

California Desert and Solar Working Group

c/o Resources Legacy Fund
555 Capitol Mall, Suite 675
Sacramento, CA 95814

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November 20, 2009

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

Re: Best Management Practices and Guidance Manual: Desert Renewable Energy
Projects, Renewable Energy Executive Order, Docket No. 09-Renew EO-01

Dear California Energy Commission and Other Renewable Energy Action Team Agencies:

Please accept and fully consider these comments on behalf of the California Desert and Solar Working Group, on the October 2009 Draft Staff Report entitled: “Best Management Practices and Guidance Manual: Desert Renewable Energy Projects” (“Draft BMP Guidance”). We are an informal working group formed earlier this year to examine ways to balance the need for timely development of utility-scale solar energy sources with the need to protect desert ecosystems, landscapes and species. Our group, which is currently focused on desert ecosystems and potential solar energy projects in California, includes representatives of solar energy companies, the electric utility sector, desert conservation groups, environmental groups and philanthropies. Because of this focus, our comments below address the Draft BMP Guidance from the perspective of utility-scale solar projects, although the Renewable Energy Action Team (“REAT”) may wish to consider how these comments may apply to other technologies as well.

We understand that the Draft BMP Guidance has been prepared in response to a requirement of Executive Order S-14-08, that: “By December 31, 2009, the REAT shall develop and publish a Best Management Practices manual to assist RPS project applicants in designing projects to emphasize siting considerations and minimize environmental impacts for RPS desert projects.”

In addition to the two components – siting and best practices – identified in EO S-14-08, the Draft BMP Guidance includes a third component – pre-application guidance – apparently seeking to implement the goal of later executive orders and memoranda of understanding to help facilitate the permitting process.

These comments first outline some broad suggestions for the scope and organization of the document, in particular our recommendation that the REAT consider separating the three components of the draft into either two or three separate documents. It then provides broad comments on each of the three components.

Scope and General Organization.

We believe the document can be improved if it is simplified and limited to focus more specifically on the components directed by EO S-14-08 – siting and best management practices (BMPs). While articulating pre-application guidance is an important and useful exercise, including that guidance in a document combined with the BMPs adds a layer of complexity and potential controversy that we believe detracts from the usefulness of the siting and BMP components. We also believe that the document would be improved by more clearly separating the discussion of siting considerations from the discussion of BMPs, perhaps in distinct chapters.

This recommendation is based upon our understanding that, in most instances, BMPs serve a specific purpose and address a specific issue. They generally represent broadly applicable measures that, in the terms of the Executive Order, “minimize environmental impacts for RPS desert projects.” They reveal a path that, if followed, represents a good-faith effort to meet the highest standards for a particular process, as that process is understood at any point in time.

In contrast, the pre-application guidance generally summarizes existing statutory and regulatory requirements, and administrative processes, which represent the minimum standard necessary for a project to be processed by the agencies. The pre-application guidance set forth in the draft also outlines practical considerations for navigating the regulatory process. While these guidelines serve a useful purpose and we commend the agencies for producing them; we suggest that they not be included in this document. The same can be said for sections that outline the decision-making process; these materials serve a useful purpose, but in this document they can obscure the substance of the BMPs.

Focusing the document on BMPs and siting will also address our broad observation, set forth in the next section, that the BMPs are a work in progress, with this draft reflecting a very initial stage in their evolution. Likewise, as discussed in the second section below, the siting process is evolving, with key issues being addressed (often for the first time) in ongoing permitting processes, and in broader planning efforts such as the Bureau of Land Management’s Solar Programmatic Environmental Impact Statement (“PEIS”) and the Desert Renewable Energy Conservation Plan (“DRECP”).

The siting provisions currently are spread throughout the document. For example, siting issues are discussed in Chapter 1 (pre-application guidance) on pages 13 (avoidance of biological resources), 16 (use of degraded lands), 17 (avoiding sensitive noise receptors), etc. These provisions should be aggregated and organized in single location, addressing the additional comments set forth above.

Likewise, there are “pre-application” measures in Chapter 1 that are de facto BMPs, and these should be integrated into the BMP chapter. For example, item 2 on page 20 of Chapter 1 addresses safe vehicle ingress and egress, a topic that is not specifically addressed in the traffic and transportation BMPs on pages 45 and 46 of Chapter 2. Those measures in Chapter 1 that are appropriately considered to be BMPs should be identified and integrated into the pertinent portions of Chapter 2, producing a single list.

The Discussion of BMPs Should Recognize that they Currently Represent an Initial Effort, and Allow for, and Necessitate, Evolving Standards.

Although the document refers in many locations to the preliminary nature of the BMPs, the fact that they are recommendations only, and states that additional evolution will be necessary, we believe that it should be even more clearly stated that this version of the BMPs reflects only an initial effort and that substantial elaboration and revision is anticipated in future versions as more thought is given to these recommendations and more experience is gained from the application of these recommendations. In a new industry, with new processes, best management practices will necessarily evolve – often quickly. All of the participants in our working group expect to learn from the successes (and mistakes) of development projects in the desert region. We hope to extract those lessons in real time, and raise them as active stakeholders. We hope the agencies will do the same. With this in mind, we believe this document should state even more clearly than it currently does that these BMPs represent an initial effort by the agencies to identify best practices, but require further refinement and evaluation.

In this regard, we note that many of the specific BMPs appear to have been crafted for projects other than renewable energy developments in the desert. Although it clearly is appropriate at this stage to look at BMPs from other contexts in formulating initial approaches to BMPs in the renewable energy sector, it is likewise clear that substantial work is needed to focus on these particular facilities in a desert context. An example is the recommendation on page 45 to use permeable pavement materials for covered areas, which is a common measure for projects in a developed urban context. Although this BMP may be pertinent to a few access roads, it generally is inapplicable for large-scale site stabilization activities. There, in turn, the proposed BMPs are vague, suggesting “means such as moisturizing and compacting” to address the site stabilization issue. Regarding site stabilization, the particular approach to be taken is likely to evolve over time, presents substantial technical issues, and likely involves tradeoffs between flood protection, stormwater runoff quality, fugitive air emissions and habitat considerations – all of which should be addressed in a manner tailored and relevant to the particular facilities and locations involved. Another example is the proposal to clean company vehicles at commercial car washes rather than on-site, which is not particularly relevant and in any event does not focus on key impacts. There are dozens of similar examples. BMPs more directly crafted to address the key impacts of renewable energy projects in a desert environment should be substituted wherever possible. We understand that this is a major undertaking that ultimately may take several years, but making prompt progress toward crafting better focused and relevant BMPs will pay off in terms of transparency, consistency, and efficiency.

We also note that the draft fails to address some of the “big ticket” issues faced by solar developments, particularly the key features of an acceptable habitat conservation strategy. These key issues include the relative roles of avoidance, preservation, and restoration in a conservation strategy, and the appropriate mitigation criteria (e.g., ratios, areas, etc.) under each of these approaches. We recognize that these issues will be addressed over the next several years in the context of the Solar PEIS and DRECP, but as with the BMPs, guidance in the interim would be very beneficial for those projects on a faster timeline. As soon as it can be developed, a clear, unified statement from the REAT agencies on these matters will help promote transparency, provide consistency of approach, improve conservation, level the playing field, allow issues of cost-effectiveness and affordability to be considered on a broad level, and expedite individual permitting decisions.

As the BMPs evolve, it is also important that the REAT agencies obtain the input of other agencies with specific responsibilities, such as the State Water Resources Control Board or

Regional Boards, Air Quality Management Districts, and others, where specific BMPs within their expertise are concerned. In addition, the California Public Utilities Commission should be involved, since many of the BMPs will have cost implications that will affect the ultimate cost of RPS energy.

We have several comments on the more specific aspects of the BMPs. First, the document generally over-emphasizes compliance with current local land-use planning documents, such as general plans, zoning ordinances, and the like. Although these are important planning documents that should only be revised in a measured and thoughtful way, many of these plans prepared by local jurisdictions were not prepared with potential future renewable energy developments in mind. Major developments frequently require revisions to general plans or other planning documents as a relatively routine step in the entitlement process. Compliance with current plans should not be an unalterable requirement. Instead, a developer should be able to propose reasonable and measured plan revisions, consistent with all applicable laws (including the “consistency” requirements of the California Planning and Zoning Law), accompanied by a showing that the proposed revisions have a reasonable chance of being accepted by the agency with jurisdiction over the plan. To be clear, we are not suggesting that projects do not conform to the environmental requirements in federal land management plans, such as resource management plans. The land management plans would need to be amended to list specific renewable projects, and may need an amendment to reclassify the project areas for renewable development. These plans may also be amended during larger plan review efforts such as the Solar Programmatic Environmental Impact Statement or the Desert Renewable Energy Conservation Plan.

The REAT also should remain neutral regarding whether lands proposed for development can be subject to a Williamson Act contract. Development on previously disturbed agricultural lands is one way to avoid the more extensive habitat impacts that can occur from development in more pristine areas. Generally, the market should be allowed to determine whether lands are of sufficiently low value for agricultural purposes such that renewable energy development is a higher and better use. Likewise, the Williamson Act termination provisions should be allowed to operate without an additional regulatory layer being created by the REAT. The document also implicitly assumes that renewable energy developments are not a “compatible” use that could be allowed without termination of a Williamson Act contract. However, this will not always be the case, and counties should be allowed to address the Williamson Act issues without interference by the REAT agencies.

Next, although we support the preparation of project-specific closure, decommissioning or abandonment plans, to cover those contingencies if and when they occur, it should also be recognized that there is a substantial probability that developed sites will remain so for the indefinite future, with facilities being repowered rather than being decommissioned and restored. Some flexibility should be allowed in the framing of these plans to avoid unnecessary financial or other obligations to address low-probability contingencies, where limited resources could be better spent to address more concrete needs, such as additional habitat mitigation.

Finally, we support the proposal in the current draft that renewable energy projects not use fresh ground water or surface water for power plant cooling.

The Siting Process Should be Transparent, Coordinate with Ongoing Planning Efforts, and Provide Additional Guidance Where Possible.

At several points, the document indicates that the agencies are “identifying” areas that are “suitable” for renewable energy development and resource conservation. Siting a project in the

“identified” areas is indicated as a “critical activity” before submitting an application to the REAT agencies. We have several comments on this identification process:

First, the identification of suitable development areas needs to be a transparent process that coordinates with other related processes, such as RETI, BLM’s PEIS (SESAs and SEZs), the DRECP and other activities. As previously commented, environmental organizations generally favor the establishment of finite development zones, while development interests generally favor the retention of some flexibility. The ultimate goal of any such process should be the optimization of high resource values (such as high insolation areas for solar resources) and low environmental impacts (including habitat values, visual, recreational, and other concerns).

Next, the proposed timing of this exercise is of concern for the “shovel ready” projects (i.e. those that are hoping to begin construction by the ARRA deadline of December 2010). As indicated on page 2, “The REAT is expected to identify draft study areas by January 2010.” Assuming that the “draft study areas” will not be “identified [as] suitable for development” until later, an obvious Catch 22 is created since that will leave insufficient time to complete the entitlement process before December 2010. A more flexible approach is clearly needed for the “shovel ready” projects, emphasizing refinement of the current siting proposals consistent with applicable state and federal laws, rather than conformance to a REAT process that has not yet occurred.

We agree that the area identification process needs to include both those areas suitable for renewable energy development, as well as areas suitable for conservation purposes. Identifying areas suitable for conservation purposes will help facilitate the prompt development of conservation strategies.

The document also should elaborate on what the REAT agencies consider to represent an adequate site selection process and alternatives analysis. Clearly, CEQA, NEPA, the Warren-Alquist Act, Clean Water Act Section 404(b)(1) and other requirements will apply in the pertinent circumstances. However, the REAT could go further by directing a constraint-based mapping exercise seeking to optimize energy resource values while minimizing habitat and other environmental impacts. The site selection and alternatives evaluation process should be designed to satisfy all applicable programs (i.e. 404(b)(1), ESA, NEPA and CEQA, where applicable). It would also be useful for the REAT to frame appropriate and acceptable generic project objectives (including economic, habitat protection, resource quality, and other objectives) that will help guide the site selection and alternatives evaluation processes.

If the Pre-application Guidance is Going to be Retained in this Document, we Recommend Several Broad Changes.

As indicated above, we believe that the document could be better focused, and would be more useful, if the pre-application guidance (generally the contents of Chapter 1) were not included in this document. To the extent that the pre-application guidance is retained, we have several broad recommendations.

First, the guidance should be coordinated with other similar efforts, such as the REAT’s recently issued “Milestones to Permit California Renewable Portfolio Standard Energy Projects by December 2010.” Second, it should more clearly address what is expected of projects that are presently in varying stages of the entitlement process. As you know, there are currently several “tranches” of projects, including those already deep into the permitting processes, those that are

hoping to commence construction by the December 2010 ARRA deadline, those which may not meet the 2010 deadline but which could be anticipated to begin construction in the following year or two, and longer-term projects. The pre-application guidance should clearly identify the respective expectations for each of these “tranches.”

For near-term projects in particular, more flexibility should be allowed in the pre-application filing guidance, particularly allowing the application process to commence where most, but not all, of the “critical actions” have occurred. While we recognize that having all of the important information in hand will help expedite the REAT agencies’ consideration of applications, it is also true that parallel timelines may be appropriate and actually help expedite the process, particularly for the “shovel ready” projects. In this regard, we note that while many of the specific timelines (such as 24 months prior contact with the transmission utility) may be prudent aspirations, in the real world the actual critical paths will often be shorter. For some of the projects in earlier tranches, many of these timelines may now be unattainable.

Regarding one detail in the proposed schedule, we disagree that the timeline for meeting with interested environmental and community groups (6 months) should be substantially shorter than the timeline for discussions with other parties. The target date should be no later than that for meeting with the majority of the responsible agencies (currently 12 months in the draft).

Finally, in order to provide flexibility in the permitting process, the biological resource and cultural resource surveys identified in the “critical activities” list should not only be to “proper protocols,” but should also be of an appropriate geographic scope. Specifically, applicants should consider surveying areas beyond their initially proposed site, to encompass potential alternative project configurations. As appropriate, biological surveys should also include attractive mitigation areas. While this can increase the initial costs somewhat, the enhanced flexibility that results will generally help expedite the entitlement process. Given the large acreages that may be involved, particularly with the expanded scope just recommended, case-by-case refinement of survey protocols should also be accommodated where appropriate and biologically sound.

Conclusion

In conclusion, we thank you again for your commitment to developing an environmentally responsible solar development program and for considering our comments. If you have any questions about these comments or think we can help you in any way, please do not hesitate to contact us.

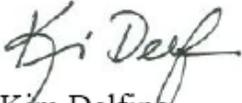
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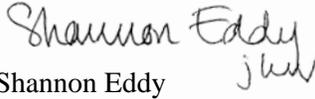


Rainer Aringhoff
Solar Millennium



Alice Bond
The Wilderness Society

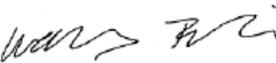

Kim Delfino
Defenders of Wildlife

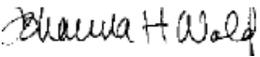

Shannon Eddy
Large-scale Solar Association

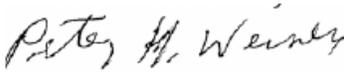

Arthur Haubenstock
BrightSource Energy


Michael Mantell, Chair
California Desert and Solar Working Group


Lorraine A. Paskett
First Solar, Inc.


Wendy Pulling
Pacific Gas and Electric


Johanna Wald
National Resources Defense Council


Peter Weiner
Solar industry attorney


V. John White
Center for Renewable Energy Efficiency
And Renewable Technology


Carl Zichella
Sierra Club

cc: Steve Black
Janea Scott
Michael Picker
Manal Yamout