



## DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

South Coast Region  
4949 Viewridge Avenue  
San Diego, CA 92123  
(858) 467-4201



September 17, 2008

Felicia Miller  
Project Manager  
Systems Assessment & Facility Siting Division  
California Energy Commission  
1516 Ninth St., MS-15  
Sacramento, CA 95814

<b>DOCKET</b>	
<b>08-AFC-4</b>	
DATE	SEP 17 2008
RECD.	SEP 18 2008

**Subject: Orange Grove Project Application for Certification, County of San Diego**

Dear Ms. Miller:

The California Department of Fish and Game (Department) has reviewed the Application for Certification (AFC) for the Orange Grove Project (Project), dated June 16, 2008, and offers the following comments and recommendations. The comments provided herein are based upon information provided in the AFC, our knowledge of sensitive and declining vegetation communities and species in the County of San Diego, and our participation in regional conservation planning efforts.

The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA; Sections 15386 and 15381, respectively) and is responsible for ensuring appropriate conservation of the state's biological resources, including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act (CESA) and other sections of the Fish and Game Code. The Department is responsible for the administering the State's Lake and Streambed Alteration Agreement program (Section 1600). The Department also administers the Natural Community Conservation Planning (NCCP) Program. The County of San Diego (County) currently participates in the NCCP program through its draft North County Multiple Species Conservation Program (NCMSCP) Plan. The proposed project lies within the planning area for the County's draft NCMSCP Plan.

The proposed Project is a 96 megawatt electric generating plant that is designed as a peaking facility to serve loads during peak demand. As such, this generating plant would not be in operation continuously, but only when demand for electricity reaches a certain threshold. The project site is an 8.5-acre property located just north of State Route 76 and the San Luis Rey River in northern San Diego County. The site is located approximately 3.5 miles east of Interstate 15. The generating plant will be located primarily on the site of an abandoned citrus grove. This land is currently owned by San Diego Gas & Electric (SDG&E). SDG&E will supply the natural gas to fuel the plant, and provide the transmission line connection at its adjacent Pala substation. Besides the generating plant, the project will include a 2.4-mile natural gas pipeline and a 0.3-mile electrical transmission line, both of which will be undergrounded.

The project site and gas pipeline easement support a number of sensitive biological resources. The native or naturalized vegetation communities on the project site or along the pipeline easement route include Diegan coastal sage scrub, southern riparian forest, coast live oak woodland, and non-native grassland. Sensitive and listed species documented to occur in the

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immediate vicinity include the coastal California gnatcatcher (*Poliophtila californica californica* - federal-threatened), least Bell's vireo (*Vireo bellii pusillus* - state and federal endangered), southwestern willow flycatcher (*Empidonax traillii extimus* - state and federal endangered), arroyo toad (*Bufo californicus* - federal endangered), Parry's tetracoccus (*Tetracoccus dioicus*), and Engelmann oak (*Quercus engelmannii*). The Project would impact 9.3 acres of Diegan coastal sage scrub and 3.4 acres of non-native grassland. In total, the project would impact approximately 36 acres of lands, with the majority being agricultural or disturbed/developed lands. The proposed alignment of the gas pipeline immediately west of the generating plant would cross coastal sage scrub habitat occupied by at least one breeding pair of federal-threatened California gnatcatchers. In addition, a small number of Parry's tetracoccus plants and Engelmann oak trees/saplings would be impacted at the generator plant site. Impacts to coastal sage scrub and non-native grassland are proposed to be mitigated off-site at ratios of 2:1 and 0.5:1, respectively, at a conservation bank. The Parry's tetracoccus plants are proposed to be transplanted to another undisturbed location on the project site, and Engelmann oak trees will be incorporated into site landscaping plans. A number of avoidance measures are proposed to avoid impacts to the gnatcatcher during the breeding season. Also, other measures are proposed to avoid impacts to arroyo toad, least Bell's vireo and southwestern willow flycatcher adjacent to the San Luis Rey River from installation of the gas pipeline.

The Department offers the following comments and recommendations to assist the California Energy Commission (CEC) and project proponent in creating a project that adequately conserves sensitive biological resources on-site, and is consistent with the County's draft NCMSCP Plan.

1. The Department recommends that the alignment of the eastern portion of the gas pipeline be modified to place it in the SR-76 right-of-way, or adjacent to it, and move the alignment out of the coastal sage scrub habitat. A portion of the pipeline is still proposed to be in the SR-76 right-of-way toward the western end of its alignment. This would also avoid impacts to the California gnatcatcher, shorten the length of the pipeline route, and significantly reduce the need to mitigate impacts to sage scrub. The Department has discussed this approach with the project's consultant (TRC), who indicated that this alignment was originally proposed but was rejected by Caltrans due to concerns about traffic safety and temporarily reduced traffic flow on SR-76. It may be that for public safety reasons realigning the pipeline to avoid sage scrub is problematic. However, the Department would like the CEC to explore options of shifting the pipeline alignment toward SR-76, and confirm with Caltrans what opportunities and constraints there are to doing this.
2. The AFC should include a figure showing the proposed fuel modification zones around the generating plant facilities. The AFC on page 2-6 indicates that a fuel modification zone of 125 feet will be established around equipment and structures, and 50 feet along each side of the access road to the site. This is inconsistent with the MOU (1997) between the Department, U.S. Fish and Wildlife Service, and State and County fire agencies, which calls for 100-foot clearance zone around structures and 30-foot road clearance. The Department is not concerned if the fuel modification zones are greater than those listed in the MOU if no additional natural habitats are impacted by expanding the zones. However, if the project proposal would impact coastal sage scrub or non-native grassland habitats beyond the distances listed in the MOU, the project should reduce the zones to protect the habitats, unless facilities or public safety would be clearly threatened.

3. There should be some modifications to the construction windows listed in the AFC to avoid impacts to riparian species and the California gnatcatcher. The breeding season for least Bell's vireo and other bird species utilizing riparian habitats along the gas pipeline route should be March 15 through September 15. The breeding season for the California gnatcatcher should be February 15 through August 31. Construction activities during these periods should be avoided unless pre-construction surveys indicate these species are not present.
4. The AFC should discuss the relationship of this project to the County's NCMSCP regional conservation plan. This project is located in the plan's Pre-approved Mitigation Area (PAMA). The PAMA represents the areas where the focus will be for building a regional interconnected habitat preserve system. What affects this project will have on the County's plan should be discussed. In order to use the County's Habitat Loss Permit process for impacts to coastal sage scrub and the California gnatcatcher, the AFC needs to demonstrate that the project will not jeopardize the County's ability to complete the plan and establish a viable habitat preserve system. This issue should also be discussed in the context of the project's cumulative impacts (page 6.6-54).
5. Table 6.6-4 (page 6.6-45) indicates the acres of impact the project will have for each vegetation community on the project site. This table should be expanded to indicate the mitigation ratio that will be used in calculating mitigation for each community impacted, and to list the total mitigation requirements. Also, which impacts are temporary, if any, and which are permanent should be indicated.
6. One or more qualified biological monitors should be in the field during the project's construction phases to monitor that appropriate biological resource avoidance measures are being implemented. These measures include, among others, siting of the gas pipeline to avoid native trees, monitoring of California gnatcatchers in the vicinity of pipeline construction activities and to comply with any required buffer zones, compliance with arroyo toad impact avoidance measures, and the salvage and transplantation of Parry's tetraococcus and Engelmann oak trees. The extent of fuel management zones should also be clearly marked in the field to assure that native habitats are not impacted beyond the designated zones.
7. The Department recommends that Engelmann oak trees, especially saplings, that are impacted by the project be salvaged and replanted at appropriate locations nearby on the SDG&E property.
8. The natural gas pipeline is proposed to be undergrounded with no need for an access road in the easement. The AFC proposed to revegetate the easement surface with grasses and wild flowers. Please discuss whether any future repair or replacement of the pipeline will require additional environmental review before excavation and repair work can proceed.
9. On page 6.6-46, Coastal California Gnatcatcher, the AFC states: "The actual impacts to coastal sage scrub and nonnative grassland will be verified at the time of construction and is expected to be mitigated based on actual impact acreage." This statement indicates that mitigation would occur after the impact is completed. This is unacceptable to the Department. Mitigation for projected impacts should be completed before or concurrent with the impacts, not afterward. This will also be a requirement of the Habitat Loss Permit. Please modify this portion of the AFC accordingly.

10. A portion of the natural gas pipeline easement crosses property owned by Gregory Canyon Ltd., developer of the Gregory Canyon Landfill project. The portion of the Gregory Canyon Landfill property proposed for gas pipeline use is shown in the most recent Habitat Restoration and Resource Management Plan for the landfill project to be used as a major habitat restoration site to meet the landfill's mitigation obligations. This restoration includes the rehabilitation and restoration of the heavily disturbed old dairy sites. The Orange Grove Project needs to avoid compromising the mitigation plan of the landfill project. The AFC needs to discuss if and/or how the placement of the gas pipeline through this proposed mitigation area will be consistent with the proposed landfill's mitigation needs.
  
11. The Supplement to the Application for Certification discusses several mitigation banks being considered for use to mitigate project impacts. A few clarifications are necessary: 1) The Daley Ranch Conservation Bank is not available to the project for mitigation as this bank does not have California gnatcatcher-occupied habitat for sale; 2) The Crestridge Conservation Bank has no credits remaining for sage scrub habitat; 3) The Cornerstone Conservation Bank owned by the City of San Diego is primarily for use by public entities, and can only be used by private credit buyers under very narrow conditions and with approval of the Department and U.S. Fish and Wildlife Service. It is unlikely that this bank will be available for this project; and 4) The Carlsbad Oaks Habitat Bank is in process and does not yet have credits for sale. It will have coastal sage scrub credits available, but it has not yet been confirmed that the California gnatcatcher occupies habitat within the bank.

The Department appreciates the opportunity to comment on the Orange Grove Project AFC and to assist the CEC and project proponent in further minimizing and mitigating project impacts to biological resources. If you have questions or comments regarding this letter, please contact David Lawhead of the Department at (858) 627-3997.

Sincerely,



Edmund J. Pert  
Regional Manager  
South Coast Region

cc: Michelle Moreno, USFWS, Carlsbad Field Office  
Susan Sanders, CEC  
David Lawhead, CDFG