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Via E-File

California Energy Commission
Dockets Unit, MS-4
1516 Ninth Street
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Re: Los Cerritos Wetlands Land Trust Comments on Preliminary Staff
Assessment of Alamitos Energy Center,
Docket No. 13-AFC-01

Dear Commissioners:

Thank you for the opportunity to comment on the Preliminary Staff Assessment (PSA) prepared for the Alamitos Energy Center (AEC) and for your careful review of our concerns. We submit these comments on behalf of the Los Cerritos Wetlands Land Trust (LCWLT). LCWLT has spent more than a decade educating and advocating for the protection and restoration of southeast Long Beach's Los Cerritos Wetlands. Accordingly, LCWLT has been extremely involved with state and local administrative processes concerning projects proposed in and near the wetlands, including the AEC.

Given the unusually high procedural standards for judicial review contained in the California Energy Commission's (CEC) enabling act, and the unusual circumstances wherein the California Public Utilities Commission (CPUC) argues it need not await completion of California Environmental Quality Act (CEQA)-equivalent environmental review before approving contracts, the CEC has a heightened duty to ensure the Final Staff Assessment prepared for the AEC is accurate, adequate and fully compliant with CEQA.

However, the PSA:

- Mischaracterizes the CEQA standard of review by conflating it with the standard of review for CPUC contract approvals;
- Misrepresents the CPUC decision and inappropriately dismisses alternatives that could eliminate and/or reduce adverse environmental impacts;
- Fails to adequately document the potential adverse impacts caused by demolition of the existing Alamitos Generating Station structures; and

- Fails to adequately consider the environmental impacts of Alamitos Generating Station demolition or operation in the context of overlapping construction and/or operation of the proposed AEC.

The PSA is required to adequately review a reasonable range of alternatives to the proposed AEC, to identify an environmentally superior alternative, and to adequately analyze the identified environmentally superior alternative. The PSA fails to comply with these CEQA mandates and consequently undermines the adequacy of the analysis of several potential areas of environmental impact.

LCWLT offers comments on individual areas of impact with the caveat that the Alternatives section requires significant revision in the Final Staff Assessment (FSA). Further, the foreseeable adverse impacts from demolition of the existing Alamitos Generating Station power plant structures must be documented and analyzed in the FSA in the context of the AEC's cumulative impacts. The absence of a certain timeline for demolition does not justify the PSA's incomplete analysis of reasonably foreseeable direct, indirect, and cumulative impacts. If the project Applicant is unwilling or unable to provide the estimated timeline for demolition of the existing structures, the environmental analysis must assume overlapping construction, operation and demolition.

While it is unclear what government actions are left after the FSA is approved by the CEC -- decisions that should not occur until *after* CEQA compliance – the CPUC has opined that because the energy contracts are not final, the approval by the CPUC should not stand in the way of CEC actions that may result in cancellation of the contracts. Because the CEC's enabling act trumps other State and local regulation of the AEC, the CEC alone is responsible both for performing thorough CEQA review and for providing final government actions licensing the project.

Given the importance of the CEC's decisions regarding the Alamitos Energy Center to the local environment and Los Cerritos Wetlands, the surrounding community's health and quality of life, and the future of energy development in California and worldwide, LCWLT insists that the FSA provide a more thorough, independent and holistic review of the project.

I. THE ALTERNATIVES ANALYSIS IS INSUFFICIENT.

CEQA requires an analysis of alternatives designed to avoid or substantially lessen a project's potentially significant environmental impacts. (Pub. Resources Code § 21002.) The California Supreme Court has described the discussion of mitigation and alternatives as “the core of the EIR.” (*Citizens v. Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) The range of alternatives should be designed to foster informed decision-making and public participation. (CEQA Guidelines § 15126.2(a) –

(f.) One of the functions of CEQA review “is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.” (*Laurel Heights Improvement Ass’n. v. Regents of the University of California* (1988) 47 Cal. 3d 376, 400.) Further, “Under CEQA, the public agency bears the burden of affirmatively demonstrating that...the agency’s approval of the proposed project followed meaningful consideration of alternatives and mitigation measures.” (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134.)

The PSA’s alternatives analysis lacks the required reasonable range of alternatives. This error has resulted in the PSA analyzing an alternative that is not the environmentally superior alternative without an adequate discussion for that choice.

The alternatives analysis, in large part, relies on the California Public Utilities Commission (CPUC) approval of the contracts offered to Southern California Edison (SCE) to meet the Long Term Procurement Plan (LTPP). This reliance fails because:

- The standard of review for the CPUC is a “reasonableness” test of SCE’s effort to meet the reliability goals in the LTPP. That approval cannot be construed as an “effective” finding that alternatives are not feasible;
- Compounding that error, the PSA reviews a different project than that approved by the CPUC. The CEC is reviewing a project proposal for gas-fired generation of 1040 megawatts, but the CPUC only approved 640 megawatts of gas-fired generation (GFG) at AEC, with an additional 100MW battery storage (total 740MW), and;
- Since approval by the CPUC, AES has proposed a 300MW battery storage project (200MW more than approved by the CPUC), and the analysis has not considered this as an alternative to 640MW of gas-fired generation.

Further, it is not clear from the PSA whether preferred resources cannot provide reliability and eliminate the need for gas-fired generation altogether – a “No Project” alternative for the gas-fired generation under consideration at AEC. Finally, given that storage projects and other preferred resources have not been found “not feasible”, it is unclear why these alternatives cannot be located on the AES-Alamitos site or elsewhere further from rare coastal wetlands and the wildlife dependent on that habitat – an “Alternative Sites” analysis.

Additionally, it is clear that staff relied on the Applicant’s project objectives, and not those of the lead agency. The staff process for the alternatives analysis “identif[ied] the objectives of the project, *as defined by the applicant.*” (4.2-3, emphasis added.) The lead agency must exercise its independent judgment on project objectives, and must not uncritically accept the applicant’s objectives. (Pub. Resources Code § 21082.1 (c)(1);

Uphold Our Heritage v. Town of Woodside (2007) 147 Cal.App.4th 587; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1352; *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1460.)

A. The PSA Fails to Analyze a Reasonable Range of Alternatives.

An EIR or its equivalent is required to analyze a range of alternatives or mitigation measures that “would avoid or substantially lessen any of the significant effects of the project” in order to “ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.” (Pub. Resources Codes §§ 21002, 21002.1; Guidelines §15126.6(a).) What constitutes a reasonable range of alternatives is determined by the project objectives. (CEQA Guidelines § 15126.6(a).) Reasonable alternatives are feasible and must “attain most of the basic objectives” of the project. (Pub. Resources Code § 21061.1; Guidelines § 15126.6(a).)

Moreover, an EIR or its equivalent may not exclude a discussion of environmentally superior alternatives without providing evidence and analysis showing why an environmentally superior alternative is not available. (*Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal. App. 4th 1277, 1305.) Yet this is exactly what the PSA does here. The PSA improperly sets up straw man alternatives limited to an off-site project and one consisting entirely of preferred resources – and then inadequately supports dismissing the alternative consisting of entirely preferred resources for failing to meet the purpose of the project proposal.

The PSA fails to provide alternatives consisting of a smaller gas plant configuration. This omission is especially glaring given that the California Public Utilities Commission only approved a 640 MW project at Alamitos to meet LA Basin reliability needs. (See Attachment 1: D.15-11-041, hereafter cited as “CPUC.”) An alternative that contemplates the 640 MW combined cycle plant *approved by the CPUC*, without the 400 MW of additional gas generation, must be considered in the PSA.

Contrary to what is discussed in the PSA, there is no legitimate basis to believe procurement higher than what the CPUC has approved is needed to meet Southern California reliability needs. Not only did the CPUC only approve a 640 MW facility (as opposed to a 1040 MW facility), but even the need for this much additional natural gas generation is likely overstated. The CPUC need findings in the 2012 LTPP, discussed in page 4.1-172 of the PSA, were derived prior to the passage of SB 350, which now requires California to achieve a 50 percent renewables portfolio standard and a doubling of energy efficiency. In addition, even without accounting for SB 350, the CEC’s demand forecast for the LA Basin has declined considerably. For example, under the CEC’s 2014-2024 Demand Forecast, the 1-in-10 year mid demand, low AAEE forecast

for 2024 is 22,597 MW.¹ However, under the 2016-2026 demand forecast, projected demand for the LA Basin for 2024 dropped to 18,888 MW.²

Moreover, given the decline in local area need and the increase in efficiency and renewable resulting from SB 350, the PSA should analyze the feasibility of an alternative with fewer megawatts of gas-fired generation (GFG) than approved by the CPUC. For example, AES is planning 200 MW of *additional* energy storage on site beyond the 100 MW of energy storage approved by the CPUC. This additional storage will correspond with a reduced need for gas resources. Indeed, because these added storage resources can charge during periods of high renewable generation, they will be considerably more effective at integrating renewable into the grid than development of even more gas resources.

B. The PSA’s Alternatives Analysis is Improperly Constrained by Reliance on the Prior CPUC Decision.

The PSA states that preferred resources cannot fully substitute for generating capacity, but “the PSA has not perfunctorily eliminated preferred resources from the alternatives analysis.” (4.2-4.) However, the PSA later states that the CPUC effectively found that preferred resources beyond those procured by SCE “cannot feasibly and reliably be counted on to meet local reliability needs” – a somewhat perfunctory dismissal. (4.2-10.)

Those statements are contradictory. But more importantly, the PSA has wrongly conflated the CPUC standard of review – “reasonableness” of the SCE’s efforts – with the CEQA standard of review for “feasibility” of proposed alternatives.

The “reasonable” standard is stated in the CPUC decision. The CPUC clarified:

We review today’s application and request therein under a reasonableness standard. The question is whether SCE conducted its RFO in a reasonable manner, consistent with the law and Commission decisions, and whether the results are reasonable.

Further, the decision found:

¹ http://www.energy.ca.gov/2013_energypolicy/documents/demand-forecast_CMF/LSE_and_Balancing_Authority_Forecasts/. For purposes of determining local capacity needs, a mid-case, low AAEE scenario is used. 1-in-10 peak demand forecasts are in Form 1.5d.

² http://www.energy.ca.gov/2015_energypolicy/documents/2016-01-27_load_serving_entity_and_Balancing_authority.php.

[We] find that while SCE's choices were not perfect, and parties may point to certain areas where better choices could have been made, the choices made by SCE were reasonable based on the directive of the Commission and the market circumstances at the time. (CPUC at 5.)

In short, the CPUC decision was based on the SCE making a reasonable effort in requesting and choosing alternatives for meeting a previous directive by the Commission, despite changes in circumstances that were foundational to that directive. That is clearly not a conclusion that alternatives to the project are "effectively infeasible." To the contrary, the CPUC was arguably signaling preferred resources *are* feasible but were not required under their standard of review.

The mandated CEQA review of feasible alternatives and the CPUC review of a reasonable effort to choose preferred alternatives could have been harmonized by certifying an EIR for the AEC before the CPUC's approval of the contracts – but that did not occur. Thus, the actions of the CPUC and their acceptance by the CEC in the PSA improperly foreclose feasible alternatives to the proposed AEC configuration prior to the completion of environmental review. (CEQA Guidelines § 15004(b)(2); *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139.)

Further, the "reasonableness" standard of review is repeatedly referenced in the decision and is relevant to the analyses in the PSA:

- Regarding the 100MW cap on energy storage (CPUC 18 to 23), the CPUC concluded: "The arguments on both sides of this issue (for more ES in the contracts) are strong ones. We find, however, that SCE acted reasonably at the time in adopting 100MW cap...." (CPUC 23, emphasis added.);
- Regarding the procurement of GFG capacity (CPUC 26 to 28), the CPUC concluded: "Regardless of whether circumstances have changed since the issuance of D.13-02-015 and D.14-03-004, and even if the political landscape is looking toward 50% renewables, we find the SCE acted reasonably in relying on 33% scenario and contracting for the amount of GFG." (CPUC at 29.)

These conclusions highlight that the CPUC did not find that preferred resources are infeasible – as asserted in the PSA. The conclusions also highlight that the CPUC findings were based on circumstances creating the supposed demand for gas-fired generation that had changed by the time of the decision. Further, the 50 percent renewables standard is now the rule. Circumstances as they exist when preparing the PSA are the baseline for reviewing the feasibility of alternatives to the proposed project. (CEQA Guidelines § 15125.)

Finally, a thorough review of the CPUC decision warns against misinterpreting its findings as CEQA equivalent. In fact, this exact question was addressed in the CPUC decision: “LCWLT, however, argues that ‘[if] the Commission approves the contracts prior to certification of an EIR, it will effectively preclude CEC review of alternatives....’” (CPUC at 29.) The decision then rebuts that CEQA argument, repeatedly concluding:

- “Approval of power purchase agreements should not unduly influence the outcome of any CEQA review or other environmental review by the CEC.” (CPUC at 36);
- “Interference with the California Energy Commission review process or other environmental review by, *for example*, unreasonably impressing upon the CEC that contract damages may result if a project is not approved under CEQA, is not permitted. The CEC’s CEQA review or other environmental review should be conducted independent of the fact that potential damages and risks may result because the Commission has issued its approval of the underlying power purchase contract.” (CPUC at 39, emphasis added.)

The PSA must be amended to include an alternatives analysis independent of the CPUC decision. Such an alternatives analysis would not be improperly constrained by decisions made prior to preparation of the PSA. The revised PSA must clarify that the CEC’s duty to analyze preferred alternatives is not constrained by the circumstances at the time SCE issued the Requests for Offers – as the CPUC argued is a “reasonable” approach for approving the contracts offered. (See e.g., CPUC at 28.)

C. The PSA Used the Wrong Baseline “Need” for the Project, Resulting in an Unnecessarily Narrow Range of Alternatives.

The PSA reviews an AEC described as a combination of gas-fired generation (GFG) to produce 1040 megawatts (MW). The PSA alternatives analysis concludes that certification of the 1040MW of GFG is adequate to: “...identify and evaluate alternatives that may reduce or avoid environmental impacts.” (4.2-3.) The alternatives analysis relies on the CPUC decision for the proposition that 1040MW of generation is needed to meet the objectives of the AEC project. This is problematic, as the CPUC has approved only 1382MW of GFG *in the region* through the development of AES projects in Huntington Beach and Alamitos, as well as the “Stanton” project. (CPUC at 5.) While the PSA relies on the CPUC decision for support that the 1040MW under review is necessary, it ironically cites the 640MW approved in the CPUC decision as support for that conclusion. (4.2-13)

The PSA must be modified to reflect that the need for GFG capacity *in the region* did not identify a need for the 1040MW analyzed in the PSA *at Alamitos*, and that a

smaller GFG capacity would better meet the goal to “reduce or avoid environmental impacts.” In relying on a purported need for 1040 MW of gas-fired generation, the PSA uses unduly narrow project objectives to constrain the alternatives analysis. Use of unduly narrow project objectives violates CEQA (*In Re Bay Delta Coordinated Environmental Impact Report Proceedings* (2008) 43 Cal. 4th 1143, 1166 [“a lead agency may not give a project’s purpose an artificially narrow definition”].)

The CPUC decision found that the approved contracts, including approval for the AEC at 640MW, “reasonably” meets the total capacity needed for reliability in the region. However, the CPUC also concluded that SCE has authority to develop additional capacity in the region, but the additional capacity should be from Preferred Resources. (CPUC at 9, 17 and 37.) As discussed below, preferred resources are reasonably foreseeable at Alamitos. The foreseeable establishment of preferred resources at Alamitos undermines the PSA reliance on 1040MW of GFG at the AEC. The 640 MW GFG approved by the CPUC would also reduce the adverse environmental impacts as compared to the 1040 MW GFG proposed for the AEC in the PSA.

The PSA must be modified to analyze the benefits of an alternative project limited to 640MW of GFG generation. Further, the PSA should include an analysis of foreseeable preferred resources that would further reduce the need for 640MW of GFG, and consequently reduce the associated adverse environmental impacts.

D. Evidence Suggests Preferred Resources are Reasonably Foreseeable at Alamitos.

As noted above, the PSA wrongly characterized the CPUC decision as “effectively” concluding preferred alternatives are not feasible. In fact the very CPUC approval cited by the PSA included several energy storage projects (including a 100MW battery storage project on the Alamitos site). Also as noted above, the CPUC determined that any additional capacity needed in the future should be met with development of preferred resources. (CPUC at 9 and fn 21.)

Importantly, AES is currently in the midst of obtaining approval for a 300MW battery storage project on the Alamitos site – 200MW more than what was approved by the CPUC. (See Attachment 2: AES Battery Project Presentation.) Arguably, that marginal capacity of 200MW could offset the 640MW of GFG approved by the CPUC. Given that establishment of 300MW of battery storage at the Alamitos site is reasonably foreseeable and feasible, yet not considered in the CPUC decision, the PSA alternatives analysis should consider the proposed battery storage project to reduce the need for 640MW of GFG, and better meet the goal to “reduce or avoid environmental impacts.” That AES is actively seeking approval of battery storage onsite at Alamitos demonstrates that battery storage is an objectively feasible alternative to portions of the AEC’s

proposed GFG. (*Western States Petroleum Association v. Southern California Air Quality Management District* (2006) 136 Cal.App.4th 1012, 1020)

The Alternatives Analysis must be revised to include a reasonable range of alternatives and the identification of a preferred alternative. Further, because this is a fundamental flaw in the assumptions used in the several subject categories in the PSA, the environmental review in those subject areas must be re-analyzed and re-circulated for public comment. (CEQA Guidelines § 15088.5.)

E. Alternatives Proposed at the Public Workshop Must be Analyzed in the PSA.

At the August 9, 2016 public workshop on the PSA, AES Director of Sustainability and Regulatory Compliance, Stephen O’Kane, raised the possibility of extending the OTC compliance deadline for the Alamitos Generating Station as an alternative to the AEC project. CEQA requires that all alternatives under consideration by the lead agency be discussed in the environmental review document. If this is an alternative under consideration by the applicant or the CEC, its potential environmental impacts must be disclosed, analyzed, and mitigated in a revised and recirculated PSA.

II. ADDITIONAL ANALYSIS AND MITIGATION OF POTENTIAL IMPACTS TO BIOLOGICAL RESOURCES IS REQUIRED.

LCWLT and its members are concerned about the AEC project’s potential impacts on the Los Cerritos Wetlands and adjacent habitat. The project would be sited in an area surrounded by the Los Cerritos Wetlands and flanked by forebays that connect to the San Gabriel River, and, eventually, the Pacific Ocean. The wetlands are important foraging areas and nurseries for both marine and terrestrial species. LCWLT engaged Tidal Influence to review the PSA’s biological resources analysis. The detailed comments of Principal Restoration Ecologist, Eric Zahn are contained in Attachment 3 to these comments. Mr. Zahn recommends that the PSA be revised to:

- Analyze impacts on the Southern California legless lizard, a California Department of Fish and Wildlife-designated species of special concern with potential to occur at the AEC site (Attachment 3, pp. 1-2);
- Analyze impacts on the Pacific seahorse, a vulnerable species that has been recently identified in Alamitos Bay and that may occur in the forebays and San Gabriel River adjacent to the AEC site (Attachment 3, p. 2);
- Analyze impacts on the burrowing owl, which has moderate potential to utilize the former tank farm at the AEC site and which likely flies over the project site while travelling through the area. The project should also incorporate a mitigation

measure that requires conducting a burrowing owl survey prior to the commencement of construction activities; and

- Consideration of the short-eared owl, northern harrier and loggerhead shrike as having moderate potential to occupy the project site, and analysis of the project's potentially significant impacts on the foraging of these species. Puddling on site could attract prey for these species (Attachment 3, p. 2).

The PSA's exclusion of these species from its analysis of the project's potential impacts on biological resources represents a failure to disclose information about the project and precludes informed decision-making, in violation of CEQA. Mitigation that is developed to avoid impacts to these important species must be concrete and enforceable. (Pub. Res. Code § 21081.6(b); *Lincoln Place Tenants Ass'n v. City of Los Angeles* (2007) 155 Cal. App. 4th 425, 445).

Mr. Zahn's review also recommends the formulation of stronger, more concrete mitigation measures designed to prevent potential impacts to marine mammal, sea turtle, and Southern tarplant populations. Protections included in the PSA are not currently adequate to ensure the detection or maintenance of populations that are present. Relevant recommendations include:

- Analysis of the potential environmental impacts of construction and operation of the AEC project on Pacific green turtles and marine mammals that could enter the forebays at the current Alamitos Generating Station. The project must implement a mitigation measure that requires a biologist to perform daily pre-construction marine mammal and sea turtle surveys to prevent adverse impacts to marine mammals and sea turtles that are present. (Attachment 3, p. 2.)
- Inclusion of at least a 1:1 replacement ratio in the Southern Tarplant Reintroduction Plan. Further, our ecologist notes that tarplant surveys that will be conducted pursuant to the project and its construction must be performed during the flowering stage for the plant, typically between May and November, to ensure detection. (Attachment 3, pp. 2-3.)

Mr. Zahn further suggests that the project cannot fully prevent or mitigate its potentially significant impacts on biological resources without implementing monitoring of the Zedler Marsh restoration site and the Los Alamitos Pump Station restoration site. The Biological Resources Mitigation Implementation and Monitoring Program should also be revised to include a sea turtle monitoring program, a Belding's savanna sparrow monitoring program, and an endowment for non-native weed management at the Los Cerritos Wetlands. (Attachment 3, pp. 3-4.)

III. THE PSA IMPROPERLY SEGMENTS THE CONSTRUCTION AND OPERATION OF THE PROJECT FROM THE DEMOLITION OF THE ALAMITOS GENERATING STATION.

The AEC is purportedly needed, in part, to offset the loss of power generation that will occur at the end of 2020 when OTC rules require the existing Alamitos Generating Station to cease operation. The PSA claims that the demolition of the Alamitos Generating Station will be pursued as a separate project with the City of Long Beach. However, neither the PSA's declaration nor the Memorandum of Understanding alters CEQA's requirement that the environmental review for the AEC analyze the demolition of the Alamitos Generating Station. Environmental review must evaluate the "whole of a project" and not simply its constituent parts when determining whether it will have a significant environmental effect. (CEQA Guidelines § 15003(h).) This requirement exists to ensure that "environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences." (*Bozung v. Local Agency Formation Commission* (1975) 13 Cal. 3d 263.)

The court in *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214 set out three items to be used to determine what constitutes the whole of a project: (1) relationship in time, (2) physical location; and (3) the entity undertaking the action. (*Id.* at 1227.) The Alamitos Generating Station will not be demolished until the AEC is approved to provide replacement generation, and the Alamitos Generating Station and the AEC occupy the same brownfield site under control of AES. The PSA's failure to consider these projects as a single project for the purpose of the CEC's CEQA-equivalent analysis violates the statute. It is irrelevant whether or not the demolition will occur as a result of AES's Application for Certification from this Commission, or by agreement with the City – it is part and parcel of the same proposal.

IV. THE CUMULATIVE IMPACTS ANALYSIS IS INADEQUATE.

CEQA requires environmental review of a project's direct, indirect, and cumulative environmental impacts. Indirect impacts are "secondary effects" that are the reasonably foreseeable result of a project although they "are later in time or farther removed in distance." (CEQA Guidelines § 15358 subd. (a)(2); *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1205). A cumulative impact "is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CEQA Guidelines §15130.) "One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of

small sources.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.) Without “meaningful cumulative analysis” and control, courts have found, “piecemeal development would inevitably cause havoc in virtually every aspect of the urban environment.” (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61.)

It appears that the PSA’s analyses of the AEC’s potential cumulative impacts are separated into the numerous subject sections, making it difficult for the public to understand the scope and timing of the impacts. We strongly recommend including a consolidated Cumulative Impacts analyses section to the report that provides a *comprehensive* explanation of:

- The cause and effect of all the potential adverse impacts that could be exacerbated by other foreseeable projects;
- The timing of the several projects that cause the potential cumulative impacts; and
- An explanation of reasonable alternatives for reducing the cumulative impacts.

In the meantime, LCWLT offers examples of areas where the PSA is inadequate in satisfying CEQA’s requirement to define and analyze potential cumulative impacts. One example of the PSA’s omission of cumulative impacts is the treatment of the environmental impacts from the project construction and operation of the new facility with the foreseeable different demolition alternatives.

A. Timing of Demolition of the Existing Alamitos Generating Station.

Demolition of the existing Alamitos Generating Station is a reasonably foreseeable event. CEQA requires environmental review to analyze the reasonably foreseeable impacts of a project’s implementation. (*Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 390.) However, based on a read of the PSA, it is unclear when demolition, construction and operation begin and end, and when those three components of the project may be concurrent. It is unclear whether the Memorandum of Understanding AES entered into with the City of Long Beach regarding demolition of the Alamitos Generating Station – meaning a much longer period of cumulative impacts – precludes an alternatives analysis of the comparable cumulative impacts from performing all three activities (demolition, construction and operation) simultaneously.

The PSA indicates, “demolition is expected to occur after 2020.” (3-1.) But the PSA timeline indicates, “Begin Site Preparation – Q1 2017” and “Commercial Operation (of all Units) – Q3, 2021.” (3-10.) Per the PSA, “Site Preparation” includes demolition of the existing Unit 7. In other documents, AES indicates that design, site preparation

(demolition) and construction of the 300MW battery storage facility will begin in 2018 and conclude in 2020. (Attachment 2, slide 19)

Therefore, at a minimum, it appears that concurrent demolition and construction will occur from 2017 when site preparation and demolition of Unit 7 begins through 2020 when construction of the battery storage facility is finalized. Further, operation of some units will occur simultaneous with construction of other units from 2020 until Q3 2021. This may also occur at the same time as the beginning of demolition of the remaining structures “some time after 2020.” Finally, it is unclear how long the demolition may take beyond 2020. In any event, some concurrent demolition and operation will occur, and the PSA is required by CEQA to analyze the direct, indirect, and cumulative impacts that these concurrent activities will cause.

The need for this analysis is demonstrated by the PSA section on Biological Resources, which concludes that, because the existing generators are nearing the end of their useful life, and new regulations require discontinuance of the once-through cooling system in 2020:

Therefore, existing Units 1 through 6 are expected to be decommissioned within a few years. ...there would be some overlap between the construction and operation phase of the AEC and the operation and then demolition of the AGS units. (4.3-38.)

None of this “overlap” in demolition and operation, and/or the foreseeable cumulative impacts, is discussed in any detail in the PSA. This failure to disclose relevant information precludes informed decision making and is prohibited by CEQA.

The PSA further states:

In addition, there are currently proposed projects near the AEC that may impact local biological resources, especially those in the Los Cerritos Wetlands complex and other regional wetlands. (4.3-38)

Again, beyond this superficial statement, the PSA does not contain analyses of the cumulative impacts of these “currently proposed projects” in the cumulative impacts section for the public or a decision maker to find.

Without a more detailed timeline and discussion of all foreseeable projects and potential impacts on the environment, it is impossible for the public or a decision maker to review the cumulative impacts that may occur during simultaneous demolition, construction and operation of all the foreseeable components of the AEC. Further, it is impossible to analyze whether the cumulative impacts of simultaneous demolition,

construction and operation would be more or less harmful to the environment than cumulative impacts from only partial demolition, new construction, and operation – but prolonged demolition of the rest of the existing structures for an indeterminate amount of time after the construction is concluded and operation begins. Finally, without all of the project’s potential impacts disclosed in the PSA, it is impossible to know if all feasible mitigation has been incorporated into the project.

The PSA must be modified to include data on the impacts of individual activities, as well as information on the timing of these individual activities and the potential cumulative impacts, and then re-circulated for public review and comment.

B. Impacts versus Cumulative Impacts.

1. Biological Resources

As noted above, LCWLT offers an example of where the PSA fails to adequately identify and discuss cumulative impacts. We have focused our comments on the Biological Resources section of the PSA because the protection and preservation of biological resources are of particular concern to LCWLT’s mission and members.

2. Noise

The PSA addresses adverse impacts to wildlife from “Noise” and finds that: “Construction and demolition noise would occur over 56 months in proximity to the Los Cerritos Wetlands complex.” (4.3-29.) However, the PSA’s analysis appears to include only construction, with the solitary example being the noise occurring during “pile driving.” Noise generated by operation of the project, as well as by all sources of noise that may occur onsite, must be included in a revised and recirculated PSA.

The Noise analysis is the first time that the PSA references simultaneous construction and demolition for 56 months. But nowhere does the PSA analyze whether additional noise will add to the project’s cumulative impacts when operation of one or more generators begins within that unspecified 56 month period.

The cumulative impacts conclusions in the Biological Resources section of the PSA fails to remedy this total lack of detail in analysis. (See eg., 3.4-38 to 39.) In discussing cumulative impacts, the PSA fails to document the individual contributions from the different phases of the AEC and other nearby projects, as well as what the cumulative impacts would actually be. Instead, it concludes:

If operation and demolition of the AGS or construction and demolition of the Haynes Generating Station or other near-by projects overlap with those of the

AEC, cumulative impacts to wildlife from noise, dust, lighting, spread of invasive weeds, or stormwater runoff could occur. However, *implementation of Conditions of Certification [w]ould minimize these impacts from the AEC, and the AGS demolition, the Haynes Generating Station and other nearby projects would have similar mitigation requirements to minimize the impacts in the context of human receptors such as residential communities, schools and other sensitive receptors. These measures would also minimize each project's impacts to biological resources in the area.*" (4.3-38, emphasis added.)

The PSA fails to correctly apply the definition of "cumulative impacts" and turns CEQA on its head by assuming that separate EIRs for other foreseeable projects will require mitigation of those individual impacts to the point where the cumulative impacts from all the projects will be fully mitigated. (See, *Bozung v. Local Agency Formation Commission* (1975) 13 Cal. 3d 263.) That reasoning -- if applied similarly to the EIRs for site preparation (including demolition) and construction of the battery storage facility, demolition of the AGS, and other nearby projects -- effectively ensures that a thorough cumulative impact analysis will never occur in this PSA or any of the other EIRs. That is, each of the separate EIRs could make the exact same argument and similarly avoid a thorough cumulative impacts analysis.

The PSA needs to be revised to remedy these errors and re-circulated for public comment prior to preparation of the Final Staff Assessment.

3. Other Substantive Analyses

We have reviewed the rest of the Biological Resources section of the PSA for the analysis of other adverse impacts and find the documentation and analysis of cumulative impacts fail to meet CEQA standards for similar reasons as those identified in the example of "noise" above.

Therefore, whereas the PSA fails to adequately identify the environmental impacts of the site preparation and construction of the AES battery storage facility, the demolition of the existing AGS, and several other foreseeable projects in proximity to the proposed AEC, the entire document needs to be thoroughly reviewed and modified to remedy the errors and then re-circulated for public review and comment prior to preparing a Final Staff Assessment.

CONCLUSION

We thank you for the opportunity to comment on the Preliminary Staff Assessment. The Los Cerritos Wetlands Land Trust looks forward to your response to these comments. Further, we look forward to reviewing a Final Staff Assessment of the

proposed AEC that adequately reflects the project's likely significant environmental impacts on the Los Cerritos Wetlands and that contains a thorough analysis of alternatives designed to avoid, reduce, and mitigate these impacts.

Sincerely,

Original Signed By
Michelle N. Black

Attachments:

- (1) D.15-11-041, Decision Approving, in part, Results of Southern California Edison Company Local Capacity Requirements Request for Offers for the Western LA Basin Pursuant to Decisions 13-02-015 AND 14-03-004, November 19, 2015
- (2) AES Battery Project Presentation, AES Alamos Battery Energy Storage System Application for a Conditional Use Permit, July 18, 2016
- (3) Review of the Alamos Energy Center Preliminary Staff Assessment, Tidal Influence, August 10, 2016