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09-AFC-5

DATE FEB 24 2010

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February 24, 2010

Mr. Craig Hoffman
Project Manager
California Energy Commission
Siting, Transmission and Environmental Protection Division
1516 Ninth Street, MS 15
Sacramento, CA 95814

Re: Abengoa Mojave Solar Project (09-AFC-5)
Memo from Heather Blair, Energy Commission Staff Biologist (Aspen Environmental Group) to Craig Hoffman, Energy Commission Project Manager dated February 5, 2010, Re: Abengoa Mojave Solar Project – time-sensitive issues and informational needs

Dear Craig;

Attached is a response to address the informational needs presented by Ms. Heather Blair in the above-referenced memo.

Thank you for your and your staff's continued efforts in this permitting process. Please contact me with any questions.

Sincerely,



Kathleen L Sullivan, PE

Attachment

The Abengoa Mojave Solar (AMS) Project team appreciates the continued input and guidance provided by the California Energy Commission (CEC) regarding the AMS Project. Based on the California Energy Commission (CEC) February 5, 2010 memorandum from Heather Blair (CEC Staff Biologist) to Craig Hoffman (CEC Project Manager), regarding the AMS Project's time-sensitive issues and informational needs, the AMS team has prepared the following responses.

Desert Tortoise Plan. The AMS Project Team is in the process of preparing a Draft Desert Tortoise Exclusion Fencing, Clearance Survey, and Translocation Plan (Desert Tortoise Plan). The Desert Tortoise Plan will incorporate the measures and guidance provided by the CEC in the February 5, 2010 memorandum. By receiving this guidance from the CEC early in the process, the AMS Project Team anticipates that a draft Desert Tortoise Plan will be ready for agency review by late March 2010.

Burrowing Owl Plan. The AMS Project Team is in the process of preparing a Draft Burrowing Owl Monitoring and Mitigation Plan (Burrowing Owl Plan). The Burrowing Owl Plan will incorporate the measures and guidance provided by the CEC in the February 5, 2010 memorandum. By receiving this guidance from the CEC early in the process, the AMS Project Team anticipates that a draft Burrowing Owl Plan will be ready for agency review by late March 2010.

Swainson's Hawk Survey Results – Spring 2010. The AMS Project Team has coordinated with the CDFG (Eric Weiss) and noted raptor expert, Pete Bloom, regarding the survey methodology for the proposed Swainson's hawk surveys. The proposed survey methodology is provided as Attachment 1. Based on the guidance provided by the CDFG and Pete Bloom, the Swainson's hawk surveys will be initiated as early as late April 2010, and the last survey occurring as late as July 30. Preliminary and ongoing survey results will be provided to the CEC and CDFG via email or phone, in order to streamline the environmental review and permitting process, to the extent feasible.

Bald and Golden Eagle Protection Act (Eagle Act). Kim McCormick has been coordinating with the USFWS (Ashleigh Blackford) on how to proceed with demonstrating compliance with the Eagle Act. The USFWS has provided guidance suggesting that current breeding bird survey information be reviewed to determine whether there is existing eagle nesting data for the AMS Project vicinity. If nesting is detected, an assessment of project-related effects will be conducted to determine their potential to "disturb" a bald or golden eagle by resulting in (1) injury to an eagle, (2) a decrease in an eagle's productivity by substantially interfering with normal breeding, feeding or sheltering behavior, or (3) nest abandonment by substantially interfering with normal breeding, feeding or sheltering behavior. It is our understanding that USFWS is in the process of drafting protocols to address the method for conducting surveys in desert areas to detect eagle nests, and that no guidance has yet been issued by USFWS regarding the process for obtaining an Eagle Act take permit should one become necessary. AMS will continue to work closely with USFWS to ensure that the AMS Project will comply with the Eagle Act. An assessment of existing eagle nesting information is currently being conducted, and is expected to be completed by early March 2010.

Compensatory Mitigation Details. The AMS Project Team has already surveyed a portion of the proposed compensatory mitigation site as part of the Project's CEC-required biological buffer surveys. The AMS Project Team will conduct additional biological surveys to determine the degree of disturbance, such as waste dumping, which may require compensation site enhancement measures such as waste removal and fencing. It is not anticipated that the compensation site has been used for dumping, or that any historic structures would require demolition or removal from the site. However, if the biological survey documents any dumping or structure that would require demolition or removal, additional cultural resources and historic resources surveys would be conducted to determine the necessary cultural or historic documentation and/or preservation of site features that may be required. If any of these items are determined to be present on the compensatory mitigation site to a degree that would require additional effort to conserve the natural and/or historic resources on the compensation lands, the AMS Project Team would inform the CEC of the proposed methods for addressing these issues. The AMS Project Team will also provide the CEC with a map delineating the 118.2 acres of the 233-acre site that are proposed as compensation for AMS Project impacts. The biological survey of the compensatory mitigation site is expected to be completed by early March 2010.

Attachment 1

Survey Methodology for a Raptor Study Focusing on the Swainson's Hawk

Raptor Study Focusing on the Swainson's Hawk

Swainson's hawk (*Buteo swainsoni*) is a state threatened species. The Swainson's hawk was detected at the project site during 2007 general raptor surveys (one individual on June 20, 2007) and focused protocol burrowing owl surveys (one pair on August 13, 2007) conducted by EDAW (EDAW 2007a, 2007b). One individual and one pair of Swainson's hawks were detected from June through August 2007. Swainson's hawks are known to nest in the nearby Antelope Valley (Bloom pers. comm. 2009). As such, the Swainson's hawk has been identified as a species of concern at the project site by the CDFG. Potential foraging and limited breeding habitat occurs at the project site and includes old agricultural fields, dry uplands, croplands, and cold desert shrub-steppe, generally with low vegetation, with adjacent ornamental and native trees.

In discussions with CDFG biologist Eric Weiss, it was determined that a survey methodology should be used, based on a modification to the existing Swainson's Hawk Nesting Survey Guidelines for the Central Valley (Swainson's Hawk Technical Advisory Committee, May 31, 2000). AECOM biologists consulted Pete Bloom, a leading Swainson's hawk expert, to develop the following modified survey methodology. Surveys for nesting Swainson's hawk will involve driving paved and dirt roads at 5 miles per hour throughout appropriate habitat within the project site and a 5-mile buffer surrounding the project site. All raptor and corvid nests (e.g., ravens and crows) will be recorded and mapped using a Global Positioning System (GPS) during surveys. Surveys will occur at least two times during the spring (April through July) during periods of Swainson's hawk peak nesting activity. These surveys are intended to address potential project effects on foraging and breeding habitat for the Swainson's hawk, per direction provided by CDFG. A summary letter report will be prepared following completion of the spring surveys detailing the study's results.

AECOM will incorporate the existing project survey data gathered during 2007 and 2008 general raptor surveys within the project site and a 1-mile buffer around the site (EDAW 2007b, 2008). Additionally, Bloom has recommended two surveys of the project site and buffer to look for nesting activity (Bloom pers comm. 2009). AECOM proposes the following 2 surveys within the project site and a 5-mile buffer around the site:

1. A focused survey (1) of the project site between late April to May to determine potential nest locations, by searching all trees (ornamentals, natives, Joshua trees, utility poles, etc.) for active nests. This time of year coincides with Swainson's hawk breeding activity such as nest building, pair vocalizations, territorial displays, and early egg laying, etc. Other raptor species will be on their territories (red-tailed hawks, great horned owls, etc.) and nests, which should minimize potential confusion of raptor nests with Swainson's hawk nests. Additional surveys may be required if an active nest is found to monitor the nest.
2. One (1) additional survey between late May to July 30 to detect late arriving adults setting up nesting territories, as well as potential nestlings or fledglings.

Please note that these surveys will focus on detecting Swainson's hawk nest locations within the project site and a 5-mile buffer. Additional surveys may be warranted if an active Swainson's hawk nest is detected. Consultation with CDFG will occur if an active Swainson's hawk nest is detected to determine the most appropriate course of action.