From: Murphy/Perkins
To: Energy - Docket Optical System; Dyas, Mary@Energy; Energy - Public Adviser"s Office;
Subject: Complaint re: El Segundo Power Redevelopment Project 00-AFC-14
Date: Tuesday, July 03, 2012 11:49:30 AM

In Re: El Segundo Power Redevelopment Project
Application For Certification 00-AFC-14
California Energy Commission Project CEC-800-2005-001-CMF

Pursuant to 20 California Code of Regulations 1230 through 1237, and following the procedure set forth at page 290 of the California Energy Commission's decision of February 2, 2005 in this project, we, Michelle Murphy and Bob Perkins, complain that the project as it is being constructed does not comply with Conditions of Certification which were proposed by the project owner, agreed to by all parties, and approved by the California Energy Commission in its decision dated February 2, 2005 ("the 2005 Decision"), and in its "Commission Decision to the Amendment" dated June 30, 2010 ("the Amendment Decision." The Amendment Decision addressed the plant owner's request to substitute dry cooling and rapid response time technology, and we believe that it and the 2005 Decision, which dealt at more length with the issues which bring this Complaint, are consistent regarding these issues).

As presently being constructed, the southern end of the project is not only noncompliant, it is dangerous, and an unnecessary, ugly visual blight on the landscape, to the harm of the neighboring residents, walkers, drivers, beachgoers, and City.

We reside at 4420 The Strand, Manhattan Beach, CA 90266. Our telephone number is (310) 545 6751, and our email murphyperkins@gmail.com.

The California Energy Commission has the power under California Public Resources Code ("PRC") 25200 et seq, including PRC sections 25500, 25532, 25534 and 25539, to require compliance with its Conditions of Certification, including revoking the Certification altogether for noncompliance.

We are informed and believe that the current owner of the El Segundo Power Plant is NRG Energy Inc, and that its mailing address, as set forth on its web site, is El Segundo Power / NRG West, c/o Ken Riesz, 5790 Fleet Street, Suite 200, Carlsbad, CA 92008. We understand that, during the permit process, NRG and another company jointly owned the plant. We'll refer to the owner as NRG in this complaint, and amend if that's slightly wrong.

Here are facts upon which the complaint is based. We intend to learn more facts, and to add them to the complaint if appropriate.

1. NRG has placed a chain link and barbed wire fence as close as possible to the curb on

45th Street. Originally, the owner's representatives told us orally, and Ken Riesz and George Piantka wrote, that it was only temporary: "a landscaped berm and chain link fence will be completed at the southwest corner of the power plant site. This work is ongoing and takes place primarily behind a temporary fence" (undated letter re Fence Construction Activities, April 4-6, emphasis added) However, Mr. Piantka has since told us they now intend to leave the fence where it is, where it can endanger and possibly even kill children.

45th Street has no sidewalks and lots of pedestrians, many of them kids going from the beach to the convenience store at 45th and Vista del Mar. It also has a blind spot where pedestrians below Ocean Avenue and drivers above it cannot see one another. Until a few weeks ago, pedestrians could easily walk north of the street, because the power plant's fence was about (it meandered some) 15-20 feet away from the curb. That is no longer possible.

We recognize NRG needed to replace the old fence for several reasons, including getting it out of the way while constructing the required landscaped berm. We do not formally complain about temporary placement of it in its current location. We do strenuously object that leaving it there, as the owner proposes, is dangerous.

It is also unsightly, clearly different from what was promised in the photographs of Key Observation Points ("KOPs") which the owners selected and submitted in order to get their permit (these show the fence's location further north), and in violation of the conditions of their permit to construct this facility. Condition VIS-1 requires the owner to take measures "that result in an overall enhancement of views …" and as part of that effort, to provide "photographs showing existing conditions and simulated post-construction conditions from … KOPs." (Amendment Decision, p. 92)

The applicant did submit such photos for the Staff Assessment, and represented them as the owners' "Visual Resources Enhancement Proposals" on which the Commission, Staff, and neighbors could rely. See figures 5.13–13 a through c to that document, which show the new fence fence north of where it has now been built. Similarly, see the owners' "Preliminary Landscape Plan", dated 2/16/07 (copy attached). This is a document required by the permit to build this plant. The copy we're attaching was given to us by Mr. Piantka, with his highlighting, showing (on the "Section Through Landscaped Berm") that the fence was to be well up the berm, well north of the property line. (See Attachment A)

Another dangerous condition was unwittingly created by applicant with the new fence placement. Manhattan Beach's traffic control force has for many years stored necessary traffic control signs and sawhorses on the land between the curb and the old fence. Now those signs are sometimes in the street and always hanging out a little over the street making access by both pedestrians and cars more precarious. They are not stored near

the blind spot but anyone trying to hang on to the fence and stay out of the street by walking on or near the curb would be forced into the street at that spot and cars must swerve around the signs when they end up in the street.

Applicant could not have had the current fence position approved by the Commission because until surveyors were hired in the spring of 2012, no one knew exactly where the city boundary nor NRG's property line was located. Laurie Jester, Manager for the City of Manhattan Beach, suggested during hearings that Manhattan Beach owned the land up to five feet or more north of the curb of 45th Street. Similarly, the owner didn't know or contend it owned the land where the palm trees (see paragraph 2 of this complaint, below) stand, so could not have even proposed, let alone gotten approval, to destroy them beneath the 45th Street berm or to build its ugly, massive retaining wall.

We request the Commission require the dangerous and noncompliant fence to be moved north.

2. NRG is constructing a massive concrete retaining wall, roughly 80 feet long, near the southern boundary of its property. NRG says it is doing so to save some palm trees "for us." We did, indeed, ask NRG not to saw those trees down, but we did not ask for this hideous wall – in fact, we emphatically asked them not to build it. We believe that (a) no such massive wall was necessary to save these trees (b) the Energy Commission's decision required both that the trees be saved and that no such unsightly concrete structure be built along 45th Street, and (c) if, which the owner contends but we doubt, the letter of the law would permit such a structure, common sense and good neighborliness require working out a compromise with the neighbors to minimize its impact, and postponing construction until after making a reasonable attempt to do so – which (with the sole exception of asking our opinion of its color) NRG has refused to do.

The Commission has recognized that visual impact is a serious matter. "Due to the long-term nature of visual exposure that will be experienced from residences, and the sensitivity with which people regard their places of residence, residential viewers are considered to have high viewer concern. Recreational viewing is also rated high. Viewer concern is rated moderate to high for motorists on Vista Del Mar, which include a combination of tourists, recreationists, residents, commuters, and others." (2005 Decision, p. 175) The 45th street berm and its vegetation were required for the express purpose of visual improvement. "The installation of a landscaped berm … will result in a vastly different view for some residences and for vehicles and pedestrians going down 45th Street… <u>those constituents will see vegetation where they currently see the large, curved, green side of the southern fuel oil tank.</u>" (2005 Decision, p. 174, emphasis added). "If berms are used, they shall be vegetated …" (Amendment Decision, p. 92). If NRG is allowed to proceed, the constituents will get not "vegetation", but a big slab of

concrete.

Indeed, the Conditions of Certification, and especially VIS 9 require a vegetated berm, not a wall. Condition VIS 9 required the owner to submit a "final berm plan" before any ground disturbance, to include "a detailed landscape, grading and irrigation plan." (Amendment Decision, p. 100). We haven't seen that "final berm plan", but will be very surprised if that "final berm plan" shows this wall.

The palms are no excuse. In the first place, we believe it was always understood they'd be kept. KOP 2, which was prepared by the owners and was not only relied on by staff but is actually printed as part of the Commission's 2005 Decision (the "after" construction picture is on p. 177), clearly shows those palms peeking over our house – the same palms, before and after construction. Moreover, when the owner submitted slightly revised photos of both KOP 2 and KOP 5 to justify the 2007 Petition to Amend (figures 3.12-3 and –7 to that Petition), those photos, too, show the palms undamaged by construction. But even if, as NRG tells us, they had planned to destroy them and only chose to keep them after we protested, it is not necessary to build this massive concrete wall to do so. Here are a couple of options: the berm, since they have never built it, could be built a few feet farther north than they plan, at little cost (though it would cost NRG some parking lot area, which they could retrieve by building the retaining wall on the north side of the berm which was originally planned and was permitted, but which they tell us they now intend to forego). Another solution, this being one which NRG representatives themselves suggested to us at one point: small, individual planters could be built around the palms. There are lots of ways to do this, but NRG has flatly refused to even delay construction of the wall or consider any alternatives. Perhaps it's a spite wall. It's ugly enough.

We request the Commission require removal of this wall, and preservation of the palms.

3. NRG has failed for well over a year to build and temporarily landscape the berm along 46th Street. This, the owners assured us during the application process, would be done at the beginning of construction, to mitigate the dirt, noise and irritation of the construction process for residents, drivers, pedestrians and beachgoers. Though the Conditions do not expressly state the time berm construction will be completed, they do clearly express that it is to take place early in the process. Condition VIS-9 requires that the owner submit a "final berm plan," including "a detailed landscape, grading and irrigation plan" for approval 60 days "prior to start of ground disturbance." (Amendment Decision, pp. 99, 100) The owner was required to install temporary berm landscaping "for the duration of construction," which obviously doesn't contemplate waiting to construct the berm until near the end of the project, which the owner is now doing.

NRG has never denied that it was supposed to build and landscape the berm at the start of construction. Instead, it has repeatedly mollified neighbors by saying it would be done in

a few weeks and/or saying it ran into permitting problems.

We don't believe the Commission can do anything about this particular deception now, except to require immediate action to beautify the 45th Street boundary, and to consider the unneighborly, sly behavior of NRG on this point when considering the other matters of which we are complaining.

4.On June 19, 2012 Compliance Project Manager Mary Dyas and Chris Marxen, Compliance Officer Manager, meet with concerned neighbors at our home. While sitting at our kitchen table we looked at the large excavation on the side of the hill in front of our house. Everyone, Energy Commission staff and neighbors alike, agreed that it must be a temporary dig for something that was to be underground as we had no indication that anything but greenery was to be placed there. The next day, Wednesday June 20 NRG poured a massive, ugly, open concrete drain at the site. It looks like a giant waterslide. We attach a photo showing it, and invite comparison to the KOPs (especially KOP 2, which is part of the Commission's 2005 Decision, at pp. 176-177) which the owners represented, when applying for their permit, showed how the place would look. (See Attachment B for how it actually looks)

We aren't the only folks who believed those KOPs; the Commission itself, in reliance on the representations of NRG and its partners, said "After removal of the tank farm and the implementation of the landscape screening, the view will appear generally as" in KOP 2. 2005 Decision Dated Feb. 2, 2005, p. 177. NRG encouraged us to think that was true until very, very recently, and was successful. Among other evidence, see the email of Laurie Jester, Planning Manager for the City of Manhattan Beach, dated June 22, 2012 and sent to Mary Dyas, Chris Marxen and George Piantka as well as interested residents. Ms. Jester, who also participated in the licensing process, said "This drainage structure is not consistent with the visual documents that were approved. It has a significant visual impact and revisions should be made."

We believe this entire drainage system is contrary to what the owners represented they would build. The tank area's drainage was, according to the Application for Certification, to be routed through the existing units' drainage, not to a new structure at the southwest corner scarring beach views: "The tank area will be regraded to slope down to new drop inlets and the stormwater will be routed to an oil water separator and the effluent discharged through the existing Units 3 and 4 discharge structure, Discharge No. 002." (Application, p.3.5.3)

We also believe no massive drain system is necessary. The tank farm area was a stormwater collection point for 50 years before this repowering project began. It had no such massive drain. Neighbors (the Cripes) have lived here for over 40 of those years. In their memory, (and, we suspect, in the records of the power plant) it never flooded or even came close. George Piantka has told us that no significantly different amount of storm water is anticipated in the future. We have no quarrel with the permitted drain to

the north, but we respectfully suggest that the owners are wasting their money building something as humongous as the present drain even in the proper place (unless they are actually building for some future use of that area, which would be a devious circumvention of the state's regulatory scheme).

Mr. Piantka also suggested as a justification for the ugly massive drain that mosquitoes would hatch from puddled storm water if the drain weren't there. Mosquitoes have not appeared to worry the plant's owners for the last 50 years and raising the issue now seems like a red herring designed to justify something NRG wants for other reasons.

We request the Commission require removal of the noncompliant concrete, and replacing it with vegetation.

5. Recently, NRG has begun constructing what its representative George Piantka has described as a road along the southern boundary of its property, beginning at the southwest corner and heading east, then up over the berm and apparently into the tank farm area. We believe this road was not permitted. In fact, the plans the owners submitted and which were permitted by the Energy Commission's Decision of February 2, 2005 contemplate an entirely different road, running north-south, along the western side of the property, to connect the western area to the tank farm.

The road under construction also does not match the KOPs, or the visual conditions requiring landscaping where it runs. We have not seen the landscaping plan which was required by condition VIS-9, but believe it, too, will not show that road, because the road is another ugly noise, smell and sight thrown in the face of the nearby public and, especially, the neighbors. Certainly the "Preliminary Landscape Plan" of 2007 which Mr. Piantka showed us has no such road – there is indeed a tank farm access road shown, but it is on the west side of the property, <u>north</u> of the still-standing tank.

We request the Commission require removal of the noncompliant road and replacing it with vegetation.

6. Conditions VIS-6 & 7 (pp. 97 & 98 of the Amendment Decision) require that site lighting be "hooded, …such that the luminescence or light source is shielded to prevent light trespass outside the project boundary." The lights along the western boundary of the property, recently installed, appear to be noncompliant, though, since they are not yet in use, we can't be sure. We believe they can easily be made compliant by installing proper hoods. We have mentioned this to the owner's representative Mr. Piantka, who says they have not yet been tested and suggests this is not the time to raise the issue. Perhaps, but our credence in Mr. Piantka's employer's representations is pretty low right now, and it is a decided burden to have to take matters to the Commission, so we'll raise it now.

We request the Commission require that plant light sources not allow "light trespass

outside the project boundary, to the Strand, the 45th Street parking lot, or to neighboring residences."

Summary

We raise one public safety issue – the location of the southern fence – and several visual issues. Though visual issues are not life and death, they are important – so important that The Commission, in approving the power plant, chose them as key points for its "Executive Summary" of the decision, as well formally placed them in the decision itself. "The proposed project includes perimeter landscaping, a seawall, and a landscaped berm to screen views. Views of the power plant will be screened while maintaining appropriate ocean and scenic views." (Commission Decision of June 2, 2005, p. 4). Again, at p. 175 of that Decision, the Commission emphasized the importance, for this beautiful area, of building the plant as visually attractively as possible: "Due to the long-term nature of visual exposure that will be experienced from residences, and the sensitivity with which people regard their places of residence, residential viewers are considered to have high viewer concern. Recreational viewing is also rated high. Viewer concern is rated moderate to high for motorists on Vista Del Mar, which include a combination of tourists, recreationists, residents, commuters, and others." (Id, p. 175)

NRG themselves bragged in their 2011 Corporate Responsibility Report that..."NRG and community members have partnered to develop a landscaping plan for the El Segundo Energy Center." And now they are ignoring that plan, defying the Energy Commission's Conditions of Certification and defiling our coast.

When we first asked NRG to comply, and pointed out their noncompliance, it could have been done cheaply and easily: (1) agree to move the chain link fence (2) don't build that big retaining wall (3) stop construction on the "waterslide" drainage system and the southern boundary road and (4) promise to hood their lamps. NRG refused to do so, or to compromise on a single one of these issues, or to even delay construction so that, if we are right, it could avoid wasting money pouring concrete it had no right to pour.

We've suffered from NRG's intransigence. We don't have the timely, landscaped berm. We do have the concrete gash visible from a mile down the beach, we're rapidly getting the paved road, and it looks like we'll have that retaining wall in a few days. It's not right, it's not neighborly, and it's not legal.

We are also, and we hope unreasonably, concerned that if NRG blatantly ignores the Conditions of Certification's visual requirements when their scoffing of the law is so easily seen by anyone with eyes, they might be ignoring safety and pollution requirements as well. We neighbors cannot see these possible violations and must rely on NRG and the Energy Commission to protect our health and those of future generations. Our trust has eroded.

As our neighbor Nick Nickelson has pointed out, our safety and visual problems are a tiny part of this half billion dollar project and none of it affects the operation of the plant. Why NRG is trying to trying to make enemies of its only near neighbors and make our corner of the world so ugly is beyond our understanding.

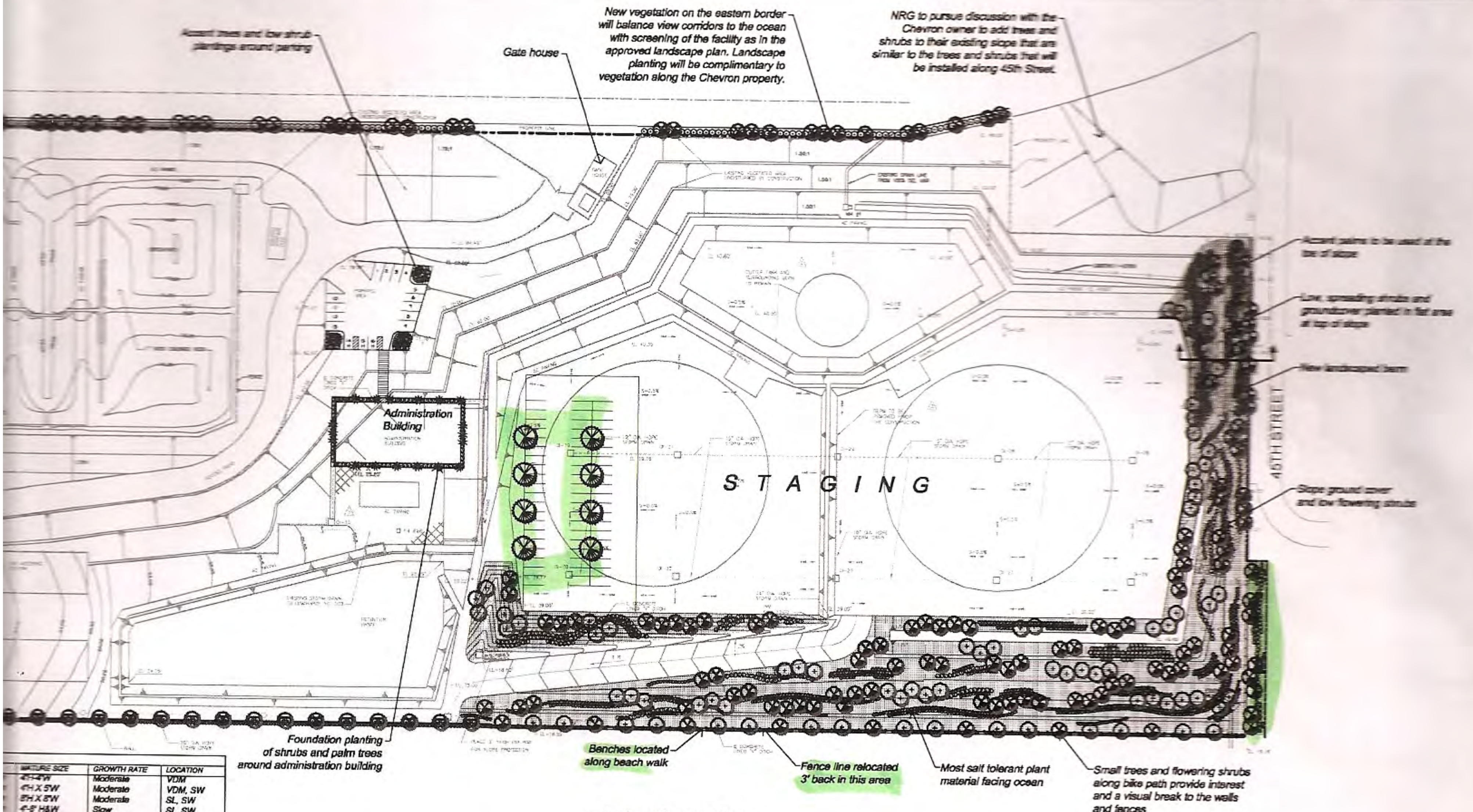
We ask the Energy Commission to force NRG to make it right.

Declaration Under Penalty of Perjury

Each of us declares under penalty of perjury that he or she is informed and believes that each of the facts set forth herein is true and accurate.

Respectfully submitted July _3___, 2012

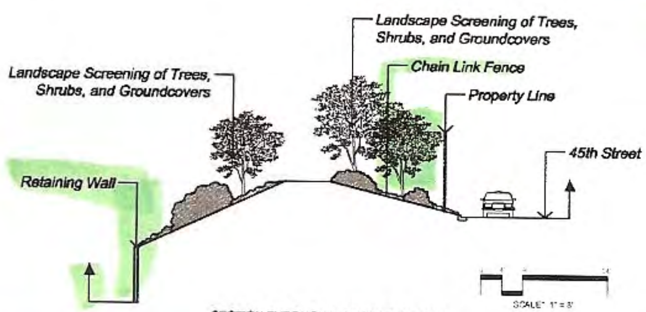
/s/ Michelle Murphy and /s/ Bob Perkins


Accent trees and low shrub plantings around parking
Gate house
New vegetation on the eastern border will balance view corridors to the ocean with screening of the facility as in the approved landscape plan. Landscape planting will be complimentary to vegetation along the Chevron property.
NRG to pursue discussion with the Chevron owner to add trees and shrubs to their existing slope that are similar to the trees and shrubs that will be installed along 45th Street.
Administration Building
STAGING
45TH STREET
Accent palms to be used at the top of slope
Low, spreading shrubs and groundcover planted in flat area at top of slope
New landscaped berm
Slope ground cover and low flowering shrubs
Foundation planting of shrubs and palm trees around administration building
Benches located along beach walk
Fence line relocated 3' back in this area
Most salt tolerant plant material facing ocean
Small trees and flowering shrubs along bike path provide interest and a visual break to the walls and fences

MATURE SIZE	GROWTH RATE	LOCATION
4'H-4'W	Moderate	VDM
4'H X 5'W	Moderate	VDM, SW
5'H X 8'W	Moderate	SL, SW
4'-5' H&W	Slow	SL, SW
3'-5' H&W	Moderate	VDM, SL, SW
4'-6' H&W	Fast	SL
5'H & 4'W	Fast	SL
5'H & 8'W	Moderate	SL

...NOTES
...ative plant
...comply with City of El Segundo Landscape Requirements
...will be installed on slopes
...mix to include wood fiber and binder
...Del mar
...
...of Sea Wall

...ION CONCEPT
...system will utilize reclaimed water and be a fully ... electrically controlled, overhead spray system that provides ... coverage with 70% overlap. Low precipitation rate spray ... separately programmable controllers, and a rain sensing ... will be utilized to promote conservative water uses. In-line ... shall be used on steep slopes. Pop-up heads will be ... near pedestrian uses.



SECTION THROUGH LANDSCAPED BERM

Graphic Scale

North

RBF CONSULTING
PLANNING ■ DESIGN ■ CONSTRUCTION

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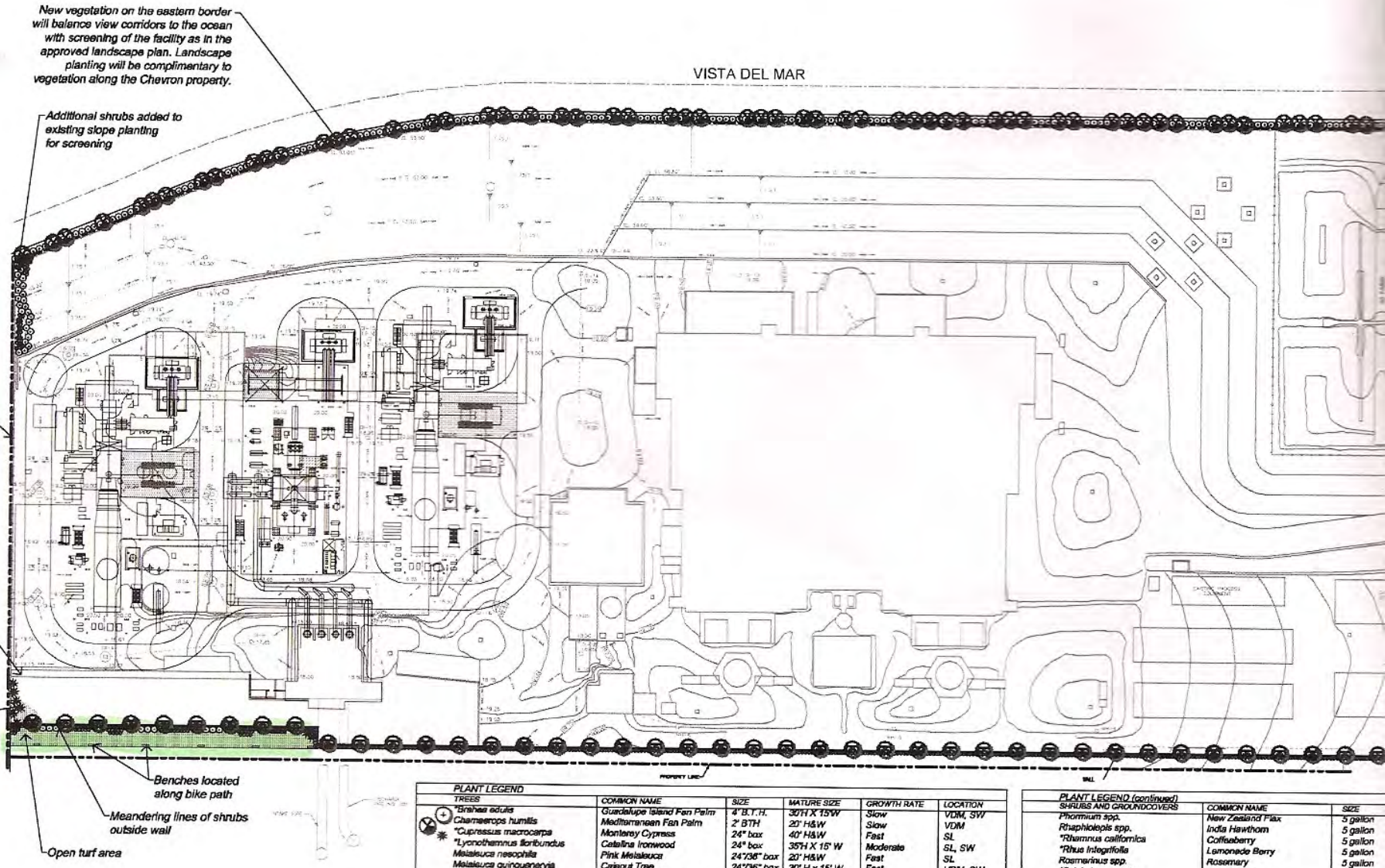
02/16/07

Preliminary Landscape Plan



PLANT LEGEND					
TREES	COMMON NAME	SIZE	MATURE SIZE	GROWTH RATE	LOCATION
*Brahea edulis	Guadalupe Island Fan Palm	4" B.T.H.	30'H X 15'W	Slow	VDM, SW
Chamaerops humilis	Mediterranean Fan Palm	2' BTH	20' H&W	Slow	VDM
*Cupressus macrocarpa	Monterey Cypress	24" box	40' H&W	Fast	SL
*Lyonothamnus floribundus	Catalina Ironwood	24" box	35'H X 15' W	Moderate	SL, SW
Melaleuca nesophila	Pink Melaleuca	24"/36" box	20' H&W	Fast	SL
Melaleuca quinquenervia	Cajeput Tree	24"/36" box	30' H x 15' W	Fast	VDM, SW
Metrosideros excelsa	New Zealand Christmas Tree	24"/36" box	30'H X 30'W	Moderate	VDM, SL, SW
*Pinus torreyana	Torrey Pine	24"/36" box	50'H x 30'W	Fast	SL, SW
*Prunus ilicifolia	Hollyleaf Cherry	24" box	10'-20' H&W	Moderate	SL
*Prunus lyonii	Catalina Cherry	24"box	15'-20' H&W	Moderate	VDM, SL, SW
SHRUBS AND GROUNDCOVERS					
*Agave shawii	Shaw Agave	5 gallon	3'H X 3'W	Moderate	SL
*Architostaphylos 'John Dourley'	John Dourley Manzanita	1 gallon	3'H X 6'W	Moderate	VDM, SL
*Artemisia californica	California Sagebrush	1 gallon	3'H X 5'W	Moderate	SL
*Baccharis pilularis	Coyote Brush	5 gallon	2'H X 6' W	Moderate to Fast	VDM, SL, SW
Carissa macrocarpa 'Tuttle'	Dwarf Natal Plum	5 gallon	3'H X 5'W	Fast	VDM, SL
Cistus purpureus	Rock Rose	5 gallon	4'H X 4'W	Moderate	VDM, SL
*Ceanothus gloriosus	Point Reyes Ceanothus	1 gallon	2'H X 6'W	Moderate	SL, SW
Dodonaea viscosa	Purple Hopseed Bush	5 gallon	10'-15' H&W	Fast	SL, SW
*Heteromeles arbutifolia	Toyon	5 gallon	6'-10' H&W	Fast	SL
*Juncus patens	Wire Grass	1 gallon	2'H X 2'W	Fast	SL
Juniperus conferta	Shore Juniper	1 gallon	2'H X 2'W	Moderate	SL, SW
*Lavatera assurgentiflora	California Tree Mallow	5 gallon	8'H X 8'W	Fast	SL, SW
*Myrica californica	Pacific Wax Myrtle	5 gallon	10'-15' H&W	Moderate	SL, SW

PLANT LEGEND (continued)		
SHRUBS AND GROUNDCOVERS	COMMON NAME	SIZE
Phormium spp.	New Zealand Flax	5 gallon
Rhaphiolepis spp.	India Hawthorn	5 gallon
*Rhamnus californica	Coffeeberry	5 gallon
*Rhus integrifolia	Lemonade Berry	5 gallon
Rosmarinus spp.	Rosemary	5 gallon
*Salvia leucophylla	Purple Sage	1 gallon
*Salvia mellifera	Black Sage	1 gallon
Westringia fruticosa	No Common Name	5 gallon
HYDROSEED GROUNDCOVER		
*Abronia maritima	Sand Verbena	PLANTIN
*Achillea millefolium	White Yarrow	*Indicates
*Ambrosia chamissonis	Beach Bur-Sage	Planting to
*Antirrhinum nuttallianum	Nuttall's Snapdragon	Jute mesh
*Atriplex patula	Spear Orache	Hydroseed
*Camissonia cheiranthifolia	Beach Evening Primrose	VDM=Vist
*Eriogonum parvifolium	Sea Cliff Buckwheat	SL=Slopes
*Eschechotzia caespitosa	Dwarf California Poppy	SW=In fro
*Gnaphalium bicolor	Everlasting	
*Isocoma menziesii	Coast Goldenbush	IRRIGATI
*Lupinus chamissonis	Dune Bush Lupine	The irrigat
*Lupinus nanus	Sky Lupine	automatic,
*Phacelia ramosissima	Branching Phacelia	100% cove
*Trifolium gracilentum	Pin-Point Clover	heads, acc
		device will
		check valv
		used at ea

El Segundo Power II, LLC