LAND USE SERVICES DEPARTMENT

COUNTY OF SAN BERNARDINO

385 North Arrowhead Avenue, 3rd Floor • San Bernardino, CA 92415-0181
(909) 387-4141 Fax (909) 387-4228
http://www.sbcounty.gov/landuseservices

DENA M. SMITH
Director

DOCKET
09-AFC-5
DATE FEB 12 2010
RECD. FEB 16 2010

February 12, 2010

Craig Hoffman, Project Manager
California Energy Commission
1518 Ninth Street
Sacramento, California 95814

Subject: Abengoa Mojave Solar Project (09-AFC-5) overall consistency with the County of San Bernardino General Plan and Development Code.

Dear Mr. Hoffman:

Thank you for the opportunity to comment regarding the request for information associated with the overall consistency of the County of San Bernardino General Plan and Development Code with the proposed Abengoa Mojave Solar Project. The 2007 County of San Bernardino General Plan contains the goals and policies that guide the development within the County. It also identifies a full set of implementation measures that ensure the policies for the Plan are carried out. The Development Code was revised to implement the General Plan, including the proposed Development Code Amendment addition of *Chapter 84.29 Renewable Energy Generation Facilities* related to the allowed usage in the Land Use Zoning Districts, Setbacks, Fencing Standards and Decommissioning Requirements applicable to this project.

Within the Conservation Element of the 2007 General Plan there are relevant Countywide Goals and Polices and specific goals for the Desert Region for energy that are related to addressing the consistency analysis.

GOAL CO 8. *The County will minimize energy consumption and promote safe energy extraction, uses and systems to benefit local regional and global environmental goals.*

CO 8.3 *Assist in efforts to develop alternative energy technologies that have minimum adverse effect on the environment, and explore and promote newer opportunities for the use of alternative energy sources.*

CO 8.5 *There are unique climatic and geographic opportunities for energy conservation and small scale alternative energy systems within each of the County's three geographic regions and, therefore, the County shall:*

a. *Implement land use and building controls and incentives to ensure energy-efficient standards in new developments that comply with California energy regulations as minimum requirements.*
b. *Quantify local climate variations and in each climatic region require energy conservation systems in new construction.*
c. *Fully enforce all current residential and commercial California Energy Commission energy conservation standards.*

Desert Region Goals and Policies of the Conservation Element

GOAL D/CO 2. *Encourage utilization of renewable energy resources.*

The fourteen (14) parcels identified in the project proposal of the Abengoa Mojave Solar Project are designated as Rural Living (RL) Land Use Zoning. The applicable Development Code sections that include a new Development Code Amendment, awaiting the second reading at the Board of Supervisors on February 23, 2010 for final approval, are referenced as follows:

Chapter 84.29 Renewable Energy Generation Facilities is being added in the proposed Development Code Amendment. The Rural Living (RL) Land Use Zoning designation will allow renewable energy facilities in the proposed amendment as

Board of Supervisors
BRAD MITZELFELT. . . . . First District NEIL DERRY . . . . . Third District
PAUL BIANE . . . . . Second District GARY C. OVITT, Chair. . . . . Fourth District
JOSIE GONZALES, Vice Chair. . . . . Fifth District

referenced in *84.29.020 Applicability and Land Use Zoning Districts - If a facility is proposed solely in the Rural Living land use zoning district, it must include a minimum of 20 acres in the development proposal.* The Abengoa Mojave Solar Project exceeds these standards for the minimum acreage standards. In addition, the following Subsections regarding Setbacks, Fencing Standards and Decommissioning Requirements in the proposed Chapter 84.29 are also applicable to the project. They are as follows:

84.29.040 Solar Energy Development Standards

(a) Setbacks. *Solar energy generating equipment and their mounting structures and devices shall be set back from the property line either pursuant to the standards in the Land Use Zoning District, or 130 percent of the mounted structure height, whichever is greater.*

84.29.50 Special Fencing Standards

Special fencing standards may be applied without a variance in recognition of the capital costs of renewable energy facilities. Total fence heights allowed are inclusive of any height extension devices such as slanted razor-wire panels.

(a) Fencing on street side. *Chainlink fencing up to 8 feet in height may be installed no closer than 15 feet from the right-of- way on streetside boundaries. Security devices such as razor-wire height extensions may only be directed inward to the property, and may not extend beyond the property boundary to overhang the right-of-way.*

(b) Fencing on interior boundaries. *Chainlink fencing up to 8 feet in height may be installed along the property line on interior (non-streetside) boundaries. Security devices such as razor-wire height extensions may only be directed inward to the property, and may not extend beyond the property boundary to overhang any other property.*

(c) Electric Fencing. *Electric fencing is not allowed.*

84.29.060 Decommissioning Requirements

(a) Closure Plan. *Following the operational life of the project, the property owner shall perform site closure activities to meet federal, state and local requirements for the rehabilitation and revegetation of the project site after decommissioning. The Applicant shall prepare a Closure, Revegetation, and Rehabilitation Plan and submit to the Planning Division for review and approval prior to building permit issuance. Under this plan, all aboveground structures and facilities shall be removed to a depth of three feet below grade, and removed offsite for recycling or disposal. Concrete, piping, and other materials existing below three feet in depth may be left in place. Areas that had been graded shall be restored to original contours unless it can be shown that there is a community benefit for the grading to remain as altered. Succulent plant species native to the area shall be salvaged prior to construction, transplanted into windrows, and maintained for later transplanting following decommissioning. Shrubs and other plant species shall be revegetated by the collection of seeds, and re-seeding following decommissioning.*

(b) Compliance with other requirements. *Project decommissioning shall be performed in accordance with all other plans, permits and mitigation measures that would assure the project conforms with applicable requirements and would avoid significant adverse impacts. These plans include the following as applicable:*

- *Water Quality Management Plan*
- *Erosion and Sediment Control Plan*
- *Drainage Report*
- *Notice of Intent and Stormwater Pollution Prevention Plan*
- *Air Quality Permits*
- *Biological Resources Report*
- *Incidental Take Permit, Section 2081 of the Fish and Game Code*
- *Cultural Records Report*

The County may require a Phase 1 Environmental Site Assessment be performed at the end of decommissioning to verify site conditions.

The project proposal would need to include the applicable setback and fencing standards, along with compliance to the closure plan and other related closure plan requirements

.

The County would have to approve a Major Variance for those development standards. Development Code Chapter 85.17 discusses variance procedures. We would have to make the following findings in the affirmative to grant a variance:

85.17.060 Findings and Decision

(a) General findings. *The review authority may approve a Variance (Major or Minor) only after first finding all of the following:*

(1) The granting of the Variance will not be materially detrimental to other properties or land uses in the area and will not substantially interfere with the present or future ability to use solar energy systems;

(2) There are exceptional or extraordinary circumstances or conditions applicable to the subject property or to the intended use that do not apply to other properties in the same vicinity and land use zoning district;

(3) The strict application of the land use zoning district deprives the subject property of privileges enjoyed by other properties in the vicinity or in the same land use zoning district; and

(4) The granting of the Variance is compatible with the maps, objectives, policies, programs, and general land uses specified in the General Plan and any applicable specific plan.

I believe the County would grant a variance for this project because the technology used does not fit into the typical standards.

Thank you for considering our comments. If you have any questions or require any information, please contact me at (909) 387-4373.

Sincerely,

Christney K. Barilla

Christney K. Barilla, Senior Planner
Advance Planning Division

Cc: James M. Squire, AICP, Deputy Director
Carrie Hyke, AICP, Principal Planner
Judy Tatman, AICP, Principal Planner