



June 3, 2014

Leona Valley Town Council
P.O. Box 795 • Leona Valley • CA 93551

Thuy Hua
LA County Department of Regional Planning
320 W Temple St 13th Floor
Los Angeles CA 90012

Re: Renewable Energy Ordinance – May 2014 Draft

Dear Ms. Hua:

Thank you for giving us the opportunity to submit comments on the proposed Renewable Energy Ordinance as part of the scoping process. The Ordinance will dramatically impact uses, health and development in the North County area. Because of the dynamic proposed changes, it is important to provide input in order to retain our rural communities while prudently addressing how such projects shall be integrated into the existing land use framework. We held the submission of our comments until after your presentation to our community, input from residents and completion of your most recent draft. The Leona Valley Town Council reserves the right for additional review and commentary should further changes to the draft Renewable Energy Ordinance occur.

Our concerns are addressed on the pages that follow.

Respectfully,

A handwritten signature in cursive script that reads "Alice M. Wollman".

Alice Wollman
Vice President
Leona Valley Town Council

Cc: Supervisor Michael D. Antonovich
Norm Hickling, Deputy to Supervisor Antonovich

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The following is for your consideration

Section 22.08.040 D

Under definition for “decommissioning”: “Decommissioning” means the removal of a use from service, which includes safe storage, dismantling, disposal, recycling, removal of concrete pads, and/or site restoration. We object to the use of the word **“or”** for site restoration. With respect to site restoration, how will a site be “restored”? Does this include the replanting of native plant species? How long or how many attempts shall be made to perform “site restoration”? What if the project becomes bankrupt? Will there be some sort of an escrow account? Or stipend set aside for future decommissioning?

22.52.1610 Applicability:

A. Other technologies should include solar and wind energy too.

D. (2) Replacement for maintenance purposes should specify that replacement of equipment should be of the same or lesser size/height. The size/height and footprint may not be increased.

Section 1. Section 22.08.040:

“Decommissioning”: Please describe how and what is to be restored on the site once the project is decommissioned? Does this mean the 500-1,000+ year old Joshua trees that were removed or destroyed are to be replanted? What level of restoration is going to occur? We request a performance bond requirement for all renewable energy projects.

Section 3. Section 22.08.190:

With respect to a “small scale” solar energy system: How will the County determine what the necessary demand is for a single-family dwelling? How is the 150% calculated? What is the formula that determines how much energy is required to support a dwelling? Does this include secondary structures? An entire site? All of the ancillary improvements? If demand is to be used “off-site” does this mean a private residential property can develop enough energy to sell privately to adjacent properties? The sentence “Any energy generated by a wind energy system that exceeds the on-site energy demand may be used offsite” is vague. Specificity is required for this ordinance and this should not be left open to interpretation. Does this mean we can all start our own mini energy businesses on our private residential sites?

Section 4. Section 22.08.210

Utility-scale renewable energy facility, structure mounted: If each utility scale energy facility is comprised of pedestals on which the energy device is placed, does this constitute structure mounted? The definition of “structure” needs to be expanded to what it is likely intended to be: office building, apartment complex, school or other public facility.

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22.52.1620 Permit Requirements

With respect to Utility-Scale Renewable Energy Facilities, Structure Mounted: All systems are a combination of structure and ground mounts.

Small-Scale Renewable Energy System: The permit process requires a minor conditional use permit for a small scale wind energy system. Will this type of CUP address protected views-capes and ridgelines? Or, will anyone and everyone be able to place these towers on a ridge or within an adjacent property's prime view? Is it permissible to place a small scale solar array on top of a ridgeline, blighting a protected ridge? What is the criteria for the site plan review? Is it merely to ascertain setback requirements?

Utility Scale Renewable Energy Facility: Because "structure mounted" has not been adequately explained, it appears that a minor site plan review is all that is required, even if some low structure is built by a developer to circumvent the conditional use permit process in A1, A2, Commercial and Manufacturing zones. While the intent of the County may be for placement on existing buildings, does this also mean if an energy Developer installs rudimentary carports that will never be used, that the CUP process is then circumvented?

Based upon a review of the chart, large scale utility projects with ground mounting systems will be supported only by those sufficiently large sites in heavy agricultural zones (A-2), commercial or industrial zones. Where in the County of Los Angeles are there sites that are sufficiently large to accommodate a large scale project? Did the County of Los Angeles determine where such sites are located? There are sites that are sufficient in size in the Santa Monica Mountains; however, most are exempt because of the coastal zone limitation as well as a scenic drive restriction. While we support these limitations, it truly is for the benefit of the coastal areas while further directing any and nearly all potential renewable energy projects to the Antelope Valley. We further assert that the majority of those lots sufficient in size to support a large scale renewable energy project (outside scenic or coastal areas) are in the Antelope Valley. This appears to be a fact rather than a statement as the County of Los Angeles Planning Department has emphasized outreach for the Renewable Energy portion of the County Plan to the Antelope Valley. While we understand that the County is under an obligation to produce a certain amount of renewable energy, it appears District 5 of Los Angeles County is shouldering, by percentage, nearly the entire burden.

The Antelope Valley has a very high unemployment rate and family incomes are already below the state average. The Antelope Valley, as a whole, is an economically disadvantaged area and renewable energy projects do not produce permanent, high paying jobs. Furthermore, the increased amount of dust produced by these projects increases the risk of Valley fever in an already economically disadvantaged area. "A review by the CDC (Goodman, 1994) of the

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medical records in Kern County, California showed that coccidioidomycosis accounted for approximately \$66 million in direct costs of hospitalization and outpatient care during the period 1991-1993.” (USGS report) The large scale utility projects will not provide energy to the Antelope Valley, but will service more affluent areas in the Bay area, Los Angeles and beyond. With respect to CEQA and NEPA, the Antelope Valley will receive disparate impacts in the form of socioeconomic discrimination on low income communities. These communities already bear the brunt of disproportionately high environmental burdens, and will continue to do so based on how the County Renewable Energy Plan inadvertently or purposely directs by statute the large scale utility projects to the Antelope Valley. This Plan makes it easier to build harmful projects in low-income areas. There is a pervasive pattern of siting the most dangerous, environmentally degrading facilities in communities with predominantly low-income residents and minorities. This trend is driven in large part by zoning requirements, low property costs, and the fact that many low-income communities lack the political clout and/or education to effectively oppose these projects.

22.52.1630, Standards for Small Scale Solar Energy Systems

Item “B” states that the height shall not exceed the zone by more than 5 feet. Please address where and how this measurement is applied, even if contained elsewhere in the County code.

22.52.1640. Standards for Temporary Meteorological Towers

Access Roads: Please provide a standard for temporary access roads with ingress/egress points. Does this mean that these roads will require temporary grading? A grading permit? Please address the issue of runoff, land/mudslide and dust. Will such facilities be permitted in a landslide or liquefaction zone?

Setback Requirements: there is a failure to consider the bounce and/or roll of the tower apparatus, which will exceed the 1.25 system height;

Maintenance: Please identify a minimum schedule for maintenance. What is “regularly scheduled”? Is that weekly, monthly, yearly?

22.52.1650 Standards for Small-Scale Wind Energy Systems

During the Plan presentation before the Leona Valley Town Council meeting we discussed the noise of a small scale system. According to our own environmental expert, 60 dBA SEL is the equivalent noise level of a heavy traffic street. This figure has not been reduced, although discussion and facts were presented to the County at our Town Council meeting. If there are multiple towers contained in one small community, the noise will be overwhelming, particularly in a town with hillsides bordering a valley on multiple sides (like Leona Valley) which will exacerbate the high noise levels.

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22.52.1660. Standards for Ground Mounted Utility-Scale Renewable Energy Facilities

Access Roads: Please provide a standard for temporary access roads with ingress/egress points. Does this mean that these roads will require temporary grading? A grading permit? Please address the issue of runoff, land/mud slide and dust. Will such facilities be permitted in a landslide or liquefaction zone?

Fencing: Non-opaque fencing is permitted; as is fencing of eight feet in height “regardless of any other fencing standards.” Many Community Standards Districts have fencing guidelines in order to create an open, non-view obscuring environment. This standard now trumps what is considered a community value.

Fencing of solar facilities, building roads and transmission lines will transect enormous portions of habitat, and impede movement of wildlife who travel through "wildlife corridors" that, according to the Western Governors Association, have never been adequately mapped. There is concern that this transection will further isolate interconnected habitats, and create "islands" of parkland and protected areas that will reduce biodiversity.

Drought tolerant native or non-native vegetation: How is it determined to be infeasible? Is insufficient water supply a cause for not requiring vegetation? By the way, if water is insufficient, then the project should not be placed in the location. Please explain how or why plantings would be infeasible.

Light sensor or motion sensor lighting for the main facility: Should comply with the Dark Sky standard of unincorporated Los Angeles County.

Setbacks: 30 feet in agricultural zones is insufficient to allow for bounce and roll.

Signs: Please state minimum and maximum size of the signs.

Site disturbance: It is stated that existing vegetation may be removed (except for root systems), but sensitive or unique plant species are not addressed. Existing policy resulted in the clear cutting of a Joshua tree grove off of West Avenue “M” as this industrially zoned site had no environmental restrictions as a result of the County policy. If this were a grove of oak trees, there would be permits pulled and mitigation for the removal of each oak tree, yet in the world, Joshua trees are rarer and a unique species only found in the Mojave Desert. It is impossible to replace a grove of Joshua trees by the nature of the species, which grows only one to three inches per year. A fifty foot tall tree is minimally 200 years old, yet the County has failed to implement

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a strategy to protect Joshua woodlands and the lack of policy to protect these indigenous species will further degrade an already at risk environment.

An additional issue with site disturbance is that clearing of desert vegetation can invite invasive species that can escape developed areas and spread and further disturb sensitive desert species. A mitigation requirement should be in place to prevent invasive plant species from spreading off site.

Fugitive Dust Emission: The Plan addressed fugitive dust during construction, but not after construction is completed. Dust storms emitting from renewable projects in the West Antelope Valley off of Highway (138) have resulted in blindness to drivers and put the general public at risk due to the increased risk of transmission of Valley Fever, asthma and other ailments.

C. immitis grows in the upper (5 - 20 cm) horizons of soils in endemic areas” Although some growth sites have been identified, their distribution and recognition throughout the entire endemic area of the southwestern U.S. is poorly known.

Water Quality Protection: Shall the projects be permitted to use herbicides? How will weeds be cleared? What efforts will be made to protect the ground water as the result of use of potential herbicides?

Impacts to Birds and Bats: The County of Los Angeles is relying exclusively on the State guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development; however, the “guidelines” have not satisfied issues at other facilities, including one facility (Kern County/DWP) that has the highest song bird kill rate in the United States. Furthermore, the County has failed to address any plan to protect migratory birds from solar facilities.

In February 2014, the Wall Street Journal published an article regarding solar arrays catching migratory birds on fire. There are two large issues that will be difficult, if not impossible to mitigate and the County should address in advance of any policy from the State of California. The large collection of mirrored solar arrays has resulted in bird wings getting singed or catching fire. “U.S. Fish and Wildlife Service told state regulators that they were concerned that heat produced by the project could kill golden eagles and other protected species. The agency also is investigating the deaths of birds, possibly from colliding with structures, found at two other, unrelated solar farms. One of those projects relies on solar panels and the other one uses mirrored troughs. Biologists think some birds may have mistaken the vast shimmering solar arrays at all three installations for a lake and become trapped on the ground after landing.” The article refers to solar farms located here, in the Mojave Desert. The Antelope Valley is classified as an internationally recognized Important Bird Area. The solar developments are now hop-

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scotching across the West Antelope Valley (rather than clustering) in such a manner that there will be no safe migratory areas, even with suitable nesting habitat, thereby creating eco-traps in which birds are encouraged to breed and flourish but will most assuredly reach death as a result of the renewable energy contiguous location. This will have a ripple affect across the animal food chain.

Set Back for Facilities Using Wind Resources: the chart recommends two times the facility height. On multiple occasions, wind turbines have fallen off of high towers, and have had accelerated rolls and over-turns onto Highway 58, where the largest wind energy plants are located. Two times the height does not address bounce or a potential defect in the wind turbines and can result in danger, if not death, to members of the general public.

NOT ADDRESSED IN DRAFT

Environmental Mitigation

We have observed that mitigation is required on large scale solar projects. In fact, a most recent approval required a mitigation of 2 acres for every 1 acre destroyed. However, the County failed to address how and in what time frame this is to be mitigated. The mitigation was required over a period of 40 years, but it did not state the mitigation should be done in advance of the permit. The solar company took this to mean that they could mitigate a couple acres each year until the end of forty years. There is specific LEGAL language that is required for mitigation in the environmental permitting process. The County Planning Department does not appear to have obtained legal input from an expert in environmental law. This language should be prepared in advance of the approval of the Renewable Energy plan. Language such as “fully endowed”, “in advance” are all pertinent features. Often, there is a risk of bankruptcy on these projects, therefore, performance bonds and an endowment must be required. Additionally, with mitigation on a per acre basis, the mitigation should take place in the area in which the environmental degradation has occurred.

Because the majority of renewable energy projects will require mitigation, it is important to incorporate a mitigation banking standard as part of the proposed Renewable Energy Ordinance. It is recommended that all renewable energy projects that require habitat or waters of the Federal or State and/or CEQA mitigation should utilize mitigation banks in Los Angeles County that have conservation easements and endowments in place to fund long-term habitat management in perpetuity.

The County should be mindful that allowing utility-scale solar facilities on thousands of acres of land primarily in one area (Antelope Valley) is akin to scraping clean and fencing thousands of acres of desert habitats that can never be restored, much like primeval forest once cut can never be "primeval" again.

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Significant Ecological Areas

The document does not address the development of renewable facilities in Significant Ecological Areas. While it unlikely to prohibit such development, there should be an additional layer of protection for those significant areas through a conditional use permit process, including an environmental study, regardless of the zoning. Utility scale Renewable Energy production *is* an industrial use.

Conversion of Prime Farmland

The proposed plan encourages the conversion of prime farmland into renewable energy development. What is important is we don't allow this 21st century 'Gold Rush' to get out of hand and jeopardize our food security, our watersheds, habitat areas and health to future generations. We don't have to put large-scale solar on prime farmland just because it is close to a substation. Presently, many farmers in the West Antelope Valley have allowed their land to go fallow in order to join the 21st Century gold rush for renewable energy. This is resulting in the conversion of a rural lifestyle into a temporary financial gain for a handful. Once other, more reliable, energy producers are created at a lower cost, the large footprint of renewable energy will place a permanent scar on the Antelope Valley, regardless of decommissioning rules. The rich rural history of the Antelope Valley will become just that, history.

Fire

The County proposal fails to address issues pertaining to renewable energy development in areas classified for High Fire (Class IV) Severity Area or a High Wind Severity Area. For example, should an area with High Fire and Wind Severity be developed with 500 foot tall wind energy towers, the surrounding communities will be put at risk as emergency aircraft will not be able to access the area and exit routes for communities will be hampered if not blocked, putting the public at extreme risk.

Ground Water Depletion

Desert wildlife is dependent on surface water, springs, seeps, creeks, wetlands, and seasonal streams. Little, if any, rainfall percolates downward to reach the water table. Pumping on utility scale or by cumulative numbers of smaller operations will cause groundwater depletion and loss of surface water that would be devastating to fish, plants, riparian communities, birds, reptiles, mammals, and microscopic organisms living in the desert soil, causing collapse to ecosystems that depend on these resources. Please address preventative measures with respect to this issue.

Structure Testing

Wind energy tower structures should be engineered and tested to withstand the strongest of historical wind events.

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Placement Restriction

Restrict placement of solar facilities to areas directly adjacent to sources of water that are transported from outside the area via aqueduct or pipeline, so no groundwater pumping need occur, or require water to be hauled via truck tanker. (This can offset the benefit of renewable energy, when truck trips are factored in.)

Installation Types

In the rush to meet the high demand for renewable energy projects at a low cost, some Developers are obtaining solar panels from foreign manufacturers. Due to the demand for solar panels, manufacturers in China are reportedly cutting corners, and as a result, are seeing high failure rates. It is feasible that with a high failure rate due to a lower quality work product, a Developer could walk away from a project, particularly if government subsidies are eliminated. Furthermore, some foreign manufacturers are using lead components that leach into the soil. Therefore, it is most important to obtain a bond or some other means of guaranteeing decommissioning a project; second, it is also important to complete soil studies for those Developers using foreign components, both for testing for lead deposits that could leach into the ground water; and to ascertain if on site pesticides have leached into the soil.

Air Quality

Studies indicate that the desert is valuable as a carbon sink. Will the large-scale removal of vegetation required for solar plants seriously reduce this value? Evaluation of the cost/benefit of this loss should be weighed against the value of the so called renewable energy produced. Assure that loss of a project's carbon dioxide sink's capability will be completely offset and produce a clear net carbon dioxide reduction benefit. Monitor, and review in an ongoing way, a solar plant's carbon footprint.

Nearly all of the areas included in the West Mojave Plan (which includes the Antelope Valley) have recorded concentrations of pollutants in excess of national and state ambient air quality standards for PM10 and a variety of others. In addition, the presence of numerous new dirt roads invites vehicle trespass that would compound the problem of particulates in the air. Construction and maintenance activities will cause serious air quality issues for wildlife and human inhabitants of the desert. Vast amounts of water will be required to subdue dust. Water, as a dust mitigation measure, could have a reverse impact and subsequent consequences as it helps in the propagation of the arthroconidia (spores) of *Coccidioides immitis*. This plan should include a mechanism to prevent off-road use; and trip/travel reductions during and after projects have been constructed.

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Consider all impacts of air pollution, including drift from other areas as total to that area, regardless of the source, when evaluating solar projects. Do not allow subtraction of transported ozone in determining attainment and non-attainment areas.

Refuse multisource projects that use a small portion of solar energy production to facilitate approval and then use natural gas or some other greenhouse gas producing fuel to make electricity. Solar plants should be one hundred percent solar-only, and should only be considered for facilitated permit processes.

Separately Analyzing Aspects of the Total Project is Piecemealing

The County of Los Angeles is creating this Renewable Energy Plan as part of the General Plan, which is presently being updated. At community meetings throughout the Antelope Valley we were also told that the “plan” was being created due to the need, the high demand and creation of renewable energy projects in the County of Los Angeles as part of the mandated and established Renewable Portfolio Standard (RPS) by the State of California.

During the September 29, 2011 LADWP Barren Ridge scoping meeting in Leona Valley, the community was informed of other potential projects by energy developers that are presently in the LADWP “queue”, waiting in line in the event this project is approved. A similar circumstance had arisen with Southern California Edison’s Tehachapi Renewable Energy Project. Wind and solar renewable energy projects were in Edison’s “queue” and are now being executed with plans to connect to the new Edison 500kv transmission lines. The cumulative impacts were never assessed or addressed. Upon the Record of Decision, these projects began a permit process and were therefore, a foreseeable event in violation of the California Environmental Quality Act. Based upon immediate past events we believe those projects in the County “queue” as well as solicitations not yet in the system, should also be considered as part of the whole project, with plans to connect to the LADWP/Edison transmission lines. The projects in the “queue” as well as this proposed County Renewable Energy Plan are in fact part of the whole action.

The Los Angeles County Renewable Energy Plan proposal, the LADWP Barren Ridge Project and the Tehachapi Renewable Transmission Project are part of the same mandated and established Renewable Portfolio Standard (RPS) by the State of California. As such, all of these projects are part of the same cumulative impacts of the same action. When completing an environmental study of all of these issues, the County planning department must address the cumulative impacts to the Antelope Valley as the result of their “plan” which coincides and, in fact, helps implement all of these renewable energy projects in one specific area in the County of Los Angeles. These projects need to fall under review of a separate environmental impact report that should be undertaken specifically for the Antelope Valley.

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CEQA defines “project” as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonable foreseeable indirect physical change in the environment....” (CEQA Guidelines, § 15378, subd. (a); see also CEQA Guidelines, §15063, subd. (a)(1) {the lead agency must consider “all phases of project planning, implementation and operation.}). NEPA similarly requires that the DEIS succinctly describe the environment affected. (40 C.F.R. § 1502.15) An Agency cannot treat one project as a succession of smaller projects, none of which, by itself, causes significant impacts. (Burbank-Glendale-Pasadena Airport Authority v. Hensier (1991) 233 Cal. App. 3d 577, 592{“CEQA mandates environmental considerations do not become submerged by chopping a large project into little ones”}; see also NEPA mandate that connected projects be included in the DEIS, 40 C.F.R. § 1508.25, subd. (a); Blue Ocean Preservation Society v Walkins (D. H1.1991) 754 F. Supp. 1450.)

A project description must include all relevant parts of a project, including reasonably foreseeable future expansion or other activities that are part of the project. (Laurel Heights I, 47 Cal. 3d at 396.). The California Supreme Court in Laurel Heights I stated that “an EIR must include an analysis of the environmental effects of future expansion or other action if “(1) it is a reasonably foreseeable consequence of the entire project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” (Id.). The lack of one concrete project description violates CEQA in that it precludes the public from intelligent participation in the analysis of the project (County of Inyo v. City of Los Angeles (1977) 71 Cal. App. 3d 185, 197). (See also NEPA requirements regarding connected actions, 40 C.F.R. §§ 1508.7, 1508.8, 1508.23, 1508.25, subd. (a)(2) and subd (c).) The proposed Renewable Energy Plan is, in fact, incorporating and part of several projects, including proposed renewable energy projects. The “Plan” is being created as a result of the TRTP and Barren Ridge projects. Thereby, this Renewable Energy Plan is part of a larger project, and as such, is a reasonably foreseeable consequence of the initial project, the mandated and established Renewable Portfolio Standard (RPS) by the State of California.

Further, piecemealing results in an inaccurate project description because essential pieces of the project(s) are not included. “An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” (Burbank-Glendale-Pasadena Airport Authority, 233 Cal. App. 3d at 592.) “A curtailed, enigmatic or unstable project description draws a red herring across the path of public input” (County of Inyo. 71 Cal. App. 3d 185 at 193; McQueen v Board of Directors (1988) 202 Cal. App. 3d 1136, 1143 overruled on another point in Western States Petroleum Associates v. Superior Court (1995) 9 13 Cal. 4th 559, 570, fn 2; Mira Monte Homeowner’s Association v County of Ventura (1985) 165 Cal. App. 3d 357, 365.). Because the project description is limited by piecemealing, the public and decision makers are being deprived of the ability to understand impacts from the synergistic

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effects, conflicts and cumulative impacts of all of the collective projects associated with the renewable energy plans that were created as a result of Barren Ridge and the Tehachapi Renewable Energy projects. This includes the proposed Renewable Energy Plan for the County of Los Angeles.