

DOCKETED

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STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification for the) Docket No. 13-AFC-01
Alamitos Energy Center)

**AES ALAMITOS ENERGY, LLC’S
RESPONSE TO COMMITTEE’S QUESTIONS REGARDING THE LAND USE
SECTION OF ALAMITOS ENERGY CENTER (AEC) PRELIMINARY STAFF
ASSESSMENT (13-AFC-01)**

AES Alamitos Energy, LLC (the “Applicant”) provides the following responses to the *Committee Questions Regarding the Land Use Section of Alamitos Energy Center (AEC) Preliminary Staff Assessment [13-AFC-01]* issued on September 19, 2016 (“Committee Questions”).¹ The Committee’s questions are identified in *italics* below.

- 1. Regarding the City of Long Beach’s Southeast Area Development Improvement Plan [SEADIP], on PSA page 4.6-11, it states “A Draft Specific Plan and Environmental Impact Report is expected to be released for public review in mid-2016.” What is the status of the updates to the planning LORS? Will the project be compliant with the revised LORS?*

RESPONSE: The Hearing Draft Southeast Area Specific Plan (“SEASP”)² and Draft Environmental Impact Report (“DEIR”) were published on July 20, 2016.³ The SEASP, if adopted, will replace the SEADIP to guide land use and development in the Southeast Area of the City of Long Beach (“City”). (SEASP, p. 7.) Comments on the DEIR were due on September 19, 2016.

If the SEASP is adopted as set forth in the draft, the Alamitos Energy Center (“Project”) will be in compliance with the SEASP. The SEASP provides that industrial uses within the entire SEASP area must comply with Long Beach Municipal Code (“LBC”) Chapter 21.33, *Industrial District*. (See, SEASP, p. 56.) The SEASP does not provide any other development standards for Industrial Districts, other than minimum front yard setbacks along Studebaker Road. (See, SEASP, p. 74.)

Both the Supplemental Application for Certification (“SAFC”) and the Preliminary Staff Assessment (“PSA”) analyze the Project’s consistency with the City’s Municipal Code. The AEC site is zoned as Planned Development (“PD”)-1, and designated as General Manufacturing (“MG”). (See, SAFC, p. 5.6-15; also see PSA, p. 4.6-8.) The MG designation is equivalent to

¹ TN#: 213708.

² The Hearing Draft of the SEASP is available at <http://www.lbds.info/civica/filebank/blobload.asp?BlobID=5945>.

³ <http://www.lbds.info/civica/filebank/blobload.asp?BlobID=5944>

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the General Industrial (“IG”) zoning designation. (See, SAFC, p. 5.6-15; also see PSA, p. 4.6-8.) Section 21.33.020 of the LBC provides that the IG district is the City’s “industrial sanctuary” district, “where land is preserved for industry and manufacturing, and where existing industries are protected from non-industrial users that may object to the operating characteristics of industry.” In this district, “development standards are the minimum necessary to assure safe, functional, and environmentally-sound activities.” (LBC § 21.33.020(C).) Both the SAFC and the PSA found the Project to be consistent with all applicable local standards. (See, SAFC, p. 5.6-19; also see PSA, pp. 4.6-11 through 22.) Therefore, the Project is compliant with both existing LORS and the draft SEASP.⁴

2. *Land Use Table 2 (PSA page 4.6-12) indicates that a conditional use permit (CUP) is required for electrical services uses, such as the AEC, in the zoning district where the proposed plant will be located. What are the standards for granting such a CUP? Does the AEC meet them? Has the City of Long Beach expressed an opinion on the topic?*

RESPONSE: But for the Commission’s site certification jurisdiction, Section 21.25.206 of the LBC provides that the City would have to make the following findings, summarized in the table below, before approving a conditional use permit for a project like the AEC. As demonstrated in the SAFC and the PSA, the AEC meets all requirements for the issuance of a CUP by the City.

Long Beach Municipal Code	SAFC/PSA Reference⁵
§ 21.25.206(A): The approval is consistent with and carries out the General Plan, any applicable specific plans such as the local coastal program and all zoning regulations of the applicable district.	See, SAFC, p. 5.6-19; also see PSA, pp. 4.6-11 through 22.
§ 21.25.206(B): The proposed use will not be detrimental to the surrounding community including public health, safety or general welfare, environmental quality or quality of life.	See, SAFC pp. 1-1, 1-6 to 1-9, 5.9-12; also see PSA, pp. 1-7 to 14.
§ 21.25.206(C): The approval is in compliance with the applicable special conditions for specific conditional uses set forth in Section 21.52.410	See below.
§ 21.25.206(D): The related development approval, if applicable, is consistent with the green building standards for public and private development, as listed in Section 21.45.400.	Not applicable.
§ 21.52.410(A): The proposed use, and the siting and arrangement of that use on the	See, SAFC, pp. 1-1, 1-6 to 1-9, 5.6-18 to 21, 5.9-12, 5.16-3 to 15; also see PSA, pp. 1-7 to

⁴ This Response does not address the legal question of whether compliance with future LORS is required.

⁵ This table provides citations to only some of the SAFC/PSA sections that support these findings.

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Long Beach Municipal Code	SAFC/PSA Reference⁵
property, will not adversely affect surrounding uses nor pose adverse health risks to persons working and living in the surrounding area.	14.
§ 21.52.410(B): Adequate permitting and site design safeguards will be provided to ensure compliance with the performance standards for industrial uses contained in Section 21.33.090 (Performance Standards) of this Title.	See, SAFC, p. 5.6-19; also see PSA, pp. 4.6-11 through 22.
§ 21.52.410(C): Truck traffic and loading activities associated with the business will not adversely impact surrounding residential neighborhoods.	See, SAFC, pp. 5.2-10 to 18; also see PSA, pp. 4.11-1, 25-35.
§ 21.52.410(D): Businesses involved with hazardous waste treatment, hazardous waste disposal, or hazardous waste transfer shall comply with the following location requirements. . .	Not applicable.

The City has expressed support for the Project, and has not identified any concerns with approving the Project. (See, City of Long Beach Comment Letter (May 17, 2016) TN# 211504.)

3. *Land Use Table 2 also contains references to two different building height limits: 35 feet (under the 2006 SEADIP) and 65 feet (under the 2015 amendments to the SEADIP zoning) (see PSA pages 4.6-16 and 4.6-18, respectively). How is this dichotomy reconciled? Even if not reconciled, the stacks for the AEC are 140 and 80 feet tall. Does the fact that the existing AGS stacks are over height obviate the need for a variance (Long Beach Municipal Code Chapter 21.25, Division III) or is it merely a factor to consider in deciding whether a variance should be approved. If a variance is required and cannot be approved, is an override justified? Why?*

RESPONSE: There is no conflict to reconcile between the two heights. The SEADIP is the local land use LORS that is currently applicable to the Project. The SEASP, which will replace the SEADIP if approved, is not yet an applicable LORS because it has not been adopted by the City.

In this case, the building height limit set forth in the SEADIP does not apply to the stacks because the height limit applies only to buildings.⁶ The stacks are non-building structures.⁷ The

⁶ SEADIP, Provision 5 (“The maximum height of buildings shall be 30 feet for residential and 35 feet for non-residential uses, unless otherwise provided herein.”)

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SEADIP does not provide development standards for non-building structures. Where a PD zone does not contain a standard “for a particular aspect of development . . . then the development standards for that aspect of a zoning district which is closest to the overall intent of the particular planned development district shall apply.” (LBC § 21.37.050.) Therefore, the development standards for the IG zoning district would apply as it is closest to the overall intent of the planned development district in which the AEC is located. (See, SAFC, p. 5.6-15; also see PSA, p. 4.6-8.)

The code distinguishes between buildings and non-building structures. (See, LBC, § 21.33.130, Table 33-4.) There is no restriction on the maximum height of non-building structures, such as the stacks proposed for the AEC, in the IG zoning district.⁸ (*Id.*) Therefore, a variance is not required for the stack heights.

4. *The section lists numerous assessor parcel numbers (APNs). How many legal parcels are there on site? Do any of the project facilities extend over those parcel lines? Should a lot merger or other action take place to ensure that the project is built on a single lot? Why or why not?*

RESPONSE: The Project, the Alamitos Energy Center, is located on one legal parcel, which is comprised of Los Angeles County Assessor's Identification Numbers (“AINs”) 7237-019-005, 7237-018-808, and 7237-019-808.⁹ The 21-acre AEC site, including the generating facility and all structures related to the generating facility, is located entirely within the larger 71.1- acre parcel. (SAFC, p. 1-1.) Certain linear facilities do extend over the boundaries of this parcel.

A map showing the boundaries of the parcel (denoted as Parcel B), which includes AINs 7237-019-005, 7237-018-808, and 7237-019-808, is provided as Attachment A to this response. No merger or action to ensure that the project is built on a single lot is required because the project as proposed will be built on Parcel B, which is a single legal lot.

5. *Proposed Condition of Certification LAND-1 (PSA page 4.6-30) requires, prior to the start of construction, a site plan consistent with city of Long Beach design standards for the General Industrial zone, including heights, parking, and setbacks. Will the Final Staff Assessment discuss whether those standards are satisfied, or is staff expecting that determination to be made during the post-certification review of the site plan?*

RESPONSE: The Final Staff Assessment will discuss whether applicable design standards are satisfied. Commission Staff and the Applicant discussed LAND-1 and consistency with City of Long Beach design standards at the PSA Workshop held on August 9, 2016. Both parties agreed that the Project's consistency should be evaluated during the siting process. Accordingly, Commission Staff agreed that the Final Staff Assessment would include a discussion of the

⁷ See, LBC § 21.15.410 which defines “building” as “any roofed structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind.”

⁸ Even if a variance were needed, such an approval would be preempted by the Commission, which could “stand in the shoes” of the City to make the findings needed to support the approval. An override would not be required.

⁹ The Supplemental Application for Certification inadvertently included AIN's for the larger Alamitos Generating Station property.

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project's conformance with applicable design standards.

6. *The project calls for construction of a new wastewater pipeline that will be affixed to an existing bridge that crosses the Los Cerritos Channel. Will the existing bridge be able to accommodate the new pipeline? Will the pipeline's construction cause any impacts? Where or how will any impacts of the pipeline on the bridge be addressed in the PSA or FSA?*

RESPONSE: The AEC sanitary/process wastewater pipeline is proposed to be attached to the existing Loynes Drive Bridge, which crosses the Los Cerritos Channel and is a good candidate for accommodating the new pipeline. The Loynes Drive Bridge, identified as California Department of Transportation ("CT") Bridge Number 53C073, was constructed in 1966 and was seismically upgraded in 2007.¹⁰ Attaching the AEC pipeline on this bridge will require AES to apply for a CT encroachment permit. CT's encroachment permitting includes specific requirement for attaching utilities, such as the wastewater pipeline, on bridges.¹¹ Section 671.5(a) of the California Streets and Highways Code requires that CT either approves or denies an Encroachment Permit Application submittal within 60 calendar days, upon determination that the submittal is complete and that an Encroachment Permit Application submittal is complete when all other statutory requirements, including any California Environmental Quality Act¹² ("CEQA") requirements, have been met. Based on an initial review of the available bridge inspection data for the Loynes Drive Bridge, the bridge is a good candidate for attaching the sanitary/process wastewater pipeline.

The potential environmental impacts associated with the sanitary/process wastewater pipeline are primarily construction-related, which have been analyzed in the SAFC and the PSA. The potential operational impacts are those associated with typical pipeline maintenance activities.

7. *The project lies within the coastal zone and appears to require a coastal development permit under Long Beach Municipal Code sections 21.25.901- 21.25-908. Where is the analysis of this? Is Coastal Commission review/approval required under the Long Beach Municipal Code? Has the Coastal Commission commented on the project?*

RESPONSE: The project is partially located in the coastal zone. (See, SAFC, p. 5.6-15; PSA, pp. 4.6-9 to 10.) In the absence of the Commission's exclusive jurisdiction, a local coastal development permit would be required from the City of Long Beach for that portion of the project located in the coastal zone (See, *Id.*)

Two findings must be made before a local coastal development permit can be approved: (1) a finding that the proposed development conforms to the certified local coastal program and (2) a finding that the proposed development conforms to the public access and recreation policies of Chapter 3 of the Coastal Act. (See, LBC § 21.25.904(C).) The second finding must be made only where the proposed development is located seaward of the nearest public highway to the

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[http://www.dot.ca.gov%2Fhq%2FLocalPrograms%2FInactiveProjects%2FMarch2007%2FCarried Over fr Dec 06-0703.xls&usg=AFQjCNGOO_95N0lr-ziTyN_t3JE7IDpi7Q](http://www.dot.ca.gov%2Fhq%2FLocalPrograms%2FInactiveProjects%2FMarch2007%2FCarried%20Over%20fr%20Dec%2006-0703.xls&usg=AFQjCNGOO_95N0lr-ziTyN_t3JE7IDpi7Q)

¹¹ http://www.dot.ca.gov/trafficops/ep/docs/Chapter_6.pdf

¹² Pub. Resources § 21000 et seq.

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shoreline. (See, LBC § 21.25.904(C)(2).) The project's consistency with the City's certified local coastal program is discussed at pages 4.6-9 through 22 of the PSA. The AEC is consistent with the applicable LORS.

Coastal Commission approval is not required under the Long Beach Municipal Code. (See, LBC § 21.25.903(B).) The Coastal Commission has indicated that it will not be commenting on this project, or otherwise participate in this proceeding.¹³

September 21, 2016

ELLISON, SCHNEIDER & HARRIS L.L.P.

By: _____/s/_____

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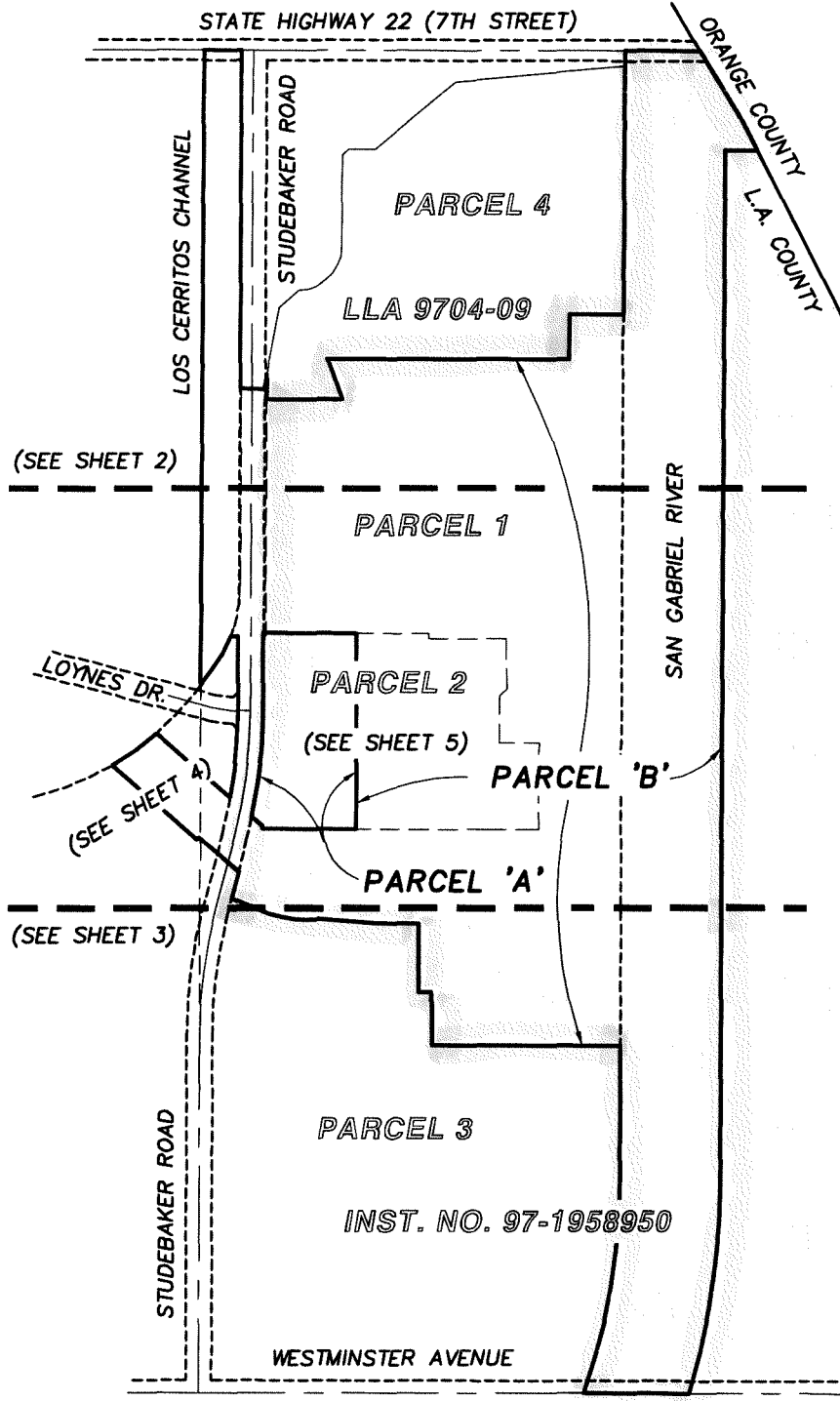
¹³ (See, Email Regarding Alamitos 30413 (d) (September 8, 2016) between Keith Winstead, CEC and Tom Luster. TN#: 213634.)

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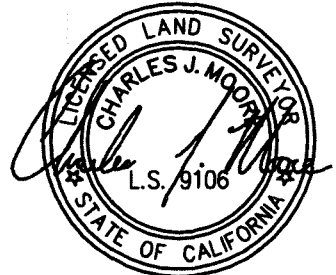
ATTACHMENT A

Parcel Map

EXHIBIT "B" - MAP
LOT LINE ADJUSTMENT NO. _____



SCALE: 1"=700'



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EXHIBIT "B"
 LOT LINE ADJUSTMENT NO. _____