STATE OF CALIFORNIA

Energy Resources Conservation and
Development Commission

DOCKET
07-AFC-6
DATE OCT 17 2011
RECD. OCT 17 2011

In the Matter of:)
Application for Certification for the)
Carlsbad Energy Center Project)
(CECP))
)

Docket No 07-AFC-6

City of Carlsbad and Carlsbad Redevelopment Agency
Request for Official Notice of Their Official Acts Regarding Land Use Conformance

October 17, 2011

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STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION

In the Matter of Application for Certification for the Carlsbad Energy Center Project (CECP)	)))))	Docket No. 07-AFC-6

City of Carlsbad and Carlsbad Redevelopment Agency
Request for Official Notice of Their Official Acts Regarding Land Use Conformance

The City Council of the City of Carlsbad and the Carlsbad Housing and Redevelopment Commission respectfully request that the California Energy Commission take official notice of Resolution 2011-230 and Ordinance CS-158 (Attached).

The purpose of this resolution and ordinance is to provide greater clarity regarding which land uses throughout the City, including the Coastal Zone, are authorized for the generation of electricity and its limitations.

In previous written and oral testimony in the Carlsbad Energy Center Project (CECP) proceeding, the City of Carlsbad City Council and the Carlsbad Housing and Redevelopment Commission have made several official determinations that the proposed CECP does not comply with land use laws, ordinances, regulations, and standards (LORS) because, a) it is a merchant power plant, b) it is located within the coastal zone, c) not coastal dependent and, d) is not a smaller power plant as understood and envisioned by Redevelopment Agency. The Redevelopment Agency has also determined that the CECP has failed to attempt even the most basic form of compliance, that of filing for a Redevelopment Permit.

The Energy Commission's June 2011 Presiding Member's Proposed Decision (PMPD) disregarded these official actions and came to a different conclusion on project compliance based on its own interpretation of the City's and Redevelopment Agency's applicable LORS.

The PMPD did, however, provide valuable insight into its evaluation and the criteria it applied to its analysis. What became clear through reading the PMPD is that the interwoven land use regulations under which the City and Redevelopment Agency work with daily are confusing and perplexing to those not familiar with them.

In response to what the City and Redevelopment Agency consider is an incorrect interpretation by the PMPD and in an effort to make its land use regulations more understandable, the City Council has made amendments and clarifications to its General Plan, Zoning Ordinance, and other relevant land use documents. These clarifications focus on land use adjustments that specifically address the generation of electrical energy throughout the City including the Coastal Zone, and the Encina Power Station.

At its September 27, 2011 meeting, the City Council of the City of Carlsbad unanimously adopted Resolution 2011-230, which is an amendment to the General Plan Public Utilities land use designation. It also adopted Ordinance CS-158, which is an amendment to the Public Utility Zone list of permitted uses (Municipal Code Section 21.36.020). Both amendments concern the generation of electrical energy in the City of Carlsbad.

With regards to the General Plan Amendment, the description of the Public Utilities land use designation has been changed to add the following clarification about the generation of electrical energy:

A primary function designed to serve all or a substantial portion of the community may also include the generation of electrical energy if it is located outside the Coastal Zone but only if it is conducted by a government entity or by a company and such use is authorized or approved by the California Public Utilities Commission.

As contained within Table A of the Zoning Ordinance Section 21.36.020, two (2) significant amendments have been established that are consistent with and implement the General Plan. These amendments allow:

Generation of electrical energy, primary, by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission outside the City's Coastal Zone only.

Generation of electrical energy, accessory, by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission in or outside the City's Coastal Zone and limited to a generating capacity of fewer than 50 megawatts. Generating capacity of 50 megawatts or more is prohibited in the Coastal Zone.

The clear reading of these amendments results in a General Plan and Zoning Ordinance that prohibits a primary land use in the Coastal Zone which proposes energy production. Such a use is allowed in the City outside of the Coastal Zone in two situations. First, if it conforms to City standards and it has received prior approval or authorization from the CPUC. Second, if applicant is a government entity. Additionally, the amended Zoning Ordinance allows for power generation as an ancillary use within the City (including the Coastal Zone), as long as the power generated is less than 50 MW. Again, conformance with the code requires prior approval or authorization from the CPUC or that the applicant is a government entity.

Finally, other land use documents that regulate land use at the Encina Power Station and environs, including the Agua Hedionda Land Use Plan, Encina Specific Plan, and Encina Power Station Precise Development Plan, were also amended to remain consistent with the approved General Plan and Zoning Ordinance changes.

The City Council and the Housing and Redevelopment Commission want to make it abundantly clear that the impact of these changes applies to the CECP as it relates to its compliance or lack thereof with local LORS. (*City of Claremont v. Cruse* (2009) 177 Cal App. 4th 1153, 2009, rev. denied.)

The City Council and the Housing and Redevelopment Commission appreciate the opinions and insights of the PMPD. With the recent amendments, the City and the Redevelopment Agency is confident that the plain reading of the General Plan and the Zoning Ordinance removes any prior confusion regarding the CECP's land use conformance with LORS.

Thank you for considering these issues.

Respectfully submitted:

Ronald R. Ball
City Attorney for City of Carlsbad and
General Counsel for Carlsbad Redevelopment Agency

EXHIBIT 7

RESOLUTION NO. 2011-230

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A GENERAL PLAN AMENDMENT AND LOCAL COASTAL PROGRAM AMENDMENT TO REVISE LAND USE STANDARDS REGARDING THE GENERATION AND TRANSMISSION OF ELECTRICAL ENERGY AND EXPANSION OPPORTUNITIES FOR THE ENCINA POWER STATION.
CASE NAME: CHANGES TO POWER PLANT STANDARDS
CASE NO.: GPA 11-06/LCPA 11-06

The City Council of the City of Carlsbad, California, does hereby resolve as follows:

WHEREAS, pursuant to the provisions of the Municipal Code, the Planning Commission did, on September 7, 2011, hold a duly noticed public hearing as prescribed by law to consider General Plan Amendment GPA 11-06 and Local Coastal Program Amendment LCPA 11-06, as referenced in Planning Commission Resolutions No. 6803 and 6805, respectively; and

WHEREAS, the Planning Commission adopted Planning Commission Resolution No. 6803 recommending to the City Council approval of GPA 11-06 and adopted Planning Commission Resolution No. 6805 recommending to the City Council approval of LCPA 11-06; and

WHEREAS, the City Council of the City of Carlsbad, on the 27th day of September 2011, held a duly noticed public hearing to consider said General Plan Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to the General Plan Amendment and Local Coastal Program Amendment.

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

1. That the above recitations are true and correct.

2. That the recommendation of the Planning Commission for the approval of General Plan Amendment GPA 11-06 is adopted and approved, and that the findings of the

Planning Commission contained in Planning Commission Resolution No. 6803 on file with the City Clerk and incorporated herein by reference are the findings of the City Council.

3. That the recommendation of the Planning Commission for the approval of Local Coastal Program Amendment LCPA 11-06 is adopted and approved, and that the findings of the Planning Commission contained in Planning Commission Resolution No. 6805 on file with the City Clerk and incorporated herein by reference are the findings of the City Council.

4. That the approval of LCPA 11-06 shall not become effective until it is approved by the California Coastal Commission and the California Coastal Commission's approval becomes effective.

5. This action is final the date this resolution is adopted by the City Council. The Provisions of Chapter 1.16 of the Carlsbad Municipal Code, "Time Limits for Judicial Review," shall apply:

"NOTICE TO INTERESTED PARTIES"

> The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure, Section 1094.6, which has been made applicable in the City of Carlsbad by Carlsbad Municipal Code Chapter 1.16. Any petition or other paper seeking review must be filed in the appropriate court not later than the nineteenth day following the date on which this decision becomes final; however, if within ten days after the decision becomes final a request for the record of the deposit in an amount sufficient to cover the estimated cost or preparation of such record, the time within which such petition may be filed in court is extended to not later than the thirtieth day following the date on which the record is either personally delivered or mailed to the party, or his attorney of record, if he has one. A written request for the preparation of the record of the proceedings shall be filed with the City Clerk, City of Carlsbad, 1200 Carlsbad Village Drive, Carlsbad, CA. 92008."

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PASSED AND ADOPTED at a Joint Special meeting of the City Council and Housing and Redevelopment Commission of the City of Carlsbad on the 27th day of September 2011, by the following vote, to wit:

AYES: Council Members Hall, Kulchin, Blackburn, Douglas, Packard.

NOES: None.

ABSENT: None.

MATT HALL, Mayor

ATTEST:

LORRAINE M. WOOD, City Clerk

(SEAL)

ORDINANCE NO. CS-158

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING AN AMENDMENT TO ZONING ORDINANCE SECTION 21.36.020 TABLE "A" REGARDING GENERATION AND TRANSMISSION OF ELECTRICAL ENERGY AS PERMITTED USES IN THE PUBLIC UTILITY ZONE.
CASE NAME: CHANGES TO POWER PLANT STANDARDS
CASE NO.: ZCA 11-05

The City Council of the City of Carlsbad, California, does ordain as follows:

SECTION I: That Table A in Section 21.36.020 of the Carlsbad Municipal Code is amended to read as follows:

Table A

Permitted Uses

In the table, below, subject to all applicable permitting and development requirements of the municipal code:

"P" indicates use is permitted.
"CUP" indicates use is permitted with approval of a conditional use permit.
1 = Administrative hearing process
2 = Planning Commission hearing process
3 = City Council hearing process
"Acc" indicates use is permitted as an accessory use.

Use	P	CUP	Acc
Agricultural farm worker housing (temporary) (subject to Section 21.42.140(B)(2))		3	
Agriculture: only the following agricultural uses, and buildings accessory to such agricultural uses, are permitted in the P-U zone: (a) field and seed crops, (b) truck crops, (c) horticultural crops, (d) orchards and vineyards, (e) pasture and rangeland, (f) tree farms, (g) fallow lands, (h) greenhouses	x		
Airports		3	
Alcoholic treatment centers		2	
Any other use which the planning commission or city council may determine to be similar to the permitted uses in the zone and to fall within the intent and purposes of the zone (see note 1)	x		
Aquaculture (defined: Section 21.04.036)		2	
Aquaculture stands (display/sale) (subject to Section 21.42.140(B)(10))		2	
Biological habitat preserve (subject to Section 21.42.140(B)(30)) (defined: Section 21.04.048		2	
Campsites (overnight) (subject to Section 21.42.140(B)(40))		2	
Cemeteries		3	
Columbariums, crematories, and mausoleums (not within a cemetery)		2	
Energy transmission facilities, including rights-of-way and pressure control or booster stations for gasoline, electricity, natural gas, synthetic natural gas, oil or other forms of energy sources	x		
Fairgrounds		3	

Generation of electrical energy, primary, by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission outside the City's Coastal Zone only	x		
Generation of electrical energy, accessory, by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission in or outside the City's Coastal Zone and limited to a generating capacity of fewer than 50 megawatts. Generating capacity of 50 megawatts or more is prohibited in the Coastal Zone			x
Golf courses		2	
Governmental maintenance and service facilities	x		
Greenhouses >2,000 square feet (subject to Section 21.42.140(B)(70))		1	
Hazardous waste facility (subject to Section 21.42.140(B)(75)) (defined: Section 21.04.167)		3	
Hospitals (defined: Section 21.04.170)		2	
Hospitals (mental) (defined: Section 21.04.175)		2	
Mobile buildings (subject to Section 21.42.140(B)(90)) (defined: Section 21.04.265)		2	
Packing/sorting sheds >600 square feet (subject to Section 21.42.140(B)(70))		1	
Petroleum products pipeline booster stations	x		
Processing, using and storage of: (a) natural gas, (b) liquid natural gas, (c) domestic and agricultural water supplies	x		
Public utility district maintenance, storage and operating facilities	x		
Radio/television/microwave/broadcast station/tower		2	
Recreation facilities		2	
Recreational facilities (public or private, passive or active)	x		
Recycling collection facilities, large (subject to Chapter 21.105 of this title) (defined: Section 21.105.015)		2	
Recycling collection facilities, small (subject to Chapter 21.105 of this title) (defined: Section 21.105.015)		1	
Recycling process/transfer facility		2	
Satellite television antennae (subject to the provisions of Section 21.53.130 of this code)	x		
Signs subject to the provisions of Chapter 21.41	x		
Stadiums		3	
Transit passenger terminals (bus and train)		2	
Transmission of electrical energy if conducted by a government entity or by a company authorized or approved for such use by the California Public Utilities Commission	x		
Using and storage of fuel oils	x		
Wastewater treatment, disposal or reclamation facilities	x		
Windmills (exceeding height limit of zone) (subject to Section 21.42.140(B)(160))		2	
Wireless communications facilities (subject to Section 21.42.140(B)(165)) (defined: Section 21.04.379)		1/2	
Zoos (private) (subject to Section 21.42.140(B)(170)) (defined: Section 21.04.400)		2	
Note: 1. Providing there shall not be permitted any use which creates noxious gas or odor, excessive sound vibration or significant atmospheric pollution.			

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SECTION II: That the findings of the Planning Commission in Planning Commission Resolution No. 6804 shall constitute the findings 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. Notwithstanding the preceding, this ordinance shall not be effective until approved by the California Coastal Commission.

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INTRODUCED AND FIRST READ at a Joint Special Meeting of the Carlsbad City Council and Housing and Redevelopment Commission on the 27th day of September 2011, and thereafter.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the 11th day of October 2011, by the following vote, to wit:

AYES: Council Members Hall, Kulchin, Blackburn, Douglas, Packard.

NOES: None.

ABSENT: None.

ABSTAIN: None.

APPROVED AS TO FORM AND LEGALITY

RONALD R. BALL, City Attorney

10/12/11

MATT HALL, Mayor

ATTEST:

LORRAINE M. WOOD, City Clerk

(SEAL)

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 9/19/2011)

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DECLARATION OF SERVICE

I, Robin Nuschke declare that on, 10.17.11, I served and filed copies of the attached Request for Official Notice re: Land Use, dated 10.17.11. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[www.energy.ca.gov/sitingcases/carlsbad/index.html]**.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

✓ Served electronically to all e-mail addresses on the Proof of Service list;

✓ Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "e-mail service preferred."

AND

For filing with the Docket Unit at the Energy Commission:

✓ by sending an original paper copy and one electronic copy, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the address below (preferred method); ***OR***

____ by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT
Attn: Docket No. 08-AFC-11
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

✓ Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
Michael J. Levy, Chief Counsel
1516 Ninth Street MS-14
Sacramento, CA 95814
mlevy@energy.state.ca.us

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Robin Nuschke

~~Maggie Read~~ Robin Nuschke
~~Hearing Adviser's Office~~

*indicates change