

DOCKETED

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August 27, 2015

Jennifer Didlo
Stephen O’Kane
AES Southland Development, LLC
690 Studebaker Road
Long Beach, CA 90803

Coastal Act Violation File No: **V-9-15-0092 (AES Southland Development, LLC
Redondo Beach Generation Station)**

Location: Former tank portion of the AES Redondo Beach
Generating Station located at 1100 North Harbor Drive in
Redondo Beach, Los Angeles County; APNs 7503-013-
014, 7503-013-015, 7503-013-819, and 7503-013-820.

Violation¹ description: Unpermitted installation and operation of water pumps for
the purpose of groundwater dewatering affecting
approximately 5.93 acres of wetlands at the former tank
portion of the site.

Dear Ms. Didlo and Mr. O’Kane:

I am writing in regard to a violation of the Redondo Beach Local Coastal Program (“LCP”) and

¹ Please note that the description herein of the violation at issue is not necessarily a complete list of all unpermitted development on the subject property that is in violation of the Coastal Act or the City of Redondo Beach LCP. Accordingly, you should not treat the Commission’s silence regarding (or failure to address) other unpermitted development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development. Please further note that the term “violation” as used throughout this letter refers to alleged violations of the Coastal Act or the City of Redondo Beach LCP.

the Coastal Act² on property owned by AES Southland Development, LLC (“AES”) at 1100 North Harbor Drive in Redondo Beach, Los Angeles County. We are writing because of the unpermitted development activity being undertaken or threatening to be undertaken including, but not limited to, installation and operation by AES of new water pumps adversely affecting, or having the potential to adversely affect, approximately 5.93 acres of Coastal Commission-jurisdiction wetlands within the former tank portion (“subject site”) of the AES Redondo Beach Generating Station.

The Coastal Act was enacted by the State Legislature in 1976 to provide long-term protection of California’s 1,100-mile coastline through implementation of a comprehensive statewide planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission (“Commission”) is the state agency created by, and charged with, administering the Coastal Act. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats; protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the sea. The Commission plans and regulates development, including development in wetlands, within the statutorily defined “Coastal Zone” jurisdictional area consistent with the requirements of Chapter 3 of the Coastal Act. The Commission also reviews and certifies LCPs submitted by local governments that have part or all of their jurisdictional area within the Coastal Zone and delegates permitting authority to them after LCP certification so that they may regulate development within their certified LCP jurisdictions. The City of Redondo Beach (“the City”) has a certified LCP and, thus, primary permitting and enforcement authority within its certified LCP jurisdiction. However, in this case, the City has requested Commission staff’s assistance in this enforcement matter; as discussed later.

One of the habitats the Commission and local governments with certified LCPs are charged with protecting is that of wetlands. Wetlands are among the most important ecosystems in the world.³ They produce high levels of oxygen, filter toxic chemicals out of water, reduce flooding and erosion, recharge groundwater, and serve as critical habitat for wildlife, including a large percentage of plants and animals on California’s endangered species list.

The Coastal Act and the City’s LCP contain several policies that afford protection to wetlands and sensitive habitat:

Coastal Act Section 30231 and LUP Section VI, Subsection D – Land Use, Policy 20 state:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms

² The California Coastal Act of 1976 (“Coastal Act”) is codified in Division 20 of the Public Resources Code (sections 30000 to 30900).

³ Source: California’s Wetlands, A Briefing: Water Education Foundation, 2000.

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 water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Coastal Act Section 30233 and LUP Section VI, Subsection D – Land Use, Policy 21 state (in relevant part):

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource-dependent activities.

Applicable Coastal Act and LCP provisions require generally that biological productivity in wetlands be protected and allowable uses in or near wetland areas be limited. While much of the Redondo Beach Energy Project (“RBEP”) site has been developed for more than a century, it contains areas of Coastal Commission-jurisdictional wetlands. This conclusion is based on 2013 wetland data provided by AES, observations made during a site visit by the Coastal Commission ecologist, Dr. Jonna Engel, in January 2014, and review of historic information by both Energy Commission and Coastal Commission staff. It has been determined that there are approximately 5.93 acres of Coastal Commission-jurisdictional wetlands in the area of the site containing bermed retention basins that formerly held fuel oil tanks that were retired in the 1990s and removed in 2006. In July 2015, the Commission adopted findings that concurred with staff’s determination that Commission-jurisdictional wetlands were present at the RBEP site.⁴

⁴ See Coastal Commission’s Final Adopted 30413(d) Findings for Redondo Beach Energy Project, submitted to California Energy Commission and available at:

We are aware that AES disputes the conclusion that there are wetlands at the site, and has stated that any wetland characteristics within the site were artificial hydrologic features resulting from water moving to the site from a series of injection wells located from about one half-mile to a mile from the site and operated by the West Basin Water District. These injection wells have been operated since the 1960s to provide a salt water intrusion barrier. AES has stated that this injection well program created an artificially high groundwater table, which led to AES installing and operating a dewatering system at the site meant to keep groundwater about three to five feet below the ground surface. AES stated that in 2012 it determined its dewatering system was underperforming and allowing wetland hydrology and hydric soils to develop at the site.

Commission staff has found, however, that portions of the site appear to have exhibited wetland characteristics at several times during the past century, including before the Water District's injection well pumping system was installed and during power plant operations. It appears that, instead of the injection well system creating artificial hydrology, the power plant's dewatering system has acted to mask existing wetland characteristics within the site. However, these characteristics appear to be present even when the dewatering system is apparently functioning as intended.

The Commission has already formally addressed this issue, and found, when it adopted its 30413(d) review of the AES Redondo Beach Energy Project, that AES's proposal to install and operate new pumps would likely further mask or remove the wetland features already identified at the site.

Coastal Act/LCP Violation

AES indicated that, in December 2014, it replaced one of its water pumps intended for groundwater dewatering on the former tank portion of the site, and that another pump was scheduled to be installed in June of 2015. We do not know if the new pumps are currently operating.

Pursuant to Section 30106 of the Coastal Act and Section 10-5.2204(a)(13) of the City's LCP:

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act...change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or

alteration of the size of any structure, ... and the removal or harvesting of major vegetation other than for agricultural purposes... (Emphasis added)

As such, the installation and operation of water pumps for the purpose of groundwater dewatering on your property constitutes development under the Coastal Act and the City's LCP because it is both the placement of a solid material or structure on land and the removal of wetland material. Section 30600(a) of the Act, as well as Section 10-5.2206(a) of the City's certified LCP, requires that any person wishing to perform or undertake development in the coastal zone must first obtain a Coastal Development Permit ("CDP"), in addition to any other permit required by law, before carrying out any development. Any development activity conducted in the coastal zone without a valid CDP constitutes a violation of the Coastal Act/LCP. Thus, the unpermitted installation and use of water pumps in an unused portion of the site that has been determined by both the Coastal Commission and the Energy Commission to contain Coastal Commission-jurisdictional wetlands constitutes a Coastal Act/LCP violation. We do not consider the installation and use of these water pumps to be exempt development. In fact, the fuel oil tanks were removed in 2006 and this portion of the site containing wetlands has not been used for its originally intended purpose for nearly ten years. Thus, the installation and operation of the subject water pumps is unpermitted development, and operation of these pumps will be considered knowing and intentional performance or undertaking of development in violation of the Coastal Act and the City's certified LCP.

Enforcement Remedies

Pursuant to Coastal Act Section 30810(a)(1), the Commission may issue an order to cease and desist to enforce the requirements of a certified local coastal program if the local government requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order. Accordingly, the City has requested that the Commission assist in enforcement of the alleged Coastal Act violation described herein that has occurred on the subject property (see enclosed letter).

Chapter 9 of the Coastal Act contains enforcement remedies to address Coastal Act/LCP violations. Section 30809 of the Coastal Act provides for the Executive Director to issue an order if he determines that any person **has undertaken, or is threatening to undertake**, any activity that may require a coastal development permit without first securing said permit. Further, as noted above, Section 30810 provides that the Coastal Commission may also issue a cease and desist order if it determines that any person **has undertaken, or is threatening to undertake**, any activity that requires a coastal development permit without first securing said permit. These cease and desist orders may be subject to terms and conditions that are necessary to ensure compliance with the Coastal Act/LCP. Moreover, Section 30811 authorizes the Commission to order restoration of a site where development occurred without a coastal development permit, is inconsistent with the Coastal Act/LCP, and is causing continuing resource damage. Finally, The Executive Director is also authorized, after providing notice and

the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against your property.

In addition to the above, Section 30820 of the Coastal Act provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. The Act also provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists. The Coastal Act also provides for additional penalties for violations of either a cease and desist order or a restoration order, and exemplary damages in cases of knowing and intentional violations of the Coastal Act.

Resolution

In some cases, when unpermitted development takes place in the Coastal Zone, the alleged violator may seek an after-the-fact CDP from the relevant permitting authority, which in this case is the City, as the area in which the unpermitted development took place lies within the City's LCP jurisdiction. However, the unpermitted installation and operation of water pumps for the purpose of dewatering wetlands are not development activities allowed in wetlands under applicable laws. Therefore, Commission Staff does not recommend you seek an after-the-fact CDP for this development. In order to resolve the subject Coastal Act/LCP violations on the subject property and avoid penalties, as well as additional harm to coastal resources, you must:

1. **CEASE ALL UNPERMITTED ACTIVITIES.** This includes ANY water pumping of the former tank site for the purposes of groundwater dewatering;
2. Provide to me by September 9, 2015 written confirmation that all such unpermitted pumping has ceased. If no such pumping is currently taking place, confirm in writing that it has not taken place nor will take place;
3. Submit a complete CDP application by September 28, 2015 to the City of Redondo Beach for removal of the subject pumps and restoration of any damaged resources. Once a valid CDP is issued, you must complete the project, as approved, and comply with all conditions, including any monitoring requirements, before this violation file can be closed;
4. Contact me by September 14, 2015 regarding how you intend to resolve this violation.

We hope that we can work cooperatively with you to resolve this matter quickly. I can be reached at **415-904-5269**.

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Failure to meet the deadlines noted above may result in formal action by the Commission to resolve this Coastal Act violation. The formal action could include a civil lawsuit, recording a Notice of Violation on your property, the issuance of an Executive Cease and Desist Order or Commission Cease and Desist and/or Restoration Order, and/or imposition of monetary penalties.

Thank you for your cooperation and prompt attention to this matter. We look forward to hearing from you soon.

Sincerely,



JO GINSBERG
Enforcement Analyst

Enclosure: Letter from Joe Hoefgen, City Manager, City of Redondo Beach

cc: Alison Detmer, CCC, Deputy Director
Lisa Haage, CCC, Chief of Enforcement
N. Patrick Veasart, CCC, Enforcement Supervisor
Tom Luster, CCC, Coastal Program Analyst
Amber Dobson, CCC, Coastal Program Analyst
Matt Christen, CCC, Staff Counsel
Mike Webb, City of Redondo Beach, City Attorney
Joe Hoefgen, City of Redondo Beach, City Manager