City of Carlsbad

Direct Testimony

(07-AFC-6)

City of Carlsbad
Office of the City Manager

January 4, 2010

California Energy Commission
Attn: Karen Douglas, Chairman and Associate Member Carlsbad AFC Committee and
James Boyd, Vice Chair and Presiding Member Carlsbad AFC Committee
1516 Ninth Street
Sacramento, CA 95814

Dear Commissioners Douglas and Boyd:

On behalf of the City of Carlsbad and the Carlsbad Housing and Redevelopment Agency, I respectfully submit the following testimony. From the moment we learned of NRG's intent to build a new power plant on its Carlsbad property, we have been actively involved in the Application for Certification for the Carlsbad Energy Center Project (CECP). Our testimony is the result of thousands of hours of staff work and should be a clear signal to the Commission that the City and Redevelopment Agency view this issue with the utmost importance.

What we have found through our analysis is that the proposed project is deeply flawed. The most serious of these flaws are presented in the following pages and highlight that the CECP:

- Violates the Coastal Act, and
- Violates land use LORS of the City of Carlsbad and the Carlsbad Redevelopment Agency
- Is not a coastal dependent project
- Continues ocean water for power plant uses long after the existing Encina power plant is gone
- Imposes significant visual impacts on the community
- Does not comply with public safety standards
- Fails to address foreseeable projects such as the widening of Interstate 5

Finally, and most importantly, the proposed CECP deprives the City of a once-in-a-lifetime opportunity to dramatically improve the quality of life and economic stability of the San Diego region while enhancing California's valuable coastal resource.

For the past twenty-five years the City has had a well-documented vision of reclaiming its coastline for its citizens and visitors. This vision embraces a coastline free from heavy industrial uses including power plants and power lines. This vision sees the opportunity to connect the 300 acres of land between the Pacific Ocean and the Agua Hedionda Lagoon, east and west of the freeway, to ultimately create a place where not only San Diego but the Southern California region comes to gather and enjoy the coast. With the proposed conversion of this land to truly coastal related uses; elimination of ocean water for all power plant activities, and the improvement and integration of the transportation systems – including the I-5 freeway, LOSSAN rail corridor, surface streets, and bicycle and pedestrian paths - the community's chance to realize their vision is closer than ever.

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Carlsbad has a rich tradition of embracing its regional responsibilities, and we recognize that our vision to free our coast from heavy industrial uses combined with the region's need for power may require us to locate power plants and associated transmission lines elsewhere. That is why we have diligently worked to identify viable alternate sites that meet the City's long-term goals.

In our eyes, the CECP represents a crossroads for the community. One choice constitutes a continued heavy industrial use of the state's precious shoreline. This choice thwarts the community's vision and severely limits the City and Redevelopment Agencies' efforts to redevelop this land for the benefit of Californians for generations to come.

The other choice is one that looks forward. It is a choice that that empowers our region to better itself, and in the process, lays the foundation to reclaim a vital piece of coast for all to enjoy.

This is the choice the state has entrusted to you to make on behalf of our City and all Californians.

Sincerely,

Lisa Hildabrand
City Manager

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INTRODUCTORY COMMENTS AND OVERVIEW

PREPARED DIRECT TESTIMONY
OF
LISA HILDABRAND
CITY MANAGER
CITY OF CARLSBAD

Q1. Please state your name and position with the City of Carlsbad.

A1. My name is Lisa Hildabrand. I am the City Manager for the City of Carlsbad. I also serve as the Secretary and Executive Director for the Carlsbad Redevelopment Agency and the Executive Manager for the Carlsbad Municipal Water District.

Q2. How long have you been City Manager?

A2. I have worked for the City of Carlsbad for the past 18 years. During that time I have served as the Assistant City Manager and the Finance Director. I have been the City of Carlsbad's City Manager since 2007.

Q3. What are your major functions as the Carlsbad City Manager?

A3. My responsibilities include working with the City Council in developing policy, working with the City departments and staff implementing Councils' policy directives, and overseeing the management and administration of the City's programs and resources. One of my major functions is to consider and balance the perspectives of the various City departments in the policy and administrative decision-making process.

Q4. What staff functions report to you as City Manager?

A4. I oversee the day-to-day operations which comprise all aspects of city government, including Fire, Police, Water, Transportation, Planning, Parks and Recreation, etc. The City currently has approximately 700 employees and an annual budget of $260 million.

Q5. Can you provide an overview of the testimony the City will be providing?

A5. Yes. Our testimony to the Commission will focus on key areas of concern which inlcude:

1. Redevelopment. The Carlsbad Redevelopment Agency has determined that the CECP is simply continuing brownfield development, is inconsistent with redevelopment ordinances, and impedes with its vision of the future uses of the lands in the redevelopment area. Mr. Murray Kane will present testimony on

redevelopment law and policy and Ms. Debbie Fountain will testify regarding the project's non-compliance with the Redevelopment Agency's legal requirements.

2. Land Use. The CECP does not conform to City land use planning regulations and would result in significant environmental impacts that cannot be avoided. While the staff of the Energy Commission said they recognized the City's responsibility for interpreting its own regulations, they did not accept the City's interpretation but rather concluded that the project does conform with the City's requirements. The testimony of Mr. Scott Donnell gives more detail why we believe the CEC staff's conclusions are incorrect.

3. Coastal Act. The City has the authority to make decisions regarding project conformity with the California Coastal Act. We do not believe the development of a new power plant is consistent with sound coastal development practices and that the CECP specifically is inconsistent with the Coastal Act. This conclusion is also consistent with the determination made by the Coastal Commission on a previous power plant proposal made at essentially the same site and that we believe the Coastal Commission would reach on this project today. The testimony of Mr. Ralph Faust will discuss provisions of the Coastal Act and Mr. Gary Barberio will address specific conformance of the proposed project.

4. Cumulative Impacts. It is our opinion that cumulative impacts were treated inconsistently in the Final Staff Assessment. The cumulative impacts of the proposed CECP with other projects including the double tracking of the rail line, widening of Interstate 5, and elimination of once-through cooling at the Encina Power Station should have been addressed consistently and comprehensively throughout the document. Mr. Michael Hogan will address this issue.

5. Visual Impacts. The City continues to believe that the project will result in significant adverse visual impacts. We have retained HNTB to develop a three-dimensional model of the project site and photo simulations. Juan Martinez will discuss these and the visual implications of the project. Mr. Don Neu of the City will also discuss the visual impacts of the project from the freeway, the inner lagoon and homes east of the lagoon.

6. Fire Safety. In their independent evaluation of the CECP, the City's Fire Department determined that the CECP represents a hazardous location which limits the Fire Department's ability to provide service to it. In their testimonies, Fire Chief Kevin Crawford, Fire Marshall Jim Weigand, and Operations Chief Chris Heiser will discuss the Department's public health and safety concerns.

7. Alternatives. As the City has tried to inform the CEC staff on numerous occasions, there are alternate locations within the City of Carlsbad where a power plant could be constructed and operated outside of the coastal zone, without any significant adverse environmental impacts, and in compliance with city or state laws or ordinances. The City understands the regional need for power generation and asks that the Energy Commissioners agree with me that it should not occur in

a location that commits Carlsbad's coastline to heavy industry for the next 50 years. Mr. Joe Garuba will discuss our proposed alternatives to the CECP site.

Q6. Can you please highlight the City's overall conclusions regarding the CECP proposal?

A6. Yes. First, let me make it clear that the City is not opposed to the power generation facilities located within its boundaries. We do not, however, want to see a continued and expanded heavy industrial use within the coastal zone. Rather than prolong power generation at the site of the Encina Power Station, the City would prefer to see that coastal property redeveloped to allow for public uses compatible with the coastal zone. Rather than continue use of ocean water for power plant use long after the Encina Power Station concludes its useful life, the City would prefer to see any new power plant located at a more appropriate, inland industrial site.

Second, we believe the CECP proposal not only conflicts with the City's vision, it specifically violates the plans, policies, and ordinances of the City; the plans, policies, and ordinances of the Redevelopment Agency; and provisions of the Coastal Act. The CECP proposal also results in significant adverse environmental impacts to the community – particularly in the areas of visual resources and public health and safety.

Finally, as I said earlier, the City is not opposed to having a power plant "in its backyard". It has tried to work with NRG over the past two years to relocate their project to sites the City believes are viable and preferable to the CECP. Furthermore, the City believes these sites comply with applicable LORS, are not expected to result in any significant adverse environmental impacts, and can be developed in a timely manner.

Q7. Do the City Council and the Redevelopment Agency support these conclusions?

A7. Yes. The City Council and the Redevelopment Agency have expressed their opposition to a power plant at the proposed site on numerous occasions. The most recent example of this opposition is evidenced in Council Resolution No. 2009-323 (Exhibit #400) and Housing and Redevelopment Commission Resolution No. 482 (Exhibit #401).

Q8. Please describe the efforts of your staff with regard to the CECP.

A8. The City and Redevelopment Agency have committed an extraordinary amount of resources to understanding and analyzing the project. Once the City understood what was being proposed and the severe impact it would have on our community, we worked extensively to help provide our insight and expertise to the CEC staff. Our position on the CECP is based on the analysis of more than 20 City and redevelopment staff that have collectively spent more than 5000 hours reviewing the project.

Over the past two (2) years we have provided extensive documentation to the CEC staff highlighting our assessment and concerns of the project. The City was even the party

responsible for identifying that this site was the subject of a failed Notice of Intention (NOI) attempt by San Diego Gas and & Electric (SDG&E)in the early 1990's.

Q9. Can you please briefly outline SDG&E's 1990 NOI?

A9. In 1989, SDG&E filed a NOI with the Energy Commission to study five (5) locations. Two of these sites were located in the coastal zone – Encina and South Bay. After thorough review by both the Coastal Commission and the CEC staff, both coastal sites were found to be unacceptable and were subsequently withdrawn from consideration by SDG&E. During its review process of the 1989 NOI, the City identified numerous concerns with having a second power plant at the Encina site and transmitted those concerns to the Energy Commission. The City Council even adopted a moratorium on additional power plants (NS-108) (Exhibit # 432) that would be located at Encina. Mr. Donnell's testimony provides a more through description of this history.

Q10. Please describe the City's vision as it affects the property NRG has proposed for development of the CECP?

A10. The Encina Power Station has been an imposing presence in the San Diego region for nearly 60 years. It was in existence even before the City of Carlsbad. The residents have lived with the imposing structure and stack, heavy equipment, noise and pollution on the coastline because having power is important and power plants needed the ocean water for cooling. As you know better than I, that premise is no longer true. Power plants do not need the ocean water and thus, should not be located in the coastal region.

The City has long realized the immense potential that the EPS site, including the adjacent properties, represents. They encompass nearly 300 acres of land with access to some of the best coastline and lagoon frontage in the San Diego area. For the past 25 years the community has patiently waited for Encina to live out its useful life so that access to these precious natural areas could be achieved. Now that the end of heavy industry on our coast is in sight, the possibilities of what that property could become are limitless. This is a rare opportunity to reclaim prime coastal land in Southern California for the benefit of the public in a way that will also reward the property owner.

Over the past 30 years a non-profit group called the Project for Public Spaces has evaluated more than 1,000 public spaces, and informally investigated tens of thousands more. From all this they have discovered that most great places share four key qualities:

- They are **accessible** and well-connected to other important places in the area.
- The place is **comfortable** and projects an inviting **image**.
- There are a variety of **activities and uses** at the site.
- It is a **sociable** place where people like to gather, visiting it again and again.

Because of the site's proximity to a major transportation corridor which includes the four lane road along the coastline, the regional rail line, the Coastal Rail Trail, and the I-5 freeway, it could become a center unlike most others which provides multi-modal accessibility to beaches, state parks, and lagoons. The size of the site and the quality of natural resources surrounding it would allow for development of commercial, recreational, and open space amenities that would benefit not just Carlsbad and the region but the state as a whole.

As has been demonstrated time and again, open spaces by the water are natural gathering spots for people to come together, enjoy art and educational venues, dine, socialize, and create strong community connections. When revitalized, this location could easily serve as the northern gateway to San Diego County (Exhibit #403). It could become a coastal presence that would illustrate the best that San Diego has to offer - a stark contrast to the current heavy industrial look of the existing power plant. This site has the potential to be one of the "great places" not only in San Diego, but in Southern California – something very few locations could accomplish.

Q11. Can you provide an example of the City's vision being reflected in a recent development?

A11. There are lots of examples throughout Carlsbad that reflect the quality and variety of uses that could be created on the EPS site. These include the City's golf course, the Crossings at Carlsbad; the Carlsbad Ranch commercial/office development, which includes Legoland; the recently adopted Ponto Vision plan which includes a mixture of travel, recreation, commercial, neighborhood commercial, open space and residential uses. The size and scale of this site obviously lend itself to something inspiring, such as San Antonio's River Walk, San Diego's Balboa Park, or San Francisco's Yerba Buena Center.

Q12. Energy Commission Staff, in its Executive Summary, recommended that the Commission "license the project with findings pursuant to its override authority under provisions of the Public Resources Code section 25525, based on the benefits of the project." (FSA Executive Summary, page 1-9) Would you please comment on this suggestion?

A12. Yes. Although we are perplexed that the Executive Summary contained this recommendation but there is no mention of an override in the Land Use section, we consider this a token acknowledgement of the City's role in interpreting its own land use regulations. With regard to the override requirements, I would like the Committee to consider the following:

- We are in an advantageous time when demand seems to have fallen, at least temporarily, and SDG&E appears to be vigorously pursuing renewable energy capacity. It is a perfect time to take a giant step toward reclaiming the coast without undue pressure on SDG&E's ability to serve its customers. [See testimony of Joe Garuba]

- The “severe” visual environmental impacts that would result with the construction of the CECP without creating any significant adverse environmental impacts elsewhere. [See testimony of Don Neu and William Kanemoto of CEC Staff]

- Carlsbad sees an opportunity to redevelop the Encina parcels of land to the great benefit of the city, residents of Carlsbad and visitors. [See testimony of Debbie Fountain]

Q13. Do you have any concluding observations?

A13. I would like to again emphasize that the City of Carlsbad is not averse to contributing its part to required regional infrastructure. We host, for example, the McClellan Carlsbad Airport, the Encina Wastewater facility, and have hosted the Encina Power Station for nearly 60 years. We are also supportive of a replacement power plant if it is located inland, so that there are limited adverse environmental impacts and all of our city regulations are complied with. However, rather than prolonging an industrial presence in the coastal zone, particularly one that is not coastal dependent, we would also like to see commercial, recreational, and open space uses that are more consistent with our limited coastal resources.

It is for these reasons that over one year ago the City Council, following an extensive review of the CECP’s conformance with city’s regulations and its impacts, passed Resolution 2008-235, which states that the CECP would be “inconsistent and detrimental to the best interests of the community”, that the “CECP contains several objectionable concerns including land use incompatibility”, and that “non-coastal dependent industrial land use should be located away from the Encina Power Station to avoid impacting significant coastal resources.” The City Council, in this resolution, voted to oppose the CECP.

Redevelopment
Murray Kane

PREPARED DIRECT TESTIMONY
OF
MURRAY O. KANE, ESQ
KANE, BALLMER & BERKMAN
SPECIAL COUNSEL
HOUSING AND REDEVELOPMENT COMMISSION
CITY OF CARLSBAD

Q1. Please State your Name and Employment.

A1. My name is Murray O. Kane, and I am currently the senior principal of the law firm of Kane, Ballmer & Berkman, which is located at 515 S. Figueroa Street, Suite 1850, Los Angeles, California 90071. Kane, Ballmer & Berkman has, since 1989, served under contract as Special Counsel to the City of Carlsbad ("City") and the Housing and Redevelopment Commission of the City of Carlsbad. As special counsel, Kane, Ballmer & Berkman has provided a variety of ongoing legal services regarding redevelopment to the City and the Carlsbad Redevelopment Agency.

Q2. How long have you held this position?

A2. I have been employed by Kane, Ballmer & Berkman for 36 years, since 1973. I have been a member of the bar admitted to practice law in the State of California since 1971.

Q3. What is your expertise as a California redevelopment attorney?

A3. I am a nationally prominent lawyer specializing in the practice of redevelopment law. Our law firm has served as general and special redevelopment counsel to over 100 cities and redevelopment agencies. I have been an attorney practicing law in the field of redevelopment for 38 years, since 1971.

I have been a principal of the firm since 1978 and serve as senior principal. I have extensive experience in all phases of redevelopment, including the creation, organization and administration of agencies, creation of projects, relocation and owner participation, public improvements, public utilities and land disposition. I served as General Counsel for the Community Redevelopment Agency of the City of Los Angeles for over fifteen (15) years and am currently primarily responsible for the firm's representation of over a dozen redevelopment agencies.

I have served as litigation counsel on validating actions involving the validity of many redevelopment projects.

I have served as lead attorney in the negotiation and documentation of many major redevelopment projects.

I am a frequent lecturer on redevelopment topics to such organizations as the League of California Cities, the Los Angeles County Bar Association and the California Redevelopment Association, as well as serving as periodic guest lecturer of the Schools of Law and Business (Real Estate) of the University of Southern California and the School of Law of the University of California at Los Angeles.

I have testified as an expert on redevelopment legislation before Legislative Committees of the States of California, Colorado and Kansas.

I have also qualified and testified as an expert witness of the subject of redevelopment in the Superior Court of the State of California for the Counties of Los Angeles, Napa and Orange. My expert testimony was expressly relied upon by the California Supreme Court in Napa v. Marek, a major case decided in favor of redevelopment agencies of the State of California.

Q4. In what role did you serve in connection with the approval and adoption and implementation of the South Carlsbad Coastal Redevelopment Project?

A4. Kane, Ballmer & Berkman served as special counsel to the City of Carlsbad and its redevelopment agency in connection with the approval and adoption of the South Carlsbad Coastal Redevelopment Area (SCCRA), and I personally provided the necessary legal services for such assignment. I am personally knowledgeable of the purposes and objectives of the SCCRA and the background of the reasons for the selection of the project boundaries and the goals of the project. Our firm has also served as special counsel to the City of Carlsbad and the Carlsbad Redevelopment Agency since inception of the implementation of the SCCRA and many legal issues arising therefrom.

Q5. What is the purpose of your testimony in this proceeding?

A5. The purpose of my testimony is to explain the legal authority of the Carlsbad Redevelopment Agency as a redevelopment agency of the State of California and its relationships to other legal entities, including the City of Carlsbad, the State of California and the California Energy Commission; and to provide a legal framework supporting the testimony before the California Energy Commission of the City of Carlsbad and the Carlsbad Redevelopment Agency on this matter.

Q6. Will you please summarize your testimony?

A6. Yes. The key points of my testimony are:

1. The Legislature has by statute declared that the achievement of the purposes of redevelopment is a matter of statewide concern and all redevelopment agencies have been charged by statute with implementing appropriate and continuing planning, land use and construction policies for such purposes.

2. The Carlsbad Redevelopment Agency is a separate public body established and created by the California Community Redevelopment Law as an administrative arm of the State of California vested with the responsibility of carrying out and assuring the satisfactory completion of the South Carlsbad Coastal Redevelopment Area (SCCRA), and as such the Carlsbad Redevelopment Agency is neither a local agency nor a part of the municipal corporation that is the City of Carlsbad.

3. Unless otherwise cited, all statutory references herein refer to the California Community Redevelopment Law contained in the California Health & Safety Code (Sections 33000 et seq) (the "CRL").

4. Pursuant to the mandate and authority of the CRL, the Carlsbad Redevelopment Agency must perform planning and permitting functions for all development proposed within the SCCRA, including the proposed development of the Carlsbad Energy Center Project ("CECP") site and adjacent properties, and all such development must conform to the Redevelopment Plan for the SCCRA. Based on such authority, it is clear that the proposed power plant is subject to the Redevelopment Plan and to the procedures and permits required by the Redevelopment Plan for all development within the Redevelopment Project Area.

5. Pursuant to its authority as vested by the CRL, the Housing and Redevelopment Commission has properly determined that the CECP proposal is not in compliance with the SCCRA Plan.

6. By law contained in the CRL and relevant case law, the CECP proposal cannot be developed without the approval and support of the Housing and Redevelopment Commission and cannot be developed if properly found to lack conformity with the Redevelopment Plan for the SCCRA. In addition the CECP proposal cannot be developed without site and related facility certification of the California Energy Commission pursuant to Public Resources Code Sections 25500 et seq. The CRL and Public Resources Code Sections 25500 et seq. must be harmonized and read together to achieve the legislatively declared purposes of both State statutes.

Q7. Can you expand on your testimony on the legislative determinations regarding the purposes and duties of California redevelopment agencies?

A7. Yes. The purpose of redevelopment is to eradicate blight, provide meaningful employment opportunities to all economic segments and to provide affordable housing for lower income residents (Sec 33071). The State Legislature has recognized that blighted areas present difficulties and handicaps which are beyond regulation alone (Sec 33035), that the process of deterioration of a blighted area cannot be halted or corrected except by redeveloping the entire area or substantial portions of it (Sec 33036(b)), and that the remedying of such conditions requires appropriate planning and continuing land

use and construction policies (Sec 33036(d)). Therefore the State of California has established a number of State Policies relevant here:

- That the sound development and redevelopment of blighted areas is to be protected and promoted "through all appropriate means." (Sec 33037(a));

- That the redevelopment of blighted areas and provisions for appropriate continuing land use and construction policies constitute public uses and purposes, "and are governmental functions of state concern in the interest of health, safety, and welfare of the people of the state..." (Sec 33037(c)) (Emphasis added);

- "That the necessity in the public interest for the provisions [of the CRL] is declared to be a matter of legislative determination." (Sec 33037 (d)).

Q8. Can you expand on your testimony regarding the role of the Carlsbad Redevelopment Agency as a state agency carrying out redevelopment in the City of Carlsbad as an administrative arm of the State of California?

A8. Yes. The redevelopment agency is a separate public body corporate and public (Sec 33100) established and created by the State Legislature (Sec 33101) as an administrative arm of the state and given the responsibility to achieve the important purposes and policies of California Redevelopment set forth both by the State Legislature and by the voters who approved an amendment to the California Constitution to provide for tax increment as the principal means of financing California redevelopment (Art 16, Sec 16, California Constitution). As such the redevelopment agency is a separate public body from the City (even though the City Council may sit as the board of the Redevelopment Agency either directly (Sec 33220(a)) or in the form of a community development commission (Sec 34100 et seq)) and is not a part of the municipal corporation that is the City (see *County of Solano v. Vallejo Redevelopment Agency*, 75 Cal.App.4th 1262, 1267 (1999)). As such the redevelopment agency is not a local agency. Redevelopment agencies are governmental entities that exist by state law and are administrative agents of the state. These state agencies carry out state policy and do not function as local entities. Case law is in accord. See *Andrews v. City of San Bernardino*, 175 Cal.App.2d 459 (1959); *Walker v. Salinas*, 56 Cal.App.3d 711 (1976).

Not surprisingly, the State Legislature has prohibited redevelopment agencies from delegating any power or authority to any other entity unless permitted by the CRL (Sec 33121.5).

In order to assure that the above mentioned Legislative Policies are achieved, various provisions of the CRL make it clear that the redevelopment agency is the entity with the authority and duty to carry out the work of redevelopment pursuant to the adopted redevelopment plan (Sec 33336), and that the plan is to be administered by the redevelopment agency, which is vested with the responsibility to carry out the redevelopment plan (Sec 33372) and to assure that all development within the redevelopment plan area conforms to the redevelopment plan (Sec 33336).

Q9. Can you expand on your testimony regarding the planning and permitting functions and duties of the Carlsbad Redevelopment Agency and its duty and authority to determine the lack of conformity of the proposed CECP with the Redevelopment Plan for the SCCRA?

A9. Yes. Every redevelopment agency performs planning as well as permitting functions and is authorized and required to do so by specific state statutes in the CRL (see eg Sec 33336). All development must conform with the redevelopment plan, as determined by the Agency, prior to the issuance of any City or other permits. Case law has upheld this view, e.g. finding City ordinances that conflict with the redevelopment plan to be inapplicable or invalid attempts to amend or vary from the redevelopment plan without going through the formal amendment process governed by the State Community Redevelopment Law (Health & Safety Code Sections 33000 et seq.). See *Kehoe v. City of Berkeley*, 67 Cal.App.3d 666 (1977). Redevelopment plans must conform to the City's general plan and must include specific provisions regarding land and building uses and development (see H & S Code Section 33333).

Q10. Can you expand on your testimony regarding the legal requirement for the applicant to obtain both Carlsbad Redevelopment Agency approval and California Energy Commission certification?

A10. Yes. To the extent it were argued that per Sec 25500 the California Energy Commission may impose the development of a power plant within a State authorized Redevelopment Project Area in a situation where such proposed power plant has failed to obtain the approval and permit of the applicable redevelopment agency, then based on the above authority that argument would fail as being in conflict with the CRL (including the above policies and the authority and responsibilities given to the redevelopment agency directly by the State Legislature). The two statutes (the CRL and Sec 25500) must be read together in a way that protects and preserves the achievement of the important public policies established for redevelopment by the State Legislature in the CRL and by the voters in adding the tax increment redevelopment project financing provisions to the State Constitution (Art 16 Sec 16). There is nothing in Sec 25500 which expresses or even implies that it was meant to convey authority to the California Energy Commission to undercut and conflict with the CRL and all of the efforts made over many years by a sister state agency carrying out the state policies of the CRL. It would be unreasonable to somehow read such a policy into Sec 25500.

Q11. Do you agree with Ms. Fountain's testimony regarding the history of the Carlsbad Redevelopment Agency?

A11. Yes. Her testimony on this subject is consistent with the CRL and case law. As to the time period commencing with 1989, my personal recollection of the history of the Carlsbad Redevelopment Agency is the same as hers.

Q12. Do you agree with Ms. Fountain's testimony regarding the relationship between the Carlsbad Redevelopment Agency and the Carlsbad Planning Department?

A12. Yes. Her testimony on this subject is consistent with the CRL and case law. The CRL expressly authorizes redevelopment agencies to have access to the services and facilities of the various departments and offices of the City, including the planning department, to achieve its purposes (Sec 33128).

Q13. Do you agree with Ms. Fountain's testimony regarding the City of Carlsbad's role in carrying out the South Carlsbad Coastal Redevelopment Plan?

A13. Yes. Her testimony on this subject is consistent with the CRL and case law. The provisions of the SCCRA Plan quoted in her testimony regarding aid and cooperation between the City and the Housing and Redevelopment Commission in carrying out the Plan are expressly authorized by Sections 33220 et seq.

Q14. Do you agree with Ms. Fountain's testimony regarding the general controls and limitations set forth in the redevelopment plan for the redevelopment or development of all real property within the SCCRA, and the role of the Housing and Redevelopment Commission relating to such controls and limitations?

A14. Yes. Her testimony on this subject is consistent with the CRL and case law. The provisions of the SCCRA Plan quoted in her testimony regarding all real property being subject to the controls and requirements of the Redevelopment Plan and requiring all development in the SCCRA to obtain approval of a redevelopment permit from the Housing and Redevelopment Commission is validly based on the statutory duty of the Housing and Redevelopment Commission to oversee and ensures the implementation of the SCCRA Redevelopment Plan (Sec 33336(a)).

The specific land use provisions and criteria contained in the SCCRA Redevelopment Plan are expressly required by Sec 33333, which requires every redevelopment plan to provide for, among other things, "limitations on the type, size, height, number, and proposed uses of buildings" (subsection (b)) and "the property to be devoted to public purposes and the nature of such purposes" (subsection (d)).

Q15. Do you agree with Ms. Fountain's testimony regarding the finding of the Housing and Redevelopment Commission that the CECP lacks conformance with the goals and provisions of the Plan and applicable land use regulations, ordinances, and rules?

A15. Yes. Her testimony on this subject is consistent with the CRL and case law. The Housing and Redevelopment Commission Resolution on this subject finding that the CECP is not in compliance and/or consistent with the applicable planning/land use documents is validly based on the above-mentioned statutes and legislative determinations of the CRL.

Q16. Do you agree with Ms. Fountain's testimony regarding the "extraordinary public purpose" findings that are required by the Redevelopment Plan for the CECP?

A16. Yes. Her testimony on this subject is consistent with the CRL and case law. The requirement in the SCCRA Redevelopment Plan requiring extraordinary public purpose to be demonstrated for the CECP is squarely within the statutory authority and duties I have cited in my testimony.

Specifically such a requirement appropriately safeguards the work of redevelopment pursuant to the Redevelopment Plan for the SCCRA and the CRL. The requirement that various covenants, conditions, and restrictions be prescribes in order to implement the goals and objectives of the Plan is expressly authorized by the CRL (Sections 33336 et seq).

The reasons and basis for the determination of the lack of extraordinary public purpose contained in Ms Fountain's testimony constitute precisely the kind of ongoing planning and land use controls contemplated and required to be imposed by the CRL, as cited in my testimony.

Q17. Do you agree with Ms. Fountain's testimony regarding the type of cooperation with other public bodies and the requirement of approval from the Housing and Redevelopment Commission that are required and authorized by the Redevelopment Plan for the SCCRA?

A17. Yes. Her testimony on this subject is consistent with the CRL and case law. The ongoing planning and land use duties required of the Housing and Redevelopment Commission by the CRL applies to public and well as private development (Sec 33333).

The required aid and cooperation between the California Energy Commission and the Housing and Redevelopment Commission cited in her testimony is expressly authorized by the CRL (Sec 33220), and is also required in order to harmonize and avoid conflict between the CRL and the relevant Public Resources Code provisions relating to site and facility certification, as explained in my testimony.

Redevelopment
Debbie Fountain

PREPARED DIRECT TESTIMONY
OF
DEBBIE FOUNTAIN
HOUSING AND REDEVELOPMENT DIRECTOR
CITY OF CARLSBAD

Q1. Please State your Name and Place of Employment.

A1. My name is Debbie Fountain, and I am currently the Director of the Housing and Redevelopment Department for the City of Carlsbad. I am an employee of the City of Carlsbad. However, through a contract for staff support between the City Council and the Housing and Redevelopment Commission, I am responsible for the day-to-day operations of both the Carlsbad Redevelopment Agency and Carlsbad Housing Authority, which are two legal entities separate from the City of Carlsbad. The Carlsbad Housing and Redevelopment Commission is the legislative body that oversees the work of the Agency and Authority, and I provide staff support to this body as well.

Q2. How long have you held this position?

A2. I have been the Director of Housing and Redevelopment for 11 years, since 1998. I have been working as a staff member for the Department of Housing and Redevelopment since 1990.

Q3. What are your duties and responsibilities as Director of the Housing and Redevelopment Department?

A3. As the Director, I oversee the day-to-day operations of both the Redevelopment Agency and the Housing Authority. I provide administrative support to implement the redevelopment programs and housing plan(s) within the City of Carlsbad on behalf of the City Council, Housing and Redevelopment Commission, Housing Commission, and Planning Commission. I assist with processing land use permits and related applications for the South Carlsbad Coastal Redevelopment area; and, process land use permits and other applications for the Village Area.

Q4. What is the purpose of your testimony in this proceeding?

A4. I am here to explain the purpose served through the Carlsbad Redevelopment Agency, and describe the responsibilities of the Housing and Redevelopment Commission and its legislative directives on behalf of the Agency, and the Agency/Commission's relationship with the City of Carlsbad's Planning Department. I will also present the Housing and Redevelopment Commission's conclusions on the Carlsbad Energy Center Project ("CECP") proposal.

Q5. Will you please summarize your testimony?

A5. Yes. The key points of my testimony are:

1. The South Carlsbad Coastal Redevelopment Area Plan was approved in 2000 to establish a process and framework for implementation of redevelopment actions to alleviate and prevent the spread of blight and deterioration in the South Carlsbad Coastal Redevelopment Area ("SCCRA"). The SCCRA includes the proposed CECP site and adjacent properties.

2. The Housing and Redevelopment Commission is authorized, by the SCCRA Plan to use the powers set forth in the Plan, and the powers invested in the Commission by Redevelopment Law and any other State Law.

3. Although the SCCRA Plan indicates support for the development of a smaller replacement power plant within the SCCRA Plan, this support was based on various assumptions that are no longer applicable, and conditions which were not satisfied.

4. As the legislative body for the Carlsbad Redevelopment Agency, the Housing and Redevelopment Commission has determined that the CECP proposal is not in compliance with the SCCRA Plan and, therefore, does not approve or support the CECP proposal.

Q6. Please describe the history of the Carlsbad Redevelopment Agency?

A6. The Carlsbad Redevelopment Agency was established in 1976 to oversee and ensure the appropriate implementation of redevelopment plans within the City of Carlsbad. The Carlsbad Housing and Redevelopment Commission is the legislative body for the Carlsbad Redevelopment Agency. In 1981, the Commission together with the City Council adopted their first redevelopment plan - the Village Project Area Redevelopment Plan. This plan incorporates approximately 200 acres of land in the older downtown section of the City of Carlsbad. In 2000, the Commission and Council adopted a second redevelopment area in Carlsbad which is known as the South Carlsbad Coastal Redevelopment Project Area and subject to a redevelopment plan. This plan incorporates approximately 550 acres of land in the coastal section of Carlsbad, which has boundaries that begin at the power plant and includes land to the south along the Carlsbad Boulevard Alignment to the southern city limits. The proposed CECP is located on property within the boundaries of the South Carlsbad Coastal Redevelopment Project Area. See attached map of boundaries (Exhibit 406).

Q7. What is the relationship between the Carlsbad Redevelopment Agency and the Carlsbad Planning Department?

A7. Murray Kane, the Agency's Special Legal Counsel, is providing separate testimony to explain the legal authority of the Agency and its relationships to other legal entities. However, in general terms, the Carlsbad Redevelopment Agency is a separate legal entity

that contracts with the City of Carlsbad to provide staff support for Agency operation and its legislative body. The establishment of an agency and redevelopment areas within the State of California are authorized and governed by California Redevelopment Law, Health and Safety Code, Sections 33000-34160. The State Health and Safety Code also authorizes the establishment of a public body, corporate and politic, to govern and operate as the Redevelopment Agency's legislative body. The public body is known as the Housing and Redevelopment Commission within the City of Carlsbad. Its sole purpose is to govern and operate the Redevelopment Agency and Housing Authority for the City of Carlsbad, which are two separate legal entities from the City of Carlsbad. The State Department of Housing and Community Development monitors the activity of Redevelopment Agencies.

The Carlsbad Redevelopment Agency is an independent legal entity. However, the Agency contracts with the City of Carlsbad to provide staff services and other operational resources. This includes staffing services from the City's Housing and Redevelopment Department, as well as the City's Planning Department and other administrative support departments within the City of Carlsbad. While the Housing and Redevelopment Department is responsible for day-to-day operations of the Agency and implementation of redevelopment activities and programs, the City's Planning Department is responsible for development services. The Department provides staff to the Agency to process land use applications and ensure compliance with all land use regulations.

Q8. What is the City of Carlsbad's role in carrying out the South Carlsbad Coastal Redevelopment Plan?

A8. Per the SCCRA Plan, "the City is required to provide aid and cooperate with the Housing and Redevelopment Commission in carrying out the Plan, and must take all reasonable actions necessary to ensure the continued fulfillment of the purposes of the Plan and to prevent the recurrence or spread of conditions of blight in the Project Area." Actions by the City include, but are not limited to, imposition of appropriate design controls to ensure proper development and use of land in the project area. The City is also responsible for helping to ensure the Agency achieves its redevelopment goals through consistent application of zoning, general plan, specific plan, master plan, or other planning regulations, laws, ordinances, or other policies.

Q9. What general controls and limitations does the redevelopment plan set forth for real property within the South Carlsbad Coastal Redevelopment Area, and what is the Housing and Redevelopment Commission's role?

A9. On behalf of the Carlsbad Redevelopment Agency, the Housing and Redevelopment Commission oversees and ensures the implementation of the South Carlsbad Coastal Redevelopment Area (SCCRA) Plan. The Redevelopment Plan states that:

> "all real property in the SCCRA is subject to the controls and requirements of the Plan. No real property is to be developed, redeveloped, rehabilitated or otherwise changed after the date of the adoption of the Plan except in conformance with the

goals and provisions of the Plan and the regulations and requirements of the General Plan and zoning ordinance, and all other state and local building codes, guidelines, or master or specific plans as they now exist or are hereafter amended."

The Plan also requires all development in the SCCRA to obtain approval of a redevelopment permit from the Housing and Redevelopment Commission, and for development to be consistent with the goals and objectives for the area. (See Exhibit No. 407 for copies of relevant language from the Redevelopment Plan which controls and sets general limits on real property within the SCCRA, and requires approval of a redevelopment permit for all development.)

Q10. Has the Housing and Redevelopment Commission approved a redevelopment permit or any other type of permit for the proposed CECP?

A10. No. There has been no redevelopment permit application submitted for the proposed CECP. Therefore, the Housing and Redevelopment Commission has not approved a redevelopment permit for the project.

Q11. Has the Housing and Redevelopment Commission otherwise found the CECP to be in conformance with the goals and provisions of the Plan and applicable land use regulations, ordinances, rules?

A11. No. On December 22, 2009, the Housing and Redevelopment Commission approved Resolution No. 401 indicating that the CECP is not in compliance and/or consistent with the applicable planning/land use documents primarily due to the fact that there has not been a comprehensive update to Specific Plan 144, within which the subject property for the CECP is located, and the findings have not been made for extraordinary public purpose as required by the SCCRA Plan.

Q12. What is the relationship of the comprehensive update of Specific Plan 144 to a Major Redevelopment Permit and/or a determination of conformance with the goals and provisions of the SCCRA Plan?

A12. The SCCRA Plan requires approval of a Major Redevelopment Permit for any project within the South Carlsbad Coastal Redevelopment area including the CECP. This would require a comprehensive review of the project details from both a land use perspective as well as a design standpoint. This comprehensive review would be difficult, if not impossible, without a comprehensive update of Specific Plan 144 and the Precise Development Permit (which is required by the City in addition to the Major Redevelopment Permit required by the Agency) for the property, or some other type of Master Plan for the site. The Redevelopment Agency would be unable to make all appropriate findings to approve the required redevelopment permit without an understanding of how the remainder of the property could be redeveloped as desired and consistent with the other goals and objectives of the plan. The Agency would need to be able to make findings that development of the CECP would not preclude redevelopment

of the property in a manner which provides greater benefit to the community, and meets the extraordinary public purpose findings.

To issue the redevelopment permit, the project must also comply with any and all City requirements as well. Since the City has also determined that the comprehensive update of the Specific Plan (144) is required to obtain approval of the project from the City Council, and that action has not occurred, the Agency is unable determine that the proposed CECP is in conformance with the applicable land use regulations for the SCCRA. Therefore, the Housing and Redevelopment Commission, on behalf of the Agency, found it necessary to determine that the CECP does not conform to the SCCRA Redevelopment Plan.

Q13. What are the "extraordinary public purpose" findings that you referred to earlier?

A13. In order to facilitate and safeguard the work of redevelopment pursuant to the South Carlsbad Coastal Redevelopment Plan and Redevelopment Law, it is important that the Housing and Redevelopment Commission ensure that the Plan contains various covenants, conditions, and restrictions which the Commission prescribes in order to implement the goals and objectives of the Plan. With this goal in mind, staff recommended, and the Commission approved, an amendment to the South Carlsbad Coastal Redevelopment Plan in 2005 that requires, among other things, approval of findings of extraordinary public purpose for development of certain industrial and utility type of land uses (such as desalination plants, wastewater treatment plants and energy generation plants).

The scale of a project, not only in terms of its size and height but also its long term potential environmental impacts and potentially negative influence on adjacent land uses, will determine the Agency's threshold for what constitutes an extraordinary public benefit. For the proposed CECP, the Agency's threshold is understandably very high. To date, NRG has not demonstrated extraordinary public purpose in a manner acceptable to the Redevelopment Agency for the CECP to be subsequently considered an acceptable land use in the SCCRA and for the Agency to subsequently make the subject findings.

The Agency has determined that it is unable to make these required extraordinary public purpose findings for the following reasons:

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

- There remains a general concern that the proposed land use (new power plant) would be an incompatible land use and potentially preclude other more desirable development such as visitor-serving commercial uses and public amenities and/or services for local resident enjoyment; and

- No other extraordinary public benefit amenities have been offered by the applicant (NRG) or included within the CECP application, such as land dedications for public use and enhanced coastal access opportunities.

Q14. What are the goals and objectives of the Carlsbad Redevelopment Agency for the SCCRA?

A14. There are a variety of goals and objectives for the 550 acres of land within the SCCRA. These goals are noted in the SCCRA Plan as follows:

- Eliminating blight and environmental deficiencies in the Project Area.

- Assembling of land into parcels suitable for modern, integrated development with improved pedestrian and vehicular circulation in the Project Area.

- Replanning, redesigning, and developing properties which are stagnant or improperly utilized.

- Increasing, improving, and preserving the community's supply of housing affordable to very low, low, and moderate income households.

- Developing new beach and coastal recreational opportunities.

- Facilitating the redevelopment of the Encina power generating facility to a smaller, more efficient power generating plant.

- Funding the Carlsbad Boulevard realignment which will yield excess property that could facilitate expansion of the Carlsbad State Beach campgrounds and other recreational facilities.

- Retaining as many existing businesses as possible by means of redevelopment and rehabilitation activities.

- Enhancing commercial and recreational functions in the Project Area.

- Strengthening the economic base of the Project Area and the community by the installation of needed on- and off-site improvements to stimulate new commercial and industrial expansion, employment, and economic growth.

- Increasing parking and open spaces amenities.

- Implementing performance criteria to assure quality site design and environmental standards to provide unity and integrity to the entire Project Area development.

Q15. As related to the subject property and existing power plant, what are the redevelopment goals ?

A15. The original intent of the goals for the subject property and existing power plant, as set forth within the preliminary report and the final SCCRA Plan, was to convert the industrial land west of the railroad tracks (where the current Encina Power Station is located) to another, more appropriate land use that would provide greater benefit to the community and would eliminate the possibility of an intensification of industrial applications at that site.

At the time of SCCRA plan approval, the thought was that a replacement power generating facility, located on the eastern portion of the site, would be more aesthetically and geographically desirable than any retrofit to the existing power plant facility. However, sense the time of original approval, new information has been provided (such as the CECP application which the Agency believes intensifies the industrial use/design and does not guarantee the decommissioning/demolition of the existing plant) as well as new policies have been implemented (i.e., 2005 amendment to SCCRA which requires extraordinary public purpose findings) which conflict with the original goals of decommissioning the existing plant and constructing a replacement plant on the same property as the existing Encina Power Station (but to the east).

Q16. Have these redevelopment goals for the power plant property changed from the time the SCCRA Plan was adopted?

A16. No. The initial primary goals related to the power plant property express the desire to demolish the existing power plant and redevelop the site. These have not changed since adoption of the SCCRA Plan in 2000. In addition, Redevelopment Agency support for the construction of a smaller, replacement plant that meets the Agency's specific conditions has not changed.

There is, however, no support from the Agency for the current CECP, as submitted, due to design concerns. In addition, the site of the proposed CECP, east of the railroad tracks and west of Interstate 5, is no longer supported by the Redevelopment Agency due to site constraints and changed circumstances. The reasons why the Agency is unable to support the current CECP include, but are not limited to:

- No guaranteed time commitment for demolition of the existing power plant. This raises a serious concern that the SCCR Area could potentially have two highly industrial uses operating on key coastal property for many years. This is detrimental to the redevelopment goals for the area.

- Negative visual impact from a highly industrial design of the proposed plant. The Agency initially understood that the proposed replacement plant could be designed to be visually appealing and be comparable in design to a high quality, "Class A" office building. There is concern that if the CECP is constructed as currently designed, the high quality commercial or visitor serving uses desired for the remaining property west of the railroad track will be not be realized and the community will not receive the desired benefit.

- Failure to contribute to an overall attractive and pleasant environment. One of the objectives of the SCCRA Plan is to create an attractive and pleasant environment. Therefore, all plans are required to give consideration to good design, open space and other amenities to enhance the aesthetic quality of the project area. Because the Commission does not believe the proposed CECP is good design and it does not provide other amenities to enhance the aesthetic quality of the project, the Agency can't support the proposed plans and would not approve them as currently submitted.

- Significant site constraints. The Agency believes that the CALTRANS project to widen Interstate 5 significantly constrains the site for the replacement facility - much more than anticipated when the SCCRA was adopted.

- Public safety concerns. The Agency is very troubled by the serious public safety concerns expressed by the City's Fire Chief and Fire Marshall regarding ability to adequately serve the subject site in case of emergency. This raises safety concerns for adjacent properties, users of the coastal rail trail, other public in the area, and traffic on Interstate 5.

Q17. Does the Carlsbad Redevelopment Agency believe that the owner(s) of the property upon which the Encina Power Station is currently, and the CECP is proposed to be, located was, or were, aware of the Agency's conditional support for the smaller, replacement plant on the noted property? Were the property owners made aware of this conditional support?

A17. Yes. In 2000 and 2001, the Carlsbad Redevelopment Agency and City of Carlsbad worked together with Cabrillo Power (the owners of the Encina Power Station at the time) and its consultant, Hofman Planning, in an effort to develop a Memorandum of Understanding which would set forth the conditions under which both the City and Redevelopment Agency would be able to support a repowering/replacement facility on the site east of the existing power plant (Encina Power Station). Cabrillo Power prepared the initial draft Memorandum of Understanding, dated April 5, 2001. The City/Redevelopment Agency responded with its desired revisions to the MOU on June 18, 2001, which included a request for:

- More details on the proposed project and the goals of the SCCRA Plan to be addressed through construction and operation of the project.

- Clear assurances that the existing power plant buildings west of the railroad tracks would be demolished by a specific date, not just the electrical generating units.

- Formal acknowledgement by Cabrillo Power that support and cooperation from both the City and the Agency is critical to the repowering/replacement process.

- Submittal of a pre-application by Cabrillo Power to the City and the Agency for review and approval of conditions, if appropriate, for any proposed repowering/ replacement project.

- A comprehensive study of the repowering and relocation of all five (5) existing units on the site, and assurances that two power plants would not be operating for an extended period of time on the site of the Encina Power Station.

- A design competition for the new power plant to ensure a very public process, and to ensure quality design.

There are a number of additional points of agreement which were requested in order to gain City and Agency support for a new power plant. See attached letter dated June 18, 2001 (Exhibit No. 408). This correspondence demonstrates that the City and Agency support for location and the actual repowering/replacement plant was based on an initial understanding of the assurances and/or commitments to be made by Cabrillo Power as part of any proposal for a new power plant on its property.

Although the effort to obtain a Memorandum of Understanding with the power plant owner (Cabrillo Power) in 2001 was ultimately a failure, I believe that the response from both the City and the Agency clearly demonstrates that the support for a replacement plant within the area noted in the CECP was subject to a number of various points of agreement and formal assurances. When the SCCRA Redevelopment Plan was adopted, there were a variety of unanswered questions and very limited details on a new plant and when the existing power plant would be decommissioned and demolished. In an attempt to be cooperative, the Agency initially expressed support for a replacement plant in the location identified by the CECP (which is on the eastern portion of the existing Encina Power Station site, between the railroad tracks and Interstate 5). However, I believe that the property owner understood the conditional nature of this support and appeared willing, at the time, to be cooperative in return. Unfortunately, because many of the initial concerns have still not been addressed and the requested assurances have not been provided, the Agency can no longer support the noted site for a replacement plant and is unable to support the proposed CECP for design and benefit reasons.

Q18. Why does the Agency require "extraordinary public benefits/purpose" findings for development of an industrial facility such as the CECP?

A18. The "extraordinary public benefits/purpose" findings were set forth in 2005 by the Housing and Redevelopment Commission as an amendment to the SCCRA Plan in order to take all reasonable actions necessary to ensure the continued fulfillment of the redevelopment purposes of the Plan and to prevent the recurrence or spread of conditions

of blight in the Project Area. As amended, the SCCRA Plan permits all land uses that are permitted by the General Plan and zoning ordinance, as it currently exists or as amended in the future, with the exception that the Commission limited new development which provides for industrial types of uses, such as those set forth within the Public Utility Zone (ie., desalination plants, electrical energy generating and/or transmission plants, etc), to only those industrial uses that could demonstrate an extraordinary public purpose.

As authorized by Redevelopment Law (Section 33338), the Redevelopment Plan may contain covenants, conditions, and restrictions which the Commission prescribes in order to implement the goals and objectives of the Plan. Industrial uses, such as those permitted in the public utility zone, can create additional conditions of both physical and economic blight which would be contrary to the purpose of redevelopment and the goals and objectives set forth within the SCCRA. Therefore, the Commission felt it was necessary to establish land use restrictions which would limit new industrial development (such as that type of development noted within the public utility zone). In this process of considering new industrial development, the Agency did, however, acknowledge that there may be some projects which are beneficial to the SCCRA in that they provide extraordinary public benefits or meet an extraordinary public purpose which would otherwise not be possible without the proposed industrial development. Therefore, rather than completely prohibiting new industrial development (specifically "public utility zone" land uses), the Commission set forth a requirement that any new industrial use, such as those noted above, obtain approval of the appropriate land use permits from the Housing and Redevelopment Commission and demonstrate its extraordinary public purpose. This demonstration is provided through findings of extraordinary public benefit(s).

Q19. Do you have any examples of other industrial uses within the SCCRA which are similar to the CECP where these extraordinary public purpose findings were required, and the Agency was able to make them to approve the project?

A19. Yes. The recently approved Desalination Plant to be constructed on the site of the existing power plant property (west of the railroad tracks) is a good example. This proposed industrial use required the Agency to make findings of extraordinary public purpose in order to approve the Major Redevelopment Permit for this project. The extraordinary public purpose/benefits of the Desalination Plant include, but are not limited to:

- Security of Water Supply. The project will allow the City of Carlsbad Municipal Water District (CMWD) to purchase 100% of its potable water supply needs from the desalination plant, thus providing a secure local water supply that is not subject to the variations of drought or political and legal constraints on water supplies.

- Redundant Water Supply: The project will provide water supply redundancy for the City, strengthening security and reliability of water supply for residents and businesses. The CMWD will maintain its membership in and right to purchase water at the CWA, while receiving 100% of its potable water supply needs from

the Project, thereby creating a redundant supply of water available in the event of catastrophe or unforeseen circumstances.

- Reliable Water Supply: The desalination plant will provide a reliable water supply for 30 years with two possible 30-year extensions.

- Economic Benefits: The Project will provide the City with desalinated water at a predictable and reasonable price through the long-term Water Purchase Agreement.

- Positive Economic Impact on Ability to Attract and Retain Business: The desalination plant will create a drought-resistant, reliable water supply for the City of Carlsbad that will provide the stability necessary to attract and retain high-tech and biotechnology businesses which are dependent on a reliable water supply for their research and manufacturing processes. These businesses provide high skill, high wage jobs in the City of Carlsbad that enhance the overall economy of the community.

- Land for Public Purpose: Several acres of dedications to the City for the public's benefit were provided by the property owner (Cabrillo Power) in order to obtain approval for the Desalination Plant through the Precise Development Plan for the project. The dedications include "Fishing Beach" and "The Bluff" area to allow for public recreational and coastal access use, including public parking. The "Hubbs Site" will be deed restricted to allow fish hatchery, aquatic research, and trails. The south Power Plant Public Parking Area will be dedicated for public parking. There is also a dedication of an easement for the Coastal Rail Trail.

- Restore and Enhance the Marine Environment: The Desalination Plant owner/operator, Poseidon, has been and will likely remain actively involved in activities aimed at protecting, restoring, and enhancing the health and vitality of Agua Hedionda Lagoon, the surrounding 30-square-mile watershed upstream of the Lagoon, and the near shore environment, including Hubbs Sea World Research Institute. Additionally, the project proposes to deed restrict approximately 2 acres of vacant land located on the north side of the lagoon between the Hubbs Sea World Research Institute and nearby railroad tracks for uses such as marine research and expansion of the Hubbs facility.

- Regional Leadership Role: Creation of a 50 million gallon per day (mgd) desalination facility will enhance the position of the City of Carlsbad as a Statewide and Regional leader in water supply by creating a new supply called for in the State Department of Water Resources 2005 California Water Plan and the CWA's Urban Water Management Plan.

A copy of the Planning Commission Resolution setting forth these findings and facts of the extraordinary public purpose/benefit of the Desalination Plant are provided as Exhibit 409.

Q20. Has the CECP proposed public benefits comparable to the noted Poseidon Desalination Project that was approved by the Housing and Redevelopment Commission?

A20. No. The proposed CECP is significantly larger in scope and design than the Desalination Plant and should provide relatively comparable benefits. However, the CECP offers no additional community benefits which could be considered extraordinary by the Agency. I believe that the CECP needs to provide public benefits comparable to, if not greater than, those provided through the Desalination Plant in order to obtain approval of an extraordinary public benefit finding from the Housing and Redevelopment Commission. A comparison of the two development projects in scope and intensity and a summary of benefits offered to date is provided in the Attachment 1.

Q21. Do you agree with the California Energy Commission Staff that one of the public benefits for the proposed CECP is that it is a Brownfield Redevelopment Project because it will result in a net increase in electrical generating capacity?

A21. No. I do not agree that the proposed CECP provides for Brownfield Redevelopment. In my opinion, the proposed CECP only intensifies an industrial use on the site. It does not accomplish redevelopment and there is no guarantee that the new plant will result in the demolition of the existing power plant. I believe that the typical examples of Brownfield Redevelopment most often demonstrate the clean-up of industrial sites (hazardous substance removal, etc) and then the re-use of those sites for economic development projects such as commercial centers, mixed use projects, office developments, etc. I am not aware of any examples of Brownfield Redevelopment where an industrial site was redeveloped with another industrial land use. The examples I am familiar with provided for redevelopment of Brownfield site with much more attractive and commercially beneficial land uses. Here are some examples of typical Brownfield Redevelopment where there was much greater public benefit realized:

- In Homestead, Pennsylvania, the site once occupied by Carnegie Steel has been converted into a successful commercial center, The Waterfront.

- In Pittsburgh's Squirrel Hill neighborhood, a former slag dump for steel mills was turned into a $243 million residential development called Summerset at Frick Park.

- In the South Side neighborhood, a former LTV Steel mill site was transformed into Southside Works, a mixed-use development that includes high-end entertainment, retail, offices, and housing.

- In the Hazelwood (Pittsburgh) neighborhood, a former Jones and Laughlin steel mill site was transformed into a $104 million office park called Pittsburgh Technology Center.

- In Herr's Island, a 42-acre (170,000 m^2) island on the western bank of the Allegheny River, a former rail stop for livestock and meatpacking were transformed into Washington's Landing, a waterfront center for commerce, manufacturing, recreation and upscale housing.

- In San Diego, California, the East Village Neighborhood, which was long viewed as one of San Diego's most dangerous, dilapidated neighborhoods with abandoned warehouses and ground that was contaminated from nearly 100 years of industrial uses, has been transformed into one of the downtown's fastest-growing and most popular neighborhoods. The Ballpark District is 82 acres and currently has a ballbark (Petco Park), 8300 residential units, 1100 hotel rooms, 1.2 million square feet of commercial space, and more than 3600 public parking spaces either planned, underway or completed within the nearly 60 block ballpark neighborhood.

Q22. Why are the above types of brownfield redevelopments more desirable for a redevelopment agency?

A22. The above examples of brownfield redevelopment are more desirable because they tap an unrealized opportunity for economic growth and they remove conditions of blight which is the primary goal of redevelopment. The proposed site for the CECP as well as the site of the existing power plant (Encina) are in prime coastal locations and represent blighted sites from both an economic and/or visual perspective. If developed properly, tremendous profits can be generated for the developer/property owner, as well as the City and Redevelopment Agency. The potential benefits from an alternate type of development (non-industrial/non-utility) on the subject site include increased tax base growth, job creation, neighborhood revitalization and environmental protection. In a study of 223 cities completed in 1999 by the U.S Conference of Mayors entitled Recycling America's Land: A National Report on Brownfield Redevelopment, it was estimated that additional cumulative tax revenues in the range of $955 million to $2.7 billion annually could be realized by cities where brownfield redevelopment occurred. I have not seen an updated or current study on these tax benefits which was as thorough as the 1999 study, but I think it would be very safe to assume that these benefits would be at least the same but most likely substantially higher in 2009.

In our own Agency assessment of the development alternatives, conservative estimates indicate that the revenue generated for local government would be substantially higher for commercial development with visitor-serving uses (such as a hotel and/or restaurants) vs. the development of one or more power plants on the site. The revenue generating potentially is significantly different, with commercial development exceeding power plant development by nearly 5 times as much revenue on an annual basis.

Q23. What types of public benefits would be considered essential for the CECP to include in order for the Redevelopment Agency to be able to support a finding of "extraordinary public purpose" as discussed previously in your testimony?

A23. First, it is important to reiterate that from a land use perspective it has been determined by the City of Carlsbad that this project does not comply with the City's Laws, Ordinances, Regulations and Policies as related to land use. Therefore, at this point, the "extraordinary public purpose" finding by itself would not allow for Commission approval of the CECP. However, examples of extraordinary public purpose for the proposed CECP, would include but are not limited to:

- Binding commitment that the existing power plant be decommissioned and all buildings and related facilities be demolished by no later than 2013.

- NRG enters into an Owner Participation Agreement (OPA) with the Agency prior to start of CECP project construction binding NRG on decommissioning and demolition of the existing (Encina) power plant, and requires NRG to deposit funds with the City to initiate and complete a comprehensive Conceptual Master Plan and/or Land Use Development Strategy for the subject property and to bond for removal of the existing plant by a date certain.

- NRG to proceed with selecting a developer to redevelop the existing power plant site as soon as the above noted Conceptual Master Plan and/or Land Use Development Strategy is complete and approved by the City and the Redevelopment Agency.

- NRG to substantially improve the landscaping and fencing on the perimeter of their property to aesthetically enhance the area as a temporary measure until such times as the property can be redeveloped.

- NRG to provide public parking on their property for visitors and/or residents that wish to enjoy the beach and/or coastal resources in the area.

- NRG shall assist SDGE/Sempra to relocate the switchyard off the property of the existing power plant at the time the new power plant is constructed.

- NRG shall dedicate at least 32 acres of land on the most northern end of the NRG property (adjacent to lagoon and north of existing power plant) to the Redevelopment Agency at no cost for public access and public coastal recreational amenities.

Q24. Can the Carlsbad Redevelopment Agency provide funding to assist in the redevelopment of the power plant site?

A24. Yes. The purpose of Redevelopment is to eliminate blight and blighting influences to allow for the revitalization of an area designated as redevelopment area. The primary financing source to implement the blight removal program(s) is tax increment revenue.

Due to several reassessments of the power plant by the State of California, as requested by the property owner, the SCCRA currently generates no tax increment because its total assessed value is below the base value established in 2000. This means that there are currently no funds to assist with redevelopment. However, as development improves, it is anticipated that additional revenues will be provided in order to assist with redevelopment projects in the SCCRA. It is possible for the Redevelopment Agency to borrow funds from the City of Carlsbad to initiate redevelopment activities with an agreement to repay at such time as tax increment funds are available. Therefore, if the Housing and Redevelopment Commission made a decision to do so, it could provide funding to assist in the redevelopment of the power plant site.

Q25. What type of cooperation with other public bodies is authorized by the South Carlsbad Coastal Redevelopment Area Plan?

A25. The Housing and Redevelopment Commission is authorized, by the SCCRA Plan:

> "to seek aid and cooperation of other public bodies that are authorized by State Law to aid and cooperate, with or without consideration, in the planning and implementation of activities authorized by this Plan. The Commission shall seek this aid and cooperation in an attempt to coordinate the implementation of the Plan with the activities of such public bodies in order to accomplish the purposes of redevelopment and to achieve the highest public good. In working with these other public bodies, the Commission is authorized to impose the planning and design controls contained in and authorized by the Plan to ensure that present uses and any future development by public bodies will conform to the requirements of this Plan."

Since both the California Energy Commission and the Carlsbad Redevelopment Agency are authorized by State Law and, in effect, both serve State functions, the Agency believes that our two public bodies should be working in cooperation to accomplish the purposes of redevelopment and to achieve the highest public good, which would be best addressed through the findings of extraordinary public purpose and compliance with applicable land use regulations.

ATTACHMENT 1

COMPARISON OF PROJECT SCOPE AND EXTRAORDINARY PUBLIC BENEFITS
DESALINATION PLANT (TO BE CONSTRUCTED BY POSEIDON) and PROPOSED CECP

Category	Desalination Plant (Poseidon)	CECP (NRG)
Project Size	4 acres	32 acres (8X larger site)
Structure Height	35 feet (building height max)	139 feet (industrial stacks)
Architectural Treatment	Facility enclosed in Class "A" office structure	Exposed Industrial Equipment; no architecturally acceptable building or equipment design
	Approved Landscape Plan	No significant, attractive landscaping noted or landscape screening provided
Security	The project will provide the City of Carlsbad Municipal Water District (CMWD) a secure water supply capable of meeting up to 100% of its needs that is not subject to the variations of drought or political and legal constraints on water supplies.	The electricity generated by the CECP will be sold into the transmission grid and used primarily by all SDG&E customers.
Redundancy	The project will provide water supply redundancy for the City, strengthening security and reliability of water supply for residents and businesses even in the event of catastrophe or unforeseen circumstances.	There are no guarantees that the generation of this power would eliminate risk of “black outs” or require other energy conservation measures in Carlsbad.
Reliability	The desalination plant will provide a reliable water supply for 30 years with two possible 30-year extensions.	There is no justification provided for the need for this power plant at this specific site. Other sites could be used to generate the proposed power.
High Quality Resource	The project will provide high quality drinking water comparable with the water supply that can be purchased from the CWA. The project’s water will meet all State and Federal health standards and reduce total dissolved solids (TDS) compared to imported water from the Colorado River and Sacramento-San Joaquin Delta provided by the CWA.	No innovative power generating alternatives, energy efficiency, or energy education programs offered as part of the project; no natural resource capitalization.

Economic Benefits	The project will strengthen the economic base of the Project Area and the community by providing water at a predictable and reasonable price through the long-term Water Purchase Agreement with agreed-upon water rates.	There are no measures that would prevent substantial electrical rate increases within the City and no predictable or reasonable pricing for the long-term.
Tax Benefits	The project represents additional tax related income for the Agency and the City.	The CECP represents additional tax related income for the Agency and the City. Initial financial studies indicate that the economic benefit of a new power plant without assurances that the existing power plant will be demolished is much less than can be obtained with visitor-serving commercial and recreational uses envisioned for the site. The CECP creates minimal long-term jobs, generates no sales tax or transient occupancy tax revenue for the City and provides for no public amenities which would add value to the property from a community use perspective
Impact on Ability to Attract and Retain Business	A drought-resistant, reliable water supply for the City of Carlsbad will provide stability to attract and retain high-tech and biotechnology businesses dependent on a reliable water supply for their research and manufacturing processes. These businesses provide high skill, high wage jobs in the City of Carlsbad that enhance the overall economy of the community.	There are no assurances that the existing power plant would be de-commissioned and demolished at a date certain - a key goal for the redevelopment plan and necessary to create a positive economic impact on the Agency and/or City's ability to attract and retain businesses in the area. The CECP is a use that could potentially preclude other more desirable development such as visitor-serving commercial uses and public amenities and/or services for local resident enjoyment with positive economic impact.
Acquisition of Land for	The project will develop new beach and coastal recreational opportunities, enhance commercial	The CECP doesn't include any additional projects or developments which would provide the community with additional

Public Purpose	and recreational functions and increase parking and open space amenities in the project area. Each dedication, in the form of an easement, title transfer, or deed restriction will increase public access and recreational opportunities along the coast. Specific projects include: *Fishing Beach* - An easement for this site, along the shore of Agua Hedionda Lagoon and next to Carlsbad Boulevard dedicated for public recreational and coastal access use, including public parking. *Bluff Area* — The Bluff Area, located on the west side of Carlsbad Boulevard and opposite the Power Station, is proposed to be dedicated in fee title to the City for recreational and coastal access uses. *Hubbs Site* - The Hubbs Site, along the lagoon north shore, consists of the land between the existing Hubbs Sea World Research Institute and the railroad tracks. The site is proposed to be deed restricted to uses such as a fish hatchery, aquatic research, and trails. *South Power Plant Public Parking Area* — An easement along the east side of Carlsbad Boulevard and near the south entrance to the power plant would be dedicated for public parking. *Coastal Rail Trail Easement* - Dedication of an easement for the Coastal Rail Trail.	public amenities such as parks, public parking areas, trails, coastal access, or other recreational opportunities. In the FSA, the CEC staff has proposed to move the coastal rail trail to the west side of the railroad tracks making it more difficult and expensive to construct the Coastal Rail Trail and less desirable for users because of rail crossings and potential safety concerns.

Land Use
Scott Donnell

LAND USE CONFORMANCE

PREPARED DIRECT TESTIMONY
OF
SCOTT DONNELL
SENIOR PLANNER
CITY OF CARLSBAD

INTRODUCTION AND SUMMARY

Q1. Please state your name and place of employment.

A1. Scott Donnell, City of Carlsbad.

Q2. Would you describe your responsibilities?

A2. I oversee the Special Projects division of the Planning Department. Special Projects primarily shepherds city-proposed applications, such as capital improvement projects, through the planning and public hearing review process. The division also may review atypical projects such as the proposed Carlsbad Energy Center Project ("CECP") and the Carlsbad Seawater Desalination Plant. I supervise employees and review applications, including the two projects previously mentioned.

Q3. How long have you held this position?

A3. I have been a municipal planner more than 20 years and have worked for the City of Carlsbad since 1999. I have served in my current capacity as Senior Planner for the past 3 years.

Q4. What is the purpose of your testimony?

A4. The purpose of my testimony is to:

1. Describe the City's involvement in the AFC process with regards to land use;

2. Present the City's conclusions on conformance of the Carlsbad Energy Center Project (CECP) with the City of Carlsbad's land use laws, ordinances, regulations, and standards; and

3. Discuss previous CEC conclusions on conformance of a similar proposal with City land use laws.

Q5. Can you please summarize your testimony?

A5. In summary, my testimony concludes that:

1. The City of Carlsbad has been actively involved in the Energy Commission's AFC process by requesting and supplying information, providing comments, and providing our assessment of the CECP's conformance with our legal requirements.

2. The proposed CECP does not conform to existing land use Laws, Ordinances, Regulations, and Standards (LORS) based on:

   - City Council Policy,
   - Carlsbad General Plan,
   - Carlsbad Specific Plan 144,
   - Carlsbad Zoning Ordinance,
   - Precise Development Plan PDP 00-02(B),
   - South Carlsbad Coastal Redevelopment Area Plan, and
   - Scenic Corridor Guidelines.

   Key among these regulations is the failure of the CECP to conform to the City's General Plan and its inability to commence and complete a comprehensive update of the applicable Specific Plan (SP 144), the latter a longstanding requirement of Council.

3. In its previous assessment of a proposal by SDG&E to construct and operate a combined cycle power plant adjacent to the Encina Power Station, the CEC staff stated that the proposed project was "*…not likely to be in conformance with the general or applicable specific plans of Carlsbad…*" (see Exhibit 418).

CITY'S INVOLVEMENT

Q6. Can you please describe the City's efforts to review and comment on the CECP and its conformance with City LORS and other land use concerns?

A6. The City has been an active participant in the CECP proceedings. From the onset of this project, the City has submitted many letters to the California Energy Commission that document its concerns about project impacts on land use. These letters, which cite the proposed CECP's inconsistency with City LORS and other land use concerns, are dated as follows and have been docketed with the Energy Commission:

- October 24, 2007,
- December 20, 2007,
- April 25, 2008,
- May 1, 2008,
- July 8, 2008,
- August 22, 2008,
- September 10, 2008,
- October 7, 2008,
- October 22, 2008,
- November 4, 2008,
- November 18, 2008,
- January 1, 2009,
- March 5, 2009,
- April 29, 2009,
- June 5, 2009, and
- October 22, 2009.

Further, at the request of CEC staff, Joe Garuba, Municipal Projects Manager; Debbie Fountain, Housing and Redevelopment Director; and I flew to Sacramento in early 2008 to explain the City's Land Use requirements to CEC staff.

Q7. Did the CEC staff specifically ask the City of Carlsbad for its opinion on land use consistency?

A7. Yes. Based on our Sacramento meeting and through correspondence, on March 20, 2008, the CEC staff requested the City's opinion on the consistency of the CECP with applicable City of Carlsbad land use regulations. On May 1, 2008 the City responded with its analysis and conclusion that the CECP did not comply with City land use LORS. While the City has continually maintained the CECP is inconsistent with Carlsbad's land use plans and requirements, CEC staff has failed to give due deference to the City's position as evidenced by the FSA.

CITY REQUIREMENTS

Q8. Can you identify the documents that would typically be used to make a land use conformity determination for the CECP?

A8. There are seven planning documents that are applicable to the CECP. They are:

- General Plan,
- Specific Plan 144,
- Zoning Ordinance,
- Agua Hedionda Land Use Plan (AHLUP),
- Precise Development Plan PDP 00-02,

- South Carlsbad Coastal Redevelopment Area Plan (SCCRA Plan), and
- Scenic Corridor Guidelines

Also applicable is a 25-year-old City Council policy requiring a comprehensive update of SP 144 that applies to any development contemplated at the existing Encina Power Station and adjacent areas within the Specific Plan.

Attached is a map (Exhibit 414) which highlights the different jurisdictions of several of the planning documents. These include Specific Plan 144, the AHLUP, Precise Development Plan PDP 00-02, and the SCCRA Plan, all of which are centered on the Agua Hedionda Lagoon. The other planning documents have city-wide application.

Q9. How do the various land use plans relate and coordinate with each other?

A9. Generally, all documents are consistent with and implement the General Plan. The General Plan is Carlsbad's blueprint for land use, appearance, and growth now and in the future. The purpose of the General Plan is to establish an overall multi-part vision for the entire community. The way the General Plan achieves this vision is through the development and implementation of goals, objectives, and implementation actions.

OVERALL CONFORMANCE

Q10. Based on your review of these documents, does the CECP comply with the City land use LORS?

A10. No. The CECP does not comply with existing land use LORS. Additionally, the CECP does not conform to either the South Carlsbad Coastal Redevelopment Area Plan (see Redevelopment Testimony of Debbie Fountain) or the Agua Hedionda Land Use Plan which implements the Local Coastal Plan (see Coastal Conformity Testimony of City of Carlsbad staff).

NONCONFORMANCE WITH THE PLANNING PROCESS/SP 144

Q11. The City's approach to determining land use conformity appears to involve a planning process as well as evaluation against specific performance criteria. Why is the planning process so important to the City?

A11. Particularly for the required comprehensive amendment of SP 144, the process is critical because it ensures the public and myriad interests are engaged in the development of the land use vision. This is clearly important for this project considering its location is a coastal area long dominated by a publicly inaccessible use. The sound planning resulting from this process establishes the standards that guide development and enable the evaluation of project conformance to the established vision over the long term.

The reason the City has stressed the need for a comprehensive update of Specific Plan 144 since 1982 (which includes the EPS location) and why it views the update with such importance is that it has long anticipated the re-use of the EPS and other adjacent properties, particularly those west of I-5, to something other than heavy industry. For more than 50 years, Carlsbad has had a prominent industrial presence in the form of the EPS along its coastline. In the ensuing time, while Carlsbad has grown into a community, the EPS has remained a stagnant land use in the City's center. It is reasonable to expect, therefore, that development proposals within SP 144, especially very significant ones such as the CECP, warrant a serious, public, and comprehensive consideration of land use and other matters of community interest. The vetting achieved through Carlsbad's requirement for a broad, complete update of SP 144 would achieve this expectation.

The specific planning process may be developer or city-initiated. Usually, the former is preferred because of the developer's vested interest in laying out a proposal and proposing how it fits into the broader vision for an area.

Q12. What is the primary planning tool the City would have used at the CECP site if an AFC had not been filed at the CEC?

A12. As stated above, the Specific Plan 144 (SP 144) is the central planning document for the area of the City where the CECP is proposed for construction. I cannot emphasize enough that SP 144 is intended to be a master planning process resulting in a document that ties together all the other applicable land use planning documents for this area. This process is necessary to determine the city's overall land use vision for the area, establishes specific requirements for individual projects, and ensures compliance with other applicable regulations. While the process is admittedly time consuming, it is understandable when one considers the property in question's key coastal location on one of the largest parcels of land in the City.

The failure of the CECP to file and prosecute an amendment to Specific Plan 144 was one of the major concerns addressed in the City's May 1, 2008 letter to the CEC staff. In fact, the City has consistently noted and described the need for a comprehensive update from its first correspondence to its latest resolution on the CECP. In its earliest comment letter, dated October 24, 2007, the City wrote:

> "Carlsbad Energy Center LLC's AFC does not address this comprehensive update requirement. Without the update, it is not possible to determine the appropriateness of the new power plant and whether it helps to fulfill the vision for the Encina Specific Plan area. For example, the City is concerned that further industrialization of the project area, especially in light of no guarantee of removal of the existing power plant, may be counter to goals it wishes to achieve."

Q13. Did the CECP comply with any of the requirements of SP 144?

A13. No. The CECP applicant, Cabrillo Power I LLC, did file an amendment to the SP 144 plan on September 17, 2007. This filing simply amended the specific plan to recognize the proposed CECP; it did not propose the comprehensive update required by city policy

The lack of a comprehensive update has left the City in a quandary on how to evaluate the CECP's consistency with its land use planning regulations. If the City, not the CEC, held jurisdiction, the City would have required CECP to follow its established procedures and provide the City with the comprehensive update of SP 144. The ongoing refusal of the CECP to comply with City LORS led, in part, to the City's lack of support for the project. The CEC staff failed to assist the City as its consistency review failed to look at the underlying areas of concern to the city, such as overall land use vision, land use compatibility, height limit, design, public access, etc.

Q14. Have there been attempts to update SP 144 and create a master plan for the EPS and adjacent properties?

A14. Yes. Since 1982, the City has requested the owners of the EPS site (SDG&E and since approximately 2000, Cabrillo Power I LLC) to comprehensively update the Specific Plan and create a master plan for that area.

In 1989 SDG&E proposed an addition to the Encina Power Station and filed an NOI application with the CEC. In this proceeding the CEC Staff issued an Issues and Alternatives Report in August of 1990. This report recognized that:

> "However, the project will not be in compliance with the city of Carlsbad's current Specific Plan for the site area because the plan only permits use of the site by facilities that are presently there. Were it not for the exclusive power plant siting authority of the CEC, SDG&E would need to obtain an amendment to the specific plan, including the following major aspects:
>
> - architectural review of all buildings
> - approval to construct structures greater than 35 feet in height, especially the air emissions stack;…"

Based on concerns raised by both the California Coastal Commission and the CEC staff, SDG&E withdrew the EPS from consideration in the NOI proceeding.

In the early 1990's SDG&E agreed to begin that master plan, but work on it was never completed. By 1998, the City was sufficiently frustrated in its attempts to affect that update that the Carlsbad City Council passed Resolution 98-145 declaring its intention to comprehensively update and master plan the Encina Specific Plan on its own. At the time of the resolution's adoption, all properties within SP 144 were owned by SDG&E.

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

- "Whereas, SDG&E was informed that any future modifications, changes, amendments or additions to its plant would require a completed major amendment to the specific plan processed in accordance with Chapter 21.36 of the Carlsbad Municipal Code;

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

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

- Whereas, these considerations [of amending existing zoning and General Plan designations of the SDG&E properties] should include whether the continued use of a portion of the property for a Power Plant is in the best interest of the citizens of Carlsbad and is the best, long-term use of the property given its superior coastal location and its proximity to other existing, surrounding uses that can be adversely impacted by Power Plant use;…"

Q15. What was the result of Council Resolution 98-145?

A15. Shortly after the adoption of Council Resolution 98-145, the EPS was sold by SDG&E to Cabrillo Power. Initiation of the specific plan update by the City was subsequently put on hold in hopes of working cooperatively with the new owner.

Q16. Was the City successful in working with Cabrillo?

A16. No. Although there was some initial cooperation after the transfer of the EPS, details of a Memorandum of Understanding could never be finalized by the parties (see Redevelopment Testimony of Debbie Fountain).

Q17. Since the adopted Resolution (No. 98-145) in 1998, has the City Council reaffirmed its requirement that any development proposed in the SP 144 area be required to complete a comprehensive update?

A17. Yes. On June 11, 2002, as part of the proceeding on the proposed Carlsbad Desalination Plant, the City Council reiterated its policy on requiring a comprehensive update and master plan of SP 144. Specifically the City Council reaffirmed that the update requirement: (1) applies to any proposal; (2) is applicant, rather than city-initiated; and (3) requires the cooperation and resources of all affected property owners.

Q18. Have there been any exceptions to Council's policy?

A18. Yes. On August 5, 2003, the City Council passed Resolution 2003-208, allowing the proposed Carlsbad Seawater Desalination Plant (Poseidon), which is a lessee of Cabrillo Power I LLC, to proceed without a comprehensive update of the entire specific plan. An important point to clarify is that the City Council decision to waive its policy to comprehensively update Specific Plan 144 applied only to the Poseidon's desalination plant and not any other development proposal.

Nearly three years later, in June 2006, the City Council and Housing and Redevelopment Commission approved the desalination plant as permitted by the waiver. The approval was possible, in part, because of significant public dedications, which enabled the Housing and Redevelopment Commission to find the desalination plant provided an extraordinary public benefit (see Testimony of Ms. Fountain)Most recently, on September 15, 2009, and consistent with prior Council action, the City Council again waived the requirement for a comprehensive SP 144 update as part of its approval of applicant-proposed changes to the desalination plant. Justification for the waiver is found in Planning Commission Resolution 6633 (adopted as part of Council's approval), which states:

> "The development contemplated by the Desalination Project Changes project…(1) complies with South Carlsbad Coastal Redevelopment Area Plan goals and enhances redevelopment opportunities at the Encina PowerStation through the undergrounding and consolidating of appurtenant facilities; (2) maintains previously approved requirements for the dedication of lands for public use, and; (3) does not change any aspect of the desalination plant's intake or output capacity or operational characteristics..; therefore, the processing of the project as an amendment to, rather than a comprehensive update of the Encina Specific Plan 144, is appropriate."

Please note that in approving the waivers for the Poseidon desalination project in 2003 and 2009, the City Council maintained the requirement to comprehensively update SP 144 and this is applicable to any other project in the specific plan area.

Q19. Other than with regards to the desalination project, has the City made any other interpretations on the comprehensive update requirement of SP 144?

A19. Yes. In a letter dated July 16, 2007 (Exhibit 418) and prior to the CECP filing with the CEC, the City sent a letter to SDG&E reconfirming that SDG&E would need to comprehensively update SP 144 if it wanted to expand its operations center (located on the SW corner of the EPS). This letter was in response to a request from SDG&E for said expansion.

Q20. Has the City ever required another master plan similar to that of SP 144?

A20. Yes. The City has a long history of requiring master plans/vision plans for substantial tracks of development.

INCONSISTENCY WITH GENERAL PLAN REQUIREMENTS

Q21. Understanding that it is difficult to assess CECP compatibility with the City's land use regulations without the requisite filings by CECP for initiating the SP 144 process, have you formed any opinions regarding the CECP based on specific land use requirements of the City?

A21. Recognizing the lack of necessary information, the City has made the following determinations with regard to consistency with the:

- City's General Plan,
- Zoning Ordinance,
- Encina Specific Plan, and
- Encina Power Station Precise Development Plan.

Q22. Looking at the first of these - Is the CECP consistent with the City's General Plan?

A22. The CECP project is inconsistent with the General Plan. It does not fit with most of the applicable goals and objectives laid out in Land Use Element and Open Space and Conservation Element of the General Plan. These goals and objectives and the reasons the CECP does not comply with them are as follows:

1. Land Use Element, Overall Land Use Pattern Goal A.1: *"A City which preserves and enhances the environment, character and image of itself as a desirable residential, beach and open space oriented community."*

   The CECP will not enhance the environment as required by Goal A.1. The height of the stacks (over 100 feet higher than the city's height regulation), the mass of the structures, the location in close proximity to the Agua Hedionda Lagoon, and the location in plain view of many residents makes the CECP incompatible with this General Plan element.

   The CECP is additionally inconsistent with the goal of enhancing the environment in that the location chosen for the CECP fails to give an opportunity for the city to enhance the beach area for its residents

2. Land Use Element, Overall Land Use Pattern Goal A.2: *"A City which provides for an orderly balance of both public and private land uses within convenient and compatible locations throughout the community and ensures that all such uses, type, amount, design and arrangement serve to protect and enhance the environment, character and image of the City."*

   The CECP is inconsistent with Goal A.2 because it fails to protect and enhance the environment, character and image of the city. The CECP will continue to give

visitors and residents the view that Carlsbad is a beach community that tolerates heavy industry along its coast, thus damaging the environment, character and image of the city.

3. Land Use Element, Overall Land Use Pattern Goal A.3: *"A City which provides for land uses which through their arrangement, location and size, support and enhance the economic viability of the community."*

   The CECP is inconsistent with Goal A.3 because the location of the proposed CECP does not enhance the economic viability of the community.

4. Land Use Element, Industrial Goal A: *"A City which develops an industrial base of light, pollution-free industries of such magnitude as will provide a reasonable tax base and a balance of opportunities for employment of local residents."*

   The CECP would not comply with this General Plan goal. While the City recognizes that combined-cycle power plants are relatively clean, they are not pollution free. The CECP represents a 10-fold increase in air emissions compared to 2008 air emissions from Encina Units #1-3 and the facility's greenhouse gas emissions will double what the community currently produces (2005 & 2007 City of Carlsbad Green House Gas Inventory). Pollution from the CECP will be in addition to that from Encina Units #4 and 5, which will continue to operate regardless of the CECP outcome for the intermediate future.

   Regarding employment, according to information contained in the AFC and subsequent documents (FSA, page 4.8-7; AFC Section 1.8.2, page 1-15), the CECP will provide limited long-term employment opportunities for the community[1].

5. Land Use Element, Industrial Objective B.1: "To provide industrial lands which can accommodate a wide range of Industrial uses, including those of relatively high intensity, while minimizing negative impacts to surrounding land uses."

   The CECP would also not comply with this General Plan provision. While it represents a project at the heavy industry range of uses, the CECP would be unable to minimize the visual, economic, and social impacts to surrounding land uses.

6. Land Use Element, Industrial Objective B.4: *"To concentrate new industrial uses within the present boundaries of the industrial corridor as shown on the Land Use Plan."*

[1] While the City's vision is to support a base of light industry, it is not opposed to some heavy industry including power generation within city limits evidenced by Industrial Objective B.1.

Locating new industry in a location near the beach and lagoon, and not in the designated boundaries of the industrial corridor places the CECP in conflict with the city's General Plan.

7. Land Use Element, Industrial Objective B.5: *"To encourage planned industrial parks as the preferred method of accommodating industrial uses."*

   Locating the CECP in the coastal zone and outside of a planned industrial park conflicts with this provision of the General Plan.

8. Land Use Element, Industrial Objective C.14: *Screen all storage, assembly, and equipment areas completely from view. Mechanical equipment, vents, stacks, apparatus, antennae and other appurtenant items should be incorporated into the total design of structures in a visually attractive manner or should be entirely enclosed and screened from view.*

   The CECP has not proposed to provide any screening of mechanical equipment and is in conflict with this objective of the General Plan. It should be noted that while the EPS is a visual blight on the community (per the establishment of the SCCRA), its mechanical components are at least enclosed within a structure. The CECP is proposing to leave exposed the entire complex, which exacerbates the industrial nature of the plant.

9. Land Use Element, Environmental Objective C.5: *"Limit future development adjacent to the lagoons and beach in such a manner so as to provide to the greatest extent feasible the physical and visual accessibility to these resources for public use and enjoyment."*

   The CECP does nothing to "limit future development" adjacent to either the coast or the Agua Hedionda Lagoon. In fact it intensifies development in the area and ensures it continues for at least another 30 years. As a heavy industrial use, it diminishes rather than provides for the "physical and visual accessibility to these resources" both now and into the future.

10. Land Use Element, Environmental Objective C.6: *"Ensure the preservation and maintenance of the unique environmental resources of the Agua Hedionda Lagoon while providing for a balance of public and private land uses through implementation of the Agua Hedionda Land Use Plan."*

    Again, the CECP does not help "ensure the preservation and maintenance" of the lagoon nor assist in providing "a balance of public and private land uses". As a heavy industrial facility in this location, the CECP, like its predecessor the Encina Power Station, will define the land use in the area and make it less desirable for a balance of uses more appropriate to the coastal zone.

11. Open Space and Conservation Element, Open Space A.1: *"An open space system of aesthetic value that maintains community identity, achieves a sense of natural spaciousness, and provides visual relief in the cityscape."*

As previously identified, the visual impacts from the proposed CECP will have substantial negative effects on the community and will compromise the aesthetic value of the AHL. At this location, a power plant such as the CECP will detract from Carlsbad's coastal community identity, reduce the sense of natural spaciousness, and intensify visual impacts rather than provide visual relief.

12. Open Space and Conservation Element, Special Resource Protection A.2 – *"A city that protects and preserves visually attractive and/or significant natural areas."*

    The Agua Hedionda Lagoon is a complex series of sensitive habitats which provide not only environmental benefits, but also social and recreational amenities as well. It is significant not only as a city but as a state resource. The CECP will be a visually dominant feature as seen from the lagoon. As previously identified, the visual impacts from the proposed CECP will have substantial negative effects on the community and will compromise the aesthetic value of the Agua Hedionda Lagoon.

13. Open Space and Conservation Element, Special Resource Protection A.4: *"A city that preserves as open space, hillsides, ridges, valleys, canyons, lagoons, beaches and other unique resources that provide visual and physical relief to the Cityscape."*

    As previously identified, the visual impacts from the proposed CECP will have substantial negative effects on the community and will compromise the aesthetic value of the Agua Hedionda Lagoon. As such, the City finds that the proposed CECP does not conform to the General Plan.

14. Circulation Element, Scenic Roadways Policy C.1: *"Implement the policies, standards, and guidelines contained within the Carlsbad Scenic Corridor Guidelines."*

    The City's Scenic Corridor Guidelines identify several thoroughfares in the vicinity of the CECP, including Interstate 5 and the railroad, as scenic corridors. An overall goal of the Guidelines is to "preserve and enhance the quality of views along the [scenic corridor] both to the natural and manmade environment.". As previously identified, the visual impacts from the proposed CECP will have substantial negative effects on the community and will compromise the aesthetic value of the Agua Hedionda Lagoon. More information on aesthetics and scenic corridors may be found in Section 2.2, Visual Resources, of the California Coastal Act Conformance Report prepared by City of Carlsbad staff.

In light of all of the comments above, the City finds that the proposed CECP does not conform to the goals and objectives laid out in the General Plan.

INCONSISTENCY WITH ZONING REQUIREMENTS

Q23. Is the CECP consistent with the City's Zoning Ordinances?

A23. No. Although the land is currently zoned "PU" for public utility, the city's determination of compatibility goes well beyond the simple zoning designation. The "PU" designation is for "public utility" – but whether the CECP is a public utility is questionable. It is not regulated by the California Public Utilities Commission or any other regulatory body and the absence of a power purchase agreement with the regional provider of electricity, SDG&E, reinforces CECP status as a merchant power plant. Merchant power plants are similar to other industrial users.[2]

Also, the City's zoning regulations require the development to be consistent with the following:

1. "Insure compatibility of the development with the general plan and the surrounding developments;

2. Insure that due regard is given to environmental factors;

3. Provide for public improvements and other conditions of approval necessitated by other development." (Carlsbad Municipal Code 21.36.010)

The CECP is inconsistent with these provisions of the applicable zoning ordinance.

INCONSISTENCY WITH PRECISE DEVELOPMENT PLAN

Q24. Is the CECP consistent with the Encina Power Station Precise Development Plan?

A24. The City of Carlsbad Precise Development Plans are created to assure compliance with the vision and guidelines of the General Plan. In that regard, PDP 00-02 applies to

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[2] We are concerned that the CECP is merchant power plant and not a public utility, imbued with the public interest. While we do not know all of the background, this issue apprears to have been addressed in the Chula Vista case (CVEUP) with the Energy Commission determination's on page 32:

"CVEUP would not qualify as a "public and quasi-public" use even if it were an unclassified use. "Public and quasi-public" is described in section 19.47.010 as "uses in appropriate locations which are maintained by public or publicly controlled agencies such as municipal and/or county agencies, school districts, or utility companies (e.g. water, gas, electricity, etc.)… ." The evidence shows that the entity to which the City granted a license for the existing peaker was PG&E, an investor-owned public utility. The CVEUP, however, is to be owned and operated by MMC Energy, Inc., which is neither a public or publicly controlled agency nor a utility company. MMC sells electricity to utilities but is not itself a utility. The CVEUP is therefore not a "public or quasi-public" use."

development within the area proposed for the CECP. City Staff has evaluated the CECP and its compliance with PDP 00-02 and has determined that, like the provisions of the General Plan that it implements, the CECP would be inconsistent and would not be approved if the City had sole jurisdiction.

The PDP indicates that significant proposed development within its boundaries, such as a new power generating station, mandates a formal amendment to the PDP. Proposals requiring formal amendments would be subject to a full analysis of compliance with PDP land use standards and a determination of whether those standards are adequate. This is particularly applicable to the CECP as the adopted PDP does not contemplate an additional power plant within its boundaries.

The FSA does not identify how or if the CECP complies with PDP standards. Likewise, the formal amendment to the PDP submitted by NRG in 2007 contains very little analysis of project compliance with standards. The City noted the inadequacy of this submittal to the Energy Commission in its earliest comment letter on the project dated October 24, 2007.

Neither the FSA nor the formal amendment analyze if PDP setbacks can adequately accommodate the CECP. Among other items, no determination of compliance has been made with regards to PDP architectural guidelines, which apply to the Encina Power Station's "…perimeter, and other publicly visible components of the Precise Development Plan area.

- Future buildings and structures, and additions and alterations to them or to existing buildings and structures, should be sited and designed in a compatible manner with the EPS's surroundings, which include the overall lagoon and ocean environment, views from scenic corridors, public recreation and open space areas, and established residential neighborhoods.

- Building materials and finishes should also reflect compatibility with surroundings." (pages 27-28 of Precise Development Plan PDP 00-02(B), dated August 19, 2009)

The CECP, as proposed, anticipates virtually no setbacks from key infrastructure elements, such as the I-5 freeway. The City has often required setbacks to insure a project's visual compatibility with its surroundings and lessen the visual impacts from structures.

Similarly, the project makes no effort to adhere to or address the City's 35-foot height restrictions. The CECP has been proposed at a coastal location, where its height and mass pose a much more troubling aesthetic issue since it will interfere with line of sight from numerous inland locations to the beach (see Testimony of Don Neu). Other developers have worked with the City on this requirement. For example, Legoland excavated land and recessed one of its roller coasters in order to comply with the City's height limit.

The CECP has failed to propose, and the CEC Staff has failed to require public improvements and land for public access which would compensate for the project's impacts upon the city. Again, there is significant history of major projects proposing compensation to the benefit of the citizens of the City of Carlsbad.

Overall, issues regarding compliance with the PDP should be addressed as part of the comprehensive update of SP 144.

Q25. The CEC staff in the CECP Final Staff Assessment concluded that the project is in conformance with the City's land use LORS. Why do you believe they reached that conclusion?

A25. When you read staff's analysis in the FSA, it appears that they defaulted to the zoning designation to answer just about all land use interpretations, including conformity with general plan, special plan, zoning, etc. In its responses to comments, the CEC staff states in the FSA that:

> "It is therefore assumed that permitted industrial uses, or those deemed equivalent to a permitted use sited on properties zoned Industrial within an area dominated by industrial uses (i.e., EPS) are compatible with surrounding uses and zoning districts." (page 4.5-41)

Although the CEC staff asserts that the CECP will comply with the City's zoning ordinance because of the "PU" zone, they fail to fully appreciate how zoning regulations are applied. Even though the City believes the PU zone is for public utilities, not merchant plants, there are additional zoning requirements. For example, CECP cannot comply with setbacks required by the zoning regulation, and the height and bulk of the CECP makes compliance with zoning regulations problematic. The CEC staff fails to address how these and other requirements such as landscaping and public improvements are complied with.

The City has also expressed concern that the CEC staff fail to provide due deference to the City of Carlsbad and the Carlsbad Housing and Redevelopment Agency, with respect to their land use regulations. Both have adopted resolutions which clearly state that the CECP is not in conformance with a number of applicable LORS.

CITY COUNCIL POSITION

Q26. Does the City Council have a formal position on the CECP's conformance with local land use requirements?

A26. Yes. The City Council has adopted a series of resolutions which state Council's judgment that the CECP does not conform to existing land use LORS (See Testimony of Lisa Hildabrand, City Manager of the City of Carlsbad).

Furthermore, based on information gathered during the CECP review process, the City Council has also adopted Urgency Ordinance CS-067 which implements a moratorium on any new or expanded thermal electric power generation facility located within the coastal zone and requires that the Encina property, along with others, be re-evaluated as part of the City's current effort to update its General Plan. This would in effect serve as the beginning of a comprehensive SP 144 update.

Q27. Why did the City Council express its most recent opposition to the CECP after the Final Staff Assessment was released?

A27. The analysis of the CECP has been a dynamic process. Due to substantial changes in various project elements, the City Council felt it necessary to review the project on an ongoing basis.

Q28. Is there existing Council policy regarding the EPS site?

A28. Yes. There are number of policies and plans that apply to the EPS site. The history of power generation at the EPS site is one that is wrapped in dispute and controversy. Attached (Exhibit 429) is a chronology of the more significant events which have occurred at that location since its construction in 1952.

Since 1982, the City Council has had a policy that requires a comprehensive update (master plan) of SP 144 for the EPS site as well as adjacent properties within the specific plan. As discussed earlier, the City has long held that this update is critical to ensure compatibility of future development.

FUTURE DEVELOPMENT/VISION

Q29. Has the City expressed its opinion regarding the future land uses it anticipates at the EPS?

A29. Yes. The City has expressly stated its goal for removal of the existing power plant and re-designation of the EPS for publicly-oriented, non-utility land uses (see Testimony of City Manager). This anticipated shift in land use is consistent with the goals and objectives of the Coastal Act and South Carlsbad Coastal Redevelopment Area Plan as well as recent State Water Board, California Public Utilities Commission, and CEC proposed policies on the elimination of ocean water for cooling power plants.

Q30. In the middle of the EPS property is the site of the approved Carlsbad Seawater Desalination Plant. How did the City ensure this project would comply with its goals for the property?

A30. Among the City objectives for the desalination plant was a design and location compatible with any future redevelopment of the EPS. With regards to design, Poseidon's approved desalination project resembles a modern office or industrial building, is 35 feet tall, and whose equipment is either placed underground or screened architecturally.

Q31. Do you have any comments on the Staff requirement to place the Coastal Rail Trail on the west side of the railroad tracks?

A31. Yes. I was surprised to see this Condition of Certification, LAND-1[3], as it did not appear in the PSA and staff never contacted me after an initial conversation over 1 1/2 years ago. There are a number of reasons why this "solution" will not work:

- The Carlsbad City Council approved the alignment on the east side of the railroad tracks on April 17, 2001.
- Dedication of the trail was accomplished in May 2006 as part of the approvals for the Poseidon project.
- Construction of the trail between Canon Road and Agua Hedionda Lagoon has started as the West Hotel (located at the corner of Cannon Road and Avenida Encinas) has already dedicated land for the trail and has made improvements to the trail on the east side of the railroad tracks.

I would like to add that the stipulation in the Condition of Certification that allows for a cash payment in lieu of the Trail defeats the concept of a San Diego to Oceanside rail trail, which has been under development for over 10 years.

SDG&E PROPOSAL

Q32. Is the proposed CECP the first time the City has dealt with a proposal for a second power plant at the EPS site?

A32. No. In 1989, over 20 years ago, the EPS was part of a SDG&E initiated Notice of Intention (89-NOI-1) to the CEC which contemplated putting a second power plant at the Encina site.

Q33. What was the City's response to the NOI?

A33. The City actively engaged the CEC during the NOI process. Based on a review of SDG&E's proposal, the City adopted a moratorium on building a second power plant at the EPS. Ordinance NS-109 highlights the City's belief that an additional power plant at the EPS site would compromise the community's quality of life and would pose significant health, safety, and environmental concerns. The City also provided substantial comments and information to the CEC regarding its analysis that the NOI did

[3] The City of Carlsbad is concerned with the legal implications of this condition since it implied the Energy Commission has the authority to modify a project under the jurisdiction of the City and/or remove any ability to use its authorities to obtain necessary property for the greater public necessity and convenience.

not conform to City LORS. Finally, the City commissioned an environmental impact report to identify potential impacts from a change in land use.

Q34. What was the result of the SDG&E NOI?

A34. Both the California Coastal Commission (California Coastal Commission Report to the California Energy Commission, dated August 31, 1990) and the California Energy Commission staff (CEC Issues and Alternatives Report San Diego County Sites, dated August 1990) recognized that the proposed power plant would be in conflict with the Coastal Act as well as various land use LORS. As highlighted in the 1990 CEC Issues Report:

> *Regarding the two coastal sites, Encina and South Bay, the proposed project is not likely to be in conformance with the general or applicable specific plans of Carlsbad and Chula Vista. (EXEC-4)*

Ultimately, SDG&E withdrew the EPS site from the NOI proceeding based on the concerns expressed by both the CCC and the CEC. I believe that those same concerns still apply to the proposed CECP and find it curious that CEC staff fail to mention the 1990 NOI proceeding in any part of the CECP's FSA.

ATTACHMENT 1

City of Carlsbad

Chronology of Encina Power Plant Site and Specific Plan 144

City of Carlsbad

Chronology of Encina Power Plant Site and Specific Plan 144

1952

San Diego Gas and Electric Company (SDGE) constructed the Encina Power Plant (EPS).

1971

The Public Utility (PU) Zone was established and applied to the EPS and surrounding properties owned by SDGE.

August 3, 1971

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

December 4, 1973

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

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

1974

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

1975

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

May 4, 1976

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

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

May 3, 1977

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

1978 through 1993

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

1982

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

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

July 24, 1989

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

December 1989

SDGE filed NOI (89-NOI-1)

January 1990

Council adopted NS-108 (attached)

Council adopted Resolution 90-15

February 1990

Council adopted NS-111 – extends emergency ordinance

August 1990

Agenda bill and Issues Report

1991

SDGE agreed to comprehensive update

May 1991

Confidential memo re General Plan Designation

Draft EIR for Encina Power Plant site – Tetra Tech

January 16, 1996

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

May 12, 1998

SDGE sent letter to Carlsbad City Council acknowledging long-standing differences on the EPS. SDGE requested that the City not adopt any policy or practice that would impact or delay the probable sale of the EPS.

May 12, 1998

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

1999

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

July 18, 2000

South Carlsbad Coastal Redevelopment Plan adopted.

Spring/Summer, 2001

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

August, 2003

Carlsbad City Council adopted Resolution No. 2003-208 which allowed the proposed Carlsbad Seawater Desalination Plant to be processed without requiring a comprehensive update of the entire Specific Plan 144.

November 18, 2005

Carlsbad City Council and Housing and Redevelopment Commission adopted resolutions (2005-333 and 404, respectively) and the City Council introduced an ordinance (NS-779) approving an amendment to the South Carlsbad Coastal Redevelopment Plan. The amendment requires projects to obtain a redevelopment permit, and, for certain projects such as a desalination plant and energy generating facilities, obtain a precise development plan or other appropriate permit, and demonstrate they serve an extraordinary public purpose.

June 13, 2006

Carlsbad Seawater Desalination Plant approved, Precise Development Plan for Encina Power Station approved, Specific Plan 144 amended consistent with Council Resolution 2003-208

July 16, 2007

Carlsbad City Manager sent letter to Sempra Energy Utilities. This letter required SDGE to comprehensive SP144 update in order for the City to consider proposed modifications to SDGE's Operations Center (located at the southwest corner of the EPS site).

September 14, 2007

Carlsbad Energy Center LLC filed application for certification with California Energy Commission for the Carlsbad Energy Center Project (CECP).

September 17, 2007

Carlsbad Energy Center LLC filed applications to amend the Encina Power Station Precise Development Plan PDP 00-02 and Encina Specific Plan SP 144 for the CECP.

May 13, 2008

Carlsbad City Council passed Resolution 2008-138, declaring its opposition to the proposed Carlsbad Energy Center Project; supporting the reuse of the existing Encina Power Station site to provide greater public benefit; and directing staff to continue to work with NRG and SDG&E to help identify alternate solutions to regional energy demands.

August 12, 2008

Carlsbad City Council passed Resolution 2008-235, reaffirming its opposition to the Carlsbad Energy Center Project, supporting the reuse of the existing Encina Power Station site to provide greater public benefit; reaffirm its longstanding requirement for a comprehensive plan to guide redevelopment of the Encina Power Station site; declaring that any non-coastal dependent industrial use (including power generation) at the Encina Power Station site is inconsistent with the best interests of the community and should be precluded; and directing staff to continue to work with NRG and SDG&E to help identify alternate solutions to regional energy demands.

September 15, 2009

City Council and Housing and Redevelopment Commission approved changes to the Carlsbad Seawater Desalination Plant.

October 20, 2009

Carlsbad City Council (1) adopted Urgency Ordinance CS-067 prohibiting any new or expanded thermal electric power generation facilities located in Carlsbad's Coastal Zone; and (2) passed Resolution 2009-263, declaring its intention to study and consider amendments to the General Plan designation, Zoning Ordinance, Local Coastal Program, and other regulations pertaining to the location and operation of thermal electric power generating facilities

December 1, 2009

The City Council passed Urgency Ordinance CS-070, extending Urgency Ordinance CS-067.

December 22, 2009

In a joint meeting, the Carlsbad City Council and Housing and Redevelopment Commission passed separate resolutions (2009-233 and 482, respectively) finding that the proposed Carlsbad Energy Center Project is inconsistent with all applicable local and related land use laws, ordinances, regulations and standards and poses serious impacts to the health, safety, and quality of life to the community at large. The Housing and Redevelopment Commission also found the proposal does not comply with the South Carlsbad Coastal Redevelopment Plan.

CITY OF CARLSBAD

INCORPORATED
1952

CALIFORNIA

Coastal
Ralph Faust

COASTAL IMPACTS AND COASTAL POLICY

PREPARED DIRECT TESTIMONY
OF
RALPH FAUST

Q1. Please state your name and place of Employment.

A1. My name is Ralph Faust, and I am a consulting attorney in Bayside, California.

Q2. What is your previous employment and experience relevant to this proceeding?

A2. I am a 1970 graduate of the University of Chicago Law School, and I was admitted to practice in California in January, 1971. With several short exceptions I have practiced law in California since that time. From 1986 to 2006 I was the Chief Counsel of the California Coastal Commission (CCC, or Commission). In that capacity I personally advised the Commission and its Executive Director, and I managed and supervised the Legal Division of the Commission's staff as it conducted its duties and advised the Commission staff on all legal matters relating to the work of the Commission.

My advice to the Commission included interpretation of the Coastal Act, the Coastal Zone Management Act and other related environmental laws applicable to the Commission's actions, formulations and implementation of coastal policy, and advice on particular issues or projects that came before the Commission for decision.

Q3. What is the purpose of your testimony in this proceeding?

A3. The purpose of my testimony is to:

1. Discuss the purpose and objectives of the Coastal Act, and the process used by the Coastal Commission to determine whether a particular project is consistent with the policies of Chapter 3 of the Coastal Act, as is required by that law;

2. Discuss the role, experience and ability of the staff of the Coastal Commission and of the various local government entities with jurisdiction in the coastal zone, such as the City of Carlsbad, which have certified Local Coastal Programs (LCP) to apply the policies of the Coastal Act and of the appropriate certified LCP to make determinations and/or recommendations to the Commission and/or the governing entity regarding the consistency of particular proposed projects with the appropriate coastal policies;

3. Provide my opinion regarding whether the CECP would be considered a coastal dependent use; and

4. Discuss whether the Coastal Commission would continue to support the conclusions that it made in its 1990 report to the California Energy Commission ("CEC") "California Coastal Commission Report to the California Energy Commission on San Diego Gas and Electric's Proposal for a New Power Plant at Encina or South Bay in San Diego County" (attached as Exhibit n1), if it applied the policies of the Coastal Act to the CEPC.

Q4. Will you summarize the primary conclusions of your testimony?

A4. Yes, my primary conclusions are that:

1. The CEC must make specific findings on the conformity of any power plant proposed within the coastal zone with specific provisions of the Coastal Act.

2. Based on its status as a local government with a certified LCP and its experience implementing that certified LCP and the Coastal Act, the City of Carlsbad is in an excellent position to evaluate the conformity of a project located within the coastal zone for consistency with the coastal resource policies of the Coastal Act.

3. The Carlsbad Energy Center Project ("CECP") does not meet the specific definition in the Public Resources Code as a coastal dependent facility.

4. The Coastal Commission determined in 1990 that a new power plant located adjacent to the existing Encina power plant would not be consistent with provisions of the Coastal Act and would probably make that same determination today.

Q5. What is the purpose and what are the objectives of the Coastal Act?

A5. The Coastal Act (Public Resources Code section 30000, et. seq.), was enacted by the Legislature to provide long-term protection, enhancement and restoration of the resources of the coastal zone for present and future generations. It accomplishes this through a unique partnership with local governments that have jurisdiction in the coastal zone, pursuant to which local governments that have certified Local Coastal Programs are delegated coastal development permit issuing authority over the area covered by the certified LCP. Through this partnership both Commission and local government staffs work directly to interpret and implement the policies of the Act.

The objectives of the Coastal Act include protection of the State's natural and scenic resources, including the delicately balanced ecosystem of the coastal zone, maximizing public access and public recreational opportunities in the coastal zone and assuring that certain uses in the coastal zone are given priority in development approvals over other non-priority uses. These priority uses include coastal dependent industry and visitor-serving commercial recreational facilities.

Q6. What is the role of the Commission and of local government in the implementation of the Coastal Act?

A6. Under the Coastal Act, the Commission is charged with making certain determinations, including whether proposed development in the coastal zone is consistent with the policies of Chapter 3 (at Public Resources Code (PRC) section 30200 et. seq.) of the Act. After a local government in the coastal zone has adopted and the Commission has certified an LCP for that portion of the coastal zone within its jurisdiction, statutory authority to make determinations with respect to proposed development in that jurisdiction's coastal zone is delegated, with certain exceptions, to that local government (PRC section 30519). In order to certify a local government's LCP, the Commission must find that the Plan is in conformity with the policies of Chapter 3 of the Coastal Act (PRC section 30512 (c)).

Both the Commission and its staff, and a local government with a certified LCP and its staff, perform similar functions with respect to proposed development in the coastal zone. Staff must analyze the impacts of the proposed development on coastal resources and make a recommendation to the issuing agency (City Council, County Board or Commission). The issuing agency must find, as appropriate, that the proposed development is in conformity with the Chapter 3 policies of the Act, or with the certified LCP (PRC section 30604). Whether that determination is made by the Commission with respect to Chapter 3, or by a local government with respect to its certified LCP, the objectives and priorities of the Coastal Act, which are contained in Chapter 3, are the standard and reference point of that decision.

Q7. What is the relationship of the authority of the Coastal Commission under the Coastal Act and of the Energy Commission under the Warren-Alquist Act, where their respective jurisdictions might be seen to come in conflict?

A7. The Legislature anticipated that the Coastal Commission, in its implementation of the Coastal Act, might come into conflict with the respective jurisdictional boundaries of various state agencies, and, in order to minimize duplication and conflicts, provided in Chapter 5 of the Coastal Act (PRC section 30400 et. seq.) for coordination among these various agencies. PRC section 30413 governs the relationship between the CCC and the CEC. While preserving the fundamental jurisdiction of the Energy Commission with respect to matters within its statutory responsibility, the Legislature provided that the Coastal Commission first, "designate those specific locations within the coastal zone where the location of a facility as defined in (PRC) section 25510 would prevent the achievement of the objectives of this division…provided…that specific locations…presently used for such facilities and reasonable expansion thereof shall not be so designated"; and second, where the Energy Commission exercises siting authority and undertakes proceedings pursuant to Chapter 6 of Division 15 with respect to any thermal power plant or transmission line to be located within the coastal zone, "forward to the (Energy Commission) a written report on the suitability of the proposed site and related facilities" that are the subject of the Energy Commission's proceedings. Finally,

the Coastal Commission was authorized, at its discretion, to participate fully in the Energy Commission's other proceedings pursuant to its power plant siting authority.

Q8. What did the Coastal Commission anticipate that its involvement would be in the CEC power plant siting process?

A8. The Coastal Commission always anticipated that it would participate fully within the scope of the Legislature's authorization in the power plant siting process, and it did participate on a number of occasions. Where issues arose regarding what was expected of each Commission during review of proposed projects at existing coastal power plant sites, the Commissions entered into a Memorandum of Agreement (MOA) in 2005 "regarding the role and duties of each during the Energy Commission's Application for Certification (AFC) review" (Attachment n2). As is provided in the MOA, both Commissions clearly anticipate that the CCC will file a report as provided by the Legislature in PRC section 30413 (d) in each AFC proceeding for each thermal power plant project proposed in the coastal zone. For example, paragraph II on page 2 of the MOA begins:

> "Pursuant to requirements of Sections 25523 (b) and 30413 (d), the Coastal Commission is responsible, during the AFC proceeding for each project, for reviewing thermal power plant projects proposed in the coastal zone and providing a report to the Energy Commission specifying provisions regarding the proposed site and related facilities to meet the objectives of the California Coastal Act."

The details of the MOA involve timing, necessary information and coordination during the proceedings, all based on the common assumption of CCC participation with this report. Only in the face of the State's current budget crisis has the CCC declined to participate, based upon a lack of staff resources to complete the anticipated report.

Q9. What is the purpose of that CCC involvement in the CEC power plant siting process?

A9. The purpose of the CCC involvement is to provide to the CEC an assessment of the conformity of a proposed power plant with provisions of the Coastal Act and the suitability of the proposed site for a thermal power plant and related facilities. The CCC is also to consider and make findings with respect to seven criteria specified by the Legislature in PRC section 30413 (d). If the proposed project does not meet the criteria specified in PRC section 30413 (d), the CCC report is to include specific provisions or suggested modifications that would bring the project into conformity with the policies of the Coastal Act.

Q10. What findings are required by the CCC when making a project specific determination on conformance with the Coastal Act?

A10. When the Commission makes a determination on a power plant project proposed to be located in the coastal zone, it must prepare the report specified in PRC section 30413 (d). That section requires a consideration of, and findings regarding seven specified criteria. These are:

1. The compatibility of the proposed site and related facilities with the goal of protecting coastal resources.

2. The degree to which the proposed site and related facilities would conflict with other existing or planned coastal-dependent land uses at or near the site.

3. The potential adverse effects that the proposed site and related facilities would have on aesthetic values.

4. The potential adverse environmental effects on fish and wildlife and their habitats.

5. The conformance of the proposed site and related facilities with certified local coastal programs in those jurisdictions which would be affected by any such development.

6. The degree to which the proposed site and related facilities could reasonably be modified so as to mitigate potential adverse effects on coastal resources, minimize conflict with existing or planned coastal-dependent uses at or near the site, and promote the policies of this division.

7. Such other matters as the commission deems appropriate and necessary to carry out this division.

The CCC begins with an analysis of consistency of the proposed project with the Chapter 3 policies of the Coastal Act. Both alternatives and possible mitigation are then considered where the project is not fully consistent as proposed. It is extraordinarily unlikely that any large power plant would be fully consistent with the Coastal Act as proposed. If the project as mitigated cannot be found to be fully consistent with these policies, the Commission would consider whether it could be approved pursuant to the terms of PRC section 30260 as a coastal dependent industrial facility. This analysis of Coastal Act consistency is then integrated into the criteria of PRC section 30413 for purposes of the report to the CEC.

Q11. What is the purpose of the Coastal Commission report outlined in PRC section 30413 (d)?

A11. The legislature imposed upon the Coastal Commission a number of specific findings that must be made in the determination of conformance. Many of these areas, such as the

effect of the proposed project on aesthetic values or the evaluation of the proposed project on fish and wildlife, would also be addressed in a CEQA analysis.

However, there are items specific to the protection of the coast, such as the compatibility of the proposed project with the goal of protecting coastal resources. Due to this, it is important for the CEC to consider all of the potential impacts that a proposed project would have on the coastal resources involved.

Q12. What process would the Coastal Commission typically use to make a specific determination of conformance with the Coastal Act on a proposed project?

A12. For power plants located in the coastal zone, the Coastal Commission typically performs the following analysis:

1. In order to make the findings on compatibility with the goal of protecting coastal resources as required by PRC section 30413 (d) (1), the CCC would evaluate the proposed project with regard to its impacts on coastal resources at or near the proposed site. This would include both an evaluation of its impacts against the standards of Chapter 3 of the Coastal Act, the standard of review for development proposed in the coastal zone, and an evaluation of its consistency with the priority of uses established in the Coastal Act.

   Generally, agriculture and coastal dependent uses including coastal dependent industrial uses are accorded the highest priority. Oceanfront land suitable for recreational use is required to be protected for recreational use unless foreseeable demand is already provided for in the area. Finally, private land suitable for visitor-serving commercial recreational facilities is given priority for this type of development over private residential, general commercial or general industrial development.

   The impacts of the proposed project are weighed against each of the Chapter 3 policies to determine if they are significant. These Chapter 3 policies include protections for coastal access and recreation, for biological and marine resources and for the scenic and visual resources of the coastal area. If impacts are identified that are significant, then the project is examined to determine if the significant impacts can be avoided or mitigated to a level of insignificance, so that it is fully consistent with the Coastal Act.

   A proposed project that is not fully consistent with the standards of Chapter 3 could not be approved except pursuant to the requirements of PRC section 30260 (relating to coastal dependent industrial development), or by utilizing the conflict resolution provisions of PRC sections 30007.5 and 30200.

2. In order to make the findings on conflicts with coastal dependent land uses as required by PRC section 30413 (d) (2), the CCC would evaluate the proposed project with respect to known and anticipated coastal-dependent land uses at or near the site. As is required by PRC section 30255, coastal-dependent

developments have priority over other developments on or near the shoreline. If a project is not a coastal-dependent development, its priority is determined by application of the standards of PRC sections 30220-30223.

3. For the findings required by PRC section 30413 (d) (3) on aesthetic values, the CCC would evaluate the proposed project with respect to the criteria of PRC section 30251. In general this section requires that scenic and visual qualities of coastal areas be protected as a resource of public importance.

4. In order to make the findings on biological resources required by PRC section 30413 (d) (4), the CCC would evaluate the proposed project with respect to the criteria of PRC sections 30230, 30231, 30233 and 30240. In particular the potential impacts of the proposed project upon the biological productivity of freshwater and saltwater marine resources would be evaluated.

5. To make the findings required by PRC section 30413 (d) (5) on local coastal programs, the CCC would evaluate the conformance of the proposed site and related facilities with the appropriate certified local coastal programs of potentially affected communities. In the absence of a certified LCP, the Commission would evaluate the proposed project in light of the priorities of use under the Coastal Act, as discussed above.

6. In order to make the findings required by PRC section 30413 (d) (6) to mitigate adverse impacts, minimize land use conflicts, and promote the policies of the Coastal Act, the CCC would evaluate all of the impacts identified with respect to the above criteria, and formulate specific actions or project modifications that would meet the goals of this subsection. Some impacts could be avoided with project modifications while others could be mitigated to some degree even if not avoided.

7. The findings required by PRC section 30413 (d) (7) are discretionary with the CCC.

More generally, the Coastal Commission, in evaluating proposed development against the standards of Chapter 3 of the Coastal Act, must identify all potential impacts of the development on coastal resources and measure those potential impacts against the relevant standards of Chapter 3. To do this, a variety of studies may be required, and evidence weighed to assess the impacts. The Commission makes all such decisions on a case by case basis, although it uses its prior decisions as a guide for future decisions. Where impacts are identified, the Commission, like all public agencies, must seek to avoid the impacts or to mitigate them to a level of insignificance. Where significant impacts of the project remain in conflict with the Chapter 3 standards, the Commission must deny the project unless the Commission can find that it meets the narrow standards of either PRC section 30260 or PRC sections 30200 and 30007.5.

Q13. How do the public access and public recreation policies of the Coastal Act fit in the overall scheme of the purpose and objectives of the Coastal Act?

A13. While there is no specific provision in the 30413 (d) report for discussing public access and recreation, these concerns would typically be discussed in the second part of the 30413 (d) report regarding land use impacts.

The policies on public access and recreation are among the most important provisions in the Coastal Act. This is emphasized by the Legislature's inclusion of the maximization of public access and recreational opportunities in the listing of the fundamental goals of the Coastal Act in PRC section 30001.5. With very limited exceptions, the Coastal Act (PRC section 30212) requires that public access to the shoreline and along the coast be provided for all new development on the coast. This mandate is a specific implementation of the requirement of Section 4 of Article X of the California Constitution (PRC section 30210). Likewise, recreational use is protected and given a high priority under PRC sections 30220-30222. Visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation are given priority over all other uses in the coastal zone except agriculture or coastal-dependent industry. Where feasible and not specifically inconsistent with those limited exceptions, development that provides for visitor-serving recreation and that includes access to and along the coast is the standard that all coastal communities should strive to implement.

I would also note that findings on public use and access are also reflected in section 1752 (e) of the Energy Commission's power plant siting regulations.

Q14. What time frame does the Coastal Commission consider when making its determinations?

A14. The Legislature anticipated that both use and impact evaluations would be made over the projected life of the project. Each proposed new use is considered fresh. The fact that a use may exist, and may once have been considered, for example, coastal dependent does not mean that a similar new use is automatically accorded the same status. Several of the Legislative findings in PRC section 30001 address the protection of coastal resources over time.

Q15. In evaluating the CECP, is it likely that the Coastal Commission would consider the possible closure of the Encina Power Station Units 1 to 5?

A15. Yes. For example, the Coastal Commission specifically considered the long-term implications of a new power plant located adjacent to an existing one in the recent El Segundo Application for Certification. In that proceeding the Commission stated that:

> "…the proposal is expected to significantly extend the life of the current facility and will therefore increase the length of time the area will experience visual degradation due to the facility. The two (existing) units proposed for replacement are nearing the end of their useful life. The AFC states that the estimated

> economic life of the proposed power plant is approximately 30 years. Absent this proposed project, all or part of the ESGS facility would likely be removed, thus reducing the overall negative visual impact of the facility within a shorter timeframe." (California Coastal Commission, Letter to Commissioner Pernell on Visual Findings on Application for Certification (AFC) #00-014 – El Segundo Generating Station, March 5, 2002, page 3, paragraph 2)

The Coastal Commission also expressed similar concerns over the addition of a new power plant proposed by SDG&E at the Encina Site twenty years ago. In their report to the CEC on SDG&E's Proposal For a New Power Plant at Encina or South Bay in San Diego County (89-NOI-1), August 31, 1990 the Commission considered long-term implications when they stated:

> "The visual environment at the Encina site is somewhat degraded by the existing plant, but the new plant would intensify that impact *as well as extend the life of the current plant*." (Page 3, Executive Summary, emphasis added)

Q16. The term "coastal-dependent development or use" is important in Coastal Commission determinations of conformance. How does the Coastal Commission define a "coastal-dependent use"?

A16. A "coastal-dependent development or use" is defined in PRC section 30101 to mean "any development or use which requires a site on, or adjacent to, the sea to be able to function at all." General industrial development that does not meet that strict standard is given a low priority in the coastal zone, and does not qualify for the preferential treatment accorded to coastal-dependent industrial development by PRC section 30210.

This definition is extremely important in light of the Coastal Act's goal to locate industry away from the coast as much as possible. Industrial development that is not coastal dependent cannot be approved in the coastal zone unless, as mitigated, it is fully consistent with the Chapter 3 policies of the Act.

Q17. What would qualify a power plant to be a "coastal dependent use"?

A17. The California legislature recognized that certain industrial facilities had to be located within the coastal zone in order to exist. Examples include desalination plants, fishing support facilities and ocean transport facilities. Up until the late 1980s, power plants could logically be labeled "coastal-dependent" as they needed a great deal of water for cooling purposes. When power plant technology allowed large plants to be constructed inland without the need for large amounts of ocean water, power plants, in my view, ceased to be coastal-dependent.

Q18. In your opinion, would the CECP be considered a "coastal-dependent use"?

A18. No. Because the CECP does not require a site on or adjacent to the sea to be able to function at all, it cannot be a coastal dependent industrial use.

Q19. The California Energy Commission staff recommends that the Commission make a determination that the CECP is "coastal-dependent" due to the existing infrastructure, zoning and the fact that a few previous cases determined that a project was coastal-dependent because the new plant would be located on the same site as an existing industrial facility. Would you comment on this test?

A19. Coastal dependency is defined in PRC section 30101 and that definition does not contain any financial test. Simply put, if the proposed development can function "at all" if it is not on or adjacent to the sea, then it is not coastal dependent, and it cannot benefit from the special approval requirements of PRC section 30260. Consequently the presence of "existing infrastructure" that would presumably make the project less costly to construct is irrelevant to this test. Nor is the present zoning significant. The "U" designation in the Agua Hedionda LUP was proposed by the City and certified by the Commission at a time when the only cooling technology for a thermal plant such as this required a site on or adjacent to the coast. The zoning designation is understandable in this context, but it is not compelling regarding analysis of this project. It indicates only that at the time that the Agua Hedionda LUP was approved by the City and certified by the Commission, those entities thought that this site, as opposed to other sites also on or adjacent to the sea but not adjacent to an existing power plant, was appropriate for a thermal power plant. The standard of review for a project such as this is consistency with the policies of Chapter 3 of the Coastal Act.

As for additional power plants at existing power plant locations, whether they use the same water source or not, these plants should not be included in the definition of a coastal-dependent facility. Coastal-dependent development is defined "any development or use which requires a site on, or adjacent to, the sea to be able to function at all." (PRC 30101) The clear reading of the statute does not allow a power plant that does not need ocean water to be found to be coastal-dependent under this definition. The convenience of using an existing but not essential water supply and existing infrastructure does not outweigh the judgment of the Legislature on coastal dependency. The impacts of the CEPC, if built, will long outlive the impacts of the present Encina facility, and the judgment of the Legislature was to have this type of development with these types of impacts at a location outside of the coastal zone if they could function at such a location.

Q20. How may the Coastal Commission approve a project that is a coastal-dependent industrial facility that is not otherwise consistent with the policies of the Coastal Act?

A20. Under the provisions of PRC section 30260, "where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with (that section)…if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible." The Commission has the discretion, but is not required to approve coastal-dependent industrial facilities if the

proposed project meets all of these three criteria. However, it must be coastal-dependent in order for this provision to be invoked.

Q21. Has the Coastal Commission ever reviewed a proposed power plant at the Encina site for consistency with the policies of the Coastal Act pursuant to the provisions of PRC section 30413?

A21. Earlier I noted that the Coastal Commission adopted a report on September 11, 1990, entitled "California Coastal Commission Report to the California Energy Commission on San Diego Gas and Electric's Proposal for a New Power Plant at Encina or South Bay in San Diego County" (89-NOI-1). This report reviewed a proposal of the San Diego Gas and Electric Company (SDG&E) for a 460 Megawatt combined cycle power plant at these two possible sites for consistency with the policies of Chapter 3 of the Coastal Act using the criteria of PRC section 30413 that reflect the policies of the Coastal Act.

The project proposed by SDG&E at the Encina site was natural gas-fired, located in roughly the same location as the CECP, and had two stacks of approximately the same height as the CECP. The SDG&E proposal used more ocean water for its operation than the CECP.

Q22. Is the 1990 Coastal Commission report relevant to consideration of the Coastal Act issues raised by the proposed CEPC?

A22. In large part, it is. Although the cooling technology of the proposed CEPC is different than that of the plant earlier proposed by SDG&E for the Encina site and the volume of ocean water to be consumed is less, the location and stack height of the CECP is essentially the same as the SDG&E proposal. I have not seen a drawing of the project proposed by SDG&E but I expect that the visual appearance of the CECP is probably the same or perhaps more massive because of the dry cooling technology. In addition the relevant policies of the Coastal Act have not changed since 1990.

The circumstances associated with the CECP differ from those of the SDG&E proposal because:

1. The Encina Power Station is 20 years closer to the end of its economic life,

2. The state has adopted policies to eliminate the use of ocean water in the operation of power plants along the coast and is undertaking steps to close down the Encina Power Station,

3. There are probably more users of the coastal resources in the Carlsbad area today than in 1990 and fewer coastal resources and recreational opportunities within the coastal zone.

Q23. What were the principal conclusions of the 1990 Coastal Commission report concerning the proposed SDG&E power plant at the Encina site?

A23. The 1990 report concluded that the construction of a new power plant at Encina is inconsistent with the policies of the Coastal Act. It concluded:

> "The Coastal Commission's assessment is that the construction of a new power plant at…Encina…is <u>inconsistent</u> with the policies of the Coastal Act." (Page 8, Executive Summary)

Based upon this, the Commission concluded that the Encina site was unsuitable for a new power plant.

Q24. In what specific ways did the Coastal Commission find that a proposed new power plant at Encina would be inconsistent with the policies of the Coastal Act that would apply to the CECP?

A24. The 1990 report found many inconsistencies with the policies of the Coastal Act. The Commission, however, made its determination primarily based on impacts to visual and marine biological resources:

> "At both sites (Encina and South Bay), the existing power plants cause significant adverse impacts to the coastal resources in the vicinity of the plants. The proposed additional units would add cumulatively to those impacts, particularly in regards to visual impacts and marine resources." (Page 7, Executive Summary)

Regarding marine biological resources, the report found that the proposed plant expansion at Encina would significantly increase entrainment and impingement impacts upon the marine environment in Agua Hedionda Lagoon and that these impacts were not fully mitigable. However, in 1990 the Coastal Commission was reviewing a proposed power plant that would utilize once-through seawater cooling, necessitating a location from which large quantities of water could be drawn into the plant, causing the entrainment and impingement impacts. Unlike the present proposed plant, which uses dry cooling technology, the SDG&E proposal needed to be on a site adjacent to the ocean in order to draw the water necessary to cool the plant.

The Commission's conclusions regarding the impacts on visual and aesthetic resources are likely to be more applicable to the CECP. The Commission had the following conclusions regarding SDG&E's proposal to locate a new power plant adjacent to the existing Encina facility:

> "The plant expansion would result in the addition of two 150 foot high stack structures, and a 75,000 square foot building. These new structures would increase the massiveness of the facility. While these 150 foot high stack structures and new building would represent only an incremental increase in the level of impact upon the visual resources of the area, the impact will nevertheless be significant." (Page 33)

> "The Commission finds that, given the size of the proposed structures and the visually prominent nature of the site, the visual impacts of the development are not fully mitigable and that some unmitigable significant impacts to the visual environment are likely to occur. For these reasons, the Commission finds that the impacts resulting from the expansions are not consistent with Section 30251 of the Act. Furthermore, the Commission finds that the cumulative visual impact of the proposed expansion in conjunction with the existing plant is significant, and is inconsistent with the Coastal Act." (Page 33)

> "The existing Encina Power Plant with its 383-foot-high stack and massive generating facilities substantially degrades the visual quality of the beach and shoreline. The addition of the proposed combined cycle project with its two 150-foot-high stacks will add significantly to the existing impacts." (Page 45)

Finally, in its discussion of cumulative impacts, the 1990 report noted that, while SDG&E had not responded to information requests with respect to cumulative impacts, the cumulative impacts upon coastal resources were likely to be significant in the areas of visual impacts, marine biology and air quality. With respect to visual impacts and public access, the Coastal Commission concluded that the proposed addition of a new facility with its two 150 foot high stacks would add significantly to existing impacts, and that the across-the-beach discharge would visually degrade the beach and disrupt full public access and use of the beach. The report found that the addition of the new plant would extend the size and life of the discharge channel and on a cumulative basis significantly impact beach use and the visual environment.

Q25. Did the Coastal Commission reach any conclusions on land use in its 1990 report?

A25. Yes. It stated that:

> "…the Commission finds that the proposed project is consistent in concept with the use designation in the certified Land Use Plan, but that an amendment to Specific Plan No. 144 would be necessary to include the expanded facilities." (Page 35)

Q26. Has the Coastal Commission issued a report pursuant to PRC section 30413 regarding the proposed CEPC?

A26. No. Due to a substantial workload and limited resources resulting from the State's budget crisis, the Coastal Commission declined to submit such a report regarding the proposed CEPC. I note that the Coastal Commission has submitted a 30413(d) report in a number of proceedings where the proposed plant was in the coastal zone (Moss Landing, Morro Bay, El Segundo), but sent letters declining to participate due to financial constraints in others (South Bay, Humboldt).

Q27. Would the filing of a report by the Coastal Commission add to the record in this proceeding?

A27. Yes, but given the lack of a report, it would be beneficial for the CEC to have a report which describes the proposed project's conformance with the goals and objectives of the Coastal Act. If the Coastal Commission is not going to create such a report, an entity with experience in the implementation of coastal policies should provide the analysis. I have discussed the issue with the City staff and have evaluated their experience, and in my opinion, they are well qualified to produce such a report.

Q28. Why do you believe the City of Carlsbad has this capability?

A28. The legislative design for the implementation of the Coastal Act is for the cities and counties along the coast to develop and adopt Local Coastal Programs. Following approval of these LCPs by the Coastal Commission, the individual cities and counties then use the LCP as local planning tools to evaluate an application for construction within the coastal area within their city or county. The City of Carlsbad has a Local Coastal Program certified by the Coastal Commission and has been delegated permit issuing authority over the area covered by the certified LCP. Although the Agua Hedionda area has only a certified LUP, rather than a fully certified LCP, this does not change the capability of the City to evaluate the coastal impacts of the proposed project, because the criteria for analysis remain the same. Because of the number of applications that a city such as Carlsbad reviews each year, and the close working relationship that these local entities develop with the regional coastal offices, cities such as Carlsbad develop a very good idea of how the Coastal Commission would evaluate a project.

Q29. Have you reviewed the coastal conformity testimony prepared by the City of Carlsbad regarding the CECP project?

A29. Yes.

Q30. Is it your opinion that the City considered the analytical requirements that would other wise be followed by the Coastal Commission if it participated in the review of the CECP?

A30. Yes.

Q31. If the Coastal Commission had sufficient budgetary resources to prepare and submit a report pursuant to PRC section 30413 with respect to the CEPC, do you think that it would reach the same overall conclusions today that it did in 1990?

A31. Yes, except to the extent that the technology or method of operation of the plant has changed and that these changes affect the analysis. I think that the Coastal Commission would likely reach a similar conclusion with respect to the direct and cumulative visual impacts, the cumulative impacts upon beach access and recreation, and the need to amend Specific Plan No. 144.

While the CECP uses substantially less ocean water than the plant proposed by SDG&E, and the Encina Units 1-3 will be closed once the CECP becomes operational, it is my opinion that the Coastal Commission would conclude that any additional withdrawal of water from the lagoon, and especially any withdrawal of water over a longer period of time than that which will occur due to the operation of the existing Encina facility would have entrainment and impingement impacts inconsistent with the marine protection policies of the Coastal Act. Such an inconsistency with the Chapter 3 policies could only be found to be consistent with the Coastal Act if the CECP were a coastal dependent industrial facility. Because the CEPC is not coastal dependent, these impacts can be entirely avoided by moving the new facility to an inland location.

Q32. Are there any issues upon which you think that the Commission would reach a new or a different conclusion that would have significance for the application of the criteria of PRC section 30413?

A32. There are several such issues. First, the assumption of the Coastal Commission in 1990 was that the proposed project was required to utilize once-through seawater cooling, and that because of this it was a coastal-dependent industrial facility within the meaning of PRC section 30101, and thus was subject to the special approval requirements of PRC section 30260. Section 30260 allows for the approval of coastal dependent industrial facilities that are not consistent with the coastal resource protection policies of the Coastal Act where certain criteria are met. These criteria include that there be no feasible and less environmentally damaging alternatives, that not to approve would adversely affect the public welfare, and that adverse environmental effects are mitigated to the maximum extent feasible.

Industrial facilities that are not coastal dependent do not qualify for approval under these criteria, and must be found to be fully consistent with the coastal resource protection policies of the Act. Although the CECP proposes to use ocean water, it could use water from other sources and it is not dependent upon once-through seawater cooling; thus the Coastal Commission could not make a similar assumption. Since this facility does not "require a site on, or adjacent to, the sea to be able to function at all", it is not coastal dependent, and cannot be approved utilizing PRC section 30260.

Since the CECP is also not consistent with various coastal resource protection policies of the Coastal Act, it could not be approved at all under the Coastal Act. For this reason the Coastal Commission would likely conclude that the project was not compatible with the goal of protecting coastal resources (PRC section 30413 (d) (1)), and should be located at a suitable site inland of the coastal zone.

Second, even if the Coastal Commission were to conclude that the proposed CEPC was a coastal dependent industrial use, it would be likely to further investigate the prospect of feasible less-environmentally damaging alternative locations for a project not required to utilize seawater intake. If any were found to exist, then the project still would not qualify for approval under PRC section 30260 (1), with the conclusion reached as noted above.

Third, because the CEPC does not appear to be required to be located near the sea, the cumulative impacts of extending the life of the existing use of thermal power plants at this particular location and its clearly understood impacts would likely be reviewed. The Commission noted the cumulative impact of extending the life of direct impacts such as the discharge channel in its 1990 report. Whatever the projected life of the existing Encina facility, it is significantly shorter than that of the new proposed facility. Thus a variety of impacts, particularly to visual resources, to access and recreation and to land use could be significantly reduced at this site if the new facility can be built at a different location inland of the coastal zone.

While some of the issues above were discussed in the 1990 report, one that was not is the issue of land use on the site itself. It cannot be emphasized enough that, without the existing industrial facility, this is prime coastal land, situated between a coastal lagoon and the ocean, with beach access, highway access and unsurpassed views. If this facility were not on the site, the Coastal Commission would anticipate that the City would consider other uses consistent with the priorities for development along the coast that the Legislature mandated in the Coastal Act. For example, the City, after whatever site clean-up may prove necessary, might choose to encourage development of a commercial visitor-serving recreational use, one that is given high priority under PRC section 30222. Extending the existing impacts unnecessarily is itself an impact under the terms of PRC sections 30230, 30231, 30251 and 30413 (d) (3) and (4). Preventing the development of a Coastal Act priority use such as a commercial visitor-serving recreational use, when alternatives exist, is another separate impact under the terms of PRC sections 30221, 30222 and 30413 (d) (1) and (2). The Coastal Commission would likely conclude that these additional impacts exist and need to be considered by the CEC in its decision.

Q33. PRC section 30260 references the obligation to consider alternative locations if a new or expanded coastal-dependent industrial facility cannot feasibly be accommodated consistent with other sections of the Act. Have you reviewed the alternative location testimony of the witnesses of the City of Carlsbad?

A33. Yes. Not only does it appear that the locations offered by the city seem viable, they are both located inland – outside the Coastal Zone. Locating these industrial facilities outside the Coastal Zone promotes the intent of the Coastal Act. No industrial facility that is not, as mitigated, fully consistent with the policies of the Coastal Act can be permitted in the coastal zone if it does not "require a site on or adjacent to the sea to be able to function at all". (PRC section 30101).

Q34. The California Public Utilities Commission has expressed the idea that the utilities first consider the advantages of repowering units at existing sites, or the redevelopment of brownfield sites in close proximity to load centers. Do you have a comment?

A34. Yes. While I generally concur with this policy, it should be cautiously applied to projects within the coastal zone. The reasons are twofold:

1. Inland power plant locations out of the coastal zone are mandated as compared to locations adjacent to the sea by the Coastal Act, for the reasons discussed above, and

2. Various state agencies have determined that once-through-cooling, used at most older coastal power plants, is to cease over the next ten years. This represents an opportunity to shift power generation away from the coastal zone and implement the Legislature's vision for priority uses within the coastal zone.

Coastal
Gary Barberio

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COASTAL CONFORMITY

PREPARED DIRECT TESTIMONY
OF
GARY BARBERIO
COMMUNITY AND ECONOMIC DIRECTOR
CITY OF CARLSBAD

Q1. Please state your name and place of employment.

A1. My name is Gary Barberio and I am the Community and Economic Director for the City of Carlsbad.

Q2. Please describe your experience in interpreting the California Coastal Act and determining conformity of individual projects with provisions of the Coastal Act?

A2. The City of Carlsbad has reviewed over 700 applications for coastal development permits in the Coastal Zone. The primary tools we use in this evaluation are the certified local coastal plans. These plans rely heavily upon the goals and purposes of the California Coastal Act and local land use regulations. Our City staff has coordinated many of our evaluations with the local Coastal Commission office. Although we do not always agree with the opinions expressed by the local commission office, we have gained an appreciation of their Coastal Act interpretations.

In terms of my own personal experience, over the past 24 years I have worked as a planner for four coastal communities in San Diego County, including the City of Carlsbad since _April 2003. I have also worked as a planner for the San Diego County coastal communities of Oceanside, Imperial Beach, and Encinitas. In all four of these communities, I have been closely involved with interpretation and implementing the California Coastal Act and working closely with staff of the Coastal Commission.

Q3. What is the purpose of your testimony in this proceeding?

A3. I am here to co-sponsor the report entitled: "California Coastal Act Conformance". Mr. Scott Donnell, also on the City's staff, is my co-sponsor. We will address:

1. How the City of Carlsbad evaluates a project's conformity with provisions of the Coastal Act;

2. The conclusions of the City on Coastal Act conformity for the proposed CECP as presented in our report entitled: "Proposed Carlsbad Energy Center Project (CECP) California Coastal Act Conformance;" and

3. How our conclusions compare with those the Coastal Commission made in its 1990 report to the California Energy Commission (CEC) "California Coastal

Commission Report to the California Energy Commission on San Diego Gas and Electric's Proposal for a New Power Plant at Encina or South Bay in San Diego County."

Q4. Please describe your conclusions.

A4. Our principal conclusions are that:

1. The CECP does not conform with provisions of the Coastal Act for the reasons described in our report; and

2. The City's conclusions are consistent with the Coastal Commission's earlier determination that a new power plant located adjacent to the existing Encina power plant would not be consistent with provisions of the Coastal Act.

If this was not a project licensed by the California Energy Commission, our report to the local coastal office would recommend no approval as the proposed CECP is inconsistent with the Coastal Act.

In reaching these conclusions we relied, in part, upon the opinions and determinations of Mr. Ralph Faust, whose testimony is also being offered in this proceeding.

Q5. What are the primary reasons you believe the CECP does not conform with the provisions of the Coastal Act?

A5. The primary reasons are because the CECP:

1. Is not a coastal dependent land use and therefore, is not required to be in the coastal zone;

2. Has not demonstrated an "extraordinary public purpose" required under the South Carlsbad Coastal Redevelopment Area Plan and does not enhance or restore the overall quality of the coastal zone environment;

3. Has significant individual and cumulative visual impacts;

4. Has potential foreseeable biological resource impacts as a result of ocean water withdrawals from the Agua Hedionda Lagoon in the event of temporary or permanent closure of the Encina Power Station; and

5. Fails to comply with the overall coastal objectives of the Coastal Act.

Q6. Do you have any final comments?

A6. Yes. I would note that the report by the Coastal Commission on this very site in 1990 was very instructive. The Coastal Commission came to a very definitive determination on the conformity of the previous SDG&E project. While the CECP is proposing a different

cooling technology which uses less ocean water, the location of the SDG&E site is essentially the same as the CECP and the Coastal Commission would probably make that same determination on the CECP today as they did regarding the SDG&E project in 1990. In the intervening 20 years, I believe appreciation for our coastal resources has not diminished but rather has increased as has the need to protect our limited coastal resources. To this end, both the California Coastal Commission and the City of Carlsbad have worked to discourage new non-coastal dependent industry in the coastal zone.

Cumulative
Mike Hogan

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PREPARED DIRECT TESTIMONY
OF
MICHAEL M. HOGAN, ESQ.
HOGAN GUINEY DICK LLP
SPECIAL COUNSEL
THE CITY OF CARLSBAD

Q.1 Please state your name and employment.

A.1 My name is Michael Hogan and I am currently a partner in the law firm Hogan Guiney Dick LLP, which is located at 225 Broadway, Suite 1900, San Diego, California. My firm serves as special counsel to the City of Carlsbad and has provided legal services concerning compliance with the California Environmental Quality Act (CEQA).

Q.2 How long have you held this position?

A.2 I have been employed by Hogan Guiney Dick LLP for 14 years, since October 1995. For fifteen years before that, I was a partner and associate with the law firm Gray Cary Ware & Freidenrich (now DLA Piper) in San Diego, California. I have been a member of the bar admitted to practice law in the State of California since 1980.

Q.3 What is your expertise with the California Environmental Quality Act?

A.3 I have been an attorney practicing land use and CEQA law for nearly 30 years. Since 1980, I have represented property owners, organizations and public agencies in land use and CEQA matters involving a wide variety of public and private projects, including port facilities, cruise ship terminals, hotels, casinos, Class I, II and III landfills, and virtually every type of residential, commercial and industrial development. I have successfully prosecuted and defended scores of CEQA lawsuits in both the trial and appellate courts. Over the past 13 years, my practice has been devoted exclusively to the representation of public agencies. Presently, my firm serves as special counsel to seven cities, counties and special districts in Southern California and the Central Valley, providing legal assistance in the preparation of the environmental documents required by CEQA and in litigation concerning those documents.

Q.4 What is the purpose of your testimony in this proceeding?

A.4 The purpose of my testimony is to discuss whether or not the analysis of the potential cumulative impacts of the Carlsbad Energy Center Project (CECP), contained in the Final Staff Analysis (FSA), complies with the requirements of CEQA, and to suggest ways in which the FSA can be revised to provide an adequate analysis of cumulative impacts.

Q.5 Will you please summarize your testimony?

A.5 Yes. The key points of my testimony are:

- CEQA requires a lead agency to analyze the cumulative impacts of a proposed project and other past, present and probable future projects with related or similar impacts on the environment.

- To be adequate under CEQA, the analysis of cumulative impacts must satisfy the following requirements. First, the analysis must provide a complete list of past, present and probable future projects producing related or cumulative impacts. Second, it must define the geographic scope of the area affected by the cumulative impacts and provide a reasonable explanation of the geographic limitation used. Third, it must provide a reasonable analysis of whether the cumulative projects may result in a significant impact on the physical conditions in the affected area. And fourth, the analysis and conclusions regarding the cumulative impacts must be supported by facts, data or other substantial evidence.

- The discussion of cumulative impacts in the FSA is not complete and therefore does not comply with the requirements of CEQA.

- The inadequacy of the FSA's analysis of cumulative impacts can be remedied by revising the analysis to provide a complete list of cumulative projects, to explain the geographic scope of the area affected by the cumulative impacts, to evaluate the impacts of the cumulative projects on the existing physical conditions in the affected area, and to provide facts and data in support of the assumptions and conclusions.

Q.6 Can you expand on your testimony regarding the requirements for an adequate analysis of a project's cumulative environmental impacts?

A.6 Yes. Power plant site certification proceedings under Chapter 6 of the Warren-Alquist Act are considered a certified regulatory program under CEQA. (Pub. Res. Code § 21080.5; Cal. Code Reg., tit. 14 [CEQA Guidelines], § 15251(j).) The environmental documents prepared by a certified regulatory program may be used in place of an EIR that otherwise would be required for a project. (Pub. Res. Code § 21080.5(a); CEQA Guidelines § 15250; *Californians for Alternatives to*

Toxics v. Cal. Dept. Of Pesticide Regulation (2006) 136 Cal.App.4th 1049, 1067.) These environmental documents are considered the "functional equivalent" of an EIR. (*Citizens for Non-Toxic Pest Control v. Dept. of Food & Agriculture* (1986) 187 Cal.App.3d 1575, 1586.) As such, they must include an adequate analysis of a project's cumulative impacts on the environment. (*Friends of the Old Trees v. Dept of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1393; *see also* Cal. Code Reg., tit. 20, Appendix B, subdiv. "g.")

"Cumulative impacts" refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. (CEQA Guidelines § 15355.) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the proposed project when added to other closely related past, present, and reasonably foreseeable probable future projects. (CEQA Guidelines § 15355(b).) Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time. (*Ibid.*)

An agency's environmental document must discuss cumulative impacts when a project's incremental effect is "cumulatively considerable." (CEQA Guidelines § 15130(a).) "Cumulatively considerable" means that the incremental effects of a project are significant when viewed in connection with the effects of past projects, other current projects and probable future projects. (CEQA Guidelines § 15065(a)(3).) When the combined impact associated with a project's incremental effect and the effects of other projects is not significant, the environmental document must indicate why the cumulative impact is not significant and is not discussed in further detail. (CEQA Guidelines § 15130(a)(2).) The document also must identify the facts and analysis supporting the agency's conclusion that the cumulative impact is less than significant. (*Ibid.*)
The following elements are required by CEQA for an adequate discussion of cumulative impacts:

> First, the agency's environmental document must provide either (a) a list of cumulative projects, which includes all past, present and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or (b) a summary of projections contained in an adopted planning document which describes or evaluates regional or area-wide conditions contributing to the cumulative impact.
>
> Second, when utilizing a list of cumulative projects, the agency should consider the nature of each environmental resource being examined, the location of the project and its type when determining whether to include a related project on the list.
>
> Third, the agency should define the geographic scope of the area affected by the cumulative impact and provide a reasonable explanation for the geographic limitation used.

Fourth, the environmental document must include a summary of the expected environmental effects to be produced by the cumulative projects, with specific reference to additional information stating where that information is available; and

Fifth, the environmental document must provide a reasonable analysis of the cumulative impacts of the relevant projects in which the assumptions and conclusions are supported by facts, data or other empirical evidence.

(CEQA Guidelines § 15130(b)(1)-(5).)

CEQA places great importance on the adequate analysis of cumulative impacts because environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but may result in severe environmental harm when considered in combination with similar impacts of other projects. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.) A cumulative impact analysis which understates information about the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decision-maker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures and the appropriateness of project approval. (*Joy Road Area Forest & Watershed Assn. v. California Dept. of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 676.)

Q.7 Can you expand on your testimony regarding the requirement that a list of cumulative projects must include all past, present and probable future projects producing related or cumulative impacts?

A.7 Yes. Where an environmental document uses the "list of projects" approach, CEQA requires the list to include all past, present and probable future projects that may have related environmental effects. (CEQA Guidelines §§ 15130(a)(1), (b)(1)(A), 15355.) The test for determining whether a development proposal has reached the stage where it should be considered a "probable future project" is whether environmental review of the project has begun. (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 74-75.) A project that has begun environmental review must be included on the list of cumulative projects even though its environmental review or approval process is in its early stages or is expected to be lengthy. (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 870.)

The list of cumulative projects must include all sources of related environmental impacts, not just similar sources or projects. For example, a proposed industrial project that will add traffic to area roads must consider other past, present and probable future projects which have related traffic impacts, including residential and commercial projects, not just other industrial projects.

In compiling the list of projects, the lead agency also should consider the nature of the resource affected and the location and type of project under review. (CEQA Guidelines § 15130(b)(2).) For example, where water quality impacts are concerned, projects outside the watershed would probably not contribute to a cumulative impact. (*Ibid.*) However, where air quality impacts are concerned, the discussion of cumulative impacts of a proposed energy facility requires consideration of other projects throughout the air basin. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721.)

The FSA does not comply with the requirements for an adequate list of cumulative projects for several reasons. First, the FSA fails to identify the past, present and probable future projects which were considered. With respect to GHG emissions, for example, the FSA discusses the CECP's cumulative impacts "in the context of its effect on the electricity system." (FSA, pp. 4.1-119, 123.) In doing so, the FSA assumes substantial increases in power generation from renewable sources and the replacement of high GHG-emitting generation, but fails to identify these sources or to explain how they meet CEQA's threshold requirement for consideration as probable future projects. (FSA, pp. 4.1-114-118.) The FSA's consideration of other impact areas suffers from the same defect. With respect to traffic impacts, for example, the FSA acknowledges that "[t]raffic associated with future residential and commercial developments within the area would further contribute to congestion on these affected roadways," but fails to identify any of these future developments. (FSA, p. 4.10-16.) Similarly, the discussion of Soil and Water Resources refers to "[c]umulatively significant impacts to the water quality of Agua Hedionda Lagoon or the Pacific Ocean," but fails to identify the projects which cause or contribute to the cumulative impact. (FSA, p. 4.9-19.)

Second, the FSA fails to consider probable future projects with related impacts on several environmental resources. For example, the discussion of cumulative impacts from GHG emissions is limited to the state's power plants and fails to consider any other sources of GHG emissions in the project area, such as the I-5 North Coast Corridor Project (I-5 Widening Project), the Carlsbad Seawater Desalination Project (CSDP), the Vista/Carlsbad Interceptor Sewer Plant, the Agua Hedionda Lift Station Project or the Los Angeles-San Diego Double-Tracking Project (LOSSAN). The same omission occurs with respect to other environmental impact areas, such as Public Health, which refused to consider emissions from the I-5 Widening Project in its discussion of cumulative impacts. (FSA, pp. 4.7-27, 28.)

Third, the FSA acknowledges there are other projects with related impacts, but either identifies only some of the cumulative projects or refers the reader to other documents for more information, in violation of CEQA's requirement that information which is required to be in an EIR must be in the final report. (*Kings County Farm Bureau, supra,* 221 Cal.App.3d at p. 727.) For example, the

discussion of cumulative Noise and Vibration impacts refers to "several projects in the vicinity" but identifies only two of them and refers the reader to the Application for Certification (AFC) to learn the identity of the rest. (FSA, p. 4.6-13; *see also* p. 4.13-15 [Waste Management].) Similarly, the FSA states the applicant obtained a list of "nearby projects that may contribute to a public health impact," but fails to identify any of the projects on the list. (FSA, p. 4.7-22.) The FSA's failure to identify the other development projects which were considered causes the analysis of cumulative impacts to be incomplete. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 740-741.) A table showing the cumulative projects which the FSA considered in each impact area is provided in Attachment 1.

Q.8 Can you expand on your testimony regarding the requirement that the analysis of cumulative impacts must define the geographic scope of the area affected by the cumulative impacts and provide a reasonable explanation of the geographic limitation used?

A.8 Yes. CEQA requires an analysis of cumulative impacts to define the geographic scope of the area affected by the cumulative impact and to provide a reasonable explanation for the geographic limitation used. (CEQA Guidelines § 15130(b)(3).) The geographic scope of the analysis may vary depending on the nature of the resource affected. For example, although the geographic area affected by cumulative noise impacts might be limited to an area within close proximity to a proposed project, the geographic area affected by other cumulative impacts, such as air quality or socioeconomic impacts, could encompass a much larger area. (*See, e.g., Bakersfield Citizens for Local Control, supra,* 124 Cal.App.4th at pp. 1214-1218 [analysis of cumulative urban decay impacts required to consider similar project located 3.5 miles away because its market area overlapped with that of proposed project]; *Kings County Farm Bureau, supra,* 221 Cal.App.3d at p. 721 [analysis of cumulative air quality impacts required to consider other projects with similar impacts in the affected air basin].)

Although it used the list of projects approach for all impact areas except air quality, the FSA did not define the geographic scope of the area affected or provide an explanation for the geographic limitation used for any cumulative impact except GHG emissions. The FSA's reference to other projects "in the vicinity of the CECP" or to "nearby projects" does not comply with CEQA's requirements. (*See, e.g.,* FSA, pp. 4.6-13 [Noise and Vibration], p. 4.7-22 [Public Health].) Similarly, where a geographic limitation might be inferred by the public or the decision-makers, the FSA does not provide any explanation for the geographic limit used for a cumulative impact that would appear to require a broader limit. With respect to cumulative socioeconomic impacts, for example, the FSA only considered other development projects in the City of Carlsbad, even though it assumed workers would be drawn from the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area. (FSA, p. 4.8-11; *see also* p. 4.13-15 [Waste Management].)

Q.9 Can you expand on your testimony regarding the requirement that the analysis of cumulative impacts must provide a reasonable analysis of whether the cumulative projects may result in a significant impact on the physical conditions in the affected area?

A.9 Yes. CEQA requires a reasonable analysis of the cumulative impacts of the relevant projects. (CEQA Guidelines § 15130(b)(5).) The analysis must determine whether the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, other current projects and probable future projects. (CEQA Guidelines §§ 15063(a)(3), 15130(a).) The analysis of cumulative impacts is concerned with the *combined* effects of a proposed project and other past, present and probable future projects with related impacts, not the size the individual project's impact. Although an individual project's incremental effect may be small, it nonetheless may contribute to a significant cumulative impact. (*Bakersfield Citizens for Local Control, supra,* 124 Cal.App.4th at p. 1214.)

The test for determining whether a project will have a significant cumulative impact is whether the project, in combination with other past, present and probable future projects, may result in a substantial adverse change in the physical conditions in the area affected. (CEQA Guidelines 15355, 15382.) The existing physical conditions in the affected area represent the baseline for determining whether a cumulative impact may be significant. (CEQA Guidelines 15125(a).) Accordingly, the analysis of cumulative impacts must consider whether the cumulative projects will cause or contribute to a substantial change in the existing physical conditions, not in hypothetical conditions which might exist under different circumstances. (*Woodward Park Homeowners Assn. v. City of Fresno* (2007) 150 Cal.App.4th 683, 707-711.)

The FSA did not apply this standard of review in its discussion of several impact areas. For example, the FSA's discussion of the cumulative impacts of GHG emissions does not consider the CECP's incremental contribution of GHG emissions in connection with the emissions of other past, present and probable future projects. Rather than considering the project's anticipated net contribution of approximately 602,553 metric tons per year of GHG emissions, in combination with the GHG emissions of other cumulative projects, the FSA considered the project's GHG emissions in the context of a "system build-out of renewable resources in California." This approach not only failed to consider the CECP's incremental contribution of GHG emissions in combination with the GHG emissions of other past, present and probable future projects, but also it improperly evaluated the project's impacts against a hypothetical baseline involving unidentified renewable energy resources and old and new power plants which may or may not commence or terminate operations, rather than against the actual physical conditions in the affected area. (*Woodward Park Homeowners Assn., supra,* 150 Cal.App.4th at pp. 707-711.) In addition, the FSA's use of a

"system-wide" approach focuses on the project's beneficial impacts and fails to consider the adverse cumulative impact which may result from the project's net increase of approximately 602,553 metric tons per year of GHG emissions in combination with the GHG emissions of other past, present and probable future projects in the affected area. (*County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580.)

The FSA also uses an erroneous standard of review in determining that the cumulative impact of GHG emissions is insignificant because the CECP's GHG emissions rate would be less than the GHG emission rate of Units 1, 2 and 3 at the Encina Power Station (EPS). (FSA, p. 4.1-107.) In focusing on the CECP's GHG emission *rate*, rather than on the incremental increase in the *amount* of GHG emissions it will generate, the FSA fails to consider the actual impact on the physical environment. Rather than considering the CECP's emission rate in comparison to the existing boiler rate, the FSA should have considered the project's net increase of approximately 602,553 metric tons per year of GHG emissions in combination with the GHG emissions of other past, present and probable future projects.

The FSA also used an improper "ratio" analysis when considering the CECP's cumulative impacts in other areas. (*Kings County Farm Bureau*, supra, 221 Cal.App.3d at p. 718.) With respect to cumulative impacts on Waste Management, for example, the FSA compared the amount of waste to be generated by the CECP with the total amount of waste landfilled in San Diego County (FSA, p. 4.13-15), and with respect to cumulative air quality impacts, the FSA determined that the project would not impact the Carbon Monoxide Maintenance Plan because "the project's generated traffic would be insignificant in comparison with the existing San Diego County traffic (FSA, p. 4.1-47). The FSA also did not apply the proper standard for analyzing cumulative impacts in other impact areas. With respect to Land Use, for example, the FSA concluded the project's land use impacts would not be cumulatively considerable because "[t]he proposed project would not make a *significant contribution* to regional impacts related to new development and growth." [Emphasis added.] (FSA, p. 4.5-36.) The same problem occurs in the discussion of air quality impacts, where the FSA did not consider the CECP's incremental contribution to cumulative impacts unless it provided a "substantial contribution." (FSA, p. 4.1-49.) However, the question in a cumulative impacts discussion is not whether an individual project's contribution is "substantial" but whether its incremental contribution, of whatever size or amount, is significant when considered *in combination with* the effects of other past, present and probable future projects

Q.10 Can you expand on your testimony regarding the requirement that the analysis of cumulative impacts must provide facts, data and analysis in support of its conclusions?

A.10 Yes. A cumulative impact analysis must be substantively meaningful. While technical perfection is not required, the courts have looked for adequacy,

completeness and a good faith effort at full disclosure. (*Mountain Lion Coalition v. Fish & Game Comm.* (1989) 214 Cal.App.3d 1043, 1051.) One of the basic requirements for a meaningful analysis of cumulative impacts is that the assumptions and conclusions must be supported by facts, data, reports or studies. (*Joy Road Area Forest & Watershed Assn., supra,* 142 Cal.App.4th at p. 676; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 429.) A conclusory discussion of cumulative impacts, unsupported by facts, is insufficient.

The FSA does not provide facts, data or other evidence in support of the assumptions and conclusions in the discussion of cumulative impacts for many environmental areas. For example, the FSA states that it is "highly unlikely" the CECP, the CSDP and other unidentified "remaining projects" could create a significant cumulative noise impact, but provides no facts or data to support this conclusion. (FSA, p. 4.6-13.) The FSA also concludes that the cumulative impact on recycled water supply will not be significant, despite the fact that the source of the recycled water supply is unknown. (FSA, p. 4.9-18.) The FSA provides no facts, data or studies in support of either this conclusion or staff's "belief" that a reliable supply of water will be available prior to operation of the CECP. The absence of any empirical data in support of this assumption also is contrary to CEQA's mandate that environmental documents identify the near- and long-term sources of water for a proposed project. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 430-433.) In addition, the FSA does not provide any facts, reports or studies in support of its conclusion that implementation of proposed conditions of certification and compliance with LORS will avoid or reduce cumulative impacts to biological resources below significance. (FSA, p. 4.2-17.)

Q.11 Can you expand on your testimony that the FSA did not perform a complete analysis of cumulative impacts?

A.11 Yes. A discussion of cumulative impacts is only as good as the list of projects it uses. (Kotska and Zischke, *Practice Under The California Environmental Quality Act* (2d ed. 2009), § 13.41, p. 650.) When relevant projects are omitted from the list of cumulative projects, the type and severity of potential cumulative impacts will be understated and the analysis of cumulative impacts will be inadequate. (*Bakersfield Citizens for Local Control, supra,* 124 Cal.App.4th at pp. 1214-1218; *Friends of the Eel River, supra,* 108 Cal.App.4th at p. 868; *San Joaquin Raptor/Wildlife Rescue Center, supra,* 27 Cal.App.4th at pp. 739-741; *Kings County Farm Bureau*, supra, 221 Cal.App.3d at pp. 721-724.)

The FSA's analysis of cumulative impacts is not complete because it omits relevant projects from the list of cumulative projects considered in the analysis of a number of cumulative impact areas. There are at least six projects which should have been included on the list of cumulative projects considered in nearly every impact area. These projects are:

- I-5 North Coast Widening Project (I-5 Widening);
- Carlsbad Seawater Desalination Project (CSDP);
- Carlsbad/Vista Sewer Upgrade Project;
- LOSSAN Corridor Double-Tracking Project (LOSSAN);
- Coastal Rail Trail; and
- Decommissioning of Units 4 and 5 at the Encina Power Station (EPS).

Attachment 2 is a brief description of these probable future projects provided by the City of Carlsbad.

Each of these six projects satisfies CEQA's requirements for inclusion on the list of cumulative projects: they are "reasonably foreseeable probable future projects" because they have commenced environmental review; they are within the geographic scope of the affected area because they are located immediately adjacent to or within close proximity to the CECP site; and their potential impacts on the environment are closely related to the environmental impacts the CECP will have.

The FSA's analysis of cumulative impacts is incomplete because, although it considered some of these six projects in connection with some impact areas, it did not consider them in all of the resource areas in which they may have a cumulative effect and did not provide any explanation for why they were considered in some resource areas but not in others. (*See* Attachment 1.)

An informative example of how the omission of a reasonably foreseeable future project from the list of cumulative projects causes an understatement of cumulative impacts is the Decommissioning of EPS Units 4 and 5. In its discussion of cumulative GHG emissions, the FSA acknowledged that the retirement of facilities using once-through cooling (OTC) is a "likely event" pursuant to State Water Resources Control Board (SWRCB) regulation. (FSA, p. 4.1-118.) The FSA also considered the Decommissioning of EPS Units 4 and 5 in its analysis of cumulative impacts on Visual Resources. (FSA, p. 4.12-24.) However, the FSA did not include the Decommissioning of EPS Units 4 and 5 in the list of cumulative projects considered with respect to Biological Resources. This omission clearly results in an understatement of the potential cumulative impacts on the Agua Hedionda Lagoon that will occur when the CECP no longer can use the existing EPS water discharge stream as its source of the 4.32 million gallons/day of seawater needed for industrial use and dilution purposes. (FSA, pp. 4.2-18 – 4.2-19.) Whether the Decommissioning of Units 4 and 5 is treated as a probable future project in the analysis of cumulative impacts, or whether it is included in the "Project Description" of the CECP as a reasonably foreseeable future phase of the project which must occur to comply with the SWRCB's OTC regulation, it must be analyzed in the FSA to provide adequate disclosure of the CECP's adverse environmental effects. (*Berkeley Keep Jets Over The Bay Com. v. Board of Port Commr.* (2001) 91 Cal.App.4th 1344, 1362-1363.) The FSA's

failure to do so results in an understatement of the type and severity of cumulative impacts that may result from the proposed project.

Q.12 Can you expand on your testimony that the inadequacy of the FSA's analysis of cumulative impacts can be remedied?

A.12 Yes. The inadequacy of the FSA can be remedied by revising the analysis of cumulative impacts in the following ways:

- The FSA should provide a summary of cumulative impacts in the Executive Summary or Introduction to the FSA, which (a) identifies the past, present and probable future projects on the list of cumulative projects, (b) explains the geographic scope of the area affected, (c) provides a map or other graphic showing the location of the cumulative projects in relation to the CECP, and (d) summarizes the significant cumulative impacts that may occur.

- In the analysis of cumulative impacts for each environmental resource, the FSA should identify all of the projects on the cumulative list which may have related impacts and will be discussed in the analysis.

- The FSA should evaluate the combined impacts of the cumulative projects on the existing physical conditions in the affected area, and not against hypothetical conditions which may exist under different circumstances.

- The FSA should state whether the cumulative impacts in each environmental area are significant or less than significant and provide facts, data or other substantial evidence in support of the conclusions reached.

If the FSA were to make these revisions, it would satisfy the requirements of CEQA for an adequate analysis of cumulative impacts.

ATTACHMENT 1

FSA=s ANALYSIS OF CUMULATIVE IMPACTS

LIST OF CUMULATIVE PROJECTS

Section	Impact Area	Cumulative Projects Listed
4.1	Air Quality	Uses Asummary of projections@ approach
4.1.A	GHG Emissions	Electrical power generation system, including retirement of generation using once-through cooling
4.2	Biological	I-5 Widening Project Carlsbad Seawater Desalination Plant (CSDP)
4.3	Cultural	Eight (unidentified) projects
4.4	Hazardous	Cites to AFC for list of nearby facilities that store hazardous materials
4.5	Land Use	I-5 Widening Project CSDP Vista/Carlsbad Sewer Interceptor Project Agua Hedionda Lift Station Project LOSSAN Coastal Rail Trail
4.6	Noise	Cites to another document and refers to Aseveral projects in vicinity@
4.7	Public Health	Refers to Alist of nearby projects@ and existing EPS and states that any new increased emissions from I-5 Widening Project must be assessed in its own EIR
4.8	Socioeconomics	ASeven proposed projects@ including I-5 Widening Project, CSDP and five unidentified public utility upgrades.
4.9	Soil/Water	No list

4.10	Traffic	Flower fields I-5 Widening Project CSDP City of Carlsbad Capital Improvement Program, including Vista/Carlsbad Sewer Interceptor Project and Agua Hedionda Lift Station Project LOSSAN Coastal Rail Trail
4.11	Trans. Line Safety	No list
4.12	Visual	CSDP Future Decommissioning of Units 4 and 5 Coastal Rail Trail I-5 Widening Project Other nearby development sites east of I-5 Vista/Carlsbad Sewer Interceptor Project
4.13	Waste Mgmt	Refers to Amultiple projects in the City of Carlsbad and bordering the project site that may have a cumulative effect@ and identifies: CSDP I-5 Widening Project Multiple Capital Improvement Projects Flower Fields Area Agua Hedionda Lift Station Project LOSSAN

Attachment 2

City of Carlsbad
Office of the City Manager

December 23, 2009

To: Mike Hogan

From: Joe Garuba

Subject: Foreseeable Projects

As mentioned in various sections of the CECP FSA, there are several projects that are either under construction or are foreseeable in the near future in the vicinity of the proposed CECP. They are:

1. Carlsbad Seawater Desalination Plant (Poseidon)
2. LOSSAN Corridor Double Tracking
3. I-5 North Coast Widening Project
4. Carlsbad/Vista Sewer Upgrade Project
5. Coastal Rail Trail
6. Proposed State Policy on the Reduction of Ocean Water Cooling for Power Plants

Each of these is described below using the most recent information I could gather. In some cases I also called the project contact to ensure the information is current and accurate. For your information, I have identified the source material and name of my contact in case you have further questions.

CARLSBAD SEAWATER DESALINATION PLANT

Project Description: The Carlsbad Desalination Project will provide San Diego County with a locally-controlled, drought-proof supply of high-quality water. When complete, the Carlsbad Desalination Project will consist of a 50 million gallon per day (56,000 acre-feet per year (AFY)) seawater desalination plant and associated water delivery pipelines.

Water produced from the plant will serve the cities and communities of Carlsbad, Oceanside, San Marcos, San Diego, Encinitas, Solana Beach, Rancho Santa Fe, Escondido, Chula Vista, National City and the unincorporated communities of Rainbow, Bonsall and Fallbrook.

Location: The Carlsbad Seawater Desalination Plant (CSDP) is located approximately 400 feet west of the proposed CECP.

Timing: After ten years of planning and five years in the state's permitting process, the Carlsbad Desalination Plant has now received final approvals

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from every required regulatory and permitting agency in the state, including the California Coastal Commission, State Lands Commission and Regional Water Quality Control Board.

The CSDP is currently under construction (construction began November 2009 per City of Carlsbad records) and has a projected completion date by end of 2012.

Lead Agency: City of Carlsbad

Identified Impacts In Combination with CECP: Minimum impacts will be construction related including construction traffic and constrained laydown areas. The pipeline associated with the CSDP will impact CECP's construction ingress and egress along Cannon Road and Avenida Encinas.

Sources: Personal Communication, Skip Hammon, City of Carlsbad Transportation Director, December 14, 2009

LOSSAN CORRIDOR RAIL WIDENING

Project Description: The Carlsbad Double Track Project will add a second track from just south of Carlsbad Village Drive to just south of Cannon Road in Carlsbad.

Location: The rail line is located approximately 200 feet west of the CECP.

Timing: Caltrans Division of Rail has contracted with Amtrak to complete the design for this project, and has funded the design with $1 million in state monies. The design is at 90% completion.

The environmental permit applications have been submitted to all applicable agencies.

Depending on permit approval time frames, Amtrak intends to fund the estimated $17.6 million project for construction and hopes to advertise the project in January or February 2010. This project is a high regional priority for coastal rail corridor operational improvement (per Tom Lichterman e-mail, NCTD).

Construction is anticipated to start in the 2nd/3rd quarter of 2010 and last approximately 18-24 months.

Lead Agency: Caltrans, Division of Rail

Identified Impacts In Combination with CECP:

Sources: Personal Communication, Tom Lichterman, North County Transit District, 12/22/2009

I-5 NORTH COAST WIDENING

Project Description: Caltrans has proposed to widen the Interstate 5 Freeway (this has already occurred south of Carlsbad). Caltrans' proposal contains 4 options which result in two different footprints. The options are either an 8+4 alignment or a 10+4 alignment.

Location: The I-5 is immediately adjacent to the CECP and when widened will be less than 125 feet away.

Timing: Excerpts from Allan Kossup, Caltrans letter to City of Carlsbad dated May 6, 2009: "With the full support and financial commitment from the region, Caltrans is in the process of finalizing the Draft Environmental Document (DED) for the I-5 NCC Project. The Notice of Intent was issued and Scoping meetings have been completed. All of the technical and environmental studies are completed. The Federal Highway Administration is in the process of reviewing the DED."

"The formal environmental process for the I-5 NCC Project was initiated in 2004 in partnership with the Federal Highway Administration (FHWA) and funded by the San Diego Association of Governments (SANDAG). The I-5 NCC has been a key component of the Regional Transportation Plan since the mid 1990s and is also included in the Region's Transnet Program, a local ½ cent sales tax for transportation projects, approved by voters in 2005."

"I-5 is an Interstate facility that serves not only local and regional traffic, but interregional, goods movement, and national defense related traffic. As such, various regional, state and national stakeholders have identified the widening of the I-5 NCC as a high priority. The I-5 NCC Project is a high priority project under Presidential Executive Order (E.O.) 13274 "Environmental Stewardship and Transportation Infrastructure Project Reviews" to "enhance environmental stewardship and streamline the environmental review and development of transportation infrastructure projects." It is the only project in California on the list of eight nationwide projects selected by the U.S. Department of Transportation (USDOT). Additionally, I-5 is one of only three corridors in California that are designated as a national "Corridor of the Future" by the USDOT."

"Given the foregoing description of the tangible activities of SANDAG and the Department of Transportation, it is plain that neither CEC staff nor

NRG LLC's counsel appreciate how far along these complex transportation projects are in terms of delivery."

"Again, based upon the body of work already completed, both the I-5 NCC Project and the LOSSAN rail projects are not only "probable", given their regional and inter-regional priority, they are "likely", and a substantial amount of resources have already been committed to delivering them for Californians."

(do we have recent verification that everything is as reported above and proceeding on schedule?)

Lead Agency: Caltrans

Identified Impacts In Combination with CECP:

Sources: Personal Communication, Bill Figgie, Caltrans, ; CECP Final Staff Assessment, Worker Safety Section.

CARLSBAD/VISTA SEWER INTERCEPTOR & AGUA HEDIONDA LIFT STATION REPLACEMENT

Project Description: The project consists of constructing a parallel sewer interceptor system to accommodate existing and future sewer flows from the cities of Vista and Carlsbad. The individual projects include a parallel force main in Jefferson Street, replacement of the Agua Hedionda Lift Station, and a parallel gravity main from the Lift Station to the Encina Wastewater Facility.

Location: The section of sewer line and the Agua Hedionda Lift Station that pass the CECP are immediately adjacent to the west and northwest to the CECP (less than 100 feet).

Timing: New appropriations of $31.4 million are included in the FY2009-10 CIP for the Carlsbad/Vista Sewer Interceptor projects. The overall cost estimates for the five components of this project have increased approximately $2.9 million, for a total cost of $47.4 million, of which $14.7 million is to be funded by the City of Carlsbad, with the remainder of $32.7 million to be funded by the City of Vista.

Construction has already begun on several sections of the sewer replacement. Construction on this section and lift station is expected to begin in 2010.

Lead Agency: City of Carlsbad and City of Vista

Identified Impacts In Combination with CECP: Impacts will be predominately construction related – construction, site constraints, traffic, air quality, laydown areas. Operational implications will be the inability to put any berm and tress on top of the sewer easement.

Sources: City of Carlsbad 2009/2010 Budget Document, page I-5; Personal Communication, Glenn Pruim, City of Carlsbad Utilities Director

COASTAL RAIL TRAIL

Project Description: The Coastal Rail Trail (CRT) is a multi–modal trail extending from San Luis Rey River in Oceanside to the Santa Fe Depot in San Diego along the railroad right-of-way.

Location: In the City of Carlsbad, the CRT is located within the railroad right-of-way, adjacent to the railroad right-of-way, and on city streets. In Carlsbad, the North County Transit District (NCTD) owns the railroad right-of-way.

Timing: On April 17, 2001, the City Council approved the Coastal Rail Trail Project. The route approved by the City Council is located on the east side of the railroad tracks. At the same meeting, the City Council approved the Mitigated Negative Declaration for the Coastal Rail Trail Project. Since this approval, the City of Carlsbad has broken the Rail Trail into 6 separate reaches (projects) to facilitate construction. Reaches 2 and 6 are completed. Sections of Rail Trail have also been completed in other jurisdictions, including the City of Solana Beach.

The section of trail from Tamarack Avenue to Cannon Road has been designated as Reach 3. The approved alignment for Reach 3 is on the east side of the existing rail road track, in the railroad right-of-way, and crosses over Agua Hedionda Lagoon on a future bridge to be shared with the Carlsbad Vista Sewer Interceptor. At its current location, the Rail Trail would be approximately 100 -125 feet west of the CECP.

On May 3, 2006, the Planning Commission made a finding as part of the Precise Development Plan (PDP) for the Carlsbad Seawater Desalination Plant that the Costal Rail Trail would be dedicated within the boundaries of the PDP to be consistent with the City Wide Trails Program. A condition was placed on the PDP requiring the developer to cause the easement to be dedicated at a mutually agreeable location between the City and the property owner.

Due to several components of the CRT being co-located with the Carlsbad/Vista Sewer Interceptor, construction on Reach 3 is anticipated follow improvements to the sewer system (expected construction to begin in 2012).

Lead Agency: City of Carlsbad

Identified Impacts In Combination with CECP: Impacts – Construction Operational - people and ingress and egress issues.

Sources: Personal Communication, Skip Hammon, City of Carlsbad Transportation Director, 12/11/2009; Personal Communication, Ron Ball, City of Carlsbad Chief Council, 12/11/2009; Personal Communication, Glenn Pruim, City of Carlsbad Utilites Director

ELIMINATION OF ENCINA UNITS 1-5 OCEAN WATER (ONCE-THROUGH) COOLING

Project Description: Eliminate the use of once-through cooling systems in power plants located on the coast in California. This is being driven by the State Water Board's Policy on the Use of Coastal and Estuarine Water for Power Plant Cooling dated July 2009.

Location: Encina Power Station (EPS)

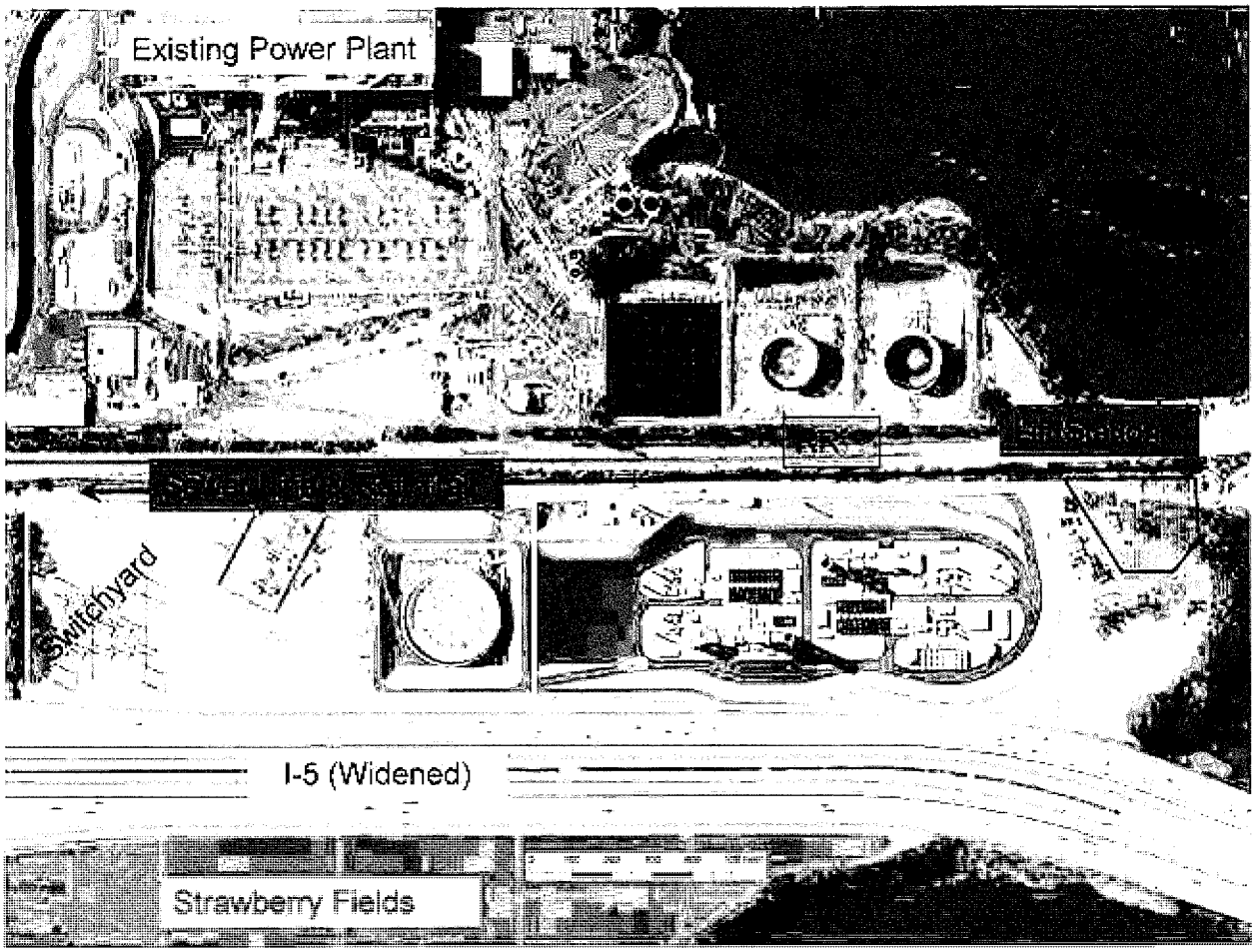
Timing: Based on available documents, the EPS is expected to be in compliance with new regulations by 2017.

Lead Agency: State Water Resources Control Board in cooperation with the California Energy Commission, California Public Utilities Commission, and California Independent System Operator

Identified Impacts In Combination with CECP: Impact of Encina 1-5 coming off of OTC would be to effectively shut down the power plant unless another source of water is identified. Impacts need to be analyzed with respect to land use, visual, public access, noise, construction impacts, etc.

Sources: California Water Resources Control Board, Once-Through Cooling Policy, Page 78, Table 15; CEC, CPUC, CAISO, "*Implementation Of Once-Through Cooling Mitigation Through Energy Infrastructure Planning And Procurement*", July 2009, Page B-2. http://www.energy.ca.gov/2009publications/CEC-200-2009-013/CEC-200-2009-013-SD.PDF

The following is a figure of the site showing these projects in relation to the CECP.


Existing Power Plant
Switchyard
I-5 (Widened)
Strawberry Fields

Visual
Juan Martinez

PREPARED DIRECT TESTIMONY
OF
JUAN MARTINEZ

Q1. Please state your name and place of employment

A1. My name is Juan Martinez and I am a 3-D Team Lead with HNTB, a consulting firm specializing in Civil Engineering. I have eleven years of experience creating 3D visualizations for architectural and engineering projects. On the eleven years, I have eight years of experience creating civil engineering simulations and six years of experience creating freeway/transportation type projects. Typically, our 3-D animations serve DOTs and toll authorities. (My resume is attached).

Q2. Please describe your work for the City of Carlsbad in this CECP proceeding.

A2. The City was concerned that the Energy Commission staff did not present visual aids depicting the proposed power plant with the inclusion of the Highway I-5 HOV project. The City asked HNTB to create visual representations that would yield this information.

Q3. Are you sponsoring any of these visual aids in this proceeding?

A3. Yes. I am sponsoring the following:

- Exhibit _421_ Photo simulations of the CECP at KOP 04;
- Exhibit _422_ Photo simulations of the CECP at KOP 06;
- Exhibit _423_ View from North Bluff;
- Exhibit_430_ CECP-I5 Drive Cam
- Exhibit _431_ CECP-I5 Orbit Cam
- Exhibit _424_ 3-D rendering depicting the CECP site with Carlsbad Fire Department road widths

Q4. Please explain exhibit 424, the 3-D rendering depicting the CECP site

A4. Certainly. There are two images in this exhibit. The red line in both images depicts the outer edge of the fifty foot perimeter road within the pit. One image one, the outer green line depicts the outer rim of the upper perimeter road assuming the existing berm. On the other image, the green line depicts the outer rim of the upper perimeter road assuming a vertical wall between the two roads.

Q5. Please describe the information used to create these exhibits and the assumptions used in your analysis.

A5.

- Figure 2.1-1 CECP Plot Plan from CECP_002 (Project Description)
- Figure 2.2-1 CECP Site Plan from CECP_002 (Project Description)
- Exhibit A and B NRG Energy Proposed Easements from CECP (07-AFC-6) – Sewer Replacement Project
- CECP (07-AFC-6) – Visual Impacts and Site Constraints
- Table 5.13-2 from CECP_005.13 (Visual Resources)

Q6. Please describe the process of creating these exhibits.

A6. The proposed power plant was modeled and inserted into an existing 3D model which was previously created for the State of California Department of Transportation. The major components modeled were created as mass models with dimensions taken from Table 5.13-2. The exceptions were the two HSRG stack heights which were taken from the elevation in CECP (07-AFC-6) – Visual Impacts and Site Constraints. Since electronic CAD files were not provided, a process call "rubber-sheeting" was used to place the proposed site into the existing 3-D model. Rubber-sheeting involves bringing in the raster image (Figure 2.1-1 CECP Plot Plan) into a CAD application and using the graphical scale on the image to appropriately scale and move the image into the correct location. Once the plan is in the correct location, the 3-D model of the proposed site is able to be integrated with the existing 3-D model. Once the 3-D model is complete, cameras are able to be inserted and an image is able to be generated from any vantage point within the modeled world. Cameras were inserted to depict the proposed power plant from KOP 4 and KOP 6. Additionally, cameras were created to depict a top-down view of the proposed facility relative to I-5 at a scale of 1" = 50' and a view from the north bluff.

Q7. Does that complete your direct testimony?

A7. Yes it does.

Visual
Don Neu

VISUAL AND AESTHETIC RESOURCES

Prepared Rebuttal Testimony Of
Don Neu, City of Carlsbad Planning Director

Q1. Please state your name and place of employment.

A1. Don Neu, Planning Director for the City of Carlsbad.

Q2. What are your duties and responsibilities?

A2. My duties and responsibilities include planning, directing, supervising and coordinating Planning programs; to provide technical staff assistance to the City Manager, City Council and Planning Commission; and to perform professional city planning work. This includes the preparation and presentation of reports and recommendations relating to the social, economic and physical development of the City of Carlsbad. I am responsible for administering the City's Environmental Protection Procedures, the California Environmental Quality Act, the General Plan, Local Coastal Program, Zoning Ordinance and other local land use regulations.

Q3. What has been your experience in assessing the visual and aesthetic impacts of projects?

A3. My experience includes assessing visual and aesthetic impacts for projects proposed in the City of Carlsbad as required by state and local laws. I have been a planner for 25 years with almost 21 of those years working in the City of Carlsbad Planning Department. Prior to that time I worked as a planner in another coastal city and for a county both in the state of California.

Q4. What is the purpose of your testimony in this proceeding?

A4. The purpose of my testimony is to:

1. Present an analysis of the proposed CECP's visual and aesthetic impacts using the approach typically conducted by the City of Carlsbad.
2. Compare the results of my analysis with the previous conclusions reached by the CEC staff and California Coastal Commission on SDG&E's combined cycle project proposed at Encina.
3. Comment on the analysis performed by the CEC staff in their FSA.

Q5. Will you summarize the conclusions of your testimony?

A5. My conclusions include:

1. The construction and operation of the CECP will result in long-term, significant adverse impacts individual and cumulative impacts to the visual and aesthetic environment that cannot be fully mitigated.
2. In their analysis of the combined cycle project located adjacent to the Encina Power Station, both the CEC staff and California Coastal Commission also concluded that there would be unmitigated significant adverse visual impacts.
3. The CEC staff's analysis in the CECP FSA uses a valid approach for assessing visual impacts, correctly describes the sensitivity of viewers observing the proposed CECP, and correctly states the severity of the visual impacts of the CECP in combination with the I-5 widening projects. In my opinion however, the CEC's analysis understates the visual dominance, industrial presence, and adverse impact of the existing Encina Power Station. The analysis underestimates the significance of the CECP's visual impacts even with mitigation, and does not fully capture the overall aesthetic impact of adding another industrial facility in a high quality, coastal oriented, recreational and urban environment.

Visual and Aesthetic Analytical Approach

Q6. How important are visual and aesthetic resources to the City of Carlsbad.

A6. Visual and aesthetic resources are extremely important to the City as is our commitment to preserve, protect and enhance the quality of life for both residents and visitors to our community. Environmental stewardship guides principles for development within the city. Visual and aesthetic considerations play an important role in the permitting and long-term planning of new projects.

Located on the Southern California coast, Carlsbad is one of the most beautiful and desirable locations in the United States. Many of the residents in the city live here because of the climate, quality of life, and proximity of the coast.

The city also hosts countless visitors each year, drawn primarily to the beauty of the coast. Carlsbad State Beach, located directly west and south along the coast from the Encina Power Stations, serves as one of the more popular beaches in the area featuring swimming, surfing, skin diving, fishing, picnicking, and camping.

The Aqua Hedionda Lagoon, located directly east of the project, along with the remaining two lagoons within the city limits constitutes important aesthetics.

Q7. Can you describe the approach the City typically uses in evaluating the visual impacts of a project in either the planning or permitting process?

A7. Typically the staff of the City's Planning Department performs a visual analysis. This includes evaluating the appropriateness of proposed landform alteration; impacts to any existing native habitat or non-native landscaping; analyzing the proposed massing, building planes, height, quality of building materials, and building color for

compatibility with existing standards and the environment in the project vicinity. I use this approach to prepare analyses.

Q8. Have you seen the visual simulations prepared by Juan Martinez of HNTB?

A8. Yes. Mr. Martinez's simulations are a depiction of the general scale, structure, and location of the CECP. While they do not factor in mitigation, they depict the significant visual impact of the facility. Even with mitigation these structures will be readily visible from the freeway, railroad, coastal rail trail, and numerous residences.

Q9. What criteria or standards does the City use in evaluating the visual implications of a proposed development and how do they compare to the CECP's aesthetic impacts?

A9. Our primary evaluation criteria come from the City's General Plan. For Instance, the City persistently strives to be:

> *"A.1 A City which preserves and enhances the environment, character and image of itself as a desirable residential, beach and open space oriented community."*

Specific General Plan objectives include provisions related to visual and aesthetic resources including the following:

> *"B.2 To create a visual form for the community, that is pleasing to the eye, rich in variety, highly identifiable, reflecting cultural and environmental values of the residents."* – With its size, mass, and open design, the CECP has the distinct look and feel of an industrial facility. While highly identifiable, it is not pleasing to the eye nor does it reflect the cultural or environmental values of the City or its residents. In its proposed location and current design, the CECP does not conform to this criteria and as such it represents a significant adverse visual and aesthetic impact.
>
> *"C.1 Arrange land uses so that they preserve community identity and are orderly, functionally efficient, healthful, convenient to the public and aesthetically pleasing."* – With its location in close proximity to the coast and Agua Hedionda Lagoon and its lacking visual mitigation make the proposed facility far from aesthetically pleasing and further deteriorate the ideal community identity. The proposed location also does not conform with the City's criteria because it sits along major scenic transportation routes.
>
> *"C.2 Establish development standards for all land use categories that will preserve natural features and characteristics, especially those within rural, coastal and/or hillside areas."*– The City has established a number of standards intended to preserve natural features and characteristics

important to maintaining a positive visual and aesthetic environment. These include maximum building heights that for non-residential development are limited to 45 feet with an allowance for architectural protrusions to reach a maximum height of 55 feet. The maximum number of levels or stories is three. Development in the city is of a scale intended to preserve the community character of a low density coastal community with significant natural resources. Approximately 40 percent of the city will remain as permanent open space. The CECP does not conform to these standards.

Our General Plan also contains a separate section on Environmental Standards. The overarching goal of this section is to be:

> *"A City which protects and conserves natural resources, fragile ecological areas, unique natural assets and historically significant features of the community."*

Implementing provisions of this section includes actions to:

> *"C.5 Limit future development adjacent to the lagoons and beach in such a manner so as to provide to the greatest extent feasible the physical and visual accessibility to these resources for public use and enjoyment."*– In its location between the coast and the Agua Hedionda Lagoon and between the coast and numerous residences and visitor's accommodations, the CECP impedes visual accessibility to these unique natural resources. It adds to the already strong industrial nature of the site and, because of its longer economic lifetime, will continue to impede the visual accessibility after the existing power plant is removed.
>
> *" C.6 Ensure the preservation and maintenance of the unique environmental resources of the Agua Hedionda Lagoon while providing for a balance of public and private land uses through implementation of the Agua Hedionda Land Use Plan* – The CECP does nothing to ensure the preservation and maintenance of the unique visual and aesthetic resource of the Agua Hedionda Lagoon. As noted above, it will result in extending the presence of an industrial facility directly to the east of the lagoon.
>
> *"C.7 Require comprehensive environmental review in accordance with the California Environmental Quality Act (CEQA) for all projects that have the potential to impact natural resources or environmental features."*
>
> *"C.9 Implement to the greatest extent feasible the natural resource protection policies of the Local Coastal Program."*
>
> *"C.11 Participate in programs that restore and enhance the City's degraded natural resources."* – The CECP will do nothing to restore or enhance the degraded aesthetic resources of the area. Rather, it will ensure the continued

industrial use of the site and, as a result, possibly impede development of other uses that may represent a restoration or enhancement of the areas resources.

The City's zoning regulations and development plans also include development standards intended to avoid or minimize impacts to the City's visual and aesthetic resources. For example, the Precise Development Plan for the Encina Power Station site, including lands zoned PU, contains a height limit of 35 feet. This important zoning restriction represents an attempt by the City to preserve views of the ocean, bluffs, and lagoons for all citizens and visitors. It is also consistent with the character of the built environment of the city.

In addition to these provisions, the City also consults the California Environmental Quality Act, CEQA, for guidance when evaluating the visual consequences of a project. For example, questions in Appendix G under aesthetics ask if a project would:

1. Have a substantial adverse effect on a scenic vista?
2. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?
3. Substantially degrade the existing visual character or quality of the site and its surroundings?
4. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

These guidelines help frame and identify important issues before they become problems.

Q10. How would you answer each of the four questions regarding aesthetics in Appendix G of CEQA regarding the proposed CECP project?

A10. I would answer the four questions in the following manner:

1. Have a substantial adverse effect on a scenic vista? – The lagoons are some of the most valued scenic resources in the city. The close proximity of the proposed facility to the Agua Hedionda Lagoon, the only active recreation lagoon in the city, as well as the coastline another significant scenic resource will significantly impact viewsheds of the lagoon and coast.

2. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? – The proposed project will be visible from Interstate 5 and Carlsbad Boulevard (Coast Highway). The proposed project will be out of scale with development in the city as seen from these transportation corridors.

3. Substantially degrade the existing visual character or quality of the site and its surroundings? – The proposed development will substantially degrade the visual character of the site by adding additional structures that will be highly visible as they exceed the city's maximum building height. No attempt is made to use architectural design to reduce the visual impact. Instead the project relies on landscaping to try to minimize the visual impacts. Property in other ownership in the immediate vicinity of the site is designated for Open Space or Travel/Recreation Commercial by the General Plan.

4. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? – Proposed condition of certification VIS-4 requires a lighting mitigation plan. In addition, the condition includes a requirement that the plan be submitted to the City of Carlsbad for review and comment. The city appreciates the opportunity to provide comments on the plan.

CECP Visual and Aesthetic Analysis

Q11. How would you characterize the aesthetic impact of the proposed CECP?

A11. I would characterize the aesthetic impact as being significant. The proposed height of the structures exceeds the maximum height limits in the City of Carlsbad. The proposed equipment is not adequately screened architecturally to attempt to mitigate the visual impact of the equipment. Landscaping is proposed to attempt to screen the facility instead of complementing the overall development of the site. The aesthetic impact appears to have been done in the context of expansion on the site of an existing industrial facility so that consideration of the character of the community is minimized and compatibility with existing as well as permitted future development in the immediate vicinity is not adequately considered.

Q12. Given your analysis, what do you believe would be the overall impact of the CECP on the areas visual and aesthetic resources?

A12. The impact would be significant. The location, height and lack of architectural treatment of the facility will be very noticeable and is not in compliance with city standards applied to new development. The facility will be visible from numerous locations including Carlsbad Boulevard (Coast Highway) and Interstate 5. With projects planned in the vicinity of the site the area remaining to provide a buffer which is heavily relied upon to try to mitigate the project's visual impact is limited.

Q13. Do you believe this impact can be mitigated to a point of insignificance?

A13. While the construction of berms or landscaping may reduce the visibility of the CECP, these provisions will not completely block it or diminish the industrial nature of the facility. Mitigating options would also form a barrier and block views of the natural resources in the vicinity of the project. Placing the power plant in a building

would visibly reduce its industrial character but would require the construction of a large, imposing building with its own visual impacts. The best solution would be to avoid the impacts by placing the power plant in a different location away from aesthetically appealing natural resources to an area with low viewer sensitivity.

Q14. The CECP is not the only project proposed in the area. Other projects include the double tracking of the rail line, construction of the Coastal Rail Trail, and widening of Interstate 5. In your opinion, what will be the cumulative visual and aesthetic resource impacts of these projects in combination with the CECP?

A14. Each of these projects will increase the significance of the CECP's visual impacts. Each will increase the number of individuals that view the proposed power plant and the Coastal Rail Trail will place individuals traveling at a very slow rate immediately adjacent to the facility. In addition, each of these projects will reduce the potential for screening the CECP which may lessen but not eliminate a significant adverse visual impact.

Q15. Would you recommend approval of the project from strictly a visual perspective if the city had permitting authority?

A15. No. This is contrary to the direction the city has taken with respect to visual resources and our efforts to make this an attractive city.

Previous CEC and CCC Visual Analyses

Q16. Have you read the visual analyses of the California Coastal Commission and California Energy Commission regarding San Diego Gas and Electric Company's previous proposal to construct a combined cycle power plant adjacent to the Encina Power Station?

A16. Yes.

Q17. Can you summarize the conclusions of the CCC regarding that proposal?

A17. In its report to the Energy Commission (California Coastal Commission, 1990, "California Coastal Commission Report to the California Energy Commission on San Diego Gas and Electric's Proposal for a New Power Plant At Encina or South Bay in San Diego County"), the CCC stated:

> "The visual environment at the Encina site is somewhat degraded by the existing plant, but the new plant would intensify that impact as well as extend the life of the current plant." (page 3, Executive Summary)
>
> "The Commission finds that, given the size of the proposed structures and the visually prominent nature of the site, the visual impacts of the development are not fully mitigable and that some unmitigable significant impacts to the

visual environment are likely to occur. For these reasons, the Commission finds that the impacts resulting from the expansions are not consistent with Section 30251 of the Act. Furthermore, the Commission finds that the cumulative visual impact of the proposed expansion in conjunction with the existing plant is significant, and is inconsistent with the Coastal Act." (page 33)

"The existing Encina Power Plant with its 383-foot-high stack and massive generating facilities substantially degrades the visual quality of the beach and shoreline. The addition of the proposed combined cycle project with its two 150-foot-high stacks will add significantly to the existing impacts." (page 45)

Q18. Can you summarize the conclusions of the CEC staff regarding that proposal?

A18. In its 1990 Issues and Alternatives Report on page Vis-14, the CEC staff concluded:

"The cumulative effect of the new combined –cycle facilities, particularly the new generation building and the two new stacks, and the large size of the existing Encina power plant facilities including the 387 foot stack, would result in a significant incremental increase in the perceived bulk of the facilities and in the vertical linearity of the combined number of stacks. In spite of the existing visual disturbance due to the existing plant, the incremental increase in visual disturbance would result in significant cumulative visual impacts. The mitigation measures proposed for the combined-cycle project, in the mitigation sections below, can reduce most of the cumulative impacts, but significant residual cumulative impacts due to the stacks would remain.

Q19. Do you agree with these conclusions and do you believe they are applicable to the CECP?

A19. Yes, I agree with the previous conclusions of the CEC staff and the Coastal Commission on the visual impacts of constructing a new power plant of the size of the CECP in this area. I also believe these conclusions apply to the CECP. While located in a slightly different place with a below grade foundation, the CECP will still have greater bulk because of the equipment required for air cooling rather than once-through cooling as proposed in the SDG&E project.

Q20. Has anything significant changed since the previous report?

A20. As a greater percentage of the city has been developed residents have become more aware of the value of the city's resources. The city has adopted plans to protect natural resources such as the Habitat Management Plan. Residents and businesses consistently rate the city's coastal resources as an important component of their quality of life. The Coastal Commission staff has interpreted coastal policies in a

more restrictive manner when considering Local Coastal Program Amendments and when considering projects in areas where the state has retained permit jurisdiction.

Critique of the CEC Staff's FSA

Q21. Have you read the visual analysis presented by the CEC staff in the FSA and do you agree with the visual and aesthetic characterization of the area as described in the FSA?

A21. I agree with the brief description of the scenic elements. The staff describes a very high quality visual and aesthetic environment correctly. It rightly notes, "Highway I-5, an eligible State Scenic Highway, and Carlsbad Boulevard, a locally designated scenic corridor, bound the EPS site to the east and west respectively; and a rail line carrying Amtrak and Coaster regional commuter trains bounds the CECP site to the west" and explains that, "…other designated local scenic roadways and adjoining residences have prominent views to the site over the lagoon.

I also believe it correctly characterizes the overall scenic quality of the project viewshed as being "comparatively high, distinguished by views of the Agua Hedionda Lagoon, the Pacific Ocean, substantial areas of agricultural open space, and predominantly residential development with a relatively high degree of visual intactness and unity."

My point of disagreement is how the description minimizes the dominance and adverse effect of the Encina Power Station. The CEC staff states that:

> "Although the generation structure and stack are large and industrial in character, they present a relatively simple, uncluttered architectural form comparable to a large building, albeit marked by the 400- foot tall exhaust stack, which extends its visibility and accentuates its visual dominance over a wider area."

I believe this short statement significantly understates the enormity and extensive presence of the existing power plant. Its outline provides the predominant feature visible from many parts of the city. Whether seen from the beach, the main road through the city, the freeway, the rail line, or residences and resorts in the hills to the east, the power plant is always present, day or night. Even if the views of the facility are obscured by vegetation, other intervening structures, or geography, for a resident or a visitor, the industrial presence of the power plant dominates the area.

The staff's statement of the main building being a "relatively simple, uncluttered architectural form" may be technically accurate but it diminishes the visual and aesthetic impact of the facility.

Q22. Have you reviewed staff's characterization of the project site and the proposed project?

A22. Yes. Staff's description of the site appears to be well considered. I believe, however, that a more complete description of the length, width and depth of key CECP structures would aid the Commission in assessing the severity of visual impacts. For example, motorists traveling south on Interstate 5 would be subjected to the entire length of the CECP and the new substation; a span of 2500 feet, over a quarter of a mile. Views from homes and recreational facilities on or above the inner lagoon would not only have the CECP height to block their views (stack height of 139 feet) but would also look upon the entirety of the CECP and the substation. This increases the severity of the negative view impacts.

While the CEC staff seems to applaud the uncluttered, enclosed form of the EPS, they do not comment on the open, exposed structure of the CECP. Rather than presenting the appearance of a commercial building such as the desalination project recently approved by the City and Coastal Commission, the CECP add to the industrial atmosphere confronting countless residents, visitors, and travelers on Interstate 5 and Amtrack.

Q23. Do you agree with the CEC staff's characterization of the sensitivity of viewers observing the proposed CECP?

A23. Yes. The FSA characterized considered viewer sensitivity in terms of the Key Observation Points selected for its visual analysis. The CEC staff rated the visual sensitivity from most of the KOPs as high and the others as moderate:

> KOP 1 – "Overall, sensitivity of the Carlsbad Boulevard/Carlsbad Beach viewshed is thus considered high."
> KOP 2 – "Overall visual sensitivity of this viewer group is thus moderate to high."
> KOP 3 – "Viewer concern, viewer exposure, and existing visual quality for this group of viewers and viewpoints are all high. Overall viewer sensitivity is thus high."
> KOP 4 – "As under KOP 3, viewer concern, viewer exposure, and existing visual quality for this group of viewers and viewpoints are all high. Overall viewer sensitivity is thus high."
> KOP 5 – "As under KOP 3, viewer concern, viewer exposure, and existing visual quality for this group of viewers and viewpoints are all high. Overall viewer sensitivity is thus high."
> KOP 6 – "Although duration of visual exposure to the project site is brief, the number of viewers is very high, and many commuters are likely to pass the site twice a day, daily. However, viewer exposure to the project site, due to substantial screening by the existing earth berm and tall trees adjoining the highway, is considered moderate."

KOP 7 – "Overall viewer sensitivity for northbound motorists on I-5 in this segment is considered to be moderate."
KOP 8 – "As under KOP 1, viewer exposure, viewer concern and visual quality from this KOP are all high. Overall, sensitivity of this viewshed is thus considered high."
KOP 9 – "Overall sensitivity of this KOP is thus considered moderate, reflecting the modest existing visual quality and very brief viewer exposure."

I believe the visual and aesthetic sensitivity of individuals from most of the places around the proposed project is high. I say this not just from a strictly visual perspective but an overall aesthetic perspective as well.

Q24. Do you agree with the CEC staff's approach for evaluating the visual impacts?

A24. The CEC staff uses an accepted approach that is intended to reduce the apparent subjectivity and increase the replicability of a visual analysis. By focusing the analysis on Key Observation Points with before and after photographs, the analysis can present a static view of a project available for analysis and discussion. While this approach can capture the visual representation of a project at a specific time and location, in my opinion, it cannot capture the overall aesthetic impact of a project. For example, a single picture of an ocean beach cannot capture the smell, sound, feel, and overall visual impression of the beach.

Q25. Do you have any comments on Staff's discussion of Scenic Vistas?

A25. While we agree with the general discussion, it is important to emphasize the quantity and quality of the scenic vistas in the vicinity of the CECP. It is unfortunate that the CECP is proposing a project located in an area with "several scenic vistas" and numerous scenic routes or corridors with high scenic quality views.

Q26. Do you agree with the discussion of Visual Character or Quality?

A27. While it is an informative discussion, there are two issues that demand a response. First, the CEC staff claims "While the proposed project is located on the edge of the lagoon, the project would not directly affect the lagoon or its scenic value." I find it perplexing that the staff can conclude that a power plant with 139-foot stacks on the edge of the lagoon would not affect its scenic value. However, impacts from the CECP become more clear after factoring in the cumulative projects. (see below) Second, the CEC staff's discussion of construction impacts is, no doubt, correct and has some merit. However, the City believes that construction impacts are short-term impacts and believes that no mitigation is necessary. Even with a project where the construction schedule is approximately two years, the visual impacts caused by the presence of construction equipment is a transitory impact and, in the city's view, no mitigation is necessary.

Q28. Do you agree with the CEC staff's discussion of mitigation measures?

A28. The proposed mitigation measures (conditions of certification) will not mitigate all visual impacts of the proposed project as previously discussed in this testimony. The ability to create a landscape buffer between the project and key observation points is limited by the future widening of Interstate 5 and Fire Department requirements. Relying on berming, the planting of 24 inch box trees, and painting of the proposed structures will not adequately mitigate the project's visual impact.

Q29. Do you agree with the CEC staff's discussion on cumulative impacts?

A29. The CEC staff's discussion on pages 4.12-24 to 4.12-29 of the FSA is helpful , but does not clearly give the current state of the cumulative projects or include project impacts with the cumulative projects included in its analysis.

Q30. What do you want to add to the staff discussion of the "cumulative projects"?

A30. Staff discusses a number of projects in its cumulative analysis. Staff then makes certain conclusions regarding the impacts that these projects would have from a visual standpoint. As discussed in other testimony, all of these projects are foreseeable and a full visual analysis of the CECP including these cumulative projects is necessary. Staff performed some analysis but did not complete its work. Unfortunately, staff failed to create any visual representations of the views from the key observation points assuming these cumulative projects. CEQA may not require visual representations from the selected KOPs, but it is misleading to include a set of visual representations without these projects and neglect to include representations with these projects. A brief summary of these projects (for additional discussion see the Prepared Direct Testimony of Mr. Hogan and the attachment from Mr. Garuba):

1. Coastal Rail Trail. The Coastal Rail Trail has been under development and is scheduled to provide a bicycle and pedestrian pathway for over forty miles from San Diego to Oceanside. The alignment within the city of Carlsbad is close to a final alignment. The City has determined that it must be placed on the east side of the BNSF rail tracks. The portion of the trail from Canon Avenue north to the rail bridge over the Agua Hedionda Lagoon was part of the Poseidon desalination project community benefits, approved by the Coastal Commission.

2. North Coast Interstate 5 HOV/Managed Lanes Project. This Caltrans project has been under development since 2004. CEC Staff concludes that construction will take place "5-10 years following initial project commencement", and the city agrees with this assessment. The alignment for the project is certain since Caltrans cannot move the freeway without prohibitive cost increases due to a longer span of the Agua Hedionda Lagoon. If the analysis of the visual impacts of the CECP is conducted without consideration of the I-5 HOV project, project impacts will be misleading and incomplete. The City believes the I-5 HOV project

will go forward despite any environmental impacts that may result – this project is too important to both the state of California and federal government. The City agrees with the Staff in that the berm to the west of the freeway, and its existing foliage, will be removed with construction of this project.

3. Sewer Interceptor and Lift Station. This project replaces aging infrastructure used to transport the raw sewage to the regional waste water treatment facility in south Carlsbad. As part of an existing regional waste treatment network, the location of the pipeline and lift station cannot be moved.

4. LOSSAN. This double-tracking rail project will require an additional right-of-way. Although there will be no visual impacts from the double tracking project, the additional required right-of-way adds to the already-constrained CECP project site.

Q31. Although you consider the cumulative impact analysis incomplete, do you concur with the conclusions?

A31. I partially agree with the CEC staff's cumulative discussion. On page 4.12-27, the FSA states:

> "The adverse effect on visual quality of this segment of I-5 from the loss of the existing berm and trees, and the resulting exposure of the EPS and the proposed CECP as seen by south-bound motorists on I-5 is considered to be potentially *severe*." (emphasis added)

The FSA goes on to state:

> "The cumulative visual effect introduced by the proposed CECP in combination with the I-5 widening project would thus nullify the less-than-significant visual impact discussed in this analysis for KOPs 2, 3, 4 (north shore of lagoon), and 6 and 7 (Highway I-5), since that determination was dependent upon the presence of the existing berm, existing landscape screening, and the staff-recommended planting of additional in-fill landscape screening. Absent mitigation, it currently appears that a significant cumulative visual impact could occur in the absence of modification to either the I-5 widening project alternatives, the CECP, or both."

I agree with the conclusions of the CEC staff that the cumulative impacts from the CECP and widening of I-5 represent a severe visual impact.

The CEC staff then proposes mitigation VIS-5 which creates a permanent buffer zone between I-5 and the CECP with a new landscape berm planted with large container, fast growing evergreen trees no later that the start of project operation.

With these measures in place, the CEC staff expect there to be no significant adverse impacts.

While the proposed mitigation will provide some visual screening, I do not believe it is sufficient to mitigate the impacts to less than significant. I also understand there are feasibility questions related to the mitigation given fire safety concerns.

Finally, the CEC staff recommends urgency in implementing this mitigation, if feasible and I note that in its testimony, the applicant has requested that implementation of VIS-5 be delayed:

> "VIS-5 should be revised to allow the mitigation plan to be submitted if and when the 1-5 widening project is approved on a path that encroaches onto the CECP site and the land has been obtained from the project owner."

Q32. Are there foreseeable projects that were not evaluated by Staff?

A32. Yes. As discussed in the testimony of Mr. Hogan, the elimination of once-through-cooling will undoubtedly result in the retirement and demolition of Encina units 1-5. This property will then be converted to other uses. The CEC staff reflects the reality of this on page 4.12-24 of the FSA:

> "Although the time frame is not known, it is assumed that at some point in the future, the remaining generation Units (4 and 5) within the EPS generation facility not decommissioned under the CECP project, will also be decommissioned, in accordance with long-range City of Carlsbad plans."

According to a report prepared by staff of the CEC, California Public Utilities Commission and California Independent System Operator (July 2009, "Implementation Of Once-Through Cooling Mitigation Through Energy Infrastructure Planning And Procurement", page B-2), replacement of all five units of the Encina Power Station is to be completed by 2017. The impacts of the CECP considering removal of the Encina Power Station should have been evaluated.

Q33. Has the City evaluated the visual impacts of the CECP assuming the existence of the cumulative projects?

A33. Yes. Please refer to the testimony of HNTB for (visual representations of the CECP and surrounding features?) These representations are helpful in assessing the visual impacts from the selected KOPs, although staff has provided a great deal of pertinent analysis. Although I believe the KOP approach is limited, I have listed below the CEC staff's judgments on the Visual Quality, Visual Change, and visual impacts at the selected KOPs. I have also included my suggested change to this analysis and the reasons for the difference are included.

<u>KOP 1</u> – View from Carlsbad Boulevard Looking Southeast.

Staff	Visual Quality – High	Visual Change – low to moderate
City	Visual Quality – High	Visual Change – High

The "high" visual change designation represents both the inability to shield the CECP with berms and foliage from Carlsbad Boulevard views, but also the views of the CECP following redevelopment of the Encina parcel. Staff determined that the Visual Change would be low to moderate due to the tree canopy and the dominance of Encina units 1-5. After the removal of the berm, the tree canopy disappears and the demolition of Encina units 1-5 the CECP become highly visible. Also, the entire parcel, with the exception of the CECP with its 139-foot stacks and 88 foot HRSGs, will be below the City's 35 foot height limit. This would make the CECP the most dominant feature of the horizon for viewers looking east from Carlsbad Boulevard. The height, depth and length of the CECP, and the dominance of the CECP make Visual Change high.

KOP 2 – View from Pannonia Trail at Capri park

Staff	Visual Quality – Moderate to High	Visual Change – Moderate
City	Visual Quality – High	Visual Change – High

Staff's designation of "moderate to high" results from the relatively small number of homeowners with this view, distance to the site and screening. The "High" Visual Quality is due, in part, to the heightened attention to the scenic vista looking across the Inner Agua Hedionda Lagoon toward the sea following the demolition of Encina units 1-5. More importantly, this CEC proceeding has caused greatly increased attention of its citizens to the visual impacts of the CECP. Over 2,000 Carlsbad citizens have signed petitions and many have participated in a photo contest for the city's ugliest views – all of which contain the existing power plant. This attention alone results in a "High" Visual Quality designation. With regard to the Visual Change "High" designation, the absence of the berm between the freeway and the CECP and the absence of protective screening makes the views of the CECP dominant and not in keeping with the ocean vista expected by citizens at KOP 2. Finally, following demolition of Encina Units 1-5, the CECP would be the only structure higher than 35 feet, thus making the CECP,by far, the most dominant feature on the horizon. The failure to attempt to shield or treat the façade of the CECP makes the views that much worse.

KOP 3 – View from end of Cove Drive

Staff	Visual Quality – High	Visual Change – Moderate
City	Visual Quality – High	Visual Change – High

Staff's designation of Visual Change as "moderate" is due, in large part, to the imposition of Condition of Certification VIS-2, which requires the CECP to screen the plant with "informal groupings of tall, fast-growing evergreen shrubs and trees". Two issues preclude the viability of this screening plan on the eastern side of the CECP: insufficient room exists for "informal groupings" of trees and the size of replacement trees will take many years to reach a size that would provide partial screening of the proposed facility. As recreational users of the inner Agua Hedionda lagoon will experience this view, and the full mass of the CECP will silhouette the skyline, the Visual Change is High. Finally, the absence of shielding with the demolition of Encina 1-5 and replacement with structures below 35 feet, the CECP would be highlighted on the horizon.

KOP 4 – View from end of Hoover Street

Staff	Visual Quality – High	Visual Change – Weak to Moderate
City	Visual Quality – High	Visual Change – High

Staff's designation of Visual change as "weak to moderate" appears to stem from the foreground screening. With the construction of the Interstate 5 HOV project, the berm and foreground screening would disappear. Views of the CECP from this public access point would then be unobstructed and highly visible. The CECP would dominate the views across the inner Agua Hedionda lagoon, disrupting the scenic quality of the lagoon. The demolition of Encina units 1-5 open the view shed behind the CECP, but the dominance of the CECP would overshadow the opened vista to the ocean. For these reasons, the Visual Change would be "high".

KOP 5 – View from end of Harbor Drive

Staff	Visual Quality – High	Visual Change – Low
City	Visual Quality – High	Visual Change – High

Staff's designation of Visual Change as "low" is based upon the "the existing berm and tall Eucalyptus canopy (which) provides nearly complete screening of the project." The 139-foot stacks and 88 foot HRSGs would be completely visible from this viewing location across the middle Agua Hedionda lagoon from the proposed CECP. The demolition of Encina units 1-5 would highlight the industrial nature of the CECP by making the CECP the sole outstanding significant structure on the southward view. Because any future development on the Encina site would be 35 feet in height or less, the 139 foot stacks and 88 foot HRSGs would stand out even more. For these reasons, the Visual Change would be "high".

KOP 6 – View from southbound U.S. interstate 5 at Agua Hedionda lagoon.

Staff	Visual Quality – Moderately high	Visual Change – Low
City	Visual Quality – High	Visual Change – High

Staff's designation of Visual Quality as "moderately high" stems from the existing visual quality, which includes the berm and foliage between the Interstate 5 and the proposed CECP. This KOP represents a motorists' view driving southbound on the Interstate. Views from this scenic route would change dramatically with the elimination of the berm and foliage. Even though motorists would view the CECP for only a short amount of time, the massive industrial views in an area where motorists expect views of the beach and ocean requires a visual quality designation as "high". With regard to Visual Change, the change from berm and almost-complete screening to no berm and no effective screening yieldan unobstructed view of the CECP, and require a visual change designation as 'high".

KOP 7 – View from northbound U. S. I-5 at Canon Road

Staff	Visual Quality – Moderate	Visual Change – Moderate
City	Visual Quality – Moderate	Visual Change – Moderate/high

Staff's visual change designation as "moderate" is based upon the brief, but relatively strong views of the industrial CECP and the new substation. With the elimination of the berm and foliage, the views from motorists traveling north on Interstate 5 would be brief, but significant. With the elimination of the berm and foliage, coupled with the demolition of Encina 1-5, the industrial CECP dominate Northbound motorists' views. Therefore, visual change is moderate to high.

KOP 8 – View: Carlsbad Boulevard looking east from Encina Power Plant Station outfall

Staff	Visual Quality – High	Visual Change – Moderate
City	Visual Quality – High	Visual Change – Moderate to High

The addition of the CECP would add to the industrial nature of the site and thus would have a negative visual impact. With the demolition of the Encina 1-5 building and stack, and the replacement of these structures with structures 35 feet in height or lower, the CECP would stand out and degrade the view shed. For these reasons, the Visual Change should be considered Moderate to High.

KOP 9 – View from Burlington Northern Santa Fe Rail Corridor looking east

Staff	Visual Quality – Moderate	Visual Change – Moderate
City	Visual Quality – Moderate	Visual Change – Moderate

KOP 10 – View from existing Encina Power Plant site

Staff Visual Quality – (no determination) Visual Change – (no determination)
City Visual Quality – High Visual Change – High

Staff failed to make any determination with regard to views from the existing Encina units 1-5 power plant. The City requested this view as it is foreseeable that the existing Encina units 1-5 will be retired and the structures demolished in the near future – probably within two or three years following completion of the CECP. Upon the redevelopment of this parcel of land, tourists and citizens would be subjected to the highly visible, industrial and massive CECP when viewers would expect to see scenic vistas. For Visual change, as redevelopment would be 35 feet or lower, the CECP would be much taller than the redeveloped property, thus imposing an industrial facility of great height in close proximity to citizens and tourists. For this reason, Visual Change should be high.

KOP 11 – View from proposed Coastal Rail Trail

Staff Visual Quality – (no determination) Visual Change – (no determination)
City Visual Quality – Moderate Visual Change – Moderate

The City plans to construct the Coastal Rail Trail on the east side of the BNSF-Santa Fe railroad tracks and will eventually connect as part of a trail from Oceanside to San Diego. Viewer expectations will be a mixture of scenic vistas, commercial development and industrial facilities. For this reason, the City believes visual quality will be moderate. With regard to Visual Change, the City believes the size, proximity and lack of effective screening of the CECP will result in a significant adverse visual impact. For this reason, the City believes visual change will be moderate.

Q34. What are your conclusions with regard to this KOP analysis?

A34. Staff recognizes the expectations of Carlsbad citizens and visitors and assigns 5 "high" determinations of Viewer Quality or sensitivity to scenic vistas (The city believes there are 9 "high" areas). A careful reading of staff's testimony reveals that there may be little or no dispute regarding the visual impacts due to change if the Commission considers the Interstate 5 HOV project in its analysis. The City included all foreseeable cumulative projects in its analysis and inescapably conclude that the CECP will cause significant, adverse visual impacts.

While these two determinations are not binding on the Energy Commission, the logic of the analysis should not be ignored. Keep in mind that these determinations

were considered without the Interstate 5 HOV project, which will make the visual impacts greater.

Q35. Are there other proceedings that merit consideration?

A35. Yes. In the Metcalf proceeding (99-AFC-3), the staff determined that the project had the potential to cause significant adverse visual impacts. In that proceeding, staff considered eleven KOPs and their determinations appear to result in fewer high sensitivity and quality determinations than are appropriate in the CECP.

Q36. Considering all of the preceeding analysis, what is your overall conclusion regarding the visual impacts that would result if the CECP is constructed?

A36. A number of scenarios conclude that the CECP's site is not an optimal location. A power plant, seen by thousands every day, located on the coast, next to a scenic freeway and a valuable lagoon does not serve the best interests of the people of the state of California. If the Commission ignores Caltrans and the widening of Interstate 5, the CECP will have significant environmental impacts that cannot be mitigated. The Coastal Commission report on the NOI and the Energy Commission's Issues and Alternatives Report are relevant and useful guides. Recognizing that the inevitable construction of the planned Interstate 5 widening project eliminates any screening to the north and west of the project, the CEC Staff discussion of these impacts thus has particular relevance.

Safety
Chief Kevin Crawford

FIRE SAFETY

PREPARED DIRECT TESTIMONY
OF
KEVIN CRAWFORD
FIRE CHIEF
CITY OF CARLSBAD

Q1. Please State your name and place of employment

A1. My name is Kevin Crawford and I am the Fire Chief for the City of Carlsbad.

Q2. How long have you been employed by the City of Carlsbad?

A2. I have worked for the City of Carlsbad since 1986 and have served as the City's Fire Chief since 2002. I have worked in the Fire and Emergency Medical Services field for the past 27 years.

Q3. What are your responsibilities as Fire Chief?

A3. As Fire Chief, I am responsible for overall operations of the Carlsbad Fire Department, which includes fire prevention, suppression, fire inspection, emergency medical services and disaster preparedness.

Q4. What is the purpose of your testimony?

A4. The purpose of my testimony is to:

1. Summarize the efforts of the City of Carlsbad Fire Department to understand and evaluate the project

2. Overview Fire Department's concerns with the proposed CECP

3. Provide recommendations to the CEC Commissioners as the Fire Chief

Q5. What is the process you have gone through up until this point with regards to CECP?

A5. It is important to understand that the Fire Department does not have a position on the merit of siting the CECP from a land use perspective. The Fire Department has made a conscious decision to avoid politicizing the emergency services component of this project. Per the Fire Department's role and responsibilities, we were asked to review the CECP from an emergency response and fire life safety perspective. As such, I directed both my Fire Marshal and Fire Operations Chief to review and evaluate the proposed

CECP. To that end, the Fire Department has diligently worked to understand and evaluate the project.

Q6. Did the Fire Department have the necessary information to conduct its analysis?

A6. No. The lack of vital project information became apparent in January 2009 with the release of the Preliminary Staff Assessment. Based on the Department's concerns with information identified in that document and provided by the Applicant, the Department requested additional information. These requests for additional information, including two made by myself on March 10, 2009 and April 28, 2009, have either gone unanswered by the Applicant and the CEC staff or the information that was provided was incomplete. These requests included providing the Fire Department with a comprehensive site map with relevant details of the CECP, topographical and elevation information, boundary lines, and project characteristics where available of adjacent developments such as the widening of Interstate 5, improvements to the Carlsbad/Vista Sewer receptor, Coastal Rail Trail, and double tracking of the railroad. The Fire Department also needs accurate information on temperatures adjacent to cooling equipment located in the pit, plume velocities, and the location and height of overhead wires and lines,

From my perspective as Fire Chief, I become deeply concerned when developers don't provide information that the Department requests.

Recognizing that the Department has been provided with limited information, I requested that my staff perform their analysis based on the information available including the Final Staff Assessment. The Fire Department's evaluation also took into account the collective impacts of the Poseidon desalination plant, double tracking the rail line west of the project, widening of the I-5 freeway, and other projects proposed for the immediate area. We also considered the visual schematics created by HNTB.

Q7. Based on the Fire Department's evaluation, have you identified any concerns with the project?

A7. Yes. As highlighted in the testimony of both the Fire Marshal and the Operations Chief, the Department has identified a number of concerns related to the CECP. These concerns include:

- Site design,
- Emergency access,
- Proximity to other critical infrastructure, and
- Proposed Fire Suppression Design

Q8. Do you agree with these concerns?

A8. Yes. I agree with the concerns expressed by both the Fire Marshal and the Operations Chief.

Q9. Based on these concerns, have you developed any conclusions regarding the CECP?

A9. Yes, I have come to several conclusions regarding the project based on numerous discussions with my staff. My conclusions are:

There is insufficient information about the specific design of the CECP to perform a proper evaluation of the risks to emergency response personnel, plant workers, or the public of the project. In general, there is not adequate information to properly evaluate the project.

Based on information that is available, the project is deficient in several areas, including:

- site access,
- the width of emergency access lanes,
- the lack of emergency access "above the rim" of the power plant, and
- the inadequacy of the proposed fire suppression equipment.

As such, I believe that the CECP does not adequately address the Carlsbad Fire Department's concerns and that if constructed, provides constrained access and represents a potentially hazardous location which limits the ability of the Carlsbad Fire Department to provide service to it.

Q10. Can you elaborate on these concerns?

A10. Yes. Let me provide you with what I consider to be the most critical concerns from those identified by my Fire Marshal and Operations Chief:

Site Design and Emergency Access

The design of the project creates further concern. The only emergency access lane to the project will also have the daily traffic of the plant on it which will impede any emergency services. More importantly however, the width of the lane is inadequate. Considering its multipurpose use within a confined location and the proposal to use the existing access lane as the evacuation route in case of emergency, I believe it is prudent planning to require an access road which can accommodate the myriad of needs. As such, I concur with my staff's recommendation that the emergency access lane be widened to 50 feet around the base of the plant.

The proposed removal of the access road above the pit is distressing. The Fire Department needs adequate area to access the pit from above. The proposed site has limited emergency access due to the I-5 freeway, railroad tracks, and lagoon. Access to the rim above the pit may prove crucial in effectively combating a future emergency. Again, per the recommendation of my staff, I believe that it is sound planning to require a 25 foot access road above the "rim" of the pit.

Fire Protection Water Supply

As mentioned in the Fire Marshal's testimony, the Fire Department deems the proposed water supply for the fire suppression system as inadequate. In case of an emergency, the fire suppression system called for in this proposal is not appropriate for the urban area for where the plant is to be located and is not to the standards of Carlsbad's Fire Department.

Q11. Have you developed a recommendation for the CEC Commissioners regarding the CECP?

A11. Yes. Due to the numerous project concerns which have been repeatedly stated, I recommend that the Energy Commissioners do not approve the CECP as proposed.

Q12. Is there any information or design modifications that the CECP could take that would offset your concerns.

A12. Yes. The project should, at a minimum, need to address the issues that the Fire Marshal and the Operations Chief have identified. These are:

- Provide the requested design and operation information about the CECP;
- Adjust the site plan to accommodate a 50 foot minimum emergency access width at the base of the "pit" between any structures or facilities and the base of the pit sides;
- Provide a minimum 25 foot emergency access along the "rim" of the pit, and make recommended changes to the fire suppression system;
- Provide a looped fire protection water system connected to the Carlsbad Municipal Water District;
- Modify any facility emergency response plan to indicate the actual hazardous materials response capability and time;
- Recognize that emergency response times will be extended due to limited site and facility access; an
- Recognize that the site is constrained which may limit emergency response operations depending of the circumstances.

Safety
Chris Heiser

FIRE OPERATIONS

PREPARED DIRECT TESTIMONY
OF
CHRIS HEISER
OPERATIONS CHIEF
CITY OF CARLSBAD FIRE DEPARTMENT

Q1. Please state your name and place of employment.

A1. My name is Christopher Heiser and I am the Fire Operations Chief for the City of Carlsbad Fire Department ("CFD").

Q2. How long have you been employed by the City of Carlsbad?

A2. I have been employed by the Carlsbad Fire Department for 21 years and have held the position of Paramedic/Firefighter, Paramedic Captain, Shift Battalion Chief, Training Battalion Chief and for the past six (6) years as Division Chief in charge of Fire Operations. I have been involved in the Fire and Emergency Medical Service since 1979.

Q3. What are your responsibilities as Operations Chief?

A3. As Operations Chief, I have the responsibility for evaluating the Fire Department's ability to safely and effectively respond to fire, rescue and emergency medical services incidents within the City of Carlsbad. I was asked to review the proposed Carlsbad Energy Center Project ("CECP") to help determine the Fire Department's ability to respond to incidents associated with it, during both the construction and operations phases.

Q4. Do you have any other assignments or responsibilities that are regional in nature?

A4. I am a Task Force Leader and a Program Manager for the Metropolitan Medical Strike Team ("MMST"), which responds to any terrorism attack that might occur in San Diego County. In this capacity, I have conducted target analyses and mitigation planning for numerous complex, high-profile facilities throughout the County.

Q5. Can you please describe your involvement with the CEC and the Applicant up to this point?

A5. I met with the Applicant one time to discuss questions and concerns raised by the proposed project. Specifically, I had questions regarding the complexity of the design in conjunction with the limited access of the site. During that meeting, in spring 2009, the Fire Department requested detailed schematics to include three-dimensional drawings to assist in its evaluation of the CECP. This was to insure that adequate and safe ingress and egress for both the Fire Department and building occupants was identified.

Additionally, this information was requested to assist in the development of an accurate threat assessment and further development of an effective response plan. To date, the requested plans have not been provided.

CFD felt it important to conduct a review of the CECP in order to provide our best professional recommendation to the Fire Chief, City Council, and the Energy Commission. Because of the lack of requested information the CFD had to rely on available materials that were prepared by both the Applicant as well as the CEC staff, including the FSA. Additionally, in order to assess the cumulative impacts on emergency response to the CECP by taking into account a widened I-5 freeway, we supplemented the schematics provided in the FSA with those constructed by HNTB.

Q6. What is the purpose of your testimony?

A6. The purpose of my testimony is to:

1. Describe the Carlsbad Fire Department;

2. Identify potential emergency responses that are associated with the CECP and the associated response times; and

3. Highlight project concerns and CFD's conclusions from an operational perspective.

Q7. Please describe the Carlsbad Fire Department.

A7. The Carlsbad Fire Department is an ISO Rated Class 4 All Risk Fire Department. The Carlsbad Fire Department consists of Operations, Fire Prevention, Emergency Preparedness and Administration. Fire Operations, which has constant staffing of 25 personnel 24/7 consists of the following:

- 6 Fire Stations,
- 5 Fire Engines (3 people per engine),
- 1 Ladder Truck (3 people per truck),
- 3 Ambulances (2 people per ambulance), and
- 1 Battalion Chief.

All Carlsbad firefighters have the dual role of Firefighter-Paramedics and all fire department engines are equipped and staffed with a minimum of one paramedic. Neighboring jurisdictions have similar staffing.

All Carlsbad Firefighters are trained to the level of HazMat First Responder, Operations. First Responders, at the Operations level, are defined as, "individuals who respond to

releases or potential releases of hazardous substances for the purpose of protecting nearby persons, property, or the environment from the effects of the release." As identified in the testimony of Fire Marshal Weigand, CFD personnel are trained to respond in a *defensive* fashion. Their function is to contain the release from a safe distance, keep it from spreading, and prevent exposures. This level of responder cannot stop a release of hazardous materials of any magnitude. If a hazardous material incident occurs, the rescue and mitigation of the incident would be managed by San Diego County's Hazardous Incident Response Team (HIRT). HIRT has a response time of 45 to 60 minutes, depending on traffic and availability.

In 2009, the Carlsbad Fire Department responded to over 9,000 calls for emergency service. These calls included both residential and commercial occupancies and responses to the commercial airport, major commercial occupancies including Legoland Amusement Park. Contrary to information contained in the FSA, the Fire Department has responded to several calls at the Encina Power Station. In addition to responding and managing emergency incidents at these facilities, I have conducted hazard and threat analyses for wildland incidents, terrorism events, and structural responses.

Q8. Please describe the types of calls which you would anticipate the Carlsbad Fire Department would need to respond to the CECP for?

A8. There are four probable types of emergency incidents at the CECP facility to which the Carlsbad Fire Department will likely be requested to respond: medical aid, HazMat, technical rescue and structure fire. Based upon initial response requirements, each emergency response has a specific number and type of apparatus assigned. Additional apparatus and personnel are requested as needed as part of existing Mutual Aid Agreements. For working incidents at a facility like the proposed power plant, an automatic duplication of initial response requirements is probable.

- Medical Aid: 1 Engine; 1 Medic Unit; Total of 5 personnel
- Hazardous Material Release: 2 Engines; 1 Medic Unit; 1 Truck; 1 Battalion Chief; Total of 12 personnel
- Technical Rescue (confined space): 3 Engines; 1 Truck; 1 Medic Unit; 1 Battalion Chief; Total of 15 personnel
- Commercial Structure Fire: 4 Engines; 1 Truck; 1 Medic Unit; 1 Battalion Chief; Total of 18 personnel

Q9. Do you agree with the FSA assessment that a Carlsbad Fire Department emergency response to the proposed CECP facility would occur in 6 minutes?

A9. No, I do not agree with the FSA assessment that an emergency response would occur within 6 minutes.

The response time to an emergency is composed of 3 aspects; dispatch, turnout, and travel time. Typically, dispatching and turnout time is factored at a total of 3 minutes. Travel time is predicated on apparatus location and traffic conditions, at the time of the call. The evaluation of adequate response time to an incident includes the total response time of the apparatus and personnel required to effectively manage the incident.

The total response time for a medical aid (2 apparatus) to the entrance of the proposed CECP facility would be approximately 8 minutes. The total response time for a technical rescue emergency (6 apparatus) would be approximately 12 minutes. The response times for a commercial fire and HazMat response (7 apparatus) will exceed 12 minutes.

As stated earlier, HazMat responses will be the responsibility of HIRT, which has an estimated response time of 45-60 minutes.

These times reflect arrival at the Avenida Encinas point of entry and do not include travel time through the facility, crossing rail lines and downgrade access to the facility. Response times will also be degraded due to traffic issues created by the emergency. Further, during the construction phase, response times will be increased due to the limited avenues of ingress and egress into the facility.

Q10. Do you agree with the characterization that the CECP site is not overly constrained and that other power plants are located in a similar environment?

A10. No. I do not agree with that assessment. In the FSA, staff states there is no difference between the proposed site in Carlsbad and other existing power plants. The proposed site in Carlsbad is best described as a 30 foot below-grade bowl within 100 feet of Interstate 5 to the east, an active rail line on the immediate border to the west, a lagoon to the north, and an access route from the south that runs beneath high-tension electric distribution lines.

The proposed facility design severely limits site access into and out of the facility. Additionally, any major emergency event at the facility will significantly impact traffic flow on Interstate 5 and commercial and freight rail traffic. Further, the proposal has limited and channeled escape routes, which will delay evacuation and interfere with emergency responders' access into the site. The limited access at the proposed power plant will increase the Carlsbad Fire Department's response time. Increased response times will increase the morbidity and mortality of patients. Also, the limited access may preclude the Fire Department's ability to appropriately address the emergency.

Q11. Does the below-grade design and limited access of the proposed CECP facility affect the Carlsbad Fire Department's response requirements?

A11. Yes. National Fire Protection Administration (NFPA) 1500 identifies that in situations where the risk to fire department members is excessive, activities shall be limited to defensive operations. The limited access into the facility combined with hazardous material concerns, potentially limits the Carlsbad Fire Department's fire ground

operations to defensive, as opposed to offensive, operations, depending on the circumstances and nature of the incident.

Q12. Can you please elaborate on potential impacts from a CECP emergency on Interstate-5 or the rail line?

A12. The easternmost edge of the proposed CECP Project rests approximately 100 feet from Interstate 5. Even a minor emergency event at the proposed CECP facility that creates any visual impact will have significant impacts to the traffic flow on both North and Southbound Interstate 5. Any incident resulting in the release of hazardous material would potentially result in the mandatory shut-down of all lanes of Northbound and Southbound Interstate 5 and the adjacent railroad line until the incident was resolved.

Q13. Can you please describe your concerns during the construction phase of the CECP?

A13. During the construction phase, on average, there are projected to be over 350 daily workers on-site and engaged in heavy construction with related heavy equipment. The FSA Report clearly identified the hazards associated with the construction of a gas-fired power plant. The FSA Report also recommends actions to reduce or eliminate these identified hazards. By their own admission, complete elimination of the hazards is not possible. The Carlsbad Fire Department will be responsible for the emergency responses created during the construction phase. As previously stated, response times to the emergency will be extended due to the limited access.

Q14. Do you agree with the FSA requirement of an Automated External Defibrillators (AED) to augment emergency medical attention?

A14. The Carlsbad Fire Department supports the use of AEDs. However, the application of an AED is limited in nature and the majority of cardiac emergencies cannot be treated by such. Regardless of the nature of the medical emergency, an injured or ill worker has the best chance of survival with rapid EMS intervention. Therefore, while I support the inclusion of requiring an onsite AED, I do not believe that it will make a significant impact on project safety.

Q15. Have you reached a conclusion about the appropriateness of the CECP from a fire suppression standpoint?

A15. Yes. Based upon the information presented by both the Applicant and the CEC staff, including a review of the Worker Safety and Fire Protection section of the FSA, I have concluded that the Carlsbad Fire Department cannot safely and effectively respond to emergency calls for service to the proposed CECP. This conclusion is based upon limited facility avenues of ingress and egress, the below-grade bowl configuration and the facility's proximity to major transportation routes all of which impede the ability of the Carlsbad Fire Department to safely and effectively manage emergency incidents associated with the CECP. As such, if the CECP was under the permitting authority of the City, I would recommend that the project not be approved as currently proposed.

Safety
Jim Weigand

FIRE OPERATIONS

PREPARED DIRECT TESTIMONY
OF
JAMES WEIGAND
FIRE MARSHALL
CITY OF CARLSBAD

Q1. Please state your name and place of employment

A1. My name is James Weigand and I am currently the Fire Marshal for the City of Carlsbad.

Q2. What are your duties and responsibilities as Fire Marshal?

A2. I am responsible for the management and supervision of the Fire Prevention Division of the Carlsbad Fire Department ("CFD"). The Fire Prevention Division is responsible for the review of all types of project and building plans related to compliance with the fire, life safety and hazardous materials requirements of the California Fire and Building Codes. In addition to plan review and inspection responsibilities, the division conducts compliance inspections during the construction process as well as maintenance inspections throughout the life of the facility. Other division responsibilities include fire/arson investigation, public fire and life safety education, long range planning and the regulation of the use handling and storage of both hazardous materials and hazardous waste. The division also provides incident support during department responses to large events.

Q3. How long have you been evaluating fire safety for industrial facilities?

A3. I have been a member of the fire service for the past 22 years. Of that time, the majority of my experience has been with the regulation, evaluation and when necessary the response to emergencies at industrial facilities. In addition to privately operated facilities, I have regulated government owned-government operated facilities as well as government owned-contractor operated facilities.

Q4. What specific actions have you taken with regard to the Carlsbad Energy Center Project ("CECP")?

A4. The Carlsbad Fire Department has actively attempted to obtain sufficient information from the applicant and the California Energy Commission (CEC) staff on the proposed project. To date, information provided to the CFD has either been incomplete or inaccurate. Several of the most recent requests (March-April 2009) made by the Fire Chief have gone unanswered.

As one would expect, this lack of information has greatly impacted the Fire Department's ability to evaluate the actual potential fire and life safety impacts of this project and the Department's ability to provide protection to the facility. The lack of information has also created uncertainty as to the extent an emergency would have on our community.

However, recognizing the licensing authority of the CEC, the size and complexity of the proposed project, and the potential impact it would have on the community, the Fire Department felt it critical to provide the Commission with its best professional recommendation. To that end, CFD staff met on numerous occasions to discuss the CECP in order to evaluate the project and develop a recommendation for the Fire Chief. Staff evaluated available materials; including project information contained in documents submitted to the CEC by the Applicant as well as CEC staff generated documents, including the CECP FSA. Based on this information, I was able to determine the proposed CECP has serious flaws in several areas including site and emergency access constraints, fire protection water supply, and emergency response constraints

Q5. What is the purpose of your testimony?

A5. The purpose of my testimony is to:

1. Describe Carlsbad Fire Department's efforts to obtain information necessary to evaluate if the CECP can be safely provided with fire protection and emergency response service.

2. Point out problematic code application safety concerns that will impact CFD's ability to respond to emergencies at the proposed facility.

3. Present my conclusions as the Carlsbad Fire Marshal on the fire and emergency response safety of the CECP proposal.

Q6. Will you summarize your overall conclusions?

A6. My conclusions are:

<u>CECP Site and Emergency Access</u>

The proposed site in Carlsbad is best described as a 30 foot below-grade bowl within 100 feet of Interstate 5 to the east, an active rail line on the immediate border to the west, a lagoon to the north, and an access route from the south that runs beneath high-tension electric distribution lines. Based on the project location, its proposed design, and project conditions contained in the CECP Final Staff Assessment (FSA) (see Worker Safety section) I have identified several concerns that are outlined below regarding emergency access. Furthermore, the CFD recognizes that there will be different response needs required of the CECP during different times of its existence. These needs can be broken into the two (2) main phases of the project - construction and operations. Testimony of Chief Heiser reflects the different calls that CFD expects to receive from the plant.

However, it should be made clear that in both phases of the project, site access is a concern. These concerns are exacerbated by the recessed nature of the project, which limits ingress and egress and diminishes the ability to freely evacuate the site in case of emergency.

Site Access Concerns – During Construction

During construction, the sheer volume of activity, in conjunction with other adjacent projects such as the double tracking of the LOSSAN rail corridor and the Carlsbad/Vista Sewer Upgrade, will not only increase the likelihood of an emergency, but will pose significant obstacles in the way of heavy equipment for site access.

Confined Space

Based on site design and layout, including the slope of the "pit" walls and the security walls as required in the FSA, I believe that the CECP meets the intent of a confined space. This designation is designed to provide protection for both those working in the confined space as well as those who will respond in case of an emergency.

It is important to highlight that significant confusion was created by information contained in the FSA. An example of this confusion can be seen in the discussion of the widening of Interstate 5. On pages 4.14-14 and 4.14-15, the FSA discusses distance from a widened freeway to the power plant. As contained in both bullet points 1 and 2, the FSA mentions distance in the context of removing the slope leading to the power plant and creating a retaining wall in order to provide an adequate visual screening buffer. However, this change in power plant design is not included in any condition of certification. The result is that the reader is left to guess what the real site design will be.

Emergency Access Roadway (in the "Pit")

As the Fire Marshal, I have determined that the project is being developed in an extremely constrained area that does not provide sufficient space for necessary firefighting equipment.

As a project condition (Worker Safety-6), the FSA requires that the project provide a 30-foot emergency access roadway around the project at the base of the pit. This roadway would serve as the only emergency access lane and would be a shared use with the day-to-day operations of the CECP. Recognizing the constrained nature of the site, the FSA highlights that it required 30 feet instead of the minimum 20-foot fire access roadway required by the California Fire Code. However, the FSA and the Applicant failed to identify that the 20-foot requirement is based on a flat, fully accessible site. The applicable code section for a project like the CECP is California Fire Code §503.2.2 which states "[t]he fire code official shall have the authority to require an increase in the minimum access widths where they are inadequate for fire or rescue operations."

A recent example of where the CFD required an increase in emergency access is the Poseidon Desalination Plant (CSDP). This plant is located at the Encina Power Station

site, just west of the CECP. In the case of the CSDP, CFD felt it appropriate to require 42 foot wide access roads due to potential hazardous materials issues. It should be noted that the CSDP is an at grade facility and would more freely allow vehicle movement around obstructions and provide for the unobstructed escape of responders if needed during an emergency.

In reviewing the proposed CECP and the hazards it presents, I have determined that it would be appropriate to require a minimum width of 50 feet around the base of the proposed CECP for emergency access and responder safety.

Emergency Access Roadway (around the "Rim")

As the Fire Marshal, I have concerns about the lack of emergency access along the rim of the pit.

Currently, there is an access road which surrounds the existing site at the top of the grade along the rim of the pit. However, per information contained in the Worker Safety Section (page 4.14-15) of the FSA, this access is proposed to be removed. The lack of appropriate site access at the top of the slope is a significant concern. There are a number of reasonable scenarios (e.g., hazardous materials release, significant fire, etc.) where deployment of firefighters into the pit to mitigate the incident may not be practical or possible. In those cases, the fire department would look to other access in order to attempt to mitigate the incident as safely as possible. In the case of this project, the ability to access the proposed facility from the rim of the pit is impeded by the location of the freeway, railroad tracks, and lagoon. The inability of the fire department and other emergency responders to access the facility could result in additional off-site consequences to the community beyond those acknowledged by the applicant or envisioned in the staff review. In my professional capacity, I recommend CECP continue to maintain the access road along the rim and that it be widened to no less than 25 feet wide to accommodate emergency operations.

Site Access Concerns – Operations

Once operational, I have concerns about CFD's ability to fully utilize the Emergency Access Roadway (Pit) surrounding the base of the pit during an emergency.

These concerns are based on several factors including the air cooled nature of the plant, the plume velocities associated with certain pieces of plant equipment, and the existence of overhead electrical lines.

The CECP proposes an air cooled facility. At two points in the proposed access loop in the pit, the roadway passes in close proximity to the cooling equipment where the heat from the generation process will dissipate into the atmosphere. Information has yet to be provided to the Department demonstrating that the temperatures adjacent to this equipment will not be excessive for emergency responders deployed into the pit.

I have additional concerns regarding the potential need for an aerial approach during an emergency, including the use of ladder trucks. The Fire Department has raised numerous questions regarding hazards which may impede its ability to fully deploy and respond to an emergency, including plume velocities and overhead electrical lines. To date, these questions have gone unanswered.

Fire Protection Water Supply

As the Fire Marshal, I do not support the CECP's proposed fire protection water supply system. In case of an emergency, the CECP proposes to use water from an onsite storage tank, assisted by a jockey pump and a fire pump to provide fire protection water for the site. While this might be acceptable fire protection in a rural area or a location with an intermittent supply of water, it is not appropriate for an urban setting with a significant water storage capacity associated with the municipal water system. I would recommend that fire protection water for this project should be provided by means of a looped system connected to the Carlsbad Municipal Water District. This type of fire connection benefits this project in that it diminishes concerns surrounding the reliability and supply of the fire protection system, and is required of every other development within the City of Carlsbad.

Emergency Response Constraints

Classification of the Carlsbad Fire Department as Hazmat Qualified

It is important to clarify the limitations of CFD in regards to Hazmat qualifications for response to the CECP.

As highlighted in the testimony of Chief Heiser, all Carlsbad Firefighters are trained to the level of HazMat First Responder, Operations. First Responders, at the Operations level, are defined as, "individuals who respond to releases or potential releases of hazardous substances for the purpose of protecting nearby persons, property, or the environment from the effects of the release." If a hazardous material incident occurs, the rescue and mitigation of incident would be managed by San Diego County's Hazardous Incident Response Team (HIRT).

Q7. Have you reached a conclusion with regard to the CECP?

A7. Yes. As mentioned earlier, the Fire Department has on numerous occasions requested several pieces of information that have gone unaddressed. Because neither the Applicant nor the CEC Staff provided the information requested, we determined that we needed to develop the information ourselves in order to provide our best professional recommendation to both the City Council and the Energy Commission. The Department conducted its own analysis based on available information and identified the comments and concerns provided in this testimony, as well as the testimony offered by Fire Chief Crawford and Operations Division Chief Chris Heiser.

Q8. As Fire Marshal, what are your conclusions regarding the proposed CECP?

A8. Based on the information we were able to gather, I have determined that:

- The site design, including the depressed nature of the site and the walls of the pit, constitute the intent of a confined space and result in an unreasonable risk to emergency responders and facility employees as it seriously limits their ability to self evacuate in case of an emergency

- There is a need to maintain the "rim road" for emergency access and response

- There is a need for additional width on the fire and emergency access roadway in the pit as well as access on the rim of the pit for emergency responder access and safety (50 and 25 feet respectively)

- The water tank and fire pump system as proposed represents an undesirable and unacceptable alternative in light of the existence of a fully functional municipal water system

- The classification of the Carlsbad Fire Department as "hazmat" qualified is misleading and over represents CFD's true ability to mitigate an incident at the facility

These concerns led me to make a recommendation to the Fire Chief that from a fire prevention point of view the Fire Department should recommend to the Energy Commission that they deny the CECP as proposed.

Alternatives
Joe Garuba

CECP PROJECT ALTERNATIVES

PREPARED DIRECT TESTIMONY
OF
JOSEPH GARUBA
MUNICIPAL PROJECTS MANAGER
CITY OF CARLSBAD

Q1. Please state your name and position.

A1. My name is Joe Garuba. I am the Municipal Projects Manager for the City of Carlsbad.

Q2. How long have you held this position?

A2. I have been employed by the City for 10 years. I have been Municipal Projects Manager for 2 years. I have worked for local government for the past 15 years.

Q3. What are your primary responsibilities?

A3. My primary responsibilities are to oversee the City's facilities, fleet and real estate operations. I am also part of an internal team that is working to reduce the City's carbon footprint through the development of renewable energy generation projects and energy efficiency measures. In addition, for the past several years, I have been tasked with coordinating the City's review and response to the proposed Carlsbad Energy Center Project ("CECP").

Q4. What is the purpose of your testimony?

A4. I will address why the City is committed to identifying viable alternate sites to the proposed CECP and why it believes those sites are feasible and preferable to the CECP proposal.

Q5. Will you please summarize the primary conclusions of your testimony?

A5. Yes. The primary conclusions of my testimony are:

1. The City does not consider the CECP a suitable option for replacing a portion of the Encina Power Station because it continues an industrial use within the coastal zone, does not comply with local ordinances and policies of the Coastal Act and the South Carlsbad Coastal Redevelopment Area, and has significant adverse environmental impacts.

2. The City, however, recognizes the importance of discontinuing once-through power plant cooling and the need to replace the Encina Power Station while continuing to provide for regional power demands. Consequently, it sought

potential alternative sites within the city limits that could meet these objectives while complying with all state and local LORS and avoiding significant adverse impacts.

3. The City identified two sites that meet these requirements and believes these sites are viable and preferable to the CECP proposal.

4. The City has worked with a power plant developer who has submitted proposals to SDG&E to develop power plant projects on these sites that can be operational as soon as 2014.

Q6. Why did the City look for Alternate Sites?

A6. The City felt compelled to look for alternate sites based upon a number of concerns that have already been addressed:

- As discussed by Lisa Hildabrand, Scott Donnell and Debbie Fountain, the CECP proposal does not comply with the City's or the Redevelopment Agency's land use ordinances, policies or plans.

- As discussed by Gary Barberio and Ralph Faust, the City believes that the CECP proposal does not comply with the Coastal Act and is counter to the conclusions of the adopted California Coastal Commission report to the Energy Commission dated August 31, 1990 on San Diego Gas and Electric Company's proposal for a new power plant at essentially the same location.

- As discussed by Fire Chief Crawford, Fire Marshall Weigand, and Operations Chief Heiser, the CECP proposal represents a fire safety concern.

- As discussed by Don Neu, the CECP proposal represents a significant adverse visual impact which the City does not believe can be fully mitigated.

In addition, the City was concerned that NRG's proposal:

- Impedes the ability of the City to achieve its long-term vision for the community by extending the presence of a non-coastal dependent industrial use along its coast.

- Has very limited project objectives.

PROJECT OBJECTIVES

Q7. Can you describe the City's concerns with the CECP's objectives?

A7. Yes, but let me repeat one of the comments made by our City Manager – the City of Carlsbad supports our regions need for reliable electricity which includes having a power plant within the city limits. The City believes that while the CECP's project objectives are general in nature, they can be misinterpreted and/or are constrained to the point which precludes any other site from consideration.

As identified in the CEC FSA Alternatives section (CECP FSA Section 6.3-6.4), the project objectives stated for the CECP are as follows:

- Meet the expanding need for new, highly efficient, reliable electrical generating resources that are dispatchable by the CAISO, and are located in the "load pocket" of the San Diego region;
- Improve San Diego regional electrical system reliability through fast starting generating technology, creating a rapid responding resource for peak demand situations, and providing a dependable resource to backup intermittent renewable resources like wind generation and solar;
- Allow the retirement of existing EPS Units 1, 2, and 3, and assist in the retirement of the South Bay power plant and the eventual retirement of existing EPS Units 4 and 5;
- Modernize existing aging electrical generation infrastructure in north coastal San Diego County, which includes the retirement of aging once-through cooling (OTC) facilities. Retiring the use of OTC is an objective shared by the energy and environmental agencies in California, including the California Public Utilities Commission (CPUC), California Energy Commission (CEC), CAISO, and publicly owned utilities;
- Utilize existing infrastructure to accommodate replacement generation and reduce environmental impacts and costs; and
- Meet the commercial qualifications for long-term power contract opportunities in southern California.

We agree with the conclusions contained in the Presiding Members Preliminary Decision in the Chula Vista Energy Upgrade project (CVEUP), which stated:

> *"A reasonable, feasible alternative must be one that meets most basic project objectives while avoiding or substantially lessening any of the significant effects of the project. [CEQA Guidelines, § 15126.6(a).] Stating project objectives too*

narrowly or too specifically could artificially limit the range of reasonable, feasible alternatives to be considered. Therefore, we have given careful consideration to the selection of project objectives in this case, especially the stated objectives of reusing the existing infrastructure and locating the project at a site designated for industrial use with consistent zoning." (CVEUP PMPD page 66)

Q8. Do you agree with the first objective of meeting the needs of the region using efficient, reliable generation?

A8. Yes, but the City believes that considering the age and antiquation of the Encina Power Station, any project would achieve that objective. Also, it is important to note that the CECP is a merchant power plant that does not have an existing power purchase agreement with SDG&E. The objective of efficient and dispatchable power seems to be more germane to SDG&E and their resource allocation plan than it is to the CECP.

Q9. Do you agree with the objective for new generation to be integrated technologically with renewable resources to improve grid reliability?

A9. Yes. Based on information contained in the CEC's 2009 Integrated Energy Policy Report (IEPR), due to the intermittent nature of many forms of renewables, there is a need to "firm up" the electrical supply.

However, as contained in this latest IEPR, the CEC has clearly identified a need to master plan generation projects at the regional level to ensure that licensed projects integrate into the grid. The city agrees with this concept. Furthermore, as stated with the first objective, considering the age and antiquation of the Encina Power Station, there are a number of project alternatives that would achieve this objective.

Q10. Do you agree with intent to shut down Encina Units 1-3 as well as set the stage for Chula Vista and the remaining Encina?

A10. This is another example of the project objective being confused or limiting. The City and Redevelopment Agency have on numerous occasions expressed their interest in decommissioning and demolishing the <u>entire</u> Encina Power Station. This project does not achieve that goal. While the CECP project may result in discontinuing the operation of Units 1-3 – something that the market appears to be doing on its own - it does not result in the removal of any of the Encina Power Station structures. In fact, the CECP proposal results in an intensification of industrial facilities at the site and a continued industrial use for the next 30 to 40 years. Other possible alternatives exist that can assist in the retirement and removal of the entire Encina Power Station without extending the need to generate power on a prime coastal site.

Q11. Do you agree with the objective to modernize the existing infrastructure, including the shift away from once through cooling?

A11. Yes. Power generation no longer needs large bodies of water for cooling purposes, and the City agrees with the federal and state direction to move away from this practice of using ocean water for power plant operations.

With respect to the benefit of reducing the use of ocean water for EPS, the City believes that the CECP's reduction of ocean water cooling as it relates to the EPS is overstated.

This is based on the following:

- Since the CECP application was filed, state policy has sufficiently developed to reflect the state's intent to restrict ocean water cooling for power plants. This intent is evidenced in numerous state documents, including the State Water Board's "Water Quality Control Policy on the Use of Coastal and Estuarine Water for Power Plant Cooling" dated July 2009. As highlighted in Table 15 of that report (page 78), a preliminary compliance date for the reduction of ocean water use by the EPS has been set for 2017. See Table 1 below.

- The amount of ocean water cooling applied to EPS Units #1-3 is based on maximum output. However, over the past several years, EPS Units #1-3 have seen a substantial decline in usage. This decline is reflected in the EPS operational data which shows that in 2008:

  - EPS Unit #1 ran 10 days
  - EPS Unit #2 ran 39 days
  - EPS Unit #3 ran 76 days
  - EPS Units #1-3 were completely inoperative (none of the units were running) on more than 280 days in 2008 (greater than 80% of the year).

- The CECP's use of 4 mgd of ocean water for desalination purposes negates any benefit realized by shutting down EPS Units #1-3. Using a useful life of 40 years, the CECP would be authorized to use more than 60 billion gallons of ocean water.

Table 1

California Energy Agencies Once-Through Cooling Compliance Schedule

Draft Infrastructure Replacement Milestones and Compliance Dates for Existing Power Plants in California Using Once-Through Cooling									
		Infrastructure Replacement Milestones[i]							
				CPUC Procurement[iv]					
Region (Balancing Authority)	Existing Facility Name	CAISO Enhanced LCR Study[ii]	CAISO-CPUC-CEC Infrastructure Replacement Plan[iii]	LTPP Approval[v]	Gen Project Approval[vi]	CAISO Annual Transmission Plan[8]	CPUC Transmission Permitting[7]	Known Replacement Infrastructure Operational[9]	Unspecified Replacement Infrastructure Operational[9]
Humboldt	Humboldt Bay Power Plant[10]	Not required[19]	Pre-Plan[20]	Complete	Complete	Gen solution	N/A	Q3 2010	N/A
San Diego	South Bay Power Plant (partial capacity)[11]	Not required[19]	Pre-Plan[20]	Complete	Complete	Gen solution	N/A	Q4 2009	N/A
	South Bay Power Plant (remaining units)[12]	Not required[19]	Pre-Plan[20]	Trans solution	Trans solution	Complete	Complete	Q3 2012	N/A
	Encina Power Plant	Q4 2009	Q1 2010	2011	2013	2011	2015	N/A	2017
Bay Area	Potrero Power Plant (Unit 3)[13]	Not required[19]	Pre-Plan[20]	Trans solution	Trans solution	Complete	Complete	Q1 2010	N/A
	Contra Costa Power Plant (1 of 2 units)[14]	Not required[19]	Pre-Plan[20]	Complete	Complete	Gen solution	N/A	Q2 2009[21]	N/A
	Contra Costa Power Plant (second unit)	Q4 2009	Q1 2010	2011	2013	2011	2015	N/A	2017
	Pittsburg Power Plant								
Central Coast	Moss Landing Power Plant[15,16]	Q4 2009	Q1 2010	2011	2013	N/A	N/A	N/A	2017
	Morro Bay Power Plant[16]	Not required	Pre-Plan	complete	complete	N/A	N/A	Q1 2009[22]	N/A
Ventura/Big Creek[17]	Mandalay Generating Station	Q4 2010	Q2 2011	2013	2015	2012	2016	N/A	2020
	Ormond Beach Generating Station								
Los Angeles Basin[17] (CAISO)	El Segundo Generating Station	Q4 2010	Q2 2011	2013	2015	2012	2016	N/A	2020
	Huntington Beach Generating Station								
	Redondo Generating Station								
	Alamitos Generating Station								
Los Angeles Basin[17] (LADWP)	Haynes Generating Station[18]	Not under The California ISO balancing authority or the CPUC jurisdiction. The Energy Commission is conferring with LADWP to understand in-basin capacity requirements and processes for accomplishing OTC mitigation.							
	Harbor Generating Station[15,18]								
	Scattergood Generating Station[18]								
Nuclear Plants	Diablo Canyon Power Plant								
	San Onofre Nuclear Generating Station								

Source: CEC, CPUC, CAISO, "Implementation Of Once-Through Cooling Mitigation Through Energy Infrastructure Planning And Procurement"; July 2009, page B-2

Q12. Do you agree with the objective to utilize existing infrastructure to reduce costs?

A12. Efforts should be made to reuse existing infrastructure when and where appropriate. However, any potential benefit realized from reuse should be compared to the social and environmental benefits achieved through relocation. Re-use for the sake of re-use reflects short-sighted thinking if it conflicts with other state and local goals and objectives (avoiding significant adverse impacts, eliminating use of ocean water in power plant operations, ensuring appropriate development in the coastal zone, and improving a community's quality of life) in considering the lifespan of this type of project. The Energy Commission articulated the same concerns in the CVEUP PMPD:

> *"The project objectives formulated by Applicant and Staff include, in one form or another, the reuse of the existing plant's infrastructure such as project linears. While it may be advantageous to reuse existing infrastructure as long as it is serviceable and up-to-date if the reuse does not create or perpetuate adverse environmental impacts, the evidence shows that in this case there are few advantages beyond the obvious economic ones, and there are disadvantages that could be avoided…."* (CVEUP PMPD page 66).

Q13. Do you agree with the objective of developing a plant that meets commercial qualifications for long-term power contract opportunities in Southern California?

A13. This objective contradicts other objectives that are more San Diego-centric. As identified earlier, SDGE's RFO process takes the constructability of a proposed project into account when it goes through the selection and power purchase agreement phase. Beyond licensing and construction ability, I am not clear as to what other specific commercial qualifications are implied.

Q14. Do you agree with the representation that the CECP is a brownfield redevelopment as described in the CECP FSA Executive Summary and alternatives analysis?

A14. I believe the Redevelopment Agency is the most appropriate agency to determine whether this conversion of one brownfield use to another is appropriate (see the Redevelopment Testimony of Debbie Fountain).

It is appropriate to re-use existing infrastructure to the greatest extent practical. From an environmental and community impact perspective, it is advantageous to utilize sites that are already disturbed. This is a major factor in the City's identification and evaluation of possible alternate locations.

In this case, the proposed CECP is in the coastal zone. As such, the City believes that an *intensification and continuation* of a brownfield site within the coastal zone should not carry a siting preference and actually represents a significant inconsistency with the Coastal Act's goal of enhancing and restoring the overall quality of the coastal zone. The Coastal Commission clearly expressed this in their 1990 review of a similar project proposed at the same location.

CITY'S PROPOSED ALTERNATIVE SITES

Q15. Please describe the City's efforts to identify Alternate sites

A15. Considering the concerns previously cited by the City, the significant negative impacts the proposed CECP would have on the community, and the City's belief that it has some responsibility to help provide suitable locations for power generation, the City felt compelled to identify and analyze alternate sites. It supplied these sites to the CEC staff for their consideration.

Q16. Did the City provide any "official" recommendations that the CEC staff consider specific alternative sites?

A16. Yes. The City provided CEC staff with numerous correspondence and recommendations regarding alternate sites. An example of this can be seen in Docket No. 49098 which identified specific alternate locations that the City felt were viable and preferable locations for a new power plant.

Q17. What were the criteria that the City used for the Alternate Sites?

A17. The City's criteria were:

- Replace the Encina Power Station in a manner that meets local and regional electricity system requirements;
- Avoid the use of ocean water for power generation, as is consistent with the intent of state policy;
- Preserve the City's long-term vision to redevelop its coastline and allow the existing power plant site to change to a use more consistent with the coastal zone;
- Locate the replacement generation facilities to take advantage of existing infrastructure to the extent possible; and
- Comply with state and local LORS and avoid significant environmental impacts.

Q18. Did the City identify any sites which it found to be preferable to the CECP?

A18. Yes, based upon its analysis, the City identified two sites within the City – commonly referred to as Oaks North Phase 3 and Fleet Services (Carlsbad Safety Center in the FSA). The City did not try to identify potential alternate sites outside of its borders; however, it believes that SDG&E's recent RFO serves that purpose. In evaluating potential alternate sites, City staff took into consideration City Council's vision for the community and its expressed support for an alternate location with regards to potential project elements that may require City assistance, such as the granting of infrastructure easements and land use amendments. An example of this support is highlighted in Exhibit 417 (City Manager letter to SDG&E).

Q19. Please describe the Oaks North Phase 3 and the Fleet Services sites.

A19. Both sites have some similarities. They are both:

- located in the City's industrial corridor,
- located outside the Coastal Zone,
- have good access from an emergency response perspective,
- relatively far away from sensitive receptors,
- have limited visual profiles, and
- don't pose cumulative impact concerns.

Oaks North Phase 3

Oaks North Phase 3 consists of an approximately 55-acre parcel of land with multiple graded industrial zoned development pads. The site is fully mitigated from an environmental standpoint (it has an approved EIR based on industrial uses) and has needed infrastructure such as water (recycled and potable) and wastewater available onsite. Table 2 below highlights applicable distances to relevant project linears. The property is currently for sale by private owners.

The City identified the Oaks North property's potential for substantial expansion for future power generation and its ability to accommodate SDG&E facilities from Encina as significant benefits. This would achieve the goals expressed by both the Coastal Act and the Redevelopment Agency.

Fleet Services Facility

The Fleet Services Facility is an 8 acre parcel located adjacent to the City's Public Safety Center. It is currently graded and paved. The site is located in the middle of the City's industrial zone, and borders the regional trash transfer station. The nearest residential unit (1 unit) is over 2000 ft away with the nearest multiple residential development more than 3500 ft away. Table 1 below highlights applicable distances to relevant project linears.

Q20. How does the potential generating capacity at the City's alternative sites compare with the CECP and the Encina Power Station?

A20. Based upon current technology and land requirements, the City has expressed support for up to 500 MW at the Fleet Services site and believes that the Oaks North site is able to accommodate even more due to the size of the parcel.

Q21. Where do the alternatives interconnect with the existing transmission system?

A21. The proposed interconnection would occur at the junction of the north/south transmission lines and those that travel west to the existing Encina switchyard. Exhibit 428 is a map that shows the proposed location of the interconnection. The benefit of this location is that when the EPS is finally decommissioned, the power lines extending west along the lagoon can be removed which would provide a significant improvement to the visual quality of the surrounding area. In addition, the removal of the power lines would then allow for the community's full use of this vital coastal resource.

Q22. Did you compare the alternate sites to the CECP?

A22. Yes, Staff conducted a comparison of the alternate sites to the CECP, which is highlighted in Table 2 below.

TABLE 2
COMPARISON OF CECP AND ALTERNATIVE SITES

Compliance With LORS

	CECP	Oaks North	Fleet Services
Land Use	Does not comply (1)	Complies	Complies
Coastal Act	Does not comply (2)	Not Applicable	Not Applicable
Redevelopment	Does not comply(3)	Not Applicable	Not Applicable

(1) The CECP fails to comply with the City of Carlsbad General Plan, Zoning, Agua Hedionda Land Use Plan and failed to submit a complete amendment to SP 144 (Testimony S Donnell)
(2) The CECP is not compatible with the Coastal Act in that it would result in increased visual impacts and intensification of industrial development in the Coastal Zone, which runs counter to the requirement to enhance and restore the lands within the Coastal Zone (Testimony of City and Faust)(1990 Coastal Report on SDG&E NOI)
(3) The CECP is incompatible with the goals and policies of the Carlsbad Redevelopment Agency (Testimony of D Fountain) (Per Housing and Redevelopment Commission Resolution No. 482)

Comparison of Linears to Proposed Project

	CECP Site	Oaks North	Fleet Services
Distance to 138-kV Transmission Line (ft)	2,050	6,000	8,500
Distance to 230-kV Transmission Line (ft)	1,800	14,500	12,000
Distance of Natural Gas Line (ft)	1,100	4,800	Adjacent
Distance to Reclaimed Water (ft)	N/A	Adjacent	Adjacent
Nearest Residential Unit (ft)	1,700	2,500	2000
Meets FAA Feasibility Study	With Conditions	Yes	Yes

TABLE 3
ALTERNATIVE SITE ENVIRONMENTAL IMPACTS

Issue Area	Oaks North Alternative Site	Fleet Services Alternative Site
Air Quality/Public Health	Similar to CECP	Similar to CECP
Biology	**Less than CECP.** Biological impacts will be fewer as Oaks North would use recycled water.	**Less than CECP.** Biological impacts will be fewer as Fleet Maintenance would use recycled water.
Cultural	Similar to CECP	Similar to CECP
Hazardous Materials	Similar to CECP	Similar to CECP
Land Use	**Less than CECP.** Currently zoned Planned Industrial, Oaks North is located in the eastern portion of the Industrial Corridor. Land Use impacts will be fewer as they do not violate the goals and objectives of the City of Carlsbad and the South Carlsbad Redevelopment Agency.	**Less than CECP.** Currently zoned for Open Space (non-habitat). Site is graded and paved. Current use is for fleet maintenance (garage and fueling station) and large parking lot. Located in industrial corridor adjacent to regional trash transfer station.
Noise	**Unknown**	**Uncertain**
Public Health	Similar to CECP	Similar to CECP

Socioeconomics	**Less than CECP.** Economic generation for the City of Carlsbad will be improved with the full redevelopment of the EPS site and the development of a power plant in an alternate location.	**Less than CECP.** Economic generation for the City of Carlsbad will be improved with the full redevelopment of the EPS site and the development of a power plant in an alternate location.
Soil and Water	**Less than CECP.** Will use recycled water. Impacts will be greater at the CECP as the CECP will utilize a desalination plant (once through cooling water).	**Less than CECP.** Will use recycled water. Impacts will be greater at the CECP as the CECP will utilize a desalination plant (once through cooling water).
Traffic	Similar to CECP	Similar to CECP
Transmission Line Safety and Nuisance	Similar to CECP	Similar to CECP
Visual Resources	**Less than CECP.** Nearest residential receptor is 3000 feet away. Site would have limited visibility. Size of parcel would allow for appropriate visual screening. Visual impacts will be fewer at Oaks North as projects on these sites will not be visible to large populations, but the CECP will be highly visible to more than 200,000 motorists per day and many permanent residents.	**Less than CECP.** Nearest residential receptor is more than 1500 feet away (1 house at the bottom of the mesa). Site is screened by Public Safety Center, Joint First Responders Training Facility and Fire Station #5. Very limited visibility. Located in the industrial corridor.

Waste Management	Similar to CECP	Similar to CECP
Worker Safety & Fire Protection	**Less than CECP.** Worker safety concerns will be fewer at the Oaks North and Fleet Maintenance sites as the City of Carlsbad has agreed that these sites pose limited danger to fire personnel due to increased site access and emergency response capabilities.	**Less than CECP.** Worker safety concerns will be fewer at the Oaks North and Fleet Maintenance sites as the City of Carlsbad has agreed that these sites pose limited danger to fire personnel due to increased site access and emergency response capabilities.
Geology	Similar to CECP	Similar to CECP
Project Reliability	**Greater reliability.** The CECP will be less reliable as there is only a single source of water for the project. The CECP will also need to apply for and receive new NPDES permits once EPS Units 4 & 5 are shut down, which casts further doubt about the CECP's reliability.	**Greater reliability.** The CECP will be less reliable as there is only a single source of water for the project. The CECP will also need to apply for and receive new NPDES permits once EPS Units 4 & 5 are shut down, which casts further doubt about the CECP's reliability.

Q23. What is the position of the City Council regarding the development of these sites for power plant development?

A23. The City Council has expressed its desire to see the development of a power plant, if needed, at an inland location within the City's industrial corridor.

Q24. What actions has the City taken to encourage development at these alternative sites?

A24. To encourage development of these generation alternatives, the City has:

- Held several discussions with SDG&E on its intentions;
- Evaluated current General Plan and zoning designations to determine necessary amendments;
- Conducted site visits to other generation facilities;
- Evaluated the capacity of recycled and waste water system and potential expansion(reclaimed water);
- Developed alignments for undergrounding the gen-tie; and
- Evaluated existing site specific environmental documents.

Q25. Is the City going to provide recycled water to either alternate site?

A25. Yes. The City has committed to expanding its recycled water system if necessary to accommodate a power plant at an alternate site. Docket # 45467 provides greater detail on the Carlsbad Municipal Water District's recycled water supply.

Q26. Did the City offer recycled water to the CECP?

A26. Yes. From the initial filing of the CECP with the CEC, the Applicant made representations that its project would be served with recycled water. City staff made clear their concerns that this was not accurate and that the Applicant had not engaged the City as to the availability of the recycled supply. The City offered to discuss the potential expansion of its recycled water system to accommodate the CECP, but this offer was rejected by the Applicant.

Q27. In their testimony, the applicant argues that Condition of Certification SOIL & WATER 1 and 3 be changed to eliminate the city's approval of the CECP's construction storm water pollution prevention plan (SWPPP). Do you agree with that modification?

A27. No. It is important that the City review the construction SWPPP because all runoff and storm water will be discharged into the City's storm water drainage system. As the owner

and operator of the stormwater conveyance system, the City is the entity ultimately liable for discharge from the storm water system and is subject to finds from various state and federal agencies for unlawful discharges. As a result, the City needs to know what will be discharged into the system and what actions will be taken to prevent pollution from entering the system. The CEC staff was correct to require City approval of the CECP's SWPP per the existing conditions Soil and Water 1 & 3.

Q28. In their testimony, the Applicant is also proposing a change to Condition of Certification SOIL & WATER 2 that appears to allow the use of potable water for construction activities if a non-potable source of water is unavailable.

A28. The Carlsbad Municipal Water District advises the Commission that due to supply limitations regarding potable water, the District cannot guarantee its availability at the time of CECP's construction. Furthermore, the District supports the use of non-potable water sources if available and would encourage the Energy Commission to keep intact staff's proposed Condition of Certification Soil and Water -2.

Q29. What do you think would be the public reaction to development of a power plant at either of these locations?

A29. Based on my experience with the CECP, I would expect that citizen reaction would be mixed. That being said, I believe that if presented with a choice of location, the vast majority of the community would support putting a new power plant in an industrial park that has limited visibility versus constructing another plant along the coast. I would also expect overwhelming support for the eventual elimination of power lines along the Cannon corridor.

FSA ALTERNATIVES ANALYSIS

Q30. Did you review the FSA Alternatives Section?

A30. Yes. The City reviewed the FSA Alternatives section and disagrees with the conclusions of the CEC staff. The City's disagreement has 2 main themes – the comparison of impacts between the CECP and the alternate sites were not appropriately characterized (for example visual impact and sensitivity) and there was little or no distinction between construction impacts, which are temporary in nature, and ongoing impacts.

Q31. For the Fleet Services site or Carlsbad Safety Center site as it is referred to in the FSA, the CEC staff state on page 6-4 that: "The site is currently zoned for Open Space (non-habitat designation) and the city would have to rezone this site…" Do you agree with this statement?

A31. If a power plant were to be located at the Fleet Services facility, the City may choose to amend the land use designation, which is within its authority to do so. However, Open Space with a non-habitat designation provides for a variety of government uses which may allow the proposed use with a Conditional Use Permit.

The City understands that amending land uses in order to accommodate a new power plant may be required in order to locate the plant in a preferred location.

Q32. Do you consider this to be a "potentially significant land use compatibility impact…" as described in the FSA?

A32. No. The Fleet Services site is located in the middle of an industrial park, next to a trash transfer station and a shooting range. The site is currently a large parking lot with a small facility that serves to help maintain the City's fleet.

Q33. The FSA also states on page 6-4 that: "…development of this site would require the relocation of both existing recreational and public service (police and fire) facilities." Do you agree with this statement and if so, would it represent a concern to the City?

A33. That FSA statement is false. It should also be noted that the recreational ball field is temporary and will be removed as part of the development of the City's Joint First Responder Training Facility.

Q34. The FSA states that: "…access and circulation to the safety center facility would be significantly affected by this alternative, resulting in potentially significant impacts to police and fire response time." Do you agree with this statement?

A34. I do not agree with this statement. Existing roads will remain. Furthermore, a distinct benefit the City has identified is that emergency response would be substantially improved to either of the preferred alternate locations.

Q35. The FSA also says that there is a "…lack of nearby associated electric infrastructure (transmission lines)…" You have estimated the distance to nearby electricity transmission lines to be 12,000 feet. How does this compare with the distance to transmission lines for other projects permitted by the CEC?

A35. The distances of transmission lines associated with some of the power plants permitted by the Energy Commission without resulting in significant adverse environmental impacts include:

- Sutter Power Plant – 4 miles
- Los Medanos Power Plant – 2.5 miles and 1.2 miles
- Delta Energy Center – 3.3 miles above ground and 0.8 miles under ground
- Valero Cogeneration Project – 2,000 feet under ground
- La Paloma Power Plant – 15 miles

- Pastoria Energy Project – 1.4 miles
- MID Energy Expansion – 1.2 miles
- Walnut Energy Center – 1,950 feet
- Riverside Energy Resource Center – 1.75 miles
- Victorville 2 – 10 miles
- San Francisco Energy Reliability Project – 3,000 feet
- Russell City Energy Center – 1,100 feet

Q36. Regarding the Oaks North site, the FSA on page 6-8 states that there will be an "…increase in temporary construction-related air quality emissions over that generated by CECP construction due to the overall amount of construction activities required." Do you agree with this statement?

A36. I do not agree with that statement. The Oaks North site is already cleared and graded. The majority of the necessary infrastructure is already in place, with the exception of the transmission lines and short interconnection to the natural gas line. The CECP by contrast, requires significant demolition of existing infrastructure, soil removal and remediation (including hazardous materials), and the regrading of the existing site. Additionally, any project approved at the Oaks North site would also be permitted by the CEC who, I am confident, would ensure that any temporary construction impacts are mitigated to insignificant levels.

Q37. Do you agree with the statement in the FSA that the routes of the required transmission lines to this site are unknown?

A37. No. The potential routes for the transmission connection have been identified. The majority of the interconnection would occur either in City right-of-way or on City property and would be underground.

Q38. The FSA goes on to state the construction of the transmission facilities will result in: "…an increase in potentially significant temporary impacts (noise, land use compatibility, and biological resources) could occur when compared to construction of the CECP." Do you expect the construction impacts of the transmission lines will be significant?

A38. No. The predominant location for the transmission lines will be underground either in roads or across City property (dirt). The City also routinely deals with construction impacts within the City limits and would work with the project developer and the CEC to ensure that any potential impacts are fully mitigated.

Q39. The FSA states that: "…development of the site with this alternative could result in a permanent conversion of a currently undeveloped site with heavy industrial uses that would contribute to a potential shift in the general land uses of the area." What is your reaction to that statement?

A39. The development of a power plant at either of the alternate sites would be more consistent with existing and planned uses than a power plant along the coast. Both the Oaks North and the Fleet Services facility are located in the middle of an industrial corridor, which is the preferred location for this type of heavy industry.

Q40. The CEC staff asserts that the "…Oaks North site zoning designation would have to be changed from Planned Industrial to Public Utility by the city of Carlsbad City Council…" Do you agree with that statement and do you foresee any concerns by the Council if the statement is correct?

A40. I do not agree with this statement. A new power plant at Oaks North may be accommodated through the issuance of a Conditional Use Permit. Furthermore, if changes to land use designations are required, the City has expressed its support for those changes. In October 2009, the City Council authorized staff to review appropriate locations for power plants, including those sites which may amendments to their existing land use designations.

Q41. The FSA goes on to state that: "…developing a power plant within the Oaks North site could result in increased land incompatibility and conversion impacts as compared to the CECP, which would develop a power plant within an existing industrial site currently occupying a power plant." Do you concur with this conclusion?

A41. I do not agree with that FSA statement. The long term use for Oaks North is an industrial one. If the City needed to find an alternate site for a power plant, the Oaks North site is a highly suitable location for that type of heavy industrial use.

The other point that the CEC staff fail to recognize is the reasonable expectation that the existing Encina Power Station is nearing the end of its useful economic life, that the state is moving toward closing down the once-through cooling system at the Encina Power Station, and the expected date for that compliance is 2017 according to documents prepared by the CEC. If this were to occur as scheduled, then it is foreseeable that the likely result would be the decommissioning of the Encina Power Station. Once out of service, the City would expect the property to be redeveloped. In this case, the CECP will not only become the dominant industrial presence on the site but will also ensure this industrial presence continues and reliance on ocean water for power plant purposes for 30 to 40 more years.

Q42. The FSA states that: "Due to the elevated topography of both the Oaks North site and the presence of residential receptors located within hillside developments north and east of the site, receptors located within these areas currently have unobstructed views through the Oaks North viewshed." How do you compare the visibility of the CECP and the Oaks North sites, including their stacks, to residential receptors?

A42. To compare the visual sensitivity between either the Oaks North or the Fleet Services site and the CECP is ridiculous. Both alternate locations provide highly limited views from existing residential receptors. Furthermore, both sites allow for enough space to adequately screen any infrastructure constructed. Both alternate sites are located in the City's industrial corridor. The Fleet Services site is adjacent to a trash transfer station and is heavily screened by the Public Safety Center and Fire Station #5. Finally neither of the alternate locations are located anywhere near a major thoroughfare such as Interstate 5 or the LOSSAN rail corridor, such as the CECP is, which has a daily use of more than 200,000 vehicles.

Q43. As with the Fleet Services site, the FSA states the construction of transmission connections would result in a significant increase in potential environmental impacts. Do you believe these impacts would be significant?

A43. No, I do not agree with the FSA statement that construction of transmission lines (approximately 2 miles long) would result in environmental impacts that are significant beyond mitigation which would necessitate the need to continue to develop power plants along the coast.

Q44. The FSA says that: "It is likely that the project applicant would need to obtain large easement rights (or franchise rights) within this area to accommodate a transmission line, of which the availability is unknown. It is also likely that transmission line ROW associated with this alternative may require zoning designation changes within "Transportation Corridor" by the Carlsbad City Council in order to accommodate the required transmission line route, per the city of Carlsbad summary of zoning requirements. What is your opinion of these statements?

A44. Early on the City made the CEC staff aware that if another power plant was to be considered in Carlsbad, it preferred that it was removed from the coast. The City not only identified alternate locations but also infrastructure alignments to support the alternate sites, the majority of which use either City right-of-way or City-owned property. Clearly the CEC staff has failed to recognize the degree of motivation expressed by the City in this matter.

Q45. Did you look at the potential impacts of the Fleet Services and Oaks North alternate sites on the Palomar Airport?

A45. Yes. The City obviously wants to ensure that any location of a new power plant does not create a hazardous situation for the Palomar Airport. As the agency that provides emergency response to Palomar Airport, the City is familiar with the potential hazards the airport faces. As part of the City's alternate site analysis it did the following:

- Sent a request to the FAA for preliminary review of stack height.
- The City met with airport personnel to discuss the limitations of the surrounding airspace,
- Reviewed existing and proposed land use plans as they apply to the airport. Both sites are outside of the safety cone and are located in Zone 6, which allows for new development of peaking generation.

Additionally, as identified in the Traffic and Transportation section of the FSA (4.10-13) airspace surrounding Palomar Airport is unconstrained. Considering the proposed condition of certification (Trans-3) exists that requires the CECP to issue a Notice to Airman to avoid overhead flights, city staff believe that in the worst case scenario, any alternate site airspace impact would be equivalent to those created by the CECP.

Q46. What was the response of FAA and airport personnel?

A46. The FAA's response to the City (Docket # 49073) clearly shows that both sites were deemed appropriate for the location of a smokestack.

Q47. Do you consider either the Fleet Services or Oaks North sites to be "greenfield" sites?

A47. No. The City does not consider either location to be "greenfield" sites as both are disturbed, are located in the industrial corridor, and are either zoned for industrial uses (Oaks North) or currently serve as one (Fleet Services).

Q48. What difference is there between the City's analysis and the Alternatives Table 2 contained in the FSA?

A48. There are significant differences between the conclusions contained in the two charts. One of the differences results from FSA inaccuracies. An example of this inaccuracy is how it applies a similar visual sensitivity. In reality, the City's alternative sites are very different and have a substantially reduced level of visual exposure as compared to the CECP (see discussion above). Also, the FSA Alternatives Table 2 skews its analysis based on temporary construction impacts to the public but does not take into account long-term benefits associated with relocation. This is evident in that the majority (5 out of 6) of the impacts sited in the FSA as more significant than the CECP are construction

impacts which are temporary in nature. The City believes that any short term construction impact due to development of an alternate site is far more preferable than the long-term impact of building another power plant on its coastline.

SDG&E REQUEST FOR OFFERS

Q49. Are you aware of the recent SDG&E RFO?

A49. Yes. The City is aware of SDG&E's 2009 Request for Offers. The City is also aware that NRG was required to bid into that RFO due to their lack of a power purchase agreement with SDG&E.

Q50. Were any of the City's preferred sites bid into the SDG&E RFO?

A50. Yes. Both alternate sites were bid into the RFO. When the City learned of the RFO, it sought to work with NRG on relocating the CECP at an alternate location, but its efforts were fruitless.

Q51. One of the Applicant's stated goals for the CECP is to provide electrical reliability for the San Diego region in the 2010 – 2014 timeframe. Can you compare the projected on-line date of these alternatives to a probable on-line date for the CECP.

A51. It should be noted that the Applicant does not currently have a power purchase agreement with SDG&E, which calls into question their ability to provide energy to the San Diego region.

When looking at the proposed project schedule for the CECP, the City believes that its development may not be completed until at least 2014. This is due to CECP's need to gain approval from a number of additional permitting agencies after the Energy Commission's decision. For example, the CECP will be required to receive approval from the State Lands Commission, the Regional Water Quality Control Board, and potentially the EPA for PSD. Assuming that the CECP can receive the numerous agency approvals required, construction for the CECP will necessitate a significant amount of soil remediation and site preparation just to begin construction. Finally, as identified in the testimony of Mike Hogan, there will be several large scale construction projects (Poseidon, LOSSAN, Carlsbad/Vista Sewer Interceptor) occurring onsite at approximately the same time as the CECP which will require a substantial coordination effort and may cause additional delays.

NO PROJECT ALTERNATIVE

Q52. Did the City look at the "No Project Alternative"?

A52. Yes. The City looked at the "No Project" alternative. The City believes that SDG&E represents the organization that is responsible for the reliability of the region's electrical

supply. If the proposed CECP were to be denied, then the negative impacts created from the project would not be realized, which would be a benefit to the community.

Pending the results of the 2009 RFO, which include proposals at the City's preferred locations, the City believes that the CECP could be denied with little impact to SDG&E and the region. Denial of the CECP would avert numerous negative impacts on the community and environment, including the impacts of prolonging the use of ocean water for power plant operations. It would also allow for the full redevelopment of the EPS site, as consistent with state and local LORS. Finally, denial of the CECP would allow the City to work in a cooperative fashion with SDG&E and others to help develop electrical generation in a mutually agreeable location.

Q53. The FSA states that: "If the proposed CECP were not built, certain environmental benefits from the new power plant would not be realized. For instance, all five EPS units *would continue to operate "as is" into the foreseeable future*, and retirement of the EPS circa 1950's *Units 1 through 3 would be indefinitely delayed*." To your knowledge, are these statements supported by other CEC or state policies or document?

A53. This statement appears to be contrary to proposed changes in state policy by numerous state agencies, including the State Water Board, the CEC, and the ARB regarding the use of ocean water for power plant cooling. I would refer to Mr. Hogan's testimony regarding these policy changes. Also, information contained in SDG&E's 2009 RFO clearly states its preference for new generation to help retire the existing coastal power plants which use ocean water for cooling (South Bay and EPS). Finally, the EPS is limited to contract durations of 2 years, which I interpret to be a signal of its short-term horizon.