

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

DOCKET

07-AFC-6

DATE FEB 12 2010

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In the Matter of:

The Application for Certification for the
CARLSBAD ENERGY CENTER
PROJECT

Docket No. 07-AFC-6

SUGGESTED TOPICS FOR COMMITTEE BRIEFINGS

February 12, 2010

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City of Carlsbad and Carlsbad Redevelopment Agency Proposed Topics for Briefing for Carlsbad Energy Center Project (07-AFC-6)

The following is the City of Carlsbad and the Carlsbad Housing and Redevelopment Agency's response to the Siting Committee's request that the parties file a statement summarizing the issues they believe should be addressed in briefs. This response includes topics previously identified by the Committee as well as other areas that the City and Redevelopment Agency believe are fundamental to the evaluation of the Carlsbad Energy Center Project. In addition, to the topics identified below, the City and Redevelopment Agency may provide the Committee with additional information to help with its deliberations.

BRIEFING ISSUES

Project Description and Cumulative Impacts

- Is there a clear and consistent project description for the Carlsbad Energy Center Project (CECP)?
- Did the FSA provide a complete cumulative impact analysis which incorporates applicable foreseeable projects?

Coastal Act and Coastal Commission

- Is the participation of the Coastal Commission required in order for the Energy Commission to make a decision?
- Is the CECP a coastal dependent facility?
- Is a California Public Resources Code section 30413(d) report required for the analysis of the CECP?
- What is the relevance of the Coastal Commission's decision concerning the 1989 SDG&E Notice of Intention (NOI)?

Redevelopment Law

- Is the Housing and Redevelopment Commission of the City of Carlsbad a separate public body, corporate and politic, that is vested with the responsibility to carry out the Redevelopment Project for the South Carlsbad Coastal Redevelopment Plan, and is it required to do so as an administrative arm of the State of California and not as a local public body?
- Are the important public purposes and goals of redevelopment, to provide meaningful employment to the citizens of California, to expand affordable housing for California's persons and families, and to eliminate blight, as expressed in the California Community Redevelopment Law, matters of statewide concern?
- Is the statutory requirement of redevelopment agencies to impose development and construction policies within the boundaries of redevelopment projects, as expressed in the California Community Redevelopment Law, a matter of statewide concern?

- Is there a statutory requirement in the State of California that requires redevelopment agencies to implement and apply appropriate and continuing planning, land use and construction policies within the boundaries of redevelopment projects so that the statewide purposes of redevelopment are achieved; and can a redevelopment agency delegate those duties to another public body?
- In order to assure compliance with these statutory duties, is the Housing and Redevelopment Commission of the City of Carlsbad required to perform planning and permitting functions so that all development within the boundaries of a redevelopment project conforms to the redevelopment plan adopted under the state redevelopment law for that project area?
- Has the applicant complied with those HRC planning and permitting functions, including applying for and obtaining a Redevelopment Permit and presenting evidence of any extraordinary public purposes to be achieved by applicant's project?
- Would the issuance of a permit to applicant in this case by the CEC without compliance by the applicant with the requirements of the Redevelopment Plan create a direct conflict between two applicable state statutes (Public Resources Code Sections 25500 et seq. and Health & Safety Code Sections 33000 et seq.) and between two different governmental arms of the State of California (the CEC and the Carlsbad HRC)?
- Should that direct conflict be resolved by harmonizing the California Community Redevelopment Law with the Warren-Alquist Act to require the applicant to obtain a Redevelopment Permit and to submit it as a condition of certification, thereby protecting and preserving the achievement of the important public policies of statewide concern conferred on both the CDC and the Carlsbad HRC by the State Legislature?

Authority of the Warren Alquist Act

- Does the Warren Alquist Act preempt existing stormwater requirements regarding the necessity for City approval of the CECP's Stormwater Pollution Prevention Plan (SWPPP)?
- Does the Warren Alquist Act preempt the City's moratorium on new power generation facilities in the Coastal Zone?
- Does the Warren Alquist Act preempt the City's authority to locate the Coastal Rail Trail?

Land use

- What development standards are applicable to the CECP?
- What is the relationship between the City of Carlsbad's Precise Development Plan and a Conditional Use Permit?
- Is the CECP a public utility and, if not, does it conform to the City of Carlsbad's applicable land use designations?

Due Deference

- Did the City and Redevelopment Agency provide the Energy Commission staff with an analysis, conclusions, and official determinations of the CECP in the areas of redevelopment, coastal conformity, land use, visual, and fire protection?
- Does the Warren Alquist Act require that the CEC staff defer to the City and Redevelopment Agency's analysis, conclusions, and official determinations in those areas?

LORS Conformance

- Does the CECP conform to all of the applicable LORS regarding:
 - Redevelopment Law
 - California Coastal Act
 - City of Carlsbad land use requirements
 - City of Carlsbad visual and aesthetic requirements
 - City of Carlsbad fire safety requirements

LORS Override

- If an override is required to approve the CECP, what is the basis for the CEC's determination?
- Is the CECP required for the Public Convenience and Necessity (PRC 25525)?
- Does the Coastal Act provide guidelines for the approval of non-coastal dependent industrial land uses?
- Are there Project Alternatives that would substantially meet the project objectives?

California Environmental Quality Act (CEQA) Conformance

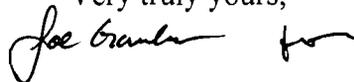
- Does the CECP create significant adverse impacts, either individually or cumulatively?

CEQA Override

- If a CEQA override is required to approve the CECP, what is the basis for the CEC's determination?

If you have any questions, please feel free to contact me.

Very truly yours,



RONALD R. BALL
City Attorney



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

Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 1/27/2010)

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DECLARATION OF SERVICE

I, Robin Nuschy, declare that on 2-12-2010, I served and filed copies of the attached, Suggested Topics for Committee Briefings. 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.htm>]. 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

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

