

**INFORMATIONAL
CALENDAR ITEM
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**STAFF UPDATE ON RENEWABLE ENERGY PROGRAM ACTIVITIES INVOLVING
SCHOOL LAND CONSOLIDATION EFFORTS PURSUANT TO ASSEMBLY BILL 982
AND PARTICIPATION IN THE DESERT RENEWABLE ENERGY
CONSERVATION PLAN**

PURPOSE:

This report summarizes the activities of California State Lands Commission (Commission) staff in the Alternative Energy Program¹ related to the Desert Renewable Energy Conservation Plan (DRECP) in the Mojave and Colorado Desert regions of the State. Activities include efforts to pursue exchanges with the Bureau of Land Management (BLM) that would result in consolidation of school lands to facilitate the siting of renewable energy projects, as well as efforts to ensure the opportunities and constraints developed for the DRECP are consistent with and advance the Commission's fiduciary responsibilities and management objectives for school lands within the DRECP boundaries. The report includes a brief background on prior Commission decisions and legislation that provide the framework for staff's activities, identifies and describes milestones reached to date, and identifies and summarizes the remaining activities and decisions anticipated in 2013-4.

BACKGROUND:

In September 2011, the Executive Officer, with authority from the Commission (June 23, 2011, C 134), executed a memorandum of understanding with the four agencies comprising the Renewable Energy Action Team (REAT)² expressing the parties' intent to coordinate and cooperate on development of the DRECP. The commitments and goals set forth in the memorandum of understanding are important to the Commission's effective stewardship of school lands because the DRECP Planning Area contains extensive school lands under the jurisdiction of the Commission and administered under the State Lands Act (Pub. Resources Code §

¹ The Alternative Energy Program is an interdivisional team of staff from the Commission's Land Management Division, Mineral Resources Management Division, Division of Environmental Planning and Management, and Executive Office that was formed in December 2011 in response to the Commission's increasing role in the State's renewable energy initiatives and efforts.

² The REAT was established pursuant to a memorandum of understanding among the California Energy Commission, the California Department of Fish and Wildlife, the U.S. Department of Interior Bureau of Land Management, and the U.S. Fish and Wildlife Service, dated November 17, 2008.

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6001 et seq.). The development and implementation of the DRECP will affect these lands and potential revenues generated to benefit the State Teachers' Retirement System. The goal of the DRECP is to provide for the long-term protection and conservation of desert ecosystems while allowing for the appropriate development of renewable energy projects. In addition to the REAT agencies and the Commission, the planning process involves several other state and federal agencies, including the California Public Utilities Commission, California Department of Parks and Recreation, National Parks Service, and the Department of Defense, as well as interested stakeholders including cities, counties, tribal interests, industry and utilities, and non-governmental environmental organizations.

Assembly Bill 982 (Skinner), *Land Exchanges for Renewable Energy-Related Projects* (Chapter 485, Statutes of 2011 and codified in Public Resources Code §§ 8720-8723), builds on this ongoing cooperative relationship. It recognizes that the majority of the over 340,000 acres of school land under the jurisdiction of the Commission in the California desert are fragmented and isolated, and the size of the individual parcels is generally insufficient for development of renewable energy projects. In addition, significant portions of these parcels are located within national parks, preserves, monuments, and forests. Although these lands retain significant conservation value, their location and physical characteristics limit development potential. By providing specific statutory direction related to land exchanges and land consolidation, as well as environmental protection goals in the DRECP Planning Area, Assembly Bill 982, when coupled with the 2011 memorandum of understanding, frames Commission staff's role in the DRECP development process.

PLANNING MILESTONES:

DESERT RENEWABLE ENERGY CONSERVATION PLAN:

Throughout 2012 and continuing into the present, the Commission's Alternative Energy Program staff has been actively participating in the DRECP planning process to ensure the Commission's interests and school land development responsibilities are represented. As part of this effort, Commission Geographic Information Systems (GIS) and Title staffs have been able to refine and improve the Commission's mapping of school land parcels in coordination with GIS staffs from other participating agencies (see http://www.slc.ca.gov/GIS/GIS_Downloads.html). This improved mapping will not only benefit the School Land Program generally, but will also assist in developing proposals for sale or exchange of parcels to consolidate school land ownership, consistent with the provisions of Assembly Bill 982.

On December 17, 2012, the REAT released for public review an "interim" document entitled *Description and Comparative Evaluation of Draft DRECP Alternatives*, along with "FAQs," a fact sheet, and preliminary maps. The interim document is neither the official draft DRECP nor the environmental analysis that will be carried out to comply with the National Environmental Policy Act (NEPA) or the California

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Environmental Quality Act (CEQA); rather, it was released in an effort to ensure transparency and to provide stakeholders and the public a chance to review and give feedback on what has been developed so far regarding the plan alternatives and the agencies' approach to developing the DRECP. It is anticipated that public input on the interim document will help the agencies refine and revise the draft DRECP and shape the Draft Environmental Impact Statement/Report (EIS/EIR), which is scheduled to be released in September 2013. Commission staff has been engaged in developing parts of the interim document, specifically in regard to the Commission's goals related to the memorandum of understanding, Assembly Bill 982, and the Commission's statutory fiduciary duties related to protecting revenue generation opportunity on school lands. Staff expects to continue to coordinate closely with the REAT and other participating agencies as the DRECP and EIS/EIR are developed.

MEMORANDUM OF AGREEMENT:

Assembly Bill 982 directs the Commission to consolidate school lands through exchanges with the Department of Interior, represented by the BLM, in the DRECP area to facilitate renewable energy development. Additionally, Assembly Bill 982 requires the Commission to ensure such exchanges and development opportunities will not conflict with the DRECP by providing that the Commission consult with the California Department of Fish and Wildlife (CDFW). A memorandum of agreement (MOA) with the BLM, signed by the Commission's Executive Officer and the State Director of the BLM on May 21, 2012 formalizes the working relationship between the two parties and provides a process for inter-agency cooperation to prioritize and enter into mutually beneficial land exchanges. The MOA states, among other things, that the objective of the BLM is to acquire school lands within national park units and wilderness areas while conveying lands that are "not considered suitable for long term management as public lands," and that the objective of the Commission is to acquire federal lands which are suitable for siting renewable energy projects while conveying school lands which have limited potential to produce revenue.

ANNUAL REPORT TO LEGISLATURE:

Assembly Bill 982 includes a requirement that the Commission report annually to the Legislature on the status of its school land consolidation efforts in the California desert,³ including the status of the above-described MOA between the Commission and the BLM. Commission staff submitted its first report on December 31, 2012 and posted the report on the Commission's website.

LAND EXCHANGE PROPOSAL:

Assembly Bill 982 directed the Commission to prepare and submit, within 240 days from the execution of the MOA (described above), "...a proposal for land exchanges

³ The "California desert" in this report means the California Desert Conservation Area as described in Section 1781 of Title 43 of the United States Code.

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that consolidate school land parcels in the California desert into contiguous holdings that are suitable for large-scale renewable energy-related projects” (California Public Resources Code, § 8723, subdivision (a)). Consistent with this direction, Commission land management and environmental planning and management staffs coordinated throughout 2012 with BLM and DRECP staffs to identify parcels to include in an initial exchange.

On August 14, 2012, the California Director of the BLM provided a preliminary list of BLM-owned lands, totaling approximately 5,800 acres, for Commission staff’s consideration and possible inclusion in the land exchange proposal. Generally, the offered BLM lands are located adjacent to or near existing school lands; one parcel has an existing BLM right-of-way (ROW) authorizing use of the lands for renewable energy purposes, and several others have pending applications for renewable energy ROWs.

The Commission’s Executive Officer submitted the land exchange proposal to the BLM on January 15, 2013, consistent with the statutory requirement in Assembly Bill 982. The proposal includes a prioritized list of school land parcels for disposal, with an emphasis on (1) the scattered inholdings located within federally protected areas, such as wilderness and national parks; and (2) a targeted list of BLM parcels for acquisition that includes BLM lands within areas identified in the *Description and Comparative Evaluation of Draft DRECP Alternatives* as “development focus areas” which are expected to avoid the highest level of biological conflicts. It is expected, as memorialized in the MOA, that school land consolidation will involve multiple discrete land exchange agreements carried out over time as the DRECP is finalized and implemented. Commission staff will continue to coordinate with BLM staff to update and refine the exchange proposal as the DRECP is developed (e.g., as locations of development focus areas and conservation areas evolve) as a means of ensuring land consolidation is carried out in a manner that maximizes development potential, is in the best interest of the Commission’s duties to the State Teachers’ Retirement Fund, and is in the best interest of the State.

ANTICIPATED 2013-4 ACTIVITIES:

Staff expects to continue its participation in DRECP development in order to meet the scheduled September 2013 release of the draft DRECP and EIS/EIR and subsequent June-August 2014 Final EIS/EIR publication and approval decisions. As part of this effort, staff will continue consultation with CDFW to ensure Commission use of school lands for development is consistent with the conservation goals of the DRECP, and that use of school lands for conservation purposes does not conflict with the Commission’s statutory responsibilities associated with the management of the State’s School Lands, including the State’s mineral interests.

In regard to the Assembly Bill 982 provisions, staff will coordinate with BLM staff to develop language for the federal land use component of the DRECP that specifies,

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to the extent possible, the land exchange goals of the BLM and the Commission, potentially including mapped exchange priority areas. This level of detail and specificity should inform the Commission's consideration and approval of individual land exchange transactions. BLM realty staff and Commission land management staffs also anticipate entering into one or more agreements to initiate a land exchange in late 2013.

Last, consistent with the Commission's stated intent in the 2011 memorandum of understanding, Commission and U.S. Fish and Wildlife Service staffs have initiated discussions related to preparation of the documents necessary for issuance of an incidental take permit to the Commission pursuant to section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1544). Similarly, Commission staff is in preliminary discussion with the CDFW with respect to the permit it may issue pursuant to section 2835 of the Natural Community Conservation Planning Act (NCCPA) (Fish & G. Code § 2800 et seq.).

The decision to accept the conditions of approval and be bound by the terms of the respective ESA and NCCPA permits, including conservation actions, would require Commission approval prior to their execution. This determination would involve consideration by the Commission of the streamlining incentive for project applicants, as the permits issued to the Commission by the U.S. Fish and Wildlife Service and CDFW would authorize the "incidental taking" of species covered under the DRECP by project applicants on school lands without a separate permitting process, provided the Commission demonstrates that the applicants' activities are covered by and consistent with the conservation strategy in the DRECP. Establishing a framework by which plan participants can provide such "delegated" take authorization to individual project applicants is one of the primary features of the DRECP and is intended to reduce the time and costs associated with renewable energy project permitting, consistent with Governor Schwarzenegger's Executive Order S-14-08 (which, among other things, established the REAT and called for preparation of the DRECP). Staff anticipates developing preliminary recommendations for the Commission's consideration in early 2014, and if the Commission determines participating as a permittee is in the best interest of the State's management of school lands, as noted above, the permits would likely be prepared for issuance concurrent with certification of the EIS/EIR and approval of the DRECP by the REAT agencies, should approval be deemed appropriate by those agencies.