State Of California **The Resources**
Agency of California

Memorandum

Date :
November 1, 2002
Telephone: (916) 653-1245
ATSS

To : Robert Pernell, Commissioner and Presiding Member
William J. Keese, Chairman and Associate Member

From : **California Energy Commission** **- James W. Reede, Jr.**
1516 Ninth Street Energy Commission Project Manager
Sacramento, CA 95814-5512

Subject : **EL SEGUNDO POWER REDEVELOPMENT PROJECT, 00-AFC-14 RESPONSE TO COMMENTS AND ERRATA TO THE FINAL STAFF ASSESSMENT**

After publication of the El Segundo Power Redevelopment Project Final Staff Assessment, various parties submitted comments that addressed concerns and also identified errors and omissions in the document (See attached list).

Energy Commission staff reviewed and considered all comments on the Final Staff Assessment (FSA). In the interest of aiding all parties in preparing for the Committee Workshop, Pre-hearing Conference, and eventual evidentiary hearings, staff has chosen to respond to all comments on the FSA, including those of the other parties.

Enclosed are staff's responses to comments, corrections to errors and omissions and supplemental testimony. This document is being filed to meet the Committee's schedule put forth in the Notice of Prehearing Conference and Scheduling Order of October 7, 2002.

Enclosures
cc: El Segundo Proof of Service
Agency List

COMMENTS SUBMITTED

California Department of Transportation	Agency
9/24/02	
Richard Nickelson	Intervenor
9/29/02	
Residents for a Quality City	Resident
9/29/02	
Los Angeles Department of Water and Power	Agency
9/30/02	
M. Murphy & R. Perkins	Intervenor
9/30/02	
City of Manhattan Beach	Intervenor
9/30/02	
El Segundo Partners II, LLC	Applicant
10/02/02	
National Marine Fisheries Service	Agency
10/04/02	
California Coastal Commission Staff	Agency
10/08/02	
City of El Segundo	Intervenor
10/08/02	
City of Manhattan Beach	Intervenor
10/10/02	
Richard Nickelson	Intervenor
10/13/02	
County of Los Angeles Fire Department	Agency
10/28/02	

EXECUTIVE SUMMARY

STAFF ERRATA

Page 1-5 – In the Overview of Staff's Conclusions Table, change the Environmental / System Impacts entry for Visual Resources:

From: "NO"
To: "Impacts Mitigated"

Page 1-6 – Change **VISUAL RESOURCES** section, first paragraph, second sentence:

From: "Therefore, no significant visual impacts…."
To: "Therefore, few significant visual impacts…."

STATE LANDS COMMISSION COMMENTS DATED OCTOBER 25, 2002

CSLC COMMENT-1: We offer the following comments regarding the discussion of the CSLC in the FSA:
Executive Summary, Page 1-4
Delete the existing paragraph under the heading CALIFORNIA STATE LANDS COMMISSION and replace with the following:

Two sets of intake/outfall lines serve the El Segundo Generating Station. One set of lines serves Units 1 and 2, and one serves Units 3 and 4. These facilities are covered under one 49-year lease (Lease PRC 858.1) issued by the CSLC to **El Segundo Power LLC** that expires October 26, 2002. Upon expiration of the lease, the lease will go into a holdover status, until such time as a decision is made to: (1) enter into a new lease; or (2) not issue a new lease and require removal of all improvements and restoration of the affected areas pursuant to Paragraph 14 of the lease. On August 29, 2002, **El Segundo Power LLC** submitted an application for a new lease. That application is currently being reviewed by CSLC staff for adequacy and to determine the appropriate environmental processing under the California Environmental Quality Act (CEQA). The CEC's regulatory program is functionally equivalent to the preparation of an EIR under the CEQA. Therefore, the CSLC can rely on the FSA in satisfaction of its CEQA requirements.

STAFF RESPONSE: Staff appreciates the update and clarification, and accepts the clarifying language submitted by the CSLC and incorporates it into the FSA. Staff notes that the applicant before the Energy Commission is El Segundo Power II LLC, while the applicant for the lease renewal at the State Lands Commission is El Segundo Power LLC. These are separate corporate entities and will need to

secure the approval from the State Lands Commission for any assignment of the renewed lease from the one to the other.

AIR QUALITY

EL SEGUNDO POWER II LLC COMMENTS DATED OCTOBER 2, 2002

ESP II COMMENT-1: The applicant (ESP II) requested that the Condition of Certification AQ-30 be deleted as it was in reference to equipment that would no longer be used in the same manner once the project construction is completed. This condition requires the proper maintenance and use of the current ammonia storage tank system used for the Units 3 and 4 SCR system. That system will be changed from tank truck delivery and replaced by a pipeline system (from the local Chevron Refinery). Additionally, the Conditions of Certification in the Hazardous Material Section of the Final Staff Assessment are sufficient to regulate the ammonia pipeline.

STAFF RESPONSE: Staff agrees that Condition of Certification AQ-30 is reference to equipment that is used for the Units 3 and 4 SCR system. The Conditions of Certification in the Hazardous Materials section of the Final Staff Assessment are sufficient to regulate the maintenance and use of the proposed ammonia pipeline. The SCAQMD has agreed to remove the condition from the FDOC. Therefore, staff recommends that Condition of Certification AQ-30 be deleted.

CITY OF MANHATTAN BEACH COMMENTS DATED SEPTEMBER 30, 2002

COMB COMMENT-1: Section 10.60.120 of the Manhattan Beach Municipal Code (MBMC) does not allow any use, process, or activity to produce objectionable dust or odors that are perceivable without instruments by a reasonable person at the property lines of a site. With the identified significant PM-10 impacts it is not clear if the project complies with this requirement. The City suggested that the excess PM10 emissions identified by the Commission staff (158 lbs/day) might violate the sited section of their Municipal code.

STAFF RESPONSE: PM10 emissions from a combustion turbine burning only natural gas are not typically considered dust, which typically refers to larger, visible particles. Furthermore, PM10 has no odor. Therefore, it is staff's opinion that this section of the Manhattan Beach Municipal Code does not apply to the ESPR PM10 emissions.

CITY OF EL SEGUNDO COMMENTS DATED OCTOBER 8, 2002

COES COMMENT-1: The FSA does not provide a discussion of the City of El Segundo's proposed conditions AQ31-AQ33. The City noticed that

the FSA specifically addressed two letters received from other parties in its Air Quality analysis but provides no discussion of the merits of the three conditions that have been proposed by the City as a means to improve local air quality.

STAFF RESPONSE: While Energy Commission staff did review and consider all comments on the Staff Assessment (SA), staff did not provide explicit response to all comments from other parties in this case (i.e. the applicant and intervenors, such as the City of El Segundo). The parties to the case have the opportunity to present evidence and cross examine the witness from other parties, including staff. If the City does not agree with staff's testimony in the FSA, the City will have the opportunity during evidentiary hearings to make its case for its proposed conditions and to question staff directly. However, in the interest of aiding all parties in preparing for the Committee Workshop, Pre-hearing Conference, and eventual evidentiary hearings, staff has chosen to respond to all comments on the FSA, including those of the other parties. Staff does not support the Conditions of Certification AQ-31 through AQ-33 as proposed by the City of El Segundo due generally to their lack of mitigation effectiveness.

COES COMMENT-2: Condition of Certification No. AQ-C2 requires the submittal of Fugitive Dust Mitigation Plan 30-days prior to site mobilization. The previous version of this condition (AQ-C3) required the submittal of this plan 60 days prior to site mobilization.

STAFF RESPONSE: Staff modified the time requirement of the submission of the Fugitive Dust Mitigation Plan required by Condition of Certification AQ-C2 to better fit the construction constraints of the ESPR. Staff apologizes for any confusion this may have caused, but recommends that the verification remain as currently proposed, 30 days prior to site mobilization.

COES COMMENT-3: The agreed upon text in the verification section of Condition AQ-5 used to require action prior to the start of commercial operations. This has been modified. The City of El Segundo recommends restoration of the original agreed upon text.

STAFF RESPONSE: Condition of Certification AQ-5 requires source testing for ammonia emissions from the exhaust stacks of the ESPR. This condition and its verification have not been modified from the Preliminary Staff Assessment, and never referred to initial startup or the start of commercial operations. The City was unable to clarify their comment further, therefore staff will make no further response.

COES COMMENT-4: The agreed upon text in the verification section of Condition AQ-6 used to require action prior to the start of commercial operations. This has been modified to "initial startup" which is not a

defined term in the General Conditions chapter of the FSA. The City of El Segundo recommends restoration of the original agreed upon text.

STAFF RESPONSE: Condition of Certification AQ-6 requires source testing for oxygen, CO, SOx, ROG, PM and ammonia no later than 180 days after initial startup. This condition never referred to the start of commercial operation and should not. Initial startup refers to the first time natural gas is injected into the combustion chamber of the combustion turbine. This is also the beginning of the commissioning period. This Condition defines the completion of the commissioning period with the required source testing to prove the emission controls are effective. Therefore, staff recommends the language as currently proposed.

COES COMMENT-5: It is not clear why several of the emission limits used in Conditions AQ-9 and AQ-11 have changed since the previous version of the conditions that were reviewed by all parties.

STAFF RESPONSE: Minor modifications were made in the emission limits of Conditions of Certification AQ-9 and -11 to reflect minor changes in the project assumptions. These modifications were generally more restrictive with the exception of PM10, which was increased from 11 lbs/hr to 15 lbs/hr (which will be fully mitigated). These changes were incorporated in the Final Determination of Compliance issued by the South Coast Air Quality Management District (SCAQMD) on February 14, 2002, and have been incorporated by staff into the FSA.

RICHARD G. NICKELSON COMMENTS DATED OCTOBER 13, 2002

Richard G. Nickelson made several comments regarding Environmental Justice, the use of PM10 Priority Reserve Credits and Emission Reduction Credits to mitigate the ESPR emission impacts in a letter to the Energy Commission staff dated October 13, 2002.

NICKELSON COMMENT-1: Mr. Nickelson commented on staff's comparison of the maximum project PM10 impacts at Manhattan Beach to those of the closest environmental justice population (EJP) in Hawthorne. Mr. Nickelson notes that modeling shows the project's maximum impacts in Manhattan Beach to be 42 times higher than those on the EJP, and expressed concern that "it is acceptable to expose Manhattan Beach families to PM 10 at levels greater than 42 times agreeable to EJP standards for low income or minority communities

STAFF RESPONSE: Staff's comparison of modeled PM10 impacts in Manhattan Beach was not to a standard of acceptable impacts to an EJP, but to the modeled impacts to the closest EJP. The modeled impact levels in Hawthorne do not represent a standard against which impacts are evaluated. Staff included the comparison solely to show that this case does not disproportionately affect any environmental justice community

NICKELSON COMMENT-2: Mr. Nickelson raises two other issues in his comments. First, ESP II has not stated definitively that they will mitigate the ESPR PM10 emissions with 23 lbs/day of purchased emission reduction credits (ERCs) and 293 lbs/day of Priority Reserve Credits (PRCs) that they will purchase from the South Coast Air Pollution Control District (District). Secondly, Mr. Nickelson is concerned that the ESPR PM10 emissions will be mitigated with emission reductions that have no local component to the Cities of Hawthorne, Manhattan Beach or El Segundo. Mr. Nickelson suggests that these emission impacts and mitigation may have a deleterious effect on the health and well being of the Citizens of Hawthorne, Manhattan Beach and El Segundo as well as the value of real estate. Mr. Nickelson identifies several people who were residents of El Porto who have recently died of cancer and several other El Porto citizens that are currently being treated for cancer.

STAFF RESPONSE: Mr. Nickelson is correct in that ESP II have only implied their intention to surrender the ERCs and use the PRCs, and have not stated that that is in fact their intention. Prior to the ESPR hearings, Energy Commission staff will craft a Condition of Certification requiring the surrender of the identified ERCs and proof of the PRCs being withdrawn from the District Bank. Additional information from SCAQMD is required prior to staff drafting an appropriate condition.

The PM10 emissions from the ESPR are a maximum of 615 lbs/day and are currently to be mitigated in part by 23 lbs/day of ERCs purchased by ESP II. In accordance with District Rule 1304 (offset exemptions), ESPR qualifies for an exemption from the requirement to fully mitigate all of the ESPR emissions from the facility (with the exception of NOx). Additionally, ESPR is a qualified generating facility under District rule 1309.1, thus entitling them to access the PRC to the limit imposed by the District. These two rules have two different, but similar effects. Similar in that providing the emission reductions becomes the responsibility of the District, not the applicant. Different in that they use two different paths to the same pool of emission reduction credits that the District will use, known as the District Account.

The District Account is a pool of credits that are not tracked beyond their emission reduction value, thus there is no location information available other than they are from the South Coast Air Basin. Once a credit enters the District Account it is added to the pool as a sum of the total, so that when the District disseminates credits from the District Account there is no possibility of tracing it back to the actual emission reduction. Thus, when the District disseminates 293 lbs/day of PM10 credits from the District Account (via the Priority Reserve) for the ESPR, the District will not be able to identify the location, age or actions taken that originally created the emission reductions. The District will only be able to state that it will be 293 lbs/day in total and will be from somewhere within the District boundaries.

Staff has recommended accepting these PRCs from the District Account based on the consideration that they are part of a large system. That system encompasses emission reductions and increases from across the District boundaries. The emission reductions are created from the same general areas and sources as the emission increases. Thus, while it is true that no one emission increase can be connected to any specific emission reduction, taken as a whole the program will tend to balance out. Therefore, staff is reasonably confident that the District Account system is sufficient to mitigate both regional and local emission impacts. The same general argument can be made for the ERCs, that while they are more specific (and not local in this case), that they are part of a larger system that does have a local component. As stated earlier, staff does have concerns about the amount of ERCs and PRCs that will be surrendered. Staff intends to address those concerns with appropriate Conditions of Certification upon receipt of documentation from the South Coast Air Quality Management District.

BIOLOGICAL RESOURCES

EL SEGUNDO POWER II LLC COMMENTS DATED OCTOBER 2, 2002

ESP II COMMENT-1: Though Energy Commission staff did not propose any biological conditions of certification, ESP II proposes the following condition. BIO-1 is intended to ensure that the Energy Commission is fully aware of future studies that ESGS will be required to complete by the Los Angeles Regional Water Quality Control Board.

Applicant's Proposed Condition of Certification
BIO-1 Applicant will perform impingement and entrainment studies on intake #1 at ESGS, and any other studies that may be required by the LARWQCB in accordance with pending changes to the Clean Water Act implementing rules for existing facilities, when such final rules are enacted and at a time when such a study is required. Applicant will provide the study protocol and the results of the study to the CPM.

STAFF RESPONSE: In the FSA, staff has testified that there are significant adverse cumulative and potentially significant direct impacts from the use of the once-through system. Unless the applicant modifies the project to avoid those impacts, staff recommend that the project not be certified until appropriate site-specific studies are completed. Such studies would allow evaluation of the scale of the impacts and what, if any, mitigation will be feasible to reduce the impacts to less than significant levels. Therefore, staff disagrees with this proposed Condition.

ESP II COMMENT-2: ESP II finds the alternative cooling proposal to be an increased burden on ESPR that would render the project unviable. The cost of the pipeline and its maintenance contribute to that. The cost of the water also contributes. Most significantly, however, is the cost of

building a condenser designed to handle warmer secondary water without bio-fouling or significant efficiency and performance losses.

Additionally, there are several elements that add a significant degree of regulatory and operational risks. Foremost among these is the significant and huge undertaking involving the pumping of secondary wastewater several miles, heating and discharging it to the ocean. Ultimately, the added regulatory uncertainty and operational complexity pale in comparison to the use of the readily available sea water. The fact that this project does not propose to create a new sea water system, but simply makes use of an existing operating system further solidifies the ESP II's rejection of the proposed system.

Nevertheless, ESP II is appreciative of the Energy Commission staff's efforts to attempt to find a resolution to the disagreement over the quality and usability of the entrainment data. In this case, however, ESP II feels that the appropriate course of action is to submit the contested data issues to the Committee. ESPR was designed as a repowering project making use of existing resources to the maximum extent possible. The best heat sink for ESPR continues to be the existing cooling system.

STAFF RESPONSE: Comments noted.

NATIONAL MARINE FISHERIES SERVICE COMMENTS DATED OCTOBER 4, 2002

NMFS COMMENT-1: The National Marine Fisheries Service (NMFS) provided corrections to the official name of the Magnuson-Stevens Fishery Conservation and Management Act and to the section of the act that authorizes NMFS to provide Essential Fish Habitat (EFH) Conservation Recommendations.

STAFF RESPONSE: Errors noted and corrected below:

Page 4.2-3 and 4.2-38, Change

From: "Magnuson-Stevens Fishery Management and Conservation Act"
To: "Magnuson-Stevens Fishery Conservation and Management Act"

Page 4.2-3 and 4.2-38, Change

From: "Section 395(b)(4)(A)"
To: "Section 305(b)(4)(A)"

NMFS COMMENT-2: The FSA states that NOAA Fisheries "has recommended that prior to licensing the Applicant [must] complete an entrainment and impingement study similar to those done at Moss Landing, Morro Bay, Diablo Canyon and Potrero power plants, and if that study finds significant impacts, mitigate for those impacts." NOAA Fisheries does recommend that the Applicant complete a scientifically

reliable entrainment and impingement study prior to licensing. If the study finds significant impacts, NOAA Fisheries believes that the Applicant should take all feasible measures to avoid the impact, rather than mitigate. Only if avoidance were deemed infeasible would NOAA Fisheries recommend mitigation as a means to offset adverse impacts to EFH.

STAFF RESPONSE: Comments noted and accepted, see correction below.

Page 4.2-38, 1st Full Paragraph, 2nd Sentence, Change to read

> "Under these circumstances, the NMFS has recommended that prior to licensing the Applicant complete an entrainment and impingement study similar to those done at Moss Landing, Morro Bay, Diablo Canyon and Potrero power plants, and if that study finds significant impacts the Applicant should take all feasible measures to avoid the impact, rather than mitigate. Only if avoidance were deemed infeasible would NOAA Fisheries recommend mitigation as a means to offset adverse impacts to EFH. ~~, mitigate for those impacts.~~"

CITY OF EL SEGUNDO COMMENTS DATED OCTOBER 8, 2002

COES COMMENT-6: The City of El Segundo concurs with the FSA determination that additional studies are necessary to determine the impacts of the project on marine resources and that these studies should be completed prior to certification.

STAFF RESPONSE: Comment noted.

CALIF. COASTAL COMMISSION STAFF COMMENTS DATED OCTOBER 8, 2002

CCC COMMENTS-1: Marine Biological Resources. The Coastal Commission staff generally concurs with the FSA's determination that the project's currently proposed use of seawater for cooling would cause unmitigated adverse biological impacts, primarily due to ongoing and increased entrainment of biological organisms. We further agree that these impacts would be significant, due to the proposal's increased water use (approximately three times the current use – from a current rate averaging 50 to 70 million gallons per day to a proposed rate of 207 million gallons per day), and due to the proposal extending the life of the facility and its associated impacts for approximately 50 years. We also concur with the FSA's conclusion that the applicant has not yet provided adequate information about how best to avoid or mitigate this aspect of the proposed project. Even with the current inadequate information, we believe the two options presented in the FSA for moving forward on this proposed project – requiring alternative cooling or requiring an entrainment/impingement study – would ensure either that the necessary information is provide or the impact is avoided.

STAFF RESPONSE: Comments noted and staff concurs.

CCC COMMENTS-2: Alternative Cooling Option. Both CEQA and the Coastal Act emphasize that the first step of mitigation is to avoid impacts, and to then mitigate by reducing or compensating for impacts only after all feasible methods of avoidance are put into place. Therefore, we believe the alternative cooling proposal should be the primary option evaluated as part of this review. We note that the comments from NMFS also express this preference.

Based on the information available to date, it appears this significant adverse entrainment impact can be avoided entirely through the use of the alternative cooling option evaluated by the Energy Commission staff. We recognize that many aspects of the proposed alternative cooling system remain conceptual or require further evaluation before it can be deemed complete. However, given that the proposed system would completely eliminate what is the most significant adverse environmental impact of the proposed project, we believe it is worth the additional evaluation.

This approach of using water other than seawater is of particular importance given the impaired status of Santa Monica Bay and the NMFS comments regarding the decline of Pacific coast groundfish stocks in the area, which are in part affected by the ESGS intake. The approach also supports regional and state interests in using reclaimed water where possible. Part of the reason this alternative cooling option is feasible is due to the location of both the Hyperion Treatment Plant and the ESGS facility at similar elevations along the coast. The elevation difference between the two facilities is minimal and allows water to be pumped to and from each facility with little of the additional energy cost that might be incurred for proposed reclaimed water uses

In addition to the FSA, we reviewed the comment letter from the LADWP. We note many of their comments address specific elements of the proposal that will have to be evaluated further, including issues such as the impact of thermal discharges from ESGS on the Hyperion outfall structure, the regulatory and legal issues associated with combined discharges, the costs of the proposal, and others. We largely concur with these comments, as they are the types of concerns that will need to be part of the additional feasibility analysis for the proposed alternative system.

STAFF RESPONSE: Comments noted and staff concurs.

CCC COMMENTS-3: Necessary Entrainment/impingement Study. The FSA evaluates the existing studies and information regarding entrainment and impingement impacts, and identifies significant deficiencies in the studies applied to the ESGS facility. We concur with the FSA's evaluation, and we concur with its conclusions that the available entrainment studies are inadequate and that ESGS's entrainment impacts are likely significant.

Requiring a new study would also ensure consistency with other recent Energy Commission reviews for coastal power plant projects at Moss Landing, Morro Bay, etc, all of which have recently completed entrainment studies to replace out-of date information similar to that used in the past at ESGS, and all of which identified significant adverse impacts to local marine resources.

STAFF RESPONSE: Comments noted and staff concurs.

CITY OF LOS ANGELES LADWP COMMENTS DATED, SEPTEMBER 30, 2002

LADWP COMMENT-1: While the Energy Commission staff has focused on the upfront need for site-specific entrainment and impingement (E/I) data in order to develop mitigation, the United States Environmental Protection Agency (EPA) has taken a different approach. EPA's proposed rule for existing cooling water intake structures does not require existing plants to retrofit with alternative cooling systems. Rather, EPA envisions that existing facilities will be allowed to demonstrate compliance with EPA's proposed performance standards for E/I reductions. Since the beginning of the rulemaking process, EPA has consistently rejected the notion of determining best available technology on a site specific basis, as outlined in the 1977 Draft Guidance Document, and has, instead, advocated the establishment of a national standard. In expressing impact concerns due to cooling water intake structures, EPA predominately focuses on cumulative impacts to fishery stocks and ecosystem-level structural changes.

Consistent with this concept, EPA proposes to require facilities to establish baseline E/I calculations, not on a facility-specific basis, but based on a hypothetical shoreline facility with no control technology. (This approach is similar to what the Project has done already.) It is subsequently the facility's responsibility to demonstrate compliance with EPA's performance standard by contrasting the baseline against a facility-specific Demonstration Study. The results of the Demonstration Study will either conclude that the facility is meeting the performance standards or will require mitigation (i.e., the installation of new technology, operational changes, restoration measures, or any combination thereof [The use of operational changes or restoration measures to meet the performance standards is at the discretion of the permittee.]) Thus in contrast to the Energy Commission approach, EPA allows modifications (repowering) so long as the performance standards are met in whatever way the facility chooses to do that. Unlike the Energy Commission staff, which has concluded that data is needed upfront to develop mitigation prior to repowering, EPA requires the facility to demonstrate compliance with the performance standards, period. Whether the mitigation is before or after repowering, the fact remains that the performance standards must be met.

Consequently, LADWP believes that it is premature for the Energy Commission to be focusing on a specific mitigation measure and that at a minimum, the Energy Commission should be consistent with the EPA philosophy of looking at ecosystem level impacts. The Project should be allowed to move forward with the requirement to implement the provisions of the final Cooling Water Intake Rule. LADWP believes that should the final rule include a requirement to conduct a Demonstration Study, or any similar requirement, this will address many of the concerns expressed by the Energy Commission staff in their FSA. At this time, LADWP does not concur that identifying a specific mitigation measure, namely abandonment of the once-through cooling system for the use of reclaimed water, before the applicant has the opportunity to comply with the final rule is appropriate.

STAFF RESPONSE: Staff does not concur with the comments in the LADWP letter related to entrainment and impingement impacts and the necessary mitigation measures. LADWP's comments focus entirely on speculative **federal** regulatory requirements under the Clean Water Act, and fail to consider any **existing state legal mandates**, including the requirements of the California Coastal Act, the Warren-Alquist Act and CEQA.

The LADWP letter recommends that mitigation not be required at this point in the review, due to the possibility that a new federal Environmental Protection Agency (EPA) rule, currently in draft form, will address the issue. The current schedule is for the final rule to be issued in February 2004.

The LADWP's comments make reference both out of context and contradictory to the federal EPA proposed Phase II rules, and fail to even recognize the requirements of the California Environmental Quality Act, Warren-Alquist Act, and other state laws such as the Coastal Act, as is required in Energy Commission decision-making. For instance, the FSA's finding of the facility's significant adverse impacts from the use of ocean water is based largely on CEQA requirements and previous Energy Commission determinations, not on a draft EPA rule. The LADWP comments do not recognize the FSA's analysis showing that the continued and expanded use of ocean water would result in significant adverse impacts to aquatic biota.

The LADWP comments also depend on the speculative future adoption of a draft EPA rule. It is inappropriate to base a regulatory decision on a draft rule. Not only does such a decision ignore the legal requirements of an agency to implement existing rules and regulations, it does not recognize the very likely possibility that the language in a draft rule may change significantly by the time it becomes final. For example, last year's final EPA rule for new cooling water intake structures differs significantly from the draft rule, largely due to the extensive comments provided by the various concerned parties. There is reason to believe the final Phase II

rule for existing intake structures, if and when it is issued, will differ significantly from the current draft rule.

Finally, LADWP acknowledges in its letter that "It is subsequently the facility's responsibility to demonstrate compliance with EPA's performance standard by contrasting the baseline against a facility-specific Demonstration Study. The results of the Demonstration Study will either conclude that the facility is meeting the performance standards or will require mitigation (i.e., the installation of new technology, operational changes, restoration measures, or any combination thereof." Energy Commission Staff, the California Coastal Commission, California Department of Fish and Game, and the National Marine Fisheries Services have all recommended that the applicant perform a 316(b)-like facility-specific Demonstration Study now rather than wait until they get around to doing whatever studies will be required by future 316(b) regulations when the final rule is issued.

LADWP COMMENT-2: With respect to the proposed mitigation measure of using secondary effluent for cooling, the LADWP and the Los Angeles Bureau of Sanitation (BOS) have a number of concerns. The BOS continues to express its concerns regarding the unknown impact the thermal discharge may have on the concrete Five-Mile Discharge Outfall. The outfall structure must not suffer any damage due to the thermal discharge. The Energy Commission must require that the Project conduct a study on the potential effects, if any, from the thermal discharge on the outfall structure. The BOS should have the opportunity to review and comment on the study.

Any usage of the outfall structure should not violate the Hyperion Treatment Plant (HTP) National Pollution Discharge Elimination System (NPDES) permit, nor impact HTP's ability to comply with its NPDES permit. The FSA, while addressing the addition of chemicals (namely chlorine) for biofouling control (page 4.2-AppA-16), has left unaddressed where the inplant process wastewater will be discharged. Typically power plants discharge this wastewater along with its once-through cooling water. This wastewater contains pollutants of concern. For this reason, the Project's cooling water should be conveyed and discharged in such a way as to not impact on the HTP's NPDES legal sample point by having their own independent one. While the Energy Commission staff speculate that the thermal plume discharged from the outfall will not impact the surrounding marine environment, BOS believes that a study should be conducted to specifically address this concern. It is BOS' position that it should have no legal wastewater quality responsibility for the proposed mitigation project, including any cumulative or synergistic impacts created solely do to the presence of a thermal component to the discharge.

The BOS requests that the Project address the potential for a shortfall of reclaimed water. The West Basin Municipal Water District (MBMWD) currently uses about 30 million gallons per day (MGD) of the HTP effluent

as reclaimed water. Studies done jointly by LADWP and BOS, and independently by the Federal Bureau of Reclamation, show the demand for only 100 MGD by the year 2020. As HTP currently produces about 360 MGD of effluent daily, there is generally no problem meeting the proposed mitigation measure's demand on a daily basis. However, there are problems for about six hours a night when the HTP flow falls below the combined WBMWD and Project demands. Offsite storage or some other solution must be considered to handle this shortfall. The BOS will be neither obligated to the Project, nor liable for, any shortfalls or interruptions of secondary effluent supply.

STAFF RESPONSE: Staff concurs that additional studies are needed and stated as such in the FSA.

LADWP COMMENT-3: LADWP's final comments reiterate the need for various studies, contractual negotiations and their authority to control the flow of reclaimed water.

STAFF RESPONSE: Comments noted. The feasibility of the alternative cooling option depends on the applicant's ability to get a reliable long-term contract for the water.

STAFF ERRATA

Page 4.2-App.A-38 INSERT TABLE 2

EL SEGUNDO COOLING OPTIONS TABLE 2
Conversion Table – Large Volume Flows

The tables are computed by applying the following formulas:

mgd * 694.444 = gpm
gpm * .00144 = mgd
mgd * 1120.412 = afy

gpm is gallon per minute
mgd is million gallons per day
afy is acre-feet per year

gpm	mgd	afy	mgd	gpm	afy
10,000	14	16,130	10	6,944	11,201
20,000	29	32,260	30	20,833	33,604
40,000	58	64,520	60	41,667	67,208
60,000	86	96,780	90	62,500	100,813
80,000	115	129,040	100	69,444	112,014
100,000	144	161,300	130	90,278	145,618
120,000	173	193,560	160	111,111	179,223
140,000	202	225,820	190	131,944	212,827
160,000	230	258,081	200	138,889	224,028
180,000	259	290,341	207	143,750	231,869
200,000	288	322,601	220	152,778	246,431
220,000	317	354,861			

FACILITY DESIGN

CITY OF EL SEGUNDO COMMENTS DATED OCTOBER 8, 2002

COES COMMENT-28: The FSA does not include the previously agreed upon condition **GEN-11**, which required the provision of an on-site construction trailer for the use by the CBO.

STAFF RESPONSE: Comment noted. During final preparation of the FSA, staff determined that this condition was not appropriate for inclusion because the decision to have a trailer on-site will be made by the CBO.

GEOLOGY & PALEONTOLOGY

CITY OF EL SEGUNDO COMMENTS DATED OCTOBER 8, 2002

COES COMMENT-29: Condition GEO-1 is missing the verification heading in the body of the condition

STAFF RESPONSE: On review of the FSA, staff discovered that the verification heading was missing from Conditions GEO-1 through GEO-5. Staff amends it's proposed Conditions to include the verification heading as follows:

For GEO-1, the verification heading belongs at the start of the first full paragraph on page 5.2-9 ("At least 30 days…"). [and so on for the remaining conditions.]

COES COMMENT-30: Condition GEO-6 is formatted to contain a protocol while the protocol section of other conditions has been removed.

COES COMMENT-31: Condition PAL-2 is formatted to contain a protocol while the protocol section of other conditions has been removed.

STAFF RESPONSE: Items noted and protocol headings deleted.

HAZARDOUS MATERIALS MANAGEMENT

CITY OF EL SEGUNDO COMMENTS DATED OCTOBER 8, 2002

COES COMMENT-7: It is the City's understanding that the previous recommendation to require a sprinkler system adjacent to the ammonia pipeline crossing of Vista Del Mar as part of Condition HAZ-3 had been accepted by all parties. However, this safety feature, recommended by the El Segundo Fire Department, is not incorporated into HAZ-3.

STAFF RESPONSE: Staff included in Condition of Certification **HAZ-3** with a provision requiring the Applicant to provide backup safety devices to avert and mitigate any accidental ammonia releases from the aqueous ammonia pipeline. The applicant and the City of El Segundo, in past workshops related to this project, have acknowledged and accepted the need for safety backup. However, a specific device such as a sprinkler system was not targeted given the preliminary design stage of the project.

The pipeline will pass through an existing underpass at Vista Del Mar Boulevard as part of its route. The Boulevard is a north-south secondary arterial four-lane undivided roadway. Therefore, the public can be potentially exposed to ammonia vapors in the event of a pipeline leak at the underpass.

Staff recommends that the provision relating to backup safety devices be revised, as shown below, in order to clarify the provision. Further, it is staff's opinion that it is more appropriate to list an array of alternatives instead of specifying a particular backup device, i.e. sprinkler system, pending the final design of the pipeline.

HAZ-3 The project owner shall revise the existing CalARP Program Risk Management Plan (RMP). Similarly, the project owner shall also revise its existing RMP pursuant to the USEPA RMP Program. Both RMPs shall be expanded to include discussions to prevent and control the accidental release of ammonia from the pipeline. Those discussions shall elaborate on the various safety devices selected

for the pipeline including double sleeve construction, provisions for backup safety devices, protective shut-in actions, emergency support systems, monitoring programs and personnel training, as a minimum. The shut-in actions shall include responses to pipeline overpressures and also leaks. Backup safety devices to be considered for the pipeline shall include sprinklers, sprays, deluge systems or equivalent systems. Special emphasis shall be placed on the deployment of such devices in the vicinity of the overpass at Vista Del Mar Boulevard in order to eliminate any vulnerabilities at that location.

LAND USE

CITY OF EL SEGUNDO COMMENTS DATED OCTOBER 8, 2002

COES COMMENT-8: "Land Use Table 1 includes two projects that do not exist. There is no Class A office space project totaling 3.5 million square feet under environmental review, in plan check, or under construction in El Segundo. There is also no 2.5 million square foot mixed-use project on the west side of the City for which an EIR is being prepared."

STAFF RESPONSE - The information on these projects was found on the City's website for the El Segundo Planning Division during August 2002, specifically the El Segundo Planning Division Goals & Objectives FY 2001/2002 and Accomplishments FY 2000/2001 web pages. Staff appreciates this more recent information from the City, and staff has provided a revised Land Use Table 1 that deletes reference to a 3.5 million square foot project and a 2.5 million square foot project in accordance to the City's comment. The revised table is included following **COMB COMMENT-2** below.

COES COMMENT-9: "The FSA does not contain the previous Condition **LAND-2**, which referred to the 1.2-acre public use area at the southwest corner of the property that was agreed to by all parties."

STAFF RESPONSE: Staff does not recall final agreement on this item by all parties as the City states in its comment. The original proposed **LAND-2** Condition of Certification found in the Energy Commission's Staff Assessment (SA) dated June 15, 2001 stated that *"The project owner shall provide not less than 1.2 acres of land to be established for public use subject to the approval of the California Energy Commission…."* This condition was the subject of debate. Staff's notes and the written comments from the parties made at the Energy Commission's workshop conducted on July 17-18, 2001 show that the amount of land to be provided and who was to maintain the property were unresolved issues. At that time the City had requested that 7 acres be established for public use and offered to the City. Staff and the project owner could not support this request for various reasons. Since the July, 2001 workshop staff has

prepared a revised condition of certification after review of written comments received from the California Coastal Commission and the cities of El Segundo and Manhattan Beach and the result of technical work and coordination between the Energy Commission's visual resources and land use units. The resulting revised condition of certification that is now being recommended by staff requires the project owner to prepare a landscape plan for the power plant facility. The plan includes moving the existing perimeter fence located along the west and south property lines. The fence relocation will allow an approximate 1.3 total acres to be landscaped within this area of the facility. The landscaping within this area will include the installation of several park style benches for public use that will front the existing bike path and beach walk. The landscaping plan is to be submitted to the City of El Segundo and the City of Manhattan Beach for review and comment in accordance to Condition of Certification **VIS-2**. See proposed Conditions of Certification **VIS-2** under the Visual Resources section and the revised **LAND-11** below. **LAND-11** has been revised to include the term "public use area" in the condition. The "public use area" is to be shown and identified on the landscape plan. Staff offers the following changes to the text and the Condition to address this comment.

> At the top of page 4.5-11, third line, under title Warren-Alquist Act – Establishment of Area For Public Use, change the end of the first complete sentence as shown below.
>
> The public use land area(s) will continue to be owned and maintained by the applicant <u>(see **LAND-11**).</u>

Revise the condition as shown below.

LAND–11 The project owner shall provide copies of the final perimeter landscape plan(s) to the CPM. Said landscape plans shall <u>show and identify the area to be designated for "public use."</u> ~~Said landscape plan(s) shall include the installation of~~ <u>The project owner shall install</u> ~~public~~ park type benches <u>for public use</u> ~~along the west border of the ESGS property~~ <u>within the public use area designated on the final perimeter landscape plan.</u>

<u>Verification:</u> <u>The public park type benches shall be installed</u> <u>p</u>ursuant to the schedule contained in Visual Resources Condition~~s~~ of Certification **<u>VIS-2</u>**<u>.</u> ~~the project owner shall submit copies of the proposed perimeter landscaping plan to the City of El Segundo and the City of Manhattan Beach for review and comment and to the CPM for review and approval.~~

COES COMMENT-10: "The El Segundo Municipal Code (ESMC) references in **LAND-2** and elsewhere throughout the FSA should be revised to reflect the recodification of the ESMC, which renumbered all

code sections. The reference in **LAND-2** should be to Title 8, Chapter 5 and Title 15, Chapter 15, which both contain parking requirements."

STAFF RESPONSE: Staff has updated the references to the El Segundo Municipal Code in the land use analysis to correspond with the renumbered codes that are shown on the City's website. Staff offers the following changes to Condition **LAND-2** and to the text of the FSA.

LAND-2 Modify the reference at the end of the first sentence as follows: (Title 8, Chapter 5 and Title 15, Chapter 15).

Page 4.5-13 – Local Coastal Program

Under subtitle Local Coastal Program, second paragraph, revise the fourth sentence as shown.

(Section ~~20.42.030~~ 15-6B-7 (3) El Segundo Zoning Ordinance).

Page 4.5-13 – Zoning

Under subtitle Zoning, second paragraph, revise the first sentence as shown.

Title 15, ~~20 Zoning~~ Chapter 6, ~~20.41~~ Article B - Heavy Industrial (M2) Zone District, Section 15-6B-7(c) ~~20.41.060(c~~) Height

Under subtitle Zoning, second paragraph, revise the third sentence as shown.

Exhaust stacks are subject to Title 15, ~~20 Zoning~~ Chapter 2, ~~20.12 Chapter 20.12 General Provisions~~ Section 15-2-3 ~~20.12.030~~ Exceptions to Building Height,

COES COMMENT-11: "The agreed upon text of LAND-4 and several other conditions throughout the FSA has been revised to eliminate the City's role to "review and comment" on many important aspects of the project before approval by the Compliance Project Manager (CPM). The "comment" role in these conditions is vital for El Segundo to be involved as the project progresses. Additionally, the applicant did not object to the City's review and comment role on this condition and many others."

STAFF RESPONSE: Staff has reviewed the existing proposed conditions of certification **LAND-1** through **LAND-11** and concludes that the City is not correct. The conditions of certification have appropriately identified either by name the City of El Segundo or by use of the phase the "local government of jurisdiction" to identify the City as a reviewing party.

CITY OF MANHATTAN BEACH COMMENTS DATED 9/30/02 and 10/10/02

COMB LAND USE COMMENT-1: "Page 4.5-13- The Local Coastal Program (LCP) for the City of El Segundo indicates that the permitted uses in the zone shall not be objectionable due to dust, smoke, etc. Since the Air Quality section of the Staff Assessment indicates that there are significant unmitigated air quality (PM-10) impacts we believe that the project is inconsistent with the LCP."

STAFF RESPONSE: City staff is correct in saying that the Air Quality technical section has determined that the ESPR project without mitigation for PM-10 will generate a significant effect under CEQA. However, at the same time the City of Manhattan Beach in their statement is equating PM-10 emissions to that of smoke, odor and/or dust. Staff does not believe that PM-10 can be properly categorized with the items identified in the stated City of El Segundo LCP policy. Regardless, the question the City presents involves an air quality issue; therefore staff defers this determination to the Energy Commission's Air Quality technical unit and any mitigation measure discussion.

The City's comment also addresses the project's consistency with the City of El Segundo's Local Coastal Program (LCP). Staff recognizes that the California Coastal Commission has the lead responsibility for determining a power plant's consistency and suitability with the California Coastal Act; as such, the Coastal Commission is required under the Coastal Act to prepare a consistency and suitability report to the Energy Commission. The consistency and suitability report is to include findings on the "conformance of the proposed site and related facilities with the certified coastal programs (El Segundo LCP) in those jurisdictions which would be affected by any and such development [and] the degree to which the proposed site and related facilities could reasonably be modified so as to mitigate potential adverse effects on coastal resources, minimize conflict with existing or planned coastal-dependent uses at or near the site, and promote the polices of this division."

The Coastal Commission has not provided the Energy Commission their final consistency/suitability report pertaining to land use. It is expected that this report will be submitted November 6, just prior to the project's evidentiary hearings.

COMB LAND USE COMMENT-2: "Page 4.5-20- Table 1 shows Metlox in the City of Manhattan Beach as 220,000 SF. The correct square footage is 63,000 for Metlox and 57,000 for the Public Safety Facility."

STAFF RESPONSE: Staff offers the following changes to Land Use Table 1 on page 4.5-20 of the FSA to reflect the correct square footage for the buildings provided by the City of Manhattan Beach and the corrections suggested by the City of El Segundo in comment 8.

LAND USE Table 1

Development	Size (approx.)	Location	Jurisdiction	Status
~~**Class A office space**~~	~~3.5 million sq. ft.~~	~~City-wide~~	~~El Segundo~~	~~Portions currently in environmental review plan check or under construction.~~
Grand Ave Corporate Center	Includes two hotels, a health care facility, and two office buildings	North side of the City	El Segundo	City has completed permitting of the project.
~~**Mixed-use Development**~~	~~2.5 million sq. ft.~~	~~West side of City~~	~~El Segundo~~	~~An EIR is currently being prepared for the project.~~
El Segundo Corporate Campus	2.5 million sq. ft.	Unknown	El Segundo	An EIR is currently being prepared for the project.
Civic Center/Metlox Development Project	~~220,000 sq. ft.~~ Metlox - 63,000 sq. ft. Public Safety Facility – 57,000 sq. ft.	Downtown Commercial District	Manhattan Beach	The City is completing permitting on the project.

COMB LAND USE COMMENT-3: "Condition of Certification LAND-4, under Verification, the second paragraph, the City has requested that they also have the opportunity to review and submit written comments on the lay down/staging area. The condition as written only allows the City of El Segundo and the California Coastal Commission to provide written comments. The City of Manhattan Beach is only offered the opportunity to view the plot plan and location map showing the lay down/staging area but not to provide written comment(s)."

STAFF RESPONSE: Staff offers the following revision to **LAND-4**, under Verification, second paragraph (see **LAND-4**) to allow the City of Manhattan Beach and other affected cities the opportunity to provide written comments on the lay down/staging area. Staff has also added language to clarify that this information shall be provided to the CPM for review and approval.

LAND-4 Under **Verification** the following paragraphs are revised accordingly.

Verification: At least 30 days prior to the start of site mobilization, the project owner shall provide to the CPM for review and approval the secured lay down and staging area(s).

The project owner shall provide a plot plan and location map showing the lay down/staging area(s) to the CPM for review and approval and to the affected local ~~government of~~ jurisdiction(s) (i.e. County of Los Angeles, the City of El Segundo, City of Manhattan Beach, etc.) planning department(s) and to the California Coastal Commission if located within the State designated Coastal Zone for review and comment.

If the project owner requires additional off-site lay down/staging area, the project owner shall file a request for an amendment to their permit with the CPM.

The affected local ~~government of~~ jurisdiction(s) and the Executive Director of the California Coastal Commission if applicable shall have 30 calendar days to provide written comments to the CPM on the lay down/staging area(s).

COMB LAND USE COMMENT-4: "City staff has identified from review of their notes taken during the July 17 and 18, 2001 Energy Commission workshop on the project and review of their suggested revisions to the proposed land use Conditions of Certification for the project dated August 29, 2001 that they had docketed, a suggested condition of certification was not addressed in the land use analysis. The proposed condition pertained to the project owner maintaining public access along the bicycle pathway that borders the El Segundo Generating Station. Project construction activity is not to prevent public use of the bicycle path. The condition also stated that any damage to the bike path cause by construction activity is to be repaired by the project owner."

STAFF RESPONSE: Staff did not have written notes regarding this matter from the July 17, 2001 workshop. Nevertheless, the proposed condition supports the goal of the California Coastal Act, and the California Coastal Commission and the Los Angeles County Department of Beaches and Harbors goal for maintenance of public access. The following errata and new Condition of Certification **LAND-12** has been added.

Page 4.5-10 – Coastal Access

Under subtitle Coastal Access, insert the following at the end of the first paragraph after the period.

Staff has proposed a Condition of Certification **LAND-12** that requires the applicant to maintain public access along the Class 1 bicycle path that borders the facility.

LAND-12 Project pre-construction and construction activity shall not prevent public use of the County maintained Class 1 bicycle path. The project owner shall maintain public access along the bicycle path that borders the El Segundo Generating Station.

The project owner shall repair any damage to the bicycle path that is caused by pre-construction and construction activities conducted for the project.

Verification: The project owner shall complete any repair to the bicycle path pursuant to the schedule contained in Visual Resources Condition of Certification **VIS-3**.

The CPM, the designated representative of the affected local jurisdiction(s) and the designated representative of the Coastal Commission may conduct random site visits to verify compliance with the **LAND-12**. Also, the CPM will investigate filed complaints to ensure compliance.

CALIF. STATE LANDS COMMISSION COMMENTS DATED OCTOBER 25, 2002

The CSLC offers the following comments regarding the discussion of the CSLC in the FSA:
CSLC LAND USE COMMENT-1:
PAGE 4.5-3

> Delete the reference to § 6701-6706 in the heading and replace with § 6216 & 6301.
>
> Delete the second paragraph that begins, "Any person who uses or occupies …", and replace it with the following:
>
> "The California State Lands Commission shall exclusively administer and control all such lands, and may lease or otherwise dispose of such lands, as provided by law, upon such terms and for such consideration, if any, as are determined by it."

STAFF RESPONSE: Staff concurs with the proposed language changes.

CSLC LAND USE-COMMENT-2:
PAGE 4.5-12

> Delete the first paragraph.
> Delete the second paragraph and replace it with the following:
>
> The two intake/outfall structures that serve the El Segundo Generating Station property are located on tide and submerged lands under the jurisdiction of the California State Lands Commission (CSLC). El Segundo Power LLC has an lease with the CSLC that expires October 26, 2002. At that time, the lease will go in holdover status, until such time as a decision is made to: (1) enter into a new lease; or (2) not issue a new lease and require removal of all improvements and restoration of the affected areas pursuant to Paragraph 14 of the lease. On August 29, 2002, El Segundo Power LLC submitted an application for a new lease. The application acknowledges that, "If the repowering proceeds, El Segundo Power LLC will transfer the appropriate portions of the existing Station to El Segundo Power II LLC, including the intake and outfall structures for Units 1 and 2, and assign a portion of PRC 858.1 to El Segundo Power II LLC, with SLC's consent, and any further conditions to such assignment."

The application is currently being reviewed by CSLC staff for adequacy and to determine the appropriate environmental processing under the California Environmental Quality Act (CEQA).

Modify the third paragraph to read:

To ensure the long-term use of the intake structure for the project and the project's compliance with CSLC regulations, staff is recommending a condition of certification requiring the applicant to provide evidence of a valid lease with the CSLC prior to the start of commercial operation of the ESPR facility (see **LAND-10**). This provision would ensure that the proposed project would be in compliance with the requirements for the leasing of State owned tide and submerged lands.

Modify the fourth paragraph as follows:

"Use of the facility's existing seawater intake structure is subject to consistency with the terms and conditions of the CSLC lease then in effect. Any structural modification of the facility would require formal authorization by the CSLC."

STAFF RESPONSE: Staff concurs with the proposed language changes.

CSLC LAND USE-COMMENT-3
PAGE 4.5-25

Modify the **Land-10** discussion as follows:

El Segundo Power LLC, is the lessee of PRC 858.1, involving tide and submerged lands under the jurisdiction of the California State Lands Commission. That lease expired October 26, 2002. El Segundo Power LLC shall provide to the CPM a copy of a new lease executed with the California State Lands Commission. The new lease shall secure El Segundo Power LLC's long-term use of the seawater intake/outfall lines, including those that serve El Segundo Generating Stations Units 1 and 2. The new lease shall be executed prior to the start of commercial operation of the new generating units for the project.

Modify the **Verification** section as follows:

"El Segundo Power LLC has submitted an application requesting a new lease to the CSLC. El Segundo Power LLC has provided the CPM with a copy of the initially submitted application filed with the CSLC.

El Segundo Power LLC shall submit to the CPM a copy of the newly executed lease agreement with the CSLC, and any subsequent assignment of the newly executed lease that has been approved by the CSLC."

STAFF RESPONSE: Staff concurs with the proposed language changes.

NOISE

CITY OF MANHATTAN BEACH COMMENTS DATED 9/30/02

COMB NOISE COMMENT-1: "Page 4.6-5. A sentence should be added to the discussion of the City of Manhattan Beach noise ordinance that indicates that although the City of Manhattan Beach Noise ordinance allows no noise increase above the existing ambient level the City of Manhattan Beach agreed to an increase of no more than 2 dba as being reasonable since it is generally accepted that an increase of less than 2 dba is not perceivable to the human ear."

STAFF RESPONSE: Staff agrees that the added sentences clarify the intent of the City of Manhattan Beach.

Modify FSA Page 4.6-5, paragraph 3 as follows:

It has been stipulated that the Manhattan Beach Municipal Code noise standards will apply to the project. The City of Manhattan Beach has interpreted its ordinance, in this case, to require that the project not result in an increase of more than 2 dBA at the most affected residences, which are the homes adjacent to the south project boundary. Although the Manhattan Beach noise ordinance allows no noise increase above the existing ambient level, the City of Manhattan Beach agreed to an increase of no more than 2 dBA as being reasonable since it is generally accepted that an increase of less than 2 dBA is not perceivable to the human ear.

COMB NOISE COMMENT-2: "Figure 2. The figure is not readable."

STAFF RESPONSE: A readable copy is attached to this document.

COMB NOISE COMMENT-3: "Noise 1- The "Hotline" identified is for Noise and Vibration impacts only. A similar protocol should be established for all complaints.

STAFF RESPONSE: There is a complaint process outlined in General Conditions **COM-11.** The General Conditions sections also outline the resolution process and a Energy Commission toll free compliance number (**1-800-858-0784**) for the public to contact the Energy Commission about power plant construction or operation-related questions, complaints or concerns.

COMB NOISE COMMENT-4: Noise 6. This is not the condition that was agreed to in July. See the July 9th Energy Commission Proposed Noise Conditions of Certification (Noise 6 and 7). This condition should be removed and replaced with conditions 6 and 7 from July 9th which requires a 30 day not 7 day noise study.

STAFF RESPONSE: The 30-day testing period was agreed upon during a workshop in July 2002. Staff failed to include the new testing interval in the FSA. The July 8, 2002 letter was written to accommodate the possibility of completing the testing in June through September 2002. That testing was not performed. Conditions Noise-6 and Noise-7 outlined in the July 8, 2002 letter were combined into one condition when the FSA was published due to their interrelatedness. Staff submits the changes in the following errata.

Page 4.6-23 – NOISE-6
The following changes should be made for clarification of staff's intent:

Replace paragraph A, 1st bullet and 5th bullet with the two paragraphs shown:

- The project owner will conduct a 30-day continuous community noise survey at a residential receptor (on 45th Street in Manhattan Beach), selected by the CPM in cooperation with the City of Manhattan Beach. This pre-construction survey shall be conducted during the period of June 1 to September 30. Hourly L_{eq}, L_{50} and L_{90} values shall be measured.

- If the initial 30-day measurement data, in the judgment of the CPM in consultation with the City of Manhattan Beach, fail to demonstrate a consistent relationship of surf and ambient noise levels, the measurement will be repeated until a consistent relationship can be established.

Page 4.6-24 – NOISE-6
Replace the third sentence in **NOISE-6** Paragraph B with:
"In addition, the applicant shall conduct a 30-day community noise survey at the same receptor locations used for the 30-day noise measurement cited in Section A above."

COMB NOISE COMMENT-5: Noise 8. A map of the nighttime exclusion area is needed. The format of the condition is a bit confusing. Does the first paragraph apply to the entire site or only the Tank Farm site? The first paragraph of the same condition prior to the Verification section, which discusses pure tones, is also confusing. It appears to exclude the tank farm site and if so how are pure tones addressed on the Tank Farm site.

STAFF RESPONSE: The Applicant submitted a map of the exclusion zone on October 15, 2002 to all of the parties. Staff agrees that the first paragraph of **NOISE-8** should be modified for clarity. Staff has changed the wording in the condition to reflect the applicant's suggested language, see below:

Page 4.6-25 – NOISE-8
Add: **Tank Farm Area** as the heading for the first paragraph.
Remove: **Tank Farm Area** from the heading of the second paragraph.

Replace: fourth sentence of the paragraph titled Phase II with the following:

Phase II: Demolition period: Entering and exiting the site, hauling material. Construction activities shall avoid the southerly end of the tank farm. All construction activities will be restricted to 7:30 AM to 6:00 PM. ~~Moreover, other than vehicles entering and exiting tanks, equipment will operate inside the tanks.~~ Moreover, other than vehicles entering and exiting the tank farm, equipment will not operate in the designated night-time exclusion area (located south of the south tank). During the hours 9:00 AM to 5:00 PM, the nighttime exclusion area may be accessed by passenger vehicles or pedestrians to inspect tanks. . Except as further restricted above, all demolition and construction shall occur between 7:30 AM to 6:00 PM Monday - Friday and 9:00 AM to 6:00 PM on Saturdays. No demolition or construction shall occur on Sundays or holidays.

CITY OF EL SEGUNDO COMMENTS DATED OCTOBER 8, 2002

COES COMMENT-12: The ESMC reference on page 4.6-4 should be revised from Chapter 9.06 to Title 7, Chapter 2.

STAFF RESPONSE: Staff agrees to the LORS designation changes.

EL SEGUNDO POWER II LLC COMMENTS DATED OCTOBER 2, 2002

ESP II NOISE COMMENT-1: Re: **NOISE-10**. As stated in previous submittals, the generating station has already taken steps to minimize use of the loudspeaker system. ESP II agrees not to use the loudspeaker system except during emergencies, and for testing of the system. Written direction from OSHA should not be necessary for those uses and may not be available.

STAFF RESPONSE: Staff accepts this change that implements the desired operation of the loudspeaker for emergency use only. There are no specific OSHA regulations for loudspeaker use, so the reference to such standards was deleted. The new Condition of Certification **NOISE-10** is shown below.

NOISE-10 The loudspeaker system shall be allowed for emergency use only, and for testing of the system.

Verification: The project owner shall transmit to the CPM in the first Monthly Construction Report a statement acknowledging that the above restrictions will be observed throughout the construction and operation of the project.

SOIL AND WATER RESOURCES

EL SEGUNDO POWER II LLC COMMENTS DATED OCTOBER 2, 2002

ESP II SOIL & WATER COMMENTS-1: Consistent with previous versions of this Condition, the specific measures referenced in the text of Final Staff Assessment should be incorporated into the text of the Condition.

STAFF RESPONSE: As discussed at the October 9, 2002 FSA Workshop, staff is amending Conditions of Certification **SOIL & WATER 1** and **SOIL & WATER 3** to refer the applicant to the State Water Resources Control Board (SWRCB) Division of Water Quality for guidelines and checklists. These guidelines and checklists would serve to assist the applicant in developing a complete and efficient Storm Water Pollution Prevention Plan (SWPPP). Information on the Construction and Industrial Stormwater Program can be located SWRCB website at http://www.swrcb.ca.gov/stormwtr/index.html. The current contact number for the SWRCB Division of Water Quality is: (916) 657-0757. The revised **SOIL & WATER 1** Condition of Certification is shown below.

SOIL & WATER 1: Prior to site mobilization, demolition, and/or construction related ground disturbance activities, including linear facilities, the project owner shall develop a Storm Water Pollution Prevention Plan (SWPPP) for the project as required under the NPDES General Stormwater Construction Activity Permit. A copy of the SWPPP and the Notice of Intent (NOI) submitted to the LARWQCB as required under the NPDES General Stormwater Construction Activity Permit regulations shall be provided to the CPM for review and approval. The SWPPP shall include the actual drainage and facility design for all on- and off-site ESPR project facilities for construction, and shall be designed according to the most recent applicable guidelines and checklists set forth by the State Water Resources Control Board Division of Water Quality. ~~address all issues detailed in the Staff Recommended Mitigation section of the FSA~~. The SWPPP shall demonstrate compliance with all applicable SUSUMP requirements. The project owner shall submit the construction SWPPP to the City of El Segundo for review and comment, and provide the CPM with a copy of a transmittal letter that requests the City provide copies of their comments to both the project owner and to the CPM.

Verification: Sixty days prior to the start of any site mobilization activities and/or ground disturbing activities associated with demolition or construction of the project (including demolition of tanks or Units 1 and 2) or any linear element, the project owner shall submit copies of the construction SWPPP, the NOI, and the transmittal letter to the CPM for review and approval. The SWPPP must be approved, and the transmittal letter and NOI copies received by the CPM prior to the start of site mobilization activities**.**

ESP II SOIL & WATER COMMENT-2: Consistent with previous versions of this Condition, the specific measures referenced in the text of Final Staff Assessment should be incorporated into the text of the Condition. In this case, the condition can refer to the specific measures stated in **SOIL & WATER 1**.

STAFF RESPONSE: See response to **ESPII COMMENT-1**. The revised **SOIL & WATER 3** Condition of Certification is shown below. Staff additionally had to revise **SOIL & WATER 4 & 5** to conform to the changes to **SOIL & WATER 3.**

SOIL & WATER 3: Prior to power plant operation the owner shall develop a SWPPP as required under the NPDES stormwater discharge permit for operation of the project. The SWPPP shall include the actual drainage and facility design for all on- and off-site ESPR project and linear facilities showing the details of the stormwater and sediment run-off and run-on to the ESPR project facilities during operation. The SWPPP shall be designed according to most recent guidelines and checklists set forth by the State Water Resources Control Board Division of Water Quality ~~address all issues detailed in the Staff Recommended Mitigation section of the FSA~~. This plan shall document that the existing and proposed project stormwater facilities have adequate capacity as required by the City of El Segundo. The SWPPP shall be consistent with all other permit and design documents, and shall demonstrate compliance with all applicable SUSUMP requirements. The project owner shall include in this plan the installation of secondary containment for the entire site, excluding off-site and linear facilities. The containment design shall have design documentation and specifications for the berms or other walled structures. The project owner shall submit the operational SWPPP to the City of El Segundo for review and comment, and provide the CPM with a copy of a transmittal letter that requests the City provide copies of their comments to both the project owner and to the CPM. The operational SWPPP shall be approved, and the transmittal letter received by the CPM prior to the start of operation.

Verification: Sixty days prior to the start of operation the project owner shall submit copies of the SWPPP and the transmittal letter to the CPM for review and approval. The SWPPP must be approved,

and the transmittal letter received by the CPM prior to power plant operation.

SOIL & WATER 4: Prior to power plant operation the owner shall develop an Erosion and Sedimentation Control Plan (ESCP) for the operational phase of the project. The ESCP shall include the actual drainage and facility design for all on- and off-site ESPR project and linear facilities showing all of the details of stormwater and sediment run-off and run-on to the ESPR project facilities during operation. The ~~SWPPP~~ ESCP shall address all issues detailed in the Staff Recommended Mitigation section of this FSA. The ESCP shall be consistent with all other permit and design documents, and shall demonstrate compliance with all applicable SUSUMP requirements. The project owner shall include in this plan the installation of secondary containment for the entire site, excluding off-site and linear facilities. The containment design shall have design documentation and specifications for the berms or other walled structures. The project owner shall submit the operational ESCP to the City of El Segundo for review and comment, and provide the CPM with a copy of a transmittal letter that requests the City provide copies of their comments to both ESPR and to the CPM. The operational ESCP shall be approved, and the transmittal letter received by the CPM prior to the start of operation.

Verification: Sixty days prior to the start of operation the project owner shall submit a copies of the ESCP and the transmittal letter to the CPM for review and approval. The ESCP must be approved, and the transmittal letter received by the CPM prior to power plant operation.

SOIL & WATER 5: The project owner shall maintain in effect the National Pollutant Discharge Elimination System (NPDES) Permit from the LARWQCB for the life of the ESPR project. The project owner shall comply with all provisions of the NPDES Permit, and shall notify the CPM of any proposed or actual changes made to this permit and provide copies of materials related to permit amendment, modification, and renewal, and of any changes to the project design or operational plan necessary to comply with the NPDES permit changes. All ~~NPDES compliance monitoring reports submitted to the LARWQCB~~ exceedances, permit violations, and enforcement actions shall be reported and discussed in the annual Compliance Report to the CPM. All NPDES enforcement actions against the project shall be reported to the CPM by letter within 30-days of the project being notified by LARWQCB. The project shall not operate without the NPDES permit in place.

Verification: Within 30 days following receipt of a new, amended, or modified NPDES Permit from the LARWQCB, the project owner shall submit a copy of the new permit to the CPM. The Annual

Compliance report shall include a copy of NPDES compliance monitoring reports submitted to the LARWQCB, reporting NPDES permit exceedances, ~~notices of~~ violations, and ~~discussion of~~ enforcement actions taken against the project owner, and a discussion of the measures taken by the project owner to bring the project into compliance with the NPDES permit. The CPM shall be notified by letter of NPDES permit enforcement actions within 30-days of the project being notified by the LARWQCB. The project owner shall notify the CPM in writing of any changes made to this permit, and of any changes to the project design or operational plan necessary to comply with NPDES permit revisions.

ESP II SOIL & WATER COMMENT-3: As stated in previous submittals, ESPR, as currently designed, will fully comply with all LORS regarding potable water use. ESPR will not result in significant impacts caused by its proposed potable water usage levels. Nevertheless, ESP II agrees to investigate and report on the feasibility of using reclaim for the remaining potential process-related uses of potable water, and to indicate whether the ESPR will in fact convert those uses to reclaim. As such, the requested RWUP is unnecessary.

STAFF RESPONSE: Based on an evaluation staff performed for the FSA, it was determined that reclaimed water is available for all facility process water needs, excluding once through cooling, fire control, sanitary, and potable uses. (The feasibility of using reclaimed water for once through cooling was addressed separately in the cooling options report that was included as Appendix A to the Biological Resources section of the FSA.) Therefore, to assure conformance with the LORS identified in the FSA regarding reclaimed water use in place of potable water where possible in the proposed project, staff has revised **SOIL & WATER 6**

At the FSA October 9, 2002 workshop, it was agreed that ESPR would be required to use reclaimed water for all in-plant uses except those uses determined by staff to be infeasible. Any additional proposed uses would be submitted by ESP II in a feasibility report to staff. This report would include sufficient current project details including a current water and heat balance, which staff will need to complete such an assessment. Staff has also had additional conversations with West Basin Municipal Water District (WBMWD), the reclaimed water supplier, and confirmed any increase in reclaimed water demand can be handled by the existing reclaimed water line to the site and/or by an appropriate increase in the HDPE 10” line already planned for transportation of WBMWD water to the site (ESPR 2000a). Based on discussions with WBMWD (Personal Communication with Mark Tettemer of WBMWD by Tim Landis of the Energy Commission, October 21, 2002) the reliability of this reclaimed water supply is consistent with a reclaimed water availability failure rate of less than 1 percent.

Staff has determined in the FSA that reclaimed water is technically feasible for the ESPR use, that the supply is both adequate and available, and that it is in use or proposed for use by other power plants operating in the same California merchant power market. The project owner is expected to use reclaimed water for all but specifically excluded uses unless it can be demonstrated that its use is not compatible with any particular use. As requested by ESPR, staff has amended **SOIL & WATER 6** to address these issues in the required Reclaimed Water Use Plan (RWUP). The revised **SOIL & WATER 6** Condition of Certification is shown below**.**

SOIL & WATER 6: The project owner shall use reclaimed water for all in-plant process water needs, except those specifically excluded uses, unless it can be demonstrated that its use is not compatible with any particular use. ~~The project owner shall use reclaimed water for all in-plant water needs~~. Specifically excepted from using reclaimed water are fire control water, sanitary water, ~~and~~ potable water, and once through cooling water. The project owner shall submit a Reclaimed Water Use Plan (RWUP) that includes a detailed revised project design, operational plan, ~~and~~ water balance, and heat balance for the use of reclaimed water for review and approval by the CPM prior to the start of any site mobilization activities for the project or any linear element. This RWUP shall be consistent with all applicable LORS, including Title 22 California Code of Regulations.

Any in-plant water needs that the project owner claims can not be met using reclaimed water, other than those specifically excepted, shall be identified and a discussion of the infeasibility of reclaimed water use for these needs shall be included in the RWUP for review and approval by the CPM. Site mobilization activities shall not begin without a CPM approved RWUP.

Verification: The project owner shall submit the RWUP to the CPM for review and approval sixty days prior to the start of any site mobilization activities associated with the project or any linear elements. The RWUP must be approved by the CPM before the start of site mobilization.

ESP II SOIL & WATER COMMENT-4: As stated in our previous discussions on this issue, ESP II believes that the requested sampling program exceeds the requirements of applicable LORS and does not serve to mitigate an identified impact. Nonetheless, ESP II agrees to conduct limited sampling of individual waste streams, as follows:

- The constituents sampled are limited to those identified in the LARWQCB's 303d list for Santa Monica Bay
- The sampling is a one-time event after the start of operations.
- Sampling will take place at specific test points related to waste streams identified on the project water balance diagram, as amended.

- Sampling will occur only on waste streams associated with the new facility and will not affect the sampling program for existing units 3 and 4.

STAFF RESPONSE: The current NPDES requirements for monitoring in-plant waste streams were discussed with the Los Angeles Regional Water Quality Control Board (LARWQCB) staff. Based on these discussions and a review of quarterly monitoring data tables for the retention pond submitted in a recent data response, staff has revised **SOIL AND WATER 7** to accept the same monitoring parameters, locations and schedule as those of the NPDES permit for in-plant waste streams. The LARWQCB staff has made several facility visits in 2001 and confirmed that most, if not all in-plant wastes are being discharged to the retention pond or removed off site to a hazardous waste facility.

Staff has reviewed quarterly NPDES permit data monitoring requirements attached to a monthly monitoring report submitted in the latest data responses. These tables confirmed the quarterly monitoring required by the LARWQCB, however the schedule and format of the monitoring report were not furnished and have not been furnished by the LARWQCB at this time. **SOIL AND WATER 7** has been completely replaced to reflect the monitoring and reports currently submitted to the LARWQCB.

SOIL & WATER 7: The project owner shall perform quarterly sampling of the retention pond and provide analytical data summary reports consistent with those required by the NPDES permit in the Annual Compliance Report to the CPM. These samples shall be collected and analyzed for parameters consistent with the NPDES permit monitoring requirements for the retention pond, and all exceedances and violations, and actions taken to avoid their reoccurrence shall be discussed in detail.

Verification: The quarterly reporting and discussion shall be included in the Annual Compliance Report to the CPM for the life of the project.

ESP II SOIL & WATER COMMENT-5: ESP II does not agree with the necessity of **SOIL & WATER 9**. As with any power plant, loss of any needed component for operation (gas, water, chemicals, labor, etc) would simply render the power plant unable to operate. This is a financial risk to the applicant. To the extent that any applicant was willing to take on a degree of risk greater than that acceptable under power plant reliability standards, such analysis and calls for a back up should be imposed under the Power Plant Reliability section. Here, however, ESPR does not propose risks greater than that held by nearly all power plants recently certified by the Energy Commission. Many plants obtain water by only one pipeline, gas by only one pipeline and both by single suppliers. For these reasons, ESP II does not feel a condition calling for a back up plan is required under the Energy Commission's responsibilities.

STAFF RESPONSE: While ESP II has suggested that the City of Manhattan Beach (COMB) would provide a backup water supply for the project, a will-serve letter was not produced by the applicant indicating that COMB would actually provide this water. At the FSA workshop held on October 9, 2002, a representative from COMB stated that they did not have adequate supply to provide backup water to the ESPR, and declined to serve the project.

Since the applicant has not provided staff with a backup water supply source for assessment in the FSA, and does not believe that such a backup water supply is necessary, the currently proposed ESPR project will apparently operate without a backup supply for process water or other water needs that will be served by reclaimed or other water supplies. Staff is accustomed to evaluating the use of a backup water supply for power plants using reclaimed or other water when those backup supplies are proposed as part of the project design and operational plan, are evaluated by staff, and allowed by a Condition of Certification proposed in the FSA. Therefore, staff considers the lack of a backup water supply to be a discretionary business decision made by ESP II.

Staff can not recommend the use of a backup water supply that has not been identified and evaluated for significant impacts and conformance with LORS. If the project does want to operate during water supply failures, the backup water supply should be identified and evaluated by staff in response to the project owner filing an amendment with the Energy Commission to modify the project to provide such a backup water supply. Energy Commission staff recommends that ESP II arrange for backup water to be supplied by the City of El Segundo (COES), the supplier of the original source of process water that will be replaced by reclaimed water. Conditions of Certification **SOIL AND WATER 9** and **SOIL AND WATER 8** from the FSA are replaced in their entirety with the revised Condition of Certification **SOIL & WATER 8** below.

SOIL & WATER 8: Only potable water from the City of El Segundo, recycled water from the West Basin Municipal Water District shall be used by the project for uses other than once-through cooling. The process water supply shall be reclaimed water. A backup water supply has not been included in the project design or operational plan, and the project shall not operate during periods when reclaimed or other water is not available in sufficient quantities from the primary supply sources. The project owner shall report the periods of non-operation due to unavailability of water from any source in the Annual Compliance Report.

The project owner shall install on-site metering and recording devices and record on a monthly basis all water used by the ESPR, except water used for once-through cooling, including the amount of reclaimed, and non-reclaimed water used by the project, with the

source and amount of all reclaimed and non-reclaimed water identified. The annual summary shall include the monthly range, monthly average, and total amounts of reclaimed and non-reclaimed water identified by amount and source used by the project in both gallons-per-minute and acre-feet. Following the first year of operation the annual summary shall also include the yearly range and yearly average of reclaimed and non-reclaimed water identified by amount and source used by the project. This information shall be supplied to the CPM in the Annual Compliance Report for review and approval for the life of the project.

Verification: No less than 60 days prior to the start of operation of ESPR, the project owner shall submit to the CPM evidence that metering devices have been installed and are operational on the pipelines serving and within the project. These metering devices shall be capable of recording the quantities in gallons of water delivered to ESPR and differentiate between uses of these supplies by ESPR in order to report water demand. The project owner shall provide a report on the servicing, testing and calibration of the metering devices and operation in the annual compliance report. The project owner shall submit the required water use summary to the CPM for review as part of the Annual Compliance Report for the life of the project.

TRAFFIC & TRANSPORTATION

CITY OF MANHATTAN BEACH COMMENTS DATED 9/30/02

COMB TRAFFIC COMMENT-1: "Pages 4.9-7, 8, 10, 11, and 12 and Tables 1 and 3 – These tables and text (Vista Del Mar and Rosecrans) indicate the City of Manhattan Beach has no LOS standard. This is not correct, the City of Manhattan Beach uses the same standards that are used by the City of EL Segundo, the county of Los Angeles and the Institute of Transportation Engineers which is Level of Service (LOS) D or better is considered acceptable. Additionally, if a project causes a 2% or greater increase in the Volume Capacity (V/C) ratio at any intersection resulting in a LOS E or F condition, it is considered a significant impact. Although this standard is not adopted by ordinance it is a standard policy and practice for many years in the City of Manhattan Beach when preparing EIR's and other environmental documents."

STAFF RESPONSE: Staff indicated in its review of potential traffic impacts on the City of Manhattan Beach by the project, that it was applying the same LOS standards used for the City of El Segundo. When traffic conditions for a roadway or intersection fall below the LOS of D, staff requires the project owner to develop a traffic control plan to mitigate this traffic impact. Please see the changes below to address the concerns of COMB.

Page 4.9-7 last paragraph – Current Intersection and Roadway Operating Conditions

Table 1 shows that five of the intersections are operating below acceptable standards for LOS. The unacceptable LOS occurs at one or both of the peak hours. The intersection at Vista Del Mar/Highland Avenue and Rosecrans in Manhattan Beach does not have an established LOS standard but the LOS is F in the AM Peak Hour and E in the PM Peak Hour, which is normally unacceptable in most communities.

Page 4.9-8 Table 1 – Current Intersection and Roadway Operating Conditions

For the Vista Del Mar/Rosecrans Avenue row the LOS Standard column should read LOS D or Better instead of No Standard.

Page 4.9-10 last paragraph – Level of Service Section

According to the analysis, LOS at the intersection of El Segundo Boulevard at Sepulveda Boulevard located in El Segundo is expected to deteriorate from LOS E to F with the addition of project-related trips during the AM peak hour in the peak month of construction activity. The intersection of Rosecrans Boulevard and Vista Del Mar/Highland Avenue located in Manhattan Beach is expected to deteriorate from LOS E to F under both the LAX/Pershing and County/State Beach parking location scenarios with the addition of project-related trips during the PM peak hour.

Page 4.9-11 first paragraph - Level of Service Section

The City of Manhattan Beach uses the same LOS standard that is used by the City of El Segundo, and the County of Los Angeles, which is a LOS D or better. ~~does not have an adopted LOS standard for intersections~~. ~~However, we have assumed that~~ Therefore, the project-related deterioration from LOS E to F at the intersection of Rosecrans Boulevard and Vista Del Mar/Highland Avenue is a significant impact.

Page 4.9-12 Table 3 – Level of Service Section

For the Vista Del Mar/Rosecrans Avenue row the LOS Standard column should read LOS D or Better instead of No Standard.

COMB TRAFFIC COMMENT-1a "Vista Del Mar is actually Highland Avenue at Rosecrans; the street changes names at the intersection of 45th Street at the City of Manhattan Beach boundary. This should be corrected throughout the section and the entire document."

STAFF RESPONSE: Staff has made this correction to the document.

Page 4.9-6 Vista Del Mar paragraph of Freeways and Local Roadways Section
Vista Del Mar becomes Highland Avenue in the City of Manhattan Beach, this change in name has been corrected through out the Traffic and Transportation Section.

Vista Del Mar is a four-lane undivided, north-south secondary arterial roadway that bounds the easterly perimeter of the project site. Vista Del Mar becomes Highland Avenue south of 45th Street in the City of Manhattan Beach.

COMB TRAFFIC COMMENT-2 "Page 4.9-10 – This section indicates that 25% of the workforce will be traveling from the south of the project site, and presumably through the City of Manhattan Beach. No mitigation is provided to ensure that these trips do not occur through the City of Manhattan Beach, which would have a significant impact on our streets and particularly the intersection of Highland and Rosecrans. This is of particular concern if construction workers are allowed to park on site or at the beach parking lot to the north."

STAFF RESPONSE: Staff has assumed that 25 percent of the workforce could come from the south to the project site. It is felt that the majority of workers commuting from the south will be coming from the Torrance area, and areas in Los Angeles that would be south and east of the beach.

Therefore, the workers are expected to commute by way of U.S. Interstates 405 and 110 to the off-site parking locations for construction workers. The applicant has proposed possible off-site parking location that would be located off of Imperial Highway, which is on the northern edge of the City of El Segundo. Therefore, construction traffic from the south is expected to stay east of the City of Manhattan Beach.

Staff's proposed TRANS-4 and TRANS-5 for off-site parking and the traffic control plan requires the applicant to mitigate traffic impacts. The City of Manhattan Beach will have the opportunity to review and comment on the applicant's selection of off-site parking areas and its proposed traffic control plan. Staff will consider the City's comments on these conditions and if appropriate they will be made part of the traffic control plan.

COMB TRAFFIC COMMENT-3: "TRANS-4: this condition does nothing to mitigate the significant impacts (LOS F) to the intersection of Highland and Rosecrans. The parking and staging plan should be submitted to the City of Manhattan Beach since the location may impact our streets, circulation, and traffic."

STAFF RESPONSE: The City of Manhattan Beach will have the opportunity to review and comment on the traffic control plan to be implemented in TRANS-5. TRANS -5 will have the greatest mitigation

effect on traffic at the Highland/Rosecrans intersection. We agree that the final construction workers parking site selected could result in traffic impacts in the City of Manhattan Beach. Therefore, staff is recommending that TRANS-4 be changed to include review by the City of Manhattan Beach of the applicant's selection of off-site parking locations and policies. Please see the changes below:

TRANS-4 During construction of the power plant and all related facilities, the project shall develop a parking and staging plan for all phases of project construction to enforce a policy that all project-related parking occurs on-site or in designated off-site parking areas.

Verification: Verification: At least 60 days prior to start of site mobilization, the project owner shall submit the plan to the Cities of El Segundo and Manhattan Beach and other jurisdiction affected by site selection, such as the City and/or County of Los Angeles for review and comment, and to the CPM for review and approval.

COMB TRAFFIC COMMENT-4:"TRANS-5 This condition needs to require no construction traffic on City of Manhattan Beach streets. Vehicular and pedestrian access off of 45th Street or any area other than the main gate, should be prohibited."

STAFF RESPONSE: The applicant has agreed to several conditions that would avoid construction traffic impacts on the City of Manhattan Beach. This includes having all truck traffic avoid the City, having off-site parking located north of the project, and arranging workforce hours to avoid peak traffic time in the area.

The City of Manhattan Beach will also have the opportunity to review and comment on the traffic control plan proposed by the project owner. The City's concerns and recommendations on the applicant's proposed traffic control plan will be considered by the Compliance Project Manager and if warranted would be included in the approved traffic control plan.

CITY OF EL SEGUNDO COMMENTS DATED OCTOBER 8, 2002

COES COMMENT-13: The ESMC references on page 4.9-2 and 4.9-3 should also be revised to reflect the recent recodification of the ESMC.

STAFF RESPONSE: Staff agrees to the LORS designation changes.

Page 4.9.2 - Heavy Vehicles and Equipment
Change: Section 10.20.010 To: Title 8, Chapter 4, Section 7

Page 4.9.2 – Truck Routes
Change: Section 10.40.010 To: Title 8, Chapter 4, Section 6

Page 4.9.3 - Obstruction
Change: Section 12.04.050 To: Title 9, Chapter 2, Section 6
Change: Section 12.04.060 To: Title 9, Chapter 2, Section 7
Change: Section 12.04.070 To: Title 9, Chapter 2, Section 8

COES COMMENT-14: "Condition TRANS-5 does not contain some of the agreed upon provisions as previous versions of the condition. Specifically, the traffic control plan should be required to specify material haul routes, employee parking areas, and safety at the main gate on Vista Del Mar."

STAFF RESPONSE: While TRANS-5 was revised for the FSA based on recent Energy Commission experience in the certification and compliance process, the modification did not change the substance of the requirement that the applicant develop a traffic control plan by consulting with the various jurisdictions affected by the construction and operation traffic. The City of El Segundo will have the opportunity to review the applicants traffic control plan and comment on it. If the City does not feel that the traffic control plan is complete or addresses all of its requirements they have the opportunity to communicate this to the Compliance Project Manager (CPM). The CPM may then require the applicant to address these issues.

COES COMMENT-15: "The City of El Segundo previously proposed SOCIO-5, which require the payment of a one-time Traffic Impact Mitigation Fee as required by City Council Resolution No. 3969. It is the City's understanding that this condition was agreed upon by all parties because it is required of all new development in El Segundo and that it would be moved from the Socioeconomics chapter to the Traffic and Transportation chapter of the FSA."

STAFF RESPONSE: This condition was inadvertently omitted from the FSA. Staff recommends the following Condition of Certification to cover the traffic mitigation fee.

Page 4.9-20 TRANS-8 Traffic Mitigation Fee

TRANS-8 The project owner shall pay the City of El Segundo traffic mitigation fee for new development. The project owner shall submit the Application for Traffic Mitigation Fee Determination Form to the Public Works Director so that the traffic mitigation fee can be calculated. When the Public Works Department indicates the amount of the traffic mitigation fee, the project owner shall pay this fee to the City of El Segundo.

Verification: The project owner shall provide proof of payment of the Traffic Mitigation Fee in the next Monthly Compliance Report following payment.

EL SEGUNDO POWER II LLC COMMENTS DATED OCTOBER 2, 2002

ESP II TRAFFIC COMMENT-1: This condition is generally acceptable, with the clarification that road repairs are based on damage caused by the ESPR Project.

STAFF RESPONSE: Staff agrees with the request for clarification, see revised language below.

Page 4.9-20 TRANS-7 Roadway Damages

TRANS-7 Following completion of ESPR project construction, the applicant shall repair any damage caused by the ~~traffic associated with the~~ ESPR project to the segment of Vista Del Mar and other roadways affected by linear construction activity along with the primary roadways identified in the traffic control plan for construction traffic to the road's pre-project construction condition.

TRANSMISSION LINE SAFETY & NUISANCE

CITY OF EL SEGUNDO COMMENTS DATED OCTOBER 8, 2002

COES COMMENT-16: All parties had previously agreed to Condition TLSN-3, which required notification of Manhattan Beach property owners of potential electromagnetic interference from transmission lines. This condition was omitted from the FSA without discussion or justification.

STAFF RESPONSE: Condition of Certification TSLN-3 has been re-entered as part of the FSA. Please see below.

TLSN – 3 The project owner shall make every reasonable effort to identify and correct, on a case-specific basis, all complaints of interference with radio or television signals from operation of transmission lines and related facilities. In addition to any transmission repairs, the relevant corrective actions should include, but shall not be limited to, adjusting or modifying receivers, adjusting or repairing, replacing or adding antennas, antenna signal amplifiers, filters, or lead-in cable.

The project owner shall maintain written records for a period of five years, of all complaints of radio or television interference attributable to operation together with the corrective action taken in response to each compliant. All complaints shall be recorded to include notations on the corrective action taken. Complaints not leading to a specific action or for which there was no resolution

should be noted and explained. The record shall be signed by the project owner and also the complaint, if possible, to indicate concurrence with the corrective action or agreement with the justification for a lack of action.

Verification: All reports of line-related complaints shall be summarized and included in the Annual Compliance Report to the CPM.

CITY OF MANHATTAN BEACH COMMENTS DATED SEPTEMBER 30, 2002

COMB TLSN COMMENT-1: TLSN 2- This condition appears to just require measurements but not have any standards that are required to be met. Documentation that shows compliance with the standards identified in TLSN 1 should be required.

STAFF RESPONSE: The CPM will determine if the post-modification measurements deviate from the standards outlined in TLSN-1 when compared to the pre-modification measurements and if appropriate will initiate corrective action.

TRANSMISSION SYSTEMS ENGINEERING

CITY OF EL SEGUNDO COMMENTS DATED OCTOBER 8, 2002

COES COMMENT-32: The last paragraph on Page 5.5-2 refers to a "Unit 7 project." It is not clear if this is a typographical error.

STAFF RESPONSE: Replace the words "Unit 7 with "ESPR".

COES COMMENT-33: The Facilities Summary section on page 5.5-5 refers to a commitment of the applicant to Alternative 3 for transmission line overloads, but there does not appear to be a clear discussion of what those mitigation measures are or how they are incorporated into the proposed conditions of certification.

STAFF RESPONSE: Please see the information in the SCE Facilities Study dated September 12, 2001 that applicant docketed May 21, 2002. Please see **TSE-1** through **TSE- 8.**

COES COMMENT-34: The Cumulative Impacts section on page 5.5-6 indicates that the Cal-ISO has recommended that the applicant update the Facility Study, yet there does not appear to be any proposed condition of certification to require the applicant to undertake such an update.

STAFF RESPONSE: Please Condition **TSE-5** item (f)**.**

COES COMMENT-35: Condition TSE-5 refers to "SGD&E interconnection standards" without defining who or what SGD&E is.

STAFF RESPONSE: "SDG&E" is an error. The sentence should read "…SCE interconnection standards."

VISUAL RESOURCES

CITY OF MANHATTAN BEACH COMMENTS DATED 9/30/02

COMB VISUAL COMMENT 1: Figure 21 representing views from the neighborhood east of Highland Avenue was taken from the driveway and not the second story of the residence, and that photographs from the second and third stories were provided previously by the City.

STAFF RESPONSE: The photos referenced by the City were not used in part due to the quality of the images, and also because it was felt that they would not lead to conclusions in any way different from the image included in the report. In fact, the ground level view is, for example, at a similar elevation to the second story of neighbors directly to the west on 45th Street. However, some of the referenced images are reproduced as attachments to this document, as Figures 21b and 21c. The views from these locations do not differ materially from Figure 21 with regard to views of the project site, and would not affect Staff's conclusions regarding potential visibility of the Tank Farm area after construction from areas east of Highland Avenue. As seen in the figures, visibility of the Tank Farm area after construction would be minimal and represent a small portion of the overall view. Removal of the existing tanks would also result in increased views of the Bay.

COMB VISUAL COMMENT 2: References to Vista del Mar within the City of Manhattan Beach are inaccurate, because Vista del Mar becomes Highland Avenue within the City of Manhattan Beach.

STAFF RESPONSE: Page 4.11-14: References to "Vista del Mar" in the discussion of KOP 3 are amended to read "Highland Avenue."

COMB VISUAL COMMENT 3: At the workshop of October 9, 2002, City staff requested that the timing cited in Conditions of Certification VIS-1 and VIS-2 be changed from '120 days prior to start of construction' to 'prior to ground disturbance.'

STAFF RESPONSE: Condition VIS-1, first paragraph under Verification, is amended as follows:

> "At least 120 days prior to ground disturbance …."

Condition VIS-2, first paragraph under Verification, is amended as follows:

> "At least 120 days prior to ground disturbance …."

COMB VISUAL COMMENT 4: At the workshop of October 9, 2002, with regard to Conditions VIS-6 through VIS-8 concerning mitigation of night lighting impacts, City staff noted that although a complaint resolution form is required, a phone number or other contact point or person is not provided. Therefore the City requested that such a number and contact point be provided.

STAFF RESPONSE: As part of Condition of Certification COM-11 (General Conditions section of the FSA), the project owner is required to establish and disseminate a telephone number by which the public may contact project representatives with questions, complaints, or concerns. The project owner is required to post the phone number at the power plant site in a location easily visible to passerby during construction and operation of the facility. The project owner also is required to provide the phone number to the Energy Commission Compliance Project Manager, who will post it on the Energy Commission's web page. The public may use this point of contact for notifying the project owner of lighting complaints or landscape-related concerns.

CITY OF EL SEGUNDO COMMENTS DATED OCTOBER 8, 2002

COES COMMENT-17: In its letter to the California Energy Commission dated October 8, 2002, the City concurred with the FSA that additional screening of the proposed project is necessary to mitigate visual impacts.

STAFF RESPONSE: Comment is noted.

COES COMMENT-18: The City requested that the trigger date for application of Condition VIS-1 should be the start of ground disturbance, since some visual enhancements, including the 45th Street berm, would require grading before construction.

STAFF RESPONSE: See staff's response to COMB Visual Comment 3, above.

COES COMMENT-19: City requested that removal of the urea tanks on the west side of the site, as agreed to by the applicant, should be included in the required landscaping plan. The condition should also specify that the landscaping plan be consistent with the Landscape Concept Plan already reviewed by the City.

STAFF RESPONSE: Energy Commission staff's understanding is that the urea tanks are shown to be removed in the most recent version of the Landscape Plan submitted with the Visual Enhancement Proposals of May 2002. Applicant had no objection to altering VIS-2 in the recommended way.

The following sentence is added to the end of the second paragraph of VIS-2, after the words "….pertaining to on-site landscaping":

"The final landscape plan shall reflect the agreed upon removal of existing urea tanks on the west side of the project site."

Regarding alteration of wording to Condition VIS-2, staff's understanding is that the City may wish to recommend certain changes to perimeter planting as shown in the most recent Landscape Plan, in order to conform with applicable zoning codes and with comments made previously in a letter from the City dated June 20, 2002. Specifically, in that letter the City recommended that trees required to meet City zoning requirements be located on the existing berm on the north and west side of the tank farm. The City will have the opportunity to review and comment on the final Landscape Plan during review of the required Facility Enhancement Plan under VIS-1, as well as under VIS-2 as both are currently worded. Therefore, staff does not believe alteration of this wording of VIS-2 is necessary to address the City's concerns.

COES COMMENT-20: City requested that Condition VIS-3 include language requiring removal of rusted fencing on top of the existing seawall, and the repainting of the existing seawall.

STAFF RESPONSE: Energy Commission staff's understanding is that the Landscape Concept Plan of April 2002 calls for reconstruction of the existing seawall referred to. Applicant had no objection to this addition in wording. Therefore Condition VIS-3 is amended to included the following language, following paragraph two after the words "… to produce a textured surface":

" As part of seawall construction, the project owner shall remove unsightly, rusted existing fencing on the western property boundary. New fencing shall be maintained for the life of the project and replaced as necessary to prevent visual deterioration."

COES COMMENT-21: City objected to removal of review and comment language under verification of VIS-5.

STAFF RESPONSE: The Verification portion of Condition VIS-5 is amended as underlined in the following:

In paragraph 1: "The project owner shall submit its proposed treatment plan <u>to the CPM for review and approval, and to the Coastal Commission and the Cities of El Segundo and Manhattan Beach for review and comment</u> at least 90 (ninety) days prior to ordering the first structures that are color treated during manufacture."

ELSIE CRIPE, INTERVENOR / RESIDENT, MANHATTAN BEACH

Ms. Cripe is dissatisfied with the architectural treatment proposal, and would prefer a more robust architectural treatment that would reduce noise.

STAFF RESPONSE: Comment noted. A more robust treatment has not been shown to be feasible. The measures in VIS-3 address visual impacts only, and not potential noise impacts.

MURPHY AND PERKINS, INTERVENORS / RESIDENTS, MANHATTAN BEACH

ITEM #1: Ms. Murphy expressed a concern with the potential effectiveness of native plant species as visual screening material on the berms, as required by the Coastal Commission.

STAFF RESPONSE: Intervenor's concern is well-taken. However, Energy Commission staff believe that a suitable plant palette can be identified that will address concerns of the Coastal Commission while providing adequate visual screening. As stated in Condition VIS-1, *preference* shall be given to native species and/or species requiring little or no irrigation, or at a minimum, non-invasive species. It is important that the review process to take place under Conditions VIS-1 and VIS-2 ensure that the criteria of adequate screening, drought tolerance, and non-invasiveness all be met by the final landscape plan.

EL SEGUNDO POWER II LLC COMMENTS DATED OCTOBER 2, 2002

ESP II VISUAL COMMENT-1: The applicant proposed various alterations to Condition VIS-1, including changing the wording requiring screening to match that proposed by the applicant in the Visual Enhancement Proposals of May 2002; and deletion in the paragraph under the heading "Architectural Screening" of the words "If the project owner proposes and the Energy Commission concurs that it is infeasible to shield portions of the facility using architectural screening, the project owner may instead propose other measures such as landscaping, berms, or fencing to provide the necessary screening …."

STAFF RESPONSE: The applicant's proposed changes to Condition VIS-1 are not, in staff's view, legally justified or appropriate. In VIS-1, staff is accurately presenting the conditions set forth by the Coastal Commission in its findings on this project, which define what the Coastal Commission, in its own words, would require in order to find the project in conformance with the Coastal Act. Under the Warren-Alquist Act, the Energy Commission must include in its decision the provisions recommended by the Coastal Commission unless the Energy Commission determines that adoption of these provisions would result in a greater adverse effect on the environment or that the provisions would not be feasible for the project (Pub. Resources Code, §25523(b)). Staff has not found that the Coastal

Commission's conditions are either infeasible or will result in a greater adverse effect on the environment. Therefore, at this time staff concludes that it is neither legally justified nor appropriate to revise VIS-1 as requested by the applicant.

ESP II VISUAL COMMENT-2: The applicant proposed that required screening under Condition VIS-4 be as described in the Visual Enhancement Proposals of May 2002; that references to screening of Units 3 and 4 be deleted; and that references to the Energy Commission's determination of feasible enhancement in its certification decision be deleted.

STAFF RESPONSE: Energy Commission staff does not agree with changing the wording of Condition VIS-4 to say 'consistent with applicant's Visual Enhancement Proposals …'. What is at issue here is conformance with the Coastal Act. Since Coastal Commission staff has stated in its various comments to the Visual Enhancement Proposals that those proposals have not yet been shown to conform with the Coastal Act, staff could not recommend adopting that change.

Similarly, staff could not support deletion of the reference to screening Units 3 and 4 at this time. In regard to both of these proposed changes in wording, the modification or elimination of these specific requirements would require a presentation of evidence showing the *infeasibility* of the complete screening called for in the Coastal Commission decision, which includes Units 3 and 4. On the basis of evidence demonstrating infeasibility of such total screening, the Energy Commission may, in its certification decision, determine that the total screening called for by the Coastal Commission, including screening of Units 3 and 4, is in fact *not feasible*. According to staff's understanding of the requirements of Section 25523(b) of the Warren-Alquist Act and Section 30413(d) of the Coastal Act, only then should the requirements described by the Coastal Commission be altered. VIS-4 as now written simply spells out the specific provision for 'screening of all equipment below 125 feet elevation.' In other words, according to the wording of the Coastal Commission's findings, the burden is upon the applicant to demonstrate that the desired level of screening is not feasible. However, Energy Commission staff has, in the FSA, provided some additional evidence placing the feasibility of architecturally screening Units 3 and 4 in question. Therefore, the level of additional evidence needed to address screening of these units may be less than in relation to proposed Units 5 and 7.

If a more complete discussion by the applicant demonstrates clearly that the applicant's proposal is in fact the best feasible treatment, then the Energy Commission could adopt those proposals as representing fulfillment of Condition VIS-1 and, therefore, conformance with the Coastal Act, in its certification decision. Staff's understanding is, further, that if a final enhancement plan is not adopted as part of the Energy Commission's

certification decision, then the Commission must meet again, post certification, to adopt/approve that final enhancement plan. (See below).

The difference between the applicant's previously submitted enhancement plan and the final enhancement plan could be, in part, the necessary evidence that could establish, for both Commissions, which specific screening measures are and are not 'feasible.' Energy Commission staff, City of El Segundo, and Coastal Commission staff agree that a more complete degree of architectural screening should be applied *if feasibl*e. Although the applicant has stated that more screening is not feasible, evidence to establish that fact has not yet been provided.

The applicant proposed to delete references to the Energy Commission's certification decision, and the role of the Commission's decision in relation to adoption of the final enhancement plan called for in Condition VIS-1.

Energy Commission staff believes that adoption of Condition VIS-1 (the specific provisions of the Coastal Commission's decision) without approval of the plan (prior to certification) would still ensure Coastal Act conformance. However, staff also believes that the specific enhancement plans required under Condition VIS-1 would still need to be *approved by the Energy Commission*, and not by staff. Therefore, in either case the references to the Commission's decision appear difficult to avoid.

Thus, in order to avoid the Commission having to meet again to approve plans in the post-certification phase, the Commission could hear testimony and decide what level of screening is 'feasible' prior to certification. Enhancement plans reflecting that level of application would then fulfill VIS-1. Again, approval of such plans would require consensus among the parties about what level of screening is actually feasible.

Rather than make the changes to the Conditions of Certification proposed by the applicant, staff recommends that the applicant be encouraged to submit a final enhancement plan to be approved by the Energy Commission prior to certification. In order to fulfill the requirements of the Coastal Commission decision and address concerns voiced by Coastal Commission staff, that plan should include evidence substantiating the applicant's claim that full screening is not feasible; and, based on that evidence, the specific measures that could feasibly be implemented. Staff would further recommend that the emphasis of the applicant's efforts in developing a final enhancement plan should be on information relating to feasibility of screening on Units 5 and 7; and on ways that perimeter landscaping could be modified or specified to optimize screening of all units while maintaining Bay views.

CALIFORNIA COASTAL COMMISSION COMMENTS DATED OCTOBER 8, 2002

CCC VISUAL COMMENT-1 We generally concur with the Visual Resource section of the FSA. We believe it fairly and accurately assesses the existing visual conditions at and near the project site. It also appropriately compares the existing and proposed facility to other nearby facilities. It describes the visual impacts from numerous key observation points around the facility and notes the effect that various mitigation measures would have in avoiding or reducing those impacts. It also correctly summarizes the Coastal Commission's findings regarding the Coastal Act's requirements for evaluating visual resource effects. We therefore concur with the FSA's proposed Conditions of Certification.

We note that on October 2, 2002, the applicant proposed changes to several of the FSA's recommended visual resource conditions. For Conditions VIS-1 and VIS-4, the applicant proposes deleting the requirement to screen all equipment below elevation 125' and to instead provide partial screening on two new units only (as shown in the Visual Enhancement Proposals of May 2002). The applicant also proposes deleting the requirement to provide the necessary feasibility information for the visual mitigation measures.

We believe these proposed changes are inappropriate for several reasons:

1. They do not conform to Coastal Act requirements. As determined by the Coastal Commission's March 5, 2002 findings and specific provisions, the visual resource provisions of the Coastal Act apply to the facility, not just to the proposed new development. The Coastal Act takes a comprehensive approach in addressing aesthetic and visual resources. It requires that visual impacts and mitigation be evaluated not only for the development being proposed but also for the associated facilities and surrounding areas. For example, section 30251 of the Act, which serves as the primary Coastal Act policy for reviewing the visual aspects of proposed developments, states that the "scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance" (emphasis added). It also requires that the permitted development "be sited and designed to protect views to and along the ocean and scenic coastal areas, and where feasible, to restore and enhance visual quality in visually degraded areas". The emphasis, therefore, is on the area of the development, not just on the proposed development itself. Furthermore, section 30413(d)(3) of the Act requires that the findings provided by the Coastal Commission to the Energy Commission address "the potential adverse effects that the proposed site and related facilities would have on aesthetic values". Again, the emphasis is

comprehensive, and is not meant to be limited to just the particular elements of the project being considered.

This is particularly applicable to the proposed changes at ESGS because it includes changes throughout the facility. The primary component of the proposed redevelopment is the replacement of two generating units; however, the proposal includes building a new berm at the southernmost boundary of the facility, removing tanks at the southeast portion of the facility, expanding an existing seawall on the western boundary, planting new landscaping along the eastern boundary, as well as other changes, all of which affect the facility as a whole and affect views of the facility from many observation points along the coast. It is therefore inappropriate to evaluate only the visual impacts associated with replacing the generating units since the overall proposal will change views of many parts of the facility.

2. The proposed changes do not conform to the FSA visual resource analysis. The FSA's analysis, which is based in part on the Coastal Commission's findings, clearly explains the adverse visual impacts of both the existing and the proposed facility, and explains the need for the recommended visual enhancement measures and adequate feasibility analyses. The recommended Conditions of Certification are a result of this FSA analysis.

3. The proposed changes would inappropriately remove the regulatory definition of feasibility. The applicant proposes to delete the recommendation to base visual resource measures on feasibility, as defined in Coastal Act section 30108. This definition is the same as is used in CEQA, and is thus applicable to, and necessary for, the Energy Commission's review. Additionally, should the Energy Commission determine not to accept the Coastal Commission's specific provisions as Conditions of Certification, that decision is to be based on a determination that the provisions would cause greater adverse environmental effects or that they would be infeasible. If this definition of feasibility is removed, as the applicant proposes, it would be difficult to determine the feasibility or infeasibility of the various provisions.

Additionally, we note that even with the recommended Conditions of Certification in the FSA, some degree of visual degradation would remain. The FSA finds many of the visual resource mitigation measures would merely change the adverse visual impacts from strong to moderate or from moderate to weak; therefore, it is evident that the proposed conditions should be maintained or strengthened rather than weakened.

STAFF RESPONSE: Comments noted.

WASTE MANAGEMENT

CITY OF EL SEGUNDO COMMENTS DATED OCTOBER 8, 2002

COES COMMENTS-22: It appears that the trigger date in the verification section of WASTE-3 has been changed from 60-days to 30-days without discussion or justification. The term "project operation" should revised to state "commercial operation" since this is a defined trigger date. The "review and Comment" function has also been removed from this condition without discussion or justification.

STAFF RESPONSE: Condition Waste-3 has been revised to address COES and applicant concerns. Please see the revisions below.

WASTE-3 Prior to the start of both site mobilization and commercial operation, the project owner shall prepare and submit to the CPM for review and approval, and to local agencies, if applicable, for review and comment, a waste management plan for all wastes generated during construction and operation of the facility, respectively. The plans shall contain, at a minimum, the following:

- A description of all waste streams, including projections of frequency, amounts generated and hazard classifications; and
- Methods of managing each waste, including storage, treatment methods and companies contracted with for treatment services, waste testing methods to assure correct classification, methods of transportation, disposal requirements and sites, and recycling and waste minimization/reduction plans.

Verification: At least 60 days prior to the start of site mobilization, the project owner shall submit the construction waste management plan to local agencies, if applicable, for review and comment, and to the CPM for review and approval. The operation waste management plan shall be submitted no less than 60 days prior to the start of commercial operation. The project owner shall submit any required revisions within 20 days of notification by the CPM (or mutually agreed upon date). In the Annual Compliance Reports, the project owner shall document the actual waste management methods used during the year compared to planned management methods.

COES COMMENT-23: The verification section of WASTE-5 has removed the El Segundo Fire Department from the receipt of contaminated soils reports. Since this is a public health issue, our Fire Department should be informed of such findings.

STAFF RESPONSE: Condition of Certification **Waste-5** has been revised to address COES and applicant concerns. Please see the underlined revisions below.

WASTE-5 If potentially contaminated soil is unearthed during excavation at either the proposed site or linear facilities as evidenced by discoloration, odor, detection by handheld instruments, or other signs, the Registered Professional Engineer or Geologist shall inspect the site, determine the need for sampling to confirm the nature and extent of contamination, and file a written report to the project owner and CPM stating the recommended course of action. Depending on the nature and extent of contamination, the Registered Professional Engineer or Geologist shall have the authority to temporarily suspend construction activity at that location for the protection of workers or the public. If, in the opinion of the Registered Professional Engineer or Geologist, significant remediation may be required, the project owner shall contact representatives of the Los Angeles Regional Water Quality Control Board, the Glendale Regional Office of the California Department of Toxic Substances Control, the CPM, and other local agencies, if applicable, for guidance and possible oversight.

Verification: The project owner shall submit any reports filed by the Registered Professional Engineer or Geologist to the CPM and the City of El Segundo Fire Department within 5 days of their receipt. The project owner shall notify the CPM within 24 hours of any orders issued to halt construction.

COES COMMENT-24: It is not clear why the Los Angeles County Fire Department would receive the RI Workplan in WASTE-6 instead of or in addition to the El Segundo Fire Department.

STAFF RESPONSE: Condition of Certification **Waste-6** has been revised to address COES and applicant concerns. Please see the underlined revisions below.

WASTE-6 Before demolition of the fuel oil tanks, the existing generator buildings, and any other building, the project owner shall prepare a Remedial Investigation Workplan (RI Workplan). This plan shall include a detailed site characterization plan with soil and groundwater sampling and analysis to determine the extent and nature of contamination existing beneath these structures. The RI Workplan shall be provided to the Glendale Regional Office of the California Department of Toxic Substances Control, the Los Angeles Regional Water Quality Control, the City of El Segundo Fire Department, and other local agencies, if applicable, for review and comment, and to the CEC CPM for review and approval. If contaminated soil or groundwater is found to exist, the project owner shall contact representatives of the above-named agencies for further guidance and possible oversight. In no event shall the project owner proceed with site preparation or construction activities at any location on the site where hazardous waste contamination is found to be present until that location is either remediated or shown to pose an insignificant risk to humans and

the environment as demonstrated to the satisfaction of the LARWQCB, DTSC, and the CPM.

Verification: At least sixty (60) days prior to commencement of tank or structure demolition, the project owner shall provide the RI Workplan to the Glendale Regional Office of the California Department of Toxic Substances Control, the Los Angeles Regional Water Quality Control, the City of El Segundo Fire Department, other local agencies, if applicable, and the CEC CPM. Within thirty (30) days of completion of the sampling and analysis and prior to the initiation of any construction activities, the project owner shall provide the results of the sampling and analysis to the Glendale Regional Office of the California Department of Toxic Substances Control, the Los Angeles Regional Water Quality Control, the City of El Segundo Fire Department, other local agencies, if applicable, and the CPM for review and guidance on possible remediation.

COES COMMENT-27: Condition **WORKER SAFETY-3** does not contain the agreed upon text regarding asbestos in the fuel oil storage tanks that was part of the previously agreed upon condition.

STAFF RESPONSE: Staff determined that conditions related to asbestos are more appropriately described in the Waste Management section and has created a **WASTE-8** Condition of Certification to address concerns. Please see the **WASTE-8** Condition of Certification below.

WASTE-8 Prior to modification or demolition of existing structures, the project owner shall complete and submit a survey of all Asbestos-Containing Materials (ACM) and Regulated Building Materials (RBM) that contain lead-based paint to the El Segundo Fire Department for review and comment and to the CPM for approval. After receiving approval, the project owner shall remove all ACM and RBM from the site prior to demolition.

Verification: No less than sixty (60) days prior to commencement of structure demolition, the project owner shall provide the survey to the El Segundo Fire Department for review and comment, and to the CPM for review and approval. The project owner shall inform the CPM, via the monthly compliance report, of the date when all ACM and RBM were removed from the site.

EL SEGUNDO POWER II LLC COMMENTS DATED OCTOBER 2, 2002

ESP II WASTE COMMENTS: The applicant had expressed the same concerns as the City of El Segundo relating to conditions **Waste 3, 5, & 6.**

STAFF RESPONSE: Please see responses to COES COMMENTS 22, 23, AND 24.

WORKER SAFETY & FIRE PROTECTION

CITY OF EL SEGUNDO COMMENTS DATED OCTOBER 8, 2002

COES COMMENT-25: The previously agreed to text of Condition **WORKER SAFETY-1** included a protocol for the Demolition and Construction Fire Protection and Prevention plan which has been omitted from the revised condition and should be restored. The verification of this condition should be tied to the start of ground disturbance, not demolition.

STAFF RESPONSE: Staff has restored the previously agreed to language. See underlined text below.

WORKER SAFETY-1 The project owner shall submit to the Compliance Project Manager (CPM) for approval, a copy of the Project Demolition and Construction Safety and Health Program containing the following:

- A Demolition and Construction Safety Program;
- A Demolition and Construction Personal Protective Equipment Program;
- A Demolition and Construction Exposure Monitoring Program;
- A Demolition and Construction Emergency Action Plan; and
- A Demolition and Construction Fire Protection and Prevention Plan.

The Safety Program, the Personal Protective Equipment Program, and the Exposure Monitoring Program shall be submitted to the CPM for review and comment concerning compliance of the program with all applicable Safety Orders. The Demolition and Construction Fire Protection and Prevention Plan and Emergency Action Plan shall be submitted to the City of El Segundo Fire Department for review and comment prior to submittal to the CPM.

<u>The Demolition and Construction Fire Protection and Prevention Plan and Emergency Action Plan shall include the following:</u>

1. <u>Methods to maintain fire access roadways and submittal of a fire access layout plan for review by the El Segundo Fire Department and approval by the CPM.</u>
2. <u>Provision of a suitable replacement for the existing fire suppression water reservoir prior to demolishing the existing reservoir.</u>
3. <u>Provision of fire flow calculations to verify that the available water supply proposed will be adequate for emergency operations.</u>
4. <u>A requirement that all temporary fire mains and hydrants shall be adequately braced and tied-down to anticipate the effects of</u>

water hammer and that protection from vehicular impact is provided as necessary.

Verification: At least 30 days prior to site mobilization, the project owner shall submit to the CPM for review and approval a copy of the Project Demolition and Construction Safety and Health Program. The project owner shall provide a letter from the City of El Segundo Fire Department stating that they have reviewed and commented on the Demolition and Construction Fire Protection and Prevention Plan and Emergency Action Plan.

COES COMMENT-26: The Operations and Maintenance Safety Plan and its accompanying protocol, which were previously agreed upon additions to Condition **WORKER SAFETY-2**, have been omitted. There was previous discussion if these items were more appropriately placed in the Hazardous Materials chapter, but they do not appear to have been addressed in the FSA. Instead of review and comment on the elements of this condition, the El Segundo Fire Department should have a "review and acceptance" function, because absent the Energy Commission's jurisdiction, the El Segundo Fire Department would have to review such plans. They will also be the implementing agency for many elements in this condition.

STAFF RESPONSE: Staff has restored the previously agreed to language. See underlined text below. Staff has not accepted the suggested "review and acceptance" language, since final approval of the plan rests with the Energy Commission and not the El Segundo Fire Department.

WORKER SAFETY-2 The project owner shall submit to the CPM for approval a copy of the Project Operations and Maintenance Safety and Health Program containing the following:

- An Operation Injury and Illness Prevention Plan;
- An Emergency Action Plan;
- Hazardous Materials Management Program;
- Operations and Maintenance Safety Program;
- Fire Protection and Prevention Program (8 CCR § 3221); and;
- Personal Protective Equipment Program (8 CCR §§ 3401-3411).

The Operation Injury and Illness Prevention Plan, Emergency Action Plan, and Personal Protective Equipment Program shall be submitted to the Cal/OSHA Consultation Service, for review and comment concerning compliance of the program with all applicable Safety Orders. The Operation Fire Protection Plan and the Emergency Action Plan shall also be submitted to the City of El Segundo Fire Department for review and comment.

The Project Operations Fire Protection and Prevention Plan and Emergency Action Plan shall address:

1. Provision of remote annunciation for all fire alarm and automatic suppression devices and the placement of remote annunciation at the security station on Vista Del Mar.
2. Provision of a complete fire alarm system and automatic fire sprinklers for the new administration building and any new control buildings.
3. A secondary entrance point for Fire Department operations along the northern boundary of the property.

Verification: At least 30 days prior to the start of operation, the project owner shall submit to the CPM a copy of the Project Operations and Maintenance Safety & Health Program.

COES COMMENT-26A: The City of El Segundo commented in a previous workshop that the following requirements should be added to the Operations Fire Protection and Prevention Plan and Emergency Action Plan, both of which are included in Condition of Certification **WORKER SAFETY-2**:

ITEM a) Provide a fixed water spray system to mitigate any ammonia releases.
STAFF RESPONSE: This issue is covered in Hazardous Materials Management response to COES Comment 7.

ITEM b) Provide remote air quality sampling stations. Submit a location plan to the Environmental Safety Division.
STAFF RESPONSE: Comment noted.

ITEM c) Provide secondary spill containment for all liquid storage vessels, tanks and processes that utilize hazardous materials. Secondary containment that is open to the weather shall be sized to hold a 24-hour amount of rain as determined by the 100-year rainfall.
STAFF RESPONSE: Comment noted

ITEM d) Provide secondary containment for all areas protected with fixed water spray systems. Containment shall be designed to contain 2-hour of fire protection water.
STAFF RESPONSE: Comment noted

ITEM e) Provide remote shut-off valves for all fuel systems.
STAFF RESPONSE: Comment noted

ITEM f) Submit a mitigation plan for all hazardous materials processes.
STAFF RESPONSE: Comment noted

ITEM g) The following installations require Fire Department approval. Submit separate plans for Fire Department review: 1) Automatic fire sprinklers, including water spray. 2) Inert Gas extinguishing systems. 3)

Fire alarm system. 4) Underground fire service mains, temporary and permanent. 5) Any aboveground or underground storage tanks.

STAFF RESPONSE: These systems are required by LORS and will be part of the Fire Prevention Plan reviewed by the El Segundo Fire Department and approved by the CPM. It is not necessary to list every regulatory requirement as a Condition of Certification.

ITEM #27: Condition **WORKER SAFETY-3** does not contain the agreed upon text regarding asbestos in the fuel oil storage tanks that was part of the previously agreed upon condition.

STAFF RESPONSE: Staff has detemined that conditions related to asbestos are more appropriately described in the Waste Management section and has created a **WASTE-8** Condition of Certification to address concerns. Condition **WORKER SAFETY-3** will remain as proposed.

GENERAL CONDITIONS

STAFF ERRATA

Page 7-4; Section on Reporting of Unplanned Outages, COM-3
Action: Please delete this entire section.
Reason for Change: Staff has determined that this condition is unnecessary and has removed this from our General Conditions. There are other tools in place for obtaining this information.

Page 7-6 – Construction and Operation Security Plan COM-8

Certain elements of the security plan, referenced in both the Executive Summary and in the Hazardous Materials sections of the FSA were inadvertently left out of COM-8. The following changes should be made to correct this error:

CONSTRUCTION AND OPERATION SECURITY PLAN, COM-8

Prior to commencing construction, a site-specific Security Plan for the construction phase shall be developed and maintained at the project site. ~~Prior to commercial operation,~~At least sixty (60) days prior to the initial receipt of hazardous materials on-site, a site-specific Security Plan and Vulnerability Assessment for the operational phase shall be developed and maintained at the project site. ~~The plans may be reviewed at the site by the CPM during compliance inspections.~~ The project owner shall notify the CPM in writing that the Plan is available for review and approval at the project site.

Construction Security Plan

The Construction Security Plan must address:

1. site fencing enclosing the construction area;
2. use of security guards;
3. check-in procedure or tag system for construction personnel and visitors;
4. protocol for contacting law enforcement and the CPM in the event of suspicious activity or emergency; and
5. evacuation procedures.

Operation Security Plan

The Operations Security Plan must address:

1. permanent site fencing and security gate;
2. use of security guards;
3. security alarm for critical structures;
4. protocol for contacting law enforcement and the CPM in the event of suspicious activity or emergency;
5. evacuation procedures;
6. perimeter breach detectors and on-site motion detectors;
7. video or still camera monitoring system; and
8. fire alarm monitoring system.
9. site personnel background checks.
10. site access for vendors and requirements for Hazardous Materials vendors to conduct personnel background security checks.
11. In addition, the project owner shall prepare a Vulnerability Assessment and implement site security measures addressing hazardous materials storage and transportation consistent with US EPA and US Department of Justice guidelines.

The CPM may authorize modifications to these measures, or may require additional measures depending on circumstances unique to the facility, and in response to industry-related security concerns.

Page 7-10, in the middle of the page between enumerated item #8 and the heading Facility Closure, COM-12 and COM-13
Action: Please add the following paragraph and section III.
The CPM will negotiate the above-cited pre-construction and construction milestones with the project owner based on an expected schedule of construction. The CPM may agree to modify the final milestones from those listed above at any time prior to or during construction if the project owner demonstrates good-cause for not meeting the originally-established milestones.

III. A FINDING THAT THERE IS GOOD CAUSE FOR FAILURE TO MEET MILESTONES WILL BE MADE IF ANY OF THE FOLLOWING CRITERIA ARE MET:

1. The change in any milestone does not change the established commercial operation date milestone.
2. The milestone is changed due to circumstances beyond the project owner's control.
3. The milestone will be missed, but the project owner demonstrates a good-faith effort to meet the project milestone.
4. The milestone will be missed due to unforeseen natural disasters or acts of God which prevent timely completion of the milestones.
5. The milestone is missed due to requirements of the California ISO to maintain existing generation output.

Reason for Change: The above paragraph and section III were inadvertently left out of the submitted testimony.

Page 7-18, Table 1, Com-3, Description
Action : Remove language in the description box and replace with "Deleted".
Reason for Change: Condition COM-3 has been deleted.