

**CALIFORNIA COASTAL COMMISSION**

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# Thu 9b

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 49th Day: December 25, 2007  
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 Staff: Toni Ross-SD  
 Staff Report: January 15, 2008  
 Hearing Date: February 6-8, 2008

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-07-074

Applicant: Cabrillo Power 1 LLC      Agent: Marc Kodis

Description: The demolition of existing surplus fuel oil tank Nos. 1, 3, 5, 6, and 7 and associated conveyance piping and other appurtenances.

Site: West of Interstate 5, at 4600 Carlsbad Boulevard (Encina Power Station), Carlsbad, San Diego County.

Substantive File Documents: Certified Agua Hedionda Land Use Plan; Biological Survey by Thomas Leslie Corporation dated October 17, 2007.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval with several Special Conditions. Cabrillo Power is proposing to remove 5 existing surplus fuel tanks and their associated appurtenances. The applicant has indicated that these fuel tanks are no longer used and the removal of these tanks will eliminate unnecessary costs for maintenance and operation, as well as avoid sources for leak or failure. Concerns raised include impacts to water quality and nearby breeding shorebird species. These impacts are not likely but must be addressed due to the sensitivity of the surrounding habitat, as the site is located immediately adjacent to Agua Hedionda Lagoon. Special conditions regarding seasonal restrictions on work and standard construction phase BMPs are recommended. As conditioned, all potential adverse impacts on coastal resources are addressed to assure consistency of the development with Chapter 3 policies of the Coastal Act.

Standard of Review: Chapter 3 policies of the Coastal Act

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 6-07-074 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Project Modifications. Only that work specifically described in this permit is authorized. Any additional work requires separate authorization from the Executive Director. **If, during construction, site conditions warrant changes to the project the San Diego District office of the Coastal Commission shall be contacted immediately and before any changes are made to the project in the field.** No changes to the project shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Future Development Restriction. This permit is only for the development described in coastal development permit No. 6-7-074. Except as provided in Public

Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including but not limited to, further site remediation, shall require an amendment to Permit No. 6-07-074 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

3. Construction Best Management Practices. The applicant shall comply with the following construction-related requirements:

a. Construction-Related Requirements:

1. No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
2. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
3. Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
4. All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

b. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. The following construction-related BMPs shall be maintained in a functional condition throughout the duration of the project:

1. The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
2. The applicant shall develop and implement spill prevention and control measures;

3. The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems; and
4. The applicant shall provide adequate disposal facilities for solid waste, including excess steel and concrete, produced during construction.

4. Construction Schedule. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval a final construction schedule identifying the project start and stop dates. The schedule shall include the following:

a. Shorebird Breeding Season:

1. The schedule shall indicate that work will not occur during the shore bird breeding season, between February 15<sup>th</sup> and August 31<sup>st</sup> in any year.
2. If, however, it is determined that work is required during the breeding season, the applicant must obtain specific documented approval with justifiable reasoning from the California Department of Fish and Game (CDFG) and/or US Fish and Wildlife Service (USFWS) stating that such work will not disturb sensitive species.

The permittee shall undertake development in accordance with the approved construction schedule. Any proposed changes to the approved schedule shall be reported to the Executive Director. No changes to the approved schedule shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description.

The Cabrillo Power I Encina Power Station is located along the shore of the Pacific Ocean and on the south margin of the Agua Hedionda Lagoon. The East and West Tank Farm areas are located in the northeastern portion of the Encina Power Station property and include seven fuel oil above-ground storage tanks (ref. Exhibit #2,3).

Tank Nos. 1 through 7 were constructed in the 1970's to store fuel oil used for power generation. Until 1984, the power plant was primarily fueled by Bunker C or No. 6 fuel oil. Since 1984, the power plant has been fueled by natural gas. As such, the majority of these tanks are no longer required. Remediation efforts and closure reports were submitted to the Department of Environmental Health immediately following the

decommissioning of these oil tanks and as such, the majority of water quality impacts have previously been addressed. Currently all of the tanks are located above ground and within impound basins. Tanks 5-7 are separated by concrete-coated sloped earthen berms and Tanks 1 and 3 are separated by sloped earthen berms lined with rip-rap for erosion control. At the bottom of each impoundment basin, the tank is surrounded by a six-inch layer of gravel. Dike drain sump structures, inlets, and 18-inch diameter corrugated metal drainage pipes line the perimeter of each impoundment basin. A drain rock layer, 4-inches thick, overlays the bottom 15 feet of the slopes of the earthen berms. The slopes of the earthen berms and the drain rock layer are covered with a two-inch thick layer of gunite. All of these mechanisms decrease the likelihood that any residual fuel oil will leak into soils or ground water.

As proposed, Cabrillo Power I would remove five of the seven fuel oil tanks (1, 3, 5, 6, & 7) and their associated conveyance piping and other appurtenances and would then remediate the soil underneath these tanks. The project will be broken into two phases. Phase 1 will include the removal of all above ground equipment (tanks and piping) and Phase 2 will include the removal of the concrete slabs and the remediation of the underlying soil. This permit only addresses Phase 1, the above-ground work, associated with the project. Phase 2 will be addressed by a later permit subsequent to the completion and approval of the soil remediation plan by the necessary agencies. Because Phase 1 includes only the above ground portion of the fuel oil tanks' removal, no serious potential for water quality impacts exists. However, the tanks and piping located above ground may contain small amounts of residual oils/fuels/contaminants.

Phase 1 will include the removal of tank roofs, floors and walls, the removal of all above ground piping and structures, the removal of associated catwalks and floors, the removal of concrete masonry unit walls and slab, electrical conduit and all other mechanical equipment and any other related material. During demolition the tank, tank components, and piping will be cut apart using heavy equipment, torches and/or pneumatic cutting tools. An excavator will be used when necessary to remove heavy or large items. All scrap steel will be appropriately sized and then transported to a scrap or recycling facility. All other materials generated from the project will be transported off-site for disposal and/or recycling in accordance with California regulations.

As stated above, the project is located within the Agua Hedionda Lagoon segment of the City of Carlsbad's certified LCP. The Agua Hedionda Lagoon Segment of the City of Carlsbad's Land Use Plan has been certified by the Commission; however, no implementation plan has been certified for this segment and therefore the area remains an area of deferred certification and the Chapter 3 policies of the Coastal Act are, therefore, the standard review.

2. Water Quality and Marine Resources. Sections 30231, 30232 and 30240 of the Coastal Act apply to the proposal and state in part:

### Section 30231

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

### Section 30232

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

### Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

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

The proposed project includes the removal of tanks and associated piping historically utilized to hold fuel oil. The proposed project is located directly adjacent to Agua Hedionda Lagoon. Agua Hedionda Lagoon is unique in that recreational and commercial uses are permitted; yet the lagoon is a healthy, tidal body, with large wetlands supporting several endangered species. As such, certain measures need to be considered for the protection of both water quality and marine resources.

The removal of tanks holding fuel oils may lead to unexpected leaks within piping that could lead to impacts to lagoon water quality. The applicant has included a number of measures to decrease the likelihood of any of these residual contaminants leaking into surrounding soils and coastal waters. Measures include that all conveyance piping scheduled for removal will be tagged prior to dismantling, starting from the tanks and traced back to the source as far as practical, keeping the location of possible contaminants and spillage sites visible to all workers. Prior to dismantling, the pipes will be checked for liquid contents that may be present from prior decontamination efforts. Holes may be drilled along the pipes to check for fluids. To the greatest extent practicable, pipes will be dismantled only after all contents have been drained and managed using appropriate

protocols. A layer of plastic sheeting may be placed on the ground surface prior to draining or cleaning any pipes. All residues and contaminants will be handled and managed appropriately prior to disposal. Pipes containing hardened fuel oil may have to be cleaned after dismantling at an off-site facility and subsequently recycled as scrap. All of these measures decrease the probability of any impacts to water quality. However, should site conditions change (i.e. the presence of fuel oil in large quantities) these mitigation measures may not be adequate to eliminate all water quality impacts. As such, Special Condition #1 requires that the applicant contact the Coastal Commission should project conditions change. Special Condition #1 gives the Executive Director authority to determine how the changes in project conditions shall be addressed. Further, Special Condition #3 requires the applicant to abide by typical construction phase BMPs to assure that all construction related materials are housed or disposed of appropriately. Therefore, the project as conditioned can be found consistent with the above stated policies of the Coastal Act.

As stated above, the project is located immediately adjacent to a lagoon known to provide breeding and roosting habitat for native avian species. The applicant included a Biological Technical Report addressing the potential for impacts to any avian species in this application. The survey indicated that there were no active nests found within a 500' radius of the project site for any sensitive species including California gnatcatchers or raptors. Two abandoned nests, possibly from American Crows, were identified near Tank #1. To further ensure the project will avoid disturbance of nesting or breeding bird species resulting from demolition noise, the applicant has included a BMP to address potential impacts. As proposed, if noise levels during demolition are in excess of 60 dBA (decibels of sound using an A weighting filter) and/or 5 dBA's above ambient noise level at active nesting/breeding locations, the applicant will hire a qualified biologist to conduct a survey of these areas. If the biologist deems it necessary, he or she may propose additional measures to allow for continued demolition without the further disruption of nesting/breeding birds. However, native birds' behavior is not limited to nesting and breeding within Agua Hedionda Lagoon. While there may not be nesting occurring within a 500' radius of the project site, foraging may still be a highly necessary activity occurring within this area. Agua Hedionda Lagoon is used by a number of native species as an important foraging area. During the nesting/breeding season it is important that the native birds that utilize these waters for foraging are not distressed by construction noise. The BMPs proposed by the applicant do not include mitigation measures for impacts to foraging species. As such, Special Condition #4 requires that work either be limited to outside the breeding/nesting season, or if work during the breeding/nesting season is unavoidable, that the applicant receive permission from the US Fish and Wildlife Services and/or the California Department of Fish and Game before working during the breeding season. Therefore, as conditioned, the project can be found consistent with the applicable biological resource policies of the Coastal Act.

### 3. Public Works Facilities.

#### Section 30254

New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided....Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

As described above, the project proposes the demolition and removal of existing surplus fuel tanks. Encina Power Station no longer uses these fuel oil tanks for storage, and current conditions impose ongoing costs for maintenance and operation of these tanks and may result in preventable leaks or failures. This project will not result in the expansion of current public works facilities but rather the reduction. Special Condition #2 requires the applicant to apply for an additional coastal development permit, or an amendment to this permit for any and all other work not specifically approved and authorized through Permit No. 6-07-074, including the subsequent soil remediation. As such, any expansion of the existing power station would require additional review. Therefore, the project as conditioned can be found consistent with all applicable Chapter 3 policies of the Coastal Act.

4. Public Access. Portions of the project are located between the first public road and the sea, therefore the Commission must make a specific finding that the development is consistent with the public access and recreation policies of Chapter 3 of the Coastal Act. Pub. Res. Code Section 30604(c).

#### Section 30210

...maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs.

#### Section 30211

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

The proposed project will take place solely within the existing developed area of Encina Power Station. As such no impacts to public access including public access trails, use of Agua Hedionda Lagoon, or general access to the beach will be impacted by this project. All construction related access will be from within the existing Encina Power Station developed area and as such no impacts associated with construction equipment or access



is anticipated. Therefore, the proposed project is consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

5. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made. The Agua Hedionda Lagoon plan area is the only uncertified segment in the City of Carlsbad's LCP; therefore, the Commission retains permit jurisdiction in this area with the standard of review being the Chapter 3 policies of the Coastal Act. As proposed, the development is consistent with Chapter 3 of the Coastal Act. Approval of the project will not prejudice the ability of the City of Carlsbad to prepare a Local Coastal Program for the Agua Hedionda Lagoon plan area that is in conformity with the provisions of Chapter 3.

6. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions for construction phase BMPs and restricting work during breeding season will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

#### STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

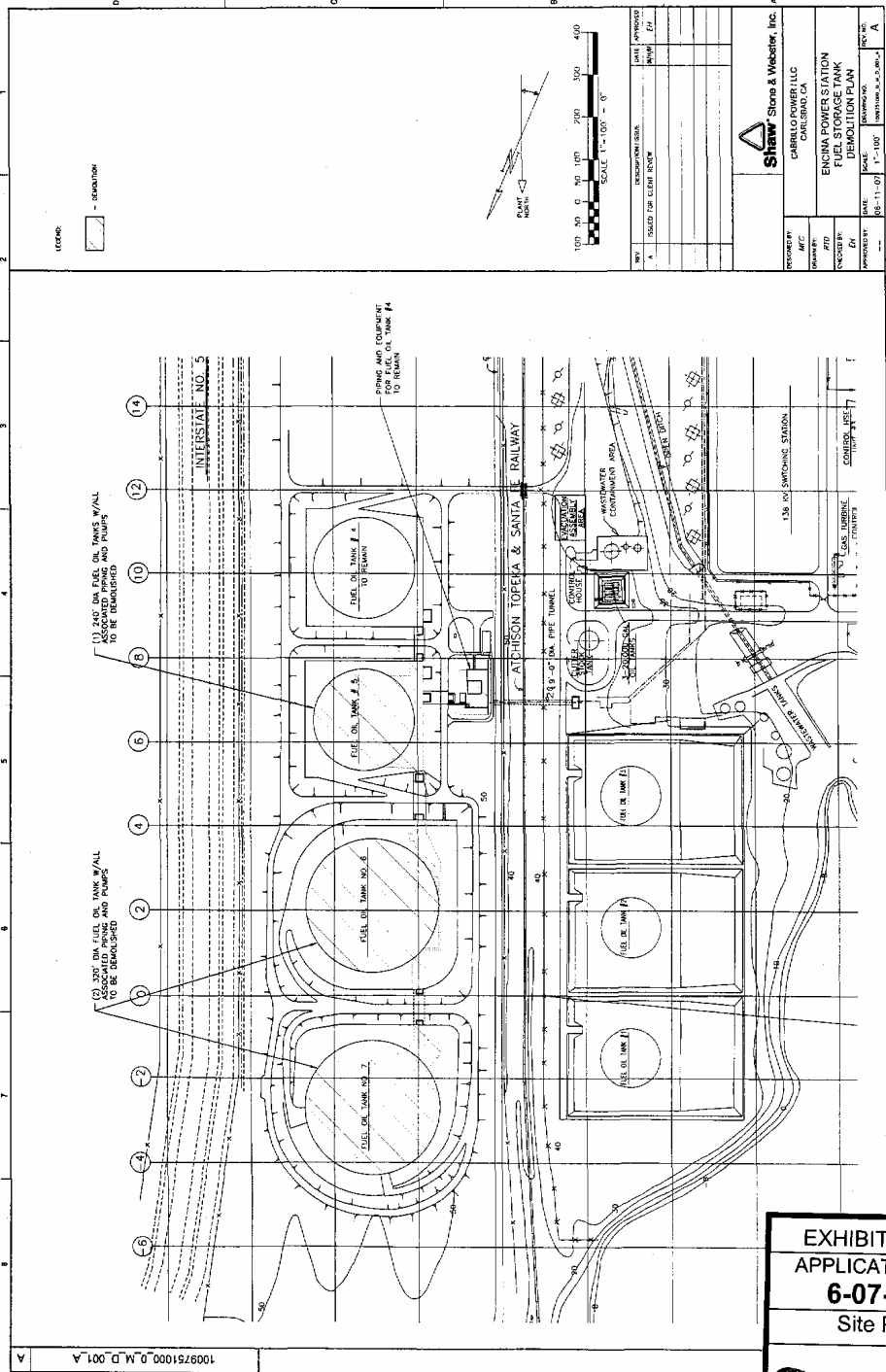


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SAN DIEGO COAST DISTRICT

EXHIBIT NO. 1
APPLICATION NO. <b>6-07-074</b>
Location Map
California Coastal Commission



**EXHIBIT NO. 2**  
**APPLICATION NO.**  
**6-07-074**  
**Site Plan**

California Coastal Commission



**Shaw** Shaw Environmental, Inc.  
 NRG ENERGY  
 FUSION POWER PLANT  
 CARLSBAD, CALIFORNIA

FIGURE 1  
 ENCINA SITE (NUCLEAR FARM DEMO)  
 1400 CALLE SAN BLAS  
 CARLSBAD, CALIFORNIA



DEMOLISH AND REMOVE TANKS COLLECT  
 CONFIRMATION SAMPLES ON 50' GRID  
 DEMOLISH AND REMOVE BERM  
 CONFIGURE NEW SLOPE

LEGEND

- DEMOLISH AND REMOVE TANKS COLLECT CONFIRMATION SAMPLES ON 50' GRID
- DEMOLISH AND REMOVE BERM
- CONFIGURE NEW SLOPE

DATE	10/11/06	DRWING BY	CHICKO BY	APPROVED BY	DRAWING NUMBER
K-874	CONCORO	10/11/06	CHICKO BY	APPROVED BY	1009704012-81

**EXHIBIT NO. 3**  
 APPLICATION NO.  
**6-07-074**  
 Site Photograph