

## DOCKETED

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STATE OF CALIFORNIA

Energy Resources Conservation and  
Development Commission

In the Matter of: )  
Petitions to Amend the )  
Carlsbad Energy Center Project )  
\_\_\_\_\_ )

Docket No. 07-AFC-06C

Brief of the City of Carlsbad on  
Selected Issues

April 24, 2015

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## ARGUMENT

### Coastal Dependency

The amended CECP is consistent with the California Coastal Act and the adopted Local Coastal Program Land Use Plan for the Agua Hedionda segment. After making this affirmative finding, it is unnecessary to determine if the amended CECP is a coastal dependent resource. The legislative scheme clearly anticipates industrial development that is consistent with the Coastal Act and the adopted Land Use Plan can be located in the coastal zone. In the event a proposed project is not consistent with the Coastal Act, then it can nevertheless be located in the coastal zone if it is coastal dependent (PRC 30101) defined as a development that “requires a site on, or adjacent to, the sea to be able to function at all.” We need not reach this definitional issue.

As outlined in the original CECP proceeding by former California Coastal Commission General Counsel Ralph Faust, the California Coastal Act considers a two part test when

determining whether to allow construction of an industrial facility, such as a power plant, in the coastal zone.

1. Is the proposed facility consistent with the Coastal Act and an adopted Land Use Plan?
2. If not, should the proposed facility nevertheless be permitted because it is coastal dependent?

As Mr. Faust explained: “The CCC begins with an analysis of consistency of the proposed project with the Chapter 3 policies of the Coastal Act. Both alternatives and possible mitigation are then considered where the project is not fully consistent as proposed. If the project as mitigated cannot be found to be fully consistent with these policies, the Commission would consider whether it could be approved pursuant to the terms of PRC section 30260 as a coastal dependent industrial facility.” (Exhibit; TN203851 submitted by Terramar, City of Carlsbad testimony, January 4, 2010, page Faust-5).

In the case of the amended CECP the whole of the project, as Mr. Barberio testified (April 2, 2015 Tr. 18-19) is consistent with the policies of the Coastal Act and with the adopted Local Coastal Program Land Use Plan for the Agua Hedionda segment. Consequently, it can be approved even though it is not coastal dependent.

Chapter 3 contains the coastal policy elements that determine consistency with the Coastal Act. The following elements also appear in a number of locations (e.g., 30001.5 and 30413 (d). Section 30200, in Chapter 3, dictates that the policies in Chapter 3 “. . . shall constitute the standards. . . and the permissibility of proposed developments”:

- Access. Section 30210 of the Coastal Act speaks to access to the sea. The proposed ACECP project includes decommissioning, demolition, removal and remediation of the Encina Power Station (EPS) site and the freeing up of land currently occupied by the San Diego Gas & Electric Company (SDG&E) service center. As Mr. Barberio testified, redevelopment of this land will allow significantly greater access to the coastal property and the ocean than is currently available. (Tr. April 2, 2015, page 21)
- Recreation. Section 30220 of the Coastal Act encourages water-oriented recreation. With the freeing up of lands currently occupied by the EPS, abandoned oil tanks, and the SDG&E service center, there will be increased opportunities for access to ocean recreation including swimming, surfing, and other beach related or coastally proximate activities.
- Marine Resources. Section 30230 of the Coastal Act requires that “marine resources shall be maintained, enhanced and, where feasible, restored”. With the decommissioning, demolition, and removal of the EPS and provision of recycled water to the amended CECP, the use of ocean water for cooling and other power plant requirements will be eliminated. As the FSA points out, at page 4.3-1, the amended CECP will not draw any water out of the Agua Hedionda lagoon.
- Habitat Areas. Section 30240 of the Coastal Act calls for the protection of habitat areas. The amended CECP will be constructed on existing industrial lands and not result in any impacts to habitat.

- Scenic and Visual. Section 30251 of the Coastal Act calls for the protection of the scenic and visual qualities of coastal areas and “where feasible, to restore and enhance visual quality in visually degraded areas”. Demolition and removal of the EPS with its 400-foot stack and 200-foot high housing building, removal of the abandoned oil tanks, and relocation of the SDG&E Service Center will remove the visual blight that has characterized the area and will greatly enhance scenic vistas on the site and in a significant area surrounding the site. Additionally, the amended CECP represents a vast improvement from the licensed CECP with its lower stacks and profile. As testified by Mr. Barberio: “The amended CECP will not cause a “visually significant impact” (Tr. April 2, 2015, page 20)

The adopted Local Coastal Program Land Use Plan for the Agua Hedionda segment (adopted May, 1982, but amended August 14, 2006) also recognizes that “the SDG&E (now NRG) power facility occupies the entire south shore (*of the Agua Hedionda Lagoon*) west of the freeway...” and as such, designates the entire site for Utilities (U) on the Land Use Plan Map, Exhibit C. The whole of the amended CECP project is consistent with this designation.

As Mr. Barberio also testified, the amended CECP is not coastal dependent (Tr. April 2, 2015, page 22) but is not precluded from being constructed in the coastal zone because it is in conformance with the policies of the Coastal Act and the adopted Land Use Plan.

#### Visual Impacts Associated with Widening I-5

The Committee asked: Will there be a significant unmitigated visual impact following the widening of highway I-5 and the required visual mitigation?

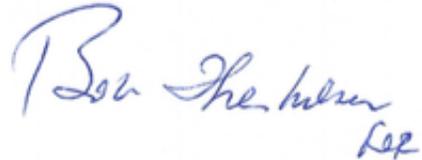
As the City stated in its comments on the Final Staff Assessment: “The City believes that removal of the Encina Power Station and all of its related facilities will be a significant improvement in the visual landscape even with the addition of the amended CECP.” With respect to the narrow issue of visual impacts associated with the widening of I-5, it is the City’s position that a combination of removal of the Encina Power Station, the lower profile visual footprint of the amended CECP, and the proposed foliage screening and barrier wall will effectively offset or mitigate any visual impacts resulting from the construction of the amended CECP to less than significant. With flexibility, the project owner, Caltrans and the City will effectively mitigate the visual impacts of the ACECP.

The City supports condition VIS-5 with the project owner’s suggested change. The City believes it gives flexibility to the parties that will be developing visual mitigation in the future – namely Caltrans, project owner and the City. As Mr. Barberio testified, the City believes there are several mitigation scenarios available given the nature of negotiations that will need to occur when Caltrans acquires its required land from NRG. Mr. Barberio expressed the City’s willingness to be involved in those negotiations and provided several examples of visual mitigation in the immediate vicinity that resulted from negotiations between Caltrans and private parties. (Tr. April 2, pages 26 to 28) The City also agrees with

the comments of Mr. Kanemoto (Tr. April 1, page 37) and Mr. Mason (Tr. April 1, pages 90 to 91) that we must assume Caltrans will fulfill their obligations under CEQA.

Respectfully Submitted:

Dated: April 22, 2015

A handwritten signature in blue ink that reads "Allan J. Thompson" with a small "for" written below it.

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