

CALENDAR ITEM

134

A & S: Statewide

06/23/11
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**CONSIDER APPROVAL OF MEMORANDUM OF UNDERSTANDING
WITH STATE AND FEDERAL AGENCIES TO FACILITATE PARTICIPATION
AND ENGAGEMENT IN THE RENEWABLE ENERGY ACTION TEAM AND
THE DESERT RENEWABLE ENERGY CONSERVATION PLAN**

PARTIES:

California State Lands Commission

California Energy Resources Conservation and Development Commission

California Department of Fish and Game

United States Bureau of Land Management

United States Fish and Wildlife Service

BACKGROUND:

The California State Lands Commission ("Commission") has been invited to work with the Renewable Energy Action Team ("REAT") toward completion of the Desert Renewable Energy Conservation Plan ("DRECP"), the development of which was mandated by Executive Order #S-14-08 with the purpose of advancing state and federal conservation goals in the desert regions of California, while also facilitating the timely permitting of renewable energy projects under applicable State and federal laws. The REAT was formed in 2008 to oversee implementation of the DRECP and is comprised of the California Department of Fish and Game ("DFG"), the California Energy Resources Conservation and Development Commission ("CEC"), the United States Bureau of Land Management ("BLM"), and the United States Fish and Wildlife Service ("FWS"). The objectives of the REAT were further refined in a Memorandum of Understanding ("2009 MOU") signed by the United States Secretary of the Interior and the Governor of California in October 2009.

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The DRECP is being prepared pursuant to the Natural Community Conservation Planning ("NCCP") Act (Fish & G. Code § 2800 *et seq.*), and is currently expected to be completed by the end of 2012. Generally speaking, an NCCP "identifies and provides for the regional or area-wide protection of plants, animals, and their habitats, while allowing compatible and appropriate economic activity....The primary objective of the NCCP program is to conserve natural communities at the ecosystem level while accommodating compatible land use. The program seeks to anticipate and prevent the controversies and gridlock caused by species' listings by focusing on the long-term stability of wildlife and plant communities and including key interests in the process." (<http://www.dfg.ca.gov/habcon/nccp/>).

The primary goals of the DRECP are to: provide for the long-term conservation and management of sensitive species; preserve, restore, and enhance natural communities and ecosystems that support those species; identify the most appropriate locations for the development of utility-scale renewable energy projects, taking into account potential impacts to threatened and endangered species and sensitive natural communities; provide a comprehensive means to coordinate and standardize mitigation and compensation requirements; provide a framework for a more efficient process by which proposed renewable energy projects within the DRECP planning area may obtain regulatory authorizations and which results in greater conservation values than a project-by-project, species-by-species review would have; and identify and incorporate climate change adaptation research, management objectives, and/or policies into the final plan document.

In May 2010, the REAT Agencies entered into a Planning Agreement pursuant to Fish and Game Code section 2810 which specifies, among other things, the conservation objectives for the planning area, the roles and responsibilities of the plan participants. The Planning Agreement also describes the process the plan participants agree to follow to ensure the inclusion of independent scientific input and public participation, development of sound conservation strategies and reserve design, and compliance with federal and state permitting requirements and other laws. The currently proposed MOU between the Commission and the REAT would facilitate coordination between Commission staff and the REAT Agencies to ensure that REAT and DRECP goals for renewable energy development and environmental protection are accomplished in a manner that is consistent with and advances CSLC's management objectives for School Lands in the DRECP Planning Area.

Because the DRECP is a project subject to the requirements of the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"), a joint Environmental Impact Report/Environmental Impact Statement ("EIR/EIS") is being prepared that will disclose and analyze the potentially significant environmental effects of implementing the DRECP. Additionally, if the NCCP is approved, it will include an Implementation Agreement executed and agreed to by the

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plan participants, which will contain specific provisions required by Fish and Game Code section 2820, subd. (b). These provisions include biological and compliance monitoring, funding, implementation oversight and management responsibilities, establishment of reserves, conditions for species coverage and coverage revocation, and procedures for “third-party” delegation of any incidental take authorization which may be issued to plan participants by the DFG and the FWS pursuant to provisions of the NCCP Act and the federal Endangered Species Act, respectively, upon approval of the DRECP by those agencies.

PROPOSED MEMORANDUM OF UNDERSTANDING:

The geographic extent of the DRECP planning area includes the Mojave and Colorado Desert regions of southern California, which contain extensive lands under the jurisdiction of the Commission that are administered under the State Lands Act, pursuant to California Public Resources Code (“PRC”) sections 6001, et seq. (“School Lands”). Execution of the proposed MOU will enable Commission staff to work collaboratively with the REAT Agencies and other federal, state, and local agencies and stakeholders, to develop the DRECP and, potentially, become a plan participant and signatory to the Implementation Agreement if the Commission determined that doing so was in the best interest of the State. While the proposed MOU would facilitate the Commission’s participation in the DRECP planning process and provide input related to the use of School Lands in the DRECP planning area, it would not obligate the Commission to take any particular action with regard to lands under its exclusive jurisdiction; it would simply provide the opportunity for Commission staff to participate in the planning process to the extent the Commission deems such participation appropriate. Staff has analyzed the proposed MOU, the REAT MOUs, and the DRECP Planning Agreement and has concluded that execution of the proposed MOU and participation in the DRECP process with the REAT is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission’s delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, § 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of CEQA because it is not a “project” as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060(c)(3) and 15378.

2. More information about the DRECP and the REAT, including a schedule of activities and maps, can be found at <http://drecp.org>.

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EXHIBIT:

- A. Memorandum of Understanding Between the California Department of Fish and Game, the California Energy Commission, the Bureau of Land Management, the U.S. Fish and Wildlife Service, and the California State Lands Commission Regarding Participation and Engagement in the California Renewable Energy Action Team and the Desert Renewable Energy Conservation Plan.

IT IS RECOMMENDED THAT THE COMMISSION:

1. Find that the activity is not subject to the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15060(c)(3) because the activity is not a project as defined by Public Resources Code section 21065 and Title 14, California Code of Regulations, section 15378.
2. Authorize the Executive Officer to execute the Memorandum of Understanding in substantially the form attached as Exhibit A.