

## DOCKETED

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*Comment Received From: CA Dept of Fish and Wildlife / Jennifer Edwards*

*Submitted On: 11/12/2013*

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**Comments on the Preliminary Staff Assessment (PSA) (Part A) for the Huntington Beach Energy Project, Huntington Beach, CA**

*Additional submitted attachment is included below.*

**From:** Edwards, Jennifer@Wildlife [<mailto:Jennifer.Edwards@wildlife.ca.gov>]

**Sent:** Friday, November 08, 2013 10:02 AM

**To:** Heather Blair [<mailto:HBlair@aspeneq.com>]

**Cc:** Fluharty, Marilyn@Wildlife

**Subject:** Comments on the Preliminary Staff Assessment (PSA) (Part A) for the Huntington Beach Energy Project, Huntington Beach, CA

Ms. Blair:

The Department of Fish and Game (Department) has reviewed the Preliminary Staff Assessment (PSA) dated October 10, 2013. The comments provided herein are based on information provided in the PSA, our knowledge of sensitive and declining vegetation communities in the County of Orange (County), and regional conservation planning efforts. The Department is a Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Act [CEQA] Guidelines §15386) and a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed project that come under the purview of the California Endangered Species Act ([CESA] Fish and Game Code §2050 et seq.), Fish and Game Code section 1600 et seq., and other sections of the Fish and Game Code.

In order to ensure the project is consistent with ongoing regional habitat conservation planning efforts, and to assist the California Energy Commission (Commission) in avoiding, minimizing, and adequately mitigating project-related impacts to biological resources, we offer the following comments and recommendations:

1. The Department concurs that there is not enough data from the applicant to assess significance of impacts in the following areas:
  - a. Construction and demolition noise impacts to special-status birds and rehabilitating wildlife. Construction and demolition noise would result in significant impacts to special-status birds in marshes near the HBEP, especially in the adjacent Upper Magnolia and Magnolia marshes, as well as rehabilitating wildlife at the Wildlife Care Center. Staff is requesting that the applicant select several noise reduction measures and provide updated construction and demolition noise modeling that assumes implementation of these measures. In addition, staff is requesting an ambient noise survey at the Wildlife Care Center to establish a baseline at this sensitive receptor. Staff will analyze these data to determine whether construction and demolition noise impacts can be mitigated and compliance with LORS, including the federal and state endangered species acts, can be achieved.
  - b. Operation noise impacts to rehabilitating wildlife. Operation noise at the Wildlife Care Center may result in significant impacts to rehabilitating wildlife. To assess impacts, staff is requesting an ambient noise survey as described above. Staff is also requesting operation noise modeling at the Wildlife Care Center that assumes implementation of noise reduction measures in staff's proposed Condition of Certification NOISE-4. Staff will analyze these data to determine whether operation noise impacts are significant and can be mitigated.
  - c. Nitrogen deposition impacts to sensitive habitats. Emissions from operation of the proposed project would result in nitrogen deposition at sensitive habitats, potentially including critical habitat for western snowy plover, San Diego fairy shrimp, and California gnatcatcher. The applicant is currently revising its responses to Data Requests 23-26 using the new meteorological dataset for the dispersion modeling as recommended by South Coast Air Quality Management District to quantify project specific and cumulative nitrogen deposition. Staff will analyze this information to

determine whether nitrogen deposition impacts are significant, and whether such impacts can be mitigated and compliance with LORS achieved.

As data is provided, we look forward to working with the Commission to provide appropriate guidance to the applicant.

2. The PSA describes CESA-listed species (i.e. Belding's savanna sparrow) that may be significantly impacted without mitigation. The Department considers adverse impacts to a species protected by CESA, for the purposes of CEQA, to be significant without mitigation. As to CESA, take of any endangered, threatened, or candidate species that results from the project is prohibited, except as authorized by state law (Fish and Game Code, §§ 2080, 2085.) Consequently, if the project, project construction, or any project-related activity during the course of the project will result in take of a species designated as endangered, threatened, or a candidate for listing under CESA, the Department recommends that the project proponent seek appropriate take authorization under CESA prior to implementing the project. Appropriate authorization from the Department may include an incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and Game Code §§ 2080.1, 2081, subds. (b), (c)). For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.
3. Project activities for the Remedial Action for Ascon Landfill Site (SCH# 2013041010) are adjacent to the project footprint. This may have implications for cumulative impacts regarding impacts to sensitive species (i.e. noise). It may be in the Commission's interests to contact Mr. Safouh Sayed of the Department of Toxic Substances Control ([ssayed@dtsc.ca.gov](mailto:ssayed@dtsc.ca.gov)), project lead for the Remedial Action Plan for Ascon Landfill Site project, in order to prevent cumulative impacts to sensitive species located in close proximity to one another. A description of project interactions may be warranted in the PSA.

We look forward to attending the public review workshop on November 20th and continuing to work to minimize impacts to sensitive biological resources for this project.

Sincerely,

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