

California Energy Commission

DOCKETED

09-RENEW EO-1

TN 75190

FEB 23 2015

February 23, 2015

California Energy Commission
Dockets Office, MS-4
Docket No. 09-REVIEW E0-01
1516 Ninth Street
Sacramento, CA 95814-5512

Re: DRECP NEPA/CEQA

The DRECP as it is currently proposed will usurp the authority of local governments to make local land-use decisions in the future. It will act as a zoning overlay on County and City General Plans. The effect will be to remove the decades-old precedent of local control of land use decision-making in California.

If approved without substantial changes the land use goals and policies established by local governments to direct growth and ensure economic viability will become secondary to the overreaching and vast bureaucracy of the DRECP.

SIZE OF THE DRECP

The 22.5 million-acre DRECP defines the land use of 93 percent of the existing private lands (approximately 4,423,000 acres) within the plan area as either a renewable energy development zone or as part of a vast conservation reserve design.

In total, the DRECP designates approximately 2.2 million acres as Development Focus Areas (DFA) for renewable energy development (of which approximately 1.7 million acres are private lands). According to the DRECP only 177,000 acres will be developed by renewable energy projects.

The DRECP also designates approximately 14.9 million acres as a Reserve Design Envelope (RDE) where mitigation measures are to be implemented (of which approximately 2.7 million acres are private land). Within the RDE, the primary mitigation measure identified is acquisition of private land.

It is not clear why the DRECP chose to site the 177,000 acres of proposed renewable projects on private lands when there are over 13.9 million acres of federal lands (not including federal military lands) within the plan area to accommodate renewable energy projects. These public lands provide the resource agencies with both land use and regulatory authority. By locating renewable projects on private lands DRECP squarely places the burden of renewable energy development on our communities without "streamlining" the process.

WHY THE DRECP PREEMPTS LOCAL LAND USE AUTHORITY

The DRECP falls short in protecting local land use authority because existing laws, regulations, and policies require that all future planning efforts be consistent with established plans.

For example, a standard question in the California Environmental Quality Act (CEQA) process asks whether the proposed project (such as a development project or general plan update) is in conflict with provisions of an adopted Habitat Conservation Plan (HCP) or Natural Conservation Community Plan (NCCP). If the proposed project is in conflict with an adopted plan such as the DRECP, a finding of significant impacts must be made under CEQA. In order for the project to go forward, mitigation must be provided or a statement overriding considerations must be adopted.

In addition, should a local government choose to develop its own HCP and/or NCCP or seek a “take” permit from the wildlife agencies, existing planning guidance requires that their planning effort be consistent with previously adopted plans, in this case the DRECP.

Based on the above, if a local government considers allowing development within a designated conservation area and, possibly, even development within a proposed DFA that is not renewable energy, a case could be made that the project would be in conflict with the DRECP. From this perspective, the 177,000 acres of allowable take under the DRECP could be interpreted as the maximum allowable build out of private land within the entire planning area. This is unacceptable and would prevent local governments from utilizing their authority to implement their general plans, zoning ordinances, and codes.

In addition to imposing possibly insurmountable barriers to future development within local jurisdictions, the proposed DRECP calls into question plans that have already been approved by localities that are consistent with existing state and federal environmental law, as well as those that will be approved prior to the DRECP taking effect. Will future projects proposed for implementation under these existing approved plans be subjected to the same requirement for consistency with the DRECP? If so, this would amount to an ex-post facto imposition of conditions of approval that were not in effect at the time such plans were approved by desert localities.

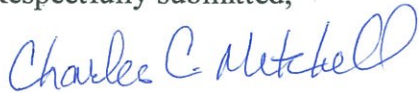
The solution to implementing the DRECP in a manner that preserves local self-determination while protecting desert habitat and fostering the development of alternative energy is to exempt lands within local spheres of influence from the provisions of the plan. This approach would allow for planned development concentrated in established urban areas to continue to occur while preserving the vast majority of the desert for the protection of sensitive species and the development of renewable energy.

CONCLUSION

The lack of clarity in the proposed DRECP and EIS/EIR creates many unintended consequences for desert communities, foremost of which is the potentially crippling effect the plan would have on the economic development of desert communities and their ability to foster increases in job

opportunities and the availability of housing for working residents. In order to resolve these consequences so that the desert can truly thrive, the DRECP needs to be a product of meaningful collaboration with local governments, as opposed to a unilateral dismantling of local control of land use decision-making. Under the guise of promoting renewable energy on a mere 177,000 acres of desert land, the DRECP proposes a regulatory process covering 22.2 million acres of the desert, much of which is privately owned. In the absence of significant revisions along the lines proposed herein, the plan is unacceptable to our City. We respectfully request a revised DRECP be issued that addresses the concerns expressed, including another public comment period to respond to the revised DRECP.

Respectfully submitted,



Charles C. Mitchell
City Manager

Cc: Commissioner Karen Douglas, *California Energy Commission*
State Director James Kenna, *Bureau of Land Management*
Chief Deputy Director Kevin Hunting, *California Department of Fish and Wildlife*
Alexandra Pitts, Deputy Regional Director, *U.S. Fish and Wildlife Service*