PLANNING COMMISSION RESOLUTION NO. 6088

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

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

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

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

(“the Property”) and;

WHEREAS, said verified application constitutes a request for a Precise Development Plan as referenced in Exhibit “X” dated May 3, 2006, attached hereto and on file in the Planning Department PRECISE DEVELOPMENT PLAN AND DESALINATION PLANT – PDP 00-02 as provided by Chapters 21.36 and 21.52 of the Carlsbad Municipal Code; and
WHEREAS, the Precise Development Plan serves as a land use application for the Carlsbad Seawater Desalination Plant, which is proposed at the Encina Power Station; and

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

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

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

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to the Precise Development Plan.

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

A) That the foregoing recitations are true and correct.

B) That based on the evidence presented at the public hearing, the Commission RECOMMENDS APPROVAL of PRECISE DEVELOPMENT PLAN AND DESALINATION PLANT – PDP 00-02, based on the following findings and subject to the following conditions:

Findings:

1. The Precise Development Plan PDP 00-02 is consistent with the intent and purpose of the Public Utilities (P-U) Zone, Section 21.36.010 (1) of the Carlsbad Municipal Code, to 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
objectives of the Public Utilities (U) General Plan designation; (2) the Precise Development Plan, through developments standards and review procedures, is compatible with surrounding developments; (3) the Precise Development Plan planning area is adequately buffered from surrounding, more sensitive uses (e.g., residences and businesses) by open space, other utility uses, and transportation corridors and through development standards, including setbacks, of the proposed Precise Development Plan. Furthermore, the Owner, through the Precise Development Plan, has offered to provide certain public dedications that will enhance the public's use of open space areas adjacent to the Precise Development Plan area and the PDP is conditioned to dedicate an easement for the Coastal Rail Trail.

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

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

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

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

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

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

10. The approval of Precise Development Plan PDP 00-02 fulfills the requirement of Municipal Code Section 21.36.030, which in part states that “no building permit or other entitlement for any use in the P-U zone shall be issued until a precise development plan has been approved for the property.”

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

1. If any of the following conditions fail to occur; or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the City shall have the right to revoke or modify all approvals herein granted; deny or further condition issuance of all future building permits; deny, revoke or further condition all certificates of occupancy issued under the authority of approvals herein granted; record a notice of violation on the property title; institute and prosecute litigation to compel their compliance with said conditions or seek damages for their violation. No vested rights are gained by Developer or a successor in interest by the City’s approval of this Precise Development Plan, other than those described in the Development Agreement (DA 05-01).

2. Staff is authorized and directed to make, or require the Developer to make, all corrections and modifications to the Precise Development Plan documents, as necessary to make them internally consistent and in conformity with the final action on the project. Development shall occur substantially as shown on the approved Exhibits. Any proposed development different from this approval shall require an amendment to this approval.

3. Prior to approval of the Precise Development Plan, the Developer shall apply for and obtain approval of a Coastal Development Permit issued by the California Coastal Commission or its successor in interest, that substantially conforms to this approval. A signed copy of the Coastal Development Permit must be submitted to the Planning Director. If the approval is substantially different, an amendment to the Precise Development Plan shall be required.

4. This approval is granted subject to the certification, adoption and approval of the Environmental Impact Report (EIR 03-05) and Mitigation Monitoring and Reporting 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.
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.
9. a. The Desalination plant project shall comply with all conditions and mitigation measures which are required as part of the Zone 1 and Zone 3 Local Facilities Management Plans and any amendments made to that Plan prior to the issuance of building permits. Should amendments occur to the LFMPs, the Developer shall comply subject to the limitations of the Development Agreement (DA 05-01).

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

10. The approval of the PDP shall become null and void for the portions relating to the Desalination Plant, if the Desalination Plant does not become operational within 10 years of the final discretionary approval, including the discretionary approvals of the California Coastal Commission or other agencies, as may be consistent with the Development Agreement (DA 05-01).

11. Developer shall implement, or cause the implementation of, the EIR 03-05 Project Mitigation Monitoring and Reporting Program.

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

b. As a condition of this approval, Developer must comply with the requirements of all regulatory agencies having jurisdiction over the Desalination Plant and the Mitigation Monitoring and Reporting requirements of the environmental documents for the Desalination Plant.

13. Developer shall submit to the Planning Director a reproducible 24” x 36” mylar copy of the Precise Development Plan reflecting the conditions approved by the final decision-making body.

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

c. Developer shall submit and obtain Planning Director approval of a Final Landscape and Irrigation Plan showing conformance with the conditions herein and the City’s Landscape Manual. Developer shall construct and install all landscaping as shown on the approved Final Plans, and maintain all landscaping in a healthy and thriving condition, free from weeds, trash, and debris.

d. The first submittal of Final Landscape and Irrigation Plans shall be pursuant to the landscape plan check process on file in the Planning Department and accompanied by the project’s building, improvement, and grading plans.

e. Prior to the issuance of any permits for the project, the applicant shall submit to the Planning Director a digital copy and a camera-ready master copy of the ENCINA POWER STATION AND PRECISE DEVELOPMENT PLANT – PDP 00-02, in addition to the required number of bound copies determined by the Planning Director.

Engineering

14. Prior to issuance of any building permit, Developer shall comply with the requirements of the City’s anti-graffiti program for wall treatments if and when such a program is formally established by the City.

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

16. Prior to issuance of grading or building permits for the desalination plant, Developer shall cause Owner or its successor in interest to make an irrevocable offer of dedication to the City and/or other appropriate entities for all public streets, lands, and easements shown on the Precise Development Plan listed below, except as otherwise provided in the 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
submitted to the satisfaction of the City Attorney, the City Engineer, and the Planning Director.

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

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

iii. South Power Plant Parcel: A public parking and public access easement shall be granted to the City of Carlsbad for the property described as the South Power Plant Parcel for the development of public vehicle parking by the City of Carlsbad. The South Power Plant Parcel is located at the southwest corner of the Precise Development Plan, adjacent to the east side of Carlsbad Boulevard and Encina Power Station south entrance gate, an area approximately 0.27 acre in size. If necessary, Developer shall be responsible for costs associated with removal and relocation of any gates or fences 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
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.
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.
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

PC RESO NO. 6088 -13-
ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A PRECISE DEVELOPMENT PLAN PDP 00-02 FOR (1) THE EXISTING 95-ACRE ENCINA POWER STATION (EPS), LOCATED AT 4600 CARLSBAD BOULEVARD IN LOCAL FACILITIES MANAGEMENT ZONES 1 AND 3 AND GENERALLY NORTH OF CANNON ROAD, SOUTH OF AGUA HEADIONDA LAGOON, EAST OF THE PACIFIC OCEAN, AND WEST OF INTERSTATE 5, AND; (2) THE PROPOSED CARLSBAD SEAWATER DESALINATION PLANT, WHICH WOULD BE LOCATED ON THE GROUNDS OF THE EPS.

CASE NAME: PRECISE DEVELOPMENT PLAN AND DESALINATION PLANT

WHEREAS, the City Council of the City of Carlsbad, California has reviewed and considered a request to approve Precise Development Permit 00-02 for the Encina Power Station and Carlsbad Seawater Desalination Plant; and

WHEREAS, after procedures in accordance with the requirements of law, the City of Carlsbad has determined that the public interest indicates that said Precise Development Plan be approved.

WHEREAS, the City Council did on the ___ day of ____, hold a duly noticed public hearing as prescribed by law to consider said request; and

WHEREAS at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to the Specific Plan Amendment; and

NOW, THEREFORE, the City Council of the City of Carlsbad does ordain as follows:

SECTION I: That Precise Development Plan PDP 00-02, dated May 3, 2006, on file in the Planning Department and incorporated by reference herein is approved. All development of the property shall substantially conform to the approved plan as conditioned.
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.
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:

__________________________________________
LORRAINE M. WOOD, City Clerk

(SEAL)