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October 30, 2008

VIA HAND DELIVERY AND PER PROOF OF SERVICE

J. Mike Monasmith
Siting Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

DOCKET	
07-AFC-6	
DATE	<u>OCT 30 2008</u>
RECD.	<u>OCT 30 2008</u>

**Re: Carlsbad Energy Center Project (07-AFC-6)
City of Carlsbad Request for Easements for Vista/Carlsbad Interceptor Sewer
Replacement Project**

Dear Mr. Monasmith:

On behalf of Carlsbad Energy Center LLC, please find enclosed for docketing correspondence to Terry Smith, Senior Civil Engineer for the City of Carlsbad, regarding the City's requests for easements for the Vista/Carlsbad Interceptor Sewer Replacement project over Cabrillo Power I LLC's real property, including the proposed site for the Carlsbad Energy Center Project. This letter will be provided to all parties identified on the attached proof of service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allison Cook".

Allison D. Cook

Enclosure

cc: See attached Proof of Service

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

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

Docket No. 07-AFC-6 PROOF OF
SERVICE
(Revised 10/30/2008)

Carlsbad Energy Center Project (07-AFC-6)

**City of Carlsbad Request for Easements for Vista/Carlsbad Interceptor Sewer
Replacement Project**

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-15
Sacramento, CA 95814-5512
docket@energy.state.ca.us

APPLICANT

David Lloyd
Carlsbad Energy Center, LLC
1817 Aston Avenue, Suite 104
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David.Lloyd@nrenergy.com

Tim Hemig, Vice President
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INTERESTED AGENCIES

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Ron Ball, Esq., City Attorney
1200 Carlsbad Village Drive
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Allan J Thompson Attorney
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21 "C" Orinda Way #314
Orinda, CA 94563

INTERVENORS

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Mike Monasmi
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mmonasmi@energy.state.ca.us

DECLARATION OF SERVICE

I, Maria R. Davis, declare that on October 30, 2008, I deposited copies of the attached document in the United States mail at Sacramento, California, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

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



Maria R. Davis



Cabrillo Power I LLC
1817 Aston Avenue, Suite 104
Carlsbad, CA 92008

Direct Phone: 760.710.2144

October 29, 2008

Mr. Terry L. Smith
Senior Civil Engineer
City of Carlsbad
Public Works – Engineering
1635 Faraday Avenue
Carlsbad, CA 92008-7314

Ref: Vista/Carlsbad Interceptor Sewer Replacement – Request for Easements

Dear Mr. Smith:

NRG West has reviewed your letter dated September 5, 2008 and a separate letter from Scott Donnell of the City's Planning Department dated September 10, 2008 to Mike Monasmith of the California Energy Commission regarding the City's request for easements for the Vista/Carlsbad Interceptor Sewer Replacement project.

As you are aware, representatives of Cabrillo Power I LLC (Cabrillo Power), a subsidiary of NRG West, have met with the City on several occasions to discuss the City's request for new sewer lift station and sewer pipeline easements (collectively "Easements") to replace the existing sewer lift station and sewer pipeline on the Encina Power Station property owned by Cabrillo Power and the needs of Cabrillo Power to ensure that the location of the replacement lift station and replacement sewer pipeline are compatible with the existing and future use of the Encina Power Station for the continued generation of electricity critical to the City and the region. Cabrillo Power believes that a mutually agreeable location for the replacement lift station and replacement sewer line can be achieved in accordance with the conditions of the Precise Development Plan (PDP 00-02) prior to occupancy of the Poseidon Desalination Plant. We look forward to continuing to work with the City to reach a mutually agreeable location for the lift station and the new sewer line. We also, however, are compelled to clarify and correct several aspects of your letter.

First, we wish to clear up one statement. In your letter you state:

"As you may recall, the previous owner of the Encina Power Station, Cabrillo Power, prepared a Precise Development Plan in partnership with Poseidon Resources for the Carlsbad Seawater Desalination Plant."

Please be advised that Cabrillo Power, as a subsidiary of NRG, was and is still the owner of the entire Encina Power Station.

Most importantly, however, NRG is compelled to correct the inference that somehow the agreement to agree upon suitable Easements in the future in any way conflicts with or is even relevant to the Carlsbad Energy Center Project (CECP). The PDP 00-02 provisions for the Easements are unrelated to the CECP application pending before the California Energy Commission. PDP 00-02 conditions expressly state the Easements are to

be dedicated in mutually agreed upon locations prior to occupancy of the Poseidon Desalination Plant. The CECP Project does not interfere with appropriately sized Easements and the Easements have no effect on the CECP operations.

It is important that the complete context of the PDP 00-02, as approved by the City (Resolution No. 6088), be acknowledged by the City. Specially, Section 7.d. of the Findings of the PDP 00-02 states:

"The Precise Development Plan PDP 00-02 is consistent with the goals of the South Carlsbad Coastal Redevelopment Plan in that:

d. Locating the Carlsbad Seawater Desalination Plant in a location that creates the least amount of constraints on any future conversion of the Encina power station facilitates the redevelopment of the Encina power generating facility to a smaller, more efficient power generating plant."

Likewise, the applicable Specific Plan and the City's Redevelopment Plan also contain similar statements regarding the common goal of ultimately replacing the existing (older) Encina Power Station steam generating units with new generating facilities to be located on-site between the railroad tracks and Interstate 5, the exact location of CECP.

Cabrillo Power notes that various City staff statements, documents and status briefings to the City Council, and statements by various City Council members over the last year seem to ignore the specific goals of the Specific Plan, the South Carlsbad Coastal Redevelopment Plan and Finding 7.d. of PDP 00-02 regarding the future conversion of the Encina Power Station to facilitate redevelopment of the Encina Power Station to a smaller, more efficient power generation facility. The findings and conditions of PDP 00-02 were determined to be of mutual benefit to the City and Cabrillo Power, and were the result of a productive relationship between the City and Cabrillo Power as evident by Cabrillo Power's willingness to cooperatively work with the City during the creation of PDP 00-02 as the City's primary action approving the Poseidon Desalination Plant. Cabrillo Power is willing to meet its obligations under PDP 00-02; we trust and expect that the City will likewise meet its obligations under PDP 00-02.

Regarding the specific lift station/sewer line Easements (as well as possible future the Coastal Rail Trail easement), Conditions 16.d. and 16.e. of PDP 00-02 state as follows:

*"16.d. Coastal Rail Trail – **Prior to occupancy [i.e., of the Poseidon desalination plant]**, dedicate an easement for the Coastal Rail Trail in a location within the boundaries of the Precise Development Plan **that is mutually acceptable to the City and Owner [i.e., Cabrillo Power]** or its successor in interest." [Emphasis added]*

*"16.e. Agua Hedionda Lift Station Site and Vista-Carlsbad Interceptor Sewer Pipeline – **Prior to occupancy [i.e., of the Poseidon desalination plant]**, dedicate an easement for the Agua Hedionda Lift Station Site and Vista-Carlsbad Interceptor Sewer Pipeline in a location within the boundaries of the Precise Development Plan **that is mutually acceptable to the City and the Owner [i.e., Cabrillo Power]** or its successors in interest." [Emphasis added]*

First and foremost, the phrase *"...that is mutually acceptable to the City and the Owner..."* in both Conditions 16.d. and 16.e., is key to the discussion between the City and Cabrillo Power regarding the ultimate location and size/width of the Easements to be dedicated by Cabrillo Power at a later date. Both parties must mutually agree to the location and size of the easements which should not interfere with the

"...the redevelopment of the Encina power generating facility to a smaller, more efficient power generating plant" pursuant to Finding 7.d. of PDP 00-02.

Second, the timing of such dedication of mutually acceptable Easements is tied to "occupancy" of the Poseidon Desalination Plant, which Cabrillo Power understands to be at best 2 – 3 years away.

PDP 00-02, Conditions 16.d. and 16.e. must also be read to be consistent with Finding 7.d. of PDP 00-02, as noted above that:

"The Precise Development Plan PDP 00-02 is consistent with the goals of the South Carlsbad Coastal Redevelopment Plan in that:

d. Locating the Carlsbad Seawater Desalination Plant in a location that creates the least amount of constraints on any future conversion of the Encina power station facilitates the redevelopment of the Encina power generating facility to a smaller, more efficient power generating plant."

Therefore, the location and size/width of the mutually agreeable replacement Easements to be dedicated by Cabrillo Power to the City for the Coastal Rail Trail and the sewer lift station/sewer easement must minimize constraints on any future conversion of the Encina Power Station to a smaller more efficient power generating plant, i.e., the Carlsbad Energy Center Project, in order to be consistent with Finding 7.d. of PDP 00-02.

As to the issue of the timing of the dedication of the Easements prior to occupancy of the Poseidon Desalination Plant, the term "occupancy" has a specific meaning in the City's codes and typically is related to when the City building inspector grants the owner of a facility, in this case the Poseidon Desalination Plant, the right to occupy and use the facility for its permitted use following completion of construction.

Third, there is no specific or implied interrelationship in PDP 00-02 and Conditions 16.d. and 16.e. regarding the joint location of the interceptor/sewer line Easements to be dedicated and the possible future Coastal Rail Trail easement dedication. The Coastal Rail Trail ultimate route is entirely separate from the Easements and should not be co-located with the Easements, nor is it acceptable to Cabrillo Power to link the discussion of a mutually acceptable easement location for the Coastal Rail Trail to the discussion of the mutually acceptable location for the Easements. Cabrillo Power has suggested alternative locations for the Coastal Rail Trail to avoid the outer/middle lagoon rail bridge and rail right-of-way; instead bringing the trail along the northern edge of the outer lagoon to Carlsbad Boulevard, then connecting back at Cannon Road.

Regarding the size of the Easements proposed by the City for the sewer interceptor pipeline, in the City's letter dated September 5, 2008, it is noted by that an additional 20-foot easement is required adjacent to the City's existing 17.5-foot wide sewer easement. This would result in a combined easement of 37.5 feet. In accordance with the City Standards – Chapter 1 – General Design Criteria No. 10, while a public easement for two facilities is 30-feet *"unless a lesser width is specifically authorized by the City Engineer"*, not the 37.5 feet noted in the September 5, 2008 letter. Further, Cabrillo has always understood that the Easements were to provide replacement facilities, whereas the City's letters seem to suggest the new facilities would be in addition to the existing lift station and sewer pipeline. Unnecessary duplicative facilities and multiple easements are not acceptable to Cabrillo and are not provided for in the PDP 00-02 Conditions. At this time, Cabrillo Power does not find the City's proposed additional 20-foot easement, combined with the existing 17.5-foot easement to be acceptable.

Regarding the size and configuration for the sewer replacement lift station permanent easement and the construction laydown area temporary easement shown on Exhibit A of the September 5, 2008 letter, both of

Mr. Terry Smith
Cabrillo Power Response to City of Carlsbad's Request for Easements
October, 29, 2008
Page 4 of 4

these easements must be mutually agreeable in accordance with Condition 16.e. Neither the September 5, 2008 letter nor its Exhibit A, provide sufficient information regarding the rationale or requirements for the size of the permanent easement or the temporary easement for Cabrillo Power to determine if these lift station easements are acceptable.

As PDP 00-02 Condition 16.e. must be read to compliment Finding 7.d. (see above), the location and size of the permanent and temporary easements for the sewer lift station must minimize conflicts to any future conversion of the Encina Power Station to a smaller more efficient power generating plant, which includes the Carlsbad Energy Center Project in order to be consistent with Finding 7.d. of PDP 00-02.

Cabrillo Power and the City have mutually benefited by a productive relationship as evident by Cabrillo Power's willingness to cooperatively work with the City during the PDP 00-02 proceedings which was a prerequisite of the City's desire to approve the Poseidon Desalination Plant. As the primary purpose of PDP 00-02 was to approve the desalination plant, the various conditions of PDD 00-02 are tied to "occupancy" of the Desalination Plant, not as independent obligations in connection with any subsequent repowering projects, such as the Carlsbad Energy Center Project. We trust that the City is also willing to continue to work in a productive and cooperative way to resolve mutually acceptable Easements locations and configuration so that important projects such as the replacement lift station, replacement sewer interceptor pipeline line and the Carlsbad Energy Center Project at the Encina Power Station can timely move forward to the mutual benefit of the City, Cabrillo Power and the community.

Sincerely,
Cabrillo Power I LLC



Tim Hemig
Director, Environmental Business

Attachment: Planning Commission Resolution No. 6088 – Precise Development Plan (PDP) 00-02

cc: Mike Monasmith, California Energy Commission
Lisa Hildabrand, City Manager, City of Carlsbad
Scott Donnell, City of Carlsbad Planning Department
Joe Garuba, Municipal Projects Manager, City of Carlsbad

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WHEREAS, the Precise Development Plan serves as a land use application for the Carlsbad Seawater Desalination Plant, which is proposed at the Encina Power Station; and

WHEREAS, the purpose of the Precise Development Plan is to also document existing land uses at the Encina Power Station, a facility that began operation in 1954, and provides land use and development standards for existing and potential future uses at the power station as well as the Carlsbad Seawater Desalination Plant; and

WHEREAS, the Precise Development Plan and Desalination Plant project does not involve any modification to the Encina Power Station with the exception of demolishing a fuel oil tank, making certain electrical connections and making certain connections to the Encina Power Station seawater discharge as required by the Carlsbad Seawater Desalination Plant; and

WHEREAS, the Planning Commission did on the 3rd day of May, 2006 hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to the Precise Development Plan.

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

- A) That the foregoing recitations are true and correct.
- B) That based on the evidence presented at the public hearing, the Commission **RECOMMENDS APPROVAL** of **PRECISE DEVELOPMENT PLAN AND DESALINATION PLANT – PDP 00-02**, based on the following findings and subject to the following conditions:

Findings:

1. The **Precise Development Plan PDP 00-02** is consistent with the intent and purpose of the Public Utilities (P-U) Zone, Section 21.36.010 (1) of the Carlsbad Municipal Code, to provide a Precise Development Plan that is compatible with the General Plan and surrounding developments, **in that (1) existing and permitted land uses within the proposed Precise Development Plan are consistent with and/or implement the**

1 objectives of the Public Utilities (U) General Plan designation; (2) the Precise
2 Development Plan, through developments standards and review procedures, is
3 compatible with surrounding developments; (3) the Precise Development Plan
4 planning area is adequately buffered from surrounding, more sensitive uses (e.g.,
5 residences and businesses) by open space, other utility uses, and transportation
6 corridors and through development standards, including setbacks, of the proposed
7 Precise Development Plan. Furthermore, the Owner, through the Precise
8 Development Plan, has offered to provide certain public dedications that will
9 enhance the public's use of open space areas adjacent to the Precise Development
10 Plan area and the PDP is conditioned to dedicate an easement for the Coastal Rail
11 Trail.

12 2. The Precise Development Plan PDP 00-02 is consistent with the intent and purpose of
13 the Public Utilities (P-U) Zone, 21.36.010 (2) of the Carlsbad Municipal Code to provide
14 a Precise Development Plan that has given due regard to environmental factors, in that
15 the proposal has been reviewed concurrently with the processing and certification of
16 Environmental Impact Report (EIR) 03-05, compliant with the provisions of the
17 California Environmental Quality Act.

18 3. The Precise Development Plan PDP 00-02 is consistent with the intent and purpose of
19 the Public Utilities (P-U) Zone, 21.36.010 (3) of the Carlsbad Municipal Code to provide
20 a Precise Development Plan that provides for necessary public improvements, in that
21 conditions of approval have been placed on the project, which, in addition to the
22 terms and obligations of Development Agreement DA 05-01, combine to ensure that
23 adequate public improvements and/or dedications, and/or funds necessary therefor,
24 will be secured concurrent with project approval.

25 4. The Precise Development Plan PDP 00-02 permits the Carlsbad Seawater
26 Desalination Plant that is identified as a permitted use in the P-U Zone by
27 Municipal Code Section 21.36.020 (4)(c) and that incorporates design, location, and
28 operation characteristics that ensure compliance with the intent and purpose of the
29 P-U Zone. Furthermore, PDP 00-02 sets forth the standards of development for the
30 desalination plant.

31 5. The Precise Development Plan PDP 00-02 is consistent with the General Plan in that:
32 a. It provides regulations and standards for uses that are appropriate uses for
33 the General Plan Public Utilities ("U") land use designation, the designation
34 applied to the Encina Power Station.
35 b. The General Plan Land Use Element notes that the U land use designation is
36 applied to existing areas, such as the Encina Power Station, that are being
37 used for public or quasi-public functions.
38 c. It provides development standards for the Encina Power Station, including
39 the Carlsbad Seawater Desalination Plant, which is consistent with the
40 Overall Land Use Pattern goal A.2 that states, "A City which provides for an
41 orderly balance of both public and private land uses within convenient and
42 compatible locations throughout the community and ensures that all such
43 uses, type, amount, design, and arrangement serve to protect and enhance
44 the environment, character, and image of the City."

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- d. The establishment of the Precise Development Plan, its regulation of development and uses at the Encina Power Station, and the Owner's offers of public dedications as conditioned herein, achieve compliance with Land Use Element Environmental Policy C.6, which states, "Ensure the preservation and maintenance of the unique environmental resources of the Agua Hedionda Lagoon while providing for a balance of public and private land uses through implementation of the Agua Hedionda Land Use Plan."
6. The Precise Development Plan PDP 00-02 is consistent with Encina Specific Plan 144 in that:
- a. It complies with and enhances applicable Specific Plan standards and requirements adopted over the years to regulate development at the Encina Power Station.
 - b. It documents and maps power plant uses and features, and, since it proposes no changes to the operation of the Encina Power Station and only limited changes to its facilities (seawater discharge and electrical connections and removal of the a fuel oil storage tank), the Precise Development Plan does not conflict with Specific Plan standards and requirements regarding power station operations.
 - c. The proposed amended and restated Encina Specific Plan, SP 144(H), incorporates the land use designations of the City of Carlsbad General Plan, with which the Precise Development Plan is consistent. Additionally, SP 144(H) would incorporate by reference PDP 00-02.
7. The Precise Development Plan PDP 00-02 is consistent with the goals of the South Carlsbad Coastal Redevelopment Plan in that:
- a. Establishment of the Precise Development Plan and its development and environmental standards assists in eliminating blight and environmental deficiencies in the Redevelopment Plan area and ensuring quality site design.
 - b. Development of the Carlsbad Seawater Desalination Plant will assist in the stimulation of new commercial/industrial expansion, employment, and economic growth. The Owner-offered dedication to set aside vacant land next to the Hubbs-Sea World research facility for marine research or aquaculture also furthers this goal.
 - c. The Owner-offered public dedications, including dedication of the Fishing Beach along the lagoon and Bluff area adjacent to the beach, enable development of new public beach and coastal recreation opportunities, parking, and open space amenities.
 - d. Locating the Carlsbad Seawater Desalination Plant in a location that creates the least amount of constraints on any future conversion of the Encina power station facilitates the redevelopment of the Encina power generating facility to a smaller, more efficient power generating plant.
8. The Precise Development Plan PDP 00-02 is consistent with the City's adopted Scenic Corridor Guidelines, which apply to Carlsbad Boulevard and the North County Transit District railroad corridor, in that it provides for the Carlsbad Seawater Desalination Plant a quality building design and appropriate visual screening, and, for the

1 Encina Power Station as a whole, recognition of the Guidelines and development
2 standards.

- 3 9. The Precise Development Plan PDP 00-02, including the public dedications proposed
4 by the Owner through the Precise Development Plan, is in conformance with the Agua
5 Hedionda Land Use Plan and all applicable policies in that it has been reviewed for
6 consistency with relevant coastal policies including land use, habitat protection,
7 grading and drainage, stormwater management, recreation, shoreline access, and
8 visual resources. In particular, the Precise Development Plan achieves consistency
9 with Land Use Plan policies as follows:
- 10 a. The Precise Development Plan regulates uses that are consistent with those
11 land uses shown on the Plan's Land Use Map (Policy 1.1).
 - 12 b. The Owner-offered dedication of a public access easement for the Fishing
13 Beach is consistent with policies 6.5 and 6.7, which encourage the Encina
14 fishing area on the Outer Lagoon to be maintained and present recreational
15 uses of the lagoon to be expanded where feasible.
 - 16 c. Other Owner-offered public dedications in the vicinity of Agua Hedionda
17 Lagoon and the Pacific Ocean are consistent with Coastal Act Policies
18 regarding public access to coastline and recreational features.
 - 19 d. The Precise Development Plan is subject to, and incorporates as a regulating
20 document, the Mitigation and Monitoring Program for EIR 03-05, which
21 provides mitigation to ensure consistency with Land Use Plan policies
22 regarding environmentally sensitive habitats, geology, and water quality.

23 Furthermore, the Project has been conditioned to obtain its coastal development
24 permit from the California Coastal Commission.

- 25 10. The approval of Precise Development Plan PDP 00-02 fulfills the requirement of
26 Municipal Code Section 21.36.030, which in part states that "no building permit or
27 other entitlement for any use in the P-U zone shall be issued until a precise
28 development plan has been approved for the property."
11. As conditioned, the project is consistent with the City's Landscape Manual (Carlsbad
Municipal Code Section 14.28.020 and Landscape Manual Section I B).
12. The Planning Commission has reviewed each of the exactions imposed on the Developer
contained in this resolution, and hereby finds, in this case, that the exactions are imposed
to mitigate impacts caused by or reasonably related to the project, and the extent and the
degree of the exaction is in rough proportionality to the impact caused by the project.
13. That the City has adopted a Citywide Trails Program and a segment of the trail network,
the Coastal Rail Trail, is associated with this project. To facilitate locating this trail,
which cannot be accommodated in its originally intended location within the North
County Transit District Railroad right of way due to various reasons including
space limitations, security, and safety concerns, the Owner and the City have agreed
to try and find a mutually agreeable trail location within the Precise Development
Plan boundaries.

1 **Conditions:**

2 **Notes:** Unless otherwise specified herein, all conditions shall be satisfied prior to issuance of
3 grading or building permits for the Carlsbad Seawater Desalination Plant, whichever
4 occurs first.

- 5 1. If any of the following conditions fail to occur; or if they are, by their terms, to be
6 implemented and maintained over time, if any of such conditions fail to be so
7 implemented and maintained according to their terms, the City shall have the right to
8 revoke or modify all approvals herein granted; deny or further condition issuance of all
9 future building permits; deny, revoke or further condition all certificates of occupancy
10 issued under the authority of approvals herein granted; record a notice of violation on the
11 property title; institute and prosecute litigation to compel their compliance with said
12 conditions or seek damages for their violation. No vested rights are gained by Developer
13 or a successor in interest by the City's approval of this **Precise Development Plan**, other
14 than those described in the **Development Agreement (DA 05-01)**.
- 15 2. Staff is authorized and directed to make, or require the Developer to make, all corrections
16 and modifications to the **Precise Development Plan** documents, as necessary to make
17 them internally consistent and in conformity with the final action on the project.
18 Development shall occur substantially as shown on the approved Exhibits. Any proposed
19 development different from this approval shall require an amendment to this approval.
- 20 3. Prior to approval of the **Precise Development Plan**, the Developer shall apply for and
21 obtain approval of a Coastal Development Permit issued by the California Coastal
22 Commission or its successor in interest, that substantially conforms to this approval. A
23 signed copy of the Coastal Development Permit must be submitted to the Planning
24 Director. If the approval is substantially different, an amendment to the **Precise**
25 **Development Plan** shall be required.
- 26 4. This approval is granted subject to the certification, adoption and approval of the
27 Environmental Impact Report (**EIR 03-05**) and Mitigation Monitoring and Reporting
28 Program, **SP 144(H)**, **DA 05-01**, **RP 05-12**, **CDP 04-41**, **SUP 05-04** and **HMPP 05-08**
and is subject to all conditions contained in Planning Commission Resolutions No. **6089**,
6090, **6091**, **6092**, **6093**, and **6094** for those other approvals incorporated herein by
reference.
- 29 5. **Those portions of the Project's water conveyance pipelines located within the City of**
Carlsbad but outside of the City's coastal zone are not approved as part of this
permit and are subject to future permits by the City of Carlsbad, and will be subject
to the requirements of the Carlsbad Municipal Code.
- 30 6. If any condition for construction of any public improvements or facilities, or the payment
of any fees in-lieu thereof, imposed by this approval or imposed by law on this Project
are challenged, this approval shall be suspended as provided in Government Code
Section 66020. If any such condition is determined to be invalid, this approval shall be
invalid unless the City Council determines that the project without the condition complies
with all requirements of law.

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- 7. a. Developer shall comply with all applicable provisions of federal, state, and local laws and regulations in effect at the time of building permit issuance, **except as otherwise provided in the Development Agreement.**
- b. **Owner shall comply with all applicable provisions of federal, state, and local laws and regulations in effect at the time of building permit issuance as they relate to the existing Encina Power Station.**
- 8. **Indemnification:**
 - a. Developer shall and does hereby agree to indemnify, protect, defend, and hold harmless the City of Carlsbad, its Council members, officers, employees, agents, and representatives (collectively "Indemnified Parties"), from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees incurred by the City arising, directly or indirectly, from (i) City's approval and issuance of this **Precise Development Plan**, (ii) City's approval or issuance of any permit or action, whether discretionary or nondiscretionary, in connection with the Carlsbad Seawater Desalination Plant use contemplated herein, and (iii) Developer's installation and operation of the Carlsbad Seawater Desalination Plant, including without limitation, any and all liabilities arising from the emission by the Carlsbad Seawater Desalination Plant of electromagnetic fields or other energy waves or emissions. These obligations survive until all legal proceedings have been concluded and continue even if any City approval giving rise to an indemnification obligation is not validated.
 - b. Owner shall and does hereby agree to indemnify, protect, defend, and hold harmless Indemnified Parties, from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees incurred by the City arising, directly or indirectly, from (i) City's approval and issuance of this **Precise Development Plan**, (ii) City's approval or issuance of any permit or action, whether discretionary or nondiscretionary, in connection with the use of the existing 95-acre Encina Power Station, and (iii) Owner's installation and operation of the Encina Power Station, including without limitation, any and all liabilities arising from the emission by the Encina Power Station of electromagnetic fields or other energy waves or emissions. Owner's duty to indemnify the Indemnified Parties does not include any and all liabilities, losses, damages, demands, claims, costs, court costs and attorney's fees arising, directly or indirectly from the Carlsbad Seawater Desalination Plant. These obligations survive until all legal proceedings have been concluded and continue even if any City approval giving rise to an indemnification obligation is not validated.

- 1 9. a. The Desalination plant project shall comply with all conditions and mitigation
2 measures which are required as part of the Zone 1 and Zone 3 Local Facilities
3 Management Plans and any amendments made to that Plan prior to the issuance of
4 building permits. **Should amendments occur to the LFMPs, the Developer
5 shall comply subject to the limitations of the Development Agreement
6 (DA 05-01).**
7 b. For the Encina Power Station, Owner shall comply with all conditions and
8 mitigation measures which are required as part of the Zone 1 and Zone 3 Local
9 Facilities Management Plans and any amendments made to that Plan prior to the
10 issuance of building permits for any permits not contemplated in this PDP, as it
11 may be amended from time to time.
- 12 10. The approval of the PDP shall become null and void for the portions relating to the
13 Desalination Plant, if the Desalination Plant does not become operational within
14 **10 years of the final discretionary approval, including the discretionary approvals of
15 the California Coastal Commission or other agencies, as may be consistent with the
16 Development Agreement (DA 05-01).**
- 17 11. Developer shall implement, or cause the implementation of, the **EIR 03-05 Project
18 Mitigation Monitoring and Reporting Program.**
- 19 12. a. As a condition of this approval, Owner must comply with the requirements of all
20 regulatory agencies having jurisdiction over the Encina Power Station.
21 b. As a condition of this approval, Developer must comply with the requirements of
22 all regulatory agencies having jurisdiction over the Desalination Plant and the
23 Mitigation Monitoring and Reporting requirements of the environmental
24 documents for the Desalination Plant.
- 25 13. Developer shall submit to the **Planning Director** a reproducible 24" x 36" mylar copy of
26 the **Precise Development Plan** reflecting the conditions approved by the final decision-
27 making body.
28 a. Developer shall include, as part of the plans submitted for any permit plan check,
a reduced legible version of all approving resolution(s) in a 24" x 36" blue line
drawing format (including any applicable Coastal Commission approvals and the
Mitigation Monitoring and Reporting Program).
b. Prior to final inspection of the desalination plant, Developer shall have
constructed a decorative screen wall or fence and, where feasible, install
landscaping and irrigation along the entire Carlsbad Boulevard frontage of
the Encina Power Station beginning at the power station's south boundary
adjacent to the SDG&E property and extending approximately to the north
end of the aquaculture facilities adjacent to the power station's discharge
pond, provided that (f) prior to issuance of building or grading permits for
the desalination plant, plans for the decorative screening wall or fence,
landscaping and irrigation, as outlined in the conditions for a Final
Landscape and Irrigation Plan contained herein, shall be submitted to the

1 Planning Director and the City Engineer for review and approval; and
2 (ii) such decorative screen wall or fence shall replace the existing fence and
3 shall incorporate, if determined appropriate by the Planning Director and
4 the City Engineer, the bridge rail over the cooling water discharge culvert as
required by and conditioned in Planning Commission Resolution No. 6091
for Redevelopment Permit RP 05-12.

- 5 c. Developer shall submit and obtain Planning Director approval of a Final
6 Landscape and Irrigation Plan showing conformance with the conditions herein
7 and the City's Landscape Manual. Developer shall construct and install all
8 landscaping as shown on the approved Final Plans, and maintain all landscaping
9 in a healthy and thriving condition, free from weeds, trash, and debris.
- 10 d. The first submittal of Final Landscape and Irrigation Plans shall be pursuant to the
11 landscape plan check process on file in the Planning Department and
12 accompanied by the project's building, improvement, and grading plans.
- 13 e. Prior to the issuance of any permits for the project, the applicant shall submit to
14 the Planning Director a digital copy and a camera-ready master copy of the
15 **ENCINA POWER STATION AND PRECISE DEVELOPMENT PLANT -**
16 **PDP 00-02**, in addition to the required number of bound copies determined by the
17 Planning Director.

18 Engineering

- 19 14. Prior to issuance of any building permit, Developer shall comply with the requirements of
20 the City's anti-graffiti program for wall treatments if and when such a program is
21 formally established by the City.
- 22 15. Prior to approval of a grading or building permits for the desalination plant, Developer
23 shall cause Owner to give written consent to the City Engineer to the annexation of the
24 area shown within the boundaries of the Precise Development Plan into the existing City
25 of Carlsbad Street Lighting and Landscaping District No. 1 and/or to the formation or
26 annexation into an additional Street Lighting and Landscaping District. Said
27 written consent shall be on a form provided by the City Engineer.
- 28 16. Prior to issuance of grading or building permits for the desalination plant, Developer shall
cause Owner or its successor in interest to make an irrevocable offer of dedication to the
City and/or other appropriate entities for all public streets, lands, and easements shown
on the Precise Development Plan listed below, except as otherwise provided in the
Precise Development Permit. The offer shall be made by a separate document. All land
so offered shall be offered free and clear of all liens and encumbrances and without cost.
Streets that are already public are not required to be rededicated.
- a. **Public dedications:** The locations of the following dedications are shown on
exhibit "Poseidon Desalination Plant Proposed Parcel Exhibit" attached
hereto for reference. Prior to issuance of grading or building permits for the
desalination plant, precise legal descriptions and documentation shall be

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submitted to the satisfaction of the City Attorney, the City Engineer, and the Planning Director.

- i. **Hubbs Site Parcel:** A deed restriction shall be recorded on the property known as the Hubbs Site Parcel. The Hubbs Site Parcel is the vacant, approximately two-acre eastern portion of the property identified by Assessor's Parcel Number (APN) 206-07-017 and currently occupied by the Hubbs-Sea World Research facility. The deed restriction shall limit allowable land uses on the Hubbs Site Parcel to those that are directly related to fish hatchery, fish ecology research, aquaculture uses, and trails to the satisfaction of the Planning Director.
- ii. **Bluff Area Parcel:** Fee title to property known as the Bluff Area Parcel shall be granted to the City of Carlsbad for public access and recreational uses. The Bluff Area Parcel is on the west side of Carlsbad Boulevard, between the Encina Power Station discharge jetty and the Terramar residential area. Fee title shall include only the bluff area and not the beach. Cabrillo Power I LLC shall pay all costs associated with the property dedication.
- iii. **South Power Plant Parcel:** A public parking and public access easement shall be granted to the City of Carlsbad for the property described as the South Power Plant Parcel for the development of public vehicle parking by the City of Carlsbad. The South Power Plant Parcel is located at the southwest corner of the Precise Development Plan, adjacent to the east side of Carlsbad Boulevard and Encina Power Station south entrance gate, an area approximately 0.27 acre in size. If necessary, Developer shall be responsible for costs associated with removal and relocation of any gates or fences necessary to accommodate the parking and access to it. Furthermore, prior to issuance of grading or building permits for the desalination plant, one (or more) plan(s) shall be provided to the City to show feasible parking layouts as determined by the Planning Director and the City Engineer. Parking lot plans shall be designed to complement and allow installation of the Carlsbad Boulevard frontage landscape and wall conditioned herein. The operational parameters of the public parking and public access shall be ones that are mutually agreeable to both the Owner and the Planning Director.
- iv. **Fishing Beach Parcel:** A public access and public parking easement shall be granted to the City of Carlsbad for the property known as the Fishing Beach Parcel for access and on-shore recreational uses, including public parking. The operational parameters of the on-shore recreational facilities, public parking, and public access shall be ones that are mutually agreeable to both the Owner and the Planning Director. This property, approximately 2.4 acres, is located on the east side of Carlsbad Boulevard along the Outer Agua Hedionda Lagoon and stretches from the lagoon inlet jetty to a point at an existing fence about 1,500 feet south. Cabrillo Power I LLC or their assignee shall retain the right to close the Fishing Beach property to

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public use and access from time to time during periodic dredging cycles as approved for lagoon maintenance.

b. **Carlsbad Boulevard:** From the southerly boundary of the Precise Development Plan to the northerly boundary of Specific Plan 144, dedicate additional right-of-way for public street and utility purposes along the easterly side of Carlsbad Boulevard. Width of additional right-of-way shall be one (1) foot to the satisfaction of the City Engineer.

c. **The Owner of the Precise Development Plan property shall enter into an agreement with the City whereby the Owner:**

i. Acknowledges that the existing storm drain facilities across Precise Development Plan property may be of inadequate size to contain the 100-year storm flows.

ii. Acknowledges that under existing NPDES requirements applicable to the Owner's property that Owner has legal obligations to prevent illegal or unpermitted discharges into the Agua Hedionda Lagoon or Pacific Ocean under expected drainage water flows, and no releases of hazardous materials or pollutants as the result of drainage flows across the Precise Development Plan property.

iii. Subject to any Owner-initiated development which requires a formal amendment to the Precise Development Plan, regardless of any potential exemption based upon square footage, Owner shall irrevocably offer to dedicate a public drainage easement over the existing main storm drain line carrying public drainage water across the Precise Development Plan property. The offer shall include additional width and rights to allow for the complete construction, operation and maintenance of the existing storm and future Drainage Master Plan (DMP) Facility BAA to the satisfaction of the City Engineer. The offer may allow for Owner to adjust the exact alignment or increase the capacity of the new drainage facility at Owner's expense to accommodate the flow in the existing drainage facility, prior to the City's construction of any facilities. After construction of the facilities, the City may allow Owner to relocate the existing storm drain facilities at Owner's expense if the relocated alignment is acceptable to the City Engineer or eliminate the existing facility at Owner's expense if eliminating the existing facility is acceptable to the City Engineer. Prior to acceptance of the existing private storm drain and the proposed drainage easement by the City, the Owner shall remove all liens and encumbrances from the easement property proposed for dedication that would interfere with the construction, operation, or maintenance of the existing and future drainage facilities to the satisfaction of the City Engineer, including buildings, structures, and pipelines. The agreement and its provisions shall be subject to the satisfaction of the City Engineer and the City Attorney.

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

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

17. Prior to the issuance of any grading or building permits for construction within the Precise Development Plan area, other than the desalination plant, Owner shall:

i) Pay the City's Planned Local Drainage Area (PLDA) fee for the property encompassed by the entire Precise Development Plan, excluding the desalination plant site, in accordance with the City's PLDA fee program at time of building or grading permit issuance. Owner shall pay PLDA fees for any owner-initiated development which requires a formal amendment to the Precise Development Plan, regardless of any potential exemption based upon square footage.

ii) Construct that portion of Master Drainage Plan facility BAA which is proposed to be located on Owner's property within the Precise Development Plan area, subject to fee credits and reimbursements, if any, as may be provided in the then current City Drainage Ordinance. Owner may also request reimbursement from applicable fund sources from the City Redevelopment Agency. Owner shall construct that portion of facility BAA for any owner-initiated development which requires a formal amendment to the Precise Development Plan.

18. Owner shall not challenge any aspect of the Carlsbad Seawater Desalination Plant's Environmental Impact Report before the California Coastal Commission or in any court of law for any reason or purpose.

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NOTICE

Please take **NOTICE** that approval of your project includes the "imposition" of fees, dedications, reservations, or other exactions hereafter collectively referred to for convenience as "fees/exactions."

You have 90 days from date of final approval to protest imposition of these fees/exactions. If you protest them, you must follow the protest procedure set forth in Government Code Section 66020(a), and file the protest and any other required information with the City Manager for processing in accordance with Carlsbad Municipal Code Section 3.32.030. Failure to timely follow that procedure will bar any subsequent legal action to attack, review, set aside, void, or annul their imposition.

You are hereby **FURTHER NOTIFIED** that your right to protest the specified fees/exactions **DOES NOT APPLY** to water and sewer connection fees and capacity charges, nor planning, zoning, grading or other similar application processing or service fees in connection with this project; **NOR DOES IT APPLY** to any fees/exactions of which you have previously been given a **NOTICE** similar to this, or as to which the statute of limitations has previously otherwise expired.

PASSED, APPROVED AND ADOPTED at a regular meeting of the Planning Commission of the City of Carlsbad, California, held on the **3rd** day of **May 2006** by the following vote, to wit:

AYES: Chairperson Montgomery, Commissioners Baker, Cardosa, Heineman, Montgomery, Segall, and Whitton

NOES:

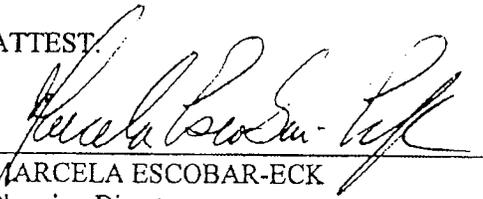
ABSENT:

ABSTAIN: Commissioner Dominguez



MARTELL B. MONTGOMERY, Chairperson
CARLSBAD PLANNING COMMISSION

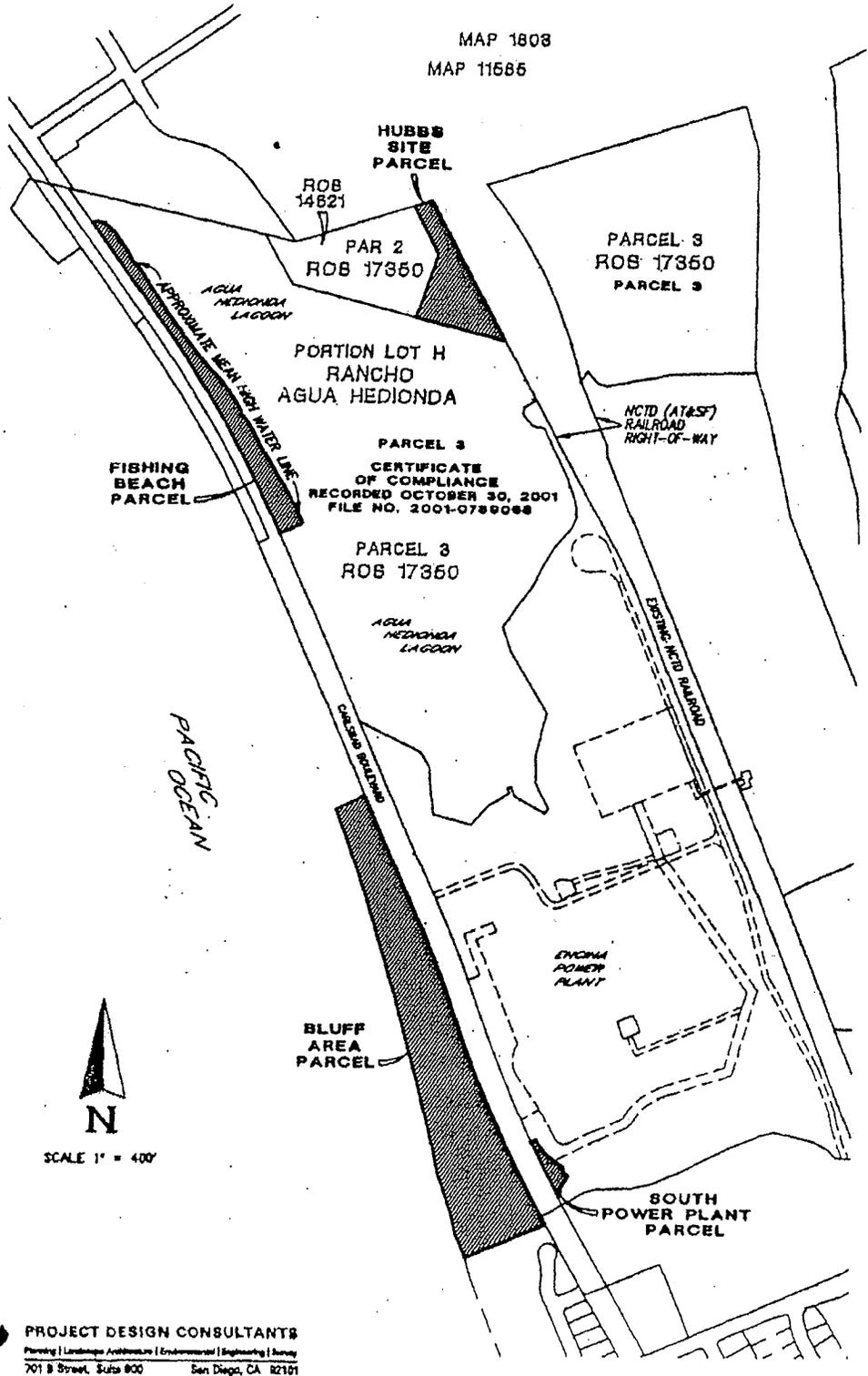
ATTEST.



MARCELA ESCOBAR-ECK
Planning Director

POSEIDON DESALINATION PLANT PROPOSED PARCEL EXHIBIT

MAP 1808
MAP 11685




N
 SCALE 1" = 400'


PROJECT DESIGN CONSULTANTS
 Planning | Landscape Architecture | Environmental | Engineering | Surveying
 701 B Street, Suite 800 San Diego, CA 92101
 619.236.0471 Tel 619.234.0349 Fax

SURVEYED BY: [Name] DATE: 3/26/2004 SHEET: PK 101

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PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council
of the City of Carlsbad, California, on the _____ day of _____, by the following
vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED AS TO FORM AND LEGALITY

RONALD R. BALL, City Attorney

CLAUDE A. LEWIS, Mayor

ATTEST:

LORRAINE M. WOOD, City Clerk

(SEAL)