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NEXTERA BLYTHE SOLAR'S
SUPPLEMENTAL TESTIMONY RELATING TO
CONDITION OF CERTIFICATION BIO-15

Modification 1

We suggest deleting the two sentences below because:

- They impose requirements that would be very difficult to comply with
- They commit the project owner to complying with future standards and conditions, currently unknown at this time.
- It appears that the intent of the language is to ensure that the project owner is implementing current practices into the BBCS. This language is simply not needed as the first sentence of the condition already requires the BBCS to be approved by the CPM with the input of the BLM, CDFW, and USFWS.

Therefore we suggest the following modification to the first portion of Staff's current version of Condition of Certification **BIO-15**.

BIO-15 The project owner shall prepare a Bird and Bat Conservation Strategy (BBCS) and submit it to the CPM for review and approval, in consultation with BLM, CDFW, and USFWS for review and comment. ~~Alternately, the CPM, in conjunction with the USFWS, BLM, and CDFW, may determine the appropriate plan for the project site and provide it to the project owner for implementation. In the event a standard monitoring plan is developed for the industry, the CPM may request the project owner implement that plan, in conjunction with the USFWS and CDFW, and accounting as necessary for project-specific technology or onsite environmental conditions or constraints.~~ The BBCS shall provide for the following:

Modification 2

We propose the following modification to the first bullet because:

- The language "other relevant project-related avian and bat factors" is vague and undefined with no showing that such information would be relevant when comparing mortality data.
- We have deleted the term "behavior" from the condition because surveys to determine avian behavior prior to construction are simply not necessary to determine species composition.

Therefore, we suggest the following modification to the first bullet of Staff's current version of Condition of Certification **BIO-15**.

- Survey and monitor onsite avian use, ~~behavior, or other relevant project-related avian and bat factors~~ prior to commencing construction to document species composition. The project owner will submit all data gathered onsite to the CPM as specified herein and within the BBCS, or as requested by the CPM, and will also make consulting biologists available to answer CPM inquiries.

Modification 3

We have proposed the following modification to the fifth bullet to insert a CEQA-appropriate standard of when mitigation and adaptive management would be triggered. Such a threshold is needed to:

- Comply with CEQA Guidelines that require a threshold for determining whether an impact rises to a level requiring mitigation actions;
- The threshold "ecologically significant" is appropriate because it creates a nexus that would take into account species composition and relevant site specific factors;
- Without such a threshold, it is possible that the BBCS could trigger measures for injury to one bird or to injuries to many birds that are otherwise not protected or exist in such numbers that the level of mortality is too low relative to the species population numbers.

Therefore we suggest the following modification to Staff's current version of Condition of Certification **BIO-15**.

- Identify specific conservation measures and/or programs to avoid, minimize, rectify, reduce or eliminate **ecologically significant** adverse impacts over time and evaluate the effectiveness of those measures.

Modification 4

We suggest modification to Item 3 of the BBCS Components.

- The list proposed by Staff is too burdensome and inclusive.

- While we understand that such information may be applicable to a power tower project where birds may be injured while flying through the solar flux and then may fly offsite, we disagree that the same level of monitoring and data gathering efforts should be required for this PV modification.
- The Modified Project reduces the extent of the structures in half and reduces the heights of structures significantly.
- References to control sites should be deleted because requiring control sites is not standard under the federal wind guidelines and would not be applicable here.
- No bat acoustic sampling is necessary as the Approved Project assumed impacts and the Modified Project does not increase potential bat impacts.

Therefore we suggest the following modification to Item 3 of the BBCS Component section of Condition of Certification **BIO-15**.

3. The BBCS will contain full survey methodology and field documentation, identification of appropriate onsite ~~and offsite~~ survey locations, ~~control sites, and the seasonal considerations~~ **and shall**. ~~Bat acoustic sampling may be implemented depending on results of the project owner's baseline studies, including~~ **preconstruction data.**

Modification 5

We have proposed a modification to Item 4 (d) of the BBCS Component of this condition to remove the requirement performing statistical methods to generate estimates of avian and bat impacts ***prior to or during construction.***

- Impacts to species during construction are mitigated through the application of several other conditions of certification that employ Biological Monitors and a Designated Biologist to implement the BRMIMP to reduce impacts. For example, see Condition of Certification **BIO-8**
- This data is simply unnecessary as the purpose for using the statistical methods is to predict future impacts ***after construction is complete and the facility is operational.***
- The condition already requires reporting mortality during construction, but impacts during construction activities will not provide meaningful data that could be used to predict impacts when construction activities cease.
- Gathering data necessary to perform statistical analysis during construction would be problematic as the conditions cannot be repeated since construction activities vary over time.

Therefore, we propose the following modification to Item 4 (d) of the BBCS Component of Condition of Certification **BIO-15**.

4. (d) Statistical methods used to generate facility estimates of potential post construction avian and bat impacts based on the observed number of detections during standardized searches during the monitoring season.

Modification 6

We proposed the following modification to Item 5 of the BBCS component of this condition to ensure that there are criteria developed and incorporated into the BBCS that will allow the monitoring to cease. Otherwise the monitoring could continue indefinitely with no discernable ecological benefit. Therefore we propose the following modification to Item 5 of the BBCS Component portion of Condition of Certification **BIO-15**.

5. Survey schedule and period. Post-construction monitoring studies included in the BBCS shall be for at least two years following commencement of commercial operation of each individual unit. ~~At the end of two years of surveys, the CPM shall determine whether the survey program shall be continued for subsequent periods, based on results of onsite monitoring.~~ **The BBCS shall define the circumstances under which additional years of monitoring would be necessary.** The monitoring program may be modified with the approval of the CPM in response to survey results, identified scavenging efficiency rates, or other factors to increase monitoring accuracy and reliability or in accordance with the adaptive management decision-making framework included in the BBCS.

Modification 7

We propose a modification to Item 6 of the BBCS component of the condition to provide a CEQA-related threshold for mitigation and adaptive actions. The reasons a CEQA-related threshold are described in our proposed Modification 3.

Therefore, we recommend the following modification to Item 6 of the BBCS Component of Condition of Certification **BIO-15** be incorporated into the Final Decision.

6. Adaptive management. An adaptive management program shall be developed to identify and implement reasonable and feasible measures needed to reduce levels of avian or bat mortality or injury

attributable to project operations and facilities **to less than ecologically significant levels**. Any such impact reduction measures must be commensurate (in terms of factors that include geographic scope, costs, and scale of effort) to the level of avian or bat mortality or injury that is specifically and clearly attributable to the project facilities. Adaptive actions undertaken will be discussed and evaluated in survey reports. The adaptive management program shall include the following elements:

Modification 8

We propose modifications to Item 7 of the BBCS Component of this condition to ensure that any trigger for adaptive mitigation is also CEQA-related as described in our proposed Modification 3. In addition we incorporated similar language qualifying the adaptive mitigation measures in the same way the adaptive management is qualified in Item 6 of the condition. This compromise was discussed at the workshop and NextEra Blythe Solar agreed to incorporate this type of language in exchange for removing its request for a cost cap.

Therefore we propose the following modifications to Item 7 of the BBCS Component of Condition of Certification **BIO-15**.

- 7 Adaptive Mitigation: The CPM may require the project owner to implement adaptive mitigation for **ecologically significant** onsite injury or mortality of birds and bats, based on recommendations of the TAC, if utilized, or as outlined within the BBCS. **Any such adaptive mitigation measures must be commensurate (in terms of factors that include geographic scope, costs, and scale of effort) to the level of avian or bat mortality or injury that is specifically and clearly attributable to the project facilities. Adaptive mitigation measures undertaken will be discussed and evaluated in survey reports.** Such measures shall be approved by the CPM and may include, but not be limited to: (i) restoration of degraded habitat with native vegetation; (ii) restoration of agricultural fields to bird habitat; (iii) management of agricultural fields to enhance bird populations; (iv) invasive plant species and artificial food or water source management; (v) control and cleanup of potential avian hazards, such as lead or microtrash; (vi) retrofitting of buildings to minimize collisions; (vii) retrofitting of conductors and above ground cables to minimize collisions; (viii) animal control programs; (ix) support for avian and bat research and/or management efforts conducted by

entities approved by the CPM within the project's mitigation lands or other approved locations; (x) funding efforts to address avian diseases or depredation due to the expansion of predators in response to anthropomorphic subsidies that may adversely affect birds that use the mitigation lands or other approved locations; and (xi) contribute to the Migratory Bird Conservation Fund managed by the Migratory Bird Conservation Commission. Adaptive mitigation will be discussed and evaluated in survey reports.

Modification 9

We offer the following modifications to the Verification language to conform the Verification to the proposed language of the Condition of Certification.

Verification: Prior to the start of construction, a draft BBCS shall be submitted to the CPM for review and comment in consultation with CDFW, BLM, and USFWS. A final BBCS shall be submitted to the CPM within 60 days of construction commencement. The project owner shall provide the CPM with copies of any written or electronic transmittal from the USFWS, BLM, or CDFW related to the BBCS within 30 days of receiving any such transmittal.

Reporting Protocol: Verification of Survey Results (including preconstruction bird and bat use, ~~radar data~~, mortality monitoring, and golden eagle monitoring): All survey results and complete reports, including raw data, shall be submitted to the CPM after each survey season and in an annual summary report throughout the course of the study period, or as otherwise directed by the CPM. The results of onsite injury and mortality monitoring will be reported monthly or more frequently, if requested by the CPM. The reports will include all data required as part of the monitoring program. **Post-construction monitoring studies included in the BBCS shall be for at least two years following commencement of commercial operation of each individual unit. The BBCS shall define the circumstances under which additional years of monitoring would be necessary.** The Monitoring Study shall continue until the CPM, in consultation with CDFW, BLM, and USFWS, **using the criteria included in the BBCS,** concludes that the cumulative monitoring data provide sufficient basis for estimating long-term bird mortality for the project. The reports will include all monitoring data required as part of the monitoring program. The reports shall also assess any adaptive management measure implemented during the prior year as approved by

the CPM. After the second year of the monitoring program, the CPM shall meet and confer with the TAC (if convened) **and shall use the criteria contained in the BBCS** to determine if subsequent monitoring periods are warranted ~~based on data quality and sufficiency of analysis, or if needed, to document efficacy of any adaptive management measures undertaken by the project owner. If a TAC was not convened, then the study period may be extended as directed by the CPM, in consultation with CDFW, BLM, and the USFWS, shall determine if another year of monitoring is warranted.~~

If a carcass or injured special status species is found at any time by the monitoring study or project operations staff, the project owner, Designated Biologist, or other qualified biologist that may be identified by the Designated Biologist shall contact the CPM, CDFW and USFWS by email, fax or other electronic means within one working day of any such detection. Verification of other injuries or mortalities shall be within 48 hours, or as otherwise directed by the CPM.