STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

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| In the Matter of: | ) | Docket No. 06-AFC-3 |
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| Application for Certification for LSP SOUTH BAY, | ) | |
| LLC'S SOUTH BAY REPLACEMENT PROJECT | ) | |
| | ) | |

# Applicant's Notice of Objection to Certain CEC Data Requests

March 5, 2007

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# Applicant's Notice of Objection to Certain CEC Data Requests

On February 23, 2007, LSP South Bay, LLC ("LSP South Bay" or "Applicant") received Data Requests from the California Energy Commission ("CEC" or "Commission") Staff relating to LSP South Bay's South Bay Replacement Project ("SBRP"). The Applicant has worked and will work diligently to prepare a response to as many of these questions as possible. Except as noted below, the Applicant will respond to these requests on or before March 26, 2007. There are however, a few specific requests to which the Applicant is unable to respond because the questions are either vague or otherwise objectionable. The Applicant hereby offers its objections to these questions.

In addition, Applicant will require additional time to prepare responses to certain Data Requests, as set forth below.

## Notice of Objections to Specific Data Requests

Set forth below are the questions to which Applicant objects or cannot respond and a statement of the nature of each objection. The text of the request is shown in bold.

**Background to Data Requests 103 to 106:**

**"...information is needed to assess impacts to biological resources immediately adjacent to the SBRP, particularly because it borders the San Diego National Wildlife Refuge (SDNWR) and J Street Marsh which is a privately owned parcel with wetland status and sensitive species."**

While the Applicant does not object to the "Background" description per se, the Applicant wishes to note the following corrections. The SBRP, which is to be located on the former LNG site, is not immediately adjacent to the J Street Marsh. While the north-

end of the existing SBPP site is adjacent to the J Street Marsh, the former LNG site and the SBRP are not adjacent to the J Street Marsh.

**104. Past runoff.**

Applicant objects to this request as irrelevant. The former LNG site was owned and maintained by San Diego Gas and Electric Company ("SDG&E") until 1999. Since 1999 the former LNG site has been and continues to be owned and maintained by the Unified Port of San Diego ("Port"). As LSP South Bay has never been in control of the LNG site, it has no knowledge as to whether there has been "past leakage or runoff" from the SBRP site into the adjacent salt ponds. Because the berms and dikes are not a part of the SBRP site or project, the Commission does not have jurisdiction over issues associated with the berms and dikes referred to in the request. Thus, the requested information is irrelevant to any decision the Commission must make in this proceeding.

Similarly, LSP South Bay objects to this request as calling for speculation. With respect to including "a plan for ensuring integrity of berms and dikes," Applicant has no control over such land. The land where the berms and dikes are located are not part of the SBRP site that will be leased to Applicant by the Port. Therefore, the Port retains maintenance responsibility for the berms and dikes.

**107. Elimination of the warm water discharge.**

Applicant objects to this request as irrelevant to any decision the Commission must make in this proceeding and as calling for speculation. To begin, the request assumes a need for information on "mitigation measures" and thus assumes a potentially significant impact where none has been shown to exist. Applicant is currently working with the National Marine Fisheries Service ("NMFS"), other resource agencies, and the Staff to ascertain whether potentially adverse impacts could result. Under Section 7 of the federal Endangered Species Act, resolution of this issue is a non-delegable, federal responsibility. The CEC Staff will, of course, monitor this ongoing federal process and impose the "standard" Biological Resources Conditions of Certification. Although the request is untimely, Applicant is committed to working with the CEC staff and all other parties to address this issue, consistent with the Commission's precedent on these issues.

Thank you for your time and consideration.

Respectfully submitted,

Dated: March 5, 2007

ELLISON, SCHNEIDER & HARRIS L.L.P.

By _____ for
Jedediah J. Gibson
Christopher T. Ellison
Attorneys for LSP South Bay, LLC

## DECLARATION OF SERVICE

I, Deric J. Wittenborn, of Ellison, Schneider and Harris, LLP, located at 2015 H Street, Sacramento, CA 95814, declare that on March 5, 2007, I transmitted the foregoing document titled ***LSP South Bay, LLC's (Applicant's) Notice of Objection to Certain CEC Data Requests*** via e-mail and consistent with the requirements of California Code of Regulations, title 20, Sections 1209, 1209.5, and 1210, or as indicated by first class postal mail, to each individual identified on the attached service list.

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

Deric J. Wittenborn

**Poof of Service**
**Docket No. 06-AFC-3**
**March 5, 2007**

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