



INYO COUNTY BOARD OF SUPERVISORS

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COUNTY ADMINISTRATIVE OFFICER

DARCY ELLIS
ASST. CLERK OF THE BOARD

AGENDA ITEM REQUEST FORM

February 6, 2024

Reference ID:
2024-20

Appeal No. 2023-03/Barker Solar Planning Department ACTION REQUIRED

ITEM SUBMITTED BY

Cynthia Draper, Assistant Planner

ITEM PRESENTED BY

Cynthia Draper, Assistant Planner

RECOMMENDED ACTION:

Conduct a Public Hearing regarding: Appeal No. 2023-03 (John Mays, Amanda Ball, Brian McNamara, Tom Kidder, and Eden Miller) of Renewable Energy Permit (REP) 2022-02/Barker and deny the appeal (Attachment A - Appeal Letter).

BACKGROUND / SUMMARY / JUSTIFICATION:

On September 19, 2022, the applicant, Robbie Barker, submitted two Renewable Energy Permit (REP) applications for two separate photovoltaic (PV) solar facilities on contiguous land. The applicant submitted two separate applications because each facility would connect separately to the existing Southern California Edison (SCE) 33-kv transmission line passing through the area, have different interconnection agreements, and therefore require two separate County permits to operate. The first application (No. 2022-01) is known to the applicant as "Trona 7". The second application (No. 2022-02) is known to the applicant as "Trona 4" and is the subject of this agenda item (the proposed project).

The Trona 4 project proposes a commercial scale PV solar facility within a 15-acre parcel that is contiguous (i.e., has a common corner) with the Trona 7 site. The facility would generate 3-Megawatts (MW) of electricity using approximately 6,000 single axis tracker solar panels. The Trona 4 project area is graded flat, or gently sloped and is highly disturbed with no natural vegetation, habitat, water features or structures. The project area is surrounded by private vacant land to the north. The land to the south is a developed commercial solar field, owned by the applicant, and the land to the east is vacant BLM land. The land to the west is both private vacant and misc. structure. Approximately five residential structures are within 0.5 miles of the project area located mostly to the south and west. Two of these structures are approximately 400 feet from the edge of the project area. Other land uses within 0.5 mile of the Project Area include storage of equipment, vehicles, scrap yards, and storage units (see Attachment B - Vicinity and Project Site maps).

REPs are subject to Inyo County Code (ICC) Title 21 as well as the Inyo County Renewable Energy General Plan Amendment (REGPA¹) and all requirements thereof. The REGPA was adopted by the County in March 2015 as a plan to help guide and regulate renewable energy development throughout Inyo County. As part of the REGPA process, a Programmatic Environmental Impact Report (PEIR²) was prepared

¹ <https://www.inyocounty.us/sites/default/files/2020-04/FinalREGPA33015.pdf>

² <https://www.inyocounty.us/services/planning-department/environmental-reviews>

pursuant to section 15168 of the California Environmental Quality Act (CEQA) Guidelines to address state-mandated renewable energy demands and potential future utility-scale renewable energy projects within the County's footprint. The PEIR was certified by the County in 2015 alongside the REGPA and the proposed project is also subject to its terms. The proposed project is located within the Southern Solar Energy Development Area (SEDA) as approved and identified in the REGPA. The Southern SEDA allows for up to 600-acres of solar photo voltaic development.

Pursuant to section ES.7 of the PEIR, proposed solar energy projects **greater** than 20 MW are examined in light of the PEIR to determine whether any additional environmental document must be prepared while solar energy projects **up to** 20 MW may be exempt from further CEQA analysis, unless an event specified in Public Resources Code (PRC) section 21166 has occurred. Whether such an event has occurred is a determination to be made by a qualified County planner and if such a determination is made, a Supplemental EIR or other CEQA document *may* be required.

PRC section 21166 states:

When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.*
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.*
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.*

Mr. Barker's project proposes to install only a 3MW commercial scale photovoltaic solar facility and is therefore exempt from further environmental review pursuant to the express terms of the PEIR unless one of the triggering events in section 21166 exists. Staff determined that none of the triggering events listed in subsections (a), (b) or (c) of section 21166 existed such that a subsequent or supplemental environmental impact report was required. In other words, the PEIR prepared for the REGPA is legally sufficient and no further environmental review is required for this project.

Nevertheless, out of an abundance of caution, staff recommended a Negative Declaration be prepared to ensure a greater extent of analysis and, in particular, to review air quality as the Trona area is prone to dust events. Accordingly, in December 2022, an Initial Study with a Mitigated Negative Declaration (ISMND)³ was prepared by staff to consider possible significant impacts to environmental resources for the project. The project site was devoid of natural habitat/vegetation at the time the application was submitted so it was determined that neither a biological survey nor a cultural resources report were required. The State review period for the ISMND ended on December 27, 2022. The County received numerous public comments, but no comments were received from any local or state agencies, including the California Department of Fish and Wildlife or the Great Basin Unified Air Pollution Control District.

Based on the public comments received in response to the ISMND, the applicant decided to have a biological survey and air quality report prepared even though they were not required. The applicant requested staff revise and recirculate the ISMNDs⁴ through the CEQA State Clearinghouse with the new information. Since the biological survey and air quality report were prepared for both projects as one, staff prepared the recirculated ISMNDs as a combined project, but submitted them to

³ <https://www.inyocounty.us/services/planning-department/current-projects>

⁴ <https://www.inyocounty.us/services/planning-department/current-projects>

the CEQA Clearinghouse with two ISMNDs – one for each project – to ensure each separate permit application was processed correctly. The State review period for the recirculated ISMND ended on August 17, 2023. Like the first circulation, no comments were received from any local or state agencies though, again, numerous public comments were submitted by community members opposed to the project, including comments from attorneys retained by these community members.⁵

The additional surveys found no special status species on the project site; however, the bio-survey identified potential habitat for nesting birds and a possible wildlife corridor for the Desert Kit Fox. This led staff to add conditions of approval to the project to mitigate any potential impacts related to the nesting birds and wildlife corridor. The air quality study likewise did not identify any issues, but staff added conditions of approval to mitigate air quality during construction to minimize fugitive dust. Conditions of approval were also added for noise during construction. These conditions were put into a Mitigation, Monitoring Report table format to help make them more understandable to the public. (See Attachment D – Planning Commission Staff Report).

On October 25, 2023, the proposed project was presented to the Planning Commission and a duly noticed public hearing was held. During the public hearing the Commission heard from staff, the applicant, and several members of the public on various aspects of the project, including easements, fire risk, noise, dust in the area, and visual resources. The neighbors raised objections and opposed the project but did not request or accept any additional or modified conditions of approval, including, for example, the suggestion of a privacy fence to help mitigate visual impacts. After considering all evidence presented to it during the hearing, the Planning Commission approved REP 2022-02/Barker with Findings and Conditions of Approval. A Notice of Decision and Notice of Determination were filed for the project soon after (Attachment E – Notice of Decision and Determination) (Attachment F – Planning Commission Minutes).

The Planning Commission's decision was timely appealed by John Mays, Amanda Ball, Brian McNamara, Tom Kidder, and Eden Miller (Appeal 2023-03). In their November 8, 2023, Appeal Letter, Appellants assert the following nine grounds as the basis for their appeal. Note that essentially all the appeal points are repeated from the CEQA comments submitted by the Appellants earlier in the process and the majority of staff responses below are taken directly from staff and applicant responses provided to the Planning Commission (see Attachment D)

- 1. Failure to approve a reclamation plan and financial assurances for the REPs. (County Code, §§ 21.20.030, -040, -070; REGPA Implementation Policy 10; General Plan Policy MER-2.8; REGPA mitigation measure Bio-3).**

Response:

ICC Chapter 21.20.030 states in pertinent part:

Any person who submits an application for a renewable energy impact determination or a renewable energy permit shall, at the time of the submission of the application, submit a plan for reclamation/revegetation of the site of the facility once the facility is decommissioned or otherwise ceases to be operational. The reclamation plan shall be based upon the character of the surrounding area and such characteristics of the property as type of native vegetation, soil type, habitat, climate, water resources, and the existence of public trust resources...

⁵ Most of the comments raised perceived CEQA issues, which issues were promptly responded to by staff and the applicant's attorney. These comments and all responses were included in the materials provided to the Planning Commission (Attachment C - Comments and Responses regarding the CEQA documents).

...the county planning commission ... in the case of a renewable energy permit, shall impose as a condition of approval, a plan for the reclamation/revegetation of the site of the facility at the time that the facility is decommissioned, or otherwise ceases to be operational, and shall establish site-specific criteria for evaluating and monitoring compliance with the approved reclamation plan.

In compliance with the above, Mr. Barker submitted a draft reclamation⁶ plan with his initial application packet in February 2023. However, due to the continuing changes to the project – primarily the recirculation of the ISMND – the applicant was given additional time to finalize this plan, and on October 25, 2023, the Planning Commission approved the Trona 4 project with the following conditions of approval:

3. *Decommissioning Plan and Financial Assurance*

- *As per section 21.20.030 of ICC, the owner/developer shall submit a staff approved decommissioning plan prior to the issuance of grading or building permits.*
- *As per section 21.20.040 of ICC, the owner/developer shall have secured financial assurances/surety bond prior to the issuance of grading or building permits.*
- *The owner/developer shall submit an updated reclamation plan and updated financial assurance/surety bond to the Inyo County Planning Department every 5 years.*

Chapter 21.20.030 does not require the reclamation plan to be in its final form at the time it is submitted or at the time the Planning Commission considers the REP application for approval. It also does not require the Planning Commission to review the draft plan. Instead, it simply directs the Planning Commission to condition approval of the REP on the existence of said plan. Here, by imposing, as a condition of approval, the requirement that Mr. Barker submit a staff-approved decommissioning plan prior to the issuance of grading or building permits, the Planning Commission did what the code required.

Pursuant to ICC Chapter 21.20.040, as a condition to the approval of a renewable energy permit, and in order to ensure reclamation will be effectuated, the Planning Commission must also require financial assurances from the applicant that meet the criteria listed in subsections A-F of the same. The Planning Commission included this condition as required by the ICC.

ICC Chapter 21.20.070 states as follows:

Prior to the issuance of a renewable energy impact determination or the granting of a renewable energy permit, the county planning commission must find that, through the imposition of mitigation measures, the approval of a reclamation plan, the receipt of adequate financial assurances, and by other conditions incorporated into the determination or imposed upon the permit, the health, safety and welfare of the county's citizens, the county's environment, including its public trust resources, and the county's financial well-being, have been adequately safeguarded.

The Planning Commission adopted REP 2022-02 with conditions of approval directly addressing mitigation measures, approval of a reclamation plan, and receipt of adequate financial assurances. By considering these conditions as presented by staff during public the hearing, and adopting them, the Planning Commission determined that the conditions of

⁶ Reclamation and decommissioning are used interchangeably throughout.

approval addressing all elements listed in Chapter 21.20.070 adequately safeguarded the public health welfare and safety⁷.

General Plan Policy MER-2.8. mandates staff to work with applicants to develop their reclamation plans and ensure those plans contain certain elements and meet certain criteria. These are the guidelines staff follow when approving the final reclamation plan (which in this case will occur before Mr. Barker qualifies for building or grading permits). The REGPA Implementation Policy #10 requires staff to “*Review and approve reclamation plans and financial assurances at the onset of renewable energy solar facility development projects and oversee the full implementation of reclamation plans at the decommissioning and termination of renewable energy solar facilities.*” The Condition of Approval that requires a reclamation plan and financial assurances prior to the issuance of grading or building permits meets this requirement since it is with those permits that development will begin. Nothing in MER-2.8 or Policy #10 suggests the County acted inappropriately or in violation of its own codes and regulations in the processing of Mr. Barker’s application.

With regard to Mitigation Measure BIO-3, it does not apply to the Trona 4 project because it, like all the mitigation measures in the PEIR, applies to solar photovoltaic projects located in designated SEDAs that produce *more than* 20MW of electricity. An exception to this rule exists if a specified event in section 21166 has occurred. Staff determined no such event had occurred.

The Final PEIR Volume II, page 4.4-122 states:

*“Biological resources mitigation measures have been developed for solar energy development projects **producing more than 20 MW** of electricity for off-site use (**utility scale**) and would be implemented to mitigate adverse impacts to biological resources. As previously mentioned, small scale solar energy projects are considered to result in no impacts under CEQA; however, all individual solar energy facility project applications (including small scale, community scale, and distributed generation commercial scale) **shall be reviewed by the County, and the need for implementation of the following mitigation measures shall be determined based on the professional judgment of a qualified county planner, pursuant to ICC Title 21 and State CEQA Guidelines.** For example, community scale solar developments (i.e., roof- or ground-mounted PV panels for a specific community’s use) may be determined by a qualified county planner to have no potential impact on biological resources and would not require a biological resource evaluation or implementation of the biological resources mitigation measures listed in this section. **In such cases**, the County shall document that no impacts to biological resources would occur and no mitigation measures are necessary in lieu of the biological resources evaluations required in Mitigation Measures BIO-1 through BIO-3”.* (emphasis added)

Based on this language, the Trona 4 project (producing less than 20 MW) is exempt from Mitigation Measure BIO-3. Nevertheless, a qualified biologist conducted a plant and wildlife (biological) survey of the proposed project site and found no special status plant or animal species. Potential habitat and a wildlife corridor were identified, and a mitigation and monitoring program was prepared for the project based on the biologist’s findings. No further obligation to the mitigation and monitoring program set forth in the PEIR was required due to the county’s actions regarding the project’s CEQA evaluation with the ISMND.

⁷ See also Attachment E - Notice of Decision and Determination, Finding #6 wherein the Planning Commission made a health, welfare and safety finding supported by Environmental Health. This finding, along with the conditions of approval, adequately address 21.20.070.

2. Piecemealed CEQA review by splitting the overall renewable energy project (comprised of both REP 22-01 and 22-02) into two separate MNDs.

Response: The Appellants assert the County analyzed the two separate applications (REP 22-01 and 22-02) in a “piecemeal” manner that is prohibited by CEQA. Section 15378 of the CEQA Guidelines broadly defines a project under CEQA as “the whole of the action” that may result either directly or indirectly in physical changes to the environment. Impermissible piecemeal review occurs when a large project is broken up into one or more smaller ones – each with minimal potential impact on the environment – which cumulatively may have significant consequences (*Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 235).

In this case, two ISMNDs were circulated for the two projects. The first set resulted in public comments regarding possible biological and air-quality impacts. This caused the applicant to have a bio-survey and air quality report conducted for the projects, which were prepared as if this was one project. The applicant then requested that staff recirculate the ISMNDs. This does not qualify as piecemealing for two distinct reasons:

1. Mr. Barker filed two separate REP applications for two separate solar facilities on contiguous land (Trona 7 and Trona 4). Each facility connects separately to the SCE utility grid and has its own energy contract, therefore each needs to have its own permit to operate.
2. Because the two proposed facilities have a common applicant, are in proximity to each other, and would have similar impacts, the second Initial Study evaluated the environmental impacts of both applications as one Project, but again 2 ISMNDs were resubmitted to the State Clearinghouse one for each project, meaning Trona 4 was evaluated along with Trona 7 and Trona 7 was evaluated along with Trona 4. Throughout the recirculated Initial Study process and all supporting documents, the two separate projects are treated and referred to as one single project. Piecemealing occurs when one large project is cut into smaller portions in order to analyze smaller segments. In this case, the County took two individual projects and analyzed them as one, single project.

Furthermore, the County’s decision to prepare two separate approvals was based on its administrative need to render a decision on two separate applications. While Appellants incorrectly label this as piecemealing, they also fail to acknowledge that the ISMNDs are identical in the subject matter and conclusions. Further, they fail to provide any legal authority prohibiting a lead agency from preparing multiple approvals, each supported by a separate ISMND, for multiple applications supported by a single, combined environmental review.

3. Failure to include draft mitigation monitoring and reporting plans ("MMRP") in the MNDs for public review and comment as required by the ICC.

Response:

ICC 15.44.020 states as follows:

Draft mitigation monitoring plans shall be included in proposed mitigated negative declarations and draft EIRs. The draft monitoring plan shall be subject to public review and comment. The mitigation monitoring program shall be adopted at the time the negative declaration is adopted or the CEQA findings are made on the EIR.

This language requires the County to ensure the MMRP is available to the public for review and comment and that the plan is included in the proposed MND and adopted at the time the MND is adopted. This language does not require the County to circulate the MMRP with a MND and the Appellants incorrectly suggest it does. Further, nowhere in the CEQA Guidelines does it require an agency to include the reporting/monitoring plan in the draft MND. (See CEQA Guidelines, §§ 15073, 15073.5, and 15097.)

In this case, the County complied with all applicable laws and regulations in its treatment of the MMRP. Specifically, the MMRP, along with the ISMND, was made available to the public via the County's website on October 14, 2023, through the notice of hearing published for the Planning Commission meeting that took place on October 25, 2023 (this is more than the ten days required by law for notice). The notice included a direct link to the Planning Commission materials which included the MMRP and ISMND. These materials were also made available to the public at the Planning Department office. Following the public hearing on October 25, 2023, the Planning Commission approved the project along with the MMRP and the MND.

4. Failure to properly incorporate the REGPA Programmatic EIR and its MMRP into the County's CEQA review for the Project.

Response: This was not necessary per the Final PEIR Volume II prepared pursuant to section 15168 of the CEQA Guidelines for the REGPA. Specifically, page ES.7 of the PEIR states:

"This document has been prepared as a program-level EIR pursuant to Section 15168 of the State CEQA Guidelines to document the environmental impacts of solar energy development within the County. The contents of this PEIR represent the independent judgment of the County (State CEQA Guidelines Section 15050). Subsequent, proposed solar energy projects greater than 20 MW would be examined in the light of this PEIR to determine whether any additional environmental document must be prepared (State CEQA Guidelines Section 15168(c)). Solar energy projects up to 20 MW may be exempt from further CEQA analysis, unless an event specified in Public Resources Code Section 21166 occurs as determined by a qualified County planner, in which case a Supplemental EIR or other CEQA document may be required."

The County determined the PEIR to sufficiently address certain potential impacts of the project and those that were thought to require site-specific analysis were properly assessed with an ISMND that integrates enforceable mitigation measures based on the recirculated initial study. This falls directly under the direction of ES-7 as a qualified planner made the decision to require an "other CEQA document."

5. Violating CEQA by conflating analysis of Project impacts and mitigation measures.

Response: Appellants raise this same issue in their comment letter to the Planning Commission and based on that letter it would appear they are incorrectly applying EIR-level standards to the initial study prepared for this project. In other words, they seem to imply that an IS needs to contain the same level of detail and analysis required for an EIR and on that basis claim the County erred in its preparation of the MND.

Pursuant to CEQA Guidelines section 15063(a)(3), an initial study is "neither intended nor required to include the level of detail included in an EIR". Further, in this case the IS prepared for this project indicated "No Impact" or "Less than Significant Impact" for nearly all applicable categories. The checklist made a finding of "Less Than Significant with Mitigation Incorporated" for only three categories and appropriate mitigation measures were put into place for all three – biological resources (nesting birds and Kit Fox travel through the site), air quality (dust), and

noise during construction. This was done by conditioning the project with pre-construction bio-surveys, dust management and suppression during construction and operation, and noise suppression during construction. Failure of the applicant to meet any of the conditions of approval, including the mitigation measures, may result in revocation of the REP.

The IS did not make any findings of “Potentially Significant Impact” and therefore an EIR was not required. The use and preparation of the MND was appropriate and done in compliance with the PEIR and CEQA Guidelines.

6. Failure to prepare EIRs despite the existence of a fair argument of significant environmental impacts.

Response: Again, the Trona 4 project is exempt from further CEQA analysis pursuant to the express terms of the PEIR. Staff elected to conduct further environmental review anyway and prepared a MND. A MND is appropriate when the environmental effects of the project can be avoided or mitigated to the point where clearly no substantial evidence, in light of the whole record, is presented that the project may have a significant effect (CEQA Guidelines § 15064(f)(2)). In this case, no impacts were identified in the IS that met the threshold to trigger an EIR. The use and preparation of the MND was appropriate and done in compliance with the PEIR and CEQA Guidelines.

Ignoring this, the Appellants claim a “fair argument” exists such that an EIR must be prepared. Pursuant to CEQA Guidelines section 15064(f)(1), the fair argument standard means that if a “fair argument” can be made that a project may have a significant effect on the environment, an EIR must be prepared. Pursuant to CEQA Guidelines section 15384, to support the existence of a fair argument of significant environmental impacts, the Appellants must provide substantial evidence that includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. The Appellants incorrectly rely on argument, speculation, and unsubstantiated opinion and narrative and fail to provide any evidence, let alone substantial evidence, to support their claim that the Trona 4 project may have significant effects on the environment to necessitate the preparation of an EIR.

7. Reliance on mitigation measures that are inadequately defined, unenforceable, and of unknown effectiveness to conclude that environmental impacts are less than significant.

Response: The mitigation measures set forth for the project, and included as conditions of approval, were derived from the biological survey and air quality study conducted. The biological survey suggested mitigation measures which were prepared by a qualified biologist and the air quality study suggested mitigation measures prepared by a consulting firm that specializes in air quality and greenhouse gas impacts. Based on these experts’ opinions, the mitigation measures created for the project would result in environmental impacts that are less than significant. Like all the conditions of approvals, these mitigation measures are fully enforceable⁸. If the applicant fails to follow or properly implement any of the conditions, the REP may be revoked.

Appellants fail to specify which mitigation measures they take issue with. They also fail to provide any facts, substantial evidence, or compelling argument and rely on vague, conclusory statements to support their contention that one or all of the mitigation measures are deficient. (See CEQA Guidelines § 15384.).

⁸ The mitigation and monitoring program provides direction for what particular agency or county department is responsible for particular aspects of the project monitoring and when it should occur.

8. Inadequate identification of cumulative projects and analysis of cumulative impacts.

Response: Appellants raise this same issue in their comment letter to the Planning Commission and based on the language in that letter it would appear that they fail to recognize the difference between a cumulative analysis required for an EIR and that which is required for an initial study supporting a negative declaration. To argue their point, Appellants rely on CEQA Guidelines sections 15130 and 15355, which govern the cumulative impacts analysis in an EIR. An EIR was not prepared for this project because it was not required to be prepared therefore requirements for an EIR do not apply.

In response to the comment letter, on this discrete point, the applicant's attorney explained:

The correct method for assessing – in an initial study – whether impacts are cumulatively considerable is described in Section 15065(a)(3) of the CEQA Guidelines, as interpreted and applied by San Joaquin Raptor/Wildlife Rescue Center and related cases. The question is whether the “incremental effects” of a project are “considerable” when evaluated against the backdrop of environmental effects of other projects. (San Joaquin Raptor, 42 Cal.App.4th at pp. 623-624.) Where the initial study concludes that these effects are absent, a challenger must point to some substantial evidence that a cumulatively considerable incremental effect exists. (See response letter from Harrison, Temblador, Hungerford & Guernsey at Attachment C).

The IS is supported by substantial evidence showing that the Projects will have no considerable incremental effects requiring the preparation of an EIR and Appellants have failed to show otherwise.

9. Inadequate analysis and disclosure of environmental impacts.

Response: Pursuant to the REGPA, staff reviewed the project first under the lens of the PEIR and although not necessary, decided to produce an ISMND for the project, primarily to address possible dust in the area. Based on public comment, and at the applicant's request, a recirculated ISMND was subsequently created to further evaluate possible environmental impacts. A biological survey and an air quality analysis were also conducted for the ISMND. All possible impacts were evaluated, disclosed, and where appropriate, mitigated through the ISMND process. These documents were also circulated pursuant to CEQA Guidelines and sent to the State Clearinghouse for State Agency review and the County Recorder for public comment. As already stated, public comment was addressed.

This project is expressly allowed by virtue of its location within an adopted SEDA as set forth in the Inyo County REGPA. The County determined no further environmental review was required pursuant to the PEIR but still prepared an ISMND, which was circulated and then recirculated again with a biological and air quality study. Based on the ISMND, and the administrative record as a whole, substantial evidence that the project has a significant impact on the environment does not exist.

Further, as evidenced in the record, the applicant has gone above and beyond that which is legally required to appease the appellants throughout this process, including supporting additional (un-mandated) environmental reviews, supporting a second circulation of the ISMND with a biological survey and air quality report, and remaining open to additional conditions of approval as were discussed during the Planning Commission's public hearing.

The County's preparation and use of the ISMND was proper and complied with all applicable laws and regulations and the Appellants have failed to show otherwise.

Recommended Actions:

Staff recommends the Board deny the appeal and uphold the Planning Commission's decision to approve REP 2022-02/Barker.

- (1) <https://www.inyocounty.us/sites/default/files/2020-04/FinalREGPA33015.pdf>
- (2) <https://www.inyocounty.us/services/planning-department/environmental-reviews>
- (3) <https://www.inyocounty.us/services/planning-department/current-projects>
- (4) <https://www.inyocounty.us/services/planning-department/current-projects>
- (5) Most of the comments raised perceived CEQA issues, which issues were promptly responded to by staff and the applicant's attorney. These comments and all responses were included in the materials provided to the Planning Commission (**Attachment C - Comments and Responses regarding the CEQA documents**).
- (6) Reclamation and decommissioning are used interchangeably throughout.
- (7) See also Attachment E - Notice of Decision and Determination, Finding #6 wherein the Planning Commission made a health, welfare and safety finding supported by Environmental Health. This finding, along with the conditions of approval, adequately address 21.20.070.
- (8) The mitigation and monitoring program provides direction for what particular agency or county department is responsible for particular aspects of the project monitoring and when it should occur.

FISCAL IMPACT:			
Funding Source	Non-General Fund	Budget Unit	023800
Budgeted?	Yes / No	Object Code	
Recurrence	One-Time Expenditure		
Current Fiscal Year Impact			
Future Fiscal Year Impacts			
Additional Information			

Paid for with \$300 application fee

ALTERNATIVES AND/OR CONSEQUENCES OF NEGATIVE ACTION:

- 1. The Board may consider the following alternatives.
- 2. Do NOT approve the requested actions. Denial of the Appeal and upholding the Planning Commission decision to approve is recommended.
- 3. Return to staff with direction.

OTHER DEPARTMENT OR AGENCY INVOLVEMENT:

None.

ATTACHMENTS:

1. Attachment A-F - Appeal 2023-03
2. Public comment Howard Smith
3. Public comment Kidder
4. Public comment Mays 1
5. Public comment Mays 2
6. Public comment Mays 3
7. Public comment Mays 4
8. Public comment Mays 5
9. Public comment McNamara Ball
10. Public comment McNamara
11. Public comment Soluri Meserve

APPROVALS:

Cynthia Draper	Created/Initiated - 1/11/2024
Darcy Ellis	Approved - 1/17/2024
Cathreen Richards	Approved - 1/17/2024
John Vallejo	Approved - 1/22/2024
Christian Milovich	Approved - 1/26/2024
Nate Greenberg	New -
Cathreen Richards	
Cynthia Draper	