

CALIFORNIA COASTAL COMMISSION

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



Th17a

Filed: August 10, 2007
 49th Day: September 28, 2007
 Staff: TL-SF
 Staff Report: August 16, 2007
 Hearing Date: September 6, 2007

STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Oxnard

DECISION: Denial

APPEAL NO.: A-4-OXN-07-096

APPLICANT: Southern California Edison Company

PROJECT DESCRIPTION: Construction and operation of a “peaker” power plant.

PROJECT LOCATION: 251 North Harbor Boulevard, Oxnard, Ventura County.

APPELLANT: Southern California Edison Company

APPENDIX I: Appeal

EXHIBIT 1: Proposed project location

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 appellant has raised substantial issues in that the City’s denial of a coastal development permit does not conform to applicable LCP policies.

SUBSTANTIVE FILE DOCUMENTS:

- Certified City of Oxnard Local Coastal Program
- City of Oxnard File No. 06-400-05
- Coastal Commission Appeal File No. A-4-OXN-07-096
- Appeal from Southern California Edison (SCE)

I. APPELLANT CONTENDS THAT

The City of Oxnard's reason for denying the proposed project was not valid. The City determined that because the project was not "coastal-dependent", it did not conform to the "Coastal Energy Facility" zoning designation of the proposed site. The appellant contends that the City's interpretation of its "Coastal Energy Facility" zoning designation was in error and that the City therefore improperly denied SCE's request for a coastal development permit.

II. LOCAL GOVERNMENT ACTION

On November 2, 2006, SCE applied for the City's CDP. On June 28, 2007, the City's Planning Commission denied the CDP. SCE filed a timely appeal of that decision with the City Council and on July 24, 2007, the City Council denied the appeal. Concurrent with this CDP review, the City prepared a Mitigated Negative Declaration pursuant to the California Environmental Quality Act; however, on June 28, 2007 and July 24, 2007 declined to adopt the MND.

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 AND RESOLUTION

I move that the Commission determine that Appeal No. A-4-OXN-07-096 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-4-OXN-07-096 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 denied by the City is a “peaker” power plant proposed to be constructed and operated by Southern California Edison Company (SCE) at a site adjacent to the Mandalay Generating Station in the City of Oxnard, Ventura County. The proposed development would include construction and operation of a 45-megawatt power generating facility and associated components such as transformers, an electrical substation, storage tanks, and other similar structures. The proposed project site is within the City’s coastal zone and subject to the City’s Local Coastal Program.

SCE is proposing this peaker plant and three others in response to an order by the California Public Utilities Commission (Rulemaking #06-02-013) directing SCE to develop up to 300 megawatts of additional electrical generation capacity for the summer 2007 peak electrical demand period. SCE recently brought on line five other peaker plants elsewhere in Southern California to partially respond to that order.

2. **Permit History:** On June 28, 2007, the City of Oxnard Planning Commission denied the appellant's request for a Coastal Development Permit to construct and operate the peaker plant. The Planning Commission at that time also declined to adopt the Mitigated Negative Declaration (MND) prepared by the City pursuant to requirements of the California Environmental Quality Act. On July 10, 2007, the appellant filed a timely appeal of the Planning Commission's decision with the Oxnard City Council. On July xx, the City Council denied the appeal and declined to adopt the MND. On July 27, 2007 the Coastal Commission received the City's Notice of Final Action and associated records to start the 10-working-day appeal period, which ended August 10, 2007. SCE filed its appeal on August 10, 2007.
3. **Permit Jurisdiction:** The proposed project would be located within the Coastal Zone in the City of Oxnard and is subject to the City's certified Local Coastal Plan (LCP). The proposed project is a "major energy facility" as defined in the Commission's regulations¹, and is therefore subject to appeal to the Coastal Commission, pursuant to Coastal Act Section 30603(a)(5).²
4. **Non-conformity to the Certified LCP:** The standard of review for this appeal is consistency with the certified LCP of the City of Oxnard. The appellant contends that the City's denial of its CDP application is based on an erroneous interpretation of its LCP. The appellant specifically contends that the City erred in determining the zoning designation allows only "coastal-dependent" energy facilities to be located at the proposed project site. The appellant also contends that the proposed project could be permitted under the zoning designation's allowable conditional use as an "electrical power generating plant and accessory uses normally associated with said power generating facility". Both of these appeal issues raise substantial issue with the project's conformity to the LCP.
5. **Appeal Issues Raising a Substantial Issue:**

Appeal Issue – whether the zoning designation of the proposed project site requires facilities to be "coastal-dependent":

The LCP's Coastal Zoning Ordinance Section 17-20(A), which describes the Coastal Energy Facilities Sub-Zone designation, states:

Purpose - The purpose of the EC sub-zone is to provide areas that allow for siting, construction, modification and maintenance of power generating facilities and electrical substations consistent with Policies 51, 52, 54, 55 and 56 of the Oxnard coastal land use plan. Additionally, the EC sub-zone is designed to provide a framework for coordinating

¹ 14 Cal. Admin. Code Section 13012(a) defines, in relevant part, "major energy facilities" as those "that cost more than one hundred thousand dollars (\$100,000)..." Edison states that the project would cost approximately \$50 million to build.

² Coastal Act Section 30603(a) states, in relevant part: "After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments: ... (5) Any development which constitutes a major public works project or a major energy facility."

the requirements and responsibilities of applicable city, State and federal regulatory agencies vested with the authority for reviewing energy facility development. To assure consistency with the Oxnard coastal land use plan, the following coastal act provisions and land use plan policies shall apply:

- (1) Coastal dependent energy facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth, where consistent with this article. (Coastal Act, Section 30260)*
- (2) All new energy related development shall conform to the air quality regulations set forth by the Ventura County Air Pollution Control District, the air quality management plan and new source review rule 26. (Policy 29)*
- (3) Energy related development shall not be located in coastal resource areas including sensitive habitats, recreational areas and archeological sites. All development adjacent to these resource areas or agricultural areas shall be designed to mitigate any adverse impacts. (Policy 30)*
- (4) All new energy related development shall be located and designed to minimize adverse effects upon public access to the beach. (Policy 54)*
- (5) No energy related development shall be located seaward of the 100 year flood/wave run-up line as designated by the U.S. Department of Housing Insurance Program Administration and the land use map of the Oxnard coastal land use plan. (Policy 56)*
- (6) Wastewater from any energy related facilities shall be treated as necessary and put to reuse including, but not limited to the following:*
 - (a) Re-injection into the aquifer or ground water recharge system; and*
 - (b) Recycling for industrial, agricultural or urban use. (Policy 64)*

The LCP's Coastal Zoning Ordinance Section 17-20(B) states:

Conditionally permitted uses - The following uses are permitted subject to the approval of a coastal development permit pursuant to the provisions of article V:

- (1) Off-street public parking facility;*
- (2) Electrical power generating plant and accessory uses normally associated with said power generating facility;*
- (3) Electrical substation; and*
- (4) Natural gas pump and extraction facilities.*

Discussion: The City's denial of the proposed project was based on its determination that the proposal did not conform to the designated zoning for the parcel on which the project was to be located. Pursuant to the City LCP's Coastal Zoning Ordinance at Section 17-20, the parcel is designated as "Coastal Energy Facility Sub-Zone". The City's only rationale for denying the proposal is that the zoning designation requires any energy facility on the site to be coastal dependent.³ The City's record shows that neither SCE

³ Both the City's LCP at Section 17-3(12) and Section 30101 of the Coastal Act define a "coastal-dependent development or use" as "any development or use which requires a site on, or adjacent to, the sea to be able to function at all."

nor the City characterized the proposed facility as “coastal-dependent”. The facility does not rely on a site “on, or adjacent to, the sea” to function, and in fact, other similar peaker plants proposed by SCE are located outside the coastal zone at inland locations. SCE contends, however, that this zoning designation allows non-coastal dependent facilities and that the City therefore erred when it determined the proposed project would have to be coastal-dependent to be sited at this location.

Section 17-20(A) states in part that the purpose of this zoning designation is to provide areas for siting power generating facilities. It then specifies in various subsections several provisions that apply to power generating facilities that would be located on sites with this zoning designation. For example, subsection (2) requires all energy related development to conform to local air quality regulations, subsection (3) prohibits these developments from locating in areas with sensitive habitats, recreational areas, or archaeological sites, and subsection (4) requires them to minimize adverse effects on public access to the beach.

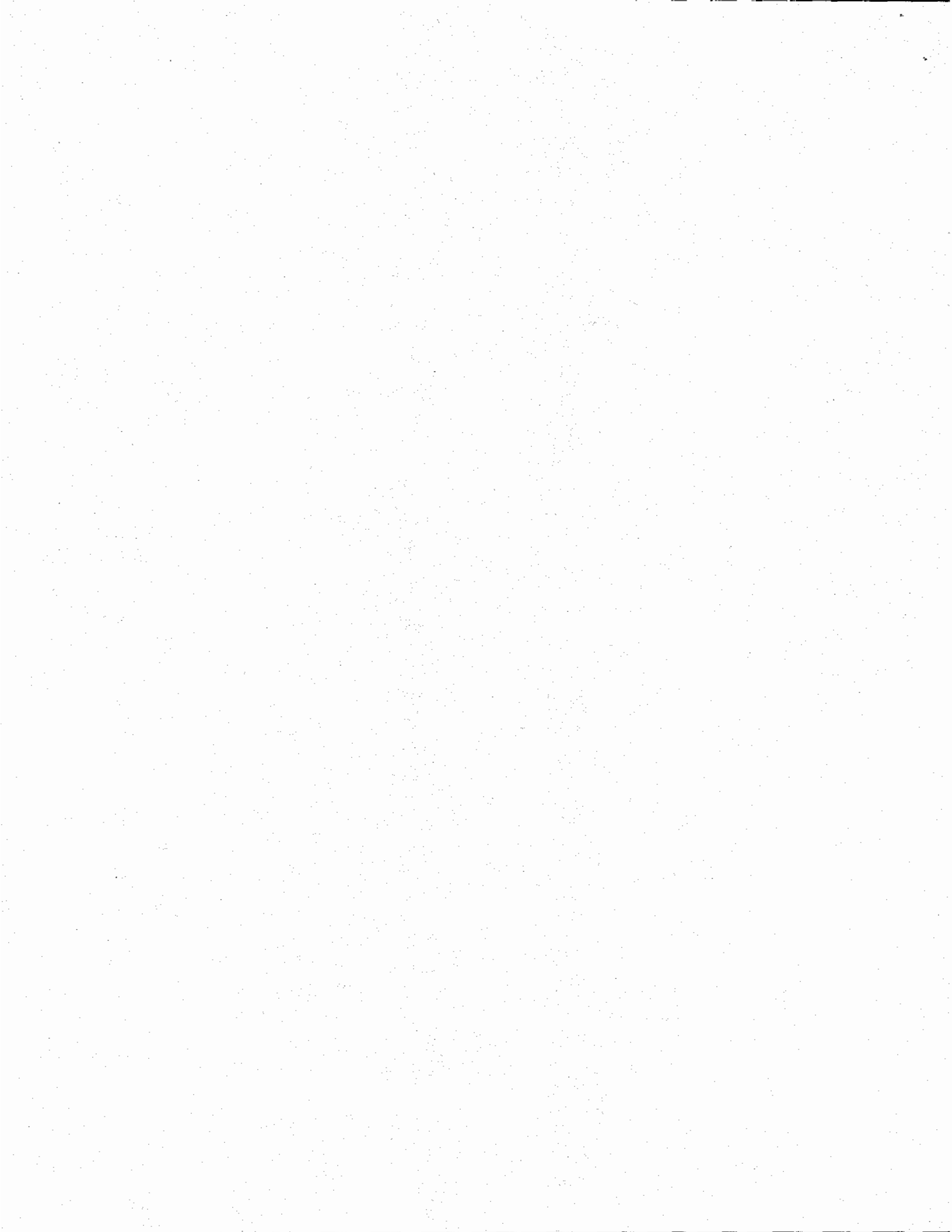
For this appeal issue, the key subsection of this provision is Section 17-20(A)(1), which states that “coastal dependent energy facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth, where consistent with this article.” The City’s interpretation of this subsection is that the proposed project could not be sited at this location because it is not a coastal dependent energy facility. This subsection, however, is the only one that refers to “coastal-dependent” facilities, and it only “encourages” such facilities to locate within this zoning designation. The other subsections apply generally to “energy related developments”, not exclusively to “coastal-dependent” developments. Additionally, these subsections are all subject to the overarching provision of Section 17-20(A), which states that this zoning designation allows “power generating facilities and electrical substations” and is therefore not limited to “coastal-dependent” facilities.⁴ Therefore, the City’s decision raises substantial issue with regard to whether the LCP requires facilities at this site to be “coastal-dependent.”⁵

Conclusion: Based on the above, the record provided by the City and the information provided by the appellants, the City’s decision raises questions regarding its conformity to LCP Section 17-20. 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.

⁴ Further, the LCP’s definition of “energy facility” does not specify that such facilities must be coastal-dependent. LCP Section 17-3(25) defines an “energy facility” as “any public or private processing, producing, generating, storing, transmitting or recovering facility for electricity, natural gas, petroleum, coal or other sources of energy.”

⁵ SCE additionally contends that even if Section 17-20 required facilities to be “coastal-dependent”, its proposed project should be considered “coastal-dependent” as it is accessory to the adjacent coastal-dependent Mandalay Generating Station. Section 17-20(B)(2) allows several conditionally permitted uses to be located within this zoning designation, including “accessory uses normally associated with said power generating facility”. As noted above, it is clear from the record that SCE’s proposed peaker plant is not coastal-dependent. Further, the City did not address this issue in its decision to deny the CDP for the proposed facility; therefore, Edison has not exhausted local appeals regarding this issue and the issue does not raise substantial issue regarding LCP conformity.

APPENDIX I: APPEAL



CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT OFFICE
 89 SOUTH CALIFORNIA STREET, SUITE 200
 VENTURA, CA 93001-4508
 VOICE (805) 685-1800 FAX (805) 641-1732

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CALIFORNIA
 COASTAL COMMISSION
 SOUTH CENTRAL COAST DISTRICT

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Southern California Edison Company, Attention: Sumner J. Koch, Law Dept.

Mailing Address: 2244 Walnut Grove Avenue

City: Rosemead

Zip Code: 91770

Phone: 626-302-3253

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Oxnard

2. Brief description of development being appealed:

Construction of a 45-megawatt "peaker" power plant with black-start capability.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

251 North Harbor Boulevard, Oxnard, CA.

4. Description of decision being appealed (check one.):

- Approval; no special conditions
 Approval with special conditions:
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-4-OXN-094

DATE FILED:

8/10/07

DISTRICT:

So Central Coast

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: July 24, 2007

7. Local government's file number (if any): CDP No. 06-400-5

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Southern California Edison Company
Attn: Wendy Miller
2244 Walnut Grove Avenue
Rosemead, CA 91770

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) See attached Exhibit A.

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

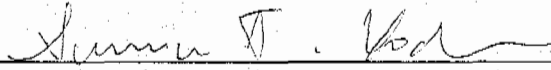
- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

See attached Exhibit B.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date: August 9, 2007

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

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EXHIBIT B

STATEMENT OF REASONS SUPPORTING THE APPEAL
CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Appeal by Southern California Edison Company from the City of Oxnard Denial of Coastal Development Permit No. 06-400-5, for Development of a 45-Megawatt Peaker Electrical Generating Facility

I. INTRODUCTION AND SUMMARY

Southern California Edison Company (SCE) appeals the July 24, 2007, decision of the City Council of the City of Oxnard, California (City), denying a coastal development permit (CDP) for development of a new, 45-megawatt (MW) peaker electrical generating facility that SCE proposes to build at 251 North Harbor Boulevard in the City of Oxnard. In its action, the City Council upheld a June 28, 2007, City Planning Commission decision denying the CDP. The City's July 26, 2007, "Notice of Final Action" to SCE, which includes as attachments both the July 24th City Council resolution (Resolution No. 13,340) and the June 28th Planning Commission resolution (Resolution No. 2007-19), is attached hereto as **Exhibit B-1**.

The proposed development is forecast to cost approximately \$50 million to build, and is therefore a "major energy facility" under the California Coastal Commission (Commission) regulations. *14 Cal. Admin. Code § 13012*. The City's denial of the CDP for the development is therefore appealable to the Commission. *Cal. Pub. Res. Code § 30603(a)(5)*.

The City notified the Commission of its action on the CDP on July 27, 2007, as stated in the Commission's July 30, 2007, "Notification of Appeal Period" to SCE. This appeal therefore is timely filed. *14 Cal. Admin. Code § 13110*.

The proposed development conforms fully to the standards set forth in the City's certified Local Coastal Program (LCP), as well as to the public access policies set forth in the California Coastal Act. The Commission therefore can and should reverse the decision of the City, and grant the requested CDP. *Cal. Pub. Res. Code § 30603(b)(2)*. The site of the proposed development is entirely within an area already zoned for energy facilities, including power plants, pursuant to the City's certified LCP and certified Coastal Land Use Plan (LUP). The City's coastal zoning ordinance section applicable to this "Energy Coastal" (EC) subzone, Section 17-20 (attached hereto as **Exhibit B-2**) expressly allows "electrical power generating plant and accessory uses normally associated with said power generating facility." *Section 17-20(B)(2)*. The only rationale provided by the City Council's resolution (and the City Planning Commission resolution) for denying the CDP is that the proposed development is not "coastal dependent." However, nothing in the zoning ordinance or elsewhere states or can be reasonably construed to imply that an energy development must be "coastal dependent" to be permitted within the EC zone. The zoning ordinance says, instead, that "coastal dependent energy facilities shall be *encouraged* to locate or expand within existing sites

and shall be permitted reasonable long-term growth, where consistent with this article.”

Section 17-20(A)(1) (emphasis added). See also, Cal. Pub. Res. Code § 30260.

Encouraging coastal dependent energy facilities to locate or expand within existing energy sites, rather than using new areas of the coast, does not bar, and is not inconsistent with, allowing a non-coastal dependent facility also to locate within this site already specifically zoned for (and long used for) energy facilities. Moreover, even if the ordinance did require the development to be coastal dependent, the proposed peaker (although not requiring ocean water to operate) is coastal dependent within the meaning of the ordinance, as it is directly supportive of and “accessory” to the adjoining coastal dependent Mandalay Station. *Section 17-20(B)(2).*

The City’s rationale for denial, if applied consistently, would not only bar this proposed facility, but would also bar any future, non-coastal dependent upgrade or addition to the two existing power plants within City of Oxnard that requires a CDP, and any upgrade or addition to the transmission substations within the City’s coastal zone that requires a CDP.

The City’s resolutions state no other grounds for denying the CDP, and there are no valid grounds for the denial. The proposed development would not interfere with beach access in any way, or otherwise fail to conform to the public access policies of the Coastal Act. Under the California Environmental Quality Act (CEQA), moreover, the City’s planning staff prepared and initially recommended for certification a Mitigated Negative Declaration (MND) correctly finding that any potential environmental impacts of the project are insignificant or will be mitigated to an insignificant level. At the City Planning Commission meeting, the staff did not recommend certification of the MND, but based that changed position on only one potential new issue, that had just been raised by one commenting agency, the Ventura County Department of Airports (VCDOA). That issue has now been addressed to the satisfaction of the VCDOA based on their further review of the project. No other issues have been raised at any point that have not already been fully addressed in the prepared MND or in subsequent SCE comments to the City.

II. BACKGROUND

A. The Proposed Development

SCE proposes to build a 45-MW, natural gas-fired electrical generation facility, to be located on a 16-acre, SCE-owned site immediately adjacent to (and within the same EC subzone as) the existing, 430-MW Mandalay Generating Station, owned by Reliant Energy. The SCE facility would be a “peaker” plant, capable of being started up and fully dispatched on very short notice (approximately 10 minutes) and intended to operate primarily at times of peak electricity demand or during other system strains such as when a major power plant or transmission line becomes suddenly unavailable. The proposed unit will also have “black start” capability, meaning it will have the ability to start up without any external power source and thus able to start up during area-wide power outages, for example following a major earthquake. The facility therefore could start up

in such conditions and provide power necessary for essential services, including the start-up of other power plants.

SCE undertook the development of this facility in response to the *Assigned Commissioner's Ruling Addressing Electric Reliability Needs in Southern California for Summer 2007* (ACR), issued by California Public Utilities Commission (CPUC) President Michael Peevey on August 15, 2006. The ACR, attached hereto as **Exhibit B-3**, was prompted in large part by the July 2006 heat wave in California, and the much higher-than-forecast electricity demands that California experienced. *See especially, ACR at pp. 1, 3-5.*¹ The ACR directed SCE to pursue, among other things, the immediate development of up to five SCE-owned, black-start capable peaker facilities (totaling up to 250 MW), providing collateral grid support benefits, and to be online by the summer of 2007. *ACR at pp. 2, 6.* The other four peaker projects that SCE pursued in response to the ACR (located in the cities of Norwalk, Ontario, Rancho Cucamonga and Stanton) were granted MNDs under CEQA, received their construction permits, and are now built and operational.²

Although the peaker project proposed for the Oxnard site has not been permitted by the City and therefore was not built by the summer of 2007, the project still represents an extremely important and valuable energy resource for Oxnard and the surrounding areas, as discussed immediately below, and SCE files this appeal to pursue approval of the CDP and development of the facility.

Following the issuance of the ACR, and after thoroughly considering numerous possible sites and all relevant factors, SCE selected the proposed Oxnard site as one of the five best sites for the peaker projects, for a combination of reasons. Summarized briefly, two main overarching factors make the proposed site an optimal peaker location:

There is a serious local need for an additional, black-start capable, peaker facility. Oxnard and the surrounding Ventura County area are relatively vulnerable to prolonged power outages, because the area's only transmission linkage to the rest of the state's power grid is through a single substation and transmission corridor. If that linkage and the Oxnard power plants were to be off-line at the same time, for example due to a major earthquake in the area, the area has no other adequate power supply route, whereas most other areas of the power grid are accessible through alternate routes. Within the Oxnard area, moreover, the proposed Mandalay-adjacent site is especially well-suited for such a black start capable peaker, because of its immediate proximity to both (i) a suitable substation for interconnection to the grid, and (ii) from there to the Mandalay Generating Station, which would be one of the most important targets for the peaker's power, so that Mandalay's own generating units could be restarted. The proximity to Mandalay

¹ See also, letter from Yakout Mansour, President and Chief Executive Officer, California Independent System Operator, to Michael Peevey, CPUC President, August 9, 2006, attached as an exhibit to the ACR.

² Pursuant to the ACR, SCE also has pursued and developed additional demand response (air conditioning cycling) capability, and has entered into an agreement to purchase power from a new (repowered) non-SCE power plant in Long Beach, California. That 260-MW power plant project also was permitted and built within the ACR's one-year timeframe.

minimizes chances of intervening transmission also being out of service in the emergency condition. Although the Mandalay Generating Station also has a peaker unit, that unit is approximately 40 years old and is not considered as reliable as a new unit, especially for black start purposes.

Besides being already zoned for energy development, the proposed site is a brownfield (former oil storage tank) site, and is essentially adjacent to (within about 500 feet of) the transmission switchyard at which the peaker would interconnect to the grid. This location eliminates the potential environmental impacts and other issues generally associated with developing a new, greenfield site for the plant, and developing a new transmission corridor for interconnection to the grid. While this factor was especially crucial given the CPUC's directive to pursue development of the SCE peaker projects for the summer of 2007, it still remains a very important benefit and advantage of the proposed site over other possible sites.

B. The Proposed Site

The proposed development site is immediately adjacent to the existing, 430-MW Mandalay Generating Station, and for over 40 years, beginning in the late 1950s, was the site of the fuel oil storage tanks for the Mandalay plant. (The Mandalay plant now operates primarily on natural gas but operated primarily on fuel oil until the 1970s.) When SCE sold the Mandalay plant in 1998, as part of the broader restructuring of the California electric industry, SCE retained the oil storage tanks (by then used only for emergency back-up fuel supply) and the land containing the tanks. The California Independent System Operator later determined that the back-up oil supply was no longer needed, and SCE subsequently removed the tanks and remediated the site. The site now is completely vacant.

As shown on the site map attached hereto as **Exhibit B-4**, the site is completely separated from the ocean by the Mandalay plant to the west and northwest of the site, and by the DCOR oil processing facilities to the southwest of the site.

As discussed, the site is zoned for energy facilities pursuant to the City's certified LCP, including its certified LUP and its coastal zoning ordinance.

C. Procedural History

The following summarizes the procedural history of this CDP application at the City:

November 2, 2006	SCE files initial CDP permit application and Draft MND study with the City; the City requires final engineering drawings and other additional material before accepting.
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November 21, 2006	SCE refiles CDP application and Draft MND study with additional engineering drawings and supplemental materials, after performing additional engineering design work. Application accepted by the City.
December 2006 through April 2007	The City requests and SCE provides additional studies, data and information related to various aspects of the project. At the City's requests, SCE redesigns landscaping aspects of the project several times.
May 11, 2007	The City indicates to SCE for the first time that it may find that the peaker project is not consistent with the LCP, as not coastal dependent. On the same day, the City issues a draft MND for public review and comment, stating that: (1) the project does not qualify as a coastal dependent use and would not be allowed at this location; (2) the project could be classified as an accessory use to the existing Mandalay Generating Station; and (3) the final determination of use and zoning code conformance will be made by the Planning Commission. (MND at p. 72.)
June 15, 2007	SCE submits comments on the MND objecting to finding that project is not consistent with the LCP.
June 18, 2007	MND public comment period (extended once) closes.
June 24, 2007	The City posts the agenda and staff report for the June 28 th Planning Commission meeting. The staff report recommends adoption of the MND, but denial of the project based on the fact that it is not coastal dependent. SCE's submitted comments on the LCP are not responded to or addressed.
June 26, 2007	VCDOA submits letter to the City raising new issue regarding potential air traffic hazard from the proposed project.
June 27, 2007	SCE submits letter responding to all MND comments received during the open comment period, as requested by the City to support adoption of the MND.
June 28, 2007	SCE submits supplemental analysis that is acceptable to VCDOA supporting the fact that the project does not create an air traffic hazard.
	City Planning Commission meeting. Planning staff circulates a memorandum amending the original staff report to recommend that the MND not be adopted due to the air traffic issue. The Planning Commission denies the CDP for

the project on the coastal dependency basis, and does not act on the MND.

- July 10, 2007 SCE appeals the Planning Commission decision to the City Council.
- July 18, 2007 SCE meets with VCDOA to discuss the airport noise issue. VCDOA is satisfied that project will not indirectly impact airport noise, and requests a confirmatory written communication from SCE.
- July 20, 2007 The City posts the agenda and staff report for the July 24th City Council appeal hearing. The staff report recommends upholding Planning Commission rejection of project, but changes the MND recommendation to require revision and recirculation of the MND or to require preparation of an EIS. SCE's comments on the LCP are not responded to or addressed.
- July 24, 2007 SCE transmits letter on the airport noise issue to VCDOA. VCDOA notifies the City that the airport noise issue is closed and requests three permit conditions, which SCE accepts.
- SCE submits letter to the Planning Department, as requested, responding to all MND comments including letters received during the MND comment period, verbal comments made at the Planning Commission meeting, and the VCDOA issue.
- City Council Meeting. The City Council upholds the Planning Commission final action, and does not comment or act on the MND.

III. GROUNDS FOR APPEAL

A. The Proposed Development Conforms to the Standards Set Forth in the Local Coastal Program

The only rationale provided in the City Council's resolution (as well as the City Planning Commission's resolution) for denying the CDP is that the proposed development is not "coastal dependent." Although the City resolutions are unable to point to any directly supporting language, they cite to the City's coastal zoning ordinance, claiming the ordinance prohibits any non-coastal dependent development, such as the proposed peaker, from locating on the site. However, no provision in the zoning ordinance -- or elsewhere in the City's LCP or applicable law -- states, or can be reasonably construed to imply, that an energy development must be "coastal dependent" to be permitted at the proposed site. On the contrary, the City's coastal zoning ordinance clearly allows energy development on the site, without specifying that it must be coastal dependent.

The proposed development site lies entirely within the City's EC (Energy Coastal) subzone, which has been specifically zoned, pursuant to the City's certified LCP and certified LUP, for energy facilities including power plants. The applicable section of the coastal zoning ordinance, Section 17-20, expressly allows "electrical power generating plant and accessory uses normally associated with said power generating facility." *Section 17-20(B)(2)*. The peaker facility is an electric generating plant.

The zoning ordinance nowhere requires that the energy development must be coastal dependent, and merely says, instead, that "coastal dependent energy facilities shall be *encouraged* to locate or expand within existing sites and shall be permitted reasonable long-term growth, where consistent with this article." *Section 17-20(A)(1) (emphasis added)*. See also, *Cal. Pub. Res. Code § 30260*. This encouragement of coastal dependent energy facilities to locate or expand within existing energy sites, rather than occupying new areas of the coast, does not bar, and is not inconsistent with, allowing a non-coastal dependent facility also to locate within a site already specifically zoned for -- and long used for -- energy facilities. To the contrary, the siting of the peaker at this proposed site is completely consistent with the goal of concentrating energy facilities in already-used energy sites rather than occupying new areas.

Moreover, even if the zoning ordinance did require this development to be coastal dependent, the proposed peaker is coastal dependent within the meaning of the ordinance, as an "accessory" use to the adjacent Mandalay Generating Station (which requires ocean water) and substation. *Section 17-20(B)(2)*. As discussed above in Section II.A, a prime reason for siting the peaker at this location is precisely the proximity to the Mandalay plant and the substation, optimizing the peaker's ability to support Mandalay with the peaker's black start capabilities in an earthquake situation or other strain on the Oxnard area grid.

The City's rationale for denial of the CDP, assuming it were applied consistently, would not only bar this proposed facility, but would also bar any future, non-coastal dependent upgrade or addition to the two existing power plants within City of Oxnard that requires a CDP, and any upgrade or addition to the transmission substations within the City's coastal zone that requires a CDP, since the language of the zoning ordinance relied on by the City makes no distinction based on facility ownership or between generation and transmission facilities. Even assuming, *arguendo*, that such a broad action affecting energy facilities were otherwise within the legitimate authority of the City, the wording of zoning ordinance's supposed prohibition on all non-coastal dependent energy development in the EC is far too vaguely worded to have provided fair and adequate notice to SCE and the public that such a prohibition was intended or effected by the ordinance, and the prohibition would be invalid on that basis alone.

SCE's July 10, 2007, administrative appeal of the City Planning Commission decision to the City Council, attached hereto as **Exhibit B-5**, further addresses the City's incorrect assertion that the zoning ordinance bars this development, because it is not coastal dependent. Also, as more fully discussed in that document, the proposed development also fully conforms to all other standards of the City's LCP. The LCP, including the coastal zoning ordinance, provides no valid basis for the denial of the CDP.

B. The Development Conforms to the Public Access Policies of the Coastal Act, and is Otherwise Fully Permissible

The proposed development would not interfere with beach access in any way, or otherwise fail to conform to the public access policies of the Coastal Act, and the City has not contended otherwise. As noted above and as shown in Exhibit B-4 hereto, the site does not front on the ocean, being completely separated from it by the Mandalay plant and oil facilities, nor does it affect beach access in any way. There would be no basis for denial of the CDP on grounds of nonconformance with the public access policies of the Coastal Act.

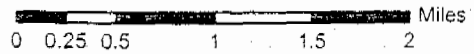
The development is likewise fully permissible by the Commission under CEQA. The City's planning staff prepared, and initially recommended for certification, an MND correctly finding that any potential environmental impacts of the project are insignificant or will be mitigated to a level of insignificance. At the June 28, 2007, City Planning Commission meeting, the staff appeared to withdraw this recommendation for certification of the MND, but clearly based this changed position only on a comment received two days before from the VCDOA, raising a question of whether the proposed facility might cause aircraft using the airport to veer south from their usual flight path, thereby presenting a potential obstruction issue or a potential indirect noise issue. That issue has now been resolved and eliminated to the satisfaction of the Airport based on their further review of the project, as noted in the VCDOA-SCE e-mail exchange, attached hereto as **Exhibit B-6**. No other CEQA issues have been raised at any point that have not already been fully addressed in the MND and in subsequent SCE comments to the City. All of the City administrative record in this matter, including but not limited to, all of the documents listed on **Exhibit B-7** hereto, is incorporated in this appeal by reference. *See 14 Cal. Admin. Code Section 13112.*

Santa Clara River

PZ 06-400-5

Pacific Ocean

Vicinity Map



Oxnard Planning
June 18, 2007

PZ 06-400-5
Location: 201 N Harbor Bl
APN: 183002203
Edison

EXHIBIT NO. 1
APPLICATION NO.
A-4-oxn-07-096

