

DOCKETED

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VIA ELECTRONIC FILING

Mr. John Heiser, Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

**Re: Huntington Beach Energy Project - Petition to Amend (12-AFC-02C)
Response to Wetlands Conservancy**

Dear Mr. Heiser:

This letter is submitted on behalf of Project Owner, AES Southland Development, LLC (“AES” or “Project Owner”), to address the comments on the Petition to Amend (“PTA”) for the Huntington Beach Energy Project (“Amended HBEP”) submitted by the Huntington Beach Wetlands Conservancy (“Conservancy”) dated April 18, 2016 (TN# 211134).¹ In particular, the Conservancy misstates the Amended HBEP’s proximity to the wetlands and potential to impact the wetlands, and misconstrues the effect of the existing Coastal Development Permit (“CDP”) issued by the City of Huntington Beach for the Plains All American Tank Farm site (“Plains Site”) on use of that site for construction parking and laydown.

Contrary to the comments from the Conservancy, the Amended HBEP, which includes a change in the electrical generation equipment, along with a modified layout, will not result in an increase in the level of noise or vibration to the wetlands as compared to licensed HBEP. (PTA, Sec 5.7 Noise and Vibration.) Amended HBEP will continue to comply with all noise and vibration conditions of certification in the Final Decision. (*Ibid.*) Moreover, all equipment will be located more than 100 feet from the adjacent Environmental Sensitive Habitat Area. (PTA, Sec. 5.2, p. 5.2-5.)

¹ As an initial matter, the Conservancy takes issue with the images depicting the wetlands that are included in the Petition to Amend. Project Owner cannot use images without authorization. The images included in the PTA have been authorized for use for the PTA. The PTA clearly describes the wetlands and their location, and the PTA does not mislead the reader in regards to the location or condition of the wetlands. (PTA, p. 5.2-2 to 5.2-3 (TN# 206087).)



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The Conservancy also comments on the potential impacts to animal and bird inhabitants at the Wildlife Care Center. This issue was addressed and considered by the CEC Siting Committee during the original licensing of the HBEP, and Amended HBEP does not alter the basis of the conclusions in the Committee's Final Decision that there are no significant impacts to the Wildlife Care Center.² (Final Decision, pp. 5.1-25 to 5.1-26 (TN# 203309); PTA, pp. 5.2-4 to 5.2-5; see also, PTA, Fig. 5.2-1a, 5.2-2a, (TN# 206087).)

The Conservancy also raises concerns about the use of the Plains Site for construction parking and laydown. As an initial matter, AES acknowledges that use of the footbridge connecting the Plains Site to the Amended HBEP site would require appropriate easements from the landowner. (See, PTA, Revised Air Quality and Public Health Assessment, Att. 1, p. 2 (TN# 210969).) The use of the footbridge, however, is not necessary for Amended HBEP to use the Plains Site for construction parking and laydown. Construction laydown activities at the Plains Site, including loading/unloading and stacking of construction supplies, preparation and cutting of materials for transport to the HBEP site, temporary warehousing of material in mobile trailers would all be located more than 150 feet from wetlands, across the Orange County Flood Control channel. The PTA acknowledges that access from the Plains Site to the Amended HBEP construction site includes using Pacific Coast Highway. (PTA, p. 5.12-1 (TN# 206087).) While use of the Plains Site for construction parking does not result in any significant environmental impacts, AES had considered the option of using the footbridge to optimize construction activity and schedules and further lessen local traffic in the area, thereby providing added benefit for the local community. Should the footbridge be unavailable, construction workers will travel on shuttles from the Plains Site to the construction site via Pacific Coast Highway on the route identified in the PTA. (PTA, p. 2-14 to 2-15 (TN# 206087); Project Owner's Response to City of Huntington Beach Comments on PTA, Att. A (TN# 210262).) The PTA and subsequent submittals by Project Owner fully evaluate the potential impacts of using the Plains Site for construction parking and laydown and correctly conclude that use of the Plains site will not result in significant impacts. (See, PTA, Section 1.4 p. 1-2 to 1-3 (TN# 206087); Project Owner's Response to City of Huntington Beach Comments on PTA, Att. A (TN# 210262).)

Finally, the Conservancy misstates the effect of the existing CDP on the Amended HBEP. The existing CDP, issued by the City of Huntington Beach to the current land owner, authorizes certain demolition activities on the Plains Site. The scope and extent of these demolition

² As specifically established and acknowledged during the CEC licensing of HBEP, it is notable that the Wildlife Care Center was constructed well after the existing Huntington Beach Generating Station was in operation, and is located between the existing power plant and Pacific Coast Highway. If noise concerns were an issue, a more appropriate site should have been acquired for the Wildlife Care Center as opposed to where it is currently located.



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activities is defined by the CDP and are under the jurisdiction of the City. The activities subject to the CDP will occur with or without Amended HBEP. The CDP does not cover the use of the Plains Site for construction parking and laydown and, accordingly, that use is addressed as part of the PTA. Project Owner's statements regarding the CDP are intended to make clear Project Owner's acknowledgement that activities related to Amended HBEP on the Plains Site must be evaluated and authorized by the Commission through the PTA process. (PTA, p. 1-2 (TN# 206087).) The Conservancy incorrectly asserts that the decision about which agency has responsibility for activities at the Plains Site "should be based on which agency can provide the best protection for the wetlands and the public." This position is contrary to law and ignores the respective jurisdictional authority of the City and the Commission. As noted, the existing CDP was issued by the City and remains under the jurisdiction and authority of the City. Any activities on the Plains Site that are proposed as part of Amended HBEP are under the exclusive jurisdiction and authority of the Commission. (Pub. Resources Code, § 25500.) Through the Commission's siting process, the environmental impacts of the use of the Plains Site for Amended HBEP will be assessed and appropriate conditions will be included. (See, e.g., Pub. Resources Code, § 25519; Tit. 20 Cal. Code Regs., § 1769.)

Any future proposals for development of the Plains Site by the owner of the Plains Site would be accomplished under the sole jurisdiction of the City. Such future proposals are separate and distinct from Amended HBEP, subject to City review and approval, and are not properly included in the evaluation of Amended HBEP. (*Citizens for East Shore Parks v. Cal. State Lands Commission*, 202 Cal.App.4th 549, 565 (2011); *Save Round Valley Alliance v. County of Inyo*, 157 Cal.App. 4th 1437 (2007).) Entitlements that may be required for any future development of the Plains Site are also not part of the Amended HBEP.

The Conservancy also opines that several specific environmental impacts may result from Amended HBEP. Each of these issues is addressed in turn, below:

1. Condition of Certification BIO-8: the PTA does not propose to modify BIO-8. (PTA, p. 5.2-5 (TN# 206087).)
2. Dust and debris from Plains Site: the PTA fully evaluates the potential impacts on biological resources from the Amended HBEP's proposal to use the Plains Site for construction laydown and parking. (See, PTA, pp. 5.2-1 to 5.2-5, App. 5.2A (Survey Report and Site Photographs for Plains All American Tank Farm; "Huntington Beach Energy Project Biological Reconnaissance Survey for Plains All American Tank Farm" (TN# 206087).)



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3. Rainwater runoff: the construction of Amended HBEP, including use of the Plains Site for construction parking and laydown, will be subject to State Water Resources Control Board Order 2009-0009-DWQ, General Permit for Storm Water Discharges Associated with Construction Activity, and required to prepare a Storm Water Pollution and Prevention Plan to ensure no impacts from storm water runoff. (PTA, p. 5.11-2 (TN# 206087); Final Decision, pp. 5.1-24 to 5.1-25, 5.2-7 to 5.2-8 (TN# 203309.)
4. Entrance to the Plains Site: the PTA proposes to relocate the entrance to the Plains Site to provide better vehicle safety and access, and minimize environmental impacts associated with creating safe access to the Plains Site. (Project Owner's Response to City of Huntington Beach Comments on PTA, Att. A (TN# 210262).) There will be no significant impacts to traffic as a result of Amended HBEP using the new proposed entrance to the Plains Site. (*Ibid.*) Amended HBEP's use of the Plains Site and the on-going Ascon Landfill project will not result in significant cumulative impacts on traffic. (*Ibid.*)

More specifically, construction worker parking and construction laydown areas will be located at the existing Plains Site located on the west side of Magnolia Street. To replace the existing narrow single track lane entrance to the Plains Site, a new private entrance to the Plains Site will be constructed at the existing "T" intersection at Magnolia Street and Banning Avenue. This intersection is currently a three-way signalized intersection and based on the City's *Draft Existing Circulation Conditions Technical Report Traffic Study*, this intersection is currently operating at level of service (LOS) A during both the AM and PM peak hours. As part of Amended HBEP, this intersection will be reconfigured as a four-way signalized intersection to accommodate ingress and egress from the Plains Site and will meet the requirements of the City of Huntington Beach.

Peak hour intersection turning movement counts were obtained from the City of Huntington Beach's *Draft Existing Circulation Conditions Technical Report Traffic Study* and the intersection LOS was calculated for the AM and PM peak hours, with and without the project-added traffic. The intersection is projected to operate at LOS A during both peak hours with the proposed intersection improvements. There would be no project-related impacts.

Project Owner has nonetheless proposed Conditions of Certification to further reduce any potential impacts on traffic related to use of the Plains Site. (Project Owner's Response to City of Huntington Beach Comments on PTA, Att. A (TN# 210262).) There is, therefore, no legal basis to evaluate or require a change to the proposed entrance location.



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(CEQA Guidelines, §§ 15126.4 (mitigation measures only required to reduce significant impacts), 15126.6 (alternatives must reduce or avoid significant impacts).)

5. Future development at Plains Site: As indicated above, the plans of the Plains Site owner for future development at the Plains Site are not part of Amended HBEP, not under the Commission's jurisdiction but rather subject to City jurisdiction, and appropriately not considered by the Commission. The Commission's review of the Plains Site is limited to its proposed use to support Amended HBEP. (See, CEQA Guidelines, § 15378(c); *Citizens for East Shore Parks v. Cal. State Lands Commission*, 202 Cal.App.4th 549, 565 (2011).) The proposed use of the Plains Site for Amended HBEP does not require a zone change. (City of Huntington Beach Zoning Code, § 204.08(L) (Public and Semipublic Use Classifications include "Maintenance and Service Facilities. Facilities providing maintenance and repair services for vehicles and equipment, and materials storage areas. This classification includes corporation yards, equipment service centers, and similar facilities."); § 214.06 (regarding Maintenance and Service Facilities, "City-owned facilities are permitted; all other facilities require a conditional use permit from the Zoning Administrator"; regarding Commercial Parking Facilities in Public/Semipublic zone, "Public parking permitted, but commercial parking facilities on City-owned land require a conditional use permit from the Zoning Administrator").)
6. Visual enhancements: Amended HBEP does not result in significant visual impacts. Nonetheless, AES has proposed a visual enhancement program as a community benefit. Regarding the Conservancy's concerns, no significant impacts to wildlife were identified in the PTA regarding raptor perching, noise or glare. The existing environment already provides various perching opportunities for raptor species. For example, the existing facilities at Huntington Beach Generating Station, Plains Site, Wetlands and Wildlife Care Center, residential subdivision, utility poles, traffic signals and street lights, and perimeter fencing and landscaping all provide perching opportunities for raptors within the vicinity of the Magnolia and Upper Magnolia Marshes. According to Ingold (2010)³, red-tailed hawks (*Buteo jamaicensis*) were observed soaring or perched on large trees while hunting and American kestrels (*Falco sparverius*) were found in small trees and

³ Ingold, D.J. 2010. Abundance and habitat use of winter raptors on a reclaimed surface mine in southeastern Ohio. *Ohio Journal of Science*. Volume 10, Issue 4.



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utility wires. According to Marion and Ryder (1974)⁴, buteos (hawks) often selected high, conspicuous perches, such as utility poles.

The visual enhancement program the Project Owner is developing as requested by and in conjunction with the City of Huntington Beach is not expected to cause a significant impact. As previously noted, significant impacts from noise and glare are not anticipated and the Biological Resources Conditions of Certification included in the licensed HBEP are applicable to the PTA. The visual enhancement program is designed to withstand the elements of the coastal environment, and to that end, is supported by 24-inch plastic spheres that are mounted on a high-tension cable net structure with cross supports -- meaning the spheres are designed not to move, even in high-wind conditions. Therefore, the visual enhancement will not create noise during wind events. As for the Conservancy's concerns regarding solar reflected glare on the plastic spheres, color choice and a non-glossy finish for the spheres will eliminate any potential for glare, and therefore, will not result in any impacts. No additional impacts to biological resources have been identified.

As described in detail above, the impacts associated with using the Plains Site for construction parking and laydown have been fully evaluated in the PTA and subsequent submittals. Amended HBEP's use of the Plains Site will not result in new significant impacts to the wetlands or otherwise.

Very truly yours,

Kristen T. Castaños

⁴ Marion, W.R. and R.A. Ryder. 1974. Perch-site preferences of four diurnal raptors in northeastern Colorado. *Short Communications*. Available online at: <https://sora.unm.edu/sites/default/files/journals/condor/v077n03/p0350-p0352.pdf>