

## CALIFORNIA ENERGY COMMISSION

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November 2, 2011

**DOCKET****09-AFC-8C**

DATE NOV 02 2011

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Mr. Ron Johnson  
Director of Construction and Engineering  
NextEra Energy Resources, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408

**Re: Genesis Solar Energy Project (09-AFC-8C), Riverside County, California  
Condition of Certification BIO-17, Desert Kit Fox and American Badger**

Dear Mr. Johnson:

The Genesis Solar Energy Project (GSEP or project) is a 250-megawatt (MW) solar electric generating facility using solar parabolic trough technology that was licensed by the California Energy Commission (Energy Commission) on October 12, 2010. The Energy Commission's license for the project contains 27 Biological Resources conditions of certification that ensure mitigation of the project's impacts to sensitive species and their habitat to less than significant levels. The purpose of this letter is to discuss the on-going monitoring of desert kit fox (*Vulpes macrotis*) dens that has taken place since February 2011 in accordance with Condition of Certification BIO-17, the status of kit fox dens within the project site's temporary desert tortoise fencing, and the course of action for active kit fox dens still remaining within the site during construction activities.

On January 3, 2011, NextEra Energy began performing pre-construction surveys for desert kit fox (February 5, 2011 Memorandum - Genesis Solar Energy Project, BIO-9 and BIO-17 - Desert Tortoise, Desert Kit Fox, and American Badger Clearance Surveys – Phase I) in accordance with BIO-17 during which 14 dens, both satellite and natal, were found within the GSEP plant site and along the access road. Since January 2011, the project's Designated Biologist and various approved Biological Monitors have monitored the status of these dens and the occurrence of other dens found in the site during the course of various site preparation activities (i.e. site mowing and clearing, unexploded ordnance surveys, etc). Methods of monitoring primarily consisted of daily den checks and remote camera photography. The Designated Biologist, Energy Commission staff, field staff from the California Department of Fish and Game (CDFG) and United States Bureau of Land Management (BLM), and various NextEra Energy personnel have remained in regular contact on the status of dens and which impact avoidance measures to implement in order to ensure compliance with BIO-17 during the various stages of site preparation activities. Conference calls between NextEra Energy, the Designated Biologists (Peggy Goette and Thomas Darden), Energy Commission staff (Amy Golden, Chris Davis, and Eric Veerkamp), and CDFG (Magdalena Rodriguez) have taken place on April 13, May 18, June 13, July 2, September 2, and October 12, 2011.

The CDFG expressed concern over passively relocating young juveniles out of their natal dens prior to the juveniles being capable of foraging and surviving on their own, which was

taken into consideration in the development of den protection measures and passive hazing techniques. Passive hazing techniques implemented since April 2011 to encourage passive relocation of kit fox outside of the project's temporary desert tortoise fencing in order to allow GSEP site preparation activities to take place included the following:

- removing the primary sources of food and cover through on-site mowing which was required as part of unexploded ordnance surveys;
- the installation of temporary ramps over tortoise fencing to encourage crossing; and
- the use of coyote urine, a primary kit fox predator, around burrow entrances and the use of a wooden lathe in the burrow entrance center to discourage use of the burrow (these two techniques were only used on non-natal, satellite dens).

Den protection measures implemented with these passive hazing techniques included the following:

- leaving a 500-foot wide vegetated buffer around each den;
- leaving a 500-foot wide vegetated corridor from each den to the desert tortoise fencing to encourage movement;
- on-going monitoring through remote camera photography stations; and
- daily visits to the dens to check their status and document kit fox sign.


After ten months of monitoring, three active dens (Dens #5, 8, and 17) remain within the GSEP's temporary desert tortoise fencing. Based on the monitoring results, ongoing collaboration for the project, and strong site fidelity that desert kit fox have shown for the site's dens, Energy Commission staff, CDFG and BLM field staff, and the Designated Biologist are in agreement that in the best interest of the kit fox population at the GSEP site and surrounding area, a more aggressive approach to passively relocating the kit fox that occupy the remaining dens be implemented.

Based on a project conference call held on October 12, 2011, and a memorandum from the project's Designated Biologist (dated October 13, 2011 – GSEP Designated Biologist Kit Fox Burrow Excavation Proposal), there is a recommendation that burrows that are determined inactive at Den #8 (which currently consists of 15 burrows, 12 of which show signs of regular use) be excavated. This work would be supervised by the Designated Biologist with at least one additional approved Biological Monitor and two additional laborers. Excavation of inactive burrows would not begin until air temperatures have cooled to daytime highs of 85 to 89 °F to reduce the potential for heat stress to relocated animals and is tentatively planned for November 2, 2011. First, burrows at Den #8 will be investigated with an underground viewing device (peeper scope) to determine unoccupancy. Once confirmed unoccupied, the

burrow would be dug down to the bottom using hand tools and then back-filled by hand to discourage re-occupancy. Burrow excavation would occur during cooler hours of the day, preferably from 0600 to 0900 hours. For Den #8, the Designated Biologist estimated that four burrows could be excavated at one time and that it would likely take three to four days to fully excavate Den #8. To further discourage re-occupancy and to optimize effectiveness of this approach, the timing of burrow excavation will be as close to site grading in the area of Den #8 as possible, preferably within 24 hours. Following den excavation, an approved Biological Monitor must be present within the vicinity of Den #8 to monitor for kit fox activity during construction and grading activities, in the event that a kit fox has re-occupied the area surrounding Den #8. This action is in the best interest of the desert kit fox population in the project area, as confirmed by the CDFG, BLM, and the Designated Biologist.

The above strategy to excavate inactive burrows of a den not vacated for three consecutive days is a violation of BIO-17 in the project's Final Decision. However, because of the threat to the desert kit fox and the circumstances set forth above, Energy Commission staff does not object to the strategy and will not file a complaint against the project owner. Depending on the results and effectiveness of this passive relocation approach, the Energy Commission staff will consult with CDFG and BLM and either suggest similar methods or modify these passive relocation methods for the two remaining kit fox dens (Dens 5 and 17) or any other kit fox den that may be identified throughout the course of site grading. In the event that BIO-17 is still relevant during the remainder of construction activities at the GSEP but would require modifications in keeping with the best interest of the kit fox population in the project area, NextEra Energy must petition the Energy Commission for a project amendment in advance of taking any action. If you have any questions on the content of this letter, please contact Chris Marxen, Compliance Office Manager, at (916) 651-0587 or [cmarxen@energy.state.ca.us](mailto:cmarxen@energy.state.ca.us).

Sincerely,



TERRENCE O'BRIEN, Deputy Director  
Siting, Transmission,  
and Environmental Protection Division

cc: Kevin W. Bell, California Energy Commission  
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