

STATE OF CALIFORNIA  
Energy Resources Conservation and  
Development Commission

<b>DOCKET</b>	
<b>07-AFC-6</b>	
DATE	NOV 15 2011
RECD.	NOV 15 2011

In the Matter of: )  
Application for Certification for the )  
Carlsbad Energy Center Project )  
(CECP) )  
\_\_\_\_\_)

Docket No 07-AFC-6

November 15, 2011

City of Carlsbad and Carlsbad Redevelopment Agency  
Motion to Enlarge Time to File Rebuttal Testimony and to Unconditionally Grant the Motion of  
Official Notice

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STATE OF CALIFORNIA  
CALIFORNIA ENERGY COMMISSION

In the Matter of )  
Application for Certification for the ) Docket No. 07-AFC-6  
Carlsbad Energy Center Project )  
(CECP) )  
\_\_\_\_\_)

City of Carlsbad and Carlsbad Redevelopment Agency  
Motion to Enlarge Time to File Rebuttal Testimony and to Unconditionally Grant the Motion of  
Official Notice

The Committee Scheduling Order filed November 9, 2011 in this action provides no time for Intervenors, City of Carlsbad and Carlsbad Redevelopment Agency, to reply rebuttal testimony filed by NRG, Commission staff or other parties. According to the "Revised Committee Schedule" Carlsbad and Carlsbad Redevelopment Agency are directed to file responsive pleadings on December 1, 2011 at 3:00 P.M. "All parties" are directed to file rebuttal testimony on December 7, 2011 at noon. Although this schedule makes sense for Applicant and Commission staff, it does not make sense for Intervenors, City of Carlsbad and Carlsbad Redevelopment Agency. In effect, by requiring them to file rebuttal testimony on December 7, 2011 (with no time provided to review responses filed by the Applicant and Commission staff) effectively means that the Intervenors are either rebutting their own testimony or rebutting the testimony of the Applicant and the Commission staff without the benefit of any time provided for review.

The scheduling order also conditioned the Taking of Official Notice on the submission of the complete copies of Intervenor's official documents, including the findings and recommendations of the Carlsbad Planning Commission and relevant background materials for Resolution 2011-230 and Ordinance CS-158. Those documents are attached and were adopted and signed on September 27, 2011, and it is respectfully requested that this condition is met and the documents be officially noticed.

Therefore, it is respectfully submitted that the time for filing rebuttal testimony be extended to December 12, 2011 or such other time as the Committee determines and the Intervenor's request for Official Notice be finally granted.

Respectfully Submitted: /s/ Ronald R. Ball  
Ronald R. Ball  
City Attorney for City of Carlsbad and General Counsel for  
Carlsbad Redevelopment Agency



**CITY OF CARLSBAD  
AND  
HOUSING AND REDEVELOPMENT  
COMMISSION JOINT AGENDA BILL**

<b>AB#</b> <b>20,690</b>	<b>CITY COUNCIL ISSUANCE AND HOUSING AND REDEVELOPMENT COMMISSION CONCURRENCE OF A WRITTEN REPORT PER GOVERNMENT CODE SECTION 68585(d) AND CITY COUNCIL CONSIDERATION OF CHANGES TO POWER PLANT STANDARDS – GPA 11-06/ZCA 11-05/ LCPA 11-06/PDP 00-02(E)/SP 144(N)</b>	<b>DEPT. DIRECTOR</b>
<b>MTG.</b> <b>9/27/2011</b>		<b>CITY ATTORNEY</b>
<b>DEPT.</b> <b>CED</b>		<b>CITY MANAGER</b>

**RECOMMENDED ACTION:**

That the City Council hold a public hearing and **ADOPT** Resolution No. 2011-229, **AUTHORIZING** the issuance of a written report as required by Government Code Section 65858(d) describing the measures taken to alleviate the condition which led to the adoption of Urgency Ordinance No. CS-067.

That the Housing and Redevelopment Commission hold a public hearing and **ADOPT** Resolution No. 514, **CONCURRING** with the City Council’s issuance of a written report describing the measures taken by the City to alleviate the condition that led to the adoption of Urgency Ordinance No. CS-067.

That the City Council hold a public hearing and **INTRODUCE** Ordinances No. CS-158, CS-159, and CS-160 **APPROVING**, respectively, amendments to the City of Carlsbad Zoning Ordinance (ZCA 11-05), Encina Power Station Precise Development Plan (PDP 00-02(E)), and the Encina Specific Plan (SP 144(N)); and **ADOPT** Resolution No. 2011-230, **APPROVING** a General Plan Amendment (GPA 11-06) and a Local Coastal Program Amendment (LCPA 11-06) based upon the findings contained therein.

DEPARTMENT CONTACT: Scott Donnell 760-602-4618 [scott.donnell@carlsbadca.gov](mailto:scott.donnell@carlsbadca.gov)

<b>FOR CITY CLERKS USE ONLY.</b>			
<b>COUNCIL ACTION:</b>	<b>APPROVED</b> <input type="checkbox"/>	<b>CONTINUED TO DATE SPECIFIC</b> <input type="checkbox"/>	_____
	<b>DENIED</b> <input type="checkbox"/>	<b>CONTINUED TO DATE UNKNOWN</b> <input type="checkbox"/>	
	<b>CONTINUED</b> <input type="checkbox"/>	<b>RETURNED TO STAFF</b> <input type="checkbox"/>	
	<b>WITHDRAWN</b> <input type="checkbox"/>	<b>OTHER – SEE MINUTES</b> <input type="checkbox"/>	
	<b>AMENDED</b> <input type="checkbox"/>		

**ITEM EXPLANATION:**

Project	Planning Commission	City Council	Housing and Redevelopment Commission	Coastal Commission
Section 65858(d) Written Report	N/A	✓	✓	
GPA 11-06	RA	X		
ZCA 11-05	RA	X		•
LCPA 11-06	RA	X		•
PDP 00-02(E)	RA	X		
SP 144(N)	RA	X		
N/A = Planning Commission does not review or act on this report ✓ = Issues (City Council) and concurs (H&RC) with report RA = Recommended adoption/approval X = Final City decision-making authority • = Requires Coastal Commission approval				

In 2009, the City Council adopted and extended urgency ordinances prohibiting the expansion or location of thermal electric power generation facilities in the Coastal Zone pending studies and changes in various land use regulations. Along with its urgency ordinance actions, the Council passed resolutions directing staff to study whether present land use provisions regarding such facilities need amendment, and to consider alternative land uses and a conceptual master plan for the Encina Power Station.

An additional urgency ordinance (CS-110) adopted in October 2010 extended for a second time the prohibition on the expansion or location of power generation facilities to October 20, 2011. The prohibition, or moratorium, can be extended only twice and therefore will expire on that date. A related resolution also continued to express both the city’s opposition to power plants in the Coastal Zone and the Council’s direction to staff regarding land use studies and objectives.

In response, land use amendments are proposed to effectively address the generation of electrical energy, including by thermal electric power generation facilities, at the Encina Power Station, in the Coastal Zone, and throughout the city. Exhibit 1 summarizes how the amendments would revise standards regarding the generation of electrical energy, which currently is described as a “primary function” of the Public Utilities land use designation and a permitted use with no restrictions in the Public Utility Zone. The exhibit also notes benefits the changes would bring, such as enhancing redevelopment opportunities in the Coastal Zone.

Further, as Exhibit 1 notes, recommended changes also apply to the transmission of electrical energy as well.

On September 7, 2011, the Planning Commission voted 5-0-2 (Commissioner Siekmann recused herself; Commissioner Nygaard absent) to recommend approval of the project. Four speakers provided public testimony, three of whom supported the project and one opposed. The opposing speaker, attorney Brian Fish with the law firm Luce Forward, represented Cabrillo Power I LLC (owner of the existing Encina Power Station) and NRG Energy, Inc. (applicant of the Carlsbad Energy Center Project applicant and Cabrillo’s parent company). Mr. Fish

submitted a letter on the project to the Planning Commission, to which staff responded at the meeting. Staff's response is provided in the minutes. Both the minutes and the letter are attached as exhibits.

As noted, the moratorium imposed by Urgency Ordinance CS-067, as extended by Urgency Ordinance CS-110, expires October 20, 2011. Ten days prior to its expiration, Government Code Section 65858(d) requires the legislative body to issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance. Exhibit 2 is the relevant resolution and report. Exhibit 3 is a resolution recommending the Housing and Redevelopment Commission concur with the issuance of the report.

**FISCAL IMPACT:**

The recommended actions impose no additional financial burden beyond normal city costs to file environmental notices with the County Clerk and process the Local Coastal Program Amendment through the Coastal Commission.

**ENVIRONMENTAL IMPACT:**

The Planning Director has determined the project, including the issuance of and concurrence with the written report is exempt from the California Environmental Quality Act (CEQA) because it will not have a significant effect on the environment. The project proposes no development and merely clarifies existing land use standards. The written report is simply an information item, describing actions the city has or may take.

This determination is pursuant to State CEQA Guidelines Section 15061(b) (3). This section states "when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

Furthermore, the determination is exempt from CEQA based on Municipal Code Section 19.04.070 A.1.c.(1). This section identifies minor zone or municipal code amendments that refine or clarify existing land use standards as being exempt from CEQA because they also are not considered to have a significant environmental effect.

**EXHIBITS:**

1. Summary of changes and benefits resulting from proposed amendments
2. City Council Resolution No. 2011-229 (65858(d) Report)
3. Housing and Redevelopment Commission Resolution No. 514 (65858(d) Report)
4. City Council Ordinance No. CS-158 (ZCA 11-05)
5. City Council Ordinance No. CS-159 (PDP 00-02(E))
6. City Council Ordinance No. CS-160 (SP 144(N))
7. City Council Resolution No. 2011-230 (GPA 11-06 & LCPA 11-06)
8. Planning Commission Resolutions No. 6803, 6804, 6805, 6806, 6807
9. Planning Commission Staff Report dated September 7, 2011
10. September 7, 2011, letter from Luce Forward
11. Excerpt of the draft Planning Commission meeting minutes dated September 7, 2011.

**CHANGES TO POWER PLANT STANDARDS -  
GPA 11-06/ZCA 11-05/LCPA 11-06/PDP 00-02(E)/SP 144(N)****Summary of Changes and Benefits Resulting from Proposed Amendments****Generation of Electrical Energy**

1. Permit generation of electrical energy outside the Coastal Zone but restrict it in the Coastal Zone to only facilities of fewer than 50 megawatts that are accessory to another use.
2. Prohibit the generation of 50 megawatts or more of electricity in the Coastal Zone.
3. Restrict generation of electrical energy inside or outside the Coastal Zone to only facilities by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission.
4. Enable the City to regulate and thus determine the compatibility of any future power generation in the Coastal Zone as such generation would be limited to fewer than 50 megawatts, which is subject to city, not California Energy Commission, jurisdiction.
5. Reduce the potential for significant environmental impacts, including but not limited to visual, air quality, and land use impacts, associated with construction of a new power generating facility or expansion of an existing facility of 50 megawatts or more.
6. Enhance redevelopment opportunities in the Coastal Zone due to the restrictions the amendments impose on generation of electrical energy in the Coastal Zone.
7. Allow the possibility of small, accessory power generation at Coastal Zone facilities such as the Encina Wastewater Treatment Plant.
8. Make clear to the California Energy Commission, which has jurisdiction over power generating facilities of 50 megawatts or more, the city's land use standards regarding generation of electrical energy.
9. Amend the Public Utilities land use designation and Public Utility Zone, the only designation and zone that permit generation of electrical energy.
10. Eliminate provisions regarding future power generation in the Agua Hedionda Lagoon area through amendments to the Agua Hedionda Land Use Plan and Encina Specific Plan.
11. Clarify the existing Encina Power Station is not consistent with the General Plan or Zoning Ordinance through amendments to the Encina Power Station Precise Development Plan and Encina Specific Plan.

**Transmission of Electrical Energy**

Clarify transmission of electrical energy may only be conducted by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission, which matches the restriction imposed on the generation of electrical energy.

## **Attachment to Expiration of Urgency Ordinance CS-067 – Third Required Written Report**

Note: This memo provides a summary only of the city's actions regarding the adoption and extension of Urgency Ordinance CS-067 from October 2009 through October 2010; please refer to the agenda bills, ordinances, and resolutions referenced below for complete information.

### October 20, 2009

The City Council adopted Urgency Ordinance CS-067 on October 20, 2009, to: 1) declare that the proposed Carlsbad Energy Center Project (CECP), an expansion of the existing Encina Power Station, represents a current and immediate threat to public health, safety and welfare; and 2) adopt a 45 day moratorium to prohibit any new or expanded thermal electric power generation facilities within Carlsbad's Coastal Zone. Urgency Ordinance CS-067 would expire on December 4, 2009, 45 days after its adoption, unless it was extended.

On the same date, the City Council also adopted Council Resolution 2009-263, declaring its intention to study and consider amendments to the General Plan Land Use Element, Zoning Ordinance, and other regulations pertaining to the location and operation of thermal electric power generation facilities within the City.

Please refer to Agenda Bill 20,007 for more information.

### December 1, 2009

On this date, the City Council adopted Ordinance CS-070 to extend Urgency Ordinance CS-067 for 10 months and 15 days (through October 20, 2010). The City Council also adopted Council Resolution 2009-299, directing staff to, among other things: 1) prepare a land use study of the Encina Power Station property and 2) complete a review of alternative sites within the City that may accommodate and are acceptable to the city for the location and operation of thermal electric power generation facilities including public outreach and input through the City's General Plan Update.

The first written report describing the measures taken to alleviate the subject urgency ordinance condition is included as part of Agenda Bill 20,054.

### October 5, 2010

At a joint meeting of the City Council and Housing and Redevelopment Commission on October 5, 2010, the City Council adopted Resolution 2010-237, authorizing the issuance of the second written report describing the measures taken to date to alleviate the condition which led to the adoption of the urgency ordinance. At the same meeting, the Housing and Redevelopment Commission adopted Resolution 493, concurring with the City Council's issuance of a written report.

The second report was issued fifteen days prior to the October 20, 2010, expiration of Ordinance CS-070. It is included as part of Agenda Bill 20,377.

October 12, 2010

At its October 12, 2010, meeting, the City Council adopted Ordinance CS-110, extending the previously adopted Ordinance CS-070 for 12 months (through October 20, 2011). It also adopted Resolution 2010-238, declaring its intention to consider amendments to the Land Use element of the General Plan, the Zoning Ordinance, and other regulations pertaining to the location and operation of thermal electric power generation facilities within the City of Carlsbad. Contemplated amendments included land use changes at the Encina Power Station site.

Agenda Bill 20,380 provides further information.

**RESOLUTION NO. 2011-229**

1  
2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
3 CARLSBAD, CALIFORNIA, AUTHORIZING THE ISSUANCE OF  
4 A WRITTEN REPORT AS REQUIRED BY GOVERNMENT CODE  
5 SECTION 65858(d) TO DESCRIBE THE MEASURES TAKEN BY  
6 THE CITY TO ALLEVIATE THE CONDITION WHICH LED TO  
7 THE ADOPTION OF URGENCY ORDINANCE NO. CS-067.

8 WHEREAS, at its regular meeting on October 20, 2009, the City Council adopted  
9 Urgency Ordinance CS-067, prohibiting any new or expanded thermal electric power generation  
10 facilities in Carlsbad's Coastal Zone pending studies and changes in the General Plan and  
11 Zoning Ordinances and other land use regulations; and declaring the ordinance to be an  
12 emergency ordinance adopted as an urgency measure to protect the public health, safety and  
13 welfare and based on the facts stated in the ordinance that represent a current and immediate  
14 threat to the public health, safety, or welfare; and

15 WHEREAS, as authorized by Government Code Section 65858, Urgency  
16 Ordinance CS-067 was extended by urgency ordinances CS-070 and CS-110, the latter  
17 adopted October 12, 2010, and set to expire October 20, 2011; and

18 WHEREAS, Government Code Section 65858(d) requires, ten days prior to the  
19 expiration of an urgency ordinance extension, the legislative body to issue a written report  
20 describing the measures taken to alleviate the condition which led to the adoption of the  
21 ordinance.

22 WHEREAS, the written report is attached hereto as Exhibit A and dated  
23 September 23, 2011.

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

- 26 1. That the above recitations are true and correct.
- 27 2. That pursuant to Government Code Section 65858(d), the City Council of  
28 the City of Carlsbad authorizes the issuance of a written report describing the measures taken  
by the City to alleviate the condition that led to the adoption of Urgency Ordinance CS-067.
3. This action is final the date this resolution is adopted by the City Council.  
The Provisions of Chapter 1.16 of the Carlsbad Municipal Code, "Time Limits for Judicial  
Review," shall apply:

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“NOTICE TO INTERESTED PARTIES”

The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure, Section 1094.6, which has been made applicable in the City of Carlsbad by Carlsbad Municipal Code Chapter 1.16. Any petition or other paper seeking review must be filed in the appropriate court not later than the nineteenth day following the date on which this decision becomes final; however, if within ten days after the decision becomes final a request for the record of the deposit in an amount sufficient to cover the estimated cost or preparation of such record, the time within which such petition may be filed in court is extended to not later than the thirtieth day following the date on which the record is either personally delivered or mailed to the party, or his attorney of record, if he has one. A written request for the preparation of the record of the proceedings shall be filed with the City Clerk, City of Carlsbad, 1200 Carlsbad Village Drive, Carlsbad, CA. 92008.”

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the 27th day of September 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
MATT HALL, Mayor

ATTEST:

\_\_\_\_\_  
LORRAINE M. WOOD, City Clerk

(SEAL)

RESOLUTION NO. 514

1  
2 A RESOLUTION OF THE HOUSING AND  
3 REDEVELOPMENT COMMISSION OF THE CITY OF  
4 CARLSBAD, CALIFORNIA CONCURRING WITH THE  
5 ISSUANCE OF A WRITTEN REPORT BY THE CITY  
6 COUNCIL DESCRIBING THE MEASURES TAKEN BY  
7 THE CITY TO ALLEVIATE THE CONDITION THAT LEAD  
8 TO THE ADOPTION OF URGENCY ORDINANCE CS-  
9 067, CONSISTENT WITH GOVERNMENT CODE  
10 SECTION 65858(D).

11 WHEREAS, at its regular meeting of October 20, 2009, the City Council adopted  
12 Urgency Ordinance No. CS-067, prohibiting any new or expanded thermal electric power  
13 generation facilities in Carlsbad's Coastal Zone pending studies and changes in the General  
14 Plan and Zoning Ordinances and other land use regulations; and declaring the ordinance to be  
15 an emergency ordinance adopted as an urgency measure to protect the public health, safety and  
16 welfare and based on the facts stated in the ordinance that represent a current and immediate  
17 threat to the public health, safety, or welfare; and

18 WHEREAS, as authorized by Government Code Section 65858, Urgency  
19 Ordinance CS-067 was extended by urgency ordinances CS-070 and CS-110, the latter  
20 adopted October 12, 2010, and set to expire October 20, 2011; and

21 WHEREAS, Government Code Section 65858(d) requires, ten days prior to the  
22 expiration of an urgency ordinance extension, the legislative body to issue a written report  
23 describing the measures taken to alleviate the condition which led to the adoption of the  
24 ordinance; and

25 WHEREAS, said written report is attached as Exhibit A to City Council Resolution  
26 No. 2011-\_\_\_\_\_, and is incorporated herein by reference.

27 NOW, THEREFORE, BE IT RESOLVED by the Housing and Redevelopment  
28 Commission of the City of Carlsbad, California as follows:

1. That the above recitations are true and correct.
2. That the Housing and Redevelopment Commission of the City of Carlsbad concurs with the issuance of the written report issued by the City Council of the City of Carlsbad describing the measures taken by the City to alleviate the condition that led to the adoption of Urgency Ordinance CS-067.



**ORDINANCE NO. CS-158**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING AN AMENDMENT TO ZONING ORDINANCE SECTION 21.36.020 TABLE "A" REGARDING GENERATION AND TRANSMISSION OF ELECTRICAL ENERGY AS PERMITTED USES IN THE PUBLIC UTILITY ZONE.

CASE NAME: CHANGES TO POWER PLANT STANDARDS  
 CASE NO.: ZCA 11-05

The City Council of the City of Carlsbad, California, does ordain as follows:

SECTION I: That Table A in Section 21.36.020 of the Carlsbad Municipal Code is amended to read as follows:

**Table A**

**Permitted Uses**

In the table, below, subject to all applicable permitting and development requirements of the municipal code:

- "P" indicates use is permitted.
- "CUP" indicates use is permitted with approval of a conditional use permit.
- 1 = Administrative hearing process
- 2 = Planning Commission hearing process
- 3 = City Council hearing process
- "Acc" indicates use is permitted as an accessory use.

Use	P	CUP	Acc
Agricultural farm worker housing (temporary) (subject to Section 21.42.140(B)(2))		3	
Agriculture: only the following agricultural uses, and buildings accessory to such agricultural uses, are permitted in the P-U zone: (a) field and seed crops, (b) truck crops, (c) horticultural crops, (d) orchards and vineyards, (e) pasture and rangeland, (f) tree farms, (g) fallow lands, (h) greenhouses	x		
Airports		3	
Alcoholic treatment centers		2	
Any other use which the planning commission or city council may determine to be similar to the permitted uses in the zone and to fall within the intent and purposes of the zone (see note 1)	x		
Aquaculture (defined: Section 21.04.036)		2	
Aquaculture stands (display/sale) (subject to Section 21.42.140(B)(10))		2	
Biological habitat preserve (subject to Section 21.42.140(B)(30)) (defined: Section 21.04.048)		2	
Campsites (overnight) (subject to Section 21.42.140(B)(40))		2	
Cemeteries		3	
Columbariums, crematories, and mausoleums (not within a cemetery)		2	
Energy transmission facilities, including rights-of-way and pressure control or booster stations for gasoline, electricity, natural gas, synthetic natural gas, oil or other forms of energy sources	x		
Fairgrounds		3	

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Generation of electrical energy, primary, by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission outside the City's Coastal Zone only	x		
Generation of electrical energy, accessory, by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission in or outside the City's Coastal Zone and limited to a generating capacity of fewer than 50 megawatts. Generating capacity of 50 megawatts or more is prohibited in the Coastal Zone			x
Golf courses		2	
Governmental maintenance and service facilities	x		
Greenhouses >2,000 square feet (subject to Section 21.42.140(B)(70))		1	
Hazardous waste facility (subject to Section 21.42.140(B)(75)) (defined: Section 21.04.167)		3	
Hospitals (defined: Section 21.04.170)		2	
Hospitals (mental) (defined: Section 21.04.175)		2	
Mobile buildings (subject to Section 21.42.140(B)(90)) (defined: Section 21.04.265)		2	
Packing/sorting sheds >600 square feet (subject to Section 21.42.140(B)(70))		1	
Petroleum products pipeline booster stations	x		
Processing, using and storage of: (a) natural gas, (b) liquid natural gas, (c) domestic and agricultural water supplies	x		
Public utility district maintenance, storage and operating facilities	x		
Radio/television/microwave/broadcast station/tower		2	
Recreation facilities		2	
Recreational facilities (public or private, passive or active)	x		
Recycling collection facilities, large (subject to Chapter 21.105 of this title) (defined: Section 21.105.015)		2	
Recycling collection facilities, small (subject to Chapter 21.105 of this title) (defined: Section 21.105.015)		1	
Recycling process/transfer facility		2	
Satellite television antennae (subject to the provisions of Section 21.53.130 of this code)	x		
Signs subject to the provisions of Chapter 21.41	x		
Stadiums		3	
Transit passenger terminals (bus and train)		2	
Transmission of electrical energy if conducted by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission	x		
Using and storage of fuel oils	x		
Wastewater treatment, disposal or reclamation facilities	x		
Windmills (exceeding height limit of zone) (subject to Section 21.42.140(B)(160))		2	
Wireless communications facilities (subject to Section 21.42.140(B)(165)) (defined: Section 21.04.379)		1/2	
Zoos (private) (subject to Section 21.42.140(B)(170)) (defined: Section 21.04.400)		2	
Note: 1. Providing there shall not be permitted any use which creates noxious gas or odor, excessive sound vibration or significant atmospheric pollution.			



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INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City Council on the 27<sup>th</sup> day of September 2011, and thereafter.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the 11<sup>th</sup> day of October 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
RONALD R. BALL, City Attorney

\_\_\_\_\_  
MATT HALL, Mayor

ATTEST:

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LORRAINE M. WOOD, City Clerk

(SEAL)

ORDINANCE NO. CS-159

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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING AN AMENDMENT TO THE ENCINA POWER STATION PRECISE DEVELOPMENT PLAN PDP 00-02(E) TO (1) CLARIFY THE ENCINA POWER STATION IS NOT CONSISTENT WITH THE GENERAL PLAN OR ZONING ORDINANCE DUE TO ITS LOCATION IN THE COASTAL ZONE AND ITS GENERATING CAPACITY, AMONG OTHER THINGS; (2) REVISE THE CONTENTS OF THE PRECISE DEVELOPMENT PLAN AS NECESSARY TO REFLECT THIS INCONSISTENCY AND (3) MAKE MINOR HOUSEKEEPING CHANGES TO REFLECT, AMONG OTHER THINGS, THE APPROVED STATUS OF THE CARLSBAD SEAWATER DESALINATION PLANT. THE ENCINA POWER STATION PRECISE DEVELOPMENT PLAN ENCOMPASSES THE 95-ACRE ENCINA POWER STATION AT 4600 CARLSBAD BOULEVARD, LOCATED ALONG THE SOUTH SHORE OF AGUA HEDIONDA LAGOON AND WEST OF INTERSTATE 5 AND WITHIN LOCAL FACILITIES MANAGEMENT ZONES 1 AND 3.

CASE NAME: CHANGES TO POWER PLANT STANDARDS  
CASE NO.: PDP 00-02(E)

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WHEREAS, the City Council of the City of Carlsbad, California has reviewed and considered a request, consistent with Chapter 21.36 of the Municipal Code, to approve amendment "(E)" to the Encina Power Station Precise Development Plan, PDP 00-02; and

WHEREAS, after procedures in accordance with the requirements of law, the City Council has determined that the public interest indicates that PDP 00-02(E) be approved.

NOW, THEREFORE, the City Council of the City of Carlsbad does ordain as follows:

SECTION I: That PDP 00-02(E), dated September 7, 2011, on file in the Planning Department, and incorporated herein by reference, is approved. PDP 00-02(E) shall constitute the development plan for the property and all development within the plan area shall conform substantially to the plan.

SECTION II: That the findings of the Planning Commission in Planning Commission Resolution No. 6806 shall constitute the findings of the City Council.

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EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption, and the City Clerk shall certify to the adoption of this ordinance and cause it to be published at least once in a publication of general circulation in the City of Carlsbad within fifteen days after its adoption.

INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City Council on the 27<sup>th</sup> day of September 2011, and thereafter.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the 11th day of October 2011, by the following vote, to wit:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
RONALD R. BALL, City Attorney

\_\_\_\_\_  
MATT HALL, Mayor

ATTEST:

\_\_\_\_\_  
LORRAINE M. WOOD, City Clerk

(SEAL)

ORDINANCE NO. CS-160

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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING AN AMENDMENT TO THE ENCINA SPECIFIC PLAN SP 144(N) THAT (1) INCORPORATES PRECISE DEVELOPMENT PLAN PDP 00-02(E) AS APPROVED BY CITY COUNCIL ORDINANCE NO. \_\_\_\_\_; (2) DELETES STATEMENTS REGARDING FUTURE POWER GENERATING FACILITIES; AND (3) CLARIFIES THE ENCINA POWER STATION IS NOT CONSISTENT WITH THE GENERAL PLAN OR ZONING ORDINANCE. THE ENCINA SPECIFIC PLAN EXTENDS BETWEEN THE PACIFIC OCEAN AND CANNON ROAD, ENCOMPASSES THE AGUA HEDIONDA LAGOON, THE ENCINA POWER STATION, AND PROPERTIES WITHIN LOCAL FACILITIES MANAGEMENT ZONES 1, 3, AND 13.  
CASE NAME: CHANGES TO POWER PLANT STANDARDS  
CASE NO.: SP 144(N)

WHEREAS, the Encina Specific Plan SP 144 was originally adopted by the City Council as Ordinance No. 9279 on August 3, 1971, and has since been amended several times; and

WHEREAS, SP 144 contains the rules and regulations for the orderly development of 680 acres of land, which includes the Agua Hedionda Lagoon, agricultural operations and natural open space, and the Encina Power Station; and

WHEREAS, the City Council of the City of Carlsbad has reviewed and considered Specific Plan Amendment SP 144(N) for the Encina Specific Plan; and

WHEREAS, after procedures in accordance with requirements of law, the City Council has determined that the public interest indicates that said SP 144(N) be approved.

NOW, THEREFORE, the City Council of the City of Carlsbad does ordain as follows:

SECTION I: That SP 144(N), dated September 7, 2011, on file in the Planning Department, and incorporated herein by reference, is approved. SP 144(N) shall constitute the development plan for the property and all development within the plan area shall conform substantially to the plan.

SECTION II: That the findings of the Planning Commission in Planning Commission Resolution No. 6807 shall constitute the findings of the City Council.

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EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption, and the City Clerk shall certify to the adoption of this ordinance and cause it to be published at least once in a publication of general circulation in the City of Carlsbad within fifteen days after its adoption.

INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City Council on the 27th day of September 2011, and thereafter.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the 11th day of October 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
RONALD R. BALL, City Attorney

\_\_\_\_\_  
MATT HALL, Mayor

ATTEST:

\_\_\_\_\_  
LORRAINE M. WOOD, City Clerk

(SEAL)

Exhibit X-SP 144(N)  
September 7, 2011

**City of Carlsbad**  
**Encina Specific Plan 144**

Amended and Restated with Amendment 144(~~KN~~), per

City of Carlsbad Ordinance No. CS-~~148XXX~~, adopted on ~~XXXMay 24,~~ 2011

~~City of Carlsbad Specific Plan 144  
(as amended and restated by Ordinance No. CS 148XXX with 144(KN))~~

I. INTRODUCTION

A. PURPOSE

The purpose of this Specific Plan is to (1) set forth the existing land uses and land use regulations applicable to the area of Carlsbad which includes the Agua Hedionda Lagoon and certain areas near the lagoon, including the Encina Power Station; and (2) maintain the conditions and regulations of previous Specific Plan Amendments A through K.

~~Pursuant to Carlsbad City Council Ordinance CS-148 the purpose of this amendment to Specific Plan 144, described as Specific Plan 144(K), is to:~~

- ~~1. Incorporate the provisions of Carlsbad Municipal Code (CMC) Chapter 21.209 Cannon Road Agricultural and Open Space (CR A/OS) Zone into Specific Plan 144.~~
- ~~2. Revise Exhibit C to identify lands within SP 144 which are subject to "Proposition D Preserve the Flower and Strawberry Fields and Save Taxpayer's Money" and the Cannon Road Agricultural/Open Space (CR A/OS) Zone.~~
- ~~3. Maintain the conditions and regulations of previous Specific Plan Amendments A through H.~~

B. HISTORY

Specific Plan 144 (SP 144) was originally adopted in City of Carlsbad Ordinance 9279 on August 3, 1971. 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. The property covered by the original Specific Plan 144 was described in Ordinance 9279 as:

A portion of Lot F of Rancho Agua Hedionda in the County of San Diego and a Portion of Lot H, Rancho Agua Hedionda Map 823, in the City of

Carlsbad, and a portion of Block "W" of Palisades No. 2, Map 1803 in the City of Carlsbad, County of San Diego, State of California; also being parcel 6, page 07, Book 206; Parcels 24,25,26, and 27, Page 01, Book 210; Parcel 21, Page 21, Book 211, and Parcel 14, page 01, Book 212, of the Assessor's map of San Diego County, and more particularly described in application on file in the Office of the City Planner.

As originally adopted, the Specific Plan placed 13 conditions of development on the subject property and provided for methods of enforcement.

On 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 Encina Power Station. This amendment became null and void one year later.

On 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 provided a finding that "all conditions of City Council Ordinance 9279 have been complied with and this amendment is consistent with said ordinance and the provisions of the P-U zone." Amendment B to Specific Plan 144 added condition 14 which created design, development, and other requirements for the construction 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.

Amendment C of Specific Plan 144 was adopted on May 3, 1977 by City Council Ordinance 9481 to allow for the construction of water treatment facilities and a maintenance building at the Encina Power Station. Amendment C added condition 15 regarding the development of the water treatment facilities and the maintenance building and amended the map of the specific plan area.

Between 1978 and 1993 three additional amendments to Specific Plan 144 were applied for and withdrawn by SDG&E for changes to the Encina Power Station. 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.

On January 16, 1996 the 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.

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

[On June 13, 2006, the Carlsbad City Council adopted Ordinance No. NS-805, approving Specific Plan 144\(H\) to incorporate Precise Development Plan PDP 00-02 for accommodated the Carlsbad Seawater Desalination Plant in the Specific Plan and on the and the Encina Power Station site.](#)

[In 2007, Specific Plan 144 \(I\) was submitted by Carlsbad Energy Center LLC as part of their proposal for power regeneration onsite. This application is pending and may be superseded by the California Energy Commission and related procedures.](#)

[On September 22, 2009, the Carlsbad City Council adopted Ordinance No. CS-057 approving Encina Specific Plan SP 144\(J\) to incorporate Precise Development Plan PDP 00-02\(B\), for modifications to the the Encina Power Station and Carlsbad Seawater Desalination Plant.](#)

[On May 24, 2011, the Carlsbad City Council adopted Ordinance No. CS-148, approving SP 144\(K\) and incorporating the provisions of Carlsbad Municipal Code \(CMC\) Chapter 21.209 - Cannon Road Agricultural and Open Space \(CR-A/OS\) Zone into Specific Plan 144. CS-148 also revised Specific Plan 144 Exhibit C to identify lands within SP 144 which are subject to "Proposition D - Preserve the Flower and Strawberry Fields and Save Taxpayer's Money" and the Cannon Road Agricultural/Open Space \(CR-A/OS\) Zone.](#)

[Application SP 144\(L\) has been submitted for a proposed project, the Agua Hedionda Sewer Lift Station and Trunk Line.](#)

[SP 144 \(M\) has been withdrawn.](#)

On XXXXX, 2011, the Carlsbad City Council adopted Ordinance No. CS-XXX, approving SP 144(N) to delete and modify Specific Plan provisions regarding generation of electrical energy and Encina Power Station consistency with city land use standards. These changes clarify the Encina Power Station is not consistent with the General Plan and Zoning Ordinance.

## C. PHYSICAL SETTING

The Specific Plan 144 (SP 144) area is generally bound by public beach areas and the Pacific Ocean to the West, the North Shore of the Agua Hedionda Lagoon on the North, and Cannon Road on the South. The east end of the Specific Plan is bisected by Cannon Road and contains wetland and upland areas east and south of the lagoon. A map showing the boundaries of the Specific Plan area is shown as Exhibit A attached to this document.

The SP 144 area incorporates the Agua Hedionda Lagoon on the West and East sides of the I-5 Freeway and includes agricultural/open space land in the southeast, and the Encina Power Station in the West. The I-5 freeway bisects the Specific Plan area and the AT&SP/North County Transit District Rail Corridor parallels the I-5 Freeway in the Western part of the Specific Plan area and bisects the Encina Power Station. Additionally, Carlsbad Boulevard is located along and just inside the west Specific Plan boundary and separates the Encina Power Station from the Pacific Ocean. A small portion of the Specific Plan is located west of the freeway and along the lagoon's north shore.

The Specific Plan Boundary is shown in Exhibit A. The distribution, location and extent of the uses of the land, including open space within the area covered by this Specific Plan, are shown in Exhibit B.

## II. INFRASTRUCTURE

The Specific Plan area is generally characterized by the Agua Hedionda Lagoon, Encina Power Station and agricultural land. The following description provides the existing distribution, location, extent and intensity of major components of public and private transportation, sewage, water, drainage and solid waste disposal, energy, and other essential facilities located within the area covered by the plan, and which support the existing land uses described in the plan. PDP 00-02 ([BE](#)), referenced in this Specific Plan, provides information on the Carlsbad Seawater Desalination Project and associated infrastructure, which were approved concurrently with amendment 144(J) to this Specific Plan. PDP 00-02([BE](#)) also provides details regarding the existing Encina Power Station.

The desalination project is located on the grounds of the Encina Power Station. Related infrastructure includes conveyance pipelines to carry desalinated water offsite of the power station (and thus outside the boundaries of the PDP and Specific Plan) and into surrounding communities. A portion of the different alignments for the pipelines would cross land within Specific Plan 144 south and east of the power station and east of Interstate 5. Since these offsite pipelines are not located within the PDP, they are subject to different permit requirements. However, outside the PDP area, there are no further infrastructure plans proposed to support any development of any existing undeveloped or open space areas within the Specific Plan area.

~~Other than the infrastructure contemplated in PDP 00-02(BE) and other permits related to the Carlsbad Seawater Desalination Project and not yet constructed, and any infrastructure referenced in the previously approved Local Facilities Management Plan described below, there are no other planned or approved, but as yet unbuilt, changes or additions to infrastructure facilities in the Specific Plan area. Because additional growth and development within the Specific Plan area is not proposed, there are no further infrastructure plans proposed to support any development of any existing undeveloped or open space areas within the Specific Plan.~~

Major infrastructure elements in the Specific Plan area include electrical transmission lines emanating from the Encina Power Station and which extend across the Specific Plan area to the East, the I-5 freeway, the AT&SP/North County Transit District Rail tracks, Cannon Road and Carlsbad Boulevard. The power plant is served by general water and wastewater facilities that service the greater Carlsbad area.

There are sewer and water lines and a gas main located within the Cannon Road right-of-way. A gas main and sewer force main also extend along the AT&SP/North County Transit District Rail tracks. Other public rights of way in the Specific Plan, such as Cannon Road and Carlsbad Boulevard, support additional infrastructure.

As part of its Growth Management Program, the City of Carlsbad adopted the 1986 *Citywide Facilities and Improvement Plan* in order to implement the City's General Plan and Zoning Ordinance. This plan ensures that development does not occur unless adequate public facilities and services exist or will be provided concurrent with new development. A Local Facility Management Plan (LFMP) has been adopted for all but one of the 25 Facility Zones within the City. The SP 144 area is located within Zone 1,

Zone 3 and Zone 13, for which the City has adopted LFMPs. Consistent with the Citywide Plan, each plan contains performance standards (i.e., thresholds) for public facilities and services. This provides the City with quantitative guidance as to whether or not a project will be in conformance with adequate public facility and service provision thresholds. Therefore, projects within the City of Carlsbad are subject to thresholds for circulation, city administrative facilities, fire, schools, libraries, park and recreation resources, open space, wastewater treatment capacity, sewer collection system, drainage/storm water system and water distribution. This Specific Plan incorporates by reference the LFMPs for those parts of the Specific Plan area that fall within Zone 1, Zone 3 and Zone 13.

~~There are no present proposals for additional development in the Specific Plan area and therefore there will be no additional need for infrastructure facilities at this time beyond those required for the development in the PDP 00-02(BE) area.~~ PDP 00-02(BE) is consistent with the LFMP for Zone 1 and Zone 3, and infrastructure within the PDP 00-02(BE) area will be subject to requirements of PDP 00-02(BE). All future development occurring with PDP 00-02(E) or elsewhere within SP 144 will require analysis to determine consistency with the Growth Management Program, including relevant LFMPs, and infrastructure needs.

### III. DEVELOPMENT STANDARDS

Generally, the development standards in this Specific Plan are the same as the standards contained in the City of Carlsbad General Plan. This Specific Plan provides for the same Utility, Travel/Recreation Commercial, Residential High Density, and Open Space designations as are indicated in the Carlsbad General Plan as shown in Exhibit B attached to this document. Further, development standards for the Encina Power Station are contained in PDP 00-02(BE).

~~At this time, there is no additional development proposed for the lagoon or agricultural/open space areas of Specific Plan 144.~~ Regulations for the development of Specific Plan the agricultural and open space areas are included in this Specific Plan and in CMC Chapter 21.209 – Cannon Road Agricultural/Open Space (CR-A/OS) Zone, incorporated herein by reference.

Standards and conditions for the Encina Power Station required as part of the original Specific Plan and Amendments A-G-N are indicated below. Items 1-13 were found to be complied with in the findings of City of Carlsbad Ordinance 9456. Any development proposed outside the PDP 00-02(BE) portion of this Specific Plan 144 will require an amendment to this

Specific Plan. Any additional development within the PDP 00-02([BE](#)) area will not require an amendment to this Specific Plan unless it is considered a "formal amendment" as described in PDP 00-02([BE](#)).

Specific Plan Amendments 144(A-H, [JN](#)) established the following standards and requirements, (some of which have been satisfied as of the date of Specific Plan 144([KN](#))):

1. That the granting of the requested zoning shall be subject to the remainder of the San Diego Gas and Electric property (portion Lot "F") being annexed to the City of Carlsbad. Also that the area designated on the Specific Plan as "Site of Future Power Plant," east of the freeway, be subject to Specific Plan approval at a later date.
2. All developments within the public utility zone shall be within the conditions specified therein and following.
3. Details concerning the leasing of park lands shall be agreed upon between San Diego Gas and Electric Company and the City within one year after the City has approved final rezoning. Location of baseball little league park and other athletic facilities shall be subject to specific plan approval at the earliest practicable date, it being understood that the present proposed location thereof is disapproved.
4. All buildings shall be subject to architectural review as prescribed in Ordinance No. 9268 prior to issuance of a building permit to assure a maximum amount of design compatibility with the neighborhood and existing facilities.
5. The heights of future ~~power-generating buildings and~~ transmission line tower structures shall be of heights and of a configuration similar to existing facilities. All storage tanks shall be screened from view. No other structure or building shall exceed thirty five (35') feet in height unless a specific plan is approved at a public hearing.
6. All fuel storage tanks shall be recessed and used for those oils which, upon being consumed, shall not have a sulfur content exceeding .50 percent; being that

percentage commonly associated with the term “low sulfur fuel oil.”

7. Landscape and irrigation plans prepared by a registered landscape architect shall be submitted in conformance with Ordinance No. 9268 for the screening of existing facilities. Plans shall be submitted within two years and must provide a schedule for installation.
8. ~~That the proposed site for a future power generating facility on the East side of Interstate 5 shall be planned so as to be compatible with the present facility. The facilities shall meet the requirements of the State and Federal regulations and shall be environmentally compatible with the City of Carlsbad.~~
9. All signs shall be in conformance with City ordinances within 90 days.
10. Exterior lighting shall be oriented so that adjacent properties shall be screened from glare or a direct light source.
11. Prior to any construction, detailed plans shall be submitted to the City of Carlsbad Fire Department to assure:
  - a) Necessary fire protection requirements.
  - b) Suitable access roads for fire fighting purposes.
  - c) Necessary yard mains and fire hydrants.
  - d) Other fire protection devices or appliances deemed necessary.
12. That the applicant dedicate right-of-way for that portion of the width of Cannon Road (102' R/W) which falls within the applicant's property East of I-5. The alignment shall be subject to the approval of the City Engineer and Planning Director.
13. That the following conditions of public improvements for Cannon Road and Carlsbad Boulevard be complied with:

A. Carlsbad Boulevard.

1) Construct street improvements including curb, gutter, sidewalks, street lights and up to 20 feet of paving along each side where SDG&E property has frontage, excepting public beaches and property dedicated for public parks. Construction may be deferred until mutually agreeable to the City and the Company except that the safety of the driving and walking public will be considered. The improvements may be financed by assessment district.

B. Cannon Road.

1) Construct full street improvements for ½ street from Carlsbad Boulevard to a point approximately 600 feet easterly of I-5 along frontage owned by SDG&E, timing to be subject to approval of City, but in any event not before development of property adjoining the south side of Cannon Road or the institution of an assessment district.

2) Dedicate full right of way (102 feet) for that portion of Cannon Road easterly of I-5 which falls within SDG&E property.

3) Construction of improvements easterly of B-1 may be deferred until property easterly of I-5 is developed. Agreement on grade development and spreading of construction cost shall be mutually agreeable to the City and the Company. The City policy for improvement of such streets shall be considered.

C. Access roads shall be subject to City approval.

14. In addition to the above conditions, the revised portions of the specific plan which permit the construction of the 400-foot stack and the removal of the four existing stacks shall be accomplished in accord with the revised specific plan SP-144B and shall be subject to the following conditions:

(A) All applicable requirements of any law, ordinance or regulations of the State of California, City of Carlsbad, and any other governmental entity shall be complied with.

(B) All ground lighting shall be arranged to reflect away from adjoining properties and streets.

(C) Any mechanical and/or electrical equipment to be located on the roof of the structure shall be screened in a manner acceptable to the Planning Director. Detailed plans for said screening shall be submitted, in triplicate, to the Planning Director for approval.

(D) Air pollution equipment capable of monitoring ambient particulates, NO<sub>x</sub> and SO<sub>2</sub> concentrations and other emissions from the Encina Plant as well as air quality in the Carlsbad area shall be placed in service not later than six months following the effective date of this ordinance. The number of stations, type of equipment and location of stations shall be to the satisfaction of the APCD Control Officer and the City of Carlsbad. Should the Air Pollution Control Officer of the San Diego County Air Pollution Control District require additional air quality or emissions monitoring equipment and funds for air quality analysis in connection with their current study of emissions from the Encina Power Plant, the applicant shall supply said equipment and funds as deemed necessary by the Air Pollution Control Officer. The cost of said equipment shall not exceed \$150,000. The requested funds for air quality analysis shall not exceed \$50,000 per year.

(E) Any future measure required by the San Diego County Air Pollution Control District to lessen or otherwise control emissions from the Encina Power Plant are hereby incorporated as a part of this Specific Plan Amendment and SDG&E shall comply fully therewith. The costs of such measures shall be borne by SDG&E.

(F) SDG&E will obtain a report of compliance from the City staff regarding the conditions of this ordinance and from the San Diego County Air Pollution Control Officer regarding compliance with the applicable conditions of the ordinance and with air quality standards, and forward it to the City Council five years from the date of this ordinance or as otherwise required by motion of the City Council, or the Planning Commission. The Planning Commission and City Council shall review the report with regard to conformance to the conditions of this ordinance and to

regulations required by other applicable regulatory agencies, including, but not limited to, the San Diego County Air Pollution Control District, Public Utilities Commission and State Coastal Commission. The City reserves the right to amend this specific plan SP-144B as necessary to add conditions to ensure such compliance. After the initial report is filed the City Council may, by motion, require additional reports as they deem necessary.

(G) In the event that the City of Carlsbad determines that the 400-foot stack is no longer necessary as a method of air emission dispersion, the 400-foot stack shall be removed at the applicant's expenses. The applicant may request an amendment to this specific plan to provide a reasonable extension of the period for such removal.

(H) The applicant shall make a formal commitment to conduct the studies necessary to determine what operating practices and/or emissions control devices are capable of eliminating the particulate "fallout" problem. A schedule for the completion of the studies shall be established which is satisfactory to the San Diego County Air Pollution Control District Officer, the Air Pollution Control District Hearing Board or Court of Law. SDG&E shall fully comply with the abatement order entered in petition No. 607.

The applicant shall further agree to pay claims for property damage resulting from the "fallout" problem until compliance with the abatement order is achieved.

The particulate "fallout" problem shall be controlled to the satisfaction of the City Council of the City of Carlsbad and of the Air Pollution Control Officer prior to the final building permit clearance for Encina 5 and the single stack.

(I) Not later than eight months after the Building Inspector signs the final inspection for the 400-foot stack, the four stacks on the existing Encina Power Plant shall be completely removed.

(J) SDG&E shall file an annual report with the City Council regarding improvements in plant and operating procedures during the preceding year which reduce the

emission of air pollutants resulting from the operation of Encina Units 1, 2, 3 and 4.

(K) SDG&E shall operate the plant in full compliance with all air quality standards as are or may be established by the APCD. If the monitoring stations indicate the standards are being exceeded at any time, SDG&E shall comply with all directions of APCD to reduce, through any reasonable means, pollutants from the plant.

(L) In the event SDG&E files for a variance or other form of administrative or legal relief from the requirements of APCD, they shall concurrently forward a copy of any such filing, or any subsequent communications in connection therewith, to the City of Carlsbad.

15. In addition to the above conditions, the revised portions of the specific plan which permits the construction of water treatment facilities and a maintenance building shall be accomplished in accord with the revised specific plan SP-144(C) and the plot plan marked Exhibit A, dated January 31, 1977, attached hereto and made a part hereof, and shall be subject to the following conditions:

A. The water treatment ponds shall be constructed and maintained to the following standards to minimize the likelihood of the ponds serving as mosquito breeding sources:

1. Confine standing water impoundment to as small an area as possible.
2. All pond areas shall be lined with a nonporous material acceptable to the City Engineer.
3. Maintain a removal program of dense aquatic vegetation, such as cattails, bulrush, tule, pondweed, etc.
4. Maintain a mosquito fish (*Gambusia affinis*) population, as necessary.

5. Maintain routine (weekly) inspections of water impoundments to detect mosquito breeding.
6. Abate any mosquito breeding, as it is detected.

B. Prior to the issuance of building permits for the maintenance building, the applicant shall submit a plot plan to the Planning Director for review and approval showing which existing shops and storage activities are to be removed and consolidated into the new structure.

Standards and criteria by which development will proceed at the Encina Power Station are set forth in PDP 00-02 ([BE](#)) (adopted concurrently with Specific Plan amendment 144([JN](#))) and are hereby incorporated into this document by reference. The [Public Utility \(P-U\)](#) zoning district, Zoning Ordinance Chapter 21.36, is the primary source of the standards and conditions established within PDP 00-02 ([BE](#)). Other standards and conditions in PDP 00-02 ([BE](#)) originate from related regulations and documents discussed in Chapter III of PDP 00-02 ([BE](#)).

[The EPS is not a permitted use in the P-U zoning district or within the boundaries of PDP 00-02\(E\). Further, both the P-U Zone and PDP 00-02\(E\) clarify generation of electrical energy is permitted in the Coastal Zone only if \(1\) by a government entity or by a utility company authorized or approved for such use by the California Public Utilities Commission and \(2\) it is an accessory use that generates fewer than 50 megawatts. Both the P-U Zone and PDP 00-02\(E\) also clarify that a generating capacity of 50 megawatts or more is prohibited in the Coastal Zone. Further information about the EPS may be found in the Introduction and in chapters I and III of PDP 00-02\(E\).](#)

As described in PDP 00-02 ([BE](#)), any formal amendments to PDP 00-02 ([BE](#)) will be incorporated into the Specific Plan 144 and will require an amendment to, [or comprehensive update of,](#) this Specific Plan [as determined by the City Council.](#)

Other land use regulations applicable to Specific Plan 144 include the following:

- The Agua Hedionda Land Use Plan. Specific Plan 144 is entirely within the boundaries of the Agua Hedionda Land Use Plan, which is part of the City's Local Coastal Program,
- The South Carlsbad Coastal Redevelopment Plan (SCCRP). The SCCRCP encompasses within its boundaries the western half of Specific Plan 144, including a portion of the agricultural land east of I-5 and the majority of the area west of I-5 (including the Encina Power Station).
- The Cannon Road Agricultural/Open Space Zone (CMC Chapter 21.209). A portion of the SP 144 area east of I-5 is included in the Cannon Road Agricultural/Open Space (CR-A/OS) Zone and all development and uses in this portion of the Specific Plan shall be subject to the provisions of that zone.

Furthermore, Specific Plan requirements shall not be required of, or applied to, uses regulated by the California Public Utilities Commission (CPUC).

#### IV. IMPLEMENTATION

Specific Plan Amendment 144([JN](#)) authorizes no new development in the Specific Plan area over and above that allowed by Precise Development Plan 00-02([BE](#)). The City of Carlsbad has instituted zoning regulations for the area covered by Specific Plan 144([NJ](#)). In the future, any amendment to the Carlsbad Zoning Ordinance affecting an area covered by this Specific Plan will require zoning to be consistent with this Specific Plan per Government Code section 65455.

#### V. RELATIONSHIP TO THE GENERAL PLAN

SP 144 incorporates the Carlsbad General Plan land use designations for the area covered by the Specific Plan. The Specific Plan is therefore consistent with the General Plan as shown in Exhibit B attached to this document. It should be noted that zoning of certain areas covered by SP 144 is not consistent with General Plan land use designations shown in Exhibit C attached to this document.

The General Plan for the City of Carlsbad designates the land contained in the SP 144 area as RH "Residential High Density," U "Public ~~Utility~~Utilities," OS "Open Space," and T-R "Travel/Recreation Commercial." The Encina Power Station is designated U and the majority of the remaining Specific Plan area is designated OS. The General Plan Land Use element describes the U designation's primary functions as follows: The General Plan states that the Utility designation's "primary functions include such things as the generation of electrical energy, treatment of waste water, and operating facilities, or other primary utility functions designed to serve all or a substantial portion of the community."

Primary functions may include such uses as the treatment of waste water, public agency maintenance storage and operating facilities, or other primary utility functions designed to serve all or a substantial portion of the community. A primary function designed to serve all or a substantial portion of the community may also include the generation of electrical energy if it is located outside the Coastal Zone but only if it is conducted by a government entity or by a company and such use is authorized or approved by the California Public Utilities Commission.

The Specific Plan provides regulations for the development of the Encina Power Station ~~which provides "generation of electrical energy,"~~ and incorporates the PDP 00-02(BE). The PDP serves as a permit for the Carlsbad Seawater Desalination Project, which would provide "primary utility functions designed to serve all or a substantial portion of the community," by augmenting potable drinking water supplies for the City of Carlsbad. Thus, the ~~power station and~~ desalination plant ~~are uses is~~ consistent with the provisions of the General Plan. Other than the desalination plant, Specific Plan 144(JN) authorizes no additional development.

The Encina Power Station is not consistent with the General Plan Public Utilities designation since its primary function is generation of electrical energy and it is located within the Coastal Zone.

Additional areas covered by SP 144 include the Agua Hedionda Lagoon, property along the north shore of the lagoon and west of Interstate 5, the agricultural/open space area East of the I-5 freeway along the lagoon's south shore, and wetland and upland areas at the east end of the lagoon on either side of Cannon Road. The majority of these additional areas are designated Open Space. SP 144(K) ~~includes included~~ a revision to Exhibit C to identify lands within SP 144 which are subject to "Proposition D - Preserve the Flower and Strawberry Fields and Save Taxpayer's Money" and the Cannon Road Agricultural/Open Space (CR-A/OS) Zone. The specific plan does not provide for any new development to occur in these areas,

which besides Open Space are designated as Travel/Recreation Commercial, and Residential High Density. In doing so, the Specific Plan maintains consistency with and enables implementation of the goals of the Land Use and Open Space Elements of the Carlsbad General Plan.

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**RESOLUTION NO. 2011-230**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A GENERAL PLAN AMENDMENT AND LOCAL COASTAL PROGRAM AMENDMENT TO REVISE LAND USE STANDARDS REGARDING THE GENERATION AND TRANSMISSION OF ELECTRICAL ENERGY AND EXPANSION OPPORTUNITIES FOR THE ENCINA POWER STATION.  
CASE NAME: CHANGES TO POWER PLANT STANDARDS  
CASE NO.: GPA 11-06/LCPA 11-06

The City Council of the City of Carlsbad, California, does hereby resolve as follows:

WHEREAS, pursuant to the provisions of the Municipal Code, the Planning Commission did, on September 7, 2011, hold a duly noticed public hearing as prescribed by law to consider General Plan Amendment GPA 11-06 and Local Coastal Program Amendment LCPA 11-06, as referenced in Planning Commission Resolutions No. 6803 and 6805, respectively; and

WHEREAS, the Planning Commission adopted Planning Commission Resolution No. 6803 recommending to the City Council approval of GPA 11-06 and adopted Planning Commission Resolution No. 6805 recommending to the City Council approval of LCPA 11-06; and

WHEREAS, the City Council of the City of Carlsbad, on the 27<sup>th</sup> day of September, 2011, held a duly noticed public hearing to consider said General Plan Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to the General Plan Amendment and Local Coastal Program Amendment.

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

- 1. That the above recitations are true and correct.
- 2. That the recommendation of the Planning Commission for the approval of General Plan Amendment GPA 11-06 is adopted and approved, and that the findings of the



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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the 27<sup>th</sup> day of September 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

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MATT HALL, Mayor

ATTEST:

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LORRAINE M. WOOD, City Clerk

(SEAL)

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**PLANNING COMMISSION RESOLUTION NO. 6803**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, RECOMMENDING APPROVAL OF AN AMENDMENT TO THE GENERAL PLAN LAND USE ELEMENT TO CHANGE THE PUBLIC UTILITIES LAND USE DESIGNATION REGARDING GENERATION OF ELECTRICAL ENERGY.

CASE NAME: CHANGES TO POWER PLANT STANDARDS

CASE NO: GPA 11-06

WHEREAS, the **City of Carlsbad** has filed a verified application for an amendment to the General Plan, **GPA 11-06**, to amend the Land Use Element and specifically the land use classification of “Public Utilities;” and

**WHEREAS, the City has filed GPA 11-06 to respond to City Council Ordinance CS-110, which extends Urgency Ordinance CS-067 and (1) prohibits, through October 20, 2011, the expansion or location of thermal electrical power generation facilities within Carlsbad’s Coastal Zone, (2) describes the City’s concern about expansion of the Encina Power Station, and (3) states the City’s objective to study existing land use standards regarding electrical power generation, particularly at the Encina Power Station and in the Coastal Zone, due to concerns regarding the appropriateness and sufficiency of the standards to protect the health, safety, and welfare, of its citizens; and**

**WHEREAS, the City has also filed GPA 11-06 to respond also to City Council Resolution 2010-038, which (1) declares the City Council’s intent to study and consider amendments to the General Plan Land Use Element, Zoning Ordinance, and other regulations pertaining to the location and operation of thermal electric power generation facilities within the City and (2) directs city staff to prepare the necessary applications to implement land use recommendations; and**

WHEREAS, said verified application constitutes a request for a General Plan Amendment as shown on Exhibit “**X-GPA 11-06**” dated **September 7, 2011**, attached hereto

1 and on file in the Carlsbad Planning Department, **CHANGES TO POWER PLANT**  
2 **STANDARDS – GPA 11-06**, as provided in Government Code Section 65350 et. seq. and  
3 Section 21.52.150 of the Carlsbad Municipal Code; and  
4

5 WHEREAS, the Planning Commission did, on **September 7, 2011**, hold a duly  
6 noticed public hearing as prescribed by law to consider said request; and

7 WHEREAS at said public hearing, upon hearing and considering all testimony  
8 and arguments, examining **GPA 11-06**, analyzing the information submitted by City staff, and  
9 considering any written and oral comments received, the Planning Commission considered all  
10 factors relating to **GPA 11-06**.

11 NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning  
12 Commission of the City of Carlsbad, as follows:  
13

- 14 A) That the above recitations are true and correct.
- 15 B) That based on the evidence presented at the public hearing, the Commission  
16 **RECOMMENDS APPROVAL of CHANGES TO POWER PLANT**  
17 **STANDARDS – GPA 11-06**, based on the following findings:

18 **Findings:**

- 19 1. **GPA 11-06** responds to and is consistent with the concerns and intent and the public  
20 health, safety and welfare objectives of City Council Ordinance CS-110 and City Council  
21 Resolution 2010-238 in that it:
- 22 a. **Specifies a primary function of the Public Utilities designation designed to**  
23 **serve all or a substantial portion of the community may include the**  
24 **generation of electrical energy if it is located outside the Coastal Zone but**  
25 **only if it is conducted by a government entity or by a company and such use**  
26 **is authorized or approved by the California Public Utilities Commission.**
- 27 b. **Clarifies, through the addition of the word “may,” that all primary function**  
28 **examples described for the Public Utilities designation may not be acceptable**  
**primary functions in all instances.**
- c. **Amends the Public Utilities designation, the only land use designation that**  
**specifically identifies generation of electrical energy as a function or use of**  
**the designation.**

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2. GPA 11-06 particularly because of its restrictions on generation of electrical energy in the Coastal Zone, is consistent with overall Land Use Element Goals A.1 and A.2, which state:

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

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.

3. GPA 11-06 is also consistent with Environmental Policy C.5 of the Land Use Element, which states, "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." GPA 11-06 is harmonious with this policy because it clarifies that generation of electrical energy as the primary function of a use or site is not acceptable on a site designated Public Utilities which is in the Coastal Zone.

4. Recognizes the City's role as a participant in regional planning, GPA 11-06 is consistent with the Land Use Element's Special Planning Considerations--Regional Issues goal, by continuing to allow consideration of generation of electrical energy for the region's benefit as a primary function of the Public Utilities designation outside the Coastal Zone.

5. The Planning Director has determined the project is exempt from the California Environmental Quality Act (CEQA) because it will not have a significant effect on the environment. This determination is pursuant to State CEQA Guidelines Section 15061(b) (3) and Municipal Code Section 19.04.070 A.1.c.(1). CEQA Guidelines Section 15061(b) (3) states "when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." Furthermore, Municipal Code Section 19.04.070 A.1.c.(1) identifies minor zone or municipal code amendments that refine or clarify existing land use standards, which the project does, as being exempt from CEQA because they also are not considered to have a significant environmental effect.

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PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Carlsbad, California, held on **September 7, 2011**, by the following vote, to wit:

AYES: Chairperson L’Heureux, Commissioners Arnold, Black, Scully and Schumacher

NOES:

ABSENT: Commissioner Nygaard and Siekmann

ABSTAIN:

\_\_\_\_\_  
STEPHEN “HAP” L’HEUREUX, Chairperson  
CARLSBAD PLANNING COMMISSION

ATTEST:

\_\_\_\_\_  
DON NEU  
Planning Director

**GPA 11-06 – Changes to Power Plant Standards**  
Revision to General Plan Land Use Element

(Note: Proposed text additions are shown as **bold and underlined**. Proposed text deletions are shown as ~~stricken~~.)

**C. LAND USE CLASSIFICATIONS**

**6. PUBLIC UTILITIES (U)**

This category of land use designates areas, both existing and proposed, either being used or which may be considered for use for public or quasi-public functions.

Primary functions **may** include such ~~uses~~ things as the ~~generation of electrical energy~~, treatment of waste water, public agency maintenance storage and operating facilities, or other primary utility functions designed to serve all or a substantial portion of the community. **A primary function designed to serve all or a substantial portion of the community may also include the generation of electrical energy if it is located outside the Coastal Zone but only if it is conducted by a government entity or by a company and such use is authorized or approved by the California Public Utilities Commission.**

Sites identified with a "U" designation indicate that the City is studying or may in the future evaluate the location of a utility facility which could be located within a one kilometer radius of the designations on a site for such a facility. Specific siting for such facilities shall be accomplished only by a change of zone, and an approved Precise Development Plan adopted by ordinance and approved only after fully noticed public hearings.

1 **PLANNING COMMISSION RESOLUTION NO. 6804**

2 A RESOLUTION OF THE PLANNING COMMISSION OF THE  
3 CITY OF CARLSBAD, CALIFORNIA, RECOMMENDING  
4 APPROVAL OF AN AMENDMENT TO ZONING  
5 ORDINANCE CHAPTER 21.36, PUBLIC UTILITY ZONE, AND  
6 SPECIFICALLY TO TABLE "A" OF SECTION 21.36.020,  
7 PERMITTED USES, REGARDING GENERATION AND  
8 TRANSMISSION OF ELECTRICAL ENERGY.

CASE NAME: CHANGES TO POWER PLANT  
STANDARDS

CASE NO.: ZCA 11-05

8 WHEREAS, the Planning Director has prepared a proposed Zone Code  
9 Amendment, **ZCA 11-05**, pursuant to Section 21.52.020 of the Carlsbad Municipal Code **and**  
10 **specifically in response to City Council Ordinance CS-110 and City Council Resolution**  
11 **2010-038; and**

12 **WHEREAS, City Council Ordinance CS-110 extends Urgency Ordinance**  
13 **CS-067 and (1) prohibits, through October 20, 2011, the expansion or location of thermal**  
14 **electrical power generation facilities within Carlsbad's Coastal Zone, (2) describes the**  
15 **City's concern about expansion of the Encina Power Station, and (3) states the City's**  
16 **objective to study existing land use standards regarding electrical power generation,**  
17 **particularly at the Encina Power Station and in the Coastal Zone, due to concerns**  
18 **regarding the appropriateness and sufficiency of the standards to protect the health, safety,**  
19 **and welfare, of its citizens; and**

21 **WHEREAS, City Council Resolution 2010-038 (1) declares the City**  
22 **Council's intent to study and consider amendments to the General Plan Land Use Element,**  
23 **Zoning Ordinance, and other regulations pertaining to the location and operation of**  
24 **thermal electric power generation facilities within the City and (2) directs city staff to**  
25 **prepare the necessary applications to implement land use recommendations; and**

26 **WHEREAS, ZCA 11-05 affects all Public Utility (P-U) zoned properties,**  
27 **including those inside and outside the city's Coastal Zone; and**  
28

1 WHEREAS, the **CHANGES TO POWER PLANT STANDARDS – ZCA 11-**  
2 **05** is set forth and attached in the draft City Council Ordinance marked “**Exhibit X – ZCA 11-**  
3 **05**” and dated **September 7, 2011**; and

4 WHEREAS, the Planning Commission did, on **September 7, 2011**, hold a duly  
5 noticed public hearing as prescribed by law to consider said request; and

6 WHEREAS at said public hearing, upon hearing and considering all testimony and  
7 arguments, examining **ZCA 11-05**, analyzing the information submitted by City staff, and considering  
8 any written and oral comments received, the Planning Commission considered all factors relating to **ZCA**  
9 **11-05**.

10 NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning  
11 Commission of the City of Carlsbad as follows:

- 12
- 13 A) That the foregoing recitations are true and correct.
- 14 B) That based on the evidence presented at the public hearing, the Commission  
15 **RECOMMENDS APPROVAL of CHANGES TO POWER PLANT**  
**STANDARDS – ZCA 11-05** based on the following findings:

16 **Findings:**

- 17 1. **ZCA 11-05** responds to and is consistent with the concerns and intent and the public  
18 health, safety and welfare objectives of City Council Ordinance CS-110 and City Council  
19 Resolution 2010-238 in that it:
- 20 a. **Permits generation of electrical energy outside the Coastal Zone but restricts**  
**it in the Coastal Zone to only facilities of fewer than 50 megawatts that are**  
**accessory to another use.**
- 21 b. **Prohibits the generation of 50 megawatts or more of electricity in the Coastal**  
**Zone.**
- 22 c. **Restricts generation of electrical energy inside or outside the Coastal Zone to**  
**only facilities by a government entity or by a company authorized or**  
**approved for such use by the California Public Utilities Commission.**
- 23 d. **Enables the City to regulate and thus determine the compatibility of any**  
**future power generation in the Coastal Zone as such generation would be**  
**limited to fewer than 50 megawatts, which is subject to city, not California**  
**Energy Commission, jurisdiction.**
- 24 e. **Reduces the potential for significant environmental impacts, including but**  
**not limited to visual, air quality, and land use impacts, associated with**
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**construction of a new power generating facility or expansion of an existing facility of 50 megawatts or more.**

- f. Enhances redevelopment opportunities in the Coastal Zone due to the restrictions it imposes on generation of electrical energy in the Coastal Zone.**
- g. Allows the possibility of small, accessory power generation at Coastal Zone facilities such as the Encina Wastewater Treatment Plant.**
- h. Clarifies to the California Energy Commission, which has jurisdiction over power generating facilities of 50 megawatts or more, the city’s land use standards regarding generation of electrical energy.**
- i. Amends the Public Utility Zone, the only zone that permits generation of electrical energy.**
- j. Clarifies that transmission of electrical energy may only be conducted by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission, which matches the restriction imposed on the generation of electrical energy.**

**2. ZCA 11-05 is consistent with the General Plan in that it:**

- a. Complies with the General Plan Land Use Element description of the Public Utilities land use designation, as amended by GPA 11-06, in that ZCA 11-05 (1) restricts, for Public Utility-zoned properties in the Coastal Zone, generation of electrical energy to only those facilities that are accessory to another use and generate fewer than 50 megawatts; (2) prohibits power generation of 50 megawatts or more in the Coastal Zone; (3) permits as a primary use the generation of electrical energy outside the Coastal Zone; and (4) requires all generation of electrical energy whether in or outside the Coastal Zone to be conducted by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission.**
- b. Implements, particularly because of its restrictions on generation of electrical energy in the Coastal Zone, overall Land Use Element Goals A.1 and A.2, which state:**
  - A.1 City which preserves and enhances the environment, character and image of itself as a desirable residential, beach and open space oriented community.**
  - 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.**
- c. Complies with Environmental Policy C.5 of the Land Use Element, which states, “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.” ZCA 11-05 complies with this policy because it limits generation of electrical energy in**

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the Coastal Zone to only those facilities that are accessory to another use, generate fewer than 50 megawatts, and that are operated by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission.

- d. Recognizes the City's role as a participant in regional planning, consistent with the Land Use Element's Special Planning Considerations--Regional Issues goal, by continuing to allow facilities that may generate electrical energy for the city's and the region's benefit as a permitted, primary use outside the Coastal Zone; similarly it acknowledges this role regarding the transmission of electrical by continuing to allow such use in the Public Utility Zone regardless of Coastal Zone location.
3. **ZCA 11-05** reflects sound principles of good planning in that it maintains consistency with other sections of the Zoning Ordinance not proposed for amendment and provides clarification regarding the generation and transmission of electrical energy as land uses in the Public Utility Zone.
4. **ZCA 11-05** is consistent with the Local Coastal Program in that it:
- a. Provides clarification regarding the generation and transmission of electrical energy as land uses in the Public Utility Zone, which affects property in the Coastal Zone.
  - b. Does not change any Local Coastal Program standards regarding important coastal resources such as public access and view protection, and sensitive biological and geological resources.
  - c. Through restrictions that limit the size and scope of electrical generating facilities in the Coastal Zone, **ZCA 11-05** potentially enhances opportunities for public access and protection of existing views and resources, consistent with the goals of the Coastal Act as found in Public Resources Code Section 30001.5.
5. **ZCA 11-05** is consistent with the South Carlsbad Coastal Redevelopment Project Redevelopment Plan (SCCRP) in that it:
- a. Permits as an accessory use generation of electrical energy, which the SCCR, in Section VI (600), identifies as a use that may be permitted in the SCCR Project Area upon the satisfaction of certain criteria.
  - b. Permits the transmission of electrical energy, which the SCCR, in Section VI (600), identifies as a use that may be permitted in the SCCR Project Area upon the satisfaction of certain criteria.
  - c. Maintains the requirement for a Precise Development Plan, approval of which is one of the criteria necessary to permit generation or transmission of electrical energy in the SCCR Project Area.
  - d. By limiting generation of electrical energy to only an accessory use of fewer than 50 megawatts by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission, **ZCA 11-05** may facilitate SCRRP goals, as listed in Section IV (400), including: eliminating blight and environmental deficiencies; replanning, redesigning, and developing properties which are stagnating or improperly utilized;

1                    **developing new beach and coastal recreational opportunities; facilitating the**  
2                    **redevelopment of the Encina power generating facility to a smaller more**  
3                    **efficient power generating plant (if in compliance with the limitations set**  
4                    **forth by ZCA 11-05); enhancing commercial and recreational functions; and**  
5                    **increasing parking and open space amenities.**

6                    6.     The Planning Director has determined the project is exempt from the California  
7                    Environmental Quality Act (CEQA) **because it will not have a significant effect on the**  
8                    **environment. This determination is pursuant to State CEQA Guidelines Section**  
9                    **15061(b) (3) and Municipal Code Section 19.04.070 A.1.c.(1). CEQA Guidelines**  
10                    **Section 15061(b) (3) states “when it can be seen with certainty that there is no**  
11                    **possibility that the activity in question may have a significant effect on the**  
12                    **environment, the activity is not subject to CEQA.” Furthermore, Municipal Code**  
13                    **Section 1919.04.070 A.1.c.(1) identifies minor zone or municipal code amendments**  
14                    **that refine or clarify existing land use standards, which the project does, as being**  
15                    **exempt from CEQA because they also are not considered to have a significant**  
16                    **environmental effect.**

17                    PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning  
18                    Commission of the City of Carlsbad, California, held on **September 7, 2011**, by the following  
19                    vote, to wit:

20                    AYES:            Chairperson L’Heureux, Commissioners Arnold, Black, Scully and  
21                    Schumacher

22                    NOES:

23                    ABSENT:        Commissioner Nygaard and Siekmann

24                    ABSTAIN:

25                    \_\_\_\_\_  
26                    STEPHEN “HAP” L’HEUREUX, Chairperson  
27                    CARLSBAD PLANNING COMMISSION

28                    ATTEST:

\_\_\_\_\_

DON NEU  
Planning Director

1 **PLANNING COMMISSION RESOLUTION NO. 6805**

2 A RESOLUTION OF THE PLANNING COMMISSION OF THE  
3 CITY OF CARLSBAD, CALIFORNIA, RECOMMENDING  
4 APPROVAL OF AN AMENDMENT TO (1) POLICY 2.3 OF  
5 THE AGUA HEDIONDA LAND USE PLAN REGARDING  
6 FUTURE EXPANSION OF THE ENCINA POWER PLANT  
7 AND (2) TO TABLE "A" OF ZONING ORDINANCE SECTION  
8 21.36.020 REGARDING GENERATION AND TRANSMISSION  
9 OF ELECTRICAL ENERGY IN THE PUBLIC UTILITIES  
10 ZONE.

11 CASE NAME: CHANGES TO POWER PLANT  
12 STANDARDS  
13 CASE NO: LCPA 11-06

14 WHEREAS, the **City of Carlsbad** has filed a verified application for an  
15 amendment to the Local Coastal Program, **LCPA 11-06**, to amend portions of the Zoning  
16 Ordinance (**as provided by application Zone Code Amendment ZCA 11-05**) and the Agua  
17 Hedionda Land Use Plan, an implementing ordinance and a segment of the City's Local Coastal  
18 Program, respectively; and

19 WHEREAS, the **City** has filed **LCPA 11-06** to respond to **City Council**  
20 **Ordinance CS-110**, which extends **Urgency Ordinance CS-067** and (1) prohibits, through  
21 **October 20, 2011**, the expansion or location of thermal electrical power generation facilities  
22 within **Carlsbad's Coastal Zone**, (2) describes the **City's** concern about expansion of the  
23 **Encina Power Station**, and (3) states the **City's** objective to study existing land use  
24 standards regarding electrical power generation, particularly at the **Encina Power Station**  
25 and in the **Coastal Zone**, due to concerns regarding the appropriateness and sufficiency of  
26 the standards to protect the health, safety, and welfare, of its citizens; and

27 WHEREAS, the **City** has also filed **LCPA 11-06** to respond to **City Council**  
28 **Resolution 2010-038**, which (1) declares the **City Council's** intent to study and consider  
amendments to the **General Plan Land Use Element**, **Zoning Ordinance**, and other  
regulations pertaining to the location and operation of thermal electric power generation

1 **facilities within the City and (2) directs city staff to prepare the necessary applications to**  
2 **implement land use recommendations; and**

3 WHEREAS, California State law requires that the Local Coastal Program,  
4 General Plan, and Zoning designations for properties in the Coastal Zone be in conformance; and

5 WHEREAS, said verified applications constitute a request for a Local Coastal  
6 Program Amendment as shown on “**Exhibit X – ZCA 11-05**” dated **September 7, 2011**,  
7 attached to Planning Commission Resolution No. 6804, and as shown on “**Exhibit X- LPCA 11-**  
8 **06**” attached hereto and also dated **September 7, 2011**, as provided in Public Resources Code  
9 Section 30514 and Section 13551 of California Code of Regulations Title 14, Division 5.5; and

10 WHEREAS, the Planning Commission did on **September 7, 2011**, hold a duly  
11 noticed public hearing as prescribed by law to consider said request; and

12 WHEREAS at said public hearing, upon hearing and considering all testimony  
13 and arguments, examining **LCPA 11-06**, analyzing the information submitted by City staff, and  
14 considering any written and oral comments received, the Planning Commission considered all  
15 factors relating to **LCPA 11-06**; and

16 WHEREAS, State Coastal Guidelines requires a six-week public review period  
17 for any amendment to the Local Coastal Program.

18 NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning  
19 Commission of the City of Carlsbad, as follows:

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- 21
- 22 A) That the foregoing recitations are true and correct.
- 23 B) At the end of the State-mandated six-week review period, starting on **July 29,**  
24 **2011**, and ending on **September 9, 2011**, staff shall present to the City Council a  
summary of the comments received.
- 25 C) That based on the evidence presented at the public hearing, the Commission  
26 **RECOMMENDS APPROVAL** of **CHANGES TO POWER PLANT**  
27 **STANDARDS – LCPA 11-06** based on the following findings, and subject to the  
following conditions:

1 **Findings:**

2 1. **LCPA 11-06** meets the requirements of, and is in conformity with, the policies of  
3 Chapter 3 of the Coastal Act and all applicable policies of the **Agua Hedionda Land Use**  
4 **Plan** segment of the Carlsbad Local Coastal Program not being amended by this  
amendment, in that:

5 a. **Power generation is not allowed on the property affected by Policy 2.3(b), the**  
6 **policy proposed for deletion. The only property to which Policy 2.3(b)**  
7 **applies, a 45-acre parcel identified by Assessor’s Parcel Number 211-010-24**  
8 **and on the east side of Interstate 5, has General Plan and Local Coastal**  
9 **Program land use designations (“Travel/Recreation Commercial” and**  
10 **“Travel Services Commercial”) that do not allow generation of electrical**  
11 **energy. The property is also within the Commercial Visitor Serving Overlay**  
12 **Zone. The underlying zoning of this property, Public Utilities, is not**  
13 **consistent with the land use designations.**

14 b. **The purpose for which the policy was written, to preserve power plant**  
15 **expansion opportunities for the Encina Power Station, is no longer needed or**  
16 **appropriate for the following reasons:**

17 i. **The Agua Hedionda Land Use Plan was adopted in 1982 and no**  
18 **power generation uses have been proposed on the 45-acre parcel.**  
19 **Instead, in 1989 and 2007, power plants were proposed within the**  
20 **boundaries of the existing Encina Power Station, west of the 45-acre**  
21 **parcel and separated from it by Interstate 5.**

22 ii. **Power generation is not a coastal dependent development or use, and**  
23 **thus does not require a prime coastal location such as the 45-acre**  
24 **parcel. “Coastal-dependent development or use,” as defined in**  
25 **Coastal Act Section 30101, is “any development or use which requires**  
26 **a site on, or adjacent to, the sea to be able to function at all.” As**  
27 **recent advances in technology demonstrate, state of the art power**  
28 **plants (e.g., Palomar Energy Center in Escondido, Mountainview**  
**Power Project in Redlands) are able to operate away from large water**  
**bodies such as Agua Hedionda Lagoon.**

29 iii. **The 45-acre parcel is located in a sensitive coastal location; as**  
30 **demonstrated by the City’s findings on the Carlsbad Energy Center**  
31 **Project (California Energy Commission filing 07-AFC-6), new power**  
32 **generation in the Agua Hedionda Land Use Plan area would have**  
33 **significant environmental impacts, including but not limited to air**  
34 **quality, land use, and visual impacts and may affect public access to**  
35 **coastal resources.**

36 c. **By deleting Policy 2.3(b), LCPA 11-06 improves the use and internal**  
37 **consistency of the Agua Hedionda Land Use Plan by deleting a policy which**  
38 **enables consideration of a future power plant on the 45-acre parcel in**  
39 **conflict with the parcel’s Travel Services Commercial land use designation.**

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d. **Deletion of Policy 2.3(b) does not change any Local Coastal Program standards regarding important coastal resources such as public access and view protection, and sensitive biological and geological resources and in fact potentially enhances opportunities for public access and protection of existing views and resources, consistent with the goals of the Coastal Act as found in Public Resources Code Section 30001.5.**

2. **By eliminating a policy of the Agua Hedionda Land Use Plan that enables consideration of a future power plant, LCPA 11-06 responds to and is consistent with the concerns and intent of City Council Ordinance CS-110 and City Council Resolution 2010-038.**

3. **As demonstrated in Planning Commission Resolution No. 6804, ZCA 11-05 is also consistent with the Local Coastal Program in that it provides clarification regarding generation and transmission of electrical energy in the Coastal Zone, does not change Local Coastal Program standards regarding coastal resources, and potentially enhances opportunities for public access and protection of coastal resources.**

4. **The Planning Director has determined the project is exempt from the California Environmental Quality Act (CEQA) because it will not have a significant effect on the environment. This determination is pursuant to State CEQA Guidelines Section 15061(b) (3) and Municipal Code Section 19.04.070 A.1.c.(1). CEQA Guidelines Section 15061(b) (3) states “when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” Furthermore, Municipal Code Section 19.04.070 A.1.c.(1) identifies minor zone or municipal code amendments that refine or clarify existing land use standards, which the project does, as being exempt from CEQA because they also are not considered to have a significant environmental effect.**

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PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Carlsbad, held on **September 7, 2011**, by the following vote, to wit:

AYES: Chairperson L’Heureux, Commissioners Arnold, Black, Scully and Schumacher

NOES:

ABSENT: Commissioner Nygaard and Siekmann

ABSTAIN:

\_\_\_\_\_  
STEPHEN “HAP” L’HEUREUX, Chairperson  
CARLSBAD PLANNING COMMISSION

ATTEST:

\_\_\_\_\_  
DON NEU  
Planning Director

**LCPA 11-06 – Changes to Power Plant Standards**  
Revision to Agua Hedionda Land Use Plan

(Note: Proposed text additions are shown as **bold and underlined**. Proposed deletions are shown as ~~strike-outs~~.)

2. Agriculture

Policies

2.3 Conversion of the 45-acre SDG&E south shore property identified as TS on Exhibit “C” to this plan shall be subject to the following conditions:

- a) Prior to development SDG&E shall record a permanent open space easement over the remaining OS lands on said Exhibit “C” in favor of the City of Carlsbad. Said easement shall not prohibit or limit the following utility uses which are also permitted as a matter of right in the Cannon Road Agricultural/Open Space Zone: Energy transmission and distribution facilities, including but not limited to rights-of-way and pressure control or booster stations, substations, gas metering/regulating stations or operating centers for gasoline, electricity, natural gas, synthetic natural gas, oil or other forms of energy sources, with the necessary accessory equipment incidental thereto, together with utility buildings/facilities that are built, operated or maintained by a public utility to the extent they are regulated by the California Public Utilities Commission. Conversion of these remaining lands to non-agricultural uses shall be subject to the City’s Agricultural Conversion Mitigation Fee Program.
- ~~b) SDG&E shall provide a written report demonstrating to the satisfaction of the City, that preservation of the site is not necessary to assure reasonable expansion opportunities for the Encina Power Plant in accordance with Coastal Act Section 30413(b), and that future expansion could reasonably be accommodated at the present power plant site. Said report shall be a requirement of a future specific development plan for the property.~~
- ~~↔~~ **b)** Prior to issuance of a permit for development of the parcel, the owners shall make a portion of the site available for development as a public recreational use if the City finds that current or future recreational needs require the development of such uses in the south shore portion of the Land Use Plan area.

**LCPA 11-06 – Changes to Power Plant Standards**  
Revision to Agua Hedionda Land Use Plan

(Note: Proposed text additions are shown as **bold and underlined**. Proposed deletions are shown as ~~strike-outs~~.)

- d) **c)** Development of the parcel with non-agricultural uses shall be subject to the City's Agricultural Conversion Mitigation Fee Program.

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**PLANNING COMMISSION RESOLUTION NO. 6806**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, RECOMMENDING APPROVAL OF AN AMENDMENT TO THE ENCINA POWER STATION PRECISE DEVELOPMENT PLAN, PDP 00-02(E), TO (1) CLARIFY THE ENCINA POWER STATION IS NOT CONSISTENT WITH THE GENERAL PLAN OR ZONING ORDINANCE DUE TO ITS LOCATION IN THE COASTAL ZONE AND ITS GENERATING CAPACITY, AMONG OTHER THINGS; (2) REVISE THE CONTENTS OF THE PRECISE DEVELOPMENT PLAN AS NECESSARY TO REFLECT THIS INCONSISTENCY AND TO NOTE GENERATION OF ELECTRICAL ENERGY IS ACCEPTABLE ONLY IN THE LIMITED CIRCUMSTANCES IDENTIFIED IN THE ZONING ORDINANCE; AND (3) MAKE MINOR HOUSEKEEPING CHANGES TO REFLECT, AMONG OTHER THINGS, THE APPROVED STATUS OF THE CARLSBAD SEAWATER DESALINATION PLANT. THE ENCINA POWER STATION PRECISE DEVELOPMENT PLAN ENCOMPASSES THE 95-ACRE ENCINA POWER STATION AT 4600 CARLSBAD BOULEVARD, LOCATED ALONG THE SOUTH SHORE OF AGUA HEDIONDA LAGOON AND WEST OF INTERSTATE 5 AND WITHIN LOCAL FACILITIES MANAGEMENT ZONES 1 AND 3.

CASE NAME: CHANGES TO POWER PLANT STANDARDS  
CASE NO.: PDP 00-02(E)

---

WHEREAS, the **City of Carlsbad** has filed a verified application regarding property owned by **Cabrillo Power I LLC**, and described as:

**That portion of Lot “H” of Rancho Agua Hedionda in the City of Carlsbad, County of San Diego, State of California, according to partition map thereof No. 823, filed in the Office of the County Recorder of San Diego County, November 16, 1896, as described in Certificate of Compliance recorded October 30, 2001, as Document No. 2001-0789068, Parcel 4 (Assessor’s Parcel Numbers 210-010-41 and a portion of 210-010-43).**

WHEREAS, said verified application constitutes a request for an **amendment** to Precise Development Plan PDP 00-02 - **CHANGES TO POWER PLANT STANDARDS - PDP 00-02(E)**; and

1           **WHEREAS, Precise Development Plan PDP 00-02, provides land use**  
2 **information, procedures and standards for the Encina Power Station, consistent with the**  
3 **Public Utility Zone as found in Municipal Code Chapter 21.36; and**

4           **WHEREAS, the City has filed PDP 00-02(E) to respond to City Council**  
5 **Ordinance CS-110, which extends Urgency Ordinance CS-067 and (1) prohibits, through**  
6 **October 20, 2011, the expansion or location of thermal electrical power generation facilities**  
7 **within Carlsbad’s Coastal Zone, (2) describes the City’s concern about expansion of the**  
8 **Encina Power Station, and (3) states the City’s objective to study existing land use**  
9 **standards regarding electrical power generation, particularly at the Encina Power Station**  
10 **and in the Coastal Zone, due to concerns regarding the appropriateness and sufficiency of**  
11 **the standards to protect the health, safety, and welfare, of its citizens; and**

12           **WHEREAS, the City has also filed PDP 00-02(E) to respond to City Council**  
13 **Resolution 2010-038, which (1) declares the City Council’s intent to study and consider**  
14 **amendments to the General Plan Land Use Element, Zoning Ordinance, and other**  
15 **regulations pertaining to the location and operation of thermal electric power generation**  
16 **facilities within the City and (2) directs city staff to prepare the necessary applications to**  
17 **implement land use recommendations; and**

18           **WHEREAS, the CHANGES TO POWER PLANT STANDARDS – PDP 00-**  
19 **02(E) is set forth and attached in the draft City Council Ordinance and in the revised PDP 00-**  
20 **02(E) document (excluding the appendix items), both marked “Exhibit X-PDP 00-02(E)” and**  
21 **dated September 7, 2011; and**

22           **WHEREAS, changes to the attached PDP 00-02(E) document are shown in**  
23 **underline for added text and ~~strikeout~~ for deleted text; and**

1                   WHEREAS, the Planning Commission did, on **September 7, 2011**, hold a duly  
2 noticed public hearing as prescribed by law to consider said request; and

3                   WHEREAS at said public hearing, upon hearing and considering all testimony  
4 and arguments, examining **PDP 00-02(E)**, analyzing the information submitted by City staff, and  
5 considering any written and oral comments received, the Planning Commission considered all  
6 factors relating to **PDP 00-02(E)**.

7                   NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning  
8 Commission of the City of Carlsbad as follows:  
9

- 10                   A) That the foregoing recitations are true and correct.
- 11                   B) That based on the evidence presented at the public hearing, the Commission  
12 **RECOMMENDS APPROVAL of CHANGES TO POWER PLANT**  
**STANDARDS – PDP 00-02(E)** based on the following findings:

13 **Findings:**

- 14 1. The amendment to the Encina Power Station Precise Development Plan, **PDP 00-02(E)**,  
15 responds to and is consistent with the concerns and intent of City Council Ordinance CS-  
16 110 and City Council Resolution 2010-238 in that **PDP 00-02(E)**:
- 17                   a. **Incorporates and/or reflects wording from the General Plan (as amended by**  
**GPA 11-06) and Zoning Ordinance (as amended by ZCA 11-05) to:**
- 18                   i) **Prohibit in the Coastal Zone the generation of 50 megawatts or more**  
**of electrical energy.**
- 19                   ii) **Permit generation of electrical energy in the Coastal Zone only if**  
**fewer than 50 megawatts, only by a government entity or by a utility**  
**company authorized or approved for such use by the Public Utilities**  
**Commission, and only if accessory to another use.**
- 20                   iii) **Clarify that the existing Encina Power Station, because it is in the**  
**Coastal Zone, generates 50 megawatts or more of electrical energy,**  
**and is not an accessory use, is not consistent with the Public Utilities**  
**land use designation or Public Utility Zone.**
- 21                   iv) **Make clear the expansion of the current Encina Power Station or**  
**addition of a new power facility (unless consistent with Zoning**  
**Ordinance limitations) would not be consistent with the General Plan.**
- 22                   v) **Notes that transmission of electrical energy is a permitted use if**  
**conducted by a government entity or by a utility company authorized**  
**or approved for such use by the Public Utilities Commission.**
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- b. **Deletes wording that describes new power plant construction and expansion, major modification, and re-powering of the existing Encina Power Station as types of projects requiring formal amendment to the PDP 00-02.**
- 2. **PDP 00-02(E) is consistent with the General Plan in that:**
  - a. **It provides regulations and standards for uses in the General Plan Public Utilities (“U”) land use designation, the designation applied to the Encina Power Station, as amended by GPA 11-06.**
  - b. **It provides development standards for the Encina Power Station, including the Carlsbad Seawater Desalination Plant, which is consistent with the Overall Land Use Pattern goal A.2 that states, “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.”**
- 3. **PDP 00-02(E) is consistent with the Zoning Ordinance in that it maintains Encina Power Station Precise Development Plan provisions, including development standards, permitting procedures, permitted utility and other uses, and identification of applicable regulating land use documents so that PDP 00-02(E) stays consistent with the intent and purpose of the Public Utility Zone as expressed in Carlsbad Municipal Code Section 21.36.010.**
- 4. **PDP 00-02(E) implements Encina Specific Plan 144 in that:**
  - a. **It is consistent with SP 144(N) and reflects changes to specific plan provisions regarding electrical power generation.**
  - b. **As PDP 00-02(E) is considered a formal amendment to the Encina Power Station Precise Development Plan, it requires an amendment to the Encina Specific Plan 144, which has been facilitated through SP 144(N).**
- 5. **PDP 00-02(E) would not be detrimental to the public interest, health, safety, convenience, or welfare of the City in that the amendment:**
  - a. **Reduces, by prohibiting generation of electrical energy of 50 megawatts or more, the potential for significant environmental impacts, including but not limited to visual, air quality, and land use impacts, associated with an expansion of the existing Encina Power Station or the construction of a new power generating facility of 50 megawatts or more.**
  - b. **Enhances Encina Power Station redevelopment opportunities as it restricts future power generation to only facilities of fewer than 50 megawatts that are accessory to another use and are conducted by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission.**

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c. **Enables the City to regulate and determine the compatibility of any future power generation at the Encina Power Station as such generation would be limited to fewer than 50 megawatts, which is subject to city, not California Energy Commission, jurisdiction.**

6. **The Planning Director has determined the project is exempt from the California Environmental Quality Act (CEQA) because it will not have a significant effect on the environment. This determination is pursuant to State CEQA Guidelines Section 15061(b) (3) and Municipal Code Section 19.04.070 A.1.c.(1). CEQA Guidelines Section 15061(b) (3) states “when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” Furthermore, Municipal Code Section 19.04.070 A.1.c.(1) identifies minor zone or municipal code amendments that refine or clarify existing land use standards, which the project does, as being exempt from CEQA because they also are not considered to have a significant environmental effect.**

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Carlsbad, California, held on **September 7, 2011**, by the following vote, to wit:

- AYES: Chairperson L’Heureux, Commissioners Arnold, Black, Scully and Schumacher
- NOES:
- ABSENT: Commissioner Nygaard and Siekmann
- ABSTAIN:

\_\_\_\_\_  
STEPHEN “HAP” L’HEUREUX, Chairperson  
CARLSBAD PLANNING COMMISSION

ATTEST:

\_\_\_\_\_  
DON NEU  
Planning Director

1 **PLANNING COMMISSION RESOLUTION NO. 6807**

2 A RESOLUTION OF THE PLANNING COMMISSION OF THE  
3 CITY OF CARLSBAD, CALIFORNIA, RECOMMENDING  
4 APPROVAL OF AN AMENDMENT TO THE ENCINA  
5 SPECIFIC PLAN, SP 144(N), TO (1) INCORPORATE THE  
6 ENCINA POWER STATION PRECISE DEVELOPMENT  
7 PLAN, PDP 00-02, AS AMENDED BY AMENDMENT “(E);”  
8 (2) DELETE PROVISIONS REGARDING FUTURE POWER  
9 GENERATING FACILITIES; (3) CLARIFY THE ENCINA  
10 POWER STATION IS NOT CONSISTENT WITH THE  
11 GENERAL PLAN OR ZONING ORDINANCE; AND (4) MAKE  
12 MINOR HOUSEKEEPING CHANGES TO UPDATE SPECIFIC  
13 PLAN CONTENT AND PROVIDE INFORMATION ON  
14 AMENDMENTS AND POTENTIAL FUTURE  
15 DEVELOPMENT. THE ENCINA SPECIFIC PLAN EXTENDS  
16 BETWEEN THE PACIFIC OCEAN AND CANNON ROAD,  
17 ENCOMPASSES THE AGUA HEDIONDA LAGOON, THE  
18 ENCINA POWER STATION, AND PROPERTIES WITHIN  
19 LOCAL FACILITIES MANAGEMENT ZONES 1, 3, AND 13.

20 CASE NAME: CHANGES TO POWER PLANT  
21 STANDARDS  
22 CASE NO.: SP 144(N)

23 WHEREAS, the City of Carlsbad has filed verified applications for zoning and  
24 related land use documents which affect properties within Encina Specific Plan SP 144; and

25 **WHEREAS, the City has filed the verified applications to respond to City  
26 Council Ordinance CS-110, which extends Urgency Ordinance CS-067 and (1) prohibits,  
27 through October 20, 2011, the expansion or location of thermal electrical power generation  
28 facilities within Carlsbad’s Coastal Zone, (2) describes the City’s concern about expansion  
of the Encina Power Station, and (3) states the City’s objective to study existing land use  
standards regarding electrical power generation, particularly at the Encina Power Station  
and in the Coastal Zone, due to concerns regarding the appropriateness and sufficiency of  
the standards to protect the health, safety, and welfare, of its citizens; and**

**WHEREAS, the City has also filed the verified applications to respond to  
City Council Resolution 2010-038, which (1) declares the City Council’s intent to study and  
consider amendments to the General Plan Land Use Element, Zoning Ordinance, and  
other regulations pertaining to the location and operation of thermal electric power**

1 generation facilities within the City and (2) directs city staff to prepare the necessary  
2 applications to implement those land use recommendations; and

3 WHEREAS, said verified applications include a request for a Specific Plan  
4 amendment, on file in the Carlsbad Planning Department, CHANGES TO POWER PLANT  
5 STANDARDS as provided by SP 144(N) and Government Code Section 65453; and

6  
7 WHEREAS, the City Council adopted the Encina Specific Plan 144 on  
8 August 3, 1971, by Ordinance 9279 to provide rules and regulations for the orderly  
9 development of 680 acres of land located generally east of the Pacific Ocean, south of the  
10 north shore of Agua Hedionda Lagoon, and north of Cannon Road, all of which is in the  
11 Coastal Zone; and

12 WHEREAS, because Encina Specific Plan 144 encompasses the Encina  
13 Power Station and land designated and zoned for public utility uses and contains standards  
14 regarding future power generation, SP 144 (N) is a necessary action to adequately respond  
15 to the concerns expressed in the aforementioned ordinance and resolution; and

16  
17 WHEREAS, in 2002, the City Council, in Agenda Bill 16,790, directed that  
18 any applicant of a proposed project within the specific plan be required to prepare a  
19 comprehensive update of the specific plan; and

20 WHEREAS, as SP 144(N) proposes only minor text changes (shown in  
21 underline for added text and ~~strikeout~~ for deleted text), does not change any General Plan  
22 Land Use designations within the boundaries of the Specific Plan, and does not propose any  
23 development, the processing of an amendment to, rather than a comprehensive update of  
24 the Encina Specific Plan, is appropriate; and

1                   WHEREAS, the proposed **CHANGES TO POWER PLANT STANDARDS –**  
2 **SP 144(N)** are set forth and attached in the draft City Council Ordinance and in the revised SP  
3 144(N) document, both marked “**Exhibit X-SP 144(N)**” and dated **September 7, 2011**; and

4                   WHEREAS, the Planning Commission did, on **September 7, 2011**, hold a duly  
5 noticed public hearing as prescribed by law to consider said request; and

6                   WHEREAS at said public hearing, upon hearing and considering all testimony  
7 and arguments, examining **SP-144(N)**, analyzing the information submitted by City staff, and  
8 considering any written and oral comments received, the Planning Commission considered all  
9 factors relating to **SP 144(N)**.

10                   NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning  
11 Commission of the City of Carlsbad as follows:

- 12
- 13           A)     That the foregoing recitations are true and correct.
  - 14           B)     That based on the evidence presented at the public hearing, the Commission  
15                **RECOMMENDS APPROVAL** of **CHANGES TO POWER PLANT**  
16                **STANDARDS – SP 144(N)** based on the following findings:

17           **Findings:**

- 18           1.     The amendment to the Encina Specific Plan, **SP 144(N)**, responds to and is consistent  
19                with the concerns and intent of City Council Ordinance CS-110 and City Council  
20                Resolution 2010-238 **in that it (1) reflects wording from the General Plan (as**  
21                **amended by GPA 11-06) to note in the Public Utilities land use designation**  
22                **generation of electrical energy may be a primary function designed to serve all or a**  
23                **substantial portion of the community if it is located outside the Coastal Zone but**  
24                **only if it is conducted by a government entity or by a company and such use is**  
25                **authorized or approved by the California Public Utilities Commission; (2)**  
26                **incorporates wording from the Zoning Ordinance (as amended by ZCA 11-05) to**  
27                **clarify generation of electrical energy of 50 megawatts or more is prohibited in the**  
28                **Coastal Zone and is permitted in the Coastal Zone only as an accessory use of fewer**  
              **than 50 megawatts and only if it is by a government entity or by a company**  
              **authorized or approved for such use by the California Public Utilities Commission;**  
              **(3) eliminates provisions regarding future power generation at the Encina Power**  
              **Station and elsewhere within the Encina Specific Plan, all of which is in the Coastal**  
              **Zone; and (4) incorporates the Encina Power Station Precise Development Plan,**  
              **PDP 00-02(E), amended to reflect the General Plan and Zoning Ordinance wording**  
              **described above.**

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- 2. **SP 144(N) would not be detrimental to the public interest, health, safety, convenience, or welfare of the City in that, by incorporating and/or reflecting General Plan and Zoning Ordinance wording and eliminating specific plan provisions regarding future power generation, both as described in the first finding above, SP 144(N) eliminates the possibility of significant environmental impacts, including but not limited to visual, air quality, and land use impacts, associated with an expansion of the existing Encina Power Station or the construction of a new power generating facility of 50 megawatts or more.**
  
- 3. **SP 144(N) eliminates an inconsistency with Policy 1.9 of the Agua Hedionda Land Use Plan by revising condition 5 of the Specific Plan so that any future buildings permitted at the Encina Power Station may not exceed a height of 35 feet, which is consistent with the allowed height limit of the policy.**
  
- 4. **The Planning Director has determined the project is exempt from the California Environmental Quality Act (CEQA) because it will not have a significant effect on the environment. This determination is pursuant to State CEQA Guidelines Section 15061(b) (3) and Municipal Code Section 19.04.070 A.1.c.(1). CEQA Guidelines Section 15061(b) (3) states “when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” Furthermore, Municipal Code Section 19.04.070 A.1.c.(1) identifies minor zone or municipal code amendments that refine or clarify existing land use standards, which the project does, as being exempt from CEQA because they also are not considered to have a significant environmental effect.**

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PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Carlsbad, California, held on **September 7, 2011**, by the following vote, to wit:

AYES: Chairperson L’Heureux, Commissioners Arnold, Black, Scully and Schumacher

NOES:

ABSENT: Commissioner Nygaard and Siekmann

ABSTAIN:

\_\_\_\_\_  
STEPHEN “HAP” L’HEUREUX, Chairperson  
CARLSBAD PLANNING COMMISSION

ATTEST:

\_\_\_\_\_  
DON NEU  
Planning Director



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

APPLICATION FOR CERTIFICATION  
FOR THE **CARLSBAD ENERGY  
CENTER PROJECT**

Docket No. 07-AFC-6  
**PROOF OF SERVICE**  
(Revised 10/24/2011)

**APPLICANT**

Jennifer Hein  
George Piantka, PE.  
NRG Energy, Inc., West Region  
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DECLARATION OF SERVICE

I, Robin Nusch declare that on, 11.15.11, I served and filed copies of the attached Motion for Time to File Rebuttal dated 11.15.11. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [[www.energy.ca.gov/sitingcases/carlsbad/index.html](http://www.energy.ca.gov/sitingcases/carlsbad/index.html)].

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

**(Check all that Apply)**

**For service to all other parties:**

- Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "e-mail service preferred."

**AND**

**For filing with the Docket Unit at the Energy Commission:**

- by sending an original paper copy and one electronic copy, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the address below (preferred method); **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

**CALIFORNIA ENERGY COMMISSION – DOCKET UNIT**  
Attn: Docket No. 07-AFC-6  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

**OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:**

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission  
Michael J. Levy, Chief Counsel  
1516 Ninth Street MS-14  
Sacramento, CA 95814  
[mlevy@energy.state.ca.us](mailto:mlevy@energy.state.ca.us)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

