

From: [Koutoufidis, Nicholas](#)
To: [Koutoufidis, Nicholas](#)
Subject: RE: [External] JVR Solar Farms
Date: Monday, August 16, 2021 9:02:10 PM

From: Donna Jones <donna@donnajoneslaw.com>
Sent: Monday, August 16, 2021 2:18 AM
To: Eldridge, Lonnie <Lonnie.Eldridge@sdcounty.ca.gov>
Cc: Smith, David <David.Smith@sdcounty.ca.gov>
Subject: [External] JVR Solar Farms

Dear Lonnie,

First, it's good to have you back in San Diego, and as County Counsel – congratulations! Second, I assume you're meeting with staff today on an item for Thursday's Board agenda, and wanted to be sure you were aware of a few of the legal issues at play. I wrote a lengthy comment letter to the EIR, and a second letter prior to the Planning Commission and a third letter will be submitted today in conjunction with the litigator my client has retained for this matter.

Given that your time is short, I highlight just a few of the legal issues:

- The MUP Findings conflict with the conclusions of the EIR. The County requires the decision-maker to find that the location, size, design and operating characteristics of the proposed use are compatible with adjacent uses, residents, buildings or structures, with consideration given to harmony in scale, as well as the harmful effect on desirable neighborhood character, among other items. The EIR found that the project has not one but 10 significant and unmitigated impacts to the community and the surrounding area's character, with significant and unavoidable impacts to:
 - the valued visual character or image of the community
 - a valued focal and/or panoramic vista (Scenic highway I-8)
 - a valued focal and/or panoramic vista from (scenic) Old Highway 80
 - a valued focal and/or panoramic vista from Jacumba Community Park

- a valued focal and/or panoramic vista from Anza-Borrego Desert State Lands
- a valued focal and/or panoramic vista from Bureau of Land Management lands on Round Mountain
- a valued focal and/or panoramic vista from BLM lands on Airport Mesa
- a valued focal and/or panoramic vista from BLM lands on Table Mountain; and from
- an increasingly modified landscape, diminished day and night views, and reduced visual quality in the community; and caused by
- altering the existing character and quality of the visible landscape and interruption of panoramic views from I-8 and elevated vantage points.

This project would completely engulf a rural community on three sides, and is visible from virtually every viewpoint in Jacumba Hot Springs, hence the EIR's findings. The MUP Findings ignore these EIR conclusions, and rely on the presence of other solar projects a few miles away to justify the required finding. Those other solar projects, however, do not surround or impact the community, which is why they were not opposed by the community. Those projects cannot serve as justification for the required findings, especially in the face of the EIR's conclusions.

- The County's code is being improperly twisted in an attempt to put a square peg in a round hole and approve a project with: (i) an unquestionably permanent structure that is not going to be subject to the County's control, and (ii) more than 600 acres of uses that are incompatible with the underlying zoning for a minimum of 35 years. County Code 2888.a allows incompatible uses on Specific Plan zoned areas but only if such

uses are i) temporary, ii) their removal is secured by a bonded agreement before issuance of a building permit, and iii) they are subject to the county's control so that these requirements can be enforced. This project does not meet any of those criteria.

- The switchyard -- unquestionably part of the project analyzed in the EIR -- would be permanent. It therefore cannot fit within 2888.a. The project attempts to get around this inconvenience by noting that once approved by the Board and turned over to SDG&E, the County will no longer have the power to do anything about it. The justification for approving a permanent structure under a code section that expressly states structures cannot be permanent is that (i) once approved, it is outside of the County's control and would be under SDGE's ownership and (ii) if it had sought a separate Minor Use Permit the switchyard could have been permitted under another section. But the switchyard did not and does not seek a Minor Use Permit, so whether or not it could have been granted one is irrelevant. And to allow violation of the County Code because after the improper project is approved the County can no longer enforce its code against the non-complying structure is a novel and precedent-setting position I would not think the County would want to endorse.

- The remainder of the solar farm purports to be "temporary." It is hard to conclude that 35 years is the type of "temporary" that language envisioned, as it would last at least a generation and smother and kill this town during that time. Even worse, there is much to suggest that the MUP will be extended as the life of the solar panels is extended and as individual panels are replaced over the years to allow more life. What other use would ever replace solar farms once the permanent switchyard is installed? It is not the type of "temporary" use Section 2888.a of the County Code requires.

- Section 2888.a requires that a bonded agreement securing the removal of the structures be in place *before* any building permit is issued. Yet the MUP

conditions do not require the proposed project to complete its decommissioning plan (an essential component to knowing the amount to be bonded) or to provide security until *one year after issuance of the first building or occupancy permit*. This is in violation of the code requirements. No small bond put up now to address this issue would suffice, as it is impossible to accurately bond until the decommissioning plan is completed. The decommissioning plan must be required to be completed, and the bond in place, before issuance of any building or occupancy permit or this project does not conform to the requirements of Section 2888.a.

- The Community Sponsor Group provided an Equity for Jacumba Alternative prior to the Planning Commission hearing that would mitigate the significant and unmitigated impacts to aesthetics discussed above. That alternative, which fully mitigates almost all of the otherwise significant and unmitigated impacts while also achieving most if not all of the project objectives, must be analyzed and the EIR recirculated to address. An expert has reviewed the solar numbers and concluded that the Equity for Jacumba Alternative would be able to generate close to if not the same amount of solar power as the proposed project, while also mitigating the currently unmitigated significant impacts.

I refer to my earlier letters and the letter that will be sent in later today or tomorrow for more information, but also remain available to discuss any of these issues with you at your convenience.

I am copying David on this email because I know I have David's correct email address and I'm not sure I have yours, and I wanted to ensure your office receives these points so they can be addressed by staff today.

I am out of the country but should be reachable until early afternoon Pacific Time at my cell phone (619-933-3008).

Thank you so much for taking these points into consideration.

Best regards,

Donna

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