



**BOARD OF SUPERVISORS
COUNTY OF INYO**

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November 12, 2010

Ms. Shiipa Gupta
Environmental Planning and Assessment
City of Los Angeles Department of Water and Power
111 North Hope Street, Room 1044
Los Angeles, CA 90012

**RE: Notice of Preparation of Draft Environmental Impact Report for the Southern
Owens Valley Solar Ranch
SCH No. 2010091094**

Dear Ms. Gupta:

On behalf of the Inyo County Board of Supervisors, I am pleased to continue working with the City of Los Angeles Department of Water and Power (DWP) to manage its lands and activities within Inyo County for the mutual benefit of all. The Board has consistently expressed its support of appropriate renewable energy development to work to achieve important local, State, and federal planning goals, and we are looking forward to effectuating these goals and developing smart renewable energy development in the Owens Valley and elsewhere in Inyo County. With this in mind, please consider the attached comments regarding the scope of the Environmental Impact Report being prepared for the Southern Owens Valley Solar Ranch in response to the Notice of Preparation.

Chapter 21.04 of the Inyo County Code (Renewable Energy Development) applies to this project. Pursuant to that Chapter, DWP is required to obtain a Renewable Energy Permit for the Solar Ranch project, or alternatively, enter into a Renewable Energy Development Agreement with the County before commencing construction of the project. A copy of the Ordinance is attached.

As a result of the enactment of the Ordinance, the County is a Responsible Agency under CEQA with regard to this project and will use the EIR on the project to assess the impacts resulting from the issuance of a Renewable Energy Permit or the approval of a Renewable Energy Development Agreement. Upon learning of the proposed project, County staff contacted representatives of LADWP in the hope of scheduling a meeting to discuss working together on this project, but, as of this time, no meeting has been scheduled; however, we hope that a meeting can be scheduled in the near future.

We look forward to working with you to implement the Ordinance and anticipate that it will result in a better project for DWP, the County, and the general public. Please also note that we are working on updates to the Inyo County General Plan to address renewable energy, and we hope to coordinate those efforts with this project.

Thank you again for your consideration. If you have any questions regarding these matters, please contact the County's Administrative Officer, Kevin Carunchio, at (760) 878-0292.

Sincerely,



Richard Cervantes
Chairperson, Inyo County Board of Supervisors

Exhibits

cc: Board of Supervisors
Kevin Carunchio, CAO
Randy Keller, County Counsel
Greg James, Attorney for Inyo County
Gruen Gruen + Associates
The Honorable Mayor of the City of Los Angeles Antonio Villaraigosa
City of Los Angeles Department of Water and Power Staff
East Independence Sanitary District
Independence Community Services District
Independence Fire Protection District
Keeler Community Services District
Lone Pine Paiute Shoshone Tribe
Lone Pine Unified School District
Lone Pine Fire Protection District
Lone Pine Community Services District
Olancho Cartago Fire Department
Olancho Community Services District
Owens Valley Unified School District
Southern Inyo Hospital District
Governor's Office of Planning and Research, State Clearinghouse

Exhibit A

Detailed Inyo County Responses to Notice of Preparation (NOP) of Draft Environmental Impact Report (EIR)

City of Los Angeles Department of Water and Power (DWP) Southern Owens Valley Solar Ranch Project (SCH No. 2010091094)

November 12, 2010

1. **County Renewable Energy Ordinance.** The County adopted Ordinance No. 1158 regarding renewable energy on August 17, 2010 ("Ordinance").¹ This Ordinance encourages and regulates renewable energy development, such as that proposed by DWP and requires that DWP 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. As a result of the enactment of the Ordinance, the County is a Responsible Agency under the California Environmental Quality Act (CEQA) with regard to this project and, ideally, will use the EIR on the project to assess the impacts resulting from the issuance of a Renewable Energy Permit or the approval of a Renewable Energy Development Agreement.

The DWP should review the Ordinance and make application to the County Planning Department pursuant to the Ordinance as soon as possible to expedite permitting and ensure that the EIR incorporates information required to process the application, as well as provide information regarding other requirements of the Ordinance. As indicated in the Ordinance, the County encourages DWP to work the County to develop a Renewable Energy Development Agreement.

2. **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, including DWP. The Draft EIR should include a thorough consistency analysis of the project in regards to the General Plan. The following General Plan references are relevant to the proposed project.

- *Land Use Element* – both of the sites of the proposed project are designated Natural Resources (NR). The proposed project is inconsistent with the NR Land Use Designation. The County is working to update the General Plan to address renewable energy, including this inconsistency.³
- *Government Element* – development of energy resources on both public and private lands be encouraged with the policies of the County to develop these

¹ Refer to <http://inyoplanning.org/RenewableNewPage.htm> for a copy of the Ordinance.

² The General Plan may be reviewed online at the following link - http://inyoplanning.org/general_plan/index.htm.

³ Refer to <http://inyoplanning.org/RenewableNewPage.htm> for more information regarding the County's renewable energy planning, including the Renewable Energy General Plan Amendment currently underway.

energy resources within the bounds of economic reason and sound environmental health.

- *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, including reducing impacts from dust from Owens Lake and other sources. 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.

3. **Population and Housing.** The project will result in increased population in the Southern Owens Valley. According to the NOP, the project will require an average of 175 workers, and up to a peak daily maximum of 300 workers. Based on average household size in Inyo County in the year 2000 of approximately 2.3, this may temporarily increase the population of Lone Pine by up to almost 700 people. Due to the relatively small population in the area (i.e., Lone Pine has a population of about 2,000), this increase will be significant. The nearby communities of Independence, Keeler, Cartago and Olancho may be similarly impacted. The EIR should evaluate potential impacts in regards to population and housing in light of the existing population, as well as populations in nearby communities, and identify mitigation measures for such impacts and alternatives that will reduce any such impacts to less than significant. In addition, the EIR should address the likely timing of demobilization of construction activity and decommissioning of temporary housing and other temporary facilities and the EIR should address the impacts if the project is delayed following the commencement of its construction.

4. **Relationships With Other Plans, Projects And Agreements.** The EIR should evaluate long-term land use compatibility and relationships with other plans and agreements. Land use compatibility issues include relationships with recreational, agricultural, and other uses in the vicinity of both project sites. On the southern project site, the relationship with Boulder Creek Resort, Diaz Lake, and the Lone Pine Airport are particularly important. In addition to the Inyo County General Plan, Zoning Ordinance, and Renewable Energy Ordinance, other relevant plans and projects include the Owens Lakebed Master Plan, the Lower Owens River Project (LORP), air quality plans for Owens Lake, and the Long Term Water Agreement. The proposed project footprints appear to coincide with the LORP, and the EIR should include detailed consistency evaluation regarding the LORP and describe any impacts of the proposed project on the

LORP, including the LORP Post Implementation Agreement between Inyo County and the City of Los Angeles.

5. **Public Services.** The EIR should evaluate potential impacts on public services, both during construction and operation, and identify mitigation measures for such impacts and alternatives that will reduce the impacts to less than significant. Due to the relatively small population in the Lone Pine area, as well as in neighboring communities including Independence, Keller, Cartago, and Olancha, the temporary increase in population resulting from construction activities will impact County services, as well as other public services.

- *Emergency Services* – the increased population will result in increased demand for emergency response services, such as Sherriff, fire protection, and emergency medical services. These services will be required for potential work-place incidents, as well as from the new workers and their families living in the area. The EIR should evaluate potential increases in demand for these services, and provide mitigation measures to offset impacts. Such mitigation measures could include providing funding for additional personnel and/or equipment for the Sherriff, the Lone Pine Fire Protection District, the Independence Fire Protection District, the Southern Inyo Hospital District, the Olancha Cartago Fire Department, and other relevant public services to offset impacts to emergency services, and the EIR should evaluate the potential environmental effects of providing these services. Potential impacts should also be evaluated for services provided by other nearby communities and tribes. As many of the local service providers have relatively limited capacity, impacts could be severe.
- *Health and Human Services and Schools* – the increased population will result in increased demands for health and social services provided by the County and other entities, such as emergency shelter services, public health, and behavioral health services. The increase in population resulting from the project will also impact local schools. Due to the small population in southern Inyo County, existing services are limited in capacity. The EIR should evaluate potential increases in demand for these services, and provide mitigation measures to offset impacts. Such mitigation measures could include providing additional personnel and/or equipment to offset impacts to these services. Potential impacts to tribal health and human services should also be evaluated.
- *Administrative Services* – the increased population will increase demand for other County services that may not be quantifiable, and may be limited on an individual basis, but are cumulatively considerable to the County. For example, DWP generally does not pay for recording fees, and requests for these services are expected to rise due to the project. Similarly, incremental increases will result in demand for library, legal, and other services provided by the County. Although this loss of income on a singular basis is relatively small to the County budget, the cumulative effect of small incremental impacts will be considerable overall. The EIR should address such impacts, and DWP should work with the County to evaluate this overall cumulative issue, both during construction and operation.

- The EIR should describe mitigation measures (including compensation for economic and social impacts) for changes to the environment and their resulting secondary impacts on the costs of public services, blighting effects on the built environment, changes in land, water and air resources, and use and enjoyment by local businesses, residents and visitors.
6. **Infrastructure and Utilities.** The EIR should evaluate potential impacts to infrastructure and utilities, as well as long-term maintenance of any new facilities, and identify mitigation measures for such impacts and alternatives that will reduce the impacts to less than significant. The temporary increase in population will result in the need for new infrastructure to support the population, such as water supply, wastewater treatment, stormwater conveyance, streets and highways, landfills, etc. Design of new streets, access, and intersections should be coordinated with the Department of Public Works. If in the long-term the County will need to maintain any new transportation facilities, DWP should identify means to support such maintenance. Short-term wear and tear on County streets and facilities should also be addressed. Disposal capacity at County landfills, including related closure and post-closure plans and costs, and recycling construction debris should be addressed to ensure that capacity is not unnecessarily compromised, and fair compensation for any capacity that is lost should be described.
 7. **Hydrology, Water Supplies and Water Quality.** The EIR should evaluate potential impacts regarding water supplies, hydrology, and water quality and identify mitigation measures for such impacts and alternatives that will reduce any such impacts to less than significant. The EIR should identify the proposed sources of water supply for all components of the proposed project, and analyze any impacts on water systems of Lone Pine and Independence related to the proposed project. If the project results in the need for new wells, such wells should be evaluated within the context of the Long-term Water Agreement. Potential short-term and long-term impacts on hydrology and water quality should also be addressed. The water supply to and the wastewater treatment associated with any temporary housing should also be analyzed.
 8. **Aesthetics/Visual Resources.** The EIR should evaluate potential impacts on scenic views and aesthetics and should identify mitigation measures for such impacts and alternatives that will reduce the impacts to less than significant. The proposed sites of the projects are visible or partially visible from Highway 395, Diaz Lake, the Owens River, Whitney Portal Road, Horseshoe Meadows Road, the Alabama Hills, the Boulder Creek Resort and from most points in the Sierra Nevada and Inyo Mountains. Potential impacts from light and glare, and particularly nighttime lighting, should be evaluated.
 9. **Traffic and Transportation.** Short-term impacts from worker commuting and materials delivery, including increased wear and tear on existing roads and increased dust from project related use of roads, should be evaluated and the EIR should identify mitigation measures for such impacts and alternatives that will reduce any such impacts to less than significant. A construction traffic management plan should be prepared to address oversized deliveries, street closures and traffic control, blocked access to property and businesses, street maintenance and debris removal, etc. Carpools and/or buses may be

considered for transport of construction workers to the project sites, into Lone Pine, and other destinations.

10. **Hazardous Materials and Hazards.** Potential short- and long-term impacts regarding hazards and hazardous materials should be evaluated. Any hazardous substances utilized during construction should be identified in the EIR and mitigation measures identified. Transport of hazardous materials should also be addressed. Long-term issues regarding wildland fires, any hazardous materials or substance utilized in transmission facilities, and increased fire protection needs should also be evaluated. Any hazards resulting from the project in regards to the use and operation of the Lone Pine airport and any impacts to military overflights should also be addressed and the EIR should identify mitigation measures for such impacts and alternatives that will reduce any such impacts to less than significant.
11. **Grazing and Agriculture.** The EIR should address existing grazing occurring within the proposed project areas, and the potential effects of relocating that grazing elsewhere, as well as mitigation measures and alternatives for such impacts. The EIR should also address any changes in the availability of water for agricultural use that will result from the project.
12. **Air Quality.** The EIR should address short and long-term impacts to air quality and should identify mitigation measures for such impacts and alternatives that will reduce the impacts to less than significant. As dust is an issue with Owens Lake, mitigation measures should be instituted to minimize dust during construction, operation, and following the cessation of the project. In the long term, it may be beneficial for air quality, biological resources, and aesthetics to consider revegetating or maintaining onsite vegetation through construction. The EIR should also address the project's impacts to air quality following the decommissioning of the project and should identify mitigation measures and alternatives to reduce any such impacts to less than significant.
13. **Socioeconomic Impacts.** The EIR should address potential socioeconomic impacts from the project and should identify mitigation measures for such impacts and alternatives that will reduce the impacts to less than significant. This type of project can lead to economic booms and busts that can lead to rapid expansion and subsequent decay, the results of which can impact the physical environment. Hiring and training of local workers should be considered to address this issue. In the past, DWP representatives and literature have indicated that local workers would be trained and hired to construct and operate the project, which should continue to be considered. Consideration should also be given to manufacturing and/or assembling components in Inyo County, which can also address potential socioeconomic impacts, and reduce transportation-related energy use and emissions, including emissions of global warming gases.

Potential impacts to the local economy and related impacts to the physical environment should also be addressed. Although renewable energy development may result in interest from some tourists, the long-term effects on the County's tourism-dependent economy by converting open space to solar energy development should be evaluated. Displacement

of transient lodging opportunities for tourists by workers should be addressed. If workers are staying in hotels or motels for more than 30 days, Transient Occupancy Taxes may not be collected, the effects of which should be evaluated. Also, potential impacts to specific business, such as the Boulder Creek Resort, should be evaluated.

It appears that under Article 13, Section 11(a) of the California Constitution the improvements which will be a part of the proposed project will not be taxable. Therefore, the County and other affected units of local government may not be compensated through taxes for the financial and other impacts of the project. The EIR should describe mitigation, including payments in lieu of taxes, the creation of taxable possessory interests, and the payment of unsecured property taxes, for this impact.

Environmental impacts directly connected to the purpose of the project create secondary impacts. These can also be referred to as *spillover effects or impacts*. When such secondary impacts lessen the benefits available to workers, businesses, visitors, local citizens or others, they are termed *negative spillover effects*, which need to be identified and, if significant, mitigated whenever possible. Potentially negative spillover effects should be identified to the same extent that environmental impacts of the project are identified and addressed.

Spillover effects can also be positive. Positive spillover benefits, which can be extremely significant, should also be identified in the draft EIR, but the identification of such benefits will require conceptualizations of secondary effects that could be induced by the project but are not in themselves necessary for the project's development or operation. Below are some examples of such potential effects. The EIR should identify and evaluate these and others, so as to make the project serve more than one positive purpose.

- Recruitment and training of local residents to work on the project and its operation;
- Use of local materials;
- Manufacturing and/or assembling components of the project in Inyo County;
- Expansion of local mining by facilitating the discovery of new minerals or construction material sites;
- Build new roadways to open up access not only to the project, but to other resource areas;
- Create viewing platforms or other attractions at the operating project that would educate and provide enjoyable experiences to visitors;
- Plan for and adopt a policy of transmission offset reductions for new electricity-using businesses near the project;
- Inclusion of power storage facilities.

14. **Recreation.** The EIR should address potential impacts from the project to recreational uses and should identify mitigation measures for such impacts and alternatives that will reduce the impacts to less than significant. Impacts to recreation should be minimized to the greatest extent feasible. Potential issues include County parks and campgrounds,

trails into the Inyo Mountains, hunting and fishing along the Owens River and other recreational uses of the LORP, and hunting in the vicinity of Owens Lake.

15. **Mineral Resources/Mining.** The EIR should address potential impacts resulting from the mining of mineral resources to supply the project and should identify mitigation measures for such impacts and alternatives that will reduce the impacts to less than significant. In particular, the County is concerned about potential mining activities during construction and operational phases of the project.
16. **Noise.** The EIR should address short-term and long-term noise impacts, especially for potential project sites that are located in close proximity to existing development, and the EIR should identify mitigation measures for such impacts and alternatives that will reduce the impacts to less than significant. The County's General Plan Noise Chapter provides guidance for noise issues.
17. **Biological Resources.** The EIR should address potential impacts from the project to biological resources and should identify mitigation measures for such impacts and alternatives that will reduce the impacts to less than significant. Mitigation measures should minimize such impacts during construction and operation, and consider revegetation/restoration of the project site with native vegetation or irrigated agriculture following the cessation of construction and after decommissioning. Efforts must be made to retard/avoid the introduction noxious weeds and non-native invasive plants. Potential impacts to biological resources should be minimized to the extent feasible. Coordination with the Eastern Sierra Weed Management Area, Owens Lakebed Master Plan, the LORP, and the Desert Renewable Energy Conservation Plan may provide mitigation opportunities.
18. **Removal of Facilities.** The EIR should address a plan for the removal of project facilities as such facilities become non-operational. The EIR should also describe a plan for remediation/restoration of the project site following the removal of facilities. Guidance for these issues is provided in the Renewable Energy Ordinance.
19. **Alternatives.** The EIR should evaluate a range of alternatives to reduce identified impacts. Alternatives that should be considered for further analysis in the EIR include the following:
 - Alternative locations for the temporary housing should be considered. Developing the housing within or adjacent to Lone Pine or other existing communities may result in reduced impacts, as well as provide future housing opportunities for the community. By developing the housing in close proximity to existing infrastructure and services, the increase in demand can be minimized, trip making may be reduced, and the local community may be better activated by the project. It may also make more sense to provide smaller housing blocks at several locations to dissipate the boom and bust cycle.

- Phasing development can reduce the cyclic increases and decreases in activity, thereby minimizing the boom and bust cycle. The EIR should consider alternatives to phase development and thereby minimize temporary impacts to public services and infrastructure, socioeconomic impacts, and the potential for decay.
 - It is understood that low-water using technologies are being considered for the project. If instead high-water using technologies are selected, alternatives that minimize water use should be considered. Alternatives to the proposed project that employ solar thermal technologies instead of the proposed photovoltaic technology should be discouraged because of the associated increased water use required.
20. **Cumulative Impacts.** A thorough analysis of potential cumulative impacts should be prepared. Of greatest importance is any future plan for renewable energy development in the vicinity of the project, such as on Owens Lake. Information sharing for any environmental review for the Owens Lakebed Master Plan should also be pursued to ensure that any potential cumulative impacts from that project in conjunction with the Southern Owens Valley Solar Ranch are addressed. Transmission and intertie issues should also be evaluated, as applicable.
21. **Evaluation of Project Sites.** Since it appears that the EIR will be evaluating two proposed locations for the project, these comments pertain to both proposed locations. The EIR should contain detailed descriptions of the proposed project and potential impacts at both locations—and at any other locations that may be considered as project alternatives.

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