



**COUNTY OF
SAN BERNARDINO**

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DOCKET	
10-SIT-OII-1	
DATE	<u>JAN 04 2011</u>
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January 4, 2011

Commissioner Robert B. Weisenmiller, Presiding Member
Chairman Karen Douglas, Associate Member
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Power Plant Siting Lessons Learned
CEC Docket No. 10-SIT-OII-1

Dear Commissioner Weisenmiller and Chairman Douglas:

Thank you for the opportunity to comment on the "Power Plan Siting Lessons Learned" Informational Proceeding currently pending before your Committee. The San Bernardino County ("County") Board of Supervisors, and particularly Supervisor Brad Mitzelfelt of the First District, regrets they were unable to participate in the first workshop of the committee conducted on December 14, 2010, since this was a Board hearing date. As this Committee schedules additional workshop hearings, the County hopes to continue its meaningful participation in this process.

Generally speaking, the First District includes what is colloquially termed the "High Desert." This includes the areas of the Mojave Desert along the Interstate 15 corridor from Barstow to the Nevada Border, and along Interstate 40 from Barstow to Needles and the Arizona Border. Along these corridors, as well as elsewhere within this District, and to a lesser degree within other areas of the County, tens of thousands of acres of desert land have been targeted for development of renewable energy projects. Three of these projects have recently been approved by the California Energy Commission ("Commission"), and the County's experience in these three processes has been educational.

Since neither of the commissioners on this Committee were committee members on the three large solar projects recently approved within the County, the purpose of this letter is three-fold: (1) to educate the committee on the County's overall position on renewable energy projects; (2) to consider relevant issues in the three large projects located in the County that were approved by the Commission within the past few months, and (3) to offer suggestions for the processing of future renewable energy projects within the County.

County's General Position on Renewable Energy Projects

Because many of the industrial sized solar power projects are sited in lands under federal authority, there are jurisdiction limitations on the county's participation. Even so, the State's Renewable Energy

The mission of the government of the County of San Bernardino is to satisfy its customers by providing service that promotes the health, safety, well being, and quality of life of its residents according to the County Charter, general laws, and the will of the people it serves.

Transmission Initiative recognizes that the input of local governments is critical to a vitalized policy for developing renewable energy. Regardless of land ownership, it can be said with certainty that every renewable energy project to be sited in California necessarily falls within some county's boundaries, and creates impacts that will be borne exclusively by local government.

Yet, the County supports all forms of renewable energy, if appropriately sited, with mitigation that provides protection for existing property owners and County interests. Consistent with that support, the County has taken various actions to support and sustain these technologies.

Greenhouse Gas Emissions Reduction Plan. In 2007, the County revised its General Plan, which revision contained numerous provisions to more fully protect the environment. However, the update of the General Plan occurred when global warming was emerging as an item of increasing concern to California lawmakers. Although the County believed at the time that the General Plan was sufficient for the technology and regulation of the moment, the County agreed in response to well-publicized litigation initiated by the California Attorney General to develop a distinct Greenhouse Gas Emissions Reduction Plan. The plan and the attendant environmental review are currently under development and slated for adoption this year. Renewable energy is a key component in this plan.

Green County San Bernardino. In 2007, the Board adopted the "Green County San Bernardino" program, designed to spur the use of the so-called "green" technologies and building practices, including the use of renewable sources of energy. In adopting this program, the Board recognized that prosperity and economic development could not be achieved at the expense of the environment and that a balance must be struck between development and environmental stewardship. Additionally, "Green County San Bernardino" includes a public awareness component aimed at educating residents about steps they can take in their daily lives to conserve resources and protect the environment.

BLM MOU. In order to establish a framework governing the respective responsibilities and roles in processing environmental documents, particularly those related to alternative energy projects, on March 18, 2008, the Board approved a Memorandum of Understanding ("MOU") with the Bureau of Land Management ("BLM") in order to expedite the review of development on BLM-administered public lands within the County's boundaries. A copy of this MOU is Attachment "A." The MOU is intended to be utilized to achieve consistency and collaboration on the development and review of joint environmental documents where feasible, and maximize coordination between the two agencies.

County Position Statement. In April of last year, the County Board took a fourth step by adopting a position statement on renewable energy projects that are being proposed for construction in the desert portions of the County. This policy was refined by Board action in July, 2010. In this policy statement, a copy of which is Attachment "B," the County identifies four critical issues it faces from the proliferation in the desert of renewable energy projects: (1) Endangered species mitigation which frequently requires the acquisition of acreage in multiples of the project area; (2) Infrastructure impacts, such as those to emergency services; (3) Impacts to ongoing operations and maintenance of infrastructure; and (4) Impacts to historical and recognized land uses.

NACo Resolutions. The County sponsored two resolutions at the National Association of Counties ("NACo") which were adopted at its July 2010 meeting. Copies of these resolutions are collectively Attachment "C." NACo represents more than 2,300 counties serving more than 80 percent of the nation's population. By these resolutions, NACo requests that the land and wildlife management agencies adopt procedures that provide for project mitigation other than through land transfer from

private to public ownership and that historic uses of the properties targeted for renewable energy projects be recognized.

Significant Issues Related to Three Large Solar Projects Approved in 2010

Ivanpah

When the Ivanpah Solar Energy Generating System Project ("Ivanpah"), Docket No. 07-AFC-5, was originally submitted to the Commission in 2007, it was projected as a 400-MW concentrating solar project located in San Bernardino County, to be constructed in three phases and to occupy a total of 3,400 acres of BLM land in eastern San Bernardino County. Following a significant number of days of evidentiary hearings, the Presiding Members Proposed Decision ("PMPD") was issued on September 22, 2010, with Ivanpah still a three phase project but with the projected power output reduced to 370-MW. Despite the reduction in power output, the total project footprint was approved for 3,600 acres (5.6 square miles).

On April 2, 2010, the County issued its opening brief commenting and raising concerns on twelve separate issues. At the time the PMPD was issued, the County offered comments on mitigation of land use impacts, impacts to county fire and emergency services, and some more minor issues including the establishment of a Solar/Ecological Interpretive Center. The County very much appreciates the Commission's responsiveness to these concerns, and the inclusion of Conditions of Certification Worker Safety-7 and Worker Safety-8 and Land-3. We can report that a fair share contribution agreement between the County and the applicant regarding these provisions was executed on December 14, 2010.

The Commission was less responsive to the County's concerns to the great number of additional acres that would be required to mitigate for the biological impacts of the Ivanpah project. Condition of Certification BIO-17 called for a 3:1 mitigation ratio, with at least two thirds of the 3:1 mitigation requirement to be achieved by acquisition, in fee title or in easement. Thus, the project applicant will be required to acquire at least 7,164 acres (in excess of 11 square miles) of private land suitable for desert tortoise habitat.

Calico

The second of these three projects was the Calico Solar Power Project ("Calico"), Docket No. 08-AFC-13. At the time of the filing of the application on December 2, 2008, this was proposed as an 850-MW project covering 8,230 acres of BLM land along the 40 Freeway approximately 17 miles east of Newberry Springs. After extensive evidentiary and other hearings, the PMPD was issued on September 25, 2010, and with significant revisions, the final Commission Decision on December 1, 2010, with the project as approved occupying 4,613 acres (7.2 square miles) and generating 663.5-MW. The Commission Decision included Worker Safety Conditions of Certification similar to those in Ivanpah that required negotiations between the applicant and the County as to fire and safety impact mitigation. Again, the County can report that negotiations are ongoing.

Once more, however, the Biological Resources Conditions of Certification, BIO-17 to be specific, included the robust requirement that the project owner provide compensatory mitigation acreage of 10,302 acres (16.1 square miles) of private land as desert tortoise habitat lands.

Abengoa

The Application for Certification for the Abengoa Mojave Solar Power Plant ("Abengoa"), Docket No. 09-AFC-5, was filed on August 12, 2009. The PMPD was issued on August 6, 2010, and the Commission's Final Decision on September 15, 2010. This 250-MW project is to be constructed on

1,765 acres (2.75 square miles) of previously disturbed, privately owned agriculture land near the Harper Dry Lake. Thus, there was no need to impose the mitigation lands acquisition requirements similar to those in Ivanpah and Calico. However, the fire and safety impacts were in evidence and the County appreciates the Commission's imposition of Worker Safety Conditions of Certification that required negotiation between the County and the project applicant, with ultimate authority to resolve the issue reserved by the Commission if these negotiations do not come to fruition. Yet once again, the County is pleased to report on the positive discussions with the applicant and optimism that these will culminate in an agreement acceptable to both.

From the County's standpoint, with all other things being equal, Abengoa represents an optimal project in terms of siting. Located totally on privately owned and previously disturbed agriculture land, it does not create the biological impacts of those, like Ivanpah and Calico, sited on relatively undisturbed public land, and thus does not involve the acquisition of private property to serve as biological mitigation.

The County's Suggestions for Evaluating Future Large Solar Projects

The Process May Not Adequately Assess Cumulative Impacts for Biological Mitigation

Under the California Environmental Quality Act ("CEQA") Guidelines, "a cumulative impact consists of an impact which is created as a result of the combination of the Project evaluated in the EIR together with other projects causing related impacts" (14 California Code of Regulations ("Cal Code Regs") §15130(a)(1)). Cumulative impacts must be addressed if the incremental effect of a project, combined with the effects of other projects is "cumulatively considerable" (14 Cal Code Regs §15130(a)). As further described, the incremental effects are to be "viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects" (14 Cal Code Regs §15165(a)(3)).

In the evaluation of alternatives, the Commission has generally determined that each of these three large projects will be cumulatively significant. For example in the case of Ivanpah, "[t]he contribution of [Ivanpah], in combination with the many other renewable energy projects proposed for the Ivanpah Valley and Mojave Desert, to the loss of desert lands, is cumulatively significant. Lands formerly available for multiple uses—habitat, grazing, recreation, and open space — would no longer be available for those uses once a power plant is constructed." (Ivanpah Commission Decision, Alternatives Section, page 2)

The huge swaths of native desert land required for these projects is staggering of itself, but the permitting and resource agencies require the project applicants to acquire additional vast reserves of private desert property to serve as mitigation. In the cases of Ivanpah and Calico, the projects and the attendant biological mitigation lands total 29,296 acres, or 45.8 square miles, or about the same size as the City and County of San Francisco. Thus, between the project sites and the mitigation lands, this significant amount of acreage will no longer be available for any other economic use. It is estimated that there are 140,000 acres of potential desert tortoise habitat held in private unincorporated lands under the County jurisdiction. The project and mitigation requirements of Ivanpah and Calico thus represent consumption of about 21 percent of those properties.

These projects have the distinction of being the first out of the gate, but there are an estimated 66 solar projects and 63 wind project applications currently in some stage, with a total overall area of over one million acres within the California Desert Conservation Area, and many of these are projected to be sited within the County's boundaries. Once the available mitigation land is set aside, it cannot be

utilized to mitigate for these follow-on projects, so more and more the private lands will be unavailable for activities generating jobs and taxes.

This incredible consumption of desert land for the amount of power generated is illustrated by comparison to another power project within San Bernardino County approved within the last ten years. The Mountainview Power Plant Project (00-AFC-2) was approved on March 22, 2001, and generates 1056 MW (82% of Ivanpah, Calico, and Abengoa combined) but on a site of only 54 acres. Obviously, a natural gas-fired power plant like Mountainview creates other impacts, but it produces nearly the same power on less than a fraction of one percent of the land impacted by the three solar projects.

The County is cognizant of the dual approval process for the Projects sited on federal land, but to the extent possible, the Commission should coordinate with the BLM in seeking more creative and less impactful mitigation strategies. Clearly, acquisition of mitigation land is one of the mitigation strategies, but it should not be the sole strategy; and definitely should not automatically be required in multiples of the project acreage. In Ivanpah, Staff appeared to agree that alternative mitigation strategies are viable. "CDFG and Staff agree with BLM that much can be accomplished in terms of protection of the tortoise through habitat enhancement, including fencing of certain roads and freeways, closure of unpermitted dirt roads, control of ravens (which eat young tortoise), and so forth." (Ivanpah, Staff's Opening Brief, page 9)

Finally, it appears that there is an inequitable treatment of habitat mitigation depending on where the project is located. The Silver State North Project ("Silver State") is a 400-MW photovoltaic project located in the Ivanpah Valley within Nevada immediately east of Primm. Thus, it is in the same geographic area, habitat, and recovery unit as Ivanpah. However, the Silver State owner was not required to acquire any mitigation lands. The Biological Opinion prepared for Silver State went into great detail on the capture and translocation of tortoises from the project area, but on page 59, the mitigation requirement imposed is that the applicant pay \$2,295,684 for mitigation, based on 2,996 acres impacted and payment of \$774 per acre. The Biological Opinion does not say where the payment per acre came from, but appears to be 1:1 based on an estimate of land value around Ivanpah. These funds may be used for management actions expected to provide a benefit to the desert tortoise, and habitat acquisition is but one of the strategies listed.

Achieving equity in how these projects are required to mitigate for their habitat impacts would certainly be beneficial to project applicants developing in California, and the more liberal use of an in lieu fee program instead of a wholesale requirement that multiple acres of habitat be acquired would benefit the long term economic interests of the County and its residents.

In short, the County strongly urges the Commission to step up its work with the resource agencies to develop a comprehensive in lieu fee program that will mitigate the biological impacts without the onerous and unrealistic requirement of every renewable energy project acquiring mitigation land (from a steadily decreasing supply) in multiples of the project acreage.

Dismissal of Staff's Emergency Impact Analysis

Although the County is appreciative of the concerns given for impacts of these three projects to County fire and safety response teams, there is some concern that the Commission's staff analysis, based upon the County's data, was summarily dismissed. In the case of Calico, staff outlined its interaction with County representatives to develop a matrix for fairly and reasonably rationing the costs of mitigation. These were outlined in the Supplemental Staff Assessment (pp. C.15-24 through 25) and were not refuted during the course of the hearing. Staff's witness, Dr. Greenberg, testified that, "[P]erhaps far and away the best analytical approach that staff has seen in 15, 16 years was conducted by the San Bernardino County Fire Department, which based its allocation for this particular solar

project to mitigate direct and cumulative impacts on an approach that staff initially developed.” (Transcript, August 6, 2010, p. 185) By contrast in Abengoa, the project applicant actually put on witnesses to rebut staff and the County’s witnesses whose testimony supported the conclusions provided by Dr. Greenberg. Nevertheless, in Calico, just as in Abengoa, the Commission adopted the Committee’s Conditions of Certification that required negotiation between the applicant and the County as to the appropriate level of mitigation, and barring success in those negotiations, relying on new analysis prepared to experts to be designated.

The County understands that on four projects in Riverside County [Rice (09-AFC-10), Palen (09-AFC-07) Genesis (09-AFC-08) and Blythe (09-AFC-06)], the respective committees and the Commission adopted Staff’s recommendations that were very similar to those being advocated for the County without the need for independent corroboration. Equitable treatment of local governments similarly situated would seem to be a desirable objective of the Commission.

Mitigation of Other Impacts

Frequently, the desert is viewed as an area to be avoided, and the absence of activity at any given time is considered evidence that the desert is little used. However, these desert lands provide unique recreational and economic opportunities. For example, during the Ivanpah hearing, testimony was elicited that annual visitors to the Clark Mountains range in estimates from 12,300 to in excess of 41,000. Just considering recreational use at the Project site, the Ivanpah Dry Lakebed alone is visited by an estimated 5,000 visitors annually. In addition to this general outdoor recreation use, the desert areas have historically provided unique opportunities for off-highway vehicles, filming, and mining. These are all major, sustainable economic activities that will be lost as more and more of the desert is taken up with renewable energy projects, and especially with the onerous mitigation requirements discussed above.

The County is appreciative of the Commission’s response in the Ivanpah case of requiring a joint viewing and interpretive site to be developed. But the County’s larger concern is the seeming absence of mitigation for this type of use, and suggests that the Commission require reasonable mitigation, such as replacement or development of alternative recreational and wilderness opportunities.

Conclusion

The Commission has a daunting task of striking a balance between meeting the State’s renewable energy goals and imposing mitigation for the unavoidable impacts that this Project will create. The projected long operational lives of these Projects demand even greater scrutiny, and the County is empathetic to the pressures created by the executive and legislative branches of state government, as well as the urgency imposed by federal funding of limited availability.

These projects, and those to follow, also underscore those challenges that come from the fact that 84% of the property within the County is within federal jurisdiction. What is more, these projects illustrate the dichotomous condition in which the County finds itself. On the one hand, these projects promise some direct benefits to County residents such as construction and operations jobs. But on the other, they generate real impacts on County services, plus biological mitigation requirements threaten to forever eliminate tens of thousands of acres of private property from any kind of economic use. When these projects are sited on federal land, such as with this project, the impact is exacerbated. The County has limited, if any, land use authority and thus cannot condition these projects in the ways to mitigate these impacts that it would when federal land is not involved. Potential tax revenues are also diminished given the tax exemptions that have been mandated to foster this class of energy production.

Thus, although the County supports in a general sense the creation of renewable energy, that support is conditioned on the imposition of appropriate mitigation to the specific County impacts articulated. Consistent with this support, the County offers to work with the Commission and its staff to enhance the approval process to be more responsive to the interests of all parties, and especially those of local government.

Sincerely,



GREGORY C. DEVEREAUX
Chief Executive Officer

GCD:GN:smj

c: Honorable Members, Board of Supervisors
Jean Rene Basle, County Counsel
Gerry Newcombe, Deputy Executive Officer

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF SAN BERNARDINO
AND THE U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT
FOR PROCESSING ENVIRONMENTAL REVIEWS
March 2008**

This MEMORANDUM OF UNDERSTANDING (hereinafter referred to as "MOU") is entered into as of this ___ day of March 2008 between the County of San Bernardino (hereinafter the "County"), with offices located at 385 North Arrowhead Avenue, San Bernardino, California 92415-0182 and the U.S. Department of the Interior, Bureau of Land Management, California Desert District (hereinafter the "BLM"), as represented by the Barstow Field Office located at 2601 Barstow Road, Barstow, California 92311, by the Needles Field Office located at 1303 S. Highway 95, Needles, California 92363, and by the Ridgecrest Field Office located at 300 S. Richmond Road., Ridgecrest, California 93555. Collectively, the County and the BLM shall be referred to as the "Parties". This MOU shall apply to all projects that are located within the County for which the BLM is the lead federal agency.

A. PURPOSE

The purpose of this MOU is to establish an effective, efficient and cooperative process for conducting environmental reviews of proposed projects that are located on public lands managed by the BLM and that may or may not include private land under the jurisdiction of the County. This agreement also sets forth the respective roles and responsibilities of the BLM and the County and establishes that the highest priority be afforded to renewable (also referred to as alternative) energy projects.

This MOU is not intended as the exclusive means of obtaining BLM review of projects within the County's jurisdiction or County review of projects within BLM's jurisdiction. This MOU is a vehicle by which the BLM and the County may achieve consistency by collaborating on the development and review of joint environmental documents where feasible, and maximizing coordination between the two jurisdictions.

B. NEED FOR AGREEMENT

Due to several state and federal policies and regulations that provide incentives for the development of renewable energy sources, together with the vast undeveloped areas and climatic conditions within San Bernardino County, the BLM has received numerous right-of-way applications for solar, wind and geothermal energy development projects within those portions of the County lying within the California Desert District. Private lands are also included within some project boundaries. All projects on public land must be reviewed for compliance with the National Environmental Policy Act ("NEPA"), and where the State or County has certain permitting

authority, must also be reviewed for compliance with the California Environmental Quality Act (“CEQA”).

For projects that are under the jurisdiction of both Parties, and where the County is the CEQA lead agency and an EIR is required for compliance of CEQA, BLM and the County will prepare joint environmental documents to facilitate processing and resolution of issues early in the NEPA and CEQA compliance processes.

The California Energy Commission (“CEC”) acts as the CEQA lead agency for thermal energy projects of 50 megawatts or greater. The County is the CEQA lead agency for virtually all other projects that include private land. In all cases, the County desires to have local interests represented in the environmental review process. In any case where either the CEC is the CEQA lead agency or when CEQA review is not required, the County will be a cooperating agency with the BLM during its NEPA review process if County resources allow.

C. DUTIES OF THE PARTIES

(1) BLM

The BLM agrees to:

- a) Invite the County to participate as a cooperating agency when the BLM is preparing an environmental impact statement (“EIS”) under NEPA.
- b) Take a leadership role in expediting the review of alternative energy proposals, consistent with the Energy Policy Act of 2005 (*PL 109-58*) and subsequent BLM guidance on alternative energy projects, including WOIM 2006-216, Wind Energy Development Policy and WOIM 2007-097, Solar Energy Development Policy, (which are intended to increase renewable energy production on Federal land to assist moving the country towards energy independence), and consistent with NEPA requirements, other applicable environmental laws and regulations, and the California Desert Conservation Area Plan (1980, as amended).
- c) Through the BLM Responsible Official, cooperate with the County to the fullest extent possible to reduce duplication between federal, state, local and tribal requirements. Cooperation may include the following: establishing and maintaining common databases; formulating joint planning processes; participating in joint science investigations; holding joint public meetings and hearings; and undertaking joint environmental assessment level and joint EIS level analyses using joint lead or cooperating agency status.
- d) Provide staffing resources dedicated to coordinating input with the County in processing these applications.
- e) Provide an overall contact for alternative energy projects in the County who will provide regular briefings and updates to the County.

- f) Coordinate with the County regarding public participation activities for joint documents.
- g) Provide opportunity for a County representative to serve on an interdisciplinary team (ID Team) for each EIS and provide key members of its staff to participate, to develop the EIS, analyze impacts and coordinate support activities for each effort.
- h) Make available to the County information to be used in preparation of each EIS covered under this MOU, subject to any non-disclosure provisions as required by statute.
- i) Discuss with the County requirements of federal and state statutes, regulations, policies or applicant's proposals that may result in inconsistencies with the County General Plan, and facilitate resolution of identified conflicts, as requested by either Party.
- j) Consult with the County regarding establishment of relative priorities or other appropriate strategies if the current and/or projected workload of renewable energy projects exceeds the BLM's or the County's ability to provide the services specified in this MOU in a timely manner.
- k) Take the lead role for consultation with the U.S. Fish and Wildlife Service under the federal Endangered Species Act (as amended).
- l) Take the lead role for consultation with the State Historic Preservation Officer under the National Historic Preservation Act.
- m) Take the lead role for consultation with Native American Tribes.

(2) County

The County agrees to:

- a) Expedite the review of alternative energy proposals, consistent with CEQA requirements, other applicable environmental laws and regulations, and the County General Plan and Development Code (as applicable, and consistent with California Senate Bill SB 1078, approved 12 September 2002 (California Public Utilities Code, Sections 387 et. seq.), and the Renewables Portfolio Standards Program authorized under that Act, and subsequent Energy Report updates (which have set the goal of increasing the percentage of renewable energy in the State's electricity mix to 20 percent by 2010, and to 33 percent by 2017).
- b) Participate in the NEPA process as a Cooperating Agency subject to NEPA regulations in 40CFR Parts 1501.6, 1506.2 and 1508.5. On any specific project covered under this MOU that the County chooses not to participate as a formal Cooperating Agency, it will so inform BLM as soon as feasible, but no later than 30 days after release of the Notice of Intent.
- c) Provide resources including staffing for its participation as a Cooperating Agency in the processing of the aforementioned projects as more fully described in this MOU. If the

County is unable to provide staffing resources as identified below, it may notify the BLM in writing of the specific responsibilities it will be unable to fulfill, on a project-specific basis.

- d) Assign a representative to serve as liaison for the County in each EIS/Environmental Impact Report (“EIR”) effort in which the County has an interest but is not the CEQA lead agency. This representative will participate in the following activities as County resources allow:
- (1) Participate as a full member of the ID Team, including in public scoping, comment review and response, and document development activities.
 - (2) Attend scheduled ID Team meetings.
 - (3) Submit written assignments as required within specified deadlines and in proper format.
 - (4) Keep the County Supervisors apprised of EIS/EIR efforts and direction as documents are developed.
 - (5) Provide specific expertise and input on planning, access issues, social and economic data, and other areas of special expertise relevant to each EIS/EIR effort.
 - (6) Discuss with the ID Team apparent inconsistencies between the County General Plan and the policies, plans, and programs of the CEC or BLM during the development of EIS/EIR alternatives.
 - (7) Notify the CEC and the BLM in writing of apparent inconsistencies as early as possible in the planning process, but no later than during the Draft EIS/EIR comment period.
- e) Assign a representative to serve as County liaison with the BLM in each EIS/EIR effort on projects where the County is the CEQA lead agency and as identified in Paragraph “d” above. This liaison will also provide timely feedback on key project-specific documents that govern the scope, timeframe and parameters for the EIS/EIR analysis, including but not limited to:
- (1) Additional information needed for County applications to initiate a joint EIS/EIR environmental review process;
 - (2) Participation in the development of the Scope of Work for selection of the Third-Party Contractor for environmental document preparation, consistent with County policies, and in the selection of the contractor including providing any concerns about prospective contractors based on their demonstrated EIR capabilities;
 - (3) Participation in development of plans for preparation, outreach, and overall scheduling for project processing as they relate to EIR requirements;

- (4) Inclusion of strategies for any pertinent anticipated General Plan amendments or exceptions, if applicable;
 - (5) Review of Federal Register Notices required by NEPA for development and availability of EIS documents, for inclusion of pertinent CEQA requirements; and
 - (6) Preparation and coordination of any supplemental notices or news releases required by the CEQA lead agency for EIR documents.
- f) Provide adequate information to the BLM regarding analysis of issues of concern for projects covered under this MOU.
 - g) To the best of its ability, ensure the participation of all essential County personnel and decision makers at appropriate times during the preparation of joint environmental documents and associated permit evaluation processes.
 - h) Work closely with the BLM to adjust priorities and schedules in order to make optimal use of available staff resources.

D. THE BLM AND COUNTY MUTUALLY AGREE THAT:

- (1) On projects within the County's jurisdictional boundaries where BLM is serving as the lead federal agency for processing and compliance with NEPA, the County may, at its election, participate as a Cooperating Agency on those projects.
- (2) On projects within the County's jurisdictional boundaries where CEC is the lead agency on environmental compliance under State law, the County will provide input through the CEC, to the extent feasible.
- (3) For projects where the County is the CEQA lead agency and an EIR is required for compliance of CEQA, BLM and the County will prepare joint environmental documents to facilitate processing and resolution of issues early in the NEPA and CEQA compliance processes.
- (4) Renewable energy projects shall generally be given the highest priority of all jointly prepared environmental documents.
- (5) All environmental documents will be prepared in accordance with applicable federal and state statutes, regulations, policies, and planning instruments.
- (6) In general, the BLM is responsible only for public information regarding BLM regulatory activities, including NEPA and permit processing. The County is responsible for providing adequate public information regarding CEQA activities if it is the lead CEQA agency, and for public information related to other applicable County regulatory activities.

- (7) BLM will retain authority for approval and signature of the Record of Decision after conclusion of the EIS/plan amendment process and all subsequent permit decisions under its jurisdiction. The County will retain authority for approval and signature of the Notice of Determination after conclusion of any EIS/EIR joint process in which the County is the lead agency for compliance with State environmental law, and make associated final permitting decisions for permits under its jurisdiction.
- (8) The BLM shall have the final decision-making authority with respect to EIS decisions as the NEPA lead agency, and federal permit decisions under its jurisdiction. The County or other CEQA lead-agency shall have final decision making authority with respect to EIR decisions, and any permit decisions under its jurisdiction.
- (9) Inasmuch as this MOU does not include a funding mechanism, each party will provide its own funds for implementation of this MOU, either through appropriated funds or other approved mechanisms, including but not limited to supplemental funding provided to each party by the proponent.

E. CONTACTS

To provide for consistent and effective communication between the BLM and the County, each party hereby appoints a Principal Representative to serve as its central point of contact on matters relating to this MOU. Additional representatives from each BLM Field Office may also be appointed to serve as points of contact on specific permit actions, and the County may appoint additional points of contact on specific permit actions. The Principal Representative for each party may be changed upon written notification to the other party.

BLM Principal Representative:

Alan Stein, Deputy District Manager, Resources Division
Bureau of Land Management
California Desert District
22835 Calle San Juan de Los Lagos
Moreno Valley, CA 92553
Tel. 951-697-5382, Facsimile: 951-697-5299

County Principal Representative:

Carrie Hyke, Principal Planner, Advance Planning Division
County of San Bernardino
Land Use Services Department
385 N. Arrowhead Avenue, 1st Floor
San Bernardino, CA 92415-0182
Tel. 909-387-4371, Facsimile: 909-387-3223

F. AMENDMENT, MODIFICATION AND TERMINATION

- (1) This MOU may be modified or amended only in a writing signed by each Party.
- (2) Either party may terminate this MOU by providing written notice to the other party. Such termination shall be effective upon the thirtieth (30th) calendar day following service of such notice, unless a later date is set forth. In the event of termination, the BLM will continue to be responsible for NEPA compliance as the NEPA lead agency and the County will continue to be responsible for CEQA compliance in cases where the County is the CEQA lead agency. All baseline data compiled up to the time of termination shall be made available to both Parties for their continued processing of environmental documents and permits under each party's respective jurisdiction.
- (3) This MOU shall be effective upon the latest date of execution by any Party, and remain in effect until terminated by one or both parties or by the operation of law.

San Bernardino County Position on Desert Renewable Energy Projects

April 2010

San Bernardino County supports renewable energy and looks forward to the positive economic impact the development of these projects will bring to our local economy. The proliferation of utility scale and smaller energy projects in the Mojave Desert portions of our County have caused careful evaluation and consideration of the appropriate mitigation measures that are needed to protect the environment, future development, and the economy of our region. Projects fall into three general categories:

1. Solar thermal projects producing less than *50 Megawatts (MW)*, and all wind energy and solar photovoltaic projects on *private land* are completely within the County's land use jurisdiction.
2. Projects on *public land* (typically BLM) fall under the jurisdiction of the applicable federal land owner. The County's role in these cases is that of a cooperating agency. As such we are able to review and contribute to draft environmental documents before public distribution.
3. Solar thermal energy projects producing *50 MW or greater, whether on private or public land*, fall under the jurisdiction and procedures of the California Energy Commission (CEC) for permitting and environmental review. If on federal land, a joint permitting and environmental review is conducted with the applicable federal agency. The County may provide public comment or intervene, in which case it may participate in the evidentiary hearing proceedings with the ability to pursue legal action if necessary.

Projects in the first category described above can be conditioned to address impacts on County infrastructure and operations/maintenance costs. Projects in categories 2 and 3 will require a different approach to protect the County's interests. The most critical issues to address in these categories include the following:

- **Endangered Species Mitigation**
 - Support the implementation of an in lieu fee program that will provide much needed funding for conservation, habitat restoration, implementing species recovery strategies, and predation control, but not be used to purchase vast tracts of mitigation lands or impose additional restrictions on public or private land.
 - Oppose the acquisition of habitat at a multiplied (e.g. 3:1) mitigation ratio for desert renewable energy projects because the scale of the proposed projects would render vast portions of private land unavailable for future use and could severely limit the ability of future development to adequately mitigate its impacts.
 - Rationale to support these positions includes:
 1. Federal ownership (84%) of land within the County significantly reduces tax revenue needed to serve these public lands.

2. The County general fund already subsidizes fire service in the desert and maintains roads on BLM lands – further development of federal properties exacerbates an existing problem.
 3. Current proposed renewable energy projects could require 1 million acres for project sites and another 3 million acres or more for mitigation, effectively using up all available mitigation land for future development.
- **Mechanism to Address Infrastructure Impacts**
 - No current mechanism exists to address the impacts these projects will have on public safety facilities and transportation infrastructure in San Bernardino County.
 - Large scale development in desert areas already underfunded for public safety facilities because of significant federal ownership, will only exacerbate impacts on the County's limited financial resources.
 - The County is open to a variety of approaches to address this issue, including targeted Development Impact Fees and/or direct mitigation in the form of developer constructed facilities, and is requesting that the state and federal energy and resource agencies (Fish and Game, Fish and Wildlife Service, CEC, BLM, etc) implement policies and procedures requiring developers of utility scale renewable energy projects to enter into mitigation agreements, pay appropriate fees, or develop other mechanism to mitigate impacts on local agencies.
 - **Mechanism to Address Ongoing Operation/Maintenance Cost Impacts**
 - No current mechanism exists to address the impacts these projects will have on the ongoing costs of providing adequate public safety and transportation services, as well as the loss of recreation/tourism revenue.
 - The County is open to a variety of approaches to address this issue, including Possessory Interest Tax, Federal Lease Revenue Sharing, Community Facilities District Formation, and others. Preliminarily it appears that the ongoing operation and maintenance costs will be addressed by a Possessory Interest Tax, which should approximate property tax revenue given the expected long term of a federal land lease.
 - **Historic and Recognized Land Use Impacts**
 - Support mitigation requirements, implemented through the National Environmental Policy Act (NEPA) process, that address the loss of historic and recognized land uses including dispersed recreation (OHV use, hunting), livestock grazing, and general public access to public lands.
 - Projects that remove large areas of relatively flat, accessible land historically providing for grazing allotments, access routes to back country, and open OHV play should be mitigated by the dedication of other areas of public land to such activities or possibly the acquisition of lands that can be so dedicated.

If the County is unsuccessful in negotiating appropriate impact mitigation for these energy projects, its recourse would be to legally challenge the environmental document for projects in category 2, and to legally challenge the CEC decision for projects in category 3.

Resolution on mitigation for historic and recognized federal land multiple uses when renewable energy projects are developed on federal land

Issue: Renewable energy projects, particularly large scale solar development, remove large blocks of land from the federal estate from historic multiple use activities, including dispersed recreation, livestock grazing, and general public access. Mitigation is too often focused only on wildlife and cultural resources. Other multiple uses receive only passing mention in the environmental documentation, and are seldom offset, replaced or otherwise mitigated.

Recommended Policy: NACo requests the Bureau of Land Management and Forest Service adopt policies that provide real and substantial consideration of historic uses in the project plans and environmental documentation, and commit project developers to providing mitigation for their loss.

Background: As renewable energy development expands, the potential exclusion of historic permitted uses on Federal public lands becomes more apparent. Some projects may be benign, such as wind energy on ridge lines. Other developments such as solar on flat accessible land, remove huge areas which have historically been essential parts of grazing allotments, contained the access routes to back country, or provided areas that BLM designated as "open" for OHV recreation. Ancillary facilities and safety closures, however, for all projects, may remove areas and access from previous uses.

Some uses, such as grazing, can be mitigated through compensation or buy-out, though the effect will be a reduction from past use. There may be offsetting economic value from the energy project, but it is essential that benefits and losses both be weighed in the NEPA process and the process commit the developer to providing such mitigation.

Access through project areas cannot be addressed by the market. Development plans must provide alternate access routes. OHV open areas, if such has been legitimately provided in BLM or FS land use plans, should be similarly mitigated for, by designation of other appropriate areas or the acquisition of areas by the developer for such dedication and designation.

Failure to provide at least a degree of mitigation can result in sprawling of dispersed uses to areas of private land, encouraging trespass, and requiring engagement of law enforcement at high cost to both the land management agencies as well as local government.

NACo does not oppose development of renewable energy on public land, but wishes to assure that the NEPA process and plan of development explicitly address historic use and commit the developer to mitigation.

Policy options: None.

Fiscal Urban/Rural Impact: Renewable energy development may or may not have positive impacts on the land and the area. Projects normally result in total exclusion of the public, but their output will provide energy, employment, and increase renewable portfolios required by many states. Mitigation for impacts and use loss may add to project costs. Providing such mitigation may have an overall positive impact since the area may benefit from the new use plus retain of all or part of the current use. Providing such mitigation will also reduce the effect on local law enforcement to control trespass use that could occur if mitigation is not provided.

Sponsor: Brad Mitzelfelt, Supervisor, San Bernardino County, California

ATTACHMENT "C"

Resolution on acquisition of private land for wildlife mitigation, associated with renewable energy development, with subsequent transfer to federal agencies

Issue: Wildlife agencies (State and Federal) have required the purchase of private land and its transfer to government agencies or non-governmental organizations (NGOs) as mitigation for projects that will occupy habitat or impact species with status under Federal or State law or regulation. Such acquisitions remove private land from tax rolls. When the land becomes Federal, many counties not only lose the property tax revenue, they fall outside the limit of Payment in Lieu of Taxes (PILT) accounting. Large renewable energy development projects have exacerbated the situation.

Proposed Policy: NACo requests the land and wildlife management agencies adopt procedures that provide for project mitigation other than through land transfer from private to public ownership. When such transfers are deemed the only appropriate mitigation, and offsetting PILT will not occur, then agencies must provide that project developer would continue to pay the property tax on the transferred land, or fees in lieu of taxes, in perpetuity, unless the land were restored to private ownership at a future date.

Background: The land and wildlife management agencies have sought land mitigation for impacted habitat for a variety of species, mostly those with listed status under the Endangered Species Act. Such mitigation often is required at a multiplied factor, e.g. 3:1, in which the project developer must “donate” a multiple of private land to the permitting agency or designated entity as mitigation. Such land is removed from the tax rolls.

Many projects are located in counties in which PILT payments are capped because of already large Federal estates; thus transfers may add to the Federal estate and counties do not receive additional PILT payment reflecting the expanded Federal estate. Further, since the acquiring agencies are usually BLM or the Forest Service, counties cannot receive PILT under Sections 6904 or 6905.

Most projects utilize significant parts of local government infrastructure, including the use of county roads for project development, operation and maintenance. In addition development may use other county services, including solid waste disposal, law enforcement, public health, and fire and emergency medical response during the life of the project.

Offsetting the loss of tax base must become an essential part of renewable project mitigation, even when mitigation land is transferred to a state agency or NGO. Mitigation should be accomplished by project developers depositing funds for use to provide other kinds of mitigation investment equivalent to the amount that might otherwise be invested in land acquisition.

Policy options: Expand current PILT requirement that only additions to the Federal estate by NPS or in National Forest wilderness can receive payment under Section 6904. If such change were made, remove the 5-year limit on such payments.

Fiscal Urban/Rural Impact: While development may provide some positives to local economies, local governments should not be left with losses and costs associated with the project. The policy will assure a steady revenue stream regardless of mitigation requirements as well as funding for county infrastructure and services.

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