

PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT

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DEVELOPMENT SERVICES AGENCY

Planning and Community Development
Engineering, Surveying and Permit Services
Roads Department

DOCKET

09-AFC-9

DATE AUG 23 2011

RECD. AUG 23 2011

August 23, 2011

File: Ridgecrest Solar Project
Solar Trust of America

Attn: Eric Solorio, Project Manager
California Energy Commission
1516 Ninth Street MS-15
Sacramento, California 95814

**RE: August 24, 2011 Business Meeting: Item No. 8: Ridgecrest Power Project (09-AFC-09)
Kern County Planning and Community Development Department Objection to
Motion for Order Affirming Application of Jurisdictional Waiver**

Dear Mr. Solorio,

The Kern County Planning and Community Development Department objects strongly to the request by Solar Trust of America (formerly Solar Millennium, LLC) for a determination that the California Energy Commission has jurisdiction over any portion of the Ridgecrest Solar Power Project that would be considered on private land for solar photovoltaic. Solar photovoltaic projects as well as wind projects, regardless of size, are under the local land use control of counties and cities. The Applicant's interpretation of section 25502.3 to allow an applicant to voluntarily ask the CEC to assume jurisdiction is without legal merit as discussed in the staff reply brief.

The legal authority of the California Energy Commission is provided by legislative direction and all actions of the legislature should be considered when reviewing this matter. Land use regulations are a manifestation of the local police powers conferred by the California Constitution, not an exercise of authority delegated by statute (*Scrutton v. County of Sacramento*, 275 Cal. App. 2d 412,417 (1969)). As stated by the California Supreme Court:

We have recognized that a city's or county's power to control its own land use decisions derives from this inherent police power, not from the delegation of authority by the state *See e.g. Candid Enters., Inc v Grossmont Union High Sch. Dist* 39 Cal. 3d 878,885-86 (1985) (upholding a school facilities impact fee imposed by a county without statutory authorization); *Birkenfeld v City of Berkeley*, 17 Cal. 3d 129, 140-142 (1972) (upholding city rent control initiative despite lack of statutory authority). *DeVita v County of Napa*, 9 Cal. 4th 763,782 (1995), *see also Big Creek Lumber Co, v City of Santa Cruz*, 38 Cal. 4th 1139,11151 (2006) (land use regulations in California historically a function of local government under the grant of police power contained in the California Constitution).

In contrast the California Energy Commission authority is created by specific legislative actions that created your specific authority. Absent a specific legislative preemption of our authority, which your staff's brief demonstrates, does not exist, your Commission cannot preempt the county's constitutional police powers for land use authority for siting and permitting solar PV and wind regardless of size. This applicant cannot confer jurisdiction by request and escape the counties regulatory authority.

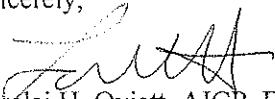
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If your Commission were to issue a permit based on the applicants request for jurisdictional authority, it would not be honored by the county, no building permits could be issued and we would retain authority over the appropriate land use permitting.

Kern County has demonstrated our ability to process these types of project efficiently on aggressive timeframes. Solar Trust of America has had no discussions with the County on the processing of a solar PV project anywhere in Kern County and this attempt to subvert local zoning processes and responsibilities should be completely rejected as having no legal basis or merit.

Thank you for your support of renewable energy and your continued interest in ensuring that local government concerns are addressed.

Sincerely,



Lorelei H. Oviatt, AICP, Director
Kern County Planning & Community Development Department

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cc: Kern County Board of Supervisors
County Counsel
County Administrative Office
Senator Michael Rubio
Senator Jean Fuller
Assemblywoman Shannon Grove