

STATE OF CALIFORNIA  
Energy Resources Conservation  
and Development Commission

<b>DOCKET</b>	
<b>07-AFC-6</b>	
DATE	FEB 18 2010
RECD.	FEB 18 2010

In the Matter of:

The Application for Certification for the  
CARLSBAD ENERGY CENTER  
PROJECT

Docket No. 07-AFC-6

CARLSBAD ENERGY CENTER LLC'S MOTION TO  
ADMIT SUPPLEMENTAL DOCUMENTS  
INTO THE EVIDENTIARY RECORD

February 18, 2010

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Pursuant to Title 20, California Code of Regulations, section 1716.5,<sup>1</sup> Applicant Carlsbad Energy Center LLC ("Applicant") submits this Motion to Admit Supplement Documents into the Record requesting that the Siting Committee ("Committee") for the Carlsbad Energy Center Project ("CECP" or "Project") admit supplemental documents ("Documents") into the CECP evidentiary record. The Documents are relevant to the Project's compliance with local fire protection and worker safety laws, ordinances, regulations, and standards ("LORS"). The Committee and the Presiding Member have discretion to admit the Documents pursuant to sections 1203(c) and 1712(b) as relevant evidence and to take official notice of the Documents pursuant to section 1213.

**I. INTRODUCTION**

From February 1 to 4, 2010, the Committee held evidentiary hearings for CECP in Carlsbad, California. During the hearings, the parties presented testimony and documentary evidence on the contested topic of worker safety and fire protection, in particular, on the proper width of proposed access roads for the Project. Energy Commission Staff testified that the

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<sup>1</sup> All references are to Title 20, California Code of Regulations, unless otherwise noted.

applicable Project access road-width requirement. Applicant's experts testified that the designs for the proposed CECP call for fire access road widths of appropriately 28-feet at plant elevation and 20-feet for all other access roads. In contrast to testimony by CEC Staff and the Applicant, the City of Carlsbad (the "City") testified that secondary access roads for CECP must be 50-feet wide and in particular, the City testified that it recently and expressly required the Poseidon desalinization project ("Poseidon") have 42-foot wide access lanes as an example of the City requiring much wider access than the 20-foot wide requirement.

The Documents are the final Carlsbad Planning Commission and the City Council approved plans for Poseidon. These plans depict the dimensions of access lanes around Poseidon, showing widths varying between 15- and 25-feet. The Poseidon plans were reviewed by the City Fire Marshal's office, which approved the plans without any changes or conditions requiring access road widths of 42-feet. Contrary to the City's testimony, these Documents demonstrate that the approved access lanes for Poseidon range from only 15-feet to 25-feet.

## **II. ARGUMENT**

The Energy Commission regulations on power plant site certification provide that "[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs." (20 Cal. Code Regs., § 1212(a).) Each party to a proceeding has the right to submit testimony and other evidence, subject to the exercise of the lawful discretion of the presiding committee member. (20 Cal. Code Regs., § 1712(b).) Moreover, the Committee may take official notice of "any generally accepted matter within the commission's field of competence, and of any fact which may be judicially noticed by the courts of this state." (20 Cal. Code Regs., § 1213.)

**A. The Committee Should Admit the Documents Into the Record.**

The Committee should admit the Documents into the administrative record for the CECP proceeding as relevant evidence on which responsible persons customarily rely.

The Documents depict the widths of access roads for Poseidon, a desalinization facility, being constructed on the Encina Generating Station site adjacent to the proposed CECP. Applicant and Energy Commission Staff both testified that the applicable requirement for access lane width is 20-feet. The City Fire Department claimed discretion to increase required road widths beyond the normal 20-feet, and insisted that 50-feet was the required width for CECP access roads. The City Fire Department claimed the Poseidon project was an example of such discretion and, even under cross examination, insisted that it had required a road width of 42-feet for Poseidon. The Documents are directly relevant to the accuracy of that testimony and to the accuracy of the City Fire Department's testimony in its entirety.

During the evidentiary hearings, the City Fire Department testified that it desired greater accessibility to and around the CECP site than currently called for by the CECP designs. City Fire Chief Kevin Crawford testified that the Fire Department wanted Applicant to accommodate a 50-foot minimum emergency access width at plant elevation around the entire plant. To support this testimony, Fire Marshall James Weigand testified that he specifically required the Poseidon to have 42-foot wide access lanes. Applicant questioned Fire Marshall Weigand on this claim, but the Fire Marshall insisted that he was certain he required Poseidon to have 42-foot wide access lanes and insisted it was a key example of his exercise of discretion to require wider road widths.

Though Applicant was advised at the evidentiary hearings that the Fire Marshall's testimony and his insistence were wrong, Applicant did not have the requisite documentation

available to impeach Fire Marshall Weigand. Applicant has since identified the Documents, which clearly demonstrate that the City Fire Department approved Poseidon with access widths of 25-feet, 20-feet, and 15-feet respectively all significantly less than 42-feet, and even partly less than the basic 20-foot requirement.<sup>2</sup> The Documents clarify that CECP, with proposed 20- to 28-foot access roads, complies and is consistent with local worker safety and fire protection LORS and also demonstrate that the City Fire Department's testimony inaccurately portrayed the facts, even under cross examination.

In making a proposed decision on CECP's AFC, the Committee must make findings on the Project's compliance with local fire protection and worker safety LORS. The Documents are directly relevant to this determination and would assist the Committee in making its findings. The Documents also clarify the facts and eliminate any ambiguity regarding conflicting oral testimony received from the parties on worker safety and fire protection. Because of the conflicting testimony provided at the evidentiary hearings, the Documents are not cumulative evidence, but instead are new evidence that resolve discrepancies in oral testimony. The Committee must admit any relevant evidence if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs. (20 Cal. Code Regs., § 1212(a).) The Committee should therefore exercise its discretion to admit the Documents into the evidentiary record for CECP.

**B. The Committee May Take Official Notice of Any Generally Accepted Matter.**

The Committee may take official notice of "any generally accepted matter within the commission's field of competence, and of any fact which may be judicially noticed by the courts of this state." (20 Cal. Code Regs., § 1213.) The Documents are City-approved plans for the

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<sup>2</sup> See attached City of Carlsbad Planning Commission Resolution No. 6632 and the Poseidon Desalination Plant Layout, Revision E, dated August 19, 2009 and September 22, 2009, respectively.

Poseidon facility located adjacent to the CECP site. The Documents were prepared by or at the direction of the City, a party to this proceeding. As the final, approved plans from the City for Poseidon, the Documents are a generally accepted matter. The Documents pertain to the Committee's field of competence, as the arbitrators of CECP's compliance with local fire protection and worker safety LORS. Applicant therefore requests that the Committee take official notice of the Documents as a generally accepted matter within the Committee's field of competence.

The Committee may also take official notice of any fact which may be judicially noticed by a court within California. Evidence Code section 452 provides that judicial notice may be taken of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code, § 452(h).) Documents approved by the Carlsbad Planning Commission and City Council and included in the official records of these legislative bodies are not reasonably subject to dispute and are capable of immediate and accurate determination. For these reasons, the Committee should take official notice of the Documents and allow them into the administrative record for the CECP evidentiary hearings.

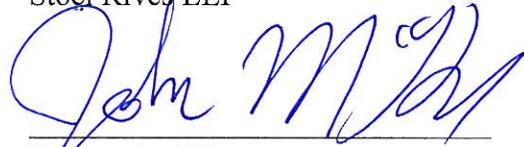
### **III. CONCLUSION**

The Committee has discretion to admit relevant noncumulative evidence into the adjudicatory proceeding for CECP. The Documents that Applicant requests admission of are noncumulative evidence relevant to Applicant's position that (1) CECP complies with local LORS for fire protection and worker safety, (2) 20- to 28-foot wide access road widths are proper and acceptable for CECP, (3) the City's assertion that 50-foot wide access roads are necessary for CECP is falsely premised on its contention that 42-foot wide access roads were

required for Poseidon, and (4) the City Fire Department falsely testified that it had required 42-foot wide access roads for Poseidon. For the reasons above, Applicant requests that the Committee GRANT this motion to admit supplementary documents relevant to the Committee's consideration of the Project.

Date: February 18, 2010

Stoel Rives LLP



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John A. McKinsey  
Attorneys for Applicant  
CARLSBAD ENERGY CENTER LLC

CITY OF CARLSBAD PLANNING COMMISSION RESOLUTION NO. 6632  
(DATED AUGUST 19, 2009)

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**PLANNING COMMISSION RESOLUTION NO. 6632**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, RECOMMENDING APPROVAL OF AN AMENDMENT TO PRECISE DEVELOPMENT PLAN PDP 00-02 FOR THE CARLSBAD SEAWATER DESALINATION PLANT, WHICH WOULD BE LOCATED AT THE ENCINA POWER STATION (EPS). THE AMENDMENT WOULD RECONFIGURE THE APPROVED DESALINATION PLANT SITE, MODIFY PLANT BUILDINGS AND STRUCTURE SIZES AND LOCATIONS, CONSOLIDATE PLANT USES, AND UNDERGROUND RELATED PLANT FACILITIES, ALL ON THE EPS PROPERTY LOCATED AT 4600 CARLSBAD BOULEVARD IN LOCAL FACILITIES MANAGEMENT ZONES 1 AND 3 AND GENERALLY LOCATED NORTH OF CANNON ROAD, SOUTH OF AGUA HEDIONDA LAGOON, EAST OF THE PACIFIC OCEAN, AND WEST OF INTERSTATE 5.

CASE NAME: DESALINATION PROJECT CHANGES  
CASE NO.: PDP 00-02(B)

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WHEREAS, **Poseidon Resources (Channelside) LLC**, "Developer," has filed a verified application with the City of Carlsbad regarding property owned by **Cabrillo Power I LLC**, "Owner," and described as:

**That portion of Lot "H" of Rancho Agua Hedionda in the City of Carlsbad, County of San Diego, State of California, according to partition map thereof No. 823, filed in the Office of the County Recorder of San Diego County, November 16, 1896, as described in Certificate of Compliance recorded October 30, 2001, as Document No. 2001-0789068, Parcel 4 (Assessor's Parcel Numbers 210-010-41 and a portion of 210-010-43).**

WHEREAS, on June 13, 2006, the City Council of the City of Carlsbad, California granted Poseidon Resources (Channelside) LLC ("Developer") and Cabrillo Power I LLC ("Owner") a Precise Development Plan and Desalination Facility – PDP 00-02, dated May 3, 2006; and

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

1 WHEREAS, Developer has filed a verified application with the City of  
2 Carlsbad for an amendment to PDP 00-02 to reflect final design plans for the Carlsbad Seawater  
3 Desalination Plant (PDP 00-02(B)); and

4  
5 WHEREAS, **PDP 00-02(B)** makes only minor changes to text and graphics of the  
6 Precise Development Plan document, and the text changes are shown in ~~strikethrough~~ to indicate  
7 words to be deleted and in underline to indicated words to be added; and

8 WHEREAS, said application constitutes a request for an amended Precise  
9 Development Plan as amended by **PDP 00-02(B)** and as referenced in Exhibit 1 dated August 19,  
10 2009, attached hereto and on file in the Planning Department **DESALINATION PROJECT**  
11 **CHANGES — PDP 00-02(B)** as provided by Chapters 21.36 and 21.52 of the Carlsbad  
12 Municipal Code; and

13  
14 WHEREAS, the amendment to Precise Development Plan and Desalination Plant  
15 project represents a reconfiguration of the onsite facilities of the Carlsbad Seawater Desalination  
16 Plant and does not involve any modification to the intake or output of the desalination plant or its  
17 operational characteristics; and

18  
19 WHEREAS, the Planning Commission did on **August 19, 2009**, hold a duly  
20 noticed public hearing as prescribed by law to consider **PDP 00-02(B)**; and

21 WHEREAS at said public hearing, upon hearing and considering all testimony  
22 and arguments, examining **PDP 00-02(B)**, analyzing the information submitted by City staff, and  
23 considering any written and oral comments received, the Planning Commission considered all  
24 factors relating to **PDP 00-02(B)**.

25  
26 NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning  
27 Commission of the City of Carlsbad as follows:

28 A) That the foregoing recitals are true and correct;

B) That the Planning Commission hereby **RECOMMENDS APPROVAL** of  
PC RESO NO. 6632

1                                   **Desalination Project Changes – PDP 00-02(B)**; based on the following findings  
2                                   that are supported by substantial evidence and subject to the following conditions.

3                   **Findings:**

- 4           1.       The **Precise Development Plan PDP 00-02(B)** is consistent with the intent and purpose  
5                   of the Public Utilities (P-U) Zone, Section 21.36.010 (1) of the Carlsbad Municipal Code,  
6                   to provide a Precise Development Plan, including with the changes to the Carlsbad  
7                   Seawater Desalination Plant proposed by PDP 00-02(B), that is **compatible with the**  
8                   **General Plan and surrounding developments, in that (1) existing and permitted land**  
9                   **uses within the proposed Precise Development Plan are consistent with and/or**  
10                   **implement the objectives of the Public Utilities (“U”) General Plan designation; (2)**  
11                   **the Precise Development Plan, through developments standards and review**  
12                   **procedures, is compatible with surrounding developments; and (3) the Precise**  
13                   **Development Plan planning area is adequately buffered from surrounding, more**  
14                   **sensitive uses (e.g., residences and businesses) by open space, other utility uses, and**  
15                   **transportation corridors and through development standards, including setbacks, of**  
16                   **the proposed Precise Development Plan. Furthermore, the Owner, through the**  
17                   **Precise Development Plan, remains committed to providing certain public**  
18                   **dedications that will enhance the public’s use of open space areas adjacent to the**  
19                   **Precise Development Plan area and Precise Development Plan PDP 00-02(B) is**  
20                   **conditioned to dedicate an easement for the Coastal Rail Trail.**
- 21           2.       The **Precise Development Plan PDP 00-02(B)** is consistent with the intent and purpose  
22                   of the Public Utilities (P-U) Zone, Chapter 21.36.010(2) of the Carlsbad Municipal Code  
23                   to provide a Precise Development Plan that **has given due regard to environmental**  
24                   **factors, in that PDP 00-02(B) has been reviewed concurrently with the processing**  
25                   **and approval of the Addendum to Final Environmental Impact Report (EIR) 03-05,**  
26                   **compliant with the provisions of the California Environmental Quality Act.**  
27                   **Furthermore, as detailed in the Addendum, the desalination plant changes proposed**  
28                   **by PDP 00-02(B) are consistent with the findings of the EIR 03-05 and do not**  
                  warrant any changes to the Mitigation Monitoring and Reporting Program adopted  
                  in City Council Resolution 2006-156 for the Precise Development Plan and  
                  Desalination Plant project.
3.       The **Precise Development Plan PDP 00-02(B)** is consistent with the intent and  
                  purpose of the Public Utilities (P-U) Zone, Chapter 21.36.010(3) of the Carlsbad  
                  Municipal Code to provide a Precise Development Plan that provides for  
                  necessary public improvements, in that conditions of approval have been placed  
                  on the project, which, in addition to the terms and obligations of the Amended  
                  and Restated Development Agreement DA 05-01(A), combine to ensure that  
                  adequate public improvements and/or dedications, and/or funds necessary  
                  therefore, will be secured concurrent with project approval.
4.       The **Precise Development Plan PDP 00-02(B)** permits the Carlsbad Seawater  
                  Desalination Plant that is identified as a permitted use in the P-U Zone by  
                  Municipal Code Section 21.36.020(4)(c) and that incorporates design, location,  
                  and operation characteristics that ensure compliance with the intent and  
                  purpose of the P-U Zone. Furthermore, PDP 00-02(B) sets forth the standards  
                  of development for the desalination plant.

- 1     5.     The **Precise Development Plan PDP 00-02(B)** is consistent with the General Plan in  
2     that:
  - 3     a.     **It provides regulations and standards for uses that are appropriate uses for**  
4     **the General Plan Public Utilities (“U”) land use designation, the designation**  
5     **applied to the Encina Power Station.**
  - 6     b.     **The General Plan Land Use Element notes that the U land use designation is**  
7     **applied to existing areas, such as the Encina Power Station, that are being**  
8     **used for public or quasi-public functions.**
  - 9     c.     **It provides development standards for the Encina Power Station, including**  
10    **the Carlsbad Seawater Desalination Plant, which is consistent with the**  
11    **Overall Land Use Pattern goal A.2 that states, “A City which provides for**  
12    **an orderly balance of both public and private land uses within convenient**  
13    **and compatible locations throughout the community and ensures that all**  
14    **such uses, type, amount, design, and arrangement serve to protect and**  
15    **enhance the environment, character, and image of the City.”**
  - 16    d.     **The establishment of the Precise Development Plan PDP 00-02(B), its**  
17    **regulation of development and uses at the Encina Power Station, and the**  
18    **Owner’s offers of public dedications as conditioned herein, achieve**  
19    **compliance with Land Use Element Environmental Policy C.6, which states,**  
20    **“Ensure the preservation and maintenance of the unique environmental**  
21    **resources of the Agua Hedionda Lagoon while providing for a balance of**  
22    **public and private land uses through implementation of the Agua Hedionda**  
23    **Land Use Plan.”**
- 24     6.     The **Precise Development Plan PDP 00-02(B)** is consistent with Encina Specific  
25     Plan 144(J) in that:
  - 26     a.     **It complies with and enhances applicable Specific Plan standards and**  
27     **requirements adopted over the years to regulate development at the Encina**  
28     **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 (e.g., removal of a fuel oil storage tank, seawater**  
   **discharge channel connections, rerouting and removal, as appropriate, of**  
   **existing support infrastructure, such as piping, and potential demolition of**  
   **the administration building), Precise Development Plan PDP 00-02(B) does**  
   **not conflict with Specific Plan standards and requirements regarding power**  
   **station operations.**
  - c.     **The proposed amended and restated Encina Specific Plan, SP 144(J),**  
   **incorporates the land use designations of the City of Carlsbad General Plan,**  
   **with which the Precise Development Plan PDP 00-02(B) is consistent.**  
   **Additionally, SP 144(J) would incorporate by reference PDP 00-02(B).**
7.     The **Precise Development Plan PDP 00-02(B)** is consistent with the goals of the  
   South Carlsbad Coastal Redevelopment Plan in that:

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- 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 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 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. Furthermore, the consolidation of appurtenant facilities onto the desalination plant site as well as undergrounding and relocating of the pipelines and intake pump station enhances redevelopment opportunities at the EPS.**

8. **The Precise Development Plan PDP 00-02(B) 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 an updated quality building design and appropriate visual screening for the Carlsbad Seawater Desalination Plant, and recognition of the Guidelines and development standards for the Encina Power Station as a whole.**

9. **The Precise Development Plan PDP 00-02(B), including the public dedications proposed by the Owner through the Precise Development Plan, is in conformance with the Agua Hedionda Land Use Plan and all applicable policies in that it has been reviewed for consistency with relevant coastal policies including land use, habitat protection, grading and drainage, storm water management, recreation, shoreline access, and visual resources. In particular, the Precise Development Plan PDP 00-02(B) achieves consistency with Land Use Plan policies as follows:**

- a. **The Precise Development Plan PDP 00-02(B) regulates uses that are consistent with those land uses shown on the Plan's Land Use Map (Policy 1.1).**
- b. **The Owner-offered dedication of a public access easement for the Fishing Beach is consistent with policies 6.5 and 6.7, which encourage the Encina fishing area on the Outer Lagoon to be maintained and present recreational uses of the lagoon to be expanded where feasible.**
- c. **Other Owner-offered public dedications in the vicinity of Agua Hedionda Lagoon and the Pacific Ocean are consistent with Coastal Act Policies regarding public access to coastline and recreational features.**

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- d. **The Precise Development Plan PDP 00-02(B) is subject to, and incorporates as a regulating document, the Mitigation and Monitoring Program for EIR 03-05, adopted by City Council Resolution 2006-156, which provides mitigation to ensure consistency with Land Use Plan policies regarding environmentally sensitive habitats, geology, and water quality.**
- e. **Development permitted by Precise Development Plan PDP 00-02(B) is consistent with the development standards, such as building height, of the Agua Hedionda Land Use Plan.**
- f. **In November 2007, the Developer received discretionary approval of a coastal development permit (E-06-013) from the California Coastal Commission. This approval applies to the Carlsbad Seawater Desalination Plant as approved as part of Precise Development Plan PDP 00-02 by the City Council and Housing and Redevelopment Commission on June 13, 2006.**

- 10. **The approval of Precise Development Plan PDP 00-02(B) fulfills the requirement of Municipal Code Section 21.36.030, which in part states 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.”**
- 11. **As conditioned, Precise Development Plan PDP 00-02(B) is consistent with the City’s Landscape Manual (Carlsbad Municipal Code Section 14.28.020 and Landscape Manual Section I B).**
- 12. **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 and a condition of Precise Development Plan PDP 00-02(B) requires the dedication of an easement for the Coastal Rail Trail.**

**Conditions:**

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

- 1. **If any of the following conditions fail to occur; or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the City shall have the right to revoke or modify all approvals herein granted; deny or further condition issuance of all future building permits; deny, revoke or further condition all certificates of occupancy issued under the authority of approvals herein granted; record a notice of violation on the property title; institute and prosecute litigation to compel their compliance with said conditions or seek damages for their violation. No vested rights are gained by Developer or a successor in interest by the City’s approval of this Precise Development Plan, other**

1           **than those described in the Amended and Restated Development Agreement DA 05-**  
2           **01(A).**

3           2.       Staff is authorized and directed to make, or require the Developer to make, all corrections  
4           and modifications to the **Precise Development Plan PDP 00-02(B)** documents, as  
5           necessary to make them internally consistent and in conformity with the final action on  
6           the project. Development shall occur substantially as shown on the approved Exhibits.  
7           Any proposed development different from this approval shall require an amendment to  
8           this approval.

9           3.       Prior to issuance of **any grading or building permits**, Developer shall demonstrate  
10          compliance with the approved Coastal Development Permit issued by the California  
11          Coastal Commission or its successor in interest that substantially conforms to this  
12          approval. A signed copy of the Coastal Development Permit must be submitted to the  
13          Planning Director. If the approval is substantially different, an amendment to the **Precise**  
14          **Development Plan PDP 00-02(B)** shall be required.

15          4.       Developer shall implement, or cause the implementation of the **Precise Development**  
16          **Plan and Desalination Plant** Mitigation Monitoring and Reporting Program adopted by  
17          City Council Resolution 2006-156.

18          5.       This approval is granted subject to the approval of **EIR 03-05(A), SP 144(J), DA 05-**  
19          **01(A), RP 05-12(A), HMPP 05-08(A), and approved permit CDP 04-41** and is subject  
20          to all conditions contained in Planning Commission Resolutions No. **6631, 6633, 6634,**  
21          **6635, 6636, and 6092** for those other approvals incorporated herein by reference.

22          6.       **Those portions of the Project's water conveyance pipelines located within the City of**  
23          **Carlsbad but outside of the Precise Development Plan PDP 00-02(B) boundaries are**  
24          **not approved as part of this permit and are subject to future permits by the City of**  
25          **Carlsbad, and will be subject to the requirements of the Carlsbad Municipal Code.**

26          7.       **If the Encina Power Station administration building is demolished or removed, any**  
27          **proposal to rebuild or relocate the building shall be subject to separate review and**  
28          **approval.**

            8.       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.

            9.       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 Amended and Restated Development Agreement DA 05-01(A).**

            10.      **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.

1 11. Indemnification:

2 a. Developer shall and does hereby agree to indemnify, protect, defend, and hold  
3 harmless the City of Carlsbad, its Council members, officers, employees, agents, and  
4 representatives (collectively "Indemnified Parties"), from and against any and all  
5 liabilities, losses, damages, demands, claims and costs, including court costs and  
6 attorney's fees incurred by the City arising, directly or indirectly, from (i) City's  
7 approval and issuance of this **Precise Development Plan PDP 00-02(B)**, (ii) City's  
8 approval or issuance of any permit or action, whether discretionary or  
9 nondiscretionary, in connection with the Carlsbad Seawater Desalination Plant use  
10 contemplated herein, and (iii) Developer's installation and operation of the Carlsbad  
11 Seawater Desalination Plant, including without limitation, any and all liabilities  
12 arising from the emission by the Carlsbad Seawater Desalination Plant of  
13 electromagnetic fields or other energy waves or emissions. These obligations survive  
14 until all legal proceedings have been concluded and continue even if any City  
15 approval giving rise to an indemnification obligation is not validated.

16 b. Owner shall and does hereby agree to indemnify, protect, defend, and hold harmless  
17 Indemnified Parties, from and against any and all liabilities, losses, damages,  
18 demands, claims and costs, including court costs and attorney's fees incurred by the  
19 City arising, directly or indirectly, from (i) City's approval and issuance of this  
20 **Precise Development Plan PDP 00-02(B)**, (ii) City's approval or issuance of any  
21 permit or action, whether discretionary or nondiscretionary, in connection with the  
22 use of the existing 95-acre Encina Power Station, and (iii) Owner's installation and  
23 operation of the Encina Power Station, including without limitation, any and all  
24 liabilities arising from the emission by the Encina Power Station of electromagnetic  
25 fields or other energy waves or emissions. Owner's duty to indemnify the  
26 Indemnified Parties does not include any and all liabilities, losses, damages, demands,  
27 claims, costs, court costs and attorney's fees arising, directly or indirectly from the  
28 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.

20 12. a. The Desalination plant project shall comply with all conditions and mitigation measures  
21 which are required as part of the Zone 1 and Zone 3 Local Facilities Management  
22 Plans and any amendments made to that Plan prior to the issuance of building permits.  
23 **Should amendments occur to the LFMPs, the Developer shall comply subject to  
24 the limitations of the Amended and Restated Development Agreement DA 05-  
25 01(A).**

26 b. For the Encina Power Station, Owner shall comply with all conditions and mitigation  
27 measures which are required as part of the Zone 1 and Zone 3 Local Facilities  
28 Management Plans and any amendments made to that Plan prior to the issuance of  
building permits for any permits not contemplated in this PDP, as it may be amended  
from time to time.

13. The approval of the PDP shall become null and void for the portions relating to the  
Desalination Plant, if the Desalination Plant does not **become operational within  
10 years of the final discretionary approval, including the discretionary approvals of**

1           **the California Coastal Commission or other agencies, as may be consistent with the**  
2           **Amended and Restated Development Agreement DA 05-01(A).**

3           14.    a. As a condition of this approval, Owner must comply with the requirements of all  
4                    regulatory agencies having jurisdiction over the Encina Power Station.

5                    b. As a condition of this approval, Developer must comply with the requirements of all  
6                    regulatory agencies having jurisdiction over the Desalination Plant.

7           15.    Developer shall submit to **the Planning Director** a reproducible 24" x 36" mylar copy of  
8                    the **Precise Development Plan PDP 00-02(B)** reflecting the conditions approved by the  
9                    **final decision-making body.**

10          16.    Developer shall include, as part of the plans submitted for any permit plan check, a  
11                    reduced legible version of all approving resolution(s) in a 24" x 36" blue-line drawing  
12                    format (including any applicable Coastal Commission approvals **and the Mitigation**  
13                    **Monitoring and Reporting Program**).

14          17.    Prior to the issuance of any permits for the project, the applicant shall submit to the  
15                    Planning Director a digital, **editable** copy and a camera-ready master copy of the  
16                    **DESALINATION PROJECT CHANGES – PDP 00-02(B)**, in addition to the required  
17                    number of bound copies determined by the Planning Director.

18          18.    Prior to the issuance of any permits for the project, the applicant shall submit to the  
19                    Planning Director a digital copy of the biology report exhibits in AutoCAD DWG or  
20                    ESRI-Shape-File Format registered to CCS zone 6 NAD 83. **This requirement applies**  
21                    **to exhibits prepared for biological impacts in both the Encina Power Station and**  
22                    **pipeline alignments throughout Carlsbad.** The Planning Director has the discretion to  
23                    waive this condition based on factors such as the scope of the study and the format in  
24                    which the exhibits were prepared.

25          19.    **Prior to final inspection of the desalination plant, Developer shall have constructed**  
26                    **a decorative screen wall or fence and, where feasible, install landscaping and**  
27                    **irrigation along the entire Carlsbad Boulevard frontage of the Encina Power Station**  
28                    **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 (i) prior to issuance of building**  
                    **or precise 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**  
                    **Planning Director and the City Engineer for review and approval; and (ii) such**  
                    **decorative screen wall or fence shall replace the existing fence and shall incorporate,**  
                    **if determined appropriate by the Planning Director and the City Engineer, the**  
                    **bridge rail over the cooling water discharge culvert as required by and conditioned**  
                    **in Planning Commission Resolution No. 6634 for Redevelopment Permit RP 05-**  
                    **12(A).**

                    20.    Prior to the issuance of a precise grading plan, Developer shall submit and obtain  
                    Planning Director approval of a Final Landscape and Irrigation Plan showing

1 conformance with the conditions herein and the City's Landscape Manual. Developer  
2 shall construct and install all landscaping as shown on the approved Final Plans, and  
3 maintain all landscaping in a healthy and thriving condition, free from weeds, trash, and  
4 debris.

- 4 21. The first submittal of Final Landscape and Irrigation Plans shall be pursuant to the  
5 landscape plan check process on file in the Planning Department and accompanied by the  
6 project's **precise** grading plans.

6 **Engineering:**

- 7  
8 22. Prior to approval of **precise** grading or building permits for the desalination plant,  
9 Developer shall cause Owner to give written consent to the City Engineer to the  
10 annexation of the area shown within the boundaries of the Precise Development Plan into  
11 the existing City of Carlsbad Street Lighting and Landscaping District No. 1 **and/or to  
12 the formation or annexation into an additional Street Lighting and Landscaping  
13 District. Said written consent shall be on a form provided by the City Engineer.**

- 12 23. Prior to issuance of **precise** grading or building permits for the desalination plant,  
13 Developer shall cause Owner or its successor in interest to make an irrevocable offer of  
14 dedication to the City and/or other appropriate entities for all public streets, **lands**, and  
15 easements shown on the Precise Development Plan **listed below, except as otherwise  
16 provided in the Precise Development Plan PDP 00-02(B).** The offer shall be made by a  
17 separate document. All land so offered shall be offered free and clear of all liens and  
18 encumbrances and without cost. Streets that are already public are not required to be  
19 rededicated.

- 17 a. **Public dedications:** The locations of the following dedications are shown on  
18 exhibit "Poseidon Desalination Plant Proposed Parcel Exhibit" attached hereto  
19 for reference. Prior to issuance of precise grading or building permits for the  
20 desalination plant, precise legal descriptions and documentation shall be  
21 submitted to the satisfaction of the City Attorney, the City Engineer, and the  
22 Planning Director.

21 i. **Hubbs Site Parcel:** A deed restriction shall be recorded on the property  
22 known as the Hubbs Site Parcel. The Hubbs Site Parcel is the vacant,  
23 approximately two-acre eastern portion of the property identified by  
24 Assessor's Parcel Number (APN) 206-07-017 and currently occupied by the  
25 Hubbs-Sea World Research facility. The deed restriction shall limit  
26 allowable land uses on the Hubbs Site Parcel to those that are directly related  
27 to fish hatchery, fish ecology research, aquaculture uses, and trails to the  
28 satisfaction of the Planning Director.

26 ii. **Bluff Area Parcel:** Fee title to property known as the Bluff Area Parcel shall  
27 be granted to the City of Carlsbad for public access and recreational uses.  
28 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

1 shall be granted to the City of Carlsbad for the property described as the  
2 South Power Plant Parcel for the development of public vehicle parking by  
3 the City of Carlsbad. The South Power Plant Parcel is located at the  
4 southwest corner of the Precise Development Plan, adjacent to the east side  
5 of Carlsbad Boulevard and Encina Power Station south entrance gate, an  
6 area approximately 0.27 acre in size. If necessary, Developer shall be  
7 responsible for costs associated with removal and relocation of any gates or  
8 fences necessary to accommodate the parking and access to it. Furthermore,  
9 prior to issuance of grading or building permits for the desalination plant,  
10 one (or more) plan(s) shall be provided to the City to show feasible parking  
11 layouts as determined by the Planning Director and the City Engineer.  
12 Parking lot plans shall be designed to complement and allow installation of  
13 the Carlsbad Boulevard frontage landscape and wall conditioned herein.  
14 The operational parameters of the public parking and public access shall be  
15 ones that are mutually agreeable to both the Owner and the Planning  
16 Director.

17  
18 iv. Fishing Beach Parcel: A public access and public parking easement shall be  
19 granted to the City of Carlsbad for the property known as the Fishing Beach  
20 Parcel for access and on-shore recreational uses, including public parking.  
21 The operational parameters of the on-shore recreational facilities, public  
22 parking, and public access shall be ones that are mutually agreeable to both  
23 the Owner and the Planning Director. This property, approximately 2.4  
24 acres, is located on the east side of Carlsbad Boulevard along the Outer Agua  
25 Hedionda Lagoon and stretches from the lagoon inlet jetty to a point at an  
26 existing fence about 1,500 feet south. Cabrillo Power I LLC or their assignee  
27 shall retain the right to close the Fishing Beach property to public use and  
28 access from time to time during periodic dredging cycles as approved for  
lagoon maintenance.

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

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

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

28 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 from the Precise Development  
Plan property.

d. Coastal Rail Trail –Dedicate an easement for the Coastal Rail Trail in a location

1 within the boundaries of the Precise Development Plan that is mutually  
2 acceptable to the City and Owner or its successor in interest.

3 e. Agua Hedionda Lift Station Site and Vista-Carlsbad Interceptor Sewer Pipeline  
4 - Dedicate an easement for the Agua Hedionda Lift Station Site and Vista-  
5 Carlsbad Interceptor Sewer Pipeline in a location within the boundaries of the  
6 Precise Development Plan that is mutually acceptable to the City and the Owner  
7 or its successors in interest.

8 25. Subject to any Owner-initiated development which requires a formal amendment to  
9 the Precise Development Plan, other than the desalination plant. Owner shall  
10 prepare and submit, for City Engineer review and approval, a hydrology/hydraulic  
11 study regarding the 100-year storm flows conveyed to and through the subject  
12 property. The Study shall consider the post-developed (ultimate) storm flows  
13 generated by the Precise Development Plan Area and shall provide the type and size  
14 of proposed storm drain facility and appurtenances (Private Storm Drain  
15 Improvements) necessary to collect and convey the proposed 100-year storm across  
16 the property all to the satisfaction of the City Engineer.

17 26. Subject to any Owner-initiated development which requires a formal amendment to  
18 the Precise Development Plan, other than the desalination plant. Owner shall  
19 submit grading plans to the City Engineer for review and approval for the  
20 construction of Private Storm Drain Improvements identified in the city-approved  
21 hydrology/hydraulic study all to the satisfaction of the City Engineer. Owner shall  
22 pay review and inspection fees based on the latest schedule of fees.

23 27. Owner shall not challenge any aspect of EIR 03-05(A) before the California Coastal  
24 Commission or in any court of law for any reason or purpose.

## 25 NOTICE

26 Please take **NOTICE** that approval of your project includes the "imposition" of fees,  
27 dedications, reservations, or other exactions hereafter collectively referred to for convenience as  
28 "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.

1 PASSED, APPROVED AND ADOPTED at a regular meeting of the Planning  
2 Commission of the City of Carlsbad, California, held on **August 19, 2009**, by the following vote,  
3 to wit:  
4

5 AYES: Commissioners Baker, Dominguez, L'Heureux, Nygaard,  
6 Schumacher, and Vice Chairperson Douglas

7 NOES:

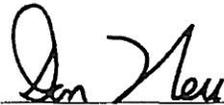
8 ABSENT: Chairperson Montgomery

9 ABSTAIN:

10 

11  
12 FARRAH DOUGLAS, Vice Chairperson  
13 CARLSBAD PLANNING COMMISSION

14 ATTEST:

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16  
17 DON NEU  
18 Planning Director



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SECTION I: That Precise Development Plan PDP 00-02(B), dated August 19, 2009, on file in the Planning Department and incorporated by reference herein, is adopted. The Encina Power Station Precise Development Plan (PDP 00-02(B)) shall constitute the development plan for the property and all development within the plan area shall conform to the plan.

SECTION II: That the findings and conditions of the Planning Commission in Planning Commission Resolution No. 6632 shall also constitute the findings and conditions of the City Council.

EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption, and the City Clerk shall certify to the adoption of this ordinance and cause it to be published at least once in a publication of general circulation in the City of Carlsbad within fifteen days after its adoption.

INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2009, and thereafter.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of  
Carlsbad on the \_\_\_\_ day of \_\_\_\_\_ 2009, 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)

CARLSBAD DESALINATION PLANT LAYOUT – REVISION E  
(DATED AUGUST 19, 2009)

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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](http://WWW.ENERGY.CA.GOV)

APPLICATION FOR CERTIFICATION  
FOR THE CARLSBAD ENERGY  
CENTER PROJECT

Docket No. 07-AFC-6  
PROOF OF SERVICE  
(Revised 2/16/2010)

**Carlsbad Energy Center LLC's  
Motion to Admit Supplemental Documents into the Evidentiary Record**

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

**INTERESTED AGENCIES**

California ISO  
P.O. Box 639014  
Folsom, CA 95763-9014  
(e-mail preferred) [e-recipient@caiso.com](mailto:e-recipient@caiso.com)

**APPLICANT**

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City of Carlsbad  
South Carlsbad Coastal Redevelopment Agency  
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Ronald R. Ball, Esq., City Attorney  
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California Unions for Reliable Energy ("CURE")  
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[gsmith@adamsbroadwell.com](mailto:gsmith@adamsbroadwell.com)  
[mdjoseph@adamsbroadwell.com](mailto:mdjoseph@adamsbroadwell.com)

**COUNSEL FOR APPLICANT**

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**INTERVENORS**

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**ENERGY COMMISSION**

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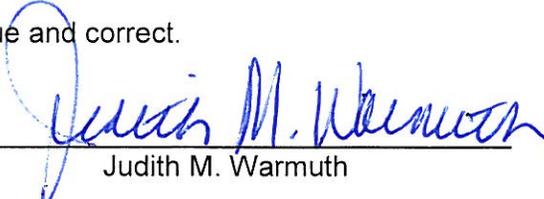
**DECLARATION OF SERVICE**

I, Judith M. Warmuth, declare that on February 18, 2010, I deposited copies of the aforementioned document in the United States mail at 500 Capitol Mall, Suite 1600, Sacramento, California 95814, 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.

  
\_\_\_\_\_  
Judith M. Warmuth