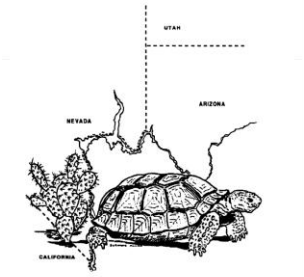

DESERT TORTOISE COUNCIL
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Via email only

20 January 2014

Mr. Jaymie L. Brauer, Planner III
Kern County Planning Department
2700 "M" Street, Suite 100
Bakersfield, CA 93301
planning@co.kern.ca.us and brauerj@co.kern.ca.us

RE: Addendum to the Environmental Impact Report for the Beacon Photovoltaic Solar Project, Springbok Solar Farm 1 and Oryx Solar Farm

Dear Mr. Brauer,

We present herein substantial and significant reasons why the environmental analyses for the Beacon site cannot be extrapolated to Oryx and Springbok projects. Specifically, reconnaissance-level surveys performed on the Oryx and Springbok sites are neither adequate nor sufficient to determine or analyze the impacts of implementing the work described in the proposed Addendum. Additionally, we present the reasons why the resource surveys performed on the Beacon site cannot be extrapolated to the other two sites to make an informed decision.

The Desert Tortoise Council (Council) is a private, non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of this species. Established in 1976 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council regularly provides information to individuals, organizations and regulatory agencies on matters potentially affecting the desert tortoise within its historical range.

On 1/6/2014, I requested that the Council be added to the distribution list of Interested Parties for all future projects in the eastern portions of Kern County that may affect the desert tortoise. Ms. Lorelei Oviatt responded later that day by email that the Council would be added. Unfortunately, of the hundreds of entities receiving the Draft Environmental Impact Report (Draft EIR) for the Beacon Photovoltaic Solar Project (Beacon), the Council was not included. I'm glad to see that we now have time to comment on the proposed addendum to existing environmental documents for two projects that, excepting proximity, have no nexus to the Beacon project. Herein, I formally ask that the Council be included as an Interested Party to review all future environmental documents addressing the proposed Springbok Solar Farm 1 and Oryx Solar Farm projects (Springbok and Oryx projects).

Herein, we provide comments relating to the addendum to the EIR for the Beacon Photovoltaic Solar Project, Springbok Solar Farm 1 and Oryx Solar Farm (Addendum) dated November 2013. Page 1-1 of the Addendum reports that the Oryx site would encompass 345 acres and the Springbok site would encompass 951 acres. Page 1-1 states, "*This Addendum has been prepared to determine whether the proposed modified project would result in new or substantially more severe significant environmental impacts compared with the impacts disclosed in the certified EIR* [for the Beacon project]."

We note on page 1-4 of the Addendum that "…with mitigation incorporated, the approved project would result in less than significant impacts related to the following environmental impact areas," which included biological resources. We understand that the Beacon project has now been postponed because at least one desert tortoise and active tortoise burrows were recently found on that site; that the certified EIR's assertion that tortoises would not be affected is no longer accurate; and that this inaccurate conclusion should not be applied to these two new sites. Given that the desert tortoise (*Gopherus agassizii*) is listed as threatened by both the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW), we understand that impacts to this species must be considered significant under the California Environmental Quality Act (CEQA).

As given on pages 1-5 and 1-6 of the Addendum, the Council believes that increasing the areas that would be affected from 2,298 acres to a total of 3,594 acres – an increase of 1,296 acres – certainly constitutes "Substantial changes" identified in Section 15162 (1) and (2) listed on page 1-5 of the Addendum; "…will have one or more significant effects not discussed in the previous EIR" under Section 15162 (3)(A) on page 1-6; that adding 1,296 acres to the original project will have "Significant effects … substantially more severe than shown in the previous EIR" identified under Section 15162 (3)(B) on page 1-6; and constitutes two "…alternatives which are considerably different from those analyzed in the previous EIR" as given under Section 15162 (3)(D) on page 1-6. Therefore, we feel that the addition of 1,296 acres, which is a 56% increase in the size of the Beacon impact area, violates five of the six criteria listed on pages 1-5 and 1-6 as the basis for an EIR Addendum. Thus, an Addendum clearly is not acceptable.

Importantly, the revisions to the Draft EIS on page 4.3-35 indicate that "Potential direct impacts to desert tortoise [on the Beacon site] include the permanent loss of 3.3 acres of potential habitat along the transmission line west of SR 14." Given the findings of the consultant's report (Quad Knopf 2013), there are approximately 300 acres of tortoise habitat on the Oryx site and 345 acres on the Springbok site that would now be impacted. Whereas the Beacon project indicates that only 3.3 acres of tortoise habitat would be permanently lost, the Oryx and Springbok sites would result in the loss of an additional 645 acres, which is not foreseen and not analyzed in the Beacon EIR. The Council asserts that this represents both significant and substantial changes so that one or two separate EIRs are appropriate to analyze impacts associated with the Oryx and Springbok sites; an Addendum is not sufficient to effectively analyze these new impacts, which have been expanded from 3.3 acres to 645 acres.

Although the Addendum (page 2-1) reports that the regional setting would be unchanged, we note that the Springbok site is 1.5 miles east of the Beacon site, and not contiguous. Importantly, as proposed, the Springbok site is contiguous to the Desert Tortoise Research Natural Area (DTRNA) and State lands. We concur that the regional setting does not significantly differ for

the Oryx site, as it is south of and contiguous to the Beacon site. However, the Beacon EIR fails to adequately assess the immediate direct and indirect impacts of the Springbok solar facility to the contiguous DTRNA, which is an important recovery area for the desert tortoise. We also note that Section 3.1.1, which describes the regional setting in the Addendum, fails to identify the DTRNA as being contiguous to the Springbok site, although it is shown in Figure 2 in Appendix B (Quad Knopf 2013).

We are concerned about the two contradictory statements given at the top of page 2-2 of the Addendum: "No changes are proposed to the approved project's site plan or the nature of the project facilities. [Immediately followed by:] The proposed modified project would include the addition of two additional solar facility sites, which would increase the total area to 3,594 acres." Since the approved project's site plan for Beacon did not identify either of the two new facilities and would result in the development of an additional 1,296 acres, the Addendum is misleading in stating there are no changes. As above, we note that impacts to tortoises on the Beacon site were estimated at 3.3 acres, which compared to the two new sites at 645 acres, is a substantial and significant change.

Page 3-2 of the Addendum with regards to impacts to scenic vistas makes the following conclusion: "…the proposed modified project would not result in new or a substantial increase in the severity of the impact to a scenic vista than disclosed in the certified EIR." Given that development of these two new sites would increase the visual impact from 2,298 acres up to 3,594 acres, a 56% increase, on what basis does the Addendum judge that this does not constitute a substantial increase? Particularly, when 951 acres would occur immediately adjacent to lands within the DTRNA and managed by the State.

We note in Section 3.3.1 on page 3-9 addressing biological resources, the following statement: "On-site field biological assessments were conducted in September 2013 and consisted of *reconnaissance-level* field surveys [emphasis added]." This level of survey is insufficient to adequately analyze project impacts. The USFWS (2010) survey protocol for tortoises requires that focused surveys be performed at 10-meter intervals.

We see in Section 3.3.2 on page 3-10 of the Addendum that no focused springtime surveys were performed for sensitive plant species known to occur in the area. Rather, surveys were performed in September 2013, which in addition to being in the fall, also occurred during a very dry year. The Addendum fails to recognize that Barstow woolly sunflower (*Eriophyllum mohavense*), which has been found both at the DTRNA adjacent to Springbok and at the nearby Hyundai Test Tract, is not even mentioned, and would not be detectable in the fall. Extrapolating any analysis of the Beacon site to these two new sites, including the entire Oryx site and the western portions of the Springbok site, is scientifically untenable. The Addendum provides no new evidence for the absence of the species on either site, which would need to be ascertained in the spring of a wet year. A fall survey for springtime annuals clearly violates the survey requirements given in CDFW (2009; see page 4 of 7 for timing of surveys).

On page 3-16 of the Addendum, we note the following conclusion: "However, no significant impact to waters of the U.S. would occur as the footprint of the solar development completely avoids these features." This statement is not consistent with Figure 2.5 and Figure 2.6 of the

Addendum, which show that solar panels would occur throughout both sites. Yet Figures 3 and 5 in Appendix B clearly show washes running diagonally through the Oryx site and within the eastern boundary of the Springbok site. This is presumably the same water course on the Oryx site of which the Beacon site would affect 20.62 acres. How many acres of this wash would be affected by development of the Oryx site, which would be fully developed according to Figure 2.5?

Unless otherwise noted, the following comments refer to the biological technical report included in Appendix B to the Addendum (Quad Knopf 2013). Review of the biological technical report confirms what the Addendum alludes to; namely that only reconnaissance surveys were performed on the two sites for desert tortoises. The methodology on page 8 of Quad Knopf indicates that two biologists surveyed the Springbok site on September 9, 2013 and two biologists surveyed the Oryx site on September 10, 2013. Given the industry standard of 4 acres per hour, it would have taken 238 hours to survey the 951-acre Springbok site and 86 hours to survey the 345-acre Oryx site, which does not include additional time to survey zone of influence transects required by the USFWS (2010) survey protocol. Unfortunately, neither the actual survey times spent on the sites nor the locations of transects are reported in the Quad Knopf report.

Performing reconnaissance-level surveys in lieu of formal, focused tortoise surveys is unacceptable as it violates USFWS and CDFG standards enforced across the listed range of the desert tortoise. Among other things, failure to survey the site according to protocol does not allow the consultants to report the number of tortoises that would be affected on either site. In the absence of this estimate, the Addendum is unable to report how many adult tortoises will be affected on these two sites compared to the Beacon site. In the absence of these data and associated estimates, we contend that the Addendum cannot quantify the level of impact associated with inclusion of these two sites. In the absence of those data, Kern County cannot conclude that significant and substantial impacts associated with this 1,296-acre expansion will not occur.

We see that most of the Beacon site is described as fallow agriculture, and that as many as 645 acres on the Oryx and Springbok sites are considered suitable tortoise habitat. It is far beneath the industry standard to not include species lists of plants and animals observed even during reconnaissance surveys. Left to the information given in Table 2 of the Quad Knopf report, we are led to believe that only three plant species occur on the Springbok site and only two on the Oryx site. Of the four species identified, the scientific name for creosote bush is misspelled, surveyors did not recognize the species of *Opuntia* (which is now *Cylindropuntia*), and the specific name for Jimson weed is misidentified. Given these observations, only the scientific name for red brome is correct. The ability of these surveyors to identify common plants, much less special status plant species, is in serious question.

We note that Quad Knopf (2013) concludes: "Some areas of the Springbok site are considered marginal habitat because of the high level of past disturbance, but desert tortoises would be expected to occasionally be present in those disturbed areas." Since the consultant's report does not indicate how much of either site was surveyed, we cannot determine if all of the tortoise sign shown in Figure 8 is restricted to the western quarter of Springbok or if eastern areas were not

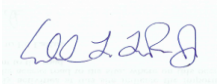
surveyed. In any case, since the consultant concludes that tortoises may "…be expected to occasionally be present in those disturbed areas," we must conclude that all habitats are compensable, not only the 300 acres on the Oryx site and 345 acres on the Springbok site, as reported on page 3-13 of the Addendum.

As with desert tortoise and special status plants, there is also a formal survey protocol (CDFW 2012) for burrowing owl (*Athene cunicularia*) that was not followed. The consultant's survey may loosely be interpreted as a Habitat Assessment, but agency-specified transects spaced between 7- and 20-meter intervals were not surveyed, as required by CDFW. As such, it is meaningless to say that no evidence of burrowing owls was found because an adequate survey effort was not performed.

In conclusion, we present herein both substantial and significant reasons why the environmental analysis for the Beacon site cannot possibly be extrapolated to Oryx and Springbok projects. For these reasons, we do not believe that either the resource surveys performed on the Beacon site or the reconnaissance surveys performed on the Oryx and Springbok sites are sufficient to analyze impacts in the proposed Addendum. Perhaps the Beacon certified EIR can be amended to accommodate the Oryx site if new, adequate protocol surveys are performed for tortoises, burrowing owls, and springtime plants in a wet year; but the Springbok site is sufficiently far from the Beacon site that its impacts have not been fully analyzed in the Addendum.

We look forward to future opportunities to comment on development of these projects.

Regards,



Edward L., LaRue, Jr., M.S.
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

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