

STATE OF CALIFORNIA

Energy Resources Conservation and Development Commission

In re the Matter of:

APPLICATION FOR CERTIFICATION FOR
THE HIDDEN HILLS SOLAR ENERGY
GENERATION PROJECT

DOCKET NO. 11-AFC-2

**PREHEARING CONFERENCE STATEMENT
INTERVENOR, COUNTY OF INYO**

February 19, 2013

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**PREHEARING CONFERENCE STATEMENT
INTERVENOR, COUNTY OF INYO**

Intervenor, County of Inyo, a political subdivision of the State of California, hereby submits this Prehearing Conference Statement.

I.

SUBJECT AREAS COMPLETED AND RIPE FOR HEARING

The County is prepared to proceed with respect to all subject areas addressed in its testimony and rebuttal testimony. Those areas include: General Project Comments, Biological Resources, Land Use, Socioeconomics, Traffic and Transportation, Water Supply, Visual, and Noise.

II.

SUBJECT AREAS NOT RIPE FOR HEARING

As noted above, the County is prepared to proceed with all subject areas included in its comments. The County is aware that staff has not submitted rebuttal testimony in the area of Socioeconomics and is continuing to analyze the County's Opening Testimony.

III.

SUBJECT AREAS IN DISPUTE

Based on the FSA, Opening Testimony and Rebuttal Testimony filed in this matter, the subject areas the County continues to dispute are as follows:

A. GENERAL PROJECT COMMENTS

1. The County maintains that Conditions of Certification aimed at mitigating the impacts from the facility on the neighboring community of Charleston View are necessary. The FSA fails to incorporate any mitigation to lessen the impacts caused by the overall presence of the project to the local residents, some of who will reside within a few hundred feet of the facility. Title 21 of the Inyo County Codebook of Ordinance requires the adoption of mitigation measures to address impacts to the County's environment, which is defined as "the ecological environment of the county as well as the social, aesthetic and economic environment of the count." ICC Title 21, section 21.08.010. In response to the PSA, the Inyo County Board of Supervisors adopted a resolution specifying the conditions which

would be imposed under Title 21 if the project were permitted by the County. The inclusion of the Conditions of Certification set forth in that resolution and as modified in the County's Testimony is necessary to comply with Title 21, a County LORS.

B. BIOLOGICAL RESOURCES

1. The areas in dispute with respect to Biological Resources are as follows:

a. Weed Abatement: The County concurs with staff that the applicant must be financially responsible for the enforcement and abatement of noxious weeds which may travel to surrounding properties. Moreover, the County concurs with staff in that the proposed mitigation measure, such as truck washing, is necessary in order to limit the potential spread of noxious weeds which occur in Nevada and must be abated in California. The County maintains that the proposed conditions of certification contained in the FSA are necessary.

b. Mitigation Lands: The County objects to the location of any mitigation lands within Inyo County on private land. The limited supply of private land for potential economic development within the County will be further impacted should this project result in the placement of mitigation lands in the County, by either the applicant directly or by a wild life agency through a "payment in lieu" program. Should mitigation lands be sited within Inyo County, an economic analysis of such lands must be undertaken and financial mitigation provided for the lost economic opportunity to the County.

C. LAND USE

1. The areas in dispute with respect to Land Use are as follows:

a. General Plan/Zoning: The project is not consistent with the County's General Plan and Zoning. The County disputes the Applicant's interpretation of the County's General Plan and Zoning.

b. Merger: The applicant must merge the lots comprising the project site, consisting of 170 separate parcels. Absent merger, structures will be constructed over property lines. Failure to merge the lots conflicts with the County's subdivision ordinance, building standards and best practices.

c. Road Abandonment: The project site is accessible by a series of roads offered for dedication in 1974. The County maintains that the roads have been accepted by the public and, thus,

are now public roads. Due to the property right created by the public's acceptance of those roads, the roads must be abandoned by the Inyo County Board of Supervisors prior to construction.

d. Reclamation: Title 21 of the Inyo County Codebook of Ordinances requires the posting of adequate financial assurances for the purposes of reclaiming the project site. The applicant's requested modifications to the proposed Conditions of Certification contained in the FSA fails to comply with Title 21 for the reclamation of the facility at the end of its lifespan.

D. SOCIOECONOMIC

1. The areas in dispute with respect to Socioeconomic are as follows:

a. Environmental Justice: Both the FSA and the applicant's conclusions that the project does not raise environmental justice issues is incorrect. Using available demographic data, which does not include the dissimilarly situated communities of Bishop and Pahrump, Nevada, supports the findings that the project will create environmental justice issues. In addition, the conclusions reached by CEC staff and the applicant fail to include in their respective analysis that the area in question has been designated as a disadvantaged community by the California Department of Water Resources. Appropriate mitigation is necessary to address this impact.

b. Title 21 of the Inyo County Codebook of Ordinances: The FSA and applicant's testimony fails to include Title 21 as a LORS. Project approval must include Conditions of Certification which comply with Title 21, specifically the requirement that the County's service related expenses are paid by the applicant and not the residents of Inyo County. Conditions intended to ensure compliance with Title 21 are set forth in the Inyo County Board of Supervisors' Resolution 2012-29 adopted on July 17, 2012 filed in response to the Preliminary Staff Assessment and the County's Opening Testimony.

(i) Service Related Impacts: The FSA erroneously concludes that services related impact costs will be significantly less than those estimated by County elected officials and Department Heads who regular provide services to the remote region where the project is located. The County disputes those conclusions and maintains that the uncertainties presented by the remote location of the project may present significant expense to the County. Furthermore, the uncertainties of where the workforce will reside during the workweek presents the potential for serious service impact costs. Due to the uncertainty of the nature and extent of those costs, Conditions of Certification are necessary to provide a mechanism for the County to assure project related service costs are reimbursed.

(ii) Sales and Use Tax: Title 21 requires mitigation measures which will assure that the necessary project related service costs are bore exclusively by the applicant and not imposed on the County and its residents. The FSA significantly overstates the estimated sales and use tax which may flow to the County should the applicant ensure that steps are taken by the contractors and subcontractors to designate the County for purposes of sales and use tax. Moreover, as noted above, limiting the County to sales and use tax revenues fails to assure that potential service related costs which exceed those revenues are paid by the applicant.

E. TRAFFIC AND TRANSPORTATION

1. The County concurs with staff's proposed Conditions of Certification concerning the need for the applicant to monitor Old Spanish Trail from the project site to Highway 127 and repair any damage caused to that portion of Old Spanish Trail from project related traffic impacts, including workforce traffic and any heavy truck which may use that route. The County further concurs with staff with respect to the designed right-of-ways. The County objects to the request by the applicant to reconsider the necessary acceleration/deceleration lanes through a traffic analysis after licensing. The County maintains that such lanes are necessary for safety.

F. WATER SUPPLY

1. The County concurs with staff that the proposed Conditions of Certification contained in the FSA are necessary to monitor and mitigate for ground water related impacts which may result from the project. The County does not agree with the arguments raised by the applicant that the conditions are unnecessary and disagrees with the applicant's interpretation of the groundwater pump tests.

G. VISUAL IMPACTS

1. The County concurs with staff that the proposed project will present visual impacts which cannot, with mitigation, be reduced to less than significant. However, the County maintains that the significant impact to the residents of Charleston View, who will be living in the shadows of the towers, should be provided more than landscaping to minimize the impact.

G. Noise

1. The County concurs with staff's proposed conditions and does not agree with the arguments raised by the applicant that the conditions should be modified. Based on the applicant's testimony, the County believes that additional conditions should be required to ensure less than significant impacts during construction.

IV.

WITNESSES

The County of Inyo intends to offer the following witnesses:

A. Supervisor Linda Arcularius

1. Time for Testimony: 1 hour
2. Live Testimony
3. Summary: Supervisor Arcularius represents the First Supervisorial District and sits as the Chairperson of the Inyo County Board of Supervisors. Supervisor Arcularius will testify as to the potential budgetary impact to the County and its residents should the County be forced to absorb service related impact costs resulting from the project. Supervisor Arcularius will also testify as to the intent and purpose of Title 21 and those conditions necessary to comply with Title 21.

B. Supervisor Matt Kingsley

1. Time for Testimony: 1 hour
2. Live Testimony
3. Summary: Supervisor Kingsley represents the Fifth Supervisorial District, which includes the location of the project site. Supervisor Kingsley will testify as to the impacts from the location of the facility within his district, including the impacts to the communities of Tecopa, Shohone and Charleston View. Supervisor Kingsley will also testify to the financial impacts to the County should it be forced to absorb service related impact costs resulting from the project. Supervisor Kingsley will further testify as to the demographics of his district.

C. Kevin Carunchio, Inyo County Administrative Officer/Budget Officer

1. Time for Testimony: 2 hours
2. Live Testimony
3. Summary: Mr. Carunchio is the County Administrative Officer and the Budget Officer for Inyo County. He will testify as to the County's budget, the various sources of revenues and the potential impacts to County services should the County be required to absorb service related costs resulting from the project. Mr. Carunchio will also testify as to the purpose and intent of Title 21.

Further, Mr. Carunchio will testify as to the challenges faced by the County when providing services to the remote regions of the County, specifically the Charleston View area. Mr. Carunchio will also testify as to the County's efforts to reach agreement with the applicant with respect to sales and use tax revenues and potential impacts to the County.

D. Claude Gruen, Gruen, Gruen + Associates

1. Time for Testimony: 2 hours
2. Live Testimony
3. Summary: Dr. Gruen, an economist and principal in the firm Gruen, Gruen + Associates, will testify as to the socioeconomic impacts to the County as a result of the project. Dr. Gruen will specifically address the report prepared by Dr. Richard McCann, testifying as to his opinion of the accuracy and reliability of that report. Dr. Gruen will also address the service related impact costs and uncertainties from the project, both during construction and operations. Dr. Gruen will further address the lost opportunity costs to the County as a result of the reduction in the limited inventory of privately held land in Inyo County.

E. Eric Myers, Esq., MuniServices, LLC

1. Time for Testimony: 1 hour
2. Live Testimony
3. Summary: Mr. Myers is staff counsel for MuniServices LLC and specializes in sales and use tax law. Mr. Myers will testify as to the allocation of sales and use taxes to the County under various scenarios. Mr. Myers will further testify as to the potential impact to sales and use tax revenues under California Alternative Energy and Advanced Transportation Financing Authority ("CAEAFTA"). Mr. Myers will also address the limitations on the use of certain sales and use tax revenues allocated to the County.

F. Joshua Hart, Inyo County Planning Director

1. Time for Testimony: 2 hours
2. Live Testimony
3. Summary: Mr. Hart is the Planning Director for the Inyo County Planning Department. Mr. Hart will testify as to the fact that the proposed project fails to comply with the Inyo

County General Plan and Zoning Code, the Subdivision Map Act, building standards and best practices. Mr. Hart will further testify to the need for the 170 parcels to be merged, the demographic composition of the area, including recent census data. Mr. Hart will also testify as to the County's standards as to potential noise related impacts and necessary conditions to mitigate for those impacts. Lastly, Mr. Hart will testify as to the requirements under Title 21, including the need for a reclamation plan and the posting of financial assurances.

G. Doug Wilson, Inyo County Public Works Interim Director

1. Time for Testimony: 2 hours
2. Live Testimony
3. Summary: Mr. Wilson is the interim Director for the Inyo County Public Works Department. Mr. Wilson will address the potential impacts to Old Spanish Trail during the construction and operations of the project. Mr. Wilson will address the nature of the various roads within Inyo County leading to the project site, the anticipated route for the construction workforce and the impacts the project is likely to have on County roads, specifically Old Spanish Trail. Mr. Wilson will testify as to the need for the applicant to both monitor and repair Old Spanish Trail from the project site to Highway 127, the problems presented by heavy truck traffic and increased vehicular traffic on Emigrant Pass and the need for acceleration and deceleration lanes at the project site. Mr. Wilson will also address the potential fiscal impacts to his department as a result of this project.

H. Bob Brown, Inyo County Road Commissioner

1. Time for Testimony: 1 hour
2. Live Testimony
3. Summary: Mr. Brown is the Inyo County Road Commissioner. Mr. Brown will testify as to the network of roads located on the project site and the lack of any physical barriers or notices closing those roads. Mr. Brown will also testify as to the use of those roads by the public in general.

I. Robert Harrington, Ph.D, R.G., Inyo County Water Director

1. Time for testimony: 2 hours
2. Live Testimony

3. Summary: Dr. Harrington is a hydrologist and registered geologist and is the director of the Inyo County Water Department. Dr. Harrington will testify in support of the conditions of certification proposed in the FSA. Dr. Harrington will further testify as to the impact the project will have on the County and its potential to access grant funding under state law requiring the monitoring of groundwater basins.

J. George Milovich, Inyo/Mono Agricultural Commissioner

1. Time for Testimony: 1 hour

2. Live Testimony

3. Summary: Mr. Milovich is the Agricultural Commissioner for Inyo and Mono Counties. Mr. Milovich will testify as to the legal mandate on his department to control noxious weeds and to support the proposed conditions of certification in the FSA for weed management. Mr. Milovich will also address the jurisdiction of his department in the enforcement of weed management and the fiscal impacts to his department should the project result in an increase in monitoring and eradication in the area of the project site.

K. Bill Lutze, Inyo County Sheriff

1. Time for Testimony: 1 hour

2. Live Testimony

3. Summary: Sheriff Bill Lutze is the Sheriff of Inyo County and has worked for the Inyo County Sheriff's Department for 40 years. Sheriff Lutze will testify as to the potential impact to his department as a result of both the construction and operation of the facility. Sheriff Lutze will testify as to the necessary staffing levels to meet the demands presented by the project given its remote location and the fiscal impacts as a result of the increased staffing needs.

L. Leslie Chapman, CPA, Inyo County Auditor/Controller

1. Time for Testimony: 30 Minutes

2. Live Testimony

3. Summary: Ms. Chapman is the Auditor/Controller for the County of Inyo. Ms. Chapman will testify as to the revenues received by the County and the allocation of those revenues,

specifically the County's receipt of sales and use tax. Ms. Chapman will also testify as to the budget for Inyo County.

V.

CROSS-EXAMINATION

A. Richard McCann

1. Time for Cross-Examination: 1 hour

2. Summary: The County intends to cross-examine Dr. McCann as to the presumptions and conclusions reached in his socioeconomic analysis. Specifically, the County wishes to cross-examine Dr. McCann as to his opinion with respect to service impact costs, sales and use tax and other revenues estimated to flow to the County as a result of the project and lost opportunity costs to the County in the event private property is used for mitigation lands. The County further intends to examine Dr. McCann as to his presumptions concerning estimated expenditures in Inyo County, the anticipated impacts from the workforce, the anticipated temporary housing for the workforce and the impact the remote location of the project has on his opinions and presumptions.

B. Jennifer Scholl

1. Time for Cross-Examination: 1 hour

2. Summary: The County desires to cross-examine Ms. Scholl as to her proffered testimony as to the project's compliance with the County's General Plan and Zoning Code and other testimony offered in the applicant's land use testimony. The cross-examination of Ms. Scholl would include the legal opinion proffered by Ms. Scholl concerning the need to abandon the network of public roads located on the project site.

C. Clay Jensen

1. Time for Cross-Examination: 1 Hour

2. Summary: The County desires to cross-examine Mr. Jensen as to his proffered testimony as to the projects compliance with the County's General Plan and Zoning and other testimony offered in the applicant's land use testimony. The cross-examination of Mr. Jensen would include the legal opinion proffered by Mr. Jensen concerning the need to abandon the network of public roads located