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VIA ELECTRONIC DOCKETING

The Honorable Andrew McAllister, Presiding Member
The Honorable Karen Douglas, Associate Member
Hearing Adviser Susan Cochran
1516 Ninth Street
Sacramento, CA 95814

**Re: Huntington Beach Energy Project (12-AFC-02)
Applicant's Comments on the Presiding Member's Proposed Decision; Applicant's
Comments on Proposed Commission Adoption Order**

Dear Commissioners and Hearing Officer Cochran:

Pursuant to the Committee's September 2, 2014 Notice of Availability of Presiding Member's Proposed Decision; Notice of Committee Conference on the PMPD on September 17, 2014 ("PMPD Conference") and Notice of Full Commission Hearing on October 7, 2014 ("Notice"), Applicant AES Southland Development, LLC, provides additional comments on the Presiding Member's Proposed Decision ("PMPD") for the Huntington Beach Energy Project. On September 15, 2014, Applicant submitted initial comments ("Applicant's Initial Comments" (TN# 203068)) that focused primarily on the proposed Conditions of Certification set forth in Appendix A of the PMPD, which were docketed to facilitate discussions during the September 17, 2014 Committee Conference on the PMPD ("PMPD Conference").¹

In addition, on September 26, 2014, the Siting Committee docketed a *Proposed Commission Adoption Order* (TN# 203117). Applicant provides comments on the *Proposed Commission Adoption Order* directly below.

I. COMMENTS ON PROPOSED COMMISSION ADOPTION ORDER

As noted above, the Siting Committee docketed a *Proposed Commission Adoption Order* on September 26, 2014 (TN# 203117). While Applicant generally concurs with the language

¹ Applicant reiterates and incorporates by reference herein its September 15, 2014 Initial Comments on the PMPD (TN# 203068).



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contained therein, there are two paragraphs that errantly refer to or solely involve an “override,” which is not part of the HBEP PMPD, nor are such findings required for approval of the HBEP. As such, Applicant proposes necessary revisions to Finding 3 and the deletion of Finding 5 in its entirety, as set forth below:

3. Implementation of the Conditions of Certification contained in the Commission Decision will ensure protection of environmental quality and assure reasonably safe and reliable operation of the facility. The Conditions of Certification also assure that the project will neither result in, nor contribute substantially to, any significant direct, indirect, or cumulative environmental impacts, ~~except for those described in the Override Findings section of the Commission Decision.~~

5. ~~The HBEP is required for public convenience and necessity. There are not more prudent and feasible means of achieving the public convenience and necessity.~~

Based on the deletion of Finding 5, all subsequent findings should be renumbered accordingly.

II. PMPD COMMENTS

Applicant’s PMPD comments set forth herein are organized in the same order as the topics are addressed in the PMPD. Where no comments are made to a particular section, Applicant does not identify that section herein.

A. ENGINEERING ASSESSMENT

1. Reliability

Within the Reliability section, footnote 1 on page 3.3-1 contains an incorrect statement as capacity factor is a ratio of electrical production and not hours of operation. The footnote reads:

Capacity factor is a measure of how much electricity a power plant actually produces during the year as compared to the maximum power it could produce at continuous full power operation during the same period of time. For example, a capacity factor of 35 percent means that ~~the a~~ plant **operating at its maximum output** would operate 3,066 hours in a year (8,760 hours).



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The last sentence of the footnote is incorrect and should be revised as set forth above.

2. Transmission Line Safety and Nuisance

There is a typographical error on page 3.5-4, which reads: “The connector line for power block 1 would be approximately 0.22 miles, while the one for power block 2 would be 0.16 miles. Each line would be designed as a combination of single-and/ or double-circle line to be supported on self-supporting steel structures.” The term “double-circle” should be changed to “double-circuit.”

In addition, as noted in Applicant’s Initial Comments, Applicant proposed revisions to TLSN-1 and TLSN-2. Staff concurred with these revisions during the September 17, 2014 PMPD Conference. (*See Applicant’s Revisions to PMPD Appendix A at p. APP-23 (TN# 203068).*)

B. PUBLIC HEALTH AND SAFETY

1. Greenhouse Gas Emissions

In the Greenhouse Gas Emissions section of the PMPD, on page 4.1-5, the following paragraph is included twice. One of the paragraphs should be deleted.

In 2003 the Energy Commission and the CPUC agreed on a “loading order” for meeting electricity needs. The first resources that should be added are energy efficiency and demand response (at the maximum level that is feasible and cost-effective) followed by renewables, distributed generation and combined heat and power (also known as cogeneration) and finally efficient fossil sources and infrastructure development.² ARB’s AB 32 Scoping Plan reflects these policy preferences. (California Air Resources Board, Climate Change Scoping Plan, December 2008.) In evaluating a facility under our jurisdiction, we examine its expected efficiency, and compare it to the other plants in the system and which it may displace. (Ex. 2000, p. 4.1-95.)

2. Air Quality

On page 4.2-12, the last sentence on the page reads: “As further mitigation, applicant proposes to sweep the Pacific Coast Highway 3.5 miles once per month for the duration of the construction period.” This sentence is not entirely accurate. Applicant proposes to prepare a Construction Particulate Matter Mitigation Plan that could include street sweeping as a mitigation measure.



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3. Public Health

On page 4.3-8 of the Public Health section, the PMPD should be revised to read: “Condition of Certification **WASTE-2** requires that the project owner submit the SCAQMD Asbestos Notification Form to SCAQMD and the Energy Commission ~~for review and approval~~ prior to removal and disposal of asbestos.” This change will reflect consistency with the requirements of **WASTE-2**, as revised. (*See Applicant’s Revisions to PMPD Appendix A at p. APP-71 (TN# 203068) to which Staff agreed at the PMPD Conference.*)

4. Worker Safety and Fire Protection

While Applicant concurs with the findings and conclusions in the Worker Safety and Fire Protection section of the PMPD, Applicant wishes to address an inaccurate statement in the text of the PMPD. On page 4.4-6, the PMPD states that “[a]ll power plants licensed by the Energy Commission are required to have more than one access point to the power plant site.” As set forth in Applicant’s Opening Testimony (Exhibit 1132, Exhibit K attached thereto) this overarching generalization is inaccurate and such a requirement would be overly burdensome. Nowhere in the Warren-Alquist Act or CEC Siting Regulations is dual access required. Rather, access requirements are based on local laws, ordinances, regulations, and standards (“LORS”), specifically local fire-related LORS.

Here, Applicant agreed to provide two access points to the HBEP site based on discussions with and specific input from the City of Huntington Beach Fire Department. Such agreement is memorialized in Condition of Certification **WORKER-SAFETY-6**. Applicant objects, however, to the general statement in the PMPD that all power plants are required to have more than one access point.

5. Hazardous Materials Management

As discussed at the PMPD Conference, Applicant and Staff have agreed to revisions to Condition of Certification **HAZ-6**. Such revisions to **HAZ-6** are set forth in Applicant’s Revisions to PMPD Appendix A at page APP-61 (TN# 203068).

6. Waste Management

As discussed at the PMPD Conference, Applicant and Staff have agreed to revisions to Conditions of Certification **WASTE-1** and **WASTE-2**. (*See Applicant’s Revisions to PMPD*



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Appendix A at pp. APP-69 through APP-71 (TN# 203068).) In accordance with those revisions, the language in the text of the PMPD should be revised as follows:

- Page 4.6-9 of the PMPD states that additional work will occur “under the oversight of” the CPM, HBFD, Orange County, and DTSC. This is not accurate - only DTSC has oversight of any contamination encountered on-site. Revised WASTE-1 provides:

If soil contamination **not previously identified or already included in corrective action plans, work plans or closure plans** is encountered prior to or during grading the project owner ~~will~~ shall **notify the CPM and DTSC**, revise the approved work plan and submit it for **concurrent CPM, Huntington Beach Fire Department, and DTSC review approval** within 30 days after contamination is identified. **Comments received within 30 days from all parties will be incorporated and provided to DTSC for approval.**

- Page 4.6-11 of the PMPD discusses the asbestos removal form that must be submitted to SCAQMD “for review and approval.” As demonstrated in revised WASTE-2, this language is not accurate. Applicant requests that the phrase “for review and approval” be deleted from the end of the sentence in the first paragraph on page 4.6-11 under the heading *Hazardous Wastes*.

C. ENVIRONMENTAL ASSESSMENT

1. Biological Resources

Regarding Biological Resources, the PMPD incorrectly states that light-footed clapper rail has been documented breeding in the Brookhurst Marsh. (PMPD at p. 5-1-18 and p. 5.1-10, Table 2 (Special Status Species Known to Occur or Potentially Occurring in the HBEP Area and the Regional Vicinity).) As the record in this proceeding demonstrates, light-footed clapper rail were observed in this area, but breeding was not confirmed. (See Exhibit 1132 at Exhibit C-1 attached thereto; see also Exhibit 1090.) For this reason and for the reasons stated in Applicant’s Opening Testimony, all references to CDFW and USFWS should be removed from the Biological Resources Conditions of Certification. (Exhibit 1132 at Exhibit C-1; Applicant’s Initial Comments (TN# 203068).)

In addition, the PMPD also states that the Magnolia Marsh restoration will be completed within a few years and is expected to provide suitable breeding habitat for the light-footed clapper rail.



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(PMPD at p. 5.1-10, Table 2 (Special Status Species Known to Occur or Potentially Occurring in the HBEP Area and the Regional Vicinity).) As previously noted by Applicant, there is a lack of suitable nesting habitat within Magnolia Marsh and creating suitable breeding habitat within this subunit could take several years, if it even happens at all. Therefore, the record does not support the assumption that salt marsh and cordgrass restoration, specifically Pacific cordgrass (*Spartina foliosa*), would provide suitable breeding habitat for this species within a few years. For example, within smooth cordgrass marshes (*Spartina alterniflora*) restored conditions began to resemble natural construction for primary producers and heterotrophic activity (*i.e.*, cordgrass and benthic invertebrates) within 5 to 15 years post-construction and soil organic carbon and nitrogen levels did not reach equivalence within the first 28 years. (Craft et al., 2003.)² For Pacific cordgrass, a San Diego Bay mitigation site failed to produce plants of sufficient height after 13 years, including multiple fertilization experiments, and the cordgrass canopy is not expected to become suitable nesting habitat for the light-footed clapper rail. (Trnka and Zedler, 2000³; Zedler and Callaway, 1999⁴; Boyer and Zedler, 1998.)⁵ Therefore, it will likely take many years for the Magnolia Marsh to even develop suitable habitat and it is speculative to assert that suitable nesting habitat will establish in the Magnolia Marsh subunit of the Huntington Beach Wetlands because other similar efforts have been unsuccessful.

Lastly, on page 5.1-29, the PMPD states: “Facility closure requirements are discussed in more detail in the **GENERAL CONDITIONS** section.” For clarification, Applicant suggests the bolded words “General Conditions” be revised to read “Compliance Conditions.”

² Craft, C., P. Megonigal, S. Broome, J. Stevenson, R. Freese, J. Cornell, L. Zheng, and J. Sacco. 2003. The pace of ecosystem development of constructed *Spartina alterniflora* marshes. *Ecological Applications* 13(5): 1417-1432.

³ Trnka, S., and J. B. Zedler. 2000. Site conditions, not parental phenotype, determine the height of *Spartina foliosa*. *Estuaries* 23(4): 572-582.

⁴ Zedler, J. B. and J. C. Callaway. 1999. Tracking wetland restoration: do mitigation sites follow desired trajectories? *Restoration Ecology* 7(1): 69-73.

⁵ Boyer, K. E., and J. B. Zedler. 1998. Effects of nitrogen additions on the vertical structure of a constructed cordgrass marsh. *Ecological Applications* 8(3): 692-705.



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2. Soil and Water Resources

The PMPD includes typographical errors when referring to the 115 AFY water supply. Throughout the PMPD, 115 AFY should be revised to 134 AFY. (*See* Staff's Prehearing Conference Statement (TN# 202670) at p. 7 identifying this as a typographic error in the FSA.)

In addition, as noted at the PMPD conference, the PMPD references the wrong NPDES number in Condition of Certification SOIL&WATER-4 and in the text on pages 5.2-7 and 5.2-9. The correct Order No. is No. R8-2006-0011.

Applicant concurs with Staff that a Water Supply Assessment is not needed for HBEP. (*See* Staff's Comments on PMPD, TN# 203120, at pp. 15-18.)

3. Cultural Resources

Applicant concurs with the PMPD's conclusion that "the potential for the site to contain undisturbed remains is very low" and that "against that backdrop, we agree with Applicant that a full-time CRS is not necessary to monitor the excavation at the HBEP." (PMPD at p. 5.3-8.) Applicant also concurs with the PMPD's thoughtful and reasonable analysis that is fully supported by evidence in the record regarding the potential to encounter such native soils being only a remote possibility and most measurably within an extremely small (approximately 60 x 55 foot) area of excavation, approximately 7 1/2 feet below ground surface. (*Id.*) Applicant maintains, however, that the PMPD's Condition of Certification CUL-6 is overly burdensome and not commensurate with the lack of potential impacts. Applicant vehemently disagrees with the need for onsite monitoring when the potential for the site to contain undisturbed native soils is unanimously determined to be very low. (PMPD at pp. 5.3-4 and 5.3-7 to 5.3-8.) As noted above, the PMPD concludes that "the potential for the site to contain undisturbed remains is very low" but then inexplicably requires pre-emptive full time monitoring, albeit for a portion of construction. The record clearly demonstrates that the project's potential to affect historical resources (let alone any resources), is very low. The lack of impact to any existing resources combined with the very low chance of buried historical resources simply does not equate to imposing a condition requiring pre-emptive monitoring of any sort (part time or full time).

Applicant also notes the PMPD grossly oversimplifies Applicant's position with regard to the potential impacts to archaeological resources based on presence of native soils. (*See* PMPD at p. 5.3-7.) Applicant has always maintained that the site is extremely disturbed and because only a very small amount of native soils may be disturbed by the Project, the potential to impact any



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cultural materials is extremely low. (*See* Exhibit 1132 at pp. 5-6 and Exhibit D attached thereto; Applicant's Opening Brief (TN# 202959) at pp. 19-20.)

More particularly, at page 5.3-7, the PMPD states that "Applicant and Staff agreed that the following areas have the potential to contain undisturbed native soils and, therefore, there is potential for undiscovered archaeological resources." This is not an accurate summary of Applicant's position. Applicant acknowledges that, while the overwhelming evidence illustrates that the site is extremely disturbed, it is possible there may be very limited amounts of undisturbed soils that could be impacted. However, of this tiny fraction of undisturbed soils, the potential to impact any historical resources, or any cultural material, in these contexts is highly unlikely.

Based on the foregoing, Applicant disagrees with CUL-6 as presented in the PMPD and proposes a new CUL-6 as set forth in Applicant's Initial Comments on the PMPD. (*See* Applicant's Revisions to PMPD Appendix A at pp. APP-107 through APP-115 (TN# 203068); Exhibit 1132 at pp. 5-6 and Exhibit D attached thereto; and, Applicant's Opening Brief (TN# 202959) at pp. 19-20.)

Despite Applicant's objections to CUL-6 as presented in the PMPD, Applicant agrees with the PMPD conclusions and conditions regarding Native American Monitors ("NAMs"). While Staff's PMPD comments recommend requiring a full time NAM, Applicant supports the PMPD approach of requiring a NAM only in the event of a discovery of a Native American artifact. There is sufficient protection within the existing Conditions of Certification to ensure Native American artifacts will be protected if discovered, without requiring a NAM on-site during all excavation. Specifically, CUL-7 appropriately adopts this "if, then" process by providing that if a cultural resource that would be of interest to Native Americans is discovered, the CRS shall then halt construction and notify all Native American groups that requested such notification. This approach is standard and is supported by the record. Thus, despite Applicant's general objections to CUL-6, Applicant does not object to the CUL-6 provisions addressing NAMs, but notes that such provisions are largely duplicated in CUL-7. For clarification, Applicant recommends the following addition to CUL-7:



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CUL-7 POWERS OF CRS

8. Within 48 hours of the discovery of a resources of interest to Native Americans, the project owner shall ensure that the CRS notifies all Native American groups that expressed a desire to be notified in the event of such a discovery, and the CRS must inform the CPM when the notifications are complete. **Within 15 days of receiving from a local Native American group a request that a NAM be employed, the project owner shall appoint one or more NAMs and shall submit a copy of the request and a copy of the response letter to the CPM.**

Finally, the last line of the last paragraph on page 5.3-9 states “staff concludes” rather than “we conclude.”

D. LOCAL IMPACT ASSESSMENT

1. Land Use

As discussed at the PMPD conference, Applicant and Staff agreed to a revision to the verification for LAND-1. (*See Applicant’s Revisions to PMPD Appendix A at p. APP-129 (TN# 203068).*)

2. Traffic and Transportation

At the PMPD conference, Applicant and Staff agreed to a revision to the verification of TRANS-2, as proposed in Applicant’s Initial Comments. (*See, specifically, Applicant’s Revisions to PMPD Appendix A at p. APP-130 (TN# 203068).*)

As correctly noted by the City of Huntington Beach, Traffic and Transportation Table 3 incorrectly identified the volume to capacity ratios for the levels of service. Below are the Applicant’s suggested corrections to Traffic and Transportation Table 3.



Traffic and Transportation Table 3
Level of Service Criteria for Roadways and Intersections

Level of Service	Volume/Capacity (v/c)	Delay per Vehicle (seconds)	Description
A	$\leq 100.00 - 0.60$	≤ 10	Free flow; insignificant delays
B	$> 10 \text{ and } \leq 200.61 - 0.70$	$> 10 \text{ and } \leq 20$	Stable operation; minimal delays
C	$> 20 \text{ and } \leq 350.71 - 0.80$	$> 20 \text{ and } \leq 35$	Stable operation; acceptable delays
D	$> 35 \text{ and } \leq 550.81 - 0.90$	$> 35 \text{ and } \leq 55$	Approaching unstable flow; queues develop rapidly but no excessive delays
E	$> 55 \text{ and } \leq 800.91 - 1.00$	$> 55 \text{ and } \leq 80$	Unstable operation; significant delays
F	$> 80 > 1.00$	> 80	Forced flow; jammed conditions

3. Noise and Vibration

In addition to the minor changes to NOISE-4 and NOISE-6 that Applicant proposed in Applicant's Revisions to PMPD Appendix A (TN# 203068), Applicant has three comments regarding the text of the Noise discussion in the PMPD, as set forth below.

- Page 6.4-9 of the PMPD incorrectly refers to the terms of the City Noise Element when, in fact, the Noise Element is in terms of Ldn. Thus, Applicant proposes that the text in the second paragraph under the heading *Compliance with LORS* be revised as follows:

The cumulative operational noise level from PB-1 and PB-2 is 61 dBA at M2, 45 dBA at M3, and 49 dBA at M4. The cumulative noise levels for M3 and M4 fall below the nighttime limit of 50 dBA in the local noise ordinance and comply with the noise element's maximum exterior noise level of 65 dBA. (Ex. 2000, p. 4.6-14.)

- Page 6.4-13 of the PMPD incorrectly summarizes the threshold of significance for noise (which is previously discussed on the bottom of page 6.4-4 of the PMPD). Thus, Applicant proposes the following revision to the paragraph that begins on the bottom of PMPD page 6.4-12, as follows:



Condition of Certification **NOISE-4** limits nighttime operational noise levels resulting from HBEP alone to 61 dBA at M2, 45 dBA at M3, and 49 dBA at M4. The Final Subsequent Environmental Impact Report for Poseidon predicts the noise levels from its operational activities to be 49 dBA near M2, 41 dBA near M3, and 43 dBA near M4. Combining 61 dBA and 49 dBA at M2 results in 61 dBA, which does not change the existing ambient level. Combining 45 dBA and 41 dBA at M3 results in 46 dBA, which is 5 dBA above the existing ambient level. Combining 49 dBA and 43 dBA at M4 results in 50 dBA, which is 4 dBA above the existing ambient level. None of these increases exceed to 5 dBA threshold of **potential** significance.

- In the first Finding of Fact on page 6.4-13 of the PMPD, Applicant requests the replacement of the subjective term “noticeably,” which could imply that the project must be inaudible, with the word “significantly,” as follows: “1. Construction and operation of the HBEP will not create noise levels **significantly** ~~noticeably~~ above existing ambient levels in the surrounding project area.”

4. Visual Resources

Applicant maintains that the Project will not have a significant or potentially significant impact on views from KOP-4 and KOP-5. However, Applicant is willing to implement the visual resources Conditions of Certification as revised in Applicant’s Revisions to PMPD Appendix A (TN# 203068).

Applicant also requests that where there is a finding of a less than significant impact (*i.e.*, KOP-1 and KOP-3), the discussion on page 6.5-10 (KOP-1) and 6.5-13 (KOP-3) regarding mitigation and residual impact assessment after mitigation be removed as it implies that there is a need to mitigate impacts that the PMPD determines are less than significant.

In Applicant’s Revisions to PMPD Appendix A, Applicant proposed changes that have been provided numerous times in the record for this proceeding. Specifically, all references to the Coastal Commission should be removed from Conditions of Certification VIS-1, VIS-2, VIS-3 and VIS-5. Staff concurs with Applicant’s proposed revisions.⁶ (*See Applicant’s Revisions to PMPD Appendix A at pp. APP-143 through APP-158 (TN# 203068).*)

⁶At the PMPD Conference, Staff counsel agreed to remove all references to the Coastal Commission in the Visual Resources Conditions of Certification (VIS-1, VIS-2, VIS-3 and VIS-



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As has been discussed throughout the record for this proceeding, the HBEP site is within the Coastal Zone and therefore subject to the Coastal Act (Public Resources Code § 30000 et. seq.), but the proposed HBEP site is within the retained jurisdiction of the Energy Commission. The Coastal Commission's permitting authority is subject to the Energy Commission's jurisdiction over power plants. (Pub. Resources Code §§ 25500, 30600.) (*See Applicant's Opening Brief* (TN# 202959) at pp. 1-2; PMPD at p. 6.1-11.) Were the Coastal Commission to exercise its permitting authority, it would review the project against the policies of the City of Huntington Beach's Local Coastal Program, General Plan, and zoning ordinance as well as the Coastal Act. (PMPD, p. 6.1-11.) The Energy Commission, when exercising its jurisdiction, conducts a similar analysis and solicits and considers the views of the agencies that would otherwise have jurisdiction over a proposed project, including the Coastal Commission, during this permitting process. (*Id.*) Ultimately, the Energy Commission is charged with making its independent determination regarding project compliance with the Coastal Act and other LORS, during review of the AFC. Additional, post-approval review and comment by the Coastal Commission is contrary to law and, therefore, is not permissible. Here, the purpose for the role of the City when reviewing the plans identified in the Visual Resources conditions is to ensure the plans' consistency with the City's April 2014 Resolution (*See Exhibit 1134* (City of Huntington Beach Resolution No. 2014-18).)

For the reasons set forth above, all references to the Coastal Commission in Visual Resources Table 3 (Proposed Project Consistency with Applicable Visual Resources LORS) should be removed.⁷ Visual Resources Table 3 of the PMPD indicates the plans required by VIS-1, VIS-2, VIS-3, and VIS-5 will be submitted to the Coastal Commission for timely comment. For the reasons set forth above, the Coastal Commission's review and comment on these plans is contrary to law and all references to the Coastal Commission in Visual Resources Table 3 should

5). Staff's PMPD Comments confirm Staff's concurrence and propose deletion of the Coastal Commission from all Visual Resources Conditions of Certification. (*See Staff's PMPD Comments*, docketed September 26, 2014, at pp. 33, 38-43 (TN# 203120).)

⁷ There are eighteen references to the Coastal Commission in Table 3, beginning at page 6.5-22 and ending at page 6.5-29 of the PMPD.



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also be deleted.⁸

Additionally, a noteworthy point. During the PMPD Conference, a Coastal Commission representative stated that the Coastal Commission need not comment on the Visual Resources Plans identified in Conditions of Certification VIS-1, VIS-2, VIS -3, and VIS-5. To that end, and for all the reasons set forth above, all references to the Coastal Commission in the Visual Resources Conditions of Certification should be deleted.

Finally, the third paragraph on page 6.5-2 is incorrect and should be revised as follows:

~~The proposed project would use the~~ existing lighting of the HBGS structures, including exterior lighting on the stack platforms, scaffolding on the power block exteriors, and exterior staircases. The tops of the existing exhaust stacks are lit with red aircraft safety warning beacons. (Ex. 2000, p. 4.12-5.)

III. AGREEMENTS REGARDING CONDITIONS AT THE PMPD CONFERENCE AND THE INTERIM DRAFT ERRATA TO THE PMPD

As was discussed during the PMPD Conference, Staff and Applicant agreed to a number of proposed revisions to Conditions of Certification, many of which were not reflected in the PMPD. On September 25, 2014, this Committee published an Interim Draft Errata to the PMPD (“Interim Errata”), which set forth a number of these agreed upon conditions. Applicant appreciates the Committee’s effort to publish the Interim Errata well in advance of the October 7 hearing on the PMPD. Applicant notes that most of the agreed to conditions are set forth in the Interim Errata; however, several agreed to conditions were not identified.

The conditions to which Staff and Applicant agree include the following: AQ-SC3, AQ-SC6, COM-13, COM-14, COM-15, LAND-1, NOISE-4, NOISE-6, HAZ-6, SOIL&WATER-3, SOIL&WATER-4, WASTE-1, WASTE-2, TRANS-2, TLSN-1, TLSN-2, the removal of the Coastal Commission from all Visual Resources Conditions of Certification, and the change from “animal” to “special status species” in BIO-8. In addition, Applicant and Staff agreed to revisions to Conditions of Certification VIS-3 and WORKER SAFETY-6 as proposed by the City of Huntington Beach in the City’s September 16 correspondence.

⁸ For example, the language in Visual Resources Table 3 should be revised to read that any plan (or both plans, as applicable) will be submitted to the City of Huntington Beach and timely comments from the City will be considered by the CPM prior to plan approval.



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IV. CONCLUSION

The foregoing, along with the inclusion of Applicant's Initial Comments and the proposed revisions to the Conditions of Certification contained therein, represents Applicant's comments on the PMPD. Applicant appreciates the Committee's and Hearing Officer Cochran's diligence to publish the PMPD and facilitate the parties' discussions during the September 17 PMPD Conference. Applicant looks forward to participating in the full Commission's hearing, and possible approval of HBEP, on October 7, 2014.

Respectfully submitted,

A handwritten signature in blue ink that reads "Melissa A. Foster". The signature is written in a cursive, flowing style.

Melissa A. Foster

MAF:jmw