

1 **PLANNING COMMISSION RESOLUTION NO. 6088**

2 A RESOLUTION OF THE PLANNING COMMISSION OF THE  
3 CITY OF CARLSBAD, CALIFORNIA, RECOMMENDING  
4 APPROVAL OF A PRECISE DEVELOPMENT PLAN PDP  
5 00-02 FOR (1) THE EXISTING 95-ACRE ENCINA POWER  
6 STATION (EPS), LOCATED AT 4600 CARLSBAD  
7 BOULEVARD IN LOCAL FACILITIES MANAGEMENT  
8 ZONES 1 AND 3 AND GENERALLY LOCATED NORTH OF  
9 CANNON ROAD, SOUTH OF AGUA HEDIONDA LAGOON,  
10 EAST OF THE PACIFIC OCEAN, AND WEST OF  
11 INTERSTATE 5; AND (2) THE PROPOSED CARLSBAD  
12 SEAWATER DESALINATION PLANT, WHICH WOULD BE  
13 LOCATED ON THE GROUNDS OF THE EPS. THE PRECISE  
14 DEVELOPMENT PLAN SERVES AS (1) A LAND USE  
15 APPLICATION FOR THE DESALINATION PLANT AND (2) A  
16 DOCUMENT TO ESTABLISH EXISTING LAND USES AT  
17 THE EPS AND DEVELOPMENT AND LAND USE  
18 STANDARDS FOR THE EPS.

19 CASE NAME: PRECISE DEVELOPMENT PLAN AND  
20 DESALINATION PLANT  
21 CASE NO.: PDP 00-02

22 WHEREAS, **Poseidon Resources (Channelside) LLC**, “Developer,” and  
23 **Cabrillo Power I LLC**, “Owner,” have jointly filed a verified application with the City of  
24 Carlsbad regarding property owned by Owner and described as:

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

29 (“the Property”) and;

30 WHEREAS, said verified application constitutes a request for a Precise  
31 Development Plan as referenced in Exhibit “X” dated May 3, 2006, attached hereto and on file in  
32 the Planning Department **PRECISE DEVELOPMENT PLAN AND DESALINATION  
33 PLANT – PDP 00-02** as provided by Chapters 21.36 and 21.52 of the Carlsbad Municipal Code;  
34 and

1           WHEREAS, the Precise Development Plan serves as a land use application for  
2 the Carlsbad Seawater Desalination Plant, which is proposed at the Encina Power Station; and

3           WHEREAS, the purpose of the Precise Development Plan is to also document  
4 existing land uses at the Encina Power Station, a facility that began operation in 1954, and  
5 provides land use and development standards for existing and potential future uses at the power  
6 station as well as the Carlsbad Seawater Desalination Plant; and

7           WHEREAS, the Precise Development Plan and Desalination Plant project does  
8 not involve any modification to the Encina Power Station with the exception of demolishing a  
9 fuel oil tank, making certain electrical connections and making certain connections to the Encina  
10 Power Station seawater discharge as required by the Carlsbad Seawater Desalination Plant; and

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

13           WHEREAS, at said public hearing, upon hearing and considering all testimony  
14 and arguments, if any, of all persons desiring to be heard, said Commission considered all factors  
15 relating to the Precise Development Plan.  
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17           NOW, THEREFORE, BE IT HEREBY RESOLVED by the Planning  
18 Commission of the City of Carlsbad as follows:  
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- 20           A) That the foregoing recitations are true and correct.
- 21           B) That based on the evidence presented at the public hearing, the Commission  
22 **RECOMMENDS APPROVAL** of **PRECISE DEVELOPMENT PLAN AND**  
23 **DESALINATION PLANT – PDP 00-02**, based on the following findings and  
subject to the following conditions:

24           **Findings:**

- 25           1. The **Precise Development Plan PDP 00-02** is consistent with the intent and purpose of  
26 the Public Utilities (P-U) Zone, Section 21.36.010 (1) of the Carlsbad Municipal Code, to  
27 provide a Precise Development Plan that is compatible with the General Plan and  
surrounding developments, **in that (1) existing and permitted land uses within the**  
**proposed Precise Development Plan are consistent with and/or implement the**

1 objectives of the Public Utilities (U) General Plan designation; (2) the Precise  
2 Development Plan, through developments standards and review procedures, is  
3 compatible with surrounding developments; (3) the Precise Development Plan  
4 planning area is adequately buffered from surrounding, more sensitive uses (e.g.,  
5 residences and businesses) by open space, other utility uses, and transportation  
6 corridors and through development standards, including setbacks, of the proposed  
7 Precise Development Plan. Furthermore, the Owner, through the Precise  
8 Development Plan, has offered to provide certain public dedications that will  
9 enhance the public's use of open space areas adjacent to the Precise Development  
10 Plan area and the PDP is conditioned to dedicate an easement for the Coastal Rail  
11 Trail.

12 2. The Precise Development Plan PDP 00-02 is consistent with the intent and purpose of  
13 the Public Utilities (P-U) Zone, 21.36.010 (2) of the Carlsbad Municipal Code to provide  
14 a Precise Development Plan that has given due regard to environmental factors, in that  
15 the proposal has been reviewed concurrently with the processing and certification of  
16 Environmental Impact Report (EIR) 03-05, compliant with the provisions of the  
17 California Environmental Quality Act.

18 3. The Precise Development Plan PDP 00-02 is consistent with the intent and purpose of  
19 the Public Utilities (P-U) Zone, 21.36.010 (3) of the Carlsbad Municipal Code to provide  
20 a Precise Development Plan that provides for necessary public improvements, in that  
21 conditions of approval have been placed on the project, which, in addition to the  
22 terms and obligations of Development Agreement DA 05-01, combine to ensure that  
23 adequate public improvements and/or dedications, and/or funds necessary therefor,  
24 will be secured concurrent with project approval.

25 4. The Precise Development Plan PDP 00-02 permits the Carlsbad Seawater  
26 Desalination Plant that is identified as a permitted use in the P-U Zone by  
27 Municipal Code Section 21.36.020 (4)(c) and that incorporates design, location, and  
28 operation characteristics that ensure compliance with the intent and purpose of the  
P-U Zone. Furthermore, PDP 00-02 sets forth the standards of development for the  
desalination plant.

1 The Precise Development Plan PDP 00-02 is consistent with the General Plan in that:  
2 a. It provides regulations and standards for uses that are appropriate uses for  
3 the General Plan Public Utilities ("U") land use designation, the designation  
4 applied to the Encina Power Station.  
5 b. The General Plan Land Use Element notes that the U land use designation is  
6 applied to existing areas, such as the Encina Power Station, that are being  
7 used for public or quasi-public functions.  
8 c. It provides development standards for the Encina Power Station, including  
9 the Carlsbad Seawater Desalination Plant, which is consistent with the  
10 Overall Land Use Pattern goal A.2 that states, "A City which provides for an  
11 orderly balance of both public and private land uses within convenient and  
12 compatible locations throughout the community and ensures that all such  
13 uses, type, amount, design, and arrangement serve to protect and enhance  
14 the environment, character, and image of the City."

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- d. **The establishment of the Precise Development Plan, its regulation of development and uses at the Encina Power Station, and the Owner's offers of public dedications as conditioned herein, achieve compliance with Land Use Element Environmental Policy C.6, which states, "Ensure the preservation and maintenance of the unique environmental resources of the Agua Hedionda Lagoon while providing for a balance of public and private land uses through implementation of the Agua Hedionda Land Use Plan."**
6. **The Precise Development Plan PDP 00-02 is consistent with Encina Specific Plan 144 in that:**
- a. **It complies with and enhances applicable Specific Plan standards and requirements adopted over the years to regulate development at the Encina Power Station.**
  - b. **It documents and maps power plant uses and features, and, since it proposes no changes to the operation of the Encina Power Station and only limited changes to its facilities (seawater discharge and electrical connections and removal of the a fuel oil storage tank), the Precise Development Plan does not conflict with Specific Plan standards and requirements regarding power station operations.**
  - c. **The proposed amended and restated Encina Specific Plan, SP 144(H), incorporates the land use designations of the City of Carlsbad General Plan, with which the Precise Development Plan is consistent. Additionally, SP 144(H) would incorporate by reference PDP 00-02.**
7. **The Precise Development Plan PDP 00-02 is consistent with the goals of the South Carlsbad Coastal Redevelopment Plan in that:**
- a. **Establishment of the Precise Development Plan and its development and environmental standards assists in eliminating blight and environmental deficiencies in the Redevelopment Plan area and ensuring quality site design.**
  - b. **Development of the Carlsbad Seawater Desalination Plant will assist in the stimulation of new commercial/industrial expansion, employment, and economic growth. The Owner-offered dedication to set aside vacant land next to the Hubbs-Sea World research facility for marine research or aquaculture also furthers this goal.**
  - c. **The Owner-offered public dedications, including dedication of the Fishing Beach along the lagoon and Bluff area adjacent to the beach, enable development of new public beach and coastal recreation opportunities, parking, and open space amenities.**
  - d. **Locating the Carlsbad Seawater Desalination Plant in a location that creates the least amount of constraints on any future conversion of the Encina power station facilitates the redevelopment of the Encina power generating facility to a smaller, more efficient power generating plant.**
8. **The Precise Development Plan PDP 00-02 is consistent with the City's adopted Scenic Corridor Guidelines, which apply to Carlsbad Boulevard and the North County Transit District railroad corridor, in that it provides for the Carlsbad Seawater Desalination Plant a quality building design and appropriate visual screening, and, for the**

1 **Encina Power Station as a whole, recognition of the Guidelines and development**  
2 **standards.**

- 3 9. **The Precise Development Plan PDP 00-02, including the public dedications proposed**  
4 **by the Owner through the Precise Development Plan, is in conformance with the Agua**  
5 **Hedionda Land Use Plan and all applicable policies in that it has been reviewed for**  
6 **consistency with relevant coastal policies including land use, habitat protection,**  
7 **grading and drainage, stormwater management, recreation, shoreline access, and**  
8 **visual resources. In particular, the Precise Development Plan achieves consistency**  
9 **with Land Use Plan policies as follows:**
- 10 a. **The Precise Development Plan regulates uses that are consistent with those**  
11 **land uses shown on the Plan's Land Use Map (Policy 1.1).**
  - 12 b. **The Owner-offered dedication of a public access easement for the Fishing**  
13 **Beach is consistent with policies 6.5 and 6.7, which encourage the Encina**  
14 **fishing area on the Outer Lagoon to be maintained and present recreational**  
15 **uses of the lagoon to be expanded where feasible.**
  - 16 c. **Other Owner-offered public dedications in the vicinity of Agua Hedionda**  
17 **Lagoon and the Pacific Ocean are consistent with Coastal Act Policies**  
18 **regarding public access to coastline and recreational features.**
  - 19 d. **The Precise Development Plan is subject to, and incorporates as a regulating**  
20 **document, the Mitigation and Monitoring Program for EIR 03-05, which**  
21 **provides mitigation to ensure consistency with Land Use Plan policies**  
22 **regarding environmentally sensitive habitats, geology, and water quality.**

23 **Furthermore, the Project has been conditioned to obtain its coastal development**  
24 **permit from the California Coastal Commission.**

- 25 10. **The approval of Precise Development Plan PDP 00-02 fulfills the requirement of**  
26 **Municipal Code Section 21.36.030, which in part states that "no building permit or**  
27 **other entitlement for any use in the P-U zone shall be issued until a precise**  
28 **development plan has been approved for the property."**
11. **As conditioned, the project is consistent with the City's Landscape Manual (Carlsbad**  
**Municipal Code Section 14.28.020 and Landscape Manual Section I B).**
12. **The Planning Commission has reviewed each of the exactions imposed on the Developer**  
**contained in this resolution, and hereby finds, in this case, that the exactions are imposed**  
**to mitigate impacts caused by or reasonably related to the project, and the extent and the**  
**degree of the exaction is in rough proportionality to the impact caused by the project.**
13. **That the City has adopted a Citywide Trails Program and a segment of the trail network,**  
**the Coastal Rail Trail, is associated with this project. To facilitate locating this trail,**  
**which cannot be accommodated in its originally intended location within the North**  
**County Transit District Railroad right of way due to various reasons including**  
**space limitations, security, and safety concerns, the Owner and the City have agreed**  
**to try and find a mutually agreeable trail location within the Precise Development**  
**Plan boundaries.**

1     **Conditions:**

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

- 5     1.     If any of the following conditions fail to occur; or if they are, by their terms, to be  
6     implemented and maintained over time, if any of such conditions fail to be so  
7     implemented and maintained according to their terms, the City shall have the right to  
8     revoke or modify all approvals herein granted; deny or further condition issuance of all  
9     future building permits; deny, revoke or further condition all certificates of occupancy  
10    issued under the authority of approvals herein granted; record a notice of violation on the  
11    property title; institute and prosecute litigation to compel their compliance with said  
12    conditions or seek damages for their violation. No vested rights are gained by Developer  
13    or a successor in interest by the City's approval of this **Precise Development Plan, other**  
14    **than those described in the Development Agreement (DA 05-01).**
- 15    2.     Staff is authorized and directed to make, or require the Developer to make, all corrections  
16    and modifications to the **Precise Development Plan** documents, as necessary to make  
17    them internally consistent and in conformity with the final action on the project.  
18    Development shall occur substantially as shown on the approved Exhibits. Any proposed  
19    development different from this approval shall require an amendment to this approval.
- 20    3.     Prior to approval of the **Precise Development Plan**, the Developer shall apply for and  
21    obtain approval of a Coastal Development Permit issued by the California Coastal  
22    Commission or its successor in interest, that substantially conforms to this approval. A  
23    signed copy of the Coastal Development Permit must be submitted to the Planning  
24    Director. If the approval is substantially different, an amendment to the **Precise**  
25    **Development Plan** shall be required.
- 26    4.     This approval is granted subject to the certification, adoption and approval of the  
27    Environmental Impact Report (**EIR 03-05**) and Mitigation Monitoring and Reporting  
28    Program, **SP 144(H), DA 05-01, RP 05-12, CDP 04-41, SUP 05-04 and HMPP 05-08**  
and is subject to all conditions contained in Planning Commission Resolutions No. **6089,**  
**6090, 6091, 6092, 6093, and 6094** for those other approvals incorporated herein by  
reference.
5.     **Those portions of the Project's water conveyance pipelines located within the City of**  
**Carlsbad but outside of the City's coastal zone are not approved as part of this**  
**permit and are subject to future permits by the City of Carlsbad, and will be subject**  
**to the requirements of the Carlsbad Municipal Code.**
6.     If any condition for construction of any public improvements or facilities, or the payment  
of any fees in-lieu thereof, imposed by this approval or imposed by law on this Project  
are challenged, this approval shall be suspended as provided in Government Code  
Section 66020. If any such condition is determined to be invalid, this approval shall be  
invalid unless the City Council determines that the project without the condition complies  
with all requirements of law.

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- 7. a. Developer shall comply with all applicable provisions of federal, state, and local laws and regulations in effect at the time of building permit issuance, **except as otherwise provided in the Development Agreement.**
- b. **Owner** shall comply with all applicable provisions of federal, state, and local laws and regulations in effect at the time of building permit issuance as they relate to the existing Encina Power Station.

8. **Indemnification:**

- a. Developer shall and does hereby agree to indemnify, protect, defend, and hold harmless the City of Carlsbad, its Council members, officers, employees, agents, and representatives (collectively "Indemnified Parties"), from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees incurred by the City arising, directly or indirectly, from (i) City's approval and issuance of this **Precise Development Plan**, (ii) City's approval or issuance of any permit or action, whether discretionary or nondiscretionary, in connection with the Carlsbad Seawater Desalination Plant use contemplated herein, and (iii) Developer's installation and operation of the Carlsbad Seawater Desalination Plant, including without limitation, any and all liabilities arising from the emission by the Carlsbad Seawater Desalination Plant of electromagnetic fields or other energy waves or emissions. These obligations survive until all legal proceedings have been concluded and continue even if any City approval giving rise to an indemnification obligation is not validated.
- b. Owner shall and does hereby agree to indemnify, protect, defend, and hold harmless Indemnified Parties, from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees incurred by the City arising, directly or indirectly, from (i) City's approval and issuance of this **Precise Development Plan**, (ii) City's approval or issuance of any permit or action, whether discretionary or nondiscretionary, in connection with the use of the existing 95-acre Encina Power Station, and (iii) Owner's installation and operation of the Encina Power Station, including without limitation, any and all liabilities arising from the emission by the Encina Power Station of electromagnetic fields or other energy waves or emissions. Owner's duty to indemnify the Indemnified Parties does not include any and all liabilities, losses, damages, demands, claims, costs, court costs and attorney's fees arising, directly or indirectly from the Carlsbad Seawater Desalination Plant. These obligations survive until all legal proceedings have been concluded and continue even if any City approval giving rise to an indemnification obligation is not validated.

...

- 1 9. a. The Desalination plant project shall comply with all conditions and mitigation  
2 measures which are required as part of the Zone 1 and Zone 3 Local Facilities  
3 Management Plans and any amendments made to that Plan prior to the issuance of  
4 building permits. **Should amendments occur to the LFMPs, the Developer  
5 shall comply subject to the limitations of the Development Agreement  
6 (DA 05-01).**
- 7 b. For the Encina Power Station, Owner shall comply with all conditions and  
8 mitigation measures which are required as part of the Zone 1 and Zone 3 Local  
9 Facilities Management Plans and any amendments made to that Plan prior to the  
10 issuance of building permits for any permits not contemplated in this PDP, as it  
11 may be amended from time to time.
- 12 10. The approval of the PDP shall become null and void for the portions relating to the  
13 Desalination Plant, if the Desalination Plant does not **become operational within  
14 10 years of the final discretionary approval, including the discretionary approvals of  
15 the California Coastal Commission or other agencies, as may be consistent with the  
16 Development Agreement (DA 05-01).**
- 17 11. Developer shall implement, or cause the implementation of, the **EIR 03-05 Project  
18 Mitigation Monitoring and Reporting Program.**
- 19 12. a. As a condition of this approval, Owner must comply with the requirements of all  
20 regulatory agencies having jurisdiction over the Encina Power Station.
- 21 b. As a condition of this approval, Developer must comply with the requirements of  
22 all regulatory agencies having jurisdiction over the Desalination Plant and the  
23 Mitigation Monitoring and Reporting requirements of the environmental  
24 documents for the Desalination Plant.
- 25 13. Developer shall submit to **the Planning Director** a reproducible 24" x 36" mylar copy of  
26 the **Precise Development Plan** reflecting the conditions approved by the final decision-  
27 making body.
- 28 a. Developer shall include, as part of the plans submitted for any permit plan check,  
a reduced legible version of all approving resolution(s) in a 24" x 36" blue-line  
drawing format (including any applicable Coastal Commission approvals **and the  
Mitigation Monitoring and Reporting Program**).
- b. **Prior to final inspection of the desalination plant, Developer shall have  
constructed a decorative screen wall or fence and, where feasible, install  
landscaping and irrigation along the entire Carlsbad Boulevard frontage of  
the Encina Power Station beginning at the power station's south boundary  
adjacent to the SDG&E property and extending approximately to the north  
end of the aquaculture facilities adjacent to the power station's discharge  
pond, provided that (i) prior to issuance of building or grading permits for  
the desalination plant, plans for the decorative screening wall or fence,  
landscaping and irrigation, as outlined in the conditions for a Final  
Landscape and Irrigation Plan contained herein, shall be submitted to the**



1 **Planning Director and the City Engineer for review and approval; and**  
2 **(ii) such decorative screen wall or fence shall replace the existing fence and**  
3 **shall incorporate, if determined appropriate by the Planning Director and**  
4 **the City Engineer, the bridge rail over the cooling water discharge culvert as**  
5 **required by and conditioned in Planning Commission Resolution No. 6091**  
6 **for Redevelopment Permit RP 05-12.**

- 5 c. Developer shall submit and obtain Planning Director approval of a Final  
6 Landscape and Irrigation Plan showing conformance with the conditions herein  
7 and the City's Landscape Manual. Developer shall construct and install all  
8 landscaping as shown on the approved Final Plans, and maintain all landscaping  
9 in a healthy and thriving condition, free from weeds, trash, and debris.
- 10 d. The first submittal of Final Landscape and Irrigation Plans shall be pursuant to the  
11 landscape plan check process on file in the Planning Department and  
12 accompanied by the project's building, improvement, and grading plans.
- 13 e. Prior to the issuance of any permits for the project, the applicant shall submit to  
14 the Planning Director a digital copy and a camera-ready master copy of the  
15 **ENCINA POWER STATION AND PRECISE DEVELOPMENT PLANT –**  
16 **PDP 00-02**, in addition to the required number of bound copies determined by the  
17 Planning Director.

14 **Engineering**

- 15 14. Prior to issuance of any building permit, Developer shall comply with the requirements of  
16 the City's anti-graffiti program for wall treatments if and when such a program is  
17 formally established by the City.
- 18 15. Prior to approval of a grading or building permits for the desalination plant, Developer  
19 shall cause Owner to give written consent to the City Engineer to the annexation of the  
20 area shown within the boundaries of the Precise Development Plan into the existing City  
21 of Carlsbad Street Lighting and Landscaping District No. 1 **and/or to the formation or**  
22 **annexation into an additional Street Lighting and Landscaping District. Said**  
23 **written consent shall be on a form provided by the City Engineer.**
- 24 16. Prior to issuance of grading or building permits for the desalination plant, Developer shall  
25 cause Owner or its successor in interest to make an irrevocable offer of dedication to the  
26 City and/or other appropriate entities for all public streets, **lands**, and easements shown  
27 on the Precise Development Plan **listed below, except as otherwise provided in the**  
28 **Precise Development Permit.** The offer shall be made by a separate document. All land  
so offered shall be offered free and clear of all liens and encumbrances and without cost.  
Streets that are already public are not required to be rededicated.
- a. **Public dedications: The locations of the following dedications are shown on**  
**exhibit "Poseidon Desalination Plant Proposed Parcel Exhibit" attached**  
**hereto for reference. Prior to issuance of grading or building permits for the**  
**desalination plant, precise legal descriptions and documentation shall be**

1 submitted to the satisfaction of the City Attorney, the City Engineer, and the  
2 Planning Director.

3 i. **Hubbs Site Parcel:** A deed restriction shall be recorded on the  
4 property known as the Hubbs Site Parcel. The Hubbs Site Parcel is  
5 the vacant, approximately two-acre eastern portion of the property  
6 identified by Assessor's Parcel Number (APN) 206-07-017 and  
7 currently occupied by the Hubbs-Sea World Research facility. The  
8 deed restriction shall limit allowable land uses on the Hubbs Site  
9 Parcel to those that are directly related to fish hatchery, fish ecology  
10 research, aquaculture uses, and trails to the satisfaction of the  
11 Planning Director.

12 ii. **Bluff Area Parcel:** Fee title to property known as the Bluff Area  
13 Parcel shall be granted to the City of Carlsbad for public access and  
14 recreational uses. The Bluff Area Parcel is on the west side of  
15 Carlsbad Boulevard, between the Encina Power Station discharge  
16 jetty and the Terramar residential area. Fee title shall include only  
17 the bluff area and not the beach. Cabrillo Power I LLC shall pay all  
18 costs associated with the property dedication.

19 iii. **South Power Plant Parcel:** A public parking and public access  
20 easement shall be granted to the City of Carlsbad for the property  
21 described as the South Power Plant Parcel for the development of  
22 public vehicle parking by the City of Carlsbad. The South Power  
23 Plant Parcel is located at the southwest corner of the Precise  
24 Development Plan, adjacent to the east side of Carlsbad Boulevard  
25 and Encina Power Station south entrance gate, an area approximately  
26 0.27 acre in size. If necessary, Developer shall be responsible for costs  
27 associated with removal and relocation of any gates or fences  
28 necessary to accommodate the parking and access to it. Furthermore,  
prior to issuance of grading or building permits for the desalination  
plant, one (or more) plan(s) shall be provided to the City to show  
feasible parking layouts as determined by the Planning Director and  
the City Engineer. Parking lot plans shall be designed to complement  
and allow installation of the Carlsbad Boulevard frontage landscape  
and wall conditioned herein. The operational parameters of the  
public parking and public access shall be ones that are mutually  
agreeable to both the Owner and the Planning Director.

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

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public use and access from time to time during periodic dredging cycles as approved for lagoon maintenance.

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

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

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

ii. **Acknowledges that under existing NPDES requirements applicable to the Owner's property that Owner has legal obligations to prevent illegal or unpermitted discharges into the Agua Hedionda Lagoon or Pacific Ocean under expected drainage water flows, and no releases of hazardous materials or pollutants as the result of drainage flows across the Precise Development Plan property.**

iii. **Subject to any Owner-initiated development which requires a formal amendment to the Precise Development Plan, regardless of any potential exemption based upon square footage, Owner shall irrevocably offer to dedicate a public drainage easement over the existing main storm drain line carrying public drainage water across the Precise Development Plan property. The offer shall include additional width and rights to allow for the complete construction, operation and maintenance of the existing storm and future Drainage Master Plan (DMP) Facility BAA to the satisfaction of the City Engineer. The offer may allow for Owner to adjust the exact alignment or increase the capacity of the new drainage facility at Owner's expense to accommodate the flow in the existing drainage facility, prior to the City's construction of any facilities. After construction of the facilities, the City may allow Owner to relocate the existing storm drain facilities at Owner's expense if the relocated alignment is acceptable to the City Engineer or eliminate the existing facility at Owner's expense if eliminating the existing facility is acceptable to the City Engineer. Prior to acceptance of the existing private storm drain and the proposed drainage easement by the City, the Owner shall remove all liens and encumbrances from the easement property proposed for dedication that would interfere with the construction, operation, or maintenance of the existing and future drainage facilities to the satisfaction of the City Engineer, including buildings, structures, and pipelines. The agreement and its provisions shall be subject to the satisfaction of the City Engineer and the City Attorney.**

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d. **Coastal Rail Trail – Prior to occupancy, dedicate an easement for the Coastal Rail Trail in a location within the boundaries of the Precise Development Plan that is mutually acceptable to the City and Owner or its successor in interest.**

e. **Agua Hedionda Lift Station Site and Vista-Carlsbad Interceptor Sewer Pipeline - Prior to occupancy, dedicate an easement for the Agua Hedionda Lift Station Site and Vista-Carlsbad Interceptor Sewer Pipeline in a location within the boundaries of the Precise Development Plan that is mutually acceptable to the City and the Owner or its successors in interest.**

17. **Prior to the issuance of any grading or building permits for construction within the Precise Development Plan area, other than the desalination plant, Owner shall:**

i) **Pay the City’s Planned Local Drainage Area (PLDA) fee for the property encompassed by the entire Precise Development Plan, excluding the desalination plant site, in accordance with the City’s PLDA fee program at time of building or grading permit issuance. Owner shall pay PLDA fees for any owner-initiated development which requires a formal amendment to the Precise Development Plan, regardless of any potential exemption based upon square footage.**

ii) **Construct that portion of Master Drainage Plan facility BAA which is proposed to be located on Owner’s property within the Precise Development Plan area, subject to fee credits and reimbursements, if any, as may be provided in the then current City Drainage Ordinance. Owner may also request reimbursement from applicable fund sources from the City Redevelopment Agency. Owner shall construct that portion of facility BAA for any owner-initiated development which requires a formal amendment to the Precise Development Plan.**

18. **Owner shall not challenge any aspect of the Carlsbad Seawater Desalination Plant’s Environmental Impact Report before the California Coastal Commission or in any court of law for any reason or purpose.**

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**NOTICE**

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

You have 90 days from date of final approval to protest imposition of these fees/exactions. If you protest them, you must follow the protest procedure set forth in Government Code Section 66020(a), and file the protest and any other required information with the City Manager for processing in accordance with Carlsbad Municipal Code Section 3.32.030. Failure to timely follow that procedure will bar any subsequent legal action to attack, review, set aside, void, or annul their imposition.

You are hereby **FURTHER NOTIFIED** that your right to protest the specified fees/exactions **DOES NOT APPLY** to water and sewer connection fees and capacity charges, nor planning, zoning, grading or other similar application processing or service fees in connection with this project; **NOR DOES IT APPLY** to any fees/exactions of which you have previously been given a **NOTICE** similar to this, or as to which the statute of limitations has previously otherwise expired.

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


**AYES:** Chairperson Montgomery, Commissioners Baker, Cardosa, Heineman, Montgomery, Segall, and Whitton

**NOES:**

**ABSENT:**

**ABSTAIN:** Commissioner Dominguez

  
\_\_\_\_\_  
MARTELL B. MONTGOMERY, Chairperson  
CARLSBAD PLANNING COMMISSION

**ATTEST.**  
  
\_\_\_\_\_  
MARCELA ESCOBAR-ECK  
Planning Director



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SECTION II: That the findings and conditions of the Planning Commission in Planning Commission Resolution No. 6088 shall also constitute the findings and conditions of the City Council.

EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption, and the City Clerk shall certify to the adoption of this ordinance and cause it to be published at least once in a publication of general circulation in the City of Carlsbad within fifteen days after its adoption. Notwithstanding the preceding, this ordinance is subject to a coastal development permit issued by the California Coastal Commission and shall not be effective until it is approved by the California Coastal Commission.

INTRODUCED AND FIRST READ at the regular meeting of the Carlsbad City Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2006, and thereafter.

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PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council  
of the City of Carlsbad, California, on the \_\_\_\_\_ day of \_\_\_\_\_, by the following  
vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
RONALD R. BALL, City Attorney

\_\_\_\_\_  
CLAUDE A. LEWIS, Mayor

ATTEST:

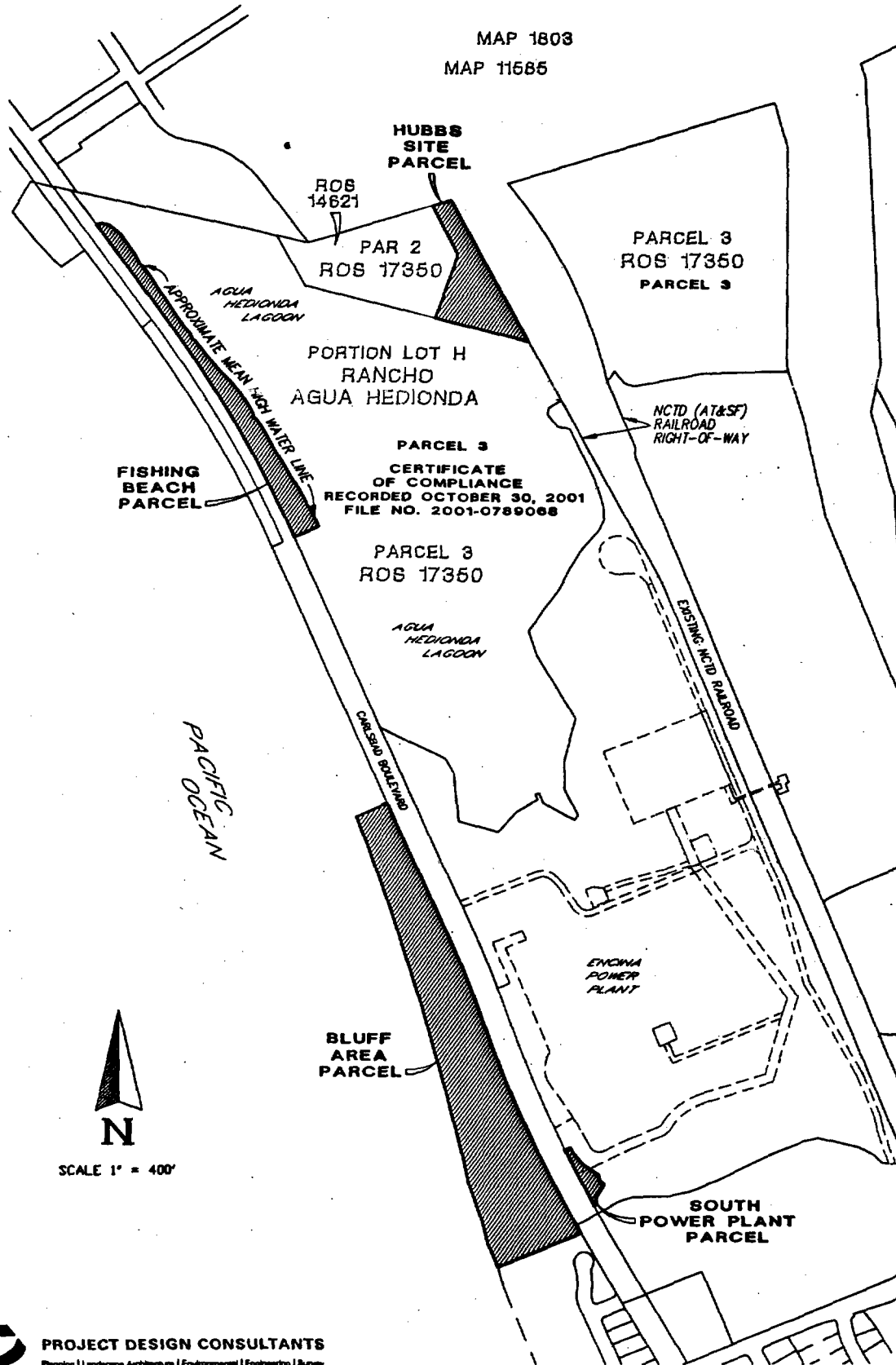
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LORRAINE M. WOOD, City Clerk

(SEAL)



# POSEIDON DESALINATION PLANT PROPOSED PARCEL EXHIBIT

MAP 1803  
MAP 11585



  
**N**  
SCALE 1" = 400'



**PROJECT DESIGN CONSULTANTS**  
Planning | Landscape Architecture | Environmental | Engineering | Survey  
701 B Street, Suite 800 San Diego, CA 92101  
619.236.6471 Tel 619.234.0349 Fax

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