# DOCKETED

| | |
|---|---|
| **Docket Number:** | 07-AFC-06C |
| **Project Title:** | Carlsbad Energy Center - Compliance |
| **TN #:** | 204361 |
| **Document Title:** | Power of Vision's Closing Brief |
| **Description:** | N/A |
| **Filer:** | Arnold Roe, Ph.D. |
| **Organization:** | Power of Vision |
| **Submitter Role:** | Intervenor |
| **Submission Date:** | 4/24/2015 1:05:00 PM |
| **Docketed Date:** | 4/24/2015 |

State of California

California Energy Commission

| | | |
|---|---|---|
| In the Matter of | ) | |
| Application for Certification for the | ) | Docket No. 07-AFC-6C |
| Ammended Carlsbad Energy Center Project | ) | |
| (CECP) | ) | |
| _____ | ) | |

**Power of Vision's Closing Brief**

Julie Baker
Arnold Roe, PhD
4213 Sunnyhill Dr
Carlsbad, CA 92008
julbaker@pacbell.net
roe@ucla.edu

Power of Vision's closing brief will be brief. We have long recognized the inevitability of some form of new power generation at the CECP site and have concentrated our efforts at providing constructive suggestions for making the amended CECP as visually benign as possible.

Our major concern is the cumulative impact that that the I-5 widening will have on the visual screening of the smokestacks and transmission line of the amended CECP.

At the Evidentiary Hearing held in Carlsbad on April 1, 2015 Staff visual expert Dr. Kanemoto (on pages 36 & 37 of the transcript) stated:

*DR. KANEMOTO: The lower project profile reduces but does not entirely eliminate visual impacts. The lower profile makes the project easier to screen visually. The EPS removal would be an overall visual benefit, and the combined impact of the upper rim road and I-5 widening would reduce the buffer zone at pinch points on the site boundary potentially causing significant cumulative impact. Even though this impact would be successfully mitigated and staff has proposed modified conditions (inaudible) which would require effective mitigation.*

On pages 42 - 43 of the transcript, Dr. Kanemoto goes on to say:

*At these points the proposed rim road abuts the presumed CalTrans right-of-way after I-5 widening. At those pinch points, the 20-foot wide landscape buffer called for in Condition Vis 5 could not be implemented on the CUP side without some alteration to the project layout..... this figure depicts a scenario, Scenario A,in which the Vis 5 buffer could be located entirely within the CECP side. As depicted, this scenario would require realignment of the upper rim road making way for a buffer zone along the future I-5 right-of-way line. This road realignment required tall retaining walls at the eastern side of the subgrade bowl in which the generation unit would be located, as shown in red in both the plan and cross-section diagrams. Staff sees no reason why such walls would be infeasible, however, in the layout shown here, these walls would need to be quite tall, nearly 30 feet as shown in the diagram.*

This excellent suggestion by the Staff, that in the event that no other solution is found for the screening problem along the widened I-5 during the consultations between the project owner and Caltrans, then the project owner could move the upper rim road at the "pinch points" **should be made part of VIS-5**. However POV pointed out the impossibility of implementing the relocation of the upper rim road unless the transmission line was moved (see pages 96 - 97 of the transcript):

*Mr. Kanemoto, this is a cross-section provided by the project owner in their TN number 203313. You might notice that the power pole is located in the sloping area. I did some calculations, and in a previous drawing, they show that the power poles were lowered 18 feet... which means that the power pole is not in the (*corrected*) 28-foot wide rather already constricted lower rim road. And if we go back to your drawing,....You see, your location of the power pole is outside of the sloping area so you can't have both a retaining wall and a transmission pole in that shaded area in the cross-section so that if you put the power pole in the proper location, instead of getting another 20 feet --I don't know, maybe you'll get 15 or 16, but not your full 20 feet. And the same*

*is true of the following drawings where you show cross-sections with the power pole in what is currently the lower rim road. So I don't see how...you can have both.*

Vis-5 of the PSA mentions the possibility of future undergrounding of the transmission line in order to mitigate the cumulative visual impacts if the I-5 widening. POV has repeatedly indicated that less costly solutions would be to move the transmission line to the west side of the pit, or on H-frames (corrected by Mr. Hale to A-frames) in the pit. Both solutions are still feasible. The A-frame solution does not require fencing as suggested by Mr. Hale, since the entire site is security fenced, and nothing has been added to the proposed H-frames that would require fencing. Also, in his testimony at the evidentiary hearing, Mr. Hale did not contest the feasibility of moving the transmission line to the west side of the pit (see page 81 of the transcript). Moving the transmission line now would be a less costly and less interruptive procedure than doing it at the time of the I-5 widening, and would facilitate the possibility of moving the upper rim road.

Staff's latest proposed version of VIS-5 (see TN# 203981, pages 20 and 142 - 144) is also troublesome in that it is internally contradictory and sets undesirable new powers for the CPM. On page 20, staff says:

*Staff has specified a 20-foot wide buffer zone because we believe that a minimal planting area of roughly that dimension would be needed to fully accommodate the mature canopy of trees of the scale needed to adequately screen the large power plant features. Staff notes that it is not enough to provide room for the tree trunks, but the branching of the mature canopy as well. That being the case, 20' would appear to be a very modest dimension to accommodate the scale of screening needed to address views of 100' transmission poles, exhaust stacks, etc.*

Yet, on page 143, in VIS-5, it eliminates the 20-foot wide buffer:

***The mitigation plan shall include a, at a minimum, a ~~20-foot-wide or greater~~ landscape planting buffer zone along the entire CECP/I-5 boundary, to accommodate replacement tree canopy of sufficient height and density and to provide substantial visual screening of the tall amended CECP features, including exhaust stacks and transmission poles; and to substantially replace any existing tree canopy on the eastern CECP boundary lost to highway expansion.***

Staff's latest proposed version of VIS-5 goes on to state:

***Wherever feasible, the landscape buffer shall maintain a minimum 20 foot width. Where infeasible, exceptions shall be approved by the CPM.***

This gives unprecedented power to the CPM to, essentially, override an unmitigatable condition. The power to override lies in the hands of the Commissioners and cannot, nor should not, be delegated.

Because the amended CECP is not coastally dependent, they will not be using ocean water and could be located anywhere, a higher standard of mitigation must be applied. The Public Resources Code (PRC) section 30251 states:

> "The scenic and visual qualities of coastal areas shall be considered and protected as a resources of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas."

The overwhelming evidence, see above, shows there were be problems mitigating the visual impacts of the CECP when I-5 is widened. Not only should the requirements of the PRC be followed by weight must be given to the prevailing community standards. Nowhere else along the I-5 corridor from State route 78 to Pacific Beach in San Diego poses such an visual blight. The Commission has an obligation to require mitigation to a level that is less than significant. Commission Staff has pointed out in their Evidentiary Hearing Testimony (see above) the potential for an unmitigatable situation after the I-5 widening.

For all of the reasons pointed out above, Power of Vision hereby formally petitions the Commission to adopt the following revised version of VIS-5 (shown in italics) adapted from the FSA:(see pages 7-107 to 109, Conditions of Certification):

***Cumulative Impact Buffer Zone, Coordination with Caltrans, and Mitigation Plan***

***VIS-5***

*In order to address potential cumulative visual impacts resulting from I-5 widening, the project owner shall maintain a permanent buffer zone, including the existing vegetative visual screening, on the eastern portion of the CECP site, between the existing NRG fence line and storage tank perimeter road. This measure shall be coordinated with Conditions of Certification* ***LAND-1***
*and* ***HAZ- 8****, requiring construction of a tall wall/safety barrier at the future right-of-way. The existing landscape screening within the buffer zone shall be maintained and enhanced per Condition of Certification* ***VIS-2*** *after start of project construction. The buffer zone shall be kept available to maintain existing visual screening, accommodate future possible I-5 widening to the extent necessary, and to accommodate both future hazard protection features and visual screening.*

*In addition, the project owner shall work with Caltrans to develop a ~~mitigation plan~~* ***Cumulative Impact Mitigation Plan*** *for accommodating the widening project while maintaining visual screening of the CECP to acceptable levels over the long term following I-5 widening. This plan could include complete or partial avoidance of the CECP site, complete or partial berm retention or replacement, complete or partial retention of existing landscape screening,* ***relocation of the upper rim road****, and replacement screening as needed. The objective of the*

*plan shall be to accommodate the I-5 widening within the designated buffer zone to the extent that encroachment is unavoidable, while providing needed hazard protection and acceptable levels of visual screening of the power plant.*

*The ~~mitigation plan~~* ***Cumulative Impact Mitigation Plan*** *shall include, at a minimum, a 20-foot-wide or greater landscape planting buffer zone along the entire CECP/I-5 boundary, to accommodate replacement tree canopy of sufficient height and density as to provide substantial visual screening of the tall amended CECP features, including exhaust stacks and transmission poles; and to substantially replace any existing tree canopy on the eastern CECP boundary lost to highway expansion. The landscape buffer may occupy* ***all or*** *portions of the CECP site, the Caltrans right-of-way, or both. The solution developed under Condition of Certification VIS-5 ~~shall not preclude~~* ***may require*** *relocation or undergrounding of transmission poles or other features, if necessary to provide the stipulated visual buffer or achieve adequate long-term project screening.* ***The project owner should consider relocation or undergrounding of transmission poles during initial construction of the project to potentially reduce later costs or undesirable interruption of energy supply to the grid.***

*Landscaping of the buffer zone shall include installation of large-container (24-inch box or larger, as needed), fast-growing evergreen trees in sufficient density to provide comparable or better visual screening of the CECP site than currently exists, within the shortest feasible period. Trees shall be selected and located so as to achieve substantial screening within a period of five years from the time of planting.*

*The ~~plan~~* ***Cumulative Impact Mitigation Plan*** *shall, at a minimum, include the following components:*

*a) a record of discussions, meetings and planning activities conducted with Caltrans;*

*b) the conclusions of these coordination activities;*

*c) a detailed Mitigation Plan providing plans, elevations, cross-sections or other details, including a detailed list of plants and container size, sufficient to fully convey how the objectives of effective visual screening of the CECP are to be achieved.*
*To the extent possible, the plans shall comply with the city of Carlsbad Landscape Manual as applicable. The plan shall specifically address visual design of security barriers required under Condition of Certification* ***HAZ-8*** *to ensure their aesthetic quality and compatibility. To the extent feasible, the plans shall conform with the intent of the Caltrans Design Guidelines for the I-5 NCC Project, Coastal Mesa Theme Unit (Caltrans 2013).*

*d) a proposed construction schedule.*

***In the event that in the Cumulative Impact Mitigation Plan, Caltrans cannot provide the required 20-foot screening buffer zone adjacent to the "pinch points" next to proposed power units 6, 7, 8, & 9, then the project owner will be required to relocate the upper rim road and underground or relocate the transmission line poles that may interfere with such relocation.***

***Verification:***

~~*At the earliest feasible time, the project owner shall coordinate with Caltrans to discuss specific hazard and visual mitigation strategies. The project owner shall work with Caltrans to devise a specific Cumulative Impact Mitigation Plan for accommodating hazard protection and visual screening, to be implemented at the time of I-5 widening*~~

.

*Following coordination and plan development with Caltrans, the project owner shall submit a draft of the Cumulative Impact Mitigation Plan to the city of Carlsbad for review and comment, and to the CPM for review and approval, at least 180 days prior to completion by Caltrans of I-5 widening in the area of the CECP boundary. The project owner shall submit any required revisions within 30 days of notification by the CPM. The project owner shall not implement the plan until receiving approval from the CPM. After receiving approval, the project owner shall complete implementation of the mitigation plan at the earliest feasible opportunity, but not later than 180 days after plan approval. The project owner shall notify the CPM within seven days after implementing the approved plan that the plan is ready for inspection.*

This proposed version of VIS-5 provides for negotiation with Caltrans and provides a feasible screening solution if cooperation with Caltrans does not result in a superior solution. Therefore Commission overrides are unnecessary and unwarranted.

Respectfully submitted by:

Julie Baker

Arnold Roe, Ph.D.