City of Carlsbad

Office of the City Manager

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Mr. Mike Monasmith
Siting Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Carlsbad Energy Center Project (07-AFC-6) – Land Use Information

Dear Mr. Monasmith:

Thank you for your Agency's letter dated March 26, 2008, requesting the City of Carlsbad's position related to the Carlsbad Energy Center Project's (CECP) consistency with existing City and Redevelopment Agency documents that govern on-site land uses at the proposed CECP site and the surrounding area, which includes the existing Encina Power Station. Per your request, we are providing input on interpretation of our zoning ordinance and related land use plans which City and Redevelopment Agency staff believe would have applied to the project had it been under Carlsbad's jurisdiction for review and approval. We appreciate this opportunity to explain and clarify the relevant land use requirements and policies, as well as our policy position regarding the compatibility and desirability of the CECP at the identified location.

Carlsbad's Overall Position on the CECP

Before discussing land use requirements and policies, be advised that Carlsbad does not support the CECP. As host to numerous regional facilities, such as the Encina Water Pollution Control Facility, McClellan-Palomar Airport, and the existing power plant, Carlsbad is clearly accepting of these types of land uses within its jurisdictional boundaries. However, with the advancement of technology that removes the need for power generation facilities to have coastal access, the City believes that there are now more appropriate, compatible locations in Carlsbad and other communities for the CECP.

The EPS property is predominantly surrounded by residences and open space. Its central location and proximity to the beach and lagoon, significant open space, and major transportation corridors make it a potential key gateway location and a connector between the ocean and existing and future visitor-serving and recreational uses. Accordingly, the City believes that a coordinated and appropriate planning effort for the entire property, as well as removal of the existing power plant and re-designation of the EPS for publicly-oriented, non-utility land uses, are necessary steps towards fulfilling this area's community benefit potential and the City's desired Vision for the CECP area.

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The proposed CECP is not consistent with the City's desired Vision for the property. Also, as noted below, although NRG has not submitted all information necessary to determine compliance requirements, staff has been able to determine that the CECP is not consistent with many of the policies and/or land use requirements set forth in the various planning documents and/or City Council policies that apply to said property.

About this Letter

As indicated in your Agency's letter, there are six (6) planning documents which are applicable to the subject property/project. Also germane is a 25-year-old City Council policy that applies to any development contemplated at the existing Encina Power Station and adjacent areas. In this correspondence, we have provided you with 1) a general description of each document, its intent and its applicability; 2) the action and/or permit(s) that would be required under each document; and 3) a description of the applicable policies and requirements set forth within each document. Similar information is provided for the Council policy as well. For additional information purposes, attached to this letter are the following exhibits:

1. A timeline of significant events in the life of the power plant and related property;
2. A map which outlines the boundaries for each document;
3. City Council Resolution No. 98-145;
4. July 24, 1989 letter to SDG&E from Carlsbad Planning Director;
5. July 16, 2007 letter to SDG&E from Carlsbad City Manager, and;

These documents are helpful in providing more detail on various issues to be discussed below.

The City submits this review of the CECP from a land use perspective only. It does not consider other equally important project-specific topics, including potential environmental impacts that would be evaluated under the California Environmental Quality Act (CEQA), such as traffic, noise, and aesthetics. Furthermore, this review does not represent the final nor complete land use comments the City may have on this project, considering there are many outstanding issues which need to be addressed that will affect land use.

Finally, while this letter describes necessary permit and compliance requirements, it does so merely to clarify these items in detail; the discussion below should not be misconstrued as an indication of what it would take for the City to support the project.

Carlsbad as Lead Agency

Before proceeding with our effort to clarify the planning documents, it is important to note that if the City and Redevelopment Agency had the sole discretion to approve the subject project application from a land use perspective, staff would have determined the application to be incomplete.

The CECP, as it is currently proposed, does not provide adequate information for a determination of compliance and/or consistency with all of the applicable planning documents. Additionally, the City would require all applicable land use permit applications to be submitted, which, in the

CECP's case, has not yet occurred. Therefore, under our typical review process, the City would not be able to continue processing the subject application due to its incomplete status. Staff would only be able to provide a list of applicable requirements and outline issues of concern that could be identified based on the information provided to date. Staff would have also informed NRG that the CECP could not be supported due to the reasons noted above.

Normally, once an acceptable project description is developed and all appropriate permit applications are submitted, the City and Redevelopment Agency requires the applicant to prepare an environmental impact report (EIR). In order to provide decision-makers with complete information and aid in their land use analysis, the EIR would consider alternative locations to the CECP site and alternative means to obtain electricity other than by constructing a new power generating facility. Furthermore, analysis of greenhouse gas emissions would be considered in the EIR. However, as the lead agency, the EIR would not proceed until the City and Redevelopment Agency agreed on the appropriate land uses for the site through the comprehensive specific plan update process described in the following section.

Land Use Analysis

Below is an analysis of each land use document applicable to the CECP. The analysis highlights project inconsistencies where those occur. Since they are essential to the understanding of the relevant land use policies and requirements, the Encina Specific Plan and City Council Policy are discussed first.

I. Encina Specific Plan (SP 144)

Background/Intent

The 680 acres of SP144 encompass the EPS site and the adjacent beach, all water areas of the Agua Hedionda Lagoon, and most properties on either side of Interstate 5 between Cannon Road and the lagoon. At the time of the specific plan's adoption in 1971, all of these properties were owned by SDG&E.

Following its adoption, SP144 was amended several times to permit the development and expansion of the EPS essentially as it appears today. Amendments allowed the Unit 4 generator in 1973, the Unit 5 generator in 1975, and the addition of the 400-foot-tall emissions stack in 1976. Subsequent amendments after 1980 were either withdrawn or did not affect the power plant. In 2006, the City Council approved SP 144(H), which permitted the development of the Carlsbad Desalination Project.

As stated in SP 144(H):

- *The purpose of this Specific Plan is to set forth the existing land uses and land use regulations applicable to the area of Carlsbad which includes the Agua Hedionda Lagoon and certain areas near the lagoon, including the Encina Power Station.*

- *The purpose of this amendment [SP 144(H)] is to incorporate the Encina Power Station Precise Development Plan 00-02 (PDP 00-02) into Specific Plan 144 while maintaining the conditions and regulations of previous Specific Plan Amendments A through G.*

As noted above, SP 144(H) did not change any land use designations, revise any conditions, or establish any development standards.

As explained in detail in the City Council Policy discussion below, City Council Resolution 98-145 establishes the requirement for a comprehensive update of SP 144 for any development proposal within its boundaries. This requirement was reiterated by the City Council in 2002. Although the City Council waived the requirement for a comprehensive update for the Carlsbad Desalination Project, the requirement continues to apply to any other proposal, including the CECP. This is evidenced by the continued application of the requirement as explained fully in the City Council Policy section.

Comprehensive Update of SP 144

If Carlsbad had permit authority for the CECP, it would require NRG to first prepare a comprehensive update of the Encina Specific Plan 144, consistent with City Council Policy and as discussed below. NRG has submitted an amendment to SP 144 (SP 144 (I)); however, the proposal amends the document to include the CECP but does not address the comprehensive update required. The update of SP144 would be expected to set forth a vision for the noted and adjacent property, which should not include the CECP or existing power station.

The comprehensive amendment of the Encina Specific Plan, SP 144, would involve all property owners and all 680 acres within the specific plan. The update would be applicant-initiated (as has been directed by the City Council) and prepared by a professional planning firm supported by experts in necessary disciplines (e.g., environmental, engineering, traffic, communications).

An EIR for the comprehensive update would also be required; the consultant to prepare the EIR would be selected and administered by the City with all expenses paid by the applicant.

It is not possible to identify all desired objectives or components of the comprehensive amendment; that will only occur as the amendment process is underway. However, the update would likely need to address the following items, all of which would be applicable to any development proposal in the SP 144, not just the CECP:

1. Ensure consistency with state law requirements regarding specific plans;

2. Establish an overall land use vision for SP 144, which would likely incorporate the findings of the Proposition D Committee for the South Shore of the Lagoon and produce the ultimate land use plan for the power plant property both east and west of the railroad tracks. It is anticipated that this land use vision will change existing land use designations and zonings, including but not limited to those applicable to the power plant, to incorporate the goals of the South Carlsbad Coastal Redevelopment Plan and the City's

desire for land uses other than power generating facilities. Furthermore, this land use vision will ensure compatibility between SP 144 and all surrounding land uses;

3. Provide a land use study with alternatives for land surrounding the CECP site;

4. Ensure consistency between all affected land use documents (PDP 00-02, SP 144, Agua Hedionda Land Use Plan, South Carlsbad Coastal Redevelopment Plan, Habitat Management Plan, Airport Compatibility Land Use Plan, Zoning Ordinance, and General Plan);

5. Update the existing SP 144 to remove provisions that are outdated and/or no longer appropriate, and replace them with germane requirements that are appropriate and consistent with other documents as expressed in item 2;

6. Update the Agua Hedionda Land Use Plan to ensure all maps, policies, and standards regarding land use, public access, environmental protection, and buildings, among other items, are appropriate and consistent with other documents as expressed in item 3;

7. Review SP 144 and other affected land use documents to ensure consistency with all Coastal Act policies. This is important since SP 144 was adopted prior to Coastal Act approval;

8. Fix inconsistent land use and zoning designations (both City and Coastal) within SP 144;

9. Incorporate and recognize the goals of the South Carlsbad Coastal Redevelopment Plan;

10. Establish trails, public access, and public places, including connections with properties east of Interstate 5 and access to and use of lagoon water bodies and the beach;

11. Consider the design, location, and type of appropriate public amenities;

12. Establish public infrastructure requirements (e.g., street widening, sewer facilities, storm drains);

13. Develop appropriate development and use standards for all properties;

14. Engage all affected property owners, and;

15. Develop and implement a public outreach plan to ensure the public is involved in and aware of the update process.

Compliance Requirements

If Carlsbad had permit authority for the CECP, it would require NRG to first prepare a comprehensive update, including a land use visioning program, of the Encina Specific Plan 144

as described above. Preparation of the update before proceeding with the CECP would be mandatory.

II. City Council Policy

Background/Intent

In 1998, the Carlsbad City Council passed Resolution 98-145 (attached) declaring its intention to comprehensively update the Encina Specific Plan 144 (SP 144). This resolution was the result of 15 years of unsuccessful attempts by the City to achieve a comprehensive SP 144 update. As detailed above, the 680-acre SP 144 encompasses all of the existing Encina Power Station, the proposed CECP, and significant other lands. The City's policy to comprehensively update the specific plan is relevant to all land use permits and determinations of consistency the City would require of the CECP and any other development proposed within the specific plan. Moreover, knowing the history of this policy is also important to understanding the basis for many of the City's comments.

As stated in Resolution 98-145, the Council declared its intention "...to study and consider amendment to the General Plan, zoning designations and the zoning ordinances pertaining to the Encina Power Plant and surrounding properties presently under the ownership of the San Diego Gas and Electric Company." At the time of the resolution's adoption, all properties within SP 144 were owned by SDG&E.

The recitals of Resolution 98-145 list the reasons why the resolution was passed, why a comprehensive update is needed, and why it directed City staff, rather than the land owner, to prepare the update. Following are some of the recitals:

- *Whereas, SDG&E was informed that any future modifications, changes, amendments or additions to its plant would require a completed major amendment to the specific plan processed in accordance with Chapter 21.36 of the Carlsbad Municipal Code;* (Note: This recital refers to a July 24, 1989, letter to SDG&E from the City's Planning Director [attached]).

- *Whereas, the existing Specific Plan for the SDG&E properties does not address the regulations and restrictions of the LCP;*

- *Whereas, despite numerous verbal agreements to do an updated [Specific] Plan, SDG&E has not come forward with a formal proposal, work program or timeline for initiating a process to update its Plan and address outstanding concerns and issues;*

- *Whereas, these considerations [of amending existing zoning and General Plan designations of the SDG&E properties] should include whether the continued use of a portion of the property for a Power Plant is in the best interest of the citizens of Carlsbad and is the best, long-term use of the property given its superior coastal location and its*

proximity to other existing, surrounding uses that can be adversely impacted by Power Plant use;

Though passed in 1998, the need and reasons for the comprehensive update as indicated by the resolution remain.

After approval of the resolution, initiation of the specific plan update by the City was subsequently put on hold when the EPS was sold by SDG&E to Cabrillo Power. It was the City's intent to work with the new owner to update the Specific Plan and develop a vision plan for that site which reflected the wishes of the community. The City attempted to negotiate a Memorandum of Understanding (M.O.U.) with the new owner which would include a process to study the existing and future land use and thus accomplish many of the SP 144 update objectives. Unfortunately, the M.O.U. was never finalized because the parties could not agree to the terms, and Cabrillo Power indicated no immediate need to move forward with the redevelopment of the site and/or construction of a new power plant.

On June 11, 2002, as part of questions related to the processing of the proposed Carlsbad Desalination Plant, the City Council reiterated its policy on requiring a comprehensive update of SP 144. By minute motion, the Council clarified the update requirement: (1) applies to any proposal; (2) is applicant, rather than city-initiated; and (3) requires the cooperation and resources of all affected property owners.

On August 5, 2003, the City Council passed Resolution 2003-208, allowing the proposed desalination plant to proceed without a comprehensive update of the entire specific plan. Rather than requiring the update, the Council directed the applicant to apply for a specific plan amendment to incorporate the proposed precise development plan into SP 144 and process the amendment along with all other necessary permits, The amendment would maintain the EPS as part of the specific plan. This would allow the City to continue to address all applicable land use matters such as public access and use of the lagoon and beach on the EPS and all other properties with SP 144. As part of the desalination project, the Council approved this amendment on June 13, 2006.

An important point to clarify is that the City Council decision to waive its policy to comprehensively update Specific Plan 144 applied only to the proposed desalination plant and not any other proposal. This waiver for the desalination plant was due to the plant's extraordinary public purpose benefit, including water reliability, price certainty, and significant public land donations. However, as stated above, the requirement to comprehensively update SP 144 continues to apply to any other project in the specific plan area. Most recently, this included a SDG&E proposal to perform minor improvements to its North Coast Operations Center (see attached July 16, 2007, letter to Sempra Energy from the Carlsbad City Manager). The City's initial comments on the CECP, contained in an October 24, 2007, letter to the CEC's Dr. James Reede, described the requirement for the CECP to conduct a comprehensive update.

Compliance Requirements

Through its Policy on development in the Encina Specific Plan, the City Council established the comprehensive specific plan update as the vehicle to (1) achieve consistency in and between the many land use documents that affect development within the Encina Specific Plan and (2) develop a land use vision for the area, including the Encina Power Station and the CECP site. The longstanding disconnect between the policies and provisions of the General Plan, Redevelopment Plan, and Local Coastal Plan are due to the fact that the Encina Specific Plan has not yet been updated, even though the need is clearly demonstrated.

If Carlsbad had permit authority for the CECP, it would require NRG to first prepare a comprehensive update of the Encina Specific Plan 144 to address the inconsistencies. The likely contents and processing of the update are listed above in the section on SP 144. The City/Agency would expect SP 144 to be updated through a visioning process that would result in alternate land uses at the CECP site.

III. General Plan

Background/Intent

Carlsbad's General Plan establishes an overall multi-part vision for the entire City, including these relevant components:

> *A City which provides a balanced variety of land uses for living, business, employment, recreation, and open space opportunities.*
>
> *A City which provides a diversified, comprehensive park system that offers a wide variety of recreational activities and park facilities.*
>
> *A City where travel is safe and easily accommodated whether it be by mass transit, in an automobile, on a bicycle or as a pedestrian.*
>
> *A City committed to the economic growth of progressive commercial and industrial businesses to serve the employment, shopping, recreation, and service needs of its residents.*
>
> *A City which recognizes the value of its unique ecological position as a coastal city of beaches, fragile lagoons, and unspoiled canyons; which has taken steps to conserve the quality and quantity of its air, water, land and biological resources.*
>
> *A City which recognizes its role as a participant in the solution of regional issues.*

Implementation of the City's overall vision is accomplished by the various General Plan elements and various policies, programs, and procedures. Carlsbad last comprehensively

amended its General Plan in 1994. Currently, the City is in the beginning stages of the next comprehensive update with community outreach expected to begin this summer.

The General Plan Land Use Element designates the entire Encina Power Station (EPS), which includes the CECP site, for Public Utilities ("U"). The General Plan describes the Public Utilities designation as follows:

> *This category of land use designates areas, both existing and proposed, either being used or which may be considered for use for public or quasi-public functions.*
>
> *Primary functions include such things as the generation of electrical energy, treatment of waste water, public agency maintenance storage and operating facilities, or other primary utility functions designed to serve all or a substantial portion of the community. Sites identified with a "U" designation indicate that the City is studying or may in the future evaluate the location of a utility facility which could be located within a one kilometer radius of the designations on a site for such a facility. Specific siting for such facilities shall be accomplished only by a change of zone, and an approved Precise Development Plan adopted by ordinance and approved only after fully noticed public hearings.*

Compliance Requirements

The existing power plant is consistent with the General Plan Public Utility designation. Although the CECP is consistent with the "U" general plan designation, a determination of "general plan consistency" cannot be made by staff. As discussed in detail in the above City Council Policy section, the constant City policy for more than 25 years has been, with few exceptions, to comprehensively update the Encina Specific Plan 144 before any development occurs. This specific plan encompasses the EPS. Based on Redevelopment Agency goals as expressed in the South Carlsbad Coastal Redevelopment Plan, the comprehensive update would likely replace part or all of the Public Utility designation on the EPS with a designation(s) deemed more appropriate for community benefit purposes. The update may also result in requirements for open space, recreation, and public uses that would affect the current and proposed power plants. Therefore, until the comprehensive update to SP 144 is processed, a determination of General Plan consistency for the CECP cannot be made.

The General Plan, in and of itself, would not require NRG to submit any land use permits. However, implementation of the General Plan's goals, objectives, and policies, would be accomplished by the permits required by the Zoning Ordinance, Local Coastal Program, and other implementing ordinances and policies. Through these permits, the City would need to demonstrate written compliance with the provisions of the General Plan through detailed findings and demonstrated by substantial evidence.

IV. Zoning Ordinance

Background/Intent

Adopted in 1971, the Public Utilities ("P-U") Zone, Chapter 21.36 of the Zoning Ordinance, has been applied to the EPS and other public utility properties in Carlsbad. It implements the Public Utility land use designation of the General Plan. In 1975, the City amended the P-U Zone to require a precise development plan for public utility uses. As stated in Section 21.36.030 of the Carlsbad Municipal Code, "No building permit or other entitlement for any use in the P-U zone shall be issued until a precise development plan has been approved for the property."

In Section 21.36.010, the Zoning Ordinance states:

> *The intent and purpose of the P-U zone is to provide for certain public utility and related uses subject to a precise development plan procedure to:*
> *(1) Insure compatibility of the development with the general plan and the surrounding developments;*
> *(2) Insure that due regard is given to environmental factors;*
> *(3) Provide for public improvements and other conditions of approval necessitated by the development.*

Among the uses permitted in the P-U Zone are:

1. Agriculture;
2. Energy transmission facilities;
3. Electrical energy generation and transmission;
4. Processing, using and storage of: (a) natural gas, (b) liquid natural gas, (c) domestic and agricultural water supplies;
5. Public utility district maintenance, storage and operating facilities; and
6. Wastewater treatment, disposal or reclamation facilities.

Based on the above list, both the existing and proposed power plants and their appurtenant facilities are permitted uses in the P-U Zone.

The P-U Zone includes only minimal development standards such as minimum lot area and coverage and parking locations. However, Section 21.36.050 states that it is through the precise development plan that requirements are established:

> *The city council may impose such conditions on the applicant and the* [precise development] *plan as are determined necessary and consistent with the provisions of this chapter, the general plan and any specific plans that include provisions for, but are not limited to, the following:*
> *(1) Setbacks, yards and open space;*
> *(2) Special height and bulk of building regulations;*
> *(3) Fences and walls;*
> *(4) Regulation of signs;*
> *(5) Landscaping;*
> *(6) Special grading restrictions;*

(7) Requiring street dedication and improvements (or posting of bonds);
(8) Requiring public improvements either on or off the subject site that are needed to service the proposed development;
(9) Time period within which the project or any phases of the project shall be completed;
(10) Regulation of points of ingress and egress;
(11) Parking;
(12) Regulation of the type, quality, distribution and use of reclaimed water, or reclaimed wastewater.

In 2000, the first precise development plan for the EPS was submitted; the City approved the precise development plan, PDP 00-02, as part of the Carlsbad Desalination Plant project in 2006. PDP 00-02 serves both as an entitlement for the existing Encina Power Station and Carlsbad Desalination Plant and as a planning document with text and graphics for the entire power plant property.

Compliance Requirements

Because the CECP may affect or be affected by surrounding land uses, a determination of compliance with the Zoning Ordinance would require the comprehensive update of SP 144, as outlined above. Additionally, compliance with the Zoning Ordinance would be determined through the precise development plan, which is discussed in the following section.

IV. Precise Development Plan

Background/Intent

The adopted precise development plan (PDP 00-02) for the EPS follows Section 21.36.050 of Carlsbad's Zoning Ordinance. It divides the EPS into planning areas with general development standards for each. It elaborates on parking requirements and provides basic aesthetic and landscaping requirements. PDP 00-02 also contains an inventory of existing uses and facilities at the power station and provides general review and approval criteria for any future improvements. Moreover, through the PDP 00-02, the City was able to condition a number of public improvements and public land or use dedications both in and adjacent to the EPS.

As previously stated, a purpose and intent of the P-U Zone is to "insure compatibility of the development with the general plan and the surrounding developments." As stated in the approved PDP 00-02 document, it satisfies this purpose and intent by providing:

- A baseline of existing conditions (as of January 2006)
- Guidance for building permit and entitlement issuance for allowed uses
- Establishment of planning areas, standards and provisions
- Amendment and implementation procedures
- Linkage to other related regulations, approvals, and documents

The only development contemplated at the EPS upon the adoption of PDP 00-02 was the Carlsbad Desalination Plant. Therefore, the document recognized that future significant

improvements such as the CECP would require a City Council-approved major amendment to PDP 00-02. Through this major amendment, development standards and other requirements tailored to the proposal would be developed. Accordingly, NRG has submitted a major amendment to the approved precise development plan in the form of PDP 00-02(A).

As noted in Zoning Ordinance Section 21.36.050 above, the City Council may impose a number of requirements to ensure consistency with the General Plan, including setback and height standards, landscaping, and public improvements. Until the comprehensive update of Specific Plan 144 is complete and, based on that update, use of the CECP site and surrounding properties is known, it is not possible to determine all requirements that should be set forth in PDP 00-02(A) and thus the requirements that would be applied to the CECP. PDP 00-02(A) as submitted by NRG was not prepared in conjunction with the comprehensive specific plan update; therefore, it is not adequate.

Compliance Requirements

Based on the above requirements set forth in the Zoning Ordinance, if the City were reviewing the proposed application from NRG for compliance purposes, staff would recommend NRG first prepare a comprehensive update of the Encina Specific Plan 144. Once complete, it would then be possible to determine compliance of the proposed CECP from a land use perspective and, if appropriate, the contents of PDP 00-02(A). Subsequently, NRG would be required to submit an amendment to PDP 00-02 which is consistent with the updated SP 144.

VI. Local Coastal Plan/Agua Hedionda Land Use Plan

Background/Intent

In May 1982, after several years of work, the City Council adopted the Agua Hedionda Land Use Plan (AHLUP), which is the segment of the City's Local Coastal Program that applies to the Agua Hedionda Lagoon area and all of Specific Plan 144. The California Coastal Commission certified the land use plan later that year.

While the AHLUP is a certified segment of the City's Coastal Plan, Carlsbad does not have the authority to issue coastal development permits within the AHLUP area. As City Council Resolution 98-145 notes, when the City applied to the Coastal Commission to obtain effective certification (permit authority) in about 1983, it was requested by SDG&E to withdraw the application. The City agreed to SDG&E's request based upon a commitment by the company that it would update Specific Plan 144 and bring the Encina Power Station site into conformance with the requirements contained in Chapter 21.36 of the Carlsbad Municipal Code. However, SDG&E did not follow through on this commitment and coastal development permits remain the jurisdiction of the Coastal Commission in the AHLUP.

While it does not issue coastal development permits for projects in the AHLUP, the City does review such projects for consistency with the requirements of the plan. Under a typical processing scenario, this consistency determination is made as part of the review of any City

permits required. Once Carlsbad's review process is complete, then the applicant would apply to the Coastal Commission to obtain a coastal development permit.

The Agua Hedionda Land Use Plan contains eight different sections: land use, agriculture, environmental, geologic hazards, public works, recreation/visitor facilities, shoreline access, and visual resources. These sections contain policies affecting the EPS and other properties. As with the Encina Specific Plan 144, the AHLUP has yet to undergo a comprehensive update and has not had any substantial revisions since its adoption over 25 years ago.

The City has intended that the comprehensive update of SP 144 would include the simultaneous, complete update of the AHLUP. In fact, the specific plan does not address the regulations and restrictions of the AHLUP; accordingly, the update of the AHLUP and review to ensure consistency between it, the SP 144, and all other land use documents are identified as items to complete in the specific plan update process.

Compliance Requirements

If the City were the lead agency on the CECP application, it would require NRG to demonstrate compliance with the provisions of the AHLUP. This would be accomplished first through the comprehensive update of SP 144, the method Carlsbad has consistently identified to develop and determine appropriate land uses and standards in the AHLUP area. Once the update was complete, a determination of compliance could then be made. Until this occurs, no such determination can be made, and the CECP cannot be found consistent with the AHLUP.

Additionally, since a SP 144 update would require changes to the AHLUP, the City would require NRG to submit a Local Coastal Program Amendment (LCPA). The LCPA would be the application to amend the policies of the AHLUP and would be processed concurrently with the specific plan update. The LCPA would require City Council and Coastal Commission review and approval. For clarification, NRG has not submitted a LCPA.

Furthermore, and under typical permitting procedures, once NRG had obtained all entitlements from the City, it would then need to apply for a coastal development permit from the Coastal Commission. This permit would be in addition to the need to obtain a LCPA.

On a related, significant matter, the Executive Director of the California Coastal Commission (CCC), as stated in a October 16, 2007, letter to the CEC, noted he will not produce the report required for the CECP's application for certification (07-AFC-6) pursuant to Coastal Act Section 30413(d). As stated in Public Resources Code 25523(b), however, the CEC cannot decide on the CECP without this report. It does not appear to the City that the Executive Director of the CCC has the authority to choose not to provide the report. In light of the fact that an LCPA and Coastal Development Permit would be required for said project, the CCC report seems significant. The City would appreciate a response from the Energy Commission on this matter.

VII. South Carlsbad Coastal Redevelopment Project Area Plan

Background/Intent

In September, 1997, the City of Carlsbad began to identify options for an action to eliminate or reduce the environmental impacts of the existing Encina Power Plant and to achieve more compatible land uses along its coastline. The existing power plant, which began operation in 1954, was obsolete due to its outdated, inefficient technology and more stringent Air Pollution Control District air emission standards, which were acknowledged by both the power plant owner/operator and the City, as well as other regulating agencies. In addition, the industrial land use represented by the power plant and related facilities was no longer considered the best use for this beautiful coastal property.

As a result of research on the issues surrounding the existing power plant and related land uses and facilities, the City decided to form a redevelopment area known as the South Carlsbad Coastal Redevelopment Area, the boundaries for which include the power plant property. The underlying intent of the Redevelopment Plan was to convert the industrial land west of the railroad tracks (where the current plant is located) to another, more appropriate land use that would provide greater benefit to the community and would eliminate the possibility of an intensification of industrial applications at that site. At the time, the thought was that a replacement facility, located on the eastern portion of the site, would be more aesthetically and geographically desirable than any retrofit to the existing power plant facility. These were incentives for both the power plant property owner and the City to encourage redevelopment of the site and decommissioning of the existing plant.

The existing and proposed new power plants adjoin residential neighborhoods, beaches, and the Agua Hedionda Lagoon that are all subjected to both the Plant's emissions as well as the aesthetic and other environmental impacts. The Plant's massive size is also out of scale with the much lower profile character of the surrounding properties.

Compliance Requirements

The South Carlsbad Coastal Redevelopment Plan (SCCRP) states the following:

> *The land uses permitted by this Plan shall be those permitted by the General Plan and zoning ordinance, and all other state and local building codes, guidelines, or specific plans as they now exist or are hereafter amended, with the exception that new development which provides for one or more of the following specific uses may be permitted in the Project Area only after all of the following are satisfied a) the Carlsbad Housing and Redevelopment Commission approves a finding that the land use serves an extraordinary public purpose, and b) a precise development plan or other appropriate planning permit or regulatory document is first approved by the Commission which sets forth the standards for development of the project, and c) the Commission has issued a Redevelopment Permit for the project:*

(i) Desalination Plant and other facilities for the production, generation, storage, treatment or transmission of water;
(ii) Generation and transmission of electrical energy;
(iii) Public Utility district maintenance and service facilities;
(vi) Governmental maintenance, storage and operating facilities;
(v) Processing, using and storage of natural gas, liquid natural gas, and domestic and agricultural water supplies;
(vi) Energy transmission facilities, including rights-of-way and pressure control or booster stations for gasoline, electricity, natural gas, synthetic natural gas, oil or other forms of energy sources; and/or
(vii) Wastewater treatment, disposal or reclamation facilities and other facilities for the production, generation, storage, treatment or transmission of wastewater.

Based on the above requirements set forth in the SCCRP, if the Redevelopment Agency were reviewing the proposed application from NRG for permit compliance purposes, we would have the following responses from a redevelopment perspective.

First, a Precise Development Plan amendment would be required to set forth the development standards for the power plant. The standards would include agreed upon height, setbacks, architectural design, etc, as well as other appropriate revisions to the current Precise Development Plan.

Second, a comprehensive amendment to the Encina Specific Plan (SP 144) would also be required, as discussed above.

Third, the applicant would be required to submit an application for a major redevelopment permit and obtain approval of that permit, which would require a comprehensive review of the project details from both a land use perspective as well as a design standpoint. NRG has yet to submit an application to the City for this permit.

Fourth, to approve the above noted permits and/or plans, the Housing and Redevelopment Commission, acting for the Redevelopment Agency, would need to approve a finding that the proposed land use serves an **extraordinary public purpose** (emphasis added). Based on the application submitted by NRG, staff believes the Commission would not be able to make this finding for the proposed new power plant. The new power plant potentially serves a regional need for electricity. However, there are several reasons why this does not equate to extraordinary public purpose for Carlsbad, including but not limited to:

1. No assurances that the electricity generated would be used specifically for Carlsbad residents and/or businesses/services;
2. No guarantees that the generation of this power would eliminate the risk of "black outs" or require other energy conservation measures in Carlsbad;
3. No measures that would prevent substantial electrical rate increases within the City;
4. No assurances that the existing power plant will be decommissioned at a date certain, which is a key goal for the redevelopment plan;

5. A general concern that the proposed land use (new power plant) would be an incompatible land use and potentially preclude other more desirable development such as visitor-serving commercial uses, hotels, and public amenities and/or services for local resident enjoyment; and
6. No other public benefit amenities were offered by NRG.

Considering the scale of the CECP, not only in terms of its size and height but also its long term potential environmental impacts and potentially negative influence on adjacent land uses, the threshold for what constitutes an extraordinary public benefit is understandably very high. NRG would need to demonstrate extraordinary public purpose in a manner acceptable to the City and Redevelopment Agency for the CECP to be considered a potential land use in the Redevelopment area.

Summary of City Position and Recommendation

As indicated in this correspondence, the CECP does not conform to applicable land use regulations and is not supported by the City and Redevelopment Agency. As outlined above, the City and Redevelopment Agency staff do not believe that the proposed project is in compliance and/or consistent with any of the applicable planning documents. Until a comprehensive update of SP 144 is completed, which shall include a visioning process to determine appropriate and acceptable land uses, it is not possible to identify the best land use for the CECP site.

The CECP's surroundings and location, combined with the fact that a coastal location is no longer mandatory for power generation, clearly reveal that the CECP site and the existing Encina Power Station are better suited for land uses other than large scale utility and industrial. For these reasons, the proposed CECP is not consistent with the City and Redevelopment Agency's desired Vision for the property. Furthermore, the City believes there are more appropriate locations in Carlsbad and perhaps elsewhere for the CECP and has offered to actively assist NRG in pursuing alternate sites. Therefore, Carlsbad does not support the CECP.

As stated in the Public Resources Code 25525:

> *The* [California Energy Commission] *may not certify a facility contained in the application when it finds, pursuant to subdivision (d) of Section 25523, that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the commission determines that the facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving public convenience and necessity. In making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability.*

Therefore, the City/Agency does not believe the CECP can be approved unless the CEC can make the "public convenience and necessity…" determination. If, however, the California Energy Commission (CEC) chooses to move forward with its approval of the subject project

regardless of the project's land use compliance/consistency status and over the objections of the City, staff respectfully requests sufficient opportunity to complete additional analysis and provide more information to the CEC before it makes a final decision on findings and conditions.

The City of Carlsbad recognizes that the land use regulations and their application for the proposed CECP site are extremely convoluted. If you have any questions, please contact me at (760) 434-2893 or jgaru@ci.carlsbad.ca.us.

Sincerely,

JOE GARUBA
Municipal Projects Manager

Attachments:

1. Chronology – Encina Power Station and Specific Plan 144
2. Map showing boundaries of redevelopment area, specific plan, coastal zone, and Agua Hedionda land use plan.
3. City Council Resolution 98-145
4. July 24, 1989, letter to SDG&E from Carlsbad Planning Director
5. July 16, 2007, letter to SDG&E from Carlsbad City Manager

c: See Proof of Service (Rev. 03/19/2008; electronic copy only)
Carlsbad City Manager
Carlsbad Community Development Director
Carlsbad Planning Director

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE *CARLSBAD ENERGY CENTER PROJECT*	**Docket No. 07-AFC-6** **PROOF OF SERVICE** **(Revised 3/19/2008)**

INSTRUCTIONS: All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-14
Sacramento, CA 95814-5512
docket@energy.state.ca.us

APPLICANT

David Lloyd
Carlsbad Energy Center, LLC
1817 Aston Avenue, Suite 104
Carlsbad, CA 92008
David.Lloyd@nrgenergy.com

Tim Hemig, Vice President
Carlsbad Energy Center, LLC
1817 Aston Avenue, Suite 104
Carlsbad, CA 92008
Tim.Hemig@nrgenergy.com

APPLICANT'S CONSULTANTS

Robert Mason, Project Manager
CH2M Hill, Inc.
3 Hutton Centre Drive, Ste. 200
Santa Ana, CA 92707
robert.Mason@ch2m.com

Megan Sebra
CH2M Hill, Inc.
2485 Natomas Park Drive, Ste. 600
Sacramento, CA 95833
Megan.Sebra@ch2m.com

COUNSEL FOR APPLICANT

John A. McKinsey
Stoel Rives LLP
980 Ninth Street, Ste. 1900
Sacramento, CA 95814
jamckinsey@stoel.com

INTERESTED AGENCIES

Larry Tobias
Ca. Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630
LTobias@caiso.com

Electricity Oversight Board
770 L Street, Suite 1250
Sacramento, CA 95814
esaltmarsh@eob.ca.gov

City of Carlsbad
Joseph Garuba,
Municipals Project Manager Manager
Ron Ball, Esq., City Attorney
1200 Carlsbad Village Drive
Carlsbad, CA 92008
jgaru@ci.carlsbad.ca.us
rball@ci.carlsbad.ca.us

Allan J Thompson
Attorney for the City
21 "C" Orinda Way #314
Orinda, CA 94563

INTERVENORS

California Unions for Reliable Energy ("CURE")
Suma Peesapati
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
speesapati@adamsbroadwell.com

ENERGY COMMISSION

JAMES D. BOYD
Commissioner and Presiding Member
jboyd@energy.state.ca.us

KAREN DOUGLAS
Commissioner and Associate Member
kldougla@energy.state.ca.us

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

Mike Monasmith
Siting Project Manager
mmonasmi@energy.state.ca.us

Dick Ratliff
Staff Counsel
dratliff@energy.state.ca.us

Public Advisor's Office
pao@energy.state.ca.us

DECLARATION OF SERVICE

I, Robin Nuschy declare that on 5-1-08, I deposited copies of the attached letter, in the United States mail at Carlsbad Post Office with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

Robin Nuschy

ATTACHMENT 1

City of Carlsbad
Chronology of Encina Power Plant Site and Specific Plan 144

1952
San Diego Gas and Electric Company (SDG&E) constructed the Encina Power Plant (EPS).

1971
The Public Utility (PU) Zone was established and applied to the EPS and surrounding properties owned by SDG&E.

August 3, 1971
Specific Plan 144 was adopted in City of Carlsbad Ordinance 9279. The purpose of the Specific Plan was to provide rules and regulations for the orderly development of 680 acres of land located East of the Pacific Ocean and South of the North Shore of the Agua Hedionda Lagoon, and North of what is now Cannon Road, and provide design and development guidelines for the expansion of the power plant, then owned by San Diego Gas & Electric Company.

December 4, 1973
The Carlsbad City Council passed Amendment A to Specific Plan 144 in Ordinance 9372 to allow for the construction of a 400-foot stack and removal of the four existing stacks at the EPS. This amendment became null and void one year later.

The amended Specific Plan required notice and public hearings for any subsequent changes to the Plan.

1974
General Plan designation establishing a Public Utilities (U) land use classification was created and subsequently applied to the EPS.

1975
PU Zone was updated to require a Precise Development Plan (PDP) rather than a Specific Plan for public utility uses.

May 4, 1976
Specific Plan 144 was amended again (Amendment B) by the City Council's passage of Ordinance 9456 to permit the construction of a single 400-foot stack at the Encina Power Station to replace the four existing stacks. Amendment B to Specific Plan 144 added condition 14, which created design, development, and other requirements for the constructions of the 400-foot stack, the removal of the existing stacks, and operation of the power station. Amendment B also provided

an exemption to the 400-foot stack and duct work and screening to the 35-foot height limit established by Condition Number 5 of Ordinance 9279.

May 3, 1977
Amendment C of Specific Plan 144 was adopted by City Council Ordinance 9481 to allow for the construction of water treatment facilities and a maintenance building at the EPS.

1978 through 1993
Three additional amendments to Specific Plan 144 were applied for and withdrawn by SDG&E for changes to the EPS. Amendment D was proposed to allow connection of unit 5 to the stack, but it was determined that the connection was already allowed and so the amendment was not necessary. Amendment E proposed various improvements to the facility, and Amendment F proposed the addition of a green waste facility. Amendments D, E and F were all withdrawn and were not incorporated into the Specific Plan 144.

1982
Agua Hedionda Local Coastal Plan (LCP) was adopted which includes the properties owned by SDG&E including the Encina Power Plant site.

The City applied to the Coastal Commission to obtain effective certification for the Agua Hedionda LCP but was requested by SDG&E to withdraw the application. The City agreed to this request based upon a commitment by SDG&E that it would update its Specific Plan and bring the Power Plant site into conformance with the Site Development Plan ("Plan") requirements contained in Chapter 21.36 of the Carlsbad Municipal Code. SDG&E subsequently failed to honor this commitment.

July 24, 1989
City of Carlsbad letter to SDG&E reaffirming that any modifications, changes, amendments or additions to its plant would require a complete major amendment to the specific plan processed in accordance with Chapter 21.36 of the Carlsbad Municipal Code. Letter also requires that as part of the major amendment, the cumulative impact of all previous changes at the EPS site would be considered and an analysis would be made as to whether any conditions are necessary to address those cumulative impacts.

January 16, 1996
Carlsbad City Council adopted Ordinance NS-345 amending Specific Plan 144 (Amendment G) to remove 24.2 acres of land from the Specific Plan area. The map of the Specific Plan area was revised to reflect the removal of the acreage.

May 12, 1998
SDG&E letter to Carlsbad City Council acknowledging long-standing differences on the EPS. SDG&E requests that the City not adopt any policy or practice that would impact or delay the probable sale of the EPS.

May 12, 1998
Carlsbad City Council adopted Council Resolution of Intention No. 98-145. This resolution declared Council's intention to study the EPS and consider amendments to the General Plan, Zoning Designations and the EPS (up to and including area within the SP 144 boundary). This resolution which called for the City to undertake its own SP 144 update was due in large measure to the historically non-cooperative nature of the plant owner.

1999
SDG&E sold a significant portion of its holdings within Specific Plan 144 to Cabrillo Power I LLC. Property sold included the Encina Power Station and outer, middle, and inner basins of the Agua Hedionda Lagoon. SDG&E retained ownership of land east of Interstate 5 and along the lagoon's south and east shore, the SDG&E construction and operations center located south of the power station, and property along the lagoon's north shore west of Interstate 5.

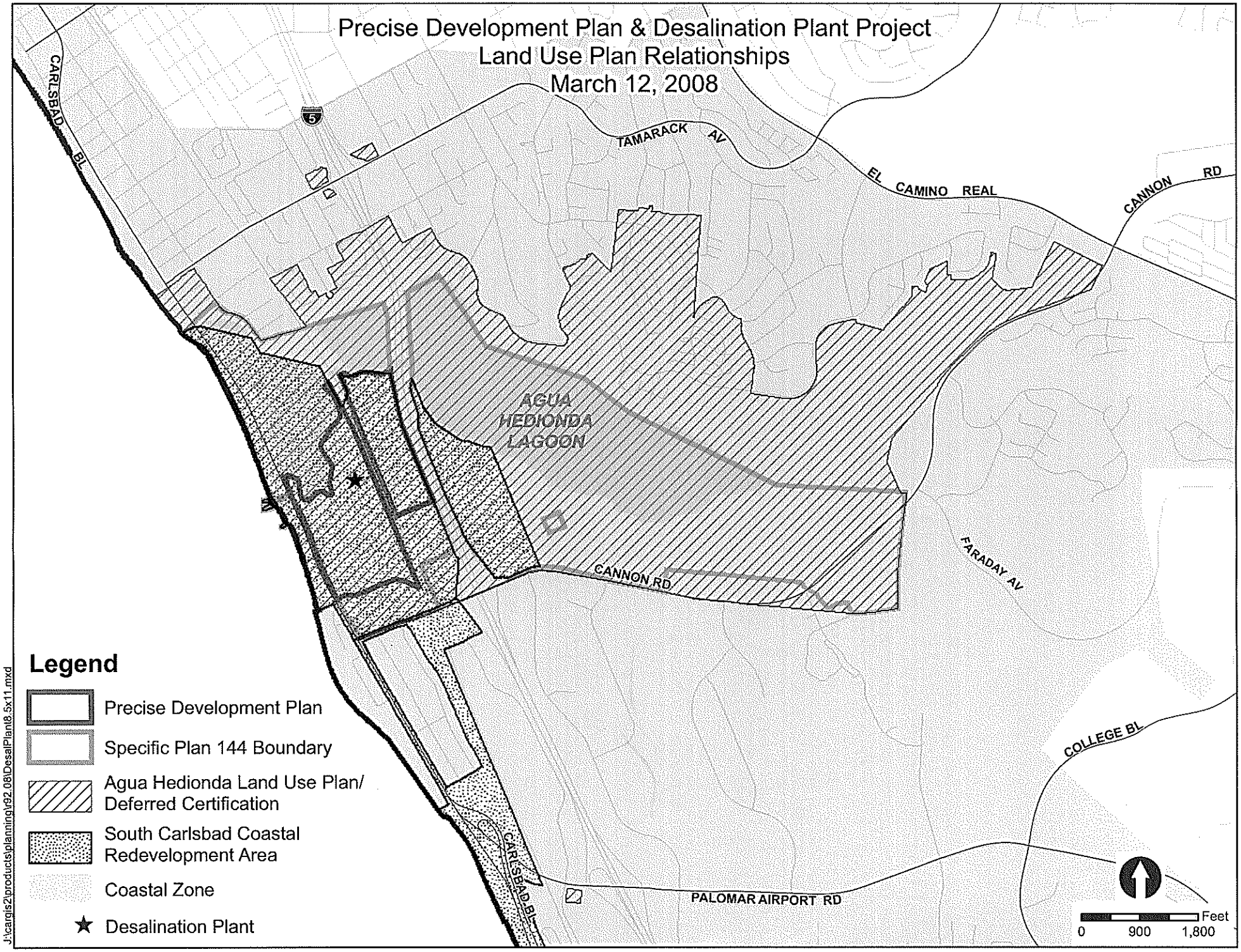
July 18, 2000
South Carlsbad Coastal Redevelopment Plan adopted.

Spring/Summer, 2001
City of Carlsbad and Cabrillo Power attempt to draft Memorandum of Understanding (MOU). The purpose of this MOU was to rectify long-standing land use issues related to the EPS and to address future re-use possibilities of the EPS site.

August, 2003
Carlsbad City Council adopts Resolution No. 2003-208 which allowed the proposed Carlsbad desalination plant to be processed without requiring a comprehensive update of the entire Specific Plan 144.

June 20, 2006
Specific Plan 144 Amended.

July 16, 2007
Carlsbad City Manager sends letter to Sempra Energy Utilities. This letter requires SDG&E to comprehensive SP144 update in order for the City to consider proposed modifications to SDG&E's Operations Center (located at the southwest corner of the EPS site).


Precise Development Plan & Desalination Plant Project
Land Use Plan Relationships
March 12, 2008
CARLSBAD BL
TAMARACK AV
EL CAMINO REAL
CANNON RD
AGUA HEDIONDA LAGOON
CANNON RD
FARADAY AV
COLLEGE BL
CARLSBAD BL
PALOMAR AIRPORT RD
Legend
Precise Development Plan
Specific Plan 144 Boundary
Agua Hedionda Land Use Plan/ Deferred Certification
South Carlsbad Coastal Redevelopment Area
Coastal Zone
Desalination Plant
Feet
0
900
1,800
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CITY COUNCIL RESOLUTION OF INTENTION NO. 98-145

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, DECLARING ITS INTENTION TO STUDY AND CONSIDER AMENDMENTS TO THE GENERAL PLAN, ZONING DESIGNATIONS AND THE ZONING ORDINANCES PERTAINING TO THE ENCINA POWER PLANT AND SURROUNDING PROPERTIES PRESENTLY UNDER THE OWNERSHIP OF THE SAN DIEGO GAS AND ELECTRIC COMPANY

WHEREAS, the San Diego Gas and Electric Company (SDG&E) initially constructed the Encina Power Plant in approximately 1952; and

WHEREAS, the Public Utility (PU) Zone was established in 1971 and applied to the Encina Power Plant and surrounding properties owned by SDG&E; and

WHEREAS, in conformance with the PU Zone, a Specific Plan was adopted for the 680 acre SDG&E ownership including the Power Plant site; and

WHEREAS, the General Plan designation establishing a Public Utilities (U) land use classification was created in 1974 and subsequently applied to the Encina Power Plant; and

WHEREAS, in 1973 the City Council approved an amendment to the Specific Plan to permit enlargement of the Power Plant including the construction of a 400 foot high stack as a means of dispersing Power Plant air emissions and reducing adverse impacts on surrounding residential neighborhoods; and

WHEREAS, the amended Specific Plan required notice and public hearings for any subsequent changes to the Plan; and

WHEREAS, there have been a number of changes made at the Power Plant without notice and hearings including a fuel tank installation in 1975, a two-story 50'x16' control room in 1977, the relocation of a maintenance building, expansion of a

switching substation and driveway in 1980, the expansion of a distribution substation in 1982, the addition of a 6,168 square foot administration building in 1984, the remodeling of the electric shop in 1985, addition of a storeroom and repair facility in 1986, the construction of a 24' x 40' pipe storage shed in 1986, the construction of a 30' x 30' metal paint shop in 1986, the addition of numerous microwave dishes and radio antenna attached to the stack, and the addition of temporary office trailers; and

WHEREAS, SDG&E was informed that any future modifications, changes, amendments or additions to its plant would require a complete major amendment to the specific plan processed in accordance with Chapter 21.36 of the Carlsbad Municipal Code, and at that time, the cumulative impact of all previous changes would be considered and an analysis would be made as to whether any conditions are necessary to address those cumulative impacts; and

WHEREAS, in 1975, the PU Zone was updated to require a Precise Development Plan (PDP) rather that a Specific Plan for public utility uses; and

WHEREAS, SDG&E has been informed that a Precise Development Plan is needed for the Power Plant site; and

WHEREAS, the Agua Hedionda Local Coastal Plan (LCP) was adopted in 1982 which includes the properties owned by SDG&E including the Encina Power Plant site; and

WHEREAS, the LCP contains numerous regulations and restrictions which impact the SDG&E properties and the Power Plant including public access, land use, recreation, agriculture, aquaculture, visual impacts and uses of the lagoon; and

4

WHEREAS, the existing Specific Plan for the SDG&E properties does not address the regulations and restrictions of the LCP; and

WHEREAS, the City applied to the Coastal Commission to obtain effective certification for the Agua Hedionda LCP but was requested by SDG&E to withdraw the application which the city subsequently did based upon a commitment by SDG&E that it would update its Specific Plan and bring the Power Plant site into conformance with the Site Development Plan ("Plan") requirements contained in Chapter 21. 36 of the Carlsbad Municipal Code; and

WHEREAS, SDG&E did not follow through on its commitment regarding the LCP; and

WHEREAS, the Zoning designations on the SDG&E properties are not in strict conformance with the General Plan designations on the properties in that portions of the properties are zoned Public Utility (PU) but are designated on the General Plan for Open Space (OS) or Travel/Recreational Commercial (TR) use; and

WHEREAS, because of the aforementioned occurrences and unresolved issues, the city has requested of SDG&E on numerous occasions that it prepare a comprehensive, updated Plan for the existing and future use and development of its property; and

WHEREAS, despite numerous verbal agreements to do an updated Plan, SDG&E has not come forward with a formal proposal, work program or timeline for initiating a process to update its Plan and address outstanding concerns and issues; and

WHEREAS, SDG&E has now informed the city that it is mandated by the courts to divest itself from its electric generating operations and facilities and has applied to the California Public Utilities Commission for permission to sell the Encina Power Plant to a private operator without addressing or agreeing to address the aforementioned issues regarding outdated plans, land use inconsistencies, coastal concerns and unfulfilled commitments; and

WHEREAS, the sale of the Power Plant site to a private operator raises additional issues and public concerns including future restrictions on public access to the Agua Hedionda Lagoon, future dredging of the lagoon, restrictions on the use of the site to only industrial or power generation notwithstanding consideration of the public health, safety or general welfare, the disposition of Cannon Park, proposed future changes of land use, the continuation of aquaculture and research at the lagoon, beach area improvements, environmental clean-up and mitigation related to oil and fuel storage and usage; and

WHEREAS, the city believes that it is necessary in order to protect the interests of its citizens for the city staff to initiate a process to address the aforementioned issues and concerns and to study and consider a comprehensive, updated plan for the SDG&E properties including the Encina Power Plant site; and

WHEREAS, the city believes that it is necessary for this process to include consideration of amendments to the existing Zoning and General Plan designations of the SDG&E properties; and

WHEREAS, these considerations should include whether the continued use of a portion of the property for a Power Plant is in the best interest of the citizens of

Carlsbad and is the best, long-term use of the property given its superior coastal location and its proximity to other existing, surrounding uses that can be adversely impacted by Power Plant use; and

WHEREAS, since SDG&E intends to sell the Encina Power Plant to a private operator, Section 21.48.100 of the Carlsbad Municipal Code which exempts Public Utilities from certain non-conforming use provisions of the Zoning Ordinance may no longer be appropriate or necessary and this code section should be considered for amendment or repeal.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Carlsbad, California as follows:

1. That the above recitations are true and correct.

2. That pursuant to Section 21.52.020 of the Carlsbad Municipal Code and Section 65358 of the State Government Code, the City Council of the City of Carlsbad declares its intention to consider amendments to the General Plan and the Zoning Ordinance as it pertains to the Encina Power Plant and the surrounding properties now under the ownership of the San Diego Gas and Electric Company (SDG&E) as shown on the attached location map and labeled Exhibit "A".

3. City staff is hereby directed to study this matter, prepare recommendations and to set public hearings before the Planning Commission and City Council to determine whether the present General Plan and Zoning designations for the SDG&E property including the Power Plant site should be amended.

4. Part of the study may include preparing alternative land uses and a "conceptual Master Plan" for the properties including the Encina Power Plant site and, at this time, staff is authorized to solicit Requests for Qualifications (RFQs) from consulting firms that are interested in contracting with the city to assist staff in preparing said alternative uses for the Power Plant site.

...

...

...

5. Staff is also directed to consider the repeal or amendments to Section 21.48.100, as appropriate, of the Carlsbad Municipal Code regarding Public Utility exemptions from the non-conforming use provisions of the Zoning Ordinance.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the 12th day of May, 1998, by the following vote, to wit:

AYES: Council Members Lewis, Finnila, Nygaard

NOES: None

ABSENT: Council Member Hall

CLAUDE A. LEWIS, Mayor

ATTEST:

ALETHA L. RAUTENKRANZ, City Clerk

City of Carlsbad

Office of the City Manager

July 16, 2007

David S. Siino, Manager/Facilities
Sempra Energy Utilities
8335 Century Park Court
San Diego CA 92123

Re: San Diego Gas & Electric ("SDG&E") North Coast Operations Center

Dear Mr. Siino:

Thank you for your letter of June 6, 2007 and your prior meeting with me and members of my staff to discuss processing your proposed North Coast Operations Center improvements at its 16 acre operations center located behind Cannon Park on the northeast corner of Cannon Road and Carlsbad Blvd. After consideration of your request and advice from our City Attorney, I have concluded that the best way to process changes to your operations center is to amend the Specific Plan and then proceed with the filing of a Precise Development Plan ("PDP").

As you have pointed out, the City Council determined to process a PDP for the proposed desalination plant without a comprehensive update to the Specific Plan. That determination by the City Council was based, in part, on the special benefits the City would receive over and above the normal benefits associated with processing and conditioning a proposed development. Indeed, the City Council and Poseidon Resources, with the consent of Cabrillo Power, entered into a development agreement pursuant to Chapter 21.70 of the Carlsbad Municipal Code. That chapter required and the City Council found that that project would result in the provision of economic, environmental, recreational, cultural and social benefits which would not be obtainable without approval of the agreement. You have not indicated any extraordinary benefits and no where I have been shown any. It has been the piecemeal approach to improvements made by your client over the years that culminated in the adoption of City Council Resolution 98-145. At the time the City Council considered this resolution, the former President of your company acknowledged the need for a resolution to the long-standing jurisdictional dispute. (Letter from Edwin Guiles May 12, 1998)

In 2002 when the City Council was deciding whether or not to allow alternative processing for the proposed desalination facility, your Regional Public Affairs Manager recognized the need to address the long-term uses for other property within the Specific Plan. (Letter from Frank Urtasun, Regional Public Affairs Manager dated June 11, 2002) Ultimately, the City Council determined to permit an amendment of Specific Plan 144 for the proposed Carlsbad Desalination Facility, but did not repeal or otherwise change its position as stated in City Council Resolution 98-145 that a comprehensive amendment to the Specific Plan is necessary to determine the future

1200 Carlsbad Village Drive • Carlsbad, CA 92008-1989 • (760) 434-2821 • FAX (760) 720-9461

vision for all properties located within the Specific Plan. If this issue is not addressed now, at what point in the future would trigger that review?

The planning staff is prepared to process your application for a Specific Plan amendment and a Precise Development Plan as soon as you apply. If you still wish to apply for relief from this requirement, please contact Senior Planner, Scott Donnell to coordinate the processing of that request.

Should you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,

RAYMOND PATCHETT
City Manager

c: City Attorney
Community Development Director
Planning Director
Senior Planner, Scott Donnell

City of Carlsbad
Planning Department

July 24, 1989

San Diego Gas & Electric
P.O Box 1831
San Diego, California 92112

Attention: Dave Siino

RE: AMENDMENT TO SPECIFIC PLAN 144/ENCINA POWER PLANT

Dear Mr. Siino:

At the Planning Commission meeting of July 19, 1989, the Commission approved your request for a minor amendment to Specific Plan No. 144 to install six wastewater tanks. As was discussed at the meeting, this is to inform you that any future request for improvement to the Encina Power Plant will require a complete major amendment to the Specific Plan processed in accordance with Chapter 21.36 of the Carlsbad Municipal Code. At that time, the cumulative impact of all previous minor amendments will be considered and an analysis will be made as to whether any conditions are necessary to address the cumulative impacts.

Please feel free to contact me if you have any questions concerning this matter.

Sincerely,

CITY OF CARLSBAD

Michael J. Holzmiller

MICHAEL J. HOLZMILLER
Planning Director

arb

cc: Planning Commission
City Attorney
SP-144 File

2075 Las Palmas Drive • Carlsbad, California 92009-4859 • (619) 438-1161