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In Reply Refer To:
 FWS/CDFG-SDG-2010B0661-2010TA0964

Mr. David Jenkins
 Vice-President
 APEX Power Group, LLC
 1293 E. Jessup Way
 Mooresville, Indiana 46158

OCT 06 2010

DOCKET	
10-AFC-01	
DATE	OCT 06 2010
RECD.	OCT 07 2010

Subject: Proposed Pio Pico Energy Center, City of Chula Vista, California

Dear Mr. Jenkins:

As a follow-up to our August 26, 2010, meeting attended by you and your consultants (Lincoln Hulse and Brent Helm of URS Corporation), the California Energy Commission (“CEC”; Eric Solorio and Carol Watson, by telephone), City of Chula Vista (“City”; Marissa Lundstedt and Glen Laube), California Department of Fish and Game (“Department”; Stephen Juarez, David Mayer, Libby Lucas), and the U.S Fish and Wildlife Service (“Service”; Eric Porter), we are providing the following comments regarding the proposed construction of the Pio Pico Energy Center (“Energy Center”).

The Multiple Species Conservation Program (“MSCP”; City of San Diego 1998) is a comprehensive, long-term habitat conservation planning program that addresses the needs of multiple species and the preservation of natural vegetation communities within the southwestern subregion of San Diego County. The MSCP also addresses the loss of covered species and their habitats due to the direct, indirect, and cumulative impacts associated with land development. On January 11, 2005, the Service issued a section 10(a)(1)(B) permit pursuant to the Federal Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) for the City of Chula Vista MSCP Subarea Plan (“Subarea Plan”; City of Chula Vista 2003). The Department also issued Natural Community Conservation Plan Approval and Take Authorization per Section 2800 *et seq.*, of the California Fish and Game Code. The Subarea Plan and its associated Implementing Agreement and permits are the means by which the City of Chula Vista has obligated to assemble the MSCP Preserve to mitigate for impacts to covered species and their habitats.

The proposed Energy Center is located between the southern end of Lower Otay Lake and the Otay River within an area defined by the Subarea Plan as 100 percent conservation for purposes of establishing the MSCP Preserve. Surrounding land uses include the Otay Water Treatment Plant to the north, County of San Diego (“County”) open space (Otay Lakes County Park) to the east, and MSCP designated 100 percent conservation areas to the south and west.



The proposed Energy Center includes construction of a new substation, transmission line poles, and gas and sewer lines. The project footprint would occupy approximately 9.6 acres within the MSCP Preserve that supports vegetation communities targeted for conservation (e.g. 8.2 acres of coastal sage scrub, 0.03 acre of southern willow scrub, and 0.7 acre of non-native grassland). The proposed project site is located within an MSCP core biological resource area (Otay Lakes/Otay Mesa/Otay River Valley; MSCP pg 2-11; Subarea Plan pg. 1-2). Core biological resource areas are defined as having high concentration of sensitive biological resources which, if lost, could not be replaced or mitigated elsewhere. In addition, the project site contributes to an east west connection to other MSCP lands that together provide for the movement of MSCP covered species.

It is our understanding that the City of Chula Vista had identified the MSCP Preserve lands as a potential location for the proposed Energy Center, and subsequently an application for certification for the project at this location was submitted to the CEC. In order to accommodate the proposed project, the City has suggested revising the Subarea Plan through a boundary line adjustment. However, coordination between the City and our agency regarding the proposed location within the MSCP Preserve did not occur prior to submittal of the application.

Because the proposed project site is located within the MSCP Preserve, is designated as a 100 percent conservation area and core biological resource area by the Subarea Plan, supports native vegetation targeted for conservation, and is important in maintaining connectivity of the MSCP Preserve, we strongly recommend that you pursue other alternative project locations outside the MSCP Preserve system. Based on the potential impacts to the MSCP Preserve, we do not believe a boundary line adjustment is the appropriate mechanism to address the proposed project. In the event that the City should continue pursuing the proposed project site as the location for the Energy Center, a standard amendment would need to be processed according to section 23.1 of the Subarea Plan Implementing Agreement.

It is our understanding that the CEC will be evaluating the proposed project site in terms of §25527 of the Warren-Alquist Act¹. It should be noted that the primary use of the MSCP Preserve is for the conservation and management of habitats and species in perpetuity. The

¹ § 25527 of the Act states:

The following areas of the state shall not be approved as a site for a facility, unless the commission finds that such use is not inconsistent with the primary uses of such lands and that there will be no substantial adverse environmental effects and the approval of any public agency having ownership or control of such lands is obtained:

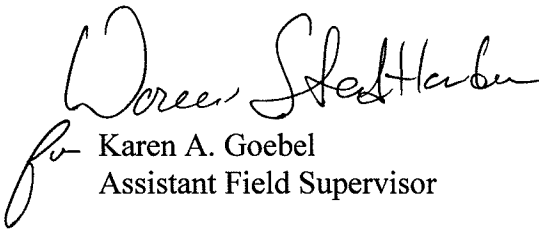
- (a) State, regional, county and city parks; wilderness, scenic or natural reserves; areas for wildlife protection, recreation, historic preservation; or natural preservation areas in existence on the effective date of this division.
- (b) Estuaries in an essentially natural and undeveloped state.

In considering applications for certification, the commission shall give the greatest consideration to the need for protecting areas of critical environmental concern, including, but not limited to, unique and irreplaceable scientific, scenic, and educational wildlife habitats; unique historical, archaeological, and cultural sites; lands of hazardous concern; and areas under consideration by the state or the United States for wilderness, or wildlife and game reserves.

proposed Energy Project is inconsistent with this primary use of the MSCP Preserve; therefore, we believe that the proposed project would not be consistent with the Warren-Alquist Act.

We appreciate the opportunity to provide written comments following our meeting on the subject project. If you have any questions regarding this letter, please contact Eric Porter of our office at (760) 431-9440.

Sincerely,


Karen A. Goebel
Assistant Field Supervisor

cc:

Steve Juarez, Department of Fish and Game, Region 5, San Diego
Erinn Wilson, Department of Fish and Game, Region 5, San Diego
Marissa Lundstedt, City of Chula Vista
Eric Solorio, California Energy Commission, Sacramento
Carol Watson, California Energy Commission, Sacramento

Literature Cited:

City of Chula Vista 2003. City of Chula Vista Multiple Species Conservation Program (MSCP) Subarea Plan. City of Chula Vista, San Diego County, California

City of San Diego. 1998. Final Multiple Species Conservation Program: MSCP Plan. San Diego County, California