

state of california—the resources agency

arnold schwarzenegger

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

DOCKET**04-SIT-02**DATE OCT 13 2006RECD. OCT 16 2006

October 13, 2006

Dr. James Reede
California Energy Commission
1516 Ninth Street, MS #4
Sacramento, CA 95814-5512
ATTN: Docket

RE: Docket #04-SIT-02 – Proposed Revisions to CEC Siting Regulations

Dear Dr. Reede:

Thank you for the opportunity to comment on the above-referenced proposed revisions. Coastal Commission staff concur with the intent of the proposal to further clarify the information needed to start the Application For Certification (AFC) process, to incorporate new laws and policies into the requirements, and to overall make the AFC process more efficient. We also believe the proposed changes will help improve implementation of the Memorandum of Agreement approved last year by the Energy Commission and Coastal Commission.

We concur with most of the proposed changes to the Siting Regulations, but have provided below just a few recommended revisions that will further improve the AFC review process.

- **Section 1702 – Definition of “feasible”:** We recommend the Siting Regulation’s definition of “feasible” be changed to match the definition used in both CEQA and the Coastal Act. Those two state laws define “feasible” as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” The definition in the Siting Regulations, however, is slightly different in that it adds the term “legal” as one of the factors to be considered. The use of “legal” in this instance is vague and unnecessary. Deleting it would reduce confusion and would provide additional clarity in the Energy Commission’s CEQA-equivalent AFC process. We therefore recommend that the definition in Section 1702 be changed as shown below:

"Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, ~~legal~~, social, and technological factors."

This change would allow the Energy Commission’s definition to be consistent with the definition used in other applicable state laws.

Coastal Commission Staff Comments on Energy Commission Docket #04-SIT-02
October 13, 2006
Page 2 of 4

- **Appendix B, Section (g)(3)(a)(ii) – Land Use:** We concur with the recommendation to include “proposed zone changes and/or general plan amendments” as part of the AFC’s land use description. This has been an issue in past AFC proceedings and is an issue in at least one current proceeding where a local jurisdiction is in the midst of considering substantial land use changes to the area in and around a proposed project site. By identifying both existing and proposed land use designations for a proposed project site, it is less likely that parts of the AFC review will have to be redone if the designations change during the course of the review.

We recognize, however, that the proposed language could be further clarified. We recommend adding language that defines “proposed” changes and amendments as those being considered by an elected or appointed board, commission, or similar entity at the state or local level. This clarification would ensure that an AFC applicant would not be required to submit descriptions of every possible land use change that could occur at a proposed project site.

- **Appendix B, Section (g)(6) – Visual Resources:** This section includes several provisions related to the protection of visual quality near a proposed power plant. We recommend the section be revised to additionally require that projects proposed to be sited within the coastal zone submit information needed to determine conformity to Coastal Act provisions related to visual resources¹. We recommend that subsection (B) of this section be revised as follows:

“An assessment of the visual quality of those areas that would ~~will~~ be affected ~~impacted~~ by the proposed project. For projects proposed to be located within the coastal zone, the assessment should also describe how the proposed project would be sited to protect views to and along the ocean and scenic coastal areas, would minimize the alteration of natural land forms, would be visually compatible with the character of surrounding areas, and, where feasible, would restore and enhance visual quality in visually degraded areas.”

This additional proposed language would allow the AFC application to more closely match the Coastal Act’s visual resource provision and make the review process more efficient.

- **Appendix B, Section (g)(13) – Biological Resources:** We believe it is particularly important the proposed changes in this section are included in the final adopted regulation, especially those related to the effects of cooling water use. During the past several years, the issue most responsible for extending AFC proceedings of coastal proposals past their required 12-month timeline has been the lack of acceptable entrainment and impingement studies. Requiring recent and thorough entrainment and impingement studies as part of the AFC application will

¹ Coastal Act Section 30251: “The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.”

Coastal Commission Staff Comments on Energy Commission Docket #04-SIT-02
October 13, 2006
Page 3 of 4

remove the main reason for delay from the Energy Commission's decision-making process.

We also recommend that some of the language proposed in the next section of the regulations (Section (g)(14) – Water Resources) be added to the Biological Resources section. We concur with the recommendation in Section (g)(14) to require an explanation of why a “zero liquid discharge process” is “environmentally undesirable” or “economically unsound” when such a process is not proposed as part of a project. We believe this same requirement should apply to the “intake end” of a proposed project, since the adverse environmental effects of cooling water systems are caused by both their intakes and discharges. We therefore recommend the same language be included in the Biological Resources section as well as in the Water Resources section. This change would help clarify that the factors to be considered in reviewing a cooling system's environmental desirability and economic soundness apply to both its intake and its discharge.

- **Appendix B, Section (g)(13(B)(iii) – Wetlands:** We recommend the proposed change to this section be further modified to require wetland delineations based on the Coastal Act's definition of “wetland” for projects proposed to be located in the coastal zone². This additional change would also allow this section to be consistent with Section (g)(13)(D)(iii), which does refer to the Coastal Act's wetland definition.

The recommended change is as follows:

“An aerial photo or wetlands delineation maps at a scale of (1:2,400) showing any potential jurisdictional and non-jurisdictional wetlands delineated out to 250 feet from the edge of disturbance if wetlands occur within 250 feet of the project site and/or related facilities that would be included with the US Army Corps of Engineers Section 404 Permit application. For projects proposed to be located within the coastal zone, also provide aerial photos or maps as described above that identify wetlands as defined in the Coastal Act.”

The Coastal Act's wetland definition is broader than that used by the Corps and its application to projects proposed within the coastal zone will be an important consideration for determining project compliance with the Coastal Act.

- **Appendix B, Section (g)(17)(B) – Geologic Hazards:** We recommend adding tsunami runup to the list of geologic hazards, as shown below.

“A map at a scale of 1:24,000 and description of all recognized stratigraphic units, geologic structures, and geomorphic features within two (2) miles of the project site and along proposed facilities. Include an analysis of the likelihood of ground rupture, seismic shaking, mass wasting and slope stability, liquefaction, subsidence, tsunami runup, and expansion or collapse of soil structures at the plant site. Describe known geologic hazards along or crossing linear facilities.”

² Coastal Act Section 30121 defines “wetland” as “lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.”

Coastal Commission Staff Comments on Energy Commission Docket #04-SIT-02
October 13, 2006
Page 4 of 4

For coastal power plants, this is likely to be an important consideration in upcoming AFC proceedings. We note that the tsunami runup is included in Appendix B's section on Water Resources, but we believe it is more important to evaluate it as part of geologic hazard review.

Closing:

Again, thank you for the opportunity to comment. We appreciate the work by the Energy Commission staff in developing the proposed changes and we look forward to implementing the adopted changes with you.

Sincerely,

Tom Luster
Energy and Ocean Resources Unit