November 25th, 2012

In Re: El Segundo Power Redevelopment Project
Application For Certification 00-AFC-14
California Energy Commission Project CEC-800-2005-001-CMF

Pursuant to 20 California Code of Regulations 1230 through 1237, and following the procedure set forth at page 290 of the California Energy Commission's decision of February 2, 2005 in this project, I, Michael Dolen, complain that the El Segundo Power Redevelopment Project ("the project") as it is being constructed does not comply with Conditions of Certification which were proposed by the project owner, agreed to by all parties, and approved by the California Energy Commission in its decision dated February 2, 2005 ("the 2005 Decision" and "the Application"), and in its "Commission Decision to the Amendment" dated June 30, 2010 ("the Amendment Decision." The Amendment Decision addressed the plant owner's request to substitute dry cooling and rapid response time technology, and I believe that it and the 2005 Decision, which dealt at more length with the issues which bring this Complaint, are consistent regarding these issues).

As presently being constructed, the project is gravely noncompliant. The owner has used blatantly deceptive simulations and violated numerous requirements set forth in California Code of Regulations Title 20 to mislead Manhattan Beach as to how the landscape would appear to residents, beachgoers, and the community at large. Furthermore, the owner is currently erecting an elevated oceanfront industrial parking lot at the site of the south tank. This parking lot was never visually depicted in the Application, nor was it clearly disclosed in written form.

My house is located at [redacted], Manhattan Beach, CA 90266. My telephone number is [redacted], and my email [redacted].

The California Energy Commission has the power under California Public Resources Code ("PRC") 25200 et seq, including PRC sections 25500, 25532, 25534 and 25539, to require compliance with its Conditions of Certification, including revoking the Certification altogether for noncompliance.

I am informed and believe that the current owner of the El Segundo Power Plant is NRG Energy Inc, and that its mailing address, as set forth on its web site, is El Segundo Power / NRG West, c/o Ken Riesz, 5790 Fleet Street, Suite 200, Carlsbad, CA 92008. I understand that, during the permit process, NRG and another company jointly owned the plant. I will refer to the owner as NRG in this complaint, and amend if that is slightly incorrect.

What follows are the facts upon which the complaint is based. Upon further due diligence, I intend to learn and add additional facts if appropriate.

Complaint #1: From the Application through present, NRG used false pretenses to mislead and deceive the Manhattan Beach community. As a result, the community was unaware of the harmful changes which its oceanfront landscape will soon endure.

Just ask the mayor of Manhattan Beach, Wayne Powell, how he feels. In an email dated November 17th, 2012 (attached, last page) it states:

> *"Based on the simulated views provided by NRG, the community was led to believe that after the tank removal, the plant would be fully camouflaged with the exception of the stacks. We are only now learning this is not the case, and that we will soon be seeing much more of the industrial plant. This new visual blight is harmful to our community."*

On page 177 of the 2005 decision, NRG presented a simulated view of KOP 2 (Figure A). Next to the simulation it states *"After removal of the tank farm and the implementation of the landscape screening, the view will appear generally as below:"*

Figure A

Figure A was the only simulation in the 2005 decision depicting the tree heights running east west. Relevant parties relied upon this critically important rendering in formulating their approval for NRG's $500 million dollar power plant expansion.

Simulations such as this were used not only in the final 2005 decision, but also as propaganda to sell the community on the project. This misled residents for the following reasons:

i. It depicted an angle strategically favorable to NRG's case. It would only be seen by beachgoers on a very specific location of the sand. Meanwhile, literally all residents of Manhattan Beach and users of The Strand would be exposed to a dramatically less appealing landscape (see Figures B and C, on the following page).

ii. With the exception of the top portion of the stacks, NRG's simulation shows tall green foliage obscuring 100% of the generating units. This completely contradicts the "Preliminary Landscape Plan" dated 2/16/07 (which is a document required by the permit to build this plant). The Preliminary Landscape Plan shows no indication of a continuous row of tightly spaced, large scaled trees that are planted in an east to west direction. The document also uses the following descriptions for the foliage on 45th street:
    a. "palms to be used at the top of slope"
    b. "slope ground cover and low flowering shrubs"
    c. "small trees and flowering shrubs"

    Any reasonable person can conclude such descriptors of foliage will be utterly inadequate at obscuring the generating units, as NRG led people to believe based on their simulation.

Figure B – Unaltered photo taken from beach at 45 degree angle. The removal of the tank will make the generating units largely visible to Manhattan Beach. Residents were misled into believing the generating units would be almost completely obscured by greenery, because that is how NRG depicted it.

Figure C – Simulation by Dolen, showing possible before/after as seen from The Strand.

Furthermore, evidence suggests that NRG's deception may have been intentional in nature; by selectively focusing different simulations on different groups of people, based upon where they live.

Below, is a propaganda-type newsletter for the "El Segundo Repowering Project" (February 2008, issue 1). To the best of my knowledge, this was distributed to Manhattan Beach at large. In addition to this newsletter's claims of being "community focused" and offering "beauty and the beach" it propagates simulations which show foliage that obscures the generating units (which contradicts their internal landscaping plans).

EL SEGUNDO REPOWERING PROJECT
Powering California with NRG
Meeting California's Energy Needs with Environmental Responsibility

February 2008 ISSUE 1

NRG West

Environmental and Community Benefits

Modernization of the El Segundo Generating Station will improve the availability, supply and reliability of electric power for the greater South Bay area while maintaining its tradition of being a good neighbor to the surrounding coastal communities. Plant modernization will improve the visual aesthetics of the plant site and include new enhancements that will benefit the community.

The modernized plant will produce substantially more power (up to 560 megawatts [MW]) and use advanced control technology to reduce air emissions as compared to the plant it will replace. The use of reclaimed water for most in-plant water processes will reduce demand on precious drinking or potable water supplies. The new units will be air

▲ Before

▼ After

The repowering project entails replacing the two oldest units with a state-of-the-art, combined cycle power plant. To improve the visual appearance of the plant, two large oil storage tanks will be removed. Native landscaping, benches and a new sea wall will enhance the coastal bike path's overall look.

Environmentally Responsible

NRG elected to amend its power plant design in 2007, utilizing new state-of-the art, rapid response combined cycle ("R2C2") technology with substantially greater environmental benefits. When complete, the modernized plant will:

- Employ highly efficient generating units that produce significantly lower emissions and burn 30% less natural gas than the original generating units – supports California's effort to address global warming
- Utilize rapid starting units - 10-minute starts versus several hours – that will provide critical backstop for wind generation during peak demand periods

Figure D

Presumably to appeal to residents near 44th and 45th street, NRG has also provided a simulation which contradicts the decision's KOP 2 simulation. See Figure E on next page.

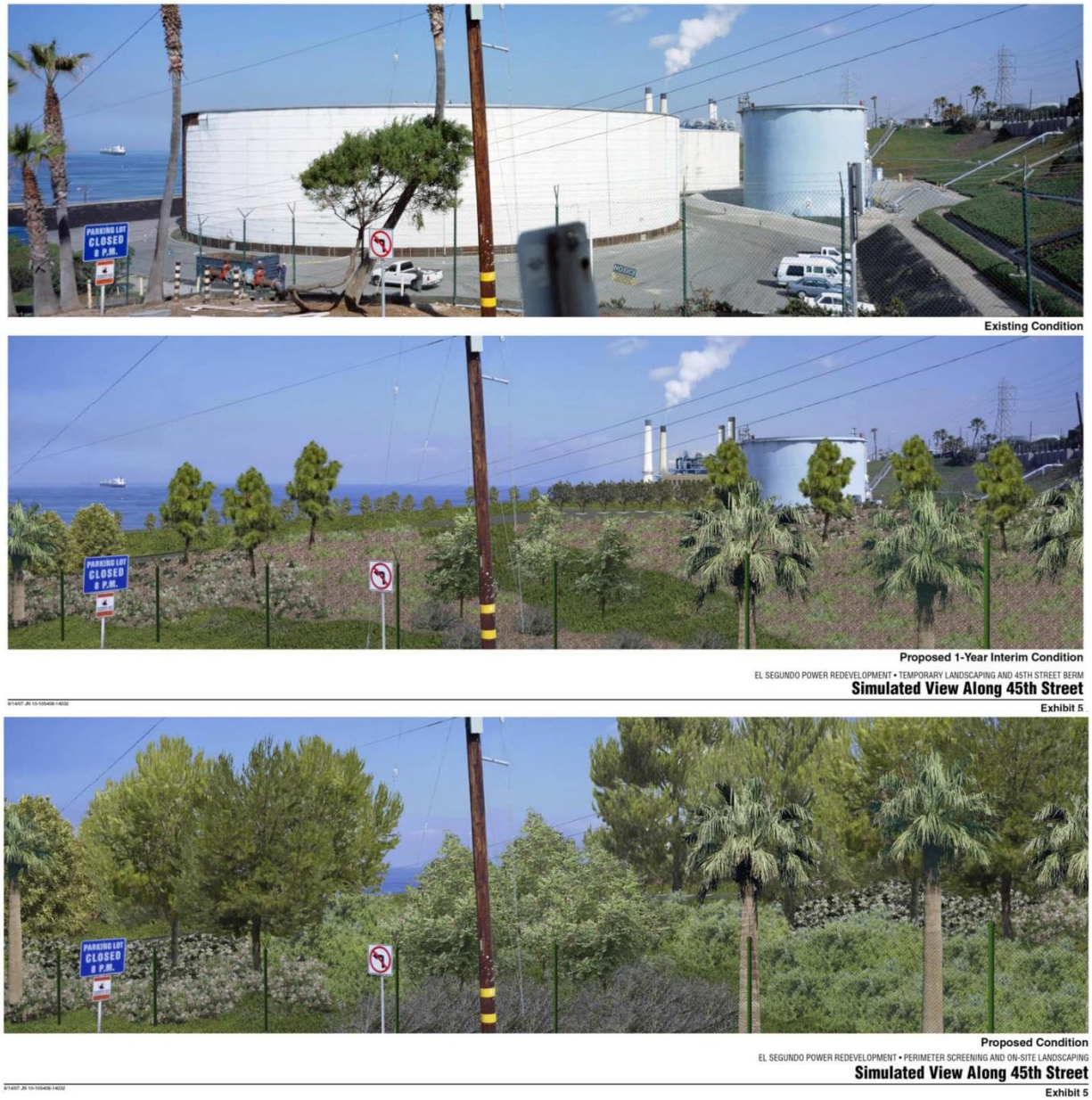

Figure E

NRG submitted a 1-year and 8-year simulated view along 45th Street (dated 6/14/2007). These simulated "tunnel vision" views depict a perspective from a very specific vantage point. However, these time-lapsed depictions prompt serious concern that NRG intends not to achieve the visual goals originally presented in KOP 2 from the 2005 decision.

As highlighted below, there are specific tree groupings in the 1-year simulation view that are clearly accounted for in the 8-year simulation view (those in the red circles).

However, there are two sets of trees groupings depicted in the 1 year simulation view that appear to either disappear or not grow to any significant height (those in the black circles). It was the belief that these trees in question would grow to 50 feet or more in height to achieve full screening, as depicted in the approved KOP 2 simulation.

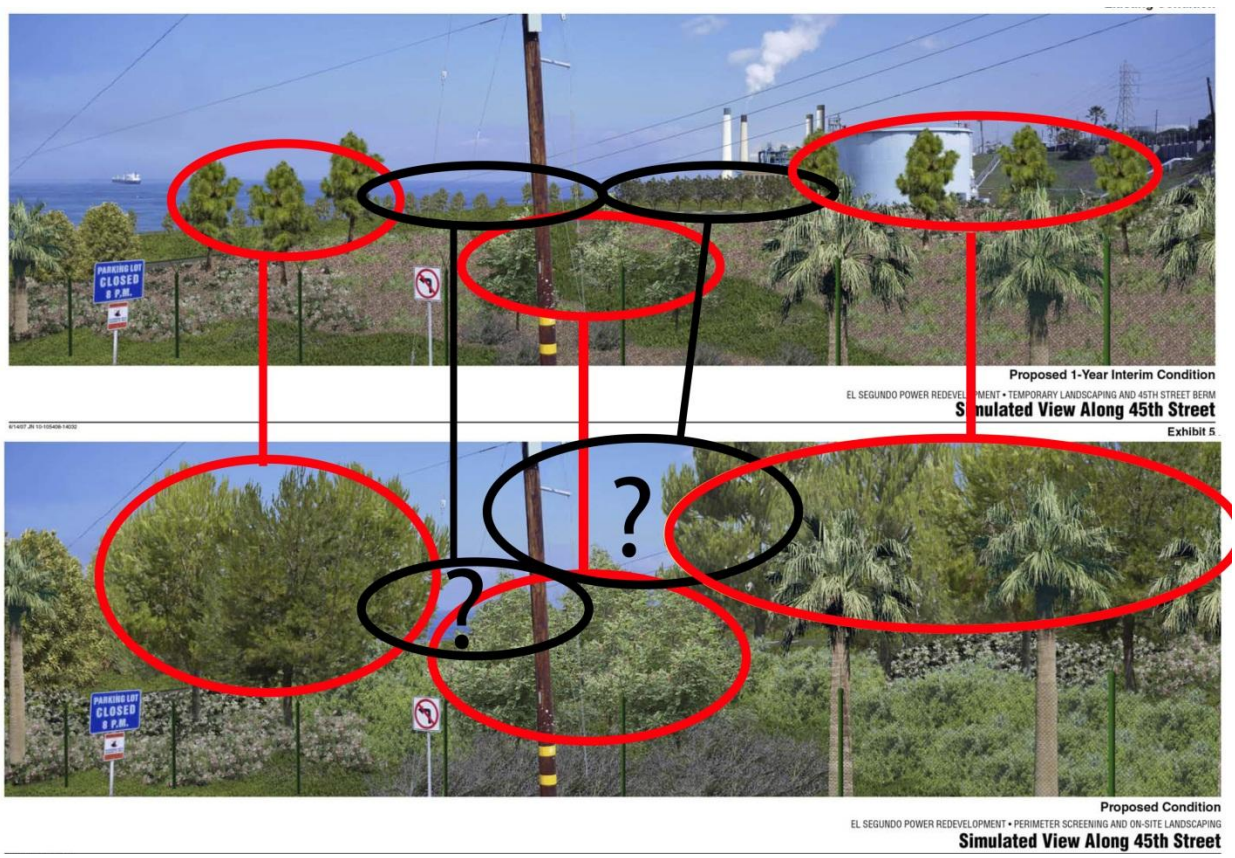

Figure F

In this "Simulated View Along 45th Street" those residents would be led to believe that from that vantage point, there will be shrubs and only small trees sparsely populating the open space, to provide a better ocean view. <u>It is not physically possible for the 45th street simulation to accomplish the landscape screening depicted in the KOP 2 simulation</u>; one or the other can be true, but not both at the same time.

Furthermore, presumably to cater to the residents at the top of the hill (from 45th St. north of Highland Blvd.), NRG presented a simulation (Figure G, next page) that does not depict any trees that would achieve the height depicted in KOP 2. I speculate this was probably done because it would come across as more appealing to those specific homes (it would provide greater ocean views for them).

Figure G

To the best of my knowledge, these two simulations (Figure F and Figure G) which contradict the first one (Figure A) were never distributed in their propaganda newsletters to the community at large. Of course if that was done, it would outrage residents to discover that only "low" trees and shrubs would be the separation between The Strand and the unsightly power plant

Had Figure G been depicted to correspond to the actual KOP 2 tree heights, it would have appeared more closely to Figure H:

Figure H – simulation modified to correspond with KOP 2 tree heights

On my phone conversation with NRG on October 4th when I was communicating my concerns about the future view from my house at [redacted], I was told *yet another* version of what I would actually be seeing when looking north; *"a berm like the one on Rosecrans, for you know the Chevron refinery."* That berm, along with its foliage, is roughly 40 ft or more in height. I have since come to learn there are no such plans for anything even remotely of that scale.

The only logical way to explain such persistent inconstancies would be either (a) intentional deception, or (b) gross negligence. Either scenario is completely intolerable for the owner and operator of a large power plant in a densely populated city.

Whatever the case, NRG has demonstrated a pattern of presenting different information, to different people (telling them what they want to hear and see, in the most favorable light possible, while neglecting to mention important unflattering facts). NRG has even employed this same deceptive strategy multiple times with the Energy Commission. One such example can be found on page 175 of the decision:

> *"The new facility at the north end of the property replaces an existing facility and actually results in a lower height profile. Most of these latter changes appear to be enhancements since they decrease visibility (lower stack height) or result in a more aesthetically pleasing view (landscaping)."*

And a similar statement on page 179:

> *"The new power plant will not block more scenic features than the existing units 1 and 2. Exhaust stack height is being lowered, thus actually providing an enhancement."*

It is true that the stack height which will be ever so slightly lower, however, what's left out is the important related fact that the stack which replaced unit #1 is actually built substantially closer to Dockweiler Beach State Park. That means the stack actually *appears significantly taller* from many vantage points at Dockweiler. It was NRG's duty to catch such an important omission and correct it.

For an even more brazen example of how NRG has misled the Commission, I urge you to carefully compare and contrast the 2005 decision with the petition to amend filed in 2007. Take a look at the simulations in the latter filing:

Figure I

The top simulation is labeled as being from the "Approved Application For Certification." But in actuality, it is a totally different image than what's found in the Application.

Below is an overlay of the image from the Application versus what NRG's claims:

Figure J

As anyone can clearly see, these are two totally different simulations.

Pursuant to 20 California Code of Regulations 1769 (Post Certification Amendments and Changes) the owner was required to do the following:

"After the final decision is effective under section 1720.4, the applicant shall file with the commission a petition for any modifications it proposes to the project design, operation, or performance requirements. The petition must contain the following information:

- ***A. A complete description of the proposed modifications, including new language for any conditions that will be affected;***
- *B. A discussion of the necessity for the proposed modifications;*
- *C. If the modification is based on information that was known by the petitioner during the certification proceeding, an explanation why the issue was not raised at that time;*

D. *If the modification is based on new information that changes or undermines the assumptions, rationale, findings, or other bases of the final decision, an explanation of why the change should be permitted;*
E. *An analysis of the impacts the modification may have on the environment and proposed measures to mitigate any significant adverse impacts;*
F. *A discussion of the impact of the modification on the facility's ability to comply with applicable laws, ordinances, regulations, and standards;*
G. ***A discussion of how the modification affects the public;***
H. ***A list of property owners potentially affected by the modification; and***
I. ***A discussion of the potential effect on nearby property owners, the public and the parties in the application proceedings."***

Note: emphasis added to most relevant requirements

The owner did not comply with these requirements during their 2007 amendment.

In the amendment, they do address the stacks in the KOP 2 view, but completely omit addressing the landscape changes which are quite dramatic and will affect people much more; approximately 2/3 of the foliage is roughly half the height it previously was in the approved KOP 2 from the 2005 decision. This is a very material change. Such an outrageous omission is further masqueraded by the alarming discovery that the first simulation was labeled as being from the Approved Application for Certification, when it clearly was not.

Thus far, NRG has shown a pattern of repeatedly manipulating and misleading all parties involved in order to achieve their goals. As evidenced by the recent Murphy-Perkins complaint and settlement, it is already a documented fact that NRG has a history of blatantly disregarding this project's plans and changing them as they wish, until they were caught and held accountable.

Complaint #2: NRG is constructing a new beachfront parking lot which was not visually depicted nor adequately disclosed in the Application.

NRG has taken the liberty to plan and soon erect a parking lot adjacent to 45th street and The Strand. According to my verbal communication via phone with NRG, the parking lot will be constructed where the southernmost retired storage tank currently sits (the storage tank will first be demolished). See Figure K, below:

Figure K

As shown above, this storage tank is beachfront and on a raised elevation, which makes it an extremely prominent location. Using this specific location for NRG's parking lot would be visually appalling to both beachgoers as well as residents (whom will likely see even more of it, due to the higher elevation of the houses).

Nowhere in the 2005 decision is a parking lot visually depicted. Instead, next to the simulation on page 177, it is stated: *"After removal of the tank farm and the implementation of the landscape screening, the view will appear generally as below:"*

Figure L – What NRG promised, per the decision

Despite the fact they don't show it in their simulations, as I can already anticipate, NRG will still try and argue that the Application gives them permission to construct a parking lot on Parcel 2. It is true that

they said they intended to use "space for parking" within Parcel 2. However there are specifics which go along with that space.

Under "Existing/Planned Uses" on page 119 of the 2005 Decision, it states:

> *"The Applicant proposes to use Parcel 2 during construction as a laydown and staging area for the project. Upon completion of the project, the existing tanks are to be removed. Parcel 2 is then to be used as an overflow parking area. At this time, the Applicant is not proposing any development on the tank farm area."*

Under "Conditions of Certification" on page 123 of the 2005 Decision, it states:

> *"LAND-5: The project owner shall provide written notification to the CPM when any plans for use of the abandoned fuel tank farm area (Parcel 2) are developed and indicate whether the project owner believes such plans are subject to the Energy Commission's permitting authority in accordance to the Warren-Alquist Act. The written notification shall include a description of the development and an analysis of which agency has proper jurisdiction over the development according to the enacted laws, ordinances and standards in effect at the time such development is to be proposed.*
>
> *LAND–6: The abandoned fuel storage tanks on Parcel 2 shall be removed prior to the start of commercial operation of the new generating units. Any site remediation and/or soil restoration activities required by appropriate authorities shall be completed following tank removal. Following site remediation, the tank farm area shall be paved and landscaped in accordance with the landscape plan submitted and approved pursuant to condition of certification, VIS-2. The tank farm uses will be restricted to parking in the designated parking areas and approved uses in the paved area south of the designated parking area.* ***Approved uses include temporary equipment staging and overflow parking during maintenance evolutions. The paved area shall not be used for permanent storage of vehicles, equipment or materials.****" (emphasis added).*

Based on a phone conversation with NRG, it was implied that employees will be using it as a regular parking lot. I do not believe that constitutes an approved use.

Furthermore, their preliminary landscape plan from 2-16-2007 (Figure M) appears to show the parking lot on the far north side of the tank farm. However according to a recent conversation with NRG, they are now planning to build the lot (or another lot?) where the southernmost tank currently sits – which is adjacent to 45th street and the beach.

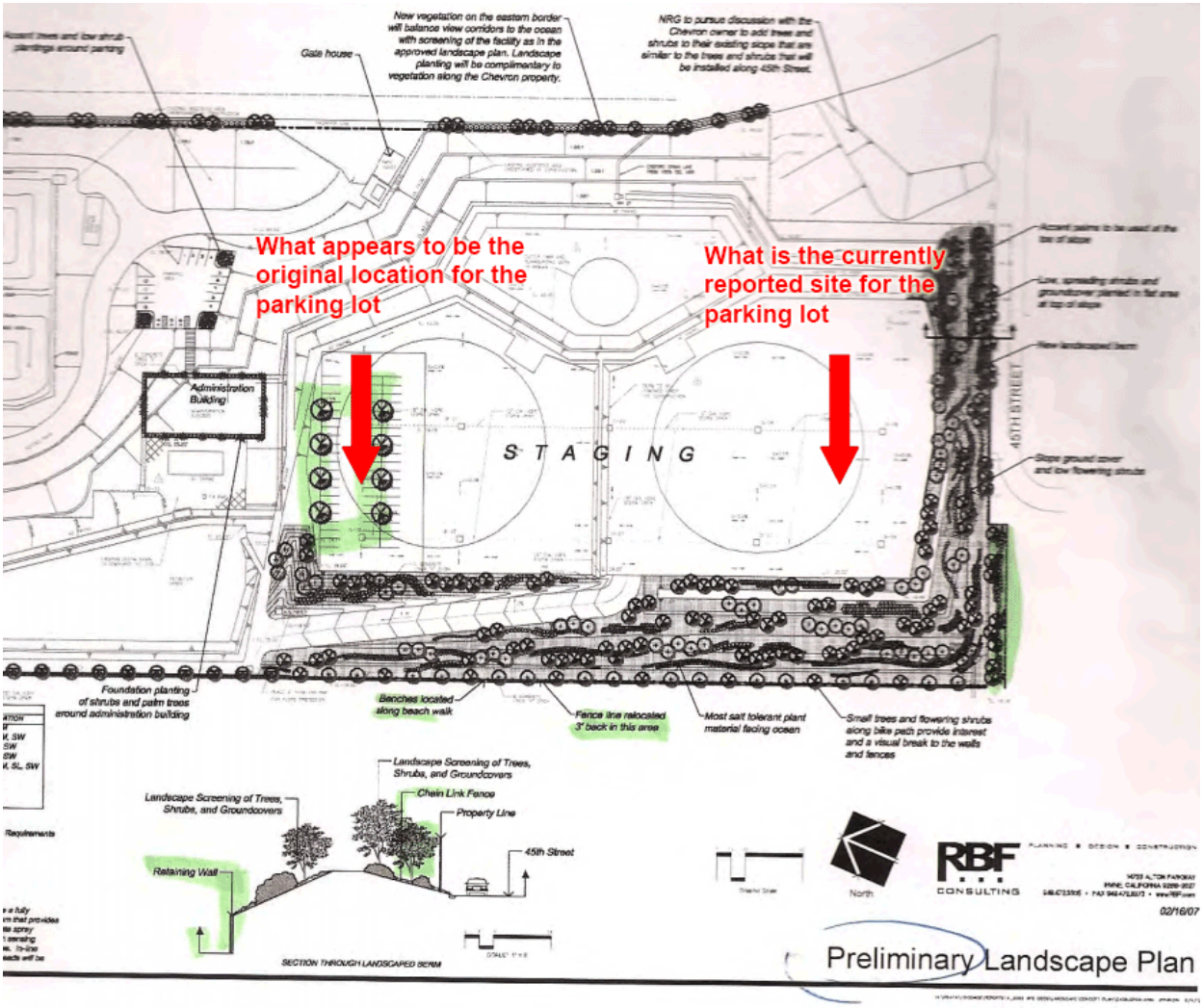

Figure M

Building a lot within the southern portion (instead of the north portion) of Parcel 2 will be a disgraceful visual blight to Manhattan Beach residents and beachgoers.

As mentioned earlier, their preliminary landscape plan for 45th street calls for a thin strip of "slope ground cover and low flowering shrubs" and "small trees and flowering shrubs." It is highly unlikely that such foliage would 100% obscure the parking lot from all KOPs (which would need to be the case, in order to remain true to the simulations found in the 2005 decision).

This parking lot plan is yet one more example of NRG only telling half the story, in order to accomplish their goals. When they disclosed their intention to build a parking lot in the Application, they conveniently omit its location and instead, use an extremely broad disclosure of it being within Parcel 2.

That's an area of land which is an entire 9 acres. Who would have thought that out of all that unused space, they would choose the absolute worst location – close to the beach and residents?

NRG provided no visual depictions and no adequate written details of this planned project component in the Application, and that goes against 20 California Code of Regulations 2001 through 2012, specifically "Information Requirements for an Application" which required the following:

> *(D) A full-page color photographic reproduction depicting the visual appearance of the site prior to construction, and a full-page color simulation or artist's rendering of the site* ***and all project components at the site****, after construction.*

The parking lot was a planned project component of the site, yet it was not depicted in the simulations, nor was it adequately disclosed in written form. This goes against the Information Requirements for an Application.

I request the Commission to require the following from the owner:

1. Provide simulation with vantage point from The Strand and 44th Street.
NRG has misled the Manhattan Beach community during the entire process – their simulations are not what would be seen from the vast majority of homes in North Manhattan Beach.

The Commission has recognized that visual impact is a serious matter. *"Due to the longterm nature of visual exposure that will be experienced from residences, and the sensitivity with which people regard their places of residence, residential viewers are considered to have high viewer concern."* Given that priority, it was misleading for NRG to only provide simulations from obscure angles only applicable to a few dozen homes, when there are up to several hundred homes located between 45th and 36th street whom will be dramatically impacted by the changes.

Pursuant to 20 California Code of Regulations 2001 through 2012, specifically "Information Requirements for an Application" the owner was required to "identify" the following:

i. *any designated scenic roadways or scenic corridors and any visually sensitive areas that would be affected by the proposed project, including recreational and residential areas and*
ii. *the locations of the* ***key observation points to represent the most critical viewing locations from which to conduct detailed analyses of the visual impacts of the proposed project. Indicate the approximate number of people using each of these sensitive areas and the estimated number of residences with views of the project****. (emphasis added)*

Using the key observation points, the instructions require them to "provide" the following:

i. *full-page color photographic reproductions of the existing site, and*
ii. *full-page color simulations of the proposed project at life-size scale when the picture is held 10 inches from the viewer's eyes, including any project-related electrical transmission lines, in the existing setting from each key observation point. If any landscaping is proposed to comply with zoning requirements or to mitigate visual impacts, include the landscaping in simulation(s)*

representing sensitive area views, depicting the landscaping five years after installation; and estimate the expected time until maturity is reached.

In Figure L are the approximate locations and viewing angles of the KOPs for Manhattan Beach which were provided by NRG:

Figure N

Given that residential viewers are considered to have high viewer concern, it makes absolutely no sense that NRG suggested key observation points which are only applicable to a few dozen homes, while neglecting the largest affected group; the hundreds of homes in the North Manhattan Beach neighborhoods.

Meanwhile for the views experienced by beachgoers, NRG suggested a very strategically favorable angle for a tiny location on the beach (KOP 2) while completely neglecting the most important beach view which is seen by tens of thousands (if not hundreds of thousands) of people per year, which is the Manhattan Beach Strand. NRG misled the Commission by claiming that this KOP 2 illustrates "the maximum number of viewers." In the "Response to Data Requests" dated March 8, 2001, NRG states:

> ***Response No. 89:*** *Key Observation Point 2 Figures 5.13-5a and 5.13-5b illustrate the project site with both before and after construction views from the south, adjacent to the City of Manhattan Beach.* ***The optimal Key Observation Point is one that illustrates the viewshed with line of sight and the maximum number of viewers****. This Key Observation Point takes these factors into account when selecting a viewpoint adjacent to the City of Manhattan Beach. (emphasis added)*

NRG did the opposite of what the instructions called for; they chose some of the *least* critical viewing locations which affect the fewest people.

Therefore I request the owner to provide a KOP from the location of The Strand and 44th Street, as this represents what users of The Strand will actually see when they walk to the north end. Additionally, it helps the North Manhattan Beach homeowners understand what their view will become. A simulation taken from further north (45th street and The Strand) would not be appropriate due to the immediate rise in elevation to the north of 45th street (less of the power plant would be visible from that location). On the other hand, a perspective from The Strand further south (such as 40th or 36th street) would be somewhat misleading to the community, because the power plant would naturally be further in the background. The intersection of 44th and The Strand represents what very well could be the most extreme vantage point of the power plant from The Strand, and therefore, the community deserves to see what it will look like at the north end. Furthermore, being that The Strand is a tourist attraction and one of the most well-known oceanfront walkways on the west coast, any changes to it will affect far more than just the 35,000 residents of Manhattan Beach.

2. Cease planned construction of parking lot in southwest quadrant of Parcel 2, due to its multiple violations of California Code of Regulations Title 20. Additionally, NRG's planned uses may be non-compliant with the Application's approved uses.

As previously discussed, NRG's planned erection of this new parking lot has violated multiple disclosure requirements as set forth in Title 20. This project component was not depicted in the simulations, nor was it adequately disclosed in written form. This blatantly violates the Information Requirements for an Application.

Therefore, in its present form, this project component of the site is non compliant. Additionally, their implied plans of using it as a regular lot for employee parking, if true, may be non-compliant with the Application's approved uses.

If NRG would like to erect a new parking lot in Parcel 2, they must do so in a compliant manner, which includes abiding by all rules, regulations, and disclosure requirements set forth in Title 20.

If and when NRG chooses to build a compliant parking lot, in order to achieve the least resistance from the community, I would strongly advise they select a different location within Parcel 2. The Application states the following on page 157:

> *"Operation: Since the project replaces an existing power plant, the Project Owner expects no significant added truck deliveries for materials associated with this project's operation. Two new permanent operating employees will be added for the project. Neither operation deliveries nor commuting will impact traffic on local streets or Interstate freeways."*

With only 2 new employees being added to the power plant's workforce, that brings us to the question: Why does the owner need to erect another parking lot? And given that Parcel 2 is a largely open area of land which is 9 acres, why are they attempting to build the lot in such a prominent location which will be a visual blight to coastal views? Such plans are clearly against the spirit of the California Coastal Act of 1976, Section 30001.5, which declares a goal to:

> *"Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources."*

Given the size of Parcel 2, NRG has the opportunity to enhance and restore the quality of the land closest to the ocean, yet they instead would like to desecrate it, even though there are clearly feasible alternatives within Parcel 2 for their desired parking lot.

3. Work jointly with Manhattan Beach to create and execute a plan for visually acceptable camouflage. The goal would be to accomplish what was depicted in the 2005 Decision, which was almost completely camouflaging the plant (with the exception of the top portion of the stacks). NRG's simulations were from strategically advantageous angles which depict the power plant (excluding stacks) as being completely obscured by green foliage (page 177 of the decision). Residents were largely led to believe that would be their view, as mentioned by the Mayor of Manhattan Beach. In summary, NRG's plans were originally accepted by the community based on false pretenses. While it's not possible to turn back the clock, it is possible for NRG to convene with the community and together, we can create an improved plan to visually camouflage the generating units upon removal of the storage tank, in order to accomplish what the community thought they were originally getting.

The preferred technique(s) to accomplish this would be decided by the City of Manhattan Beach. Depending on what the community wants, one or more of the following solutions may be decided: the planting of more mature and taller trees, creating a higher berm, or a visual block such as a wall (erected closer to the plant, not along 45th street out of respect for those residents). Such solutions are all reasonable and not difficult to accomplish, yet they would make a world of difference to the people of Manhattan Beach.

Respectfully submitted November 25th, 2012

/s/ Michael Dolen

Michael Dolen <michaeldolen@gmail.com>

NRG Plant

Wayne Powell <waynepowellmb@yahoo.com> Sat, Nov 17, 2012 at 8:32 PM
To: Michael Dolen <michaeldolen@gmail.com>

Mike,

Based on the simulated views provided by NRG, the community was led to believe that after the tank removal, the plant would be fully camouflaged with the exception of the stacks. We are only now learning this is not the case, and that we will soon be seeing much more of the industrial plant. This new visual blight is harmful to our community.

Best regards,

Wayne

Wayne Powell
- Mayor, City of Manhattan Beach
- Los Angeles County Beach Commissioner
- Chair, South Bay Regional Public Communications Authority [911]
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