



DOCKET

11-AFC-1

DATE Feb. 27 2012

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February 27, 2012

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VIA HAND DELIVERY & US MAIL

Mr. Eric Solorio, Siting Project Manager
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

**Re: Pio Pico Energy Center Project (11-AFC-01)
Correspondence to USFWS Related to Section 7 Consultation**

Dear Mr. Solorio:

On February 24, 2012, Applicant Pio Pico Energy Center, LLC submitted the enclosed correspondence to the United States Fish and Wildlife Service, Carlsbad Fish and Wildlife Office. This correspondence is related to the Section 7 Consultation for the Pio Pico Energy Center Project (reference Consultation Project No. FWS-SDG-2010-B-0611). We enclose this correspondence for docketing.

Energy Commission General Order 11-GEN ADMIN-01 requires electronic filing and service of documents, but restricts the maximum file size of documents submitted by electronic transfer or email to five megabytes. Because the enclosed correspondence exceeds that threshold, Applicant is submitting to all parties, including the Docket Unit, the enclosed documents on disc.

Respectfully submitted,

A handwritten signature in blue ink that reads "Melissa A. Foster".

Melissa A. Foster

MAF:jmw

Enclosure

cc: Proof of Service List

From: Mock, Patrick [patrick.mock@urs.com]
Sent: Friday, February 24, 2012 2:44 PM
To: Eric_Porter@fws.gov
Cc: rios.gerardo@epa.gov; grchandler@apexpowergroup.com; David Jenkins; Fitzgerald, Maggie
Subject: Pio Pico Energy Center: Applicant Response to USFWS Letter Re: FWS-SDG-10B0661-12TA0160 Consultation, Project No.: FWS-SDG-2010-B-0611
Attachments: Pio Pico Energy Center_FWS-MitOptionsAnalysisLetter_022312.pdf

Eric:

Please see attached letter regarding the Pio Pico Energy Center project.

Have a nice weekend!!

Thank you,

Pat

Patrick J. Mock, PhD, CSE, CWB[®]
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February 24, 2012

Eric Porter
United States Fish and Wildlife Service
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, CA 92011

Subject: Pío Pico Energy Center
Response to USFWS Letter Re: FWS-SDG-10B0661-12TA0160
Consultation Project No.: FWS-SDG-2010-B-0611

Dear Mr. Porter:

Introduction

The above-referenced United States Fish and Wildlife Service (USFWS) letter dated February 1, 2012 to U.S. Environmental Protection Agency, Region IX (EPA) acknowledged USFWS receipt on December 27, 2011 of EPA's request to initiate formal Section 7 Consultation under the Endangered Species Act for the Pío Pico Energy Center ("PPEC" or "Project") located in San Diego County, California. Specifically, the USFWS letter stated: "The consultation will address the proposed construction and operation of the Pío Pico Energy Center ... and the potential effects of these actions on the federally endangered quino checkerspot butterfly, federally threatened California gnatcatcher and Otay tarplant and their respective designated critical habitats." The USFWS letter continues with this request of the Applicant: "We understand the applicant's commitment to minimize impacts to threatened or endangered species and their critical habitat through habitat preservation and/or active habitat management; however, the biological assessment did not provide sufficient detail for us to determine the effectiveness of the proposed measures. Although we have sufficient information to initiate formal consultation, we request that the applicant provide more specific details regarding *how specific properties will be identified for preservation and/or habitat management* as discussed at our January 11th meeting. This information is needed for our analysis of project impacts and the associated avoidance and minimization measures." [Emphasis added.]

As requested by USFWS, Applicant herein describes the process by which Applicant would identify specific properties for preservation and/or habitat management, aimed at offsetting potential impacts from the PPEC on the quino checkerspot butterfly, gnatcatcher and Otay tarplant, and their respective designated critical habitats. Descriptions of the process steps also contain information that identifies the current¹ availability and viability of these options based on recent discussions with habitat management companies, conservation agencies and fund/endowment entities. This information includes a habitat map, private lands map, public lands map, local habitat contractors list, and conservation agency/entity list.

¹ Current as of February 17, 2012.

Identification Process

To determine how specific properties (or parcels) will be identified, the Applicant will follow the following steps:

Step 1. Compile biological survey reports, literature source databases and other resources to determine where the protected species have been sighted and/or known to thrive. Then present these sighting locations and inhabited areas on an aerial map.

Step 2. Using the habitat map produced in Step 1, overlay parcel lines of private properties that are located wholly or in part in the suitable habitat areas. This will reveal many, if not most, of the plausible parcels that might be acquirable. This is illustrated on Figure 1, Mitigation Parcel Search.

Step 3. This step can be done concurrent with Step 2. Using the habitat map produced in Step 1, overlay various conservation agency, city and county jurisdictional lines, Multiple Species Conservation Program (MSCP) lines, California Department of Fish and Game (CDFG) refuge areas, USFWS refuge areas, and Bureau of Land Management (BLM) lands. This is also illustrated on Figure 1, Mitigation Parcel Search.

Step 4. Since the map produced in Steps 2 and 3 contain the habitat information shown on the map from Step 1, the Applicant has a map from which to build options: that shows both privately held lands having suitable habitat and public lands having suitable habitat. There are three distinct options², as presented below, that Applicant has investigated:

- A. Acquisition and deed transfer of 20-acres³ of local habitat-suitable land to a local conservation agency. This would create new conserved land through perpetuity.
- B. Weed abatement of non-native plant species on 50 acres for the 20-year life of the PPEC project of local, habitat-suitable land that is already in habitat conservation.
- C. Funding of an existing, or creation of a new conservation fund or trust that would either be used to purchase land or be used for weed management to meet PPEC's mitigation requirements over the 20-year life of the PPEC project.

² On August 1, 2011 and October 31, 2011, Applicant provided details regarding Options B and C to CEC Staff.

³ As discussed with FWS staff on January 11, 2012

Tier A Option Development:

Tier A Options assume the that private land totaling 20-acres and having suitable habitat would be acquired and transferred to a local conservation agency or entity. This would create new conserved land through perpetuity. If a Tier A Option is ultimately pursued by the Applicant, then PPEC would either purchase 20 acres of private land and deed it to an agency or entity, or would provide funds to an agency/entity for the expressed purpose of purchase of private land. Either way, Figure 1, Mitigation Parcel Search from Step 2 would provide a suite of potential parcels.

Refer to the attached figure, *Mitigation Parcel Search*, which shows privately-owned parcels that are believed by the Applicant to meet the objectives of this mitigation process.

Tier B Option Development:

Tier B Options are based on weed abatement of non-native plant species on 50 acres for the 20-year life of the PPEC project of local, habitat-suitable land that is already in habitat conservation. Such weed abatement would remove non-native plant species in suitable habitat areas for the life of the PPEC project. Removal of non-native plant species would promote further growth of plants that support the quino checkerspot butterfly, California gnatcatcher and the Otay tarplant.

Options within this tier can be executed either by the Applicant contracting directly with a habitat management company, or by funding an existing conservation agency or entity for the expressed use toward a weeding program for specific areas. By using the Public Lands Map from Step 2, the Applicant would engage agencies/entities responsible for habitat conservation for the areas shown on this map.

There are several companies that perform habitat management services, specifically weeding programs, in the San Diego County. These include:

- D&D Wildlife Habitat Restorations, Inc.
- Habitat Restoration Sciences
- Habitat West, Inc.
- Recon Native Plants, Inc.

Presently, there are several agencies that control public lands that contain suitable habitat in the close proximity to the PPEC project. These agencies include:

- USFWS
- CDFG
- City of San Diego (MSCP)
- County of San Diego (MSCP)

- City of Chula Vista
- BLM

Lands that these agencies control are shown on the attached figure (*Mitigation Parcel Search*). The Applicant has contacted each of these agencies to verify habitat suitability and land control for the targeted areas shown on the attached figure.

Tier C Option Development:

Tier C Options are based PPEC funding of an existing, or creation of a new conservation fund or trust that would either be used to purchase land or be used for weed management to meet PPEC's mitigation requirements over the 20-year life of the Project. The options in this tier are considered to generally be the least favored, mainly because known conservation areas are not located in close proximity to the PPEC site. However, a new conservation trust with suitable habitat could be established that target areas in close proximity. The following conservation trusts in San Diego County include:

- San Diego National Wildlife Refuge (Coastal sage and chaparral habitats. Adjacent to the Project site.). USFWS Foundation has accepted funds in the past for land acquisitions and weeding programs.
- Crestridge Conservation Bank (Non-native annual grassland and southern-mixed chaparral, coastal sage scrub. (Approximately 25 miles from the Project site.)
- Deer Canyon Conservation Bank (Service area: Central coast, within MSCP. Southern maritime chaparral, coastal sage scrub and chamise chaparral habitats. (Approximately 30 miles from the Project site)
- The Center for Natural Lands Management

Options Matrix

Based on the process set forth herein, Applicant compiled examples of options available as of February 17, 2012 under each Tier. To summarize such examples, Applicant created an "Options Matrix," which is set forth below. Applicant notes that the options contained in the Matrix are not an exhaustive list, but are intended to demonstrate that viable options currently exist for PPEC to meet any forthcoming mitigation requirements. The Options Matrix is presented on the following pages.



Options Matrix

Option	Summary Description	Assumptions/Details/Notes
Tier 1 LAND ACQUISITION and DEED TRANSFER to conservation agency	PPEC would purchase offset land that has the correct habitat for Quino Checkerspot butterfly, and to a lesser degree for the CA Gnatcatcher and Otay Tar Plant. Land acquired would be deeded to a suitable habitat conservation agency or foundation	20 acre offset area would suffice per FWS. FWS emphasized proximity to the project, but is amenable to something regionally. This land purchase/dedication option assumes that there are no additional demands on PPEC regarding potential N deposition mitigation.
1A	Purchase offset land that is adjacent to BLM lands	Deed to BLM. BLM would be responsible for conservation of the deeded lands
1B	Purchase offset land that is adjacent to City of San Diego MSCP conserved lands.	Deed to the City of San Diego. The City would be responsible for conservation of the deeded lands
1C	Purchase offset land that is adjacent to City of Chula Vista MSCP conserved lands	Deed to the City of Chula Vista. The City would be responsible for conservation of the deeded lands
1D	Purchase offset land that is adjacent to local FWS refuge lands.	Deed to FWS. FWS would be responsible for conservation of the deeded lands
1E	Purchase offset land that is adjacent to County of San Diego MSCP conserved lands.	Deed to San Diego County. The County would be responsible for conservation of the deeded lands
Tier 2 WEED ABATEMENT on existing conservation land; funded by PPEC but managed by conservation agency	PPEC would fund weed abatement on 50 acres on land currently owned and conserved by a governmental agency, and that has the correct habitat for Quino Checkerspot butterfly, and to a lesser degree for the CA Gnatcatcher and Otay Tar Plant. [This is what was proposed to CEC.]	PPEC, LLC would make a one-time payment to a conservation agency prior to commissioning of PPEC. This funding would support non-native species weeding on 50 acres throughout the 20-year operations of the project.
2A	PPEC would hire a consultant to perform weed abatement mitigation. Location of lands to be weeded to be determined. Potential consultants include: RECON Native Plant, Inc.; Habitat Restoration Sciences; Habitat West, Inc.; and D&D Wildlife Habitat Restoration, Inc. Competitive cost estimates to be obtained to determine actual cost to weed 50 acres.	
2B	PPEC would fund a local agency willing to implement a weeding program on their conserved lands if provided the necessary funds to conduct the weeding. Potential agencies include Cities of San Diego, Chula Vista, County of San Diego, BLM, FWS, and a local conservancy (e.g., The Center for Natural Lands Management).	
Tier 3 PPEC would FUND an established or new conservation fund	Establish a foundation or otherwise fund an existing foundation that conserves the three potentially impacted species.	Assume that funding would mitigate potential N deposition impacts for the 20-year life of PPEC, not through perpetuity.



Option	Summary Description	Assumptions/Details/Notes
3A	San Diego National Wildlife Refuge (Coastal sage and chaparral habitats. Adjacent to the Project site.). FWS Foundation has accepted funds in the past for land acquisitions and weeding programs.	Eric Porter noted that FWS does not want to be a "contractor" in these arrangements, that is, they don't want to manage the funds and be responsible for results.
3B	Crestridge Conservation Bank (Non-native annual grassland and southern-mixed chaparral, coastal sage scrub. Approximately 25 miles from the Project site.)	
3C	Deer Canyon Conservation Bank (Service area: Central coast, within MSCP. Southern maritime chaparral, coastal sage scrub and chamise chaparral habitats. Approximately 30 miles from the Project site.)	
3D	The Center for Natural Lands Management	

Summary

In summary, Applicant has provided a detailed process for the identification of properties for preservation and/or habitat management. Applicant believes that there are numerous plausible mitigation options available to meet any obligations related to the potential for nitrogen deposition impacts on the federally endangered quino checkerspot butterfly, federally threatened California gnatcatcher and Otay tarplant and their respective designated critical habitats from the Project.

Please contact me at (858) 812-9292 extension 1535 with questions. We appreciate your attention to this matter.

Sincerely,

URS CORPORATION

Patrick J. Mock, PhD, CSE, CWB[®]
Principal Scientist
4225 Executive Square, Suite 1600
La Jolla, CA 92037

cc:

Gerardo Rios, EPA Region 9
Gary Chandler, PPEC

David Jenkins, PPEC
Maggie Fitzgerald, URS

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
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1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION
FOR THE *PIO PICO ENERGY CENTER, LLC*

Docket No. 11-AFC-1
PROOF OF SERVICE
(Revised 2/21/12)

Pio Pico Energy Center, LLC

**Letter to Eric Solorio, California Energy Commission, dated February 27, 2012
Enclosing Correspondence to USFWS Related to Section 7 Consultation**

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DECLARATION OF SERVICE

I, Judith M. Warmuth, declare that on February 27, 2012:

I deposited copies of the aforementioned document and, if applicable, a disc containing the aforementioned document in the United States mail at 500 Capitol Mall, Suite 1600, Sacramento, California 95814, with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list herein and consistent with the requirements of California Code of Regulations, Title 20, sections 1209, 1209.5, and 1210.

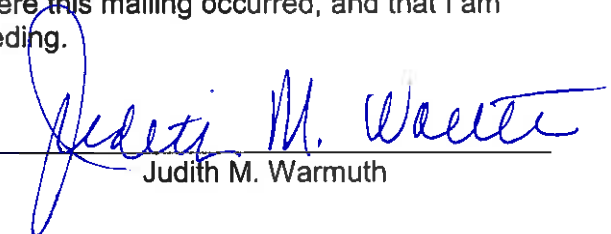
OR

I transmitted the document(s) herein via electronic mail only pursuant to California Energy Commission Standing Order re Proceedings and Confidentiality Applications dated November 30, 2011. All electronic copies were sent to all those identified on the Proof of Service list herein and consistent with the requirements of California Code of Regulations, Title 20, sections 1209, 1209.5, and 1210.

OR

On the date written above, I placed a copy of the attached document(s) in a sealed envelope, with delivery fees paid or provided for, and arranged for it/them to be delivered by messenger that same day to the office of the addressee, as identified on the Proof of Service list herein and consistent with the requirements of California Code of Regulations, Title 20, sections 1209, 1209.5, and 1210.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.



Judith M. Warmuth