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PLANNING COMMISSION RESOLUTION NO. 6091

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, RECOMMENDING APPROVAL OF REDEVELOPMENT PERMIT RP 05-12 TO CONSTRUCT THE 50 MILLION GALLON PER DAY CARLSBAD SEAWATER DESALINATION PLANT AND APPURTENANT FACILITIES, INCLUDING PIPELINES FOR THE CONVEYANCE OF DESALINATED WATER, ON PROPERTIES INCLUDING THE ENCINA POWER STATION AND ADJACENT PROPERTIES GENERALLY LOCATED NORTH OF CANNON ROAD AND EAST AND WEST OF INTERSTATE 5 AND WITHIN THE BOUNDARIES OF THE SOUTH CARLSBAD COASTAL REDEVELOPMENT AREA AND IN LOCAL FACILITIES MANAGEMENT ZONES 3 AND 13.

CASE NAME: PRECISE DEVELOPMENT PLAN AND DESALINATION PLANT

CASE NO.: RP 05-12

WHEREAS, Poseidon Resources (Channelside) LLC, "Developer," has filed a verified application with the City of Carlsbad Redevelopment Agency (RDA) regarding property leased by the Developer for the Carlsbad Seawater Desalination Plant and property owned by various owners, collectively "Owners," 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, more particularly described as follows:

Commencing at the most southerly corner of said Parcel 4, also being a point on the westerly line of the 100.00-foot-wide right of way on the Atchison Topeka and Santa Fe Railroad, also being the most southeasterly corner of Parcel 4 as shown on Record of Survey No. 17350; thence along said westerly line, north 22°30'13" west, 1763.84 feet; thence leaving said westerly line, at right angles, south 67°29'47" west, 54.68 feet to the point of beginning; thence south 67°22'25" west, 427.00 feet; thence north 22°37'35" west, 320.00 feet; thence north 67°22'25" east, 427.00 feet; thence south 22°37'35" east, 320.00 feet to the point of beginning.

1 **The application also affects properties identified by Assessor's**
2 **Parcel Numbers 210-010-41, 210-010-43, 210-010-42, 210-011-**
3 **05, and 211-010-24**

4 ("the Property"); and

5 WHEREAS, said verified application constitutes a request for a Redevelopment
6 Permit as shown and described in the **"Encina Power Station Precise Development Plan"**
7 **document** dated **May 3, 2006**, on file in the Planning Department **PRECISE**
8 **DEVELOPMENT PLAN AND DESALINATION PLANT – RP 05-12** as provided and
9 required by Sections 600 and 608 of the South Carlsbad Coastal Redevelopment Area (SCCRA)
10 Plan; and

11 WHEREAS, the Carlsbad Seawater Desalination Plant consists of the desalination
12 plant facilities itself, which include a reverse osmosis facility, pretreatment filters, and chemical
13 storage area, and appurtenant facilities such as intake and discharge pipelines, solids handling
14 building, and product water conveyance pipelines; and

15 WHEREAS, the Carlsbad Seawater Desalination Plant, including many of its
16 appurtenant facilities, are located within the boundaries of the Encina Power Station, while
17 product water conveyance pipelines extend beyond the boundaries of the Encina Power Station
18 and east of Interstate 5; and

19 WHEREAS, this Redevelopment Permit applies to the Carlsbad Seawater
20 Desalination Plant and all appurtenant facilities located onsite and offsite of the Encina Power
21 Station and within the boundaries of the SCCRA Plan; and

22 WHEREAS, Section 600 of the Redevelopment Plan states a desalination plant,
23 including its appurtenant facilities, may be permitted in the SCCRA only if the Housing and
24 Redevelopment Commission approves a finding that: 1) the desalination plant serves an
25 extraordinary public purpose; 2) a precise development plan which sets forth standards for
26 extraordinary public purpose; 2) a precise development plan which sets forth standards for
27 extraordinary public purpose; 2) a precise development plan which sets forth standards for

1 development of the desalination plant is first approved by the Housing and Redevelopment
2 Commission; and 3) the Commission has issued a Redevelopment Permit for the Project; and

3 WHEREAS, processed concurrently with Redevelopment Permit RP 05-12 is
4 Precise Development Plan PDP 00-02, which establishes the development standards for the
5 desalination plant and Environmental Impact Report EIR 03-05, which provides location and
6 other information on appurtenant facilities located offsite of the Encina Power Station and within
7 the boundaries of the SCCRA Plan; and

8
9 WHEREAS, the Planning Commission is the review body for recommending and
10 processing land use permits proposed in the SCCRA; and

11 WHEREAS, the Planning Commission did on the 3rd day of May, 2006, hold a
12 duly noticed public hearing as prescribed by law to consider said request; and

13 WHEREAS, at said public hearing, upon hearing and considering all testimony
14 and arguments, if any, of all persons desiring to be heard, said Commission considered all factors
15 relating to the Redevelopment Permit; and

16 WHEREAS, in its deliberations, the Planning Commission considered whether
17 the desalination plant serves an extraordinary public purpose.

18
19 NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning
20 Commission of the City of Carlsbad as follows:

- 21 A) That the foregoing recitations are true and correct.
- 22 B) That based on the evidence presented at the public hearing, the Commission
23 **RECOMMENDS APPROVAL** of **PRECISE DEVELOPMENT PLAN AND**
24 **DESALINATION PLANT – RP 05-12**, based on the following findings and
subject to the following conditions:

25 **Findings:**

- 26 1. The City of Carlsbad Planning Commission hereby finds the desalination plant serves an
27 extraordinary public purpose to the City of Carlsbad, the RDA, and the citizens of
Carlsbad as demonstrated by the following benefits:

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a. **Security of Water Supply:** The need for a diverse water portfolio was illustrated by the early 1990's drought, when the San Diego County Water Authority (CWA) reduced water supplies to its member agencies, including Carlsbad, by 30% and was considering 50% reductions. According to the CWA Regional Water Facilities Master Plan (RWFMP), the CWA currently imports nearly 600,000 acre feet per year (AFY) from the Metropolitan Water District (MWD), but is only legally entitled to approximately 300,000 AFY. This makes the region's imported water supply highly vulnerable to water shortages and supply disruptions. The Colorado River is a major source of water supply for California, Nevada, and Arizona. California has traditionally used more than its allocated 4.4 million acre feet (MAF) per year because Arizona and Nevada did not use their full allocations. Arizona and Nevada's increasing water needs have led to demands that California reduce its usage to its 4.4 MAF allocation. Potential threats to future deliveries of water from the Sacramento-San Joaquin Bay Delta, such as a severe decline in fish populations, levee instability, and a series of adverse court rulings, may also lead to reductions in the amount of water that can be delivered from Northern to Southern California through the State Water Project.

The project will allow the City of Carlsbad Municipal Water District (CMWD) to purchase 100% of its potable water supply needs from the desalination plant, thus providing a secure local water supply that is not subject to the variations of drought or political and legal constraints on water supplies (Appendix B to Final Environmental Impact Report EIR 03-05, Sections 1.2 and 10.1).

b. **Redundant Water Supply:** The project will provide water supply redundancy for the City, strengthening security and reliability of water supply for residents and businesses. The CMWD will maintain its membership in and right to purchase water at the CWA, while receiving 100% of its potable water supply needs from the Project, thereby creating a redundant supply of water available in the event of catastrophe or unforeseen circumstances (Appendix B to Final EIR 03-05, Section 13). The Project will add approximately 21,000 AFY dedicated to CMWD, thus replacing its current supply and increasing the reliability of CMWD's water supply.

c. **Reliable Water Supply:** The desalination plant will provide a reliable water supply for 30 years with two possible 30-year extensions (Appendix B to Final EIR 03-05, Section 2.). The City is protected from shortfalls in delivery under the terms of the Water Purchase Agreement (Appendix B to Final EIR 03-05, Sections 9 and 14).

d. **High Quality Drinking Water:** The Project will provide high quality drinking water that will compare favorably with the water supply that can be purchased from the CWA. The project will deliver a drinking water supply to the City that meets all State and Federal health standards, as well as provide a reduction in the total dissolved solids (TDS) compared to imported water from the Colorado River and Sacramento-San Joaquin Delta provided by the CWA. The desalinated water TDS will be monitored on a weekly basis and shall not exceed 350 mg/L in more

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than half the samples taken. Additionally, 90% of the samples shall be less than 400 mg/L. The City is not obligated to accept or pay for water that does not meet the quality standards (Appendix B to Final EIR 03-05, Section 8 and Schedule 8.2.). Imported water has a TDS of 466-574 mg/L (Metropolitan Water District 2005 Water Quality Report for the Skinner Filtration Plant).

- e. **Economic Benefits:** The project will achieve the SCCRA Plan goal to strengthen the economic base of the Project Area and the community. The Project will provide the City with desalinated water at a predictable and reasonable price through the long-term Water Purchase Agreement, which sets agreed-upon water rates (Appendix B to Final EIR 03-05).

The desalination plant will generate up to \$2.4 million per year in increased property tax revenue. Because the Project site is located within the South Carlsbad Redevelopment Project, an estimated \$2.0 million per year of the tax revenue will be allocated directly to the RDA (Exhibit 2, page 7, of CMWD Agenda Bill 577, dated September 28, 2004, regarding adoption of Resolution 1226, approving the Water Purchase Agreement). The Project will also generate up to \$2.9 million per year in increased business tax revenue.

- f. **Positive Economic Impact on Ability to Attract and Retain Business:** The desalination plant will create a drought-resistant, reliable water supply for the City of Carlsbad that will provide the stability necessary to attract and retain high-tech and biotechnology businesses which are dependent on a reliable water supply for their research and manufacturing processes. These businesses provide high skill, high wage jobs in the City of Carlsbad that enhance the overall economy of the community.

The project will provide an extraordinary benefit to the residents and businesses of the City by generating approximately \$2.4 million per year in property tax revenue, 85% of which will remain in the City to support schools, municipal services, and the RDA (Exhibit 2, page 7, of CMWD Agenda Bill 577, dated September 28, 2004, regarding adoption of Resolution 1226, approving the Water Purchase Agreement). Among other things, this revenue can be used to support the proposed public improvements identified in Exhibit C of the Redevelopment Plan. Additionally, the Project will generate substantial tax revenues that will go to the general funds of Carlsbad and other San Diego County cities to support police, fire, health, welfare, and transportation. Good public services help to attract high quality businesses.

- g. **Acquisition of Land for Public Purpose:** The project will advance the goals of the SCCRA Plan and the California Coastal Act to develop new beach and coastal recreational opportunities. The Project is consistent with and includes elements specifically intended to advance the goals of the State of California and the City related to the protection, maintenance, and enhancement of the overall quality of the coastal zone environment, while maximizing public recreational opportunities along the coast. The Project will achieve the SCCRA Plan goals to enhance

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commercial and recreational functions and increase parking and open space amenities in the Project area.

Through the Precise Development Plan for this project, Cabrillo Power, the Encina Power Station owner, has offered several acres of dedications to the City for the public's benefit and for marine research. Each dedication, in the form of an easement, title transfer, or deed restriction, would further Coastal Act goals of maximizing public access and recreational opportunities along the coast. The dedications are described below:

- Fishing Beach – An easement for this site, along the shore of Agua Hedionda Lagoon and next to Carlsbad Boulevard, would be dedicated for public recreational and coastal access use, including public parking.
- Bluff Area – The Bluff Area, located on the west side of Carlsbad Boulevard and opposite the Power Station, is proposed to be dedicated in fee title to the City for recreational and coastal access uses.
- Hubbs Site – The Hubbs Site, along the lagoon north shore, consists of the land between the existing Hubbs Sea World Research Institute and the railroad tracks. The site is proposed to be deed restricted to uses such as a fish hatchery, aquatic research, and trails.
- South Power Plant Public Parking Area – An easement for this site, along the east side of Carlsbad Boulevard and near the south entrance to the power plant, would be dedicated for public parking.

Further, a condition of approval of the Precise Development Plan will also enhance the public recreation through the dedication of an easement for the Coastal Rail Trail.

- h. **Restore and Enhance the Marine Environment:** As a wholesale water supplier regulated by the California Department of Health Services, Poseidon Resources will be subject to the provisions of the federal Safe Drinking Water Act that require restoration, protection, and enhancement of watersheds upstream of a source of drinking water supply. As a result, Poseidon has been and will likely remain actively involved in activities aimed at protecting, restoring, and enhancing the health and vitality of Agua Hedionda Lagoon, the surrounding 30-square-mile watershed upstream of the Lagoon, and the near shore environment. Through board participation, financial contributions, and activity involvement, Poseidon currently supports nonprofit organizations that protect the lagoon habitat, including the Agua Hedionda Lagoon Foundation and Hubbs Sea World Research Institute. Additionally, the project proposes to deed restrict approximately 2 acres of vacant land located on the north side of the lagoon between the Hubbs Sea World Research Institute and nearby railroad tracks for uses such as marine research and expansion of the Hubbs facility.
- i. **Regional Leadership Role:** Creation of a 50 million gallon per day (mgd) desalination facility will enhance the position of the City of Carlsbad as a Statewide and Regional leader in water supply by creating a new supply called for

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in the State Department of Water Resources 2005 California Water Plan and the CWA's Urban Water Management Plan.

2. That the proposed desalination use can be approved because the underlying Public Utilities (P-U) zoning district requires the approval of an official Precise Development Plan prior to the approval of building permits for allowed uses, and **PDP 00-02**, processed and approved concurrently with **RP 05-12**, serves as the code-mandated regulatory document for the subject property.

3. As demonstrated in Finding 1 above, the Project complies with several SCCRA Plan goals, which are listed in Section IV (400) of the Plan. Furthermore, the Project also complies with these other applicable Plan goals:
 - a. **Facilitate the redevelopment of the Encina power generating facility to a smaller, more efficient power generating plant.** Compliance with this goal is achieved by positioning the desalination plant in a location that creates the least amount of constraints on any future conversion of the Encina power station as detailed in the Land Use/Planning analysis section of the Project's Environmental Impact Report, **EIR 03-05**.

 - b. **Implement performance criteria to ensure quality site design and environmental standards to provide unity and integrity to the entire Redevelopment Plan area.** The desalination plant exhibits a quality design that is sensitive to its environment and non-utility surroundings. As a regulatory document, the Precise Development Plan establishes development standards and review procedures for the Encina Power Station and the desalination plant. Further, the Project has been reviewed concurrently with the processing and certification of Environmental Impact Report **EIR 03-05**, compliant with the provisions of the California Environmental Quality Act.

4. The Project is consistent with the General Plan in that it implements goals stated in the Vision section of the General Plan. The project will provide a high-quality, reliable water supply to the residents of Carlsbad, thereby fulfilling the General Plan vision statement, "A City which provides adequate public facilities to preserve the quality of life of its residents." Additionally, a reliable drinking water supply is a major issue for all Southern California jurisdictions, and by providing one hundred percent of Carlsbad's drinking water, the Project helps to fulfill another General Plan vision statement, "A City which recognizes its role as a participant in the solution of regional issues."

Further, the project also helps to fulfill the vision goal of "A City committed to economic growth of progressive commercial and industrial businesses to serve the employment, shopping, recreation, and service needs of its residents." The Project will create new jobs and new economic activity in Carlsbad and provide a reliable water supply that businesses can count on for sustainable economic activity.

5. The Project is also consistent with the General Plan in that it implements goals of the Land Use Element. The Project is consistent with the Public Utility (U) land use designation of the Encina Power Station and product water conveyance pipelines

1 are permitted in any land use designation. Further, the modern office appearance
2 and appropriate screening of equipment and chemical storage areas complies with
3 the sensitive design objective of Overall Land Use Pattern Policy C.6, which states,
4 “Review the architecture of buildings with the focus on ensuring the quality and
5 integrity of design and enhancement of the character of each neighborhood.”

- 6 6. The Project is consistent with the Encina Specific Plan 144 in that:
- 7 a. It complies with applicable Specific Plan standards and requirements
8 adopted over the years regarding architectural review, building height,
9 exterior lighting, and rooftop mechanical equipment.
 - 10 b. Since the Project proposes no changes to the operation of the Encina Power
11 Station and only limited changes to its facilities (seawater discharge and
12 electrical connections and removal of the fuel oil storage tank), the Project
13 does not conflict with Specific Plan standards and requirements regarding
14 power station operations.
 - 15 c. The proposed amended and restated Encina Specific Plan, SP 144(H),
16 incorporates the land use designations of the City of Carlsbad General Plan,
17 with which the Project is consistent. Additionally, SP 144(H) would
18 incorporate by reference PDP 00-02.

- 19 7. The Project is in conformance with the Agua Hedionda Land Use Plan and all applicable
20 policies in that the Project has been reviewed for consistency with relevant coastal
21 policies including land use, habitat protection, grading and drainage, stormwater
22 management, recreation, shoreline access, and visual resources. In particular, the
23 Project complies with the Land Use Plan building height limitation of 35 feet.
24 Furthermore, the Project has been conditioned to obtain a coastal development
25 permit from the California Coastal Commission.

- 26 8. The Project is consistent with the City’s adopted Scenic Corridor Guidelines, which
27 apply to Carlsbad Boulevard and the North County Transit District railroad corridor, in
28 that it features a quality building design and appropriate visual screening.

- 29 9. The Project is consistent with the Citywide Facilities and Improvements Plan, the Local
30 Facilities Management Plan for Zone 3 and Zone 13 and all City public facility policies
31 and ordinances. The Project includes elements or has been conditioned to construct or
32 provide funding to ensure that all facilities and improvements regarding sewer collection
33 and treatment; water; drainage; circulation; fire; schools; parks and other recreational
34 facilities; libraries; government administrative facilities; and open space, related to the
35 Project will be installed to serve new development prior to or concurrent with need.
36 Specifically:

- 37 a. The Project has been conditioned to provide proof from the **Carlsbad Unified**
38 **School District** that the Project has satisfied its obligation for school facilities.
- 39 b. All necessary public improvements have been provided or are required as
40 conditions of approval.

1 c. **Other than its obligation to provide funding for school facilities, the Project**
2 **does not generate any facility plan improvement requirements or funding.**

3 10. The Planning Commission has reviewed each of the exactions imposed on the Developer
4 contained in this resolution, and hereby finds, in this case, that the exactions are imposed
5 to mitigate impacts caused by or reasonably related to the Project, and the extent and the
6 degree of the exaction is in rough proportionality to the impact caused by the Project.

7 11. As conditioned, the Project is consistent with the City's Landscape Manual (Carlsbad
8 Municipal Code Section 14.28.020 and Landscape Manual Section I B).

9 12. The Planning Commission hereby finds that all development in Carlsbad benefits from
10 the Habitat Management Plan, which is a comprehensive conservation plan and
11 implementation program that will facilitate the preservation of biological diversity and
12 provide for effective protection and conservation of wildlife and plant species while
13 continuing to allow compatible development in accordance with Carlsbad's Growth
14 Management Plan. Preservation of wildlife habitats and sensitive species is required by
15 the Open Space and Conservation Element of the City's General Plan which provides for
16 the realization of the social, economic, aesthetic and environmental benefits from the
17 preservation of open space within an increasingly urban environment. Moreover, each
18 new development will contribute to the need for additional regional infrastructure that, in
19 turn, will adversely impact species and habitats. The In-Lieu Mitigation Fee imposed on
20 all new development within the City is essential to fund implementation of the City's
21 Habitat Management Plan.

22 **Conditions:**

23 **Notes:**

- 24 a) **All conditions of approval apply only to the desalination plant and appurtenant**
25 **facilities and not to existing facilities of the Encina Power Station.**
26 b) **Unless otherwise specified herein, all conditions shall be satisfied prior to issuance**
27 **of grading or building permits for the desalination plant, whichever occurs first.**

28 **General**

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 **RDA** 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 **RDA's** approval of this **Redevelopment Permit, other**
than those described in the Development Agreement (DA 05-01).

2. Staff is authorized and directed to make, or require the Developer to make, all corrections
and modifications to the **Redevelopment Permit** documents, as necessary to make them
internally consistent and in conformity with the final action on the Project. Development

1 shall occur substantially as shown on the approved Exhibits (**Encina Power Station**
2 **Precise Development Plan PDP 00-02 dated May 3, 2006, and Environmental**
3 **Impact Report EIR 03-05 dated December 2005**). Any proposed development
different from this approval shall require an amendment to this approval.

4 3. **As a condition** to approval of the **Redevelopment Permit**, the Developer shall apply for
5 and obtain approval of a Coastal Development Permit issued by the California Coastal
6 Commission or its successor in interest that substantially conforms to this approval. A
7 signed copy of the Coastal Development Permit must be submitted to the Planning
8 Director. If the approval is substantially different, an amendment to the **Redevelopment**
9 **Permit** shall be required.

10 4. This approval is granted subject to the certification, adoption, and approval of the
11 Environmental Impact Report (**EIR 03-05**) and Mitigation Monitoring and Reporting
12 Program, **PDP 00-02, SP 144(H), DA 05-01, CDP 04-41, SUP 05-04, and HMPP 05-08**
13 and is subject to all conditions contained in Planning Commission Resolutions No. **6087,**
14 **6088, 6089, 6090, 6092, 6093 and 6094** for those other approvals incorporated herein by
15 reference.

16 5. Approval is granted for **Redevelopment Permit 05-12 as shown and described in the**
17 **“Encina Power Station Precise Development Plan” document dated May 3, 2006,**
18 **and the Final Environmental Impact Report EIR 03-05 dated December 2005** on file
19 in the Planning Department and incorporated herein by reference. Development shall
20 occur substantially as shown unless otherwise noted in these conditions.

21 6. **The Encina Power Station has a once-through seawater cooling system. The**
22 **seawater intake is located in Agua Hedionda Lagoon and the outfall is a channel to**
23 **the ocean located south of the mouth of Agua Hedionda Lagoon. The Desalination**
24 **Plant is planned to operate in conjunction with the EPS by using the EPS cooling**
25 **water discharge as its source water and by discharging the brine that is the**
26 **by-product of the desalination process back into the EPS discharge, which in turn is**
27 **released from the EPS outfall. In the event that the EPS were to permanently cease**
28 **operations, and the Developer were to independently operate the existing EPS**
seawater intake and outfall for the benefit of the project, such independent
operation will require CEQA compliance and permits to operate as required by
then-applicable rules and regulations of the City and other relevant agencies. The
Developer will not independently operate the EPS intake and/or outfall unless and
until CEQA compliance is completed and any required permits have been issued.

7. 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.

8. Developer shall comply with all applicable provisions of federal, state, and local laws and
regulations in effect at the time of building permit issuance.

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- 9. Developer/Operator shall and does hereby agree to indemnify, protect, defend, and hold harmless the **RDA**, its **governing body members**, officers, employees, agents, and representatives, from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees incurred by the **RDA** arising, directly or indirectly, from (a) the **RDA's** approval and issuance of this **Redevelopment Permit**, (b) the **RDA's** approval or issuance of any permit or action, whether discretionary or nondiscretionary, in connection with the use contemplated herein, and (c) Developer/Operator's installation and operation of the facility permitted hereby, including without limitation any and all liabilities arising from the emission by the facility of electromagnetic fields or other energy waves or emissions. This obligation survives until all legal proceedings have been concluded and continues even if the **RDA's** approval is not validated.
- 10. Prior to the issuance of a building permit, the Developer shall provide proof to the Director from the **Carlsbad Unified School District** that this Project has satisfied its obligation to provide school facilities.
- 11. Building permits will not be issued for this Project unless the local agency providing sewer services to the Project provides written certification to the City that adequate sewer facilities are available to the Project at the time of the application for the building permit, and that sewer capacity and facilities will continue to be available until the time of occupancy.
- 12. Developer shall pay the citywide Public Facilities Fee imposed by City Council Policy #17, the License Tax on new construction imposed by Carlsbad Municipal Code Section 5.09.030, and CFD #1 special tax (if applicable), subject to any credits authorized by Carlsbad Municipal Code Section 5.09.040. Developer shall also pay any applicable Local Facilities Management Plan fee for Zone 3 and Zone 13, pursuant to Chapter 21.90. All such taxes/fees shall be paid at issuance of building permit. If the taxes/fees are not paid, this approval will not be consistent with the General Plan and shall become void.
- 13. This Project shall comply with all conditions and mitigation measures which are required as part of the **Zone 3 and Zone 13 Local Facilities Management Plans** and any amendments made to **those Plans** prior to the issuance of building permits. **Should amendments occur to the LFMPs, the applicant shall comply subject to the limitations of the Development Agreement (DA 05-01).**
- 14. The approval shall become null and void if the Project does not **become operational within 10 years of the final discretionary approval, including the discretionary approvals of the California Coastal Commission or other agencies, as may be consistent with the Development Agreement (DA 05-01).**
- 15. Developer shall implement, or cause the implementation of, the **EIR 03-05 Project Mitigation Monitoring and Reporting Program.**

- 1 16. As a condition of this approval, Developer must comply with the applicable requirements
2 of all regulatory agencies having jurisdiction over the Project.
- 3 17. This Project has been found to result in impacts to wildlife habitat or other lands, such as
4 agricultural land, non-native grassland, and disturbed lands, which provide some benefits
5 to wildlife, as documented in the City's Habitat Management Plan and the environmental
6 analysis for this Project. Developer is aware that the City has adopted an In-Lieu
7 Mitigation Fee consistent with Section E.6 of the Habitat Management Plan and City
8 Council Resolution No. 2000-223 to fund mitigation for impacts to certain categories of
9 vegetation and animal species. The Developer is further aware that the City has
10 determined that all projects will be required to pay the fee in order to be found consistent
11 with the Habitat Management Plan and the Open Space and Conservation Element of the
12 General Plan. The City is currently updating the fee study, which is expected to result in
13 an increase in the amount of the fee, and the Developer or Developer's successor(s) in
14 interest shall pay the adjusted amount of the fee once it is approved by the City Council.
15 The fee shall be paid prior to recordation of a final map, or issuance of a grading permit
16 or building permit, whichever occurs first. If the In-Lieu Mitigation Fee for this Project
17 is not paid, this Project will not be consistent with the Habitat Management Plan and the
18 General Plan and any and all approvals for this Project shall become null and void.
- 19 18. Developer shall submit to **the Housing and Redevelopment Director and the Planning**
20 **Director** a reproducible 24" x 36" mylar copy of the **Redevelopment Permit** reflecting
21 the conditions approved by the final decision-making body.
- 22 19. Developer shall include, as part of the plans submitted for any permit plan check, a
23 reduced legible version of all approving resolution(s) in a 24" x 36" blue line drawing
24 format (including any applicable Coastal Commission approvals **and the Mitigation**
25 **Monitoring and Reporting Program**).
- 26 20. **The proposed fill area along the south side of the pretreatment filters and reverse**
27 **osmosis building parking lot and driveway shall be landscaped with, at a minimum,**
28 **trees, shrubs, and groundcover consistent with the City's Landscape Manual.**
- 21 21. Developer shall submit and obtain Planning Director approval of a Final Landscape and
22 Irrigation Plan showing conformance with the conditions herein and the City's Landscape
23 Manual. Developer shall construct and install all landscaping as shown on the approved
24 Final Plans, and maintain all landscaping in a healthy and thriving condition, free from
25 weeds, trash, and debris.
- 26 22. The first submittal of Final Landscape and Irrigation Plans shall be pursuant to the
27 landscape plan check process on file in the Planning Department and accompanied by the
28 Project's building, improvement, and grading plans.
- 29 23. Developer shall construct trash receptacle and recycling areas enclosed by a six-foot high
30 masonry wall with gates pursuant to City Engineering Standards and Carlsbad Municipal
31 Code Chapter 21.105. The Planning Director shall approve location of said receptacles.
32 Enclosure shall be of similar colors and/or materials to the Project to the satisfaction of
33 the Planning Director.

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24. Developer shall report, in writing, to the **Housing and Redevelopment Director** and the Planning Director within 30 days, any address change from that which is shown on the permit application.
25. Prior to the issuance of **grading or building permits, whichever occurs first**, Developer shall submit to the **RDA** a Notice of Restriction to be filed in the office of the County Recorder, subject to the satisfaction of the **Housing and Redevelopment Director** and the Planning Director, notifying all interested parties and successors in interest that the **RDA** of Carlsbad has issued a **Redevelopment Permit** Resolution No. **6091** on the property. Said Notice of Restriction shall note the property description, location of the file containing complete project details and all conditions of approval as well as any conditions or restrictions specified for inclusion in the Notice of Restriction. The Planning Director has the authority to execute and record an amendment to the notice which modifies or terminates said notice upon a showing of good cause by the Developer or successor in interest.

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Engineering

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26. Prior to hauling dirt or construction materials to or from any proposed construction site within this Project, Developer shall apply for and obtain approval from the City Engineer for the proposed haul route.
27. Developer shall apply for and obtain a grading permit from the City Engineer.
28. Prior to the issuance of a grading permit or building permit, whichever occurs first, Developer shall submit to the City Engineer proof that a Notice of Intention for the start of work has been submitted to the State Water Resources Control Board.
29. Developer shall have the entire drainage system designed, submitted to, and approved by the City Engineer, to ensure that runoff resulting from 10-year frequency storms of 6 hours and 24 hours duration under developed conditions, are equal to or less than the runoff from a storm of the same frequency and duration under existing developed conditions. Both 6-hour and 24-hour storm durations shall be analyzed to determine the detention basin capacities necessary to accomplish the desired results.
30. **Prior to construction of water conveyance pipelines, Developer shall obtain all necessary permits and clearances as required by the Carlsbad Municipal Code.**
31. **Prior to the issuance of any grading or building permits, Developer shall execute and record a City standard Development Improvement Agreement to install and secure with appropriate security as provided by law, a bridge rail to CalTrans standards on the easterly side of Carlsbad Boulevard over the cooling water discharge culvert to the satisfaction of the City Engineer and the Planning Director. If determined appropriate by the Planning Director and the City Engineer, the bridge rail shall be incorporated into the design of the decorative screen wall or fencing along the Encina Power Station's Carlsbad Boulevard frontage as required**

1 by and conditioned in Planning Commission Resolution No. 6088 for Precise
2 Development Plan PDP 00-02.

3 32. Prior to the issuance of any grading or building permits, Developer shall pay any
4 required Planned Local Drainage Area (PLDA) fee as established in the Drainage
5 Master Plan adopted by the City at time of grading or building permit issuance for
6 the approximately 3.2-acre portion of the Precise Development Plan property
7 occupied by the desalination plant. Developer acknowledges that its obligation for
8 drainage area fees under the Drainage Master Plan is not affected by the
9 Developer's Development Agreement with the City.

10 33. Prior to the issuance of any certificate of occupancy, Developer shall demonstrate to
11 the satisfaction of the City Engineer that site drainage from the new impervious
12 surfaces which are part of the desalination plant has been captured for "source
13 water intake for filtration and ultimate domestic use" as describe on page 4.7-12 of
14 the Final Environmental Impact Report.

15 **Water**

16 34. Prior to approval of improvement plans, Developer shall meet with the Fire Marshal to
17 determine the specific fire protection measures (fire flows, fire hydrant locations,
18 building sprinklers) required to serve the Project.

19 35. The Developer shall design and install sewer laterals and clean-outs to the satisfaction of
20 and at locations approved by the Deputy City Engineer-Utilities. The locations of sewer
21 laterals shall be reflected on improvement plans.

22 **Fire Department**

23 36. The Developer shall design and install a new water main to provide potable water and
24 fire service. The locations of the water main shall be reflected on improvement plans.

25 37. Fire hydrants shall be provided within 300 feet of any desalination plant structure.

26 38. All desalination plant habitable structures shall be fire-sprinklered per the California Fire
27 Code.

28 39. The Developer shall provide a Knox key entry system on all desalination plant buildings
as approved by the Fire Marshal.

Code Reminders

40. Developer shall pay a landscape plan check and inspection fee as required by Section
20.08.050 of the Carlsbad Municipal Code

41. Approval of this request shall not excuse compliance with all applicable sections of the
Zoning Ordinance and all other applicable City ordinances in effect at time of building
permit issuance, except as otherwise specifically provided herein.

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- 42. The Project shall comply with the latest nonresidential disabled access requirements pursuant to Title 24 of the State Building Code.
- 43. Premise identification (addresses) shall be provided consistent with Carlsbad Municipal Code Section 18.04.320.
- 44. Any signs proposed for this development shall at a minimum be designed in conformance with the City’s Sign Ordinance and shall require review and approval of the Planning Director prior to installation of such signs.

NOTICE

Please take **NOTICE** that approval of your Project includes the “imposition” of fees, dedications, reservations, or other exactions hereafter collectively referred to for convenience as “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 **RDA Executive Director** 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.

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PASSED, APPROVED AND ADOPTED at a regular meeting of the Planning Commission of the City of Carlsbad, California, held on the 3rd day of May 2006 by the following vote, to wit:

AYES: Chairperson Montgomery, Commissioners Baker, Cardoso, Heineman, Segall, and Whitton

NOES:

ABSENT:

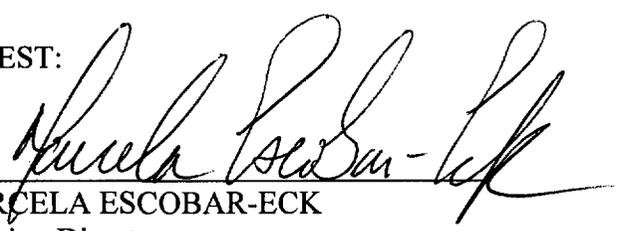
ABSTAIN: Commissioner Dominguez

:



MARTELL B. MONTGOMERY, Chairperson
CARLSBAD PLANNING COMMISSION

ATTEST:



MARCELA ESCOBAR-ECK
Planning Director