

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



# W5a

Filed: 3/15/06  
49<sup>th</sup> Day: 5/3/06  
Staff: TL-SF  
Staff Report: 3/23/06  
Hearing Date: 4/12/06

**STAFF REPORT AND RECOMMENDATION ON APPEAL**  
**SUBSTANTIAL ISSUE**

**LOCAL GOVERNMENT:** City of Huntington Beach

**DECISION:** Approval with Conditions

**APPEAL NO.:** A-5-HNB-06-101

**APPLICANT:** Poseidon Resources / AES Huntington Beach

**PROJECT DESCRIPTION:** Construction and operation of a desalination facility.

**PROJECT LOCATION:** On the site of the AES Power Plant, 21730 Newland Avenue, Huntington Beach, Orange County.

**APPELLANTS:** Residents For Responsible Desalination  
Surfrider Foundation  
Commissioners Mike Reilly and Mary Shallenberger

---

**SUMMARY OF STAFF RECOMMENDATION:** The staff recommends that the Commission, after public hearing, determine that **substantial issue exists** with respect to the grounds on which the appeal has been filed. The appellants have raised substantial issues in that the project as approved and conditioned by the City through issuance of a combined coastal development permit, conditional use permit, and associated Owner Participation Agreement does not conform to applicable LCP policies.

**SUBSTANTIVE FILE DOCUMENTS:**

- Certified City of Huntington Beach Local Coastal Program
- City of Huntington Beach File No. 02-05
- Coastal Commission Appeal File No. A-5-HNB-06-101
- Appeal Applications from Residents For Responsible Desalination, Surfrider Foundation, and Commissioners Reilly and Shallenberger

## **I. APPELLANTS CONTEND THAT**

The project does not conform to several provisions of the City's LCP related to protection of marine biological resources, water quality, environmentally sensitive habitat, energy conservation, water supply, coastal dependency, and land use.

---

## **II. LOCAL GOVERNMENT ACTION**

The coastal development permit was approved by the City of Huntington Beach City Council on February 27, 2006, concurrent with approval of a conditional use permit and an Owner Participation Agreement. Previously, on September 6, 2005, the City certified a Revised Environmental Impact Report for the project.

---

## **III. APPEAL PROCEDURES**

After certification of a LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within the appealable areas as defined by Section 30603(a) of the Coastal Act. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 feet of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed to a de novo hearing on the merits of the project at the same meeting if the staff has prepared a recommendation on said merits, or at a subsequent meeting if there is no such recommendation.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project at either the same or a subsequent meeting as described above. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program. In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Coastal Act requires a finding that the development conforms to the public access and public recreation policies of Chapter 3.

The only persons qualified to testify before the Commission at the “substantial issue” stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

---

#### **IV. MOTION**

*I move that the Commission determine that Appeal No. A-5-HNB-06-101 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

#### **STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:**

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the appointed Commissioners present.

#### **RESOLUTION TO FIND SUBSTANTIAL ISSUE:**

The Commission finds that Appeal No. **A-5-HNB-06-101** presents a substantial issue with respect to the grounds on which the appeal has been filed under section 30603 of the Coastal Act regarding consistency with the certified local coastal plan and/or the public access and recreation policies of the Coastal Act.

#### **V. FINDINGS AND DECLARATIONS**

The Commission finds and declares as follows:

1. **Project Description:** The development approved by the City is a desalination facility to be constructed and operated by Poseidon Resources at the AES Power Plant site in Huntington Beach. The development includes several buildings and structures that will house the desalination equipment, pre-treatment facilities, administration offices, and other supporting structures and equipment. The project also includes a water delivery pipeline approximately four miles long, about a mile of which is within the coastal zone.

The purpose of the project is to produce from seawater approximately 50 million gallons per day (mgd) of potable water. The facility would withdraw approximately 100 mgd of seawater from the once-through cooling system used by the power plant. The power plant is currently permitted through an NPDES permit to withdraw up to about 516 mgd of seawater through an intake structure that extends approximately 1700 feet offshore into the Pacific Ocean. The facility would also produce about 50 mgd of a high-salinity discharge that would be re-combined with any flows from the power plant and then routed through the power plant outfall, which extends about 1500 feet offshore.

The facility would be located on a part of the AES Power Plant currently occupied by an oil storage tank. The tank would be demolished and removed and any necessary soil remediation would be completed as part of this project.

2. **Permit History:** On February 27, 2006, the City of Huntington Beach approved Coastal Development Permit #02-05 for construction and operation of the desalination test facility. The City concurrently approved a Conditional Use Permit and Owner Participation Agreement, and included a number of conditions of approval. On March 3, 2006, the Coastal Commission received the City's Notice of Final Action and associated records to start the 10-working-day appeal period, which ended March 17, 2006. The appeals were filed on March 15, 16, and 17, 2006.
3. **Permit Jurisdiction:** The project is located within the Coastal Zone in the City of Huntington Beach and is subject to the City's certified Local Coastal Plan (LCP). Portions of the project are also within 100' of wetlands and thus within the appeal jurisdiction of the Coastal Commission. Additionally, a portion of the project is within the Commission's retained jurisdiction – the facility's intake and outfall are within coastal waters and the project involves both a "change in intensity of use" of those waters and a discharge to those waters – so the project will require a permit directly from the Commission, although the applicant has not yet applied for that permit.
4. **Non-compliance with the Certified LCP:** The standard of review for this appeal is consistency with the certified LCP of the City of Huntington Beach. Appellants contend that approval of the project by the City is inconsistent with several policies of the City's certified LCP.<sup>1</sup> All appellants challenged the project's conformity to LCP provisions

---

<sup>1</sup> Many aspects of the project's nonconformity to the LCP appear to be based on the City's reliance on the EIR, rather than the LCP, in its project review. The CDP states in several of its findings that the project does not require mitigation measures because the EIR identified the project's impacts as less than significant. However, the EIR analyses are not adequate for determining conformity to the LCP because they use a different, and often lesser, standard of review, than is required under the LCP.

The focus in the EIR is to determine whether the project causes significant impacts; whereas many provisions of the LCP require that any impacts be identified and then mitigated, where feasible. Some of the criteria used in the EIR to identify impacts resulted in determinations of significance that fall far short of the level of impact the LCP requires be addressed. For example, regarding the project's chemical and saline discharges to coastal waters, the LCP requires that the project "prevent the degradation" of water quality; whereas the EIR used the following criteria to determine whether the project would affect coastal waters:

- "Significant impacts related to elevated salinity would occur if the project would discharge salinity levels that result in substantial ecological losses to source populations of marine organisms; and/or permanent elevation of salinity levels of 37.5 ppt or greater outside of a reasonable distance from the discharge core would be significant."
- "Significant impacts related to chemical discharge would occur if the project would discharge any chemical wastes that would result in substantial ecological losses to source populations of marine organisms."

These criteria clearly allow degradation at a level not permitted by the LCP. The EIR's review also assumed that the power plant cooling system would operate continually during the life of the desalination facility and would therefore provide a level of dilution that would not be available if and when the cooling system shuts down. Its analyses therefore do not describe the adverse effects that would be caused by the desalination facility operating on its own, which will be different and in some cases more substantial than the effects caused by the two facilities operating together.

related to marine resources and water quality. Appellants Residents For Responsible Desalination and Surfrider additionally challenged the project's conformity to LCP provisions related to energy use and conservation and water supply. Appellant Residents For Responsible Desalination also challenged the project's conformity to an LCP land use provision. Appellant Surfrider challenged the project's conformity to an LCP coastal dependency provision. Appellants Reilly and Shallenberger additionally challenged the project's conformity to a provision of the LCP related to environmentally sensitive habitat. Of the appeal issues raised, six raise a substantial issue with the project's conformity to the LCP and three do not.

### **Appeal Issues Raising a Substantial Issue:**

#### **4a) Appeal Issue – Marine Biology and Entrainment:**

LCP Section C 6.1.19 states:

*“Prior to approval of any new or expanded seawater pumping facilities, require the provision of maximum feasible mitigation measures to minimize damage to marine organisms due to entrainment in accordance with State and Federal law.”*

The project includes new pumps that will pump seawater into the desalination facility. The CDP's findings related to this LCP provision state that no mitigation is required because the facility will not take seawater directly from the ocean and that the project will not alter the power plant's existing and permitted seawater use. Appellants contend, however, that because the project includes new seawater pumping facilities, it is required to mitigate its impacts to marine organisms to the maximum extent feasible.

This LCP policy requires simply that the effects of new seawater pumps on marine organisms be mitigated to the maximum extent feasible. The LCP does not exempt new pumps based on their location or whether they would alter existing uses.<sup>2</sup> Further, because the project did not undergo a feasibility analysis to determine which potential mitigation measures could be required, the CDP is inadequate to ensure the project conforms to this LCP provision.<sup>3</sup>

---

<sup>2</sup> The available record indicates that the project will, in fact, alter the amount of water being used in the power plant's cooling system due to any of several means – through the desalination facility obtaining electricity from the power plant, through the need for additional water to dilute its saline discharge when the power plant is otherwise shut down or operating at very low levels, through requiring additional seawater to cool the power plant discharge to temperature ranges usable by the desalination facility's membranes, or others.

<sup>3</sup> The project is also subject to the following provisions of the LCP:

**LCP Section C 6.1.2:** *“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.”*

**LCP Section C 6.1.3:** *“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.”*

Based on the record provided by the City and the information provided by the appellants, the project, as conditioned, raises numerous questions regarding the project's conformity to LCP Section C 6.1.19. Therefore, for the reasons cited above, the Commission finds that a substantial issue exists with respect to the project's consistency with the City's certified LCP.

**4b) Appeal Issue – Water Quality:**

LCP Section C 6.1.1 states:

*“Require that new development include mitigation measures to enhance water quality, if feasible and at a minimum, prevent the degradation of water quality of groundwater basins, wetlands, and surface water of water quality of groundwater basins, wetlands, and surface water.”*

Appellants raise two issues related to the project's conformity to this LCP provision – first, that the project does not include feasible mitigation measures to enhance water quality; and, that the project does not prevent water quality degradation as this LCP provision requires.<sup>4</sup>

Regarding the first issue, the project was not reviewed to determine what feasible mitigation measures were available to enhance water quality. Because there may be feasible mitigation measures available and because the City did not assess feasibility, the project cannot be found to conform to this LCP policy.

---

**LCP Section C 6.1.4:** *“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.”*

However, the project is not conditioned to include mitigation measures that may be necessary to conform to these provisions, and the CDP does not include findings regarding the project's conformity to these provisions. Similar to LCP Section C 6.1.19, these provisions require the project to include feasible mitigation measures to protect marine organisms, and without the necessary assessment of feasibility, the project cannot be found to conform to the LCP.

<sup>4</sup> Additionally, the City's review of the project was based on an incorrect version of this LCP provision. The City used the following version in its recommended CDP findings and analysis:

*“Require that new development include mitigation measures to prevent the degradation of water quality of groundwater basins, wetlands, and surface water of water quality of groundwater basins, wetlands, and surface water.”* [

This version leaves out the phrase “...enhance water quality, if feasible, and at a minimum...”. The resulting project analysis did not assess what measures might be available to enhance water quality. At the public hearing where the project was approved, the City entered into the record a corrected version of the LCP policy and added two words to its findings (“Based on the analysis contained in the Recirculated EIR, no mitigation measures are required to protect or enhance ocean water quality.”). However, these changes did not provide the analysis necessary to determine whether the project could feasibly enhance water quality and therefore it cannot be determined that the project conforms to this LCP policy.

Regarding the second issue, the appellants note that the project would cause several impacts that would degrade surface water quality and that are not adequately addressed in the CDP.<sup>5</sup> For example, the project would use a number of cleaning compounds (e.g., sodium hydroxide, sodium tripolyphosphate, sulfuric acid, etc.) to treat the reverse osmosis membranes. It would route its “first rinse” of up to about 4,000 gallons per day of its most highly concentrated cleaning discharges to a sanitary sewer, but would route its “second rinse” of up to about 87,000 gallons per day of the remaining cleaning compounds through the power plant outfall and into the ocean. The discharge of these cleaning compounds is likely to cause some level of water quality degradation. There are a number of measures that could be imposed on the project to enhance or prevent this degradation – for example, routing all, rather than just some, of the cleaning compounds to a wastewater treatment facility – however, the CDP requires no such mitigation measures and the City made no findings related to whether these or other potential mitigation measures were feasible. Similarly, the project’s discharge is expected to increase salinity levels in an area of ocean water and benthic habitat; however, the project is not conditioned to prevent this degradation. For example, at various power plant operating conditions, the plume of higher salinity water (at least 10% over ocean water background salinity) extends from several dozen to about one thousand feet downcurrent from the outfall, and higher salinity water would be present over up to dozens of acres of the seafloor.

Based on the record provided by the City and the information provided by the appellants, there are numerous questions regarding whether the project does or does not conform to LCP Section C 6.1.1. Therefore, for the reasons cited above, the Commission finds that a substantial issue exists with respect to the project’s consistency with the City’s certified LCP.

4c) Appeal Issue – Environmentally Sensitive Habitat Areas:

LCP Section 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.”*

Portions of the project would be located within 100 feet of the nearby Huntington Beach Marsh, which provides environmentally sensitive habitat. The appellants contend that the project is not sited, designed, or conditioned in a way that ensures protection of this habitat area as required by this LCP provision.

This provision requires that coastal development permit review identify the effects a facility’s site and design would have on nearby habitat and ensure that the project is sited and designed to prevent those effects. This project, however, does not adequately conform to this provision. Several of the site characteristics indicate the facility may

---

<sup>5</sup> The LCP defines both surface waters and coastal waters as including “...waters of the Pacific Ocean, streams, wetlands, estuaries, lakes, and other areas subject to tidal action through any connection with the Pacific Ocean”.

need to be substantially altered or located further from the nearby habitat area. For example, the project review describes the site as subject to liquefaction and having a high potential for the soils to spread from the project site, possibly into the adjacent habitat area. It also describes a high potential for soil contamination at the site and the potential need for soil removal or treatment. Despite these characteristics being identified during project review, the project is not sited, designed, or conditioned in a manner that prevents potential effects on the nearby marsh. For example, several of the project's conditions are written in a way to suggest that it is not known whether the project will require soil remediation or placement or removal of fill. Further, those conditions only minimize impacts, not prevent them, as is required by this provision. For instance, Condition #4u states that if soil remediation is required, the applicant must submit a plan that describes how to minimize remediation impacts on nearby properties and how to ensure pollutants do not leave the project site.<sup>6</sup> Without knowing whether soil remediation will be necessary or the extent of that potential remediation, it is not possible to know if the project can be built in a way that ensures it does not affect the nearby habitat area. Similarly, Condition #4y requires that sensitive receptors be avoided if the project needs import or export of fill.<sup>7</sup> Not knowing whether the project will require placement or removal of fill does not allow the level of review necessary to determine project impacts and determine whether those impacts can be prevented.

Other conditions related to outdoor lighting and to stormwater mitigation have similar shortcomings.<sup>8</sup> Those conditions state that if the project needs lighting or stormwater measures, then they need to be done in a way to protect the nearby habitat areas. Again, however, without knowing whether the project includes those features or knowing the extent of those features, it is not possible to know whether the project is sited and designed to meet this provision of the LCP.

---

<sup>6</sup> CDP Condition #4u: "If soil remediation is required, a remediation plan shall be submitted to the Planning, Public Works, and Fire Departments for review and approval in accordance with City Specifications No. 431-92<sup>[6]</sup> and the conditions of approval. The plan shall include methods to minimize remediation-related impacts on the surrounding properties; details on how all drainage associated with the remediation efforts shall be retained on site; details on how no wastes or pollutants shall escape the site; and details on how wind barriers around remediation equipment shall be provided." [emphasis added.]

<sup>7</sup> CDP Condition #4y: "Should the project require off-site import/export of fill material during demolition, remediation, and construction, trucks shall utilize a route that is least disruptive to sensitive receptors, preferably Newland Street to Pacific Coast Highway to Beach Boulevard to I-405. Construction trucks shall be prohibited from operating on Saturdays, Sundays, and federal holidays." [emphasis added.]

<sup>8</sup> CDP Condition #1j: "If outdoor lighting is included, light intensity shall be limited to that necessary for adequate security and safety. All outside lighting shall be directed to prevent "spillage" towards the sky and onto adjacent properties, including the adjacent wetlands, and shall be shown on the site plan and elevations." [emphasis added.]

CDP Condition #4cc: "Appropriate site-specific hydrology and hydraulic analysis will be performed for the project prior to the issuance of grading or building permits, which ever comes first. The analysis shall include mitigation measures, if necessary, in regards to storm water drainage and flooding, and to ensure protection of the adjacent wetlands." [emphasis added.]



Based on the record provided by the City and the information provided by the appellants, numerous questions exist regarding whether the project does or does not conform to LCP Section C 7.1.3. Therefore, for the reasons cited above, the Commission finds that a substantial issue exists with respect to the project's consistency with the City's certified LCP.

4d) Appeal Issue – Energy Use:

LCP Section C 1.2.3 states:

*“Prior to the issuance of a development entitlement, the City shall make the finding that adequate services (i.e., water, sewer, roads, etc.) can be provided to serve the proposed development, consistent with policies contained in the Coastal Element, at the time of occupancy.”*

Appellants state that the project does not conform to this LCP policy because the City's CDP findings state only that adequate services will be provided and do not evaluate whether providing those services will be consistent with other Coastal Element policies. Appellants note further that the project would use 720 to 840 megawatt hours per day of electricity, which if obtained from the adjacent power plant, would cause adverse effects to marine biology due to entrainment.

The CDP findings state “[a]t the time of occupancy the proposed development can be provided with infrastructure in a manner that is consistent with the Local Coastal Program”, but the CDP does not cite the LCP policy above and does not describe whether the services would be provided in a manner consistent with Coastal Element policies. The project review in the EIR is based on the electricity for the project being obtained from either the adjacent power plant or from the grid; however, neither the EIR nor the CDP assess how the desalination facility's use of the electricity from the power plant would affect coastal resources and whether such use would be consistent with the City's Coastal Element policies, as required by this LCP provision. If the power plant produces more electricity than it would otherwise to provide power to the adjacent desalination facility, it will cause more entrainment than it would otherwise. Because the project is not conditioned to avoid or mitigate for this impact, its operations may not be consistent with the provisions of the City's Coastal Element related to marine biology.

Therefore, based on the record provided by the City, the information provided by the appellants, and for the reasons cited above, the Commission finds that a substantial issue exists with respect to the project's consistency with the City's certified LCP.

4e) Appeal Issue – Energy Use and Development:

LCP Section C 8 states:

*“Accommodate energy facilities with the intent to promote beneficial effects while mitigating any potential adverse effects.”*

Appellants state that the project does not conform to this policy because locating the desalination facility at the approved site will make it more difficult for the power plant to switch to a different cooling system, thus preventing an opportunity to eliminate or reduce the adverse effects caused by the existing once-through cooling system.

Siting the desalination facility adjacent to the power plant may affect the long-term accommodation of the power plant at the site; however, the facility was not evaluated for conformity to this LCP provision. There is a reasonable potential that during the operating life of the desalination facility, the power plant's existing cooling system may need to change to an alternative system due to any of several reasons – for example, due to the implementation of Clean Water Act Section 316(b), which requires substantial reductions of entrainment and impingement impacts at coastal power plants; due to changes in state policy such as the recently proposed resolution by the State Lands Commission that would phase out once-through cooling systems; or, due to market conditions and the increased costs that may be incurred for mitigating the impacts of once-through cooling systems.

The project may also result in non-conformity to other LCP provisions related to the power plant. For example, the LCP's Coastal Element (at page IV-C-75) states that vacant land adjacent to the power plant provides an opportunity for its potential expansion. Additionally, LCP Section C 8.2.2 states:

*“Require the mitigation of adverse impacts from new technologies employed in electricity generation to the maximum extent feasible.”*

Since most alternative cooling systems would require space adjacent to the power plant, the presence of the desalination facility could diminish the feasibility of these technologies and therefore affect the ability of the power plant to be accommodated at this site. The project, however, was not reviewed for consistency with these LCP provisions and is not conditioned to ensure conformity to these provisions.

Based on the record provided by the City, the information provided by the appellants, and for the reasons cited above, the Commission finds that a substantial issue exists with respect to the project's consistency with the City's certified LCP.

4f) Appeal Issue – Land Use:

The City's LCP and related zoning codes classify the project site as Public-Semipublic / Oil Production Overlay / Coastal Zone Overlay. The CDP findings state that the project is consistent with uses allowed under the Public and Semi-public utility classification.<sup>9</sup> That classification also prohibits uses that are not listed. Appellants contend that the project does not conform to these LCP provisions because it is an industrial use, not a utility, and is therefore not allowed to be sited within this area.

It is not entirely clear from the City's record in both the CDP and the EIR whether this project is considered a utility, an industrial use, or some other classification. The project is not a public utility, in that it is owned by a privately-held corporation. It does not appear to be a utility for purposes of regulation by the state Public Utilities Commission (PUC), as neither the CDP nor the EIR cite the PUC as a permitting or regulating agency. However, the CDP does state at one point in its Findings For Approval #4 that the project is an "industrial use". It appears, therefore, that the facility may be an industrial use, which is not permitted under the Public-Semipublic classification.

Based on the record provided by the City and the information provided by the appellants, questions exist regarding whether the project does or does not conform to the LCP's Land Use policies for allowable uses on the project site. Therefore, for the reasons cited above, the Commission finds that a substantial issue exists with respect to the project's consistency with the City's certified LCP.

**Appeal Issues Not Raising A Substantial Issue:**

4g) Appeal Issue – Coastal-dependency:

LCP Section C 1.1.2 articulates a priority for "coastal dependent" uses:

*"Coastal dependent developments shall have priority over other developments on or near the shoreline. Coastal-related developments should be accommodated within reasonable proximity of the coastal dependent uses they support."*

LCP Section C 8.2.4 states:

*"Accommodate coastal dependent facilities within the Coastal Zone consistent with Sections 30260 through 30264 of the Coastal Act."*

---

<sup>9</sup> Pursuant to the City's Zoning Code at Chapter 214, uses allowed under the Public and Semipublic classification are: Cemetery, Cultural Institutions, General Day Care, Government Offices, Hospitals, Maintenance & Service Facilities, Park & Recreation Facilities, Public Safety Facilities, Religious Assembly, General Residential Care, Public or Private Schools, Major Utilities, and Minor Utilities.

The CDP's Findings For Approval #4, which discuss in part whether the project site is appropriate for visitor-serving uses, state that "(e)ven if the lands were suitable for such visitor-serving uses, the project proposes a coastal dependent industry use, which is not of a lower priority than visitor-serving uses".<sup>10</sup> Appellants contend that the facility is not coastal dependent and that the City's statement regarding the facility's coastal-dependency is unsubstantiated and is not supported in the record. Appellants further contend that the project does not conform to LCP policy C 1.1.2 because it is afforded a site near the shoreline without being coastal dependent.<sup>11</sup>

The project has not been adequately reviewed to determine whether it is coastal dependent. The statement cited above from the Findings For Approval #4 is the CDP's only reference to the project being coastal dependent. Determining whether a particular desalination facility is coastal dependent requires more than a conclusory statement and must be based on case-by-case review. Additionally, the CDP's reference is to an LCP policy related to visitor-serving uses, not to the LCP policies related to coastal-dependency. The CDP does not provide the findings or analysis necessary to make a determination of coastal-dependency pursuant to these policies. For example, LCP Section C 8.2.4 states that coastal dependent facilities are to be consistent with Coastal Act Section 30260, which includes certain requirements for such facilities; however, those requirements are not incorporated into the project or addressed in the CDP.

Because the statement in the CDP is insufficient to establish whether the project is or is not coastal dependent, and because the project has not been evaluated or conditioned as would be necessary if it were coastal dependent, the Commission finds that no substantial issue exists with respect to the project's consistency with these LCP provisions.

#### 4h) Appeal Issue – Energy Use and Conservation:

LCP Policy C 8.3.1 states:

*"Promote the use of solar energy and encourage energy conservation."*

Appellants contend that the project does not conform to this LCP policy. They state that desalination is well-documented as being the most energy demanding method to obtain fresh water. Appellants also notes that the project descriptions state that the project will require about 35 megawatts of electrical power, which represents about a 9% increase in the City's average electricity demand, and notes that the EIR fails to compare the project's projected electricity use with the energy demands of other potential water supplies that may use less energy, such as wastewater reclamation, water conservation, and stormwater retention.

---

<sup>10</sup> The LCP and Section 216.04.G of the City's Zoning Ordinance define "coastal-dependent development or use" as "(a)ny development or use which requires a site on, or adjacent to, the sea to be able to function at all".

<sup>11</sup> The project site is adjacent to an area of salt marsh considered to be part of the "sea" as defined in the LCP's Coastal Element Glossary: "Consistent with Section 30115 of the Coastal Act, 'Sea' means the Pacific Ocean and all harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean, excluding nonestuarine rivers, streams, tributaries, creeks, and flood control and drainage channels."

However, this LCP provision directs the City to “promote” and “encourage” certain actions, not the project proponent. While the City could have requested that the applicant conform to this LCP provision, it was not required to do so. Therefore, the Commission finds that no substantial issue exists with respect to the project’s consistency with this LCP provision.

4i) Appeal Issue – Water Supply and Conservation:

LCP Section C 6.1.13 states:

*Encourage research and feasibility studies regarding ocean water desalination as an alternative source of potable water. Participate in regional studies and efforts where appropriate.*

Appellants contend that the project does not conform to this LCP provision because the facility is not supported by research and feasibility studies. Appellants further contend the project does not conform to this provision because it was not developed as part of regional efforts.

Similar to the issue above, this LCP provision is directed at the City rather than at project proponents. While the City could have chosen to encourage the applicant to conform to this LCP provision, it was not required to do so. Therefore, the Commission finds that no substantial issue exists with respect to the project’s consistency with this LCP provision.

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



April 10, 2006

**W5a**

**TO:** Commissioners and Interested Parties

**FROM:** Alison Dettmer, Manager, Energy and Ocean Resources Unit  
Tom Luster, Analyst, Energy and Ocean Resources Unit

**SUBJECT:** Addendum to Findings for Appeal #A-5-HNB-06-101 (City of Huntington Beach approval of Poseidon Resources desalination facility)

---

Coastal Commission staff recommends the following corrections and modifications to the findings for the above-referenced appeal. First, there are two minor corrections to the staff report issued on March 23, 2006; second, in addition to the appeals described in that report, staff received an additional timely appeal from the Orange County Coastkeeper. That appeal raises several issues that were raised by other appellants, but also raises several that had not been raised previously. All are described below. The recommended findings in this addendum do not change staff's recommendation that the Commission find *substantial issue exists* with the project's conformity to the City's LCP.

**CORRECTIONS TO MARCH 23, 2006 STAFF REPORT:**

- Page 3, last paragraph, third sentence: Should be revised to "...The power plant ~~is currently permitted through an NPDES permit to~~ withdraws up to about 516 mgd pursuant to an NPDES permit that expired last year but is currently under an administrative extension from the Regional Board."
- Page 4, "Permit History", first sentence: Should be revised to "...construction and operation of a desalination ~~test~~ facility."

**REVISIONS TO FINDINGS:**

The appeal issues raised by Orange County Coastkeeper (Appellant) fall into two categories:

- Appeal issues already evaluated in the staff report; and,
- Appeal issues not yet evaluated in the staff report.

Each category is described in more detail below.

**Appeal Issues Already Evaluated in the Staff Report:** The following issues raised by the Appellant are similar to issues raised by other appellants and already described in the staff report. The findings regarding these issues are therefore the same as stated in the staff report, and the following appeal issues by the Appellant are considered incorporated into that report:

***Appeal Issues Raising Substantial Issue:***

- Appeal Issue – Marine Biology and Water Quality: Nonconformity to LCP Section C 6.1.1<sup>1</sup> (included in pages 6-7 of the staff report).
- Appeal Issue – Marine Biology and Entrainment: Nonconformity to LCP Section C 6.1.19<sup>2</sup> (included in pages 5-6 of the staff report).

***Appeal Issue Not Raising Substantial Issue:***

- Appeal Issue – Energy Use and Conservation: Nonconformity to LCP Section C 8.3.1<sup>3</sup> (included in pages 12-13 of the staff report).

**Appeal Issues Not Yet Evaluated In the Staff Report:** The following five issues raised by Appellant were not raised by other appellants. The findings for each of these issues are provided below and are incorporated into the staff report's section on Appeal Issues Raising an Substantial Issue starting on page 5.

***Appeal Issues Raising Substantial Issue:***

- Appeal Issue – Coastal Resources:

LCP Section C 1.1 states:

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

The project will cause adverse impacts to coastal resources, including water quality degradation, loss of marine organisms, and others. Appellant contends that the project is inconsistent with this LCP provision because it does not include adequate mitigation measures to minimize these impacts, and because its presence at the power plant will limit the ability to reduce the cooling system's adverse impacts related to entrainment and impingement.

---

<sup>1</sup> LCP Section C 6.1.1: *Require that new development include mitigation measures to enhance water quality, if feasible and at a minimum, prevent the degradation of water quality of groundwater basins, wetlands, and surface water of water quality of groundwater basins, wetlands, and surface water.*

<sup>2</sup> LCP Section C 6.1.19: *Prior to approval of any new or expanded seawater pumping facilities, require the provision of maximum feasible mitigation measures to minimize damage to marine organisms due to entrainment in accordance with State and Federal law.*

<sup>3</sup> LCP Section C 8.3.1: *Promote the use of solar energy and encourage energy conservation.*

Although the project includes some mitigation measures, it does not adequately address many of the adverse impacts identified during the City's review. These include water quality degradation caused by the plume of the higher salinity discharge into coastal waters, the increased entrainment losses caused by the facility, and others. Additionally, the project was not reviewed to determine what mitigation measures would be feasible to address the various impacts. Because this LCP provision requires that any adverse impacts be mitigated or minimized as feasible, the project raises numerous questions regarding its conformity to this LCP provision. Therefore, based on the record provided by the City, the information provided by the appellant, and the reasons cited above, the Commission finds that a substantial issue exists with respect to the project's consistency with this section of the City's certified LCP.

- Appeal Issue – Provision of Adequate Services:

LCP Section C 1.2.3 states:

*“Prior to the issuance of a development entitlement, the City shall make the finding that adequate services (i.e., water, sewer, roads, etc.) can be provided to serve the proposed development, consistent with policies contained in the Coastal Element, at the time of occupancy.”*

The project includes a water supply pipeline that would extend beyond Huntington Beach and into the adjacent City of Costa Mesa to connect with the regional water distribution system. Both the primary and alternative pipeline routes reviewed in the project's Environmental Impact Report would go through Costa Mesa. During the project's environmental review, Costa Mesa identified a number of concerns about the proposed pipeline routes and on November 1, 2006, the Costa Mesa City Council voted to oppose pipeline construction. Appellant contends that the project cannot be built as planned, since it was approved dependent on a water pipeline that cannot be built as currently configured and therefore does not meet the requirement that adequate services be provided to serve the project.

Among the services necessary to support the project is a connection to the water distribution system. The City of Huntington Beach included a finding in its coastal development permit that the project could be provided “with infrastructure in a manner that is consistent with the Local Coastal Program”, but it does not describe how this would be accomplished. The City's permit, approved on February 27, 2006, does not address the need to either alter the pipeline route or provide another means to connect to the system, either of which would likely cause as-of-yet unidentified additional impacts and would require supplemental environmental review. Even if Costa Mesa were to change its position regarding the pipeline, the current situation, and the one under which the project was approved and conditioned, strongly suggests that there is inadequate basis for the finding of LCP conformity by the City of Huntington Beach. As a result, the project is not assured of being built as approved and cannot be assured of having adequate services provided. The project approval therefore raises significant questions as to its conformity to this LCP provision. Based on the information provided by the appellant, the City's record, and the above, the Commission finds that a substantial issue exists with respect to the project's consistency with this section of the LCP.



- Appeal Issue – Public Recreation:

LCP Section C 3.1 states:

*Preserve, protect and enhance, where feasible, existing public recreation sites in the Coastal Zone.*

The project will result in discharges to coastal waters. Appellant contends that the higher salinity of those discharges and likely reduction in fish in the area will reduce recreational resources. The project's discharges have been identified as causing water quality degradation that may cause fish to move out of the area of increased salinity. However, the project does not include measures to mitigate for these effects and is not conditioned to ensure preservation or protection of this recreational resource. Additionally, the project was not subject to a feasibility analysis to determine whether there are feasible methods to enhance recreation in this area. Therefore, based on the information provided by the appellant, the City's record, and the above, the Commission finds that a substantial issue exists with respect to the project's consistency with this section of the LCP.

- Appeal Issue – Marine Biology and Water Quality:

LCP Section C 6 states:

*Prevent the degradation of marine resources in the Coastal Zone from activities associated with an urban environment.*

LCP Section C 6.1 states:

*Promote measures to mitigate the adverse impacts of human activities on marine organisms and the marine environment through regulation of new development, monitoring of existing development, and retrofitting necessary and feasible. [sic]*

LCP Section C 6.1.2 states:

*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.*

LCP Section C 6.1.3 states:

*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.*

LCP Section 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.*

The project will result in changes to the area's marine biota and its discharges will result in degradation of coastal waters. Appellant contends that the project is not conditioned to minimize the degradation of water quality or to maintain and enhance marine resources, and that the project does not include feasible measures to restore biological productivity. Appellant further contends that because the project was not reviewed for conformity to several of these applicable provisions (including C 6.1.3 and 6.1.4), it is not consistent with the LCP.

The project, as approved and conditioned, was not reviewed for conformity to LCP Sections C 6.1.2, 6.1.3, and 6.1.4. As a result, it does not include the mitigation measures required to conform to these provisions. Further, the project was not reviewed to determine the feasibility of various mitigation measures, as required by several of the above LCP provisions. Therefore, based on the information provided by the appellant, the City's record, and the above, the Commission finds that a substantial issue exists with respect to the project's consistency with these sections of the LCP.

- Appeal Issue – Water Conservation Measures:

LCP Section C 6.1.12 states:

*Periodically review the City's policies on water conservation, including the Water Conservation Ordinance, to ensure the use of state of the art conservation measures for new development and redevelopment, and retrofitting of existing development, where feasible and appropriate, to implement these measures.*

The project is a new development and is therefore subject to this LCP provision's requirement that it use state of the art conservation measures as described in the City's Water Conservation Ordinance. Appellant contends that the City failed to address this issue in its approval and that the project therefore does not conform to this LCP provision. The project was approved and conditioned without reference to this provision and it is unclear from the City's record whether the project includes the required conservation measures. Therefore, based on the information provided by the appellant, the City's record, and the above, the Commission finds that numerous questions exist with respect to the project's consistency with this section of the LCP.

The following issue raised by Appellant was not raised by other appellants. The findings for this issue are provided below and are incorporated into the staff report's section on Appeal Issues Not Raising a Substantial Issue starting on page 11.

***Appeal Issues Not Raising a Substantial Issue:***

- Appeal Issue – Water Use and Conservation:

LCP Section C 6.1.14 states:

*Encourage water reclamation projects, including household wastewater reclamation, and the use of reclaimed water for purposes such as irrigation, where feasible and appropriate.*

LCP Section C 6.1.13 states:

*Encourage research and feasibility studies regarding ocean water desalination as an alternative source of potable water. Participate in regional studies and efforts where appropriate.*

Appellant contends that the City's findings of conformity to these LCP provisions are not appropriate, since the project does not encourage water conservation or reuse and because is a large-scale project that uses standard technology rather than a research facility or feasibility effort. However, as noted in the staff report, while these LCP provisions direct the City to "promote" and "encourage" certain actions, it does not require the project to take such actions. Therefore, for reasons similar to those stated in the staff report, the Commission finds that no substantial issue exists with respect to the project's consistency with these LCP provisions.



## POSEIDON RESOURCES

April 7, 2006

### VIA E-MAIL AND FEDERAL EXPRESS

California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, California 94105-2219

Re: Appeal No. A-5-06-101: Response to Commission Staff Report and Recommendation on Substantial Issues in Appeal of City of Huntington Beach Approval of Poseidon Desalination Facility

Dear Commissioners:

Poseidon Resources Corporation ("Poseidon") is writing to respond to the Commission's March 23, 2006 Staff Report and Recommendation (the "Report") regarding substantial issues presented in the appeal of the City of Huntington Beach's approval of a Coastal Development Permit ("CDP") for Poseidon's proposed desalination facility (the "Project"). Because portions of the Project are within the Commission's retained jurisdiction, Poseidon is preparing to file an application for a CDP directly with the Commission so that consideration of the appeal may take place concurrently with consideration of the application to the Commission. For this reason, Poseidon will not challenge the staff's recommendation that the Commission find the existence of substantial issues under the Coastal Act.

While Poseidon does not challenge a finding of substantial issues, we believe that a significant amount of information contained in the Report is incorrect and that a full review of the Project indicates that it is consistent with both the Huntington Beach LCP as well as the Coastal Act. This letter will briefly respond to and clarify certain statements contained in the Report.<sup>1</sup>

---

<sup>1</sup> Poseidon's direct application with the Commission will be both legally and factually related to this appeal; therefore, Poseidon requests that the Commission staff prepare a consolidated staff report pursuant to 14 CCR § 13058 and hear both matters concurrently.

**Long Beach Office**  
3760 Kilroy Airport Way, Suite 260  
Long Beach, Ca. 90806  
562-490-2003 Tel.  
562-490-2403 Fax

**San Diego Office**  
501 West Broadway, Suite 804  
San Diego, Ca. 92101  
619-595-7858 Tel.  
619-595-7892 Fax

A. Marine Biology and Entrainment

Staff Report Contention.

The Report states that the Project's water intake pumps will not adequately minimize damage to marine organisms due to entrainment. The Report also posits that the Project will alter the amount of water taken in by the adjacent AES power plant, thereby increasing entrainment at that plant.

Response.

The Project will have insignificant to no entrainment impacts because all of the water that it will intake will come from and have already been screened and circulated through the AES plant, and over 94 percent of organisms will not survive the intake process at the AES plant. By co-locating the Project with an existing power plant, the entrainment impacts caused by the Project are negated because the facility receives its water intake after the power plant has used that water, and therefore after any inevitable entrainment at the power plant has already occurred. A detailed study regarding any additional impingement and entrainment effects caused solely by the desalination facility concluded that the facility will not cause any additional impingement losses. See Exhibit T to EIR (Huntington Beach Desalination Facility Intake Effects Assessment). The study further concluded that the Project will cause only minimal increases in entrainment mortality (the 94.1% mortality rate at the AES plant alone would be increased to between 95.3% and 98.7% when combined with the desalination facility) and that the larval fish loss attributed to the facility would be .02 percent of the total local population. Finally, the study found that the most frequently entrained species are not rare or endangered but rather are abundant in the area of the AES plant intake and species of direct recreational and commercial value constitute a very small fraction of the entrained organisms in that intake.

In addition, the Project will not alter the amount of water taken in by the adjacent power plant. As described in sections three and four of the EIR, even after implementation of the Project, the power plant will continue to pump the same amount of source seawater for cooling as is permitted today by the State Water Resources Control Board. The desalination facility will not require additional water from the power plant when the plant is shut down or operating at low levels because, even if the plant is operating in standby mode, the desalination facility will be able to operate and produce 50 MGD of fresh potable water only using water that has already been circulated by the power plant. Finally, the power plant will not need additional water to cool its discharge water to temperature ranges required by the Project because the average discharge temperature of 82 degrees is far below the maximum temperature threshold for desalination. Even during the warmest day of the last 20 years, the power plant's water would not need to be cooled further for use by the desalination facility. See Exhibit C to EIR (Hydrodynamic Modeling of Source Water Make-Up and Concentrated Seawater Dilution for the Ocean Desalination Project at the AES Huntington Beach Generating Station). Therefore, the Project is consistent with both the LCP and Coastal Act in that it more than adequately minimizes any potential damage to marine organisms.

B. Water Quality

Staff Report Contention.

The Report contends that the Project does not enhance water quality, and that the Project does not prevent water quality degradation, particularly because of the discharge of cleaning compounds from the facility as well as the resulting increased levels of water salinity in the area surrounding the facility.

Response.

The Project will enhance water quality by removing bacteria from source water and by increasing levels of dissolved oxygen in the water returned to the ocean. In addition, the Project further will enhance water quality by reducing the thermal loading and thermal footprint of the discharge from the power plant.

Moreover, neither the Project's discharge of cleaning compounds nor the slightly increased salinity levels in the area will degrade the quality of ocean water surrounding the AES plant and the desalination facility. The desalination facility will clean its reverse osmosis membranes with chemicals that are analogous to household cleaners. The initial rinse of the membrane cleaning solution will be treated at a wastewater treatment facility, and only the second rinse, which will contain trace amounts of cleaning compounds below detection limits for hazardous waste, will be discharged into the ocean after it is thoroughly diluted in water. As concluded in Appendix K to the EIR (RO Membrane Cleaning Solution Discharge Test Stream Data), even before dilution, the vast majority of the chemicals within the membrane cleaning solution would be either below detection levels or regulatory limits. Dilution of these substances will even further minimize the already less than significant impacts on the local marine environment.

In addition, only a small area of both ocean floor and water will be exposed to discharge water that has a salinity level that is just slightly higher than normal. The expected 10 percent increase in salinity in those areas is within the normal variability of seawater and will have no appreciable impact on local marine species. In fact, most marine species in the water around Huntington Beach are also found in geographic regions that naturally have a salinity range comparable to or greater than what is predicted at the discharge area. See Exhibit S to EIR (Marine Biological Considerations Related to the Reverse Osmosis Desalination Project at the Applied Energy Sources Huntington Beach Generation Station).

C. Environmentally Sensitive Habitat Areas

Staff Report Contention.

The Report asserts that the Project does not adequately ensure protection of the nearby Huntington Beach Marsh because the facility site is subject to liquefaction, has a high potential for soil contamination, may need soil removal or treatment, and may need outdoor lighting or stormwater mitigation.

Response.

The Project has been intentionally located, and additional mitigation measures have been crafted, to avoid any significant environmental impacts on the Huntington Beach Marsh. The Project will be separated from nearby coastal wetlands by existing containment berms, which will keep storm water onsite. The Project design will incorporate adequate engineering measures to stabilize structures from onsite soils known to be prone to liquefaction, including over-excavation and recompaction of soils, in-situ soil densification, injection grouting and deep soil mixing. The Project will also be engineered to meet all building and safety requirements. These measures were identified during the environmental review process by geotechnical studies prepared for the Project. In addition, a detailed geotechnical report is required to be prepared and submitted with the building permit application for the proposed facility. That analysis will address issues such as lateral spreading, chemical/fill properties of underground items, and remedial work. In addition, the desalination facility will feature an onsite local storm water drainage system, which will include catch basins that will collect any potential runoff that is contained by the existing berms and then direct it to a storm water pump via gravity lines. During the design phase of the Project, Poseidon, the City, Regional Water Quality Control Board, and the AES staff will work together to select the best method of treating storm water to minimize impacts of urban pollutants. The Project will incorporate applicable Best Management Practices in order to contain stormwater runoff and will be in compliance with all standards as administered by the State Water Resources Control Board and County of Orange. Further, the facility will be graded so that all onsite stormwater will flow away from the wetland area and toward the local drainage system. Any outdoor lighting, if required, will have limited intensity and be directed away from the sky and adjacent wetlands.

D. Energy Use

Staff Report Contention.

The Report contends that the Project may result in increased electricity production at the adjacent power plant, which could cause adverse effects to marine biology due to entrainment.

Response.

As explained in section A above, even when the desalination facility is operating at full capacity, the power plant will continue to pump the same amount of source seawater for cooling as is permitted today. Therefore, any increase in the amount of power generated by the plant due to its services to the desalination facility will not have an effect on the amount of entrainment caused by the plant's water intake device. Further, the Project may not rely wholly on the AES plant to meet its power needs, but instead may utilize a variety of power sources, which are distributed throughout the state and connected to a regional power supply source.

E. Energy Use and Development

Staff Report Contention.

The Report states that siting the desalination facility adjacent to the power plant may affect the ability of the power plant to shift to new technology, such as an alternative cooling system, which would have less adverse impacts on the environment.

Response.

The AES plant already utilizes the best technology available and alternative cooling systems will only result in greater adverse effects to the environment, such as, for example, increased noise. Moreover, the plant has power contracts that remain in effect through 2018, and as reflected in the Huntington Beach City Council meeting minutes, AES representatives have refuted claims that the siting of the desalination facility adjacent to the plant will affect future development plans.

F. Land Use

Staff Report Contention.

The Report asserts that it is unclear whether the Project is consistent with uses allowed under the Public and Semipublic classification pursuant to the City's LCP and related zoning codes.

Response.

As determined by the Director of the City's Planning Department, the desalination facility is a public-private partnership that has the same characteristics as a utility, which explicitly falls within the scope of the public/semi-public classification under the City's zoning ordinance. Poseidon has made a binding commitment to: a) enter into a Water Purchase Agreement with the City of Huntington Beach that provides the City the right to purchase three million gallons per day from the desalination facility; b) provide an emergency water supply to the City of up to 10 million gallons per day for up to seven days; and c) enter into an Owner Participation Agreement with the City Redevelopment Agency to provide long-term assurance of property tax and other economic benefits to the City. Poseidon intends to forge agreements with many other public entities as well. Even though Poseidon will not be regulated by the Public Utilities Commission, Poseidon will sell the output of the desalination facility through wholesale contracts with retail water providers that are regulated by the state, public water agencies, and municipalities. Therefore, the City has determined that because the facility will be a wholesale supplier to regulated utilities, public water agencies and municipalities, and will provide much-needed water services to the public, it is properly classified as a public/semi-public use.

G. Coastal Dependency

Finally, although the Report concludes that a substantial issue is not raised with respect to coastal dependency, staff suggests that the Project is not coastal dependent and therefore is unnecessarily afforded a site near the shoreline.



Taking the position that a facility dedicated to the desalination of ocean seawater is not coastal dependent is illogical, inconsistent with the analogous examples of coastal-dependent uses identified by the Legislature in the Coastal Act, and inconsistent with the plain meaning of the language of the Act. Seawater desalination facilities clearly fall within the Coastal Act's definition of coastal dependent because such facilities require "a site on, or adjacent to the sea" in order to draw seawater into the plant. To suggest that the plant is not coastal dependent because only the intake requires a coastal site is inconsistent with other examples identified as coastal dependent in the Coastal Act. See Pub. Res. Code § 30001.2. Using the Report's reasoning, one could argue that electric generating facilities, refineries, and offshore drilling for oil and gas are not coastal dependent because these land uses can also be sited outside the coastal zone. Further, the Commission itself already determined in its 1993 Report that desalination facilities are coastal dependent and recommended "siting of plants near existing seawater intakes" to mitigate potential adverse impacts.

Poseidon looks forward to the upcoming opportunities to explain in detail to the Commission its position on the above-referenced issues, as well as other issues regarding the proposed desalination facility's conformance with the Huntington Beach LCP and the Coastal Act. In the meantime, if you have any questions or would like to discuss any points related to the facility, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Peter MacLaggan".

Peter MacLaggan  
Senior Vice President  
Poseidon Resources Corporation

cc: Paul Emery, City of Huntington Beach  
Howard Zelefsky, City of Huntington Beach  
Mary Beth Broeren, City of Huntington Beach  
Walter Winrow, Poseidon Resources Corporation  
Andrew Kingman, Poseidon Resources Corporation  
Rick Zbur, Latham & Watkins