

## Hingtgen, Robert J

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**From:** Donna Tisdale <tisdale.donna@gmail.com>  
**Sent:** Sunday, February 01, 2015 5:47 PM  
**To:** FGG-DL, LSDOCS; Horn, Bill; Jacob, Dianne; Cox, Greg; Roberts, Dave; Ron-Roberts; Gungle, Ashley; Hingtgen, Robert J  
**Subject:** FEB 4- Soitec Solar comments  
**Attachments:** Soitec FEIR -BAD to BOS 2-1-15.pdf

### **For the February 4th Board hearing Item #1:**

Please find the attached Soitec Solar comments from the non-profit group Backcountry Against Dumps.

Thank you,

Donna Tisdale, President  
619-766-4170



# BACKCOUNTRY AGAINST DUMPS

PO Box 1275, Boulevard, CA 91905

**Date:** February 1, 2015

**To: San Diego County Board of Supervisors:**

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**From:** Donna Tisdale, President Backcountry Against Dumps (BAD); 619-766-4170;  
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## **FOR FEBRUARY 4<sup>TH</sup> AGENDA ITEM 1: SOITEC FEIR COMMENTS & SPECIFIC RESPONSES TO PDS STAFF PRESENTATION & RECOMMENDATIONS MADE TO PLANNING COMMISSION ON JANUARY 16TH<sup>1</sup>**

Our Board of Directors authorized the filing of these comments on behalf of our public benefit non-profit group and to endorse and incorporate by reference the Boulevard Planning Group Soitec FEIR comments submitted on January 9<sup>th</sup><sup>2</sup>, and throughout the County's review process for Soitec's EIR, Major Use Permits and related components. These comments are in addition to those filed by Volker Law. BAD has gone on record that we are prepared to file legal challenges for any Soitec Solar approvals by your Board.

### **We strongly urge and request that you vote for the following rejections / denials:**

1. Reject the pre-determined Staff Report and Planning Commission recommendations for approval.
2. Reject environmental findings (Staff Report)
3. Reject the Overriding Considerations
4. DO NOT certify the EIR. It is not substantially supported by the record and is not CEQA compliant.
5. Reject the Ordinance Changing the Zoning Classification of certain property in the Boulevard Subregional Plan Area; Ref PDS2012-3600-12- 005 (REZ)
6. Reject the Resolution Disestablishing a Portion of the Maupin Agricultural Preserve No. 96.

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<sup>1</sup> <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Record-Documents/2015-01-16-CountyStaff-Powerpoint-Presentation-Made-at-Planning-Commission-Hearing.pdf>

<sup>2</sup> <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Record-Documents/2015-01-09-Boulevard-Community-Planning-Group-Soitec-FEIR-Comments-for-Planning-Commission.pdf>

7. Reject Soitec Solar's Tierra Del Sol project Major Use Permit PDS2012-3300-12-010 and conditions set forth in the Form of Decision.
8. Reject Soitec Solar's Rugged Solar project Major Use Permit PDS2012-3300-12-007 and conditions set forth in the Form of Decision.

**The inadequate and flawed EIR must be revised and re-circulated based on significant new information and changed circumstances related to the following:**

1. The EIR is disorganized, confusing for the public, hard to navigate, and to understand.
2. Changed project description and changed circumstances require re-circulation for public review and comment.
3. Soitec Solar appears to be unreliable, financially unstable, and unable to meet repeated contract milestones as disclosed by SDG&E's December 22<sup>nd</sup> filing with the CPUC<sup>3</sup> and recent media coverage regarding their terminated Power Purchase Agreements, loss of 100 or more jobs at their Ranch Bernardo facility, the January 16<sup>th</sup> vote by Soitec's Board of Directors to exit the solar energy business<sup>4</sup>.
4. Late addition of new Project Alternatives 2a and lack of support data or site control for the so-called Environmentally Preferred Alternative, Los Robles Solar.
5. Vastly inadequate groundwater /construction water estimates despite revised groundwater estimated due to Dudek's failure to include major project components and Staff's failure to catch that error; inadequate mitigation, funding, and more.
6. New information on actual construction water demands for the Soitec/Invenergy Desert Green Solar project completed in Borrego Springs<sup>5, 6, 7</sup> was only recently made available and indicates that an additional 60% more water will be needed.
7. Termination of all Soitec Power Purchase Agreements with SDG&E.
8. Soitec' Board of Directors voted to exit the solar energy business on January 16<sup>th</sup> due to significant losses, terminated contracts, market failure and loss of cost-competitiveness for CPV projects.
9. Announced layoffs and anticipated closure of Soitec's CPV manufacturing facility in Rancho Bernardo will result in major changes to and elimination of alleged benefits claimed in support of the Project Objectives, Findings, and Overriding Considerations.
10. Significant project design changes.
11. Late introduction of an unprecedented 160 cargo containers for 160MW of experimental highly flammable battery Energy Storage System (ESS); with increased risk

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<sup>3</sup> <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=143931998>

<sup>4</sup> [http://www.soitec.com/pdf/soitec\\_q3\\_14-15\\_sales.pdf](http://www.soitec.com/pdf/soitec_q3_14-15_sales.pdf)

<sup>5</sup> <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Record-Documents/2015-01-23-JimBennett-email-to-DonnaTisdale-Borrego-Desert-Green-Water-Use.pdf>

<sup>6</sup> <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Record-Documents/2015-01-23-JimBennett-email-to-DonnaTisdale-Borrego-Desert-Green-Water-Use-Attachment1.pdf>

<sup>7</sup> <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Record-Documents/2015-01-23-JimBennett-email-to-DonnaTisdale-Borrego-Desert-Green-Water-Use-Attachment2-Project-Description.pdf>

- for fire, thermal runaway, cascading failures, explosions, toxic emissions, groundwater contamination; hazardous materials incidents; need for special waste handling/disposal.
12. There is an alarming and significant gap in safety codes, standards and regulations (CSRs) for still experimental grid-scale energy storage technologies.
  13. The U.S. Department of Energy (DOE) Office of Electric Delivery and Energy Reliability's released "Strategic Plan for Energy Storage Safety"<sup>8</sup> in December 2014 to address the significant gap in safety codes, standards, and regulations for grid-scale ESS.
  14. Commissioner Norby remarked that there is no ESS of this scale in the world that he is aware of. The community of Boulevard does not deserve to be sacrificed or used as a living lab experiment.
  15. Dudek's Technical memo , Supplemental Air Quality Analysis – Project Changes<sup>9</sup> dated October 29, 2014, describes 3 major project changes yet fails to address Air Quality impacts from the 160 cargo containers full of batteries, the 160 HVAC systems, inverters, transformers, and any additional emissions that will be vented into the local community's air.
  16. Dudek actions are perceived as negligent in their groundwater investigation for Soitec Solar projects. They failed to exercise the care expected of a reasonably prudent person in like circumstances; major project components were not accounted for; failure to use up-to-date real world construction water data for similar projects; Staff failed to catch Dudek's failures until brought to their attention through public comments.
  17. Dudek is not an unbiased consultant due to their conflicts of interest working for Tule Wind; working for SDG&E's ECO Substation; working for the County in developing the Wind Energy Ordinance that egregiously amended the Boulevard Community Plan to allow these types of regional industrial scale energy projects where no commercial or industrial zoning exists; and again as project monitors for the applicants.

### **Remaining Areas of Controversy:**

1. Need for a revised and re-circulated EIR.
2. Distributed Generation alternative is viable.
3. Energy Sprawl that is inconsistent and incompatible with rural communities, quality of life, public health and safety, enjoyment of residential / ranching properties.
4. Significant and biased misrepresentation of Boulevard's community character and existing conditions wrongly portray our entire planning area as blighted—when it is not.
5. Dudek's conflicts of interest, lack of impartiality, loss of credibility.
6. Unaddressed revolving door/conflict of interest with Patrick Brown going directly from PDS Planner and Soitec Project Manager for the County, to Soitec Solar employee.

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<sup>8</sup> <http://www.renewableenergyworld.com/rea/news/article/2015/01/energy-storage-safety-plan-addresses-gaps-in-codes-standards-and-regulations>;

<http://www.energy.gov/sites/prod/files/2014/12/f19/OE%20Safety%20Strategic%20Plan%20December%202014.pdf>

<sup>9</sup> [http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/Appendix\\_9.0-5\\_AQ%20Memo.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/Appendix_9.0-5_AQ%20Memo.pdf)

7. Increased risk of fire and need for specialized firefighting equipment and trained staff stationed at Boulevard—magnified by late addition of 160MW of battery storage.
8. Dudek’s revised Groundwater investigations/reports increasing water use by 40% are still deficient by another 60% or more, based on new Desert Green Solar information.
9. Creation of the Rough Acres Water Company and the potential for water mining and off-site sales raises significant concerns for sustainability for existing users.
10. Significant Glint & Glare impacts to many more homes than admitted, especially those with elevated views of Rugged Solar and Tierra Del Sol Solar projects.
11. Environmental Justice and disproportionate impacts to predominantly low-income rural groundwater dependent communities.
12. Controversial bulk water sales from private and public groundwater dependent entities, especially during ongoing extreme drought conditions.
13. Questions still remain over the legality of such bulk water sales based on bylaws, grant restrictions, proper notification and /or approval by ratepayers, and more.
14. Double standard with biased support for renewable energy projects/ regional infrastructure over the best interest of the impacted rural communities/residents.
15. Improper deferral or numerous project related plans that should be circulated with the EIR/MUP’s; at a minimum those plans should be noticed for public comment before they are approved or implemented.
16. Self-monitoring for avian and bat impacts has proven to be less than adequate at existing solar energy projects of all types as reported in the KCET articles dated July 17, 2013: [Water Birds Turning Up Dead at Solar Projects in the Desert](#)<sup>10</sup>, [Great Blue Herons Die at Solar Project](#)<sup>11</sup>
17. Failure to recognize or admit the market failure of numerous proposed wind, solar projects proposed for the Boulevard area including the following, which have been unjustly used to claim that Boulevard is a community in transition:
  - Tule Wind has failed to get a Power Purchase Agreement or all the necessary permits or leases—and may never be built.
  - SDG&E recently held an auction for their failed Manzanita Wind project.
  - Enel withdrew their Jewel Valley Wind project.
  - Inveneryg’s Shu’luuk Wind lease was voted down by the Campo Band.
  - Sol Orchard withdrew 6 solar projects planned in Boulevard.
  - Infigen withdrew their Fox Solar project.
  - Soitec’s LanWest and LanEast Solar projects have been withdrawn.
  - Soitec Los Robles Alternative is also a no go.

<sup>10</sup> <http://www.kcet.org/news/redefine/rewire/solar/water-birds-turning-up-dead-at-solar-projects-in-desert.html>

<sup>11</sup> <http://www.kcet.org/news/redefine/rewire/wildlife/great-blue-herons-die-at-solar-project.html>

## Summaries of the conclusions of our well qualified independent experts:

1. Volker Law, Public Interest Environmental Law: Soitec FEIR comments to Planning Commission<sup>12</sup>: Volker Law comments detail the FEIR's numerous significant CEQA violations, changed circumstances, and the need to re-circulate the EIR, and set the stage for litigation of any Soitec Solar project approvals.
2. Scott Snyder PG 7356, CHG 748, QSD/P 445 Principal Hydrogeologist, Snyder Geologic: *"The water demands for construction of the TDS and Rugged sites should be reanalyzed using actual water use data from the Soitec Desert Green Solar project. The actual water use per acre for Desert Green is nearly 60% higher than current projections of water use for TDS and Soitec (and double the original estimates in the Draft EIR), the site conditions of which are similar to Desert Green. The water demand was already increased by 35% for TDS and 40% for Rugged between the DEIR and the FEIR due to omissions or initial underestimates of project activities that would use water (Table 9-2, page 9.0-42)."*
3. Samuel Milham, MD, MPH with 40 years experience studying Dirty Electricity and impacts on human health with findings that dirty electricity is a human carcinogen<sup>13</sup>: Inverters interrupt current flow and generate high frequency voltage transients (electrical pollution or dirty electricity) which gets back into the grid and the earth. Dirty electricity creates serious problems with electrical equipment and health. Dr Shepherd ignored the dirty electricity component of the project so his first and third conclusions, that the project EMFs pose no potential health risk, are wrong. His second conclusion that EMFs will not migrate off-site are not true, based on Miham's testing at a solar project near Borrego Springs where the characteristic dirty electricity signal (20KHz) was found in the air at the plant and in a ground wire for a pole mounted transformer miles away.
4. Richard James, INCE, Acoustical Engineer with 40 years experience; Owner and Principal Consultant for E-Coustic Solutions: Mr. James' review of Soitec Solar Acoustical Assessment Reports for the Tierra Del Sol and Rugged Solar Related to the Proposed Energy Storage Facility lists 3 major deficiencies: 1-INADEQUATE INFORMATION TO PROPERLY CHARACTERIZE NOISE IMPACT ON ADJACENT PROPERTIES; 2-NEW DOCUMENTS DO NOT ADDRESS THE 40 DB CNEL THAT IS APPROPRIATE FOR THE PROPOSED FACILITY; 3-INFRA AND LOW FREQUENCY SOUND FROM ENERGY STORAGE FACILITY ARE NOT KNOWN; The James report concludes that *"The late addition of a 160 MW battery storage facility covering roughly 7 acres is of major concern given the limited attention to noise. Only one report even considered audible noise and then, without spectral details and by assuming no interaction between HVAC units. The impact of the proposed storage facility has not been defined with sufficient precision to permit a proper evaluation of how it affects people and wildlife in the community. The EIR fails*

<sup>12</sup> <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Record-Documents/2015-01-15-StephanieClark-VolkerLaw-Letter-Soitec-Solar-FPEIR-Comments-SCH-2012-121-018.pdf>

<sup>13</sup> <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Record-Documents/2015-01-06-DonnaTisdale-email-FWD-Dr-Sam-Milham-FEIR-Comments.pdf>

to address noise impacts inside the project (including Tule Creek floodplain and wildlife corridor) and at adjacent receptors including wildlife habitat within and adjacent to the McCain Valley Conservation and for species such as the Peninsular Big Horn Sheep Wildlife Management area which is designated critical habitat There is a need for further noise studies to address the issues raised in this review before the proposed energy storage facility is granted permits to build or operate.<sup>14</sup>

5. Scott Cashen, MS—Independent Biological Resources Consultant with 21 years experience<sup>15</sup>: Cashen’s comments list the significant CEQA violations and misrepresentations and failures related to biological resources, including Golden Eagles, core foraging habitat, avian migration and collisions; all-species status, cumulative impacts, mitigation and more; he concludes that it is his professional opinion that the County has not met the obligations of CEQA, and that the Project would result in significant and unmitigated impacts to several sensitive biological resources.
6. Dr. V.M. Ponce, SDSU Professor with 40 years experience: report on *The Impact of Soitec Solar Projects on Boulevard and Surrounding Communities*<sup>16</sup>, *Effects of Groundwater Pumping on the health of arid vegetative ecosystem*<sup>17</sup>, *Cumulative impacts on water resources of large-scale energy projects on Boulevard and surrounding communities*<sup>18</sup>. *Groundwater utilization and sustainability*<sup>19</sup>; with a focus on the cumulative adverse impacts to transboundary groundwater and riparian resources; Dr. Ponce concludes that that to remain comprehensive, sustainable yield must include hydrological, ecohydrological, and socioeconomic considerations. Dudek’s critique of Dr. Ponce’s report is inaccurate and is negated by their negligence, misrepresentations, and significant under estimate of the amount of groundwater resources needed to construct Soitec’s Rugged Solar and Tierra Del Sol Soar projects as detailed in Scott Snyder’s report, dated 1-30-15; Dudek also failed to adequately analyze or protect groundwater resources impacted by Sunroad Enterprises pumping at the Madera’s Golf Club (Dudek’s April/May 2013 report to the City of Poway<sup>20</sup>), despite Dr. Ponce’s Thompson Creek groundwater study warning that pumping from the Maderas wells would cause well interference<sup>21</sup>; The Maderas pumping was allowed to resume based on Dudek’s inaccurate report but had to be curtailed within 60 days after resumed pumping dropped water levels in wells<sup>22</sup>.
7. Dr. Timothy Schoechle, PhD, Secretary ISO/IEC JTC1 SC25/WG1 – Home Electronic System: Dr. Schoechle updated his previous report provided to Mark Wardlaw and

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<sup>14</sup> <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Record-Documents/2015-01-15-StephanieClark-VolkerLaw-Letter-Soitec-Solar-FPEIR-Attachment-1-E-Coustic-Solutions-Comments.pdf>

<sup>15</sup> <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Record-Documents/2015-01-15-StephanieClark-VolkerLaw-Letter-Soitec-Solar-FPEIR-Attachment-2-Scott-Cashen-Biological-Resources-Comments.pdf>

<sup>16</sup> <http://www.sandiegocounty.gov/content/dam/sdc/dplu/ceqa/Soitec-Documents/Record-Documents/2013-12-04-Donna-Tisdale-email-re-Soitec-Sola-DPEIR-BAD-submission.pdf>;  
<http://boulevardsoitec.sdsu.edu/>

<sup>17</sup> [http://ponce.sdsu.edu/effect\\_of\\_groundwater\\_pumping.html](http://ponce.sdsu.edu/effect_of_groundwater_pumping.html)

<sup>18</sup> <http://ponce.sdsu.edu/boulevardenergy.html>

<sup>19</sup> [http://ponce.sdsu.edu/groundwater\\_utilization\\_and\\_sustainability.html](http://ponce.sdsu.edu/groundwater_utilization_and_sustainability.html)

<sup>20</sup> <http://www.pomeradonews.com/news/2013/nov/20/maderas-given-3-2-poway-council-ok-to-use-water/>

<sup>21</sup> <http://ponce.sdsu.edu/tcgwss.html>

<sup>22</sup> <http://www.pomeradonews.com/news/2014/jan/27/low-water-level-forces-maderas-golf-club-to-shut/>

Dianne Jacob, specifically to address the lack of need for the Soitec's Boulevard CPV projects.: *Critical Transformative issues in electricity: Negating the need for more remote wind and solar projects*<sup>23</sup>. Dr. Schoechle concluded that point of use generation is superior, especially with the availability of clean inverters with battery storage.

**This section of comments is limited to most egregious statements and recommendations of staff presentation by Ashley Gungle<sup>24</sup> and other comments made.**

- **Starting at page 48, in an alarming stretch that attempts to besmirch the ruggedly beautiful Boulevard area as totally blighted, 157,000 sq ft or so of commercial / industrial development, most of which is under federal or CPUC authority, was inappropriately used to justify industrial conversion of almost 1,200 acres of scenic open space , agriculture lands, wildlife habitat, residential neighborhoods:**
  - **60,222 sq ft – Rough Acres Ranch**: The former Chargers Camp was a short-term grandfathered use, built before permits were required, that lost its grandfather protection through years of disuse; however, the politically connected Hamann Companies and related entities have significantly changed the original use through questionable and controversial actions including drug rehab services and creation of the Rough Acres Water Company for bulk water sales. Questions remain about Hamann related charities that own Rugged Solar parcels; concerns also remain regarding the 109 or so companies that use the Hamann Companies address of 1000 Pioneer Avenue, El Cajon, CA, 92020<sup>25</sup>.
  - **Rough Acres Ranch Sunrise Powerlink Construction Yard** was permitted as a temporary use that was supposed to be restored ; however PDS staff predetermined that Rugged Solar would be approved and therefore waived the restoration / mitigation required by the PUC.
  - **29,000 sq ft – US Border Patrol's Boulevard station** is under federal authority with no local control. Unauthorized use of Live Oak Springs groundwater was allowed by the Inspector General despite objections by the Boulevard Planning Group, the County, and elected officials. The USBP/station provide local jobs.
  - **60,000 sq ft Golden Acorn Casino**—located on Campo tribal land under federal authority. Problems include land disposal of inadequately treated sewage, cross

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<sup>23</sup> <http://www.sandiegocounty.gov/content/dam/sdc/dplu/ceqa/Soitec-Documents/Record-Documents/2014-03-02-Timothy-Schoechle-Comment-Letter-Comments-on-the-Soitec-Solar-Program-EIR.pdf>

<sup>24</sup> <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Record-Documents/2015-01-16-CountyStaff-Powerpoint-Presentation-Made-at-Planning-Commission-Hearing.pdf>

<sup>25</sup> <http://www.bizapedia.com/addresses/1000-PIONEER-WAY-EL-CAJON-CA-92020.html>

contamination with casino's potable water system; however the casino does provide local jobs, services, and entertainment.

- 8,000 sq ft Travel center/gas station—is located on Campo tribal land at the Golden Acorn Casino. It does provide local jobs and services
- Kumeyaay Wind turbines were approved for Campo tribal land with inadequate FONSI-NO EIS; they suffered a 2009 catastrophic failure that took out all 25 turbines and 75 blades; 2013 wind turbine fire sparked a small brush fire—the day after Santa Ana wind events.
- Lux Inn is located in commercial zone @ I-8 (used against us for both Rugged and Tierra Del Sol project despite the fact it is not visible from any part of either project.
- Vacant / abandoned Border Patrol station is located adjacent to I-8 on private land and is likely subject to Codes Enforcement action. The owner reportedly declined the Border Patrol's plans to remove their unneeded buildings and equipment when they moved to new station.
- Tule Wind was approved by BLM & County in 2012 but is in extended stall mode—Despite approvals, Tule Wind has NO Power Purchase Agreements, NO Eagle Take Permits in hand, as required by USFWS—NO lease for State Lands—an expired MUP—a request pending to extend their BLM Notice to Proceed to January 2017; Tule Wind is no longer cost competitive with lower priced renewables—and may never get built.
- US Border fence was installed with a federal waiver of NEPA and NO CEQA review; adverse impacts to wildlife, views, ephemeral surface and storm water flows.
- At page 61: Rugged Solar simulation of view from I-8 does omits new 75ft collector lines in the scenic Tule Creek floodplain, McCain Valley, and new gen-tie lines and unjustly minimizes real world impacts.
- At page 62: Simulated view of Rugged Solar East of McCain Valley Road omits the new Rugged Solar / Tule Wind Gen-tie line along the only access route to McCain Valley Resource Conservation and Wildlife Management Area and Recreation Area that includes scenic Sacatone and Carrizo Gorge Overlooks, camping, trails, rock climbing.
- NO BOULEVARD IMPACTED HOMES OR RANCHES WERE SHOWN THROUGH OUT STAFF – SOITEC PRESENTATIONS—it is an affront to those of us who have invested our life savings, blood, sweat and tears in our Boulevard properties, who pay our taxes, and who make sacrifices in order to live in quiet rural neighborhoods—not industrial energy zones.

- At page 65: Simulated view of TDS Solar gen-tie through Jewell Valley is not representative of the real world impacts and does not show views from impacted homes located along the Jewel Valley Court area which would be much more significant. Current open and uncluttered views are of Empire Ranch properties all the way to the US/Mexican border and beyond, including Rattlesnake Mountain.
- At page 68: CPV Glare: the graphic shows glare rays almost parallel with the ground yet the presentation and response from one of the authors inappropriately minimized and misrepresented the significance and duration of glare events/impacts
- At page 69: Glare Study: Graphic of CPV tracker glare shows only 5 residences in the impact zone for Rugged Solar while ignoring many other impacted homes located along Ribbonwood Road and from elevated homes located in the gated Boulevard Country Estates subdivision solely accessed from Ribbonwood Road and Opalocka Road.
- At page 70: EMF: The so-called study “Health issues related to the static and power frequency electric magnetic fields of Soitec Solar Energy Farms” failed to address dirty electricity/stray voltage and increased direct ground currents can migrate off-site for miles through common grounds and neutral wires as confirmed by Dr. Samuel Milham’s FEIR comments <sup>26</sup>. Dirty electricity is a human carcinogen.
- AT page 71: HazMat: Where is the HazMat Business Plan for Soitec’s projects? There is no mention of the new and increased potential for groundwater contamination through leaks or catastrophic thermal runaway / failure at the new 160MW of battery storage facility planned at the groundwater dependent Rugged Solar site—with the nearest HazMat response team located in San Diego, 70 miles to the west.
- At page 74: MUP FINDINGS cannot be made honestly, ethically, or lawfully. Soitec Solar projects are not compatible in bulk, scale, density, type or intensity of use, community character. When questioned by Planning Commissioners, on how the MUP Findings could be made, Director Wardlaw responded that it is all in how they are written. Weasel wording has been used to manipulate the Findings that are not supported by the Record.
- At page 75: Major Use Permit Findings cannot be made with a straight face: The existing uses listed are not all visible from the related project sites and impacted neighbors. They misrepresent the majority of Boulevard neighborhoods and

<sup>26</sup> <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Record-Documents/2015-01-06-DonnaTisdale-email-FWD-Dr-Sam-Milham-FEIR-Comments.pdf>

extensive viewsheds and do not justify the industrial conversion of 765 acres. The biased presentation, while failing to show existing modest homes and ranches and scenic vistas, inappropriately portrays Boulevard as blighted. Soitec's CPV projects represent industrial blight that does not fit in Boulevard Planning Area.

- At page 76: Plan Conformance has not been met; Once again, Staff, has made statements that are not supported by the record or actual existing uses regarding compliance. We know they are not in conformance with the zoning ordinance, the Boulevard Community Plan, goals, and visions or County policies. The Boulevard Community Plan has already been substantially and unnecessarily degraded through the undue influence of vested project applicants, their hired lobbyists, and biased decision makers who are blinded by ideals, unsustainable political agendas, and empty promises.
- At page 77: Overriding Considerations are false, misleading and not supported by the record or by Soitec's changed circumstances and loss of cost-competitiveness: There is no balance in the manipulated and weasel worded Overriding Considerations that have been written to favor the project over disproportionate adverse and cumulatively significant community impacts.
  - There is no evidence that GHG reductions or consumption of non-renewable resources will occur –*SDG&E has terminated Soitec contracts, and has contracts for the 300 MW Pio Pico<sup>27</sup> gas-fired power plant on 12 acres at Otay Mesa industrial area, and for 600MW from NRG's proposed Carlsbad Energy Center adjacent to existing gas-fired power plant.*
  - In excess of 10 miles of new high voltage lines are required to connect to the Boulevard Substation, where none currently exist. Not close enough!
  - Regional benefits and local production of goods will not come to fruition with Soitec's market failure and pending closure of local CPV facility.
  - The majority of so-called community benefits will not go to the Boulevard community; community benefit contracts unlawfully require quid-pro-quo support for Soitec Solar which is not allowed.
  - ***The projects significant and cumulatively significant impacts are not outweighed by the false promises/so-called benefits; project impacts are wholly avoidable with justified denial of Soitec's projects.***
- At page 78: Recommendations for Approval should be rejected: The project does not comply with relevant codes and regulations; it does not make the required findings, and fails to adequately address planning issues/concerns that have been

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<sup>27</sup> <http://www.utsandiego.com/news/2014/jan/07/otay-mesa-power-backed/>

raised or dealt with remaining controversies. It is our strong belief that Staff made an unlawful and politically driven predetermination to push Soitec projects through the process for approval, likely with direction/ pressure from above.

- PDS Director Wardlaw made a statement in response to Planning Commission questions that Boulevard is a “community in transition”. ***Our question is, in transition to what; under whose authority; and with what type of public notice and disclosure? None of this industrialization was addressed in the General Plan Update, even though certain projects were proposed and opposed at that time.***

### **AB900: PDS /lead agency failure to notify impacted community of Soitec’s application for fast-tracking:**

- **Despite being informed by Soitec as early as April 23, 2012<sup>28</sup>, Director Wardlaw and PDS staff failed to notify or disclose to the Boulevard community the fact that Soitec Solar had applied for CEQA fast-tracking certification** as an undeserving “environmental leadership” project through AB900; leaving the predominantly low-income and disproportionately impacted community with no opportunity to review and comment on the application before it was certified; resulting in loss of rights and reduced critical self-defense opportunities.
- **As confirmed in an e-mail response from the Office of Planning and Research, the notice was only posted on an obscure website: “The Office of Planning and Research (OPR) provides notice of the review period and associated application information on the California Job’s Web-Page. Notice is not mailed or provided by other means...”<sup>29</sup>**

### **Attachment N-Post Planning Commission Changes<sup>30</sup> still contains major errors and misrepresentations that apply to both Tierra Del Sol and Rugged Solar projects, including but not limited to the following:**

- **AT page 9/535: The Haul Route Plans** for both Tierra Del Sol Solar and Rugged Solar should be available for public review and comment by the impacted community, concurrently with EIR/MUP – especially since the routes used are sole ingress and egress routes for the majority of residents and visitors.

### **Starting At page 75 (601) Consistency with Surrounding:**

<sup>28</sup> [http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/Appendix\\_3.1.3-3\\_AB%20900Application\\_SoitecSolarEnergyProject.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/Appendix_3.1.3-3_AB%20900Application_SoitecSolarEnergyProject.pdf)

<sup>29</sup> July 1, 2013 e-mail response to Donna Tisdale from Scott Morgan State Clearinghouse Director Deputy Director, Administrator Governor’s Office of Planning and Research

<sup>30</sup> <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/bos02-04-15planningreport/Attachment-N-SOITEC-Post%20Planning%20Commission%20Changes.pdf>

1. Many of the “Existing Uses” used to support alleged consistency/conformity are flat out wrong and discredit the EIR/Findings/MUPs/Overriding Considerations
2. Tule Wind project and components will not be visible from the Tierra del Sol area south of White Star Cal Fire Station due to intervening topography
3. Tule Wind project was approved in 2011-12; however, Tule’s MUP with the County has expired; no Power Purchase Agreements have been secured; no leases have been secured from the State Lands Commission; the USFWS required Eagle Take Permits have not been secured or fully applied
4. White Star Communications facilities are not visible from a majority of the Tierra del Sol area of Boulevard south of that facility due to intervening topography
5. The Kumeyaay Wind turbines are not visible to a majority of the Tierra Del Sol area south of Shasta Road due to intervening terrain
6. The Southwest Powerlink location is incorrect—it is not located to the northeast of the collector and transmission lines. It is located on the TDS Solar site.
7. The Operations and Maintenance Buildings onsite substations and Inverter Skids (400 sq/ft. each) *will likely not be screened from views for homes / ranches with elevated views of the TDS site and Rugged Solar sites*
8. *The 30’ tall x 48’ wide CPV trackers will not be compatible or consistent with the existing uses and will represent and significant increase in bulk, scale, density, intensity of use, contrasts, noise, vibrations*
9. *The total CPV panel space equals approximately the same square footage as 50 Walmart Supercenters where land is zoned 1 dwelling per 80 acres.*
10. The Wind Ordinance amended the Boulevard Community Plan against strong community opposition, and may be overturned with the currently unresolved appeal.
11. Claiming that the proposed project is not an “industrial scale project or facility” as defined by the Boulevard Community Plan that the community worked on for 14 years along with the General Plan Update is WRONG—that was not part of Boulevard’s plan, goals or visions and to claim otherwise is WRONG
12. In a January 30<sup>th</sup> e-mail communication, Staff and Soitec confirmed that this absurd Plan Amendment *“is being held in idle status by the County.”*<sup>31</sup>
13. Staff’s inclusion of existing, approved and proposed energy facilities, the Boulevard Subregional Plan Area wrongly portrays the Boulevard community as blighted. Many of the projects have been withdrawn or simply failed.
14. At page 82: using unpermitted solar projects proposed in adjacent communities which will not be visible for a majority of the Boulevard Planning Area is WRONG
15. At page 83/610: Claiming that Tule Wind expects to begin construction in 2016 is WRONG and is contradicted by statements in the FEIR that Tule Wind has requested an

<sup>31</sup> <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Record-Documents/2015-01-30-PatBrown-email-to-AshleyGungle-Re-Soitec-Solar-General-Plan-Amendment-Status.pdf>

extension to their Notice to Proceed to start construction sometime after January 1, 2017<sup>32</sup>

16. At page 85-86: claims that removal of the A designator and disestablishment of the Agriculture Preserve will not be harmful because the “parcel has long since ceased to be an agriculture resource” is WRONG. The Brown family has allowed cattle grazing on that property for years, including 2014. The same cattle grazed on the Maupin property / preserve next door.
17. At page 86/612: Soitec brags about the productivity of their two CPV units located at the UCSD campus in LaJolla which confirms that rural locations like Boulevard are not necessary; in fact, during higher summer inland temperatures solar equipment / inverters needs to dump heat and become much less efficient and less productive than solar generation located in cooler climates.
18. Soitec CPV is a high intensity, dense, commercial industrial use that is not compatible with surrounding uses—falsely claiming that it is compatible does not make it so.
19. At page 87/613: limiting glare impacts to within one mile is WRONG, absurd, and ignores impacts to homes and investment properties that will have significant impacts from glare/degraded views that will result in lost value and quality of life impacts. Photographic evidence or impacts has been provided in the EIR process.
20. Up to 120 minutes / 2hours of glare is not compatible with adjacent residential and small livestock operations; intensity of glare can be blinding when CPV modules go out of alignment as documented in photographs previously submitted.
21. At page 88/614: CEQA has not been complied with; Volker Law comments document the numerous and flagrant CEQA violations inexcusably supported by PDS Staff, Planning Commissioners, and uninformed supporters.
22. Setbacks from existing users are still inadequate and should be increased due to the industrial nature of Soitec’s CPV projects and related components.
23. At page 30/648: Energy Storage Compliance: The noise study failed to include low-frequency noise and infrasound vibrations that are most likely to cause annoyance to residents and wildlife, according to comments filed by noise expert Richard James.
24. Groundwater misrepresentations and underestimation of project water use by almost 100% and other related issues are addressed by our experts Scott Snyder PG 7356, CHG 748, QSD/P 445, Dr. Victor M. Ponce, and our attorneys at Volker Law.
25. Page 39/657: Noise: Operational noise should also be addressed. Noise will be a significant and cumulative impact throughout the 25-30 year life of these projects.
26. Page 47/665: Private Road: Rough Acres Ranch Road is subject to a separate Major Grading Permit Application PDS2011-2700-15622 that has not yet been approved; the required amount of grading, soil movement, or water use has not been disclosed.
27. Page 49/667: Flood Plain Compliance: *No CPV units or project components should be*

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<sup>32</sup> See page S-09: [http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/O.S.O\\_Summary.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/O.S.O_Summary.pdf)

*allowed within the 100 year inundations boundaries.*

28. At page 81-82/699-700: Rugged Solar is not compatible or consistent with the local policies of the Boulevard Community Plan; the Community Plan has been bastardized by developers, lobbyists and biased decision makers to sledgehammer these industrial scale projects regional infrastructure projects into rural neighborhood open spaces/ sensitive carbon sequestering habitat where they DO NOT BELONG AND SHOULD NOT BE APPROVED.
29. At page 82-83/700-701: Rugged Solar is not compatible with the bulk, density, coverage or intensity of existing uses and cannot be ethically, honestly, or legally argued to be so.
30. At page 84/702: Fire: Fire plans and mitigation is currently inadequate; specialized foam equipment and trained full time staff, stationed in Boulevard for the life of the project, is needed to help prevent catastrophic failures and related electrical firestorms that can morph into wildfires driven by high winds with windblown embers/flaming debris flying off-site and into surrounding properties and high flammable chaparral. *Boulevard is a designated Wildfire Corridor and Very High Fire Severity Zone.*

***Fire and Emergency Services Agreement is inadequate and must be revised to include the following:***

- FIRE AND EMERGENCY PROTECTION SERVICES AGREEMENT (Project Design Feature PDF-PS-1)<sup>33</sup>
- *“On fire scenes where large quantities of Li-ion cells would be in close proximity, decisions regarding overhaul procedures must be made with an understanding that as cells are uncovered, moved, or damaged, they may undergo thermal runaway reactions and vent, they may ignite, and they may generate (or may themselves become) hot projectiles. Similarly, the potential for rekindles will be high at such fire scenes, and these scenes will require extended monitoring by trained firefighters.”*
- Specialized equipment and training should be required for the almost 1,200 acres of new electrical generating equipment, the new 160MW / 160 cargo containers of battery Energy Storage System
- The specialized equipment and full time staff should be stationed in Boulevard where the increased risks and impacts will be focused, not Jacumba, not Lake Morena, or elsewhere.

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<sup>33</sup> [http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/00\\_AIS\\_Combined\\_OPT\\_January%202015\\_Part5.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/00_AIS_Combined_OPT_January%202015_Part5.pdf)

## Energy Storage System:

- Soitec Solar informed the County that they wanted to add 160MW ESS in a letter dated October 7, 2014<sup>34</sup>; however that letter was not posted to the project website until December 15, 2014, and the impacted community was not informed by Staff or the applicant's lobbyist, Jim Whalen, who has attended almost every planning group meeting in recent years, admittedly at Soitec's expense.
- Dudek's Technical memorandum on ESS aesthetics AIS-1, dated September 25, 2014,<sup>35</sup> pre-dates Soitec's notice to the County by two weeks.
- Dudek's ESS Addendum Fire Hazards Assessment for Rugged Solar LLC Project,<sup>36</sup> dated June 2014, predates Soitec's notice to the County by 4 months or so.

## Draft Indemnification Agreement:

- Questions remain on Soitec's changed circumstances and the ability or willingness of Soitec's Board of Directors to fund the \$300,000 payment to support the litigation that will follow in the event your Board approves Soitec's dead-on-arrival projects.
- If Soitec fails to make that payment, will the Project approvals be rescinded or will the taxpayers be required to foot the legal bills on behalf of Soitec?
- Patrick Brown's desperate and aggressive actions and statements, at recent meetings, and the obviously subdued behavior of Soitec Solar CEO, Clark Crawford, who fled from the failed Amonix CPV company to the now-failed Soitec CPV disaster, have not gone unnoticed. Both Mr. Brown and Mr. Crawford must know that their jobs are on the chopping block.
- We have observed that they will say and do just about anything to win support.
- Sadly, it is the Boulevard community that will have to live with and attempt to defend against any project approvals.

## Alarming Exodus of County Planners:

- An alarming exodus of County PDS staff/ planners has been noticed since the naming of a new Director.
- This exodus of seasoned planners raises concerns, especially in light of PDS's current manipulated and biased support for the unprecedented and unnecessary transformation of rural east County, and Boulevard specifically.

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<sup>34</sup> <http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Record-Documents/2014-12-15-PatBrown-Attachment-2-2014-10-07-Soitec-Letter-to-County-re-Energy-Storage-for-Rugged-Solar-Major-Use-Permit.pdf>

<sup>35</sup> [http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/00\\_AIS\\_Combined\\_OPT\\_January%202015\\_Part3.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/00_AIS_Combined_OPT_January%202015_Part3.pdf)

<sup>36</sup> [http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/00\\_AIS\\_Combined\\_OPT\\_January%202015\\_Part5.pdf](http://www.sandiegocounty.gov/content/dam/sdc/pds/ceqa/Soitec-Documents/Final-EIR-Files/00_AIS_Combined_OPT_January%202015_Part5.pdf)

## Conclusion:

It is our strong request that your Board vote to reject Staff and Planning Commission recommendations for approval due to the glaring and documented violations of CEQA, Soitec's changed circumstances, and their Board's decision to exit the solar business<sup>37</sup>. Boulevard's residents and resources deserve better support and protection!

There really are better point-of-use alternatives on new and existing structures and parking lots, with clean inverters and smaller more manageable energy storage systems, located where better services are already available, and that do not require hundreds of miles of new expensive and destructive high-voltage lines and 85-acre substations.

In the event that you fail to vote to re-circulate the EIR and do approve Soitec's projects, in violation of the public trust and all that is just; and in the event that Soitec manages to flip their expensive entitlements to another desperate developer, the entire EIR/MUP process will need to start over from scratch, anyway--due to the loss of the CPV aspect and need to revise project reports to address significant changes and new information.

Soitec has gambled and lost, using shareholder funds and over \$35 million in tax and ratepayer funds that we are aware of. Please do the right thing and vote to reject Soitec Solar's uncompetitive out-of-the market projects outright!

Thank you....

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<sup>37</sup> <http://www.greentechmedia.com/articles/read/French-CPV-Hopeful-Soitec-Exits-the-Solar-Business>