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September 12, 2011

File Ref: SCH # 2011071092

DOCKET
09-RENEW EO-1
DATE SEP 12 2011
RECD. SEP 13 2011

Kristy Chew
California Energy Commission
Dockets Office, MS-4
Docket No. 09-RENEW EO-01
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: Notice of Preparation (NOP) for a draft Environmental Impact Report (EIR) for the Desert Renewable Energy Conservation Plan (DRECP)

Dear Ms. Chew:

The California State Lands Commission (CSLC) staff has reviewed the subject NOP for a draft EIR for the Desert Renewable Energy Conservation Plan (DRECP or Project), which is being prepared by the California Energy Commission (CEC), the U.S. Fish and Wildlife Service (USFWS), and the Bureau of Land Management (BLM). The CEC is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.), and the USFWS and BLM are co-lead agencies under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.).

The CSLC has prepared these comments as a responsible and trustee agency because of its leasing jurisdiction over portions of the Project area located on state school lands as well as its trust responsibility for any and all projects that could directly or indirectly affect state owned "sovereign" land and/or school lands, and their resources or uses (pursuant to State CEQA Guidelines[1] §§ 15381, 15386, subd. (b)). The CSLC also supports environmentally responsible use of school lands for renewable energy projects (see the *Resolution By The California State Lands Commission Supporting The Environmentally Responsible Development Of School Lands Under The Commission's Jurisdiction For Renewable Energy Related Projects* [Resolution] adopted by the CSLC on October 16, 2008, at http://www.slc.ca.gov/Renewable_Energy/Documents/Resolution.pdf).

Background and CSLC Jurisdiction

In 1853, the United States Congress granted to California hundreds of thousands of acres of land for the specific purpose of supporting public schools. In 1984, the State

[1] The State CEQA Guidelines are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Legislature passed the School Land Bank Act (Act), which established the School Land Bank Fund (SLBF) and appointed the CSLC as its trustee (Pub. Resources Code § 8700 et seq.). The Act directed the CSLC to develop school lands into a permanent and productive resource base for revenue generating purposes. The CSLC manages approximately 469,000 acres of school lands held in fee ownership by the State and the reserved mineral interests on an additional 790,000± acres where the surfaces estates have been sold. Revenue from school lands is deposited in the State Treasury for the benefit of the Teachers' Retirement Fund (Pub. Resources Code § 6217.5).

On June 29, 2011, the CSLC entered into a Memorandum of Understanding with the Renewable Energy Action Team (REAT) agencies, which include the CEC, USFWS, BLM, and the California Department of Fish and Game (CDFG), for the purposes of forming a cooperative relationship to effectively plan for and promote renewable energy development in California in a way that advances the CSLC's renewable energy development initiatives and statutory directives applicable to school lands managed by the CSLC. The CSLC's direct participation will enhance the development and implementation of the DRECP, through acquisition and sharing of comprehensive environmental baseline data, environmental analyses, impact assessments, renewable energy development, and conservation and mitigation opportunities throughout the DRECP Planning Area. The CSLC's participation in the DRECP is in anticipation of the identification of renewable energy and transmission development opportunities on school lands under the CSLC's jurisdiction and is recognition of the CSLC's interest in being an Implementing Agency of the DRECP upon plan completion.

Project Description

As described in the NOP, the DRECP is intended to comprehensively address how participating entities with jurisdiction over renewable energy and transmission projects and related facilities in the Mojave and Colorado Desert regions of California will conserve natural communities and species pursuant to the California Natural Community Conservation Planning Act (NCCP Act) and the Federal Endangered Species Act (FESA), while also facilitating the timely permitting of renewable energy projects to help meet the State's goal of providing at least 33 percent of electricity generation through renewable energy by 2010 and the Federal government's goal of increasing renewable energy generation on public land. The DRECP is intended to serve as a NCCP under section 2800 et seq. of the California Fish and Game Code and a multi-species Habitat Conservation Plan (HCP) pursuant to section 10(a)(1)(B) of the FESA.

As proposed, approval of the DRECP and associated permits would provide renewable energy developers and entities undertaking DRECP conservation efforts with authorization for the incidental take of certain endangered, threatened and special-status plant and animal species for covered activities (as defined in the DRECP). Broadly defined, covered activities include: exploration, construction, operation, maintenance and decommissioning of public and private utility-scale renewable energy generation and transmission.

As proposed, the DRECP planning area includes potentially hundreds of thousands of acres of fee-owned State school lands. Project proponents under the plan would be required to obtain a lease for all or any portion of the school land parcels on which a project were proposed in order to construct and operate any project-related facilities on the parcel(s).

Environmental Review

CSLC staff offers the following suggestions on the scope of the draft EIR.

Project Description/Range of Activities

Because the DRECP is intended to be a comprehensive planning tool that provides a framework for siting, review, and approval of subsequent, individual projects, the draft EIR should strive to be as specific and comprehensive as possible in regard to the range of activities that are being considered in order to 1) facilitate meaningful environmental review of potential impacts, mitigation measures, and alternatives for all of the methods under consideration, and 2) minimize the need for subsequent environmental review. The Project Description should be as precise as possible in describing the details, for example, of the types of equipment or methods that may be used, maximum area of impact or disturbance, seasonal work windows, locations for material disposal, use of blasting, etc., as well as the details of the timing and length of activities. To the extent specific activities or methods are unknown at the program level, the draft EIR should clearly explain all that is feasible, and identify what activities or impacts can be analyzed and mitigated for in the draft EIR and which will require additional analysis or environmental review at the project level. A comprehensive analysis of the range of actions and their potential effect on the environment will also facilitate a more robust analysis of the potential cumulative impacts.

Effects to be Analyzed and Mitigation Measures

1. Significance Criteria: While the NOP recognizes the importance of identifying an accurate environmental baseline as the existing conditions against which the DRECP implementation and its associated physical changes will be measured, the NOP does not provide information related to how significance criteria will be established. As stated above, a necessary consideration for environmental documents prepared for plans rather than projects is that the documents provide the logical connection between the covered activities, the significance of effects caused by implementation of those activities, and how implementation of the conservation strategy will, in fact, avoid or reduce those impacts. While CEQA provides lead agencies broad discretion to define significance thresholds, because CEQA's "substantive mandate" applies to significant project-related impacts, a clearly defined threshold against which the impacts are gauged is necessary.

2. Mitigation Measures: While CSLC staff recognizes that the DRECP is intended to include as a primary component a comprehensive conservation strategy that

provides for the conservation of species and habitats at the landscape level, the draft EIR should attempt to repackage the measures described into a format in the draft EIR that makes clear the connection of any given measure to a specific impact, and should describe exactly how the measure will be monitored and enforced. Additionally, the draft EIR should identify feasible mitigation measures for impacts to resources that may not be included specifically in the biological conservation strategy. These mitigation measures should either be presented as specific, feasible, enforceable obligations, or should be presented as formulas containing "performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way" (State CEQA Guidelines § 15126.4, subd. (b)). Although for CEQA purposes the mitigation measures identified in an EIR need not include all specific details when such specificity is "truly infeasible or impractical" at the time of preparation, the EIR does need to at least:

(i) specify performance standards which would ensure the mitigation of the significant effect, and
(ii) disallow the occurrence of physical changes to the environment unless the performance standard is or will be satisfied. (See State CEQA Guidelines § 15126.4.)

3. Sensitive Species: The draft EIR should avoid the mistake of stating that because the DRECP contains a conservation strategy "built in" as part of the plan that no significant impacts to sensitive species would occur. Instead, the draft EIR should provide a thorough analysis of the potential impacts of the *underlying physical changes* to the environment on sensitive species and habitats contemplated by the DRECP, and identify feasible mitigation measures to lessen or avoid such effects. These feasible mitigation measures would reasonably include the identified conservation strategy measures, but may also include additional measures deemed feasible by the lead agency. In short, the draft EIR should serve as the vehicle by which the public is shown the deliberate connection between the covered activities' impacts and the measures proposed to offset those impacts.

4. Climate Change: A greenhouse gas (GHG) emissions analysis consistent with the California Global Warming Solutions Act (AB 32) and required by section 15064.4 of the State CEQA Guidelines should be included in the draft EIR. This analysis should identify a threshold for significance for GHG emissions, calculate the level of GHGs that will be emitted as a result of construction and ultimate full implementation of the DRECP, determine the significance of the impacts of those emissions, and, if impacts are significant, identify mitigation measures that would reduce or minimize them. The analysis should pay particular attention to the possibility of cumulative impacts of GHG emissions. It is likely that at the Plan, rather than project-specific level, quantitative emissions calculations may be speculative; however, a reasoned qualitative characterization that takes into account not only the direct construction related emissions but also the potential lost carbon sequestration potential of undeveloped desert habitat as compared to the potential emissions savings of renewable energy, is encouraged.

5. Cultural Resources: The draft EIR should mention that the title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on or in the sovereign lands of California is vested in the State and under the jurisdiction of the CSLC. Mitigation measures should be developed to address any cultural resources that may be affected by the proposed Project and any unanticipated discoveries during the Project's construction activities. CSLC staff requests that the CEC consult with CSLC staff, should any cultural resources be discovered on sovereign lands during Project construction activities. The draft EIR should also include a summary of the provisions concerning Mitigation Measures Related to Impacts on Historical Resources contained in State CEQA Guideline section 15126.4(b)(1-3). This section specifies the appropriate type of mitigation for archaeological sites that are determined to be historical resources. If any historical resources on State lands under the jurisdiction of the CSLC will be affected by the proposed project, the CEC, as the state lead agency, must consult with the State Historic Preservation Officer as described in State CEQA Guidelines section 15064.5(b)(5). Generally, the state lead agency should request this consultation concurrently with the Section 106 review required of federal agencies under the National Historic Preservation Act to avoid duplication of effort. If human remains are discovered on State-owned lands, then the proper procedure is to follow the steps in the State CEQA Guidelines section 15064.5(e). The draft EIR should include a requirement that CSLC staff be notified within 24 hours of the discovery of Native American human remains on State-owned lands under its jurisdiction.

6. Geology and Mineral Resources: In carrying out its responsibilities related to management of school lands, the CSLC needs to balance alternative energy development not only with protection of biological resources but also use of mineral resources including geothermal and all other resources. The draft EIR should include a discussion of the possible impact of covered projects to mineral resources, including impacts to mineral exploration and development, such as geothermal, rare earths, aggregate, iron ore, precious metals, etc.

7. Recreation and Public Access: It is likely that implementation of the DRECP will result in restricted or diminished use and enjoyment of desert lands that may presently be valuable for recreational purposes. The draft EIR should analyze the Project's short-term and long-term impacts on recreation resources, both during construction of individual projects and over the long term as built facilities and transmission may adversely affect the recreation experience. A significance threshold should be identified and the Plan should be compared to this threshold at full build out of facilities; any significant impacts should be associated with mitigation measures that either minimize or reduce the impacts, or otherwise compensate residents and visitors.

8. Environmental Justice: The draft EIR should include a discussion of environmental justice relative to the siting of renewable energy projects under the DRECP. The CSLC has developed and adopted an Environmental Justice Policy to ensure equity and fairness in its own processes and procedures. The CSLC adopted an amended Environmental Justice Policy on October 1, 2002, to ensure "Environmental Justice

is an essential consideration in the Commission's processes, decisions and programs and that all people who live in California have a meaningful way to participate in these activities." The policy stresses equitable treatment of all members of the public and commits to consider environmental justice in its processes, decision making, and regulatory affairs, and the policy is implemented, in part, through identification of, and communication with, relevant populations that could be adversely and disproportionately impacted by CSLC projects or programs, and by ensuring that a range of reasonable alternatives is identified that would minimize or eliminate environmental impacts affecting such populations

Thank you for the opportunity to comment on the NOP for the Project. As a responsible agency, the CSLC will need to rely on the final EIR for the issuance of any lease or other discretionary action that may be required pursuant to the proposed DRECP, therefore, we request that you consider our comments prior to adoption of the final EIR.

Please send copies of future Project-related documents or refer questions concerning environmental review to Joan Walter, Environmental Scientist, at (916) 574-1310 or via e-mail at joan.walter@slc.ca.gov. For questions concerning CSLC school lands, please contact Jim Porter, Public Land Management Specialist, at (916) 574-1865, or via email at jim.porter@slc.ca.gov.

Sincerely,

Cy R. Oggins, Chief
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and Management

cc: Office of Planning and Research
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