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April 15, 2010

Craig Hoffman
Project Manager
Siting, Transmission and Environmental Protection Division
California Energy Commission
1516 Ninth Street, MS-15
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DOCKET	
09-AFC-5	
DATE	APR 15 2010
RECD.	APR 15 2010

VIA Email

Re: Abengoa Mojave Solar Project (CEC 09-AFC-5) Staff Assessment – Land Use/Agricultural Lands

Dear Mr. Hoffman,

Thank you for the opportunity to review and comment on the Staff Assessment for the Abengoa Mojave Solar (AMS) Project. We see that Transition Habitat Conservancy has been identified as holder of the proposed farmland mitigation (Condition of Certification Land-1). The Transition Habitat Conservancy (THC) works to preserve wildlife corridors and natural habitat along the high desert-to-mountain transition zone of the Mojave Desert/San Gabriel Mountains for the enjoyment and inspiration of generations to come. THC is a 501(c)(3) non-profit charitable organization that acquires and holds conservation easements and land in fee title to conserve and preserve natural resources to protect habitat, provide resource sensitive public recreation, and natural science studies. THC's mission includes education, outreach and public policy work to foster the preservation of high value desert and mountain resources including water, habitat and recreation. THC works collaboratively with landowners, project proponents, regulatory agencies and the community to design and implement effective, sustainable project mitigation policies, programs and projects.

Our comments on the Land Use/Agricultural Lands section of the Staff Assessment fall into two categories – determination of significance and methodology of proposed mitigation.

Determination of Significance

We are pleased to see the California version of the Land Evaluation Site Assessment (LESA) was used to assess the potential significance of the conversion of land by the development of the AMS Project. We are, however surprised at the outcome given the limited water resources at the project site. We request the LESA analysis for AMS Project be peer reviewed by the staff of the Department of Conservation's Land Resource Protection Division to identify if it was prepared correctly given the unique conditions at the project site. The peer review should include careful consideration of quantity and quality of water available for agricultural operation at the project site.

Should, after peer review, the impacts associated with the conversion of land for the AMS Project continued to be deemed significant then THC fully supports appropriate farmland mitigation.

Farmland Mitigation Methodology

We have reviewed the proposed Condition of Certification Land-1 and find it to be inconsistent with established farmland mitigation practices. Your consultant may wish to review other long established and successful farmland mitigation protocols such as Yolo County LAFCo's <http://www.yolocounty.org/Modules/ShowDocument.aspx?documentid=6056> which has been in use since 1994. We offer the following comments:

Conservation Purpose: Farmland mitigation is to compensate for the loss of prime or important farmland. As currently drafted, Condition of Certification Land-1 in the Staff Assessment would require that the mitigation land be farmed in perpetuity. The conservation purpose is to protect the natural resource of agricultural soils not the economic activity of farming itself. **The requirement for perpetual farming should be deleted.**

Stewardship and Defense Endowment: As currently drafted, Condition of Certification Land-1 in the Staff Assessment does not provide funding for ongoing stewardship and legal defense of the protected farmland or agricultural conservation easement(s) by the land trust. The requirement of an Endowment is not only a standard practice for mitigation lands but for any acquisition by a reputable, professionally managed land trust or conservation organization.

Timing: As currently drafted, Condition of Certification Land-1 in the Staff Assessment requires the farmland or conservation easements to be purchased within 3 years of operation of the AMS Project. Based on the approximate 26 month construction period for the project this would result in the mitigation occurring as much as 5 years after the loss of the resource. While it is important to allow time for the highly complex land acquisitions required for this Condition of Certification to be completed, the mitigation does need to occur more closely to when the resources are impacted.

Based on the above comments we respectfully request the currently drafted Condition of Certification Land-1 in the March 2010 Staff Assessment be replaced in its entirety with the attached revised Condition of Certification Land-1. The attached revision addresses the above comments and provides additional guidelines for the approval of a qualified land trust to hold the mitigation lands.

Thank you for the opportunity to comment. Please do not hesitate to contact us if you have any questions. We look forward to working with you to ensure the mitigation of impacts to the farmland is both necessary and implemented appropriately.

Sincerely,



Jill Bays, President
Transition Habitat Conservancy

Attachment: Abengoa Mojave Solar Revised Condition of Certification Land-1

Abengoa Mojave Solar Project
Revised Condition of Certification Land-1
April 15, 2010

LAND-1 The project owner shall mitigate for the loss of 1,588.5 acres of Prime and Important Farmland, as determined by the California Agricultural Land Evaluation and Site Assessment (LESA) Model (DOC 1997) prepared for the AMS project (Appendix LU-1), at a level not less than a 1:1 ratio by permanently protecting a minimum of 1,588.5 acres of reasonably equivalent farmland in perpetuity such that it will remain available for productive agricultural use by preventing uses which would impair or interfere with its agricultural productive capacity, soils, and agricultural character, values, and utility.

Mitigation Approach

The project owner shall provide one of the following mitigations for the conversion of 1,588.5 acres of Prime and Important Farmland by the AMS project at not less than a 1:1 replacement ratio:

Option A. The acquisition and dedication of farmland or agricultural conservation easement(s) to protect other agricultural lands within San Bernardino County in perpetuity. The farmland or agricultural conservation easement(s) shall be transferred to the approved land trust and the project owner shall provide sufficient "endowment" funding to the land trust for the ongoing stewardship and legal defense of the protected farmland or agricultural conservation easement by the land trust. The amount of the stewardship and defense endowment shall be determined by Property Analysis Record (PAR) or similar methodology and consistent with the land trust's policies and procedures. The endowment shall be paid to the land trust when farmland or agricultural conservation easement is transferred to the land trust. Acquisition and transfer to the land trust shall be completed and recorded no later than 24 months after the start of site improvements or construction, whichever occurs first.

OR

Option B. Prior to start of site improvements or construction, whichever occurs first, payment of fees to the approved land trust which are sufficient to fully fund the acquisition, stewardship and defense of such farmland or agricultural conservation easement(s) in perpetuity. Acquisition of the farmland or agricultural conservation easement(s) shall be completed and recorded no later than 24 months after the start of site improvements or construction, whichever occurs first.

The per acre fee shall include all costs associated with acquiring and protecting the farmland or agricultural conservation easement(s) including but not limited to:

- Purchase of a minimum of 1,588.5 acres via fee title or conservation easement(s).
- Transactions costs including title insurance, escrow costs, recording costs, survey, environmental due diligence, legal fees and staff time.
- Funding for ongoing stewardship and legal defense of the protected farmland or agricultural conservation easement(s) by the land trust. The amount of the stewardship and defense endowment shall be determined by Property Analysis Record (PAR) or similar methodology and consistent with the land trust's policies and procedures.

Standards for Mitigation Land

In either scenario the mitigation land should be in San Bernardino County and must be of reasonably equivalent quality and character as the farmland converted by the AMS project as measured using both of the following methodologies:

(i). Average Storie Index – The USDA calculation methodology will be used to calculate the average Storie Index score. The mitigating land's average Storie Index score shall be no more than 10% less than the farmland converted by the AMS project's average Storie Index score.

(ii). Land Equivalency and Site Assessment ("LESA") Model – The LESA calculation shall be in accordance with the methodology adopted by this Commission. The mitigating land's LESA score shall be no more than 10% below the AMS project's LESA score

Alternative Mitigation Land Location

If qualifying farmland or agricultural conservation easements cannot be acquired in San Bernardino County, then the purchase of lands/easements in other areas within western Mojave or adjacent counties, such as Kern, Imperial or Riverside Counties, may be considered. In the event that acquisition of qualifying mitigation lands or easement(s) is infeasible in these counties then an in lieu fee sufficient to fully fund the acquisition, stewardship and defense of such farmland or agricultural conservation easement(s) may be paid to the California Department of Conservation's California Farmland Conservancy Program per Public Resources Code 10231.5.

"Stacking"

The farmland or agricultural conservation easement(s) shall not be "stacked" or otherwise combined with easements or property acquired for habitat conservation purposes, nor for any other purposes that are incompatible with the maintenance and preservation of economically sound and viable agricultural activities and operations.

Approved Land Trust

The farmland or agricultural conservation easement(s) shall be held by a qualified agricultural land trust or other qualified land trust such as the Transition Habitat Conservancy as approved by the Compliance Project Manager (CPM) at least 120 days prior to the start of construction. A qualified land trust shall, at a minimum, be either Accredited by the Land Trust Alliance or be a member in good standing of the California Council of Land Trusts.

Land Trust Policies and Procedures

The project owner shall transfer the property/easement rights or in lieu fees directly to the approved land trust in accordance with that entity's policies and procedures.

Reporting and Project Operation

The project owner shall provide to the CPM updates in the Annual Compliance Report on the status of farmland/easement purchase(s). The AMS project shall not begin operation until the requirements of the Condition of Certification have been fulfilled.

Verification:

Option A: Copy(s) of recorded agricultural conservation easement(s) or fee title deed of protected farmland provided to CPM along with documentation for payment of stewardship and defense endowment funds to approved land trust.

Timing: No later than twenty-four months after commencement of site improvements or construction, whichever occurs first.

Option B: Documentation of in lieu fees sufficient to fully fund the acquisition, stewardship and defense of such farmland or agricultural conservation easement(s) paid to approved land trust and copy(s) of recorded agricultural conservation easement(s) or fee title deed of protected farmland provided to CPM.

Timing: In lieu fees paid prior to start of site improvements or construction, whichever occurs first. Agricultural conservation easement or fee title deed of protected land recorded and held by approved land trust no later than twenty-four months after commencement of site improvements or construction, whichever occurs first.

Approval of Qualified Land Trust

Written approval of the qualified land trust(s) by the Compliance Project Manager (CPM) which includes documentation of Accreditation by the Land Trust Alliance or membership in good standing in the California Council of Land Trusts.

Timing: No later than 120 days prior to the start of construction or site improvements, whichever occurs first.

Operation of AMS Project

Copy(s) of recorded agricultural conservation easement(s) or fee title deed of protected farmland provided to CPM along with documentation for payment of stewardship and defense endowment funds to approved land trust.

Timing: The AMS project shall not begin operation until the requirements of this Condition of Certification have been fulfilled.