

received
11/12/2024

DAVID R. NELSON
CHARLES T. YERXA, JR.

CLARK & NELSON
ATTORNEYS AT LAW
521 MARKET STREET
POST OFFICE BOX 968
COLUSA, CALIFORNIA 95932
(530) 458-5157
FAX (530) 458-2183

ROBERT D. CLARK
(1935-2004)

dave.clarkandnelson@gmail.com

November 12, 2024

Greg Plucker, Director
County of Colusa Community Development Dept.
1213 Market Street
Colusa, CA 95932

Re: Janus Solar and Battery Storage Project

Dear Mr. Plucker:

Please be advised that we represent Jean Terkildsen, Elizabeth Ferrini Katsaris and Matthew Ferrini, who are the owners of real property adjacent to the proposed Janus Solar and Battery Storage Project. On behalf of our clients, we make the following comments to the Draft Environmental Impact Report (DEIR) for the Janus Solar and Battery Storage Project.

COMMENTS WITH REGARD TO ENVIRONMENTAL ANALYSIS.

4.1 AESTHETICS.

This project contemplates the construction and operation of 196,000 solar panels to be placed on metal framework structures that would range between 6 and 13 feet above grade. The project would be located upon a 886 acre site with an estimated 666 acres being utilized for the placement of solar panels and battery storage. The solar panels would be dark blue or black in color. The subject property is located within an area of Colusa County known as Spring Valley. Historically, and currently, the property is an area of grassland hills utilized for grazing. This area remains in large part in its natural state and provides for natural views of the lower portions of the California coastal range and the Northern Sacramento Valley below.

There can be no questions that the project will significantly alter the aesthetic views of Spring Valley for the anticipated 35 years of the project's duration. Rather than views of the natural vegetation, which vary from brilliant green grasses in the spring and early summer to dry grasses in the summer and fall, the aesthetics of the 886 acres will be reformed into a dark blue or black reflective mass of glass and metal.

While the DEIR seeks to minimize the value of the existing aesthetics there can be no argument that the existing aesthetics will be significantly impacted.

While beauty may be in the eye of the beholder, my clients dispute the conclusion that the visual impacts would be less than significant. The recognition that there would be significant visual impacts must be recognized and dealt with within the Environmental Impact Report for this project.

4.9 HAZARDS AND HAZARDOUS MATERIALS.

The Janus project includes a 4 acre battery energy storage system (BESS). Within the BESS would be located lithium ion batteries. While the DEIR recognizes the potential for fire, thermal runaway conditions and explosion as potential impacts, it concludes that the impact would be less than significant because fire, thermal runaway and/or explosion would be contained within the modules.

However, if there were to be an extreme condition resulting in fire, thermal runaway or explosion, there is no analysis as to the impacts of escaping chemicals and/or gases, whether resulting from fire prevention activities, venting and exhaust or explosion. Without a full analysis of the hazards resulting from a catastrophic incident, the DEIR lacks sufficient analysis with respect to hazards and hazardous materials.

4.10 HYDROLOGY AND WATER QUALITY.

A project results in significant impacts to hydrology if it would:

Result in substantial erosion or siltation on or off site;

Substantially increases the rate or amount of surface runoff in a manner which would result in flooding on or off site; or

Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff.

The proposed project will result in 196,000 solar panels. The panels, although not specifically identified, will most likely be approximately 3 feet wide by 7 feet tall resulting in each panel consisting of 21 square feet. While the DEIR states that the project would introduce minimal stationary impervious surfaces, such is not the case. Rather, the solar panels that are contemplated are

impervious and will create over 4,000,000 square feet of impervious surface. Rain water that falls on the panel will fall to the low edge of the panel and will then flow through the natural drainage course. Rather than rain water being spread across the totality of the property as it is now, the project will result in an increase in runoff and potential channeling, erosion and overtaking of the current drainage system.

The DEIR does not address any of these concerns and therefore it is impossible for a determination to be made that there is less than a significant impact with regard to hydrology and drainage.

4.11 LAND USE AND PLANNING.

An EIR must discuss any inconsistencies between the proposed project and applicable general plans. 14 Cal. Code Regs Section 15125(b). A conflict between the project and provisions of a general plan will normally be evidence of a significant environmental effect.

When the Colusa County General Plan was adopted, it included as its first element an element not required under state law, but of critical importance to the citizens of Colusa. That element is the Agriculture Element.

The introduction to the Agriculture Element states the following: "Farming and relating agricultural industries are not only the background of Colusa County's economy, they also play a central role in the way of life of County residents and help define the character of the County. Throughout the development of the Colusa County General Plan, County residents, stake holders, business leaders and elected officials identified the protection of agricultural lands and the expansion of agricultural opportunities as some of the most critical issues to be addressed in the General Plan.

The Agriculture Element contains goals, objectives, policies and action items geared towards the protection of agricultural lands, the expansion of agricultural operations, and the reduction of conflicts between agricultural and non-agricultural land uses."

Identified below are numerous provisions of the Colusa County General Plan that we believe the proposed project is inconsistent with.

Objective AG1-A: "Recognize that agricultural land is the County's greatest natural asset and take appropriate measures to restrict the conversion of agricultural lands to non-agricultural

uses."

Policy AG1-8: "Protect agricultural lands from urban encroachment by limiting the extension of urban service facilities and infrastructure, particularly public water and sewer."

Policy AG1-9: "Encourage the conservation of agricultural lands using available programs that provide benefit to the County and/or farmers."

Action AG1-A: "Monitor the conversion of agricultural lands (AG, AU and AT) located outside of urban and urban reserve areas to non-agricultural uses."

Policy AG1-12: "Agricultural uses shall continue to be protected through ongoing adherence to the implementation of the County's Right to Farm Ordinance (Colusa County Code Chapter 34, Farming Practices)."

Objective AG2-A: "Expand opportunities to economic development and increased agricultural production by allowing agricultural processing facilities and uses directly supporting agriculture in all agricultural land use categories."

Policy AG2-1: "Agricultural related industrial support operations shall be permitted on agriculture lands. Such uses may include, but are not limited to, processing, assembly, distribution and warehousing of agricultural materials and commodities and alternative energy systems that provide energy for on-site uses. These uses should be permitted on agricultural lands as principal permitted uses subject to the standards of the Zoning Ordinance provided the following findings are made:

a. The use provides a needed service to the surrounding agricultural area which cannot be provided more efficiently within designated industrial or commercial uses or which requires location to a non-urban area because of unusual site requirements, operational characteristics or proximity to agricultural goods and products....

Policy AG2-4: "The exploration and extraction of oil, gas and other mineral resources may be allowed on agricultural grounds, provided the activity is conducted in a way that minimizes interference with agricultural operations and does not result in permanent loss of the agricultural viability of the land."

Policy AG2-5: "Encourage and supply the development of new agricultural related industries featuring alternative energy,

utilization of agricultural waste, biofuels, and solar or wind farms."

Policy LU1-7: "The land use map may be amended from time to time to ensure that there is an adequate supply of industrial, commercial, public service, residential, and other lands to serve the County's economic needs. However, agricultural and open space lands shall not be re-designated or developed for urban or residential uses unless:

The proposed use is necessary for the economic agricultural and social well being of the County.

The proposed use will not conflict with existing or anticipated uses in the vicinity."

Goal LU-2: "Maintain agriculture as the paramount land use in the County and ensure land use and planning decisions support a strong agricultural economy."

Objective LU-2A: "Conserve and protect agricultural lands through a variety of strategies, including general planning, zoning, taxation, and easements."

Policy LU2-2: "Ensure that future development and land use decisions protect the integrity of agriculture and do not in any way create a hardship for the County's farmers."

Policy LU2-3: "Ensure that lands presently in agricultural uses that do not adjoin existing communities continue to be designated for agricultural uses and are protected through the County's land use regulations."

Policy LU2-5: "Require lands designated Agricultural General, Agricultural Transition or Agricultural Uplands to remain designated for agricultural use, including businesses or uses that directly support County agricultural activities for at least the duration of the planning period, with the exception of lands re-designated consistent with the requirements of Policy LU1-7."

Policy LU2-6: "Discourage the division of land in agricultural areas if the division is not for the purpose of farming or other agricultural activities or if the division precludes the future opportunity to farm the ground."

Policy LU2-10: "Restrict mining activities such as the extraction of oil, gas, or other materials and natural resources, to avoid or minimize to a level of non-significance, impacts and to avoid

or minimize conflicts with agricultural uses and farming activities. Enforce land use compatibility provisions of the Williamson Act when such activities impact contracted lands."

Policy OSR 1-11: "To the maximum extent feasible, the significant open space resources in the County, such as the western foothills, Indian Valley, and Bear Valley should remain visually undisturbed."

Policy CON 2-4: "Allow alternative energy production infrastructure (such as solar panel arrays) that limits energy generation to the amount necessary to support on-site uses in all land use designations as a principally permitted use, provided that the project complies with the following:

- a. Does not detract from the visual character from the area and are either screened or designed to blend with the other uses on the site.
- b. Is sized to produce energy in amounts comparable with the amount demanded by on-site uses.
- c. Does not exceed noise standards.
- d. Does not create a nuisance to adjacent properties."

The DEIR's conclusion that the project is consistent with each and every general plan goal and policy referenced within the DEIR is totally lacking in any evidentiary support. The proposed project converts 886 acres of agricultural upland property from its current agricultural use to a commercial/industrial solar and battery electrical utility use. The project goal has absolutely no tie to agriculture and will provide no support of any type to the Colusa County agricultural environment. The DEIR further serves to degrade the property and its agricultural use and benefits. Cattle ranching and sheep ranching have been an integral part of Colusa County's agricultural heritage since statehood. To suggest that this project is consistent with the numerous general plan policies and goals ignores the true facts and circumstances and equates to a desired conclusion without any factual basis. Conclusions absent a factual basis are not favored under the EIR process. The conclusions of consistency need to be revised and analyzed as significant environmental impacts.

The subject property upon which the project would be constructed is currently subject to a Williamson Act contract. While the DEIR references that the Williamson Act contract terms are

currently under review, the DEIR recognizes that new provisions that would permit property in the Williamson Act to be utilized as an industrial commercial utility site are not currently in place. The DEIR needs to evaluate the inconsistency with the Williamson Act contract as it presently stands and not by what possible changes to Williamson Act contracts might be in the future.

4.20 WILDFIRE.

The proposed project includes an overhead 60KV power line four miles in length along the County right of way on Spring Valley Road and Walnut Drive. The project location is in a recognized high fire zone and power has been shutoff by PG&E in this area because of high winds two times for several days each within the past two weeks. While the DEIR makes reference in alternatives to the project to undergrounding the power line, it dismisses that alternative as being too expensive.

The DEIR should include an analysis of the safety, or lack thereof, of the type of proposed power lines, poles and connectors, together with whether an overhead transmission wire of such height and length will impact the ability of nearby property owners to procure and obtain fire insurance for their property and improvements and whether the cost of acquiring such insurance will be affordable. The public is entitled to such information particularly in light of the current insurance crisis in the State of California. Local residents should not have to bear a lack of affordable fire insurance to permit a project such as that proposed to be constructed.

DECOMMISSIONING

The project contemplates that at the end of its 35 year term of operation that the solar arrays, batteries, the battery storage systems and other components of the project will be decommissioned. While the DEIR mentions decommissioning, the only condition with regard to decommissioning is that a performance bond will be required. The issue of decommissioning should be of utmost important and concern to the County of Colusa and the public. If at the end of its operational term, or before, should the project become no longer economically feasible, the project operator may very well no longer be solvent, and it must be anticipated that the project could be abandoned. Such an abandonment could leave the County of Colusa, and its citizens, responsible for decommissioning. In view of these possibilities, the DEIR should have fully studied and analyzed the issue of decommissioning, the cost of said decommissioning some 35 years hence, and whether securing and obtaining a bond is even feasible or possible. The DEIR is devoid of any studies with respect

to decommissioning and the economic requirements to decommission a project of this size and scope. The DEIR merely references that at some point in the future an unknown individual or individuals will make some estimate as to decommissioning costs and a bond amount will be fixed. Leaving such a paramount issue for future determination is not favored under California law. The decision makers, and the public are entitled to be fully advised with respect to an issue as important as decommissioning a project that will include 196,000 solar panels together with their tracking arrays and a battery storage complex of 4 acres. The failure to study, analyze and determine the best methods to ensure that the decommissioning of the project occur must be a component of this DEIR. Failure to include such pertinent information renders the DEIR inadequate, and results in the project exposing the County of Colusa and its citizens to a potential significant environmental and economic impact.

MITIGATION MONITORING

An additional significant omission from the DEIR is the discussion of an appropriate and effective Mitigation and Monitoring and Reporting Program. The lead agency must adopt a reporting or a monitoring program that is designed to ensure compliance with the adopted mitigative measures. While the DEIR contains numerous mitigation measures there is no discussion as to how those measures will be monitored to ensure compliance and what consequence will be imposed upon the project operator should required mitigation measures not be employed. The DEIR should have reviewed and recommended specific means and manners for the monitoring to occur. This is particularly incumbent in our County in light of the fact that our Community Development Department, which includes the planning division, has extremely limited resources and may not have persons capable or competent of understanding and being in a position to determine whether the required mitigation is in fact being employed. The decision makers, and the public, are entitled to be fully advised as to how the monitoring and reporting for compliance of mitigative measures will proceed, who will be responsible for reporting, who will incur the cost of mitigation monitoring and what will be the consequences if there is non-compliance? The DEIR fails to address this very significant issue and at times places monitoring in the hands of the contractor which is a complete abdication of mitigation monitoring.

The failure to appropriately study, review and establish appropriate parameters for an effective mitigation monitoring and reporting program should be addressed in the DEIR.

PROJECT ALTERNATIVES.

A requirement of an EIR is to include within the document, alternatives to the project. The DEIR does include a chapter on project alternatives. However, the alternatives considered within the DEIR do not include what we consider to be the most appropriate alternative which would be to locate a project of this size and scope within an area of the County designated for and zoned for industrial purposes which includes solar energy systems. This omission is significant and should be addressed as a part of the environmental review process.

We appreciate your consideration of these comments and we will look forward to receiving your meaningful responses to them.

Very truly yours,

CLARK & NELSON

By


David R. Nelson

DRN:d

cc: Jean Terkildsen
Elizabeth Ferrini Katsaris
Matthew Ferrini