

**PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT**

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DEVELOPMENT SERVICES AGENCY

Administrative Operations
Engineering, Surveying and Permit Services
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Roads

February 18, 2015

California Energy Commission
Dockets Office, MS-4
Docket No. 09-REVIEW E0-01
1516 Ninth Street
Sacramento, CA 95814-5512

California Energy Commission

DOCKETED

09-RENEW EO-1

TN # 74578

FEB 19 2015

File: DRECP

RE: Comments: Draft Desert Renewable Energy Conservation Plan (DRECP),
Environmental Impact Report/Environmental Impact Statement (EIR/EIS)

Dear DRECP TEAM,

Thank you for the opportunity to provide comments on the draft Desert Renewable Energy Conservation Plan (DRECP) Environmental Impact Report/Environmental Impact Statement (EIR/EIS).

As a designated representative of Kern County I have participated in the discussion and formulation of the DRECP since its beginnings in 2009. The Kern County Board of Supervisors has been briefed on the development of the DRECP and provided direction for our comments and positions on the DRECP concepts. Kern County leads California in renewable energy production projects both permitted and constructed at 9162 MW county-wide (wind and solar PV, including roof-top) with only a very small portion on BLM land. On private land, the county Board of Supervisors retains exclusive jurisdiction for the approval of commercial scale solar photovoltaic and commercial scale wind projects in consultation with the responsible agencies of the State and Federal government.

Counties have been asked to become partners in the Desert Renewable Energy Conservation Plan (DRECP) and permit holders for Incidental Take Permits and coverage for Special Species. While the DRECP was originally focused on public lands, it has proposed that areas on private land be included for consideration. Further the conservation strategy clearly includes private lands for conservation for specific species such as the Mohave Ground Squirrel and Desert Tortoise. As Solar PV and Wind energy projects on private land are exclusively the jurisdiction of local decision makers, it is important that the concerns and issues of counties be resolved in the formulation of the plan. This is a unique Natural Community Conservation Planning (NCCP) Program as it only provides coverage for one industry; renewable energy developers which provide a California wide benefit. Counties have many other constituent needs and limited land use in the desert after military and other federal/state owned lands as well as private conservation lands are eliminated from

development potential. Therefore this NCCP conservation strategy should be uniquely designed as well to ensure the future development potential and economic growth for all county private lands.

Failure to Address Kern County Concerns

The following position items were adopted by the Kern County Board of Supervisors in 2011 and have been consistently provided to the DRECP team as matters for inclusion and resolution.

- Renewable Energy Project Developer Mitigation Fee Conservation Strategy
 - ✓ No acquisition of private lands for mitigation
 - ✓ Funds should be used for enhancement of Public Lands including State owned lands.
 - ✓ Any limited acquisition of private land for corridors or special plants has to provide a monetary enhancement to the county or city where the private land is located to offset the loss of property taxes. PILT (Payment in Lieu of Taxes from the Congress) are already capped for the larger counties and therefore will not offset the loss.
 - ✓ Any elimination of multiple uses on public land (such as OHV, mining or grazing) due to a renewable energy project should be mitigated with an additional area or funding for private land development of the eliminated use. With this policy renewable energy developers will be discouraged from displacing existing land uses or be required to mitigate the loss.
- Objection to “Business as Usual” Strategy
 - ✓ Renewable energy is unlike residential/commercial development in a standard NCCP in which each county can expect some share of the growth (benefit) to offset their share of land acquisition (cost). In this case, it is possible that all the projects will occur in one county while all the mitigation for a particular species will occur in another county. Where is the balance and why participate?
 - ✓ The desert already has significant public lands (1/3 military, 1/3 BLM/State, 1/3 Private). Giving up more is not tenable for decision makers.
 - ✓ Current Recovery Plans (i.e. Desert Tortoise) and other studies have shown that the recommended measures for the recovery of a variety of species have not been a success due to lack of funding and inconsistent implementation. A focused approach is even more important now rather than adding more land that will also not have funding to be managed.

While we appreciate the extensive biological information and land use mapping the DRECP have accomplished, the fundamental elements of the conservation strategy for the plan have not completely addressed our concerns. Therefore, Kern County has declined to execute the MOU for cooperation on the DRECP and to date, have not agreed to full participation when adopted. Our renewable energy developers have not indicated that the DRECP would be useful for projects on private land and our concerns remain for our users of Public lands.

Failed Project Description

The narrative fails in all chapters to distinguish permitting authority on private land in contrast to public land leaving the reader unable to properly determine the public process for permitting. The glaring lack of discussion of local land use permitting authority is in contrast to the invitations from the Governor's office for local Board of Supervisors to participate and the 6 years of unfunded participation by staffers from each county and city in the region in numerous meetings. The document clearly states that (Page 1.3-9) projects in private land could be covered if they "...incorporate all avoidance and minimization actions identified in the DRECP CMAs" while ignoring the permit process for a local jurisdiction. The "one size fits all" imposition of mitigation beyond biological (example Page IV-2-43 on visual) is not authorized on private land by the mere fact of completing an EIR/EIS. Local government in this region all have expertise in mitigation and real world experience with utility scale wind and solar, including monitoring results to substantiate the impacts. With the exception of a small statement in chapter VI Mitigation Monitoring and Reporting Plan regarding the authority of permitting agencies to formulate mitigation on non-biological issues, there is no discussion in the document. This misleads the average reader to believe that the State and Federal governments have jurisdiction over wind and solar permitting on private lands outside specific parameters on biological issues. The document should clearly and completely amend the Project Description to be clear on the very different permitting pathways and responsibilities of agencies on private land.

The description of Kern County lands and renewable energy potential throughout the document is truncated, lacking in important details and inadequate. This lack of accuracy includes numerous statements throughout the document (example Page IV.11-13) that states that "In Kern County, the majority of the lands within the Available Development Area are county lands under agricultural, residential and open space designations. The vast majority of development in Kern County consists of wind energy development." In other areas the statement at the end is amended to read "for the expansion of wind." These statements are completely wrong and from the text it is unclear what Kern County document the preparers of the EIR/EIS used. There is no open space designation in the Kern County Zoning ordinance that has been applied to these lands in Eastern Kern, there is extensive constructed large scale solar development, wind is constrained by adopted zoning policies (never presented) to protect the military and neither wind or solar is allowed in residential designations.

In the Land Use Section, the description of Kern County comprises seven sentences and fails to include any description of the extensive renewable energy centers, the growth and necessary protections of Mojave Air and Space Port and significant mining in the area. (Page 2.5-19). The following information is provided for the record on our completed Environmental Impact Reports <http://pcd.kernds.com/planning/environmental-documents/eda> which comprise significant relevant

information on utility scale wind and solar. Each of the over 45 EIRs contain a complete description of Eastern Kern County and the permitting pathways for each type of renewable energy project. This omission is particularly affects the cumulative impact analysis that fails to accurately account for the significant operational and permitted solar PV as well as wind in Kern County.

The inaccurate characterization of local land use authority is particularly glaring in the No Action Alternative which uses the phrase “is not prohibited” when discussing how the statistics on land use were shown with no relation to county zoning descriptions or a matrix for the reader to understand the numbers or the allowable uses. It leaves an improper impression that any and all wind or solar projects are “allowed” in all zones in the Kern County zoning ordinance with no discretionary action.

An impression which has caused concern among many of our property owners that the DRECP agencies are preempting local control over wind and solar PV projects and creating a new overlay of land use regulation on private lands. A full and complete discussion of each jurisdictions permitting for wind and solar PV on private land is needed for sufficiency of this document under CEQA.

Local Land Use Interface with the DRECP

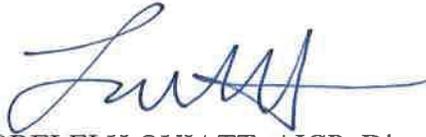
As noted above, the document fails to clearly explain the pathway for the use of this plan for an ITP and coverage as a NCCP for a project on private land under the jurisdiction of the county or a city. If the county does not execute an MOU and ask for primary jurisdiction to issue an ITP then the plan has alluded to a pathway that includes the developer of the private property going directly to California DFW for the permit. The plan appears to require that the local jurisdiction then adopt all mitigation measures from the EIR/EIS for the ITP. This is beyond the normal requirements of the current process that only requires the adoption of biological mitigations for the ITP and appropriate clearance under CEQA. Kern County requests a clear discussion of this pathway and suggests that a requirement for the developer include providing the DRECP with a letter of intent before processing with the local jurisdiction. The pathway should then include a mandated review from the DRECP, copied to the local jurisdiction, with information on the location of the project and if it actually conforms to the Development Focus Area boundary. Such a letter will provide the county an opportunity to coordinate with the CDFW and Service on necessary mitigations and preparation of environmental documentation under CEQA. Waiting until the end of the permitting process exposures both the DRECP and local government to bureaucratic roadblocks to renewable energy development.

In formulating comments, staff has discussed the DRECP with numerous stakeholders. One of the recommendations may be presented that asks for local governments to participate in a GIS based publicly available reporting system to facilitate transmission. While perhaps a useful exercise, Staff notes that the multiple requests for information on renewable energy permitting from various State and Federal agencies as well as research organizations and institutes has been a drain on Kern County staff resources. If such a clearinghouse is set up, Kern County Planning and Community Development will ask for reimbursement for costs of providing the information in formats not already available on our website.

We remain committed to our participation in the discussion and formulation of streamlined process for the promotion of renewable energy on private lands. However, at this time, based on the current Draft Desert Renewable Energy Conservation Plan (DRECP) Environmental Impact

Report/Environmental Impact Statement, I will not be recommending to the Board of Supervisors that we execute a MOU as a participation agency. We look forward to continuing the dialogue and reviewing the Response to Comments to see

Sincerely,



LORELEI H OVIATT, AICP, Director
Kern County Planning and Community Development Department

LHO:am

cc: Kern County Board of Supervisors
CAO
Inyo County Board of Supervisors
San Bernardino County Board of Supervisors
Riverside County Board of Supervisors
Los Angeles County Board of Supervisors
Imperial County Board of Supervisors
San Deigo County Board of Supervisors
Senator Dianne Feinstein
Senator Barbara Boxer
Congressman Kevin McCarthy
Congressman Steve Knight
Senator Jean Fuller
Assemblyman Tom Lackey

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Roads

March 15, 2014 - Palm Springs Meeting

Bureau of Land Management
Desert Advisory Committee (DAC)

RE: Desert Renewable Energy Conservation Plan (DRECP) – Kern County Comments

Dear DAC Members,

Thank you for the opportunity to provide comments on the Desert Renewable Energy Conservation Plan (DRECP) and the participation of the Bureau of Land Management. Supervisor Scrivner, as a member of the DAC, has asked that I provide these comments in my role as the designated stakeholder from Kern County on the DRECP Stakeholder Committee.

As a designated representative of Kern County I have participated in the discussion and formulation of the DRECP since its beginnings in 2009. The Kern County Board of Supervisors has been briefed on the development of the DRECP and provided direction for our comments and positions on the DRECP concepts. Kern County leads California in renewable energy production projects both permitted and constructed at 8142 MW county-wide (wind and solar PV, including roof-top) with only a very small portion on BLM land.

Counties have been asked to become partners in the (DRECP) and permit holders for Incidental Take Permits and coverage for Special Species. While the DRECP was originally focused on public lands, it has proposed that areas on private land be included for consideration. Further the conservation strategy clearly includes private lands for conservation for specific species such as the Mohave Ground Squirrel and Desert Tortoise. As Solar PV and Wind energy projects on private land are exclusively the jurisdiction of local decision makers, it is important that the concerns and issues of counties be resolved in the formulation of the plan. This is a unique Natural Community Conservation Planning (NCCP) Program as it only provides coverage for one industry; renewable energy developers which provide a California wide benefit. Counties have many other constituent needs and limited land use in the desert after military and other federal/state owned lands as well as private conservation lands are eliminated from development potential. Therefore this NCCP conservation strategy should be uniquely designed as well to ensure the future development potential and economic growth for all county private lands.

The following items have been consistently provided to the DRECP team as matters for inclusion and resolution.

- Renewable Energy Project Developer Mitigation Fee Conservation Strategy:
 - ✓ No acquisition of private lands for mitigation.
 - ✓ Funds should be used for enhancement of Public Lands including State owned lands.
 - ✓ Any limited acquisition of private land for corridors or special plants has to provide a monetary enhancement to the county or city where the private land is located to offset the loss of property taxes. PILT (Payment in Lieu payments from the Congress) are already capped for the larger counties and therefore will not offset the loss.
 - ✓ Any elimination of multiple uses on public land (such as OH, mining, or grazing) due to a renewable energy project should be mitigated with an additional area or funding for private land development of the eliminated use. With this policy renewable energy developers will be discouraged from displacing existing land uses or be required to mitigate the loss.

- Objection to "Business as Usual" Strategy:
 - ✓ Renewable energy is unlike residential/commercial development in a standard NCCP in which each county can expect some share of the growth (benefit) to offset their share of land acquisition (cost). In this case, it is possible that all the projects will occur in one county while all the mitigation for a particular species will occur in another county. Where is the balance and why participate?
 - ✓ The desert already has significant public lands (1/3 military, 1/3 BLM/State, 1/3 Private). Giving up more is not tenable for decision makers.
 - ✓ Current Recovery Plans (i.e. Desert Tortoise) and other studies have shown that the recommended measures for the recovery of a variety of species have not been a success due to lack of funding and inconsistent implementation. A focused approach is even more important now rather than adding more land that will also not have funding to be managed.

While we appreciate the extensive biological information and land use mapping the DRECP have accomplished the fundamental elements of the conservation strategy for the plan have not completely addressed our concerns. Therefore, Kern County has declined to execute the MOU for cooperation on the DRECP and to date, have not agreed to full participation when adopted. Our renewable

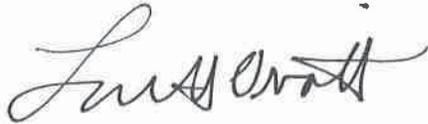
March 15, 2014

Page 3

energy developers have not indicated that the DRECP would be useful for projects on private land and our concerns remain for our users of Public lands.

We remain committed to our participation in the discussion and formulation of this new NCCP and promotion of renewable energy on private lands. Thank you for the opportunity to provide Kern County comments on the DRECP and BLM's participation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lorelei H Oviatt".

LORELEI H OVIATT, AICP, Director
Kern County Planning and Community Development Department

Cc: Supervisor Zack Scrivner 2nd District – Kern County

Lorelei H. Oviatt, AICP, Director

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Roads Department

A Draft Proposal Kern County Participation in the Desert Renewable Energy Conservation Plan (DRECP)

Counties have been asked to become partners in the DRECP and permit holders for Incidental Take Permits and coverage for other species and plants. At this time the California Energy Commission is proposed as the permit holder. While the DRECP was originally focused on public lands, it has proposed that areas on private land be included for consideration. As Solar P V and Wind energy projects on private land are exclusively the jurisdiction of local decision makers, it is important that the concerns and issues of counties be resolved in the formulation of the plan. This is a unique NCCP as it only provides coverage for one industry: renewable energy developers which provide a California-wide benefit. Counties have many other constituent needs and limited land use opportunities , in the desert after military and other federal/state owned lands as well as private conservation lands are eliminated from development potential. Therefore this NCCP conservation strategy should be uniquely designed as well.

DRAFT PROPOSAL

- Renewable Energy Project Developer Mitigation Fee Conservation Strategy
 - ✓ No acquisition of private lands for mitigation
 - ✓ Funds should be used for enhancement of Public Lands including State owned lands, or directed toward research, inventory, monitoring and recovery of species affected by the development.
 - ✓ Any limited acquisition of private land for corridors or special plants has to provide a monetary enhancement to the county or city where the private land is located to offset the loss of

property taxes. PILT (Payment in Lieu payments from the Congress) are already capped for the counties with larger public land acreage, and therefore PILT will not offset the revenue loss.

- ✓ Any elimination of multiple uses on public land (such as OHV or mining) due to a renewable energy project should be mitigated with an additional area or funding for private land development of the eliminated use. With this policy renewable energy developers will be discouraged from displacing existing land uses or be required to mitigate the loss.

- Objection to “ Business as Usual “ Strategy

- ✓ Renewable energy is unlike residential/commercial development in a standard NCCP in which each county can expect some share of the growth (benefit) to offset their share of land acquisition (cost). In this case, it is possible that all the projects could occur in one county while all the mitigation for a particular species could occur in another county. Where is the balance and why participate ?
- ✓ The Western Mojave Desert already has significant public lands (1/3 military, 1/3 BLM/State , 1/3 Private). Giving up more private acreage is not tenable for decision makers.
- ✓ Inclusion of a policy that would allow acquisition of grazing allotments on Federal lands by renewable energy developers if the land is converted to a permanent conservation purpose as part of mitigating project impacts, is an example of the kind of thinking counties are seeking.
- ✓ Current Recovery Plans (e.g. desert tortoise) and other studies have shown that the recommended measures for the recovery of a variety of species have not been a success due to lack of

funding, inconsistent implementation, and lack of appropriate monitoring of efficacy related to measures taken. A focused approach is even more important now rather than adding more land that will also not have funding to be managed, or adopting mitigation measures which may not be successful or even appropriate.

Counties have already been significant partners in permitting and constructing transmission and renewable energy projects (ex. Kern County : 7082 MW, Imperial County, 989 MW, etc.). It is time for the DRECP to engage in a useful dialogue with the stakeholders on a unique approach that could begin to assist counties in formulating a positive recommendation to their Boards of Supervisors for consideration for participation in the DRECP if energy developers are interested.