

From: [Jamey Volker](#)
To: [FGG-DL, LSDOCS](#); [Smith, Ashley](#)
Cc: "[Stephan Volker](#)"; "[Stephanie Clarke](#)"
Subject: FW: Comments of Backcountry and Donna Tisdale on Agenda Item 2 (Soitec Solar Development) for October 14, 2015 BOS Hearing
Date: Tuesday, October 13, 2015 9:06:50 AM
Attachments: [Comments of Backcountry and Donna Tisdale on Agenda Item 2 \(Soitec Solar Development\) for October 14, 2015 BOS Hearing.pdf](#)

Dear Ms. Smith,

Attached please find the Comments of Backcountry Against Dumps and Donna Tisdale on Agenda Item 2 (Soitec Solar Development) for the Wednesday October 14, 2015 Board of Supervisors hearing, which we just sent also to Mr. Hall (see transmittal email below). Please circulate these comments to the Board and make them a part of the public record in this proceeding.

Please confirm that you are able to open and read the attached Comments.

Thank you.

Jamey Volker
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Backcountry Against Dumps.

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From: Jamey Volker [mailto:jvolker@volkerlaw.com]
Sent: Tuesday, October 13, 2015 9:00 AM
To: 'David.Hall@sdcounty.ca.gov' <David.Hall@sdcounty.ca.gov>
Subject: Comments of Backcountry and Donna Tisdale on Agenda Item 2 (Soitec Solar Development) for October 14, 2015 BOS Hearing

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Attached please find the Comments of Backcountry Against Dumps and Donna Tisdale on Agenda Item 2 (Soitec Solar Development) for the Wednesday, October 14, 2015 meeting. Please circulate these comments to the Board and make them a part of the public record in this proceeding.

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Thanks you.

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October 13, 2015

VIA FACSIMILE, EMAIL AND U.S. POST

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Office of the Clerk
San Diego County Board of Supervisors
County Administration Center
1600 Pacific Highway, Room 402
San Diego, CA 92101

Re: Comments of Backcountry Against Dumps and Donna Tisdale on
Agenda Item 2 (Soitec Solar Project), Wednesday,
October 14, 2015 meeting

Dear Clerk:

Please include the following comments in the public record on the Board of Supervisors' consideration of the proposed reapproval of the Soitec Solar Project, which is calendared as Agenda Item 2 for your October 14, 2015 meeting. We submit these comments on behalf of Backcountry Against Dumps and Donna Tisdale, the parties who secured a peremptory writ of mandate directing the Board of Supervisors to rescind and vacate its previous approval of the Rugged Solar and Tierra Del Sol solar projects, along with their certification of its FPEIR and associated Findings, Statement of Overriding Considerations, and other related land use approvals.

We respectfully request the Board's denial of Soitec's request for reapproval of its Rugged Solar project for five reasons, as discussed below.

- 1. The Revised FPEIR Fails to Address the Environmental Impacts of the Backup Power Sources Necessitated by Withdrawal of the Battery Storage Components.**

When the Board previously approved the Rugged Solar project, it relied on Soitec Solar's representation that inclusion of a battery storage component would mitigate the effects of the

project by avoiding the need for reliance upon backup power sources at times when Rugged Solar would be off-line due to high winds, storms and at night.

The battery storage system that the County now proposes to remove from the Project would have “eliminate[d] the need for the proposed backup power and storm positioning system, which, as indicated in Section 1.2.1.1 of the DPEIR (p. 1.0-9), would consist of one of the following options: (1) a 1.5 MW diesel-powered emergency generator or equivalent located at the substation, (2) an Uninterrupted Power Supply (UPS) battery storage system at each inverted station, or (3) a 20 kW propane generator at each inverter skid.” AIS.0-4. Now that the County proposes to remove the battery storage system, it must analyze the impacts of the alternative backup power supply that the Project will require, such as the three potential backup sources mentioned above. Each of those potential sources could have a potentially significant environmental impact. For example, the “1.5 MW diesel-powered emergency generator” would likely have significant air quality impacts. *Id.* Because the Project proponents originally decided to use a battery storage system instead of an alternate backup power source, the County did not analyze many of the impacts of those alternate sources, including the air quality impacts of a diesel-powered generator. The County must now analyze those impacts and recirculate the EIR for further public review and comment.

Absent this mitigation, the Rugged Solar project will have greater impacts on air quality and greenhouse gas emissions. Previously, both the County and the public relied on Soitec’s representation that it would avoid these impacts through reliance upon the energy storage batteries. Now that this touted mitigation measure has been removed from the project, the County must examine the Rugged Solar project’s impacts on air quality and greenhouse gas emissions that result from the elimination of this previous project component. These impacts must be addressed in the Revised FPEIR.

2. The Revised FPEIR Must Be Recirculated for Public and Agency Review.

“When significant new information is added to an environmental impact report after notice has been given pursuant to [Public Resources Code] Section 21092 and consultation has occurred pursuant to [Public Resources Code] Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to [Public Resources Code] Section 21092, and consult again pursuant to [Public Resources Code] Sections 21104 and 21153 before certifying the environmental impact report.” Public Resources Code section 21092.1. Removal of the Rugged Solar project’s energy storage batteries is “significant new information” because, as noted, it removes a mitigation measure which would have avoided or reduced the project’s impacts on air quality and greenhouse gas emissions. Consequently, the RFPEIR must be recirculated.

CEQA Guidelines section 15162 provides that this Board may rely upon a previously certified EIR for a project unless “[s]ubstantial changes are proposed in the project” or “[s]ubstantial changes occur with respect to the circumstances under which the project is undertaken” “which will require major revisions of the previous EIR . . . due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” *Id.* at (a)(1) and (2). Where, as here, previously proposed mitigation measures have been withdrawn, withdrawal of those measures likewise necessitates preparation of a subsequent EIR. *Id.* at (a)(3)(D). Here, removal of the energy storage batteries eliminates a mitigation measure which would have substantially reduced the project’s impacts on air quality and greenhouse gas emissions. Consequently, a subsequent EIR is required to address these previously mitigated impacts.

3. The Board Lacks Jurisdiction Because the Planning Commission Has Original Jurisdiction Over the Project.

The Board’s Staff Report erroneously states that “[t]he removal of the optional energy storage energy system does not require reconsideration by the Planning Commission.” Planning Report for October 14, 2015 hearing on Soitec Solar Development, at p. 4. This statement is wrong as a matter of law. As explained below, the San Diego County Code clearly vests the Planning Commission with original jurisdiction over approval of the Rugged Solar project and consequently this Board may not proceed to hear this matter in the absence of prior Planning Commission action.

As stated in the agenda for the Board’s October 14 hearing, County Planning and Development Services “recommends the Board take the following actions to remove the battery storage components from the prior approval:”

- 1) rescind and vacate the February 4, 2015 certification of the FPEIR, associated Findings and Statement of Overriding Considerations, and land use approvals in accordance with the Peremptory Writ and 2) adopt a Revised FPEIR, associated Findings and Statement of Overriding Considerations and grant associated land use approvals that remove all allowance of an optional energy storage system.
- Board, October 14, 2015, Hearing Agenda, p. 4. The Board may not take that second set of recommended actions.

While the Board has full authority to “rescind and vacate” its prior certifications, findings and approvals, it does *not* have the authority at this juncture to reapprove the Project without the battery storage system. Among the Project approvals that the Court ordered the Board to set aside are Major Use Permits Nos. PDS2012-3300-12-007 and PDS2012-3300-12-010, respectively, for the Rugged and Tierra Del Sol components of the Project, as well as Ordinance No. 10375 rezoning the Tierra Del Sol component. The Board may not re-issue *any* of those

three approvals without prior review by the Planning Commission.

First, where as here there are “[a]pplications for granting or modifying the conditions of a use permit filed concurrently with any other application under the original jurisdiction of the Board of Supervisors,” the Board “*shall* receive a recommendation from the Planning Commission prior to [taking any] action” on the major use permit(s). County Zoning Ordinance § 7352(c) (emphasis added).

Second, while the Board is the final decisionmaker on all proposed zoning amendments, the “Planning Commission *shall [first] make a recommendation* to the Board of Supervisors on all requests to amend the Zoning Ordinance.” County Zoning Ordinance § 7502 (emphasis added).

The Board will violate both the County Zoning Ordinance and the State’s Planning and Zoning Law if it purports to reapprove the Project without prior Planning Commission review.

4. The Revised FPEIR’s Cumulative Noise Impact Analysis Ignores Significant Changes in the Project.

As noted, when either “[s]ubstantial changes are proposed in the project” or “[s]ubstantial changes occur with respect to the circumstances under which the project is undertaken,” if those changes result in unexamined environmental impacts, the agency must prepare a subsequent EIR to address those impacts. Because the proposed timing of the Rugged Solar project’s construction has changed, its noise impacts will now coincide with those of other adjacent energy development projects, resulting in cumulative noise impacts not previously addressed.

The RFPEIR’s cumulative noise impact analysis ignores significant changes in the Project, while admitting these changes in other sections of the same document. *Compare* RFPEIR 2.6-47 to 2.6-48 *with* RFPEIR P.0-9, P.0-18, 1.0-47 *and* RFPEIR App. 9.0-9. The RFPEIR completely failed to update the cumulative noise impact analysis. The construction dates – one of the major changes in the RFPEIR – do not reflect the updated construction schedule. RFPEIR 2.6-47 to 2.6-48. The RFPEIR declares that “[c]onstruction of the [Clear&Grub/Grading/Roads] phase of the Rugged solar farm would commence mid-September 2015 and be completed by October 2015. Other activities such as construction of the operations and maintenance building and undergrounding utilities would all be completed by March 2016.” RFPEIR 2.6-48. All of this information is outdated and incorrect. *Compare* RFPEIR 2-6-48 *with* RFPEIR 1.0-47 *and* RFPEIR App. 9-0-9, p. 2. The cumulative noise impacts discussion also cites Appendix 9.0-8, the “Cumulative Construction Noise Impacts - Rugged and Tule Wind Memorandum.” RFPEIR 2.6-48. However that appendix is no longer current and has been supplemented and overridden by Appendix 9.0-9. RFPEIR P.0-9, P.0-18; RFPEIR App. 9.0-9, p.1. Therefore, the RFPEIR’s conclusion that “the Rugged solar farm would not contribute to a

cumulatively considerable impact,” is outdated and incorrect. RFPEIR 2.6-48. The RFPEIR must be revised to *actually* consider this significant new information and recirculated for public review.

The RFPEIR’s conclusion in its cumulative noise analysis that there will be no overlap in noise intensive activity with Tule Wind’s construction schedule is shown to be false by the RFPEIR’s own statements elsewhere in the document. The updated construction schedule for Rugged shows significant overlap with Tule Wind construction. RFPEIR 1.0-47 (Table 1-9: Rugged Construction Schedule). Indeed, Rugged construction will not be completed until March 2, 2017, while Tule Wind construction will commence 7 months earlier in September 2016. *Id.*; RFPEIR App. 9.0-9, p. 1.

While it is true that one of the “most noise intensive phase[s] of the Rugged Solar Farm” – the ‘Clear & Grub/Grading/Roads’ phase – is *scheduled* to be completed by June 30, 2016 and is “not anticipated to overlap” with Tule Wind construction, other “heavy equipment noise intensive construction phase[s] for the Rugged Solar Project,” *will* overlap with Tule construction. App. 9.0-9, pp. 1-2; App. 9.0-9, Exh. 1, p. 2. Undergrounding utilities and construction of the operations and maintenance building *will both overlap with Tule construction*. App. 9.0-9, pp. 1-2. Both noise intensive construction phases are scheduled to continue into October 2016, *after* Tule Wind construction begins.

The RFPEIR and its Appendix 9.0-9 both ignore this overlap of “heavy equipment noise intensive construction.” RFPEIR 2.6-47 to 2.6-48; RFPEIR App. 9.0-9, pp. 1-2. However, the County admitted the intensive noise impacts of undergrounding utilities and constructing an operations and maintenance facility in its FPEIR. FPEIR 2.6-48 (declaring the cumulative noise impacts would not be significant *because* “construction of the operations and maintenance building and undergrounding utilities” would not overlap with Tule construction); FPEIR App. 9.0-8, p. 3 (same). To now pretend that these noise intensive construction phases have no contribution to cumulative noise impacts is disingenuous at best. RFPEIR 2.6-48; RFPEIR App. 9.0-8, p. 3; RFPEIR App. 9.0-9, Exh. 2, p. 3.

The RFPEIR’s cumulative noise impacts analysis must be revised to consider and address this overlap in noise intensive construction with the Tule Wind project and recirculated to allow the public the opportunity to consider the impacts of, alternatives to, and mitigations for this *significant new impact*.

5. The Rugged Solar Project’s Grading Impacts Appear to be Far More Severe Than Acknowledged in the Revised FPEIR.

As Judge Wohlfeil noted in his ruling overturning the Board’s previous approval of the Rugged Solar project, the original FPEIR presented incomplete, confusing and inconsistent

discussions of the project's grading impacts on the project site, biological resources and water demand for dust control. The Revised PFEIR suffers from the same flaw. As Backcountry Against Dumps has noted in its comments dated October 12, 2015, substantial discrepancies continue to plague the Revised PFEIR with respect to the extent of the Project's grading. The project as originally proposed involved 746,326 cubic yards of soil grading. Soitec proposed to "clear and grub" the entire 474-acre (20,659,925 square-foot) site to 4 inches below the ground surface. This quantity of soil equals over 255,000 cubic yards. Even though the project's proposal to clear the 474-acre site has never changed, inexplicably in 2014 Soitec claimed that it would only grade 29,834 cubic yards. The latter figure appears to be a gross under-estimate of the quantity of soil to be graded. If this were true, only the top one-half inch of soil would be moved. This appears to be impossible, given the undulating topography of this site.

Accordingly, this Board should direct County staff to investigate the actual quantity of grading that will take place.

For each of these reasons, we respectfully request that this Board not certify the Revised FPEIR, and reject approval of the Rugged Solar project.

Respectfully submitted,



Stephan C. Volker
Attorney for Backcountry Against Dumps
and Donna Tisdale

SCV:taf