

November 11, 2013

Agenda Items W19a & 20a

VIA E-MAIL

Chair Shallenberger and Honorable Commissioners
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Re: Huntington Beach Desalination Project: Appeal No. A-5-HNB-10-225 (Agenda Item W19a) and Application No. E-06-007 (Agenda Item W20a)

Dear Chair Shallenberger and Honorable Commissioners:

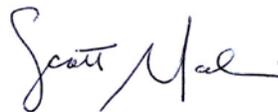
We are writing regarding the Commission's consideration of Poseidon Water's ("Poseidon") proposed Huntington Beach Desalination Project (the "Project") at its November 13, 2013, meeting. We respectfully request that the Commission reject Staff's recommendations in the Staff Report, and approve the Project as submitted by Poseidon, subject to the proposed Special Conditions attached as **Exhibit A** hereto (**Pink Sheet**),¹ as well as instruct Staff to prepare revised findings consistent with the Applicant's Suggested Basis for Findings attached as **Exhibit B** hereto (**Yellow Sheet**).

To assist the Commission's review of Poseidon's recommended Special Conditions, as promised in our November 8, 2013, letter to the Commission, we have also attached a document providing a detailed explanation of the differences between Staff's proposed Special Conditions and Poseidon's recommended Special Conditions. (See **Exhibit C** attached hereto). Under separate cover dated November 11, 2013, Poseidon is also providing a supplemental detailed response to the Staff Report, to which Exhibit C refers.

Finally, to approve the Project pursuant to Poseidon's request, we have attached two proposed Motions and Resolutions, one for CDP No. A-5-HNB-10-225 (**Exhibit D** attached hereto (**Blue Sheet**)), and one for CDP No. E-06-007 (**Exhibit E** attached hereto (**Green Sheet**)).

We look forward to presenting the Project to you at the November 13 meeting.

Sincerely,



Scott Maloni
Vice President, Poseidon Water

Attachments

cc: Alison Dettmer, California Coastal Commission
Tom Luster, California Coastal Commission

¹ The recommended Special Conditions are identical to those attached as Exhibit A to Poseidon's November 8, 2013 letter.

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT A

STANDARD CONDITIONS

- 1) **Notice of Receipt and Acknowledgment:** This permit is not valid until a copy of the permit is signed by the Permittee or authorized agent, acknowledging receipt of the permit and the acceptance of the terms and conditions, and is returned to the Commission office.
- 2) **Expiration:** If development has not commenced, this permit will expire three years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3) **Interpretation:** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4) **Assignment:** The permit may be assigned to any qualified person, provided the assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5) **Terms and Conditions Run with the Land:** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS

- 1) **Liability for Costs and Attorneys' Fees:** Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees – including (a) those charged by the Office of the Attorney General, and (b) any court costs and attorneys' fees that the Coastal Commission may be required by a court to pay – that the Coastal Commission incurs in connection with the defense of any action brought by a party other than Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.
- 2) **Evidence of Other Agency Approvals:**
 - a. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit to the Executive Director for review and approval, documentation showing that the project has obtained the following final approvals, or documentation showing that these approvals are not needed:¹
 - NPDES Permit from the Regional Water Quality Control Board.

¹ Condition to be removed to the extent satisfied prior to issuance of the permit.

These materials have been provided to the Coastal Commission Staff

EXHIBIT A

- Authorization from the Army Corps of Engineers to proceed pursuant to Nationwide Permit (NWP) No. 12 for Utility Line Activities.
 - b. WITHIN 90 DAYS FOLLOWING THE COMMENCEMENT OF COMMERCIAL PROJECT WATER DELIVERIES, the Permittee shall submit to the Executive Director documentation showing that the project has obtained a domestic water supply permit from the California Department of Public Health.
 - c. State Water Resources Control Board (State Board). If the Water Quality Control Plan for Ocean Waters of California (Ocean Plan) is amended by the State Board to address desalination facilities, including intake and brine discharge impacts and related mitigation, the Permittee shall comply with all components of the Ocean Plan applicable to the Project as determined by the Regional Water Quality Control Board through the Project's NPDES Permit.
 - d. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit to the Executive Director documentation from the California Department of Fish and Wildlife demonstrating that it has reviewed the project's buffer zone between nearby wetlands and determined the buffer is sufficient to avoid significant impacts to nearby wetlands.
- 3) **State Lands Commission.** Prior to cessation of the AES Power Plant's use of its seawater cooling system, the Permittee shall provide to the Executive Director documentation from the California State Lands Commission of a lease or lease amendment authorizing the Permittee's continued use of state tidelands for construction and operation of an ocean outfall and intake.
- 4) **California Department of Parks and Recreation (DPR).** Prior to cessation of the AES Power Plant's use of its seawater cooling system, the Permittee shall provide to the Executive Director documentation from the DPR of a grant of easement providing the Permittee any legal interest necessary to use those portions of the intake and outfall structures within DPR property, or documentation from the DPR stating that no easement is required.
- 5) **Lease, Agreement, or Deed Restriction:** PRIOR TO ISSUANCE OF THE PERMIT, the applicant shall provide to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against its interest(s) in the property where the desalination facility is to be located (i.e., the Huntington Beach Generating Station), and which is governed by this permit, a lease, agreement, or deed restriction (in which any private owner of the fee interest in such property shall join or to which it shall agree to be bound), in form and content acceptable to the Executive Director (a) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the property, subject to terms and conditions that restrict the use and enjoyment of the property; and (b) imposing all of the Special Conditions of this

EXHIBIT A

permit as covenants, conditions and restrictions on the use and enjoyment of the property. The restriction shall include a legal description of the property. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Standard and Special Conditions of this permit shall continue to restrict the use and enjoyment of the property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the property.

- 6) **Hazardous Materials at Facility Site:** PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the Permittee shall provide the Executive Director documentation that a Remedial Action Plan has been approved by the Department of Toxic Substances Control for the site consistent with all relevant conditions of the project’s SEIR.
- 7) **Construction Plan:** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:

Best Management Practices (BMPs)

- a. The Construction Plan shall include a Stormwater Pollution Prevention Plan which shall clearly identify all BMPs to be implemented during construction and their location and comply with all Regional Board requirements. Such plans shall contain provisions for specifically identifying and protecting all natural drainage swales (with sand bag barriers, filter fabric fences, straw bale filters, etc.) to prevent construction-related runoff and sediment from entering into these natural drainage areas which ultimately deposit runoff into the Pacific Ocean. Silt fences, straw wattles, or equivalent measures shall be installed at the perimeter of all construction areas. At a minimum, such plans shall also include provisions for stockpile management, temporary stormwater detention facilities, revegetation as necessary, and restricting grading and earthmoving during rainy weather.

The Construction Plan shall indicate that:

- i. dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site;
- ii. all de-watering operations shall include filtration mechanisms;
- iii. off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall not be allowed; in any event, such wash water shall not be allowed to enter any natural drainage;

EXHIBIT A

- iv. concrete rinsates shall be collected and they shall not be allowed to enter any natural drainage areas;
- v. good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment offsite and/or in one designated prepared location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes);
- vi. all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather);
- vii. all erosion and sediment controls shall be in place prior to the commencement of grading and/or construction as well as at the end of each day;
- viii. particular care shall be exercised to prevent foreign materials from making their way to the beach or Pacific Ocean;
- ix. contractors shall ensure that work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills; and
- x. construction contracts shall contain appropriate penalty provisions, sufficient to offset the cost of retrieving or cleaning up improperly contained foreign materials.

Construction Site Documents

- b. The Construction Plan shall provide that copies of the signed coastal development permit and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. Prior to any individuals commencing construction work onsite, those individuals shall be briefed on the content and meaning of the coastal development permit and the approved Construction Plan.

Construction Coordinator

- c. The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator

EXHIBIT A

should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall promptly investigate complaints and take remedial action as appropriate.

Notification

- d. Poseidon shall notify staff of the Coastal Commission's Energy and Ocean Resources Unit at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

Poseidon shall undertake development in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved Construction Plan shall occur without a Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

- 8) **Coordination with Other Concurrent Project.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall provide documentation from the Department of Toxic Substances Control showing that the location and timing of the Permittee's proposed pipeline construction will not interfere with proposed cleanup and remediation activities at the Ascon Landfill site.
- 9) **Change in Seawater Withdrawal:** If at any time during the life of the project the Permittee proposes or is required to withdraw more than an average annual flow of 127 MGD of seawater, it must obtain first an amendment to this permit.

EXHIBIT A

- 10) Noise:** Noise generated by construction (including, but not limited to, pile driving) shall not exceed 65 dBA Leq(h)* at any active nesting site within 500 feet of project site for Belding's savannah sparrow's (*Passerculus sandwichensis beldingi*), light-footed clapper rail (*Rallus longirostris levipes*), western snowy plover (*Charadrius alexandrinus nivosus*) and the California least tern (*Sternula antillarum browni*), or other special status species. If construction occurs during the breeding season for these species (January through August), applicant shall conduct a nesting bird survey for these bird species. If active nests for any of these species are found, the applicant shall prepare a noise report to document the noise levels that would result from proposed construction activities at the location of the active nests. If construction noise exceeds 65 dBA Leq(h), or ambient, if ambient noise levels are determined to be higher than 65 dBA Leq(h), then alternative methods of construction and/or pile driving (including, but not limited to, vibratory pile driving, press-in pile placement, drilling, dewatered isolation casings, etc.) or other sound mitigation measures (including, but not limited to, sound shielding and noise attenuation devices) shall be used as necessary to achieve the required dB threshold levels. If these sound mitigation measures do not reduce noise levels to the prescribed levels, the applicant shall consult with the California Department of Fish and Wildlife to determine a course of action, which may include new sound mitigation or curtailment of construction until nesting is complete.

*dBA Leq (h) is the noise levels in decibels measured with a frequency weighting network, corresponding to the "A-Scale" on a standard sound level meter averaged on an hourly basis.

11) Final Plans:

- a. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit to the Executive Director for review and approval final plans for the project components located in the coastal zone.
- b. The final plans shall document that all exterior windows will be non-glare glass, and all other structures and surfaces constructed or installed as part of the project and that are visible from public areas shall be painted or otherwise finished in neutral tones that minimize their visibility from those public areas.
- c. The Permittee shall undertake development in accordance with the approved plans and any changes shall be reported to the Executive Director. No material changes within the coastal zone shall occur without a Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary. Changes to the project requiring review for amendment would include changes in the physical, operational, or delivery capacity increases, or extension of water supply distribution pipelines beyond those shown on the final plans.

EXHIBIT A

- 12) Term of Permit:** This permit authorizes the approved seawater desalination plant and associated facilities for thirty-five years from the date the facility commences commercial project water deliveries. If the Permittee intends to continue operating the desalination facility and associated components after this authorization expires, then the Permittee shall apply for a new coastal permit authorization to allow the approved development (including, as applicable, any potential modifications to it requested by the Permittee). Provided an application is received before the permit expiration, the expiration date shall be automatically extended until the time the Commission acts on the application.
- 13) Marine Life Mitigation Plan:** PRIOR TO ISSUANCE OF THE PERMIT, the Permittee shall submit to and obtain from the Commission approval of a Marine Life Mitigation Plan (the Plan) that complies with the following:
- a. To the maximum extent feasible, the mitigation shall take the form of maintenance, creation, enhancement, or restoration of aquatic or wetland habitat, or the payment of an equivalent mitigation fee.
 - b. Unless payment of an equivalent mitigation fee is required, goals, objectives and performance criteria for each of the proposed mitigation sites. It shall identify specific maintenance, creation, restoration, or enhancement measures that will be used at each site, including grading and planting plants, the timing of the mitigation measures, monitoring that will be implemented to establish baseline conditions and to determine whether the sites are meeting performance criteria. The Plan shall also identify contingency measures that will be implemented should any of the mitigation sites not meet performance criteria.
 - c. Unless payment of an equivalent mitigation fee is required, requires submittals of “as-built” plans for each site and annual monitoring reports for no less than five years or until the sites meet performance criteria.
 - d. Unless payment of an equivalent mitigation fee is required, defines legal mechanism(s) proposed to ensure permanent protection of each site – e.g., conservation easements, deed restriction, or other methods.

The Permittee shall comply with the approved Plan. Prior to implementing the Plan, the Permittee shall submit a proposed wetlands restoration project or projects that complies with the Plan in the form of a separate coastal development permit application for the planned wetlands restoration project(s). The Commission shall hold a hearing on the proposed Plan within ninety days of the Permittee’s request for such hearing.

EXHIBIT A

- 14) Assumption of Risk and Waiver of Liability:** By acceptance of this permit, the Permittee acknowledges and agrees (1) that the site may be subject to hazards from ground motion, liquefaction, lateral spread, storm waves, storm surges, erosion, and flooding; (2) to assume the risks to Poseidon and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (3) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (4) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 15) Flood and Tsunami Hazard Mitigation Planning:** The Permittee shall comply with the specific measures identified in the Seismic, Tsunami and Flood Design Mitigation and Emergency Response Plan dated March 2013, as provided below:
- a. The Permittee shall implement SEIR mitigation measure HWQ-3: Prior to issuance of grading permits, the applicant shall submit to the City for approval a plan outlining the specific planning measures to be taken to minimize or reduce risks to property and human safety from tsunami during operation. Planning measures could include but would not be limited to the following: (a) provision of tsunami safety information to all facility personnel, in addition to posting signage on site; (b) identification of the method for transmission of tsunami watch and warnings to facility personnel and persons on the site in the event a watch or warning is issued; and (c) identification of an evacuation site for persons on site in the event of a tsunami warning.
 - b. The Permittee shall develop a Hazard Emergency Response Plan with AES HBGS prior to the commencement of project operations. The Permittee has submitted a Draft Hazard Emergency Response Plan tailored to the current AES plan but revised to address a non-essential water treatment plant. The Permittee will meet with AES HBGS to work together on a coordinated plan that is in accordance with the draft plan submitted.

EXHIBIT A

- 16) Structural Stability.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall provide to the Executive Director documentation from a qualified and licensed structural engineer, certifying that the new desalination plant owned by the Permittee is designed to resist without collapse or structural damage the forces resulting from any and all of the following seismic, geologic, flood, and tsunami hazards:
- a. The “design-level” earthquake, which, as specified in SEIR Mitigation Measure GEO-3, is to be determined based on methods required in the 2010 California Building Code;
 - b. Ground motion based on 2010 California Building Code requirements for Site Class F, with an acceleration response spectrum corresponding to 80% of the Site Class E response spectrum;
 - c. Soil settlement or displacement due to liquefaction or lateral soil spread of at least nine inches vertically and at least thirty-eight inches horizontally;
 - d. Groundwater table elevations at the ground surface;
 - e. Tsunami runup at the facility site of 11 feet above mean sea level with an additional two feet of sea level rise for a total of 13 feet above mean sea level; and
 - f. Flooding from the 100-year and 500-year flood events, including increased flood elevations resulting from two feet of sea level rise. Flood elevations shall be based on the flood map in the Environmental Hazards Element of the City of Huntington Beach General Plan.
- 17) Lighting Plan:** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit a Lighting Plan to the Executive Director for review and approval. The Lighting Plan shall document that the facility’s exterior lighting is the minimum necessary for safety purposes. All lighting (exterior and interior) shall be sited and designed so that it limits the amount of light or glare visible from offsite areas (including but not limited to views from the shoreline, public accessways, and the adjacent wetlands and environmentally sensitive habitat areas managed by the Huntington Beach Wetlands Conservancy) to the maximum extent feasible (including through uses of lowest luminosity possible, directing lighting downward, etc.).
- 18) Energy Minimization and Greenhouse Gas Reduction Plan:** PRIOR TO ISSUANCE OF THE PERMIT, the Permittee shall submit to the Commission an Energy Minimization and Greenhouse Gas Reduction Plan. The permit shall not be issued until the Commission has approved an Energy Minimization and Greenhouse Gas Reduction Plan after a public hearing. The Commission shall hold a hearing on the Energy Minimization and Greenhouse Gas Reduction Plan within ninety days of the Permittee’s request for such hearing.

EXHIBIT A

- 19) Stormwater and Drainage Plan:** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit to the Executive Director a Stormwater and Drainage Plan that complies with the stormwater and drainage requirements in the project's NPDES Permit.

EXHIBIT B

**APPLICANT’S SUGGESTED BASIS FOR FINDINGS
AND INSTRUCTIONS TO PREPARE REVISED FINDINGS**

The Commission finds that Poseidon Water’s (the “Applicant”) Huntington Beach Desalination Project (the “Project”)—Coastal Development Permit (“CDP”) Numbers A-5-HNB-10-225 and E-06-007—is **consistent with all relevant Coastal Act and Huntington Beach Local Coastal Plan (“LCP”) policies and should be approved subject to the Special Conditions proposed by the Applicant.** The Commission instructs Staff to prepare Revised Findings, including findings of consistency with all relevant Coastal Act and Huntington Beach LCP policies, based upon the materials submitted by the Applicant, including but not limited to those dated October 17, 2006, February 26, 2007, May 25, 2007, September 24, 2008, December 19, 2008, January 30, 2009, November 12, 2010, February 17, 2012, July 11, 2012, March 21, 2013, May 9, 2013, September 20, 2013, September 30, 2013, October 2, 2013, October 18, 2013, October 23, 2013, November 8, 2013, and November 11, 2013, the Subsequent Environmental Impact Report for the Project certified by the City of Huntington Beach, Santa Ana Regional Water Quality Control Board Order No. R8-2012-0007 (NPDES No. CA90000403), and the Applicant’s proposed Special Conditions submitted on November 8, 2013. In general, the Commission finds that the Project complies with all relevant Coastal Act and LCP policies and finds that, to the extent there is information in the original Staff Report or the Addendum to the Staff Report that is contrary to the information provided by the Applicant, the substantial weight of the evidence in the Commission’s record supports the Applicant’s position. Information from the Applicant’s submissions should be added to the Revised Findings to support the Commission’s findings.

SUMMARY OF FINDINGS

- **The Commission finds that the Project is consistent with all relevant Coastal Act and Huntington Beach LCP policies and should be approved subject to the Special Conditions proposed by the Applicant.** In addition to the findings described in this Summary, the Commission makes more specific findings described further below.
- **Marine Life and Water Quality.** The Commission finds that the Project will protect and enhance marine life and water quality in compliance with relevant Coastal Act and LCP policies.
- The Commission finds that imposition of **Special Condition 13** (which requires the Applicant to submit and obtain from the Commission approval of a Marine Life Mitigation Plan) will mitigate any environmental impacts of the Project operating in the long-term stand-alone operating scenario, and improve the marine environment compared to existing conditions. Even if and when the Project is to operate on a stand-alone basis, impingement and entrainment impacts on marine biological species will not be significant, and the imposition of **Special Condition 13** will not only fully mitigate any impacts, but also will restore and enhance the marine environment in conformance with Coastal Act and LCP policies.

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Agenda Items W19a & 20a

EXHIBIT B

- The Commission finds that Project is the most environmentally superior site and uses the most environmentally superior intake structure. Substantial evidence shows that the subsurface infiltration gallery intake system proposed by Commission Staff is more environmentally impactful than the Project's use of the existing intake system, is infeasible, and conflicts with Coastal Act and LCP policies.
- In reliance on the Regional Board's determinations in issuing the Project's NPDES Permit, the Commission finds that the Project's discharge and runoff are conditioned such that they will not cause adverse impacts to marine resources.
- **Wetlands and Environmentally Sensitive Habitat Areas.** The Commission finds that the Project will protect wetlands and environmentally sensitive habitat areas ("ESHA") in compliance with relevant Coastal Act and LCP policies. The Project will not degrade water quality or adversely affect biological productivity, has been intentionally located and designed with mitigation measures to avoid impacts to wetlands, and adheres to the buffer zone standard set forth in LCP Policy C 7.1.4. Imposition of **Special Conditions 2.d, 7, 10, and 17** will prevent and avoid any potential environmental impacts to wetlands and ESHA.
- **Flood, Tsunami, and Sea Level Rise Hazards.** With the implementation of the measures contained within **Special Conditions 15 and 16**, the Project will be designed to minimize the potential effects on structural integrity and risks to health and safety from sea level, flooding, and tsunami hazards, in compliance with relevant Coastal Act and LCP policies.
- **Geologic Hazards.** With the implementation of the measures contained within **Special Condition 16**, the Project will be designed to minimize the potential effects on structural integrity and risks to health and safety for geotechnical hazards, in compliance with relevant Coastal Act and LCP policies.
- **Climate Change.** With the imposition of **Special Condition 18**, the Commission finds that the Project will comply with relevant Coastal Act and LCP policies associated with energy minimization and climate change.
- **Public Access and Recreation.** As required by Section 30604(c) of the Coastal Act, the Commission finds that the Project is consistent with the public access and recreation policies of Chapter 3 of Coastal Act, as well as relevant LCP policies regarding public access and recreation.
- **Land Use.** The Commission finds that the Project conforms the land use and zoning designations for the Project site and is in conformance with all applicable LCP policies governing site designation and allowable uses.
- **Development and Public Services.** The Commission finds that the Project will not induce growth in the Coastal Zone because the Applicant will be selling its produced water to public water districts and it will offset demand for imported water supplies. The Commission also

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Agenda Items W19a & 20a

EXHIBIT B

finds that the Project will be sited in an area with adequate public services and its development will not result in significant adverse effects.

- **Coastal Dependency.** The Commission finds the Project to be a coastal-dependent development.
- **Federal Consistency.** The Commission finds that the Project’s proposed water transmission pipeline crossings of waterways (requiring federal permitting) are consistent with the policies of Chapter 3 of the Coastal Act because the crossings would be installed using the bore and jack method from right-of-way to right-of-way, with depth below the current scour line of the waterways, and because no discharge of dredge or fill materials will be allowed to occur in the waterways.

CONFORMITY TO APPLICABLE COASTAL ACT AND LCP POLICIES
(SECTIONS IV.F TO IV.M OF THE STAFF REPORT)

F. MARINE LIFE AND WATER QUALITY (Coastal Act Sections 30230 & 30231, LCP Policies C 6.1.1, C 6.1.2, C 6.1.3, C 6.1.4 and C 6.1.19):

A. Anticipated Project Impacts and Coastal Act Conformity - Intake Related

1. Adverse Impacts Caused by Poseidon’s Intake:

a) Impingement: The City of Huntington Beach’s Subsequent Environmental Report (“SEIR”) determined that under both the co-located and stand-alone operating scenarios the Project would not result in significant impingement effects. (See SEIR Section 4.10.) The Project will use the existing Huntington Beach Generating Station (“HBGS”) seawater intake system, which extends approximately 1,800 feet offshore and consists of a vertical riser with a horizontal velocity cap supported approximately 5 feet above the opening to the intake. Studies on the effectiveness of the velocity cap have shown impingement reductions as high as 90%. No physical changes to the intake system are proposed or required, and the velocity cap would remain in place for stand-alone Project operations. Under the co-located condition, neither the intake volume nor the velocity of the existing HBGS intake would be increased, and therefore existing impingement losses resulting from HBGS’ operations would not increase with the implementation of the Project. Under the Project’s stand-alone operating condition, the intake would operate at a reduced annual average flow rate of approximately 126.7 MGD, causing an estimated impingement loss of only 0.78 pounds per day (estimated impingement of fishes plus estimated impingement of shellfish), which is a fraction (less than 25%) of the daily diet of one brown pelican. The Project’s use of the existing intake structure during stand-alone operations at the Project’s average flow rate will result in a 92% reduction in impingement compared to the HBGS’ impingement losses. (See Santa Ana

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Agenda Items W19a & 20a

EXHIBIT B

Regional Water Quality Control Board (“Regional Board”) Order No. R8-2012-0007 (NPDES No. CA90000403, p. F-33.)

b) Entrainment: The SEIR determined that, under both the co-located and stand-alone operating scenarios, the Project will result in less than significant entrainment effects. (*See* SEIR Section 4.10.) As demonstrated in Tenera Environmental’s impingement and entrainment studies conducted for the Project, the most frequently entrained species in the existing seawater intake structure are very abundant both in the local area as well as the Southern California Bight, and therefore actual ecological effects due to entrainment caused by the co-located or stand-alone operating conditions are insignificant and will have no effect on the ability of the species to sustain their populations. Based on a fairly constant intake pumping rate with an annual average of approximately 126.7 MGD, larval entrainment losses due to the long-term stand-alone operation of the Project are projected to affect only a small fraction of the larvae (0.02-0.28%) of the source water populations. (*See* Regional Board Order No. R8-2012-0007 (NPDES No. CA90000403, p. F-34.) The entrainment effects associated with the Project’s stand-alone operations would be less than the entrainment effects that are currently associated with the HBGS’s Units 3 and 4 seasonally adjusted (pumping rate of up to 253.4 MGD) larval entrainment losses. (*Id.*) To that end, the purchase, restoration and maintenance of 66.8 acres of tidal wetlands in the vicinity of the Project, which AES Huntington Beach has implemented and is currently funding, provides ongoing mitigation to offset potential entrainment effects that may be associated with the withdrawal of a seasonally adjusted flow rate of up to 253.4 MGD by HBGS. (*Id.* at p. F-32.) Alternatively, the Commission’s approval of Poseidon’s proposed Marine Life Mitigation Plan would provide mitigation to offset potential entrainment effects that may be associated with the Project’s annual average intake pumping rate of 126.7 MGD. Finally, no state or federal threatened or endangered species are expected to be impacted by the Project, species with “high commercial and recreational importance, such as California halibut and rockfishes, were shown to be very uncommon” in the intake flow, and the intake structure is not within or near an Area of Special Biological Significance or Marine Life Protection Area.

2. Mitigating the Impacts Caused by Poseidon’s Use of an Open Water Intake

a) Avoiding and Minimizing Impingement / Entrainment Impacts:

(1) Alternative Intake Systems: The SEIR analyzed the feasibility and environmental impact of several types of alternative intake systems. (*See* SEIR Section 6.4.) The SEIR concluded that the use of horizontal intake wells, vertical intake wells, slant intake wells, and subsurface infiltration galleries in lieu of the Project’s proposed use of the existing HBGS seawater intake system was either infeasible and/or had greater environmental impacts

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Agenda Items W19a & 20a

EXHIBIT B

than the proposed Project. At the request of Commission staff, the Applicant also provided extensive analyses, cost estimates and additional evidence, including but not limited to a 2011 technical memorandum from Water Globe Consulting titled *Evaluation of Alternative Desalination Plant Subsurface Intake Technologies*, demonstrating that alternative intakes (i) would cause more significant environmental impacts than those caused by the existing HBGS intake; (ii) would be economically infeasible; and (iii) would be technologically and environmentally infeasible for various reasons, including both onshore and offshore subsurface conditions in the Project site vicinity. This information provides further confirmation that alternative intake systems would be infeasible and not the environmentally preferred alternative. Site-specific geophysical and geotechnical data analyzed for the project demonstrates that offshore seafloor and subsurface geological conditions are unsuitable for the steady state withdraw of 126.7 MGD.

(a) Seafloor Infiltration Galleries (Subsurface Infiltration Gallery, Deep Infiltration Gallery): As described in the SEIR and the Applicant's submissions to the Commission, including but not limited to those submissions dated October 17, 2006, February 26, 2007, May 25, 2007, September 24, 2008, December 19, 2008, January 30, 2009, February 17, 2012, July 11, 2012, March 21, 2013, May 9, 2013, October 2, 2013, October 18, 2013, October 23, 2013, November 8, 2013, and November 11, 2013, the Applicant reviewed and conducted analyses that show that site-specific conditions render seafloor infiltration galleries, such as a subsurface infiltration gallery or a deep infiltration gallery, environmentally inferior and infeasible for the Project. Such infiltration galleries are infeasible due to the fine-grained ("muddy") character of the shallow sea floor sediments offshore, which would require frequent dredging (for a subsurface infiltration gallery), the transmissivity and storativity characteristics of the Talbert Aquifer, shallow sediments in the coastal margin, the requirement for the construction, presence and ongoing maintenance of equipment on both the seafloor and beachfront resulting in the loss of 63.6 acres of habitat (i.e., large soil excavation volume associated with the construction could result in the destruction of the benthic flora and fauna over the entire intake footprint), the high cost of construction and maintenance (over \$270 million for a subsurface infiltration gallery), increased GHG emissions associated with exporting excavated and dredged seafloor material during construction and operations, and because the construction of such intake systems would require numerous above-ground structures, service roads, and collector pipelines on public beaches, which would result in significant public access, viewshed and other impacts to coastal resources.

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

(b) Beach Well Intake Systems (Vertical Wells, Slant Wells, Horizontal [Ranney Collector] Wells): As described in the SEIR and the Applicant's submissions to the Commission, including but not limited to those submissions dated October 17, 2006, February 26, 2007, May 25, 2007, September 24, 2008, December 19, 2008, January 30, 2009, February 17, 2012, July 11, 2012, March 21, 2013, May 9, 2013, October 2, 2013, October 18, 2013, and October 23, 2013, the Applicant reviewed and conducted analyses that show that site-specific conditions render beach well intake systems, including vertical wells, slant wells, and horizontal (Ranney Collector) wells, infeasible for the Project. Such beach well intake systems are infeasible due to transmissivity and storativity characteristics of the Talbert Aquifer, potential drawdown of groundwater levels and related differential settlement or subsidence impacts, shallow sediments in the coastal margin, the dewatering of sensitive habitat, permanent disruption to Huntington State Beach, the increased cost of construction and maintenance, impacts during construction, possible interception of contaminated groundwater from the nearby Ascon Landfill and Talbert Seawater Intrusion Barrier, and because the construction of such intake systems would require numerous above-ground structures, service roads, and collector pipelines on public beaches, which would result in significant public access, viewshed and other impacts to coastal resources.

(c) Screened Intake: As described in the SEIR and the Applicant's submissions to the Commission, the Applicant reviewed and analyzed the potential for a screened intake and has determined that such screening is infeasible in co-located operation because it would impact the current operation of the HBGS. The Regional Board also concluded that offshore fine slot wedgewire screens are not currently considered to be a feasible alternative for this site. Likewise, replacing the existing 3/8 inch mesh intake screens with fine mesh modified Ristroph screens and a fish return system at the HBGS would be infeasible because it would impact the current operation of the HBGS; therefore, the Regional Board concluded that fine mesh modified Ristroph screens are not currently a feasible technology for minimizing impingement and entrainment effects associated with the Project.

(d) Alternative Intake Systems Conclusion: Based upon the SEIR and the Applicant's submissions, the Commission finds that alternative intakes would result in greater environmental impacts than the proposed Project and/or are infeasible at the Project site due to site specific water quality, water supply and environmental conditions and/or are infeasible due to the

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

increased costs of such intake systems. Regional Board Order No. R8-2012-0007 (NPDES No. CA90000403, p. F-29.

(2) Technological / Operational Measures: The Applicant has committed to utilizing variable frequency drives on its intake pumps to minimize the intake flow, impingement and entrainment effects. Further, the HBGS intake structure has a velocity cap which is the best available technology for reducing intake flow rates. The HBGS is currently permitted to withdraw up to 514 MGD of seawater from the ocean. Assuming HBGS was no longer drawing in seawater and the existing intake system was utilized for the desalination facility under the stand-alone operating condition, the seawater flow would be an annual average of approximately 126.7 MGD, which is 25 percent of the current permitted allowable seawater withdrawn from the ocean by HBGS. In approving Order No. R8-2012-0007 (NPDES No. CA90000403), the Regional Board found that the Project's co-located and temporary stand-alone operations would comply with the best available site, design technology and mitigation measures feasible to minimize the intake and mortality of all forms of marine life. For long-term stand-alone operations, the NPDES permit requires the Project to submit a separate Report of Waste Discharge to the Regional Board, which will continue to have review authority to evaluate whether the Project complies with the best available site, design technology and mitigation measures feasible to minimize the intake and mortality of all forms of marine life. With these measures, the Project will not cause any substantial adverse impingement or entrainment effects.

b) Mitigating Project Related Impacts: The California Energy Commission determined that impacts to marine species resulting from the operation of HBGS Units 3 and 4 (seasonally adjusted annual flow rate of 253.4 MGD) would be adequately mitigated by AES' funding of the purchase, restoration, and maintenance of 66.8 acres of tidal wetlands. The restoration of the tidal wetlands was completed in 2009 and maintenance is ongoing. Because the Project's operations, in both the co-located and stand-alone configurations, would not cause an increase in impingement and entrainment impacts above that already mitigated by HBGS, further mitigation is unnecessary. However, if AES were to stop supporting the 66.8-acre tidal wetlands mitigation program, the Regional Board found that the Applicant would be required to fund that program "under the direction of the Huntington Beach Wetlands Conservancy, or to incorporate mandated feasible design or technology features capable of reducing or eliminating such entrainment-related effects and thereby reducing or eliminating the requirement to fund the marine life mitigation program." (Regional Board Order No. R8-2012-0007 (NPDES No. CA90000403, p. F-32.) Further, pursuant to **Special Condition 13**, the Applicant would be required to submit for

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

Commission approval a Marine Life Mitigation Plan (“MLMP”) to compensate for any potential impacts to marine life that could occur once HBGS no longer utilizes its cooling water system and the Project is operated in a long-term stand-alone mode. **Special Condition 13** ensures that any Project-related impingement and entrainment impacts will be more than fully mitigated, and that marine resources and the biological productivity of coastal waters will be enhanced and restored in compliance with Coastal Act Sections 30230 and 30231, and LCP Policies C 6.1.1, C 6.1.2, C 6.1.3, C 6.1.4 and C 6.1.19. Likewise, **Special Condition 9** requires that the Applicant must obtain an amendment to its CDP if it will withdraw more than an average annual flow of 127 MGD to ensure that any Project-related impingement and entrainment impacts will be minimized in compliance with the above noted Coastal Act and LCP policies.

B. Anticipated Project Impacts and Coastal Act Conformity - Discharge Related

1. Description of Impacts: The Regional Board studied the Project’s discharge before issuing Order No. R8-2012-007 (NPDES No. CA8000403). The Regional Board considered the discharge impacts of the Project and conditioned all potential discharge related impacts, both in the co-located and temporary stand-alone operating scenarios, to ensure compliance with Clean Water Act and California Ocean Plan requirements. The Regional Board determined that in order to maintain the required dilution ratio of 7.5 to 1, the Project’s discharge must not exceed 44.7 percent of the actual intake flow. This limitation will protect beneficial uses of the Ocean (including protection of fish habitat) and ensure that no salinity-related toxicity effects would occur in receiving waters. The NPDES Permit establishes extensive monitoring and reporting requirements to ensure compliance with this effluent limitation. In addition, if the Water Quality Control Plan for Ocean Waters of California (“Ocean Plan”) is amended by the State Board to address desalination facilities, **Special Condition 2.c** requires the Applicant to comply with all components of the Ocean Plan applicable to the Project as determined by the Regional Water Control Board through the Project’s NPDES Permit. Further, for long-term stand-alone operations, the NPDES Permit requires the Project to submit a separate Report of Waste Discharge to the Regional Board, which will continue to have review authority to evaluate whether the Project is using the best available site, design, technology and mitigation measures feasible to minimize the intake and mortality of all forms of marine life, in compliance with Water Code section 13142.5(b).

2. Commission Finding: In reliance on the Regional Board’s determinations in issuing the Project’s NPDES Permit and its continuing review authority over the NPDES Permit, as is required pursuant to Coastal Act Section 30412(b), the Commission finds that the Project’s discharge is conditioned such that it will not cause adverse impacts to marine resources. The Permit, along with its extensive monitoring and reporting requirements and **Special Condition 2.c**, ensures that the

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

Project's discharge will not harm marine resources and thus would maintain marine biological productivity and resources in conformance with Coastal Act Sections 30230 and 30231, and LCP Policies C 6.1.1, C 6.1.2, C 6.1.3, C 6.1.4 and C 6.1.19.

C. Anticipated Project Impacts and Coastal Act Conformity – Water Quality Related

1. Description of Impacts: As described in the SEIR and the Applicant's submissions to the Commission, the Project would not create or contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems or contribute to significant increases in the flow velocity or volume of stormwater runoff to cause environmental harm or provide substantial additional sources of polluted runoff. Potential groundwater, wetlands and surface water impacts due to excavation will be minimized through the direction of dewatering discharge through a desilting system. The discharge will also be sampled and tested to ensure compliance with all NPDES regulations and with de minimis permit requirements. A monitoring well system will be installed and operated for the duration of the Project construction period to ensure that construction activities do not have any measurable impacts on groundwater quality or levels outside of the boundaries of the Project site. Furthermore, the Project will not result in the use or mobilization of contaminated soil. In addition, **Special Condition 6** requires Poseidon to provide the Executive Director with an approved Remedial Action Plan for the site consistent with all relevant conditions of the Project's SEIR, and **Special Condition 7** requires the Applicant to submit a Construction Plan to the Executive Director prior to the commencement of construction identifying all best management practices to be implemented during construction to prevent construction-related runoff and sediment from entering natural drainage areas.

2. Commission Finding: In reliance on the Regional Board's determinations in issuing the Project's NPDES Permit as is required pursuant to Coastal Section 30412, the Commission finds that the Project's runoff is conditioned such that it will not cause adverse impacts to coastal resources. The Permit, along with its extensive monitoring and reporting requirements and **Special Conditions 6 and 7**, ensures that the Project's runoff will not harm marine resources and thus would maintain marine biological productivity and resources in conformance with Coastal Act Sections 30230 and 30231, and LCP Policies C 6.1.1, C 6.1.2, C 6.1.3, C 6.1.4 and C 6.1.19.

D. Marine Impacts - Conclusion: In accordance with the discussion above, the SEIR, the Applicant's submissions to the Commission, and the Regional Board-issued NPDES Permit, the Commission finds that the Project, as conditioned, will not result in any significant environmental impacts, and that imposition of **Special Condition 13** (which requires the Applicant to adhere to the MLMP) will mitigate any environmental impacts of the Project operating in the long-term stand-alone operating scenario, and improve the marine environment compared to existing conditions. Even if and when the Project is to operate on a stand-alone basis, impingement and entrainment impacts on marine

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

biological species will not be significant, and the imposition of **Special Condition 13** will not only fully mitigate any impacts, but also will restore and enhance the marine environment in conformance with Coastal Act Sections 30230 and 30231, and LCP Policies C 6.1.1, C 6.1.2, C 6.1.3, C 6.1.4 and C 6.1.19. Furthermore, the imposition of **Special Condition 2.c** (which requires the Applicant to comply with all components of the Ocean Plan applicable to the Project as determined by the Regional Water Control Board through the Project's NPDES permit), **Special Condition 6** (which requires the Applicant to provide an approved Remedial Action Plan), **Special Condition 7** (which requires the Applicant to submit a Construction Plan), and **Special Condition 9** (which requires the Applicant to obtain an amendment to its CDP if it will withdraw more than an average annual flow of 127 MGD) further ensure that the Project will be in conformance with relevant marine life and water quality policies in the Coastal Act LCP.

G. WETLANDS AND ENVIRONMENTALLY SENSITIVE HABITAT AREAS (Coastal Act Sections 30233 and 30240; LCP Policies C 6.1.4, C 6.1.20, C 7.1.2, C 7.1.3, C 7.1.4, C 7.1.5, C 7.2.7 and I-C 8(c))

A. Applicability of Coastal Act and LCP Policies. The above Coastal Act policies require the protection of wetlands and ESHA and, along with the above LCP policies, limit the kind, size and manner of alterations to certain wetlands and ESHA. The SEIR evaluated the Project site for the presence of wetlands in a manner consistent with the Commission's wetland delineation methods. Appendix H to the SEIR contained a Jurisdictional Determination prepared by Glenn Lukos Associates, which specifically describes the Commission's wetland determination criteria and applies that criteria in its evaluation of the Project's footprint. As discussed in Section 4.9 of the SEIR, the Jurisdictional Determination determined that the Project site contains no wetlands "in accordance with the federal or Coastal act definitions." This conclusion was confirmed in a technical memorandum from Glenn Lukos Associates provided with Poseidon's November 11, 2013 submittal to the Commission. Additionally, the SEIR determined that the proposed pipeline alignments are entirely within existing roadways and disturbed areas, and are "not within any wetlands under federal or state jurisdiction." Moreover, the Project site does not contain ESHA, nor would development of the Project result in the incidental take of sensitive habitats or species.

B. Prevention and Mitigation of Adverse Effects to Wetlands and ESHA. The Project complies with the above Coastal Act and LCP policies because it will not degrade water quality or adversely affect biological productivity, has been intentionally located and designed with mitigation measures to avoid impacts to the Magnolia Marsh, and complies to the 100-foot buffer zone policy set forth in LCP Policy C 7.1.4. As provided in Poseidon's November 11, 2013 submittal to the Commission, no wetlands are located on the Project site, and the Project will be separated from coastal wetlands by significant setbacks and existing containment berms, which will keep storm water onsite. With respect to the 0.35 acre pickleweed area to the east of the Project site, no structures are

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

proposed to be constructed within 100 feet of the pickleweed area. Although a proposed service road would be located approximately 65 feet from the pickleweed area, the service road is separated from the pickleweed area by a 14-foot high containment berm that is approximately 60 feet wide, which provides a physical barrier between the road and the pickleweed area. The pickleweed area is dominated by degraded patches of common pickleweed. The pickleweed area does not exhibit potential for any use by special-status species, except for marginal foraging habitat for the Belding's savannah sparrow due to the presence of pickleweed. Given the lack of suitable habitat for special-status species in the 0.35 acre pickleweed area and the configuration of the Project, the need for a 100-foot buffer between the pickleweed area and the Project's service road is reduced. **Special Condition 2.d** will require Poseidon to submit documentation from the California Department of Fish and Wildlife demonstrating that the buffer is sufficient to avoid significant impacts to any nearby wetlands.

During construction, care will be taken to limit the dewatering to only the excavated area, and prevent the draining of the wetlands, and **Special Condition 7.a** would require the Applicant to comply with a Storm Water Pollution Prevention Plan. In addition, potential groundwater, wetlands and surface water impacts due to excavation will be minimized through the direction of dewatering discharge through a desilting system. Dewatering operations will have no impacts on any nearby wetlands because the radius of influence of the dewatering operations is limited to less than 225 feet from the boundaries of the structures which will require dewatering, and does not extend outside of the desalination facility or AES power plant boundaries. The maximum dewatering volume associated with Project construction will be over five times smaller than the groundwater "draw" volume associated with natural daily tidal fluctuations to which wetlands are exposed. In addition, a monitoring well system will be installed and operated for the duration of the Project construction period in order to ascertain that construction activities do not have any measurable impacts on groundwater quality or levels outside of the Project's or AES power plant's boundaries. The measured water level will be compared to the water level in a control groundwater monitoring well that is outside of the Project site in order to confirm that groundwater level in the wetlands is not influenced by the dewatering operations. (See SEIR p. 4.9-23.) Based on actual monitoring well results, the Project may implement slurry or sheet pile cutoff walls to limit the radius of influence from dewatering to the site boundaries. Both methods are feasible and would avoid dewatering from extending beyond the site boundaries, including into nearby wetlands. Therefore, the water withdrawal associated with temporary dewatering operations during construction would be localized only and would not expand into existing wetlands.

To further ensure there are no adverse effects to wetlands and ESHA, outdoor lighting will be directed away from the sky and wetlands to prevent impacts on the Magnolia Marsh, and the Project's outdoor pumps will be enclosed, setback and screened to mitigate noise, which will be monitored to ensure compliance with the City of Huntington Beach's noise ordinance. (See SEIR, p. 4.5-18 [mitigation measure NOI-1].)

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

In addition, during construction the Project would be required to comply with **Special Condition 10**, which would limit noise generated by construction to 65 dBA Leq(h) at any active nesting site within 500 feet of the Project site for various special status species, require a nesting bird survey be conducted for construction during breeding season, and if any active nests found, require the preparation of a noise report with potential alternative methods of construction should construction noise exceed 65 dBA Leq(h) at the active nesting sites. Moreover, the Project will feature an onsite storm water drainage system including catch basins that will collect runoff and direct it to pumps via gravity lines. The Project will also be graded so that all storm water will flow away from the wetland areas and toward the local drainage system. Finally, with respect to lighting impacts, **Special Condition 17** would require Poseidon to submit a Lighting Plan to the Executive Director for review and approval showing that the Project's exterior lighting is limited to the minimum necessary for safety purposes and that all lighting is sited and designed to limit the amount of light or glare visible from adjacent wetlands or ESHA. Implementation of Poseidon's Special Conditions would ensure that the Project does not result in significant adverse impacts to avian or special status species in wetlands or ESHA.

C. Commission Findings. In accordance with the discussion above, the SEIR and the Applicant's submissions, including but not limited to those dated October 17, 2006, September 24, 2008, December 19, 2008, January 30, 2009, November 12, 2010, February 17, 2012, and July 11, 2012, November 8, 2013, and November 11, 2013, the Commission finds that the Project, as conditioned, will not result in any significant environmental impacts, and that imposition of **Special Conditions 2.d, 7, 10, and 17** will prevent and mitigate any environmental impacts of the Project to adjacent wetlands and ESHA. Furthermore, the Project complies with LCP Policy C 7.1.4. Pursuant to LCP Policy C 7.1.4(a), the Project's proposed buffer is sufficient to protect the limited biological values associated with the 0.35 acre pickleweed area. Pursuant to LCP Policy C 7.1.4(b), given the significant protections and screening provided by the 60-foot wide containment berm, there would be no significant disturbance to foraging Belding's savannah sparrow from the proposed development and the buffer as proposed would be sufficient to protect the limited foraging opportunities in the pickleweed area. Pursuant to LCP Policy C 7.1.4(c), the buffer is sufficiently wide to allow for interception of any additional material eroded as a result of the proposed development because there would be no change associated with the potential for erosion by the Project. Pursuant to LCP Policy C 7.1.4(d), the Project will use the existing containment berm, which will provide sufficient protection for the adjacent pickleweed area. Overall, the Commission finds the Project is consistent with Coastal Act Sections 30233 and 30240, and the LCP policies cited above.

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

H. FLOOD, TSUNAMI, AND SEA LEVEL RISE HAZARDS. (Coastal Act Section 30253, LCP Policies I-C.20 [Environmental Hazards Policy 5.1.1 and Program I-EH 4] and C 10.1.19)

A. Coastal Zone Impacts. The provisions above are focused on ensuring that if potential flooding or tsunami risks are present on a particular site, a Project is designed both to “assure stability and structural integrity” and to prevent or reduce risks to human safety or property if a flood or tsunami event occurs. The issue before the Commission is whether a development project on a site is designed to minimize risks to life and property damage as a result of such an event. The inquiry is focused on the nature of the project at issue (i.e., what risks could be posed by damage to the project) and the measures that can be feasibly implemented to minimize potential risks to the environment, including risks to public safety and property.

The nature of the Project is a seawater desalination facility, producing potable water. The Project does not maintain large quantities of hazardous materials on site, and those materials that are present will be stored in accordance with all federal, state and local standards. The Project will also have the necessary structural reinforcement to minimize risks from flooding, tsunami and sea level rise. In 2013, at the request of Commission staff, Geosyntec Consultants performed site-specific geotechnical, seismic and tsunami risk analyses to identify those areas in which the Project could feasibly implement measures to minimize potential risks to the Project and the environment (the Geosyntec Report). The Geosyntec Report recommended design measures to ensure the Project would mitigate potential tsunami impacts at the site, including a draft Hazard Emergency Response Plan (Response Plan). The Applicant submitted a draft Response Plan recommending the Geosyntec Report’s design measures be incorporated as special conditions to the CDP.

B. Potential Sea Level Rise, Flood, and Tsunami Risks Will be Minimized. Although the SEIR concluded that the Project would not be subject to significant impacts from a flood or tsunami, the SEIR included a mitigation measure (HWQ-3) to ensure planning measures have been prepared to minimize or reduce risks to property and human safety from a potential tsunami during operation of the Project. (*See* SEIR section 4.3.)

In addition, the Geosyntec Report also provides a detailed, site-specific tsunami hazards and risks analysis based on the Commission’s requests. Based on this analysis, Geosyntec determined that the potential maximum worst-case tsunami inundation depth at the Project site would be 12 feet Mean Sea Level (“MSL”). As requested by Commission Staff, this calculation includes 2 feet of sea level rise that could occur over the 30-year design life of the Project. Moreover, based on Commission Staff’s assertion that maximum worst-case tsunami inundation depth would be 13 feet MSL (including 2 feet of sea level rise), the Response Plan incorporated and revised the Geosyntec Report’s findings. Finished floor elevations of the proposed Project range from 9-14 feet MSL,

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

therefore tsunami-related flooding on the Project site could range from approximately 0 feet to approximately 4 feet during the worst-case tsunami event. At inundation levels of this depth, the Geosyntec Report and Response Plan determined that any tsunami-related loading on the Project's proposed structures would be mitigated by structural design. Further, the Geosyntec Report found that with the incorporation of a warning system and emergency response plan, potential tsunami hazards at the Project site would not present a significant risk to public health and safety. To address these issues, Geosyntec recommended design measures that have been incorporated into the Project as **Special Conditions 15** and **16**. With the implementation of these measures, and consistent with Coastal Act and LCP requirements, the Project can be designed and sufficient warning and response plans can be put in place to minimize potential effects on structural integrity and risks to health and human safety in the event of a worst-case tsunami scenario, including an estimated 2 feet of sea level rise over the design life of the Project. Moreover, the Project will be designed to withstand potential flooding impacts. Pursuant to **Special Condition 16**, the desalination plant will be designed to resist without collapse or structural damage the forces resulting from flooding from the 100-year and 500-year flood events.

C. Commission Findings. The Commission finds that, with the implementation of the measures contained within **Special Conditions 15** and **16**, the Project will be designed to minimize the potential effects on structural integrity and risks to health and safety from sea level, flooding, and tsunami hazards. Based on the above, the Commission finds that the Project as conditioned conforms to Coastal Act Section 30253 and the applicable LCP requirements referenced above.

I. GEOLOGIC HAZARDS (Coastal Act Section 30253, LCP Policies C 1.1, C 10.1.3, C 10.1.4, C 10.1.19, and I-C 20)

A. Coastal Zone Impacts. The provisions above are focused on ensuring that if potential geotechnical or flooding risks are present on a particular site, a Project is designed both to "assure stability and structural integrity" and to prevent or reduce risks to human safety or property if a seismic event occurs. The issue before the Commission is whether a development project on a site is designed to minimize risks to life and property damage as a result of seismic activity. As a result, the inquiry is focused on the nature of the project at issue (i.e., what risks could be posed by damage to the project) and the measures that can be feasibly implemented to minimize potential risks to the environment, including risks to public safety and property.

As noted above, the nature of the Project is a seawater desalination facility, producing potable water. The Project does not maintain large quantities of hazardous materials on site, and those materials that are present will be stored in accordance with all federal, state and local standards. The Project will also have the necessary structural reinforcement to minimize seismic and liquefaction hazard risk. Accordingly, the

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

environmental risks due to the nature of the Project would be less than significant. (*See* SEIR sections 4.2 and 4.3.) In addition, the March 2013 Geosyntec Report concluded that the Project would not “create or contribute significantly to erosion geologic instability or destruction of the site or surrounding area.”

B. *Potential Geotechnical, Seismic and Liquefaction Risks Will be Minimized.* The SEIR concluded that with the incorporation of mitigation measures, potential impacts related to geotechnical, seismic, and liquefaction issues would be less than significant. (*See* SEIR section 4.2.) In addition, after thoroughly assessing seismic risk potential at the Project site, Geosyntec determined that no changes to the Project layout are warranted, and that with the implementation of appropriate structural design measures, development on the Project site will not present any seismic related hazards or associated risks. Design measures are incorporated into the Project as **Special Condition 16** to ensure that the desalination plant is designed to resist without collapse or structural damage the forces resulting from various seismic and geologic hazards. Furthermore, the SEIR requires a design-level geotechnical investigation for the selected pipeline route and incorporation of mitigation to ensure that potential impacts will be mitigated to less-than-significant levels. (*See* SEIR p. 4.2-23.) Accordingly, and consistent with Coastal Act and LCP policies, the Project will be designed with sufficient structural integrity to minimize potential risks to life and property due to seismic events, inundation, or liquefaction.

C. *Commission Findings.* The Commission finds that, with the implementation of the measures contained within **Special Condition 16**, the Project will be designed to minimize the potential effects on structural integrity and risks to health and safety for geotechnical hazards. Based on the above, the Commission finds that the Project as conditioned conforms to Coastal Act Section 30253 and the applicable LCP requirements referenced above.

J. CLIMATE CHANGE (Coastal Act Sections 30253(c) and (d), LCP Goal C 8, and LCP Policies C 8.2.4 and C 8.3.1)

Commission Findings: Coastal Act Sections 30253(c) and (d) require that new development “be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development,” and “minimize energy consumption and vehicle miles traveled.” Poseidon proposes to implement several energy efficiency measures to reduce the energy consumption of the Project, and therefore its associated greenhouse gas (GHG) emissions. In addition, with the imposition of **Special Condition 18**, requiring the Applicant to submit an Energy Minimization and Greenhouse Gas Reduction Plan (“GHG Reduction Plan”) for Commission approval, the Commission finds that the Project complies with Sections 30253(c) and (d) and the applicable LCP Goals and Policies. The Commission notes that in addition to committing to energy efficiency measures, the GHG Reduction Plan

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

approved by the City of Huntington Beach and incorporated as a voluntary project design feature provides a commitment that the Applicant will render the Project “net carbon neutral.” That GHG Reduction Plan was modeled after the GHG Reduction Plan approved by the Commission in 2008 for Poseidon’s Carlsbad Desalination Project. The Commission finds that AB 32 (Health & Safety Code section 38500 *et seq.*) is an air pollution control program pursuant to the provisions of Coastal Act Section 30414(a), and that the State Air Resources Board (“ARB”), the agency with jurisdiction to implement AB 32, has not promulgated an air quality or emission standard under AB 32 that regulates the Project’s GHG emissions. The Commission takes administrative notice of AB 32, the AB 32 Scoping Plan, and ARB’s regulations implementing AB 32.

K. PUBLIC ACCESS AND RECREATION (Coastal Act Sections 30210, 30211, 30212, 30214.5 and 30213, LCP Objective C 3.1, and LCP Policies C 2.5, C 3.1)

A. Commission Findings. While the Project site itself will have restricted access, it will be built on a site already occupied by industrial uses, and no part of the Project is located on the beach shore. Therefore it will not affect public access to the shoreline or coastal waters. The intake and discharge facilities are located over 1,500 feet offshore, under approximately 30 feet of water and are not directly accessible. Construction impacts will be temporary, and those impacts related to installation of the distribution pipelines would be similar to other road construction projects and would not result in adverse impacts on public access to the shoreline. In accordance with the City’s Standard Conditions of Approval, a truck and construction vehicle routing plan will be prepared for the project to reduce any short-term traffic impacts to less-than significant levels. The Project will not result in any significant long-term traffic impacts.

Furthermore, the Project’s intake and outflow will not have a significant effect on offshore recreational boating or fishing. Species with “high commercial and recreational importance, such as California halibut and rockfishes, were shown to be very uncommon” in the intake flow. (*See SEIR p. 4.10-62 to -63.*) The SEIR also analyzed the Project's broader entrainment, impingement and discharge impacts to recreational species such as crabs, and concluded that those impacts would also be less than significant. (*See SEIR p. 4.10-61 to -64.*) Thus, and in conjunction with the Commission’s above findings regarding public access to the shoreline, the Commission finds the Project is consistent with the above Coastal Act Sections and LCP policies.

L. LAND USE (LCP Policies C 1.1, C 1.2.1)

A. No suggested changes to Staff Report.

M. LIABILITY FOR COSTS AND ATTORNEYS’ FEES

A. No suggested changes to Staff Report.

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

**FINDINGS FOR COASTAL ACT/LCP POLICIES NOT ADDRESSED IN STAFF REPORT:
(PROPOSED SECTIONS IV.N TO IV.P OF THE REVISED FINDINGS)**

N. DEVELOPMENT AND PUBLIC SERVICES (Coastal Act Sections 30250(a) and 30254 and LCP Policies C 1.1.1, C 1.2.1, C 1.2.3, C 4.2.1, C 4.7.5, C 4.7.8, and C 4.7.9, and LCP Objective C 4.7)

A. *Growth Inducement.* Taken together, Sections 30250 and 30254 are meant to ensure, in part, that new development does not outpace the ability of communities to provide necessary public services and that development be supportive of other coastal resources. The 56,000 AFY of new desalinated water supply created by the Project is a central component of state, regional and local water supply planning to meet already-identified demand. Furthermore, while the desalinated water would be provided for ultimate use within Orange County, the water would not be made directly available to end users. Instead, the Project requires that the desalinated water be delivered only to existing regional or local water purveyors in Orange County. Therefore, the desalinated water would offset imported water supplies that are already being counted upon to meet the future supply needs for Orange County's projected population increases. In addition, and based on the Growth Assessment and General Plan Evaluation included as Appendix X to the SEIR, the SEIR determined that the proposed Project would not supply water in excess of what is already anticipated to meet future projected needs in Orange County. Therefore, the proposed Project will not cause significant growth-inducing impacts in Orange County or adverse effects on coastal resources resulting from growth. The Commission finds that the proposed Project conforms to Sections 30250(a) and 30254 because any adverse effects to coastal resources will be mitigated as described in other sections of these Findings. Regarding growth implications, the Commission finds that the Project will not induce growth in the Coastal Zone since Poseidon will be selling its produced water to various public water districts. In this instance, use of that water by those districts will be subject to the applicable current and future growth plans, allowable levels of build-out, and conservation plans adopted by those districts or by the local jurisdictions they serve.

B. *Adequate Public Services.* LCP Policies C 1.1.1 and C 1.2.3 require in general that new development within the Coastal Zone be sited in areas with adequate public services, and that the development not result in significant adverse effects. The SEIR analyzed the required public services for the Project, including water, sewer, roads and energy in Section 4.6, and concluded that adequate public services exist. The SEIR specifically concluded that there is sufficient energy to serve the Project at this location, and therefore the public services at this location are adequate. (*See* SEIR p. 4.6-15.) As stated in Appendix G to the SEIR, the 35 MW Project load would approximately equate to less than 1% of the power demand within Orange County or

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

Southern California. In a letter dated September 27, 2013, Southern California Edison confirmed that there will be a reliable electrical supply to serve the Project.

Furthermore, as the Project is sited in close proximity to the HBGS, it is sited within an existing developed area designed for a similar uses that is able to accommodate it, and therefore the Project will have no significant adverse effects on coastal resources and public services. Finally, LCP Policy C.1.2.3, which concerns whether adequate public services “can be provided to serve the proposed development,” does not directly apply to the distribution pipeline component of the Project, as the pipeline is not a public service to be provided to the Project and does not separately consume public services; instead the pipeline component is part of the Project itself. Therefore, the Commission finds that the Project will be sited in an area with adequate public services and its development will not result in significant adverse effects, consistent with LCP policies C 1.1.1 and C 1.2.3.

O. COASTAL DEPENDENCY (Coastal Act Sections 30101, 30255, and 30260, and LCP Policies C 1.1 and C 1.1.2)

A. Commission Findings. Coastal Act Section 30101 states that “Coastal-dependent development or use’ means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.” LCP policy C 1.1.2 gives coastal-dependent uses priority over other developments in the Coastal Zone. Coastal Act Section 30255 gives coastal-dependent development priority over all other developments near the shoreline, and Section 30260 encourages coastal-dependent uses to locate within existing sites, but allows expanded coastal-dependent facilities which may not be feasibly accommodated with other policies of the Coastal Act, as long as (1) alternative locations are infeasible or more environmentally damaging (see SEIR, pp. 6-8 to 6-12; Regional Board Order No. R8-2012-007 (NPDES No. CA8000403) at p. F-24); (2) to do so would otherwise adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible. This coastal-dependent “override” provides for special consideration of coastal-dependent uses that may otherwise be found inconsistent with the Coastal Act’s Chapter 3 policies.

B. The Project does not depend on the coastal-dependent override as the Commission finds it to be consistent with the relevant Coastal Act policies. However, like the Applicant’s Carlsbad Desalination Plant, the Commission finds that proposed Project is a coastal-dependent development, and entitled to the priority granted by Coastal Act Section 30255 and LCP Policy C 1.1.2. Under the co-located scenario, the Project will use an existing coastal-dependent power plant’s seawater intake to produce desalinated water, and thus requires a “site on, or adjacent to the sea to be able to function” and draw seawater into the plant. Under the stand-alone scenario, the Project will independently operate the seawater intake to produce desalinated

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

water, thus requiring a “site on, or adjacent to the sea to be able to function” and draw seawater into the plant. Therefore, the Commission finds the Project to be a coastal-dependent development.

P. FEDERAL CONSISTENCY REVIEW

A. Basis for Federal Consistency Review. Several of the Project’s product water distribution pipeline alternatives propose to cross under the Huntington Beach and Talbert Flood Control Channels, both of which are located in the Coastal Zone. Both crossings require a permit from the Army Corps of Engineers (“Army Corps”) under Section 10 of the Rivers and Harbors Act. The Army Corps has confirmed that both crossings qualify for Section 10 Nationwide Permit 12 for Utility Line Activities. Under the Coastal Zone Management Act, the Commission is responsible for reviewing proposed federally authorized activities that may affect coastal resources to assess their consistency with the California Coastal Management Plan (“CCMP”). In accordance with the Applicant’s submissions dated July 11, 2012, March 21, 2013 and May 9, 2013, only the Project’s pipeline alternatives crossing under the Huntington Beach and Talbert Flood Control Channels in the Coastal Zone require federal permits.

B. Separate Federal Consistency Review Would be Redundant. Pursuant to the CCMP, separate federal consistency review of the pipeline alternatives that would cross under the Huntington Beach and Talbert Flood Control Channels (both within the Coastal Zone) is not required. Because the Commission is considering a CDP for the Project, a component of which is the water transmission pipeline that would potentially cross under both the Huntington Beach and Talbert Flood Control Channels, separate federal consistency review for those crossings would be redundant as the Commission must already find under its permitting authority that the Project is consistent with the Coastal Act, including its Chapter 3 policies.

C. Commission Findings. For the reasons explained in the City of Huntington Beach's CDP findings, the SEIR and the Applicant’s submissions dated July 11, 2012, March 21, 2013 and May 9, 2013, the Huntington Beach and Talbert Flood Control Channel crossings are consistent with the policies of Chapter 3 of the Coastal Act. Both crossings would be installed using the bore and jack method from right-of-way to right-of-way, with depth below the current scour line of the waterways. No discharge of dredge or fill materials will be allowed to occur in the waterways. The crossings are also consistent with Chapter 3 of the Coastal Act for the following reasons:

a) **Public Access** (Article 2). The bore and jack method of installing the pipeline crossings will not result in significant adverse effects on public access to the shoreline, and any potential temporary construction impacts would be minimal.

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

b) **Marine Environment** (Article 4). The bore and jack method of installing the pipeline crossings will not result in the discharge of dredged or fill material into the waterways, and the crossings are not within any wetlands under federal or state jurisdiction. The construction plan will also contain a Frac-Out Contingency Plan to prevent, contain and clean up any frac-outs associated with trenchless construction activities.

c) **Land Resources** (Article 5). Construction of the pipeline crossings under the Huntington Beach and Talbert Flood Control Channels would not directly impact any sensitive species or habitats, because they are proposed entirely within existing roadways and disturbed areas. In addition, the pipeline alignments are not within any wetlands under federal or state jurisdiction, and are not within an approved Habitat Conservation Plan or Natural Community Conservation Plan reserve area, and do not contain sensitive biological resources protected under the City's Local Coastal Program, or any other local resource protection policies.

d) **Development** (Article 6). As the pipeline crossings would be constructed using trenchless construction techniques, any potential aesthetic or visual impacts would be temporary and minor. As the proposed pipelines would be subsurface, there are no anticipated long-term aesthetic impacts.

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT B

ADDITIONAL FINDINGS:

- A.** The Commission finds that the proposed Project is the most environmentally superior intake structure alternative.
- B.** The Commission finds that the Project complies with all applicable Coastal Act and the LCP policies, and any information set forth in the Staff Report to the contrary or inconsistent with the findings above or materials submitted by the Applicant shall be revised accordingly.
- C.** As a certified regulatory program pursuant to Public Resources Code Section 21080.5, the Commission has the authority under the California Environmental Quality Act (“CEQA”) to analyze the Project through its own process, and the Commission’s review of the Project, which includes consideration of the information supplied by Poseidon, satisfies the Commission’s CEQA obligations. Therefore no additional environmental review is required for the Project.
- D.** The Regional Board, California Air Resources Board, California Department of Parks & Recreation, and California State Lands Commission each have primary authority over the areas within their respective jurisdictions.

These materials have been provided to the Coastal Commission Staff

Agenda Items W19a & 20a

EXHIBIT C

Modifications to Staff Conditions

As discussed in Poseidon's November 8, 2013 letter to the Coastal Commission ("Commission"), Poseidon is requesting that the Commission adopt Poseidon's proposed Conditions instead of the Conditions provided in the Commission Staff Report. This document lists each Condition provided in the Staff Report, and explains why Poseidon is requesting to remove the Staff Report Condition entirely, or shows the modifications to the Staff Report Conditions that Poseidon is requesting. The Poseidon Special Conditions are provided as Exhibit A to Poseidon's November 11, 2013 letter to the Commission. The "**Poseidon Detailed Response to Staff Report**" that is cross-referenced throughout this document is being provided to the Commission under separate cover.

Staff Standard Condition Modifications

Staff Standard Condition 2 (Expiration): Incorporated as Poseidon Standard Condition 2 with the following modification in order to extend the date on which the permit would expire if no development has commenced due to the substantial pre-construction requirements in the Special Conditions:

- 2) If development has not commenced, this permit will expire ~~two~~**three** years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

Staff Special Condition Modifications

Staff Special Condition 1 (Liability for Costs and Attorneys' Fees): Same as Poseidon Special Condition 1.

Staff Special Condition 2 (Proof of Legal Interest): This condition is not necessary because (1) the Commission is not requiring a reconfigured site plan that is different from what the City of Huntington Beach has approved; (2) Poseidon is not developing any pipelines in the coastal zone in the City of Costa Mesa; and (3) Poseidon has provided all known agreements, easements or other forms of proof of legal interest demonstrating Poseidon's ability to use the relevant property(ies) within the coastal zone for construction and operations of the Project.

Staff Special Condition 3 (State Lands Commission): Incorporated as Poseidon Special Condition 3 with the following modifications:

- 3) State Lands Commission. ~~At least six months p~~**P**rior to cessation of the AES Power Plant's use of its seawater cooling system, Poseidon shall provide ~~for~~**to the** Executive Director ~~review and approval~~ documentation from the California State Lands Commission of a lease or lease amendment authorizing Poseidon's ~~sole~~**continued** use of state tidelands for construction and operation of an ocean outfall and a ~~subsurface~~ intake.

Staff Special Condition 4 (California Department of Parks and Recreation (DPR)): Incorporated as Poseidon Special Condition 4 with the following modifications:

These materials have been provided to the Coastal Commission Staff

EXHIBIT C

Modifications to Staff Conditions

4) California Department of Parks and Recreation (DPR). ~~At least six months prior to~~ Prior to cessation of the AES Power Plant's use of its seawater cooling system, Poseidon shall provide ~~for to the~~ to the Executive Director ~~review and approval~~ documentation from the DPR of a grant of easement providing Poseidon any legal interest necessary to use those portions of the intake and outfall structures within DPR property, or documentation from the DPR stating that no easement is required.

Staff Special Condition 5 (Revised Facility Plans): The following provisions in this condition are not necessary because the Commission is approving the Project as proposed by Poseidon, and has determined that the Project as configured by Poseidon would comply with the buffer requirements set forth in LCP Policy C 7.1.4 (*see* Poseidon Detailed Response to Staff Report at Section VII), and is not requiring a reconfigured site plan that is different from what the City of Huntington Beach has approved: Subsurface Intake (5 a. and b.); Modified Ocean Outfall (5 c.); Wetland Buffer (5 d.); Hazard Mitigation Structures and ESHA Wetland Mitigation Structures (5 e. and f.); and Height Limits (5 g.). The following provisions originally provided in Staff Special Condition 5 are incorporated into Poseidon's Special Conditions as follows:

Staff Special Condition 5 h. (Lighting Minimized): Incorporated into Poseidon Special Condition 17 with the following modifications:

h. 17. Lighting Plan: PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit a Lighting Plan to the Executive Director for review and approval. The ~~Revised Plans~~ **Lighting Plan** shall document that the facility's exterior lighting is the minimum necessary for safety purposes. All lighting (exterior and interior) shall be sited and designed so that it limits the amount of light or glares visible from offsite areas (including but not limited to views from the shoreline, public accessways, and the adjacent wetlands and environmentally sensitive habitat areas managed by the Huntington Beach Wetlands Conservancy) to the maximum extent feasible (including through uses of lowest luminosity possible, directing lighting downward, etc.).

Staff Special Condition 5 i. (Windows and Other Surfaces): Incorporated into Poseidon Special Condition 11 with the following modifications:

i. 11) b. The ~~Revised Plans~~ **final plans** shall document that all exterior windows will be non-glare glass, and all other structures and surfaces constructed or installed as part of the project and that are visible from public areas shall be painted or otherwise finished in neutral tones that minimize their visibility from those public areas.

Staff Special Condition 5 j. (Stormwater and Drainage): This condition is not necessary in the form drafted by Commission Staff. Poseidon's NPDES Permit, as approved by the Regional Board, includes stormwater and drainage requirements. Under the Coastal Act, the Commission may not take actions that conflict with determinations of the Regional

These materials have been provided to the Coastal Commission Staff

EXHIBIT C

Modifications to Staff Conditions

Board in matters related to water quality. *See* Poseidon Detailed Response to Staff Report at Sections II and III. Nevertheless, Poseidon is proposing the following replacement condition as Poseidon Special Condition 19, which requires the submittal to the Commission of a stormwater and drainage plan that is consistent with the requirements of Poseidon's NPDES Permit.

19) Stormwater and Drainage Plan: PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit to the Executive Director a Stormwater and Drainage Plan that complies with the stormwater and drainage requirements in the project's NPDES Permit.

Staff Special Condition 6 (Hazardous Materials at the Facility Site): This condition is not necessary, because Mitigation Measure CON-21 in the Project's SEIR requires Poseidon to "follow all recommendations contained within the adopted Remedial Action Plan and Health and Safety Plan for the project site." Therefore, compliance with the Remedial Action Plan will ensure that any site remediation activities on the site will not cause adverse impacts to coastal resources. *See* Poseidon Detailed Response to Staff Report at Section VI. Nevertheless, in place of Staff Special Condition 6, Poseidon is proposing Poseidon Special Condition 6 as follows:

6) Hazardous Materials at Facility Site. PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the Permittee shall provide to the Executive Director documentation that a Remedial Action Plan has been approved by the Department of Toxic Substances Control for the site consistent with all relevant conditions of the project's SEIR.

Staff Special Condition 7 (Construction Plan): This condition has been incorporated into Poseidon Special Condition 7 with the following limited modifications to address the fact that Poseidon has already provided Commission Staff with all known property owner consents for construction activities within the Coastal Zone, and the Commission is not requiring a reconfigured site plan that is different from what the City of Huntington Beach has approved and is imposing Poseidon Special Condition 10, which will avoid adverse impacts on avian species due to construction noise. *See* Poseidon's Response to Staff Report at Section VII.

7) ~~Construction Plan. PRIOR TO ISSUANCE OF THIS PERMIT~~
COMMENCEMENT OF CONSTRUCTION, Poseidon shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:

~~*Property Owner Consent*~~

~~a. The Construction Plan shall be submitted with evidence indicating that the owners of any properties on which construction activities are to take place, including properties to be crossed in accessing the site, consent to such use of their properties.~~

These materials have been provided to the Coastal Commission Staff

EXHIBIT C

Modifications to Staff Conditions

Sound Mitigation Plan

b. ~~The Construction Plan shall incorporate provisions of the approved Sound Mitigation Plan required pursuant to Special Condition 11.~~

Best Management Practices (BMPs)

ca. The Construction Plan **shall include a Stormwater Pollution Prevention Plan which** shall clearly identify all BMPs to be implemented during construction and their location **and comply with all Regional Board requirements**. Such plans shall contain provisions for specifically identifying and protecting all natural drainage swales (with sand bag barriers, filter fabric fences, straw bale filters, etc.) to prevent construction-related runoff and sediment from entering into these natural drainage areas which ultimately deposit runoff into the Pacific Ocean. Silt fences, straw wattles, or equivalent measures shall be installed at the perimeter of all construction areas. At a minimum, such plans shall also include provisions for ~~stockpiling and covering graded materials~~ **stockpile management**, temporary stormwater detention facilities, revegetation as necessary, and restricting grading and earthmoving during rainy weather.

The Construction Plan shall indicate that:

- i. dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site;
- ii. all de-watering operations shall include filtration mechanisms;
- iii. off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall not be allowed; in any event, such wash water shall not be allowed to enter any natural drainage;
- iv. concrete rinsates shall be collected and they shall not be allowed to enter any natural drainage areas;
- v. good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment offsite and/or in one designated prepared location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes);
- vi. all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather);

These materials have been provided to the Coastal Commission Staff

EXHIBIT C

Modifications to Staff Conditions

- vii. all erosion and sediment controls shall be in place prior to the commencement of grading and/or construction as well as at the end of each day;
- viii. particular care shall be exercised to prevent foreign materials from making their way to the beach or Pacific Ocean;
- ix. contractors shall ensure that work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills; **and**
- x. construction contracts shall contain appropriate penalty provisions, sufficient to offset the cost of retrieving or cleaning up improperly contained foreign materials.

Construction Site Documents

db. The Construction Plan shall provide that copies of the signed coastal development permit and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies are available for public review on request. ~~All persons involved with the~~ **Prior to any individuals commencing construction work onsite, those individuals** shall be briefed on the content and meaning of the coastal development permit and the approved Construction Plan, ~~and the public review requirements applicable to them, prior to commencement of construction.~~

Construction Coordinator

ec. The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall **promptly** investigate complaints and take remedial action, ~~if necessary, within 24 hours of receipt of the complaint or inquiry~~ **as appropriate.**

These materials have been provided to the Coastal Commission Staff

EXHIBIT C

Modifications to Staff Conditions

Notification

~~fd.~~ Poseidon shall notify staff of the Coastal Commission's Energy and Ocean Resources Unit at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

Poseidon shall undertake development in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved Construction Plan shall occur without a Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

Staff Special Condition 8 (Coordination with Other Concurrent Project): This condition has been incorporated into Poseidon Special Condition 8 with the following modifications:

8) Coordination with Other Concurrent Project. **PRIOR TO COMMENCEMENT OF CONSTRUCTION ISSUANCE OF THIS PERMIT**, Poseidon **the Permittee** shall provide documentation from the Department of Toxic Substances Control showing that the location and timing of Poseidon's **the Permittee's** proposed pipeline construction will not interfere with, ~~and is consistent with,~~ proposed cleanup and remediation activities at the Ascon Landfill site.

Staff Special Condition 9 (Wetland Mitigation): This condition is not necessary because the Commission has determined that the facility site did not previously contain wetlands. *See* Poseidon's Response to Staff Report at Section VII.

Staff Special Condition 10 (Geotechnical Investigation): This condition is not necessary because Poseidon has already provided technical data to the Commission concerning subsurface faults, liquefaction, lateral spread and dewatering. *See* Poseidon Detailed Response to Staff Report at Section VIII. Further, Mitigation Measures GEO-1 and GEO-2 in the Project's SEIR already require compliance with the proposed "Geotechnical Investigation Plan" described in the condition.

Staff Special Condition 11 (Minimization of Noise Effects on Sensitive Species): This condition is not necessary in the form drafted by Commission Staff. Mitigation Measure NOI-1 requires that outdoor pumps are located within enclosed structures with adequate setback and screening, as necessary to achieve acceptable noise levels in accordance with the City Noise Ordinance standards, which require noise attenuation that would also be protective of wildlife within areas that support sensitive species in the project vicinity. Moreover, in order to minimize potential construction impacts to nesting savannah sparrows, Mitigation Measure CON-45 requires that a qualified biologist perform a preconstruction nesting survey, with adequate mitigation implemented as appropriate to ensure impacts are minimized. With adherence to noise standards required by the City and upon implementation of required mitigation measures,

These materials have been provided to the Coastal Commission Staff

EXHIBIT C

Modifications to Staff Conditions

impacts to special status species or sensitive habitats in the nearby wetland areas are not anticipated to be significant. *See* Poseidon Detailed Response to Staff Report at Section VII. Nevertheless, Poseidon is proposing the following replacement condition as Poseidon Special Condition 10, which sets further limits on noise generated by construction that may impact nesting birds. Poseidon's recommended condition differs from Staff's condition in two principal ways. First, rather than limit noise along an arbitrary boundary, the condition focuses on limiting noise at locations where active nests of special status bird species are found within 500 feet of the Project site. Second, the condition imposes a 65 dBA threshold, rather than a 60 dBA threshold, which is consistent with recent Coastal Commission precedent over the last two years.¹ *See* Poseidon Detailed Response to Staff Report at Section VII for additional discussion.

10) Noise: Noise generated by construction (including, but not limited to, pile driving) shall not exceed 65 dBA Leq(h)* at any active nesting site within 500 feet of project site for Belding's savannah sparrow's (*Passerculus sandwichensis beldingi*), light-footed clapper rail (*Rallus longirostris levipes*), western snowy plover (*Charadrius alexandrinus nivosus*) and the California least tern (*Sternula antillarum browni*), or other special status species. If construction occurs during the breeding season for these species (January through August), applicant shall conduct a nesting bird survey for these bird species. If active nests for any of these species are found, the applicant shall prepare a noise report to document the noise levels that would result from proposed construction activities at the location of the active nests. If construction noise exceeds 65 dBA Leq(h), or ambient, if ambient noise levels are determined to be higher than 65 dBA Leq(h), then alternative methods of construction and/or pile driving (including, but not limited to, vibratory pile driving, press-in pile placement, drilling, dewatered isolation casings, etc.) or other sound mitigation measures (including, but not limited to, sound shielding and noise attenuation devices) shall be used as necessary to achieve the required dB threshold levels. If these sound mitigation measures do not reduce noise levels to the prescribed levels, the applicant shall consult with the California Department of Fish and Wildlife to determine a course of action, which may include new sound mitigation or curtailment of construction until nesting is complete.

***dBA Leq (h) is the noise levels in decibels measured with a frequency weighting network, corresponding to the "A-Scale" on a standard sound level meter averaged on an hourly basis.**

¹ *See* No. 5-10-263 (Alamitos Bay Marina Rehabilitation Project) Long Beach, Jan. 2011; No. 4-10-020 (Santa Barbara Airport), July 2010; UCSB Notice of Impending Development 1-13 (Segovia Road Access Project), Aug. 2013; Channel Islands Harbor Notice of Impending Development 2-11 (Peninsula Park Guest Dock Reconstruction and Restroom Building), Dec. 2011; No. 4-07-098 (Cal. Dept. of Parks and Recreation) Implementation of a Wetland Habitat Restoration and Enhancement Program for Malibu Lagoon, Oct. 2010 (Revocation Denied June 2012); and No. E-09-010-A3 (PG&E), Humboldt Bay Power Plant Demolition and Decommissioning, Humboldt County, May 2013.

These materials have been provided to the Coastal Commission Staff

EXHIBIT C

Modifications to Staff Conditions

Staff Special Condition 12 (Protection of Sensitive Avian Species): This condition is not necessary because, as noted above, the SEIR already includes a mitigation measure requiring preconstruction nesting surveys. Neither the CDFW, nor the USFWS, the State and Federal regulatory agencies with primary oversight of listed and sensitive species, provided any comments or objections to this mitigation measure during the CEQA review process. *See* Poseidon Detailed Response to Staff Report at Section VII. Nevertheless, Poseidon Special Condition 10 would further protect any potential special status avian species that nest in the vicinity of the Project Site by imposing specific noise standards on any active nesting site that is identified within 500 feet of the Project Site. To the extent construction noise exceeds 65 dBA, or ambient, if ambient levels are higher than 65 dBA, then Poseidon Special Condition 10 requires alternative methods of construction or other sound mitigation measures as necessary to achieve the required dB threshold levels. In addition, Staff Special Condition 12 is unnecessary because the Project Site does not provide habitat for avian species (as noted in the Staff Report, vegetation on site has been removed), therefore all potential sensitive avian species would be located offsite. Accordingly, there is no potential for the Project to affect avian species other than through noise-related impacts. Poseidon Special Condition 10 fully protects sensitive avian species offsite. By limiting project noise to 65 dBA at active nests within 500 feet of the Project Site, Poseidon Special Condition 10 will avoid adverse impacts to sensitive species.

Staff Special Condition 13 (Term of Permit): Incorporated into Poseidon Special Condition 12 with the following modifications:

132) Term of Permit. This permit authorizes the approved seawater desalination plant and associated facilities **for thirty-five years from the date the facility commences commercial project water deliveries** ~~until the year 2050~~. If ~~Poseidon~~ **the Permittee** intends to **continue operating the desalination facility and associated components** ~~keep the approved development in place~~ after this authorization expires, then ~~Poseidon~~ **the Permittee** shall apply for a new coastal permit authorization to allow the approved development (including, as applicable, any potential modifications to it requested by ~~Poseidon~~ **the Permittee**). Provided ~~an completed~~ application is received before the permit expiration, the expiration date shall be automatically extended until the time the Commission acts on the application.

Staff Special Condition 14 (Coastal Hazards Response): This condition is not necessary because neither the Coastal Act nor the LCP require the Commission to revoke issued Coastal Development Permits if the Executive Director determines in the future that a particular site could become threatened by coastal hazards. Coastal Act Section 30253 provides that new development shall “minimize risks to life and property in areas of high geologic, flood and fire hazard,” but it does not require the removal of developed structures in the event that speculative, future threats are determined. *See* Poseidon Detailed Response to Staff Report at Section VIII.

These materials have been provided to the Coastal Commission Staff

EXHIBIT C

Modifications to Staff Conditions

Staff Special Condition 15 (Assumption of Risk, Waiver of Liability and Indemnity): Incorporated as Poseidon Special Condition 14, with the following revisions, which are made in light of the fact that Poseidon Special Condition 5 requires Poseidon to execute and record a lease and deed restriction against its interests in the facility site imposing all of the Special Conditions as “covenants, conditions and restrictions against use and enjoyment of the Property”:

154) **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, ~~Poseidon~~ **the Permittee** acknowledges and agrees (1) that the site may be subject to hazards from ground motion, liquefaction, lateral spread, storm waves, storm surges, erosion, and flooding; (2) to assume the risks to Poseidon and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (3) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (4) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission’s approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

~~PRIOR TO ISSUANCE OF THIS PERMIT, Poseidon shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition and recording them against the property on which the development is taking place.~~

Staff Special Condition 16 (Flood Damage Prevention): This condition is not necessary because the desalination plant and its 10 million gallon per day storage tank will not be identified as a critical facility under any relevant hazard planning guidance document and therefore the Project does not need to be elevated above a 500-year flood event. *See* Poseidon Detailed Response to Staff Report at Section VIII.

Staff Special Condition 17 (Flood and Tsunami Hazard Mitigation Planning): This condition is not necessary because Poseidon has provided the Commission with a Seismic, Tsunami and Flood Design Mitigation and Emergency Response Plan that fully addresses potential risks at the project site from flood and tsunami, and provides compliance measures to ensure risks are minimized consistent with the requirements of the Coastal Act. *See* Poseidon Detailed Response to Staff Report at Section VIII. These compliance measures are included as Poseidon Special Condition 15 (Flood and Tsunami Hazard Mitigation Planning). Further, the measures required in Poseidon Special Condition 16 (Structural Stability) will ensure that structural and non-structural elements will be implemented to reduce any identified adverse effects of tsunami and flood events on the facility’s structures and to ensure human safety. *See* Poseidon Detailed Response to Staff Report at Section VIII.

These materials have been provided to the Coastal Commission Staff

EXHIBIT C

Modifications to Staff Conditions

Staff Special Condition 18 (Structural Stability): Incorporated as Poseidon Special Condition 16 with the following modifications:

186) Structural Stability. PRIOR TO **COMMENCEMENT OF CONSTRUCTION** ~~ISSUANCE OF THE PERMIT~~, Poseidon ~~the Permittee~~ shall provide ~~to the~~ **for Executive Director review and approval** documentation from a qualified and licensed structural engineer ~~approved by the Executive Director~~, certifying that the **new desalination plant owned by the Permittee** facility and its associated components in the coastal zone (as modified by these special conditions and including its seawater intake and outfall and its product water delivery pipeline), are **is** designed to resist without collapse or structural damage the forces resulting from any and all of the following seismic, ~~and~~ geologic, **flood, and tsunami** hazards:

- a. The “design-level” earthquake, which, as specified in SEIR Mitigation Measure GEO-3, is to be determined based on methods required in the 2010 California Building Code;
- b. Ground motion based on 2010 California Building Code requirements for Site Class F, with an acceleration response spectrum corresponding to 80% of the Site Class E response spectrum;
- c. Soil settlement or displacement due to liquefaction or lateral soil spread of at least nine inches vertically and at least thirty-eight inches horizontally;
- d. Groundwater table elevations at the ground surface; ~~and~~;
- e. Tsunami runup at the facility site of 11 feet above mean sea level with an additional two feet of sea level rise for a total of 13 feet above mean sea level; **and**
- f. Flooding from the 100-year and 500-year flood events, including increased flood elevations resulting from two feet of sea level rise. Flood elevations shall be based on the requirements of Special Condition ~~16~~ **flood map in the Environmental Hazards Element of the City of Huntington Beach General Plan.**

Staff Special Condition 19 (Geologic Stability and Project Reliability): This condition is not necessary because the City of Huntington Beach has not identified the Project as a critical City facility. The Project, including its water storage tank, will be privately owned when constructed. *See* Poseidon’s Response to Staff Report at Section VIII.

Staff Special Condition 20 (Greenhouse Gases): This condition is not necessary because Poseidon has agreed, pursuant to Poseidon Special Condition 18 to submit an Energy

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EXHIBIT C

Modifications to Staff Conditions

Minimization and Greenhouse Gas Reduction Plan at a future hearing date for Commission review and approval. *See* Poseidon Detailed Response to Staff Report at Section IX.

Staff Special Condition 21 (Public Access): This condition is not necessary because the Traffic Management Plan required by the City of Huntington Beach (SEIR Mitigation Measure CON-34) will ensure that the Project's construction traffic will have a less than significant impact, and therefore that public access to the shoreline will not be impaired. *See* Poseidon Detailed Response to Staff Report at Section X. The cumulative traffic baseline for the more-recently proposed AES Huntington Beach and Ascon Landfill projects includes the Project's construction-related traffic, and therefore those projects must implement measures to ensure that their cumulative traffic impacts are less than significant. *See* Poseidon Detailed Response to Staff Report at Section X.

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EXHIBIT D

MOTION AND AMENDING MOTION AND RESOLUTION TO APPROVE COASTAL DEVELOPMENT PERMIT NO. A-5-HNB-225:

The Applicant requests that the Commission approve Coastal Development Permit No. A-5-HNB-225 for the Huntington Beach Desalination Project as submitted by the Applicant, subject to the Special Conditions attached as Exhibit A to the Applicant's letter dated November 11, 2013, and direct Staff to prepare revised findings consistent with the Applicant's Suggested Basis for Findings attached as Exhibit B to the Applicant's letter dated November 11, 2013.

To approve the Project pursuant to the Applicant's request, the following Motion and Amending Motion are in order:

Motion: I move that the Commission **approve** Coastal Development Permit No. A-5-HNB-225.

Moving Commissioner's Recommendation of Approval: I recommend a **YES** vote.

Amending Motion: I move that the Commission amend the motion to **approve** Coastal Development Permit No. A-5-HNB-225 to adopt the Applicant's Proposed Special Conditions, attached as Exhibit A to the Applicant's letter dated November 11, 2013, and that Staff prepare revised findings in accordance with the Applicant's Suggested Basis for Findings, attached as Exhibit B to the Applicant's letter dated November 11, 2013.

Moving Commissioner's Recommendation of Approval: I recommend a **YES** vote.

Passage of the motion and amending motion will result in (1) approval of Coastal Development Permit No. A-5-HNB-225, subject to the Special Conditions set forth as Exhibit A to the Applicant's letter dated November 11, 2013; and (2) direction to Staff to prepare revised findings in accordance with the Applicant's Suggested Basis for Findings, attached as Exhibit B to the Applicant's letter dated November 11, 2013. The motion and amending motion pass only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE COASTAL DEVELOPMENT PERMIT NO. A-5-HNB-225 AS SUBMITTED:

The Commission hereby approves Coastal Development Permit No. A-5-HNB-225 for the Huntington Beach Desalination Project, subject to the Special Conditions attached as Exhibit A to the Applicant's letter dated November 11, 2013, and directs Staff to prepare revised findings in accordance with the Applicant's Suggested Basis for Findings, attached as Exhibit B to the Applicant's letter dated November 11, 2013. The Commission takes such actions on the grounds that the development as submitted and conditioned will meet the requirements of and be in conformance with the policies of Chapter 3 of the Coastal Act, will meet the requirements of and be in conformance with the City of Huntington Beach's Local Coastal Program, and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit as submitted and conditioned complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the project on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts of the project on the environment.

These materials have been provided to the Coastal Commission Staff

EXHIBIT E

MOTION AND AMENDING MOTION AND RESOLUTION TO APPROVE COASTAL DEVELOPMENT PERMIT NO. E-06-007

The Applicant requests that the Commission approve Coastal Development Permit No. E-06-007 for the Huntington Beach Desalination Project as proposed by the Applicant, subject to the Special Conditions attached as Exhibit A to the Applicant's letter dated November 11, 2013, and direct Staff to prepare revised findings consistent with the Applicant's Suggested Basis for Findings attached as Exhibit B to the Applicant's letter dated November 11, 2013.

To approve the Project pursuant to the Applicant's request, the following Motion and Amending Motion are in order:

Motion: I move that the Commission **approve** Coastal Development Permit No. E-06-007.

Moving Commissioner's Recommendation of Approval: I recommend a **YES** vote.

Amending Motion: I move that the Commission amend the motion to **approve** Coastal Development Permit No. E-06-007 to adopt the Applicant's Proposed Special Conditions, attached as Exhibit A to the Applicant's letter dated November 11, 2013, and that Staff prepare revised findings in accordance with the Applicant's Suggested Basis for Findings, attached as Exhibit B to the Applicant's letter dated November 11, 2013.

Moving Commissioner's Recommendation of Approval: I recommend a **YES** vote.

Passage of the motion and amending motion will result in (1) approval of Coastal Development Permit No. E-06-007, subject to the Special Conditions set forth as Exhibit A to the Applicant's letter dated November 11, 2013; and (2) direction to Staff to prepare revised findings in accordance with the Applicant's Suggested Basis for Findings, attached as Exhibit B to the Applicant's letter dated November 11, 2013. The motion and amending motion pass only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE COASTAL DEVELOPMENT PERMIT NO. E-06-007 AS SUBMITTED:

The Commission hereby approves Coastal Development Permit No. E-06-007 for the Huntington Beach Desalination Project, subject to the Special Conditions attached as Exhibit A to the Applicant's letter dated November 11, 2013, and directs Staff to prepare revised findings in accordance with the Applicant's Suggested Basis for Findings, attached as Exhibit B to the Applicant's letter dated November 11, 2013. The Commission takes such actions on the grounds that the development as submitted and conditioned will meet the requirements of and be in conformance with the policies of Chapter 3 of the Coastal Act, will meet the requirements of and be in conformance with the City of Huntington Beach's Local Coastal Program, and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit as submitted and conditioned complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the project on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts of the project on the environment.

These materials have been provided to the Coastal Commission Staff