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July 21, 2017

Janea Scott
Commissioner and Presiding Member
Puente Power Project AFC Committee
California Energy Commission
1516 Ninth Street
Sacramento CA 95814-5512

RE: New Information on the Proposed NRG Energy Center Oxnard, LLC Puente Power Project (Application for Certification No. 15-AFC-01)

Dear Ms. Scott,

The purpose of this letter is to provide you with the California Coastal Commission (“Coastal Commission”) staff’s comments on new information relevant to the California Energy Commission (“CEC”)’s review of the proposed Puente Power Project (“Project”), and to the Project’s potential for adverse impacts on coastal resources. Specifically, our comments address the *Biological Resources Survey Report* (“Survey Report”) submitted by NRG on June 23, 2017, and the June 15, 2017 technical memorandum, prepared by cbec eco engineering on behalf of the State Coastal Conservancy (“Conservancy”), containing new modeling results on flooding risk at the Project site from the Santa Clara River. Due to the timing of the release of the Survey Report and the scheduling of the new evidentiary hearings on July 26, there was not sufficient time for the Coastal Commission itself to consider this new information. Coastal Commission staff believes that the new information and analyses contained in these documents reinforce the previous conclusions and recommendations contained in the Coastal Commission’s September 9, 2016 report on the Project, submitted to the CEC pursuant to Section 30413(d) of the Coastal Act (“30413(d) Report”; Docket TN #213667).¹

The Coastal Commission’s 30413(d) Report identified several project features that are inconsistent with the policies of the Coastal Act and City of Oxnard Local Coastal Program (“LCP”), including the fill of coastal wetlands, project impacts to environmentally sensitive habitat areas (“ESHA”), and the location of the new facility in an area at risk of flooding during the assumed 30-year project life. In order to address these concerns, the Coastal Commission recommended several specific measures, including the relocation of the project to an alternative site that avoids impacts to wetlands and ESHA and minimizes the risk of present and future flooding.

¹ Section 30413(d) expressly authorizes the Coastal Commission to participate in the CEC’s proceedings and provide findings with respect to specific measures necessary to bring a power plant project located in the coastal zone into conformity with Coastal Act and Local Coastal Program policies. Warren-Alquist Act Section 25523(b) requires the CEC to include the Coastal Commission’s recommended specific provisions in its final project decision unless it finds that they are infeasible or would cause greater environmental impact.

Biological Resources

New biological information that has become available since the release of the Coastal Commission's 30413(d) Report consists primarily of the applicant's June 2017 Survey Report. The Survey Report contains the results of focused surveys for several special-status plant and animal species, incidental observations of non-targeted, sensitive bird species and a re-analysis of previously-collected data on the wetland status of the project site.

Environmentally Sensitive Habitat Areas & Sensitive Species

The Survey Report identifies the presence of globose dune beetle (*Coelus globosus*) at multiple locations in the coastal dunes to the north and west of the project site, on either side of the Mandalay Generating Station ("MGS") fence line and within 25 to 50 feet of the proposed project footprint and the proposed demolition access road. Globose dune beetle received rankings of "G1G2" and "S1S2" in the California Department of Fish and Wildlife (CDFW)'s California Natural Diversity Database (CNDDDB), meaning the species is "imperiled" or "critically imperiled" both globally and statewide due to its rarity, limited range, and declining populations.

The Survey Report also reported "incidental observations" of two special status bird species, peregrine falcon (*Falco peregrinus*; CDFW "fully protected", USFWS "Bird of Conservation Concern") and California horned lark (*Eremophila alpestris actia*; CDFW "watch list"), in and around the proposed project site. A pair of peregrine falcons were observed nesting on Unit 1 of the MGS, and "regularly resting and foraging in the vicinity" of the biological survey area during the surveys. Two horned larks were observed within coastal dune habitat in the access road buffer area. The Survey Report also reports the presence of an active great horned owl nest on the existing MGS Unit 1, and in the attached "Wildlife List" (Appendix D) lists peregrine falcon, great horned owl, red-tailed hawk and American kestrel as raptors occurring at the proposed project site, along the outfall access road, and/or within the surrounding coastal dune habitats. Suitable prey species for raptors are identified as present within the project area, and in several cases prey remains were detected in the survey area. Taken together, these observations indicate that the project site and surrounding coastal dune habitats provide resting and foraging habitat for protected birds and raptors.

No other sensitive species occurrences were reported in the Survey Report. However, staff of the Environmental Defense Center has reported two observations of silvery legless lizard (*Anniella pulchra*, a state Species of Special Concern) in the dune habitat along the fence line north and west of the Project site (Docket TN# 217571). This species has been previously reported at multiple locations in the project vicinity. Based on these prior observations and a May 10, 2017 site visit (see footnote 3, below), Commission ecologist Dr. Jonna Engel identified the sandy substrate along the border and in the buffer of the proposed project footprint as suitable habitat with a high likelihood of supporting silvery legless lizard.

In its 30413(d) Report, the Coastal Commission found that "[d]ue to their rarity, sensitivity to disturbance, and the presence of special status species, many of the coastal dune, scrub and riparian habitats surrounding the MGS site meet the Coastal Act and LCP definitions of ESHA,

and thus require special protection.”² This finding was based on three primary factors: (1) the presence of coastal dunes “supporting both native and non-native vegetation communities” to the north, south and west of the project site³, (2) the known presence of special status species, including federally-listed California least tern and Western snowy plover, and (3) the presence of suitable habitat for other rare and sensitive species, including globose dune beetle and silvery legless lizard. In order to protect the coastal dune ESHA, and to allow project conformity with Coastal Act and LCP ESHA policies, the Coastal Commission recommended the inclusion of a requirement that all project-related development be located a minimum of 100-foot from nearby areas that meet the Coastal Act and LCP definitions of ESHA.

At the time that the Coastal Commission adopted its 30413(d) Report, the presence of globose dune beetle in close proximity to the proposed project site had not been documented, and the report did not specifically identify the degraded dune habitat within the power plant fence line as ESHA. However, the Coastal Commission clearly found that coastal dune and wetland areas containing suitable habitat for sensitive species constitute ESHA and recommended that they be protected with a minimum of a 100 foot buffer. Coastal Commission staff believes that the coastal dune habitats adjacent to the project site, which have been shown to support globose dune beetle, are consistent with the ESHA determination contained in the Coastal Commission’s 30413(d) report.

Incidental observations of silvery legless lizard, peregrine falcon, and California horned lark in and around the biological survey area provide additional evidence that the project area provides habitat for sensitive species. Although this information was not available to the Coastal Commission at the time it adopted the 30413(d) report, the presence of these species reinforces the Coastal Commission’s finding that the dune habitats surrounding the project site constitute ESHA. Moreover, in several past actions, the Coastal Commission has identified tree stands, burrows and raptor foraging habitat as ESHA.⁴ These determinations were based on survey and observational evidence of the sustained use of trees, burrows and adjacent foraging areas by raptor species. The rationale behind these determinations has been that habitats that support raptor species play especially valuable ecosystem roles because of the important ecological functions they provide for raptor perching, roosting and nesting and for foraging.

Coastal Wetlands

In its 30413(d) report, the Coastal Commission found that the project footprint contains a 2.03-acre area meeting the definition of a coastal wetland. This determination was based on AECOM’s 2015 wetland delineation documenting the dominance of hydrophytic vegetation at the site, including pickleweed (*Salicornia pacifica*), woolly seablite (*Suaeda taxifolia*) and

² Coastal Act Section 30107.5 defines ESHA as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities or developments.”

³ On May 10, 2017, Coastal Commission Senior Ecologist Jonna Engel visited the project site, and based on her observations, informed CEC staff that the areas immediately adjacent to the project site which were mapped as “ice plant mats” in the Survey Report and Final Staff Assessment, are in fact coastal dune habitat supporting both native and non-native plant species (Docket TN# 217575).

⁴ E.g., Brightwater (5-05-020) and Parkside (Huntington Beach LCPA 1-06) developments at Bolsa Chica in Huntington Beach, Arco Dos Pueblos golf course proposal (A-4-STB-93-154-A2) north of Goleta, and Newport Banning Ranch LLC (CDP 5-15-2097) in Newport Beach.

slenderleaf iceplant (*Mesembryanthemum nodiflorum*). Subsequently, in the 2016 update of the National Wetland Plant List, the wetland indicator status of slenderleaf ice plant was changed from facultative (FAC) to facultative upland (FACU). In Section 3.7.2 of the Survey Report, AECOM applies this changed status to the 2015 data and finds that the dominance test for hydrophytic vegetation was no longer met but the prevalence index for hydrophytic vegetation continued to be met.⁵ The Survey Report concludes that this change provides evidence to support the Applicant's contention that wetlands are not present in the proposed project footprint. Coastal Commission staff does not agree with this conclusion and recommends that the Coastal Commission's wetland determination continue to apply to the project site, for several reasons:

- 1) While the dominance criterion has changed because of the revised wetland indicator status of slenderleaf iceplant, the total absolute percent cover of woolly seablite, a FACW wetland indicator species, and pickleweed, an obligate (OBL) wetland indicator species, remain high at 65% in sample point 1 and 63% in sample point 2. The combined high percent cover of these wetland indicator plants resulted in prevalence indices very indicative of hydrophytic vegetation.
- 2) AECOM's 2015 wetland delineation was conducted in the middle of an extended drought. According to ACOE guidelines wetland delineations should be conducted during normal rainfall years to ensure that results are representative of average vegetative conditions. While shifts in the species composition of shrubs and trees are generally not dramatic, herbaceous species respond much more quickly during anomalous conditions and show some of the greatest shifts in wetland species composition in the arid west region.
- 3) Wetland delineations conducted outside normal rainfall years are also not representative of average hydrology conditions. While the hydrology parameter was not met in 2015 during the extended drought, indicators of hydrology might be present under normal rainfall conditions.

The identification of wetlands under the Coastal Act is left to the Coastal Commission, however, so any modification of the wetland delineation included in its 30413(d) report should go back to the Coastal Commission for review under the Coastal Act. Before making such a determination, the Coastal Commission staff believes that the Coastal Commission should have the opportunity to review a current and complete revised wetland delineation and adopt new findings on the wetland status of the project site.

Flooding Hazards

At its March 28, 2017 workshop addressing flooding hazards to the Project, the CEC posed several questions to staff of the Conservancy regarding its 2011 report on flooding hazards in the Oxnard area associated with the Santa Clara River.⁶ Modeling contained in this report suggested that the Project site is currently at risk of flooding during a 100-year flood event on the Santa

⁵ To meet the dominance test, more than 50 percent of the species must be OBL, FACW, or FAC. The value was 40% for sample point 1 and 50% for sample point 2. To meet the prevalence index for hydrophytic vegetation the index value must be less than or equal to 3.0. The value was 2.69 for sample point 1 and 2.53 for sample point 2.

⁶ Stillwater Sciences (2011). *Santa Clara River Parkway: Levee Setback Assessment of the Lower Santa Clara River, Ventura County, California*. Prepared for the California State Coastal Conservancy, September 2011, 72 pp. Included in Docket TN #213677.

Clara river, and that this hazard would be exacerbated with future sea level rise. The CEC's questions were related to the assumptions and limitations of the Conservancy's study, which was not commissioned with the purpose of projecting flood hazards at the project site. In order to address the CEC's questions, the Conservancy commissioned new flood simulations, with expanded boundaries and a greater range of ocean boundary conditions, to provide a clearer picture of Santa Clara River flooding hazards at the Project site.

As described in detail in the June 15, 2017 technical memorandum (TN #219169), the new modeling confirms the results of the previous study, indicating that the project site could experience up to 1 meter of inundation during a present-day 100-year flood on the Santa Clara River, and that future conditions, including sea level rise, could result in more severe flooding. The Conservancy's flood simulations are of particular importance because they focus on a particular hazard – inundation during a 100-year flood on the Santa Clara River, under multiple scenarios – that is not fully captured by the sea-level rise analyses (e.g., CoSMoS 3.0, Revell (2015)) being considered by the CEC. For example, CoSMoS 3.0 considers the “likely discharge” occurring during a simulated coastal storm, but does not attempt to simulate the 100-year flood on the Santa Clara River in conjunction with sea level rise.

The Coastal Commission's 30413(d) Report relied in part on the 2011 Conservancy study in its assessment of flooding hazards at the Project site. The results of the new simulations presented in the June 15 technical memorandum are consistent with and reinforce the Coastal Commission's recommendation that, if feasible, the Project be relocated to a site outside of the current 100-year and 500-year flood zones and safe from flooding related to sea level rise for the full project life.

Conclusion

In conclusion, Coastal Commission staff believes that the new information presented in the Survey Report and the Conservancy's June 15 technical memorandum provides additional support for the conclusions reached in the Coastal Commission's 30413(d) Report, and reinforces the Coastal Commission's primary recommendation that the proposed project be relocated to an alternative site, either elsewhere at the Mandalay Generating Station or off-site, that would avoid impacts to sensitive biological resources, including coastal wetlands and ESHA, and would not be at significant risk of flooding during the full project life.

Thank you for your consideration of these comments.

Sincerely,



JOHN AINSWORTH
Executive Director