



BOARD OF SUPERVISORS COUNTY OF INYO

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November 29, 2011

Mr. Mike Monosmith
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5112

DOCKET

11-AFC-2

DATE NOV 29 2011

RECD. DEC 06 2011

Re: Request for Agency Participation in the Review of the Hidden Hills Solar Energy Project, Application for Certification (11-AFC-2)

Dear Mr. Monosmith:

Thank you for the opportunity for the County of Inyo (County) to participate in the Hidden Hills Solar Energy project proposed by subsidiaries of BrightSource Energy, Inc. in Charleston View in Inyo County. The project consists of two approximately 750-foot towers surrounded by 85,000 heliostats each and related facilities on private lands just west of the Nevada border and north of Old Spanish Trail, with electricity and natural gas transmission to the site through Nevada. Absent the California Energy Commission's (CEC) exclusive permitting jurisdiction, the County would exercise primary permitting authority over this project.

We look forward to continuing to work with the CEC to plan for California's energy future and this project in particular. The comments below are in response to the CEC's notice dated August 19, 2011 to provide the CEC with significant concerns and substantive requirements that would be required but for the CEC's exclusive jurisdiction for certification.

California Environmental Quality Act. The County is a Responsible Agency under the California Environmental Quality Act (CEQA) with regard to this project and, ideally, will use the Energy Commission's certified regulatory program review to assess the impacts resulting from any discretionary actions that the County may take regarding the project. The CEC is encouraged to review the County's CEQA Procedures [Inyo County Code (ICC) Title 15]¹ when processing the project to ensure substantive compliance.

County Renewable Energy Ordinance (Title 21 of the Inyo County Code). The County adopted Ordinance No. 1158 regarding renewable energy on August 17, 2010 ("Ordinance"). The Ordinance added Title 21 to the Inyo County Code. A copy of Ordinance 1158 is attached. This Ordinance encourages and regulates renewable energy development, such as that proposed by the applicant, and would, absent the CEC's exclusive permitting authority, require that the applicant obtain either a Renewable Energy Permit from or enter into a Renewable Energy Development Agreement with the County prior to commencing construction of the proposed project. For projects not subject to a Renewable Energy Permit issued by the County, the County Planning Commission issues a Renewable Energy Impact Determination.

Given the CEC's exclusive permitting jurisdiction, the Ordinance should be utilized as a guide to analyze the project, including consistency issues with the General Plan. Moreover, the Ordinance provides a description of the nature and scope of many of the substantive requirements of the County but for the CEC's exclusive

¹ The ICC may be accessed online at the following link - <http://www.qcode.us/codes/inyocounty/>

jurisdiction and serves to identify the analyses that the CEC should perform in order to determine whether these substantive requirements can be met by the applicant. Of particular note, ICC 21.08.010 indicates as follows:

For the purposes of this title, the term “environment” includes the ecological environment of the county as well as the social, aesthetic and economic environment of the county. Impacts upon the quality of life within the county are considered environmental impacts. Therefore, the definition of environment is not limited by and may be broader than environmental considerations under the California Environmental Quality Act or the National Environmental Policy Act.

The following specific references are relevant:

- The environment to be protected in the approval of the project includes the ecological as well as the social, aesthetic and economic environments of Inyo County. (ICC 21.08.010)
- Mitigation measures shall be required to offset adverse environmental impacts to include: Avoiding the impact altogether; Minimizing impacts which may not be avoided; Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment; Compensating for the impact by replacing or providing substitute resources or environments. (ICC 21.08.040; ICC 21.20.010)

The following specific references within Title 21 are relevant Laws, Ordinances, and Regulations (LORs) related to the proposed project. Many of these LORs were not identified or addressed in the Application for Certification.

Ecology:

I. General Statement of Ecological LORs:

- a. Analyze project pursuant to the California Environmental Quality Act or equivalent process. (ICC 21.20.010)
- b. Impose enforceable mitigation to limit any ecological impact to less than significant. (ICC 21.20.010)

II. Particularized Statement of Ecological LORs:

- a. The applicant will submit a reclamation/vegetation plan for the site at the time of application to provide for reclamation of the site once the facility is decommissioned or otherwise ceases to be operational. The reclamation plan shall be based upon the character of the surrounding areas and such characteristics of the property as type of native vegetation, soil type, habitat, climate, water resources, and the existence of public trust resources. (ICC 21.20.030)
- b. Financial assurances shall be posed in the form of surety bonds, irrevocable letters of credit, trust funds or like mechanisms sufficient to cover the costs of fully implementing the reclamation plan. (ICC 21.20.040)
- c. Inventory potentially affected groundwater-dependent or groundwater-influenced habitat and resources (including habitat and resources dependent on or influenced by springflow, baseflow to streams and rivers, phreatophytic meadows, phreatophytic scrub, and riparian areas); projected impacts to habitat and resources. (ICC 21.20.010)

d. Prior to the commencement of groundwater pumping, develop of monitoring, management and mitigation plan acceptable to the County. (ICC 21.20.010)

Social: the following specific references within Title 21 are relevant social LORs related to the proposed project.

I. General Statement of Social LORs:

a. Determine consistency of project with Inyo County General Plan and determine measures to ensure consistency. (ICC 21.20.060)

II. Particularized Statement of Social LORs:

a. Inventory of potentially affected private wells (including location, owner, depth, screened interval, pump depth, static water level, pumping water level, and capacity); projected impacts to private wells; plan for monitoring and mitigating adverse effects on private wells. (ICC 21.20.010)

b. Evaluate impacts of the project on housing stock in Inyo County and develop mitigation measures. (ICC 21.20.010)

[Example mitigation: obtain available City of Los Angeles Department of Water and Power land in the Owens Valley and privatize.]

c. Develop plan for monitoring and reporting of groundwater elevations in Pahrump Valley groundwater basin and plan for retiring offsetting water rights. (ICC 21.20.010)

Aesthetics: the following specific references within Title 21 are relevant aesthetics LORs related to the proposed project.

I. General Statement of Aesthetic LORS:

a. Identify aesthetic impacts of project on tourism and residential areas in vicinity of the project. (ICC 21.20.010)

b. Develop plan to offset net loss of tourism. (ICC 21.20.010)

II. Particularized Statement of Aesthetic LORS

a. Develop plan to mitigate visual impacts to residents by determining value of view shed and returning value to residents. (ICC 21.20.010)

Economics: the following specific references within Title 21 are relevant economic LORs related to the proposed project.

I. General Statement of Economic LORs:

a. Economic impacts to the County's citizens from the project shall be identified and quantified. (ICC 21.20.010)

- b. Net economic impacts shall be mitigated by avoiding the impact, or by compensating for the impact by replacing or providing substitute resources. (ICC 21.20.010)

II. Particularized Statement of Economic LORs:

- a. Reliable forecasts of revenues from proposed projects must equal or exceed the likely costs they induce on public service providers in the County. (ICC 21.20.010)

[The fiscal integrity of County public service providers must be protected by comparing reliable forecasts of the public service operating and capital costs likely to be induced by the construction and operation of proposed projects with the stream of revenue expected to flow from proposed projects during and after construction.]

- b. Proposed projects must be tested for their likely effect on the present and future job and income producing ability of private and public activities in Inyo County. (ICC 21.20.010)

[The limitations that have historically been imposed on the economy of Inyo County by the diversion of water from the Owens Valley to Los Angeles, and the restrictions placed on the use of the large amount of federally-owned land in the County, heighten the importance of considering the short and long run effect of any use of land or other resources in the County on the viability of current and future job and income producing economic activities.]

- c. The opportunity costs induced by any land-using project (whether direct use of the land by the project or use of off-site land for mitigation purposes) likely to preclude the subsequent higher and better economic use of the land, including the future losses of property taxes and other public revenues, must be mitigated prior to the construction of any project inducing such costs. (ICC 21.20.010)

[The limited amount of privately owned land in the County makes it incumbent upon the County to guard against any use of land that fails to preserve its greatest long range potential for enhancing the job and income base of the County's private economy and its public revenue base.]

County General Plan. The Inyo County General Plan² provides overall guidance and policy for land use development in the County. The General Plan has been prepared and updated with significant outreach, and incorporates important land use policy goals agreed to by the community and relevant stakeholders. The following General Plan references are relevant to the proposed project.

- *Government Element* – development of energy resources on both public and private lands is encouraged with the policies of the County to develop these energy resources within the bounds of economic reason and sound environmental health. Consider, account for, and mitigate ecological, cultural, economic, and social impacts, as well as benefits, from development of renewable energy resources. To provide for the private ownership of land by maintaining and expanding the amount of privately owned land available in the County.
- *Land Use Element* – creates opportunities for the reasonable expansion of communities in a logical and contiguous manner that minimizes environmental impacts, minimizes public infrastructures and service costs, and furthers countywide economic development goals. The project is proposed on lands designated by the General Plan Land Use Element as Open Space and Recreation (OSR) and Resort/Recreational (REC).

- *Economic Development Element* – recruit new business that will bring new jobs to the County.
- *Housing Element* – provision of adequate sites for housing, including a variety of housing opportunities.
- *Circulation Element* – the Roadways and Highways Chapter works towards a safe and efficient transportation system.
- *Conservation/Open Space Element* – the Water Resources Chapter works to protect and restore environmental resources from the effects of export and withdrawal of water resources. The Biological Resources Chapter works to maintain and enhance biological diversity and healthy ecosystems. The Cultural Resources Chapter works to preserve and promote the historic and prehistoric cultural heritage of the County. The Visual Resources Chapter works to preserve and protect unique visual experiences for visitors and residents.
- *Public Safety Element* – the Air Quality Chapter works to promote good air quality. The Flood Hazard Chapter works to provide adequate flood protection. The Noise Chapter works to limit noise levels from stationary sources, includes noise compatibility standards in Table 9-9, and limits construction near sensitive receptors.

Given the CEC's exclusive permitting jurisdiction, consistency with the General Plan should be evaluated. The County has determined that renewable solar and wind energy projects are only consistent with the State and Federal Lands (SFL), Agriculture (A), and General Industrial (GI) General Plan land use classifications. Given the project site's OSR and REC designations, the project is inconsistent with the Land Use Element. Further information about the project and evaluation will be necessary to determine consistency with other relevant General Plan goals, policies, and implementation measures.

In order to amend the General Plan, the County typically makes the following findings:

1. Based on substantial evidence in the record, the proposed General Plan Amendment is consistent with the Goals and Policies of the Inyo County General Plan.
2. Based on substantial evidence in the record, the proposed General Plan Amendment is consistent with the purposes and intent of Title 18 (Zoning Ordinance) of the Inyo County Code.

Given the CEC's exclusive permitting jurisdiction, its review should include information to make these findings for inconsistencies with the General Plan that are identified.

Zoning. The project site is zoned Open Space with a 40-acre minimum lot size (OS-40). The proposed project is not permitted within the OS district; the only zoning designation that conditionally permits power plants is the General Industrial and Extractive (M-1) zoning district. Development standards for the OS zoning district are found in ICC Chapter 18.12, and in ICC Chapter 18.57 for M-1. Additional development standards are located in ICC Chapter 18.78. Sufficient detail to definitively analyze the project relative to the Zoning Ordinance is not available, although it appears that the project conflicts with height, setback, distance between structures, and minimum lot size requirements.

If the applicants enter a renewable energy development agreement with Inyo County in compliance with ICC Title 21, the standards and procedures of the development agreement may replace those of the Zone Code in the following areas: (1) Permitted, conditional, and/or accessory uses related to a facility and its accessory uses and structures; (2) distance between buildings; (3) height, density and intensity; (4) light and glare; (5) noise; and (6) wireless communications facilities directly related to the facility. (ICC 21.20.20)

In order to amend the Zoning Ordinance, the County typically makes the following findings:

1. Based on substantial evidence in the record, the proposed Zone Reclassification is consistent with the Goals and Policies of the Inyo County General Plan.

2. Based on substantial evidence in the record, the proposed Zone Reclassification is consistent with Title 18 (Zoning Ordinance) of the Inyo County Code.

To approve a Variance, the County typically makes the following findings:

1. That there are exceptional circumstances applicable to the property involved, or to the intended use, which do not generally apply to other property in the same district.
2. That the result would not be detrimental to the public welfare, or injurious to property in the vicinity.
3. That the strict application of the regulation sought to be modified would result in practical difficulties or hardships inconsistent with, and not necessary for the attainment of, the general purposes of this title.
4. The proposed variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.
5. The proposed variance does not authorize a use or activity that is not otherwise expressly authorized by the zoning regulation governing the parcel of property.
6. The proposed variance is consistent with the Inyo County General Plan

To approve a Conditional Use Permit, the County typically makes the following findings:

1. The proposed use is necessary or desirable.
2. The proposed use is properly related to other uses and transportation and service facilities in the vicinity.
3. The proposed use would not, under all the circumstances of this case, affect adversely the health or safety of persons living or working in the vicinity or be materially detrimental to the public welfare.
4. The proposed use is consistent with the Inyo County General Plan.

Given the CEC's exclusive permitting jurisdiction, its review should include information to make these findings if inconsistencies with zoning standards or CUP requirements are identified.

Subdivision. It appears that structures are proposed to cross property lines. To rectify this situation, parcels should be merged by one or more of the following three methods: (1) subdivision, (2) merger/right-of-way abandonment, or (3) reversion to acreage. The County's subdivision regulations are found in ICC Title 16.

Public Services, Utilities and Infrastructure. The project will result in short-term construction related and long-term additional demand for public services, utilities, and infrastructure, including roads, law enforcement, fire protection, social services, and emergency medical services. Any induced housing growth in southeast Inyo County may result in additional demands for utilities, infrastructure, services, and housing in the vicinity. The County and other service providers are required to plan for and provide these services and infrastructure. Due to the rural nature of the area, provision of the services and infrastructure necessary to accommodate a project of this magnitude is lacking. It cannot be assumed that these responsibilities can be delegated to other agencies in Nevada. The CEC process should evaluate feasible means to provide these needs by providers in Inyo County.

Hydrology, Water Supplies and Water Quality. The project will result in increased water use during construction and operation. The CEC should address potential impacts of this water use on hydrology, water supplies, and water quality. Cumulative and growth-inducing impacts in these regards are particularly worrisome in light of the overdraft in the Pahrump Valley and the sensitive resources that exist in the

Amargosa River Basin, which may be hydrologically connected to water resources under the project site. If potential impacts are identified, mitigation and monitoring should be addressed through a hydrologic monitoring, management, and mitigation plan. The County has experience with such programs; plan elements typically include:

1. Prior to commencement of groundwater pumping, an inventory of potentially affected private wells is completed (including location, owner, depth, screened interval, pump depth, static water level, pumping water level, and capacity).
2. Prior to commencement of groundwater pumping, the sustainability of the water supply for the life of the project is evaluated, including the cumulative sustainability when considered with other pumping occurring or projected to occur in the groundwater basin (including California and Nevada portions of the basin).
3. Prior to commencement of groundwater pumping, projected impacts to private wells are evaluated; aquifer tests are required on any production wells constructed or operated by the applicant.
4. Prior to commencement of groundwater pumping, a plan for monitoring and mitigating adverse effects on private wells are completed and adopted. The plan should include permission agreements, as feasible, from private well owners for monitoring activities.
5. Prior to commencement of groundwater pumping, a mitigation plan is developed and approved that provides measures for mitigating adverse impacts to private well owners.
6. Prior to commencement of groundwater pumping, an inventory of potentially affected groundwater-dependent or groundwater-influenced habitat and resources is completed and approved. The inventory identifies and describes habitat and resources dependent on or influenced by groundwater, including springflow, baseflow to streams and rivers, phreatophytic meadows, phreatophytic scrub, and riparian areas.
7. Prior to commencement of groundwater pumping, projected impacts to habitat and resources identified in the above inventory are evaluated and quantified.
8. Prior to commencement of groundwater pumping, a plan for monitoring adverse effects on habitat and resources is developed and approved.
9. Prior to the commencement of groundwater pumping, a plan for mitigating adverse effects on groundwater-dependent habitat and resources is developed. The preferred form of mitigation is avoidance of adverse effects on habitat and resources by modifying, reducing, or ceasing groundwater pumping if adverse impacts are projected as a result of prior evaluations and monitoring results.
10. A plan for monitoring and reporting of groundwater elevations in the groundwater basin is developed, and a network of monitoring wells is constructed and regularly monitored, and groundwater elevations reported to appropriate entities at the applicant's expense.

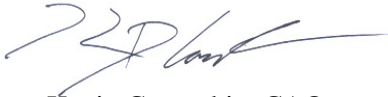
Other issues. The CEC will be evaluating other relevant issues (such as biological and cultural resources; transportation/circulation; hazards and hazardous materials; aesthetics; etc.) through its certification process. The County's jurisdiction includes these issues, and the County requests appropriate review, including consideration of mitigation measures and/or alternatives to address any potentially significant impacts.

Conclusion. Thank you for your continued efforts to include the County in this important planning project. We plan to provide the CEC with additional information about the project's impacts on the County throughout the process. In response to the question in your August 19, 2011 letter whether there is a reasonable likelihood that the proposed project will be able to comply with the County's applicable substantive requirements, the

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California Energy Commission
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answer will depend on the project proponent's willingness to supply relevant information to the CEC and its willingness to meet the County's requirements to mitigate the impacts of the project. If you have any questions or the County can provide any additional information at this time, please call me at (760) 878-0292 or email me at kcarunchio@inyocounty.us.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Carunchio', with a stylized flourish at the end.

Kevin Carunchio, CAO

Attachment

cc: Board of Supervisors
Department Heads
Greg James
Nina and Claude Gruen
BrightSource Energy, Inc.

ORDINANCE NO. 1158

AN ORDINANCE OF THE INYO COUNTY BOARD OF SUPERVISORS TO ADD TITLE 21 OF THE INYO COUNTY CODE TO ENCOURAGE AND REGULATE THE DEVELOPMENT OF RENEWABLE ENERGY RESOURCES WITHIN INYO COUNTY, TO AMEND TITLE 2, SECTION 2.40.070 OF THE INYO COUNTY CODE AND TO ADD SECTION 20.08.120 TO TITLE 20 OF THE INYO COUNTY CODE

The Board of Supervisors of the County of Inyo ordains as follows:

SECTION 1 DECLARATIONS

- A. The County of Inyo ("County") supports and encourages the responsible utilization of its natural resources, including the development of its solar and wind resources for the generation and transmission of clean, renewable electric energy.
- B. The increased use of solar radiation and wind to generate and transmit clean, renewable electric energy is a benefit not only to the citizens of the County, but also to citizens of California and the United States.
- C. The development of solar and wind resources to generate and transmit clean renewable electric energy for use in and outside the County, can provide a great benefit to the citizens of the County by providing employment in the County and increasing economic activity within the County.
- D. The large scale development of solar and wind resources to generate and transmit clean, renewable electric energy within the County will have significant beneficial and adverse impacts on the environment, economy and way of life of the County.
- E. Potential adverse impacts resulting from the development of the County's solar and wind resources may include, but are not limited to, the following:
 - 1. During construction, there will be an increase in air pollution and noise and impacts to vegetation, wildlife, public trust resources and/or archaeological sites due to ground disturbance and vegetation removal. Wear-and-tear on County roads will increase due to the delivery of construction materials. Due to new construction workers, demand for already scarce housing will increase, as will the demand for domestic water and sewage disposal, health and emergency services and law enforcement services.
 - 2. Following construction, the disturbance of large areas of land will impact native vegetation, wildlife and habitat, including sensitive plants, wildlife and air quality, as well as disrupting ranching, animal husbandry, other agricultural activities, access, and other existing land uses. Due to the use of water for cooling and other operational purposes, the County's water resources may be depleted which may affect vegetation, wildlife and habitat. Scenic views may be blocked or degraded, which may affect the attractiveness of the County for tourism. Wind generation will impact wildlife, including birds. Other impacts may result, including, but not limited to, light and glare, noise, and increased demand for housing, utilities, and public services.
- F. The County has a responsibility to exercise its full authority to protect the health, safety and welfare of its citizens and to protect the County's environment, including its public trust resources, by requiring that the adverse impacts of the development of the County's solar and wind resources to generate and transmit clean, renewable electric energy are avoided or acceptably mitigated.

- G. The County has a responsibility to exercise its full authority to ensure that its citizens and its environment do not bear an undue burden as a result of the development of the County's solar and wind resources to generate and transmit clean, renewable electric energy.
- H. The County has a responsibility to exercise its full authority to ensure that the producers and users of electrical energy generated from solar and wind resources in the County offset the cost to the County of increased services necessitated as a result of the generation and transmission of such power and that the citizens of Inyo County equitably share in the benefits resulting from the use of such resources.
- I. The County has a responsibility to promote economic development in the County including attracting, expanding and retaining businesses which generate electricity, businesses that consume electricity, businesses that create living wage jobs, businesses that provide goods and services contributing to self-sufficiency for the County and its businesses and residents, and businesses which generate taxes and other revenues to maintain and enhance governmental and educational services to residents and businesses of the County.
- J. To facilitate the development of renewable electric energy in the County it is desirable to encourage agreements between developers of such projects and the County that expedite the approval and construction of renewable electric energy projects and that allow flexibility in the application of the County land use standards in appropriate circumstances.
- K. In order to encourage and support the development of the County's solar and wind energy resources for the generation of clean, renewable electric energy while, at the same, establishing reasonable regulation of such development to protect the health, safety and welfare of its citizens and to protect the County's environment, including its public trust resources, this Board deems it appropriate and proper to adopt this Ordinance.

SECTION 2 CALIFORNIA ENVIRONMENTAL QUALITY ACT

The adoption of this Ordinance is a discretionary activity of the County; however, the adoption of this Ordinance does not have a potential for causing a significant effect on the environment; therefore, the adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA"). This finding is based upon the following:

- A. Section 15061(B)(3) of the CEQA Guidelines provides that where it can be seen with certainty that an activity will not have a significant effect on the environment, the activity is not subject to CEQA.
- B. The adoption of this Ordinance does not have a significant effect on the environment since it only establishes reasonable regulation of certain projects in a manner that protects the health, safety and welfare of the County's citizens and protects the County's environment, including its public trust resources.
- C. The adoption of this Ordinance does not approve the construction of any project that may have a significant effect on the environment.
- D. Before any project that is subject to this ordinance can be approved or constructed, there will have to be compliance with CEQA with regard to such project.

SECTION 3 ADDITION OF TITLE 21

Title 21, “Renewable Energy Development,” is added to the Inyo County Code as follows:

CHAPTER 21.04

TITLE, AUTHORITY AND PURPOSE

21.04.010 Title

This title shall be known as the Inyo County Renewable Energy Ordinance.

21.04.020 Authority

Article XI, section 7 of the California Constitution empowers Inyo County (“County”) to make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws. The County’s police powers extend to all lands within the County. The police powers of the County of Inyo include:

- A. Protection of the environment of Inyo County, including biological and other natural resources, aesthetics, recreational attractiveness and availability, traditional social activities and values of the citizens of the County, housing, public services, utilities, and economic potential within the County.
- B. Traditional authority over the use of land within the County, where such authority is not preempted by federal or state law.
- C. The public trust doctrine under which the County is empowered to exercise its police power to protect natural resources such as streams, lakes, marshlands, tidelands, wildlife and other resources.

21.04.030 Purpose

- A. It is in the public interest to support, encourage and regulate the development of solar and wind resources for the generation and transmission of clean, renewable electric energy. By this ordinance, the County intends to: (1) support and encourage the responsible development of its solar and wind resources to generate and transmit clean, renewable electric energy while protecting the health, safety and welfare of its citizens and its environment, including its public trust resources, by requiring that the adverse impacts of such development are avoided or acceptably mitigated, (2) recover the County’s costs of increased services resulting from such development, and (3) ensure that the citizens of Inyo County equitably share in the benefits resulting from the use of such resources.
- B. To support, encourage and facilitate the responsible utilization of its solar and wind resources for the generation and transmission of clean, renewable electric energy, the County encourages potential developers of such resources to work with the County and to enter into a mutually agreeable renewable energy development agreement in lieu of applying for the issuance of a renewable energy impact determination or a renewable energy permit.

CHAPTER 21.08

DEFINITIONS

21.08.010 Environment

For the purposes of this title, the term environment includes the ecological environment of the County as well as the social, aesthetic and economic environment of the County. Impacts upon the quality of life within the County are considered environmental impacts. Therefore, the definition of environment is not limited by and may be broader than environmental considerations under the California Environmental Quality Act or the National Environmental Policy Act.

21.08.020 Electric transmission line

Electric transmission line means any electric powerline within Inyo County carrying power from a photovoltaic, solar thermal or wind energy powerplant located within or outside Inyo County to a point of junction with an interconnected transmission system. Electric transmission line does not include any replacement on the existing site of existing electric powerlines with electric powerlines equivalent to such existing electric powerlines or the placement of new or additional conductors, insulators, or accessories related to such electric powerlines on supporting structures in existence on the effective date of this Title or certified pursuant to this Title.

21.08.030 Facility

Facility means any electric transmission line, solar thermal powerplant, photovoltaic powerplant, or wind energy powerplant to be constructed in Inyo County. A facility does not include a “solar energy system” or a pilot or proof of concept powerplant.

21.08.040 Mitigation

Mitigation refers to mitigation of adverse environmental impacts and includes:

1. Avoiding the impact altogether by not taking a certain action or parts of an action,
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation,
3. Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment,
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action,
5. Compensating for the impact by replacing or providing substitute resources or environments.

21.08.050 Modification of an existing facility

A modification of an existing facility is an increase in the electric generating capacity of an existing facility or electric transmission line by 10 percent or more.

21.08.060 Person

Person means any natural person and any corporation, partnership, association, public entity and any other entity with legal existence under California law. Person also includes any city, county, public district or agency, the state or any department or agency thereof, and the United States and any department or agency thereof.

21.08.070 Photovoltaic powerplant

Photovoltaic powerplant means an electrical generating facility in which the total energy output is from the direct conversion of solar energy into electricity and which transmits a portion of the electrical energy off the site of the facility. The definition of a photovoltaic powerplant does not include a “solar energy system.”

21.08.080 Pilot or proof of concept powerplant

A pilot or proof of concept powerplant is a powerplant with a capacity of five megawatts or less that is designed and constructed to test the feasibility of constructing and operating larger capacity facilities.

21.08.090 Public trust resources

Resources protected by the “public trust doctrine” are as defined by statute and the courts. Such resources include tidelands, navigable bodies of water, tributaries to navigable bodies of water, wildlife and wildlife habitat.

21.08.100 Renewable energy development agreement

Renewable energy development agreement means an agreement for the development of a facility entered into by the County and a developer of a facility in lieu of a renewable energy permit or a renewable energy impact determination. A renewable energy development agreement shall be processed in the same manner as a development agreement described in Title 20 of this Code except that the County Planning Commission will not be involved in the consideration, approval or review of such agreements, nor will the Planning Commission be the County agency for the purpose of California Environmental Quality Act review and processing for such projects. Further, a renewable energy development agreement may be exempted from the annual review provisions of Title 20, section 20.08.050 if the renewable energy development agreement contains the enforcement provisions set forth in sections 21.24.10 to 21.24.080 of this Title. The County Planning Director is the point of contact regarding a renewable energy development agreement. Renewable energy development agreements must include a reclamation plan, acceptable financial assurances, be consistent with the County General Plan, be approved by the Board of Supervisors, which will be the review and processing agency for compliance with the California Environmental Quality Act, and must include provisions acknowledging that the agreement is enforceable by injunctive relief contractual remedies and other remedies provided by law and equity.

21.08.110 Small wind energy conversion system

Small wind energy conversion system is as defined in section 18.79.040 of this Code. As defined in that section, a small wind energy conversion system means a facility consisting of a tower, wind turbine generator with blades, guy wires and anchors, and associated control and conversion electronic equipment to convert wind movement into electricity, and that is incidental and subordinate to another use on the same parcel. A facility shall be considered a small wind energy conversion system if it supplies electrical power solely for on-site use; however, a facility shall also be considered a small wind energy conversion system if it is located on a parcel that also receives electrical power supplied by a utility company and any excess electrical power generated by the small wind energy conversion system not then needed for on-site use, is used by the utility company in exchange for a reduction in the cost of electrical power supplied by that company to the parcel for on-site use. No net revenue to the owners shall be produced by such excess electrical power generation.

21.08.120 Solar energy system

A solar energy system has the same meaning as set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the California Civil Code and as used in Section 65850.5 of the California Government Code.

21.08.130 Solar thermal powerplant

Solar thermal powerplant means an electrical generating facility in which a portion of the total energy output is from solar energy converted to heat to produce electricity and which transmits a portion of the electrical energy off the site of the facility. The definition of a solar thermal powerplant does not include a “solar energy system.”

21.08.140 Wind energy powerplant

Wind energy powerplant means an electrical generating facility that converts wind energy into electricity which is transmitted off the site of the facility. A wind energy powerplant does not include a small wind energy conversion system or windmills that do not generate electricity.

CHAPTER 21.16

GENERAL PROVISIONS

21.16.010 Renewable Energy Permit

Any person who proposes to construct a facility within the County or modify an existing facility within the County shall, prior to the commencement of construction or modification, first apply for and obtain from the County Planning Commission a renewable energy permit, unless specifically exempted from such requirements by this Title or by state or federal law.

21.16.020 Renewable Energy Impact Determination

Any person who proposes to construct a facility within the County or modify an existing facility within the County who is not subject to a renewable energy permit issued by the County for the facility, shall, prior to the commencement of construction or modification, first apply for and obtain from the County Planning Commission a renewable energy impact determination that identifies environmental and other impacts expected to result from such project and mitigation for those impacts. As part of its analysis, the County Planning Commission shall determine whether the project is consistent with the County general plan. The goal of the renewable energy impact determination is to ensure that mitigation measures that would otherwise be addressed in a renewable energy permit and/or renewable energy development agreement that are identified pursuant to the renewable energy impact determination are, to the extent possible, incorporated into any approval of the facility granted by a state or federal agency.

21.16.030 Exemptions

Any person applying for a renewable energy permit need not apply for a renewable energy impact determination. Any person who has a renewable energy development agreement with the County for the construction or modification of a facility need not apply for a renewable energy impact determination or a renewable energy permit for the facility that is the subject of the renewable energy development agreement.

21.16.040 Applications

An application for a renewable energy impact determination or a renewable energy permit shall be filed and processed in the same manner as land use and conditional use permit applications submitted to the County as provided in section 18.81.160 to 18.81.300 of this Code.

21.16.050 Application fees

An applicant for a renewable energy impact determination and/or permit shall pay fees and costs to the County Planning Department as provided in Chapter 3.60 of this Code. The fee for either a renewable energy impact determination or a renewable energy permit shall be equal to the fee charged for a conditional use permit.

21.16.060 Application processing procedures

Upon completion of the County's environmental review process and the filing of all required documents, a noticed public hearing will be scheduled and conducted by the County Planning Commission to consider issuance of a renewable energy impact determination or to consider issuance of a renewable energy permit. Such a hearing will be scheduled and conducted in accordance with this Title and Chapter 18.81 of this Code.

21.16.070 Appeals

Appeals of an action by the County Planning Department or the County Planning Commission shall be in conformance with the procedures described in sections 18.81.270 to 18.81.300 of this Code.

CHAPTER 21.20

MINIMUM REQUIREMENTS FOR RENEWABLE ENERGY IMPACT DETERMINATIONS AND RENEWABLE ENERGY PERMITS

21.20.010 Mitigation measures

As a condition to the issuance of a renewable energy impact determination or a renewable energy permit, the County Planning Commission may, in the case of a renewable energy impact determination, incorporate, and in the case of a renewable energy permit, impose such reasonable and feasible mitigation measures as it finds to be necessary to protect the health, safety and welfare of the County's citizens, the County's environment, including its public trust resources, and to ensure that the County and its citizens do not bear an undue financial burden from the project.

21.20.020 Development standards

In lieu of imposing the standards and procedures set forth in Title 18 concerning: (1) permitted, conditional, and/or accessory uses related to a facility and its accessory uses and structures, (2) distance between buildings, (3) height, density and intensity, (4) light and glare, (5) noise, and (6) wireless communications facilities directly related to the facility, with regard to renewable energy development agreements, the County Board of Supervisors shall incorporate, and with regard to renewable energy permits, the County Planning Commission shall impose, such standards as are deemed appropriate and may incorporate or impose such other standards and mitigation measures as are deemed necessary. Except for those exceptions specified in the preceding sentence, any facility for which a renewable energy development agreement or a renewable energy permit is required shall, to the extent allowed by law, be governed by the standards and/or procedures in Title 18.

21.20.030 Reclamation plan

Any person who submits an application for a renewable energy impact determination or a renewable energy permit shall, at the time of the submission of the application, submit a plan for reclamation/revegetation of the site of the facility once the facility is decommissioned or otherwise ceases to be operational. The reclamation plan shall be based upon the character of the surrounding area and such characteristics of the property as type of native vegetation, soil type, habitat, climate, water resources, and the existence of public trust resources. Reclamation plans issued pursuant to this chapter shall run with the land affected thereby and shall be binding on all successors, heirs and assigns of the applicant.

In the case of the issuance of a renewable energy impact determination, the County Planning Commission shall incorporate into the determination, and in the case of a renewable energy permit, shall impose as a condition of approval, a plan for the reclamation/revegetation of the site of the facility at the time that the facility is decommissioned, or otherwise ceases to be operational, and shall establish site-specific criteria for evaluating and monitoring compliance with the approved reclamation plan.

21.20.040 Financial assurances

As a condition to the approval of a renewable energy permit, in order to ensure that reclamation will proceed and be accomplished in accordance with an approved reclamation plan, the County Planning Commission shall require financial assurances from the applicant as provided below:

- A. Financial assurances may take the form of surety bonds, irrevocable letters of credit, trust funds or other mechanisms.
- B. Public agencies may satisfy financial assurance requirements by using “pledges of revenue” or “budget set aside” as acceptable financial assurances mechanisms.
- C. The financial assurances shall remain in effect for the duration of the operation and any additional period until reclamation is completed.
- D. Financial assurances shall be sufficient to cover the costs of fully implementing the reclamation plan.
- E. The financial assurances shall be made payable to Inyo County and any other affected public agency. However, if a facility has received approval of its financial assurances from a public agency other than the county, the county shall deem those financial assurances adequate for purposes of this section, or shall credit them toward fulfillment of financial assurances required by this section, if they are made payable to the public agency, the county, and otherwise meet the requirements of this Title.
- F. If a permitted facility is sold or ownership is transferred to another person, the existing financial assurances shall remain in force and shall not be released by the County until new financial assurances are secured from the new owner and have been approved by the County.
- G. The release of financial assurances shall be with the concurrence of all agencies named on the financial assurance. The criteria for release of financial assurances, or part of the financial assurances, shall be made part of the reclamation plan. In no case shall the financial assurance be released until reclamation has been completed.
- H. The amount of financial assurances shall be reviewed annually, or as deemed necessary, by the County Planning Commission and adjusted, if required, to ensure that the assurances are sufficient to cover the costs of fully implementing the reclamation plan.

21.20.050 Term of permit

Each applicant for a renewable energy permit pursuant to this Title shall specify in the application the duration or term of the permit requested. The County Planning Commission shall determine the term of the permit if it grants the permit.

21.20.060 Consistency with the Inyo County General Plan

Prior to the issuance of renewable energy impact determination or the granting of a renewable energy permit, the Inyo County Planning Commission must find that the proposed facility is consistent with the Inyo County General Plan. Prior to entering into a renewable energy development agreement, the County Board of Supervisors must find that the proposed facility is consistent with the Inyo County General Plan.

21.20.070 Health safety and welfare of the County's citizens

Prior to the issuance of a renewable energy impact determination or the granting of a renewable energy permit, the County Planning Commission must find that, through the imposition of mitigation measures, the approval of a reclamation plan, the receipt of adequate financial assurances, and by other conditions incorporated into the determination or imposed upon the permit, the health, safety and welfare of the County's citizens, the County's environment, including its public trust resources, and the County's financial wellbeing, have been adequately safeguarded.

CHAPTER 21.24

ENFORCEMENT

21.24.010 Prohibition

No person shall construct a facility without first obtaining a renewable energy development agreement, a renewable energy permit or a renewable energy impact determination and no person shall operate a facility in violation of a renewable energy permit or renewable energy development agreement.

21.24.020 Notice

Where it appears to the County Planning Department that a facility is in violation of any condition of a renewable energy development agreement, a renewable energy permit, an approved reclamation plan or any applicable statute, regulation or ordinance, the Planning Department shall serve formal notice to the facility operator and/or owner stating the nature of the violation and the specified time frame to correct the violation before an order is issued.

21.24.030 Timing of remedy

The time within which the facility operator and/or owner must commence correction of the violation shall be sooner than sixty days from the notice of violation.

21.24.040 Order

An order shall be issued if the facility operator and/or owner fails to comply with the notice within the specified time limit. Not sooner than thirty days after the date of the order, a hearing shall be held by the County Planning Director or his designee, for which at least ten days' written notice has been given to the facility operator and/or owner. The order shall not take effect until after the hearing.

21.24.050 Failure to comply

Failure to comply with the order shall be subject to an order setting administrative penalties and permit modification or revocation. Penalties shall be assessed from the date of original noncompliance.

21.24.060 Penalty

In determining the amount of administrative penalty, the County shall take into consideration the nature, circumstances, extent and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters as justice may require.

21.24.070 Payment of penalty

Orders setting administrative penalties and revoking or modifying the determination or permit shall become effective upon issuance thereof. Payment of penalties shall be made to the Planning Department unless the affected facility operator and/or owner files an appeal with the County Board of Supervisors within ten days of the issuance of such administrative penalties. If after the hearing, the Board affirms an order setting administrative penalties, the facility operator and/or owner shall pay the administrative penalties set by the Board's order within thirty days of the service of that order. A permit modification or revocation shall become effective thirty days after the Board's order.

21.24.080 Enforcement authority

The provisions of this chapter shall be enforced by the County Planning Director or his designated appointee. Violations of section 21.24.010 or other provision of the chapter may be prosecuted by the Inyo County District Attorney.

21.24.090 Additional remedies

Notwithstanding the foregoing, a violation of this chapter may be enforced by the County by the use of any legal or equitable remedy available to the County.

CHAPTER 21.28

SEVERABILITY

21.28.010 Severability

If any section, subsection, sentence, clause, or phrase of this Title, as applied to any person, is for any reason held to be illegal, invalid, unconstitutional, or outside the jurisdiction and/or the police powers of the County of Inyo, as determined by any court of competent jurisdiction, such decision shall not affect the validity of the Title as to other

persons. If any section, subsection, sentence, clause, or phrase of this Title is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. This Title, and each section, subsection, sentence, clause or phrase hereof, would have been enacted irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid, unconstitutional, or outside the jurisdiction and/or police powers of the County of Inyo as to certain entities or persons.

SECTION 4 AMENDMENTS OF THE INYO COUNTY CODE

- A. Title 2 (Administration and Personnel), section 2.40.070 of the Inyo County Code is amended to read as follows (additions shown in italics, deletions shown by strikeover):

2.40.070 Procedural requirements—Powers and duties.

The commission shall adopt rules for the transaction of business and shall keep records of its business transactions, findings and determinations which records shall be public records. The commission may, with the approval of the board of supervisors, appoint such other officers and employees as it deems necessary for its work, whose appointment, promotion, demotion and removal shall be subject to the same provisions of law as govern other corresponding county employees. The commission may also recommend the employment of planning consultants and other specialists for such services as it may require. *Except as provided in Title 20, section 20.08.120,* ~~the~~ commission shall perform such functions and duties and shall have such power and duties as are prescribed by law, and in particular as are prescribed in Chapter 3 of Title VII of the Government Code of the state, and amendments thereto, and in addition the commission shall perform such other functions and duties with respect to county planning matters as the board of supervisors shall refer.

- B. Section 20.08.120 is added to Title 20 (Development Agreements) of the Inyo County Code reads as follows:

20.08.120 Renewable Energy Development Agreements

Title 21, Section 21.08.100 of this Code provides that renewable energy development agreements shall be processed in the same manner entered into in accordance with the procedures set forth in Title 20 of this Code except that the County Planning Commission will not be involved in the consideration, approval or review of such agreements. Section 21.08.100 also provides that a renewable energy development agreement may be exempted from the annual

review provisions of Title 20, section 20.08.050 if the renewable energy development agreement contains the enforcement provisions set forth in sections 21.24.10 to 21.24.080 of Title 21. In accordance with section 21.08.100, the planning commission shall not be involved with the consideration, approval or review of renewable energy development permits, including related California Environmental Quality Act documents, and in a renewable energy development agreement, the Board of Supervisors may exempt the agreement from the annual review provisions of Title 20, section 20.08.050 if the agreement contains the enforcement provisions set forth in sections 21.24.10 to 21.24.080 of this Title.

SECTION 5 EFFECTIVE DATE

This Ordinance shall take effect and be in full force and effect thirty (30) days after its adoption. Before the expiration of fifteen (15) days from the adoption thereof, this Ordinance shall be published as required by Government Code Section 25124. The Clerk of this Board is hereby instructed and ordered to so publish this Ordinance together with the names of the Board voting for and against the same.

PASSED AND ADOPTED this 17th day of August, 2010.

AYES: Supervisors Arcularius, Cash, Brown, Fortney and Cervantes
NOES: -0-
ABSENT: -0-
ABSTAIN: -0-



Chairperson, Inyo County Board of Supervisors

Attest: KEVIN D. CARUNCHIO
Clerk of the Board

by: 
Patricia Gunsolley, Assistant



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**APPLICATION FOR CERTIFICATION
FOR THE *HIDDEN HILLS SOLAR ELECTRIC
GENERATING SYSTEM PROJECT*
HIDDEN HILLS SOLAR HOLDINGS, LLC**

DOCKET NO. 11-AFC-2

PROOF OF SERVICE
(Revised 11/16/2011)

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DECLARATION OF SERVICE

I, Mike Battles, declare that on, December 6, 2011, I served and filed copies of the attached Inyo County Request for Agency Participation, dated November 29, 2011. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [www.energy.ca.gov/sitingcases/hiddenhills/index.html].

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

- X Served electronically to all e-mail addresses on the Proof of Service list;
- Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "e-mail preferred."

AND

For filing with the Docket Unit at the Energy Commission:

- X by sending an original paper copy and one electronic copy, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the address below (preferred method); **OR**
- by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT

Attn: Docket No. 11-AFC-2
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
Michael J. Levy, Chief Counsel
1516 Ninth Street MS-14
Sacramento, CA 95814
mlevy@energy.state.ca.us

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Originally Signed by
Mike Battles