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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

PETITION TO AMEND THE:

**HUNTINGTON BEACH ENERGY
PROJECT**

Docket No. 12-AFC-02C

STAFF'S OPENING BRIEF

Energy Commission Staff (Staff) offers the following answers to the questions posed in the "Committee Order Re: Briefing Schedule," filed on January 4, 2017 by the Committee for the Huntington Beach Energy Project Petition to Amend (Committee).

- a. In its Final Staff Assessment, "Waste Management" section, page 4.13-7, "Waste Management," Staff has identified a new ordinance, Huntington Beach section 8.21. However, the link provided does not direct to an ordinance, but to a worksheet. Please provide the correct citation for this ordinance.

Huntington Beach Municipal Code section 8.21—more specifically, section 8.21.175—requires all businesses to reuse, recycle, compost, or divert refuse and grants the Huntington Beach Director of Public Works the authority to implement a commercial recycling program for the City. An electronic version of the Huntington Beach Municipal Code is available here: <http://www.qcode.us/codes/huntingtonbeach/>. The reference to Huntington Beach Section 8.21 in Staff's Waste Management testimony is intended to identify local authority for the creation of the City's Construction and Demolition Debris Re-Use and Recycling Program, which requires a project to recycle 50% of the debris it generates. The link included on page 4.13-7 was not intended to direct the reader to an ordinance, but to an informative worksheet regarding the requirements for the Construction and Demolition Debris Re-Use and Recycling Program. However, the link provided in Staff's Waste Management section is incorrect. The correct link to the worksheet is

http://www.huntingtonbeachca.gov/files/users/building_and_safety/CandDRecyclingAppPDF.pdf. The worksheet can be used to develop the Debris Waste Reduction and Recycling Plan as set forth in Condition of Certification WASTE-5, which would ensure compliance with local waste management requirements.

- b. During the public comment portion of the Evidentiary Hearing, Robert Sarvey asked a question about the parking lot being discussed. His question can be found in the Reporter's Transcript of the December 21, 2016 Prehearing Conference and Evidentiary Hearing, beginning at page 83.

At the Evidentiary Hearing, Mr. Sarvey asked, "Is that parking area the same parking area that Coastal Commission claims is a wetland, or [is] that a different parking area we're talking about?" (RT 12/21/16, p. 83.) Two parking areas were discussed at the Evidentiary Hearing: the Plains All American Tank farm, to be used during peak construction, and the Newland Street parking area, the primary construction parking area. On pages 4.2-8 and 4.2-9 of the Final Staff Assessment (FSA) Part 1 for the Petition to Amend the Huntington Beach Energy Project Decision, Staff responded to the Coastal Commission's comments regarding two areas of Coastal Commission jurisdictional wetlands within the project area, including the Newland Street parking area. The relevant portion of the FSA Part 1 is excerpted below:

Comment: The commenter stated that there are two areas of Coastal Commission jurisdictional wetlands within the project area that would be directly impacted by the amended HBEP: the proposed parking area across Newland Street from the project site, and areas of the on-site fuel tank containment basins. The Coastal Commission requested that the applicant conduct wetland determinations and delineations of these two areas using Coastal Commission protocol, and that that the Energy Commission revise its conditions of certification to require the applicant to provide compensatory mitigation for any direct impacts. The Coastal Commission's stated preference is to remove the Newland Street site from the project to avoid potential impacts to wetlands.

Response: The Energy Commission Decision found that “[t]here are no creeks, drainages, wetlands, or other aquatic resources on the project site, offsite laydown area, or offsite parking areas” (CEC 2014bb, p. 5.1-24). However, to avoid impacts to such resources adjacent to the project, the Energy Commission imposed Condition of Certification BIO-7, which requires standard best management practices (BMPs) to be implemented during all phases of the project to control storm water runoff. BMPs include installation of silt fencing, berms, hay bales, and detention basins to control runoff from construction and demolition areas. Sediment barriers such as straw bales or silt fences would be installed to slow runoff and trap sediment.

The scope of the analysis conducted by staff in an amendment proceeding under Title 20, Section 1769 is limited to an evaluation of the incremental impacts, if any, of the proposed modifications to the project on the environment, as well as a determination of the consistency of the proposed modifications with the applicable LORS. Staff’s review of the Petition to Amend is also limited by CEQA Guidelines section 15162, which only allows new environmental analysis after a decision is made under three scenarios. New environmental analysis is allowed when: 1) substantial changes in the project, 2) or to the circumstances under which the project would be undertaken, would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects, 3) or when new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the original environmental analysis was completed, shows that the project would have one or more significant effects not previously discussed. The petition does not propose any changes to the approved use of the 3-acre Newland Street parking area, or to the approved ground disturbance within the fuel tank containment basins. As a result, there would be no substantial change to the project or to the circumstances under which it would be undertaken that would result in new significant impacts or impacts of greater severity to wetlands.

The Coastal Commission’s August 9, 2016 comments cite a 2007 Mitigated Negative Declaration (MND) prepared by the city of Huntington Beach (Negative Declaration No.

05-05 and Coastal Development Permit No. 05-07 (Newland Street Improvements Between Pacific Coast Highway and Hamilton Avenue), April 2007) which included a biological study that identified areas fronting the Newland Street parking area as having wetland characteristics. This is therefore not new information which was not known or could not have been known at the time of the original proceeding. Nevertheless, Condition of Certification BIO-7 specifies that parking areas shall be located in areas without native vegetation; so implementation of BIO-7 would ensure no significant impacts occur to any wetland vegetation on the Newland Street parking area. Staff declines to adopt the measures suggested by the Coastal Commission and believes changes to the conditions of certification are not supported by the evidence.

CONCLUSION

As articulated in the response to comments, the issue of potential wetlands in one of the parking areas was comprehensively addressed. The hearing record is complete and more than adequate to support a decision on the application.

Dated: January 9, 2017

Respectfully submitted,

Original signed by
MICHELLE E. CHESTER
Staff Attorney
California Energy Commission