City of Carlsbad
Office of the City Manager

June 2, 2009

DOCKET	
07-AFC-6	
DATE	JUN 02 2009
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Mike Monasmith
Siting Project Manager
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

Re: Carlsbad Energy Center Project (07-AFC-6) – May 6, 2009 Caltrans Letter

Dear Mr. Monasmith:

The City of Carlsbad respectfully submits the following letter from Caltrans for docketing. This letter, dated May 6, 2009, is regarding the Carlsbad Energy Center Project (CECP).

If you have any questions, please feel free to contact me at 760-434-2820.

Sincerely,

Joe Garuba
Municipal Projects Manager

JG:ad

c: Proof of Service List (Revised 5/11/2009)

DEPARTMENT OF TRANSPORTATION
DISTRICT 11
4050 TAYLOR STREET
SAN DIEGO, CA 92110
PHONE (619) 688-3611
FAX (619) 688-2587
TTY (619) 688-3214

Flex your power!
Be energy efficient!

May 6, 2009

City of Carlsbad
Joe Garuba, Municipal Project Manager
1200 Carlsbad Village Drive
Carlsbad, CA 92008-1989

Dear Mr. Garuba:

The California Department of Transportation (Caltrans) has received your correspondence dated April 28, 2009 requesting an update on the progress of the I-5 North Coast Corridor (I-5 NCC) Project, the region's position on the construction of the I-5 NCC Project and to reiterate our previous comments on the proposed Carlsbad Energy Center Project (CECP).

With the full support and financial commitment from the region, Caltrans is in the process of finalizing the Draft Environmental Document (DED) for the I-5 NCC Project. The Notice of Intent was issued and Scoping meetings have been completed. All of the technical and environmental studies are completed. The Federal Highway Administration is in the process of reviewing the DED. Public release of the DED is planned for the summer of 2009.

As you know, Caltrans has conducted extensive public outreach for the I-5 NCC Project in the City of Carlsbad. The City, community and elected officials are well informed of the freeway widening, including the Direct Access ramp in the area of the proposed CECP. Caltrans has sent letters to the California Energy Commission (CEC) dated March 25, 2008 and February 5, 2009 with comments on the proposed CECP and emphasizing the National, State, Regional, and local commitment to improve transportation on I-5 and the LOSSAN Rail corridor. Comments on these previous letters demonstrating why the implementation of the I-5 NCC Project is not speculative can be summarized as follows:

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

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

In our February 2009 letter to the CEC it was clearly stated that "All four alternatives being formally studied in the I-5 NCC draft environmental document require the removal of the existing earth berm, associated landscape and acquisition of plant property". (Emphasis added.) Given the support for the project, the commitment of regional funding, the fact that all of the alternatives impact the existing screening, and that the DED is nearing completion, we do not believe the I-5 widening is speculative.

To date we have received no information regarding our request in the February 2009 letter that *"a visual analysis be completed assuming both projects are constructed."* Due to the limited space in this area, if a jointly-developed plan to address potential visual impacts is not accommodated as part of the proposed CECP, there is a strong likelihood that future mitigation will be precluded.

In your letter you are also asking if Caltrans has a long-term mitigation strategy for shifting the freeway expansion to the east in the vicinity of the CECP. One of Caltrans' missions is to build cost-effective transportation solutions for California taxpayers. Moving the entire Interstate freeway to the east is not a cost-effective solution to mitigate potential visual impacts and will not be included as part of the I-5 NCC Project.

It is our understanding that CEC staff has considered the I-5 NCC Project and the LOSSAN rail corridor projects to be "speculative" because the DED will not be completed before the CECP hearing. It is also our understanding that counsel for the CECP has argued the I-5 NCC Project and LOSSAN rail projects are "non-existent or unspecified projects." (CEC LLC's Opposition to City of Carlsbad's Petition to Compel Response to Requests, Docket 07-AFC-6, May 1, 2009.)

Given the foregoing description of the tangible activities of SANDAG and the Department of Transportation, it is plain that neither CEC staff nor NRG LLC's counsel appreciate how far along these complex transportation projects are in terms of delivery.

More importantly, it appears CEC staff and NRG LLC's counsel applied an incorrect standard when determining whether to conduct a cumulative impacts analysis. The standard used is in conflict with CECP CEQA/CRP compliance since it is not whether another "project" has a DEIR, negative declaration or is otherwise exempt from CEQA analysis, but simply whether there are cumulative impacts. (See, e.g., CEQA Guidelines section 15130(a).) Further, it does not matter that the other project may never be built- the appropriate analysis is whether the other projects are a "realistic possibility". *(City of Antioch v. City Council of the City of Pittsburgh* (1986) 187 Cal.App.3d 1325, 1336-1338; *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892.)

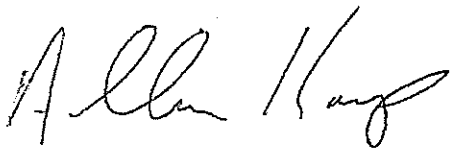
Similarly, other CEQA commentators have stated "Agencies should also be aware that some "future projects" may be "probable" even though they may never be built. What matters is whether the potential future projects appear foreseeable at the time of EIR preparation." *Remy, Thomas Moose & Manley*, "Guide to CEQA, 11th ed. 2006, Solano Press p. 472.)

To the best of our knowledge, CEC staff has not made <u>any</u> determination as to whether the I-5 NCC Project or the LOSSAN projects are a "realistic possibility" or are "foreseeable" – only that their DED is not yet finalized.

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

If you have any questions please call me at (619) 688-3611 or Arturo Jacobo, Project Manager, at (619) 688-6816.

Sincerely,



ALLAN KOSUP
I-5 Corridor Director

Cc: California Energy Commission
Docket 07-AFC-6
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

David Lloyd,
Carlsbad Energy Center, LLC
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Arturo Jacobo, Project Manager, Caltrans District 11

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 5/11/2009)

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*indicates change

DECLARATION OF SERVICE

I, Andrea Dykes, declare that on June 2, 2009, I served and filed copies of the attached document. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[http://www.energy.ca.gov/sitingcases/carlsbad/index.html]**. The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service* list) and to the Commission's Docket Unit, in the following manner:

(*Check all that Apply*)

For service to all other parties:

__X__sent electronically to all email addresses on the Proof of Service list;

_____by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

For filing with the Energy Commission:

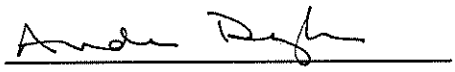
__X__**sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (preferred method);**

OR

_____depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

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



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