



July 10, 2007

Daniel Martinez, Oxnard City Clerk
City of Oxnard
305 W. Third St, West Wing

RE: Administrative Appeal of the June 28, 2007 Decision of the Oxnard Planning Commission regarding the Southern California Edison Company Mandalay Peaker Project (PZ 06-400-5)

Enclosed for filing are three sets of the Notice of Appeal, an Original and two copies.

Also enclosed, is the Filing Fee for Appeal, SCE check #226693, in the amount of \$500.

Because of the importance of the peaker to SCE's grid and the urgency of bringing it online without undue delay, SCE respectfully asks that the City act on this appeal as soon as possible by placing this on the July 24, 2007 City Council Agenda.

Thank you for consideration of this request.

Sincerely,


Nancy M. Williams
Local Public Affairs Region Manager

CITY OF OXNARD
CITY CLERK
07 JUL 10 AM 9:46

PLEASE PROVIDE ORIGINAL AND 2 COPIES

TO: Oxnard City Clerk

NOTICE OF APPEAL
(from member of the public)

I, Southern California Edison Company, am aggrieved or directly affected by and
(name of person filing appeal)

appeal the June 28, 2007 decision from the Planning Commission regarding _____
(date of PC meeting) (number)

PZ 06-400-05, Southern California Edison Mandalay Peaker Project
and description of matter)

The grounds for appeal are:

Please see attached Appeal.

I request the following relief:

Please see attached Appeal.

Sumner J. Koch

Date: 7/9/07

(signature) Sumner J. Koch
Senior Attorney
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770

(address)

cc: City Attorney
Project Planner
Development Services Department
Applicant

TO: Oxnard City Clerk
FROM: Southern California Edison Company
DATE: July 10, 2007

**ADMINISTRATIVE APPEAL OF THE JUNE 28, 2007 DECISION
OF THE OXNARD CITY PLANNING COMMISSION
REGARDING THE SOUTHERN CALIFORNIA EDISON
COMPANY MANDALAY PEAKER PROEJCT
(PZ 06-400-5)**

Southern California Edison Company (SCE) hereby appeals the June 28, 2007 decision of the Oxnard City Planning Commission regarding the SCE Mandalay Peaker project, PZ 06-400-05. For the reasons described herein, SCE requests that the City reverse the decision of the Planning Commission, adopt the Mitigated Negative Declaration prepared by Planning Commission Staff, and issue SCE a Coastal Development Permit (CDP) for the Project. Because of the importance of the peaker to SCE's grid and the urgency of bringing it online without undue delay, SCE respectfully asks that the City act on this appeal as soon as possible.

I. BACKGROUND

SCE filed an application (PZ 06-400-5) for a CDP with the City of Oxnard (City) for the Mandalay Peaker Project (Project) to be located at 251 N. Harbor Boulevard on SCE-owned land adjacent to the existing Reliant Mandalay Generating Station. The proposed Project is a 45 megawatt electric generating facility, with the ability to turn on and ramp up to full power in a very short time, approximately ten minutes. Importantly, the Project has "black start" capability, which is the ability to start up without requiring external power from the electric transmission grid. The Project would be used to provide power (i) to SCE's electric customers in the Oxnard area during times of peak power use, (ii) during outages of other generating or transmission equipment that normally provide power to the area, (iii) to assist in voltage regulation of the SCE electrical grid in the area, and (iv) to provide black start assistance to bring the Mandalay Generating Station on-line quickly should that station go off line. For example, should the electric grid "trip" and the Mandalay Generating Station shut down, the station needs an electric power source to be able to restart. The Project can supply that power.

The Project is an essential part of SCE's utility infrastructure. The Project location was chosen to strengthen the reliability of the local transmission system within Oxnard and the immediately surrounding area. The Project will be connected to the existing 66kV transmission system using the adjacent 66kV Mandalay substation. Power from the peaker will be distributed directly into the local Oxnard distribution system where it will provide about 25% of Oxnard's power demand during peak periods, relieve anticipated transmission system overloads during periods of system stress, and improve local power quality (voltage control) resulting in reduced overall power consumption during peak periods.

The Project is one of five nearly identical peaking generating units that SCE is developing in response to an August 15, 2006 ruling from the California Public Utilities Commission. That ruling was issued in response to the record, much higher-than-forecast electricity demand during the summer of 2006. Among other things, the ruling directed SCE to immediately pursue development of up to 250 megawatts of peaking generating units in locations that would bring collateral benefits to SCE's transmission system to assure system reliability. A Mitigated Negative Declaration was prepared for each of the other four peakers (located in Norwalk, Ontario, Rancho Cucamonga and Stanton), which are under construction.

The City has prepared a Local Coastal Program (LCP) for managing the Coastal Zone with the City's boundaries. The City's General Plan (2020) states that the LCP consists of a Coastal Land Use Plan (LUP) and the Coastal Zoning regulations and maps, which dictate how development may occur within the Coastal Zone. (General Plan, p. V-21.) The LCP and LUP have been certified by the California Coastal Commission (CCC) under the California Coastal Act (Coastal Act). The proposed Project site is within the Coastal Zone as defined by the City's LUP. Specifically, the proposed Project site is within an Energy Coastal Subzone area designated by the City's LUP (Figure I-2 of the MND).

II. PLANNING COMMISSION STAFF REPORT

The City Planning Commission staff prepared a Staff Report, dated June 28, 2007, for the Project. In connection with that Staff Report, the staff also completed a Mitigated Negative Declaration (MND) for the Project, which showed that the Project would not cause any significant adverse environmental effects.¹ The Staff Report for the Project CDP application

¹ An issue was raised immediately prior to the Planning Commission June 28, 2007 meeting. The Ventura County Department of Airports questioned if the peaker

recommended (i) adopting the MND, but (ii) denying the CDP application.² The Staff recommendation to deny the CDP application was based upon the position that development in the Energy Coastal Subzone is limited to "coastal dependent development." The Staff Report concluded that the Project was otherwise consistent with the City's LCP and LUP.

III. PLANNING COMMISSION PROCEEDING

On June 28, 2007, the City of Oxnard Planning Commission heard the matter, receiving a Staff presentation about the Project, followed by a presentation by SCE representatives and comments from members of the public. The Commissioners then deliberated among themselves, occasionally asking questions of SCE representatives and the Staff. By a five-to-two vote, the Planning Commission denied the SCE CDP application for the Project based on their own motion. The Planning Commission motion did not expressly adopt the Staff's proposed resolution to adopt the MND and to deny the Project CDP application. Instead, the Planning Commission approved a motion by Commissioner Medina merely to deny the CDP Application. Commissioner Medina's motion did not identify a basis for the motion or reference either the Staff Report or the Staff-prepared Resolution.

SCE understands from the Planning Commission Staff that they have since prepared a revised Resolution (No. 2007-19) denying the Project. The Planning Commission may adopt the revised Resolution at a future time, although SCE understands that this is not expected before the end of SCE's appeal period. Therefore, this SCE Administrative Appeal will address both the actual Planning Commission vote and the Staff-prepared Resolution in the event the Planning Commission signs the revised Resolution.

IV. BASIS FOR ADMINISTRATIVE APPEAL TO THE CITY COUNCIL

According to Section 17-58(J)(2) of the City's Coastal Zoning Ordinance, an appeal of a Planning Commission action to the City Council must state in what respects the Planning Commission's decision:

emission stack would cause aircraft to fly further south upon takeoff from the airport, due to pilot concern about the emissions stack. Having aircraft fly further south potentially raises an issue about increased aircraft noise at the Oxnard Shores housing area. The Department Of Airports did find that the peaker emission stack would not create an obstruction to aircraft approaching or taking off from the airport.

² At the Planning Commission meeting, the Staff proposed that the MND was not ready to be adopted due to the outstanding airport issue discussed in footnote no. 1.

1. is not in accord with the purposes of the coastal zoning ordinance;
2. is inconsistent with the Oxnard Coastal Land Use Plan; **or**
3. is based on an error or an abuse of discretion by the Commission.

The City Council should reverse the Planning Commission decision, adopt the MND, and grant the SCE CDP application because the Planning Commission decision fails all three of the criteria above, although failure on any one of the criteria is sufficient for the City Council to overturn the Planning Commission decision.

A. **The Planning Commission Decision is Not in Accord With the Purposes of the Coastal Zoning Ordinance.**

i. **The Project Site.**

The City Coastal Zoning Ordinance provides for the permitting of development within the Coastal Zone. The ordinance creates various subzones within the Coastal Zone that are intended for particular types of development. The Energy Coastal (EC) Subzone ordinance is set forth in Section 17-20 of the Coastal Zoning Ordinance. Section 17-20 is attached as **Exhibit 1** to this appeal. The Project is proposed to be located in the EC subzone. On its face, the EC Subzone allows for the development of energy facilities, such as electric generating stations like the Project. Existing energy facilities in this subzone include the Mandalay Generating Station, the 220kV Mandalay electric transmission substation, the 66 kV Mandalay electric transmission substation, and electric transmission lines.

The Project site is a remediated brownfield location that formerly contained the fuel oil tank farm that supplied fuel oil to the adjacent Mandalay Generating Station. As shown in Figure I-2 of the MND³, attached as **Exhibit 2**, the land immediately on all sides of the proposed Project site is also designated as EC. The MND indicates that the land to the south of the EC Subzone is considered "coastal resource protection." However, that "coastal resource protection" land is not immediately adjacent to the proposed Project location, and is separated from the proposed Project by an undeveloped buffer area within the SCE-owned land.⁴ Additionally, the MND finds that the Project will not impact any sensitive habitat, such as wetlands,

³ See MND page 73.

⁴ The Project location is consistent with LUP Policy 6(d), which requires a 100 foot buffer between new development and resource protection areas. Additionally, the MND concluded that the Project will not impact these resources.

beaches, or dune areas. Additionally, the land adjacent to Project site contains oil pumps and pipelines.⁵

ii. The Project is Consistent with the Coastal Zoning Ordinance.

To issue a CDP for the Project, it must be consistent with the LUP and the Coastal Act. The Coastal Zoning Ordinance was designed to implement the LUP and the Coastal Act provisions applicable to the City's LCP. According to the Staff Report, for the Project to obtain a CDP, the Planning Commission must find the Project to be a coastal dependent use. Similarly, the Planning Commission draft Resolution states that "a non-coastal dependent energy-generating facility would not be allowable based on Section 17-5(I) of the City Code. . . ." The Staff Report's conclusion and the Planning Commission's decision, assuming the Planning Commission either adopts the Staff proposed Resolution or otherwise based its decision on the same conclusion that the Project must be a "coastal dependent development or use,"⁶ are in error.

First, nothing in the Coastal Act, the LUP, or the Coastal Zoning Ordinance **requires** that an energy facility must be a "coastal dependent development or use" to be located within the coastal zone in general or the EC subzone in particular. Rather, for instance, the Coastal Act uses of the term "coastal dependent development or use" as a mechanism to limit the permitting of facilities in certain **sensitive** areas that would result in degradation to important natural resources. For example, Public Resources Code Section 30233 limits the construction of any facilities in wetlands and open coastal waters to certain types of uses, such as energy and coastal-dependent industrial facilities. However, Section 30233 is not applicable in this instance because the proposed Project location is not within coastal waters or wetlands, or any other area protected by Section 30233. Therefore, the Project does not need to be a coastal dependent use to comply with the Coastal Act. The LUP is consistent with the Coastal Act in this regard. (See Section 3.6 beginning on page III-36.)

Second, the Coastal Zoning Ordinance at Section 17-20, which implements the EC (Coastal Energy Facilities) Sub-zone requirements,

⁵ Interestingly, despite LUP Policy number 55, which finds that both residential uses and visitor-serving commercial uses are not compatible as a neighboring use with EC zoning, the Planning Commission recently approved residential development diagonal to the Project location.

⁶ The LUP and Public Resources Code Section 30101 define a "coastal dependent development or use" as "any development or use which requires a site on, or adjacent to, the sea to be able to function at all."

provides that the "purpose" of the sub-zone is "to provide areas that allow for the siting, construction, modification and maintenance of power generating facilities and electrical substations consistent with Policies 51, 52, 54, 55, and 56 of the Oxnard coastal land use plan." The proposed Project is an energy facility and the Staff Report found that the Project is consistent with the above referenced policies. (Staff Report at p. 2) Importantly, Section 17-20 does **not** require that power generating facilities and electrical substations must be coastal dependent uses.

The Coastal Zoning Ordinance is consistent with the provisions of the LUP. On page II-4, the LUP explains the "energy facility" designation as:

"This designation will allow development of energy-related facilities, including essential and coastal-dependent uses, such as electrical generation station, marine fuel loading facilities, pipelines, and fuel processing plants."

The provisions above allow for the inclusion of coastal-dependent uses, but they do not preclude other energy facility uses that are not coastal dependent. Further, the definition of "energy facility" in Coastal Zoning Ordinance Article 17-3(25) is "Any public or private processing, producing, generating, storing, transmitting or recovering facility for electricity, natural gas, petroleum, coal or other sources of energy." The definition of "energy facility", which is also in the LUP Appendix at page IV-5, makes it clear that all energy-related facilities may be developed in the EC subzone, not just coastal dependent energy facilities.

The Project is consistent with all the applicable provisions of Coastal Zoning Ordinance Section 17-20, which is the ordinance that the Planning Commission is to follow when issuing a CDP for the Project. In the parts relevant to the Staff Report and Planning Commission draft Resolution, the Ordinance (Exhibit 1) provides as follows:

Sec. 17-20(A) "Purpose"

"The purpose of the EC sub-zone is to provide areas for siting, construction, modification and maintenance of power generating facilities and electrical substations consistent with Policies 51, 52, 54, 55 and 56 of the Oxnard coastal land use plan. Additionally, the EC sub-zone is designed to provide a framework for coordinating the requirements and responsibilities of applicable city, State and federal regulatory agencies vested with the authority for reviewing energy facility development."

SCE Project Consistency Response

The Project involves the siting, construction, operation, and maintenance of a power generating facility, as contemplated by the "Purpose" of the EC subzone. The Project is also consistent with LUP Policies 51, 52, 54, 55, and 56. None of these five policies limit development within the subzone to coastal dependent uses. These policies are further reflected in the subsections of Section 17-20 and are identified below, except Policy 55, which is not a condition in Section 17-20 and is mentioned in footnote 3 above. Additionally, the Staff Report, on page 2, indicated that Policy 55 was inapplicable to the Project CDP proceeding.

Sec. 17-20(A)(1)

"Coastal dependent energy facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth, where consistent with this article." (citing Public Resources Code Section 30260) (Policy 50)

SCE Project Consistency Response

While the Project may not be a "coastal dependent" energy facility, the Project would nonetheless be located within an existing zone designated specifically for energy facilities. Section 17-20(A)(1) does not preclude non-coastal dependent energy resources from being located within the EC zone; the ordinance merely states that "coastal dependent" facilities should be encouraged to locate within the EC subzone. Other energy facilities, such as SCE's proposed peaker project, also may be located within this subzone consistent with this requirement. The Staff Report has not indicated that any coastal dependent energy facility is proposed to be located within the proposed Project location; thus, the Project would not prohibit a coastal dependent energy facility from being located within the subzone.

Further, the proposed Project is an expansion of the existing electric generating infrastructure within the existing EC subzone site, and is being proposed to address the consistent growth in the regional energy demand, particularly within the Oxnard area. Siting the Project at this location utilizes a brownfield site rather than requiring development of a new site, minimizes (indeed almost avoids) the need for new transmission lines, and will also improve the reliability of the emergency black start capability for Mandalay Generating Station, which currently relies a nearly 40 year old peaking unit which is of increasingly uncertain reliability and is not equipped with any emissions controls, unlike the proposed Project generating unit which

is new, is a model with an excellent reliability track record, and is equipped with state of the art emissions controls.

Sec. 17-20(A)(2)

“All new energy related development shall conform to the air quality regulations set forth by the Ventura Air Pollution Control District, the air quality management plan and new source review rule 26.” (Policy 51)

SCE Project Consistency Response

SCE will obtain all necessary permits from the Ventura County Air Pollution Control District (VCAPCD). As part of its normal process and prior to issuing these permits, the VCAPCD must confirm that the Project conforms to all applicable air quality regulations, the air quality management plan, and new source review rule 26. Note that this subsection does not state that the energy related development must be “coastal dependent.”

Sec. 17-20(A)(3)

“Energy related development shall not be located in coastal resource areas including sensitive habitats, recreational areas and archaeological sites. All developments adjacent to these resource areas or agricultural areas shall be designed to mitigate any adverse impacts.” (Policy 52)

SCE Project Consistency Response

The proposed Project location is on land previously used for a fuel oil tank farm from 1959 to 2003. Biological and archaeological resource studies and an independent review of the proximity to recreational areas have confirmed that the proposed Project is not located in one of the areas of concern listed by this subsection. The MND reaches this same conclusion. As with the above subsection, this subsection does not state that the energy related development must be “coastal dependent.”

Sec. 17-20(A)(4)

“All new energy related development shall be located and designed to minimize adverse effects upon public access to the beach.” (Policy 54)

SCE Project Consistency Response

The proposed Project would not obstruct any public access to the beach. The Project site is within an existing, fenced industrial area, zoned specifically for energy facilities. Project construction would not change local beach access points or pathways. Further, the proposed

site is located inland from the beach and has existing industrial development associated with an oil processing facility and the Mandalay Generating Station between it and the ocean. In addition, the 104 acres of land immediately south of the fenced Project site is jointly owned by the City of Oxnard and the County of Ventura where lateral and vertical beach access is available (LUP at p. IV-18). Like the above two subsections and all the subsections below, the subsection addresses "energy related development," not "coastal dependent" energy development.

Sec. 17-20(A)(5)

"No energy related development shall be located seaward of the 100 year flood/wave run-up line as designated by the U.S. Department of Housing Insurance Program Administration and the land use map of the Oxnard coastal land use plan." (Policy 56)

SCE Project Consistency Response

The proposed Project would be located inland of the 100 year flood/wave run up line designated by the U.S. Department of Housing Insurance Program Administration and the land use map of the Oxnard coastal LUP.

Sec. 17-20(A)(6)

"Wastewater from any energy related facilities shall be treated as necessary and put to reuse including, but not limited to the following:

- a. Re-injection into the aquifer or ground water recharge system;
- and
- b. Recycling for industrial, agricultural or urban use."

SCE Project Consistency Response

Wastewater produced by the Project will be minimal. Eight gallons per minute of wastewater from the evaporative cooler would be produced during the limited hours that the unit will operate. This water will have elevated levels of total dissolved solids but no other added pollutants and will be collected and disposed of at a facility that complies with the above requirement.

Section 17-20(B) Conditionally Permitted Uses

Section 17-20(B) specifies the three types of uses that are "permitted subject to the approval of a coastal development permit pursuant to the provisions of article V." Section 17-20(B)(2) lists "electrical power generating plants and accessory uses normally associated with said power generating facility" as a conditionally permitted use.

SCE Project Consistency Response

The Project is an energy facility, as defined in Coastal Zoning Ordinance 17-3(25). Moreover, the subsection does not limit the type of energy facilities that may be sited within the subzone to facilities that are coastal dependent. Article V, which is referenced in this subsection, contains the requirements for processing a CDP under Section 17-57. SCE and Planning Commission Staff have followed the requirements in Article V. In fact, the SCE CDP application for the Project is at the Planning Commission because SCE has sought a CDP pursuant to Article V.

Section 17-20(C)

Subsection 17-20(C) states that "all uses shall be subject to the applicable standards of this chapter" (i.e. the Coastal Zoning Ordinance Chapter in the City Code) and lists Section 17-5 (General Requirements), and Articles III, IV, and V of the Coastal Zoning Ordinance.

SCE Project Consistency Response

The SCE Project conforms to Section 17-5 and Articles III, IV, and V of the Coastal Zoning Chapter, as required. None of those articles require that energy facilities be coastal dependent uses in order to allow the development to be permitting within the coastal energy subzone. Neither the Staff Report nor the Planning Commission questioned the Project's compliance with these requirements.

iii. The Planning Commission Should Have Approved the Project CDP.

As shown above, the EC subzone does not require that an energy facility be "coastal dependent." Similarly, other designated coastal subzones do not require that authorized uses be coastal dependent developments. SCE notes that the City has authorized many developments and uses to occur within the coastal zone without requiring that those projects be "coastal dependent uses." Those developments are all consistent with the Coastal Zoning Ordinance, including the Section 17-2 "Purpose" of the Coastal Zoning Ordinance. Section 17-2 provides that one purpose of the Zoning Ordinance is:

- (2) To assure priority for coastal-dependent and coastal-related development over other development on the coast

Assuring priority for coastal dependent development is not limited to the Energy Coastal Subzone; the "priority purpose" is applicable to all

development within the coastal zone. The Planning Commission regularly approves development within the Coastal Zone that is not coastal dependent because developments within the Coastal Zone are not required to be "coastal dependent uses," with one possible exception noted below.

When the City Council passed the Coastal Zoning Ordinance, it created a subzone specifically for coastal dependent development. Section 17-19 creates a "Coastal Dependent Industrial" subzone for energy and industrial facilities that require a location adjacent to or in the vicinity of the sea to function. Electric generating stations are not listed as a conditionally permitted use in this Coastal Dependent Industrial subzone. Within this subzone, the Planning Commission may have the right to deny a CDP application for a development that is not coastal dependent. However, Section 17-20 was written in a manner different from Section 17-19 and does not have the same limitations or requirements as those found in Section 17-19.

The Planning Commission cannot now interpret Coastal Zoning Ordinance Section 17-20 to require the SCE Project to be a coastal dependent use when no other development within the Coastal Zone must meet that standard, unless the development is within wetlands, open coastal waters, or other similar sensitive habitat. Instead, the Planning Commission should have treated the Project in the same manner as all other applications for coastal development permits and issued a CDP for the Project.

B. The Planning Commission Decision is Inconsistent With the LUP.

Section 1.2 of the LUP lists certain Coastal Act policies that are used to address all new development in the Coastal Zone. The sixth policy listed in Section 1.2 provides that "Industrial developments, including coastal dependent and energy facilities, are to be concentrated and consolidated as much as possible." First, this policy distinguishes coastal dependent developments from energy facility developments; i.e., energy facilities within the Coastal Zone are not the same as coastal dependent developments. Second, the policy calls for the concentration of energy facilities as much as possible. Similarly, LUP policy 63 provides that all energy facilities should be located in energy development areas. Therefore, locating the Project within the EC subzone adjacent to existing energy facilities carries out these LUP policies.

As explained above, the Staff Report and the draft Planning Commission resolution recommended denial of the Project CDP application because the Project is not a coastal dependent development. A concrete

example that the Staff Report is interpreting the Coastal Zoning Ordinance incorrectly is the presence of SCE's Channel Islands substation in the EC subzone. The Channel Islands substation is used to provide electricity to electric consumers in the City of Oxnard. The substation is located on the northwest corner of Victoria Avenue and West Hemlock Street. The area is designated as "Energy Coastal" in both the LUP (Map No. 3, p. II-8) and the 2020 General Plan (Figure V-5 at p. V-46). (The City of Oxnard's Zoning Map, which is attached as **Exhibit 3**, can be found on the City's website at <http://planning.cityofoxnard.org/Uploads/Dept-Map-Zoning-30x40.pdf>). The Channel Islands substation is not a coastal dependent facility. While within the Coastal Zone, the substation operates independently of the ocean and is unnecessary for the operation of the Mandalay or Ormond Beach Generating Stations. In fact, the substation could have been located across the street, on the northeast corner of Victoria Avenue and West Hemlock Street, outside the Coastal Zone to provide effective and reliable electric service to SCE's customers in the area. However, the Planning Commission and City Council, at the time the General Plan and LUP were developed, recognized that because the Channel Islands substation was within the Coastal Zone, the substation area should be designated as an EC subzone. There is no reason to treat the Project different from the Channel Islands substation.

Most importantly, the Project meets the requirements for obtaining a CDP pursuant to the City's Coastal Zoning Ordinance, which is designed to implement the LUP. As the Project meets these requirements, the Project is also therefore consistent with the LUP. The Planning Commission decision denied the CDP for the Project, despite the fact that the Project is consistent with the LUP and the Coastal Zoning Ordinances. Therefore, the Planning Commission's decision is **inconsistent** with the LUP.

C. The Planning Commission Decision is Based on an Error or an Abuse of Discretion.

At this time, the exact grounds for the Planning Commission's denial of the CDP are unclear. Various Commissioners expressed different assertions as the basis for the denial (i.e., the emissions stack would be unsightly, noise from airport would be increased, the power is not needed in Oxnard, the Project would cause greenhouse gases, etc.). The Commissioners did not direct the Staff to prepare a new resolution reflecting the intent of the Commission upon which the Commission would then take an action. At the Planning Commission meeting, it was unclear if the Commission would issue a set of findings or either adopt the Staff proposed Resolution or issue a new resolution to be signed at a subsequent meeting. If the CDP denial is based upon the position that the Project must be a coastal dependent development, the decision is in error. If the Planning Commission decision is based upon

other factors, the decision is an abuse of discretion, and possibly could be also in error, depending upon the intent of the Planning Commission.

i. The Decision is Based on an Error.

If the Planning Commission adopts the Staff proposed Resolution, which bases the denial on the claim that the Project must be a coastal dependent development, the decision is in error. As shown above, the Coastal Zoning Ordinance, the LUP, and the Coastal Act each would allow the presence of the Project within the EC subzone. At the Planning Commission meeting, an attorney for the City, Mr. Rupp, advised the Planning Commission that the question of whether the EC subzone required the development to be "coastal dependent" was unclear. He stated that the Commission could interpret the ordinance either in the manner supported by SCE (the Project is a conditionally permitted use), which Mr. Rupp admitted was the plain meaning of the EC zoning language, or in a different manner if the Planning Commission believed that the intent of the zoning ordinance should be as interpreted by Staff (the Project must be coastal dependent).

Mr. Rupp's legal opinion was itself in error. An ordinance must be interpreted according to its plain meaning. Only if the ordinance is ambiguous, may the ordinance be interpreted according to the intent of the City Council. And, in that case, the intent of the City Council at the time the ordinance was created is the key, not the intent of this present day Planning Commission. Even if the ordinance were ambiguous, which is not the situation, neither the Planning Commission nor the staff provided any basis upon which to reach a conclusion that the intent of the ordinance was to limit development in the EC subzone to coastal dependent uses.

The Planning Commission expressed a number of reservations about issuing the Project a CDP. Those concerns included their personal opinions that the emissions stack would be unsightly, the Project would cause greenhouse gases, the Project might exacerbate noise from aircraft operations at the Oxnard Airport, and the power is not needed in Oxnard. These concerns were either unfounded or were to be addressed in the MND for the Project. For example, SCE representatives testified that the Project was needed in the Oxnard area for reliability and other purposes. Commissioner Medina, without any credible information supporting his position, stated that the power was not needed in the City of Oxnard. It was error for the Planning Commission to deny the CDP application for reasons related to (i) the Project's potential environmental impacts, which the MND concluded were insignificant, or (ii) reasons which were unrelated to the factors that the Planning Commission is to use when deciding whether to issue a CDP.

The Planning Commission decision on the CDP application was to be based on the factors listed in Coastal Zoning Ordinance Section 17-57(C)(5)(b). However, the Planning Commission did not properly use these factors to reach its decision. The failure to use the appropriate criteria to reach a decision to deny the SCE Project CDP application is an error. In issuing a CDP, the Planning Commission should have made the findings under Section 17-57(C)(5)(b), as discussed below.

1. The Project is conditionally permitted within the Energy Coastal subzone and complies with all the other applicable coastal zone requirements. SCE has explained above why the Project is a conditionally permitted use within the EC subzone and why the Project complies with all other applicable coastal zone requirements.
2. The Project would not impair the integrity and character of the EC subzone. The Project is consistent with the integrity and character of the EC subzone, which already contains the Mandalay Generating Station, transmission lines, two electrical substations, and other related equipment.
3. The location and intensity of use of the site would be physically suitable and would protect and maintain adjacent coastal resources. The Project would occupy a relatively small portion of the EC subzone and would leave substantial undeveloped space within the subzone. Adjacent coastal resources would be fully protected.
4. The Project would be compatible with land uses presently at the site. A peaker generating station would provide black start capability for the adjacent Mandalay generating station and is a similar type of energy facility to that already operating within the subzone.
5. The Project would be compatible with existing and future land uses within the EC subzone and in the general area in which the Project would be located. The Project is compatible with and complimentary to the uses within the EC subzone. The Project will not interfere with or preclude any other uses in the general area and the MND includes mitigation measures to ensure that the Project will not cause any significant environmental impacts.
6. There are adequate public services for the proposed use, including, but not limited to, fire and police protection, water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety. The MND concluded that the Project will not impact any public services. In fact, the Project will enhance the electric system in the Oxnard area to provide reliable electric service to electricity consumers in the area.

7. The Project will provide a type and level of public access consistent with the access policies and standards of the certified Oxnard coastal LUP. The Project will not impact public access to the beach or other recreation areas. Public access does not exist on the proposed Project location nor is access proposed for that location in the future. Furthermore, public access is available to the immediate south of the Project location.
 8. The Project would be appropriate in light of an established need, based upon the underlying goals and objectives of specific Oxnard coastal land use plan policies, applicable to the proposed location. SCE needs to place the Project in the location best suited for ensuring reliable electric service at a reasonable cost. The location proposed in the CDP application meets that need. The Project would produce power during times of need to the local 66 kV system that provides electricity to local residents, businesses, and industry. A failure to enhance this system could lead to reliability problems in the local area.
 9. The Project would be consistent with all the applicable policies of the Oxnard Coastal Land Use Plan. SCE has explained above why the Project is consistent with all the applicable Coastal LUP policies.
- ii. The Decision is Based on an Abuse of Discretion.

If the Planning Commission decision is based upon factors other than those described in Section 17-57(C)(5)(b), then the decision is an abuse of discretion because the Planning Commission does not have the authority to deny the Project on other than those factors. As the Planning Commission did not clearly enunciate the basis for its decision, that alone constitutes an abuse of discretion. The Planning Commission has a duty to explain the reasons upon which it reaches a decision. A failure to do so is an abuse of the CDP application process.

V. CONCLUSION

Coastal Zoning Ordinance Section 17-20 specifically allows the construction of generating facilities, like the Project, within the EC Subzone. The Project is in conformance with the Coastal Act, and the City of Oxnard's Coastal Zoning Ordinance and LUP. Therefore, no valid basis exists for the Planning Commission to have denied the CDP application for the Project. The City Council has the authority to affirm, reverse, or modify the decision of the Planning Commission. SCE respectfully requests that the City reverse the decision of the Planning Commission, adopt the MND prepared by Planning Commission Staff, and issue SCE a CDP for the Project.

SEC. 17-20. EC, COASTAL ENERGY FACILITIES, SUB-ZONE.

(A) Purpose - The purpose of the EC sub-zone is to provide areas that allow for siting, construction, modification and maintenance of power generating facilities and electrical substations consistent with Policies 51, 52, 54, 55 and 56 of the Oxnard coastal land use plan. Additionally, the EC sub-zone is designed to provide a framework for coordinating the requirements and responsibilities of applicable city, State and federal regulatory agencies vested with the authority for reviewing energy facility development. To assure consistency with the Oxnard coastal land use plan, the following coastal act provisions and land use plan policies shall apply:

(1) Coastal dependent energy facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth, where consistent with this article. (Coastal Act, Section 30260)

(2) All new energy related development shall conform to the air quality regulations set forth by the Ventura County Air Pollution Control District, the air quality management plan and new source review rule 26. (Policy 29)

(3) Energy related development shall not be located in coastal resource areas including sensitive habitats, recreational areas and archeological sites. All development adjacent to these resource areas or agricultural areas shall be designed to mitigate any adverse impacts. (Policy 30)

(4) All new energy related development shall be located and designed to minimize adverse effects upon public access to the beach. (Policy 54)

(5) No energy related development shall be located seaward of the 100 year flood/wave run-up line as designated by the U.S. Department of Housing Insurance Program Administration and the land use map of the Oxnard coastal land use plan. (Policy 56)

(6) Wastewater from any energy related facilities shall be treated as necessary and put to reuse including, but not limited to the following:

- (a) Re-injection into the aquifer or ground water recharge system; and
- (b) Recycling for industrial, agricultural or urban use. (Policy 64)

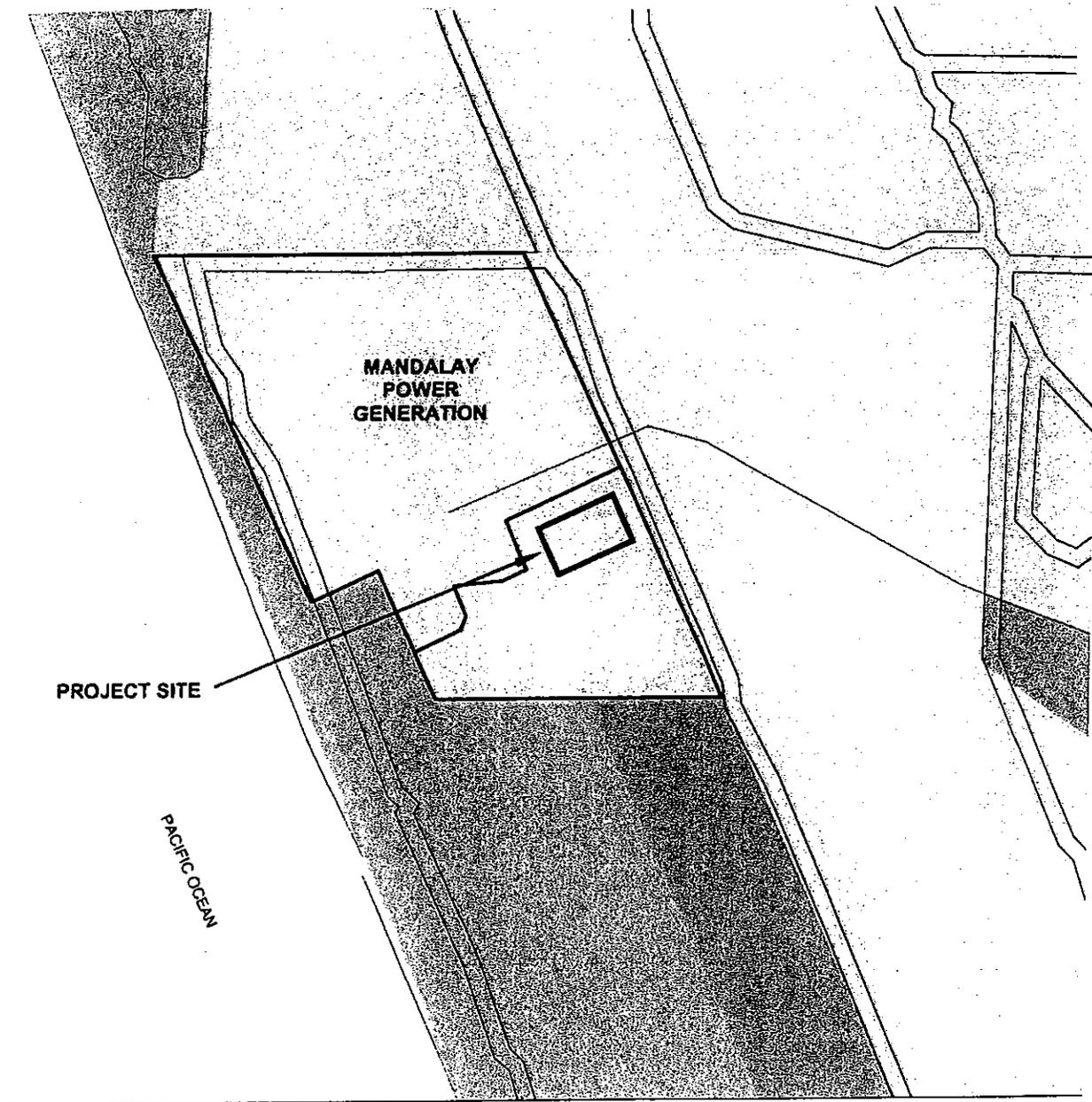
(B) Conditionally permitted uses - The following uses are permitted subject to the approval of a coastal development permit pursuant to the provisions of article V:

- (1) Off-street public parking facility;
- (2) Electrical power generating plant and accessory uses normally associated with said power generating facility;
- (3) Electrical substation; and
- (4) Natural gas pump and extraction facilities.

(C) Applicable provisions - All uses shall be subject to the applicable standards of this chapter, including standards contained in the following sections:

- (1) Section 17-5, General requirements;
- (2) Article III, Specific Coastal Development and Resources Standards;
- (3) Article IV, General Coastal Development and Resource Standards; and
- (4) Article V, Administration.

(Ord. No. 2034, 2716)



-  SINGLE-FAMILY BEACH
-  COASTAL RESOURCE PROTECTION
-  COASTAL RECREATION
-  COASTAL ENERGY
-  VENTURA COUNTY

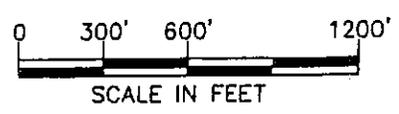
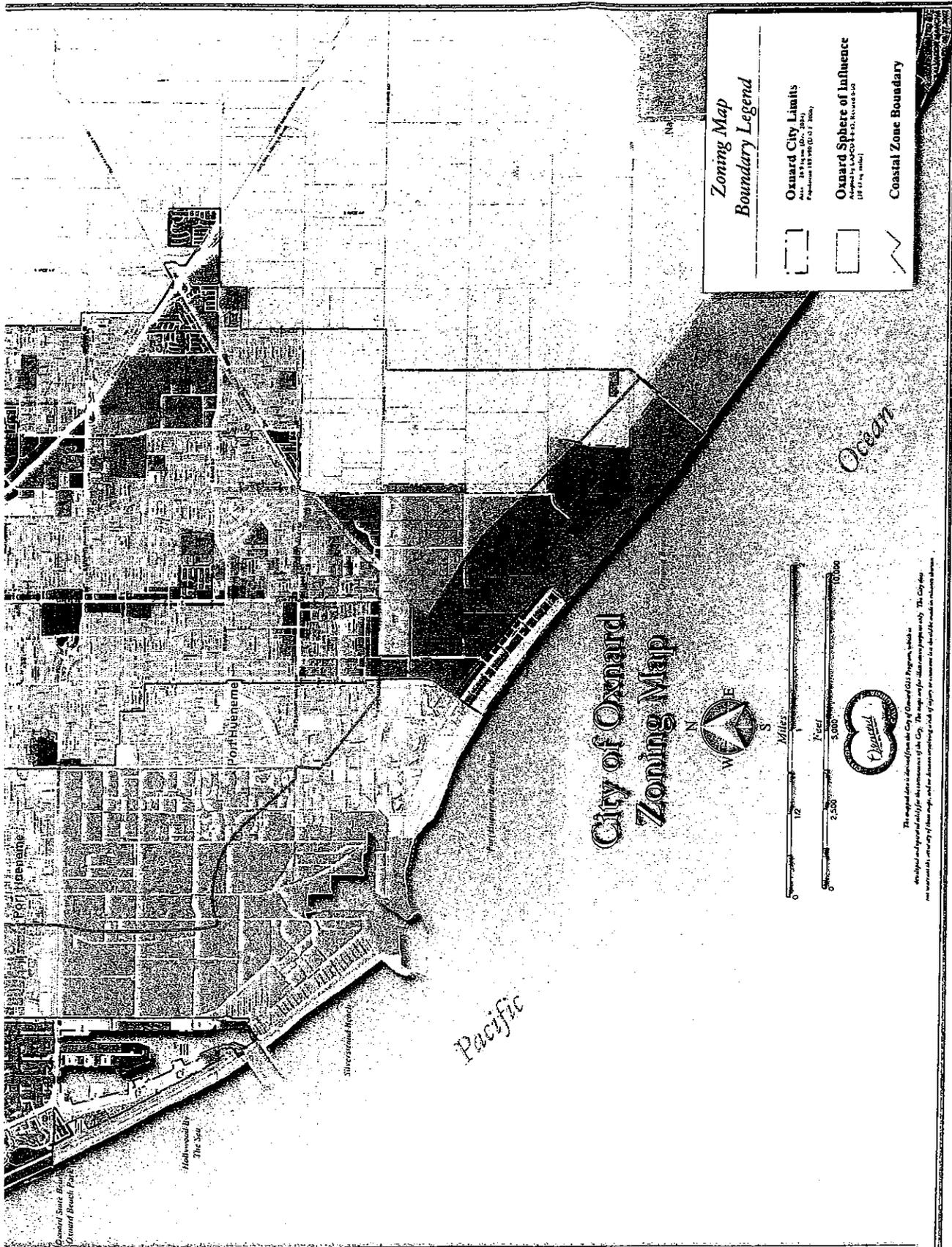


Figure I-2 Zoning Map



**Zoning Map
Boundary Legend**

Oxnard City Limits
Area: 28.9 sq. mi. (2011 Census)
Population: 181,996 (2011 Census)

Oxnard Sphere of Influence
Area: 100 sq. mi. (2011 Census)

Coastal Zone Boundary

City of Oxnard Zoning Map



This map is prepared for the City of Oxnard GIS Program, which is developed and updated only for the convenience of the City. The map is for illustrative purposes only. The City does not warrant the accuracy of these maps, and no decision concerning a right of property or interest therein should be made on reliance on these maps.

- Single Family Residential Planned Development
- Single Family Residential Planned Development
- Single Family Residential Planned Development
- Multiple Family Residential
- Multiple Family Residential Planned Development
- Garden Apartment
- Garden Apartment Planned Development
- High-Rise Residential
- High-Rise Residential Planned Development
- Manufactured Home Planned Development
- Residential Planned Development
- Coastal Residential Zoning
- Single Family Beach
- Beachfront Residential
- Coastal Low-Density Multiple Family
- Garden Apartment Cottages
- Single Family Water Oriented
- Multiple Family Water Oriented
- Mobile Home Park Coastal
- Zoning
- Coastal Neighborhood Commercial
- Coastal Planned Unit Community
- Coastal Water-Serving Commercial
- Coastal Resource Protection
- Coastal Dependent Industry
- Coastal Recreation
- EC Coastal Energy Facility
- Vertical Zoning
- Neighborhood Shopping Center
- Neighborhood Shopping Center Planned Development
- General Commercial
- General Commercial Planned Development
- Central Business District
- Commercial & Light Manufacturing
- Commercial & Light Manufacturing Planned Development
- Commercial Office
- Commercial Office Planned Development
- Vertical Zoning
- Light Manufacturing
- Light Manufacturing Planned Development
- Heavy Manufacturing
- Heavy Manufacturing Planned Development
- Limited Manufacturing
- Limited Manufacturing Planned Development
- Manufacturing Planned Development
- Butters & Research Park
- Palms-Chanel Islands
- Community Reserve
- Executive/DW
- Wheeler County
- Agricultural Open Space
- Wildlands