



California Energy Commission
Dockets Office, MS-4
Docket No. 09-RENEW EO-01
1516 Ninth Street
Sacramento, CA 95814-5512
Submitted via email to: docket@energy.ca.gov

RE: Docket No. 09-RENEW EO-01 - Comments of the Large-scale Solar Association on the Desert Renewable Energy Conservation Plan (DRECP) Alternatives and topics from the July 25 and 26 Stakeholder Meeting

The Large-scale Solar Association (LSA) appreciates this opportunity to comment on the DRECP Alternatives and key concerns with the DRECP. In addition to providing feedback on the Alternatives presented in the July stakeholder meeting, these comments identify several issues that need additional clarification and explanation as the DRECP is finalized. We recognize that this planning process is in its final stages and urge the Renewable Energy Action Team (REAT) agencies to prioritize work on these issues going forward, as resolution on these items is needed to establish a workable framework to guide development and conservation in the DRECP planning area. In this planning effort, certainty is a key need for the solar industry; the development plan must clearly state the rules and restrictions applicable to the different lands and projects within the DRECP planning area. Generally, LSA recommends incorporating the following principles into the final DRECP to ensure a smooth transition from the current permitting structure to permitting framework guided by a feasible, robust, and comprehensive DRECP-wide plan -

- Avoid disrupting or delaying pending projects in the planning area
- Provide appropriate flexibility in recognition of the significant uncertainties inherent in a long-term, landscape-level plan
- Maintain consistency with other planning efforts, as appropriate

Overall, we would like to recognize the great progress that has been made in gathering stakeholder input and developing a range of alternative scenarios. We appreciate the agencies' dedicated efforts to develop a plan that reflects the range of stakeholder interests on an expedited timeframe. While we encourage the DRECP to continue moving forward expeditiously, we have identified four priority issues where additional detail is required before the plan is completed. We strongly recommend additional stakeholder discussion on the following issues, ideally in time to ensure that the Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the DRECP can provide more clarity on these topics -

- Treatment of conservation areas and mitigation lands
- Identification and treatment of variance lands
- Treatment of pending applications
- Role of local governments

We believe further stakeholder discussion will help to resolve these key issues in a manner that allows the agencies to take into account different stakeholder concerns and provide the needed certainty for stakeholders. However, these comments provide further information on LSA's substantive concerns and information needs for each of these items in the event that the agencies elect not to move forward with additional stakeholder discussion and input.

In short, translating the alternatives presented at the July stakeholder meeting into a complete development plan requires additional work and a more thorough explanation of the rules applicable to the different categories of land within the DRECP, the relationship between the DRECP and the Solar Energy Development Programmatic Environmental Impact Statement (PEIS), the treatment of pending projects, and the participation of local governments in the DRECP.

I. DRECP Alternatives

The selection of the preferred alternative is a crucial determination that weighs on the overall success of the DRECP and its effectiveness as a framework for development and conservation/recreation in the planning area. With respect to the geography of the Development Focus Areas (DFAs), we believe that Alternative 2 should serve as the basis for the preferred alternative. With additional adjustments, Alternative 2 can provide a development and conservation plan that appropriately balances resource conflict and renewable energy goals, and provide geographic diversity in the areas captured within the DFAs. We appreciate that the geography of Alternative 2 is well-aligned with the transmission system. We have significant concerns with the geography of the DFAs in Alternative 1; Alternative 1's development areas are the most restrictive of any of the alternatives and provide minimal development flexibility.

As discussed in the California Energy Commission's "Energy Roundtable Discussion: Infrastructure Planning, Cost & Market Implications of the Desert Renewable Energy Conservation Plan," a reliable, cost-effective and low-emissions energy supply for California will depend on a diversity of both technologies and areas in which those technologies are located. The DRECP planning area is, in many ways, the "breadbasket" of renewable energy for California, with a wealth of geothermal, solar, and wind resources that would be the envy of most nations. However, in order to ensure that those resources are used wisely, and can be integrated into the grid reliably and at least cost, it is essential that the resource requirements for a variety of technologies are accommodated, and, to minimize the impact of weather variability, that weather-dependent technologies are located in diverse areas. Providing for geographic diversity is also important to avoid excessive reliance on a small number of transmission elements, which could otherwise cause the loss of a substantial quantity of California's renewable energy when transmission outages occur. Lastly, as noted by the California Public Utilities Commission, diversity is important to assuring cost-competitiveness, ensuring that ratepayers can afford the cost of the renewable energy-based portfolios that the DRECP is intended to help provide. In other words, for the DRECP to be successful, DFAs must be planned to meet the requirements of solar PV, solar thermal, and wind technologies, and must be located in divergent portions of the DRECP planning area so as to limit weather variability and transmission failure risks. Alternative 2, as proposed in the Overview of DRECP Alternatives - Briefing Materials (Briefing Materials), does not do an adequate job of this, but if supplemented with appropriate elements of Alternative 5, Alternative 2 could be made to be reasonably viable.

Beyond the geography of the DFAs, LSA believes that the variance area framework is a critical component that must be included in the preferred alternative. LSA notes that Alternative 1 is the only alternative that explicitly includes variance areas in the Briefing Materials. We believe that the variance area framework is critical to developing a long-term development and conservation plan for the DRECP planning area. The variance land framework offers flexibility needed to ensure that the DRECP plan is robust and can adjust to new information over the course of the planning horizon. For much of the land in the DRECP planning area, the information needed to make final determinations about the appropriate use of the land is simply not available at this time. For such lands, classification as a variance area is the best way to ensure that there are opportunities to gather more information and determine on a case-by-case basis the appropriate use of those lands. For instance, lands that the DRECP modeling have initially indicated to have moderate biological sensitivity may, with additional on-the-ground data, be shown either to have higher biological sensitivity or lower biological sensitivity than the modeling suggests - the DRECP needs the flexibility to adjust accordingly.

II. Treatment of Conservation Areas and Mitigation Lands

LSA requests an explanation of the rules and restrictions applicable to the treatment of the different categories of land identified in the maps provided in the Briefing Materials. To provide the certainty needed for solar energy developers to make siting decisions, it is critical that the rules applicable to the different categories of lands in the DRECP are known. In particular, LSA recommends that further attention be placed on identifying specific reserve lands within the DRECP and explaining the rules applicable to different the “Biological Reserve Context” land categories. Also, as noted above, the DRECP must be able to adjust and adapt to new information over the course of the planning horizon. Thus, the plan must identify the areas where uncertainties exist and provide appropriate flexibility to further study those lands and determine, on a case-by-case basis, their suitability for development or conservation.

The map of the Plan-wide Biological Reserve Context includes 12 different categories of land.¹ These same categories are repeated on the “Integrated Alternative” maps for each of the five Alternatives.² While certain categories convey a certain land management regime and their compatibility (or incompatibility) with large-scale renewable development is understood (e.g., Legislatively and Legally Protected Areas & Military Lands), the maps include four different categories of “Plan-wide Conservation Areas” without any explanation of the significance of this classification. Thus, it is unclear how these lands fit in to the DRECP framework and what rules or restrictions apply to these lands.

LSA notes that the identification of these “Plan-wide Conservation Areas” is, in some instances, based solely on modeling. However, modeling may not reflect on-the-ground conditions. The plan needs to provide flexibility to ensure that, as more information is learned about conditions on the ground, the DRECP can adapt, while continuing to ensure that its original goals are met. To provide more certainty around the classification and status of conservation lands, the DRECP should distinguish between conservation areas that have absolute exclusions based on prior designations, those that may allow some limited degree of development, and those classified as

¹ See, e.g., Overview of DRECP Alternatives Briefing Materials, Plan-wide Biological Reserve Context Map, p. 11.

² See, e.g., *id.* at Alternative 1 - Disturbed Lands/Low Resource Conflict Alternative - Integrated Alternative Map, p. 32.

conservation areas based on modeling results. Further, for lands that would allow some limited degree of development, or are classified as conservation areas based on modeling, the DRECP should describe the process for considering supplemental, on-the-ground data for specific pieces of land. Where the data sufficiently demonstrates that the modeling does not accurately describe conditions on the ground, the DRECP should provide a process for reclassifying such lands.

Similarly, LSA seeks further clarification on the management of the Generalized Mitigation Contribution Areas³ identified in the Briefing Materials. In particular, we seek to understand whether these mitigation contribution areas are intended to be procured and managed as a single reserve and how the overall mitigation program for the DRECP area will be structured.

III. Identification and Treatment of Variance Lands

As noted above in the discussion of the DRECP alternatives, LSA strongly supports the variance area concept. We believe that the variance framework offers flexibility that is needed to address the uncertainties inherent in long-term, landscape-level planning processes like the DRECP.

However, in order for the variance framework to be effective, it is critical for the DRECP to clearly identify which lands are eligible for treatment as variance lands. Generally, LSA believes that non-DFA, non-mitigation lands within the DRECP that are not subject to preexisting management restrictions inconsistent with large-scale renewable development should be treated as variance lands. We believe a rough assessment of the biological sensitivity of the lands within the DRECP can provide important guidance when combined with a clear direction on which areas reach a level of biological sensitivity that justifies development limitations, and which justify development exclusion. Such information gives a rough cut at defining which lands are more appropriate for development and are less likely to have significant resource conflicts. Going forward, LSA supports the retaining flexibility in the DRECP to consider the appropriateness of development on variance lands on a case-by-case basis, subject to a consistency determination with the DRECP, compliance with all applicable environmental laws and recognizing that such lands would not be eligible for the incentives available in DFAs.

In addition, LSA recommends that the DRECP be consistent with the PEIS regarding the PEIS's identified variance lands and treatment of those lands. The DRECP should avoid placing any further restrictions or burdens on variance lands identified in the PEIS.

IV. Treatment of Pending Applications

LSA requests explanation of the treatment of pending applications in the DRECP planning area. Due to the progress of the PEIS in planning for public lands in the DRECP areas and addressing the treatment of pending applications, we offer specific recommendations for the treatment of pending applications on public land and separate recommendations for those on private lands.

For public lands, we request that the DRECP's treatment of pending applications be consistent with the PEIS. Under the PEIS, pending applications include those filed in solar energy zones (SEZs) prior to June 30, 2009 and in variance and/or exclusion areas before October 28, 2011

³ See *id.* at Generalized Mitigation Contribution Areas - Working Map, p. 63.

(publication of the Supplement to the Draft PEIS).⁴ The PEIS treats all of the pending applications under the rules existing prior to the adoption of the Final PEIS.⁵

For private lands, we request that pending applications include all applications filed prior to the publication of the final DRECP for public comment. Section 8.9 of the DRECP Planning Agreement⁶ addresses two different categories of projects - Existing Projects and Interim Projects. LSA requests that the DRECP (1) reaffirm the Planning Agreement commitments for Existing Projects and Interim Projects and (2) explicitly state that all applications filed in advance of the publication of the final DRECP are subject to the interim process.

Generally, Existing Projects include those projects with complete applications by December 31, 2011 or those eligible for American Recovery and Reinvestment Act (ARRA) funding.⁷ The Planning Agreement provides guidance on the treatment of Existing Projects by the DRECP. According to Section 8.9, “[t]he Parties acknowledge and agree that substantial progress already has been made in processing the Existing Projects and that expedited processing is necessary for these projects to achieve the national and state job-creation purposes of, and remain eligible for funding pursuant to, the federal [ARRA]. The Parties recognize that the Existing Projects will be required to comply with all applicable State and federal laws...”

For “all proposed projects except Existing Projects,” Section 8.9 of the Planning Agreement points to the “interim project process” for notification and review described in Sections 8.9.1 through 8.9.3. The process described in these sections is intended to “(1) help ensure that new renewable energy projects approved or initiated in the Planning Area before completion of the DRECP are consistent with the preliminary conservation objectives (Section 6); (2) facilitate FESA, CESA, NEPA, CEQA compliance for such interim projects that require such compliance; and (3) ensure that processing of such interim projects will be conducted by the Parties in an efficient manner, and not unduly delayed as a result of the development of the DRECP.” LSA believes that this process and these principles should apply to all projects with filed applications before the final DRECP is released for public comment.

⁴ See BLM & DOE, Final Programmatic Environmental Impact Statement (PEIS) for Solar Energy Development in Six Southwestern States - Executive Summary, FES 12-24; DOE/EIS-0403 (July 2012), p. ES-4, fn. 3.

⁵ See *id.* at ES-4.

⁶ Planning Agreement by and among the California Department of Fish and Game, California Energy Commission, United States Bureau of Land Management, and United States Fish and Wildlife Service for the Desert Renewable Energy Conservation Plan (May 2010), available at <http://www.energy.ca.gov/2009publications/REAT-1000-2009-034/REAT-1000-2009-034-F.PDF>.

⁷ California Fish & Game Code § 2069(b). Existing projects are those that meet one of the following criteria: (1) Either the Energy Commission determines that the application for certification is complete by December 31, 2011, or the lead agency for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) has determined the project permit application is complete or has issued a notice of preparation of an environmental impact report by December 31, 2011.

(2) The developer or owner of the proposed powerplant or generation facility has applied for, and would qualify for, funding under the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5). For purposes of this paragraph, “funding” means a loan guarantee made pursuant to Section 406 of the act (42 U.S.C. Sec. 16516) or a grant for specified energy property in lieu of a tax credit provided pursuant to Section 1603 of Division B of the act, which division is titled the American Recovery and Reinvestment Tax Act of 2009.

V. Role of Local Governments

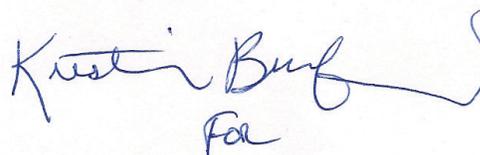
LSA recognizes that the majority of the DFA lands identified in each of the scenarios are private lands (ranging from 63-86% of the DFA lands). Thus, the role of local governments (as the lead permitting agencies for private lands) and their buy-in to the DRECP planning framework is a key issue that needs to be addressed. At this point, we understand that the counties' participation in the DRECP as signatories is uncertain. As focused discussions with local governments proceed, LSA requests that stakeholders be updated on the status of local government participation and receive additional information - and, as appropriate, opportunities to provide input - on how the DRECP may change depending on the local government participation.

VI. Additional Clarification

In addition to the key concerns identified above, LSA requests that the final DRECP clarify that DFA areas are not restricted by technology. Specifically, LSA asks that the DFA classifications on the "Technology Type" maps provided in the Briefing Materials not be viewed as limiting development to the technologies identified.

LSA would again like to thank you for this opportunity to provide comments. And, LSA further thanks the REAT agencies for their efforts to-date and the ongoing work towards creating a robust and workable framework for renewable energy development and conservation in the DRECP planning area. We look forward to continuing to work with the DRECP stakeholders and the REAT agencies to further address the issues identified herein as this process moves forward.

Respectfully,

A handwritten signature in blue ink that reads "Shannon Eddy" with a stylized flourish at the end.

Shannon Eddy
Executive Director

cc: Dave Harlow, DRECP Director
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