City of Carlsbad
Office of the City Manager

January 30, 2009

Mr. Mike Monasmith
Siting Project Manager
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

RE: City of Carlsbad Comments on Preliminary Staff Assessment of Carlsbad Energy Center Project (07-AFC-6)

Dear Mr. Monasmith:

The City of Carlsbad submits the following comments on the California Energy Commission's Preliminary Staff Assessment (PSA) of the Carlsbad Energy Center Project (CECP). For ease of use, issues raised in this letter are presented in the same order as the PSA. Page numbers (example 1-1) are referenced where appropriate.

If you have any questions regarding the issues the City raises please do not hesitate to contact me at (760) 434-2820 or at jgaru@ci.carlsbad.ca.us.

Respectfully,

Joe Garuba
Municipal Projects Manager
City of Carlsbad

Enclosure

JG/ad

c: Proof of Service List (Rev. 1/12/2009)

Overview of City Comments

The City has profound concerns about the proposed Carlsbad Energy Center Project (CECP) and the lack of clarity surrounding this project. The City anticipates that the CECP's incorporation of the widening of Interstate 5 will have substantial impacts to a number of resource areas, including Worker Safety and Visual, and will need to be fully analyzed and mitigated. There continues to be outstanding issues regarding air quality, including Green House Gas concerns, as evidenced by recent data requests and responses related to this project. Appropriate fire protection and emergency response for this project are uncertain. Non-compliance with local land use LORS and the lack of involvement from the Coastal Commission are troubling as is the long-term viability of the project's proposed water supply.

Executive Summary – Section 1

1-1: Parcel Size

a. The parcel size for the proposed CECP is **32 acres, not 23**. Please correct.

1-2: Project Location and Description

a. The summary should clarify that the permanent retirement planned for EPS Units 1, 2, and 3 would not result in the removal of any part of the generating station structure or other components of the existing Encina Power Station.

1-8: Noteworthy Public Benefits

a. Clarify that facilitating the retirement of existing EPS Units 1, 2, and 3 does not mean the removal of any part of the generating station structure or other components of the Encina Power Station.

b. Clarify that eliminating substantial amounts of seawater for once-through cooling applies only to that associated with the proposed retirement of Units 1-3.

1-8: Recommendations and Schedule

a. The City of Carlsbad disagrees with the first bullet point, which in part states "with few exceptions, the project is in conformance with all laws, ordinances, regulations, and standards..." As noted in city staff's comments on the land use section of the PSA, the project is not consistent with several applicable Carlsbad requirements, some of which are not addressed in the PSA.

Further, and as discussed in more detail in the Land Use section below, the City Council and Housing and Redevelopment Commission, in joint Resolution 2009-020, passed January 27, 2009, found the proposed

CECP inconsistent with all applicable land use laws, ordinances, regulations, and standards.

2-3: Agency Coordination

The list of agencies with applicable LORS needs to include the City of Carlsbad.

Since the release of the PSA, the CECP has been directed by CEC staff to submit project information incorporating Caltrans widening of Interstate 5. This information will undoubtedly affect areas such as Visual Impacts, Worker Safety, Noise, and Air Quality (depending on mitigation). The City looks forward to the Applicant's response to this request and will provide additional comments/questions once the CEC staff has an opportunity to review and analyze Applicant's response.

Project Description – Section 3

3-1: Parcel size is not 23 acres but 32 acres.

3-1: Please include a comprehensive site plan which contains the boundaries of the widened I-5 Freeway, the proposed CECP, and the expanded Carlsbad-Vista Sewer Interceptor facility.

3-2: Please reflect that the Applicant is a merchant power provider and as such has the ability to sell power to anyone, not just SDG&E. Also, please reflect that at the time of the PSA comment deadline, NRG still has not secured a power purchase agreement with SDG&E.

3-2: Schedule seems overly optimistic. Please reflect a more realistic schedule, such as:

2nd Quarter 2010 – CECP construction begins (30-36 months, including demolition)
2nd Quarter 2013 – CECP Startup and Testing

3-3: Capital cost of $440 million appears to be low. Please verify capital cost of project.

3-3: Water discussion is not accurate. As has been stated on numerous occasions, the City of Carlsbad does not currently have the reclaimed water capacity available to supply the proposed CECP (see Clarification of Carlsbad Municipal Water District Reclaimed Water Supply, dated February 20, 2008). Please reflect that the Applicant's proposed desalination water is the ONLY supply of industrial water for the CECP.

3-3: Use of the City's sewer system for industrial wastewater discharge is not considered an option. Please reflect that the Applicant's only source for industrial wastewater discharge is use of the existing EPS ocean outfall.

3-4: The summary discussion on Zoning/General Plan ignores the requirements of the South Carlsbad Coastal Redevelopment Area (SCCRA) Plan which applies from a land use regulatory standpoint. The Redevelopment Plan indicates that electrical power-generating facilities are only permitted if the findings of extraordinary public purpose are made by the legislative body. Please explain why the requirements of the SCCRA Plan were not considered in the analysis.

3-4: In the list of other project-related features and facilities, include the planned 138 kV switchyard relocation shown on Figure 3 and the transmission lines considering their prominence (nine poles with heights between 74 and 100 feet).

3-5: Noteworthy Public Benefits
The summary discussion on public benefits indicates that the project will accomplish a brownfield redevelopment of an existing power plant for a net increase in electrical capacity. Please explain and/or clarify the meaning of this public benefit from the CEC's perspective. City staff does not believe that the proposed project accomplishes brownfield redevelopment because the industrial use is being continued and there is no guarantee that the existing power plant will ever be demolished and the site redeveloped. From the City's perspective, the proposed project only intensifies an industrial use on the site and accomplishes no redevelopment. While increased or reuse development on an inland brownfield site may be in the best interests of the state, increased industrial intensification in a prime coastal location is not in the public's interests.

3-8: Project Description – Figure 3
This figure is difficult to read because of its small size and amount of detail. It would be a more helpful exhibit with these changes:

- Please enlarge the exhibit size (e.g., to a fold-out 11"x17" exhibit)
- Label and, as necessary, identify relevant adjacent features, such as the lagoon, the widened I-5, the expanded Carlsbad-Vista Interceptor Sewer and lift station, the Coastal Rail Trail, Carlsbad Seawater Desalination Plant, homes in the adjacent Terramar development, and the West Resort
- Use uniform, larger, and bold street name fonts

Environmental Assessment

Air Quality – Section 4.1

The City provided extensive comments to the San Diego Air Pollution Control District (SDAPCD) on its Preliminary Determination of Compliance (PDOC) and has docketed those comments with the CEC.

Since the release of the PSA, the CECP has been directed by CEC Staff to submit project information incorporating Caltrans widening of Interstate 5. This information will

undoubtedly affect areas such as Visual Impacts, Worker Safety, Noise, and Air Quality (depending on mitigation). The City looks forward to the Applicant's response to this request and will provide additional comments/questions once the CEC staff has an opportunity to review and analyze Applicant's response. Additionally, the CEC staff has requested a series of data requests regarding Air Quality. This information is fundamental to the project and may substantially alter the impacts and mitigation of the project. The City anticipates commenting to the CEC once these items have been answered and reviewed.

4.1-1: Recent filings by the CECP indicate that the SDAPCD's PDOC terms are unacceptable. Please indicate that the timing and content of an FDOC is uncertain.

4.1-1: The City is unclear regarding the 60% operating limitation and the application of SB 1368. Does this limitation apply to each turbine individually or both collectively?

4.1-22: The City has historically not allowed 24 hour construction. Carlsbad has made the CEC staff aware on numerous occasions that the Applicant's proposal to incorporate a 24-hour work schedule is unacceptable. Please revise hours of operation to reflect City of Carlsbad Municipal Code Section 8.48.

4.1-25: Please confirm from the manufacturer that the emission performance for the CTG's is based on an emission smokestack of 139 feet.

4.1-25: Facility Operation states, "...CECP operation would not require new employees because...workforce would be provided by...workforce which operates the existing Encina Power Station". Elsewhere, the PSA states that the CECP will be remotely controlled from the existing Encina Power Station. It is foreseeable that the EPS will be retired prior to the retirement of the CECP. Additionally, Cal ISO has expressed concerns about the reduced reliability of having power plants remotely controlled. Please clarify how the CECP will be operated once the EPS is retired. The City has concerns that in the event that emergency situations arise in the future, there will not be personnel available for rapid deployment. Additionally, as it is proposed, personnel will have to pass through two electrically operated gates and, possibly, two train barrier gates, to traverse from one plant to another.

4.1-27: The City is unclear as to what the limiting factor of the CECP is – air emissions or operating time. Please clarify.

GHG – Section 4.1-97 (Appendix Air-1)

4.1-97: The City disagrees with Staff's conclusion that the CECP would not result in a significant GHG cumulative impact. As identified in GHG Table 3, the CECP will produce more than 850,000 metric tons of CO2e per year. This represents GHG levels that greatly exceed any threshold level currently contemplated for identifying significant emitters.

4.1-101: Please adjust GHG Tables 2, 3, and 4 to reflect the information provided by the Applicant in their January 26, 2009 Data Response submittal.

4.1-102: GHG Table 4 should be adjusted to include GHG emissions from the EPS for operational years 2007 and 2008. In reviewing the Applicant's January 2009 data responses, GHG emissions for 2007 and 2008 from the EPS are consistent with the levels established in 2006 and are significantly lower than the emissions produced in 2002-2005.

4.1-103: The City disagrees with the PSA statement that "the project would not result in a net increase in global GHG emissions". As identified in the Applicant's January 26, 2009 Data Response F1, the Applicant states, "The need for additional power generating capacity for the CECP project area is discussed in the enclosed copy (see Attachment DRF1-1) of the California Public Utilities Commission (CPUC) order on the long-term power procurement plans for the San Diego area (Decision Number 08-11-008). As shown on page 38 of this CPUC order, the San Diego Gas and Electric Company is authorized to procure up to 530 MW of new local generating capacity. The proposed CECP is ideally suited to fulfill part of this new generating need since the net increase in generation from the 540 MWs from the CECP is 220 MWs, considering the retirement of 320 MWs from Existing Encina Units 1-3." This net increase in generating capacity results in an increase in carbon emissions by approximately 400,000 metric tons per year. Please amend the PSA to reflect this net increase.

Furthermore, the PSA fails to provide any documentation about specific offsets of other power generation outside of the retirement of EPS Units 1-3. Please provide specific reductions that will offset the GHG emission from the CECP.

4.1-104: GHG Figure 1 is misleading. Although average GHG emission per megawatt has been trending down, the gross output of GHG (due to increased energy needs) has increased. The core purpose of AB 32 is to reduce the gross amount of GHG's produced, which the CECP fails to achieve.

4.1-106: The City disagrees with the findings of the GHG cumulative impact section. As identified in the PSA, the CECP will produce more than 850,000 metric tons of CO2e per year (equivalent to the total carbon footprint for a city with a population of 60,000). Offsets for this project have not been identified and by the Applicant's own admission the project represents a growth of energy capacity, and thus GHG emissions. Please amend the cumulative impact section to reflect this project's increase on GHG emissions.

4.1-107: The City disagrees with statements in Noteworthy Public Benefits. As has been discussed earlier, although the CECP will be more efficient per megawatt than the EPS, the gross production of GHG's will increase with the development of the CECP. The City's underlying concern is that the very nature of GHG's is their cumulative effect,

and while it is important to strive for a low emission per megawatt factor, the real area of concern is the overall emission levels. Please amend the analysis to reflect that the CECP will increase overall GHG emissions by more than 400,000 metric tons per year (increase in capacity x permitted operational hours x .405 emission factor).

4.1-107: With an annual production of more than 850,000 metric tons (and a net increase of 400,000 metric tons) of GHG emissions per year, the CECP will qualify as a significant emitter of GHG's under any threshold developed. Notwithstanding the PSA's lack of analysis of the impacts the CECP would have on climate change, the analysis provided in the PSA fails to discuss effects of climate change on the proposed project. As stated in Health and Safety Code Section 38501(a), potential adverse effects of climate change include a rise in sea levels resulting in displacement of businesses or residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases. Clearly, a rise in sea level would have adverse effects on the operation of the CECP, and in particular the desalination alternative water supply system, including the seawater intake system and open-ocean discharge. However, no analysis of these effects has been provided.

Biological Resources – Section 4.2

Impingement and Entrainment of Marine Organisms

4.2-1: States that "The CECP is not subject to federal Clean Water Act 316(b) regulations because it would not require ocean water for *cooling* purposes". However, it acknowledges that the water supply proposed through seawater desalination would result in entrainment impacts on marine organisms. The proposed desalination alternative of the CECP would result in withdrawal of approximately 4 million gallons of seawater per day. As noted in the PSA (page 4.2-15) withdrawals of this quantity of water would result in an estimated annual entrainment of 22.7 million fish larvae from Agua Hedionda Lagoon. The PSA, which is the equivalent to a Draft Environmental Impact Report (EIR), states that the significance of these impacts is undetermined. However, in the PSA Workshop held by CEC staff on January 7, 2009, CEC staff indicated that after further consideration, entrainment impacts would be less than significant. This conclusion was apparently based on the "credit" associated with retirement of Encina Power Station (EPS) Generating Units 1, 2 and 3.

In light of the fact that power plants and factories around the nation collectively withdraw more than 200 billion gallons of water daily, and that a single power plant could result in annual impacts on billions of fish and shellfish, including their larvae, when Congress amended the Clean Water Act in 1972, it directed the EPA to regulate such "cooling water intake structures" so as to minimize adverse environmental impacts. (*See* Clean Water Act § 316(b), 33 U.S.C. § 1326(b) (2000) [hereinafter "CWA"].) On December 18, 2001, the EPA issued the first phase of regulations for new facilities that withdraw more than 2 million gallons of water per day. Therefore, the intent of the CWA is to require avoidance and minimization of impacts from power plants withdrawing over 2 million

gallons per day. The proposed project's *alternative* water supply would result in withdrawal of twice that quantity – 4 million gallons per day, and yet no efforts to avoid or minimize these effects are identified in the PSA. Therefore, while the PSA claims that the CECP would not be subject to CWA 316(b) requirements, its impacts exceed the regulatory thresholds of the CWA. By claiming that the seawater is not used for *cooling* purposes, the analysis sidesteps the intent of the CWA to avoid and reduce impacts on marine organisms from coastal power plants. Further, the processed seawater would indeed be used for cooling purposes, since the CECP would employ evaporative cooling as part of its operational practices. Therefore, the CECP is inconsistent with the intent, as well possibly the regulatory requirements of the CWA, and the PSA makes no effort to address these inconsistencies.

Moreover, the primary basis for concluding that the desalination system will not result in adverse effects on marine organisms appears to be reliance on a "net reduction" in impingement and entrainment effects related to the retirement of the EPS generating units 1, 2 and 3. Therefore, despite the fact that the CECP, including its desalination water supply results in impacts on marine organisms in excess of what would normally be regulated under CWA 316(b), the conclusion that these impacts are less than significant and not subject to avoidance or mitigation is based solely on the fact that a more harmful effect will be eliminated. However, the analysis fails to recognize that the elimination of existing impacts can be achieved without trading off new impacts on 22.7 million fish larvae per year. Given that feasible alternatives could be implemented to avoid these entrainment impacts entirely, it is not reasonable to rely on a "reduction" of impacts as a factor in determining the level of significance of new impacts.

Bird Collisions

In analyzing the project's potential to result in bird collisions, the PSA states that "It is anticipated that bird flight paths would be roughly east-west from the Pacific Ocean to the lagoon and that birds would not typically fly over the Encina Power Station and proposed CECP site, except possibly during inclement weather and conditions of low visibility." This statement implies that waterfowl and other birds will avoid flying over land, an assumption that is not based in fact. Further, even if the majority of bird overflight were to occur over water, the facility is located approximately 500 feet from the water surface of the lagoon. To suggest that collisions would be avoided due to the unsupported assertion that birds would not typically fly over land is unreasonable, and an inadequate basis upon which to evaluate potential impacts.

The PSA further states that "the CECP facilities are much shorter in comparison to the existing Encina Power Station facilities. Therefore, bird collision with CECP facilities is unlikely." This conclusion is flawed on several levels. First, the analysis fails to establish a baseline of bird collision impacts associated with the existing EPS. Such a baseline is necessary if the analysis relies on a comparison to baseline impacts. Second, the EPS facility is not being externally altered, and therefore, and bird collisions associated with the EPS would also occur with the proposed CECP. Therefore, the

CECP impacts are cumulative, and should be considered in addition to EPS impacts, not in comparison to EPS impacts. Finally, the analysis relies on mitigation measures that are totally unrelated to the impacts. **Condition of Certification BIO-7** is cited as means in which impacts would be reduced to less than significant levels. However, BIO-7 requires bird flight diverters only on power lines, not structures. Since the analysis fails to quantify, or otherwise characterize impacts (baseline or cumulative) related to bird collisions, and relies on mitigation that is unrelated to the impact being analyzed, the conclusions of the analysis are entirely unsupported by facts.

Numerous studies have documented extensive avian collision mortality associated with buildings and similar structures, including smokestacks (Erickson et al. 2005). These studies provide information that can be used as a basis for evaluating potential effects of bird collisions from new development. The number of bird collisions with buildings per year is estimated to comprise over 50 percent of the total annual bird mortality (Erickson et al. 2005).

The City of Toronto's Fatal Lights Awareness Program indicates that nighttime collisions seem to stem from night migrants that become confused by buildings or towers that are lit at night, especially with red light, as the proposed CECP will be. Red light has been suspected of interfering with the night-migrating birds' ability to track geomagnetic cues (City of Toronto 2007; O'Connell 2001). Other evidence from tall night-lit towers indicates that birds are attracted to the lit areas on cloudy nights regardless of the light color (Avery et al. 1976). Although many species of migrants have been documented to migrate at high altitudes, from 500 to 2000 feet (Williams 1950), most migrants flying over or near the ocean migrate at lower altitude, below 300 feet (Hüppop et al. 2006). Buildings close to waterfront areas on important migration pathways, such as the proposed CECP, can be especially problematic to nocturnal migrant birds.

The location of the Proposed Project is adjacent to the Agua Hedionda Lagoon, an area that provides habitat for a number of special-status bird species. The Proposed Project is also located along the coastline and includes a portion of a bird migration corridor and likely includes important migratory stopover habitat. The Proposed Project also includes construction of structures up to 139 feet tall. Due to the proximity to open water as a bird attractant, the location within a migration corridor, adjacency to native vegetation, and building heights that may extend into the altitude of migrating birds, the CECP could indeed result in significant impacts to migrating or special-status bird species due to an increase in bird strikes. The PSA should be revised, including a thorough analysis of potential impacts resulting from bird collisions, and should be made available for additional public review and comment, in order to meet the equivalency requirements of CEQA. To do otherwise would compromise the public review requirements afforded by CEQA, as should be replicated in the CEC CEQA equivalency process.

Increased Predation by Raptors

The PSA contains no analysis of the impacts of increased predation by raptors from constructing tall structures adjacent to sensitive wetland habitats. Because of the proximity of the CECP to the Agua Hedionda Lagoon, there is the potential for impact to special-status bird species, including nesting habitat for the California least tern. This impact could result from the man-made creation of potential perch sites for raptors that could prey on bird species native to the wetlands. Although predation on these species by raptors is a naturally occurring event, the artificial increase in perches for predators has the potential to alter the relationship between the species. Increased predation on special-status bird species as a result of the creation of perch sites in areas that do not naturally contain such vantage points is a significant impact that is not addressed in the PSA. Significant indirect effects would result from increased predation, abandonment of nests, or degradation of nesting and foraging habitat for the California least tern, all raptor species, and migratory birds, which can ultimately cause a drop in population numbers of these species.

Heating and Air Turbulence

The PSA contains no discussion or analysis of potential direct or indirect effects on bird, fish or other wildlife species that could result from increased air heating, or air turbulence created by the CECP. Potentially significant impacts associated with these project effects should be addressed, and the analysis distributed for public review, in order to afford public disclosure and review of the impacts, equivalent to what is required under CEQA.

Night Lighting

The PSA states that "Although operation of the proposed CECP would create additional light, significant impacts to biological resources are not expected." However, no analysis is offered to support this conclusion. Even with shielding, artificial lighting at night could illuminate nearby roost sites and nests, thus increasing the potential for disruption to breeding patterns and detection by nocturnal predators. In addition, artificial lighting and reflective glare may contribute to bird strikes against buildings. These impacts would be significant.

"Noteworthy Public Benefits"

In discussing Noteworthy Public Benefits, the PSA relies on a reduction in impingement and entrainment impacts associated with retirement of EPS Units 1 thorough 3 as justification for perpetuation of exactly the same impacts associated with the CECP's desalination water supply alternative. While the retirement of Units 1 through 3 is certainly a noteworthy public benefit, that same benefit could be achieved without trading off permanent impacts to 22.7 million fish larvae annually, by either locating the facility such that adequate non-ocean water supplies are available, or requiring an

alternative design of the facility to avoid the impacts. Such alternatives were never considered, because the PSA dismisses the CECP's impacts as insignificant, based on a "credit" assigned to the CECP for discontinuation of existing impacts.

Cultural Resources – Section 4.3

The City of Carlsbad has reviewed the CEC analysis of the CECP impacts on Cultural Resources and finds the analysis to be adequate. At this time, the City of Carlsbad has no additional comments or requests regarding the cultural resources analysis of the CECP.

Hazardous Materials – Section 4.4

The City of Carlsbad has reviewed the CEC analysis of the CECP impacts on hazardous materials and finds the analysis to be adequate. At this time, the City of Carlsbad has no additional comments or requests regarding the hazardous material analysis of the CECP.

Land Use – Section 4.5

1. Summary of Conclusions 4.5-1
    a. Staff strongly disagrees with this summary. To the contrary, we find the following to be true about the proposed project:
        i. It is not consistent with local land use LORS
        ii. It would generate a significant impact with respect to CEQA Appendix G issues, particularly "Land Use Planning"
        iii. It would not be consistent with the applicable section of the Warren-Alquist Act regarding public use despite proposed condition of certification Land-1
        iv. It has not been fully demonstrated to be compatible with surrounding uses
        v. It requires a comprehensive update of the Encina Specific Plan 144, which is necessary to determine the appropriate land uses and standards for the proposed CECP project site as well as the entire EPS

    b. For more than a year, Carlsbad has docketed many letters that repeatedly have documented its concerns about project impacts to land use. These letters, many of which have cited the proposed CECP's inconsistency with the City's land use LORS, are dated as follows and available on the Energy Commission's website:
        i. October 24, 2007
        ii. December 20, 2007
        iii. April 25, 2008
        iv. May 1, 2008
        v. July 8, 2008
        vi. August 22, 2008
        vii. September 10, 2008

viii. October 7, 2008
ix. October 22, 2008
x. November 4, 2008
xi. November 18, 2008

2. Introduction 4.5-1
   a. The PSA fails to discuss compatibility of the project, particularly the planned relocated 138 kV switchyard and new 230 kV switchyard, with the adjacent West Resort immediately south of the planned switchyards. Both of these proposed facilities are described in the proposed CECP's July 25, 2008 Project Enhancement and Refinement document.
   b. The PSA fails to discuss compatibility of the proposed CECP with future land uses on the east side of Interstate 5. This land is designated for Travel/Recreation Commercial uses and the proposed project's impact to future uses here should be considered.

3. Land Use Table 1 - Laws, Ordinances, Regulations, and Standards (LORS) 4.5-1
   a. Table 1, with regards to Local (City of Carlsbad) LORS, fails to recognize and needs to acknowledge the following applicable Carlsbad LORS:
      i. City Council Resolution 2008-235, passed August 12, 2008, that:
         1. Reaffirms the City's opposition to the proposed CECP
         2. Supports the reuse of the existing Encina Power Station to provide greater public benefit
         3. States that any proposed non-coastal dependent industrial land use (including power generation) at the EPS is inconsistent with the best interests of the community and should be precluded
         4. Reaffirms the Council's longstanding requirement for a comprehensive plan (i.e., Specific Plan 144 update) to guide the redevelopment of the EPS
      ii. City Council Resolution 2008-138, passed May 13, 2008 that, among other things, declares the City Council's intention to oppose the proposed CECP.
      iii. City Council Ordinance NS-806, which adopted Precise Development Plan PDP 00-02. While Table 1 presently recognizes the PDP, it fails to discuss the requirements or conditions of approval of the adopted PDP. Some of these conditions are applicable to any future development at the EPS, including the proposed CECP, via Planning Commission Resolution 6088.
      iv. City Council minute motion of June 11, 2002, establishing that the comprehensive update of Specific Plan 144 shall be applicant/property owner initiated.
      v. City Council Resolution 98-145, which makes clear the requirement for the comprehensive update of Specific Plan 144.

Details regarding the City's land use LORS, including requirements for the comprehensive update of Specific Plan 144 and the history of regulations applicable to this project, are contained in the City's May 1, 2008, letter to Energy Commission staff, which has been docketed.

b. Furthermore, please update Table 1 to acknowledge Joint City Council and Housing and Redevelopment Resolution 2009-020, passed January 27, 2009, based on long-standing City of Carlsbad Land Use policies and regulations, that finds the proposed CECP is inconsistent with all applicable land use laws, ordinances, regulations, and standards.

c. The description of the South Carlsbad Coastal Redevelopment Project Area Plan incorrectly states "the underlying intent of the redevelopment plan was to convert the industrial land west of the railroad tracks..." and "the plan's intent is to encourage the redevelopment of the EPS site and decommissioning of the existing power plant." The description also wrongly suggests the Plan's focus is the EPS. Actually, the Plan has several intended goals, as stated in Section IV (400), Redevelopment Plan Goals, which apply to a large, 555 acre area, including but also stretching far to the south of the EPS. These goals seek not only to facilitate redevelopment of the EPS to a smaller, more efficient facility, but also to eliminate blight and environmental deficiencies, develop new recreation opportunities, and implement criteria to ensure quality site design. Please correct this description to accurately reflect the intent of the Plan. It should be noted that the CECP is not in conformance with this redevelopment plan as the CECP represents an enlargement, not a decrease, in the facilities within the redevelopment area.

4. Other Project-Related Features and Facilities 4.5-5
   a. Transmissions lines should be listed as a related project feature considering their prominence (nine poles with heights between 74 and 100 feet).
   b. Relocation of the 138 kV switchyard should be listed.
   c. The "Retirement of existing EPS units" bullet point states "the use of seawater for cooling water would cease." This sentence could be misleading. It should be rewritten to clarify use of seawater for cooling purposes would cease only for the retired units and would continue for Units 4 and 5.

5. Surrounding Area 4.5-6
   a. Surrounding uses should recognize the West Resort development as it is immediately next to the proposed 230 kV switchyard.

b. At the top of 4.5-7, "Car Canyon Park" should be "Car Country Park."
c. Under Recreational Facilities on 4.5-7, "Canyon Park" should be changed to "Cannon Park."

6. General Plan Land Use and Zoning Designations 4.5-7
Discussion should acknowledge the South Carlsbad Coastal Redevelopment Project Area Plan, Specific Plan 144(H), and Precise Development Plan PDP 00-02 as applicable land use regulations to the project site and, as appropriate, surrounding properties.

7. Assessment of Impacts and Discussion of Mitigation 4.5-8
a. This section of the PSA notes an impact may be considered significant if the proposed project results in:

> "Conflict with any applicable land use plan, policy, or regulation of any agency with jurisdiction, or that would normally have jurisdiction, over the project. This includes, but is not limited to, a General Plan, redevelopment plan, or zoning ordinance."

The above significance criterion clearly shows any applicable land use policy, regulation, or plan of the City of Carlsbad must be considered. As noted above, and in the following discussion, the PSA fails to adequately consider all applicable land use LORs; accordingly, its analysis is incomplete.

Furthermore, the City has made the determination that the proposed CECP is inconsistent with its LORs. Therefore, the project has a significant land use impact.

b. This section also notes an impact may be considered significant if the proposed project results in:

> "Individual environmental effects, which when considered with other impacts, from the same project or in conjunction with impacts from other closely related past, present, and reasonably foreseeable future projects, are considerable, compound or increase other environmental impacts."

This criterion clearly indicates the PSA must analyze other projects when assessing land use compatibility. Presently, the PSA does not provide the comprehensive analysis required to make an adequate determination of land use compatibility. See the discussion under the "Cumulative Impacts and Mitigation" heading below for more information.

8. Conflict with Any Applicable Land Use Plan, Policy or Regulation
a. California Coastal Act Consistency Determination 4.5-11

i. The City notes that California Coastal Act Section cited, 30413(d), requires the Coastal Commission to issue a report on Coastal Act compatibility of the proposed CECP; CEC staff may not do this, and the CCC may not delegate or pass on this requirement.

ii. The analysis ignores the fact that the new proposed desalination plant proposed by the CECP applicant will continue to use seawater for operations of the new power plant. The City needs clarification as to why this is not noted as a concern for the Coastal Commission. The Staff notes that the Coastal Commission may take "guidance" from local land use policies. Please add the stronger language in PRC section 30004 (a) "To achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely on local government and local land use planning procedures and enforcement."

b. Coastal-dependent developments 4.5-12

i. City staff is unclear as to how the CEC can find that the proposed project is coastal-dependent simply because it is proposed to be built on the site of the existing power plant property. This new power plant does not need to be located on a site located on the sea or adjacent to the sea to be able to function (which is the definition set forth in the Coastal Act for coastal-dependent land uses). We agree that the proposed ocean-water purification system is a coastal-dependent land use if it were being developed as a standalone project and for the purposes of providing water to the entire City. However, a new power plant could be located at an alternative site and use alternate sources of water for operations. Therefore, the plant is not dependent on the specific site identified in the application in order to be able to function.

The applicant has selected the desalination project as an alternative to working cooperatively with the City to site the plant in a more appropriate, non-coastal location and to then obtain reclaimed water for the project. The fact that there is existing infrastructure on the site for an electrical-generating plant and that other areas for potential development are unaccustomed to this type of industrial development is irrelevant to a coastal-dependency land use determination. Therefore, there does not appear to be adequate justification for making a coastal-dependent land use determination for this project. Please clarify and explain the CEC's position on this matter.

ii. The City does not believe that a determination can be made that the proposed CECP is a coastal-dependent use simply because it

is located within the EPS property and has added a seawater purification plant. The primary use itself, an energy-generating plant, no longer requires ocean water for cooling purposes and, therefore, is not coastal dependent. The City does not agree that the applicant's operational decision to add a seawater purification plant (which becomes an accessory use) to the project to meet its demand for water should supersede the primary land use (energy-generating plant) which is not coastal-dependent.

In addition, it is an extreme stretch of coastal land use policies to indicate that the CECP is coastal-dependent simply because a currently coastal-dependent, inefficient and out-dated power plant was constructed on the site in the mid-1950s. If this was a new land use and being considered for this site for the first time, we believe the Energy Commission and Coastal Commission would agree with the City that this site is not an appropriate location for a power plant from a long term land use planning perspective.

iii. The sentence "Constructing the CECP on this site would avoid the need to develop in areas of the City of Carlsbad unaccustomed or unsuited to this type of industrial development" is unsubstantiated; there has been no evidence provided to support this statement. Furthermore, the City, not CEC staff, is best able to determine if an area is unaccustomed to or unsuited for a power plant. In fact, the City has advocated alternative, non-coastal locations for a power plant in Carlsbad.

The PSA at the top of 4.5-13 notes the proposed CECP site, because of its location between the rail corridor and interstate, is unlikely to be suitable for non-industrial uses. On the contrary, the I-5 and the NCTD rail corridors run in close proximity to one another along miles of coastline within San Diego County. Uses that are currently located between these facilities include residential, commercial, open space and other non-industrial uses. Furthermore, public uses and areas, such as trails, viewpoints and passive recreation features, and ball fields are examples of non-industrial improvements that could enhance this location and would be consistent with South Carlsbad Coastal Redevelopment Plan goals. Ultimately, the determination of the best uses for this segment of the EPS is best made by the City of Carlsbad as part of the required comprehensive update of Specific Plan 144.

iv. City staff is unclear as to how the CEC can determine that the proposed site has "greater relative merit to development of a power plant at an alternative site" when alternate sites were not studied in

any detail by the CEC staff. These conclusions are offered with virtually no analysis of the potential environmental effects of development of the use at any of the alternative sites. The analysis uses only the fact that the CECP is proposed on an existing industrial site as its rationale to justify **not** considering an alternative site. There is no mention of the relative environmental benefits, trade-offs, or other considerations that should be made in making this determination. In fact, the alternate sites would have been located outside the Coastal Zone and would not have been subject to the coastal-dependent determinations. Therefore, it appears that those sites would have had greater relative merit because they would not have any type of negative impact on any coastal resource and would be more preferred by the Coastal Commission.

c. Coastal Rail Trail Project 4.5-14
Discussion states that "construction and operation of the CECP would not impede or deter public access in the Coastal Zone..." City staff disagrees, noting that this determination cannot be made until the comprehensive update of Specific Plan 144 is completed. For example, there may be need for a public trail easement along the north boundary of the EPS, along the lagoon shoreline and from the nearest public roadway (Carlsbad Boulevard)) to the Interstate 5 bridge, to provide a future pedestrian connection between the beach and tourist commercial and open space properties east of the Interstate.

d. Other Considerations 4.5-17
   i. City staff doubts the assertion that the proposed CECP would not constitute "new development" as discussed in the context of public access per Coastal Act Section 30212. The PSA asserts "the proposed project would not be considered a new project because it would be located entirely within the existing EPS boundaries and includes decommissioning of older EPS units and replacement with new technology in power generation."

   Despite the PSA's assertion, it is clear the proposed CECP does not fit any of the examples provided in Section 30212 as to what new development does not include, such as replacement of existing structure destroyed by disaster, demolition and reconstruction of a residence, or improvements to a structure which do not intensify its use or increase its area by more than 10 percent.

   Therefore, the CECP should be analyzed based on the requirement of Section 30212, which is that "public access from the nearest public roadway to the shoreline and along the coast shall be

provided in new development projects..." This is an example of why the City has for many years insisted on a comprehensive SP update for this area.

CEC staff noted (4.5-15) that they City previously required the applicant to dedicate an easement for the Coastal Rail Trail in a location within the boundaries of the EPS PDP area that is mutually acceptable to the City and the applicant or its successor in interest. This requirement, established by condition 16 d. of Planning Commission Resolution 6088, does not allow the applicant to provide funding for the purchase/acquisition of an easement outside the EPS PDP area. However, in the CEC staff's review of the Warren Alquist requirement for public use areas (as noted in this section and Table 2a), staff determined that the dedication of an easement or funding to purchase/acquire an easement for the Coastal Rail Trail in some other location was an appropriate condition for meeting the statutory requirement for a public use area. City staff is unclear as to why the CEC staff would recommend a condition (LAND-1 on 4.5-38) that is not consistent with the City condition for the actual granting of an easement for the Coastal Rail Trail within the property of the EPS PDP area. If the applicant chooses to simply provide funding to purchase an easement in some other location, there is no guarantee that the trail would be constructed within the property boundaries for the project and therefore would not meet the requirements of the Warren Alquist Act. It is also likely that locating a trail other than on the project site would not comply with Coastal Act policies, including Policy 30212. Please explain and clarify the position of CEC staff on this matter. Further, and unlike the City requirement for the Coastal Rail Trail easement, LAND-1 contains no deadline by which the project owner and City must mutually agree on the easement location within the boundaries of EPS. The City strongly recommends this deadline occur prior to release of any permits for construction. The verification section of LAND-1 needs amendment to ensure verification of this deadline is met.

ii. In terms of public use areas, the City strongly disagrees that a Coastal Rail Trail alone is an adequate amenity to comply with the requirements of the Warren-Alquist Act, Coastal Act policies, the Agua Hedionda Land Use Plan, or the South Carlsbad Coastal Redevelopment Plan for public areas and/or public benefit. Due to the long term land use impacts created by the CECP and the EPS, the City believes that substantial public amenities must be included within the application in order for it to comply with the noted land use policies and/or regulations.

e. Land Use Table 2b (4.5-21)

i. Carlsbad General Plan and Zoning Ordinance (4.5-21 and 22)

Staff acknowledges the "U" and "P-U" land use and zoning designations applied to the EPS. However, these designations, and consideration of compliance with them, must be considered in light of the City Council Policy requirement that development proposed within the Encina Specific Plan 144 must first provide a comprehensive update of that specific plan. 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 and zoning on the EPS with a designation(s) and zoning(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 or zoning consistency for the CECP cannot be made.

ii. Encina Specific Plan 144 (4.5-23)

The City does not agree that Specific Plan 144 (SP 144) is a "permit-like document" and can, therefore, be pre-empted by the Energy Commission. A Specific Plan is a policy or regulatory document. It is an extension of the Zoning Ordinance, and allows for the systematic implementation of the General Plan. A Specific Plan can be adopted by resolution or by ordinance, and the City adopted SP 144 by ordinance. Furthermore, SP 144 complies with Government Code Sections 65450-65457. Therefore, it is city staff's opinion that the Specific Plan is a land use regulatory and/or policy document that carries the same weight for compliance purposes as the Zoning Ordinance and/or General Plan.

SP 144 states its amendment is required if a major amendment to the PDP is processed; according to the PDP, construction of a new power station is considered a major, or formal, amendment. This requirement is applicable to the CECP. The requirement for the proposed CECP to comprehensively update SP 144 is established by City Council policy and this update is necessary before the CECP can be determined to be in compliance with the applicable land use regulatory documents for the subject property.

The applicant's filing of an application to amend SP 144 does not propose a comprehensive update as required by the City.

iii. Encina Power Station (EPS) Precise Development Plan (PDP 00-02) 4.5-26

The PSA dismisses a compatibility analysis with the Precise Development Plan (PDP 00-02) because Energy Commission staff considers it a "site-specific permit." Staff disagrees with this conclusion and finds analysis is needed to determine compliance with this governing document; not only did PDP 00-02 serve to permit the Carlsbad Seawater Desalination Plant, it also establishes use and development standards for the EPS, and in so doing implements the General Plan and Zoning Ordinance and the Local Coastal Program for the entire EPS, similar to a specific or master plan.

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 General Plan Land Use Element requires a PDP to be adopted by ordinance. Also, constructing a new power generating facility, such as the proposed CECP, requires a formal, or major, amendment to the PDP in order to establish appropriate standards. A formal amendment to a PDP is processed in the same manner as a zone change.

PDP 00-02 contains numerous standards for which compliance analysis is needed, including setbacks, parking, grading, and architecture, that implement or complement Zoning Ordinance standards. The PSA does not provide this analysis. However, a comprehensive amendment to Specific Plan 144 is first needed before the proposed CECP can be determined to be in compliance with the applicable land use regulatory documents for the subject property.

The applicant's filing of an application to amend PDP 00-02 is not consistent with the requirement to comprehensively update the Specific Plan.

iv. City Council Ordinance NS-806 (Planning Commission Resolution 6088) (not included in Table 2b)

City Council Ordinance NS-806, passed June 13, 2006, approved Precise Development Plan PDP 00-02 and the findings and conditions of Planning Commission Resolution 6088 placed on PDP 00-02. This resolution should be identified as an applicable LORS as a number of conditions apply to the owner of the EPS, identified in the resolution as Cabrillo Power I LLC.

City staff has identified those conditions below as critical to analyze and fulfill as part of the proposed CECP. This is due to the proximity of the easements the conditions require in relation to the project. These conditions are:

16. Prior to issuance of grading or building permits for the desalination plant, Developer shall cause Owner or its successor in interest to make an irrevocable offer of dedication to the City and/or other appropriate entities for all public streets, lands, and easements shown on the Precise Development Plan listed below, except as otherwise provided in the Precise Development Plan. The offer shall be made by a separate document. All land so offered shall be offered free and clear of all liens and encumbrances and without cost. Streets that are already public are not required to be rededicated.

    d. Coastal Rail Trail – Prior to occupancy, dedicate an easement for the Coastal Rail Trail in a location within the boundaries of the Precise Development Plan that is mutually acceptable to the City and Owner or its successor in interest.

    e. Agua Hedionda Lift Station Site and Vista-Carlsbad Interceptor Sewer Pipeline - Prior to occupancy, dedicate an easement for the Agua Hedionda Lift Station Site and Vista-Carlsbad Interceptor Sewer Pipeline in a location within the boundaries of the Precise Development Plan that is mutually acceptable to the City and Owner or its successors in interest.

Furthermore, the City's Engineering Department has reviewed conditions 16b, 16c, and 17 placed on Planning Commission Resolution 6088. The Engineering Department recommends modifications to all but 16b, and recommends 16b and the modified conditions are considered as part of the analysis of the proposed CECP. The recommended conditions are:

1. Staff understands this project has existing storm drains that are not capable of collecting and conveying 100-year storm events through the property. Revise the application to include a Hydraulic/Hydrologic Study to analyze the pre and post-development storm flows of the project. The study should consider increases in storm run-off of the project and how to mitigate for any increases in flow. The study should also identify the size and capacity of existing/proposed storm drain infrastructure necessary to collect, convey and discharge storm run-off to avoid flooding of structures throughout the property.

2. Revise the project to include the construction of any proposed storm drain infrastructure identified in the Hydraulic/Hydrologic Study. New storm drain infra-structure should be constructed concurrently with the development of the project.

3. Per condition 16(b) of PC resolution 6088, revise the project to include the dedication of additional right-of-way, along the project frontage, for public street and utility purposes for Carlsbad Blvd to ensure a half-width from centerline to right-of-way of 51-ft.

v. Carlsbad Local Coastal Program/Agua Hedionda Land Use Plan 4.5-28

Analysis of compliance with the Agua Hedionda Land Use Plan (AHLUP) is lacking. There is no discussion regarding compliance with any of the Plan's policies, including those that would be particularly applicable to the proposed CECP. A number of policies concern water quality and runoff, and grading and erosion control. Other policies regard shoreline access and recreation and land use; a land use policy limits building height to a maximum 35 feet. Furthermore, the plan incorporates Coastal Act policies; as noted in these comments, the proposed CECP does not comply with the

Coastal Act; therefore, the project would not comply with the AHLUP as well.

The PSA refers the reader to its analysis of the proposed CECP's compliance with the Coastal Act; analysis at this higher level is not an acceptable substitute for consideration of local policies that implement the Act in a way tailored to fit the Agua Hedionda Lagoon area. For example, the PSA should evaluate whether the proposed CECP should comply with AHLUP Policy 6.7, which states "the present recreational uses of the lagoon shall be maintained and where feasible, expanded."

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.

vi. South Carlsbad Coastal Redevelopment Project Area Plan 4.5-29

The City does not believe that Energy Commission Staff has appropriately considered the extraordinary public purpose findings required within the South Carlsbad Coastal Redevelopment Plan to approve an electric-generating facility on the subject property. While the City agrees that the CECP will serve a regional need for electricity, we do not agree that this purpose alone meets the test for providing extraordinary public purpose as required by the Plan. The only other "public purpose" indicated to date is a condition to provide for the Coastal Rail Trail. Again, we do not believe this trail project alone (or together with the CECP) meets the test for extraordinary public purpose for our Carlsbad community. The City believes that there needs to be considerably more public purpose served by the CECP in order to make the noted findings. We have previously provided examples of the type of public purpose that the City believes must be demonstrated in order to make the required findings, which included additional public benefit amenities and a commitment to decommission and demolish the EPS on a date certain.

vii. Citywide Facilities and Improvement Plan (not included in Table 2b)

Table 1 lists the Citywide Facilities and Improvement Plan as an applicable LOR. This plan ensures that development does not occur unless adequate public facilities and services exist or will be provided concurrent with new development. The City concurs that this is an applicable document, and a discussion of compatibility of the proposed CECP with this document is lacking.

Analysis of infrastructure requirements would occur as part of the preparation of the comprehensive update of SP 144 and its accompanying EIR; this was also noted in the City's May 1, 2008, letter on CECP land use information. Furthermore, we note that wastewater treatment capacity, sewer collection system, and drainage/storm water system are among the important infrastructure considerations.

The PSA needs to demonstrate project compliance with the Citywide Facilities and Improvement Plan and the Local Facility Management Plan for Zone 3, which implements the Citywide Plan for the portion of Carlsbad that includes the EPS. An example to follow may be found in the certified EIR for the Precise Development Plan and Desalination Plant Project (SCH# 2004041081).

viii. City Council Resolutions and Actions (not included in Table 2b)

As noted earlier in comments on Land Use Table 1, the City Council has passed a number of resolutions and taken action to (1) require and reaffirm the need for an applicant/property owner-prepared comprehensive update of Specific Plan 144; (2) state its opposition to the proposed CECP and location of non-coastal dependent land uses at the EPS, and (3) support the reuse of the EPS to provide a greater public benefit. Since these City Council actions constitute LORS, an analysis of compliance with them is required.

f. Land Use Compatibility 4.5-35
   i. The first paragraph says EPS Units 5, 6 and 7 would be demolished. "Units" should be changed to "Tanks."
   ii. As noted earlier, the City disagrees that the project is compatible with land use LORS.

9. Cumulative Impacts and Mitigation 4.5-36
   a. Generally, the City concurs with the projects of note on which to base a cumulative impacts analysis. However, though discussed in the PSA, the Coastal Rail Trail (CRT) too should be considered a project of note. And, as discussed on page 4.5-13, the PSA considers the Vista/Carlsbad Interceptor

Sewer, Agua Hedionda Lift Station and I-5 widening projects as "foreseeable," meaning they are due a comprehensive analysis.

While the PSA analyzes the compatibility of these projects with the proposed CECP from a land use perspective, it fails to provide a comprehensive analysis of compatibility. This is important as components of a project of note may render as infeasible a feature or mitigation measure of the proposed CECP. It is not also possible to determine compliance with dimensional requirements, such as setbacks, of the Precise Development Plan. As the PSA does not provide any analysis from a spatial perspective, it is not possible to know how the proposed CECP would "fit" with the projects of note and with land use regulations.

Additionally, the PSA fails to consider the impacts the projects of note may have on critical aspects of the proposed CECP and vice versa, including in the areas of Visual Resources, Traffic and Transportation, Noise and Vibration, and Hazardous Materials. The PSA also needs to fully report on cumulative impacts that may result from construction of the projects of note simultaneously with the proposed CECP.

To help demonstrate compatibility, the PSA must include at a minimum a fully dimensioned and scalable site plan(s) to legibly show how the proposed CECP would "fit" with the projects of note. In addition to the CECP, the plan needs to include the proposed new and relocated switchyards and CECP improvements proposed west of the railroad tracks. The plan needs to show dimensions between critical features, such as the distances from the proposed CECP improvements to the proposed Interstate 5 right of way (widened condition), the proposed Vista Carlsbad Interceptor Sewer easement, the proposed Agua Hedionda Lift Station, and the existing West Resort.

b. The approved Carlsbad Seawater Desalination Plant (CSDP) has intake and discharge pipelines to the EPS ocean outfall. Similar outfall pipelines of the proposed CECP may conflict with those of the approved project.

Be advised as well that the CSDP proponent has submitted a Consistency Determination application to the City to make changes to the CSDP. The changes including a realignment of the plant in a north-south direction, so it extends parallel with the railroad tracks and in the location where proposed CECP outfall intake and discharge pipelines are planned to cross.

c. City staff does not agree with the following sentence from 4.5-37

> The proposed project would not require a General Plan amendment, zoning amendment, or other changes or concessions that would alter the development standards, availability of permits, or use of the project site or surrounding properties.

Although the proposed CECP is consistent with the current "U" general plan designation and "P-U" zoning, a determination of consistency with the City's General Plan, zoning ordinance or other land use document cannot be made by staff. As discussed in detail in the City's May 1, 2008 letter regarding land use LORS (referenced on PSA page 4.5-18), the constant city policy for nearly 30 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 compliance with applicable LORS for the proposed CECP cannot be made.

The City of Carlsbad strongly objects to CEC Staff characterizing and re-interpreting land use policies and regulations that have been interpreted by the City since its inception. The better course for the Staff would be to consider the City's interpretation and recommend an "override" if the Staff continues to believe the CECP is "required for public convenience and necessity and that there are not more prudent and feasible means of achieving public convenience and necessity." (Calif Pub Resources Code, 25525)

10. Conclusions and Recommendations 4.5-37

For the reasons noted herein, City staff disagrees with the conclusions and recommendations reached. Above all, until the comprehensive update of Specific Plan 144, measures to determine compatibility with LORs and adequate mitigation cannot be determined. Additionally, other points of disagreement are as follows:

a. The proposed CECP is inconsistent with applicable land use LORS, including Coastal Act requirements;
b. The proposed condition of certification LAND-1 is unacceptable as it is inconsistent with the City requirements for the Coastal Rail Trail and contains no deadline by which the project owner and City must mutually agree on the easement location within the boundaries of EPS. Additionally, the City strongly disagrees that a Coastal Rail Trail alone is

an adequate amenity to comply with the requirements of the Warren-Alquist Act, Coastal Act policies, the Agua Hedionda Land Use Plan, or the South Carlsbad Coastal Redevelopment Plan for public areas and/or public benefit.

c. Determinations of compatibility with other uses cannot be made until all surrounding uses are adequately considered.
d. Insufficient information is provided to determine that cumulative impacts would be less than significant. Incorporation of reasonably foreseeable projects in project planning and analysis is needed to understand fully potential impacts.

The PSA land use section should be revised to include a full analysis of project compatibility with all land use LORs, and adequate information on surrounding existing and proposed projects. An amended PSA should be made available for additional public review and comment in order to meet the equivalency requirements CEQA and to avoid compromising adequate disclosure and public review.

Noise and Vibration – Section 4.6

Since the release of the PSA, the CECP has been directed by CEC staff to submit project information incorporating Caltrans widening of Interstate 5. This information will undoubtedly affect areas such as Visual Impacts, Worker Safety, Noise, and Air Quality (depending on mitigation). The City looks forward to the Applicant's response to this request and will provide additional comments/questions once the CEC staff has an opportunity to review and analyze Applicant's response.

4-6.1: There is a large regional sewer interceptor (pipe) that is immediately adjacent to the proposed CECP. This pipe was constructed nearly 50 years ago and is in the process of being upgraded due to the City's concerns regarding capacity and structural integrity. Please identify and analyze impacts of pile driving activities on the existing sewer line, including the bridge which supports the line across the Agua Hedionda Lagoon. Please provide a map of the vibration intensity and impacts to the adjacent areas.

4.6-1: Please identify any impacts to the rail line adjacent to the proposed CECP.

4.6-2: As identified earlier, the City has historically not allowed a 24-hour work schedule. Please adjust proposed work schedule to reflect what is allowed (Municipal Code Section 8.48).

4.6-3: With regards to discussion on the City's Noise Guidelines Manual, text should be corrected to state that 60 dBA CNEL, not 65, is the acceptable maximum for noise that impacts schools, libraries, churches, hospitals, and nursing homes. Sixty-five dBA CNEL is the conditionally acceptable limit.

4.6-5: Did the analysis consider noise (both construction and operational) generated from the proposed and relocated switchyards and the approved desalination plant?

4.6-5: The Coastal Rail Trail, a public recreation facility which will be used heavily, will be located adjacent to the CECP. Please identify ongoing noise levels that the public will be subject to while on the CRT.

4.6-6: Noise Table 2 should include the 48-acre commercially designated SDG&E property east of I-5 as a noise measurement location.

4.6-6: Recognizing that a fundamental goal of the South Carlsbad Coastal Redevelopment Area is the redevelopment of the existing EPS into a more public oriented use, please identify ongoing noise levels on the Encina property located west of the railroad tracks.

4.6-8: Are pile driving noise impacts to the nearest residential receptors cumulative; i.e., inclusive of other CECP construction noise?

4.6-9: Please identify noise impacts of steam blows on the West Hotel which is immediately south of the proposed CECP.

4-6.10: Exhaust stack silencers, dirt berms and equipment enclosures are noted as ways to reduce plant noise if noise modeling shows the project will produce too much noise. Details on appearance and locations of the silencers, berms and enclosures are needed. Further, do the silencers increase stack height or dimensions? Details on these potential features as well as analysis of their possible visual and locational impacts are needed now to fully disclose impacts and feasibility.

4.6-13: Cumulative noise impacts and mitigation
Does analysis include the relocated and new switch stations?
It is not clear if the cumulative discussion is considering operational or construction noise.

Design of screening and visual assessment based on a widened I-5 condition must consider following Carlsbad General Plan Noise Element limitations, all of which discourage the use of walls:

a. *Noise Element land use policy C.7*: Enforce the policy of the City that site design techniques, such as increasing the distance between the noise source and the receiver; placing non-noise sensitive uses such a parking areas, maintenance facilities and utility areas between the source and the receiver, using non-noise sensitive structures, such as a garage, to shield noise-sensitive areas; and orienting buildings to shield outdoor spaces from a noise source be the first tool uses to mitigate noise impacts on sensitive land uses rather than the construction of walls or berms.

b. *Noise Element land use policy C.9*: Discourage the exclusive use of noise walls in excess of 6 feet in height as mitigation for noise along Circulation Element roadways.
c. *Noise Element land use policy C.10*: Utilize natural barriers such as site topography or constructed earthen berms to mitigate noise on a project. When noise walls are determined to be the only feasible solution to noise mitigation, then the walls shall be designed to limit aesthetic impacts. When over-height walls are necessary to mitigate nose, a berm/wall combination with heavy landscaping, a terraced wall heavily landscaped, or other similar innovative wall deign technique shall be used to minimize visual impacts.

Public Health – Section 4.7

The City of Carlsbad has reviewed the CEC analysis of the CECP impacts on Public Health and has only the following comment.

4.7-17: Please clarify if the public health analysis evaluated the cumulative emission impacts from both the proposed CECP and the existing EPS. If the analysis did not take the emissions from the EPS into account, please do so.

Socioeconomics – Section 4.8

There are many statements and/or references made in this section which are not accurate and/or not relevant to discussion on the desirability and/or benefit of the new power plant at the noted location. Because there were many inaccurate and/or irrelevant statements or facts presented, the City of Carlsbad must question and protest the accuracy of the conclusions made as related to socioeconomics and the benefit to the City and/or region from the subject project.

Additionally, there is no discussion within this analysis of the substantial fees which are due the City of Carlsbad as allowed under CEC regulations in order to construct the subject CECP. While this might represent a positive financial impact to the City, it should also be noted that this will add to the cost of the CECP, increasing construction costs (potentially 5-10% of project capital costs), and perhaps final costs to the ratepayers. This information needs to be analyzed and clearly explained to the public.

4.8-1: Statements regarding cumulative socioeconomic impacts to safety and emergency services is different than what the PSA identifies in those respective sections. Please correct.

4.8-9: The Worker Safety section of the PSA reflects a cumulative impact on Emergency Services. Please reflect this.

4.8-10: The City of Carlsbad requests verification of the fiscal impacts/benefits, including project capital costs. A copy of the sources and formulas used to determine the impacts is necessary for the City to confirm the fiscal impacts. The current impacts are not consistent with City projections, most specifically in the area of property tax revenue projections for the new plant and its benefit to the City.

It also does not appear that the CEC staff calculated the negative fiscal impact that a new power plant will potentially have on future property values, as well as the lost potential for new, more desirable visitor-serving commercial land development. The property to the west (existing power plant site), if ever redeveloped in the future, will have less value due to the long term industrial nature and negative visual value of the new power plant and expanded switchyard located immediately to the east and in very close proximity. In previous discussions, the Applicant's real estate experts have indicated that the property has much more value without the power plant (both existing and new). Therefore, the analysis of the negative impact on future development potential for the site should be explored and calculated into the overall project benefit (or disadvantage).

4.8-11: There is a repeat paragraph on this page. Also, in the last paragraph, there is an incomplete sentence. The City of Carlsbad is unclear as to the message intended and/or the relevancy of the information that was intended to be provided within this incomplete sentence.

4.8-14: The statement that the City published its first redevelopment plan in 2000, and that "the plan was superseded by the 2005 Five-Year Implementation Plan" is not an accurate statement and not an appropriate summary of the redevelopment policy documents. The official South Carlsbad Coastal Redevelopment Area (SCCRA) Plan was adopted in 2000; it was subsequently amended in 2005. It is a legal document prepared pursuant to the California Community Redevelopment Law. It establishes the process and framework for implementation of redevelopment activities. It is not superseded in any way by the 2005 Five-Year Implementation Plan. The implementation plan is simply a tool to "implement" the SCCRA Plan. The SCCRA Plan, however, remains the legal document for redevelopment purposes and the implementation tool assists in the efforts and provides short-term objectives.

The City of Carlsbad is confused and concerned about CEC staff's numerous references to the Ponto Beachfront Village Vision Plan and its relationship and/or relevance to the proposed power plant project. The Ponto Beachfront Village Vision plan applies to a portion of the SCCRA (approximately 130 acres out of 555 acres total), which does not include the power plant property (either existing or new). The goals and objectives of the Ponto Area are distinctly separate from the goals and objectives for the power plant property, which is the reason for the separate planning and visioning process set forth for the Ponto Area vs. the power plant properties. The Ponto Beachfront Village Vision plan does not include any discussion of future proposed development for the power plant properties. Therefore, the City does not understand

what source was used by CEC staff to establish any connection between that document and the power plant project. At best, any connection is irrelevant and not appropriate. At worst, the reference appears to be intentional to misguide the development goals for the power plant property. Because the Ponto Beachfront Village Vision Plan does not relate to any future commercial development on the power plant properties, it should not be used as proof of potential community benefit if the proposed power plant is constructed.

The City would like additional information and/or clarification on the reasons for including the discussion of the Ponto Beachfront Village Vision Plan within the scope of the socioeconomics analysis for the power plant property. The City does not believe the analysis is relevant or appropriate. In fact, we believe it is misleading to the public.

In the last paragraph on this page, there is another incorrect statement regarding the adoption date for the SCCRA Plan. The City was preparing to approve the redevelopment plan for the SCCRA in June, 2000, not December 2005 as stated within the analysis.

4.8-15: CEC staff noted that the SCCRA Redevelopment Plan lists as one of its ten objectives to "work towards the complete demolition of the existing power plant at its current location on the existing site and provide for construction of a new physically smaller plant at the rear of the existing site". It is not accurate to state that the Redevelopment Plan lists the above as an objective. The Redevelopment Plan itself states only the following goal regarding the power plant: "Facilitating the redevelopment of the Encina power generating facility to a smaller, more efficient power generating plant." The Plan itself does not refer to a location for the smaller plant. There was discussion in some of the related reports and implementation tools of locating the new, smaller plant in the noted location at the rear of the site and between I-5 and the railroad tracks. However, this was with the understanding that the existing power plant would be completely demolished and would not exist at the same time as the new, smaller plant. It should be made very clear that the primary goal for redevelopment has consistently been to eliminate the existing power plant and redevelop the subject property to non-industrial uses. Facilitating a smaller, more efficient power generating plant continues to be supported by the City. However, we believe that there are more appropriate locations than that selected by the applicant on the coastal property (since the plant is not coastally dependent).

In error, there is again a reference to the Ponto Beachfront Village Vision Plan which states that in this Plan "the City announced as one of its goal its intention to work with the landowner to facilitate a smaller, more efficient power plant at the site". This was not a goal of the Ponto Beachfront Village Vision Plan and an inaccurate/incorrect reference to a document that has no relationship to the redevelopment of the power plant site.

Please note the comments above regarding the numerous references to the Ponto Beachfront Village Vision Plan and its lack of relevance to the discussion on redevelopment of the power plant site.

4.8-17: Because the City has identified other areas where it could construct hotels, housing units or public amenities, CEC staff has concluded that the CECP will not have an adverse affect on the City's ability to construct hotels and/or housing units within this City. While it is true that the City proposes to build housing, hotels and other visitor-serving accommodations within the Ponto Area of the SCCRA, it is also true that the City proposes to build hotel(s), visitor-serving commercial and public amenities on the site of the power plant property. The City Council approved a resolution indicating that non-coastal dependent, industrial uses are no longer acceptable on the power plant property. These policies, goals and objectives have not been adequately analyzed within this section of environmental review. There has been no discussion of lost development opportunities on the power plant property as a result of the expansion of power generating and related facilities (switchyard) and no commitment to demolish the existing power plant and redevelop the site. No consideration has been given to the other development goals for the subject property, which may be negatively impacted as a result of construction of the CECP.

4.8-18: When comparing the potential for development which includes visitor-serving commercial uses and substantial public amenities to the proposed power plant, the City has found that the proposed project is not the highest and best use for the property and will not generate the substantial benefits (financial and other) desired for the community and region. The SCCRA Redevelopment requires findings of extraordinary public purpose in order to approve any new industrial use (such as an electric generating plant and related facilities). The public benefits provided by the proposed CECP are not extraordinary in any way. There has been no analysis of the development and public benefit opportunities to be lost if the subject CECP is constructed and remains for the next 40 to 50 years. These lost opportunities have a negative socioeconomic cost, and should be appropriately analyzed and mitigated, if necessary.

Furthermore, CEC staff failed to analyze the financial viability of the Applicant, which could have substantial ramifications considering the current economic climate and the ability to access capital markets.

Soil and Water – Section 4.9

General Comment: The City of Carlsbad will commit to providing the CECP with potable water for domestic and sanitary purposes only. As has been stated on numerous occasions, the City of Carlsbad does not project to have the reclaimed water capacity available to supply the proposed CECP (see Clarification of Carlsbad Municipal Water District Reclaimed Water Supply, dated February 20, 2008).

4.9-1: The City contends that the ocean water purification system (reverse osmosis) the Applicant proposes would result in withdrawal of approximately 4 million gallons of seawater per day. As noted in the City's comments on biological resources, the intent of the CWA is to require avoidance and minimization of impacts from facilities withdrawing over 2 million gallons per day. The proposed project's water supply would

result in withdrawal of twice that quantity – 4 million gallons per day, and yet no efforts to avoid or minimize these effects are identified in the PSA.
4.9-4: Staff understands this project has existing storm drains that are not capable of collecting and conveying 100-year storm events through the property.

Please revise the application to include a Hydraulic/Hydrologic Study to analyze the pre- and post-development storm flows of the project. The study should consider increases in storm run-off of the project and how to mitigate for any increases in flow. The study should also identify the size and capacity of existing/proposed storm drain infrastructure necessary to collect, convey and discharge storm run-off to avoid flooding of structures throughout the property.

Please revise the project to include the construction of any proposed storm drain infrastructure identified in the Hydraulic/Hydrologic Study. New storm drain infrastructure should be constructed concurrently with the development of the project.

4.9-5: Soil and Water Table 2
Change Potable Water Average Consumption to 1 gpm, Maximum Consumption to 1 gpm and Annual Consumption to 2 AFY. (The consumption estimates are taken from the potable water consumption estimates in the Palomar Energy Project (01-AFC-24), as these two plants are of similar size in similar geographic areas).

4.9-5: Paragraph following Table 2
Please change the following paragraph to reflect the City will only provide potable water for domestic use and fire suppression. The City of Carlsbad is willing to provide potable water for domestic and sanitary purposes only. The potable water will be delivered without a long-term agreement; an arrangement similar to all potable water customers. Due to chronic drought limitations, the City has not historically guaranteed the availability of potable water for any type of use. The CEC should be aware that it is highly unlikely that the City will be able to provide and guarantee a backup industrial water supply to the CECP.

4.9-9: Construction Water Supply
Revise the two paragraphs in this section to reflect the City of Carlsbad's commitment to provide potable water for domestic and sanitary purposes only.

4.9-12: First full paragraph
The City recommends adding a sentence after the first full sentence similar to the following: "If and when the EPS is deactivated, the CECP will require a new permit from the RWQCB to continue operation of the ocean-water purification system."

4.9-12: The City believes it is important to verify the ability of the Applicant to use desalinated water. In order to reduce confusion and the possibility of a constructed power plant with no available water supply, the City requests that the CEC **change Soil**

and Water 3 to condition the Applicant to provide proof of the RWQCB permit PRIOR TO CONSTRUCTION.

4.9-14: Wastewater (non-industrial) amount seems high (62 million gallons per year). Please clarify if this amount.

4.9-15: Please clarify if the CECP would need to amend their lease with the State Lands Commission, and if so, how this process will be coordinated.

4.9-17: Soils & Water-4
Change the description to reflect the City's commitment to provide potable water for domestic and sanitary purposes in the amount of approximately 2 AFY, with no long-term contract for supply.

4.9-13: Please require independent monitoring of waste streams for the CECP and the Poseidon Desalination Plant.

Traffic and Transportation – Section 4.10

Since the release of the PSA, the CECP has been directed by CEC Staff to submit project information incorporating Caltrans' widening of Interstate 5. This information will undoubtedly affect areas such as Visual Impacts, Worker Safety, Noise, and Air Quality (depending on mitigation). The City looks forward to the Applicant's response to this request and will provide additional comments/questions once the CEC staff has an opportunity to review and analyze Applicant's response.

4.10-1: Please identify cumulative impacts of CECP and widened I-5 freeway, including potential queuing along Cannon Road.

4.10-1: The City is uncertain about project traffic impacts. Please provide the complete traffic analysis prepared by the traffic consultant.

4.10-6: Please identify if the CECP needs permission from North County Transit District for use of railways/easements.

4.10-14: Due to the CEC's requirement that the CECP incorporate the widening of I-5, emergency access routes for the proposed CECP are unknown at this time (see City comments in Worker Safety). Please amend the analysis to reflect this uncertainty.

4.10-14: Please amend worker parking to preclude use of land associated with the improved Carlsbad-Vista Sewer Interceptor (including sewer lift station) and the Coastal Rail Trail.

4.10-15: Please clarify if staff analyzed future trip generation and its impacts after the project is completed.

Transmission Line Safety and Nuisance – Section 4.11

The City of Carlsbad has reviewed the CEC analysis of the CECP impacts on Transmission Line Safety and Nuisance and finds the analysis to be adequate. At this time, the City of Carlsbad has no additional comments or requests regarding the transmission line safety and nuisance analysis of the CECP.

Visual – Section 4.12

Since the release of the PSA, the CECP has been directed by CEC Staff to submit project information incorporating Caltrans widening of Interstate 5. This information will undoubtedly affect areas such as Visual Impacts, Worker Safety, Noise, and Air Quality (depending on mitigation). The City looks forward to the Applicant's response to this request and will provide additional comments/questions once the CEC staff has an opportunity to review and analyze Applicant's response.

Furthermore, the PSA takes into account the construction of a new berm and trees along the western boundary of the CECP. As it is currently proposed, that proposed visual screening is located on top of the upcoming Carlsbad-Vista Sewer Interceptor and lift station project (CVSI) and the Coastal Rail Trail (Letter from City to CEC dated September 10, 2008). Please adjust CECP site plan to reflect the location of the CVSI and the CRT and identify the location where the proposed visual mitigation (berm and trees) for the western side of the project will be located.

4.12-4: Description of existing vegetation describes height of eucalyptus trees planted along the northern and eastern boundaries of CECP as being in excess of 70 feet. However, in December 2007 the Applicant submitted Data Response Set 1A. In this response, Applicant included a report conducted by a certified arborist who identifies the height of the trees along the north and east of the CECP as 45 feet, not 70 feet. Please correct this difference in screening height. Also, please identify if the loss of 25 feet (more than 33%) of screening would further exacerbate visual impacts of the proposed CECP.

4.12-4: The bottom of the page states existing fuel oil storage tanks 1 and 2, just north of the Carlsbad Seawater Desalination Plant, will be removed for staging. However, 4.12-11 makes a point that these two tanks will remain. Please clarify which scenario the City can expect and adjust analysis accordingly. If the tanks are going to be removed, please require Applicant to provide updated visual simulations and revise the PSA's analysis accordingly.

4.12-5: Visual Resources Table 2. Please include the structure height and quantities of the proposed switchyard.

4.12-5: Please remove the reclaimed water pipeline as there is not currently one proposed for the CECP.

4.12-5: Please adjust the construction staging area to incorporate the Carlsbad-Vista Sewer Interceptor and the adjoining sewer lift station.

4.12-22: As indicated above, staff recommended mitigation for a new western earth berm appears to interfere with sewer easement.

4.12-23: City staff is concerned that more serious consideration was not given by the CEC staff on the negative visual impacts of the proposed project, recognizing that the upcoming I-5 widening project removes the berm area with the large "screening" trees (Caltrans letter to CEC dated November 17, 2008) and that the proposed berm on the west side of the project will be precluded due to improvements to the regional sewer transmission system. Because the expansion plans for I-5 are known and it is anticipated by the Applicant that they will eventually retire all facilities within the existing power plant and demolish the subject building to allow for redevelopment, it does not seem appropriate to use the trees and existing building as assurance that the proposed project is adequately screened. Please explain why these matters did not receive greater consideration in the CEC staff review and analysis of the visual impacts. Also, please explain why the proposed CECP would not be required to alter the design of their project to accommodate the potential loss of screening due to the removal of the berm/trees as a result of the I-5 widening project. Since the plans for the widening are known (perhaps not final, but generally known), there should be consideration given to the design of the power plant to address the future visual impact.

4.12-30: Statement that Coastal Commission has not certified AHLUP is incorrect; plan certified 7/1/82. Plus, contradicts 4.5-3 that says it has been certified.

4.12-33: Please confirm Visual Analysis contains a study of relocated 138 kV and new 230 kV switchyards.

Waste Management – Section 4.13

The City of Carlsbad has reviewed the CEC analysis of the CECP impacts on waste management and finds the analysis to be adequate. At this time, the City of Carlsbad has no additional comments or requests regarding the waste management analysis of the CECP.

Worker Safety and Fire Protection – Section 4.14

At this time the City is unable to provide specific comments on the PSA regarding this resource area.

However, the CEC should be aware that the City continues to have deep concerns about its ability to provide adequate Emergency Medical and Fire Protection Services in a timely fashion to the proposed CECP. These concerns reflect the heavy industrial nature of the project, its challenging geographic location, problematic site constraints,

and the need for any response to travel under numerous sets of high tension lines and over and under several bridges in order to access the proposed site.

As of this submittal, the City is still working with the Applicant to identify and understand the emergency service aspects and requirements of this project. The City will be requesting additional information through the CEC to help it better understand the proposed project and its impact to City services.

Since the release of the PSA, the CECP has been directed by CEC Staff to submit project information incorporating Caltrans widening of Interstate 5. This information will undoubtedly affect areas such as Visual Impacts, Worker Safety, Noise, and Air Quality (depending on mitigation). The City looks forward to the Applicant's response to this request and will provide additional comments/questions once the CEC staff has an opportunity to review and analyze Applicant's response.

It should be noted that until such time that the City's concerns are addressed and mitigated, the City is unsure as to its ability to meaningfully respond to any large-scale emergency incident that may occur at the proposed CECP.

Additionally, the City would like to raise a Facility Operation question that is raised on Page 4.1-25 which states, "...CECP operation would not require new employees because...workforce would be provided by...workforce which operates the existing Encina Power Station". However, elsewhere, the PSA states that the CECP will be remotely controlled from the existing Encina Power Station. It is foreseeable that the EPS will be retired prior to the retirement of the CECP. Additionally, Cal ISO has expressed concerns about the reduced reliability of having power plants remotely controlled. Please clarify how the CECP will be operated once the EPS is retired. Also, the City has concerns that in the event that emergency situations arise in the future, there will not be personnel available for rapid deployment. As it is currently proposed, personnel will have to pass through two electrically operated gates and, possibly, two train barrier gates, to traverse from one plant to another.

Facility Design – Section 5.1

The City of Carlsbad has reviewed the CEC analysis of the Facility Design finds the analysis to be adequate. However, the City would like to note that the proposed CECP is likely to change as a result of CEC requirements to incorporate the widening of I-5 into the project. Impacts from this potential redesign are unknown at this time.

Geology and Paleontology – Section 5.2

The City of Carlsbad has reviewed the CEC analysis of the CECP impacts on geology and paleontology and finds the analysis to be adequate. At this time, the City of Carlsbad has no additional comments or requests regarding the geology and paleontology analysis of the CECP.

Power Plant Efficiency – Section 5.3

The City of Carlsbad has reviewed the CEC analysis of the CECP impacts on power plant efficiency and finds the analysis to be adequate. At this time, the City of Carlsbad has no additional comments or requests regarding the efficiency analysis of the CECP.

Power Plant Reliability – Section 5.4

5.4-4: The discussion of the reliability of the water supply must be revised to reflect the following: (1) No reclaim water will be provided to the CECP project, (2) Potable water will only be supplied for domestic and sanitary purposes, and (3) no back-up connections will be provided to the CECP (4) it is speculative that the CECP will be allowed to withdraw ocean-water once EPS Units 4 & 5 are retired.

The City of Carlsbad has no comment on the reliability of the proposed CECP, except to correct the mischaracterization of the project's water supply. It should be noted that water cannot be delivered from the existing Encina Power Station to the CECP as this would constitute a resale to the LLC.

Transmission System – Section 5.5

5.5-8: Please clarify that the proposed CECP online date is no sooner than 2012 and more likely 2013. Please require an update to the SIS to identify if this change in online date will have any impact to grid reliability.

5.5-15: The PSA reflects a Cal ISO online date for the CECP of 2010. Please clarify that the online date for the CEDCP is no sooner than 2012 and more likely 2013.

Alternatives – Section 6.1

The following comments are provided based on the extensive guidance provided in CEQA and the case law interpreting CEQA, since the CEC process is intended to be the equivalent (and replacement) of CEQA review for projects considered for Certification by the CEC. A thorough analysis of alternatives is vitally important, given the extensive long-term significant impacts resulting from the proposed CECP. It is the CEC's duty to consider a reasonable range of alternatives to avoid or mitigate these extensive impacts. However, the alternatives analysis in the PSA lacks sufficient detail and scrutiny to allow meaningful public review of the Proposed Project and does not provide sufficient analysis in order to allow the decision makers to make informed decisions in regards to the Proposed Project. An example of how this lack of information impacts conclusions is evident in the comments made on 6-4 which state, "And, while staff kept an eye towards all alternative sites' ability to avoid or substantially lessen visual resource impacts – the primary significant impact of the CECP site – none met this criteria." Clearly this statement is not based on any meaningful analysis and fails to provide even a brief comparison or discussion of visual impacts for any alternative.

Inadequate Range of Alternatives

An Environmental Impact Report (or in this case the Staff Assessment) must describe a range of reasonable alternatives to any proposed project or to the project's proposed location. The nature and scope of such alternatives is governed by a rule of reason that will allow decision makers to make a reasoned choice and provide meaningful public review and participation.[1] While no set number of alternatives is required in order to provide an adequate range of alternatives, the range must be sufficient in order to permit a reasonable choice of alternatives.[2] Therefore, the lead agency has a duty to provide sufficient choices and detail in the alternatives in order to meet this "reasonable" standard.

In order to screen alternative sites as potentially feasible or not, a lead agency should evaluate whether or not any of the project's significant impacts would be avoided or substantially lessened by either altering the project's design or by locating the project in a different area. If not, such alternatives should be rejected. Further, the alternatives presented in the EIR must be able to "feasibly attain most of the basic objectives of the project." [3]

6-3: Limited Objectives of Project to Meet Desired Goals

The PSA only identifies a limited number of alternatives due to the inability to meet the basic project objectives put forth by the CEC staff. Page 6-3 states that the "primary objective is to provide a reliable source of electrical generation to an energy-dependent region of California". Then it goes on to state that staff has further determined that additional objectives include the delivery of "electricity to San Diego Gas & Electric (SDG&E) via 138-kilovolt (kV) and 230-kV lines at the existing EPS and adjacent SDG&E Cannon Substation", "Accomplish Brownfield Redevelopment" and to "retire EPS existing units 1, 2, and 3, thereby eliminating their use of up to 220 million gallons of ocean water per day for once-through cooling purposes." Given these narrowly crafted project objectives, staff inevitably limits the number of "feasible" alternative locations, and rejects all alternatives due to their inability to meet objectives. The objectives are so narrow and drafted to only support the Proposed Project, that they preclude the option to create a reasonable range of alternatives.

While feasible alternatives must be capable of meeting "most of the basic objectives" of the Proposed Project, they do not have to be able to implement all of the objectives.[4] Moreover, a project may not so limit a project's objectives in such a way to artificially confine the range of feasible alternatives that are available.[5] Here, the objectives are limited to such a degree as to only allow the Proposed Project as the feasible option and limits the pool of a reasonable number of alternatives. Either the Proposed Project's

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[1] State CEQA Guidelines, Sec. 15126.6.
[2] *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3rd 738, 750.
[3] State CEQA Guidelines, Sec. 15126.6.
[4] State CEQA Guidelines, Sec. 15126.6; See also *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477.
[5] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3rd 692.

objectives need to be altered so as not to preclude a reasonable number of feasible alternatives or the Proposed Project needs to provide sufficient documentation in the record to support these limiting project objectives.

For example, the document needs to explain why only the delivery of "electricity to San Diego Gas & Electric (SDG&E) via 138-kilovolt (kV) and 230-kV lines at the existing EPS and adjacent SDG&E Cannon Substation" is the only way to deliver the proponent's primary objective "to provide a reliable source of electrical generation to an energy-dependent region of California." The City understands that contractual obligations, and Cal ISO studies, may gravitate to a location at Canon Substation or in close proximity to the Canon Substation grid location. The Staff must not take the extra step of adopting an objective of locating the project on the EPS – this clearly violates CEQA. If the primary objective is to deliver energy to San Diego County, then additional sites need to be evaluated outside of the City of Carlsbad. The City suggests that CEC staff consider stating the objectives similar to what is included in the proposed Orange Grove project. In Orange Grove, the Staff objective reads, "The site should be within a reasonable distance of ...".

As for the project objective of brownfield redevelopment, the Alternatives analysis should recognize that the intensification of an industrial development does not constitute a brownfield redevelopment. The proposed plant utilizes land that has already been used for an industrial purpose. The City sees no difference between a parcel that is currently used for an industrial purpose and one that will, in a short amount of time (Carlsbad Oaks North), be used for an industrial purpose.

Finally, given the fact that the proposed desalination water supply alternative associated with the CECP would result in impacts on marine organisms (the very same impacts that the project objectives seek to eliminate through retirement of EPS Units 1-3), and is not a coastal-dependent use, it would appear that a number of non-coastal locations with adequate reclaimed water supplies to meet the needs of the facility would be available and would be feasible, thereby avoiding adverse environmental effects.

6-6: Insufficient Comparisons between Provided Alternatives and the Proposed Project

CEQA requires the lead agency to provide sufficient information about each alternative in order to allow meaningful evaluation, analysis, and comparison with the Proposed Project.[6] Similar to the range of feasible alternatives, the level of analysis required of each alternative is subject to the rule of reason and must contain sufficient information to allow a comparison of the merits between both the project and each alternative. [7] The analysis must be specific enough to allow informed decision making and allow for

[6] State CEQA Guidelines, Sec. 15126.6(d).
[7] Sec. 15126.6(d); See also *Laurel Heights Improvement Association v. Regents of University of Cal.* (1988) 47 Cal.App.3rd 376, 406.

appropriate public involvement; a mere conclusory discussion of alternatives is insufficient.[8]

The alternative analysis provided in the PSA lacks meaningful evaluation of the alternatives as compared to the Proposed Project. While case law and the State CEQA Guidelines do allow a comparison of the potential impacts in a matrix format, the description about and the tables provided on page 6-7 and 6-8 either lacks adequate detail for sufficient comparison between the Proposed Project and the listed alternatives or mischaracterize the impacts at alternate sites. Examples of this mischaracterization just related to the Oaks North property include:

- "distance to power lines is considerable..."
  - The distance from the Oaks North site to the transmission tie-in locations is not great. The Commission has licensed many projects with transmission lines greater than 1 ½ miles.

- "Development of this site could potentially involve considerable time in terms of securing the site (site control, zoning)..."
  - The Oaks North parcel is for sale and is zoned Planned Industrial. An option agreement to purchase the property could be put in place in very little time. While amending land use regulations would be necessary to specifically permit a power plant, the site is in an industrial park and is more than adequate in size to accommodate the proposed CECP.

- "...and putting infrastructure in place (transmission, natural gas)."
  - Construction of transmission of the length required for the North Oaks site and a natural gas line less than one mile long can easily be accommodated within the construction schedule of a major power plant.

- "the considerable time delays involved for approval,..."
  - The permitting time required for an alternate site cannot be used to justify the exclusion of that site. Additionally, it is unclear that time pressures are relevant to the present inquiry. With the approval of the Sunrise Powerlink and the completion of the Otay Mesa facility, a CECP project may not be needed until 2013 or 2014. (It should be noted that even without a Revised PSA or Revised FSA, staff estimates that the CECP cannot be on line for summer 2011 service).

- Land Use/Site Control - The table predicts impacts from locating a similar project at the Carlsbad Oaks North Alternative as "Greater than proposed site (site control)".
  - No mention is made that the Oaks North site is designated for industrial uses and is ideally situated away from residences. Furthermore, any

[8] *Laurel Heights*, at 404 to 406. See also *San Joaquin Raptor Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713

development at the EPS first requires a comprehensive amendment for the Encina Specific Plan 144, along with revisions to several other regulating documents. With regard to site control, purchase or option agreements can be put in place in a relatively short amount of time. Lastly, the CECP must obtain a revision to its lease from the State Lands Commission, and it is not clear that a revision will be granted. Accordingly, land use impacts related to the Oaks North site should be changed to either "Similar to or less than the proposed site".

- Biological Resources – Alternatives Table 2 predicts impacts from Oaks North as "Similar to proposed site".
  - The Oaks North site is graded and ready for construction. An environmental review of this project has withstood environmental scrutiny. However, use of the CECP site will result in the destruction of over 22 million fish larvae every year of operation. The description of biological impacts from construction at the Oaks North site should be "Less than proposed site".

- Noise - The table predicts impacts from the Oaks North site to be "Greater than proposed site".
  - First, without any analysis, this conclusion is difficult to defend. The City notes that the closest residential unit is 2,500 feet distant at the Oaks North site compared to 1,700 feet to the closest residential unit at the CECP. There is also a substantial possibility that required changes to the CECP to provide some type of security barrier between the I-5 and the power plant would exacerbate the noise impacts at the proposed location. The analysis also fails to identify that at an alternate location there would be additional space to include noise mitigation devices if necessary. The City suggests that this prediction be changed to "Less than proposed site".

- Water Resources - The table predicts impacts from the Oaks North site to be "Similar to proposed site".
  - The City believes that the use of ocean water, delivered through a pumping system, is contrary to state policy and at the quantities proposed by the Applicant, would trigger CWA requirements. There has been no examination the ability of the City to deliver reclaim water to the Oaks North site. The prediction should be changed to "Less than proposed site".

- Visual Resources - The table predicts impacts from the Oaks North site to be "Similar to the proposed site".
  - The City believes that the visual impacts from the CECP are not only significant, but not able to be mitigated. If nothing else, the Staff analysis should recognize that the CECP would be constructed in close proximity to Interstate 5, a highway that is an "eligible State Scenic Highway, a San

Diego County scenic route and a designated City of Carlsbad Community Scenic Corridor". The prediction should be changed to "Less than proposed site".

- Transmission Line Construction - The table predicts impacts from the Oaks North site to be "Greater than proposed site".
    - The City recognizes that above-ground transmission lines are unsightly and that the longer the distance the greater the visual impacts. However, transmission lines can be placed underground. If the lines from Oaks North were placed under ground, the visual impacts would be less than the CECP lines running above-ground to the new SDG&E electric substation. The prediction should be changed to "Similar to proposed site".

Alternatives Table 2 fails to incorporate Worker Safety and Fire Protection as an item for comparison. Based on concerns that are identified in the PSA which stem predominately from the proposed plant's geographic location, an alternate site may clearly be superior to the Applicant's proposal.

Furthermore, Alternative Table 2 lists the Cato Alternative for comparison, even though the alternative section eliminated this alternative as not meeting the staff's screening criteria.[9] The comparison table also makes no mention between the Proposed Project and the No-Project Alternative. Lastly, the PSA states that at this time, staff is unable to conclude whether or not the Proposed Project will have a significant impact on air quality, biological resources, and cumulative aesthetic impacts.[10] Yet the alternatives section in Table 2 makes conclusory comparisons for these impacts between the Proposed Project and the alternatives. This does not allow for meaningful public review nor does it allow adequate tools to decision makers to be able to make informed decisions.

6-8: Lack of Design Alternatives

Aside from the inappropriate preclusion of alternative sites, the PSA should have included a meaningful discussion of potential design changes. The alternatives section on page 6-8 does discuss Generation Technology Alternatives and includes them as part of the alternatives section. However, upon review of the discussion regarding demand-side management and renewable resources, the document provides only a cursory overview of such concepts and does not put forth any meaningful alternative designs that can be evaluated and compared to the Proposed Project.

[9] See page 6-5 of the Alternatives.
[10] See page 1-6 to 1-7 of the Executive Summary.

6-10: Insufficient Discussion of the No-Project Alternative

CEQA requires a lead agency to discuss the no-project alternative to compare the consequences for the decision makers if the Proposed Project is not approved.[11] The analysis provided in the PSA only contains a recap of some of the design features and the objectives of the Proposed Project. It does not provide a meaningful evaluation or comparison between the Proposed Project and what may happen to the site in the future if the Proposed Project was not approved. This analysis should consider the SDG&E and California ISO desire to add sufficient generation resources so that the RMR designations for the Encina units will be lifted. It is reasonable to assume redevelopment of the site upon this development.

6-11: Alternative Section Lacks a Meaningful Discussion Regarding the Environmentally Superior Alternative

CEQA requires a lead agency to identify the environmentally superior alternative and if the no-project alternative is the environmentally superior alternative, then the lead agency must also identify a different alternative as the environmentally superior alternative. If there is no environmentally superior alternative, then the alternative section should illustrate this through its analysis and comparison. The PSA does not provide for an environmentally superior alternative and the alternative analysis is so lacking in detail, that no substantive conclusions can be drawn.

6-11: Project Design – Desalination Water Supply Alternative Intake Design

The PSA should have included some analysis of an alternative intake design for the proposed project water supply. Considering that the desalination water supply system will have impacts on marine organisms related to impingement and entrainment, alternative intake designs should have been considered. For example, vertical intake wells could deliver the quantity of water needed for the proposed system, and would completely avoid impingement and entrainment impacts. Vertical wells consist of water collection systems that are drilled vertically into a source water aquifer. As another alternative, horizontal intake wells should be considered. Horizontal wells would consist of a caisson that extends below the ground surface with laterals extending horizontally in multiple directions into the surrounding aquifer. Since the laterals are placed horizontally, it increases the surface area from which water is drawn.

6-11: Conclusions and Recommendations

The conclusion regarding the CECP not causing potential significant impacts should be held pending analysis of the impacts of the CECP in conjunction with the I-5 widening.

[11] State CEQA Guidelines, Sec. 15126.6(e).

The City recommends that based on on the following facts:

1. The proposed use (electrical generation) is not coastal dependent.
2. Location of the facility at a non-coastal site would avoid not only impacts on marine organisms, but would avoid other impacts on coastal resources, such as visual resources and public access.
3. The desalination component of the CECP would result in withdrawals of seawater in excess of the regulatory thresholds of the CWA.
4. Feasible alternatives to desalination exist.

The CEC must fully consider and analyze alternatives which could feasibly meet the basic project objective of satisfying the need for new, highly efficient, reliable electrical generating resources located in the load center of the San Diego region, without causing land use conflicts and inconsistencies with the Coastal Act.

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION
FOR THE *CARLSBAD ENERGY CENTER PROJECT*

Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 1/12/2009)

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DECLARATION OF SERVICE

I, Andrea Dykes, declare that on 1/30/2009 I deposited copies of the attached PSA Comments in the United States mail at Carlsbad, CA 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.

Andrea Dyk

Attachment