California Natural Resources Agency
DEPARTMENT OF FISH AND GAME
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***ARNOLD SCHWARZENEGGER**, Governor*
***JOHN MCCAMMAN,** Director*

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September 22, 2010

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

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

Dear Mr. Jenkins:

The California Department of Fish and Game (Department) appreciates having met on August 26, 2010, with you, URS Corporation (biological consulting firm, represented by Lincoln Hulse and Brent Helm), representatives of the California Energy Commission (CEC; Eric Solorio and Carol Watson, by telephone), representatives of the City of Chula Vista (City; Marissa Lundstedt and Glen Laube), and a representative of the U.S. Fish and Wildlife Service (Service; Eric Porter) to discuss the Pio Pico Energy Center (PPEC). In attendance from the Department were Stephen Juarez, David Mayer, and Libby Lucas. During the August 26 meeting, you requested that we provide you our comments on the PPEC in writing. This letter is intended to satisfy your request by providing our primary comments to date. We are hopeful that PPEC LLC will now pursue an alternative project location outside of the 100 percent Preserve area of the City's Multiple Species Conservation Program (MSCP) Subarea Plan Preserve.

The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act, Sections 15386 and 15381, respectively. The Department is responsible for the conservation, protection, and management of the state's biological resources, including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act and other sections of the Fish and Game Code, and administers the Natural Community Conservation Planning (NCCP) program. The City is participating in the NCCP program by implementing its MSCP Subarea Plan.

The proposed location for the PPEC is between the southern end of Lower Otay Lake and the Otay River within the 100 percent Preserve area of the Subarea Plan. 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 the City's 100 percent Preserve area to the south and west.

The PPEC is a power generation facility designed to satisfy the San Diego area demand for peaking and load-shaping generation, near and long term. A new substation built on

the project site would interconnect to two 230-kilovolt (kV) transmission lines located within 1,500 feet of PPEC. The project footprint within the City's 100 percent Preserve area would occupy 9.6 acres, including 8.2 acres of coastal sage scrub, 0.03 acre of southern willow scrub, and 0.7 acre of non-native grassland. We assume these acreages include the 0.77 acre for the gas line and 0.78 acre for the sewer line. In addition, up to six power poles (accessed by existing dirt roads) would be installed, four of which would be outside of the project footprint, but within the 100 percent Preserve area. A 6.9-acre temporary laydown and parking area would be outside of the Preserve and within the County.

During the meeting on August 26, you explained the purpose of and need for the PPEC, that the City had identified the proposed location within the 100 percent Preserve area as one of several possible locations for the PPEC, and that PPEC LLC submitted an Application for Certification (AFC) for the PPEC to the CEC in June of 2010. As the Department stated in a subsequent meeting on September 14, 2010, with the City (Gary Halbert, Michael Meacham, Marissa Lundstedt, and Glen Laube), we were dismayed to learn that the City identified the proposed location as a suitable location for the PPEC and that the PPEC LLC had already submitted the AFC to the CEC. We have requested that, in the future, the City confer with the Wildlife Agencies (*i.e.,* the Department and the Service) before informing applicants that the Preserve is a suitable location for projects that encroach into it as would the PPEC.

Regarding the AFC for the PPEC, during the August 26 meeting, the CEC cited §25527 of the Warren-Alquist Act[1] and deferred to the Wildlife Agencies' judgment for a determination of the PPEC's consistency with the Preserve's intended primary use. The configuration of the Preserve resulted from years of science-based negotiations among many stakeholders, and its primary purpose is to provide habitat to support and protect sensitive flora and fauna (*i.e.*, the MSCP Covered Species) in perpetuity. Therefore, the Department believes that the PPEC in the proposed location would not conform to the Warren-Alquist Act.

The Implementing Agreement by which all parties to the MSCP are legally committed to fulfill their respective obligations under the Subarea Plan states, "Adjustments to the CITY's Preserve boundaries may be made in <u>limited</u> circumstances" (emphasis added). During both the August 26 and September 14 meetings, the Department noted that the

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1 § 25527 of the Act follows.
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.

process afforded by Section 5.4.2 of the MSCP Subarea Plan for the Wildlife Agencies to consider adjustments to the boundary of the Preserve is not intended to accommodate projects that encroach into the Preserve as would the PPEC. The proposed PPEC location is within an important corridor identified in the MSCP for mammal and bird movement. Boundary adjustments that do not meet the equivalency test require an amendment to the Subarea Plan (or separate Federal Section 10(a)(1)(B) permit or Section 7 Consultation); these processes would likely require a reanalysis of the entire MSCP Preserve system.

Again, we appreciate the opportunity to have met with you and to comment on the location of the PPEC in the 100 percent MSCP Preserve area. If you have any questions or comments pertaining to this letter, please contact Libby Lucas at (858) 467-4230.

Sincerely,

Stephen M. Juarez
Environmental Program Manager
California Department of Fish and Game

ec: Bill Condon, Department of Fish and Game
Marissa Lundstedt, City of Chula Vista
Eric Porter, U.S. Fish and Wildlife Service
Eric Solorio, California Energy Commission
Doreen Stadtlander, U.S. Fish and Wildlife Service
Carol Watson, California Energy Commission
Erinn Wilson, Department of Fish and Game