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Ms. Felicia Miller, Siting Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, California 95814

**Re: Huntington Beach Energy Project (12-AFC-02)
Applicant's Follow-Up to PSA Part A Workshop**

Dear Ms. Miller:

As discussed during the November 20, 2013 Preliminary Staff Assessment ("PSA") Part A Workshop, Applicant herein provides follow-up information in various technical areas as well as confirmation of agreed-upon changes to certain Conditions of Certification.¹

I. SOCIOECONOMICS

Staff agreed to Applicant's proposed changes to SOCIO-2 submitted on November 7, 2013.

II. BIOLOGICAL RESOURCES

Applicant and Staff discussed various issues related to Biological Resources during the Workshop.

Light-footed Clapper Rail

The Applicant requested and received the information that Staff referenced at PSA Workshop documenting the nesting of light-footed clapper rail (*Rallus longirostris levipes*) within the Brookhurst Marsh one year after the restoration of the Brookhurst Marsh, which included the *Status and Distribution of the Light-footed Clapper Rail in California 2012 Season* (Zemmel and Hoffman, 2012) and the Huntington Beach Wetlands Conservancy (HBWC) website.²

¹ In addition, Applicant requests that the follow-up Workshop identified in CEC Staff's December 2013 Status Report be deferred and combined with an expected PSA Part B Workshop that will follow the publication of PSA Part B.

² <http://hbwetlands.org/current.htm>.



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As stated in Zembel and Hoffman (2012):

*“Restoration of the Huntington Beach Wetlands is continuing and one of the pairs counted in the tally for this marsh complex was actually in the Brookhurst Marsh in 2010. Lena Hyashi reported a pair on April 19, 2010 vocalizing and observed along the larger stand of Spiny Rush (*Juncus acutus*) near the dunes and PCH [Pacific Coast Highway]. This was the first record for Clapper Rails potentially breeding in the HBW [Huntington Beach Wetlands] Complex outside the Santa Ana River Marsh since the 1970s. Unfortunately, late in the 2010 season and in 2011 we were only able to elicit “kecking” from a male, **so breeding was not confirmed**. A pair was back again in the Brookhurst Marsh in 2012.”* [acronym definitions and emphasis added].

The above observation was discussed in the Applicant’s *Supplemental Data Response, DR31 (Biological Resources)*. Furthermore, as previously stated in the AFC, *Huntington Beach Energy Center Project (12-AFC-02) Applicant’s Responses to Staff’s Data Requests, Set 1A (#1-72), Supplemental Data Response, DR31 (Biological Resources)* and the *Huntington Beach Energy Project (12-AFC-02) Applicant’s Comments on the Preliminary Staff Assessment (Part A)*, the only breeding special-status avian species that has been documented within the adjacent Magnolia Marsh is Belding’s savannah sparrow (*Passerculus sandwichensis beldingi*). The light-footed clapper rail has not been documented, breeding or otherwise, within the Magnolia Marsh. Rather, the only documentation of the light-footed clapper rail (cited above) was in the Brookhurst Marsh whose habitat differs from that of the adjacent Magnolia Marsh as further described below.

The Applicant’s *Supplemental Data Response, DR31 (Biological Resources)* evaluated the light-footed clapper rail habitat preferences, particularly for nesting. Light-footed clapper rails have a preference for tall (greater than 70 cm), dense stands of Pacific cordgrass (*Spartina foliosa*) in the low littoral zone for nesting (Massey et al., 1984). Although this species prefers tall, dense stands of cordgrass, other nesting habitat including cattail- (*Typha* spp.) and bulrush- (*Scirpus* spp.) dominated systems to expanses of pickleweed (Zembal and Massey, 1983) benefit the species. As previously noted, the light-footed clapper rail were observed within a large stand of spiny rush, near PCH (Zembel and Hoffman, 2012). According to *Huntington Beach Wetlands Restoration Project: Monitoring Program Final Report* (CSULB et al., 2013), rush (*Juncus* sp.) habitat is located within the central portion of the Brookhurst Marsh, which is over 3,000 feet southeast of the HBEP. California State University Long Beach (CSULB) et al. (2013) mapped vegetation communities within the Magnolia Marsh, which is comprised of bare salt panne,



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exposed upland, intertidal mudflat and vegetated salt marsh. These vegetation communities within the Magnolia Marsh are not high-quality nesting habitat and are relatively common throughout the HBW. Furthermore, the majority the northern half of the Magnolia Marsh is primarily bare salt panne and intertidal mudflat, which is not expected to support nesting light-footed clapper rail because there is a lack of dense vegetation that is necessary for cover and nest building.

Although Staff indicated during the PSA workshop that nesting was documented within one year post-restoration within the Brookhurst Marsh, the following should be considered before generally applying this timeframe to the Magnolia Marsh:

- 1) Breeding was not confirmed within the Brookhurst Marsh and there have been no observations within the Magnolia Marsh;
- 2) While the Brookhurst Marsh restoration was completed in 2009, it is important to understand how this marsh's pre-restoration conditions differ from those of the Magnolia Marsh.

The first point above was discussed in detail in the preceding discussion. The pre-restoration conditions of the Brookhurst Marsh and Magnolia Marsh vary dramatically in both form and function. (See Figure 1 attached hereto.) The Brookhurst Marsh predominantly consisted of relictual salt marsh, with some alkali marsh, disturbed habitat, coastal scrub, mule fat scrub, salt panne and southern willow scrub (Merkel & Associates, 2004). Conversely, Merkel & Associated (2004) indicated that the majority of the Magnolia Marsh was comprised of salt panne, with some alkali marsh, disturbed habitat, mule fat scrub and southern willow scrub. Furthermore, the western portion of the Magnolia Marsh was degraded and contained various invasive iceplant species (*Mesembryanthemum* spp.), unauthorized recreational use, and discarded fill and concrete scraps further degrading the area (Merkel & Associates, 2004). These attributes were not documented within the Brookhurst Marsh.

The differences in pre-restoration site conditions for the Magnolia Marsh and Brookhurst Marsh are depicted more clearly in restoration monitoring results (see CSULB et al., 2013). The vegetated marsh habitat has increased within both the Brookhurst and Magnolia Marshes; however, the majority of the salt panne area within the HBW (area not conducive to nesting light-footed clapper rail) is within the Magnolia Marsh (CSULB et al., 2013). Additionally, CSULB et al. (2013) indicated that there was a significant increase in vegetated salt marsh within the Brookhurst Marsh as evidenced by the documentation of seablite (*Suaeda esteroa*), woolly seablite (*Suaeda taxifolia*), turtleweed (*Batis maritime*), dwarf saltwort (*Salicornia bigelovii*), but



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these species are still absent within the Magnolia Marsh. Thus, the Magnolia Marsh's restoration efforts are progressing differently in form and function than conditions at the Brookhurst Marsh.

Cordgrass transplantation experiments are also ongoing within the HBW. In 2011, cordgrass was only present within the Talbert Marsh and transplanting experiments began in spring 2012 (CSULB et al., 2013). According to CSULB et al. (2013), nutrient additions did not seem to significantly influence cordgrass transplantations, rather transplantation success appeared to be dependent on the amount of inundation and location of where plots were located. The vast majority of plantings, especially Pacific cordgrass, within the Upper Magnolia Marsh perished because they were beyond the extent of tidal reach (CSULB et al., 2013), which most likely would require additional construction to modify tidal flow. As previously noted in the *Applicant's Supplemental Data Response, DR31 (Biological Resources)* and the *Huntington Beach Energy Project (12-AFC-02) Applicant's Comments on the Preliminary Staff Assessment (Part A)*, restoring salt marsh structure and function requires significant time to develop to resemble natural and/or desired conditions. Magnolia Marsh has not been successfully re-vegetated with cordgrass and it is speculative to assert that the necessary steps to do so will be attempted and if they are, that they will be successful. Salt marsh restoration can be very challenging and takes many years before desired conditions are *potentially* realized. 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). For Pacific cordgrass (*Spartina foliosa*), 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, 2000; Zedler and Callaway, 1999; Boyer and Zedler, 1998). Therefore, it will likely take many years for the Magnolia Marsh to develop suitable habitat and it is speculative to assert that suitable nesting habitat may establish in the Magnolia Marsh subunit of the HBW because other similar efforts have been unsuccessful.

Lastly, light-footed clapper rails have been found to habituate to human presence (Zembal et al., 1989). The Tijuana Slough National Wildlife Refuge (Tijuana Marsh) is one of the most important breeding areas for this species. As previously noted in the *Applicant's Supplemental Data Response, DR31 (Biological Resources)* general land use and significant noise sources within the vicinity of Tijuana Marsh include the Imperial Beach Naval Air Station, Brown Field Municipal Airport, Tijuana International Airport, Interstate 5, and Customs and Border Patrol



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vehicles where ambient sound levels were documented above 60 dBA (Kimley-Horn and Associates, 2005), Staff's stated sound level of concern.

To conclude and reiterate the Applicant's comments made during the PSA workshop, construction- and demolition-related noise is not expected to significantly impact light-footed clapper rail because this species has not been documented within the adjacent Magnolia Marsh. Although a pair was observed within the Brookhurst Marsh, the vegetation community they were found in differs significantly from the Magnolia Marsh, this observation is located over 3,000 feet away from HBEP and is not expected to be impacted by project-related noise. Furthermore, pre-restoration and current site conditions vary between the Magnolia and Brookhurst Marshes; therefore, the restoration timeframe and outcome of one should not be applied to the other. The Magnolia Marsh was substantially more degraded and currently contains the most salt panne habitat within the HBW. The Magnolia Marsh is not pristine area and has historically been subject to more sound and other disturbances than other subunits within the HBW. This is in part because of its location next to the existing HBGS and the Pacific Coast Highway as well as future plans from the Huntington Beach Wetlands Conservancy (HBWC). The HBWC (2007) intends to open the Magnolia Marsh to public access, including the elevated observation deck over the tidal lagoon, a boat dock for on-the-water tours and an interpretive trail system, which would also be a source of disturbance within the Magnolia Marsh.

Proposed Avoidance Measures for Light-footed Clapper Rail

If light-footed clapper rail are documented nesting within the Magnolia Marsh, the Applicant will coordinate with the United States Fish and Wildlife Service ("USFWS"). To prevent impacting a light-footed clapper rail nest, a 250-foot no disturbance buffer will be implemented and a Biological Monitor will observe the nest to ensure the species is not adversely impacted. Construction and demolition activities will continue on schedule, unless otherwise directed by the Biological Monitor. See proposed revisions to BIO-8, below.

Construction and Demolition-related Noise

During the PSA workshop Staff were directed to additional ambient noise data previously submitted in this proceeding; specifically, *Additional Responses to Intervenor Pyle's Data Requests, Set 1 (PYLE-1 through PYLE-16)*. This data documents higher existing sound levels than cited by Staff in the PSA. Based on the estimated average construction noise levels at 1,500 feet, impacts from construction and demolition noise are not expected to be significant at the Newland Marsh, Brookhurst Marsh and Talbert Marsh. Construction is a dynamic activity during which sound levels can be expected to vary. The precise reduction realized by any noise



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reduction measure will also vary. It is, however, reasonable to expect, on average, a 5 to 15 dBA reduction from a temporary sound barrier that blocks the line of sight between the sound source and the receiver. Applicant is willing to construct temporary noise shielding to further reduce sound levels at the Wildlife Care Center during demolition of HBGS Units 1 and 2 and construction of HBEP Block 2. Applicant anticipates working with Staff to more thoroughly understand their precise concerns and development of other appropriate measures, as necessary. An example of such measures is scheduling or reducing noise from a specific noise generating activities of concern (*i.e.*, pile driving) during specified time periods of threatened noise sensitive species should breeding in the adjacent Magnolia Marsh be documented and the species has been shown to be noise-sensitive. Species that nest in areas with high ambient noise levels do not appear to be as sensitive to noise as other species that avoid nesting in less acoustically pristine areas. For example, Conomy et al. (1998) documented that noise-sensitive species, such as wood duck (*Aix sponsa*), even with prolonged exposure to aircraft-related noise did not become tolerant.

Belding's Savannah Sparrow and Incidental Take

As previously stated in the AFC, *Huntington Beach Energy Center Project (12-AFC-02) Applicant's Responses to Staff's Data Requests, Set 1A (#1-72), Supplemental Data Response, DR31 (Biological Resources)* and the *Huntington Beach Energy Project (12-AFC-02) Applicant's Comments on the Preliminary Staff Assessment (Part A)* the only breeding special-status avian species that has been documented within Magnolia Marsh is Belding's savannah sparrow, which is state listed as endangered. According to Section 2080 of the Fish and Game Code, take is prohibited for any species that is endangered or threatened under the California Endangered Species Act. Furthermore, under Section 86 of the Fish and Game Code, take is defined as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." Unlike the United States Fish and Wildlife Service definition³, the Section 86 "take" definition does not include harassment; therefore, since no nesting (or potential foraging) habitat will be removed, take of Belding's savannah sparrow is not expected. Since take of a state-listed species is not expected to occur with implementation of the HBEP, an incidental take permit will not be needed.

³ Section 3(18) of the Federal Endangered Species Act, defines take as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."



BIO Conditions of Certification:

- Staff agreed to Applicant’s proposed changes to BIO-1, BIO-2, and BIO-7 submitted on November 7, 2013.
- Based on discussions regarding BIO-8 during the Workshop, Applicant proposes the following revisions to Item 3 of **BIO-8**:

3. If active nests are detected during the survey, a no-disturbance buffer zone (protected area surrounding the nest) shall be established around each nest. **Specific buffer distances are provided below for applicable avian groups (see Table 1-1). For special-status species, if an active nest is identified,** the size of each buffer zone shall be determined by the Designated Biologist in consultation with the CPM (in coordination with CDFW and USFWS). Nest locations shall be mapped using GPS technology and submitted, along with a weekly report stating the survey results, to the CPM in the monthly compliance reports.

TABLE 1-1
 Proposed Construction and Demolition Buffers for Active Nests
Huntington Beach Energy Project

| Avian Group | Species Potentially Nesting within the Project Vicinity | Buffer for Construction and Demolition Activities (feet) |
|---------------------|--------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| Bitterns and herons | Black-crowned night heron, great blue heron, great egret, green heron, least bittern, snowy egret | 250 |
| Comorants | Double-crested comorant | 100 |
| Doves | Mourning dove | 25 |
| Geese and ducks | American widgeon, blue-winged teal, cinnamon teal, Canada goose, gadwall, mallard, northern pintail, redhead, ruddy duck | 100 |
| Grebes | Clark’s grebe, eared grebe, horned grebe, pied-billed grebe, western grebe | 100 |
| Hummingbirds | Allen’s hummingbird, Anna’s hummingbird, black-chinned hummingbird | 25 |
| Plovers | Black-bellied plover, killdeer | 50 |



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|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Raptors (Category 1) | American kestrel, barn owl, red-tailed hawk | 50 |
| Raptors (Category 2) | Cooper's hawk, red-shouldered hawk, sharp-shinned hawk | 150 |
| Raptors (Category 3) | Northern harrier, white-tailed kite | 500 |
| Stilts and Avocets | American avocet, black-necked stilt | 150 |
| Terns | Elegant tern, Forester's tern, royal tern | 100 |
| Passerines (cavity and crevice nesters) | House wren, Say's phoebe, western bluebird | 25 |
| Passerines (bridge, culvert, and building nesters) | Black phoebe, cliff swallow, house finch, Say's phoebe | 25 |
| Passerines (ground nesters, open habitats) | horned lark | 100 |
| Passerines (understory and thicket nesters) | American goldfinch, blue-gray gnatcatcher, bushtit, California towhee, common yellowthroat, red-winged blackbird, song sparrow, Swainson's thrush, yellow warbler | 25 |
| Passerines (scrub and tree nesters) | American crow, American goldfinch, American robin, blue-gray gnatcatcher, Bullock's oriole, bushtit, Cassin's kingbird, common raven, hooded oriole, house finch, lesser goldfinch, northern mockingbird | 25 |
| Passerines (tower nesters) | Common raven, house finch | 25 |
| Passerines (marsh nesters) | Common yellowthroat, marsh wren, red-winged blackbird | 25 |
| Species not covered under MBTA | Domestic waterfowl, including domesticated mallards, feral (rock) pigeon, European starling and house sparrow | N/A |

Notes:

MBTA - Migratory Bird Treaty Act

N/A - not applicable

References

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III. VISUAL RESOURCES

Applicant is concerned that delaying publication of the full Visual Resources analysis to the FSA stage of the AFC proceeding will not allow Applicant, intervenors, the public, or interested agencies opportunity to comment prior to evidentiary hearings. Accordingly, Applicant requests that a complete analysis of Visual Resources be included in the PSA Part A Supplement or PSA Part B, but not deferred until the FSA as Staff indicated at the Workshop.

VIS Conditions of Certification:

- Staff agreed to Applicant's proposed changes to VIS-5 submitted on November 7, 2013.
- Staff noted during the Workshop that revisions to VIS-1 proposed by Applicant are acceptable to Staff. However, as discussed during the Workshop, Staff requested that Applicant include additional revisions to VIS-1 related to City of Huntington Beach LORS applicable to construction screening. Below are Applicant's proposed revisions to VIS-1 submitted on November 7, 2013, as well as additional revisions necessary for consistency with City of Huntington Beach LORS regarding construction screening.

VIS-1

Prior to the start of site mobilization, the project owner shall prepare and implement a Construction Screening and Site Restoration Plan describing methods and materials that will be used **during each phase of the project** to screen project construction and parking areas **and views into the project site from areas where the construction activities occurring during that phase have the potential to be visible.** ~~And~~ **The plan will also include provisions to** restore areas where ground disturbance occurred during construction.

To minimize the visual impacts of project construction, **during each phase of the project,** the project owner shall install and maintain construction screening fencing along the perimeters of the project site ~~for all areas that could be visible~~ **where there would be views** from public use areas **toward construction activities occurring during the phase.** ~~including~~ **The areas where screening would take place during phases as deemed necessary by the CPM could include** the wetland along the southeast site boundary, the west side of the project site on Newland Street, and the southwest side of the site along the Huntington Beach Wetlands Conservancy property adjacent to the Pacific Coast Highway



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(PCH). The screening fencing for the power plant site shall be no less than ~~12-~~ 6 feet tall. **Upon completion of the installation of the eight (8) foot tall masonry wall along the southeast boundary by the wetland and along the remaining portions of the project site that include the installation of the eight (8) foot tall masonry wall, the CPM shall allow project owner to remove all construction screening fencing from those portions of the site.**

Screening fencing shall be installed to visually screen the open lots that will be used for parking on Newland Street across from the project site and along the PCH at Beach Boulevard. The screening fencing for the parking lots shall be no less than & **six (6)** feet tall.

All construction period screening fencing installed along the perimeters of the project site and the construction parking lots shall conform to the corner visibility requirements specified in City ordinances.

To effectuate the proposed revisions to VIS-1, Applicant also proposes that the following language be added to the end of the Verification for VIS-1:

Within ten (10) days of receipt of confirmation from the project owner that the eight (8) foot tall masonry wall along the southeast project boundary and other portions of the project site have been completed, the CPM shall notify the project owner that construction screening fencing can be removed from the portion of the site boundary where the masonry wall is erected.

IV. NOISE

Applicant's consultant, Mark Bastasch of CH2M Hill, spoke with CEC Noise Staff on December 4, 2013 regarding Applicant's comments on NOISE-4 and to follow-up regarding noise discussions held during the Workshop. Please see the attached Record of Conversation regarding this discussion. Applicant is amenable to changing the references from 90 percent in NOISE-4 to 85 percent load.



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NOISE Conditions of Certification:

- Staff agreed to Applicant's proposed changes to NOISE-1, NOISE-2, and NOISE-9 submitted on November 7, 2013.
- Applicant requests the following changes to NOISE-7 to be consistent with LORS:

NOISE-7 If a traditional, high-pressure steam blow process is used the project owner shall equip steam blow piping with a temporary silencer that quiets the noise of steam blows to no greater than 89 dBA measured at a distance of 50 feet. The steam blows shall be conducted between ~~7:00~~8:00 a.m. and ~~8:00~~5:00 p.m. If a low-pressure, continuous steam blow process is used, the project owner shall submit to the CPM a description of the process, with expected noise levels and planned hours of steam blow operation.

Verification: At least 15 days prior to the first steam blow, the project owner shall notify all residents or business owners within one mile of the project site boundary. The notification may be in the form of letters, phone calls, fliers, or other effective means as approved by the CPM. The notification shall include a description of the purpose and nature of the steam blow(s), the planned schedule, expected sound levels, and explanation that it is a one-time activity and not part of normal plant operation.

V. CULTURAL RESOURCES

To better assist Staff with determining that there is a low risk for encountering resources during construction activities and therefore that CUL-6 as proposed by Applicant on November 7, 2013 is appropriate, Staff requested that Applicant provide additional information regarding the amount of clay removed and locations of fill at the HBEP site.

Dimensions of the Block 2 foundation slab would require excavation of a measuring approximately 50 feet x 130 feet. This is the primary component of the Project that has potential to impact previously undisturbed soils. That said, excavations in this small area are expected to be up to nine feet deep. Up to six inches of soil at the bottom of these excavations could possibly intrude into undisturbed soils, however, this six inches lies beneath the right to nine feet of overburden of disturbed soil and artificial fill, so that less than five percent of the total volume of soil that will be impacted is theoretically undisturbed. On top of that, the five percent of soil has a very low potential (less than ten percent according to professional opinion of



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the CRS) of containing historical resources. Therefore, to impose automatic monitoring as a mitigation measure within this small area would be to account for a tiny fraction of a percentage of sensitivity of the overall volume of soil to be impacted. Such an imposition to the project is considered both impractical and onerous, and not commensurate with actual sensitivity. Mitigation measures such as preparation and implementation of a WEAP and CRMMP are considered appropriate and effective measures in this circumstance.

VI. LAND USE

As discussed at the Workshop, Applicant will continue to confer and coordinate with City of Huntington Beach Staff regarding the variance.

Staff agreed to Applicant's proposed changes to LAND-1 submitted on November 7, 2013.

VII. TRAFFIC & TRANSPORTATION

CEC Staff confirmed that they are amenable to Applicant's proposed revisions to the TRANS-4 verification and the two additional minor revisions to text in this section as noted in Applicant's PSA comments filed on November 7, 2013.

VIII. SOIL & WATER RESOURCES

During the Workshop, Applicant and Staff engaged in a brief discussion regarding SOIL&WATER-6 and the maximum water use limit imposed therein. Staff indicated that they are amenable to a rolling average or a maximum limit, but that they did not agree with Applicant's proposed 30-year average and asked Applicant to provide additional details regarding a rolling average or maximum limit.

As requested by CEC staff, AES has determined the maximum annual operational water use for HBEP (Block 1 and Block 2) is estimated at 134 acre-feet per year ("AFY") based on 10-year extreme temperature conditions and at full combined output for HBEP Block 1 and Block 2 (assumes 6,665 hours of operations per power block per year). The maximum daily use remains at 190 gpm as noted in Table 2.1-1 of the AFC.

As discussed in Section 2.1.9.1 of the AFC, the water requirement for HBEP Blocks 1 and 2 will be substantially less than the actual historic water consumption of approximately 290 AFY (2004 through 2011) for existing Units 1 – 4 at the HBGS; however, it is important to note that from 2004 through 2011 HBGS Units 1 - 4 were operating at less than 20 percent of HBGS's



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maximum capacity, so the historic water use for HBGS was previously much higher than 290 AFY. The City of Huntington Beach supplies potable water that is used for both process and potable water at the existing HBGS.

Subsequent to the PSA Part A Workshop, CEC Staff also requested information regarding estimated combined water usage for the current operating configuration of HBGS along with HBEP Block 1. The current operating configuration consists of HBGS Units 1 and 2, which are assumed to use approximately 60 percent of the previous combined HBGS water usage, or approximately 174 AFY. Therefore, during the period when HBEP Block 1 is operational and HBGS Units 1 and 2 remain in operation, on a combined basis HBEP Block 1 and HBGS Units 1 and 2 water usage would be approximately 241 AFY. However, notwithstanding AES providing this combined water usage information for HBEP Block 1 and HBGS Units 1 and 2 during an interim period until HBEP Block 2 is COD and HBGS Units 1 and 2 are decommissioned, this combined water usage rate is not a limit that can nor should it be imposed by the CEC as part of the license for HBEP.

SOIL&WATER Conditions of Certification:

Staff agreed to Applicant's proposed changes to SOIL&WATER-3 submitted on November 7, 2013.

IX. WORKER SAFETY & FIRE PROTECTION

As discussed at the Workshop, Applicant will confer with the City of Huntington Beach and the Fire Chief regarding appropriate fire access roads and will provide written feedback to CEC Staff after completion of such discussions.

X. COMPLIANCE AND CLOSURE ACTIVITIES

During the Workshop, Staff and Applicant discussed compliance conditions COM-13, COM-15, and COM-16. Applicant reiterates its November 7, 2013 comments regarding such conditions and appreciates Staff's concurrence with the removal of the term "post-closure" from COM-15. Applicant maintains, however, that additional revisions to COM-15 are necessary and that COM-16 should be deleted in its entirety as there is no justification, regulatory or as mitigation for an identified significant impact, to require such a condition. Moreover, the ad hoc application of COM-16 to this project when similar conditions have not been imposed on past projects and when there is no CEC policy or regulation allowing for the imposition of such requirements is, in effect, an illegal underground regulation.



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As Applicant previously noted, COM-15 describes the procedures for and contents of required closure plans. COM-15 also requires that closure cost estimates be projected assuming closure “at a time in the facility’s projected life span when the mode and scope of facility operation would make permanent closure the most expensive.” There is no basis for assuming closure costs based on a projected worst-case scenario, particularly given that COM-15 also requires that the estimate be updated every five years. Additionally, COM-15 prohibits the use of salvage value to estimate closure costs. Such a requirement is entirely arbitrary and contrary to actual decommissioning practice. Ignoring salvage value in a cost estimate ignores a key component of the true cost of closure and decommissioning, will result in significantly overstating the actual cost of decommissioning, and is not based on any evidence or support.

COM-16 requires financial assurance for closure and post-closure care. As previously noted in Applicant’s November 7, 2013 PSA comments, the CEC does not have jurisdiction over the Project post-closure, so any conditions relating to post-closure activities exceed the authority of the CEC. More importantly, however, there is no support whatsoever for requiring the maintenance of “an irrevocable closure surety bond and standby trust fund” for closure costs. There is no potential for significant environmental impacts that supports imposition of COM-16. Without substantial evidence of a nexus between some impact and the proposed condition, the condition is unlawful. (*Nollan v. California Coastal Commission* (1987) 483 US 825, 837; *Dolan v. City of Tigard* (1994) 512 US 374, 386; *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 880; *see also* Sutter Power Plant Project Final Decision (97-AFC-2) at pp. 293-296.)

Indeed, we are aware of no other gas-fired power plant located on private land in California that is burdened by a similar condition. While in some instances it may be appropriate to require financial assurance for closure of facilities located on public lands where public rights must be protected, such conditions on private land have no justification. The financial obligation (particularly if no salvage value is accounted for) has the potential to significantly impact the economics of the Project. Without specific evidence to support financial assurance for closure, any efforts by the CEC to develop such conditions addressing financial assurance for closure should be done through a regulatory process, with full notice and opportunity for all members of the public and all affected parties to participate. Including such conditions on an ad hoc, case-by-case basis, without any evidence of or relationship to potential environmental impacts, is arbitrary, unlawful, and amounts to underground regulation.



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For the reasons set forth herein and in Applicant's November 7, 2013 PSA comments, Applicant proposes changes to COM-15 as set forth below and requests that COM-16 be stricken in its entirety (~~COM-16~~).

COM Conditions of Certification:

COM-13:

During the Workshop, Applicant and Staff discussed the stringent timing proposed by Staff in COM-13. Applicant has reviewed COM-13 and considered Staff's points regarding incident reporting and proposes a twelve-hour response time as well as other minor revisions to COM-13 as provided below.

COM-13: Incident-Reporting Requirements. As soon as is feasible, but within no more than one twelve (12) hours, the project owner shall notify the CPM or Compliance Office Manager, by telephone and e-mail, of any incident at the power plant or appurtenant facilities that results or could result in any of the following:

- ~~1.~~ reduction in the facility's ability to respond to dispatch (excluding forced outages caused by protective equipment or other typically encountered shutdown events);
- ~~2~~1. health and safety impacts on the surrounding population;
- ~~3~~2. property damage off-site;
- ~~4~~3. response by off-site emergency response agencies;
- ~~5~~4. serious on-site injury;
- ~~6~~5. serious environmental damage; or
- ~~7~~6. emergency reporting to any federal, state, or local agency.

The notice shall describe the circumstances, status, and expected duration of the incident. If warranted, as soon as it is safe and feasible, the project owner shall implement the safe shutdown of any non-critical equipment and removal of any hazardous materials and waste that pose a threat to public health and safety and to environmental quality (also, see specific conditions of certification for the technical areas of Hazardous Materials Management and Waste Management).

Within ~~one (1) week~~ **ten business days** of the incident, the project owner shall submit to the CPM a detailed incident report, which includes, as appropriate, the following information:



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1. a brief description of the incident, including its date, time, and location;
2. a description of the cause of the incident, or likely causes if it is still under investigation;
3. the location of any off-site impacts;
4. description of any resultant impacts;
5. a description of emergency response actions associated with the incident;
6. identification of responding agencies;
7. identification of emergency notifications made to federal, state, and/or local agencies;
8. identification of any hazardous materials released and an estimate of the quantity released;
9. a description of any injuries, fatalities, or property damage that occurred as a result of the incident;
10. fines or violations assessed or being processed by other agencies;
11. name, phone number, and e-mail address of the appropriate facility contact person having knowledge of the event; and
12. corrective actions to prevent a recurrence of the incident.

The project owner shall maintain all incident report records for the life of the project, including closure. After the submittal of the initial report for any incident, the project owner shall submit to the CPM copies of incident reports within ~~twenty four (24) hours~~ **two (2) business days** of a **CPM** request **for such information**.

COM-15:

Based on the foregoing and as discussed during the Workshop, Applicant proposes the following revisions to COM-15.

COM-15: Facility Closure Planning. To ensure that a facility's eventual permanent closure and long-term maintenance do not pose a threat to public health and safety and/or to environmental quality, the project owner shall coordinate with the Energy Commission to plan and prepare for eventual permanent closure.

A. Provisional Closure Plan and Estimate of Permanent Closure Costs

To assure satisfactory long-term site maintenance and adequate closure for "the whole of a project," the project owner shall submit a Provisional Closure Plan and Cost Estimate for CPM review and approval within sixty (60) days after the start



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of commercial operation. The Provisional Closure Plan and Cost Estimate shall consider applicable final closure plan requirements, ~~including interim and long-term, post-closure site maintenance costs and~~ reflect **the use of an independent third party to carry out the permanent closure.**

1. ~~facility closure costs at a time in the facility's projected life span when the mode and scope of facility operation would make permanent closure the most expensive;~~
2. ~~the use of an independent third party to carry out the permanent closure; and no use of salvage value to offset closure costs~~

The Provisional Closure Plan and Cost Estimate shall provide for a phased closure process and include but not be limited to:

1. comprehensive scope of work and itemized budget;
2. closure plan development costs;
3. dismantling and demolition;
4. recycling and site clean-up;
5. mitigation and monitoring direct, indirect, and cumulative impacts;
6. site remediation and/or restoration;
7. interim **and long-term** operation ~~and post-closure~~ monitoring and maintenance, including long-term equipment replacement costs; and
8. contingencies.

The project owner shall include an updated Provisional Closure Plan and Cost Estimate in every fifth-year ACR for CPM review and approval. Each updated Provisional Closure Plan and Cost Estimate shall reflect the most current regulatory standards, best management practices, and applicable LORS.

B. Final Closure Plan and Cost Estimate

At least three (3) years prior to initiating a permanent facility closure, the project owner shall submit for Energy Commission review and approval, a Final Closure Plan and Cost Estimate, which includes any long-term, ~~post-closure~~ site maintenance and monitoring. Final Closure Plan and Cost Estimate contents include, but are not limited to:

1. a statement of specific Final Closure Plan objectives;
2. a statement of qualifications and resumes of the technical experts proposed to conduct the closure activities, with detailed descriptions of previous power plant closure experience;



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3. identification of any facility-related installations not part of the Energy Commission certification, designation of who is responsible for these, and an explanation of what will be done with them after closure;
4. a comprehensive scope of work and itemized budget for permanent plant closure and ~~long-term~~ site maintenance activities, with a description and explanation of methods to be used, broken down by phases, including, but not limited to:
 - a. dismantling and demolition;
 - b. recycling and site clean-up;
 - c. impact mitigation and monitoring;
 - d. site remediation and/or restoration; **and**
 - e. ~~post-closure maintenance; and~~ any contingencies.
5. a revised/updated Final Cost Estimate for all closure activities, by phases, including ~~long-term, post-closure~~ site monitoring and maintenance costs, and **long-term equipment** replacement of ~~long-term post-closure equipment~~;
6. a schedule projecting all phases of closure activities for the power plant site and all appurtenances constructed as part of the Energy Commission certified project;
7. an electronic submittal package of all relevant plans, drawings, risk assessments, and maintenance schedules and/or reports, including an above- and below-ground infrastructure inventory map and registered engineer's or delegate CBO's assessment of demolishing the facility; additionally, for any facility that permanently ceased operation prior to submitting a Final Closure Plan and Cost Estimate and for which only minimal or no maintenance has been done since, a comprehensive condition report focused on identifying potential hazards;
8. all information additionally required by the facility's conditions of certification applicable to plant closure;
9. an equipment disposition plan, including:
 - a. recycling and disposal methods for equipment and materials; and
 - b. identification and justification for any equipment and materials that will remain on-site after closure;
10. a site disposition plan, including but not limited to:
 - a. proposed rehabilitation, restoration, and/or remediation procedures, as required by the conditions of certification and applicable LORS, **and**
 - b. ~~long-term~~ site maintenance activities; ~~and~~;
11. ~~anticipated future land use options after closure~~; identification and assessment of all potential direct, indirect, and cumulative impacts and proposal



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of mitigation measures to reduce significant adverse impacts to a less-than-significant level; potential impacts to be considered shall include, but not be limited to:

- a. traffic
 - b. noise and vibration
 - c. soil erosion
 - d. air quality degradation
 - e. solid waste
 - f. hazardous materials
 - g. waste water discharges
 - h. contaminated soil
12. identification of all current conditions of certification, LORS, federal, state, regional, and local planning efforts applicable to the facility, and proposed strategies for achieving and maintaining compliance during closure;
 13. updated mailing list or listserv of all responsible agencies, potentially interested parties, and property owners within one (1) mile of the facility;
 14. identification of alternatives to plant closure and assessment of the feasibility and environmental impacts of these; and
 15. description of and schedule for security measures and safe shutdown of all non-critical equipment and removal of hazardous materials and waste (see conditions of certification for **Public Health, Waste Management, Hazardous Materials Management, and Worker Safety**).

If **implementation of** an Energy Commission-approved Final Closure Plan and Cost Estimate is not ~~implemented~~ **initiated** within one (1) year of its approval date, it shall be updated and resubmitted to the Commission for supplementary review and approval. If a project owner initiates but then suspends closure activities, and the suspension continues for longer than one (1) year, or subsequently abandons the facility, the ~~Energy Commission may access the required financial assurance funds to complete the closure~~ **Final Closure Plan and Cost Estimate shall be resubmitted to the Commission for supplementary review and approval.** The project owner remains liable for all costs of contingency planning and closure.



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Applicant is fully invested in HBEP and eager to obtain a Final Decision and license to construct and operate this project, which is critical to maintaining electrical system reliability in southern California. Applicant looks forward to prompt publication of Staff's analyses of all outstanding issue areas.

Respectfully submitted,

Melissa A. Foster

MAF:jmw



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Image Date: May 31, 1994



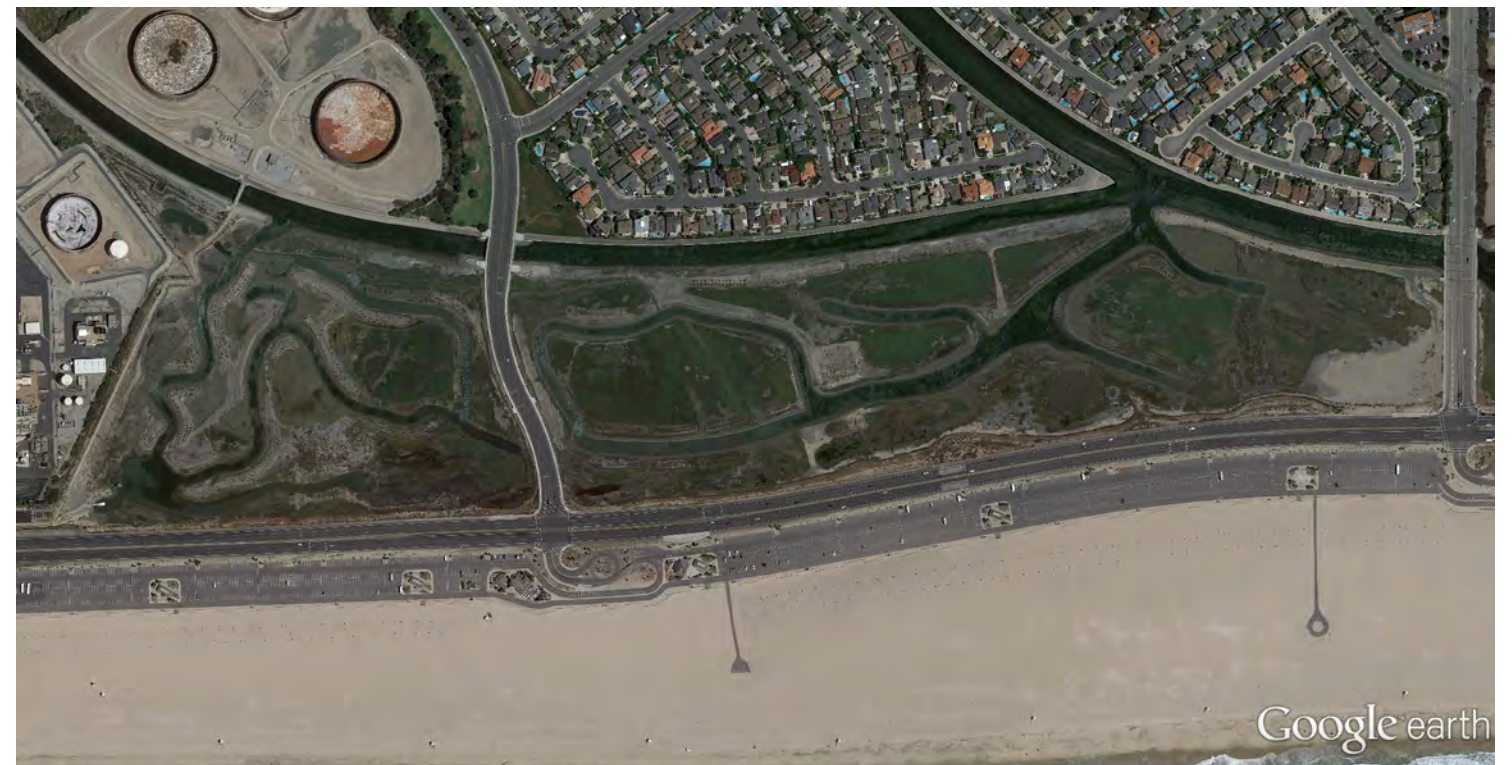
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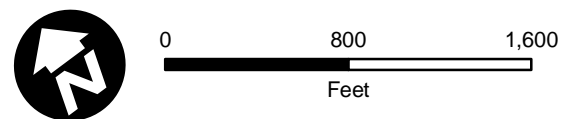


FIGURE 1
HISTORICAL AERIAL IMAGERY OF THE MAGNOLIA AND BROOKHURST MARSHES
Huntington Beach, California

Call To: Mark Bastasch/CH2M HILL

Date: December 4, 2013

Call From: Shahab Khoshmashrab/CEC

Time: 1 p.m.

Message Taken By: Mark Bastasch/CH2M HILL

Subject: AES Huntington Beach: Noise

Project No.: 458993.01.04

Shahab called to clarify the data cited in our PSA comments and pointed out that some of the baseline measurement data they were citing was in Table PYLE DR 6-1. I explained that Table PYLE DR 6-1 was referencing short term 10-minute measurements and that the 4-hour measurement summary staff are looking for are in Table PYLE DR 7-1. The lack of consistency and explanation in the differences between the measurement data included Table PYLE DR 6-1 and Table PYLE DR 7-1 was an unintentional oversight of CH2M HILL's.

Shahab reviewed the data in Table PYLE DR 7-1 and found it consistent with our PSA comments. He noted given this, he understood our PSA comments on COC NOISE-4.

Shahab's remaining questions on our NOISE-4 comments had to do with the 80% versus 90% load for testing. He explained that on some projects with multiple engines they expected/experienced a slightly lower sound level when 80% was achieved but not all equipment was operating. I explained this is likely a reciprocating engine project where there are typically 10 engines each generating about 10-15 MW and to address this concern, we did include in our PSA comments "with all combustion turbines operating". Shahab was going to consider a compromise of 85% and limiting the duration of the compliance testing to the nighttime hours as they are the hours of concern. I explained these adjustments will ease the scheduling challenges for compliance testing.