

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

**RECORD PACKET COPY****STAFF REPORT: COASTAL DEVELOPMENT PERMIT
REQUIREMENT DETERMINATION**

DATE: May 19, 2005

TO: Commissioners and Interested Persons

FROM: John Ainsworth, District Director *ja*
Gary Timm, District Manager
Steve Hudson, Supervisor, Planning and Regulation

SUBJECT: Commission Determination on Santa Barbara County Action 4-STB-05-103 at the June 8 - 10, 2005, Commission Meeting (pursuant to California Code of Regulations, Title 14, Section 13569) that Southern California Edison's replacement of wooden power poles with new larger metal poles within the Coastal Zone in Santa Barbara County constitutes development, as defined by the certified Local Coastal Program, that requires a coastal development permit that is appealable to the Commission.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission find that **the project constitutes development that requires an appealable coastal development permit** pursuant to the certified Local Coastal Program (LCP). The motion and resolution can be found on **Page 4**. The standard of review for the proposed development is the policies and provisions of the County of Santa Barbara Local Coastal Program. After certification of a Local Coastal Program, the Coastal Commission is authorized under CCR Title 14, Section 13569 to resolve disputes concerning a local government's processing of development proposals for purposes of Coastal Development Permit requirements. In this case, the County asserts that the above referenced development is exempt from the requirement to obtain a coastal development permit and that it disagrees with the Executive Director's determination that the above referenced development requires a coastal development permit that is appealable to the Commission.

Southern California Edison completed a project in 2004 involving the replacement of several existing wooden power poles (ranging in height from approximately 60 ft. to 80 ft.) with new taller metal poles (ranging in height from approximately 70 ft. to 85 ft.) along a 3.7-mile long section of line within Santa Barbara County. The new poles range between 0 and 15 ft.

greater in height, although the typical increase for most poles is 5 ft. – 10 ft. greater in height than previously existing poles. The County processed the request by Southern California Edison to determine whether the development was exempt from the coastal development permit requirement after the work had already been completed. The County has stated that at least 49 existing wooden poles were replaced with metal poles but have not indicated whether all 49 poles were located within the Coastal Zone. At least 13 existing poles were replaced within the Shepard Mesa area adjacent to Highway 150/Highway 192 within the Coastal Zone.

The County issued an after-the-fact exemption determination for the project on March 9, 2005, after all work had been completed. Commission staff informed the County in early February that Commission staff were investigating the matter to determine whether a coastal permit was required for the development. Commission staff again contacted County staff during the first week of March 2005 and requested that the County defer any formal determination of whether the project required a coastal permit until Commission and County staff could discuss the matter together the following week. However, when Commission staff contacted County staff on March 10, 2005, to inform the County that, based on a review of all available evidence, the project was not exempt, Commission staff was, at that time, informed that the County had already issued an exemption determination to the applicant the previous day on March 9, 2005 (Exhibit 3). Commission staff informed the County that although repair and maintenance activities not resulting in enlargement of the object would be exempt under the County's LCP, the replacement of the power poles by Southern California Edison involved the replacement of the existing poles with new larger poles, and was therefore, not exempt. The County was requested by Commission staff, on the same day, to immediately rescind its exemption and process a coastal permit application for the project. In addition, County staff was also informed on March 10 that, because the above referenced development is not the principal permitted use under the zoning ordinance, any coastal permit approved by the County for such development would be appealable to the California Coastal Commission.

Although the County had already been previously informed that the development was not exempt and required a coastal development permit, Santa Barbara County subsequently requested a formal Executive Director's Determination of the requirement for a coastal permit in a letter dated April 27, 2005 (Exhibit 4). The Executive Director notified the County in a letter dated May 3, 2005, that the above referenced pole replacement project requires a coastal development permit and that such permit is appealable. (Exhibit 6).

In a subsequent letter dated May 5, 2005, the County informed the Commission that it does not agree with the Executive Director's determination and requested the Commission to schedule a hearing on the determination for the next Commission hearing (in the appropriate geographic region) following the local government's request (Exhibit 5). Under Section 13569, when the local jurisdiction does not agree with the Executive Director's determination regarding the appropriate permitting status of a particular proposal, the Commission is required to hold a hearing and make the determination at the next meeting in the appropriate geographic region of the state following the Executive Director's determination, which in this case is the June 2005 meeting in Los Angeles.

I. STANDARD OF REVIEW

After certification of a Local Coastal Program (LCP), Under Section 13569 of the California Code of Regulations, when the local jurisdiction does not agree with the Executive Director's determination regarding the appropriate permitting status of a particular proposal, the Commission is required to hold a hearing and make the determination at the next meeting in the appropriate geographic region of the state following the Executive Director's determination, which in this case is the June 2005 meeting in Los Angeles.

The standard of review for the proposed development is the policies and provisions of the County of Santa Barbara Local Coastal Program. In addition, all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified LCP as guiding policies pursuant to Policy 1-1 of the LUP.

II. AUTHORITY FOR DETERMINATION

The authority for the Commission's determination stems from California Code of Regulations, Title 14, Section 13569 (Determination of Applicable Notice and Hearing Procedures) that states:

The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the Coastal Zone is submitted. This determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program. Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable:

- (a) The local government shall make its determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures.*
- (b) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;*
- (c) The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable:*
- (d) Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the*

Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request.

If the SCE project does not qualify for an exemption from the permit requirement of the LCP, then SCE must seek authorization from the County in a coastal development permit, and approval of such permit may be appealed to the Commission.

After the certification of a LCP, the Commission is authorized to determine the appropriate status of a development proposal (i.e., categorically excluded, non-appealable, or appealable) when requested to do so. The purpose of the regulation is to provide for an administrative process for the resolution of disputes over the status of a particular project. The Coastal Act was set up to give certified local governments the primary permitting authority over projects proposed in the Coastal Zone but to allow the Commission oversight authority over specified projects through the appeal process. Thus, the regulations anticipated that, from time to time, there may be disagreements regarding whether a particular project may be appealed to the Commission and an administrative dispute resolution process would be preferable (and quicker) than the immediate alternative of litigation. The local government may initiate the request or forward a request made by an applicant or other interested party. The first step in this process is to request a determination from the Commission's Executive Director. If the Executive Director and the local government are in disagreement over the appropriate processing status, as is the situation here, the Commission is charged with making the final determination.

In this case, Santa Barbara County requested an Executive Director's Determination on the Southern California Edison Pole Replacement Project in a letter dated April 27, 2005, and received by the Commission on April 29, 2005. The Executive Director is **required** to render a determination (CCR Title 14, Section 13569 (c)) and, in the event the local government disagrees with the opinion, "***the Commission shall hold a hearing for purposes of determining the appropriate designation for the area***" (CCR, Title 14, Section 13569 (d)). The Executive Director notified the County in a letter dated May 3, 2005, that the above referenced pole replacement project was not exempt from the requirement to obtain a coastal development permit. The County staff responded in a letter dated May 5, 2005, that states that the County does not agree with the Executive Director's determination and that the County requests the Commission follow the procedures provided by Section 13569 of the California Code of Regulations and schedule a hearing on the determination for the next Commission hearing (in the appropriate geographic region) following the local government's request. Once a request is made, participation is not optional and if a system for dispute resolution is to be effective, the requirements for implementation of the process must be observed by both the Coastal Commission **and** the local government. In this case, the Executive Director has made a determination that the above referenced development requires a coastal development permit that is appealable to the Commission and the County has stated that they disagree, therefore, the matter will be heard by the Commission.

III. COMMISSION ACTION ON DETERMINATION OF PERMIT REQUIREMENTS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

The Executive Director recommends that the Commission adopt the attached findings and resolution to determine that the Southern California Edison pole replacement project is not exempt from permit requirements and that the project constitutes development as defined by the certified Local Santa Barbara County Local Coastal Program that requires an appealable coastal development permit.

MOTION

*I move that the Commission determine that the Southern California Edison pole replacement project (4-STB-05-103) for which the County issued an exemption letter dated March 9, 2005, is **exempt** from the permit requirements of the certified Santa Barbara County Local Coastal Program.*

STAFF RECOMMENDATION

*Staff recommends a **NO** vote. Failure of this motion will result in adoption of the following resolution and findings and will require that the County process a coastal development permit application for the project as an appealable item. The motion passes only by affirmative vote of a majority of the Commissioners present.*

RESOLUTION

The Commission, by adoption of the attached findings, determines, pursuant to Section 13569 of Title 14 of the California Code of Regulations, that the Southern California Edison pole replacement project constitutes development as defined by the certified Local Santa Barbara County Local Coastal Program which requires a coastal development permit that is appealable to the Coastal Commission.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project History and Background

Southern California Edison completed a project in 2004 involving the replacement of several existing wooden power poles (ranging from approximately 60 ft. to 80 ft. in height) with new taller metal poles taller (ranging from approximately 70 ft. to 85 ft. in height) along approximately 3.7-mile long section of line within Santa Barbara County. The new poles range between 0 and 15 ft. greater in height, although the typical increase for most poles is 5 ft. – 10 ft. greater in height than previously existing poles. New larger wire (conductors), approximately three times the diameter of the previously existing conductors was installed. The County has stated that at least 49 existing wooden poles were replaced with metal poles in Santa Barbara County but have not indicated whether all 49 poles were located within the Coastal Zone. At least 13 existing poles were replaced within the Shepard Mesa area adjacent to Highway 150/Highway 192 within the Coastal Zone.

Although the number of wires and the maximum voltage (66kV) remains the same, the purpose of the project is to increase the capacity of the line. The County has indicated that the new larger poles are necessary to lift the new heavier wire to regulation height. The County has also stated that the larger capacity of the lines is not intended to serve new customers or service areas but is only intended to improve the reliability of existing service levels to the South Coast by allowing the new lines to carry additional load in the event that other main lines fail.

1. Local Permit/Authorization History

Commission staff was initially notified of the project in November 2004 by local residents in the Shepard Mesa area in opposition to the project. Some of the poles which have been replaced are visible from Highway 154 and the concerned parties assert that the installation of the new larger metal poles (in addition to private view impacts which are not addressed by the policies of the certified LCP) have resulted in potential adverse impacts to public views. At the time Commission staff was notified, the pole replacement project was already substantially completed. Commission staff contacted County staff regarding the matter and were informed that the County was processing an after-the-fact request by Southern California Edison to determine whether the project was exempt from coastal permit requirements. In February, Commission staff informed the County that Commission staff was investigating the matter to determine whether a coastal permit was required for the development. In follow-up, Commission staff again contacted County staff during the first week of March 2005 and requested that the County defer any formal determination of whether the project required a coastal permit until Commission and County staff could discuss the matter together the following week. However, when Commission staff contacted County staff on March 10, 2005, to inform the County that, based on a review of all available

evidence, the project was not exempt, Commission staff was, at that time, informed that the County had already issued its determination to the applicant the previous day on March 9, 2005 (Exhibit 3). Commission staff informed the County that although repair and maintenance activities not resulting in enlargement of the object would be exempt under the County's LCP, the replacement of the power poles by Southern California Edison involved the replacement of the existing poles with new larger poles, and was therefore, not exempt. In addition, Commission staff informed County staff that because the above referenced development is not the principal permitted use under the zoning ordinance, any coastal permit approved by the County for such development would be appealable to the California Coastal Commission. In response, County staff informed Commission staff that they did not intend to rescind the County-issued exemption.

2. Executive Director's Determination Disputed by the County

A letter from the County of Santa Barbara dated April 27, 2005, and received in the California Coastal Commission's San Francisco's office on April 29, 2005, requests a determination of whether the replacement of 13 wood power poles with taller metal poles by Southern California Edison is exempt from the requirement to obtain a coastal development permit pursuant to Section 35-169.2.1.a and Appendix C "County Guidelines on Repair and Maintenance and Utility Connection to Permitted Development" of the County's certified LCP (Exhibit 4).

Commission staff responded in a letter dated May 3, 2005, which states that, as the County had been previously informed, the replacement of the above referenced wood power poles with taller metal poles in the Coastal Zone is not exempt from the requirement to obtain a coastal development permit under either Section 35-169.2.1.a or the Appendix C "County Guidelines on Repair and Maintenance and Utility Connection to Permitted Development" of the certified LCP (Exhibit 6).

The County staff subsequently responded in a letter dated May 5, 2005, that states that the County does not agree with the Executive Director's determination and requests the Commission follow the procedures provided by Section 13569 of the California Code of Regulations and schedule a hearing on the determination for the next Commission hearing (in the appropriate geographic region) following the local government's request (Exhibit 5).

B. Development Requiring a Coastal Development Permit

Pursuant to Section 35-169.2.1 of the certified Santa Barbara County LCP (consistent with Section 30600 (a) of the Coastal Act) any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by the LCP (consistent with the definition of "development" as defined by Section 30106 of the Coastal Act) as:

"Development" 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 any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the 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 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 harvest 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).

In this case, the replacement of existing wooden power poles with new larger metal poles is the "placement or erection of any solid material or structure" and the "construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility" and, therefore, constitutes development.

In addition, Section 35-169.2.1 of the certified Santa Barbara County LCP states, in relevant part, that:

Before using any land or structure, or commencing any work pertaining to any development or use in the Coastal Zone of the County, wherein permits are required under the provisions of this Article, a Coastal Development Permit shall be issued, unless other regulations of this Article specifically indicate that such activity is exempt...

The Commission notes that the certified Coastal Zoning Ordinance contains provisions that would allow for some types of development to be exempt from the requirement to obtain a coastal development permit. Specifically, the County's letter to Southern California Edison dated March 9, 2005, asserts that the pole replacement project is exempt from coastal permit requirements pursuant to: (1) Section 35-169.2.1.a of the Coastal Zoning Ordinance and (2) Appendix C of the Coastal Zoning Ordinance (County Guidelines on Repair and Maintenance and Utility Connections to Permitted Development) as incorporated by Section 35-169.10. Section 35.169.2.1.a of the certified Coastal Zoning Ordinance states that a coastal permit is not required for:

Repair and maintenance activities that do not result in addition to, or enlargement or expansion of, the object of such repair or maintenance activities (see 35-169.10).

Appendix C of Coastal Zoning Ordinance as incorporated by Section 35-169.10 (County Guidelines on Repair and Maintenance and Utility Connections to Permitted Development) also states that, consistent with Section 35-169.2, a Coastal Development Permit shall be required for all development with the exception of the following two general provisions:

- 1. Repair and maintenance activities that do not result in addition to, or enlargement or expansion of, the object of such repair or maintenance activities.***

2. ***Installation, testing, placement in service, or the replacement of any necessary utility connection between an existing service facility and any development that has been granted a Coastal Development Permit.***

The two general provisions of the County's Repair and Maintenance and Utility Connection Guidelines only provide that development would not require a coastal permit if such development: (1) does not involve the enlargement or expansion of the object or (2) involve the placement or replacement of a utility connection between an existing service facility and a development that has been granted a Coastal Development Permit, such as a new residence or other structure. The Commission finds that the pole replacement project involves the replacement of several existing wooden power poles (ranging in height from approximately 60 ft. to 80 ft.) with new taller metal poles typically 5 – 10 ft. taller (ranging in height from approximately 70 ft. to 85 ft.) and will, therefore, result in the **"enlargement or expansion of the object."** Therefore, the project is not exempt under the first provision. In addition, although the project involves the replacement of the main power line, it **does not involve the installation or replacement of a "connection between an existing service facility and any development that has been granted a Coastal Development Permit,"** such as the extension or replacement of lines to provide service to a new residence that has been permitted. As such, the Commission finds that the project is not exempt under either of the two general provisions of Appendix C.

In addition, the March 9, 2005, letter from the County to Southern California Edison also asserts that an additional subsection of the Appendix C guidelines serves as a basis for the County's determination that the project is exempt. The County's March 9, 2005, letter states that "because the small increase in pole height was technically necessary to support the upgraded wires, such activity may be considered "comparable" to this exemption, which specifically addresses additions to or modifications of wires on existing poles." Part II.B.2.b of the Appendix C "Repair and Maintenance" Guidelines states, as cited in the County's March 9, 2005, letter:

Transmission and Distribution and Communication Facilities. A Coastal Development Permit is not required to maintain, replace, or modify existing overhead facilities, including the addition of equipment and wires to existing poles or other structures, right-of-way maintenance, and minor pole and equipment relocations. A Coastal Development Permit is not required to install, test and place in service power line extension facilities and supply points specifically required to provide service to development either having a C.D.P. or exempted from a C.D.P., or work required to supply increased demand of existing customers' facilities in order to maintain the existing standard of service.

The Commission notes that this exemption provision only allows for the replacement of "overhead facilities", which includes the "addition of equipment and wires to existing poles" and for some "minor pole and equipment relocations." In addition, this provision also allows for the placement of new "line extension facilities", such as installation of facilities to extend service to development approved under a separate coastal permit, including such development as a new residence approved under a separate coastal permit. However, this provision does not provide for complete replacement of poles

with new larger poles which would be inconsistent with the above referenced general provisions of the Repair and Maintenance Guidelines which specify that a coastal permit is required for any repair and maintenance activities that would "result in addition to, or enlargement or expansion of, the object of such repair or maintenance activities." As such, the Commission finds that although the replacement of existing wires and other overhead facilities which are attached to existing poles would be exempt provided that the replacement activity does not serve to expand the service capacity of the lines, the replacement of the poles themselves with new larger poles is not exempt.

Therefore, the above mentioned pole replacement project constitutes development under the Coastal Act that requires a coastal development permit. Any permit approved by the County for the project is appealable to the Coastal Commission. Thus, in order to resolve this matter, Southern California Edison must obtain an after-the-fact coastal development permit from the County addressing the development that has occurred. Alternatively, the Commission notes that although the pole replacement project, as completed by Southern California Edison, is not exempt from coastal permit requirements under the policies and ordinances of the certified LCP, removal of the new poles and undergrounding of existing transmission lines within existing road rights-of-way would be exempt and would also resolve this matter. The Appendix C guidelines specifically provide that a "Coastal Development Permit is not required to install, test, place in service, maintain, replace, modify or relocate underground facilities or to convert existing overhead facilities to underground facilities provided that work is limited to public road or railroad rights-of-way or public utility easements (P.U.E.)." As such, the removal of the poles and installation of the transmission facilities underground would be exempt under the County's LCP and would not require a coastal permit.

Finally, the Commission notes that both County letters dated April 27 and May 5, 2005, suggest that the Commission should assert coastal permit issuance authority over this project because the development runs through multiple certified LCP jurisdictions. The County has not submitted any information regarding the location or number of other poles that have been replaced in other jurisdictions or whether such development has occurred within the Coastal Zone, however, the Commission notes that it does not have primary permit issuance jurisdiction over this project regardless of whether the project extends into multiple certified LCP jurisdictions. Therefore, the County remains the permit issuance authority for all of the above referenced development that occurred within the County's LCP jurisdiction.

C. Conclusion

The above referenced replacement of existing wood power poles with new larger metal poles constitutes development that requires a coastal development permit and is not exempt pursuant to the County's LCP. In addition, because the development is not the principle permitted use under the zoning ordinances, a coastal development permit for the project could be appealed to the Coastal Commission after the Commission receives the required Final Local Action Notice from the County.

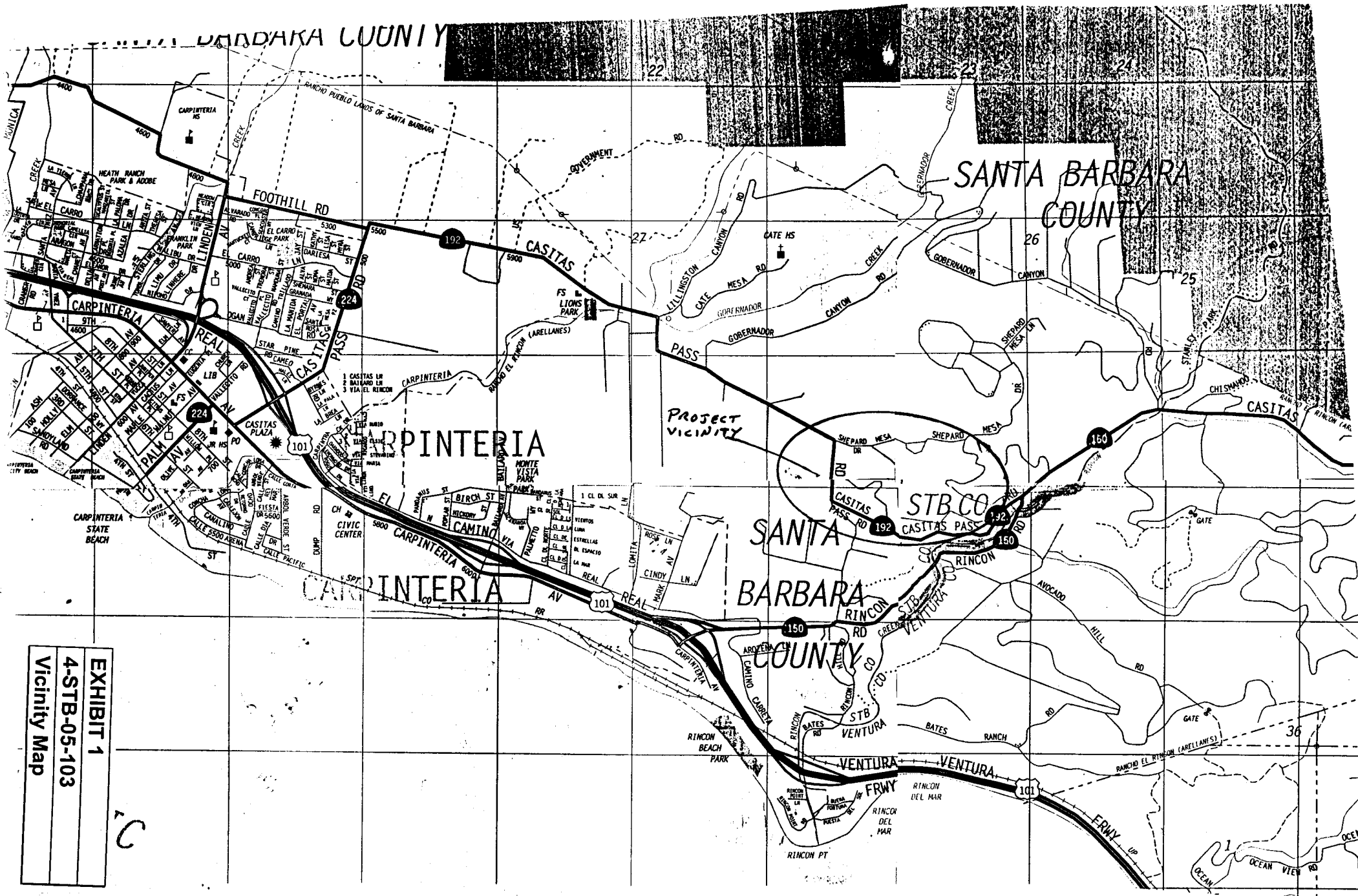
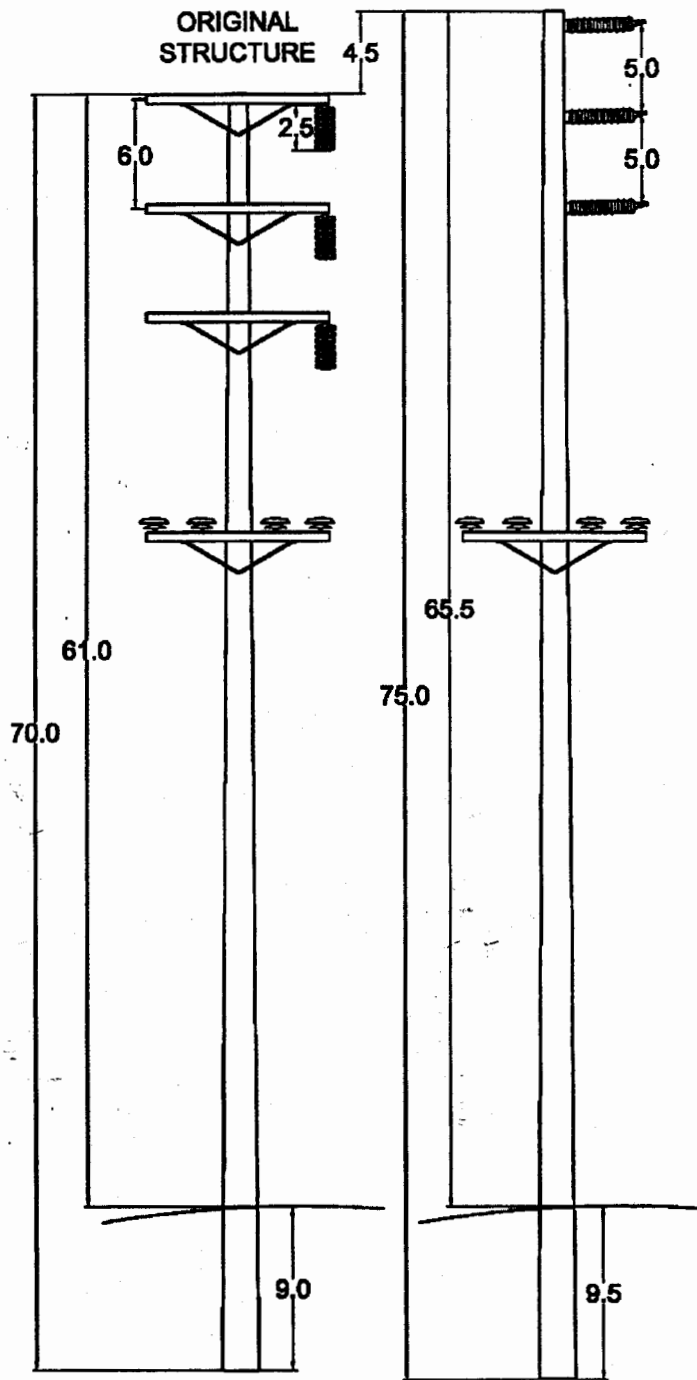
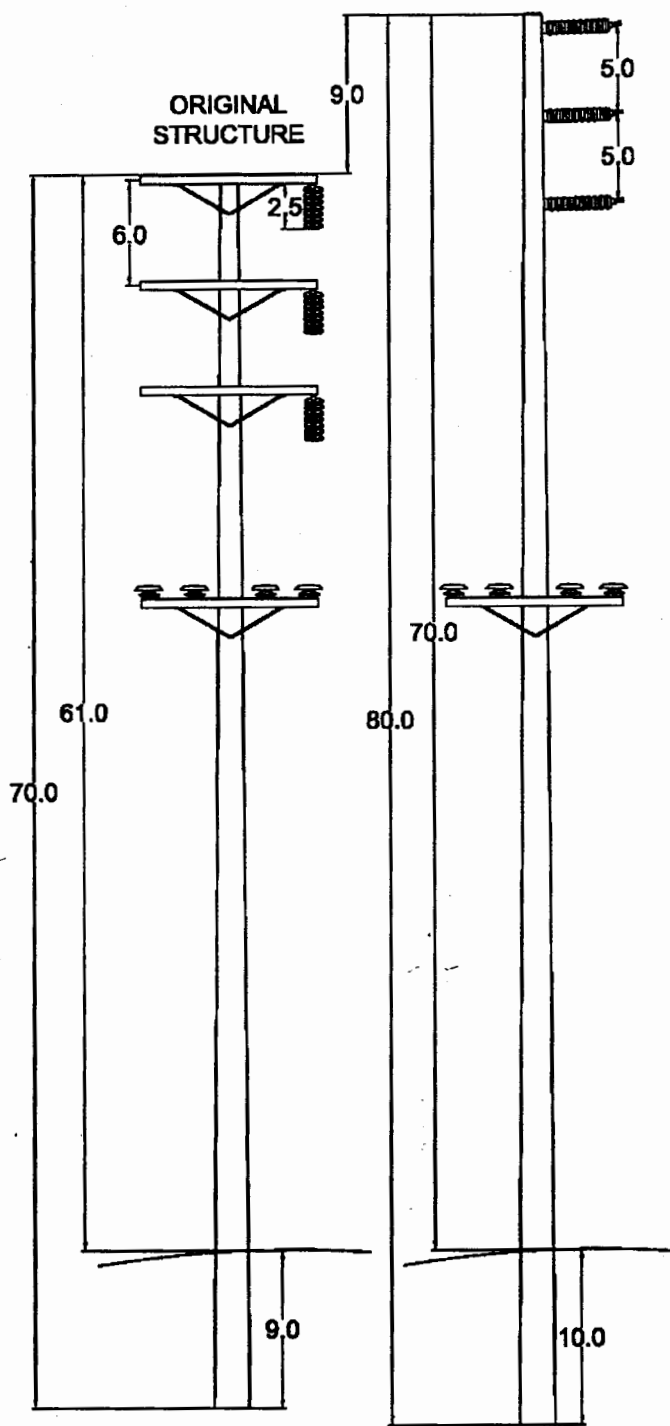


EXHIBIT 1
 4-STB-05-103
 Vicinity Map

2







County of Santa Barbara Planning and Development

Valentin Alexeeff, Director
Dianne Meester, Assistant Director

March 9, 2005

Jane Brown
Southern California Edison
103 David Love Place
Goleta, California 93117

RE: Shepard Mesa Power Pole and Transmission Line Replacements and Upgrades

Dear Ms. Brown:

Southern California Edison (SCE) completed the above-referenced project in 2004 without notifying Planning and Development. In the fall of 2004, several neighbors of the project requested that the department review the project to determine whether permits were required, and, if they were, to take appropriate action.

The project consisted of replacement of 13 wood power poles with lightweight metal poles. (The Shepard Mesa poles are part of a 3.7-mile segment of power lines in Santa Barbara County running from the Ventura County line to the Carpinteria substation, in which 49 of the 85 wood poles were replaced.) The metal poles, which are more durable than wood, are also 0 to 15 feet taller than the preexisting wood poles; the increased height is required to lift the heavier wires to regulation height. In addition, new conductors (wires), nearly three times the diameter of the preexisting conductors, were installed, and the insulators were upgraded. Although their ultimate capacity is greater, the number of wires and maximum voltage (66 kV) remains the same. In addition to installing more durable poles, the purpose of the project was to add more capacity to the line in order to improve the reliability of electrical service to the south coast. Specifically, the higher capacity would allow those lines to take additional load, thus allowing service to continue uninterrupted, should one of the other main lines fail and rerouting through the grid become necessary.

Section 35-169.2.1.a of the Article II (Coastal) Zoning Ordinance states that a permit is not required for "[r]epair and maintenance activities that do not result in addition to, or enlargement or expansion of, the object of such repair or maintenance activities." Section 35-169 also includes, in Subsection 10, a reference to Appendix C of Article II, the County's Guidelines on Repair and Maintenance and Utility Connection to Permitted Development, which further clarifies the repair and maintenance exemptions. Under the subsection applying to public utilities, Appendix C, Section II, "Description of Activities Excluded," lists specific construction activities that are exempt from Coastal Development Permits and notes that "comparable" activities are also exempt. This section goes on to provide the following permit exemption for replacement and upgrade of certain transmission lines:

Transmission and Distribution and Communication Facilities. A Coastal Development Permit is not required to maintain, replace, or modify existing overhead facilities, including the addition of equipment and wires to existing poles or other structures, right-of-way maintenance, and minor pole and equipment relocations. A Coastal Development Permit is not required to install, test and

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EXHIBIT 3
4-STB-05-103
County Exemption, dated 3/9/05

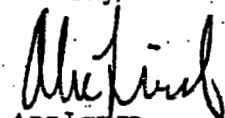
place in service power line extension facilities and supply points specifically required to provide service to development either having a C.D.P. or exempted from a C.D.P., or work required to supply increased demand of existing customers' facilities in order to maintain the existing standard of service. [Section II.B.2.b.]

Because the small increase in pole height was technically necessary to support the upgraded wires, such activity may be considered "comparable" to this exemption, which specifically addresses additions to or modifications of wires on existing poles. In addition, in the absence of specific parameters defining "addition to, or enlargement or expansion of" in the ordinance or in Appendix C, there is some level of *de minimus* modification of facility size that must necessarily be considered insignificant enough to not require permits. The poles in question increased in height from 0 to approximately 19 percent, averaging an increase of about 9.5 percent. Although line capacity did increase to handle emergency situations, the voltage did not increase, the number of lines did not increase and their thickness increased by less than one inch in diameter. The new lines are not designed or intended to serve new customers, more customers or a larger service area. In summary, although the new facilities are more robust and slightly larger, the project did not enlarge them to the point where the facilities must be considered "enlarged or expanded" within the meaning of Section 35-169.2. Moreover, Appendix C, Section II.B.2.b. specifically exempts additions of equipment and modification of existing overhead facilities. We conclude that the project is exempt from permits from Santa Barbara County.

We would, however, like to draw your attention to the following performance standard for transmission lines in important scenic areas (Article II, Section 35-148.2.b): "When above-ground facilities are necessary, design and color of the support towers shall be compatible with the surroundings to the extent safety and economic considerations allow." Because the County does not have permitting authority over this project, Edison is not legally required to follow this standard. Still, Edison may wish to consider adding aesthetic treatments to the poles, in consultation with the surrounding residents, to reduce their visual impacts, and to inform neighbors of any additional planned upgrades to the system before construction commences.

If you have any questions or concerns regarding the information in this letter, please feel free to contact me at (805) 568-3508 or by email at aleider@co.santa-barbara.ca.us.

Sincerely,



ABE LEIDER
Planner III

cc: Salud Carbajal, First District Supervisor
William Kerstetter, 6957 Shepard Mesa, Carpinteria, California, 93013
Jana Zimmer, Zimmer & Marcus,
Valentin Alexeeff, Director, P&D
✓ Jackie Campbell, Deputy Director, P&D
David Allen, County Counsel

COUNTY OF SANTA BARBARA

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COUNTY COUNSEL

April 27, 2005

RECEIVED

APR 29 2005

CALIFORNIA
EDISON'S COMMISSION
SOUTHERN CENTRAL COAST DISTRICT

Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: 14 CCR §13569 – Determination of Applicable Permit and Hearing Procedures

Dear Mr. Douglas:

On behalf of the County of Santa Barbara, I am notifying the Commission of a "dispute/question" within the meaning of Title 14, California Code of Regulations, §13569(b), regarding the appropriate permit, notice and hearing procedures for Southern California Edison's power pole replacements and transmission line upgrades through Ventura and Santa Barbara Counties and the City of Carpinteria. Section 13569(b) requires a local government to inform the Commission when an interested person challenges its determination of the applicable permit process (i.e. exemption, non-appealable) and to request the Executive Director's opinion as to the appropriateness of the local government's determination. We request that you confirm that the above referenced SCE utility replacement and maintenance project is exempt from the issuance of a Coastal Development Permit pursuant to the County's certified Coastal Zoning Ordinance ("CZO"). The relevant facts are summarized below and reflected in the attached documents provided for your review.

In 2004, SCE replaced 13 wood power poles with lightweight metal poles in a 3.7 mile segment of power lines running from Ventura County to SCE's Carpinteria substation. This was part of a much longer project that runs through the coastal zone in Ventura County and the City of Carpinteria. The average height increase accomplished by the replacement poles was approximately 9.5%. In addition, new wires, adding more capacity to the line in order to improve reliability of service, were installed. However, the voltage and number of lines did not increase and their thickness increased by less than 1 inch in diameter. The new lines were not designed or intended to serve new customers, more customers, or a larger service area.

EXHIBIT 4

4-STB-05-103

**County Correspondence,
dated 4/27/05**

Peter Douglas
April 27, 2005
Page 2

We are informed that no coastal development permit was required by either Ventura County or the City of Carpinteria for SCE's repair and maintenance project and that the exemption from permit requirements in those jurisdictions was not challenged by any person or government agency.

After SCE completed the power pole replacement and transmission line upgrade work, Planning & Development reviewed the work performed in response to an inquiry from the public. On March 9, 2005, Planning & Development staff determined that SCE's project was exempt from permit requirements under the repair and maintenance exemption in CZO Section 35-169.2.1.a and the Appendix C Guidelines on Repair and Maintenance and Utility Connection to Permitted Development. (See Attachment 1.) In considering whether SCE's project qualifies for the exemption for "repair and maintenance activities that do not result in addition to, or enlargement or expansion of, the object of such repair and maintenance activities," County staff sought the input of the Commission's Ventura County office staff. They suggested use of a 10% expansion trigger used in analogous situations as a guideline, which staff used with respect to evaluating the average pole height increase.

On March 18, 2005, Ms. Zimmer filed an appeal of the Determination of Exemption with the Director of Planning & Development. Included in the appeal correspondence is an earlier letter to SCE, dated November 22, 2004. (See Attachment 2.)

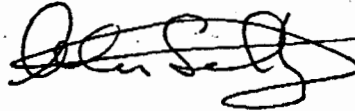
Exemption determinations are final and not appealable under the County's certified Coastal Zoning Ordinance. This is based on the language of CZO §35-182.2.1, which provides in its pertinent part that the following decisions of P&D are appealable: "approval, denial, or revocation, of Coastal Development Permits (CDPs), final approval of projects under the jurisdiction of the Director." (See Attachment 3.) A determination that a project is **exempt from** CDP requirements is separate and distinct from the actions necessary to reach "final approval of projects under the jurisdiction of the Director," and the County has historically not made exemption determinations subject to the appeal provisions of the CZO.

Thus, the attached exemption determination, made pursuant to CZO §35-169.2.1a and the Appendix C Repair and Maintenance Guidelines, is a final decision of the County. We understand that if your determination is not in accordance with the County's, then a Commission hearing must be scheduled pursuant to §13569(d) for purposes of determining the correctness of the County's exemption determination. Because the County decision is final, and because the SCE maintenance project runs through multiple coastal jurisdictions, we believe that if the Commission determines that a CDP is required, provision should be made for the Commission to consider the permit itself pursuant to its exercise of jurisdiction and to promote efficient administrative review and permit processing.

Peter Douglas
April 27, 2005
Page 3

Finally, please be advised that I spoke with Sandy Goldberg, of the Commission's legal staff, to establish the applicability of §13569 to this matter in advance of making this request. If you have any questions regarding this request, please do not hesitate to call me.

Sincerely,



Alan Seltzer,
Chief Assistant County Counsel

cc: Jane Brown, SCE
Richard Tom, Esq., SCE
Jana Zimmer, Esq.
Salud Carbajal, First Dist. Supervisor
Dianne Meester, Asst. Dir., P&D
Ralph Faust, Chief Legal counsel, CCC
Sandy Goldberg, Esq., CCC

COUNTY OF SANTA BARBARA

Stephen Shane Stark
County Counsel



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COUNTY COUNSEL

May 5, 2005

Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: 14 CCR §13569 – Determination of Applicable Permit and Hearing Procedures

Dear Mr. Douglas:

On April 27, 2005, on behalf of the County of Santa Barbara, I notified you of a “dispute/question” within the meaning of Title 14, California Code of Regulations, §13569(b), regarding the appropriate permit, notice and hearing procedures for Southern California Edison’s power pole replacements and transmission line upgrades through Ventura and Santa Barbara Counties and the City of Carpinteria. I directed my correspondence to you after consultation with Sandy Goldberg, and in compliance with the requirements of §13569(b), which provides that in order to request a Commission determination of appropriate procedures, the local government must first “request an Executive Director’s opinion.” Indeed, Ms. Goldberg requested that you be provided notice by letter and that my telephone conversation with her not be considered formal notification under the rule.

On May 4, I received a response to my letter from John Ainsworth, District Director of the South Central Coast Division. I assume that Mr. Ainsworth’s letter is your response made pursuant to §13569(c), which requires transmittal of the executive director’s determination within a short time period. Among other things, Mr. Ainsworth noted that my letter was sent to your office in San Francisco and that future correspondence should be sent to the Ventura Office. By copy, I am informing Mr. Ainsworth that the original notice of the dispute/question and request for your opinion was sent to the San Francisco office because of the requirements of section 13569(b), and that the Ventura office will be copied in future correspondence.

The purpose of this letter is to request that Commission staff follow the procedures provided under §13569(d), which provides in its pertinent part that “[w]here, after the executive director’s investigation, the executive director’s determination is not in accordance with the local government determination, the Commission shall...schedule [a] hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request.”

EXHIBIT 5
4-STB-05-103
County Correspondence, dated 5/5/05

Peter Douglas
May 5, 2005
Page 2

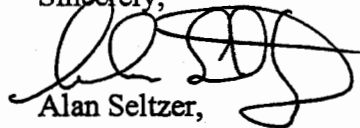
In that regard, I would like to take this opportunity to correct a misunderstanding regarding the County's initial notification letter. Mr. Ainsworth apparently interpreted our letter to assert that the Commission has coastal permit issuance authority solely because the SCE power pole replacements and transmission line upgrades runs through multiple coastal jurisdictions. The purpose of that statement was not to assert that fact as a basis for Commission jurisdiction in itself. Instead, we informed you of the fact that multiple jurisdictions are involved because County staff believes it would be an anomaly to require a coastal development permit for this segment of SCE's maintenance project when no coastal development permit was required in either Ventura County or the City of Carpinteria for SCE's repair and maintenance project.

Because the County's exemption determination is final and non-appealable, and because this issue transcends our jurisdiction, the County's notification letter suggested that the Commission review the project as a whole in the event it disagreed with the County's determination. As to the basis for Commission jurisdiction, the County's determination could be viewed as an action related to "development which constitutes a major public works project" within the meaning of Public Resources Code §30603(a)(5).

In sum, pursuant to Title 14, California Code of Regulations, §13569(d) please confirm that your determination is not in accordance with the County's, and that Commission staff will schedule a hearing on the determination for the next geographically appropriate Commission meeting.

Once again, thank you for your attention to this matter.

Sincerely,



Alan Seltzer,
Chief Assistant County Counsel

cc: John Ainsworth, District Director, CCC
Gary Timm, District Manager, CCC
Steven Hudson, Supervisor, Planning & Regulation, CCC
Shana Gray, Coastal Program Analyst, CCC
Ralph Faust, Chief Legal Counsel, CCC
Amy Roach, Deputy Chief Counsel, CCC
Sandy Goldberg, Deputy Counsel, CCC
Jane Brown, SCE
Richard Tom, Esq., SCE
Jana Zimmer, Esq.
Salud Carbajal, First Dist. Supervisor
Dianne Meester, Asst. Dir., P&D
Abe Leider, Planner, P&D

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



Sent Via Facsimile and Regular Mail

May 3, 2005

Alan Seltzer
Chief Assistant County Council
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101

RE: Requirement for Coastal Development Permit for Southern California Edison power pole replacement and upgrade project.

Dear Mr. Seltzer:

The purpose of this letter is to respond to your letter dated April 27, 2005, which was received in the California Coastal Commission's San Francisco's office on April 29, 2005. In your letter, you request a determination of whether the replacement of 13 wood power poles with taller metal poles by Southern California Edison is exempt from the requirement to obtain a coastal development permit pursuant to either Section 35-169.2.1.a or the "Appendix C Guidelines on Repair and Maintenance and Utility Connection to Permit Development" of the County's certified Local Coastal Program (LCP) of the County of Santa Barbara's certified Coastal Zoning Ordinance.

The replacement of the above referenced wood power poles with taller metal poles in the Coastal Zone is not exempt from the requirement to obtain a coastal development permit under either Section 35-169.2.1.a or the "Appendix C Guidelines on Repair and Maintenance and Utility Connection to Permit Development" of the County's certified LCP. Commission staff previously informed Santa Barbara County staff that the above referenced development was not exempt and required a coastal development permit on March 10, 2005. In addition, on that same date, Commission staff informed County staff that the exemption determination issued by the County to Southern California Edison on March 9, 2005, (which was issued by the County after-the-fact and after all the above referenced development had already been constructed) was issued in error and that the County should immediately rescind that exemption and require Southern California Edison to submit an application for a coastal development permit for the development.

In addition, your letter incorrectly asserts that the County sought input from the Commission's South Central Coast District Office staff prior to making its determination and that Commission staff suggested the County use a "10 percent expansion trigger" as a guideline to determining whether the development would be exempt. In fact, Commission staff informed County staff that the use of a percentage change in size was not relevant to the interpretation of either Section 35-169.2 or Section 35-169.2 of the LCP. Further, Commission staff informed the County during the first week of March that

EXHIBIT 6
4-STB-05-103
Commission Correspondence, dated 5/3/05

Commission staff was reviewing the above referenced project and requested that the County defer any formal determination of whether the project required a coastal permit or was exempt until Commission and County staff could discuss the matter together the following week. However, when Commission staff contacted County staff on March 10, 2005, to inform the County that, based on a review of all available evidence, the project was not exempt, Commission staff was informed that the County had already issued its determination to the applicant the previous day on March 9. Commission staff informed the County that although repair and maintenance activities that do not result in enlargement of the object would be exempt under the County's LCP, the replacement of the power poles by Southern California Edison involved the replacement of the existing poles with new larger poles, and was therefore, not exempt. In response, County staff stated that they did not intend to rescind the County-issued exemption.

Your letter also states that you believe the exemption determination by the County constitutes a final action taken by the County and is not an appealable decision pursuant Section 35-182.2.1 of the LCP. However, Section 35-182.2.1 does not contain provisions regarding the determination of whether development requires a coastal permit or is exempt and is not relevant to this matter. In this case, the above referenced project constitutes development as defined by the LCP that requires a coastal development permit. Final action by the County has not occurred on this matter because the County has not taken action on a coastal development permit application for the development. In addition, pursuant to the LCP, because the above referenced development is a non-principal permitted use, any coastal permit approved by the County for such development would be appealable to the California Coastal Commission. Therefore, the determination by the County, regardless of the fact that it was made in error, does not constitute a final action by the County pursuant to Section 35-182.2.1 and; therefore, does not eliminate the requirement that the above referenced development constitutes development that requires a coastal development permit which could be appealed to the Coastal Commission.

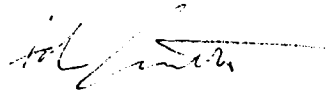
In addition, your letter also incorrectly asserts that the Commission should assert coastal permit issuance authority over this project because the development runs through multiple certified LCP jurisdictions. The Commission declines to assert permit issuance jurisdiction over this project on the grounds that portions of the project will extend into multiple certified LCP jurisdictions. Therefore, the County remains the permit issuance authority for all of the above referenced development that occurred within the County's LCP jurisdiction.

Therefore, as previously requested, in order to resolve this matter, the County should rescind the exemption determination that was made in error on March 9, 2005, and process an application for an after-the-fact coastal development permit to address the development. Further, it is Commission staff's understanding that Southern California Edison replaced more than 13 wood power poles with larger metal poles Santa Barbara County's LCP jurisdiction as asserted in your letter dated April 27, 2005. If this is the case, then the County should process an after-the-fact coastal permit application that addresses all poles that were replaced with new larger poles within the County's LCP

jurisdiction. Please contact me or Steven Hudson at your earliest convenience regarding how the County intends to resolve this matter.

In addition, we note that your letter dated April 27, 2005, was sent only to the Commission's office in San Francisco. In order for our staff to provide the County with a timely response to any future requests for information, please direct your requests for such information to the Commission's South Central Coast District Office which is responsible for Coastal Program management in your area. Should you have any questions regarding this matter, please contact Steven Hudson in our Ventura office. The Commission staff greatly appreciates the County's cooperation and assistance in this matter.

Sincerely



John Ainsworth
District Director,
South Central Coast District

cc: Dianne Meester, Assistant Director, SB County P&D
Abe Leider, Planner, SB County P&D
Jana Zimmer, Esq.
Amy Roach, Deputy Chief Counsel, CCC
Gary Timm, District Manager, CCC
Steven Hudson, Supervisor, Planning and Regulation, CCC
Shana Gray, Coastal Program Analyst, CCC



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November 22, 2004

Mr. Richard Tom, Esq.
Southern California Edison
2244 Grove Avenue
Rosemead, California 91770

Re: Illegal Installation of Edison Transmission line Shepard Mesa, Santa Barbara County

Dear Mr. Tom:

Our office represents a number of property owners in the Shepard Mesa area who have raised objections to the recent, unlawful installation by your company representatives of certain new transmission poles and lines (which we believe to be 66kv lines) in their neighborhood. The new poles and lines extend over private land from approximately the intersection of Highway 192/Shepard Mesa Road, and over the intersection of Highway 192/150 in an easterly direction. The new poles are, based on photographs we have obtained, at least 40-50% higher than the pre-existing poles, and the transmission wires appear to be of a much greater capacity than those previously existing.

We understand that these new poles were installed in a hurried, almost furtive manner in the space of one working day while several of my clients were at work. Although some affected owners were told the project would occur, the project was represented to be repair and replacement of existing facilities. While Edison personnel cut back the pre-existing poles after installation of the new structures, my clients have photographic documentation of the pre-existing condition and will be able to prove the extent of expansion of the previous facilities. Questions to local Edison representatives have gone unanswered, or the answers have been incomplete, evasive and wholly unsatisfactory.

The transmission lines and poles in question are clearly new development as defined in the California Coastal Act and the County of Santa Barbara Local Coastal Zoning Ordinance (CZO) County Code Chapter 35, Article II. All development in the Coastal Zone, including development by a utility, requires permits from the County. CZO Section 35-169.2.1; Section 35-146. Based on the evidence provided by our clients, we believe that the project your company has undertaken required a major conditional use permit under CZO Section 35-147.3.d. This permit process requires environmental review and a noticed public hearing prior to project approval. We have been advised by County staff that no such permit was applied for or obtained,

EXHIBIT 7a
4-STB-05-103
Zimmer Correspondence, dated 11/22/04

nor did Edison representatives even inquire of County staff whether and what permits are required prior to commencing work.

Although the project has recently been represented as exempt repair and replacement under Section 35-169.2.1 it is abundantly clear that the work does not qualify as repair or for any other exemption set forth in the ordinance. Specifically, we believe that any *'post hoc'* rationale attempting to justify an exemption for utility 'connections' to existing permitted structures for this massive new development would be rejected by a reviewing court as beyond the scope of the exemptions set forth in the ordinance. As I am sure you know, exemptions from environmental protection laws are strictly and narrowly construed.

The poles and transmission lines as installed violate a number of performance standards for utilities set forth in the coastal zoning ordinance. Specifically, to the extent these utilities are intended to serve new development, they may be required to be placed underground pursuant to Section 35-148.1.a. The size of the support structures and the grade of the wires alone support an inference that this project is intended to serve new or additional development.

In addition, Section 35-148.2a states that

Electrical transmission line rights of way shall be routed to minimize impacts on the viewshed in the coastal zone, especially in scenic rural areas, and to avoid locations which are on or near habitat, recreational or archaeological resources, whenever feasible. Scarring, grading or other vegetative removal shall be repaired, and the affected areas revegetated with plants similar to those in the area to the extent safety and economic considerations allow.

Section 35-148.2b states that:

In important scenic areas, where above ground transmission line placement would unavoidably affect views, undergrounding shall be required where it is technically and economically feasible unless it can be shown that other alternatives are less environmentally damaging. When above ground facilities are necessary, design and color of the support towers shall be compatible with the surroundings to the extent safety and economic considerations allow.

These facilities as constructed seriously impair and obstruct the public views from Highway 192 toward the mountains. They also obstruct views over the valley from Shepard Mesa toward the ocean. There has been no effort to design or locate these facilities in a manner compatible with the surroundings, or in a manner to minimize impacts to views. They should have been undergrounded pursuant to Section 35-148.2b. At a minimum, there can be no justification for failing to locate the new poles in the existing road right of way all the way along Highway 192. Since no environmental review has occurred, it is impossible to assess damage to habitat or archaeological resources which could be present in the undeveloped hillside areas where the

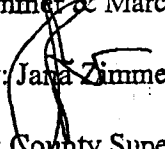
poles were installed.

Edison's failure to obtain the permits required by the coastal zoning ordinance and the Coastal Act renders the development a public nuisance as a matter of law. See, CZO Section 35-185.4. We have requested that the County and the Coastal Commission investigate and take action to correct this violation. However, you are undoubtedly aware that in the event that the appropriate public agencies fail or refuse to enforce the law, private enforcement is also an option. See, e.g. Pub. Res. Code Section 30803, 30804. In addition, Edison may well be liable to individual owners for creation of a private nuisance, and for damages, in that the poles and wires have been located without regard to buffers, directly adjacent to and over individual homes, and their presence will clearly undermine my clients' property values, their quiet enjoyment of their homes, and, if in fact these are 66KV lines, their physical health.

Thus, we believe that Edison must apply for permits to either (1) underground these facilities, or (2) relocate them along Highway 192 in the existing CalTrans right of way as you have done for the segments to the west of Shepard Mesa. In order to avoid the costs and community relations disaster awaiting if litigation is required to compel Edison to comply with their legal obligations, we are requesting that you agree to one of the above options immediately. My clients will be meeting with members of the community, as well as various invited elected and appointed officials to discuss this problem further on December 9. Therefore, we will appreciate a reply to from Edison indicating your response prior to that date.

Very Truly Yours,

Zimmer & Marcus, LLP

By:  Jana Zimmer

cc: County Supervisor Naomi Schwartz
Supervisor Elect Salud Carbajal
Assembly Member Hannah Beth Jackson
Assembly Member Elect Pedro Nava
Mayor Dick Weinberg, City of Carpinteria
Vera Bensen, Carpinteria Valley Association
Valentin Alexeeff, Planning Director County of Santa Barbara
Peter Douglas, Executive Director, California Coastal Commission
Chuck Damm, District Director, California Coastal Commission



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January 13, 2005

Valentin Alexeeff, Director
Planning and Development Department
County of Santa Barbara
105 E. Anapamu St.
Santa Barbara, CA. 93101

Steve Hudson
California Coastal Commission
89 California Street
Ventura, CA. 93013

RECEIVED

JAN 18 2005

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Re: Edsion Power Lines- Shepard Mesa- Violation of Coastal Zoning Ordinance

Dear Mr. Alexeeff and Mr. Hudson:

On November 5, 2004, we contacted your offices to advise that Southern California Edison had engaged in development, specifically installation of new, 66 kv lines along Highway 192 and over private land in the Shepard Mesa area without obtaining coastal development permits as required by the County's certified local coastal zoning ordinance. [Copy of 11/5/04 communication attached] We also provided you with photographs documenting the violation.

On December 16, 2004 you and we received almost identical responses from SCE contending, in essence, that no permits are required because the work constituted exempt 'replacement'. All parties agree that if the poles which Edison installed are not 'replacement' of what was previously present, they are not exempt. We apparently have a factual dispute with Edison. They contend the new poles are 'equivalent' to the pre-existing structures. My clients all contend otherwise. You have advised that my clients could provide additional documentation of their position before the Commission and the County state an opinion whether, on the facts, a violation has occurred.

We understand that because the County has a certified LCP, it is expected to act as the primary enforcement agency in these cases. However, because we have been informed that the County's repair and maintenance guidelines are verbatim duplicates of the Coastal Commission's guidelines, and *the failure to enforce the Coastal Act in this instance may expose the entire 1200 mile California coastline to similar unpermitted installations by Edison and other utility companies*, we think it is important that this matter be elevated to the highest level of decision makers of both agencies.

EXHIBIT 7b
4-STB-05-103
Zimmer Correspondence, dated 1/13/05

Pursuant to our recent communications, please find enclosed, in response to the factual assertions made by Southern California Edison on December 16, 2004 the following evidence:

1. A Map of the primary area of concern.
2. Declaration Lionel B. Neff, with color photographs, Exhibits 1 through 8.
3. Declaration of Alan Weil
3. Declaration of Jeffrey Light
4. Affidavit signed by seventeen (17) Carpinteria residents
5. Letter from Roxanne and Andrew Lapidus
6. Declaration of William Kerstetter, with color photographs, Exhibit 1 and 2
7. Letter from Tyson and Betty Willson
8. Letter from Jennifer and Robert Larkin
9. Declaration of Valerie Cavanaugh
10. Declaration of David Fishman
11. Letter from Susan Flannery
12. Letter from Thomas N. Sullivan
13. Letter from Warren and Thomasine Orsburn
14. Letter from David and Deborah Weinstein
15. Letter from Doris L. Neff
16. Letter from Linda Law
17. Letter from Vera Bensen

Initially, we note that the letter from Mr. Tom alleges facts without any documentation. We understand that certain photos were subsequently provided to the County staff at a meeting between P&D and Edison, and my clients have reviewed those photos, and have noted that there is no authentication identifying the locations of the particular poles depicted. As indicated in the Declaration of Mr. Kerstetter, the poles in Edison's photos cannot be reliably identified as the poles in issue, and they definitely are not the same poles installed by Edison in the location at issue, as demonstrated by the evidence we have provided. In contrast, please note that the photographs my clients have provided are identified with particularity as to date taken, location and point of view in the Declarations of Lionel Neff and William Kerstetter.

Edison relies heavily on exemptions set forth in orders by Public Utilities Commission and CEQA. These provisions are simply irrelevant to the question of permit requirements under the Coastal Act. We also disagree that the work in question is exempt from the cited PUC permit to construct requirement. Those orders apply to replacement of existing power lines with equivalent lines, which clearly, these are not, or new conductors, etc., on structures already built, which these are not. What Edison did was to replace existing poles with new structures which are not equivalent. In addition, we disagree that the cited CEQA exemption applies. Section 15302(c) only applies to replacement or reconstruction of existing utility systems and/or facilities involving negligible, or no expansion of capacity. The evidence, based on admissions by Edison employees, demonstrates that Edison added new transmission wires, where previously only distribution wires had existed.

The coastal zoning ordinance states, at Section 35-169.2

“A Coastal Development permit shall be required for all development in the coastal zone with the exception of the following:

1. Repair and maintenance activities that do not result in addition to, or enlargement or expansion of the object of such repair and maintenance activities;
2. Installation, testing, placement in service, or the replacement of any necessary utility connection between an existing service facility and any development that has been granted a Coastal Development permit.”

However, it is important to notice that the County’s certified coastal zoning ordinance directly mirrors language in the Coastal Act, at Pub. Res. Code Section 30610, which enumerates the categories of development which are exempt from permits. Repair and maintenance of an existing structure is addressed in Section 30610(d). A separate section, applicable to utility connections, is found at Section 30610 (f) which exempts:

“The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this division; **provided, however, that the commission may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources.**”

Edison’s letter asserts that its facilities come within the ‘replacement’ exception set forth in the County ordinance, but fails to address the fact that, by statute, the Commission has the authority in any case to require conditions to mitigate adverse impacts on coastal resources, including scenic resources. To whatever extent the County repair and maintenance guidelines are interpreted to impair the scope of the statute, they are *ultra vires*. “Protecting the coast requires comprehensive management and oversight, for threats to it do not respect municipal boundaries. There is ‘no doubt that the Coastal Act is an attempt to deal with coastal land use on a statewide basis.’ [citation]” *City of Malibu v. Coastal Commission* (2004) 121 Cal. App. 4th 989, 995-96. It is well established that local regulations which conflict with or alter state legislation are invalid. *Washington v. Board of Supervisors* (1993) 18 Cal. App. 4th 981, 985 (County ordinance redefining eligibility of indigent persons for general relief invalid because inconsistent with state law); *Graham v. State Board of Control* (1995) 33 Cal. App. 4th 253, 260 (Board has “no power to adopt a regulation in conflict with or which alters or violates a statute.”).

Thus, at a minimum, the Commission, (or by extension the County under its certified LCP) has the authority – and in our view, – a duty to the public to require mitigation. The exemption at 30610(f) must be construed narrowly, and the Commission – and a reviewing court – would be required to give effect to all of its provisions. However, we continue to believe that the

consideration of mitigations must occur within a permit process.

First, Edison appears to concede that under all applicable law, the replacement facilities must replace, and must not expand or enlarge the previously existing structures. Edison claims that the new structures are the 'equivalent' of the previously existing poles. The evidence my clients and other residents have provided amply demonstrates that the new poles are not 'replacement' of what existed previously before, not in height, mass, scale, material, or, therefore, visual impacts. By its own admission, Edison concedes that the new, engineered poles are fifteen feet taller above ground than the old wooden poles. [Tom letter, p. 2 footnote 2] The adverse impacts on the scenic roadway are clearly demonstrated in the photographs my clients have provided. If these structures were truly 'equivalent', they would not be noticeable, at least not to the extent that so many residents of the area have complained of their industrial appearance and their impairment of scenic views.

Second, Edison fails to squarely address the function and capacity issues. Mr. Tom implies but does not expressly state that the pre-existing lines were 66 kv lines, and he does not address the change in function at all. Edison's own employees, however, have stated that the pre-existing poles carried distribution wires of 16,000 volts, while the new poles carry 66kv transmission lines. [See, Declaration of W. Kerstetter, V. Cavanaugh.] This difference in function is also evident from the structures themselves: the suspension of three additional vertically suspended wires [Declaration of D. Fishman], the new metal towers and the 'mast like' structures which replace the old wooden poles [Communication from Warren Orsburn].

Third, Edison fails to explain how the utilities in question constitute a "necessary utility connection between an existing service facility and any development approved pursuant to this division". Edison fails to identify the existing service facility, or the 'development approved pursuant to this division' i.e. the development that has received a CDP. Edison must identify the properties served by this connection, and the Coastal Development permits obtained for those properties. Because of the nature of the lines, Edison will be unable to do so.

Further, the exemption under Section 30610(f) (and, consequently, the repair and maintenance guidelines) was intended to apply very narrowly to utility connections for approved development, and not new regional transmission or distribution lines. This conclusion is compelled by the clear language of the statute. The juxtaposition of "replacement" and "necessary utility connection" in the same phrase of the same sentence reflects the Legislature's intent to limit replacement to the utility connection which had previously existed. By definition, the required existence of previous development precludes an interpretation that the exemption in Section 30610(f) allows the installation of new transmission or distribution lines. If it were interpreted to allow such lines, Edison and other utilities would be free to 'upgrade' their systems throughout the coastal zone without ever obtaining a permit and without ever addressing the visual impacts of their ever growing facilities.

Fourth, please note that the burden of proving that the installation by Edison is exempt from

permits under the Coastal Act is on Edison as a matter of law. In this regard, please note the admitted fact that Edison failed to approach the County or provide their plans for review to determine whether their proposed project was exempt prior to construction. In *Davis v. Calif. Coastal Zone Conservation Com.* (1976) 57 Cal. App.3d 700, the developer tried to justify his failure to seek an exemption for his project under the Coastal Act by claiming that he had a vested right to complete it. The court rejected the argument, holding:

“A developer who claims to be exempt from the Coastal Zone Conservation Act permit requirements by reason of a vested right to develop the property must claim exemption on that basis. (Cal. Admin. Code, tit. 14, § 13700 et seq.) Where the developer fails to seek such a determination but instead elects to apply only for a permit, he cannot later assert the existence of a vested right to development, i.e., the developer waives his right to claim that a vested right exists.”

Id. at 708. There is no reason that this principle should not apply equally to other types of exemptions. Therefore, a developer who proceeds without first obtaining an exemption decision acts at its peril. Furthermore, it is well known that the County will normally review submitted plans and determine whether they are exempt, and, for a small fee, provide an ‘Exempt’ stamp when staff concurs that no permits are required. Given the heavy reliance in Mr. Tom’s letter on PUC orders¹ which are completely irrelevant to the requirement for permits under the Coastal Act, it appears that Edison never considered whether they were required to obtain permits for the work prior to engaging in the installation. Edison must be reminded that public utilities are clearly covered under the Coastal Act and the Coastal Zoning Ordinance, Section 35-145, regardless of exemptions from other laws and in areas outside the coastal zone.

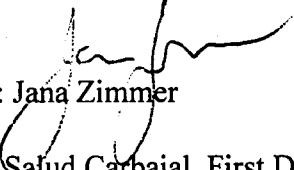
Based on the foregoing, there is no question that the activity in question required permits. In a permit process, the County could have evaluated the project’s consistency with the visual resources policies of the LCP, and the provisions of the coastal zoning ordinance. The County could have considered undergrounding, alternative routes, and could have required mitigation. The public was deprived of the opportunity to participate in the process.

We therefore request that your respective agencies inform Edison that they are maintaining structures in violation of the Coastal Act, and that they must promptly apply for the appropriate discretionary permits and/or that your respective agencies initiate enforcement proceedings for abatement.

Thank you for your prompt attention to this matter.

Very Truly Yours,

ZIMMER & MARCUS, LLP



By: Jana Zimmer

cc: Salud Carbajal, First District Supervisor
Peter Douglas, California Coastal Commission



ZIMMER & MARCUS, LLP

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19889
→ V. ALEXEEFF
KC: CHRON

March 18, 2005

Planning and Development Department
~~Appeals Clerk~~ **DIRECTOR**
County of Santa Barbara
123 Anapamu St.
Santa Barbara, CA. 93101

Re: Appeal of Determination of Exemption- Southern California Edison Transmission Lines
Shepard Mesa, Santa Barbara County

To Whom it May Concern:

This letter accompanies the appeal of my clients, William Kerstetter, Valerie Cavanaugh and Lionel Neff of the decision of the Planning and Development Department dated March 9, 2005, that work performed by Southern California Edison without permits which my clients have complained of is exempt from coastal development permit requirements.

The Department's decision was based on an improper and incorrect interpretation of the County Repair and Maintenance Guidelines and the provisions of Article II. We have been informed that the Coastal Commission enforcement staff has reviewed the same evidence that my clients provided the County and that they disagree with the County's determination based on (1) the fact that the work performed 'enlarged' the object of repair within the meaning of the ordinance; and (2) that the second ground of exemption does not apply at all.

The County's position that it is free to interpret the repair and maintenance guidelines to allow this construction without a Conditional Use Permit is fundamentally flawed. The County's repair and maintenance guidelines do not reflect any rule making on the part of the Board of Supervisors. In adopting the repair and maintenance guidelines, the County merely engrafted, almost verbatim, the Coastal Commission's statewide guidelines (1978). Therefore, the County must defer to the Coastal Commission's interpretation on the applicability of these guidelines.

In addition, the County ignored evidence provided by my clients, and did not fairly evaluate the evidence which was submitted. There was evidence that the capacity of the lines was in fact increased from 16kv to 66 kv. The determination asserts that there was no increase in line capacity. Furthermore, there was no basis whatsoever for the County to apply 'averaging' on the height of the poles. The admitted fact is that the so called 'replacement' poles increase in height

Page 1 of 2

EXHIBIT 7c
4-STB-05-103
Zimmer Correspondence, dated 3/18/05

from the pre-existing poles up to nineteen 19% with an average of 9.5%. There is no provision for a de minimis increase, and exemptions must be construed narrowly. On the Department's theory, a 'replacement' project involving hundreds of poles could result in scores of poles at enormous heights, all based on averaging. Based on these facts, no reasonable person could conclude that the project constituted replacement and repair.

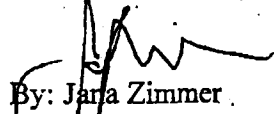
My clients continue to maintain that Edison violated the ordinance by not applying for and receiving a Conditional Use Permit for its work. The County's decision to allow these 'improvements' to remain deprives the public of due process, violates Local Coastal Plan policies and development standards and constitutes a terrible precedent for large scale projects in important scenic areas to escape all review. All new poles in the coastal zone should be underground. As taxpayers, my clients are particularly offended by the County's deference to large and powerful companies, while individual homeowners are held to the strictest standards of environmental regulation.

Since the permits required include a Conditional Use permit, any final determination by the County is appealable to the Coastal Commission, and therefore no appeal fee is required to be paid to the County.

Please confer with my office on a hearing date before the Planning Commission. At this time I will be unavailable from May 25 to June 3 and from July 23 to August 31.

Very Truly Yours,

Zimmer & Marcus, LLP



By: Jarja Zimmer

cc: Salud Carbajal, First District Supervisor
Board of Supervisors

Peter Douglas, Executive Director, California Coastal Commission

December 16, 2004

VIA FACSIMILE & U.S. MAIL

RECEIVED
DEC 21 2004

Valentin Alexeeff
Director of Planning and Development
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Re: SCE Facility Replacement Activity in the Shepard
Mesa Area of Santa Barbara County

Dear Mr. Alexeeff:

On November 23, 2004, Southern California Edison Company (SCE) received a letter from Jana Zimmer of Zimmer & Marcus LLP, who, on behalf of a number of property owners in the Shepard Mesa area of Santa Barbara County, raised objections to SCE's recent work on its facilities in the area in which deteriorated wood poles were replaced with new lightweight steel poles and existing conductors and insulators were replaced. Ms. Zimmer's letter was also provided to various local governmental agencies, including the County of Santa Barbara, the California Coastal Commission, and the City of Carpinteria.

SCE provides this letter in response to Ms. Zimmer's November 23 letter. As supported by the information provided in detail below, SCE's work in the Shepard Mesa area constituted replacement of its existing facilities in an existing SCE right-of-way with equivalent facilities. Accordingly, this work did not require any governmental approval.

From Ms. Zimmer's November 23 letter, the residents' concerns are with SCE's Santa Clara-Getty 66kV line that runs from the Santa Clara Substation in Ventura County to the Carpinteria Substation in Santa Barbara County. Within Santa Barbara County, the segment of the line runs from the Ventura County line crossing highway 150 over Shepard Mesa Drive and along Foothill Road to the Carpinteria Substation, a distance of approximately 3.7 miles. Specifically, the residents' concerns appear to be focused on the segment of the line located south of Shepard Mesa Drive to the Ventura County line, a distance of approximately 3,400 feet.

SCE routinely carries out maintenance to and replacement of its facilities to ensure that it can continue to provide safe, economical, and reliable service to its

customers. The replacement activity along the Santa Clara-Getty 66 kV line consisted of replacing 49 of the 85 wood poles with new lightweight steel poles and replacing existing conductors and insulators over 3.7 miles. In the Shepard Mesa area, a total of 17 poles were affected over approximately 3,400 feet. Of the 17 poles affected, 12 poles were replaced with new lightweight steel poles and one pole was replaced with a new engineered pole. New conductors and insulators were installed on all 17 poles regardless of whether the poles were replaced. The existing conductors (.414 inches in diameter) were replaced with new conductors (1.124 inches in diameter). The existing insulators were replaced with new polymer insulators.

Prior to the replacement activities in the Shepard Mesa area, the 17 wood poles measured between 60-to 85-feet tall. The new poles measure between 65-to 85-feet tall. Specifically, the replacement of wood poles in the Shepard Mesa area consisted of the following: one 60-foot tall wood pole was replaced with one 65-foot tall new engineered pole;¹ one 65-foot tall wood pole was replaced with one 70-foot tall new lightweight steel pole; two 70-foot tall wood poles were replaced with two 70-foot tall new lightweight steel poles; one 70-foot tall wood pole was replaced with one 75-foot tall new lightweight steel pole; six 70-foot tall wood poles were replaced with six 80-foot tall new lightweight steel poles; one 80-foot tall wood pole was replaced with one 80-foot tall new lightweight steel pole; and one 80-foot tall wood pole was replaced with one 85-foot tall new lightweight steel pole.

SCE was not required to obtain any governmental approvals or permits for this replacement work. This work is exempt from the California Public Utilities Commission's permit to construct requirements pursuant to General Order 131-D Sections III.B.1(b) and (e).² Section III.B.1(b) states that a permit to construct is not required for "the replacement of existing power line facilities or supporting structures with equivalent facilities or structures." See *General Order 131-D*, Appendix A, Section III.B.1.b. Section III.B.1(e) states that a permit to construct is not required for "the placing of new or additional conductors, insulators, or their accessories on supporting structures already built." See *id.* at Section III.B.1(e). Similarly, the replacement work is exempt from Santa Barbara County's Coastal Zoning Ordinance requirement of obtaining a coastal development permit. Section 35-146 provides that Division 8 applies to any development "except repair and maintenance and certain

¹ Engineered poles are bolted above ground to a concrete footing, whereas the wood poles and lightweight steel poles extend into the ground. As a result, the replacement engineered pole, although it is only five feet longer than the existing wood pole, is 15 feet taller above ground.

² General Order 131-D, Sections III.B.1(b) and (e) exemptions reflect the categorical exemption found in Section 15302(c) of the California Environmental Quality Act (CEQA) Guidelines. Since the replacement work is categorically exempt from CEQA, SCE is not required to comply with the notice requirements of General Order 131-D, Section XI.B. General Order 131-D states that "notice is not required for the construction of projects that are statutorily or categorically exempt pursuant to CEQA Guidelines." See *General Order 131-D*, Section III.B.1.

utility connections" as allowed pursuant to Appendix C of the County's Coastal Zoning Ordinance. Appendix C is taken from the "Repair, Maintenance and Utility Hook-up Exclusions from Permit Requirements" adopted by the California Coastal Commission on September 5, 1978. Appendix C, Subsection II.B.2.b. provides that a coastal development permit is "not required to maintain, replace, or modify existing overhead facilities, including the addition of equipment and conductors to existing poles or other structures, right-of-way maintenance, and minor pole and equipment relocations."

We hope this letter clarifies the work done by SCE on the Santa Clara-Getty 66kV line in the Shepard Mesa area, and addresses the concerns of the Shepard Mesa property owners. Please contact me, if you would like any additional information

Very truly yours,



Richard Tom

cc: Jana Zimmer, Esq.
Abe Leider, Planner, County of Santa Barbara
County Supervisor Naomi Schwartz
Supervisor Elect Salud Carbajal
Assembly Member Pedro Nava
Mayor Dick Weinberg, City of Carpinteria
Vera Bensen, Carpinteria Valley Association
Peter Douglas, Executive Director, California Coastal Commission
Chuck Damm, District Director, California Coastal Commission

