

October 30, 2012

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**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE CALIFORNIA ENERGY COMMISSION,**  
**AND**  
**THE COUNTY OF XXXX**  
**REGARDING**  
**PARTICIPATION AND ENGAGEMENT IN**  
**THE DEVELOPMENT OF**  
**THE DESERT RENEWABLE ENERGY CONSERVATION PLAN**  
  
**XXXXXX XX, 201X**

October 30, 2012

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## I. INTRODUCTION AND BACKGROUND

The Governor of the State of California issued Executive Order S-14-08 (November 17, 2008) establishing a state policy goal of producing 33 percent of California's electrical needs with renewable energy resources by 2020. The Governor and Legislature subsequently enacted Senate Bill 2 (1x) to establish the 33 percent renewable energy standard in statute, effective December 10, 2011. The Renewable Portfolio Standards (RPS) energy projects, including wind, solar, and geothermal, also contribute to achieving the state's climate change goals of reducing greenhouse gases to 1990 levels by 2020 and to 80 percent of 1990 emissions levels by 2050, making the success and expansion of RPS energy generation a key priority for California's economic and environmental future.

Concurrent with the Governor's Executive Order S-14-08, several state and federal agencies created an inter-agency cooperative effort known as the Renewable Energy Action Team (REAT) through the "Memorandum of Understanding Between the California Energy Commission and the California Department of Fish and Game Regarding the Establishment of the Renewable Energy Action Team" (November 17, 2008). In the Memorandum of Understanding, the California Department of Fish and Game (CDFG), the California Energy Commission (CEC), the Bureau of Land Management (BLM), and the United States Fish and Wildlife Service (USFWS) (REAT Agencies) committed to a cooperative relationship to achieve shared energy policy goals.

The REAT agencies subsequently entered into the "Planning Agreement by and among California Department of Fish and Game, California Energy Commission, United States Bureau of Land Management, and United States Fish and Wildlife Service for the Desert Renewable Energy Conservation Plan" (May 2010). In the Planning Agreement, the REAT agencies committed to work together to develop the Desert Renewable Energy Conservation Plan (DRECP), a multispecies desert energy conservation plan in the Mojave and Colorado Desert Regions. The DRECP will guide solar and other qualified RPS energy project siting in the DRECP Planning Area and ensure the conservation of California's natural resources in the Planning Area. The goals of the DRECP, as provided in Section 2.3 of the Planning Agreement, include the following:

- Provide for the long-term conservation and management of Covered Species within the Planning Area;
- Preserve, restore, and enhance natural communities and ecosystems that support Covered Species within the Planning Area;
- Build on the Competitive Renewable Energy Zones identified by the Renewable Energy Transmission Initiative;
- Further identify the most appropriate locations within the Planning Area for the development of utility-scale renewable energy projects, taking into account potential impacts to threatened and endangered species and sensitive natural communities;

October 30, 2012

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- Provide a means to implement Covered Activities in a manner that complies with the Natural Community Conservation Planning Act (NCCPA), Federal Endangered Species Act (FESA), National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), and other relevant laws;
- Provide a basis for the issuance of Take Authorizations allowing the lawful Take of Covered Species incidental to Covered Activities;
- Provide for issuance of Take permits for other species that are not currently listed but which may be listed in the future;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements for Covered Activities within the Planning Area;
- Provide a framework for a more efficient process by which proposed renewable energy projects within the Planning Area may obtain regulatory authorizations and which results in greater conservation values than a project-by-project, species-by-species review would have;
- Provide durable and reliable regulatory assurances, as appropriate, under the NCCPA and the FESA for Covered Activities that occur within the Planning Area; and
- Identify and incorporate climate change adaptation research, management objectives, and/or policies into the final plan document.

Under section 25619 of the Public Resources Code, the Energy Commission may provide up to seven million dollars (\$7,000,000) in grants to qualified counties for the development or revision of rules and policies, including, but not limited to, general plan elements, zoning ordinances, and a natural community conservation plan as a plan participant, that facilitate the development of eligible renewable energy resources, and their associated electric transmission facilities, and the processing of permits for eligible renewable energy resources. For counties within the DRECP Planning Area, the Energy Commission may award a grant to a county only if the county has signed the Planning Agreement as a “plan participant” as defined by California Fish and Game code section 2805(j)(1) or the county enters into a memorandum of understanding with the Energy Commission in which the county agrees to participate in the development of the DRECP for the purpose of ensuring that the DRECP can achieve the goals set forth in the Planning Agreement in a manner that is consistent with the applicable policies of the county.

The DRECP Planning Area contains extensive lands within XXX County (County) and under the County’s jurisdiction. The construction across the state of RPS generation projects and the electric transmission projects needed to deliver RPS energy to load centers may affect these lands; and in many cases, the lands may provide appropriate sites for such projects. The County supports responsible renewable energy development on lands in the County under its jurisdiction and by this MOU seeks to engage more formally in the development of the DRECP in a way that is consistent with County policies and public needs. The County may also develop or revise County rules and policies that will facilitate the development and permitting of renewable energy

October 30, 2012

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resources and associated transmission facilities and, for that reason, may apply for a grant under section 25619 of the Public Resources Code.

## **II. PARTIES**

This Memorandum of Understanding (MOU) is entered into by and between the Energy Commission and XXX County (collectively, Parties).

## **III. PURPOSE**

The purpose of this MOU is to form a cooperative relationship between the Parties to effectively plan for and promote renewable energy development in California in a way that advances California's renewable energy development initiatives and the renewable energy policies of the Parties and to develop and implement the DRECP in a manner that is consistent with the planning goals set forth in the Planning Agreement and with the applicable policies of the County. The County's participation in the DRECP planning effort will enhance the development and implementation of the DRECP through the sharing of comprehensive environmental baseline data, environmental analyses, impact assessments, renewable energy development, conservation and mitigation opportunities throughout the County. The Energy Commission and the County expect that the County's participation in the DRECP planning effort will also inform its development or revision of County rules and policies pertaining to renewable energy and lead to rules and policies that complement the DRECP.

## **IV. AUTHORITY TO ENTER INTO THIS MEMORANDUM OF UNDERSTANDING**

California Energy Commission Authority: Public Resources Code Sections 25218, subds. (d)-(e), 25219, 25302, 25324, and 25500 et seq.

County Authority: Public Resources Code Section 21000, et seq. (CEQA); County XXXX authorities.

## **V. PRINCIPLES OF AGREEMENT**

The Parties mutually agree to:

- A. Participate in DRECP meetings, review draft DRECP documents and information, and provide advice and input about accomplishing DRECP planning goals in a manner that is consistent with the County's rules and policies regarding lands within its jurisdiction.

October 30, 2012

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- B. Coordinate, share, and/or combine resources and data in conducting environmental and resource analyses to assist in the development of the DRECP, to the extent appropriate and allowed by law.
- C. Apprise each other, as far in advance as practicable, of any significant actions or issues that pertain to the development of the DRECP or the implementation of the DRECP on lands within the jurisdiction of the County.
- D. Share documents and information related to the preparation of the DRECP, to the extent appropriate and allowed by law.
- E. Provide Geographical Information Systems (GIS) staff, technical expertise, data and products where appropriate to assist in the development or implementation of the DRECP.
- F. Work together on the development of additional renewable energy resources in California's Mojave and Colorado Desert Regions, including identifying, as far in advance as practicable, those geographic areas and technical and environmental features that merit heightened consideration so that renewable energy project and transmission line development is consistent with both the DRECP's planning goals and the County's rules and policies for lands under its jurisdiction in the DRECP Planning Area.

## **VI. GENERAL PROVISIONS**

- A. Nothing in this MOU is intended to or shall be construed to limit or affect in any way the authority or legal responsibilities of the Energy Commission or the County, including those related to land use decisions.
- B. Nothing in this MOU binds the Energy Commission or the County to perform any action that is beyond its legal authority.
- C. Nothing in this MOU requires the Energy Commission or the County to assume any financial obligation, or to expend any funds, in excess of available appropriations authorized by law. This MOU does not constitute or imply approval by the Energy Commission of any grant funds under section 25619 of the Public Resources Code or any other law, nor does it constitute or imply application by the County for a grant. Any activities that involve the transfer of money, services, or property between or among the Parties will require execution of separate agreements or contracts.

October 30, 2012

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- D. Nothing in this MOU is intended to or shall be construed to restrict any Party from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- E. Any information furnished between the Parties under this MOU is potentially subject to the California Public Records Act, Gov. Code § 6250, et seq. (CPRA). The Parties agree to consult one another prior to transferring potentially privileged or exempt documents and to cooperate in good faith to assert all such privileges and exemptions permitted by the CPRA.
- F. All cooperative work under the provisions of this MOU will be accomplished without discrimination against any employee because of race, sex, creed, color, or national origin.
- G. If any legal issue arises under this MOU, California law shall apply.
- H. Any loss, damage or injury suffered by any Party in connection with the performance of this MOU will be borne exclusively by it.
- I. Amendments or supplements to this MOU may be proposed by the Energy Commission or the County and shall become effective upon written approval of both Parties.
- J. Either the Energy Commission or the County may terminate this MOU thirty (30) days after providing written notification of termination to the other Party.
- K. This MOU shall become effective as of the later date shown below on the signatures page. This MOU may be executed in one or more counterparts, each of which will be considered an original document.
- L. This MOU shall remain in effect for three (3) years after the effective date of this MOU.
- M. This MOU is intended only to reflect the mutual understanding of the Parties. It is not a contract for acquisition of supplies or services; it is not legally enforceable; and it does not create any legal obligation of either of the Parties or create any private right or cause of action for or by any person or entity.

## VII. CONTACTS

The primary points of contact for carrying out the provisions of this Memorandum of Understanding are:

- California Energy Commission: Roger Johnson

October 30, 2012

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- County:

**VIII. APPROVALS**

COUNTY OF XXX

By: \_\_\_\_\_  
[Name & Title]

CALIFORNIA ENERGY COMMISSION

By: \_\_\_\_\_  
[Name & Title]

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