

This agreement is in effect until either Commission requests cancellation with a 30-day written notice to the other.

CONCURRENCE

The Energy Commission and the Coastal Commission agree to the terms of this agreement, as evidenced by the signatures of their representatives below.

Signed,

Jackalyne Pfannenstiel, Vice Chair,
Energy Commission

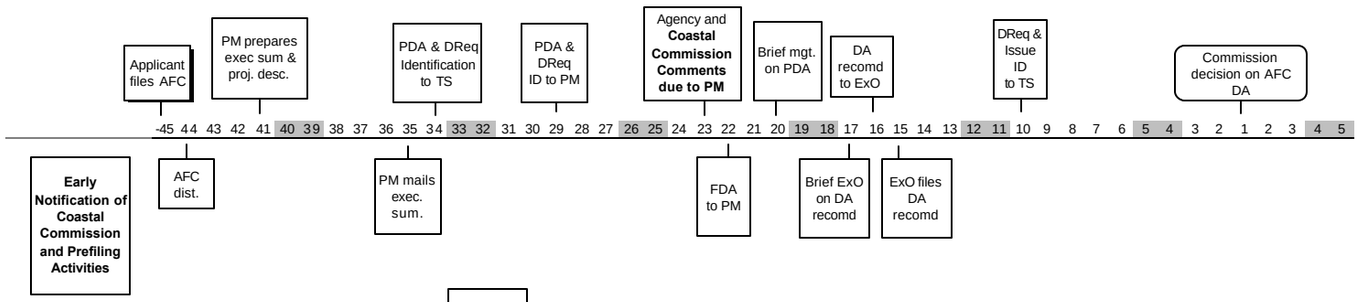
Date: 5/31/05

Meg Caldwell, Chair,
Coastal Commission

Date: 4/14/05

MOA - ATTACHMENT A: CALIFORNIA ENERGY COMMISSION POWER PLANT PERMITTING TIMELINE FOR COASTAL PROJECTS

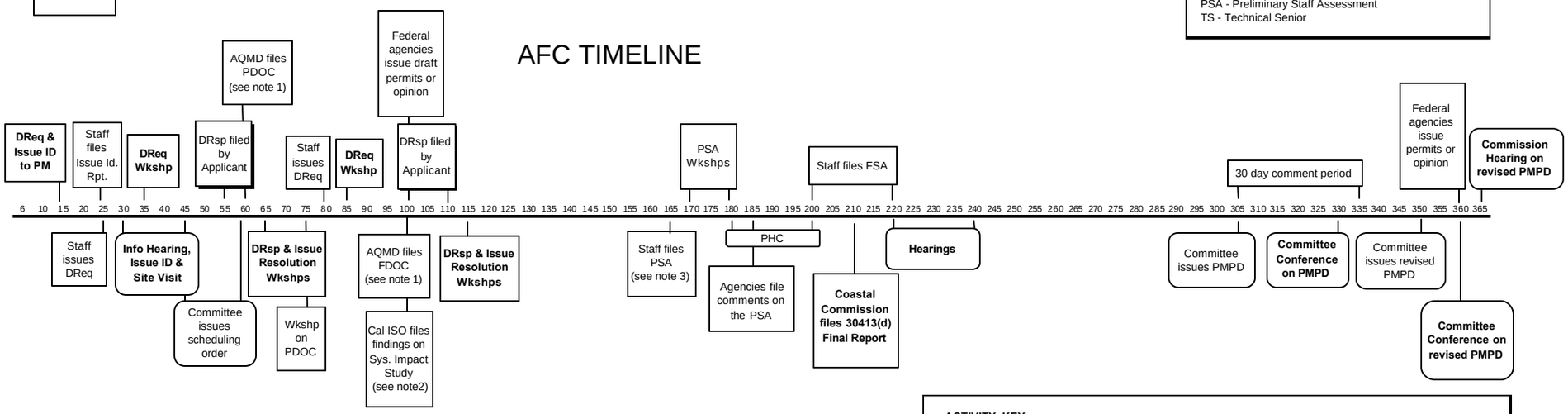
AFC DATA ADEQUACY



Key to abbreviations

AFC - Application for Certification
AQMD - Air Quality Management District
Cal ISO - California Independent System Operator
DA - Data Adequacy
DFSA - Draft Final Staff Assessment
DPSA - Draft Preliminary Staff Assessment
DRsp - Data Responses
ExO - Executive Office
FDA - Final Data Adequacy
FDOC - Final Determination of Compliance
FDReq - Final Data Requests
FSA - Final Staff Assessment
ID - Issue Identification
IS - Interconnection Study
PDA - Preliminary Data Adequacy
PDOC - Preliminary Determination of Compliance
PDReq - Preliminary Data Requests
PHC - Prehearing Conference
PM - Project Manager
PMPD - Presiding Member's Proposed Decision
PSA - Preliminary Staff Assessment
TS - Technical Senior

AFC TIMELINE



ACTIVITY KEY

Flexible activity
Applicant activity
Staff or Agency activity
Coastal Commission activity
Committee activity

4 5 Shaded dates show weekends

Notes:
1 The timing of the PDOC and FDOC will depend on the cooperation of the AQMD.
AB970 requires agencies to provide final permits in 100 days. In past practice, the districts have typically filed the PDOC 180 days, and the FDOC 240 days, after the AFC is accepted.

2 Timing of the Cal ISO comments will depend on when the Transmission Interconnection Study is initiated by the applicant.

3 The time required to file the PSA will be shortened if issues are resovled early and easily.

Revised: March 24, 2005

MOA ATTACHMENT B: Standard Minimum Information Needed During AFC Review of Proposed Coastal Power Plants, with Related Provisions of the Coastal Act and Energy Commission Regulations

This table describes key elements of the standard minimum information needed to complete the Coastal Commission's Section 30413(d) report, along with applicable references to both the Coastal Act and the Energy Commission regulations related to the necessary information. The Coastal Commission's review of specific AFC proposals will likely require additional information, which will be acquired as described in the MOA.

The table describes standard minimum information needed in four subject areas – the proposed project's likely effects on marine biological resources, on public access to the shoreline, on coastal erosion, and on visual and scenic coastal resources. Under each category, the first column describes Coastal Act policies applicable to the needed information, and the second column provides a cross-reference to the applicable Energy Commission regulation.

<table>
<tr><td colspan="2">Issue Area – Effects of Proposed Project on Marine Biology: For proposed projects using ocean water, information needed includes an analysis of likely impacts to marine biological resources based on recent and applicable entrainment data from the site of the proposed project acceptable to the Coastal Commission.</td></tr>
<tr><td>Primary Applicable Coastal Act Policies:

Coastal Act Section 30230: "Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes."

Coastal Act Section 30231: "The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams."</td><td>Primary Applicable Data Adequacy Requirements:

Appendix B(g)(13)(B): "A discussion and detailed maps of the biological resources at the site of the proposed project and related facilities, and in areas adjacent to them, out to a mile from the site and 1000 feet from the outer edge of linear facility corridors. Include a list of the species actually observed and those with a potential to occur…"
Appendix B(g)(13)(D): "A discussion of all permanent and temporary impacts to biological resources from site preparation, construction activities, and plant operation. Discussion of impacts must consider impacts from cooling tower drift, and from the use and discharge of water during construction and operation. For facilities which use once-through cooling or take or discharge water directly from or to natural sources, discuss impacts resulting from entrainment, impingement, thermal discharges, effluent chemicals, type of pump (if applicable), temperature, volume and rate of flow at intake and discharge location, and plume configuration in receiving water."</td></tr>
</table>

<table>
<tr><td colspan="2">Issue Area – Effects of Proposed Project on Public Access to the Shoreline: For proposed projects on or adjacent to the shoreline or that affect public access to the shoreline, information needed includes a description of existing public access, how that access may be affected by project construction and operation, and mitigation measures intended to provide maximum feasible access.</td></tr>
<tr><td>Primary Applicable Coastal Act Policies:

Coastal Act Section 30210: “In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.”

Coastal Act Section 30211: “Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.”

Coastal Act Section 30212(a): “Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
Adequate access exists nearby, or,
Agriculture would be adversely affected.
Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.”</td><td>Primary Applicable Data Adequacy Requirements:

Appendix B(g)(3)(A): “A discussion of existing land uses and current zoning at the site, land uses and land use patterns within one mile of the proposed site and within one-quarter mile of any project-related linear facilities. Include:
(i): An identification of residential, commercial, industrial, recreational, scenic, agricultural, natural resource protection, natural resource extraction, educational, religion, cultural, and historic areas, and any other area of unique land uses…”

Appendix B(g)(3)(B): “A discussion of the compatibility of the proposed facilities with present and expected land uses, and conformity with any long-range land use plans adopted by any federal, state, regional, or local planning agency. The discussion shall identify the need, if any, for variances or any measures that would be necessary to make the proposal conform with permitted land uses.”</td></tr>
</table>

<table>
<tr><td colspan="2">Issue Area – Effects on Coastal Erosion: Information needed includes existing and anticipated rates of shoreline erosion, wave and tsunami runup, flood levels, and other similar phenomena, and identification of any new or modified shoreline protective measures needed to protect the proposed project.</td></tr>
<tr><td>Primary Applicable Coastal Act Policies:

Coastal Act Section 30253: “New development shall:
(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.”</td><td>Primary Applicable Data Adequacy Requirements:

Appendix B(b)(1)(D): “A description of how the site and related facilities were selected and the consideration given to… site geology…”

Appendix B(g)(14)(B)(iii): “Water inundation zones, such as the 100-year flood plan and tsunami run-up zones.”

Appendix B(g)(14)(iii): “The effects of the project on the 100-year flood plain or other water inundation zones.”

Appendix B(g)(15)(C)(i): “The quantification of accelerated soil loss due to wind and water erosion.”

Appendix B(i)(1)(A): “A description of site conditions and investigations or studies conducted to determine the site conditions used as the basis for developing design criteria. The descriptions shall include, but not be limited to, seismic and other geologic hazards, adverse conditions that could affect the project’s foundation, adverse meteorological and climatic conditions, and flooding hazards, if applicable.”

Appendix B(g)(17)(a): “A summary of the geology, seismicity, and geologic resources of the project site and related facilities.”</td></tr>
</table>

<table>
<tr><td colspan="2">Issue Area – Effects on scenic and visual resources: Information needed includes a description of existing visual conditions at and near the project site, analysis of existing and proposed views of the project and site, and a description of measures available to protect, restore, and enhance visual quality for proposed projects in visually degraded areas.</td></tr>
<tr><td>Primary Applicable Coastal Act Policies:

Coastal Act Section 30251: “The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.”</td><td>Primary Applicable Data Adequacy Requirements:

Appendix B(g)(6)(F): “An assessment of the visual impacts of the project, including light and glare, and visible plumes.”

Appendix B(h)(1)(A): “Tables which identify laws, regulations, ordinances, standards, adopted local, regional, state, and federal land use plans, and permits applicable to the proposed project, and a discussion of the applicability of each. The table or matrix shall explicitly reference pages in the application wherein conformance, with each law or standard during both construction and operation of the facility is discussed.”

Appendix B(h)(2): “A discussion of the conformity of the project with the requirements listed in subsection (h)(1)(A).”</td></tr>
</table>

MOA Attachment C – Staff Coordination and Timeline For Producing 30413(d) Report During AFC Proceedings

The AFC review process includes a number of steps during which it would be mutually beneficial for the two staffs to coordinate, exchange information, or discuss issues. Staff of both Commissions will be involved to the extent feasible during these steps to develop and clarify any information requests necessary to complete the 30413(d) report. The steps include the following:

- **Prior to AFC Filing:** When feasible, the Energy Commission staff will provide notice to the Coastal Commission staff of opportunities, including but not limited to, any "pre-filing review" pursuant to Title 20, California Code of Regulations, section 1709.5, to coordinate with a potential applicant before an AFC for a coastal project is filed. These may include pre-submittal meetings with potential applicants or their representatives, meetings between the two staffs, or other similar opportunities. When feasible, the Coastal Commission staff will attend those meetings or will provide written or oral comments that identify any specific information needs known at that point in the review. The Energy Commission staff will also provide a copy of Attachment B to applicants.

- **Filing of an AFC:** For all AFCs of sites and related facilities in the coastal zone, the Energy Commission staff will provide a copy of the AFC to the Coastal Commission staff within five days of receipt of the AFC. The Coastal Commission staff will provide initial information requests within 20 days of receipt of the AFC.

- **Prior to Energy Commission's Determination That an AFC is Complete:** Pursuant to Public Resources Code section 25522(b) and Title 20, California Code of Regulations, section 1709, the Energy Commission staff reviews an AFC to determine whether it meets the informational requirements of the Energy Commission's regulations and, if so, recommends to the Energy Commission that the application be accepted as complete. During this period of up to 30 days, the Energy Commission staff will confer with the staff of the Coastal Commission regarding the sufficiency of information provided in the AFC relevant to allowing completion of the 30413(d) report. To the extent feasible, the Coastal Commission staff will provide detailed and specific requests for the information needed to complete the 30413(d) report. If any such requests go beyond the scope of informational requirements in the Energy Commission's regulations, the Energy Commission staff will send such requests to the applicant immediately following acceptance of the AFC as complete pursuant to the Energy Commission's regulations.

- **Review of Accepted AFC:** There are numerous opportunities for staff coordination between the time the Energy Commission determines an AFC is complete and issuance of the final Energy Commission decision on the proposed project. These opportunities include:
  - Data requests and workshops during discovery phase
  - Consultation during the analysis phase
  - Comments and workshop(s) on the Preliminary Staff Assessment (PSA)
  - Consultation on the Final Staff Assessment (FSA)
  - Consultation on prehearing conference statements
  - Testimony at evidentiary hearing(s)
  - Review of the Presiding Member's Proposed Decision (PMPD)
  - AFC committee hearing on the PMPD
  - Energy Commission final hearing on PMPD

Coastal Commission staff understands that the primary opportunity for submitting additional data requests to obtain information needed for the 30413(d) report is during the discovery phase after acceptance of the AFC and before the Energy Commission staff files its PSA. If there are data needed, in addition to the information provided in the AFC or specified by Coastal Commission staff during the initial review of the AFC, to complete the 30413(d) report, Coastal Commission staff will provide the Energy Commission staff with the appropriate data requests within 15 days after the AFC is deemed complete. Energy Commission staff will submit those data requests to the applicant within 10 days.

If responses to those data requests create a need for clarification or additional data, Coastal Commission staff will inform Energy Commission staff within 15 days of the receipt of the data responses. If there are substantial changes to the proposed site or related facilities, Coastal Commission staff will inform Energy Commission staff of any new data needs that arise as a result of those changes within 15 days of receipt of the changes.

Energy Commission staff will confer with the Coastal Commission staff to help ensure that all data requests are timely served and the informational needs of the Coastal Commission to complete the 30413(d) report are timely satisfied.

Coastal Commission staff will use their best efforts to file the final 30413(d) report prior to Energy Commission staff filing their Final Staff Assessment.

Pending a rulemaking to amend Appendix B in the Energy Commission's siting regulations, the staffs of both Commissions will continue to work together to refine the timeline for the submittal of the 30413(d) report in AFC proceedings in accordance with the Agreement between the two Commissions.

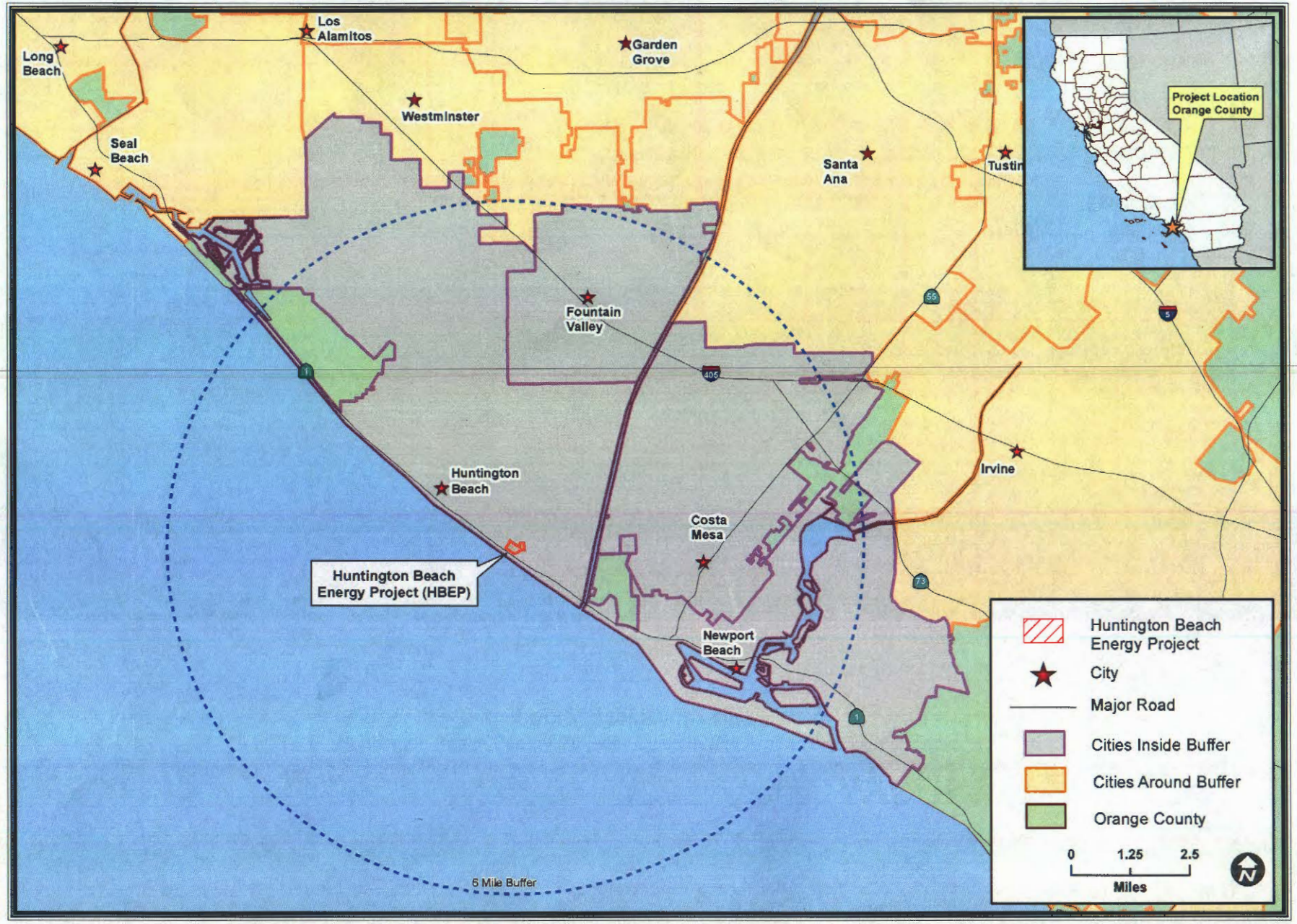
Th 10a

EXHIBITS

HUNTINGTON BEACH ENERGY PROJECT

SOCIOECONOMICS - Figure 2

Huntington Beach Energy Project - Cities In and Around the Six Mile Buffer



SOCIOECONOMICS

CALIFORNIA ENERGY COMMISSION, SITING, TRANSMISSION AND ENVIRONMENTAL PROTECTION DIVISION

SOURCE: Census 2010 - PL94-171, OpenStreetMap March 2013.

EXHIBIT No. 1

Huntington Beach Energy Project

SOIL & WATER - FIGURE 1
Huntington Beach Energy Park

CALIFORNIA ENERGY COMMISSION - SITING, TRANSMISSION AND ENVIRONMENTAL PROTECTION DIVISION

EXHIBIT No. 2
Huntington Beach Energy Project

PROJECT DESCRIPTION - FIGURE 1A

Huntington Beach Energy Project - Conceptual Drawing

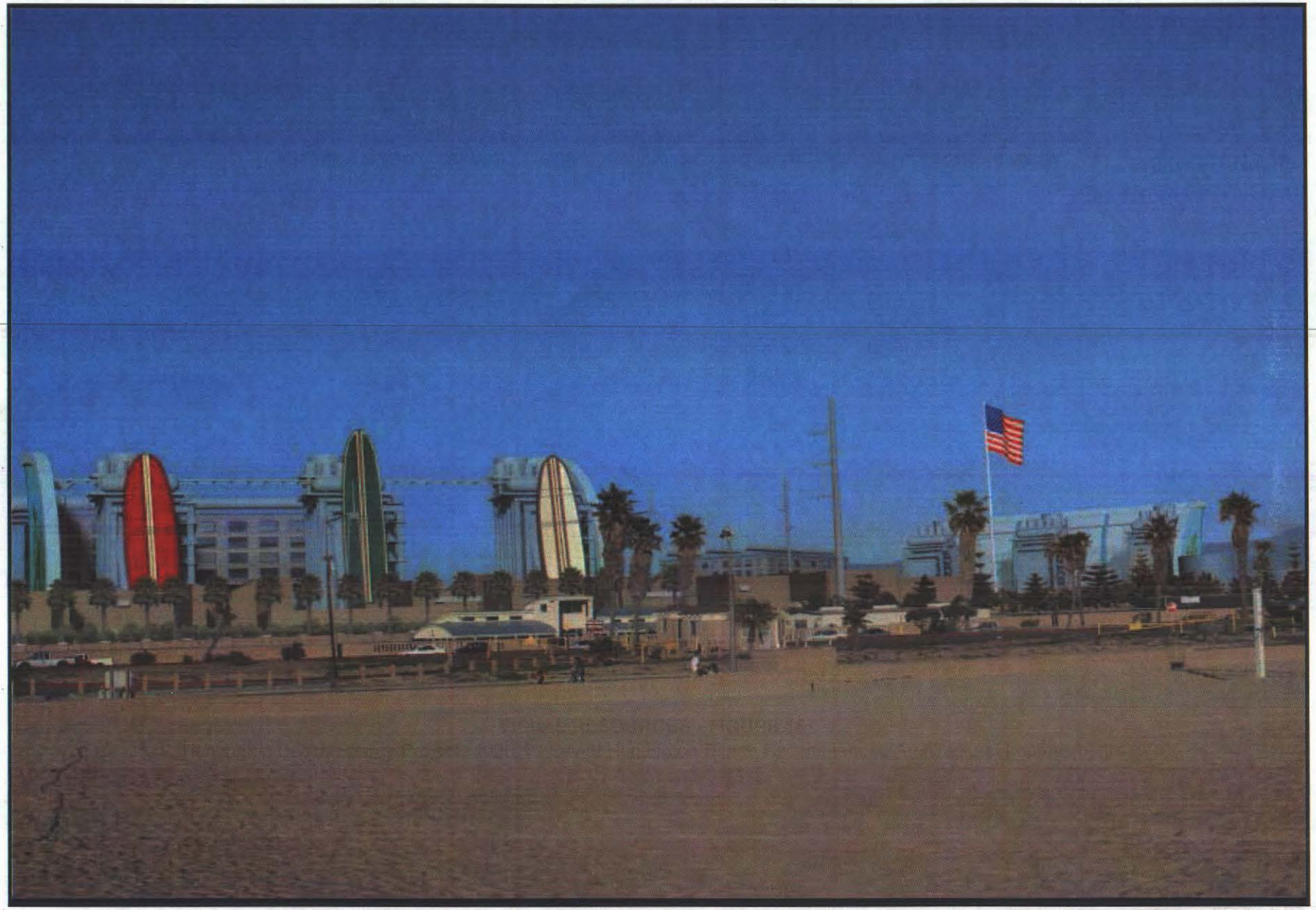
PROJECT DESCRIPTION

EXHIBIT No. 3

Huntington Beach Energy Project

VISUAL RESOURCES - FIGURE 16

Huntington Beach Energy Project - KOP 1 - City of Huntington Beach Recommended Architectural Improvements



VISUAL RESOURCES

CALIFORNIA ENERGY COMMISSION - SITING, TRANSMISSION AND ENVIRONMENTAL PROTECTION DIVISION

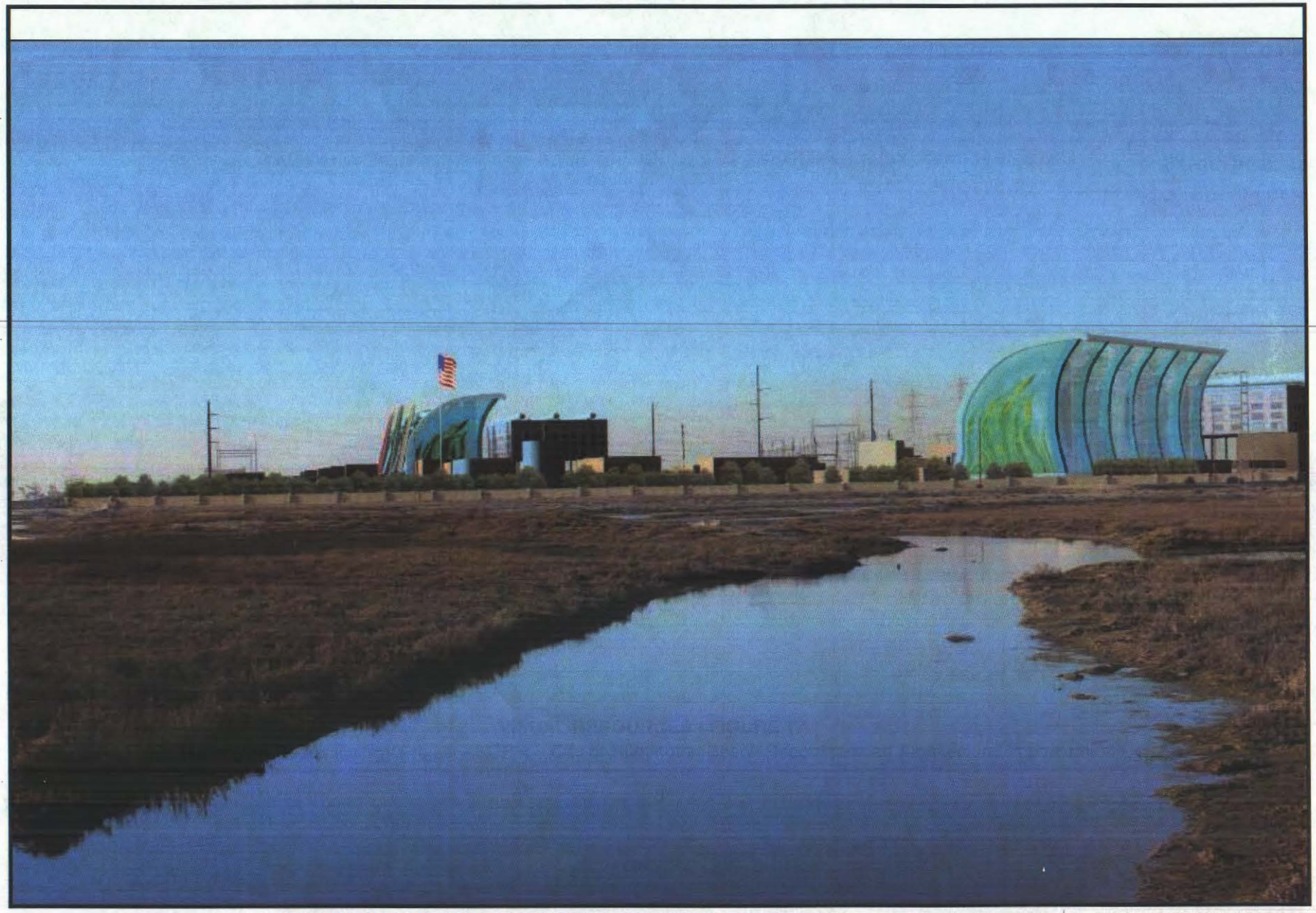
SOURCE: TN #202084

EXHIBIT No. 4a

Huntington Beach Energy Project

VISUAL RESOURCES - FIGURE 17

Huntington Beach Energy Project - KOP 4 – City of Huntington Beach Recommended Architectural Improvements



VISUAL RESOURCES

CALIFORNIA ENERGY COMMISSION - SITING, TRANSMISSION AND ENVIRONMENTAL PROTECTION DIVISION

SOURCE: TN #202084

EXHIBIT No. 4b

Huntington Beach Energy Project

EXHIBIT No. 5
Huntington Beach Energy Project

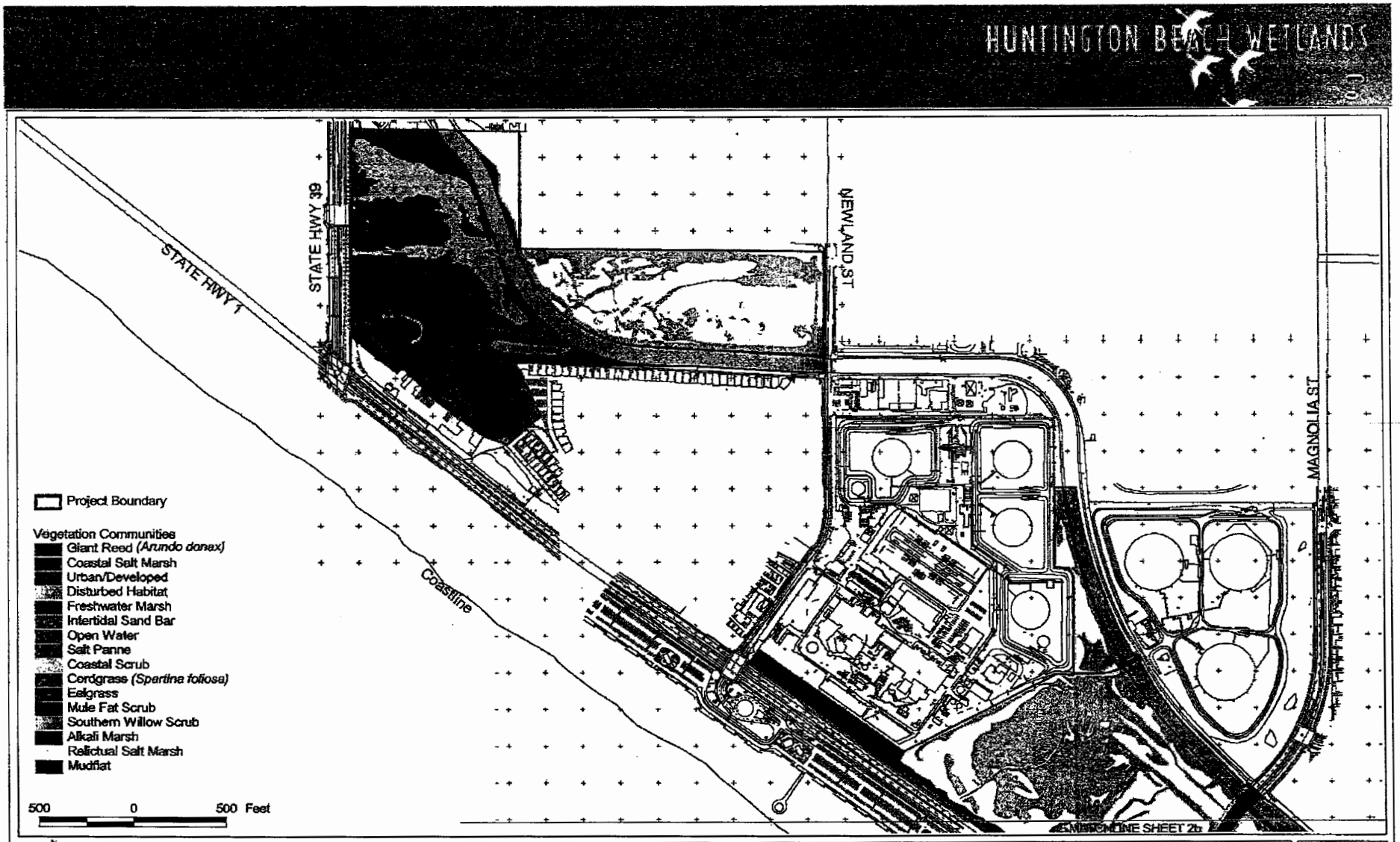
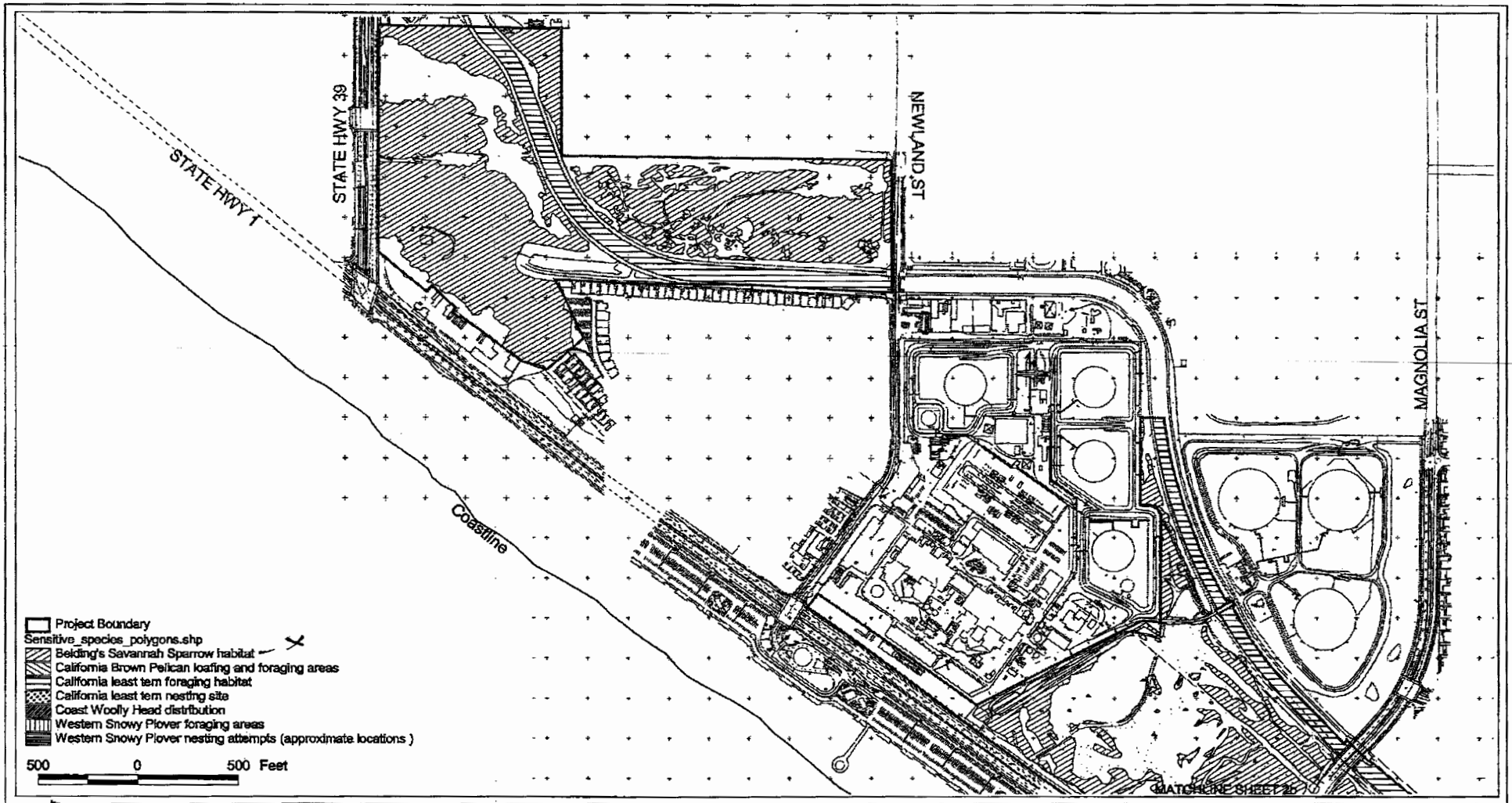


EXHIBIT No. 6
Huntington Beach Energy Project

04-001-01



Huntington Beach Wetlands
Sensitive Species Habitats
Western Portion

Figure 4a

Merkel & Associates, Inc.

EXHIBIT No. 7
Huntington Beach Energy Project

Sea Level Rise and Coastal Flooding Impacts

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

United States Department of Commerce | National Oceanic and Atmospheric Administration | National Ocean Service

Contact Us | Privacy Policy | Link Disclaimer | USA.gov

EXHIBIT No. 8

Huntington Beach Energy Project

Exhibit IV-D-2: City of Huntington Beach Prado Dam Inundation Map

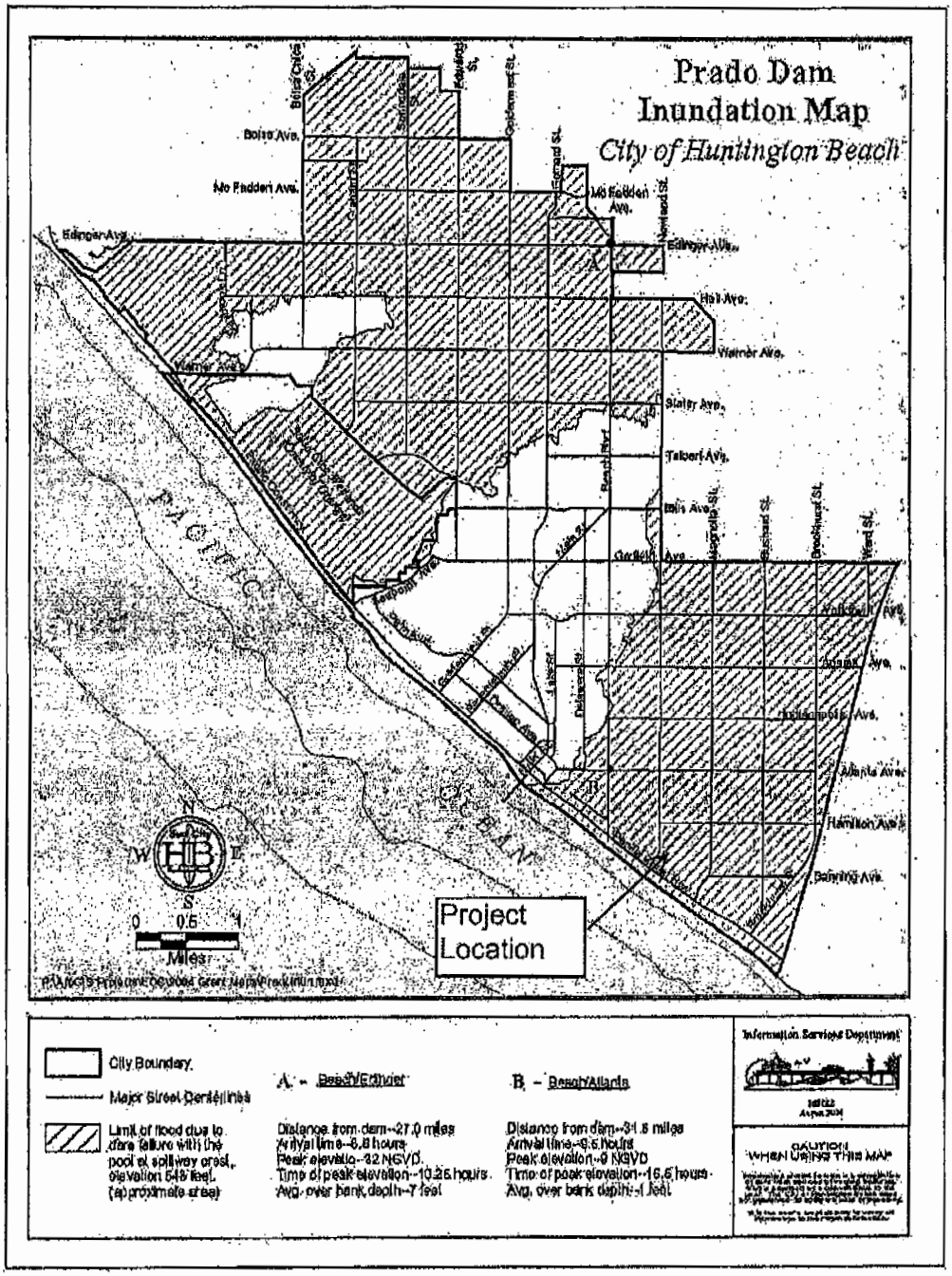
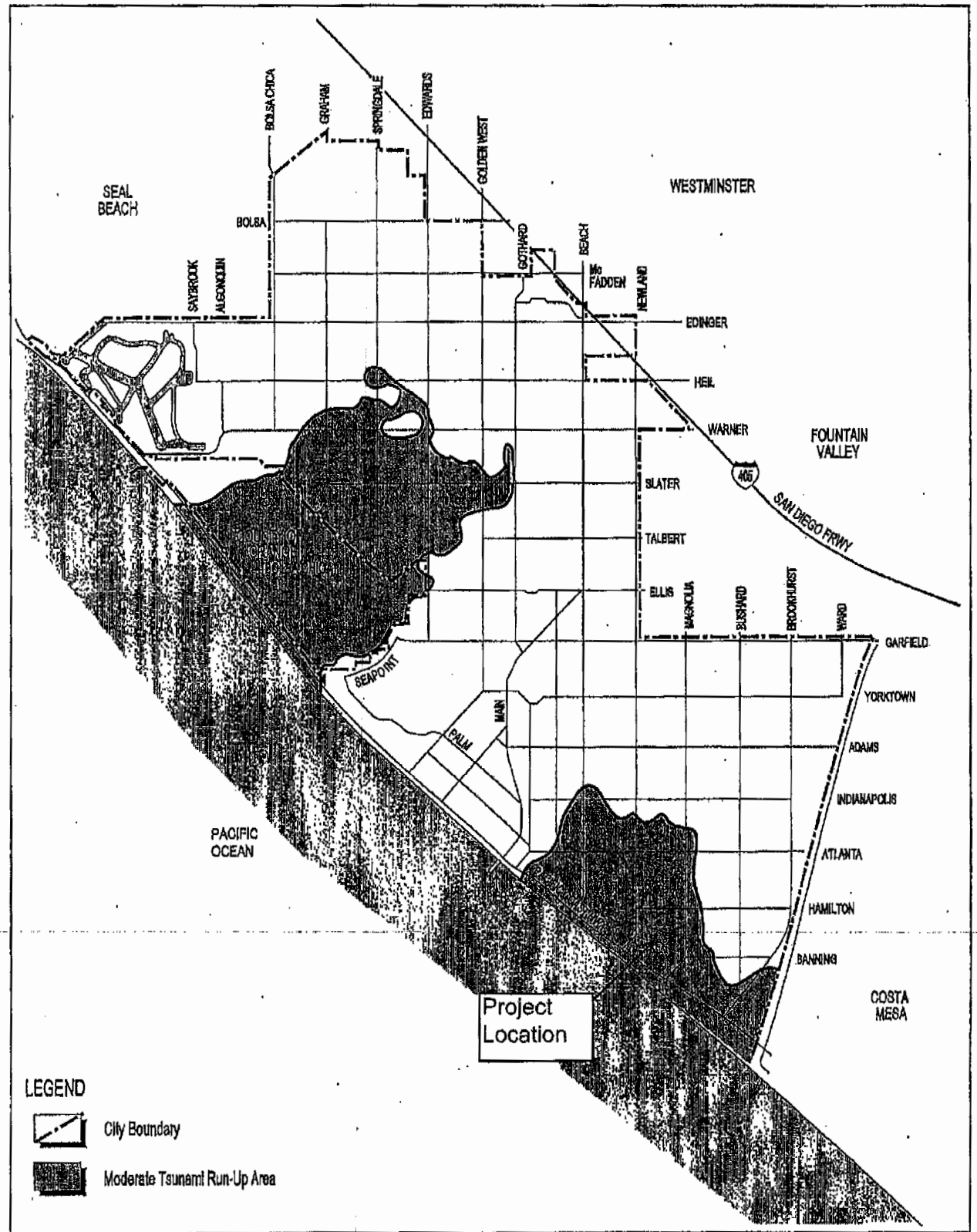


EXHIBIT No. 9
Huntington Beach Energy Project



MODERATE TSUNAMI RUN-UP AREA

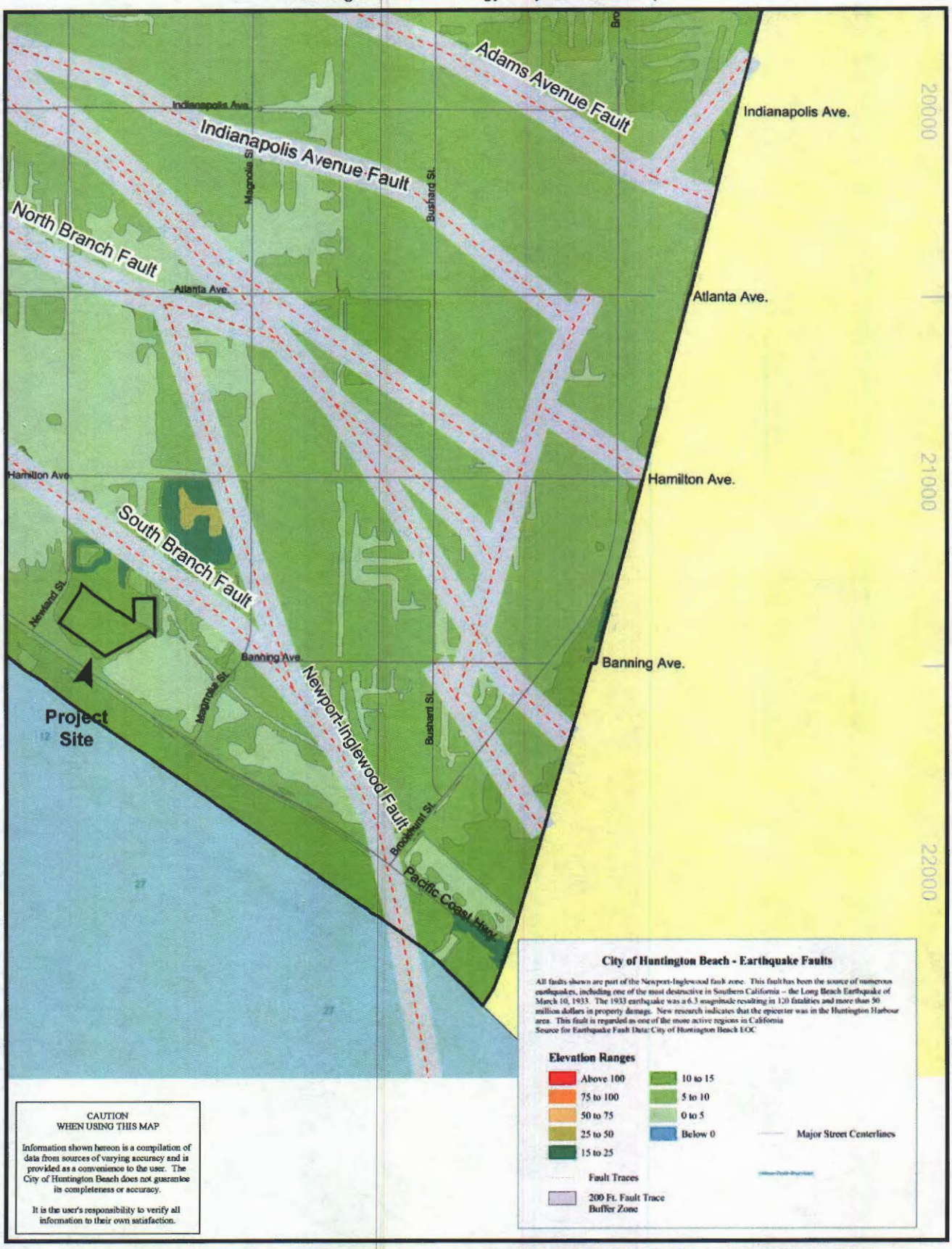
CITY OF HUNTINGTON BEACH GENERAL PLAN

FIGURE EH-8

EXHIBIT No. 10
Huntington Beach Energy Project

GEOLOGY AND PALEONTOLOGY - FIGURE 10

Huntington Beach Energy Project - Fault Map



CALIFORNIA ENERGY COMMISSION - SITING, TRANSMISSION AND ENVIRONMENTAL PROTECTION DIVISION

SOURCE: City of Huntington Beach EOC

GEOLOGY AND PALEONTOLOGY

EXHIBIT No. 11

Huntington Beach Energy Project

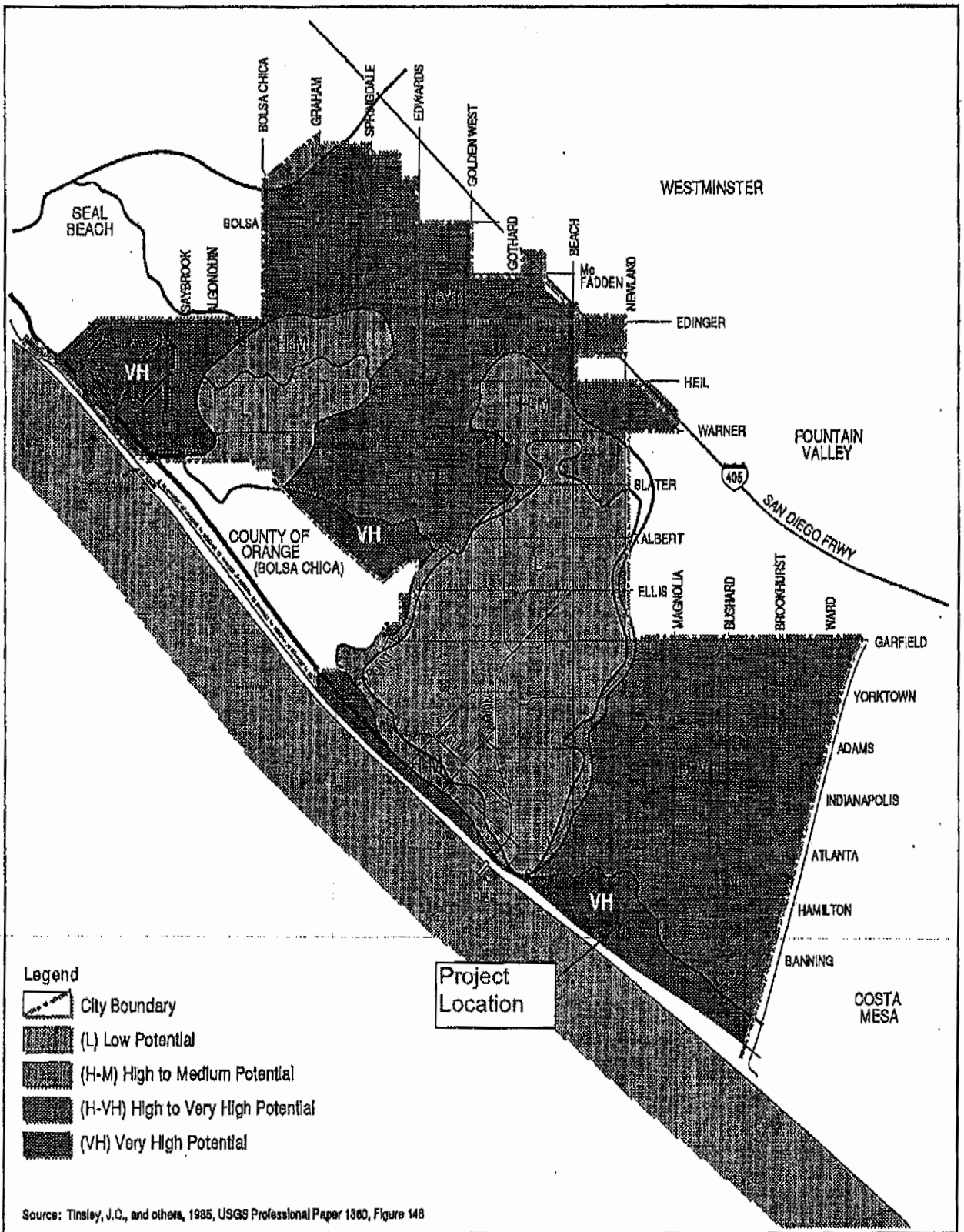


EXHIBIT No. 12
Huntington Beach Energy Project

TRAFFIC AND TRANSPORTATION - FIGURE 4
Huntington Beach Energy Project- HBEP Construction Parking Areas

CALIFORNIA ENERGY COMMISSION - SITING, TRANSMISSION AND ENVIRONMENTAL PROTECTION DIVISION
SOURCE: AFC - Figure 5.12 - 4

TRAFFIC AND TRANSPORTATION
EXHIBIT No. 13
Huntington Beach Energy Project