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RETURN
TO CLERK

By e-mail

Ms. Jaymie L. Brauer
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Reply to Comments: Draft Environmental Impact Report of Beacon Photovoltaic Project

Dear Ms. Brauer:

Thank you for responding to my comments on the Beacon Solar project (Beacon) Draft Environmental Impact Report (DEIR).¹ I read your responses and have a few comments.

First, I address your remarks in opposition to an investigation about whether this project will exacerbate the potential for physical deterioration of existing structures. Second, I address your comparison between project size measured in megawatts and land measured in acres. Third, I accept the clarification you made as to how a decommissioning plan will attach to future owners. I note that you did not address my comments on the adequacy of financial assurances. Finally, I suggest an alternative to characterizing impacts as temporary or permanent.

1. The project and physical deterioration

The Kern County Planning and Community Development Department (The Department) in opposing an investigation of Beacon's role in the future abandonment of structures and ways to mitigate the impact says such an investigation is unsupported by case law and is speculation.

I leave it to others to comment on whether an investigation of a project's impact on physical structures is supported by case law. I disagree with your characterization of my argument as speculation. What I argued is not guesswork. It is based on theory,

¹ The responses specific to my comments are found in the document at Sections 7-J and 7-K at pages 7-193 to 7-197.

historical events and began with an observation from a NextEra report published by The Department.

NextEra Energy Resources conducted architectural resource inventories and resource evaluations. They did this to comply with existing law and regulation. A report of their findings, The Beacon Photovoltaic Solar Project Cultural Resources Report,² in Chapter 1 at page 1 notes that, "...there are several abandoned structures in the area ...near the site access point".

This is evidence of the area's vulnerability to vacancy, structural deterioration and abandonment. It is a fair question to ask whether this PV project will accelerate the area's existing vacancy, deterioration, and abandonment problem and to ask if there is a way to mitigate any aggravation. For example, should a trust fund be created by Beacon to acquire, repair or demolish abandoned buildings?

The argument that there are no workers displaced by the project is insufficient to exclude Beacon's contribution to structural deterioration from consideration in a DEIR. What matters is that Beacon needs no workers and that is why the structures that are in the area will face a continuing threat perhaps an increased threat of becoming vacant and falling into disrepair.

I maintain my opinion that this issue should be investigated in the DEIR and its possible mitigation should be addressed.

2. Project size measured in megawatts and acres

Using publicly available data I suggested that Beacon when compared to other projects in the area is less efficient in its use of land. The consequences are: this project is more likely to contribute to structural deterioration in the local area; and, has increased vulnerability to policy or economic changes. As a possible mitigation I suggested that perhaps Beacon could be reconfigured to use less land.

The Department responded that the Beacon site has a gulch and railroad tracks and if you remove them then Beacon scores improve. This suggestion fails to recognize that all PV projects have areas unsuitable for PV panels. It is not a fair comparison to edit out the unsuitable land from Beacon, compare it with projects that have not been adjusted for their unsuitable land and then conclude that Beacon is acceptable.

My opinion is that some PV projects are going to be more efficient than others. I used a basic measure to reveal that Beacon does not rank high on its use of land. Inefficient land use may lead to other problems. This suggests that The Department might develop performance and operating standards to help anticipate problems and develop ways to mitigate them.

3. Decommissioning plans and financial assurances

I read the DEIR to say that the plan and assurances were required to get building permits and asked how the county could enforcement the requirement for keeping the plan up to date and financially assured after the building permits were issued.

² See:

http://www.co.kern.ca.us/planning/pdfs/eirs/beacon_solar/Appx%20F1%20Cultural%20Resources%20Survey%20and%20Report.pdf

The Department explained that a decommissioning plan and adequate financial assurances are part of a conditional use permit. Accordingly, the requirements to keep the decommissioning plan up-to-date and adequately assured attaches to the property and thus to all future owners.

I also argued that the financial assurances as described in the DEIR were inadequate. These concerns are not addressed in your response and these concerns bear repeating.

An adequate financial assurance should:

- Attach to all transfers of site ownership; (The Department says that they do)
- Make all responsible parties jointly liable; (no response)
- Be assured by an entity at arms length from the site owner; (no response)
- Be able to withstand any responsible party's bankruptcy; (no response)
- Be clear about what signals the start of restoration, (e.g., a date certain; output falls below a threshold); (no response)
- Be payable to an entity capable of managing the restoration; (no response) and,
- Provide in cash the purchasing power needed to restore the site. (no response).

In addition there is a lengthy trigger mechanism in the proposed assurance that will make the financial assurance of little or no value.

I believe the financial assurances for decommissioning as described in the DEIR are inadequate. Even though the requirement for a plan and assurances attaches to future owners, the assurances are unlikely to provide cash to future generations to remove this installation when it is no longer needed.

4. Temporary or permanent

Opinions may vary over the meaning of temporary and permanent. To astrophysicists or geologists thirty years is an inappropriately short period of time in which to conduct an analysis, economists have been cautioned that examining too long of a period of time is a misleading guide to examining human affairs.³ I do not think that it is useful to fence words with The Department over the difference between a permanent change and a change that lasts one or more useful lives of equipment where each life is thirty years or more.

It is, nevertheless, a tautology to say that there are no permanent impacts because the land conversion is temporary. It makes more sense to say that a project's long-term impacts end or are reduced when the land conversions are reversed. Decision makers can then judge whether it is in the public's interest to wait a long time for relief. The DEIR, however, is vague about the timing of restoration and, unfortunately, leaves that judgment solely to the permittee or its successor(s).

³ "... this long run is a misleading guide to examining current affairs. In the long run we are all dead, economists set themselves too easy a task, too useless a task if in the tempestuous season they can only tell us that when the storm is long past the ocean is flat again." Keynes, J.M. *A Tract on Monetary Reform*, 1923, p.80

I think a date certain for restoration should be set. Absent a date certain a process to determine the date should be defined and made a part of the conditional use permit.

Respectfully,

Mkavanaugh

Michael Kavanaugh