

Hingtgen, Robert J

From: David H. Weibel <Weibel@smwlaw.com>
Sent: Friday, February 14, 2014 11:26 AM
To: Hingtgen, Robert J
Cc: Catherine C. Engberg
Subject: Soitec Solar Draft EIR - Comments by CNFF
Attachments: Comment letter re Draft EIR for Soitec project.PDF

Mr. Hingtgen:

Please see attached a letter to you from Catherine Engberg of this office, on behalf of the Cleveland National Forest Foundation. The letter is being sent concurrently via U.S. Mail.

Please let me know if you have any difficulty opening the attachment.

Thank you,

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O3-1

Response to Comment Letter O3

**Cleveland National Forest Foundation
David Weibel, Shute, Mihaly & Weinberger LLP
February 14, 2014**

O3-1

This comment is introductory in nature and does not raise an environmental issue for which a response is required.

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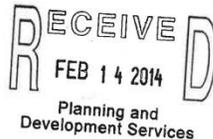
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February 14, 2014

Via E-Mail and U.S. Mail

Mr. Robert Hingtgen
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Re: Cleveland National Forest Foundation's Comments of the Soitec Solar Development Program Draft EIR

Dear Mr. Hingtgen:

This firm represents the Cleveland National Forest Foundation ("CNFF"), which promotes sustainable regional land use planning in order to stem the tide of urban encroachment into San Diego County's backcountry. The purpose of this letter is to inform the County of San Diego that its Draft EIR for the Soitec Solar Development Program ("Project") fails to comply with the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. ("Guidelines"). For the reasons set forth below, we request that the County delay further consideration of the Project until such time as a legally adequate EIR is prepared that fully complies with CEQA.

I. Introduction

CNFF fully supports renewable energy as a means to combat global warming. CNFF would like to see SDG&E meet—and exceed—the state's Renewable Portfolio Standard ("RPS"), which establishes a 33% renewable energy target by 2020. Unfortunately, the Project completely fails to push the needle forward on either goal.

Instead, the Project supplements the region's existing energy supply without proposing any commensurate reductions in non-renewable sources, i.e. "dirty

O3-2

The County of San Diego (County) does not agree that the Draft Program Environmental Impact Report (DPEIR) is insufficient, or believe that delaying consideration of the Proposed Project is warranted. In conformance with the California Environmental Quality Act (CEQA), the DPEIR evaluated the whole of the action and analyzed each environmental subject area with regard to potential adverse effects. It is not the function of the DPEIR to evaluate the merits of the Proposed Project or develop a recommendation for decision makers. Rather, the DPEIR adequately discloses impacts, describes feasible mitigation, and provides comparative analyses for reduced Project alternatives.

O3-3

The County disagrees that the DPEIR does not present evidence that the Proposed Project will help the state meet its Renewable Portfolio Standards (RPS) renewable-energy target of 33% of total electricity sold to retail customers by 2020. The Proposed Project will generate electricity that qualifies as renewable energy under the RPS and that electricity will be available for utilities like San Diego Gas & Electric (SDG&E) to purchase. The RPS requires utilities to procure not less than 33% of their total retail sales of electricity from renewable sources. (California Public Utilities Code Sections 399.15(b)(2)(B), 399.30(c)(2).) Contrary to the commenter's assertion, the Proposed Project need not propose a commensurate reduction in non-renewable energy sources for a utility offtaker to

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O3-3

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energy.” As a result, the EIR presents no evidence that the Project will make any headway towards achieving the 33% RPS target.

The EIR also violates CEQA: it obfuscates the scope of the Project, ignores its growth inducing impacts, and fails to support its conclusion that the Project will have a positive impact on curbing climate change. Let’s be frank: unless the County commits to replace a commensurate amount of “dirty” energy, this Project will simply enable sprawl development.

II. The Project Description Omits and Obscures Critical Information.

An EIR must include a clear and comprehensive description of the proposed project, which is critical to meaningful public review. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. The court in *Inyo* explained why a thorough project description is necessary:

“A curtailed or distorted project description may stultify objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other alternatives in the balance.” d. at 192-93. Thus, “[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 830.

The EIR fails to satisfy CEQA’s rigorous standard. First, the EIR states that its #1 objective is to help SDG&E meet the state’s 33% RPS. DEIR at 1.0-1. To do so, the Project’s renewable energy would need to replace existing sources of “dirty” energy. Unfortunately, the EIR provides no evidence that the Project would do so. Instead, the EIR admits that the project would “supplement the region’s in-basin energy supply.” *Id.* at 1.0-40. As a result, the EIR’s suggestion that this Project would help achieve the 33% RPS is unsupported and misleading.

Second, the EIR obliquely refers to a 25-year Power Purchasing Agreement (DEIR at 1.0-17) but provides no useful information about the terms of the Agreement.

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meet its RPS mandate. Specifically, the County is not aware of any language in Senate Bill X1 2, previous legislation, and/or executive orders requiring commensurate reductions in non-renewable energy sources for a utility to meet its 33% RPS target.

The County disagrees that the DPEIR violates CEQA. See the responses to comments O3-5 through O3-16.

O3-5

The commenter’s reference quotes a portion of the *County of Inyo v. City of Los Angeles* decision; it does not include a comment on the Proposed Project or the DPEIR, and therefore requires no response.

O3-6

The County disagrees with the commenter’s characterization that the Proposed Project’s “#1 objective is to help SDG&E meet the state’s 33% RPS.” First, the Proposed Project has seven co-equal objectives, all of which carry the same importance. (DPEIR, p. 1.0-1). Second, helping SDG&E meet its RPS target is not an explicit objective of the Proposed Project because it has not been determined what entity would purchase the Proposed Project’s electricity. Refer to the response to comment O3-3 regarding the commenter’s assertion that the Proposed Project must replace existing sources of fossil fuel electrical generation in order to meet the 33% RPS goal.

O3-7

Refer to the response to comment O10-7 regarding the commenter’s claim that the DPEIR must provide

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Who will purchase the power? For what purpose? At what cost? The EIR's revised project description should describe these and other fundamental terms.

III. The Draft EIR Fails to Adequately Analyze Growth Inducing Impacts.

An EIR must discuss the "Growth-Inducing Impact of the Proposed Project." Guidelines § 15126(d). To meet this requirement, the EIR must "[d]iscuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment" Guidelines § 15126.2(d). Of particular relevance, the Guidelines note that a project can induce growth by "remov[ing] obstacles to population growth," such as by expanding a waste water treatment plant to allow more construction within its service area. *Id.*

The EIR claims that the Project will not be growth-inducing because it will not "remove a restriction to or encourage population growth in an area. . ." DEIR at 1.0-39. The EIR's conclusion is unsupported and nonsensical. Growth in San Diego's backcountry cannot occur without energy to fuel, light, warm and cool new homes. For example, the proposed 1,746-unit Accretive/Lilac Hills project and the 430-unit Castlerock project will be served by energy from the grid—not from individual generators. Similarly, the County is considering an amendment to the County General Plan that would dramatically "upzone" certain private inholdings in the Cleveland National Forest. Namely, the Forest Conservation Initiative amendment would re-designate land to accommodate an additional 2,893 dwelling units in Alpine (Staff Recommendation), many of which would be served by energy from the grid.

According to the EIR for the County's General Plan Update, SDG&E's goal is to reduce peak energy demand by a total of 268 MW. GPU DEIR at 2.16-28. In contrast, this Project will add 168.5 MW to the region's existing supply of energy (DEIR at 1.0-1 and 1.0-40), without commensurately removing an existing non-renewable source. How is that movement in the opposite direction of SDG&E's stated goal not growth inducing? Furthermore, the County is making no progress towards achieving the state-imposed 33% RPS, or the County's Greenhouse Gas ("GHG") reductions assumed in the County's Climate Action Plan.

Other regional agencies, such as SANDAG, have analyzed the growth-inducing impacts of providing transportation facilities. According to SANDAG, San Diego region's land use pattern and resulting vehicle miles traveled ("VMT") will result in a long term GHG emission picture as follows:

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information regarding a Power Purchase Agreement for the Proposed Project's electricity.

03-8

The County disagrees with the commenter's assertion that the DPEIR has not discussed the growth-inducing impacts of the Proposed Project in accordance with the requirements of CEQA. The DPEIR provides an analysis of growth-inducing impacts at pages 1.0-39 to 1.0-40. The comment's citation of relevant provisions of the CEQA Guidelines is acknowledged and will be included in the Final Program Environmental Impact Report (FPEIR) for review and consideration by the decision makers.

03-9

The County disagrees with the commenter's assertion that the DPEIR has inadequately discussed how the Proposed Project may induce growth by adding electricity-generating capacity to the region (14 CCR 15126.2(d)). The analysis of growth-inducing impacts need not be provided at the same level of detail as the analysis of project-specific impacts (14 CCR 15126.2(d); *Napa Citizens for Honest Gov't v. Napa County Board of Supervisors* (2001) 91 Cal App. 4th, pp. 342, 369). Contrary to the commenter's assertion, the DPEIR discusses the ways in which the Proposed Project may induce growth, including housing demand for construction and operational workers, and the provision of solar energy. As described in the Proposed Project objectives (DPEIR, p. 1.0-1), the Proposed

Project is intended to assist the state in meeting its RPS targets by 2020. Residential growth will not occur in eastern San Diego County simply because the Proposed Project will be located there. Electricity generated by the Proposed Project can be delivered to end users in many different locations connected to the grid, and proximity to the Proposed Project is not required for an end user. In addition, any new homes that may be developed as a result of the Forest Conservation Initiative amendment to the General Plan are not dependent on the Proposed Project. As the commenter notes, the proposed General Plan amendment to redesignate lands in the Alpine area is underway already and is not contingent on the Proposed Project (Napa Citizens for Honest Gov't v. Napa County Board of Supervisors (2001) 91 Cal App. 4th, p. 369) The California Public Utilities Commission (CPUC) authorizes a utility to procure additional generating capacity only if the CPUC has concluded that this capacity is necessary to meet projected load demands in its service territory; that is, if growth is already projected to occur. The commenter is also referred to the response to comment O10-96.

O3-10

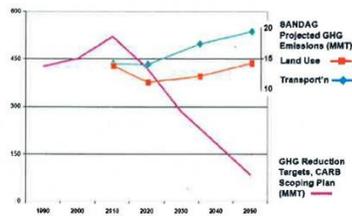
Refer to the responses to comments O10-96, related to the correlation between increased energy demand and electrical generation procurement, and O3-9, regarding growth-inducing impacts. It has not been determined which utility will be the off-taker of the Proposed

Project's electricity. Accordingly, the commenter's reference to SDG&E's goal to reduce peak energy demand cannot be evaluated in the context of the Proposed Project. Furthermore, if SDG&E were to become the off-taker of the Proposed Project's electricity, SDG&E is not required to demonstrate that existing electricity generation will be removed in order for the County to approve the Proposed Project, as the County's approval is not tied to procurement by SDG&E of new generation resources. Nor is SDG&E required to remove existing sources (renewable or non-renewable) when it contracts for new capacity; the utility will procure capacity only in accordance with CPUC orders allowing for such procurement.

The commenter's assertion that the County is making no progress toward achieving the state's 33% RPS is inaccurate, as the County has no obligation under the RPS. The RPS is applicable only to retail sellers of electricity, such as SDG&E and other electrical corporations (Public Utilities Code, Section 399.15).

The County disagrees with the commenter's assertion that the County is not making progress toward achieving the greenhouse gas (GHG) emission reductions assumed in the Climate Action Plan (CAP), at least with respect to the Proposed Project. The Proposed Project will fully offset its GHG emissions, so it does not undermine the County's GHG reduction goals (DPEIR, pp. 3.1.3-35 to 3.1.3-36). Furthermore, the Proposed Project will add

The Total Emission Picture



If SANDAG can determine the GHG impacts of regional patterns of growth, what is preventing the County from doing the same thing? The EIR should analyze the role that energy availability plays in these same growth patterns, and the resulting impacts.

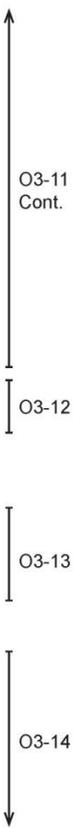
Please include this corrected analysis of growth inducing impacts in the revised and recirculated draft.

IV. The Draft EIR Fails to Adequately Analyze and Mitigate Climate Change Impacts.

The DEIR fails to analyze how the project is consistent with San Diego County's Climate Action Plan, which assumes SDG&E will fully comply with the state's 33% RPS, and that such compliance will result in a reduction of 200,605 MT CO2(eq). The Revised DEIR should include this analysis.

V. The DEIR Uses An Improper Baseline.

Making matters worse, the DEIR uses a future indeterminate baseline to calculate project impacts—in violation of CEQA. CEQA requires "a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation [NOP] is published . . ." Guidelines § 15125(a). In *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* 57 Cal.4th 439 (2013), the California Supreme Court recognized that, under limited circumstances, a departure from existing conditions (i.e., NOP date) may be appropriate. But only when "justified by



O3-11

168.5 megawatts of local renewable-energy generating capacity with no associated GHG emissions (DPEIR, pp. 3.1.3-35 to 3.1.3-36).

The commenter's reference to the San Diego Association of Governments' (SANDAG's) analysis of growth-inducing impacts related to providing transportation facilities and the GHG impacts of regional patterns of growth is noted. The County disagrees with the commenter's assertion that the growth-inducing impacts of providing transportation facilities are comparable to the growth-inducing impacts of providing renewable-energy facilities. Furthermore, the commenter is referred to the County's General Plan Update EIR (County of San Diego 2011), which discusses the growth-inducing impacts of the County's future growth plan. The commenter is referred to the responses to comments O3-8 to O3-10.

O3-12

As provided in the responses to comments O3-8 to O3-11, the County has adequately evaluated the growth-inducing impacts of the Proposed Project. As no information regarding new significant impacts or changes in the significance of existing impacts has been presented or needs to be added to the DPEIR, recirculation is not necessary. (California Public Resources Code, Section 21092.1; 14 CCR 15088.5).

O3-13

The County does not agree that the DPEIR fails to evaluate consistency with the County CAP.

Consistency with the CAP is discussed in Sections 3.1.3.3.2 and 3.1.3.5 of the DPEIR. The DPEIR is not required to evaluate how a third party, SDG&E, would meet its obligation to comply with the statewide 33% RPS. As discussed on page 3.1.3-13 of the DPEIR, Senate Bill X1 2 requires that retail electricity sellers, such as SDG&E, procure 33% of their sales from renewable-energy sources by December 1, 2020. The reduction of 200,605 metric tons of carbon dioxide equivalent (MT CO₂E) (the value in the CAP is 200,655 MT CO₂E) cited by the commenter is simply the estimated reduction from SDG&E's compliance with the RPS as a state GHG reduction measure reported in an appendix to the CAP. The CAP does not propose an RPS measure independent of what is required by state requirements. The Proposed Project would contribute to the state goal; however, the mix of renewable energy, fossil fuel, and other energy sources is the responsibility of SDG&E and not the County or the Proposed Project applicants. Accordingly, even a projection of how the Proposed Project would help to meet the RPS target for SDG&E specifically is not possible. Moreover, as discussed in the response to comment O10-87, the approval of the CAP has been litigated, thus bringing into question whether it is currently in effect.

O3-14 The County disagrees with the commenter's assertion that the DPEIR does not explain when the East County

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substantial evidence that an analysis based on existing conditions would tend to be misleading or without informational value to EIR users.” *Id.* at 445.

Here, the EIR analyzes impacts based on some future date when the ECO Transmission Line, Rebuilt Boulevard Substation, and Tule Wind projects are all on line. DEIR at 1.0-36. But the EIR fails to explain when these projects will be online, or why this Project must wait until the others are operational. Nor does it explain why it would be misleading to use existing conditions as the baseline. As such, the EIR provides no substantial evidence to support its departure from using the NOP date as the baseline.

VI. The DEIR Must Include a Distributed Generation Alternative.

The Project proposes massive solar farms on relatively pristine backcountry habitat. It would result in significant environmental impacts related to biological and cultural resources, land use, air quality, and aesthetics. The Project will require massive amounts of water, threatening local groundwater supplies. The County must not approve such a project when feasible alternatives—such as rooftop solar—exist.

CEQA requires every EIR to analyze a reasonable range of project alternatives. *See* § 21100(b)(4); Guidelines § 15126.6(a). The alternatives analysis lies at “[t]he core of an EIR” because it informs the decisionmakers and the public about ways of accomplishing some or all of the proposed project’s objectives with fewer environmental impacts. *Citizens of Goleta Valley v. County of Santa Barbara*, 52 Cal.3d 553, 564 (1990); Guidelines § 15126.6(b). To be considered “reasonable,” the range of alternatives analyzed in an EIR must provide enough variation from the proposed project “to allow informed decisionmaking.” *Mann v. Community Redevelopment Agency*, 233 Cal.App.3d 1143, 1151 (1991). The project alternatives must also avoid or substantially lessen the project’s significant environmental impacts while attaining most of the project’s basic objectives. *See* § 21100(b)(4); Guidelines § 15126.6(a) & (b). Finally, the lead agency must publicly disclose its reasoning for selecting the alternatives included in an EIR.

To achieve an adequate range of alternatives to the proposed Project, the County must evaluate a “distributed generation” alternative. Distributed generation (“DG”) is a method of generating electricity from multiple small energy sources very near to where the electricity is actually used. The most common example of DG is rooftop solar. DG can accomplish the same goals as utility-scale solar projects—i.e., the development of large quantities of renewable energy—but with substantially reduced environmental

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Substation (ECO) Transmission Line, ECO Substation Project, SDG&E Rebuilt Boulevard Substation, and Tule Wind project will be online or why the Proposed Project is dependent on these projects becoming operational before it becomes operation. The ECO Transmission Line will connect the Rebuilt Boulevard Substation to the ECO Substation. The Proposed Project will deliver its electricity to the grid by first delivering it to the Rebuilt Boulevard Substation. Accordingly, the Proposed Project cannot become operational before the ECO Transmission Line, ECO Substation, and Rebuilt Boulevard Substation are operational (DPEIR, p. 1.0-36). All three elements are expected to be operational by December 31, 2015 (Iberdrola Renewables 2014). Furthermore, Rugged Solar LLC will share the Tule Wind project’s gen-tie line (DPEIR, p. 1.0-31). While the Tule Wind Project was anticipated to begin construction in fall 2014, Tule Wind LLC is now seeking an amendment to the ROW grant that would extend the BLM NTP milestone to December 31, 2016. If the BLM approves the requested extension of the ROW grant, then construction of the Tule Wind Project would start in the 1st quarter of 2017. (*See* Tule Schedule 2017 (November 3, 2014).) Should the extension of the ROW grant not be approved by the BLM, Soitec would construct the Tule Wind project’s gen-tie line. Soitec has a shared facility agreement between Tule Wind Farm LLC and Rugged Solar LLC to allow either

party to construct the transmission line without permission from other entity. It would be misleading for the DPEIR to omit these projects from its description of existing conditions near the Project because the ECO Transmission Line, ECO Substation, and Rebuilt Boulevard Substation projects will be completed before the Proposed Project starts operation, or even begins construction.

O3-15

The environmental impacts of the Proposed Project were disclosed in the DPEIR. Impacts to biological resources, cultural resources, land use, air quality, aesthetics, and groundwater supplies were fully analyzed in the DPEIR and revised DPEIR (see Chapters 2.3, 2.4, 2.5, 2.2, 2.1, 3.1.5, and 3.1.9). As stated in the DPEIR, with implementation of mitigation measures and project design features impacts to biological resources and cultural resources will be less than significant (see DPEIR Section 2.3.7 and Section 2.4.7). The County disagrees that the Proposed Project will threaten groundwater supplies. As stated in Section 3.1.5.5 of the DPEIR, the solar farms would each individually have less-than-significant impacts with respect to groundwater resources, and because the peak construction water demands of the solar farms would not overlap, the impact of the Proposed Project as a whole would be less than significant (DPEIR pp. 3.1.5-63). Furthermore, the County disagrees with the

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impacts as it does not require developing undeveloped land. Thus, the revised EIR must analyze the feasibility of a DG alternative.

VII. Conclusion

For the foregoing reasons, CNFF urges the County to delay further consideration of the Project unless and until it prepares and recirculates a revised draft EIR that fully complies with CEQA.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

/s/

Catherine C. Engberg, P.E., Esq.

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implication that the County will approve the Proposed Project where feasible alternatives exist to mitigate potentially significant impacts to land use, air quality, and aesthetics to below significance (see DPEIR Section S.4 and Chapter 4.0).

Related to the feasibility of a distributed-generation alternative and the County's evaluation of this alternative in the DPEIR, refer to the responses to comments O10-102 to O10-115 and common response ALT2. The commenter fails to identify how a distributed-generation alternative would accomplish the same goals as utility-scale solar farms, particularly when distributed generation would not fulfill several of the Proposed Project's stated objectives, including, at minimum, objectives 2, 3, 4, and 6.

O3-16 See the response to comment O3-2. The County disagrees that the DPEIR does not comply with CEQA. The information in this letter will be provided in the FPEIR for review and consideration by the decision makers.

References

14 CCR 15000–15387 and Appendices A–L. Guidelines for Implementation of the California Environmental Quality Act, as amended.

	<p>County of San Diego. 2011. <i>San Diego County General Plan Update: Final Environmental Impact Report</i>. August 2011. County of San Diego, Department of Planning and Land Use. http://www.sdcounty.ca.gov/pds/gpupdate/environmental.html.</p> <p>County of San Diego. 2013. <i>Forest Conservation Initiative Lands General Plan Amendment</i>. County of San Diego, Department of Planning and Land Use. http://www.sdcounty.ca.gov/pds/advance/FCI.html.</p> <p>Iberdrola Renewables. 2014. Tule Wind Energy Project Preliminary Schedule. April 16, 2014.</p>
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