



City of Carlsbad

Office of the City Manager

March 5, 2009

Mike Monasmith
Siting Project Manager
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

| | |
|----------|-------------|
| DOCKET | |
| 07-AFC-6 | |
| DATE | MAR 05 2009 |
| RECD. | MAR 09 2009 |

RE: CARLSBAD ENERGY CENTER PROJECT (07-AFC-6)
EASEMENTS FOR VISTA/CARLSBAD

Dear Mr. Monasmith:

On behalf of the City of Carlsbad, please find the attached letter regarding the necessary alignment of the improved Vista/Carlsbad Sewer Interceptor and the Coastal Rail Trail for docketing.

If you have any questions, please contact me at (760) 434-2820.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Garuba".

Joe Garuba
Municipal Projects Manager

JG:ad

Enclosure

cc: Proof of Service List (Revised 2/18/2009)





City of Carlsbad

Public Works

February 19, 2009

Tim Hemig
Director, Environmental Business
Cabrillo Power I LLC
Suite 104
1817 Aston Avenue
Carlsbad, CA 92008

SUBJECT: EASEMENTS FOR VISTA/CARLSBAD INTERCEPTOR SEWER PIPELINE, AGUA HEDIONDA LIFT STATION, AND COASTAL RAIL TRAIL

Dear Mr. Hemig:

Thank you for your letter of October 29, 2008, regarding the Vista/Carlsbad Interceptor Sewer Replacement project as it relates to the proposed Carlsbad Energy Center Project (CECP). The letter responds to a September 5, 2008, letter to you from Terry Smith, Senior Civil Engineer, on the same subject.

We appreciate the clarification that Cabrillo Power I LLC (Cabrillo Power) remains the owner of the entire Encina Power Station. The City also acknowledges, as your letter notes, the several cooperative meetings over the past years in which we have discussed the replacement of the Vista/Carlsbad Interceptor Sewer Pipeline and the Agua Hedionda Lift Station, the development of the Coastal Rail Trail (CRT), and the need for easements (collectively "Easements") for these three projects. City staff appreciates this cooperation and looks forward to a continued productive relationship.

It is necessary to respond to and clarify several points raised in your October 29 correspondence, and that is this letter's purpose. Specifically, our response will address:

1. The primary purpose of Precise Development Plan PDP 00-02;
2. The relevance of PDP 00-02 conditions of approval to the proposed CECP, particularly with regard to the needed Easements;
3. The relevance of the Easements to the CECP;



4. The Redevelopment Plan goal to facilitate the redevelopment of the existing power plant and the relationship of the Easements and the proposed CECP to this goal; and
5. Siting possibilities and constraints for the CRT.

Each of these five items is addressed below.

1. *The primary purpose of Precise Development Plan PDP 00-02.* Your letter states the primary purpose of PDP 00-02 was to approve the desalination plant proposed by Poseidon Resources Channelside LLC and approved by the City in 2006. PDP 00-02 actually had two primary purposes: First, as stated in the introduction to the approved PDP document, "the [PDP] is intended to serve as an information and regulatory document to meet the City's zoning requirements for the Public Utility Zone as the zone applies to the Encina Power Station (EPS)." Second, as the introduction also notes, "the PDP is also the primary approval process for the Carlsbad Seawater Desalination Project..."

Zoning Ordinance Section 21.36.030 states in part that "no building permit or other entitlement for any use in the P-U zone shall be issued until a precise development plan has been approved for the property." Approval of PDP 00-02, therefore, was necessary to enable Cabrillo Power to obtain permits for any improvements at the EPS, regardless of the desalination plant.

Finally, Cabrillo Power's original submittal of PDP 00-02 in September 2000 did not include the desalination plant or any other development plan. The document was first submitted to provide baseline information on existing EPS structures and meet the above stated Zoning Ordinance requirements, among other things. Not until May 2002 was the PDP 00-02 application amended to include the desalination plant.

2. *The relevance of PDP 00-02 conditions of approval to the proposed CECP.* At the bottom of the first page, your letter states "the PDP 00-02 provisions for the Easements are unrelated to the proposed CECP application pending before the California Energy Commission." Further, a sentence in the letter's final paragraph concludes, "...the various conditions of PDP 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."

City staff disagrees with your interpretation. Requirements for the Easements, as well as other requirements outlined in the PDP 00-02 conditions, are indeed related to the proposed CECP and any other potential development at the EPS besides the desalination plant. Although some PDP 00-02 conditions are tied to the permitting or occupancy of the desalination plant and/or involve the plant's applicant, Poseidon Resources, those conditions also obligate Cabrillo Power, the EPS owner and PDP joint applicant with Poseidon Resources.

Additionally, several other PDP 00-02 conditions do not involve the desalination plant or Poseidon Resources and are solely obligations of Cabrillo Power. Conditions 17i) and 17ii), for example, requiring Cabrillo Power (or its successor in interest) to pay a drainage fee and construct a drainage facility "prior to the issuance of any grading or building permits for construction within the Precise Development Plan area, other than the desalination plant..." All conditions discussed are contained in the City of Carlsbad's Planning Commission Resolution 6088.

Conditions 16d., and 16e. of Resolution 6088 are listed below and require Poseidon Resources to cause Cabrillo Power to make irrevocable offers of dedication for the Easements:

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 Plan. 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.
 - 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 Owner or its successors in interest.

In the above, "Developer" is Poseidon Resources Channelside LLC, the desalination project applicant, and "Owner" is Cabrillo Power.

Upon conditioning of PDP 00-02 in 2006, the City chose this "prior to occupancy" deadline merely to ensure the timely fulfillment of these important conditions as they provide dedication of easements for critical sewer infrastructure and a partially completed regional trail. Therefore, and contrary to what your letter appears to suggest, this deadline does not change the fact that dedication is an obligation of Cabrillo Power to fulfill and is certainly applicable to the proposed CECP. Furthermore, when the conditions were approved in June 2006, neither the proposed CECP nor any other project by Cabrillo Power or another entity had been proposed at the EPS to which the conditions could be

attached. Finally, recognizing Poseidon Resources' obligation per the conditions to cause Cabrillo Power to make the dedication offers, city staff has sent a letter to the company requesting its cooperation in securing the Easements per the conditions.

3. *The relevance of the Easements to the proposed CECP.* The above discussion clarifies the timing of, and responsibility to fulfill, the conditions requiring the Easements. In no way, however, do the conditions suggest the proposed CECP and Easements are unrelated.

For context, condition 16d. requires an easement dedication of the Coastal Rail Trail, a bike/pedestrian path planned between Oceanside and San Diego. Condition 16e. requires dedication of easements for the sewer pipeline and lift station, which were constructed in the late 1960's and have either reached their useful life or are undersized to meet the future needs of the area. They are part of the critical sewer infrastructure serving tens of thousands of residents in Carlsbad and Vista and are jointly-owned by both agencies.

For at least 5 years, Carlsbad has consulted with Cabrillo Power to plan the alignment of the CRT and to replace the sewer interceptor and lift station. As you are aware, this alignment is fairly constrained through the EPS property. These constraints are caused by the existing sewer and trail alignments to the north and south, existing power plant improvements, the approved desalination plant, Interstate 5, the railroad, and the lagoon. Of course, the existing sewer alignment is located within the proposed CECP site, just inside its west boundary, and the existing lift station is just north of the proposed CECP. In an effort to minimize impacts to the EPS, the City has identified the ability to co-locate the space needed for both the sewer pipeline and the CRT. More information on locating the CRT on top of the sewer pipeline is provided in item five below.

Despite statements in your letter to the contrary, consideration of the Easements must occur with the planning of the proposed CECP because of the constraints and location of the existing sewer improvements noted above. Furthermore, in reviewing documents that your company has submitted to the California Energy Commission (CEC), NRG reflects CECP components that are located on top of the Easements. Clearly this is not accurate and needs to be clarified for the CEC's deliberations so that improvements to the sewer system and CRT are not jeopardized.

Additionally, it is imperative that the existing sewer facilities be replaced as soon as possible due to the age and poor condition of the system. This important sewer replacement project must remain on schedule and cannot be delayed by the process of acquiring easements without exposing the lagoon area to an increased risk of a sewage spill.

City staff looks forward to continued discussions with Cabrillo Power to finalize the dedication of the Easements. However, if these discussions do not occur in a timely manner, staff will recommend the City Council explore alternative ways of obtaining the required easements.

4. *The Redevelopment Plan goal to facilitate the redevelopment of the existing power plant and the relationship of the Easements and the proposed CECP to this goal.* A goal of the South Carlsbad Coastal Redevelopment Plan is “facilitating the redevelopment of the Encina power generating facility to a smaller, more efficient power generating plant.” Your letter notes that to be consistent with this goal, the location and size/width of the Easements for the CRT and sewer pipeline and lift station must minimize constraints on the proposed CECP.

To clarify, this Redevelopment Plan goal contemplated redevelopment, or replacement, of the existing power plant. It did not contemplate Carlsbad Energy Center LLC's proposal to develop an additional power plant (the proposed CECP) with no guarantee of existing power plant removal. Additionally, the goal is not site specific; while the currently proposed CECP location has been discussed as a likely place for a new power plant, no particular site was targeted by the Redevelopment Plan.

Third, this particular goal must be balanced with other Redevelopment Plan goals. For example, “eliminating blight and environmental deficiencies in the Project Area” supports the need for replacement of sewer facilities that are outdated and inadequate to accommodate future growth. Finally, and as your letter concludes, the City and Cabrillo Power should continue cooperative discussions to determine mutually acceptable locations for the Easements.

5. *Siting possibilities and constraints for the CRT.* Your letter sets forth Cabrillo Power's position that it is not acceptable to co-locate the CRT with the easements for the sewer pipeline and lift station and that the ultimate route of the trail is entirely separate from the easements for those facilities. Moreover, the letter suggests an alternative CRT routing that would avoid traversing the EPS.

As its name implies, the Coastal Rail Trail was originally approved in conceptual form to parallel closely the railroad tracks between Oceanside and San Diego. However, as discussed in Planning Commission Resolution 6088, Finding 13, the CRT “...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.” Despite these limitations, it remains the intent of agencies planning and funding the CRT to locate the trail along and near the rail corridor as much as possible. In Carlsbad, parts of the CRT have been constructed north and south of the EPS.

Since a railroad right of location is no longer feasible, the PDP identifies the CRT as “...an allowed and supported land use with the Precise Development Plan.” It further goes on to describe an alignment that would cross the Agua Hedionda Lagoon on the existing bridge supporting the Vista Carlsbad Interceptor Sewer and then enter on and continue through the EPS property north to south along Interstate 5. Because this suggested alignment appears difficult to achieve due to contemplated freeway widening, the City's Engineering Department has identified that the Easements necessary for the

Vista Carlsbad Interceptor Sewer replacement would be adequate to accommodate the CRT.

Your letter suggests an alternate routing of the CRT that would avoid the EPS and thus an alignment within the PDP. This alternate would extend along the north shore of the lagoon, then south along Carlsbad Boulevard, and then east along Cannon Road to connect with the original, contemplated alignment of the CRT.

This alternate route is unacceptable because it deviates from the desired alignment and would not be practicable to build. It would require crossing under the existing railroad and interceptor sewer bridges that traverse Agua Hedionda Lagoon. Further, locating the trail along Carlsbad Boulevard would require widening of two street bridges. Instead, development proposed at the EPS must accommodate the CRT in an alignment closely paralleling the tracks as intended.

As stated in both our letters, the City looks forward to continue to work with Cabrillo Power in an effort to mutually achieve our goals. Along those lines, we will contact you within the next two weeks to schedule a meeting.

In the meantime, if you have any questions of desire further clarification, please contact Terry Smith, Senior Civil Engineer at (760) 602-2765 or Scott Donnell, Senior Planner, at (760) 602-4618.

Sincerely,



GLENN PRUIM
Public Works Director



DON NEU
Planning Director

c: Lisa Hildabrand, City Manager
Ron Ball, City Attorney
Debbie Fountain, Housing and Redevelopment Director
Joe Garuba, Municipal Projects Manager
~~Terry Smith, Senior Civil Engineer~~
Scott Donnell, Senior Planner



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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 2/18/2009)

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DECLARATION OF SERVICE

I, Andrea Dykes, declare that on March 5, 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:

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:

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
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docket@energy.state.ca.us

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

Andrea Dykes