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AGENDA ITEM NO.: 7 (Action Item – Public Hearing)

**PLANNING COMMISSION
MEETING DATE:** March 24, 2021

SUBJECT: Renewable Energy Permit No. 2021-01/Barker & Addendum to the Negative Declaration of Environmental Impact (ND) prepared for Renewable Energy Permit 2018-01/Barker

EXECUTIVE SUMMARY

The applicant (Robbie Barker) is reapplying for a Renewable Energy Permit, located on two private parcels, in Trona. The original permit application was approved by Planning Commission on July 25, 2018; however, the applicant was unable to prepare the required Reclamation Plan within one year, and the permit lapsed. This permit would allow the applicant to construct a proposed 2 megawatt (MW) photovoltaic solar facility that uses approximately 5,400 fixed tilt or single axis tracker solar panels. The project covers 10 acres of pre-disturbed, graded land, which occasionally was used for the storage of miscellaneous equipment.

PROJECT INFORMATION

Supervisory District: 5

Project Applicant: Robbie Barker

Site Address: Trona, CA 93592

Community: Bishop, CA

A.P.N.: 038-330-47; 038-330-48

General Plan: Residential Estate (RE); Rural Protection (RP)

Zoning: Rural Residential-5.0 acre minimum (RR-5.0-MH)

Size of Parcel: 10 acres (5 acres/parcel)

SURROUNDING LAND USE:

Location:	Use:	Gen. Plan Designation	Zoning
Site	undeveloped	Residential Estate (RE); Rural Protection (RP)	Rural Residential-5.0 acre min (RR-5.0-MH)

North	Developed	Residential Estate (RE)	Rural Residential-5.0 acre min (RR-5.0-MH)
East	Undeveloped	State & Federal Lands (SFL)-BLM	Open Space-40 acre min
South	Undeveloped	Residential Estate (RE); Retail Commercial (RC)	Rural Residential-5.0 acre min (RR-5.0-MH); Highway Services & Tourist Commercial-2.5 acre min (C2-2.5-MH)
West	Undeveloped	Residential Estate (RE)	Rural Residential-5.0 acre min (RR-5.0-MH);

Staff Recommended Action: Approve the Renewable Energy Permit 2021-01/Barker

Alternatives:

- 1.) Deny the Renewable Energy Permit
- 2.) Approve the Renewable Energy Permit with current additional conditions of approval, or approve with additional conditions of approval.
- 3.) Continue the public hearing to a future date, and provide specific direction to staff regarding what additional information and analysis is needed.

Project Planner: Steve Karamitros

STAFF ANALYSIS

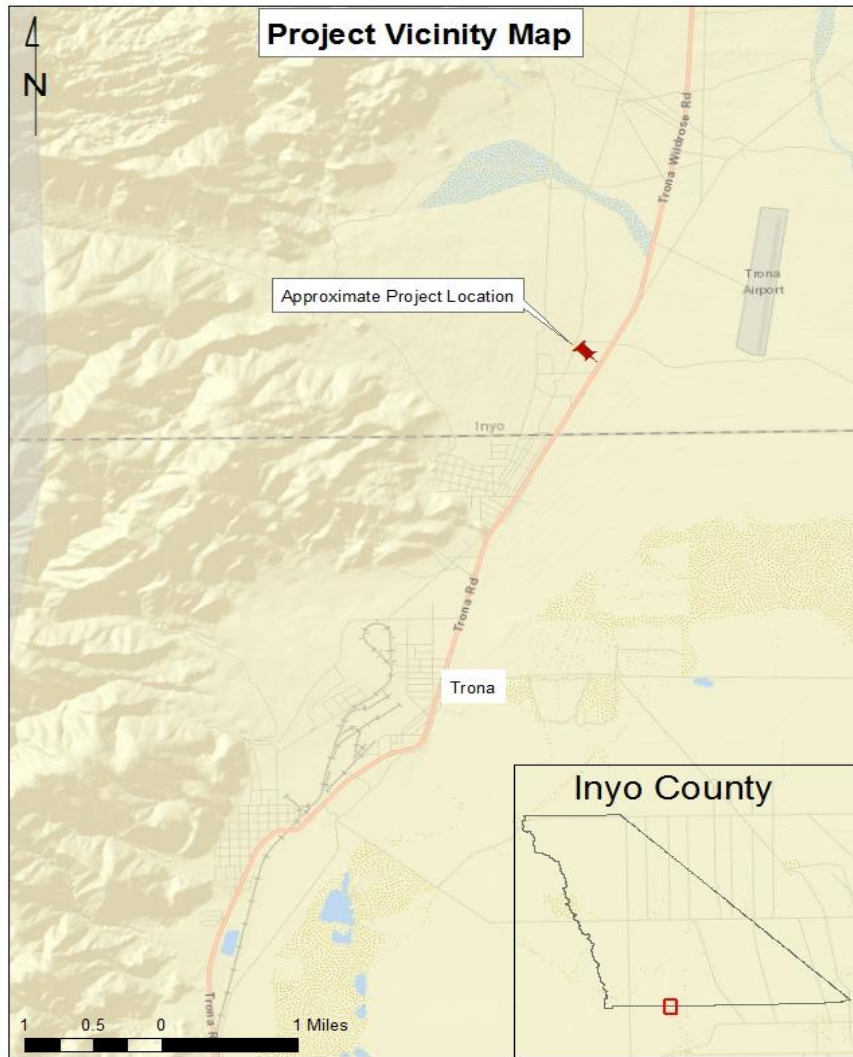
Background and Overview

The applicant has reapplied for a Renewable Energy Permit from the Inyo County Planning Department, to construct a 2 MW photovoltaic solar energy facility on two parcels, privately owned by Robbie Barker (APNs:038-330-47; 038-330-48). The project was originally approved by Planning Commission on July 25, 2018. Subsequent to approval, the applicant was unable to secure a Reclamation & Revegetation Plan, required as a Condition of Approval for the permit and pursuant to Inyo County Code (ICC) 21.20.030, and therefore the permit lapsed. The applicant, having secured the required Reclamation & Revegetation Plan, has also made modifications to the project design. The project would construct 5,400 fixed tilt or single-axis tracker solar panels, an increase of 1,900 panels from the original design. It should be noted that this change does not increase the impact of the project's footprint. The design change increases the area of solar panel coverage by nineteen percent, primarily across the highly disturbed eastern edge of APN: 038-330-48, adjacent to Trona Wildrose Rd.; however, this additional area was previously analyzed for environmental impacts. The solar project's new designs meet the yard setbacks required by the RR zoning, as previously approved by Planning Commission in 2018. This solar project will connect to Southern California Edison's transmission and distribution infrastructure, helping the State meet its greenhouse gas emission reduction targets by producing carbon neutral electricity.

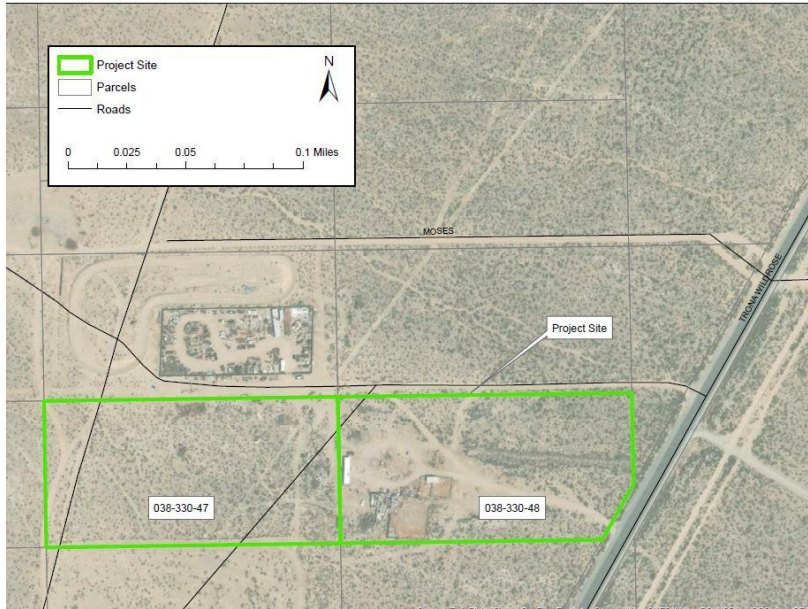
The project site is located on land that is highly disturbed with no natural vegetation, with heavy weed control having been performed in the past. The project area is surrounded by undeveloped land to the west, south and east. The land to the east, across Trona Wildrose Road, consists of over four thousand acres of vacant land owned by the Bureau of Land Management. The private land to the north of the project site is scattered with miscellaneous equipment.

The proposed application for a Renewable Energy Permit aligns with Inyo County Code Section 21.16-*General Provisions for Renewable Energy Development*, which aims to “support and encourage the responsible development of its solar and wind resources to generate and transmit clean, renewable electric energy while protecting the health, safety and welfare of its citizens and its environment, including its public trust resources” (21.04.030). The application for this permit has met the requirements of the Inyo County Planning Department and, per County Code Section 21.16.060, now requires that the Inyo County Planning Commission give final approval in order to issue the Renewable Energy Permit.

Vicinity Location Map



Site location for photovoltaic solar panels



General Plan Consistency

The goal of this review is to allow the applicant to develop a renewable solar project in compliance with the County’s Renewable Energy General Plan Amendment (REGPA), as well as Title 21 of Inyo County Code. The proposed project is consistent with the goals and policies of the Inyo County REGPA, as adopted by the Inyo County Board of Supervisors in 2015. The finalized Program EIR of the 2015 REGPA defines commercial scale renewable energy facilities as having a 20 MW capacity or less. The current project has a rated capacity of 2 MW. Since the developer is planning a small scale project, they have applied for a renewable energy permit, per the requirements of Title 21 of the Inyo County Code. Furthermore, County land use policy requires that commercial scale renewable energy projects be considered within Solar Energy Development Areas (SEDA) overlays. This project is within the County’s Southern Solar Energy Group, in Trona, California (REGPA 2015, figure ES-1). The project aligns with the County’s goals and objectives to utilize photovoltaic panels, the only type of solar technology currently supported by ICC, for renewable energy development projects. Finally, recent land use implementation measures explicitly state that small scale, community scale, and commercial scale renewable projects will be encouraged and prioritized over larger, utility scale projects (REGPA, final Errata to final EIR, pg. 3).

Zoning Ordinance Consistency

The applicant’s parcels are zoned Rural Residential-5.0 acre min (RR-5.0-MH). The *Final Errata to the Final Program Environmental Report* for the *Inyo County Renewable Energy General Plan Amendment* (REGPA), adopted in March 2015 by the Inyo Board of Supervisors, states: “...the County may consider utility scale and commercial scale renewable energy solar facilities within any zoning district under Title 18 of the Inyo County Code and pursuant to Inyo County Code Title 21” (REGPA, Errata, pg. 2). The REGPA created new land use policy that allowed applicants to apply for commercial scale renewable energy permits, regardless of zoning designation; however, approval of these projects is still reserved for the Planning Commission.

ADDENDUM TO THE NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT (ND) FOR RENEWABLE ENERGY PERMIT 2018-01/BARKER

STAFF ANALYSIS

Background and Overview

The applicant Robbie Barker has performed an Addendum (attached) to the ND that was prepared for Renewable Energy Permit 2018-01/Barker because there was a change made to the original project description (ie. electrical capacity) under CEQA. The Addendum is appropriate because, although the power capacity is increasing, there will be no added impact to environmental resources.

Renewable Energy Permit 2021-01/Barker & 2018-01/Barker were not treated as exempted from CEQA analysis. An Initial Study with a Negative Declaration was performed, which considered possible significant impacts to environmental resources. This Negative Declaration was certified when Planning Commission approved the original permit (2018-01/Barker) in July 2018. Furthermore, the County of Inyo produced a program level EIR (2015 REGPA), pursuant to Section 15168 of CEQA Guidelines, to address environmental impacts from the planned solar development areas. This document distinguishes all SEDAs that are the most environmentally suitable for solar projects, with the least amount of individual and cumulative impacts to land and resources (2015 REGPA, 3-4). Although the REGPA notes that solar facilities with a capacity of 20 MW or less should be considered exempted from further analysis, an Initial Study was performed to look at environmental resources occurring locally on the project site.

The Inyo County Planning Department received feedback on the environmental document from California Department of Fish and Wildlife On July 9, 2018, which has been included in this analysis. Staff has written instructions for minimizing potential impacts to environmental resources, and these are included as recommended Conditions of Approval for this permit. These conditions include adhering to County light and glare standards, and preconstruction Presence/Absence Surveys for Mohave ground squirrel, desert tortoise, and Burrowing Owl. If any of these species are identified in surveys, a qualified biologist will create avoidance and or mitigation measures for the applicant to follow.

ENVIRONMENTAL REVIEW

A Negative Declaration and Initial Study for the project was prepared and circulated for a 30-day review and comment period from June-July 2018. Comments were received from CDFW regarding potential impacts wildlife. Preconstruction botanical and wildlife surveys were incorporated into the project's design as Conditions of Approval for the Renewable Energy Permit 2018-01/Barker, and will be adhered to in updated permit (2021-01/Barker). These conditions were developed to make sure any environmental impacts were avoided. There are no potential significant impacts to resources.

The original Renewable Energy Permit (2018-01/Barker) has lapsed, as the permittee was unable to secure a Reclamation Plan, as required by ICC 21.20.030. This has necessitated the applicant to reapply for their permit. In addition, a modified project description that doubles the project's electrical capacity requires a re-evaluation of the CEQA determination. The area of solar paneling coverage has been increased by 19% with the new project design. This increase is occurring within the original project footprint, on property that was previously evaluated for impacts (IS/ND 2018). This increase in electrical capacity does not present additional or new impacts that were *not* addressed in the original ND prepared for the Renewable Energy Permit 2018-01/Barker. Potential visual (glare) or biological resources, as identified in the original ND, are unchanged by the project's increased capacity. In either case, preconstruction surveys are necessary and the applicant will still have to adhere to County Light & Glare standards; therefore, no subsequent Negative Declaration or Environmental Impact Report is required pursuant to CEQA Guidelines, Section 15162(a).

RECOMMENDATION

Planning Department staff recommends the Planning Commission Certify the Addendum to the ND, and that it does not require a subsequent environmental document as discussed in the findings listed below. The Addendum will then be attached and become part of the original ND.

Findings

CEQA Guidelines Section 15162 indicates that no subsequent environmental document is required unless certain conditions apply. These conditions do not exist for the proposed improvements to the Barker solar energy project, as discussed below:

1. No substantial changes will result from the construction of the photovoltaic solar project, as required by a condition of approval for CUP 2021-01/Barker that will require major revisions to the previous ND, as there are no new significant effects or substantial increases in the severity of previously identified significant effects.

The proposed project is consistent with the environmental analysis provided in the ND Prepared for Barker photovoltaic solar Project. The project impact area is unchanged; biological and cultural resource surveys supplied by the applicant showed no significant impacts from the project on plants, animals or cultural resources; and, the project area is subject to the same conditions of approval that were required for the original project.

2. No substantial changes have occurred with respect to the circumstances under which the project is being undertaken, which might require major revisions of the previous ND due to the involvement of significant effects or a substantial increase in the severity of previously identified significant effects.

Staff has analyzed the proposed project and found that no substantial changes have occurred with respect to the circumstances of the overall project that will result in significant environmental effects or increases in severity. All conditions of previously approved for Renewable Energy Permit 2018-01/Barker will apply to the power capacity increase for the new project (Renewable Energy Permit 2021-01/Barker). As a result, no substantial changes in the circumstances or severity of previously identified effects are expected to occur from the proposed photovoltaic solar project.

3. No new information of substantial importance that was not known, and which could not have been known with the exercise of reasonable diligence at the time the previous ND was certified, shows or indicates that any of the following has occurred, or will occur, as a result of the proposed photovoltaic solar project:

- A. One or more significant effects not discussed previously.

The proposed project is to increase the number of fixed tilt or single-axis tracker solar panels from 3,500 (originally proposed and approved for Renewable Energy Permit 2018-01/Barker) to 5,400 panels (Renewable Energy Permit 2021-01/Barker). This is not a substantial change and the project does not cause new impacts that were not evaluated in the certified ND prepared for Renewable Energy Permit 2018-01/Barker.

- B. Significant effects previously examined will be substantially more severe.

There are no significant environmental effects identified in the area subject to the photovoltaic solar project that were previously identified significant and can be substantially more severe, as this 10-acre area is highly disturbed, having been graded several times in the past; biological and cultural resource surveys showed no significant impacts from the project on plants, animal or cultural resources. The

project area is also subject to the conditions of approval as set forth for in Renewable Energy Permit 2018-01/Barker.

- C. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project.

There were no mitigation measures or alternatives identified in the ND prepared for Renewable Energy Permit 2018-01/Barker that were found not to be feasible, that would in fact be feasible, and would substantially reduce one or more significant effects of the project that the project proponents declined to adopt. The original ND provided for conditions of approval for the project that apply to the original project area and are being implemented by the applicant for the new energy permit, which is being applied for due to the lapse of the previous approved permit.

- D. Mitigation measures or alternatives which are considerably different from those analyzed in the previous ND would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

All conditions of approval identified for Renewable Energy Permit 2018-01/Barker, have been adopted and are being complied with by the applicant. The area subject to the increased electrical capacity improvements is small and already highly disturbed; biological and cultural resource documentation showed no significant impacts, from the increase in solar panels, on plants, animal or cultural resources; the actual area affected by the new project will be nearly identical to the original; and, this area is also subject to the conditions of approval as set forth in Renewable Energy Permit 2018-01/Barker; therefore, no new mitigation measures are necessary.

None of the above-specified conditions apply to the proposed construction of the photovoltaic solar energy project; therefore, no subsequent environmental document is required. Consideration of this addendum is adequate to comply with CEQA for this project, pursuant to CEQA Guidelines Section 15164.

Residents within 300 feet of the proposed rental were notified that an application for a Renewable Energy Permit was being submitted, and staff noticed these residents regarding the public hearing date. Notice of Availability of the Initial Study was published in the *Inyo Register* on June 7, 2018. The Notice of Determination for the Negative Declaration was filed with the State Clearinghouse on July 31, 2018. The CEQA Addendum will be appended to this ND. Notification of today's public hearing was published in the *Inyo Register* on March 9, 2021. No comments have been received to date.

In compliance with AB 52 and Public Resource Code Section 21080.3.1(b), tribes identified as being local to Inyo County, were notified via a certified letter about the project and the opportunity for consultation on this project. The tribes notified were as follows: the Cabazon Band of Mission Indians, the Torres Martinez Desert Cahuilla Indians, the Twenty-Nine Palms Band of Mission Indians, the Big Pine Paiute Tribe, the Bishop Paiute Tribe, the Fort Independence Paiute Tribe, the Lone Pine Paiute Tribe, and the Timbisha Shoshone Tribe.

Inyo County received a response from the Twenty-Nine Palms Band of Mission Indians stating that there were no known archaeological/cultural resources that pertained to the Twenty-Nine Palms Band of Mission Indians; however, the project is located within the Chemehuevi Traditional Use Area (TUA). For this reason, the County is in consultation with the tribal THPO to manage any possible cultural/archaeological resources that may be discovered. The Timbisha Shoshone Tribe indicated they might be interested, but decided not to formerly request consultation.

NEWABLE ENERGY PERMIT 2021-01/BARKER RECOMMENDATION

Planning Department staff recommends the approval of Renewable Energy Permit 2021-01/Barker, with the following Findings and Conditions of Approval:

FINDINGS:

1. The proposed Renewable Energy Permit has met the provisions of necessary review, pursuant to the California Environmental Quality Act.
[Evidence: The Inyo County 2015 REGPA, the Initial Study for this project (June 2018), and the addition to the Conditions of Approval recommended for this permit, have eliminated the potential for adverse environmental impacts that will exceed thresholds of significance, either individually or cumulatively.]
2. The proposed Renewable Energy Permit is consistent with the Inyo County General Plan Land Use Designation of Rural Residential/ Solar Energy Development Area (SEDA), as adopted by Inyo County.
[Evidence: In 2015, Inyo County updated its General Plan to include policies for solar energy development within the County. New goals, policies, implementation measures, and actual sites, were identified in locations referred to in the REGPA as Solar Energy Development Areas. The current project falls within Inyo County's southern SEDA and therefore has consistency with the General Plan.]
3. The proposed Renewable Energy Permit is consistent with the Inyo County Zoning Ordinance.
[Evidence: As stated above, utility scale and commercial scale renewable energy solar facilities are allowed within any zoning district, under Title 18 of the Inyo County Code, and pursuant to Inyo County Code Title 21. The new land use policy created by the REGPA means that applications will be considered regardless of zoning designation, with approval of the permit decided by the Planning Commission.]
4. The proposed Renewable Energy Permit is necessary or desirable.
[Evidence: In 2015, the Inyo County Board of Supervisors decided it was necessary to adopt new land use policies that were consistent with and met the broader goals and visions for the County as expressed in the General Plan. These amended land use policies regulate and direct the type, siting, and size of potential future renewable energy development within the County. Given that the applicant is within the southern SEDA, their permit is consistent with what the County has deemed necessary and desirable (REGPA, ES-2, 2015).]
5. The proposed Renewable Energy Permit is properly related to other uses and transportation and service facilities in the vicinity.
[Evidence: The proposed Renewable Energy Permit is properly related to transportation and service facilities and will not adversely affect these facilities. The project is located in an area where it can interconnect to Southern California Edison's electrical transmission lines. This project is secluded enough to avoid burdens to Inyo County maintained roads, in this case Trona Wildrose Road. Additionally, it is over a mile away from the Trona airport.]
6. The proposed Renewable Energy Permit would not under all the circumstances of this case, affect adversely the health or safety of persons living or working in the vicinity or be materially detrimental to the public welfare.

[The proposed Renewable Energy Permit does not adversely affect public health or safety of persons living in the vicinity. The Inyo County Public Health Department evaluated the application for sewer, septic, and water issues and found no problems with the application.]

7. Operating requirements necessitate the proposed Renewable Energy Permit for the site.
[Evidence: Use of the applicant's property for a photovoltaic power plant or solar energy system requires a Renewable Energy Permit, as per Chapter 21.08 of the Inyo County Code.]

CONDITIONS OF APPROVAL

1. Hold Harmless

The applicant shall defend, indemnify and hold harmless Inyo County agents, officers, and employees from any claim, action or proceeding against the County or its agents, officers, or employees to attack, set aside, void or annul an approval of the county, its advisory agencies, its appeals board, or legislative body concerning Renewable Energy Permit No. 2021-01/ Barker. The County reserves the right to prepare its own defense.

2. Avoid Environmental Impacts

The applicant shall perform preconstruction Presence/Absence Surveys for Mohave ground squirrel, desert tortoise, and Burrowing Owl. If any of these species are identified in surveys, a qualified biologist, in cooperation with CDFW, will create avoidance and or minimization measures for the applicant to follow.

3. Insurance & Reclamation Plan

As per section 21.20.040 of ICC, the applicant shall have secured financial assurance/surety bond, in the amount of the estimated reclamation costs provided in the Removal Cost Estimate (\$103,932), prior to the issuance of grading or building permits. As per section 21.20.030, the applicant shall have produced a decommissioning/reclamation plan prior to the issuance of grading or building permits.

Attachments:

- Draft Addendum
- Final ND
- Site plan