

Comment Letter O-10

Gungle, Ashley

From: Hingtgen, Robert J
Sent: Monday, March 03, 2014 10:13 AM
To: Gungle, Ashley
Subject: FW: Email #1 - Comments on the DPEIR on the Soitec Solar Development Project SCH No. 2012-121-018
Attachments: SCH No 2012-121-018 The Protect Our Communities Foundation et al comments on DPEIR Soitec Solar Dev Project.pdf, Exhibit 01 to 03-01-14 POC et al Soitec DPEIR Comments.pdf, Exhibit 02 to 03-01-14 POC et al Soitec DPEIR Comments.pdf, Exhibit 03 to 03-01-14 POC et al Soitec DPEIR Comments.pdf, Exhibit 04 to 03-01-14 POC et al Soitec DPEIR Comments.pdf, Exhibit 05 to 03-01-14 POC et al Soitec DPEIR Comments.pdf, Exhibit 06 to 03-01-14 POC et al Soitec DPEIR Comments.pdf, Exhibit 07 to 03-01-14 POC et al Soitec DPEIR Comments.pdf, Exhibit 08 to 03-01-14 POC et al Soitec DPEIR Comments.pdf, Exhibit 09 to 03-01-14 POC et al Soitec DPEIR Comments.pdf, Exhibit 10 to 03-01-14 POC et al Soitec DPEIR Comments.pdf



From: Stephan C. Volker [mailto:svolker@volkerlaw.com]
Sent: Saturday, March 01, 2014 6:55 PM
To: Hingtgen, Robert J
Subject: Email #1 - Comments on the DPEIR on the Soitec Solar Development Project SCH No. 2012-121-018

Dear Mr. Hingtgen,

Pursuant to the California Environmental Quality Act, Public Resources Code section 21000 *et seq.*, The Protect Our Communities Foundation, Backcountry Against Dumps and Donna Tisdale submit the comment letter and exhibits thereto (to this and multiple following emails due to the size of the exhibits) regarding the Draft Programmatic Environmental Impact Report issued by the County of San Diego for the Soitec Solar Development Project at the Rugged, Tierra del Sol, LanEast, and LanWest locations.

Please make the attached comment letter and Exhibit Nos. 1 - 32 thereto part of the public record in this matter.

This is the first of three emails. This email forwards the comment letter and Exhibits 1 - 10 to the comment letter.

The paper original of the comment letter and copies of the exhibits follow by U.S. Post.

Should you encounter any difficulty opening any of the attachments to this or any of the following emails, please contact my firm at the telephone number listed below.

Stephan C. Volker
 Attorney for The Protect Our Communities Foundation, Backcountry Against Dumps and Donna Tisdale

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Response to Comment Letter O10

**Protect Our Communities Foundation/Backcountry
 Against Dumps/Donna Tisdale
 Stephen Volker
 March 1, 2014**

O10-1 The County of San Diego (County) acknowledges this comment. The comment and the attached exhibits will be included in the Final Program Environmental Impact Report (FPEIR) for review and consideration by the decision makers.

O10-1

<p style="text-align: center;">Law Offices of Stephan C. Volker 436 – 14th Street, Suite 1300 Oakland, California 94612 Tel: (510) 496-0600 ♦ Fax: (510) 496-1366 svolker@volkerlaw.com</p> <p style="text-align: right;">11.172.01</p> <p style="text-align: center;">March 1, 2014</p> <p><i>Via Electronic Mail and U.S. Post</i> email: Robert.Hingtgen@sdcounty.ca.gov</p> <p>Robert J. Hingtgen San Diego County Planning & Development Services Department 5201 Ruffin Road, Suite B San Diego, California 92123-1666</p> <p>Re: Comments of The Protect Our Communities Foundation, Backcountry Against Dumps and Donna Tisdale for the Draft Programmatic Environmental Impact Report on the Soitec Solar Development Project, SCH No. 2012-121-018</p> <p>Dear Mr. Hingtgen:</p> <p>Pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code ("PRC") section 21000 <i>et seq.</i>, the Protect Our Communities Foundation, Backcountry Against Dumps and Donna Tisdale (collectively "Conservation Groups") submit the following comments regarding the Draft Programmatic Environmental Impact Report ("DPEIR") issued by the County of San Diego (the "County") for the Soitec Solar Development Project at the Rugged, Tierra del Sol, LanEast, and LanWest locations¹ (the "Project").</p> <p>Conservation Groups advocate for the adoption of smart and effective energy policies to halt global warming, such as increased use of rooftop solar photovoltaics and other distributed generation sources. In combating global warming, San Diego may not abdicate its solemn duty to ensure the health and welfare of the County's residents and environment. <i>Davidson v. County of San Diego</i> (1996) 49 Cal.App.4th 639, 648-649. CEQA likewise requires the County to protect the health and safety of the County's residents by disapproving any project that poses</p> <hr/> <p>¹ Conservation Groups note that, although Soitec Solar Development (and its subsidiary LanWest Solar Farm LLC) requested that the County "withdraw the Major Use Permit Application for the LanWest solar farm project," and "close the case out" on September 5, 2013, because the facility is discussed as part of the Project in the DPEIR, Conservation Groups will address the facility as part of the Project.</p>	<p>O10-2 This comment is introductory in nature and does not require a response.</p> <p>O10-3 The County does not agree that the Draft Program Environmental Impact Report (DPEIR) fails to adequately study, mitigate and consider alternatives to the Proposed Project. The County has analyzed a reasonable range of alternatives to the Proposed Project in accordance with CEQA Guidelines Section 15126.6. The County analyzed four reduced project alternatives, four alternatives at a separate location, and a No Project Alternative, for a total of nine alternatives. Under CEQA, the DPEIR "need not consider every conceivable alternative to the project" (14 CCR 15126.6(a)). The County describes the rationale for selecting the alternatives in Section 4.1 of the DPEIR.</p>
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significant but avoidable environmental impacts unless they are fully disclosed, analyzed and mitigated to insignificance. PRC § 21002. The DPEIR fails to meet these mandates because it does not adequately study, mitigate and consider alternatives to the Project's many significant public health and environmental impacts.

I. INTRODUCTION

This Project represents an unnecessary industrialization of scenic and environmentally sensitive rural land, including important wildlife habitat, farmland and open space.² Conservation Groups urge the County to analyze and adopt a non-fossil fuel distributed generation alternative that would locate energy generation near demand centers in already-disturbed areas. Distributed generation is vastly preferable to the Project's approximately 1,490 acres of solar farms that will replace scenic, mostly untrammeled rural lands. Yet the DPEIR improperly dismisses this alternative because it will "not create utility scale solar energy facilities" and is unable to contribute to the state's renewable portfolio. DPEIR 4.0-3. But assuming that only the Project can achieve the County's objectives ends the inquiry before it begins. A proper CEQA review would show that distributed energy would achieve the Project's renewable energy objectives at a vastly smaller environmental cost. As detailed below, the County's DPEIR is disorganized, incomplete, and fails to address the Project's significant impacts. In addition, although the DPEIR focuses its analysis on the proposed project, the DPEIR also identifies Alternative 7, the Relocate Tierra Del Sol, LanWest and LanEast Alternative as the environmentally superior alternative. Yet, the DPEIR's brief discussion of Alternative 7 completely fails to analyze its impacts and cannot support this conclusion. For each of these reasons, the DPEIR violates CEQA.

II. THE DPEIR'S PROJECT DESCRIPTION IS DEFECTIVE.

As an essential starting point for analysis of a project's environmental impacts, all EIRs must provide a project description. 14 Cal. Code Regs. ["CEQA Guidelines"] § 15124. Among other things, the project description "shall contain the following information:"

- (a) The precise location and boundaries of the proposed project . . . shown on a detailed map.
- (b) A statement of objectives sought by the proposed project[, which] will help the Lead Agency develop a reasonable range of alternatives to evaluate in the EIR.

² Conservation Groups incorporate their October 10, 2013 Scoping Comments by reference. These comments are available in the Project's Administrative Record at <http://www.sdcounty.ca.gov/pds/ceqa/Soitec-Documents/Record-Documents/2013-10-10-Stephan-Volker-Letter-re-Soitec-Solar-PEIR-Scoping-Comments-of-The-Protect-Our-Communities-Foundation-et-al.pdf>

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O10-4 The County acknowledges the commenter's preference for distributed-generation energy projects over the Proposed Project. Please refer to common response ALT2.

During preparation of the DPEIR, the County of San Diego considered comments received during the public scoping period. The County of San Diego acknowledges the October 10, 2013 comment letter submitted by Conservation Groups however, CEQA does not require the preparation of formal responses to comments received during the public scoping period. As such, a public scoping report was not been prepared as a component of the DPEIR. The FPEIR does however provided a written response to each comment received during public review of the DPEIR (see Chapter 9.0, Response to Comments).

O10-5 The County does not agree that the DPEIR is insufficient and disorganized. In conformance with CEQA, the DPEIR evaluated the whole of the action and analyzed each environmental subject area with regard to potential adverse effects. The DPEIR is consistent with the County's Environmental Impact Report (EIR) Format and General Content Requirements, dated September 26, 2006.

The County does not agree that the DPEIR's analysis of Alternative 7 is inadequate; refer to common response ALT3.

<p>Robert J. Hingtgen March 1, 2014 Page 3</p> <p>... The statement of objectives should include the underlying purpose of the project. (c) A general description of the project's technical, economic, and environmental characteristics</p> <p><i>Id.</i></p> <p>"An accurate, stable and finite project description is the <i>sine qua non</i> of an informative and legally sufficient EIR." <i>County of Inyo v. City of Los Angeles</i> ("County of Inyo") (1977) 71 Cal.App.3d 185, 193. By contrast,</p> <p>[a] curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefits 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.</p> <p><i>Id.</i> at 192-193.</p> <p>Rather than "accurate, stable and finite," the DPEIR's Project description is so "distorted" that it precludes a full and accurate analysis of the Project's environmental impacts and identification of a range of reasonable alternatives. <i>Id.</i> Many of the basic assumptions undergirding the DPEIR's analysis of the Project are either wrong, unsupported or otherwise questionable.</p> <p>A. THE DPEIR FALSELY CLAIMS THAT THE PROJECT MUST BE BUILT IN SAN DIEGO COUNTY.</p> <p>The DPEIR states – and its entire environmental analysis assumes – that the Project must be located in San Diego County. DPEIR S.0-1, 1.0-1 to 1.0-2. Indeed, there is not even a single out-of-county alternative. Yet we now know that the entire Project may instead be built in <i>Imperial County</i>. On January 16, 2014, the California Public Utilities Commission ("CPUC") adopted Resolution E-4637, which approves amendments to "the long-term power purchase agreements . . . between San Diego Gas & Electric Company["SDG&E"] and Tierra del Sol Solar Farm, LLC, LanWest Solar Farm, LLC, LanEast Solar Farm, LLC, and Rugged Solar, LLC." Resolution E-4637, p. 1 (attached hereto as Exhibit 1). Among other things, the amendments "result in . . . [a] new site location [and] new interconnection point" for the projects in Imperial County, California. <i>Id.</i> The "new project sites" would be located "near Calexico, Imperial County, California," and would interconnect at the Imperial Valley Substation. <i>Id.</i> at 2.</p>	<p>O10-6 The County does not agree that the project description is "distorted." The project description includes the three items highlighted by the commenter, per CEQA Guidelines Section 15124. Section 1.3 of the DPEIR includes a description of the Proposed Project location and Figure 1-2 and 1-3 illustrate the Proposed Project location with boundaries of each of the solar farms, as well as the Tierra del Sol gen-tie location. The Proposed Project objectives are included in Section 1.1 of the DPEIR. The Proposed Project's technical, economic, and environmental characteristics are described in Section 1.2.2 of the DPEIR.</p> <p>The comment does not include any specifics as to which assumptions the commenter asserts are wrong, unsupported, or otherwise questionable. It should be noted that the DPEIR document is intended to disclose the potential environmental effects of the Proposed Project based on a project description that must contain a general description of the Proposed Project's technical, economic, and environmental characteristics (14 CCR 15124(c)). Site grading, drainage, civil, electrical, architectural, and other engineering plans progressively evolve from conceptual or preliminary phase to final designs and construction plans—concurrently with and following the preparation and certification of a project's EIR. This is a normal and expected part of the planning process. It is beyond the scope of CEQA to provide extensive detail that can</p>
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	<p>only be precisely known when final engineering and grading plans are completed and approved by the County’s building official. Rather, the environmental analysis must be based on reasonable assumptions and a planning “envelope” (i.e., range of possibilities) that account for unknowns or uncertainties associated with the Proposed Project. In addition, the DPEIR contains project-level analysis for the proposed Tierra del Sol and Rugged solar farm projects and program-level analysis for the proposed LanEast and LanWest solar farm projects. No permits for the LanEast and LanWest solar farms are currently being sought.</p> <p>The commenter is also referred to the response to comment O10-3.</p> <p>O10-7 The County disagrees with the commenter’s assertion that CEQA requires the County to analyze the Calexico site as an alternative to the Proposed Project or as the Proposed Project itself. For the reasons set forth below, the County disagrees that revision and recirculation of the DPEIR as described by the commenter is required.</p> <p>The DPEIR evaluates the potential impacts associated with the Proposed Project, as defined in Chapter 1.0 of the DPEIR. The commenter conflates the Proposed Project before the County with the recent decision by the California Public Utilities Commission (CPUC) to amend four Power Purchasing Agreements (PPAs)</p>
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The potential relocation of the Project to Imperial County renders the entire DPEIR and CEQA process to date obsolete. The County must accordingly revise the DPEIR in the following ways, among others: (1) amend the Project location description to include Calexico (Imperial County); (2) remove the San Diego-specific Project objectives, including objectives 2 and 4 (DPEIR 1.0-1); and (3) describe and fully analyze the environmental impacts of the Calexico alternative and any other out-of-county alternatives. After revising the DPEIR with that "significant new information," the County must recirculate it. PRC § 21092.1; *Laurel Heights Improvement Association v. Regents of the University of California* ("Laurel Heights I") (1992) 6 Cal.4th 1112, 1126-1132.

B. THE DPEIR'S PROJECT OBJECTIVES ARE FLAWED.

In addition to unduly circumscribing the Project objectives to focus on San Diego County, the DPEIR misleads the public by suggesting – without supporting evidence – that the Project would meet the listed objectives. For example, the DPEIR states, in objectives 1 and 7, that the Project is intended to "[a]ssist in achieving the state's Renewable Portfolio Standard (RPS) and greenhouse gas emissions (GHG) reduction objectives" by "[d]evelop[ing] up to 168.5 MW of renewable solar energy systems that reduce consumption of non-renewable resources and reduce GHG." DPEIR 1.0-1. Yet the DPEIR provides no assurance whatsoever that the Project would "reduce consumption of non-renewable resources" that produce a greater per-watt amount of greenhouse gases. It merely states the Project "would provide a *potential* reduction" in GHGs emitted "if the electricity generated by [the Project] were to be used instead of electricity generated by fossil-fuel sources." DPEIR 3.13-25 (emphasis added), 3.13-30, 3.13-32, 3.13-35 (same).

The DPEIR's statement of Project objectives thus paints a wishful and erroneous picture of the Project instead of providing the public and decisionmakers with the "accurate view" that CEQA requires. *County of Inyo*, 71 Cal.App.3d 185, 192. And in doing so, it *prevents* rather than "help[s] the [County from] develop[ing] a reasonable range of alternatives to evaluate in the EIR." CEQA Guidelines § 15124. As discussed, the County must revise its Project description, Project objectives and alternatives analysis and then recirculate the DPEIR.

III. THE DPEIR'S ANALYSIS OF THE PROJECT'S IMPACTS IS INADEQUATE.

A. GROUNDWATER, WATER SUPPLY AND OTHER HYDROLOGICAL IMPACTS

As a preliminary organizational issue, the DPEIR – as distributed on the County website – lacks the appropriate subheadings throughout Chapter 3.1.5 (Hydrology and Water Quality)'s Analysis of Project Effects and Determination as to Significance (at DPEIR Section 3.1.5.3). Thus, the reader is left guessing as to the scope of each topic discussed and analyzed in this

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between San Diego Gas & Electric (SDG&E) and Tierra del Sol Solar LLC, Rugged Solar LLC, LanWest Solar LLC, and LanEast Solar LLC. The CPUC's approval of Resolution E-4637 does not alter the environmental analysis on the Proposed Project under CEQA; similarly, the County's action on the Proposed Project in San Diego County would not affect the PPAs amended with Resolution E-4637 for development of projects in Imperial County. Resolution E-4637 references the names of the LanEast, LanWest, Rugged, and Tierra del Sol generating facilities and a change in the location of these facilities specified in the PPAs (or original Advice Letter/Resolution approving the PPAs, if not in the PPAs themselves) to sites in Calexico (Resolution E-4637, p. 3). The original PPAs' delivery of power from the sites originally proposed for the LanEast, LanWest, Rugged, and Tierra del Sol solar farms and the amendment of the PPAs to change the location of the facilities under the PPAs does not alter the Proposed Project before the County or the related analysis in the DPEIR.

As defined in Section 1.1 of the DPEIR, the objectives of the Proposed Project do not include providing solar energy under a particular PPA. The facilities specified in Resolution E-4637 and the associated PPAs are not the Proposed Project. Rather than moving the Proposed Project to Imperial County as the commenter

	<p>suggests, Resolution E-4637 addresses relocating PPAs to sites in Calexico. Irrespective of Resolution E-4637, the applicants and the County continue to also move forward with the Proposed Project. Accordingly, the County disagrees that any change to the Proposed Project’s objectives is warranted.</p> <p>Also, as discussed in response to comment O10-99, the Calexico site is already slated for an approved solar project and Soitec is not the project applicant. Moreover, Soitec does have not site control over the Calexico site. Accordingly, it would be infeasible to consider the site as an alternative for the Proposed Project.</p> <p>The County also disagrees with the commenter’s assertion that the County improperly eliminated from consideration alternative locations for the Proposed Project, aside from the Los Robles site, in violation of CEQA; see common response ALT1 for further details.</p> <p>O10-8 The County disagrees with the commenter’s assertion that the Proposed Project would not meet the Proposed Project objectives, which are defined in Section 1.1 of the DPEIR. The Proposed Project would meet Objective 1 by creating solar energy that qualifies under the RPS (DPEIR, p. 1.0-31). Furthermore, the state has explained that the purpose of the RPS is, in part, to reduce GHG emissions, and the state’s Assembly Bill (AB) 32 Scoping Plan claims a reduction of 21.3 million metric tons of carbon dioxide equivalent</p>
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section, and the scope of each finding of no significant impact. See DPEIR 3.1.5-28 to 3.1.5-56. This runs counter to CEQA's informational mandates; indeed, "[t]he data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project." *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* ("*Vineyard*") (2007) 40 Cal.4th 412, 431.

Substantively, the DPEIR underestimates the quantity of water required in both the Project's construction and operational phases; underestimates the groundwater aquifer's resilience, capacity, and recharge rate; and overstates the availability of water to support the Project.

When discussing a project's water supply impacts, an EIR must address[] the reasonably foreseeable impacts of supplying water to the project. If the uncertainties inherent in long-term land use and water planning make it impossible to confidently identify the future water sources, [the] EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives – including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases – and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact.

Vineyard, supra, 40 Cal.4th 434 (emphasis in original).

As discussed in more detail below, the DPEIR's failure to discuss the reasonably foreseeable impacts of supplying water to the Project – both by failing to adequately address the Project's water demand, and by failing to adequately address the future water sources or discuss the level of uncertainty involved with supplying water to the Project – violate CEQA's informational mandate.

I. The DPEIR Underestimates the Project's Construction Water Demands.

The DPEIR underestimates the amount of water required during the construction phase of the Project in at least five significant ways. First, the DPEIR's calculation omits several construction activities which will require water. See DPEIR 1.0-41 to 1.0-42, Table 1-6. For both Rugged and Tierra del Sol, the construction water estimate fails to account for any water demand for many phases of Project construction, including constructing (1) substations, (2) operation and maintenance ("O&M") buildings, (3) the Tierra del Sol gen-tie, (4) the rock crushing facility, (5) undergrounded electrical equipment, (6) culverts, (7) draining, (8) fencing, and (9) foundations for anything besides CPV trackers such as invertors, transformers or poles. Compare DPEIR 1.0-41 to 1.0-42, Table 1-6 with DPEIR 1.0-43, Tables 1-8 & 1-9. It also ignores any water required for equipment washing (as a noxious weed mitigation), or during the

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emissions (MMTCO₂E) from achieving the Renewables Portfolio Standard (RPS) by 2020 (CARB 2009, Table 2, p. 17). Locating the Proposed Project in San Diego would meet Objective 2 by providing a local source of energy generation, which would improve reliability in the San Diego basin (CPUC et al. 2013, pp. 1–4 (explaining need to develop new energy generation in the LA Basin and San Diego to improve reliability)). The Proposed Project would connect to the nearby Rebuilt Boulevard Substation and would collocate the Rugged gen-tie with the 138 kilovolt Tule gen-tie, thereby meeting Objective 3. The Proposed Project would be located in an area of the County that has high direct normal irradiance, thereby meeting Objective 4. The Proposed Project applicants have committed to obtain voluntary carbon offsets or GHG credits from a qualified GHG emission broker to offset total projected construction and operational GHG emissions as stated in the *AB 900 Application for the Soitec Solar Energy Project* (attached as Appendix 3.1.3-3 of the DPEIR) and Objective 5. The applicants have also committed through the AB 900 certification to invest a minimum of \$100 million of economic development to support the local economy through the creation of high-wage, highly skilled construction and permanent jobs that pay prevailing and living wages (Objective 6). Finally, the Proposed Project would generate electricity while reducing consumption of non-renewable resources, such as fossil fuels, and would

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final punch-list and cleanup phases of construction. *Id.* The DPEIR’s discussion of groundwater and water supply impacts in sections 3.1.5 and 3.1.9.3 does not fill in these analytical gaps. See DPEIR 3.1.5-48 to 3.1.5-56, DPEIR 3.1.9-09 to 3.1.9-13. Section 2.4.1 of the Groundwater Resources Investigation Report for Rugged Solar Farm (DPEIR Appendix 3.1.5-6), and Section 2.4.1 of the Groundwater Resources Investigation Report for Tierra del Sol (DPEIR Appendix 3.1.5-5) make clear that these water demands were not included in any calculations for the Project. In addition, the AECOM estimation sheets for Rugged Solar and Tierra del Sol Solar Farm, which Dudek used to prepare the DPEIR,³ show that the concrete estimates account *only* for concrete used for tracker foundations. In order to properly understand the actual construction water demands, these numbers must be recalculated; otherwise the environmental analysis is insufficient. The projections for LanWest’s and LanEast’s construction water use, which were extrapolated from the flawed calculations for Rugged, must also be revised to reflect the additional water demands.

Second, the DPEIR and AECOM’s water use estimation sheets show that the water estimates for dust-control and grading are flawed, and are likely to repeat the mistakes found in Dudek’s analysis for the East County Substation (“ECO Substation”). The FEIR/FEIS for ECO Substation, which is located less than 10 miles from the Rugged, LanWest and LanEast sites, and less than 15 miles from Tierra del Sol, vastly understated the amount of water necessary for dust suppression and grading.⁴ As to grading, the ECO Substation FEIR/FEIS severely underestimated the depth of the alluvial soil, and during construction the ECO Substation project required significant modification, including the need to construct additional sloping outside of the planned grading limits. *Id.* In addition, the ECO Substation estimate assumed that the in-situ soils had a much higher moisture content. *Id.* Taken together, the ECO Substation project required a 200% increase in water from the amount analyzed in that project’s EIR. *Id.* Here, it appears that AECOM modified its moisture content calculations to reflect the dry conditions at ECO Substation.⁵ However, the DPEIR’s grading estimate is not based upon a thorough investigation of the depth and composition of the topsoil. While the DPEIR mentions that the topsoil at Tierra del Sol is shallow (DPEIR 3.1.2-4), it does not address the depth of the topsoil at Rugged. Given that the DPEIR fails to estimate the amount of grading to be undertaken during construction (see, e.g., DPEIR 1.0-12), the County’s water use estimate cannot be based on the

³ As available in the Administrative Record for the Project at <http://www.sdcounty.ca.gov/pds/CEQA/Soitec-Documents/Record-Documents/2014-02-12-Jim-Bennett-email-to-Howard-Cook-Additional-Information-on-Construction-Water.pdf>.

⁴ See San Diego Gas & Electric, East County Substation Project Minor Project Refinement Request Form, Request # 8, 10-1-2013, p. 2 (attached hereto as Exhibit 2).

⁵ While AECOM’s water estimation sheet purports to use the lowest observed moisture content at each site for its calculations, it appears that AECOM instead used moisture content reading from its referenced 42.1 acre site near Boulevard.

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reduce both GHG emissions (as described above) and air pollutant emissions (see Appendices 2.2-1 and 2.2-2 to the DPEIR).

The County also disagrees with the commenter’s assertion that the Proposed Project objectives have been drafted such that the County’s consideration of alternatives has been unduly circumscribed. The County has the discretion to “identify and pursue a particular project designed to meet a particular set of objectives.” *San Diego Citizenry Group v. County of San Diego*, 219 Cal.App.4th 1, 14 (2013); *California Oak Foundation v. Regents of University of California*, 188 Cal.App.4th 227, 276-277 (2010). The commenter is referred to the response to comment O10-3.

The DPEIR is organized in accordance with the County’s EIR Format and General Content Requirements, dated September 26, 2006, and in accordance with CEQA Guidelines. The subheadings under Section 3.1.5.3 to which the commenter refers are titled in accordance with the thresholds topic analyzed. The County does not agree that the topic analyzed is unclear. At the end of each subsection is a concluding statement regarding the finding of significance. The DPEIR also includes a summary of significant effects in Section S.2; see Table S-2.

Please refer to common response WR1 regarding water demand estimates.

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appropriate geotechnical data. In addition, the DPEIR water calculations for dust control and grading do not account for these activities on the 17 acres of access roads, pull sites, staging areas and foundations for the Tierra del Sol gen-tie. See DPEIR 1.0-2. In order to accurately inform decisionmakers and the public about the Project's impacts, the County must recalculate the water use estimates based upon the actual geology of the Project locations.

Fourth, the DPEIR's site preparation calculations are (1) based on the incorrect acreage for Rugged, (2) potentially based on an incorrect ratio of gallons per acre, and (3) ignore gen-tie water demands. AECOM's estimation sheet for Rugged indicates that an assumed 460 acres of land would need to be cleared, of 575 acres for the site (subtracting 20% for previously cleared or low-lying grass lands). The DPEIR, however, indicates that Rugged will occupy 765 acres. DPEIR 1.0-4. Assuming for the sake of argument that AECOM accurately represents that 20% of the Rugged sites will not require preparation, 612 acres would need to be cleared. Thus the County omitted 152 acres from the DPEIR's water use estimate. Using AECOM's assumption that site preparation will take 24,204 gallons per acre, Rugged would require 14,812,848 gallons of water for site clearing rather than the 11,133,840 gallons claimed in the DPEIR. DPEIR 1.0-41, Table 1-6. This 3,679,008 gallons represents an additional 11 acre feet that are unaccounted for in the DPEIR. As with the Project's construction activities, the projections for LanWest and LanEast's water use, which were extrapolated from the flawed calculations for Rugged, must also be revised to reflect the additional water demands.

Further, it appears that the 24,204 gallon-per-acre figure is erroneous. It seems that AECOM extrapolated water use based on the 32 acre Boulevard Border Patrol Station. DPEIR 1.0-53 (acreage). Yet AECOM's estimate states that it is based on a 42.1 acre site. Consequently, it is impossible to determine whether the underlying calculation of 24,204 gallons per acre used by AECOM is accurate. If the total water use at the Boulevard Border Patrol Station was 1,018,988.4 gallons, then dividing this quantity by 32 acres yields approximately 31,843 gallons per acre.⁶ Using this number, Rugged would require 19,487,916 gallons for site preparation of 612 acres (assuming 20% of the Project will not require site-clearing) or 59.8 acre feet, 25.6 more acre feet than accounted for in the DPEIR. DPEIR 1.0-41, Table 1-6. Tierra del Sol would require 13,374,060 gallons to prepare 420 acres, or 41 acre feet, which is almost 10 more acre feet than accounted for in the DPEIR. DPEIR 1.0-41, Table 1-6. Further, as noted the site-preparation water calculations do not account for dust control and grading for the 17 acres of access roads, pull sites, staging areas and foundations for the Tierra del Sol gen-tie. See DPEIR 1.0-2. The Tierra del Sol gen-tie omission accounts for an additional 411,468 to 535,211 gallons of water for site preparation alone.⁷

⁶ (24,204 * 42.1)/32=31,843.3875.

⁷ 24,204 * 17=411,468, 31843*17 =535,211

O10-11
 Cont.

O10-12

O10-10 The County agrees that the construction water demand estimate requires an upward revision. Common response WR1 describes the changes made to the water demand estimate, the locations where edits to the DPEIR have been made, and explains why the changes made to the Proposed Project's water demand are an insignificant modification that do not raise important new issues about significant effects on the environment (14 CCR 15088.5(b)).

O10-11 See common response WR1 and the response to comment I32-8. The portion of this comment related to the ECO Substation Final EIR/EIS does not relate to the adequacy of the environmental analysis for the Proposed Project and therefore no response is provided or required. However, for informational purposes, in the response to comment I32-8, the County has described why applying a water use factor derived from the ECO Substation project to the entire Proposed Project area is inappropriate. Common response WR1 (see in particular Item 2 and Table 1) addresses the commenter's concern with respect to grading estimates and soil information (including depth and moisture contents). Footnote 5, which suggests soil moisture values used by AECOM came from the Boulevard Border Patrol Station, is incorrect, as discussed further in common response WR1..

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Fifth, the Project makes it clear that “disturbed areas should be revegetated as soon as possible after disturbance.” See, e.g., DPEIR S.0-25, 2.3-180. The DPEIR Appendices state that the cleared areas will be replanted with native groundcover. See, e.g., DPEIR Appendix 3.1.5-1, p. 2; DPEIR Appendix 3.1.5-2, p. 2. Yet the hydrology section contains no discussion of the number of acres to be revegetated and no calculation of the amount of water it will require.

O10-13

Sixth, in addition to AECOM’s botched water estimation sheet, the DPEIR’s discussion of the water use associated with site preparation, which consists of “clearing, grubbing, grinding and dust control,” is fatally flawed. DPEIR 1.0-41 to 1.0-42. The DPEIR states that the water calculation assumes that 20 percent of each site “consists of low-lying grass and land already cleared for Sunrise Powerlink project” and thus does not include those areas in its site-preparation water-use estimate. *Id.* In looking at the vegetation surveys for Tierra del Sol, it is clear that such a blanket adjustment would be inappropriate. At Tierra del Sol, the surveys do not reveal that 20% of the site is clear; to reach 20% the calculation would have to include mixed-chaparral and areas planted with non-native species (including Tecate cypress and pine trees).⁵ See, e.g., DPEIR Appendix 3.1.4-5, pp. 12-13. These large plants will need to be cleared from the site, therefore it would be improper to exclude these categories from the water use calculations for any of the Project sites, including LanEast and LanWest, which are entirely based upon the Rugged conditions.

O10-14

Last, the DPEIR’s construction water use estimates do not add up. In Table 1-6, the total Tierra del Sol Construction Water amount is listed as 16,133,00 gallons but, when each component is added together, the total increases to 16,177,096 gallons; the total Rugged Construction Water amount is listed as 19,361,000 but, when each component is added together, the total also increases, to 19,442,464. DPEIR 1.0-41 to 1.0-42, Table 1-6. These numbers also do not match the AECOM estimation sheets, which project that Tierra del Sol would use 16,187,841 gallons, and Rugged 19,374,452 gallons. Conservation Groups urge the County to correct these mistakes, and ensure that *all* calculations are accurate and consistent.

O10-15

Because the construction-related water demands are vastly underestimated, the impacts to local groundwater, and demands for imported water, have been impermissibly downplayed. Absent an accurate assessment of the water needed for Project construction, the DPEIR fails to support its conclusion that there are no significant hydrological or public services impacts.

O10-16

2. The Project’s Operational Water Demands Are Woefully Understated.

The DPEIR underestimates the Project’s operational water use in at least three major ways. First, the DPEIR assumes that during Project operation the CPV trackers will need to be

O10-17

⁵ In addition, the Southwest Powerlink, not the Sunrise Powerlink, runs through the middle of the Tierra del Sol location.

O10-12 See common response WR1. The DPEIR has been revised to correct all three issues identified by the commenter. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

O10-13 See common response WR1. The DPEIR has been revised to clarify that a soil binder will be used to stabilize site soils. General references to reseeding have been removed from the Chapter 1.0 of the DPEIR as well as project design features (PDFs) PDF-AQ-1 and PDF-AQ-2 (DPEIR, Table 1-10). The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

O10-14 As discussed in common response WR1, disturbance acreages were updated to reflect the development footprint shown in DPEIR Tables 2.3-12, 2.3-13, and 2.3-14. The footnote in DPEIR Table 1-6 assuming that 20% of the Rugged and Tierra del Sol sites have already been cleared was only supposed to apply to the Rugged solar farm site. However, to err on the side of caution, the water demand estimate in the DPEIR has been revised to remove this assumption from the Rugged site as well, even though areas mapped as non-native grassland and disturbed land would require much less

	<p>clearing, grubbing, and grinding activity (and associated watering for dust control). The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.</p> <p>O10-15 See common response WR1. The discrepancies in totals/subtotals presented in DPEIR Table 1-6 was due to compounded errors caused by rounding individual water demand factors. DPEIR Table 1-6 has been revised to clarify that numbers are rounded, and to make sure numbers match and add up correctly. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.</p> <p>O10-16 The County agrees that the construction-related water demands in the DPEIR were underestimated. County Staff has reviewed public comments that describe project elements purportedly missing from the construction water demand estimate. Based on these comments, the County has found that the water demand estimates provided in the DPEIR require an upward revision of about 49.8 acre feet—an increase of nearly 38%. Construction water demand revisions are provided in the FPEIR (see Chapter 1.0, 3.1.5, and 3.1.9). The County also refers the commenter to common response WR1 for details.</p>
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washed only nine times each year. See e.g., DPEIR 1.0-42, Table 1-7. This assumption ignores the nature of the Project's desert environment. The air has fine particles – the area is in non-attainment for PM₁₀ and PM_{2.5} air quality standards – that blanket everything with a layer of dust. The fine desert soil will be kicked up into the air by soil disturbing activities in the Project area, such as the campground construction and associated rock crushing facility at Rough Acres Ranch near the Rugged, LanEast and LanWest sites (see DPEIR 1.0-55 and DPEIR 1.0-89), and the Jewel Valley Wind and Solar project near all four project locations. DPEIR 1.0-50 and DPEIR 1.0-89. These particles will collect on the surface of the CPV trackers and reduce the Project's generating capacity. The planned cleaning schedule of less than one cleaning per month vastly understates the potential water demand for tracker cleaning. Indeed, it appears that the CVP trackers that Soitec installed in Newberry Springs have been washed closer to once per week. Assuming a weekly washing schedule, the water use for tracker washing would be 9,750,000 gallons per year instead of 1,687,500. The County's assessment of the Project's water use must be corrected to more accurately reflect the conditions at the Project location.

Second, the DPEIR does not include any allocation of water for fire suppression in its estimate of the Project's operational water needs. DPEIR 1.0-42, Table 1-7; DPEIR Appendix 3.1.4-5, p. 36 (capacity of Tierra del Sol's fire suppression tanks, source of water, and other details to be determined "at the time of detailed system design"); DPEIR Appendix 3.1.4-6, p. 38 (same). While the Project includes water tanks for storing fire-suppression water, the DPEIR's failure to account for the water necessary to fill these tanks must be corrected.

Third, the DPEIR does not properly quantify the water required for Project decommissioning, despite its requirement that "all detachable aboveground elements of the installation" be removed, all "structural elements, including those that penetrate the ground" be removed, and the Project site be made ready for "reuse of the land . . . which could include ground surface restoration to surrounding grade and reseeded with appropriate native vegetation." DPEIR 1.0-17, see also DPEIR 1.0-18 ("decommissioning would include removal of all ground-level components and preparation of the site with a soil stabilization agent . . . or reseeded with native species" if there is no new use proposed). Removing the tracker arrays, re-grading, reseeded, and restoring the disturbed land will take considerable amounts of water but the DPEIR erroneously claims these water-intensive tasks would require less water than construction. DPEIR 1.0-21.

3. The DPEIR's Analysis of the Project's Impacts to Groundwater Resources Is Flawed and Deficient.

Contrary to CEQA, the Project's description has been manipulated to support the proponent's claim that groundwater pumping will always fall under the threshold of significance under the County's Groundwater Ordinance. See, e.g., DPEIR 3.1.5-50 (Tierra del Sol groundwater pumping is projected to draw down nearest residential wells to 19.9 feet, 0.1 foot below significance threshold of 20 feet); DPEIR Appendix 3.1.5-5, p. ES-1 (18 acre feet of the



O10-17 The County does not agree that the operational-related water demand estimate requires revision. Refer to common response WR1 for clarification of water demands associated with operation of the Proposed Project.

O10-18 Refer to common response WR1 for clarification of water demands associated with fire suppression during operation of the Proposed Project. Filling the tanks is considered a one-time water demand during construction and would not normally require refilling unless a fire emergency occurs. Because the operational water demand included a yearly contingency of 587,704 gallons and because the tanks are enclosed and watertight (i.e., no evaporation losses), no revision to the operational water demand estimate is required. However, 120,000 gallons was added to the construction demand, which would be needed to fill the tanks.

O10-19 County Staff does not agree that the water demands of decommissioning-related activities requires quantification. It would be speculative at this time to attempt to estimate water demands associated with decommissioning. However, it is reasonable to assume that the water demands for decommissioning would be but a small fraction of the construction-related demand because decommissioning would not include clearing, grubbing, grinding or substantial grading activities. Water demand during the

	<p>decommissioning phase is more likely to be the same or less than the water demand associated with operation and maintenance of the Proposed Project however, during the decommissioning phase, potable water for O&M facilities and tracker washing would not be required. Either way, the impacts of supplying it would be a small fraction of those that have already been analyzed for the construction phase of the Proposed Project. Refer to common response WR1 for further details.</p> <p>In response to this comment, the County has made revisions and clarifications to the DPEIR. These revisions to the EIR are presented in strikeout<u>underline</u> format; refer to Section 1.2.1.1 (Decommissioning and Dismantling). The text has been revised to clarify dismantling activities and methods and water usage associated with decommissioning, and dismantling To the extent these changes and additions to the EIR provide new information that may clarify or amplify information already found in the DPEIR, and do not raise important new issues about significant effects on the environment, such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.</p> <p>O10-20 See common response WR1. The County does not agree that the Proposed Project description has been manipulated to support that groundwater will be under threshold of significance. The GMMPs for both</p>
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construction water to come from groundwater pumping). As shown below, it appears to the contrary that the Project's groundwater usage will substantially exceed this threshold. By misdescribing the Project to define away this significant impact, the DPEIR has eviscerated CEQA's mandate that a project's significant impacts must be mitigated to insignificance where it is feasible to do so. Unlike the rest of the DPEIR, which recognizes that key project features are either a Project Design Feature ("PDF") or a mitigation measure, the hydrology section makes no such distinction, thereby evading CEQA's requirement that significant impacts be mitigated. See also DPEIR 7.0-40 (no proposed mitigation or PDF for hydrology). This pumping limit should be an enforceable mitigation measure of the Project's potentially significant impact to groundwater resources, instead of an *unenforceable* Project component whose actual impacts escape review.

Second, the Project does not clearly address the location of the source of each Project component's operational water. For example, for Tierra del Sol, in the analysis of whether it will cause off-site impacts to agriculture, the DPEIR states "operational water use would be approximately 4 acre-feet per year and would come from *off-site sources*, and therefore, would not result in competition for water." DPEIR 3.1.1-23. Similarly, the DPEIR states as to Rugged that "[o]perational water use would be approximately 5 acre-feet per year and would come from *off-site sources*, and therefore, would not result in competition for water." DPEIR 3.1.1-24. Yet, in the hydrology discussion, the DPEIR states that Tierra del Sol's operating demand would be about 6 acre-feet a year, to be provided by *on-site wells*. DPEIR 3.1.5-50. It confirms that Rugged's operating demand is approximately 8.7 acre-feet a year, to be supplied "*from on-site wells*." DPEIR 3.1.5-52. These discrepancies, both in quantity and source, call into question the fundamental veracity of the DPEIR's analysis of agricultural and water supply impacts. To the extent that the operational water will come from on-site sources, the Project impermissibly downplays the impacts of this decision.

The Project's impacts on local groundwater resources are comprehensively addressed in Dr. Victor M. Ponce's November 15, 2013 report *Impacts of Soitec Solar Projects on Boulevard and Surrounding Communities*.⁹ Dr. Ponce's analysis of the interrelated hydrological connections between deeper groundwater and near-surface waters in and around the Project area details the important resources that the Project's planned groundwater pumping will imperil. The existing surface springs, wells, and the numerous plant species dependent upon the local groundwater table will all suffer from the Project's overly optimistic groundwater assessments. By focusing myopically on the groundwater ordinance's significance criteria for neighboring wells, the DPEIR mischaracterizes the Project's hydrological impacts as less than significant.

⁹ Dr. Ponce's report is attached hereto as Exhibit 3, and also available at: <http://www.ponce.sdsu.edu/boulevardsoitec.pdf>

O10-20
Cont.

O10-21

O10-22

the Rugged and Tierra del Sol solar farms (see M-BI-PP-15) have already been prepared and will be implemented as conditions of the Major Use Permits (MUP). These revisions to the DPEIR are presented in ~~strikeout~~/underline format; refer to DPEIR Section 3.1.5.3.4 and DPEIR Table 1-10. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

O10-21 The County has revised the DPEIR to clarify that the operational water demands of the Proposed Project would be supplied entirely by on-site wells. Pages 3.1.1-23 and 3.1.1-24 of the DPEIR have been revised to correct the erroneous reference to operational water demand being supplied by off-site sources. In addition, the bulleted summary of the groundwater resource investigations on pages 3.1.5-52 and 3.1.5-54 of the DPEIR have been revised to further clarify the source of the Project's operational water supply.

These changes are presented in ~~strikeout~~/underline format. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

O10-22 The County has reviewed Dr. Victor M. Ponce's report cited in this comment. The County does not agree with

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Contrary to CEQA, the Project’s significant impacts to groundwater-dependent vegetation have not been sufficiently addressed and will not be sufficiently mitigated. For example, the Rugged Groundwater Investigation acknowledges the potential for groundwater pumping to impact the coast live oak habitat, and calls for monitoring and mitigation of impacts, but these impacts are not addressed by the Project’s mitigation measures and design features. Compare DPEIR Appendix 3.1.5-6, p. 3-14 with DPEIR 2.3.-185 to 2.3-189 (mitigation pertains only to Well B at Tierra del Sol). Further, the Rugged Groundwater Investigation map of groundwater-dependent vegetation ignores groundwater-dependent habitat solely on the basis of Rugged’s Tetris-shaped site boundaries. See, e.g., DPEIR Appendix 3.1.5-6, fig 11 (map of groundwater-dependent vegetation types). Groundwater and vegetation do not abide by these artificial site boundaries. The DPEIR’s impact analysis must not be limited by them. And, while the Tierra del Sol groundwater resources investigation acknowledges that “Project well production may exceed the County threshold of significance that results in draw down of the groundwater table to the detriment of groundwater-dependent habitat, typically a drop of 3 feet or more from historical low groundwater levels” (DPEIR Appendix 3.1.5-5, p. 3-22), the DPEIR’s mitigation measures for these impacts are not sufficient because they focus solely on the health of the neighboring oak trees without a comprehensive approach to the whole habitat. For these reasons, the impacts of groundwater pumping will neither be appropriately monitored nor adequately mitigated.

Further, mitigation measure M-BI-PP-14 requires the cessation of pumping from Well B, if pumping causes specific damage to oak woodlands. DPEIR 2.3.-185 to 2.3-189. Yet, the DPEIR makes no mention of an alternative source of water in the event that Well B is no longer available, and thus fails to examine the impacts of providing this alternative water to the Project. *Id.* This informational gap violates CEQA’s mandates. *Vineyard, supra*, 40 Cal.4th at 434.

As Conservation Groups stated in their October 10, 2013 Scoping Letter, the Project sits directly over the Campo-Cottonwood Sole Source Aquifer.¹⁰ Yet the County has failed to mention this aquifer in the DPEIR and its Appendices. The DPEIR fails to adequately address the importance of protecting this aquifer from (1) sources of pollution, and (2) depletion from over-pumping. While the County has included a map of the Campo-Cottonwood Sole Source Aquifer in its administrative record for this Project, its failure to discuss the aquifer’s designation or existence is an informational gap that must be rectified. The potential for the projects to contaminate or deplete this sole source aquifer is a serious concern that the DPEIR improperly ignores.

¹⁰ The EPA designated the Campo-Cottonwood Sole Source Aquifer under the authority of Section 1424(e) of the Safe Drinking Water Act. Federal Register 49 FR 2948, 01/24/84.

O10-23

O10-24

Dr. Victor M. Ponce’s report in regard to the significant impacts to groundwater resources and groundwater-dependent habitat under CEQA, nor does the County agree with the commenter that the DPEIR mischaracterizes the Proposed Project’s hydrological impacts; see common response WR2, Appendix 9.0-2 (Critique of “Impacts of Soitec Solar Projects on Boulevard and Surrounding Communities,” by Dr. Victor M. Ponce, dated 15 November 2013), and response I10-1.

The County disagrees that the DPEIR “focuses myopically” on the groundwater ordinance’s significance criteria for neighboring wells. In addition to neighboring wells, the DPEIR considers potential impacts to groundwater –dependent habitat and off-site groundwater resources resulting from proposed groundwater extraction activities (see Chapter 2.3, Biological Resources and Chapter 3.1.9, Utilities and Services Systems). Furthermore, the Proposed Project is located within the County of San Diego’s land use jurisdiction and as such, the County is the lead agency associated with the Proposed Project. Therefore, it is appropriate for the DPEIR to utilize the County’s *Guidelines for Determining Significance, Report Format and Content Requirements: Groundwater Resources* when considering the potential for direct and cumulative impacts to groundwater resources associated with development of the Proposed Project.

	<p>O10-23 The County disagrees that the Proposed Project’s impacts to groundwater-dependent vegetation have not been sufficiently addressed. See responses O10-10, O10-20, O10-22, I10, and Common Responses WR1 and WR2. The GMMPs establish protective groundwater drawdown thresholds for well interference and groundwater-dependent habitat and provide the technical basis for the application of water level (drawdown) thresholds. M-BI-PP-14 (renumbered M-BI-PP-15 in the FPEIR Section 2.3.6) has been revised to clarify its original intent that the GMMPs pertain to the wells on both the Rugged and Tierra del Sol sites and off-site wells at PVMWC and JCSD. The water level monitoring network for the Rugged and Tierra del Sol sites has also been clarified in the FPEIR (see Section 2.3.6). The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.</p> <p>As discussed in DPEIR Appendices 3.1.5-5 and 3.1.5-6, the coast live oak woodland and tamarisk scrub is the focus of biological monitoring efforts due to its proximity to the pumping wells and because their root systems can extend to depths that intercept the local groundwater table. Other groundwater-dependent habitat mapped on the Rugged site, such as alkali meadow, disturbed alkali meadow and sagebrush scrub have</p>
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shallow root systems and are dependent on surface water or perched groundwater above the water table of the alluvial aquifer (DPEIR Appendices 3.1.5-6, pg. 3-25). The average depth to the alluvial aquifer in the vicinity of the proposed supply wells on the Rugged site is approximately 14 feet below ground surface (bgs). Because perched groundwater and surface waters (when present) within the Tule Creek corridor are “losing” water features, in that the waters either evaporate or recharge the underlying alluvial aquifer, they are isolated from the potential effects of pumping wells. Therefore, the potential impacts from project pumping are limited to species that can intercept the top of the alluvial aquifer (DPEIR Appendices 3.1.5-5 and 3.1.5-6).

Mitigation Measure M-BI-PP-15 (FPEIR Section 2.3.6) calls for water level monitoring in the closest coast live oak and/or tamarisk scrub habitat on both the Rugged and Tierra del Sol sites, as well as concurrent periodic monitoring of coast live oak health. If impacts to groundwater-dependent habitat were to occur as a result of pumping-induced water level drawdowns, such impacts would first become apparent in locations closer to the pumping and in species that have roots deep enough to actually access the available groundwater. Clearly, groundwater and vegetation does not abide by artificial site boundaries, but the setup of the oak woodland and well monitoring network is appropriate because it would trigger action

	<p>at the first sign of project-related impacts. Pumping cessation or curtailment, if triggered by evidence of adverse effects (either project-induced water level declines or habitat deterioration), would likewise avoid adverse impacts to more distant habitats.</p> <p>The groundwater resource investigations for both the Rugged and Tierra del Sol sites modeled the proposed pumping and found that County CEQA thresholds for groundwater drawdown would not be exceeded, and that the production wells are screened below the level of the alluvial aquifer. The GMMPs have been developed in recognition that actual conditions during groundwater extraction for the Project may vary from conditions assumed in the technical reports. Should on-site water become unavailable because observations of water levels or oak woodland have triggered curtailment or cessation of pumping, the applicants would be required to import water from off-site sources, as identified in DPEIR Section 3.1.9.</p> <p>O10-24 The County does not agree that the DPEIR fails to adequately address the importance of protecting the Campo–Cottonwood Sole Source Aquifer. The Campo–Cottonwood Sole Source Aquifer, as designated under the Sole Source Aquifer program, allows for EPA environmental review of any project which is financially assisted by federal grants or federal loan guarantees. The Proposed Project is not financially</p>
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4. The DPEIR's Conclusion that Alternative 7 Would Reduce Hydrological Impacts Is Unsupported.

The DPEIR fails to identify any groundwater source for Alternative 7, nor does it include groundwater supply estimates or discuss whether Alternative 7 would require imported water for construction or operation. See DPEIR 4.0-44. Indeed, the DPEIR admits "any use [of the on-site groundwater] would require a groundwater investigation in compliance with County regulations to determine groundwater conditions and availability of this resource for the project." DPEIR 4.0-27. Yet, the DPEIR assumes that "impacts to hydrology and water quality and utilities related to water demand would be reduced" based on Alternative 7's reduced need for landscape irrigation. *Id.* Without an adequate analysis of available groundwater at the location, identification of outside water source, and an analysis of the impacts of supplying water to Alternative 7, the DPEIR's conclusion that Alternative 7 would reduce hydrological impacts when compared to the Project is unsupported.

O10-25

5. The DPEIR's Discussion of the Project's Reliance Upon Imported Water Supply Is Insufficient.

During construction, the Project will use trucked water. DPEIR 2.2-20, 2.6-31; DPEIR Appendix 3.1.5-5, p 2-10. However, it is not at all clear where the imported water will be found, and consequently what the impacts on the source watershed may be. The Project description indicates that Jacumba Community Service District ("Jacumba CSD"), Pine Valley Mutual Water Company ("Pine Valley MWC"), and Padre Dam Municipal District ("Padre Dam MD") will be available to supply water. DPEIR 1.0-19. In contrast, the air quality discussion lists Padre Dam MD and "other purveyors or offsite wells" when assessing the impacts of trucked water. See DPEIR 2.2-12, DPEIR Appendix 2.2-1 p. 14. The Appendices include reports on the Jacumba CSD's and Pine Valley MWC's ability to serve the Project, but do *not* include an equivalent discussion of Padre Dam MD's ability to serve the Project. See DPEIR Appendix 3.1.5-8 (Jacumba CSD Groundwater Investigation); DPEIR Appendix 3.1.5-7 (Pine Valley MWC Groundwater Investigation). Similarly, the hydrology discussion barely touches on the Padre Dam MD's provision of water to the Project (DPEIR 3.1.5-41), but lists the Jacumba CSD and Pine Valley MWC Groundwater Investigations as technical reports reviewed during the preparation of the chapter. DPEIR 3.1.5-1. Thus, it is not clear which water sources will be supplying the Project's water needs.

O10-26

O10-25

assisted by federal grants or federal loan guarantees, and thus EPA review of the DPEIR is not required. The County's groundwater ordinance and CEQA review process are designed to protect the availability of groundwater resources throughout the County. The County has recognized the groundwater-dependent nature (i.e., "sole-source") of the of region, and considered and analyzed potential impacts to groundwater supply and quality associated with the Proposed Project (DPEIR Section 3.1.5.3.3, Surface Water and Groundwater Quality, Section 3.1.5.3.4, Groundwater Resources, and Section 3.1.9.3.1, Water, and common response WR1). The County has determined that the Proposed Project would have a less than significant impact on local groundwater supply and quality. This conclusion is equally applicable to the Campo-Cottonwood Sole Source Aquifer.

The commenter asserts that the DPEIR fails to identify any groundwater source for Alternative 7, supply any groundwater estimates, or discuss whether Alternative 7 would require imported water. The County disagrees because the DPEIR states that the Rugged solar farm would remain the same as the Proposed Project, and the DPEIR clearly sets forth the potential water supply sources for the Rugged solar farm. The DPEIR explains that Alternative 7 would require less water than the Proposed Project because it would eliminate the Tierra del Sol gen-tie and the use of irrigation

O10-27

The discussion of imported water in the DPEIR's section on utilities and service systems makes clear that Jacumba CSD will cease or curtail pumping water for the Project if unanticipated impacts to groundwater storage, well interference, or groundwater-dependent habitat occur. DPEIR 3.1.9-12. This is also true of Pine Valley MWC. DPEIR 3.1.9-13. The groundwater investigation reports for Jacumba CSD and Pine Valley MWC base their recharge assumptions on the average rainfall in the area, about 11-13 inches a year for the Project area and for Jacumba CSD (Appendix 3.1.5-5, pp. ES-1, 3-5 (Tierra del Sol, 12 inches); Appendix 3.1.5-

	<p>water for landscape screening would be avoided. The DPEIR identifies that the Los Robles site has several groundwater wells onsite that are producing, although a groundwater investigation would be required to determine the availability of this resource if the applicants sought approval to construct a solar project on the Los Robles site at a future point. (See DPEIR Section 4.4.1.1) The potential sources of imported water for the Los Robles project remain the same as those available to the Tierra del Sol, LanEast, and LanWest, including Jacumba Community Services District and Padre Dam Municipal District.</p> <p>O10-26 The County does not agree that it is unclear which water sources will be supplying the Proposed Project's water needs; refer to response O10-21 and DPEIR Section 3.1.9.3.1 for a discussion of water supply options, and sources of imported water. The analysis of impacts to groundwater resources does not discuss the Padre Dam Municipal Water District at length, or reference a groundwater investigation report for the PDMWD, because it is a surface water supply source and would not have appreciable effects on groundwater given off-site imports would only be needed during the peak period of construction demand. The air quality analysis focuses on the PDMWD because it is the off-site water source that is furthest from the Proposed Project. Accordingly, the DPEIR analyzed truck trips and related air quality impacts for</p>
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6, pp. ES-2, ES-3 (Rugged, 13.5 inches near wells 6a, 6b, 8); DPEIR Appendix 3.1.5-6, p. 3-6 (Rugged, 11 inches); DPEIR Appendix 3.1.5-7 (Jacumba CSD using Tierra del Sol and Camp data); and closer to 24 inches for Pine Valley MWC (DPEIR Appendix 3.1.5-7, San Diego County Pine Valley Cumulative Groundwater Study p. 4). But the last two years have had much less rain. For example, the Campo weather station recorded 6.81 inches of precipitation in 2013, and 6.91 inches in 2012, and the weather station on Mt. Laguna recorded 6.79 inches in 2013 and 6.20 inches 2012.¹¹ Absent a major shift in conditions, the continuing drought situation increases the likelihood of curtailment. This foreseeable condition is ignored.

The drought situation will also decrease the likelihood that the Padre Dam MD can serve the Project's water needs. The San Diego County Water Authority, the water wholesaler that provides water to Padre Dam MD, gets the majority of its water from the Metropolitan Water District, which in turn gets its water from the State Water Project.¹² In light of the current drought situation, the State Water Project will not be delivering water to the Metropolitan Water District in 2014. Although the Metropolitan Water District does not currently face a water shortage, if the drought conditions continue, this situation will quickly change. Again, this foreseeable condition is ignored.

Further, DPEIR Appendix 3.1.5-5, the Groundwater Resources investigation for the Tierra del Sol, improperly relies upon a water service letter from the Live Oak Springs Water Company as a potential source of trucked water. DPEIR Appendix 3.1.5-5, p. 3-22. Live Oak Springs Water Company does not have a valid Advice Letter authorizing the sale of trucked water for construction and the County should remove this remaining reference to it from the EIR.¹³

For all of these reasons, the DPEIR underestimates the Project's water demands, overstates the water supply, and fails to adequately address or mitigate the Project's groundwater pumping impacts on vegetation, neighboring wells, and public utilities.

¹¹ Precipitation data from weather-station KCZZ in Campo and the from the Mt. Laguna Observatory (attached hereto as Exhibit 4).

¹² See San Diego County Water Authority press release available at: <http://www.sdcwa.org/san-diego-region%E2%80%99s-water-supplies-remain-adequate-despite-tatewide-drought>.

¹³ The CPUC decision regarding Live Oak Springs ability to Truck water is attached as Exhibit 5.



Tierra del Sol using the worse-case scenario assumption that all off-site imports of water would be sourced from PDMWD, even though other purveyors are available to supply water.

Potential impacts on the aquifers that would supply off-site groundwater for the Proposed Project were analyzed in the DPEIR (see DPEIR Section 3.1.9.3.1). A groundwater investigation of each of the off-site wells that could supply water to the Project demonstrated that there would be a less than significant impact related to well interference and groundwater in storage (DPEIR Section 3.1.9.3.1, Appendices 3.1.5-5 through 3.1.5-8).

O10-27 The County does not agree that this information was ignored in the DPEIR. The groundwater resource investigation reports (DPEIR Appendices 3.1.5-5 and 3.1.5-6) include periods of drought in its 30-year water balance analysis and assumes no recharge at all in its well interference modeling. Furthermore, the DPEIR's consideration of multiple sources of off-site water supply provides alternatives if one source is curtailed.

O10-28 The County disagrees with the commenter's assertion that the San Diego County Water Authority (SDCWA) "gets the majority of its water from the Metropolitan Water District [of Southern California ("MWD")]" In 2013, less than half of SDCWA's water supply came from the MWD, and that figure will be further

	<p>reduced when the Poseidon desalination facility comes online in 2016. (See http://www.sdcwa.org/enhancing-water-supply-reliability; http://www.sdcwa.org/seawater-desalination.) The County does not agree that information related to California’s current drought was ignored in the DPEIR. The commenter is referred to DPEIR Section 3.1.9.3.1 for a discussion of water supply options, and sources of imported water, and response O10-27. The commenter speculates that the PDMWD could face water shortages, and may not be able to supply water during the period of peak construction-related water demands. Given the short amount of time that off-site imports would be required (likely only during the 60-day period of peak demand), the likelihood that such demands could be met by the PVMWC and JCSD, and the minor volume of water viewed in the context of PDMWD’s overall capacity, MWD deliveries (or the potential absence of such deliveries) to SDCWA would not affect that availability of water needed for construction purposes for the Proposed Project. It should also be noted that PDMWD would provide recycled water to the Tierra del Sol solar farm to accommodate a portion of the short-term construction needs of the project.</p> <p>O10-29 The County agrees with the commenter and has removed the water service letter from Live Oak Springs Water Company from the record and has removed reference to it in the DPEIR. These revisions</p>
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B. BIOLOGICAL IMPACTS

The DPEIR's analysis of biological impacts is insufficient. The public and decisionmakers need significantly more detail on the impacts to wildlife and vegetation in order to make an informed decision, as CEQA requires. The County must provide additional information and perform the necessary studies to establish the Project's impacts to biological resources. The few surveys that were completed are inadequate and do not meet commonly accepted standards for biological surveys. "A clearly inadequate or unsupported study is entitled to no judicial deference," and does not constitute substantial evidence supporting an agency's finding. *Laurel Heights I, supra*, 47 Cal.3d at 409 n.12.

The Project will "result in indirect impacts related to construction effects and operational activities, as well as direct effects related to permanent removal of suitable habitat, [and therefore] the Proposed Project would result in *significant* impacts to related sensitive species." DPEIR 2.3-126. Among those "sensitive species" that the Project would likely harm are the federally endangered Quino checkerspot butterfly ("QCB"), whose critical habitat extends near the Project sites, the federally endangered Peninsular bighorn sheep ("PBS"), the federally-protected golden eagle, and the burrowing owl, which is a California State Species of Special Concern. The County must thoroughly analyze the Project's impacts to these and other species. The DPEIR fails to meet CEQA's informational requirement because the data are inadequate.

I. The DPEIR's Discussion of Biological Resources Is Missing Key Documents, Disorganized, and Confusing.

The DPEIR claims that a Biological Resources Report ("BRR") was "prepared for each project and can be found at appendices 2.3-1, 2.3-2, 2.3-3, and 2.3-4. DPEIR 2.3-17. However, no BRR is included for the LanEast portion of the Project. While BRRs are provided for Tierra del Sol (Appendix 2.3-1), Rugged (Appendix 2.3-2), and LanWest (Appendix 2.3-4), Appendix 2.3-3 – which should contain the LanEast BRR – only includes a *Quino Checkerspot Butterfly 45-Day Summary Report*. DPEIR Appendix 2.3-3. The DPEIR's failure to provide the documents necessary to understand the Project's impacts on critical environmental resources violates CEQA's informational purpose and prevents the public and decisionmakers from fully considering the impacts of the Project. CEQA Guidelines §15144; *Vineyard*, 40 Cal.4th at 428; *Berkeley Keep Jets*, 91 Cal.App.4th at 1355-1356.

Furthermore, the BRRs that are provided are unintelligible in part. For example, the discussion of the impacts of the Tierra del Sol gen-tie alignment on golden eagles fails to provide the reader with a clear understanding of what the report is trying to say. DPEIR Appendix 2.3-1, p. 1-17. That same BRR, when discussing the Project's effects on golden eagles, claims that there "would be a significant impact (the significance of the impact is determined through application of the County Significance Guidelines described in Section 3.0). Because[.]" DPEIR Appendix 2.3-1, p. 2-20. With this exciting cliffhanger, the paragraph abruptly ends. The word

O10-31

O10-30

to the DPEIR are presented in ~~strikeout~~/underline format; refer to Appendix 3.1.5-5. The County also refers the commenter to common response WR1 which discusses removal of water supply from Live Oak Springs Water Company from the water demand analysis. Tables 2a and 2b of common response detail the construction water supply by source for the Tierra del Sol and Rugged solar farms and show that construction water supply for both projects can be met by on-site production wells and off-site sources.

This is a concluding statement. See responses O10-9 through O10-29 regarding responses to the commenter's issues related to the Proposed Project's water demands, water supply, and groundwater pumping impacts on vegetation, neighboring wells and public utilities.

O10-32

O10-31

The County does not agree that the DPEIR's analysis of biological impacts is insufficient. The DPEIR and Biological Resource Reports (BRR) were prepared in accordance with County Guidelines for Determining Significance for Biological Resources and the Report Format and Content Requirements for Biological Resources. The County agrees that the Proposed Project would result in potentially significant impacts to sensitive species. As indicated in Section 2.3.6.1 of the DPEIR, impacts relative to sensitive species are mitigated to less than significant with implementation of M-BI-PP-1 through M-BI-PP-13.

O10-33

	<p>The County disagrees that the Proposed Project’s biological resource surveys are incomplete and do not meet accepted standards for such surveys. The adequacy of the surveys presented in the DPEIR, specifically related to the Quino checkerspot butterfly (<i>Euphydryas editha quino</i>), peninsular bighorn sheep (<i>Ovis canadensis peninsularis</i>), golden eagle (<i>Aquila chrysaetos</i>), and burrowing owl (<i>Athene cunicularia</i>), are discussed within the following responses O10-36 through O10-49 and in common response BIO1.</p> <p>O10-32 As stated in Section 1.1 of the DPEIR, the applicants are seeking project-level approvals for only the Tierra del Sol and Rugged solar farm projects, which are analyzed at a project-level of detail. The LanEast and LanWest solar farms are analyzed at a programmatic level. The DPEIR acknowledges that specific survey data may not available for the LanEast and LanWest solar farms because they are program level components; the commenter is referred to response to comment S3-13. The County agrees the introduction to the list of documents used to prepare Section 2.3 is unclear. In response to this comment, the County has revised the DPEIR to clarify that Section 2.3 has been prepared based on the review of documents or focused surveys instead of technical reports since there is not a project specific BRR for LanEast or LanWest. These revisions to the DPEIR are presented in strikeout/<u>underline</u> format; refer to the Chapter 2.3.</p>
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“Because” is both the beginning and the end of this aborted sentence, which lacks even a period to end the suspense. There is no explanation of why the impact is significant. *Id.*

The DPEIR also asserts that the Wildlife Research Institute’s (“WRI’s”) golden eagle report can be found in Appendices 2.3-3 and 2.3-4. DPEIR 2.3-20. However, as noted above, there is no BRR for LanEast, and Appendix 2.3-3 contains only one report on the Quino checkerspot butterfly, not the golden eagle. Furthermore, there is no golden eagle report – or any report by WRI – in Appendix 2.3-4. See DPEIR Appendix 2.3-4, p. ii. It is possible that the report that the DPEIR references is the WRI *Final Report: Golden Eagles and the Rugged LLC, LanEast LLC, LanWest LLC and Tierra del Sol Solar Farm LLC Projects in San Diego County, California* (“WRI Golden Eagle Report”) which can be found in DPEIR Appendices 2.3-1 and 2.3-2. DPEIR Appendix 2.3-1, Appendix I; DPEIR Appendix 2.3-2, Appendix J. Burying information in non-existent or misdescribed appendices violates CEQA. *Vineyard, supra*, 40 Cal.4th at 442.

The analysis of impacts related to “Local Policies, Ordinances, and Adopted Plans” is also incomplete. There is no discussion of the “Project Effect as Relevant to Guideline M.” Compare DPEIR 2.3-151 with DPEIR 2.3-160 to 2.3-162 (discussing Guideline L and moving directly into Cumulative impacts). The failure to discuss Guideline M - whether the Project would take any eagle, as defined under the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 (“Eagle Act”) – must be rectified.

2. The DPEIR Fails to Adequately Survey for and Address the Impacts to Avian Species.

a. Golden Eagles

Golden eagles are fully protected under federal, state and local laws, including the Migratory Bird Treaty Act (“MBTA”)¹⁴ and the Eagle Act, as well as state and local designations as sensitive and protected species. DPEIR 2.3-19; 16 U.S.C. §§ 701, *et seq.*; 16 U.S.C. § 668. Indeed, the County has designated golden eagles as a sensitive species (County Group I) and its CEQA biological guidelines mandate special considerations for golden eagles. County of San Diego, Land Use and Environmental Group, *Guidelines for Determining Significance and Report Format and Content Requirements: Biological Resources*, Fourth Revision, September 2010

¹⁴ The federal government has taken substantive action to enforce the MBTA’s permit requirement against renewable energy projects that kill birds. Soitec should not dismiss the potential deaths of MBTA-protected birds at renewable energy facilities. See, e.g., Plea Agreement, *United States of America v. Duke Energy Renewables, Inc.*, Case No. 2:13-cr-00268-KHR (D. Wyo., Filed 11/07/13), Attachment B (attached hereto as Exhibit 6).

O10-33
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O10-34

O10-35

O10-36

O10-33

The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

See response O10-31. The County agrees there are typos in Appendix 2.3-1 at pp. 1-17 and 2-20 however, the significance of the impact is accurately described and explained in Chapter 3.0 of Appendix 2.3-1 of the DPEIR (see also DPEIR, Appendix 2.3-1, Section 7.2.12 and Table 8.1) and in Section 2.3 of the DPEIR.

O10-34

The County agrees that the DPEIR incorrectly referenced the location of the Wildlife Research Institute (WRI) report. The commenter is correct that the reference relates to the WRI *Final Report: Golden Eagles and the Rugged LLC, LanEast LLC, LanWest LLC and Tierra del Sol Solar Farm LLC Projects in San Diego County, California*, which is included as an appendix to both the Tierra del Sol and Rugged solar farm BRRs. In response to this comment, the County has made revisions and clarifications to the DPEIR. These revisions are presented in ~~strikeout~~/underline format; refer to Section 2.3.1.2.

O10-35

The County does not agree that the analysis of impacts related to Local Policies, Ordinances and Adopted Plans is incomplete. The DPEIR incorrectly refers to Guideline M. The 2010 County of San Diego Guidelines does not include a Guideline M under the

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(attached hereto as Exhibit 7).¹³

The DPEIR’s discussion of golden eagles fails to satisfy the requirements set forth for protecting golden eagles under the MBTA and the Eagle Act, and specifically, fails to meet the requirements set forth in CEQA for a complete and informative EIR. CEQA Guidelines §15144; *Vineyard*, 40 Cal.4th at 428. The County failed to perform many of the necessary surveys, and the surveys that were completed were inadequate and did not conform to well-established guidelines for performing those studies. Furthermore, the DPEIR’s analysis of impacts to golden eagles fails not only because it is based on inaccurate information, but also because the County fails to support its conclusions. Conservation Groups address each of these deficiencies in turn.

The DPEIR admits that there has been “recent golden eagle breeding activity in six golden eagle territories surrounding the Proposed Project site . . . [including t]wo active golden eagle territories (‘Carrizo Gorge’ and ‘Table Mountain’) [that] overlap with the Proposed Project site and one extirpated golden eagle territory (‘Boulevard’) [] within and around the Proposed Project site.” DPEIR 2.3-20. The Proposed Project area is also “a potential golden eagle flyway zone.” *Id.* However, the DPEIR asserts that “there are no CNDDDB records of this species within the project area or surrounding quadrangles.” *Id.* This entirely ignores a December 2013 golden eagle siting by a wildlife biologist on the Rough Acres Ranch, which falls *on or within the surrounding quadrangles of the Rugged site*. California Native Species Field Survey Form, 12/01/2013 (attached hereto as Exhibit 8).

The DPEIR clearly confirms that a significant adverse impact would result if the Project “alter[s]habitat within 4,000 feet of an active golden eagle nest.” DPEIR 2.3-99. Such an impact can only be “considered less than significant if a *biologically based determination* can be made that the project would not have a substantially adverse effect on the long-term survival of the identified pair of golden eagles.” *Id.* (emphasis added). However, without the adequate site specific surveys, the significance of this impact cannot be determined. Here, the County completely failed to perform necessary surveys for three of the four Project sites, and the one survey completed is inadequate and fails to meet well-established survey guidelines.

i. Inadequacy of Surveys for Golden Eagles

The DPEIR and its appendices only reference *one* site-specific raptor survey, done for the Tierra del Sol Project site. DPEIR 2.3-2 to 2.3-3; DPEIR Appendix 2.3-1, p. 1-10 (list of biological surveys, including a single raptor survey, for Tierra del Sol).¹⁴ The remaining Project sites – Rugged, LanEast, and LanWest – were not surveyed for golden eagles or other raptors.

¹³ Available at: www.sccounty.ca.gov/pds/docs/Biological_Guidelines.pdf

¹⁴ In addition, no site-specific studies were performed for Alternative 7.



section Local Policies, Ordinances, and Adopted Guidelines. Guideline L, which states that “The project would result in the take of eagles, eagle eggs or any part of an eagle (Bald and Golden Eagle Protection Act),” is the guideline that refers to take of eagles. Guideline L is discussed within Section 2.3.3.5. In response to this comment, the County has made revisions and clarifications to the DPEIR to correct the error regarding the guideline referenced. These revisions to the DPEIR are presented in ~~strikeout~~/underline format; refer to Section 2.3.3.5.

O10-36

The County does not agree that the DPEIR’s discussion of golden eagles fails to satisfy the requirements set forth under the Migratory Bird Treaty Act (MBTA), Bald and Golden Eagle Protection Act (Eagle Act), and CEQA. Refer to common response BIO1, and the responses to comments O10-37 through O10-44, regarding the assessment of golden eagles and the adequacy of the surveys conducted.

It should also be noted that a recent CNDDDB search of the Live Oak Springs quadrangle, which is listed on the form presented in Exhibit 8 to the commenter’s letter, does not list this occurrence of golden eagle in the processed data. It is, however, listed in the unprocessed data. Due to potential quality control issues related to unprocessed data, only CNDDDB processed data has been used when discussing known occurrences of

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DPEIR 2.3-2 to 2.3-3; DPEIR Appendix 2.3-2, pp. 1-12 to 1-13 (no mention of raptor or golden eagle surveys for Rugged); DPEIR Appendix 2.3-3 (no mention of raptor or golden eagle surveys for LanEast); DPEIR Appendix 2.3-4 (no mention of raptor or golden eagle surveys for LanWest). Rather, the DPEIR relies on historical data and data from *other projects* to determine the impact to golden eagles in the area. DPEIR 2.3-19 to 2.3-20 (relying on golden eagle surveys for the Tule Wind project), 2.3-58 to 2.3-59 (same); DPEIR Appendix 2.3-2, Appendix J, pp. 6-13 (WRI report on golden eagles and the Project site, specifically stating that “site-specific studies have not been conducted”). This failure to perform site-specific surveys does not meet CEQA’s requirement that the County make every effort to determine the impacts of the Project and inform the public of those concerns. CEQA Guidelines §15144; *Vineyard*, 40 Cal.4th at 428; *Berkeley Keep Jets*, 91 Cal.App.4th at 1355-1356. This is especially true given the DPEIR’s admission that 87% of the acreage for the LanWest site is “suitable foraging habitat” for the golden eagle, and that there is a “high potential for this species to forage within the site.” DPEIR 2.3-78.

The DPEIR’s assumption that eagle impacts are insignificant despite the lack of site-specific studies also contradicts the DPEIR’s own conclusion that impacts to golden eagles can be deemed less than significant only if a site-specific biological determination demonstrates insignificance. DPEIR 2.3-99. The County’s clear direction that site-specific surveys were *required* for golden eagles on the Rugged, LanEast, and LanWest sites was completely ignored. DPEIR Appendix 2.3-2, Appendix A, Attachment A, p. 15-26; DPEIR Appendix 2.3-4, Appendix A, Attachment A, p. 15-26. Since no site-specific studies were performed, and the County itself confirmed that these surveys were necessary, the DPEIR’s reliance on historical data and data from *other projects* at *different* locations is insufficient and frustrates informed decision making.

Furthermore, the one survey that was done for Tierra del Sol was on its face inadequate. A *single* wintering raptor survey was completed on January 29, 2012, and focused on the following species: golden eagle, prairie falcon, Cooper’s hawk, sharp-shinned hawk, turkey vulture, and red-shouldered hawk. DPEIR Appendix 2.3-1, pp. 1-10, 1-16. “The *single-visit* survey” was limited to “traversing all *roads* on the site while searching for potentially suitable nesting resources” by one solitary biologist, who also spent a brief period at four different locations on the site. DPEIR Appendix 2.3-1, p. 1-16 (emphasis added). The DPEIR claims that “all portions of the site were reviewed,” but this claim is contradicted by the fact that just the areas visible from roads, and four additional undisclosed locations, were the *only areas surveyed*. *Id.* In fact, the length of the entire survey – *7 hours and 20 minutes* – is *less* than the time it would take for a single biologist to visit “four different locations” and spend “a minimum of 2 hours” at each – *8 hours*. DPEIR Appendix 2.3-1, p. 1-10. Thus, the DPEIR has exaggerated the survey’s scope and duration, and its reliance upon that incomplete survey is improper.

O10-37
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O10-38

O10-37

species in the DPEIR and supporting BRRs. The CNDDDB website includes the following warning when using unprocessed data:

Warning: *The “Unprocessed” CNDDDB data have been entered into a database at the quad/county level only. They have NOT been quality controlled and there may be errors of both omission and commission. As these data are processed, records are entered into the CNDDDB GIS database, quality controlled and removed from the “Unprocessed” database; they then become part of the official CNDDDB data set.*

Furthermore, the California Native Species Field Survey Form states that the golden eagle was observed flying over private land (i.e., Rough Acres Ranch), which is in alignment with the statement in the DPEIR that the “Proposed Project area is located in a potential golden eagle flyway zone, especially for golden eagles in territories established in nearby desert habitat.” (DPEIR Section 2.3.1.2.)

The commenter is referred to the response to comment O10-38, and common response BIO1, regarding the sufficiency of the golden eagle and raptor surveys.

The 2012 helicopter surveys conducted by WRI included the project sites and therefore can be considered a site specific survey. As stated in Common Response BIO1, ground surveys are not

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The DPEIR's golden eagle discussion is inadequate for the additional reason that the one survey that was completed – let alone the County's failure to survey the other three sites – also contradicts the 2010 United States Fish and Wildlife Service's ("USFWS") *Interim Golden Eagle Inventory Monitoring Protocols: and Other Recommendations* ("USFWS Eagle Monitoring Protocols"). Pagel, J.E., D.M. Whittington, and G.T. Allen, 2010, Division of Migratory Bird Management, USFWS, p. 10 (attached hereto as Exhibit 9).¹⁷ These protocols document the "minimum inventory and monitoring effort recommended for determining and evaluating Golden Eagle (*Aquila chrysaetos canadensis*) use of habitat" and "the minimum monitoring techniques to ascertain occupancy and reproductive success at [golden eagle] territories" in an attempt to standardize the process. *Id.* at 1 (emphasis added).

First, the USFWS Eagle Monitoring Protocol specifies that at least two ground observation periods of at least four hours each, spaced at least 30 days apart, are necessary to inventory a site for golden eagle nests, to be followed by monitoring of the nests, if found. Exhibit 9 (USFWS Eagle Monitoring Protocols) at p. 11. Before concluding that a site is unoccupied by golden eagles, the USFWS requires compliance with these minimum steps. *Id.* The single-day, 7 hour and 20 minute Tierra del Sol survey for golden eagles fails to meet these requirements, and the Project's determination that the site is unoccupied must fail.

Second, the USFWS Eagle Monitoring Protocols state that "[i]nventories for Golden Eagles should occur if nesting, roosting, and foraging habitat are contained within the project boundary and exist within 10 miles of the project boundary [and] . . . distances will be greater in xeric or other habitats where local prey may not be abundant." *Id.* at 11. There are multiple golden eagle nests known to be within 10 miles of the project area. *Golden Eagle Territories in the Iberdrola – Tule Wind Project Vicinity*, Map, May 2010 (attached hereto as Exhibit 10).¹⁸ The DPEIR itself acknowledges that two known golden eagle territories overlap with the Rugged Solar project site and there are 10 known golden eagle territories just north of it. DPEIR 2.3-58.

¹⁷ Available at: http://www.fws.gov/southwest/es/oklahoma/documents/te_species/wind%20power/usfws_interim_goea_monitoring_protocol_10march2010.pdf. Last accessed February 21, 2014.

¹⁸ Given this project's proximity to the U.S.-Mexico border, surveying for golden eagles should also have taken place in Mexico since the eagle will not abide by any political border.

O10-38
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required for the assessment of golden eagles. The one ground survey conducted for Tierra del Sol was intended to focus on all raptor species that may occur within the project area. The focus of this survey was not specifically related to golden eagle (See response to comment O10-38). The WRI survey, in addition to review of relevant historical and adjacent project data provides adequate information regarding the potential for golden eagle to both forage and roost within the project sites.

The analysis in the DPEIR did not assume that all golden eagle impacts would be "insignificant." For example, impact to core wildlife areas was determined to be "potentially significant" for the Rugged and Tierra del Sol project sites (DPEIR, pp. 2.3-116 through 2.3-117), and the Proposed Project's effect on sensitive plant and animal species (including the golden eagle) was determined to be "significant." (DPEIR, p. 2.3-126.)

As stated in Section 1.1 of the DPEIR, the applicants are seeking project-level approvals for only the Tierra del Sol and Rugged solar farm projects, which are analyzed at a project-level of detail. The LanEast and LanWest solar farms are analyzed at a programmatic level. The DPEIR acknowledges that specific survey data may not be available for the LanEast and LanWest solar farms because they are program level components; see also response to comment S3-13.

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It also admits that there are known golden eagle territories within 10 miles of the Tierra del Sol project site. DPEIR 2.3-78.¹⁹ The focus solely on a “4,000-foot nest site buffer” ignores USFWS’ clear direction that a 10-mile minimum radius is required for golden eagle surveys.

Third, WRI’s characterization of the project sites as “extirpated” without having conducted any eagle surveys at the sites contradicts the USFWS Eagle Monitoring Protocol’s requirement that “[a] territory or inventoried habitat should be designated as unoccupied by Golden Eagles ONLY after at least 2 complete aerial surveys in a single breeding season.” Exhibit 9 (USFWS Eagle Monitoring Protocols) at pp. 11-12. The Protocol also requires that where ground surveys occur, “at least 2 ground observation periods lasting 4 hours or more are necessary [and] should be at least 30 days apart for inventory, and at least 30 days apart for monitoring of known territories.” *Id.* WRI did not complete any such survey in its Golden Eagle Report. DPEIR Appendix 2.3-1, Appendix I; DPEIR Appendix 2.3-2, Appendix J. Instead, WRI relied entirely on historical data and data gathered for other projects.

Fourth, the USFWS Eagle Monitoring Protocol does not allow a “best estimate” of breeding territories as the DPEIR tries to substitute for actual inventorying and monitoring at the project site. Exhibit 9 (USFWS Eagle Monitoring Protocols) at pp. 11, 13. Instead, the Eagle Monitoring Protocol requires scientific data. *Id.* Yet, while WRI’s Golden Eagle Report lists the Project sites in its title, the document *does not rely on any site-specific studies*. DPEIR Appendix 2.3-1, Appendix I, p. 13 (“site-specific studies have not been conducted for any projects in the . . . project area.”); DPEIR Appendix 2.3-2, Appendix J, p. 13 (same). WRI provides no site-specific data to back up its anecdotal statements that the project site “has been considered extirpated since the 1980s” and “no resident golden eagles have been seen breeding for over 40 years.” DPEIR Appendix 2.3-1, Appendix I, pp. 29-30; DPEIR Appendix 2.3-2, Appendix J, pp. 29-30. The names of the biologists who have allegedly been monitoring this territory every year since 1980, the dates of their survey observations, the locations of their observations, the archives holding their observations, or anything else that would allow independent third-party review of their claims are either not provided or redacted.²⁰ *Id.* The

¹⁹ The DPEIR does not analyze environmental impacts at the LanEast and LanWest sites to the same extent as it does the Rugged and Tierra del Sol Solar sites, so it does not contain a similar discussion of golden eagle territories. However, the map provided allows for the logical inference that they are also within 10 miles of golden eagle territories, and therefore site-specific analyses should have been done. Exhibit 10 (map).

²⁰ This is especially significant since one of the federal government’s criminal complaints to which David Bittner and his company, WRI, pled guilty as discussed below, was that he had not provided the required avian data to the government. See Government’s Sentencing Memorandum (“Sentencing Memo”), U.S. v. John David Bittner, Criminal Case No. 13-CR-01391-DHB, filed July 11, 2013, p 2-3.



O10-38
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O10-38 The commenter is referred to common response BIO1 in response to the commenter’s assertion that the DPEIR’s golden eagle discussion is inadequate. Common Response BIO1 explains that the golden eagle survey and analysis set forth in the DPEIR takes advantage of nearly three decades of golden eagle survey data, including recent focused surveys within and around the Proposed Project site.

Furthermore, the County notes that the winter raptor survey for the Tierra del Sol site was conducted in order to gain a general understanding of raptor use within the site, specifically related to potential nesting issues, and to assess the presence of suitable raptor habitat. The survey was not intended to serve as a golden eagle focused survey. The report prepared by the WRI was relied upon for golden eagle use and territories within and adjacent to the Proposed Project area. As indicated in the DPEIR, the Tierra del Sol site contains very little nesting habitat for raptor species. The raptor survey focused on large trees and transmission towers already present on site (i.e., suitable nesting habitat), both of which are in proximity to existing roads. The Tierra del Sol site is relatively flat, with some gently sloping hills, but does not support much diversity in the topography of the land. In order to survey the entire site, higher elevation vantage points were chosen for the four survey areas.

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DPEIR's failure to provide relevant and reliable data precludes informed decision making under CEQA.

If WRI were to provide relevant data at a later time, the County must ensure that the data comply with the USFWS Eagle Monitoring Protocol. It must contain the (1) date and time of observation, (2) weather during observation, (3) duration of observation, (4) names of observers, and (5) location and description of observation. Exhibit 9 (USFWS Eagle Monitoring Protocols) at p. 19. This data must also be provided by an observer with "the equivalent of 2 seasons of intensive experience conducting survey and monitoring of Golden Eagle and/or cliff-dwelling raptors [or] at least 3 field seasons experience in helicopter-borne raptor surveys around cliff ecosystems" for observers completing aerial surveys. Exhibit 9 (FWS Eagle Monitoring Protocols) at p. 18. WRI's report admits these training protocols were not followed. It utilized a far less vigorous training regimen, stating that "[t]raining is accomplished by taking each individual into the field numerous times during their first year. Most[, but not all,] new biologists also undergo an intensive four-week training regimen during golden eagle migration in Montana." DPEIR Appendix 2.3-1, Appendix I, p. 4; DPEIR Appendix 2.3-2, Appendix J, p. 4.

The County's failure to complete the necessary and adequate surveys also contradicts USFWS' December 2012 comments on this Project which "recommend *current* habitat assessment and *focused* surveys be performed as appropriate to fully assess the potential for . . . impacts to these species." Letter from Karen Goebel, USFWS, to Robert Hingtgen, County of San Diego Planning and Land Use, December 17, 2012, Re: Notice of Preparation of an Environmental Impact Report for the Soitec Solar Development Program, Unincorporated San Diego County, available in the Project's Administrative Record at: <http://www.sdcounty.ca.gov/pds/ceqa/Soitec-Documents/Record-Documents/2012-12-17-Karen-Goebel-Letter-to-Robert-Hingtgen-re-NOP-of-EIR-for-Soitec-Solar-Development-Program.pdf>. Because these necessary surveys were not conducted, the DPEIR fails to meet the criteria adopted by the expert federal agency tasked with protecting wildlife.

Furthermore, the historical data and data from *other projects* – including the Tule Wind project – that the DPEIR and BRRs rely upon are also inadequate to assess the impacts of the proposed Project or Alternative 7. See, e.g., DPEIR 2.3-19 to 2.3-20 (relying on golden eagle surveys for the Tule Wind project), 2.3-58 to 2.3-59 (same); DPEIR Appendix 2.3-1, p. 1-61 to 1-62 (BRR relying on Tule Wind project data to determine existing conditions); DPEIR Appendix 2.3-1, Appendix I, p. 13 ("WRI has conducted aerial and ground [sic] surveys in neighboring areas since 1988 and aerial surveys since 1996 . . . [and] used this accumulated data to create a best estimate of the breeding territories of golden eagles in the area"); DPEIR Appendix 2.3-2, Appendix J, pp. 13 (same); Exhibit 9 (USFWS Eagle Monitoring Protocols) at

<http://www.kcet.org/news/rewire/Bittner.sent.mem.filed6-27-13.pdf> Why is the County relying on the work of a discredited scientist?



The USFWS does not provide survey guidelines for raptor surveys other than golden eagle. Therefore, the length of time the biologist spent is not directly related to the validity of the survey. However, the County agrees that clarifications should be made relative to the statement regarding the length of this survey. The statement "a minimum of 2 hours" has been revised to state "up to 2 hours." These revisions are presented in strikeout/underline format; refer to Section 1.3.4.3 of Appendix 2.3-1 of the DPEIR. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

O10-39 The County acknowledges the commenter's requests and will take these into consideration if WRI provides data at a later time. The County's potential consideration of additional data at a later time does not undermine the validity of the County's analysis in the DPEIR and the available data and studies relied upon.

O10-40 For reasons stated in common response BIO1, the County does not agree that the analysis of golden eagles in the DPEIR is inadequate. Furthermore, the County disagrees that the DPEIR's analysis of golden eagles contradicts the USFWS's December 2012 letter. As the section of the USFWS letter quoted by the commenter indicates, the USFWS's letter reserved

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pp. 11, 13. Not only does reliance on this data violate CEQA's requirement that the agency "use its best efforts to find out and disclose all that it reasonably can" about the environmental consequences of the Project, but it also contradicts the USFWS, the DPEIR, and the County's own conclusions that directed site-specific studies are necessary to determine the Project's impacts on golden eagles. Exhibit 9 (USFWS Eagle Monitoring Protocols) at pp. 11, 13; DPEIR 2.3-99; DPEIR Appendix 2.3-2, Appendix A, Attachment A, p. 15-26; DPEIR Appendix 2.3-4, Appendix A, Attachment A, p. 15-26; CEQA Guidelines §15144; *Vineyard*, 40 Cal.4th at 428; *Berkeley Keep Jets*, 91 Cal.App.4th at 1355-1356.

For example, in 2010 a USFWS raptor expert severely criticized the avian studies that were conducted for the Tule Wind project as "inadequate to provide the level of detail which will assist action and regulatory agencies in determining short and long-term effects to raptors, including golden eagles." USFWS, Pagel, Joel E., *Memo about the Tule Wind Project*, January 21, 2010 (attached hereto as Exhibit 11). These surveys were not on the Project site, "the survey effort expended was insufficient to detect nesting raptors," "the surveys did not appear to be comprehensive or stratified in any way," "there did not appear to be a comprehensive search of all available habitat to find tree nesting raptors, nor were presence of cliff habitat discussed," and "surveys for raptors require different techniques than was detailed in the [Tule Wind avian study]." *Id.* Since this data was insufficient for the Tule Wind project, it is insufficient here as well.

WRI's data is also flawed because it fails to account for the impact that helicopters have on golden eagles. DPEIR Appendix 2.3-1, Appendix I, p. 8 ("WRI data support golden eagles' indifference to helicopters"); DPEIR Appendix 2.3-2, Appendix J, p. 8 (same). Most of WRI's data is collected by helicopters, and they claim that these helicopters have no impact on the eagles despite their noise and obtrusive presence. *Id.* The scientific basis for WRI's conclusion is both inadequate and counterintuitive: data for this conclusion was collected where eagles had already become habituated to helicopters and human interaction; testing only occurred during incubation and neglected "the concern that helicopter activity during courtship and nest repair may disrupt or preclude subsequent nesting"; and data tends to support a habituation hypothesis rather than indifference. Grubb, Teryl G., *Golden Eagle Indifference to Heli-Skiing and Military Helicopters in Northern Utah*, *The Journal of Wildlife Management*, 2010, 74(6): 1275-1285, 1282.²¹ Golden eagles are a highly sensitive species known to flush when disturbed by hikers and other human disturbance, and even to attack small fixed-wing aircraft and helicopters. *Id.* at 1275. Therefore it is absurd to suggest that they are indifferent to

²¹ Available at: <http://www.wildlife-research.org/Grubb%20et%20al%202010,%20Golden%20Eagle%20Indifference%20to%20Heli-Skiing%20and%20Military%20Helicopters%20in%20Northern%20Utah>, and attached hereto as Exhibit 12.

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to the County the discretion whether focused surveys should be conducted.

O10-41 For reasons stated in common response BIO1, the County does not agree that the analysis of golden eagles in the DPEIR is inadequate. The County also disagrees that CEQA requires the County to analyze golden eagle impacts with no reference to the extensive data already collected for the area where the Proposed Project would be located, and the surrounding area. Furthermore, the County disagrees with the commenter's assertion that the USFWS considers the Tule Wind Project's golden eagle analysis to be insufficient. For example, the USFWS approved the Tule Wind Project's Avian and Bat Protection Plan (ABPP), which relied on golden eagle studies to support its conclusions. (*See* USFWS, Tule Wind Project Avian and Bat Protection Plan Memorandum (Oct. 4, 2011); Tule Wind Project ABPP (Sept. 30, 2011).)

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helicopters.²² Thus, the golden eagle report provided for the DPEIR is inadequate because it fails to provide accurate survey data. Further, by adopting WRI's erroneous conclusions, the DPEIR fails to address the impacts of the Project's helicopter use on golden eagles in the area.

Any data based on satellite telemetry research is also flawed. The DPEIR admits that "[g]olden eagles equipped with telemetry are a small sample size of the local population; many other unmarked golden eagles could have traversed the area near or within Proposed Project area." DPEIR 2.3-20; DPEIR Appendix 2.3-1, Appendix I, p. 28; DPEIR Appendix 2.3-2, Appendix J, p. 28. This incomplete data is not sufficient to determine the impacts of the Project, especially where the data is based on historical sightings or surveys for a different project, and not *site-specific* surveys.

Finally, the County should temper its reliance on WRI data since WRI's Senior Biologist and Executive Director, David Bittner, recently pleaded guilty for the unlawful take of a golden eagle.²³ Indeed, in 2010, the United States Geological Survey refused to issue a renewed federal bird banding permit to David Bittner, the lead author and primary researcher of WRI's golden eagle report. It did so because Mr. Bittner was not in compliance with the terms of his permit, which requires him to report his banding data to the government. *Id.* Mr Bittner continued to capture and banded at least 144 migratory birds before the permit was renewed in August 2010. *Id.* It was this unpermitted banding activity that led to Mr. Bittner's prosecution and conviction for an "unlawful take" of a female golden eagle pursuant to 16 U.S.S. section 668(a). Sentencing Memo, p. 1.

The Department of Justice's Sentencing Memo raised serious questions regarding Mr. Bittner's methodology. It states that other eagle experts know of no scientific basis for Mr. Bittner's habit of attaching multiple transmitters to a single bird. Sentencing Memo, p. 8. It also states that witnesses heard Mr. Bittner report "a nine month mortality rate of approximately 90% for birds mounted with transmitters, when they would expect to see a survivorship rate of approximately 85%." *Id.* Further, Mr. Bittner has a history of failing to provide the regulatory agencies which issue bird banding permits the data he is required to provide as a condition of receiving these permits. Sentencing Memo, pp. 8-9. Mr. Bittner's belief that providing relevant

²² Eagle Management Guidelines recommend a 1000-foot buffer for helicopters around nests for bald and golden eagles. USFWS, *National Bald Eagle Management Guidelines*, May 2007 (attached hereto as Exhibit 13), available at: <http://www.fws.gov/migratorybirds/currentbirdissues/management/baldeagle/nationalbaldeaglemangementguidelines.pdf>.

²³ See *Wildlife Researcher Pleads Guilty to Unlawful Taking of Golden Eagle*, Office of the United States Attorney, Southern District of California, April 18, 2013, pp. 1-2, available at: <http://www.justice.gov/usao/cas/press/2013/cas13-0418-BittnerPR.pdf>



O10-42 For reasons stated in common response BIO1, the County does not agree that the analysis of golden eagles in the DPEIR is inadequate.

O10-43 For reasons stated in common response BIO1, the County does not agree that the analysis of golden eagles in the DPEIR is inadequate.

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information regarding banded birds is giving away his “intellectual property” (Sentencing Memo, p. 8) has tainted the DPEIR. The WRI report’s heavy redactions prevent informed public comment addressing the report’s observations and conclusions regarding Golden Eagles.

ii. Inadequacy of Discussion of Impacts to Golden Eagles

The Project poses significant threats to golden eagles but the DPEIR’s analysis of these threats is inadequate. Without any surveys for three of the four Project sites, and with a clearly inadequate survey for the remaining site, the public and decisionmakers cannot accurately determine the impacts of the Project on golden eagles and their habitat, in violation of CEQA. CEQA Guidelines §15144; *Vineyard*, 40 Cal.4th at 428; *Berkeley Keep Jets*, 91 Cal.App.4th at 1355-1356.

Despite the lack of focused avian studies conducted for this Project, the DPEIR nonetheless claims that there will be significant impacts to golden eagles, including impacts to foraging habitat, and to nesting success of tree-nesting raptors – although it subsequently asserts that all those impacts will be mitigated to insignificance. DPEIR 2.3-114 to 2.3-116, 2.3-124 to 2.3-126, 2.3-194 to 2.3-195, 2.3-211 to 2.3-212, 2.3-217, 2.3-218, 2.3-228, 2.3-234. However, the calculations that were used to determine the number of acres of habitat that will be impacted for each species are unexplained. Consequently the public and decision makers are unable to discern how the “existing acreage” and “impacts acreage” were determined.²⁴ Therefore neither the decisionmakers nor the public can judge whether the planned mitigation will be adequate, contrary to CEQA.

b. Raptors

As discussed above with regard to golden eagles, only one survey was conducted to determine the presence of raptors in the Project area and the potential impacts to those species. DPEIR 2.3-2 to 2.3-3; DPEIR Appendix 2.3-1, p. 1-10; DPEIR Appendix 2.3-2, pp. 1-12 to 1-13; DPEIR Appendix 2.3-3; DPEIR Appendix 2.3-4. That *one-day* survey, completed by a single biologist, is insufficient to determine the impacts of either the proposed Project or Alternative 7 on raptors as required by CEQA. CEQA Guidelines §15144; *Vineyard*, 40 Cal.4th at 428; *Berkeley Keep Jets*, 91 Cal.App.4th at 1355-1356.

²⁴ Furthermore, some references to habitat impact calculations appear to be misnumbered or at least poorly explained. For example, the DPEIR states that “[l]ong-term direct impacts to nesting habitat for Cooper’s hawk and red-shouldered hawk are summarized in table 2.3-9,” but table 2.3-9 is a summary of direct impacts to four special-status plant species, not to specific habitat types. DPEIR 2.3-124, 2.3-201 (table).

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O10-44 For reasons stated in common response BIO1 and the responses to comments O10-36 through O10-43, the County does not agree that the analysis of golden eagles in the DPEIR is inadequate.

The DPEIR incorrectly referenced Table 2.3-9 when describing impacts to Cooper’s hawk and red-shouldered hawk within the Tierra del Sol solar farm site. The statement “*Long-term direct impacts to nesting habitat for Cooper’s hawk and red-shouldered hawk are summarized in Table 2.3-9, and impacts to general vegetation communities are described below in Table 2.3-12.*” has been revised to correctly reference Table 2.3-8. Acreages of suitable habitat for the species listed in Tables 2.3-8 and 2.3-10 were determined by combining the acreages of the vegetation communities which have been described as suitable habitat for a specific species. The table below describes the vegetation communities identified as suitable habitat within the Proposed Project. Listed, Group I and/or SSC wildlife species that occur, or have a moderate to high potential to occur, within the Proposed Project are included in the table below and are discussed in the FPEIR. Since not all of the species within the table require focused surveys, and there is a high likelihood that a species would not have been observed during other site-specific surveys; therefore impacts are based on Proposed Project impacts to suitable habitat/vegetation communities for each species.

Suitable Habitat for Group I and/or SSC Wildlife Species	
Species Name	Suitable Habitat (acres)
<i>Amphibians and Reptiles</i>	
Belding's orange-throated whiptail	1,312
Blainville's horned lizard	626
Coast patch-nosed snake	738
Coronado skink	744
Northern red-diamond rattlesnake	1,365
Two-striped garter snake	25
Western spadefoot	399
<i>Birds</i>	
Bell's sage sparrow	1,012
Cooper's hawk—foraging	765
Cooper's hawk—nesting	230
Golden eagle—foraging	986
Loggerhead shrike	1,180
Northern harrier—foraging	397
Prairie falcon—foraging	1,394
Red-shouldered hawk—foraging	252
Red-shouldered hawk—nesting	78
Southern California rufous-crowned sparrow	556
Tricolored blackbird—foraging	191
Turkey vulture—foraging	1,373
<i>Mammals</i>	
Dulzura California pocket mouse	631
Northwestern San Diego pocket mouse	733
San Diego desert woodrat	1,139
Mexican long-tongued bat—foraging	764
Townsend's big-eared bat—foraging	764
Spotted bat—foraging	764
Western mastiff bat—foraging	764

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Likewise, the DPEIR’s reliance on historical data and data for *other projects* also fails. See, e.g., DPEIR 2.3-21 (“While no project-specific bird count studies were conducted for the Proposed Project [on Swainson’s hawk], data was collected for two proposed project areas located in close proximity to the Proposed Project: Tule Wind project and a now defunct project in the McCain Valley”), 2.3-58 to 2.3-59 (relying on Tule Wind helicopter surveys for golden eagles), 2.3-61 (relying on Tule Wind surveys for QCB). As with golden eagles, directed, site-specific surveys for raptors must be completed for *all* of the Project sites.

O10-45
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c. Burrowing Owl

The DPEIR concludes, with no evidentiary support, that the Project site “does not support occupied burrowing owl habitat; therefore, there are no impacts to occupied burrowing owl habitat.” DPEIR 2.3-122 to 2.3-123. However, the body of the DPEIR fails to provide *any* discussion of what that habitat comprises, so there is no way for the public or decisionmakers to know if this is accurate. The only discussion of burrowing owl habitat can be found in the appendices to the BRRs, and that information *contradicts* the DPEIR’s conclusions. DPEIR Appendix 2.3-1, Appendix F, p. F-8; DPEIR Appendix 2.3-2, Appendix H, p. H-6. The BRRs for Terra del Sol and Rugged document that burrowing owls *have the potential to occur* on these sites, yet the DPEIR erroneously concludes otherwise. Compare DPEIR 2.3-122 to 2.3-123 with DPEIR Appendix 2.3-1, Appendix F, p. F-8; DPEIR Appendix 2.3-2, Appendix H, p. H-6. Furthermore, the DPEIR admits that no site-specific surveys have been completed for burrowing owls at the LanEast site. DPEIR 2.3-122. Without such surveys, no accurate assessment of impacts can be made. The DPEIR’s failure to analyze the proposed Project, and Alternative 7’s impacts to burrowing owls, precludes informed decision making in violation of CEQA. CEQA Guidelines §15144; *Vineyard*, 40 Cal.4th at 428; *Berkeley Keep Jets*, 91 Cal.App.4th at 1355-1356.

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d. Pseudo-Lake Effect

The Project’s CPV trackers will also harm avian species through the pseudo-lake effect, where glare makes solar panels look like water to passing birds. Both the solar Genesis project, approximately 75 miles east of Indio, and Desert Sunlight, 25 miles to the west of Genesis, have attracted water birds such as teals, grebes, avocets, egrets, loons, pelicans and clapper rails, in many instances with deadly results.²⁵ The DPEIR claims that, because the Project is “east of the

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²⁵ See, e.g., the August 2013 Monthly Compliance Report, Genesis Solar Energy Project, Avian Reporting Data Table and Forms, pp. 1-11 (182- 193 of the pdf) (available at: http://docketpublic.energy.ca.gov/PublicDocuments/09-AFC-08C/TN200657_20130930T120056_August_2013_Monthly_Compliance_Report.pdf) and Appendix B – Avian and Bat Mortality Solar Farm – of the 2013 Yearly Biological Resources Report for Desert Sunlight (available for download at:

Suitable Habitat for Group I and/or SSC Wildlife Species

Species Name	Suitable Habitat (acres)
Western red bat—foraging	764
California leaf-nosed bat—foraging	764
Big free-tailed bat—foraging	764
San Diego black-tailed jackrabbit	764

Source: DPEIR, Chapter D.2, Biological Resources

Regarding the commenter’s concern for impacts to foraging habitat for golden eagles, please refer to Chapter 2.3, Biological Resources, and more specifically Sections 2.3.1.3 through 2.3.1.6. Where information was available, the DPEIR describes the presence of and identifies the vegetation communities considered suitable habitat for golden eagle on the Tierra del Sol solar farm site (p. 2.3-41), the Rugged solar farm site (p. 2.3-58) and the LanWest solar farm site (p. 2.3-79). To calculate impacts to suitable habitat/vegetation communities, project impacts were overlaid on the sites. Because permits are not currently being sought for the LanEast and LanWest solar farm sites (and because site plans have not been prepared for these locations), impacts to suitable habitat presented in the DPEIR consists of project impacts calculated at the Tierra del Sol and Rugged solar farm sites. Project impacts to vegetation communities are depicted in Figures 2.3-25a through 2.3-25d and Figure 2.3-26.

	<p>O10-45 For reasons stated in common response BIO1, the County does not agree that the analysis of golden eagles in the DPEIR is inadequate. The 2012 helicopter surveys conducted by WRI included the project sites and therefore can be considered a site specific survey.</p> <p>The County disagrees with the commenter’s assertion that site-specific surveys were required to comply with County Guidelines and CEQA, and that the lack of site-specific studies for this Proposed Project constituted a lack of substantial evidence upon which to base significance conclusions for raptors and golden eagles.</p> <p>Further, the County disagrees that the County gave the applicants direction that site specific studies were required. The commenter cites to page 15-26 of Attachment A (the Pre-application Summary Letter for the Rugged, LanEast, and LanWest sites) which references the County’s revised list of sensitive species. The Revised Comprehensive List of Sensitive Species states that directed surveys are required for several raptor species. However, the County stated in meetings with the project applicant that a habitat assessment for these species would suffice. Therefore, the assessment for raptors to utilize a site was evaluated through on site biological reviews, anecdotal data recorded by field biologists, historical use as provided in the WRI report, and survey information</p>
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main coast migration route and west of the primary route between the Gulf of California and the Salton Sea” the Project should not attract migratory species. DPEIR 2.3-158 to 2.3-160. But the Project’s location within the Pacific Flyway should not be downplayed; indeed, egrets and other water birds are known to visit the wetland in close proximity to the Rugged sites,²⁶ and nearby Lake Domingo is known to host migrating blue-winged teal.²⁷ Ring-neck duck,²⁸ ruddy duck,²⁹ cinnamon-teal,³⁰ green-winged teal,³¹ and many other water birds frequent both natural and artificial ponds and wetlands in the vicinity of the Project. The Project claims that the impact of the pseudo-lake effect will be minimized because there will be between 30 and 80 feet between each tracker, depending on the position during the day. DPEIR 2.3-158 to 2.3-160. But even with space between solar panels, when viewed from elevation, the Project is likely to appear like marshy wetlands to birds, potentially luring them to try to land on the trackers. Instead of examining the impacts of the Project on avian species, the DPEIR claims that any discussion of this impact would be speculative because there is not much scientific information available on the pseudo-lake effect. See DPEIR 2.3-158 to 2.3-160; DPEIR Appendix 2.3-1, p. 2-25; DPEIR Appendix 2.3-2, p. 2-21. Under CEQA, a lead agency must “use its best efforts to find out and disclose all that it reasonably can,” to demonstrate it has fully “considered the environmental consequences of [its] action.” CEQA Guidelines §15144; *Vineyard*, 40 Cal.4th at 428; *Berkeley Keep Jets*, *supra*, 91 Cal.App.4th at 1355-1356; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431. Here, the DPEIR’s dismissal of the pseudo-lake effect’s impacts on these species runs afoul of this mandate.

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<http://www.firstsolar.com/en/about-us/projects/desert-sunlight-solar-farm/biological%20monitoring%20report%20-%20annual/biological%20monitoring%20report%20annual%20report%202013?d=1>.

²⁶ See Exhibit 14, documenting an egret between the Rugged site locations.

²⁷ Blue-winged teal, San Diego Bird Atlas hosted by the San Diego Natural History Museum, available at: <http://sdplantatlas.org/birdatlas/pdf/Blue-winged%20Teal.pdf>

²⁸ San Diego Bird Atlas, available at: <http://sdplantatlas.org/birdatlas/pdf/Ring-necked%20Duck.pdf>

²⁹ San Diego Bird Atlas, available at: <http://sdplantatlas.org/birdatlas/pdf/Ruddy%20Duck.pdf>

³⁰ San Diego Bird Atlas, available at: <http://sdplantatlas.org/birdatlas/pdf/Cinnamon%20Teal.pdf>

³¹ San Diego Bird Atlas, available at: <http://sdplantatlas.org/birdatlas/pdf/Green-winged%20Teal.pdf>

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for adjacent projects. The commenter is also referred to response to comment O10-38 regarding the sufficiency of the raptor surveys conducted for Tierra del Sol.

The DPEIR’s conclusion that the Proposed Project site does not support occupied burrowing owl habitat is supported by evidence in the Biological Resources Reports for the Project. No burrowing owls were detected during surveys of the Rugged and Tierra del Sol sites. (DPEIR, Appendix 2.3-1, p. 3-21; Appendix 2.3-2, p. 3-15.) Appendix 2.3-1 of the DPEIR states that there is a low potential for burrowing owl to occur within the Tierra del Sol site on the rationale that the Proposed Project site contains “minimal open suitable habitat” and that “burrows would be visible and were not detected during surveys”. Appendix 2.3-3 of the DPEIR states there is a moderate potential for burrowing owl to occur within the Rugged site; however, numerous biological surveys documented in the Biological Resources Reports failed to detect the burrowing owl and the DPEIR therefore concludes that there is no “occupied habitat”. The DPEIR appropriately analyzes impacts to burrowing owl in accordance with the County’s guidelines for determination of significance 4.1(I), which assesses impacts to “occupied burrowing owl habitat” and in accordance with CEQA Guidelines related to analyzing alternatives.

The DPEIR acknowledges that specific survey data may not be available for the LanEast and LanWest solar farms at this time because they are program level components. Additional environmental review, including biological surveys for sensitive species and vegetation communities, will be required for future approvals associated with LanEast and LanWest solar farms, should the applicants apply for project-level approvals in the future. The program level analysis for LanEast and LanWest makes conservative assumptions and applies mitigation measures accordingly; see Table 2.3-18, Section 2.3.6 of the DPEIR. The County believes that there are advantages in analyzing and disclosing effects related to LanEast and LanWest at this time in a programmatic manner to the extent that substantial evidence is available to support those conclusions. The LanWest and LanEast components fit the description of the types of actions for which a Program EIR may be prepared, as outlined in Section 15168 of the CEQA Guidelines, in that they are related geographically, and are logical parts in the chain of contemplated actions. Addressing these components at a program level offers the advantages of providing a more exhaustive consideration of effects and alternatives than would be available for an EIR on the project-level actions alone. In addition, the program-level analysis provides a more robust consideration of cumulative impacts, and may provide the basis for determining whether the subsequent

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3. The DPEIR Fails to Adequately Address the Impacts to Peninsular Bighorn Sheep.

While the DPEIR admits that PBS migrate “along the Peninsular Mountain Range and south in mountain ranges of Baja California,” and use areas nearby for habitat connectivity and migration corridors, it erroneously concludes that “development in the project area would not affect bighorn sheep movement or lambing areas.” DPEIR 2.3-33. This conclusory statement finds no support in the record. Indeed, the record indicates that PBS are found within five miles of the Tierra del Sol and Rugged sites, and within 0.8 miles of the LanEast site. DPEIR 2.3-40 (Tierra), 2.3-56 (Rugged), 2.3-73 (LanEast); DPEIR Figures 2.3-8, 2.3-12, 2.3-20. The DPEIR’s claim that the Project area “does not contain constituent elements required for [PBS]” ignores the proximity of the sheep to the Project site and the importance of habitat connectivity and migration corridors for their survival. DPEIR 2.3-56; DPEIR Appendix 2.3-1, p. 1-58.

O10-48

4. The DPEIR Fails to Adequately Address Impacts to Quino Checkerspot Butterfly.

The DPEIR downplays the Project’s impacts to the endangered Quino Checkerspot Butterfly (“QCB”) and its habitat. All of the proposed Project locations have adult nectar plants DPEIR 2.3-42, 2.3-61, 2.3-100 to 2.3-101. Indeed, Rugged and Tierra del Sol contain at least nine different species of QCB adult nectar plants,³² including *Lomatium*, *Achillea millefolium* (yarrow), *Amsinckia* spp. (fiddleneck), *Lasthenia* spp. (goldfields), *Plagiobothrys* spp. (pocornflower), *Gilia* spp., *Eriogonum fasciculatum* (California buckwheat), *Eriodictyon* spp. (yurba santa), *Salvia columbariae* (Chia), and *Dichelostemma capitatum* (blue dicks). DPEIR Appendix 2.3-1, pp. A-1 to A-2, A-5, A-7; DPEIR Appendix 2.3-2, pp. B-1 to B-3, B-6 to B-7, B-11. Further, Rugged, Tierra del Sol, and LanWest have QCB larval food plants, including *Plantago erecta* (dot-seed or dwarf plantain) and *Collinsia* spp. (Chinese houses) at Rugged, *Cordylanthus rigidus* (dark-tip bird’s beak) at LanWest, and *Collinsia* spp. (Chinese houses) at Tierra del Sol. DPEIR 2.3-61, 2.3-101; DPEIR Appendix 2.3-1, p. A-5; DPEIR Appendix 2.3-2, p. B-7. While the surveys performed in connection with the DPEIR did not identify QCB at Project locations, the DPEIR indicates that there are QCB populations 2.6 miles to the southwest and 6 miles to the north of the Rugged project site. DPEIR Appendix 2.3-2, p. 1-170. Further, there are QCB populations to the southeast of the project site, in Mexico south of Jacumba. Recovery Plan, p. 52. In addition, the California Department of Fish and Wildlife’s California Natural Diversity Database’s list of unprocessed data indicates potential sightings of QCB in both the Tierra del Sol and Live Oak Springs quadrangles.³³ This contradicts the DPEIR’s

O10-49

³² Adult nectar feeding list for QCB, U.S. Fish and Wildlife Service’s 2003 Recovery Plan for the Quino Checkerspot Butterfly, *Euphydryas editha quino* (“Recovery Plan”), p. 19, available at http://ecos.fws.gov/docs/recovery_plan/030917.pdf.

³³ California Natural Diversity Database, data for Live Oak Springs Quadrangle (3211663) and Tierra del Sol Quadrangle(3211653) (attached hereto as Exhibit 15). The database can be

activities may have significant effects. However, in response to this comment and others received from the California Department of Fish and Wildlife, the DPEIR was revised to refrain from making significance conclusions for certain biological resources, such as those pertaining to the burrowing owl for the LanEast solar farm programmatic component; see also response to comment letter S3. These revisions to the DPEIR are presented in strikeout/underline format; refer to Section 2.3.7. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

O10-47

Refer to response to comment F1-5 and F1-6 regarding avian collisions. Avian species might be susceptible to impacts related to glare, either by thinking that the trackers are a water body thus causing energetic impacts by inadvertently leading them to the array, or disorienting them. These impacts are anticipated to mostly affect migrating birds and birds moving between large water bodies of which there are several in the vicinity. As discussed in Chapter 2.1, Aesthetics, glare produced by the trackers is reported to be lower than that of many man-made surfaces, including metal roofs and glass, and water. Additionally, the size and design of the trackers would result in a site configuration where solar

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statement that “there are no CNDDDB records for this species within the solar farm area or surrounding 6-quadrant quadrangle search.” DPEIR 2.3-42 to 2.3-43.

According to the Recovery Plan, the risks for the QCB within the Southeast San Diego Recovery Unit include habitat destruction, disruption and fragmentation. Recovery Plan, pp. 84-85. Further, the particular locations used by QCB shift over time, as the QCB consume host plants and require new host habitat. Recovery Plan, 28-29. The known locations for QCB, including those identified in the Recovery Plan and those mentioned in the DPEIR, show that QCB occur in close proximity to the Project. The Project will remove a significant source of QCB host plants, which in turn will prevent these plants from propagating and replenishing depleted host habitat in the QCB recovery area. The Project will also contribute to the fragmentation of potential QCB host habitat, and remove potential habitat otherwise available during times of population expansion. Recovery Plan, p. 28-29.

The Project’s impacts to QCB and QCB habitat do not end there. As discussed below, the Project’s groundwater pumping will reduce the available near-surface water for plant species. In addition, the Project’s use of herbicides to suppress vegetation at the Project sites, including the Tierra del Sol gen-tie, will further reduce the propagation of QCB host species. The DPEIR’s incorrect conclusion that the Project will have no significant impact on QCB is unsupported and must be revised.

5. The DPEIR Fails to Adequately Address Impacts to Water-Dependent Vegetation and Special Status Plan Species.

As discussed above in Section A 3, Dr. Ponce has documented many areas in the Boulevard region, including those adjacent to the Rugged site, where plants depend upon near-surface groundwater and water “exfiltrating to the surface in the form of springs.” Ponce, p. 31. As discussed above, the DPEIR fails to acknowledge the interplay between near-surface groundwater, artesian springs, and groundwater pumping in the area. By focusing solely on the impacts of groundwater pumping on oaks – and by incorrectly assuming that water-dependant vegetation with root systems less than three-feet deep will not be impacted by groundwater pumping – the DPEIR ignores the significant impacts of groundwater pumping on vegetation adjacent to the Project sites. The Project’s reliance upon groundwater pumping will impact QCB host plants, and other sensitive habitat in the Project area, by lowering the water level to below the root zones.

accessed at: https://maps.dfg.ca.gov/viewers/cnddb_quickviewer/app.asp

O10-49
 Cont.

 O10-50

panels are spaced further apart than typical PV panels, reducing the potential to create a “lake effect.” The proposed solar farms are located within the Pacific Flyway for migratory avian species; however, the project sites is located east of the main coast migration route and west of the primary route between the Gulf of California and the Salton Sea. Therefore, most species are not expected to fly over the project sites. Additionally, many birds are known to migrate at night (Emlen 1975, Lowery 1951, USGS 2013), which reduces glare-related impacts to migrants. Therefore, due to the CPV specific technology proposed, distance from primary migration routes and typical migration patterns, and configuration of the trackers, glare is not expected to result in significant impacts to migrating avian species. There is very little scientific information available regarding the “pseudo-lake effect,” and an adequate discussion of the potential impacts would be speculative. (14 CCR § 15145 [impact too speculative for evaluation]). Additionally, the applicant has voluntarily agreed to implement a Bird and Bat Monitoring Program as a condition of approval for the Proposed Project that entails training of site O&M staff by a County approved biologist to perform self-monitoring of the project site for bird and bat strikes for a period of three years. A quarterly report of bird and bat strike observations and data will be submitted to the County of San Diego to assist with regional data

	<p>collection efforts. The applicant will also assist with other regional data collection efforts regarding bird and bat strikes that the County may develop. This condition of approval has been added to contribute to the collection and distribution of avian mortality data.</p> <p>O10-48 The County does not agree that the DPEIR fails to adequately address impacts to Peninsular bighorn sheep. Peninsular bighorn sheep are not present within the Project sites; there are no suitable western-ranging open rocky mountain areas within or adjacent to the Proposed Project area to support Peninsular bighorn sheep. Although the Proposed Project, specifically the LanEast site, is located within close proximity to Peninsular bighorn sheep habitat designated by the USFWS, the closest CNDDDB occurrence data is approximately 67 miles northeast of the northernmost point of the Rugged Solar site. [CDFG 2012, Figure 2.3-12] The closest Peninsular bighorn sheep population to the Proposed Project area is the Carrizo Canyon subpopulation. [63 FR 13134–13150; USFWS 2000] None of the Proposed Project sites would provide avenues of movement for Peninsular bighorn sheep. The LanEast site, which is closest to designated habitat, is currently encumbered by human and equestrian use, as well as I-8 immediately to the north. The restrictive nature of each of the Proposed Project sites, coupled with lack of occupied Peninsular bighorn sheep habitat and site locations conclude that development in the</p>
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	<p>Proposed Project area would not affect bighorn sheep movement or lambing areas.</p> <p>O10-49 The County does not concur with the assertion that the DPEIR downplays the Proposed Project’s impacts to Quino checkerspot butterfly.</p> <p>Quino checkerspot butterfly is a federally listed species and the USFWS published an accepted survey protocol for the species in 2002 (USFWS 2002). Focused surveys for Quino checkerspot butterfly were recently conducted in accordance with the guidelines provided in the 2002 USFWS protocol as described in the DPEIR and its appendices:</p> <p>Tierra del Sol solar farm in 2012 (solar farm) and 2013 (gen-tie alignment) (Dudek 2013; Appendix 2.3-1 of DPEIR, the BRR for Tierra del Sol solar farm)</p> <p>Rugged solar farm in 2011 (AECOM 2012c; Appendix D of DPEIR Appendix 2.3-2, the BRR for Rugged solar farm) and 2013, for off-site areas (Dudek 2013a as cited in Appendix 2.3-2, the BRR for Rugged solar farm)</p> <p>LanEast in 2011 (AECOM 2011; Appendix 2.3-1 of DPEIR, 45-Day summary report)</p> <p>LanWest in 2011 (AECOM 2012; Appendix 2.3-4 of DPEIR, BRR for the LanWest solar farm).</p>
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	<p>The DPEIR states that protocol surveys for Quino checkerspot butterfly were conducted and were negative (DPEIR Sections 2.3.1.3, 2.3.1.4, 2.3.1.5, and 2.3.3.1). Completion of the USFWS protocol surveys fulfill the assessment standards necessary for evaluating the status of the Quino checkerspot on the Proposed Project site for CEQA purposes.</p> <p>The commenter states that there are adult nectar and larval host (food) plants within the Proposed Project locations. The presence of hosts plants for Quino checkerspot was disclosed and described in each of the BRRs and focused survey reports for each site. It should be noted that these “host” plants, including Coulter's snapdragon (<i>Antirrhinum coulterianum</i>), common owl's-clover (<i>Castilleja exserta</i>), dark-tipped bird's-beak (<i>Cordylanthus rigidus</i> ssp. <i>setiger</i>), dot-seed plantain (<i>Plantago erecta</i>), woolly plantain (<i>Plantago patagonica</i>), are common in areas of southern California that do not support the Quino checkerspot butterfly, so while their presence as host plants may be necessary for butterfly occupation, their mere presence does not logically lead to the conclusion that they are actually functioning as host plants for the Quino checkerspot butterfly (i.e., they may be necessary but not sufficient for butterfly occupation).</p> <p>The commenter also states that the DPEIR discloses that Quino checkerspot butterflies populations are located “2.6 miles southwest and 6 miles north of the</p>
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	<p>Rugged site.” There is a minor error in the comment and the DPEIR actually states that the following (underlining added for clarity):</p> <p><i>The nearest USFWS occurrence for Quino checkerspot butterfly is located approximately <u>2.5 miles</u> southwest of the project site (USFWS 2012). This species was also observed approximately 6 miles north of the project area during surveys for the Tule Wind project (HDR 2010, as cited in Appendix 2.3-2). (DPEIR, Section 2.3.1.3, Page 2.3-61).</i></p> <p>Despite the fact that there are adult nectar and larval host plants within the Proposed Project sites and that there is an occurrence 2.5 miles southwest of the Rugged solar farm, which was disclosed in the DPEIR, the focused, USFWS protocol-level surveys for Quino checkerspot butterfly were negative, and the presence of nectar and host plants and known occurrences within 2.5 miles of the site, does not indicate or infer presence of the species.</p> <p>Additionally, as previously stated in response O10-36, due to potential quality control issues related to unprocessed data, only CNDDDB processed data have been used when discussing known occurrences of species in the DPEIR and supporting BRRs. However, the fact that unprocessed CNDDDB data were not used did not affect the CEQA analysis, because the DPEIR and supporting BRRs all state that Quino checkerspot</p>
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	<p>butterfly does occur within 2.5 miles of the Proposed Project, which is within the 6-quadrangle search.</p> <p>The commenter cites the <i>Recovery Plan for the Quino Checkerspot</i> (USFWS 2013), several times. To provide the public some context regarding recovery plans, it is important to note that recovery plans are guidance documents; not regulatory requirements. This means that no agency or entity is required by the federal Endangered Species Act (ESA) to implement the recovery strategy or specific actions recommended in a recovery plan (USFWS 2014), especially if the listed species addressed in the recovery plan is absent from a project (i.e., there is no section 9 take) or would not be affected by a project involving a discretionary federal action such as issuance of a federal permit. The Proposed Project is located within the Southeast San Diego Habitat Region Recovery Unit. There is one occurrence complex (which are known population distributions) in this unit, the Jacumba Occurrence Complex (USFWS 2013).</p> <p>The commenter cites the USFWS recovery plan for the Quino checkerspot butterfly to state that the Proposed Project will prevent host plants from propagating and replenishing habitat where hosts plants have been depleted and that the Proposed Project will remove a significant source of Quino checkerspot butterfly host plants. As mentioned, protocol surveys for this species</p>
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	<p>were conducted on all sites, which require that the host plants are mapped. Based upon these intensive, multi-day, multi-week surveys, the biologists indicated that the presence of the host plants is limited to a few small populations or minimal habitat (Appendix 2.3-1 and Appendix 2.3-2 of the DPEIR). The only potential Quino host plant detected within the LanEast was a small population (approximately 10 individual plants) of darktip bird's beak (<i>Cordylanthus rigidus</i>) (Appendix 2.3-3 of the DPEIR). On LanWest, two small Quino checkerspot butterfly host plant populations (darktip bird's beak) were found and other host plants were absent (Appendix 2.3-4 of the DPEIR). These small populations of host plants are not a significant source of host plants for the species.</p> <p>The commenter also states that the Proposed Project would contribute to fragmentation of potential habitat for Quino checkerspot butterfly and references the recovery plan. Landscape connectivity between the Jacumba Occurrence Complex has already been compromised by the I-8 and may be constrained by other topographic features. Along with a general lack of host plants, these existing conditions may contribute to the absence of the Quino checkerspot butterfly on the Proposed Project site. LanEast is the closest site to the Jacumba Occurrence Complex, which is approximately 1.5 to 2 miles west of this occurrence complex. The USFWS believes that there</p>
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is likely connectivity between the Jacumba Occurrence Complex, the Table Mountain Area, and the occupied habitat in El Condor in Baja California, Mexico. Tierra Del Sol, which is near the US/Mexico border, is 6 miles west of the Jacumba Occurrence Complex and does not fragment potential habitat between the complex and Mexico.

Additionally, the recovery plan states the following: *Wherever a recovery unit shares a boundary with another recovery unit, it is crucial to maintain landscape connectivity to one or more populations in the other recovery unit in order to maintain natural metapopulation dynamics and avoid the need for costly, perpetual management* (USFWS 2003). The recovery units include areas where gene flow was historically, or currently is possible. The Proposed Project is located in the Southeast San Diego Recovery Unit, which is separated from its nearest recovery unit, Southwest San Diego Recovery Unit by 10 miles; additionally the USFWS states that connectivity between these two units has been compromised. Because the recovery unit is likely already genetically isolated from the Southwest San Diego Recovery Unit under existing conditions (i.e., there is no natural movement or interchange of individuals between the recovery units due to distance and compromised connectivity), the Proposed Project would not further isolate these already isolated units.

Dispersal studies suggest that long distance movements by individuals are not common, but may be sufficient to allow for infrequent between-patch exchanges of up to 6 kilometers (3.7 miles) (USFWS 2003); however, this dispersal distance is well short of the 10-mile distance between the Southeast and Southwest San Diego recovery units. According to the recovery plan there is ecological, and possibly landscape, connectivity with the South Riverside/North San Diego Recovery Unit to the north along the western slope of the Laguna Mountains. Based upon the location of the Proposed Project in the context of the recovery units, the Proposed Project would not preclude connectivity from the Southeast Recovery Unit to the South Riverside/North San Diego Recovery Unit via the Laguna Mountains.

The Quino checkerspot butterfly hosts plants are annual herbs or forbs and the shallowest groundwater within the Proposed Project is 6.7 feet below ground. The rooting depths of these host plants are most likely 12-18 inches and, therefore, these species do not rely on on-site groundwater, but rather absorption of available water during precipitation and fog events. Additionally, the majority of the known nectar sources for Quino checkerspot butterfly are annual or perennial plant species with rooting depths less than 6.7 feet. There are a few shrubs that could be used as nectar sources and while it is possible that groundwater pumping could

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In addition, the Project has already induced an unexamined impact on native habitat at the Rugged site, including communities of semi-desert chaparral, flat-topped buckwheat scrub, and *stragalus douglasii* var. *perstrictus* (Jacumba milk-vetch).³⁴ During the Sunrise Powerlink construction, an area of native habitat was removed for a large construction yard; this habitat contained 836 rare Jacumba milk-vetch plants which were to be replaced at the site once construction was finished, as a condition of project approval. CPUC Approval, p. 2. The impact to these communities of semi-desert chaparral, flat-topped buckwheat scrub and Jacumba milk-vetch was deemed temporary, as SDG&E would mitigate the impacts through revegetation. *Id.* Before SDG&E could begin remediating the construction yard, Soitec exercised an option to use the land and applied for the Major Use Permit triggering this environmental review. CPUC Approval, p. 3. The owner of Rough Acres Ranch indicated that the Rugged solar installation would occur on the construction yard site, and for this reason, the construction yard was never revegetated. *Id.* Thus, Soitec's application caused the temporary impact to Rough Acres Ranch to become permanent. While the DPEIR states that there are between 302 and 2,660 instances of Jacumba milk-vetch at the Rugged site (DPEIR 2.3-53), and that the Rugged site will cause a significant direct impact on 66 to 480 of them (DPEIR 2.3-104), the Project's off-site mitigation plans ignores the impacts already induced by the Project. DPEIR 2.3-174.

O10-51

6. The DPEIR's Mitigation Measures Are Insufficient to Reduce the Project's Potentially Significant Wildlife Impacts.

The DPEIR claims that off-site open-space preservation of an acreage of native habitats equivalent to or greater than the acreage of project impacts will mitigate the Project's potentially significant impacts. DPEIR 2.3-174 (M-BI-PP-1). The DPEIR recognizes that the offsite parcel must be evaluated to see if it provides similar or greater biological function and value than the impacted Project locations. *Id.* In order for this assessment to have value, however, the County must know what the Project's impacts are. As discussed above, the incomplete and inadequate golden eagle and other raptor surveys render any conclusions regarding the degree of impacts unfounded. The DPEIR's flawed assessments as to PBS and QCB impacts likewise make this comparison impossible. Without an adequate assessment of the Project's impacts the County cannot determine whether the off-site mitigation location is suitable using the 1:1 – or any other – replacement ratio.

O10-52

³⁴ See California Public Utilities Commission *Approval of Alternative Program to Mitigate for Impacts at Rough Acres Yard*, June 18, 2013 ("CPUC Approval"), p. 1-3 available in the Project's Administrative Record at: <http://www.sdcountry.ca.gov/pds/ceqa/Soitec-Documents/Record-Documents/2013-06-18-Fritts-Golden-email-re-Mitigation-Restoration-in-lieu-of-using-Rough-A.pdf>

affect shrubs, it is not likely. Therefore, any groundwater depletion would not affect the viability the host plants. Nonetheless, it is important to note that impacts to groundwater- dependent vegetation will be monitored to ensure that effects are minimized through implementation of M-BI-PP-15 (FPEIR, Section 2.3.6).

No herbicides that could potentially affect host plants will be used during construction (DPEIR, Appendix 2.3-1 and Appendix 2.3-2) and the herbicides used during operation and maintenance activities will be used only to prevent vegetation from recurring around structures and will be contained within the Proposed Project impact footprint to avoid and minimize indirect impacts to vegetation outside of the impact footprint (DPEIR, Appendix 2.3-1 and Appendix 2.3-2). Additionally, the use of herbicides, including types and applications methods, will comply with state and federal laws, with the goal of controlling weeds (DPEIR, Section 2.3.6). Therefore, the effect of herbicides on the propagation of host species for Quino checkerspot butterfly are expected to be minimal and would be less than significant with the incorporation of mitigation (DPEIR, Section 2.3.7).

Finally, prior to construction, additional focused surveys for Quino checkerspot will be conducted based upon the recommendation of the USFWS (See response F1-17) to verify the conclusion in the DPEIR

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In any event, the proposed mitigation property identified in the DPEIR fails to adequately protect wildlife. The USFWS and California Department of Fish and Wildlife have indicated that the mitigation property's value will depend on whether it can be connected to land north of Interstate 8.¹⁵ However, Conservation Groups have reviewed the Project's Administrative Record, and there is nothing currently available to indicate that the mitigation parcel will include the northern land bridge that these resource agencies requested. In addition, portions of this proposed mitigation property, Lansing's Empire Ranch, appear to be potential future sites for the Project's Los Robles alternative (used in Alternative 7) and gen-tie power line. See DPEIR Figs. 2.6-2a and 2.6-2b (Maps of mitigation parcel and Alternative 7 sites). Although Conservation Groups support the concept of keeping habitat mitigation within the general community area of a project, it must be done without damaging the conservation values for which mitigation is being sought. Otherwise, impacts will not be reduced to below the level of significance. In this case, there should not be an overhead power line for the Project running through mitigation property, given the well-known risks of collision and electrocution that power lines pose to birds and since mitigation for loss of bird habitat is being sought.

Further, despite the DPEIR's statements to the contrary (DPEIR 2.3-152, DPEIR 2.3-206), this off-site mitigation parcel cannot assist the County in achieving the Preliminary Conservation Objectives in the East County Multiple Species Conservation Planning ("ECMSCP") Agreement. The DPEIR claims that "the project is designed in accordance with the Preliminary Conservation Objectives outlined in the Planning Agreement for ECMSCP." However, since the mitigation for the Project is inadequate, as discussed above, the Project does not meet the Preliminary Conservation Objectives for the ECMSCP.

Finally, the DPEIR lacks a mitigation measure for post-construction monitoring of avian mortality. Without such monitoring, neither the County nor the public will know if this Project causes direct take of legally protected species, in violation of the MBTA. It is Conservation Groups' understanding that this Project will be the first large-scale installment of the Soitec CPV technology in the United States. Ongoing collection and distribution of avian mortality data is vital to the ongoing assessment of this emerging technology. If ongoing monitoring reveals fewer bird fatalities at the Project as compared to more traditional solar projects, everyone will benefit from that knowledge. On the other hand, if the Project has high levels of bird mortality, robust and enforceable monitoring measures are necessary to ensure that such harms are measured, and reduced if possible. The County should work with USFWS and other appropriate agencies to develop an enforceable avian mortality monitoring program for the Project.

¹⁵ Goebel, Karen and Gail Sevens. Letter to Patrick Brown. December 4, 2013. Available at <http://www.sdcounty.ca.gov/pds/ceqa/Soitec-Documents/Record-Documents/2013-12-04-Karen-Goebel-Gail-Sevens-Letter-re-Biological-Evaluation-of-the-Proposed-Soitec-Mitigation-Site-San-Diego-County-CA.pdf>. Last accessed February 28, 2014.

O10-53

O10-54

that this species will not be significantly impacted by the Proposed Project.

O10-50 As described in response O10-49, the Quino checkerspot butterfly host plants are annual herbs or forbs and the shallowest groundwater within the Proposed Project is 6.7 feet below ground. The rooting depths of these host plants are most likely 12-18 inches and, therefore, these species do not rely on on-site groundwater, but rather absorption of available water during precipitation and fog events. Therefore, any groundwater depletion would not affect the viability the host plants.

Mitigation Measure M-BI-PP-15 has been revised to include implementation of a Groundwater Monitoring and Mitigation Plan (GMMP), which has been prepared for both the Rugged and the Tierra del Sol solar farms, to ensure that pumping does not unduly impact existing well users and/or groundwater-dependent habitat (DPEIR Section 2.3.6.2). Refer to common responses WR1 and WR2. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

Refer to common response WR2, Appendix 9.0-2 (Critique of "Impacts of Soitec Solar Projects on Boulevard and Surrounding Communities," by Dr. Victor M. Ponce, dated 15 November 2013), and response I10-1 for a response to "Impacts of Soitec

	<p><i>Solar Projects on Boulevard and Surrounding Communities</i>” by Dr. Ponce.</p> <p>O10-51 The County disagrees that prior impacts not associated with the Proposed Project, which have already been mitigated, must be mitigated again. Impacts and associated mitigation related to the construction of the Sunrise Powerlink are the responsibility of SDG&E. The County has no jurisdiction over SDG&E, SDG&E’s project, or the mitigation of its impacts; the CPUC has CEQA jurisdiction over the project and is the agency with authority to provide for revegetation or other mitigation. The letter cited in the comment, <i>Approval of Alternative Program to Mitigate for Impacts at Rough Acres Yard</i>, dated June 18, 2013 states: “By not restoring the Rough Acres site, the temporary impacts to plants become permanent. This status would require SDG&E to undertake offsetting mitigation elsewhere for the plant communities and Jacumba milk-vetch lost at Rough Acres”. SDG&E and CPUC have acknowledged that by not restoring the construction yard, temporary impacts will now be considered permanent, and mitigation for this permanent impact is now required. SDG&E provided alternatives to restoration, which are described in the referenced letter.</p> <p>O10-52 The commenter states that the DPEIR does not adequately address impacts to golden eagle and other raptors, Peninsular bighorn sheep, or Quino checkerspot butterfly</p>
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	<p>and, therefore, an adequate assessment of the suitability off-site mitigation cannot be completed.</p> <p>The County does not concur with the assertion that impacts to these species are not adequately addressed. Please refer to common response BIO-1 regarding the impact assessment conducted for golden eagle, responses O10-37 and O10-38 for raptors, response O10-48 for Peninsular bighorn sheep, and O10-49 for Quino checkerspot butterfly.</p> <p>O10-53 The County does not agree with the commenter’s assertion that the mitigation for the Proposed Project’s biological resource impacts is inadequate. The purpose of the potential mitigation site presented in the DPEIR is to conserve a large block of habitat with diverse biological features that provides similar or greater biological function and value when compared with the identified impacts of the Project (see DPEIR Section 2.3.3, Section 2.3.6, and mitigation measure M-BI-PP-1). Conservation of a large block of habitat would prevent land within East County from becoming fragmented. The mitigation site supports both habitat for, and populations of, special-status plant and wildlife species impacted by the Proposed Project. Future preservation/reserve needs can be designed to expand upon the potential mitigation site, connecting habitat areas south and north of I-8.</p>
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7. The DPEIR's Cumulative Biological Impacts Analysis In the Project's DPEIR Is Inadequate.

First, the DPEIR understates cumulative impacts by failing to include all of the renewable energy projects that are proposed in the immediate project area. DPEIR Table 2.3-16, "Cumulative Projects List within the Biological Cumulative Analysis Study Area," lists Tule Wind as the *only* solar or wind project that should be cumulatively considered. DPEIR 2.3-206 to 2.3-207. However, there are numerous other projects in the Boulevard area that must be cumulatively considered. Compare DPEIR 2.3-206 to 2.3-207 with the map of Boulevard Energy Projects available at: <http://www.sdcountry.ca.gov/pds/ceqa/Soitec-Documents/Record-Documents/2014-01-02-MindyFogg-email-Energy-Map.pdf>; see also DPEIR 2.3-299.

Second, the DPEIR understates the cumulative impacts of existing and reasonably foreseeable energy projects. Although it mentions the Tule Wind and San Diego Gas & Electric's (SDG&E's) Master Special Use Permit project as energy-related foreseeable cumulative projects, it dismisses their potential impacts, stating that "it is reasonable to expect" that under existing laws and regulations appropriate measures will be taken to prevent avian collision and electrocution. DPEIR 2.3-170. The mere presence of laws and regulations does not prevent avian collisions and electrocutions at this and other foreseeable project sites.

Collisions with transmission lines are estimated to kill up to 175 million birds annually in the U.S.; electrocutions by these lines are estimated to kill up to hundreds of thousands more. Manville, Albert M., USFWS senior wildlife biologist, *Anthropogenic-related Bird Mortality Focusing on Steps to Address Human-caused Problems – a White Paper for the Anthropogenic Panel*, International Partners in Flight Conference, August 27, 2013, p. 6, attached hereto as Exhibit 16. Since this impact is so detrimental the DPEIR should have addressed it in detail, taking into account any recent bird strikes or electrocutions at the nearby Southwest and Sunrise Powerlinks. The DPEIR must say more than "transmission towers and lines are designed to conform to Avian Power Line Interaction Committee (APLIC) standards" in its analysis. APLIC standards, while quite helpful, are only guidelines, not requirements. Furthermore, birds will still be killed at transmission facilities that "follow" APLIC standards. The exact measures that will be taken to reduce electrocution and collision deaths must be fully explained, and the bird kills that will result nonetheless must be disclosed, assessed and mitigated. In addition, the collision and electrocution impacts of this Project must be considered for all birds, not just the special-status birds mentioned in the DPEIR.

Third, the cumulative impacts to golden eagles are not adequately analyzed in the DPEIR. Looking only at the predicted golden eagle mortality of the Tule Wind project combined with the loss of golden eagle foraging habitat predicted for the Soitec Solar project, these impacts are likely to be severe. DPEIR 2.3-206. USFWS has expressed concern about the potential for Phase II of the Tule Wind project to kill golden eagles on an ongoing basis and cause the loss of a golden eagle territory. USFWS Memorandum to Bureau of Indian Affairs, Re: Draft Avian and

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O10-58

O10-59

The commenter's assertion that portions of the proposed mitigation site appears to be potential future sites for Alternative 7 is incorrect. The Los Robles site is located immediately adjacent to the mitigation site, but the two sites do not overlap. With regards to the gen-tie line, the commenter is correct that a portion of the gen-tie line will extend over the western and northern portions of the proposed mitigation site. Alternatives 3 and 4 discuss placing the entire gen-tie alignment underground for all 6 miles of the gen-tie route, as compared to the Proposed Project which includes 3.5 miles of overhead gen-tie. Both alternatives were not considered environmentally superior to the proposed project due to increased biological, cultural, air quality and noise impacts related to additional ground disturbance. Mitigation required for the Rugged and Tierra del Sol projects is far less than the acreage present within the mitigation site. Therefore, areas of the proposed mitigation site that overlap with the gen-tie alignment can be excluded from the final mitigation site boundary.

Refer to response to comments F1-5, F1-6 and O10-54 for a discussion of bird collision and electrocution.

The County does not agree with the commenter's statement that the Proposed Project was not designed in accordance with the Preliminary Conservation Objectives outlined in the Planning Agreement for

	<p>ECMSCP. Table 2.3-15 in the DPEIR outlines the ECMSCP Planning Agreement Conservation Objectives and how the Proposed Project will comply with each of the applicable objectives. See also response to comment F1-2.</p> <p>O10-54 Refer to response to comment F1-5 and F1-6. In response to this comment, and other related comments, the applicant has voluntarily agreed to implement a Bird and Bat Monitoring Program as a condition of approval for the Proposed Project that entails training of site O&M staff by a County approved biologist to perform self-monitoring of the project site for bird and bat strikes for a period of three years. A quarterly report of bird and bat strike observations and data will be submitted to the County of San Diego to assist with regional data collection efforts. The applicant will also assist with other regional data collection efforts regarding bird and bat strikes that the County may develop. This condition of approval has been added to contribute to the collection and distribution of avian mortality data.</p> <p>These changes are presented in strikeout/<u>underline</u> format; refer to Section 2.3.6. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.</p>
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	<p>O10-55 The County disagrees with the commenter’s assertion that the DPEIR understates cumulative biological impacts because it does not include all renewable energy projects in the area. The County defined the biological resources cumulative study area as the Peninsular Ranges of the California Floristic Province. (Section 2.3.4 of the DPEIR). This cumulative study area surrounding the Proposed Project sites is delimited by the geographic extent of natural landscapes and biota and comprises 493,970 acres. (<i>Ibid.</i>) The cumulative study area reflects broad patterns of natural vegetation, specific plant assemblages, geology, topography, and climate, rather than arbitrary and unnatural geo-political boundaries, such as County boundaries. (<i>Ibid.</i>) Projects within this study area have the potential to affect similar vegetation communities as the Proposed Project and could therefore cumulatively contribute to impacts to natural vegetation communities or species associated with these habitat types. (<i>Id.</i> at 2.3.4.)</p> <p>The biological resources cumulative study area is depicted in DPEIR Figure 2.3-27, along with the cumulative projects within this area that were known to the County at the time the DPEIR was prepared. It should be noted that those projects included in Table 1-12 but not provided in Table 2.3-16 are either outside of the biogeographic cumulative study area defined in the DPEIR (Energia Sierra Juarez Wind</p>
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Bat Protection Plan for the Tule Reduced Ridgeline Project, June 22, 2012, p. 3. The Tule Wind project would be considered high risk to golden eagles with little opportunity to minimize effects. This Project's impacts, when taken with Tule's, are cumulatively significant.

Fourth, the DPEIR predicts that impacts to foraging habitat for raptors, including for golden eagles, will be potentially significant at the Tierra del Sol, Rugged, LanEast, and LanWest sites. DPEIR 2.3-114 to 2.3-116.³⁶ The DPEIR states that the San Diego black-tailed jackrabbit, a golden eagle prey species, is present at the Tierra del Sol and Rugged solar project sites. DPEIR 2.3-44, 2.3-65. The species was also observed at the LanWest site and may also be present at the LanEast and Los Robles sites. DPEIR 2.3-80. There may be additional prey within the Project site that are not listed in the DPEIR because they are not special-status species. Although the DPEIR claims that these impacts will be mitigated to less than significant, the proposed mitigation is inadequate to achieve that level of amelioration, as discussed above. DPEIR 2.3-167 to 2.3-169. The ongoing mortality and reduced productivity of golden eagles at the Tule Wind project, when combined with impacts of the Soitec Solar Project, will cause significant negative impacts to a fully protected species whose population is already declining in the County. ³⁷

Fifth, because the Project's avian studies were inadequate as discussed above, this lack of adequate data carries over into the DPEIR's cumulative impacts analysis for all Project sites. These portions of the DPEIR will also need to be revised once adequate avian studies have been conducted. ³⁸

Finally, the DPEIR reflects a fundamental misunderstanding of the importance of habitat to wildlife. It states, "most of the special status wildlife species can adequately move out of the way of project disturbance, with the possible exception of small mammals and reptiles" and then concludes that cumulative impacts would be less-than-significant to special status wildlife species. DPEIR 2.3-168. Both the premise and the conclusion are mistaken. On the contrary,

³⁶ The Los Robles site, Alternative 7, was not included in the DPEIR's assessment of significance of impacts to foraging and functional foraging habitat; and in fact no biological assessment of the Los Robles site was included in the DPEIR at all, which compounds the previously discussed inadequacies of the DPEIR's environmental analysis.

³⁷ Unitt, Phil, *San Diego County Bird Atlas*, San Diego Natural History Museum, San Diego, California, p. 171, available at: <http://sdplantatlas.org/birdatlas/pdf/Golden%20Eagle.pdf>.

³⁸ The DPEIR acknowledges that the Soitec solar project will have potentially significant direct and indirect impacts on 29 sensitive wildlife species, including Bell's sage sparrow, Cooper's hawk, prairie falcon, golden eagle, loggerhead shrike, turkey vulture, northern harrier, red-shouldered hawk, Southern California rufous-crowned sparrow, and tricolored blackbird. DPEIR 2.3-126.



Projects, Ocotillo Express LLC, Renewergy LLC, Energia Sierra Juarez U.S. Transmission line, Imperial Valley Solar, and Jacumba Solar Farm projects) or are currently on hold and therefore are not considered reasonably foreseeable (meteorological testing phase at EGP Jewel Valley, Manzanita Wind Energy Project, Debenham Energy, Silverado Power solar farm, Campo Landfill Project, and Heald projects). Other projects are of such limited scope in the current phase of known development that they would not contribute to cumulative impacts (National Quarries, wind measurement towers in the Descanso Ranger District of Cleveland National Forest, and A. Brucci LLC projects) or information related to potential impacts of the project are not available to the public (Boulevard Border Patrol Station and Border Patrol Fence Project). The remaining wind energy project, the Tule Wind Farm, is included in Table 2.3-16.

O10-56

The Proposed Project would implement appropriate measures to prevent electrocution or collision by special-status bird or bat species with Project transmission lines in accordance with mitigation measure M-BI-PP-13, which requires that all transmission towers and lines be designed to conform with Avian Power Line Interaction Committee (APLIC) standards. Specifically, these measures will include guidance on proper pole and cross member dimensions, phasing, and insulator design and dimensions to preclude wire-to-wire contact. In addition,

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wildlife is dependent on habitat for its survival, and the very act of having to move from one area to another is a significant impact that can be detrimental to an animal's survival. It is a fundamental principle of conservation biology that habitat is usually fully occupied.³⁹ Consequently if wildlife is displaced by a project, usually the areas into which it is dispersed will already be fully occupied. The resulting lack of unoccupied habitat for the displaced wildlife typically results in their death – or that of the host species. For example, if half of a 1000-acre valley is developed, the remaining 500 acres will not suddenly be able to support double the population of wildlife that previously inhabited that acreage. Rather, the population density will over time return to its previous level, and half of the wildlife that originally occupied the valley will die. Thus, the DPEIR's erroneous conclusion that wildlife will "move out of the way" and therefore not be harmed nor create a cumulative impact is wrong as a matter of fundamental conservation biology.

O10-62
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C. NOISE

The DPEIR's noise impact analysis suffers from at least two fatal flaws. First, the geographic scope of its cumulative impact analysis is too narrow. Second, the DPEIR is defective because it fails to analyze the Project's low-frequency noise and infrasound ("ILFN")⁴⁰ emissions, and instead dismisses them as causing no significant impacts without any supporting evidence.

1. The Geographic Scope of the DPEIR's Cumulative Noise Impact Analysis Is Too Narrow.

Agencies "should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used." CEQA Guidelines § 15130(b)(3). An agency's failure to include a project in the EIR's cumulative impact analysis because of a geographic limitation violates CEQA if "it was reasonable and practical to include the project[]" and, without it, "the severity and significance of the cumulative impacts were [not] reflected adequately." *Kings County Farm Bureau v. City of Hanford* ("Kings County") (1990) 221 Cal.App.3d 692, 723. "A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of a project, the necessity for mitigation measures, and the appropriateness of

O10-63

³⁹ This principle is often expressed with the simple truism that "nature abhors a vacuum." Bolen, *Ecology of North America*, New York: John Wiley & Sons; 1998, p. 9.

⁴⁰ "Infrasound is defined as sound with a frequency of less than 20 Hz, and low frequency noise as sound with a frequency of less than 200 Hz." Farboud *et al.*, 2013, "Wind Turbine Syndrome": Fact or Fiction?," *The Journal of Laryngology & Otology*, 127(3):222-226, at p. 226 (attached hereto as Exhibit 17).

bird diverters or other means to make lines more visible to birds will be installed to help avoid collisions. This requirement would mitigate this potentially significant impacts to special status avian species (BI-TDS-15 and BI-R-15). Other foreseeable cumulative projects with transmission and distribution towers and lines would also implement APLIC standards or other appropriate measures to prevent electrocution or collision and, as a result, the Proposed Project would not contribute to a cumulative impact (DPEIR, Section 2.3.4).

O10-57 Refer to response to comment O10-56, F1-5 and F1-6. In response to this comment, and other related comments, the applicant has voluntarily agreed to implement a Bird and Bat Monitoring Program as a condition of approval for the Proposed Project, requiring the development of a self-monitoring and reporting plan for bird and bat collisions.

O10-58 Refer to response to comment F1-5 and F1-6. In response to this comment, and other related comments, the applicant has voluntarily agreed to implement a Bird and Bat Monitoring Program as a condition of approval for the Proposed Project that entails training of site O&M staff by a County approved biologist to perform self-monitoring and reporting of the project site for bird and bat strikes for a period of three years. A quarterly report of bird and bat strike observations and data will be submitted to the County of San Diego to assist with regional data collection efforts. The

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project approval.” *Citizens to Preserve the Ojai v. County of Ventura (“Ojai”)* (1985) 176 Cal.App.3d 421, 431.

Here, the DPEIR’s cumulative noise impact analysis is unduly circumscribed within a 0.25-mile radius of the Project, omits discussion of essential cumulative projects, and thereby “impedes meaningful public discussion” and violates CEQA. *Id.*; DPEIR 2.6-46 to 2.6-47. Regardless of whether the Project itself causes significant noise impacts more than 0.25 miles away, many other projects outside of that 0.25-mile radius will contribute to significant noise disturbances within that boundary. For example, the Tule Wind Project is expected to generate 8-hour-averaged construction noise levels of up to 94 dBA at two of the four noise sensitive land uses (“NSLUs”) included in the Rugged Solar noise analysis (NSLUs 2 and 4), and up to 76 and 69 dBA, respectively, for NSLUs 1 and 3. Tule Wind Project FEIS D.8-25 (section D.8 is attached hereto as Exhibit 18).⁴¹ The Tule Wind Project’s wind turbines are also projected to generate significant levels of operational noise, up to 54 dBA (L_{eq}) for NSLU 4 (homes 2-27), 42 dBA for NSLUs 1 and 2 (homes 30 and 27), and 43 dBA for NSLU 3 (home 31). *Id.* at D.8-35. Even after taking into account the proposed noise mitigation measures for Rugged Solar, the combined noise impacts of Tule Wind and Rugged Solar would likely be significant at the sensitive land use sites identified in the DPEIR.

“Because the [DPEIR] does not provide information regarding” the noise emissions and impacts of Tule Wind and other “similar developments” nearby, “the County could not . . . determine whether such information would have revealed a more severe [cumulative] impact. Accordingly, the EIR is inadequate.” *Kings County*, 221 Cal.App.3d at 724. The County must therefore expand the geographic scope of its cumulative noise impact analysis and evaluate the noise impacts of Rugged Solar when combined with Tule Wind and other existing and foreseeable projects in the area. Failing to include Tule Wind, among other projects, in the cumulative impact analysis is “inaccurate and misleading” and violates CEQA. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 724; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1216 (same).

2. The DPEIR Fails to Analyze the Project’s ILFN Emissions and Impacts.

An EIR’s factual determinations must be “supported by substantial evidence.” *Vineyard, supra*, 40 Cal.4th 426. “A clearly inadequate or unsupported study is entitled to no judicial deference,” and does not constitute substantial evidence supporting an agency’s finding. *Laurel*

⁴¹ As seen by comparing DPEIR figure 2.5-1 and DPEIR Appendix 2.6-2 Figure 4 with Figure 5 of HDR Engineering, Inc.’s February 2011 Tule Wind Project Draft Noise Analysis Report (excerpts of which are attached hereto as Exhibit 19), homes 2-26, 27, 30 and 31 identified in the Tule Wind EIS and noise analysis report correspond respectively to NSLUs 4, 2, 1 and 3 in DPEIR Appendix 2.6-2 figure 4.

O10-63
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O10-64

applicant will also assist with other regional data collection efforts regarding bird and bat strikes that the County may develop. This condition of approval has been added to contribute to the collection and distribution of avian mortality data.

O10-59 For reasons stated in common response BIO1, the County does not agree that the analysis of golden eagles in the DPEIR is inadequate.

O10-60 For reasons stated in common response BIO1, the County does not agree that the analysis of impacts to raptors, including golden eagles, in the DPEIR is inadequate.

O10-61 The County does not concur with the assertion that the surveys are inadequate. Please refer to common response BIO1 regarding the impact assessment conducted for golden eagle, and the responses to comments O10-37 and O10-38 for raptors.

O10-62 The County disagrees with the assertion that the DPEIR reflects a fundamental misunderstanding of the importance of habitat to wildlife. The commenter references the DPEIR’s analysis of direct impacts to special-status wildlife species during construction (DPEIR, pp. 2.3-167 to 2.3-168). In the context of that discussion, the DPEIR explains that most special-status species have sufficient mobility to avoid project disturbance during construction (DPEIR, pp. 2.3-167 to 2.3-168). As described in Section 2.3.4.1, mitigation

	<p>for the loss of habitat for special-status species would reduce potentially significant impacts to special-status species to less than significant:</p> <p>“However, the Proposed Project would preserve in permanent open space native habitats (M-BI-PP-1), which would mitigate for the habitat loss of special-status species from the Proposed Project. Additionally, the combined Proposed Project and cumulative project impacts (3,061.3 acres) are only approximately 0.7% of the total acreage of vegetation communities analyzed in the biological cumulative analysis study area (466,564 acres).”</p> <p>In addition, the County disagrees with the unsupported statement that habitat is usually fully occupied. Based on a number of factors, the density of a given species in a suitable habitat area will not as a rule coincide with the habitat’s carrying capacity; there is not necessarily a lineal relationship between number of individuals and acreage of habitat (Bookhout 1994). Therefore, the commenter’s conclusion that wildlife would not be able to disperse to avoid Project disturbance is based on a flawed premise.</p> <p>O10-63 The County generally agrees with the commenter that under CEQA the agency should define the geographic scope of the area affected by the cumulative impact of a project and provide a reasonable explanation for the geographic limitation used (14 CCR 15130(b)(3)).</p>
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Heights I, supra, 47 Cal.3d 409 n.12. An *unprovided or nonexistent* study is *a fortiori* insufficient to support an EIR’s factual conclusion. See *Kings County*, 221 Cal.App.3d at 712 (“A prejudicial abuse of discretion occurs” where the EIR fails “to include relevant information [and that failure] precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process”).

Here, the DPEIR purports to analyze the Project’s ILFN emissions, but in reality it just cursorily dismisses them as having “no health effects” without any supporting evidence. DPEIR 2.6-57 to 2.6-58. Because the two central assumptions underlying the DPEIR’s “no health effects” conclusion are entirely unsupported, the DPEIR’s “analysis” is fatally flawed. *Vineyard*, 40 Cal.4th at 426; *Laurel Heights I*, 47 Cal.3d at 409 n.12; *Kings County*, 221 Cal.App.3d at 712, 723-724.

First, the DPEIR states that the Project would not produce much low-frequency noise or infrasound because the “amount of sound power generated by the inverters and transformers is low.” DPEIR 2.6-57. Yet the DPEIR *entirely fails* to estimate how much ILFN – either the frequencies or the decibels – the Project will produce. The only estimates the DPEIR provides are A-weighted values from which the ILFN components of the Project-generated noise cannot be calculated.⁴² DPEIR 2.6-65 to 2.6-68, Appendices 2.6-1 and 2.6-2. The DPEIR provides neither the unweighted and G-weighted noise level estimates nor the noise frequency spectra necessary to assess the Project’s ILFN emissions and impacts.⁴³

Second, the DPEIR wrongly assumes that ILFN – including both audible and inaudible ILFN – cannot hurt you. DPEIR 2.6-57 (“inaudible sound is generally not assessed in analyses of environmental noise because it cannot be heard”), 2.6-58. The DPEIR asserts that “several reviews of currently available scientific data have determined that there is no direct causal relationship between low frequency sound and health effects,” but it fails to cite *any* such reviews or studies, let alone analyze them. *Id.* at 2.6-57 to 2.6-58. Moreover, as Conservation Groups discussed in their October 10, 2013, Scoping Comments, ILFN has recently been shown to have a much greater potential to impact humans than previously thought.

⁴² Because “the inner ear, specifically the [outer hair cells (“OHCs”)], [is] far more sensitive to low-frequency sounds than is hearing,” the common method used by the renewable energy industry and governmental agencies for expressing wind turbine noise measurements – A-weighting, denoted as “dBA” – “do[es] not give a valid representation of whether [ILFN] affects the ear or other aspects of human physiology mediated by the OHC and unrelated to hearing.” Salt & Kaltenbach, 2011, “Infrasound from Wind Turbines Could Affect Humans,” *Bulletin of Science, Technology and Society*, 31(4): 296-302, at p. 299 (attached hereto as Exhibit 20).

⁴³ Using G-weighting (expressed as “dBG”), Salt and Kaltenbach (2011) have demonstrated that sound levels of 60 dBG will stimulate the OHC of the human ear, which is likely one source of the significant physiologic impacts discussed below. Exhibit 20 at p. 300.

O10-64
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O10-65

O10-66

The key question in determining whether the defined geographic scope is reasonable is whether limiting the cumulative impacts analysis to the defined area resulted in an underestimation of the severity of the cumulative impact of the project (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 724). An EIR must not only determine the appropriate geographic area for each category of potential impacts, but also provide the criterion upon which this determination is made. The geographic area cannot be so narrowly defined that it necessarily eliminates a portion of the affected environmental setting (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184, 1216).

The DPEIR delineates the geographic extent for the analysis of cumulative impacts related to noise as within 0.25 mile of any component or access route for the Proposed Project (see Section 2.6.4 of the DPEIR). The County determined that this geographic area appropriately defined the area of potential cumulative impacts based on several factors. First, noise impacts assessments for the Proposed Project found that noise impacts would generally occur within 500 feet of the noise source within the Proposed Project sites. The geographic area for the cumulative impacts was not limited to 500 feet of each solar farm site; however, as it is possible that noise from different sources within 0.25 mile of each other could combine to create a

significant cumulative impact. At distances greater than 0.25 mile, construction noise would be briefly audible and steady construction noise from the Proposed Project would generally dissipate into quiet background noise levels. Therefore, the 0.25 mile geographic scope of the noise cumulative impacts analysis is conservative based on data showing that construction or operational noise would generally be confined to within 500 feet of the Proposed Project. The geographical extent of the cumulative noise analysis adequately reflects the potential cumulative impacts of the Proposed Project. Please refer to DPEIR Section 2.6.4.

In response to this comment, the Tule Wind project has been added to the cumulative analysis for noise. These revisions to the DPEIR are presented in ~~strikeout~~ underline format; see DPEIR Section 2.6.4. The commenter does not provide the name of specific cumulative projects other than Tule Wind that were omitted from the cumulative analysis. The County does not agree with the assertion that many other projects outside the 0.25 mile radius will contribute to significant noise. If the radius were to be expanded to include more cumulative projects, such as Rough Acres Ranch Campground, and Boulevard Border Patrol Station (all within 0.5 mile of the Rugged site), these projects would not contribute to cumulative noise effects on sensitive receptors because:

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As one recent published literature review concludes, "there is an increasing body of evidence suggesting that infrasound and low frequency noise have physiological effects on the ear." Exhibit 17(Farboud *et al.*) at p. 226. Another recent review similarly concludes that, "research has demonstrated that [low-frequency sound] can elicit adverse physical health effects, such as vibration or fatigue, as well as an annoyance or unpleasantness response." Roberts & Roberts, 2013, "Wind Turbines: Is There a Human Health Risk?," *Journal of Environmental Health*, 75(8): 8-17, at p. 13 (attached hereto as Exhibit 21).

Furthermore, ILFN does not need to be audible to be harmful. Recent research demonstrates that "infrasound elicits larger electrical potentials in the apical regions of the cochlea than those generated by any other frequencies in the range of audibility. . . . The apical regions of the cochlea should therefore be regarded as highly responsive to infrasound stimulation with responses occurring at stimulus levels well below the estimated level that is perceived" (*i.e.* heard). Salt *et al.*, 2013, "Large Endolymphatic Potentials from Low-Frequency and Infrasonic Tones in the Guinea Pig," *The Journal of the Acoustical Society of America*, 133(3): 1561-1571, at p. 1569 (attached hereto as Exhibit 22); Salt & Lichtenhan, 2012, "Perception-Based Protection from Low-Frequency Sounds May Not Be Enough," presented at InterNoise 2012 in New York City, New York, August 19-22, 2012, at p. 5 (attached hereto as Exhibit 23). One study found that the cochlear outer hair cells "could be stimulated [by very low frequency sounds] at levels up to 40 dB below those that stimulate the [inner hair cells]" and can be heard. Salt & Hullar, 2010, "Responses of the Ear to Low Frequency Sounds, Infrasound and Wind Turbines," *Hearing Research*, 286: 12-21, at p. 16 (emphasis in original) (attached hereto as Exhibit 24).

In sum, because the two central assumptions underlying the DPEIR's "no health effects" conclusion are entirely unsupported, the DPEIR's "analysis" of ILFN emissions and impacts is fatally flawed. *Vineyard*, 40 Cal.4th at 426; *Laurel Heights I*, 47 Cal.3d at 409 n.12; *Kings County*, 221 Cal.App.3d at 712, 723-724.

D. ELECTRIC AND MAGNETIC FIELD POLLUTION

As Conservation Groups discussed in their October 10, 2013, Scoping Comments, the Project – primarily through its transmission lines, transformers and inverters – would expose Project workers, nearby residents, wildlife, and others to electric and magnetic field ("EMF") radiation. People and wildlife living near the Project's substations many transformer and inverter modules would be particularly susceptible to harm.⁴⁴ Recent studies, such as those by Dr.

⁴⁴ All four of the Project's CPV systems – Tierra del Sol, Rugged, LanWest and LanEast – would use "inverter and transformer units" to convert direct current ("DC") to alternating current ("AC"). DPEIR 1.0-3 (quote; Tierra del Sol), 1.0-4 (Rugged), 1.0-5 (LanWest and LanEast). The process of converting the DC electricity to AC electricity interrupts current flow and produces EMF pollution in the form of "dirty electricity" (contamination of the 60 Hz electricity



(1) The Rough Acres Ranch Project is in the early review stages at the County and is not anticipated to overlap with the Rugged construction schedule. Additionally, the County is not required to prematurely conduct this noise analysis as part of the Proposed Project's environmental review;

(2) Boulevard Border Patrol Station is already constructed; and

(3) An 8-hour average of 75dBA for the Rugged construction site would be attenuated to 46 dBA at a distance of 0.5 mile from the site, upon implementation of mitigation. Therefore, noise levels at nearby sensitive receptors would remain below the County's significance threshold.

There are no additional cumulative projects anticipated at this time within 0.5 mile of the Tierra del Sol, LanEast or LanWest solar farm sites or Tierra del Sol gen-tie.

To the extent that these additions to the DPEIR provide new cumulative Tule Wind Energy project information that does not raise important new issues about significant effects on the environment and such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

O10-64 The County acknowledges the commenter's concern that the DPEIR dismisses the Proposed Project as

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Samuel Milham and Dr. Magda Havas, have linked EMF exposure with an increase in ailments such as diabetes, fibromyalgia, chronic fatigue syndrome, and attention deficit disorder, among others.⁴⁵ Similarly, as reported in Lovich and Ennen's 2011 *BioScience* article, Doctor Alfonso Balmori (in a 2010 article) found the "possible impacts of chronic exposure to athermal electromagnetic radiation" on mammalian species to include "damage to the nervous system, disruption of circadian rhythms, changes in heart function, impairment of immunity and fertility, and genetic and developmental problems."⁴⁶

Rather than analyze these serious EMF risks, the DPEIR "does not consider EMFs in the context of CEQA for determination of environmental impact because" (1) "there is no agreement among scientists that EMFs create a health risk and" (2) "there are no defined or adopted CEQA standards for defining health risks from EMFs." DPEIR 3.1.4-1, 3.1.4-50. Both excuses fail.

First, the DPEIR's conclusion that "there is no agreement among scientists that EMFs create a health risk" is out of date, unsupported, and refuted by the numerous recent studies cited

on the electrical grid with high-frequency voltage transients). See Exhibits 8-10 to Conservation Groups' October 10, 2013, Scoping Comments, available electronically in the Administrative Record for the Project at:

<http://www.sdcounty.ca.gov/pds/ceqa/Soitec-Documents/Record-Documents/2013-10-10-Stephan-Volker-Letter-re-Soitec-Solar-PEIR-Scoping-Comments-of-The-Protect-Our-Communities-Foundation-et-al.pdf>.

⁴⁵ See, e.g., Exhibits 8-10 to Conservation Groups' October 10, 2013, Scoping Comments, available electronically in the Administrative Record for the Project at: <http://www.sdcounty.ca.gov/pds/ceqa/Soitec-Documents/Record-Documents/2013-10-10-Stephan-Volker-Letter-re-Soitec-Solar-PEIR-Scoping-Comments-of-The-Protect-Our-Communities-Foundation-et-al.pdf>; Magda Havas, "Dirty Electricity Elevates Blood Sugar among Electrically Sensitive Diabetics and May Explain Brittle Diabetes," *Electromagnetic Biology and Medicine*, 27:135-146, 2008; Magda Havas, "Electromagnetic Hypersensitivity: Biological Effects of Dirty Electricity with Emphasis on Diabetes and Multiple Sclerosis," *Electromagnetic Biology and Medicine*, 25:259-268, 2006, available at:

http://www.next-up.org/pdf/Magda_Havas_EHS_Biological_Effects_Electricity_Emphasis_Diabetes_Multiple_Sclerosis.pdf; The National Foundation for Alternative Medicine, "The health effects of electrical pollution," available at: http://d1fj3024k72gdx.cloudfront.net/health_effects.pdf.

⁴⁶ Lovich & Ennen (2011) is attached as Exhibit 4 to Conservation Groups' October 10, 2013, Scoping Comments, which are available electronically in the Administrative Record for the Project at:

<http://www.sdcounty.ca.gov/pds/ceqa/Soitec-Documents/Record-Documents/2013-10-10-Stephan-Volker-Letter-re-Soitec-Solar-PEIR-Scoping-Comments-of-The-Protect-Our-Communities-Foundation-et-al.pdf>.



having no health effects related to low frequency noise without any supporting evidence. In response to this comment, the County has made revisions and clarification to the DPEIR to include a source for the determination that there is no direct causal relationship between low frequency sound and health effects. These revisions to the DPEIR are presented in ~~strikeout~~/underline format; see Section 2.6.7. These changes and additions to the DPEIR provide information that clarifies and amplifies information already found in the DPEIR and do not raise important new issues about significant effects on the environment; therefore, such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

O10-65

In response to this comment, ILFN unweighted and G-weighted measurements of key noise components at the solar facility located in Newberry Springs, CA were conducted. The solar facility at Newberry Springs, CA contains technology that is comparable to that of the Proposed Project analyzed in the Soitec Solar DPEIR, such as concentrator photovoltaic (CPV) electric generation systems and associated inverters and transformers. A memorandum was prepared, which summarizes the results of the noise measurements and is included as Appendix 9.0-3 to the FPEIR. The memorandum concludes that the G-weighted noise levels were well under the threshold of 85dBG which is used by environmental protection

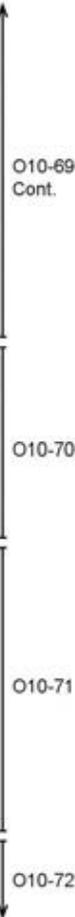
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and discussed by Conservation Groups herein and in their October 10, 2013, Scoping Comments. *Id.* The DPEIR relies on some type of California Public Utilities Commission document or decision from 2006 – cited as “CPUC 2006” – yet *nowhere* in the EIR is that document identified, not even in the References section. DPEIR 3.1.4-50. As discussed above, an omitted – or worse, a nonexistent – study is insufficient to support an EIR’s factual conclusion. *Kings County*, 221 Cal.App.3d at 712. Nor can an EIR rely on an existing study that is “buried in an appendix.” *Vineyard*, 49 Cal.4th at 442. Furthermore, even if the DPEIR had provided – or at least properly referenced – the 2006 CPUC document, it would still be outdated. The CPUC itself acknowledged in its Decision 93-11-013 that “the body of scientific evidence [on EMFs and their impacts] continues to evolve.” Yet the DPEIR fails to mention, let alone analyze, any of the scientific evidence produced in the last 8 years, including the studies and articles that Conservation Groups have cited and discussed. The fact that “the California Department of Public Health, Environmental Health Investigations Branch, ceased its inquiry into EMF in the mid-2000s” just confirms that the public agency conclusions on which the DPEIR relies are outdated. DPEIR 3.1.4-50.

Second, even if true, the fact that “there are no defined or adopted CEQA standards for defining health risks from EMFs” does not excuse the County from fully analyzing EMF impacts in the EIR. DPEIR 3.1.4-50. To paraphrase the Court of Appeal’s holding in an analogous case involving air pollution from an airport expansion, “[t]he fact that a single methodology does not currently exist that would provide [the County] with a precise, or ‘universally accepted,’ quantification of human health risk from [EMF] exposure does not excuse the preparation of a health risk assessment – it requires [the County] to do the necessary work to educate itself about the different methodologies that are available.” *Berkeley Keep Jets*, *supra*, 91 Cal.App.4th 1370.

Furthermore, the minimal discussion the DPEIR *does* provide on EMFs is wholly insufficient as a CEQA analysis. The DPEIR admits that “[s]olar farms create . . . EMFs and related harmonic components from the associated power facilities and transmission lines.” DPEIR 3.1.4-50. Yet it concludes without *any* evidentiary support that “the Proposed Project is not anticipated to result in measurable levels of EMF at nearby residences that would result in adverse effects to public health or safety.” *Id.* Without an estimation of the EMF levels that the Project components would generate at various distances, it is impossible to confirm that they would not be “measurable” or cause “adverse effects” at nearby residences. *Id.* The DPEIR therefore lacks the requisite “substantial evidence” to support its conclusion that nearby residents would not be harmed by the Project’s EMF emissions. *Vineyard*, 40 Cal.4th at 426; *Laurel Heights I*, 47 Cal.3d at 409 n.12. Moreover, the DPEIR *entirely fails* to address the impacts of the Project’s EMF emissions on Project workers and on-site or nearby wildlife despite Conservation Groups’ warnings.

The DPEIR admits that “[s]tray voltage” – a type of EMF pollution – “could occur if electrical equipment is not maintained properly,” and that “[i]nduced current or stray voltage has the potential for adverse health effects if not properly grounded.” DPEIR 3.1.4-51. The DPEIR



agencies in Australia and Denmark (no definitive standard has been established for large sources of low-frequency noise in the United States). The memorandum also concluded that the contribution of ILFN from the transformers and inverters in the Newberry Springs, CA site to offsite receivers is negligible when compared to the existing ambient ILFN noise in the area. The County has made revisions and clarifications to the DPEIR to reference this memorandum. These revisions to the DPEIR are presented in ~~strikeout~~/underline format; see Section 2.6.7. These changes and additions to the DPEIR provide information that clarifies and amplifies information already found in the DPEIR, and do not raise important new issues about significant effects on the environment; therefore, such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

O10-66 The County disagrees that the DPEIR assumes that ILFN does not have health effects. Please see responses O10-64 and O10-65 regarding revisions and clarifications to the DPEIR made in response to this comment.

O10-67 The County refers the commenter to response to comment O10-66. .

O10-68 The County acknowledges the commenter’s concern associated with electric and magnetic fields (EMF).

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nonetheless concludes that “no health effects would be anticipated to occur from stray voltage” because “electrical equipment would be examined to confirm that they are properly grounded and that there are no stray voltage issues” as “part of the regular operations and maintenance measures of the project.” *Id.* But there is *absolutely no* assurance that these measures will actually be undertaken – nor that if they are undertaken, they would eliminate these impacts. Mere grounding does nothing, since the primary medium through which stray voltage is transmitted is the *ground*. The DPEIR must address these impacts fully, rather than dismissing them based on unsupported premises. And, any measures proposed to mitigate these impacts must be adopted as enforceable mitigation measures of the Project’s potentially significant EMF impacts, rather than as unenforceable Project components that supposedly render the EMF impacts less than significant. *Cf.* PRC § 2183(d) (for the Project to qualify as an environmental leadership development project, the Project applicant must “agree[.]” that, “as an ongoing obligation, [all environmental mitigation] measures will be monitored and enforced by the [County] for the life of the obligation”).

E. AGRICULTURAL AND OPEN SPACE IMPACTS

The DPEIR fails to adequately address the Project’s impacts on agriculture, and improperly concludes that the Project’s impacts to agriculture will be less than significant. DPEIR 3.1.1-1. Based on the lack of available water at the Project locations, the DPEIR claims that the loss of these sites will have no on-site impacts. DPEIR 3.1.1-19 to 3.1.1-21. This is mistaken. There is a history of grazing at the Rugged, LanEast, and LanWest locations, and Rugged currently hosts an active ranching operation. *Id.* Further, part of the Tierra del Sol location is an agricultural preserve, and was in the past managed under the Williamson Act; this parcel also abuts land presently managed under the Williamson Act. DPEIR 3.1-22. By converting this land from low-intensity agricultural use to solar farms, for at least 25 years – with “additional terms anticipated” – (DPEIR 1.0-17), and stripping those lands of their legal agricultural use protections, the Project makes it unlikely that the lands would be ever again be available – let alone used – for agriculture. At Tierra de Sol, the soil quality is sufficient that “almost all” of the 95% of the site currently available for agricultural use meets “the criteria for Farmland of Statewide Importance.” DPEIR 3.1.1-10. At Rugged, about 40% of the site has “soil types that are candidates for Prime Farmland or Farmland of Statewide Significance.” DPEIR 3.1.1-11. As the lands are converted from low-intensity grazing, agricultural, and other rural uses, the Project would likely cause substantial disruption of these important fertile and difficult-to-replace topsoils, during site preparation, grading, and through ongoing erosion. The Project’s decommissioning provisions, while requiring removal of the Project fixtures, cannot replace the valuable topsoil once it is gone, and thus are insufficient to mitigate this loss. DPEIR 1.0-17 to 1.0-19. At a minimum, the acquisition of offsite agricultural preservation easements must be considered to mitigate this loss. *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230, 237-242.

O10-72
 Cont.

O10-73

Recognizing there is a great deal of public interest and concern regarding potential health effects and hazards from exposure to EMFs, the DPEIR provides information regarding these potential issues; see Section 3.1.4.5 of the DPEIR. However, the DPEIR does not consider EMFs in the context of the CEQA for determination of environmental impact because there is no agreement among scientists that EMFs create a health risk and because there are no defined or adopted CEQA standards for defining health risks from EMFs. As a result, the EMF information is presented for the benefit of the public and decision makers. Furthermore, in response to this comment and other comments regarding EMF, a memorandum was prepared by Asher R. Sheppard, PhD to support the information provided in the DPEIR and provide more detail; see Appendix 9.0-1. The memorandum concludes that EMF from the Proposed Project are highly localized and pose no known concern for human health.

O10-69 Refer to response to comment O10-68 and Appendix 9.0-1.

O10-70 Contrary to the commenter’s assertion, it is not the lack of adequate tests that is the issue, but rather, the lack of a scientific relationship between EMFs and alleged health effects. As discussed in response O10-68 and in Appendix 9.0-1, the reason why neither the

	<p>CEQA Guidelines nor the County have adopted CEQA standards for defining health risks from low-level EMFs is because there is no scientifically verifiable relationship between low-level EMF exposure and negative health consequences.</p> <p>O10-71 Refer to response to comment O10-68 and Appendix 9.0-1.</p> <p>O10-72 In addition to complying with the California Building Code and the California Electrical Code, the Proposed Project will comply with the National Electrical Code. Both the California Electrical Code and the national Electrical Code include provisions for grounding and eliminating stray voltage. Compliance with electrical codes for the project electrical design and operation are administrative, not scientific or engineering matters. Compliance with required codes is an obligation of the project designer and builder and thereafter, proper maintenance by the operator.</p> <p>The statement that “[m]ere grounding does nothing since the primary medium through which stray voltage is transmitted is the ground” reflects an apparent misunderstanding of the use of the term “stray voltage” in Section 3.1.4.5 of the DPEIR and furthermore, probable misunderstanding of the technical issues of grounding. In context of equipment grounding in compliance with the National Electrical Code and good practices, the role of grounding is as an</p>
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essential safety measure to eliminate the possibility of electrical shock caused by failure modes and during normal operation. “Stray voltage” is a term defined precisely in electrical engineering, where various electric system designs involve different causes and mitigations for stray voltages in context of electrical safety. The commenter is incorrect in stating that grounding is ineffective because ground currents may exist as a source for stray voltages. To the contrary, proper grounding acts both to reduce those ground currents and to protect against the existence of a potentially unsafe voltage across a human or animal body in contact with the ground and a conducting object at non-zero voltage.

“Stray voltage” also is a term in use in the media and elsewhere for a variety of problems with electric power distribution systems, some involving electric shock (including health and safety of humans and animals) and others power quality. A notable case of the former is the situation on some dairy farms where distribution system stray voltages can affect milk production and possibly animal health. In both home and industrial environments, without proper grounding the failure of insulation on a wire poses a significant risk in the scenario where the wire contacts a metal case, panel, grate or other covering that a person could touch. While failed insulation is not a cause of “stray voltage” in its usual technical meaning, accidents due

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Further, the DPEIR’s conclusions regarding off-site impacts to agriculture are fatally flawed. As discussed above, for Tierra del Sol, the DPEIR states “operational water use would be approximately 4 acre-feet per year and would come from off-site sources, and therefore, would not result in competition for water.” DPEIR 3.1.1-23. Similarly, the DPEIR states as to Rugged: “Operational water use would be approximately 5 acre-feet per year and would come from off-site sources, and therefore, would not result in competition for water.” DPEIR 3.1.1-24. The assumption that neither site will use on-site water contributes to the DPEIR’s claim that the Project will not cause land use conflicts with the adjacent farm lands, including adjacent agricultural preserves. DPEIR 3.1.1-23 & 3.1.1-24. Yet, in the hydrology discussion, the DPEIR states that Tierra del Sol’s operating demand would be about 6 acre feet a year, and anticipates that on-site wells would supply this demand. DPEIR 3.1.5-50 to 3.1.5-51. It states that Rugged’s operating demand of about 8.7 acre-feet a year would likewise be supplied “from on-site wells.” DPEIR 3.1.5-52. These statements contradict the DPEIR’s finding of no significant groundwater impact.

O10-74

In addition, Conservation Groups noted in their October 10, 2013 Scoping Comments that the conversion of ranch land creates snowballing secondary effects: it becomes harder and more expensive for the remaining ranchers and farmers to cost-effectively obtain the supplies and services (e.g. veterinarian care) they need to maintain their pastures, crops, and animals. This in turn results in more ranch land and farmland conversion, and even greater reductions in agricultural services. The Project’s failure to acknowledge and adequately evaluate these secondary and cumulative impacts of the Project on agriculture and open space must be remedied. See DPEIR 3.1.1-21 to 3.1.1-32.

O10-75

F. GLARE AND THE PSEUDO-LAKE EFFECT

The Project poses significant glare impacts as the CPV trackers reflect the sun’s light during the day. For reference, Conservation Groups attach a picture of the glare from Soitec’s experimental CPV tracker at the campus of the University of California, San Diego, as Exhibit 25. The DPEIR concludes that glare impacts are “potentially significant” but attempts to trivialize the full extent of those impacts. DPEIR 2.1-62 to 2.1-63 (Tierra del Sol), 2.1-63 to 2.1-66 (Rugged), 2.1-67 to 2.1-68 (LanEast and LanWest), 2.1-69 (Proposed Project). Appendix 2.1.3, the Boulevard Glare Study, claims that the Project’s glare impacts to drivers and residents will be minimized because the CPV trackers will reflect light almost-directly back to the sun instead of directing light towards other surfaces. Even so, the appendix acknowledges that it will create glare in homes and along local roads. DPEIR Appendix 2.1-3, pp. 20-22. The DPEIR’s discussion of the Project’s glare ignores significant information about the severity of the Project’s glare impacts.

O10-76

First, the DPEIR relies upon the Boulevard Glare Study to address the Project’s glare impacts, and this study assumes that all of the Project’s CPV trackers will be face the sun as designed, every day. See, e.g., DPEIR 2.1-26; DPEIR Appendix 2.1-3 pp. 14. But the trackers

O10-77

to insulation failure have misleadingly been described in the media as instances of “stray voltage.”

In following applicable electrical codes, the solar farm design and construction will consider soil resistivity under various moisture conditions and place sufficient metallic conductors into the earth to assure safety by assuring that any electrical currents not returned to the source on a metallic conductor will have a low impedance ground path. As a result, there would be no significant voltages on equipment that would pose a safety hazard.

As a matter of good electrical design and construction, the grounding practices that are essential for safety also reduce harmonics and switching transient currents that might be generated by control equipment, such as the solar farm inverter equipment. It is possible this comment was directed at such harmonic and switching currents. However, in this context as well, the fact that stray voltages can manifest as ground currents does not change the significance and effectiveness of proper grounding.

O10-73

The County does not agree that the DPEIR inadequately addresses the Proposed Project’s impacts on agriculture. In accordance with the County *Guidelines for Determining Significance and Report Format and Content Requirements: Agricultural Resources* (County of San Diego 2007), the Local

	<p>Agricultural Resource Assessment (LARA) model was used to assess the relative value of agricultural resources on each of the Proposed Project sites (see Section 3.1.1.3 and Appendix 3.1.1-1). As described in Section 3.1.1.3, the “low” rating of one of the required factors (Water Availability) resulted in the Proposed Project sites falling under Scenario 5, indicating that they are not considered as an important County agricultural resource. The use of the LARA model provided an objective method for assessing the value of agricultural resources on each of the sites and for determining the significance of impacts.</p> <p>As described in Section 15126.4 of the CEQA Guidelines, mitigation measures are not required for effects which are not found to be significant. As such, the County does not agree that the acquisition of offsite agricultural preservation easement shall be considered to mitigate for a loss of agricultural resources.</p> <p>Furthermore, the DPEIR explains that the disestablishment of an agricultural preserve over parts of the Tierra del Sol site would have a less than significant impact on neighboring land under the Williamson Act. (DPEIR, p. 3.1.1-28.)</p> <p>O10-74 In response to this comment, the County has made revisions and clarifications to the DPEIR. These revisions to the DPEIR are presented in strikeout/<u>underline</u> format; refer to Section 3.1.1.3.2 of</p>
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	<p>the DPEIR. The revisions have clarified that water from on-site wells would be used for operational purposes. The County has found that there is a less than significant impact to groundwater supply associated with the Project's use of identified onsite or offsite wells (DPEIR Sections 3.1.5.3.4 and 3.1.9.3.1). Accordingly, there will be no impact to agricultural uses on adjacent properties.</p> <p>O10-75 The County disagrees that the DPEIR failed to adequately evaluate secondary and cumulative impacts of the Proposed Project on off-site agricultural resources. In particular, Section 3.1.1.3.2 of the DPEIR specifically analyzes indirect impacts to agricultural resources, including an analysis of potential land use conflicts between nearby agricultural operations and the Proposed Project and an analysis of other changes to the environment that could result in the conversion of off-site agricultural resources to a non-agricultural use. Section 3.1.1.3 of the DPEIR provides a comprehensive list of potential adverse impacts caused by incompatible development near agricultural uses including:</p> <p>“farm practice complaints; restrictions on agricultural spraying, noise, or smell; liability concerns; economic instability caused by changing land values; possible increase in vandalism; damage to equipment, crops, and livestock; competition for water; possible interference with the movement of farm machinery or agricultural products; exposure of livestock to electric and magnetic</p>
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	<p>fields (EMFs), shading of crops from inappropriate buffering; and effects of glare on livestock.”</p> <p>The issues raised in this comment are consistent with the existing content of the DPEIR as quoted above. Nonetheless, the County has revised the DPEIR to include the additional potential adverse impact associated with potential difficulties encountered by ranchers and farmers to cost-effectively obtain the supplies and services (e.g. veterinarian care) they need to maintain their pastures, crops, and animals. These revisions to the DPEIR are presented in strikeout/<u>underline</u> format; refer to page 22 in Section 3.1.1.3.2. These revisions do not change the DPEIR’s conclusion that the Proposed Project would have a less than significant secondary and cumulative impact on off-site agricultural resources. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.</p> <p>Furthermore, cumulative indirect impacts to agricultural resources are analyzed in Section 3.1.1.4.</p> <p>O10-76 The County disagrees that the DPEIR attempts to trivialize the full extent of glare impacts associated with operation of the Tierra del Sol, Rugged, LanEAST and LanWEST solar farms. For comparative purposes, in Section 2.1.3.3 the DPEIR states that the anticipated glare generated by the Tierra del Sol, Rugged, LanEAST</p>
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and LanWEST solar farms would be lower than that of man-made surfaces (metal roofs, glass, etc.) and water, and discloses the anticipated glare viewing duration at affected residences and along local area roadways. In addition, Section 2.1.3.3 states that project-generated glare would be visible from residences in the surrounding area and that according to County of San Diego glare significance guidelines, glare impacts would be potentially significant. Further, in Section 2.1.7, Conclusions, the DPEIR concludes that even though proposed landscape screens could partially block views of trackers (and glare) from offsite viewing locations, project-generated glare would be received by residents and motorists in the area and as such, the direct glare impacts resulting from operation of the Proposed Project were determined to be significant and unavoidable.

The County reviewed the Boulevard Glare Study and independently analyzed the potential glare impacts associated with operation of the Proposed Project. While the DPEIR states that under perfect, operational scenario light reflections would bounce directly back to the sun, the DPEIR does not discount the glare impacts of the Proposed Project by stating that impacts would be minimized on account of the angle of reflection associated with perfect operational scenarios/conditions. Rather, the DPEIR independently analyzes the potential impacts of the Proposed Project and makes an independent impact determination.

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have two storage positions: vertical and east-facing for night-time storage and horizontal for high wind events. DPEIR 1.0-31 (horizontal stow/storm position); DPEIR Appendix 2.1-3, p. 14 (east-facing night-time storage). Thus, in times of high wind the trackers will reflect glare with a high incidence angle (see DPEIR Appendix 2.1-3, fig. 13), directly towards residents with elevated views of the Project sites. See DPEIR Appendix 2.1-3, pp. 8-10 & figs. 6(a)-6(c) (detailing impacted residents). And, if the trackers remain stuck in their night-time storage position during daytime they will very easily direct glare towards McCain Valley Road from the Rugged, LanWest and LanEast sites. DPEIR Appendix 2.1-3, pp. 8-9 & figs. 6(a) & 6(b). While the Project is off-line, the trackers will ostensibly be positioned horizontally (DPEIR 1.0-9) yet the DPEIR does not study the glare impacts of the horizontal storage/storm position. See, e.g., DPEIR Appendix 2.1-3 (no mention of storm positioning or horizontal storage when power is lost). Thus, the Glare Study fails to adequately account for the full range of potential glare impacts, and the DPEIR's analysis of the glare impacts to residents and drivers is insufficient.⁴⁷ In addition, while the DPEIR admits that the potentially significant impacts of glare cannot be fully mitigated (DPEIR 2.1-78 to 2.1-79) the DPEIR continues to downplay the significance of those unmitigated impacts.

Second, the DPEIR claims that adopting Alternative 7 would reduce "impacts related to glare" (DPEIR 4.0-41), even though the Boulevard Glare Study does not address this alternative. Compare DPEIR fig. 4-3, with DPEIR Appendix 2.1-3, figs. 6(a) to 6(c). Indeed, even as the DPEIR states that these impacts would be reduced, it also acknowledges a long list of primary receptors of glare from Alternative 7, including residences and roads. DPEIR 4.0-41. The DPEIR confusingly states that "[i]ntervening topography would may [sic] conceal the solar farm from the view of motorists along much of these roadways" under Alternative 7. DPEIR 4.0-40. This is not sufficient to support a conclusion that Alternative 7 will reduce the Project's potentially significant glare impacts.

Third, as discussed above in section II(B)(2)(d), the DPEIR fails to adequately assess the impacts of the Project's glare on avian species. The Glare Study assumes that glare is solely a terrestrial issue. DPEIR Appendix 2.1-3, p. 8. But the pseudo-lake effect is a serious biological problem for avians in flight. The pseudo-lake effect will be exacerbated during high wind events or other times when the trackers are in the horizontal position and more closely mimicking a wetland habitat. The DPEIR's failure to acknowledge the serious impacts of glare and pseudo-lake effect on avian species frustrates CEQA's informational purpose and must be rectified.

G. FIRE

As the DPEIR admits, "a high-intensity fire can be expected to occur in the Proposed Project area at some point in the future, whether it is started by natural or man-made causes. Fire

⁴⁷ In addition the Glare Study ignores the residential community directly to the south of Tierra del Sol, notwithstanding its proximity to and potential harm from the Project's glare.

O10-77
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O10-78

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O10-80

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In accordance with the County *Guidelines for Determining Significance and Report Format and Content Requirements: Dark Skies and Glare* (County of San Diego 2009), Section 2.1.3.3 of the DPEIR analyzes potential daytime glare impacts to sensitive receptors (i.e., motorists and residents) from reflected sunlight resulting from operation of the proposed solar farm facilities. The DPEIR characterizes the existing visual landscape surrounding the solar farm sites and identifies existing sources of glare, discloses the anticipated duration of glare exposure at residences and along roadways in the vicinity resulting from operation of the Proposed Project and analyzes potential glare impacts in accordance with established County guidelines for determining significance. The DPEIR also concludes that the Proposed Project's glare impacts would be significant and unavoidable. Therefore, the DPEIR does not ignore and fully discloses significant information about the severity of the Project's glare impacts.

This comment addresses the possibility of glare impacts in the event that CPV Modules malfunction or enter an emergency wind stow mode. The Boulevard Glare Study prepared by Power Engineers addresses the potential glare effects associated with the Proposed Project during normal operating procedures. The commenter posits that the DPEIR glare impacts analysis is insufficient because glare may be received in the surrounding area under certain operational scenarios (i.e., high wind events,

periods of malfunction) and, therefore, the Glare Study fails to analyze the “full range” of operational scenarios.

The Proposed Project would be equipped with emergency power to rotate the CPV trackers into horizontal stow mode (DPEIR, p. 1.0-9.). While the Boulevard Glare Study prepared for the DPEIR did not analyze glare that would be generated from the Proposed Project when CPV trackers enter into the horizontal stow mode, glare may be visible to offsite viewers during windy stowage procedures. These times however are limited to the beginning and end of the day where the sun is lowest in the sky and incidence angles and glare values are highest (see DPEIR Appendix 2.1-3, p. 24). The wind speed and duration at which a tracker would be directed to go into “stow” mode is 17.5 meters per second (m/s) (approximately 39 miles per hour (mph)) for longer than 3 seconds. It takes approximately 10 minutes for a CPV tracker to move into horizontal stow position, and 10 minutes for a CPV tracker to move back into operational mode. Once a stow operation is initiated by a wind detected at or above 17.5 m/s for 3 seconds or longer, a 10-minute clock begins. If wind conditions do not exceed 17.5 m/s for longer than 3 seconds within that 10-minute period, then the trackers will revert back to operational mode. If, however, the wind speed exceeds 17.5 m/s within the 10-minute period, then the 10-minute clock is reset and tracker remains in stow mode (POWER Engineer 2014).

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behavior in the Proposed Project area can be extreme with intense heat, above average flame-lengths, fast spread, and spotting, thus causing a hazard both on and off the Proposed Project sites.” DPEIR 3.1.4-5 to 3.1.4-6. Yet the DPEIR incorrectly concludes that there will be no significant impacts associated with fires. This conclusion ignores (1) the impacts of the Project on emergency response, (2) the ways that the Project escalates the potential harms of a fire in the Project area, and (3) the insufficiency of the mitigation measures and design features to minimize these harms.

First, the Project will have a significant impact on emergency response. The Tierra del Sol gen-tie will create significant hazards for any aerial firefighting required at or near the Project location. Conservation Groups notified the County of this concern in their October 10, 2013 Scoping Comments. The DPEIR assumes that, because the “gen-tie would not conflict with FAA rules or regulation, nor would it constitute a hazard based on FAA review of Form 7460-1,” that the Project would have no significant impacts to emergency response. DPEIR 3.1.4-43. The Administrative Record for the Project shows that the FAA’s evaluation of the Project and determination that it will not create a hazard to air navigation does *not* address Conservation Group’s concerns regarding aerial fire-fighting, but instead only addresses the proposed Project’s potential hazard to normal air traffic under non-emergency conditions.⁴⁸

Second the Project will increase the risks and potential harms associated with a fire event. Absent contrary evidence, fire fighters must assume fires at the Project site are electrical, and must be use extreme caution to avoid electrocution. DPEIR Appendix 3.1.4-6, pp. J-5, J-7. For example, Rugged’s fire protection plan indicates that firefighters must coordinate with a local CPV technician to disable the solar farm, and “avoid all potential electrical hazards until there is confirmation that the solar farm no longer poses an electrical shock hazard.” DPEIR Appendix 3.1.6.4-6, pp. J-7, J-8. Firefighters must use dry chemical extinguishers when fighting fires on or near the CPV trackers to avoid electrocution hazards, and “be cautious of water pooling when CPV solar farm could become energized.” DPEIR Appendix 3.1.4-6, p. J-5. All of these factors make quick responses to fires at the Project site more difficult. While the Project’s fire protection plans include a goal of providing additional training to local fire stations, because local volunteer fire stations are ill-prepared to fight electrical fires effectively, this goal does not alleviate the risks associated with complicated and dangerous electrical fires. See DPEIR 3.1.4-41, 7.0-40 to 7.0-41. The Project will introduce a slew of ignition sources not otherwise present, but the DPEIR concludes that it considers them to “have a low likelihood of causing fires” and thus downplays this impact. See DPEIR 3.1.4-36. The use of on-site energy storage will increase the Project’s fire risks. As the fire protection plan for Rugged admits, solar farms equipped with battery storage will require these special electrical-fire precautions even at night. DPEIR Appendix 3.1.4-6, p. J-7. The hazards associated with battery storage do not end

⁴⁸ Conservation Groups reviewed the letter available at <http://www.sdcountry.ca.gov/pds/CFOA/Soitec-Documents/Record-Documents/2013-09-25-Joan-Tengowski-Letter-to-Patrick-Brown-re-Determination-of-no-Hazard-to-Air-Navigation.pdf>



Based on proprietary data from a meteorological (MET) station located on site that has been operational since August 2012, the trackers would go into horizontal “stow” mode (for high winds) for approximately 0.32% of annual daylight operating hours. In a given year there are approximately 3,980 daylight hours (or 238,800 daylight minutes) when Soitec trackers could be operating (POWER Engineers 2014). During this very infrequent occurrence, glare may be visible to offsite viewers but would ultimately be dependent on a variety of factors including the position of sun in the sky, orientation of the tracker relative to the sun, weather conditions at the time (i.e., cloud cover or ambient dust in the air), and viewer position relative to the stow angle. Therefore, based on the unpredictability and infrequency of Soitec trackers being moved into stow mode during daylight operating hours (only 0.32% of the time), it is POWER’s professional opinion that it is not possible to predict when and where glare attributed to wind stow procedures would result in potential impacts (POWER Engineers 2014). Further, it is POWER’s professional opinion that wind stow conditions would result in an overall low occurrence for glare to offsite viewers. It should also be noted that during these high wind events there would likely be a high amount of cloud cover that would further reduce occurrence of glare (POWER Engineers 2014).

Please also refer to response to comment I83-5 regarding misalignment of solar panels and operation of solar sensors that would be used to ensure that the focal point of concentrated light is exactly on the solar cells at every moment of the day. Furthermore, any glare associated with a malfunctioning CPV tracker would be transitory in both extent and time, and therefore, would be less than significant.

While the Boulevard Glare Study does not analyze potential glare impacts to residences located south of the Tierra del Sol site in Mexico, Chapter 2.1, Aesthetics of the DPEIR has been revised to acknowledge the community of Ejido Jardines Del Rincon. The community is located south of the Tierra del Sol site and in Mexico. As stated in Chapter 2.1 of the FPEIR (p. 2.1-42) while key views were not established in the small community of Ejido Jardines Del Rincon, residences there would be afforded direct and unobscured foreground views of the solar farm facility. Furthermore, Chapter 2.1 of the FPEIR states that views afforded to residents of Mexico would be permanent and long-term in nature and due to proximity to the Tierra del Sol solar farm, the anticipated visual change and effects would be similar to the visual change and effects anticipated to occur at foreground key view locations along Tierra del Sol Road. In providing a range of viewing distances and elevations, the four key views and associated visual simulations located on Tierra del Sol Road for the Tierra

	<p>del Sol solar farm can be used to approximate the visual changes and effects to the existing landscape that would be experienced from the community of Ejido Jardines Del Rincon.</p> <p>O10-78 The County agrees that Alternative 7 would not reduce potentially significant glare impacts to below a level of significance, although Alternative 7 is likely to result in reduced impacts when compared to the Proposed Project. As indicated in on page 4.1-41 of the DPEIR, impacts related to glare for Alternative 7 would remain significant and unavoidable. A correction has been made to page 4.1-40 of the DPEIR to remove the word “would.”</p> <p>O10-79 See responses to comments O10-47, F1-5, and F1-6.</p> <p>O10-80 The comment correctly quotes the DPEIR with regard to the type of fires that may occur within the Proposed Project area based on fuels, terrain, climate, and fire history. However, the County does not agree with the commenter’s statement that the DPEIR incorrectly concludes there will be no significant impacts associated with fire. The DPEIR is based on extensive analysis conducted in coordination with the fire agencies, including San Diego County Fire Authority, CAL FIRE, and San Diego Rural Fire Protection District, and is consistent with industry standards and procedures. In addition, the Fire Protection Plans (FPPs) for Rugged and Tierra del Sol that are</p>
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there; the batteries themselves increase the risk of fire at the Project location. Instead of acknowledging that the CPV trackers and other Project components will increase the risks associated with fires, the DPEIR concludes that the Project's removal of vegetation, notice to neighbors, traffic control plans, and emergency response funding will render any harm less than significant. DPEIR 3.1.4-38 to 3.1.4-41. While the Project contemplates onsite water storage for fire suppression, this is not sufficient to mitigate the Project's significant impacts to public safety due to fire, especially in situations when firefighters cannot use water without jeopardizing their own safety.

Third, the DPEIR fails to discuss the impacts associated with a fire at the Project sites. As discussed, the DPEIR admits the high likelihood of a fire in the Project area; thus this reasonably foreseeable occurrence should be addressed. For example, as the Rugged fire protection plan states, "burning CPV modules may produce toxic vapors." DPEIR Appendix 3.1.4-6, p. J-5. Yet there is no discussion of the toxic vapors, or the long term harms associated with CPV tracker- or other Project component - combustion in the hazardous materials section of the DPEIR.

Last, the Hazards and Hazardous Materials discussion (DPEIR 3.1.4), and Public Services discussion (DPEIR 3.1.7), incorrectly conclude that any potential fire associated impacts would be reduced to insignificance by Construction Fire Prevention Plans, site-specific fire Protection Plans, construction traffic control plans, construction notifications, and payments for additional firefighting resources. See DPEIR 3.1.4-38 to 3.1.4-41 (wildland fires); DPEIR 3.1.4-42 to DPEIR 3.1.4-46 (hazards associated with interference of emergency response); DPEIR 3.1.7-8 to 3.1.7-18 (public services). But the fire protection plans (DPEIR Appendices 3.1.4-5 and 3.1.4-6), cannot serve as appropriate mitigation, as they contain significant flaws. First, each claims that the Boulevard Fire Station is staffed 24 hours a day, seven days a week. DPEIR Appendix 3.1.4-5, p. 29; DPEIR Appendix 3.1.4-6, p. 31. For this reason, each states that Boulevard Fire Station would be expected to provide the initial response to any fire at Tierra del Sol. *Id.* Conservation Groups note that the Boulevard Fire Station's *volunteer* staff are not always available, and thus the fire station is often closed. Conservation Groups have been informed that in 2013, from January to the first half of October, the Boulevard Fire Station was unmanned for at least 133 days. Thus, the Fire Protection Plan's reliance upon Boulevard Fire Station as the first response option overlooks its significant lack of appropriate staffing. One of the other local stations that is expected to provide additional responses is the Jacumba Volunteer Fire Station (DPEIR 3.1.7-2; DPEIR Appendix 3.1.4-5, p. 30; DPEIR Appendix 3.1.4-6, p. 32), which was unmanned for 15 days during the same period. Although there are plans to alleviate some of these staffing issues in a few years, any future solution would occur long after the Project is expected to be constructed. Thus, the DPEIR's analysis and conclusions regarding the Project's fire risks are fatally flawed.

O10-82
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O10-83

O10-84

referenced in the DPEIR analysis were prepared by a County-approved CEQA consultant and in accordance with the County's Guidelines for Determining Significance and Report Format and Content Requirements for Wildland Fire and Fire Protection, dated August 31, 2010. The implementation of the FPPs, including clear delineation of access routes and response methods, will be beneficial to fire response in the surrounding community, as well as to the project sites. The DPEIR considered many factors including the sites' and region's fire environment, fire history, available responding resources, and project-specific fire risk factors, amongst others. Sections 3.1.4.3.3 and 3.1.4.3.4 of the DPEIR address wildfire hazards and hazards associated with interference with emergency response capabilities as a result of the Proposed Project. Section 3.1.7.3.1 addresses the Proposed Project's potential to impact fire and emergency response public services.

As stated in the DPEIR, with implementation of PDF-HZ-2, PDF-TR-1, implementation of the Tierra del Sol FPP (Appendix 3.1.4-5) and Rugged FPP (Appendix 3.1.4-6) approved by the SDCFA, and implementation of PDF-HZ-3 requiring a project-specific FPP for the LanEast and LanWest solar farms, the Proposed Project would comply with all applicable fire codes and impacts related to fire risk would be less than significant.

	<p>O10-81 The County does not agree that the Proposed Project will have a significant impact on emergency response. As indicated in Section 3.1.7.3.1 of the DPEIR, PDF-PS-1 requires that the Proposed Project contribute funding to improve local emergency response capabilities, including annual funding for one Paramedic staff firefighter. Implementation of PDF-PS-1 would ensure that potential impacts related to emergency medical response capabilities during the construction phase remain at a level less than significant. The net benefit of the improved advanced life support medical response by adding a paramedic position to two existing stations provides an on-going benefit to the community/region long after the construction phase is complete.</p> <p>With regard to aerial firefighting, wildfire response in the County typically includes aerial attack with fixed wing and/or rotary wing aircraft that drop fire retardant in front of an encroaching fire. The presence of transmission lines, wind turbines, microwave and cell towers and other vertical structures on the landscape has been previously evaluated for impacts on aerial firefighting in recently certified environmental documents in the Study Area (see Final EIR/EIS, East County Substation/Tule Wind/Energia Sierra Juarez Gen-Tie Projects, Section D.15 and Final EIR/EIS, Sunrise Powerlink Project, Section D.15). The presence of tall, vertical structures on the landscape was</p>
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shown to have little overall effect on aerial firefighting. Many of the features are co-located with existing features, resulting in no or little change. New features are subject to FAA requirements and their locations are included in mapping used by the aerial fire attack aircraft. Typical fire operations include drops from 50 to 150 feet above ground surface from helicopters and from 150 to 500 feet above ground surface from fixed-wing aircraft. The Tierra del Sol gen-tie line poles will be approximately 125 to 150 feet tall, with the transmission line hanging at a lower elevation on the poles (DPEIR, p.1.0-23). The Rugged Gen-Tie would be co-located with the Tule Wind Project Gen-Tie, which has already been analyzed under CEQA and concluded to have a less than significant impact on aerial firefighting with implementation of mitigation measures (Final EIR/EIS, East County Substation/Tule Wind/Energia Sierra Juarez Gen-Tie Projects, pp. D.15-71 to D.15-72). The features proposed for the Proposed Project would not interfere or pose a threat of collision. Therefore, the existence of the Gen-Tie transmission lines associated with the Proposed Project sites will not have an impact on aerial firefighting operations. Typically, aerial firefighting operations focus on the initial attack in an effort to keep a wildfire ignition small and controlled under 10 acres. If a fire escapes, aerial operations will focus on key terrain features ahead of the fire or at its leading edge. The location of the Gen-Tie lines would have virtually no impact on the

	<p>ability of CAL FIRE to target drops via helicopter or fixed wing aircraft in the area.</p> <p>O10-82 The County agrees that firefighting near energized facilities and equipment includes inherent risks that require modified operations and firefighter training. This issue was adequately addressed in the DPEIR that was circulated for public review. As indicated in the FPPs, general electrical safety considerations and other measures would be implemented to ensure impacts related to fire risk would remain at a level less than significant; please refer to Appendices 3.1.4-5 and 3.1.4-6. For example, firefighters will be able to place CPV trackers into “stow mode” and work with site personnel and/or remote monitors to de-energize the system so that response can proceed in a safe manner. Additionally, the SCADA monitoring system will detect any malfunctions would trigger immediate warnings, for example of potential fires.</p> <p>With regard to suppressing an electrical fire, the County agrees there is a potential shock issue as electricity can travel through a water stream. Firefighters are trained to handle electrical fires; in addition, the firefighters will be trained specifically to handle fires related to the Proposed Project. This is further addressed in Appendix 3.1.7-1 of the DPEIR. Firefighters are trained to stay back a safe distance and use a “fog stream”. Firefighters may use Class A foam</p>
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	<p>or a Dry Chemical extinguisher, which many fire engines carry. Most likely, water would be used as it is most plentiful and can cool burning material below ignition temperatures. Another form of fire extinguisher, carbon dioxide (CO₂) extinguishers, could be used in lieu of dry chemical as they leave no residue. Most fire engines do not carry CO₂ extinguishers. Therefore, as indicated in Appendix 3.1.7-1, portable carbon dioxide (CO₂) fire extinguishers will be mounted at the inverter enclosures and medium voltage transformer units throughout the Proposed Project sites. Please refer to AIS-4, <i>Addendum to the Fire Protection Plan for Rugged Solar</i> in the PEIR for information regarding hazards associated with the optional batter storage component at the Rugged solar farm site.</p> <p>O10-83 The County does not agree that the DPEIR is inadequate with respect to addressing potential impacts associated with fire. Please see response O10-81. In addition, it should be noted that the commenter’s statement regarding the potential for toxic fumes is taken from the FPP’s technical appendix, which is a document that provides general (not project specific) precautions for fire fighters responding to a solar facility.</p> <p>Fire within a CPV tracker is considered to be an extremely rare event. From 2007 through 2011 there</p>
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H. VALLEY FEVER

The *coccidioides immitis* fungus, which causes the disease coccidioidomycosis – known as Valley Fever – naturally occurs in the soil in the Project area. In San Diego County from 2008 through 2012 there were between 138 and 159 confirmed cases of Valley Fever each year,⁴⁹ up from between 56 and 79 cases a year in 2003 through 2007.⁵⁰ Valley Fever, which has no known cure, can cause debilitating lung damage, infect the bone, skin, or meninges of the brain, and cause death; the anti-fungal medication used to treat the disease can cost \$3,000 a month. See Death Dust: the Valley Fever Menace, Dana Goodyear January 20, 2014 *New Yorker*, p. 3 (attached hereto as Exhibit 26). Valley Fever is released into the air when soil disturbing activities, such as construction, release the spores from the ground. And using water as dust-suppression “can cause more cocci to bloom in the following dry season.” *Id.*

O10-85

Each solar farm constructed under the Project will require “grading necessary for the construction of access and service roads and the installation of trackers, trenching for the electrical DC and AC collection system including the telecommunication lines; installation of the inverter stations,” “construction of the project substation, an O&M building, and the gen-tie line from the project substation to the identified regional substation.” DPEIR 1.0-12. All of these activities will be soil-disturbing; however the DPEIR does not specify how many acres will be graded as part of the Project because grading quantities have not been finalized. *Id.* Even without this information, however, it is clear that the Project’s installation of 2,667 trackers on 420 acres at Tierra del Sol and 3,588 trackers on 765 acres at Rugged – not to mention LanEast and LanWest – will disturb huge – albeit unquantified – amounts of soil. The DPEIR is silent regarding the potential for increased Valley Fever infections as a result of the Project’s soil-disturbing activities, despite the serious risks to human health posed by the fungus. This deficiency must be remedied.

O10-86

I. GLOBAL WARMING

Global Warming will have an immense impact on San Diego County. Sea level rise and reduced precipitation have disastrous implications for County communities. DPEIR 3.1.3-3. The federal government and the State of California have alerted regional governments to the dangers posed by global warming with legislation and regulation such as that listed in the

O10-87

⁴⁹ Reportable Diseases and Conditions by Year, 2008 - 2012 County of San Diego, Health and Human Services Agency, Public Health Service, available at <http://www.sdcounty.ca.gov/hhsa/programs/phs/documents/5yrTableAug2013.pdf>

⁵⁰ County of San Diego Health & Human Services Agency, Communicable Disease Report 2007, p. 9, available at <http://www.sdcounty.ca.gov/hhsa/programs/phs/documents/CommunicableDiseaseReport2007.pdf>

were a total of 30 solar panel related fires in California. This is an average of six fires per year over the five-year period, primarily by roof-top photovoltaic (PV) solar panels. Data obtained from the California Energy Commission indicates there are 78 PV plants (and a large number of other solar panels in private use) in operation in California. Solar statistics indicate that between 2007 and 2010, 47,335 solar panels (17,213 per year) were installed in California (<http://www.californiasolarstatistics.ca.gov/reports/9-08-2010/AdminStats.html>). Assuming that rate continued during 2011 and 2012, there would be a total of over 86,000 solar panels since 2007. There are likely many more panels that were installed prior to 2007. Therefore, if there are six fires per year in 78 plants and some conservatively estimated 65,000 solar panels, that equals 0.077 fires per farm per year if all fires were associated with solar farms, or 0.00009 fires per year, when known solar panels installed during 2007 to 2011 are considered (this does not include older panels that may be more prone to fires). Based on these statistics, solar farms would be expected to experience, at most, some type of fire about every 13 years and the 65,000 solar panels installed between 2007 and 2011 would be expected to experience, at most, some type of fire about every 11,000 years. It should also be noted that these statistics are for PV technology because (1) it represents a worse-case scenario since PV technology, particularly older

systems, use heating oil, which was often the source of the fires and (2) there is a lack of data available related to CPV fire calls. CPV technology does not use heating oil and contains materials that are noncombustible. Therefore, the expected incidence of CPV related fires is anticipated to be even lower than these statistics suggest.

Wildfires may occur in the area, but based on the available research and scientific principles applied to the risk evaluation, would not be considered to have the ability to ignite the trackers, which would be set back from off-site, higher BTU producing wildland fuels and would be provided fuel modification throughout the facilities. With the extremely rare likelihood of CPV tracker fire and the low probability that wildland fire would cause a CPV tracker to ignite, the potential generation of toxic vapors is also low. Please refer to Section 5.0, Study Area Project Ignition Risks, of Appendix 3.1.7-1, Emergency Services Capabilities Assessment, for summary of ignition data relied upon to determine the Proposed Project potential risk rating. Further, in the unforeseen event that a CPV tracker fire occurred, it would be limited in extent due to the non-combustibility of the CPV trackers, the spacing provided between adjacent CPV trackers, and the ability of on-site personnel and responding fire fighters to minimize fire spread through application of firefighting practices for energized facilities.

	<p>O10-84 The County does not agree that the FPPs contain significant flaws; please see Response O10-81. The FPPs state that first response would likely be from the Boulevard Station and that the CALFIRE Whitestar Station would respond with additional resources (see Appendix 3.1.4-5, p. 29 and Appendix 3.1.4-6, p. 31). In addition, the San Diego Rural Fire Protection District’s Lake Moreno Station is located in the project area and is staffed 24 hours a day, 7 days a week with paid firefighters (see Appendix 3.1.4-5, p. 29 and Appendix 3.1.4-6, p. 32). The FPPs clearly demonstrate that the response time to the Proposed Project sites from a number of fire stations is within San Diego County General Plan standards. Additionally, the FPPs clearly indicate that the Proposed Project is not expected to generate a significant amount of calls based on the type of project and its materials, and due to the small number of personnel anticipated on site (see Appendix 3.1.4-5, p. 21 and Appendix 3.1.4-6, p.23). The FPPs indicate that there are a number of fire agencies that are located in the area including San Diego County Fire Authority, CAL FIRE, and San Diego Rural Fire Protection District. The agencies coordinate coverage and are under automatic and mutual aid agreements that provide significant resources to any emergency call in the area. In addition, the closest resource will be dispatched based on auto vehicle locators that are being deployed throughout the area’s engines. The low number of potential calls from the Proposed Project site</p>
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do not rely on any one station for response, and response coverage will be provided to the site from one or more of the existing stations that are within the area.

There are several stations that are owned and staffed by SDCFA, CAL FIRE, SDRFPD and USFS within a close proximity to the Proposed Project. Within the unincorporated region's emergency services system, fire and emergency medical services are provided by Fire Protection Districts (FPD), County Service Areas (CSA) and CAL FIRE. Collectively, there are over 2,800 firefighters responsible for protecting the San Diego region from fire. Generally, each agency is responsible for structural fire protection and wildland fire protection within their area of responsibility. However, mutual and automatic aid agreements enable non-lead fire agencies to respond to fire emergencies outside their district boundaries. Interdependencies that exist among the region's fire protection agencies are primarily voluntary as no local governmental agency can exert authority over another. This was demonstrated by the major response to the 2003 and 2007 San Diego County Fires, and more recently, in the 2012 Shockey Fire which burned very near the Proposed Project's Tierra Del Sol Solar site. Statistics provided by CAL FIRE indicated that there were some 115 fire engines on scene (35 CALFIRE), 47 hand crews (36 CALFIRE), 2 dozers, 3 water tenders and including resources from SDRFPD, BLM, Campo Reservation, and mutual aid strike teams. In addition, six aerial tankers were providing fire retardant drops.

	<p>O10-85 The commenter posits that <i>coccidioides immitis</i>, a fungus that live in the soil and causes the disease coccidioidomycosis (also known as Valley Fever), naturally occurs in Proposed Project area soils. No data or documentation has been provided by the commenter to substantiate this claim. Instead, the commenter cites references that identify instances of Valley Fever throughout the County, without ever identifying the source of the occurrence.</p> <p>The Proposed Project is located in southeastern San Diego County, which, based on information compiled by the County of San Diego, has a very low background risk of coccidioidomycosis (County of San Diego 2007). According to the County of San Diego Health and Human Services Agency (HHS), 144, 138, 159, 160, and 121 confirmed cases of coccidioidomycosis were reported in San Diego County during a five-year period from 2009 to 2013 (County of San Diego 2014a). While incidences of coccidioidomycosis have increased since 2003, according to the 2007 County of San Diego HHS Communicable Disease Report cited by the commenter less than 5 cases of coccidioidomycosis per 100,000 population were reported in southeastern San Diego County from 2003 to 2007 (County of San Diego 2008, p. 16). Furthermore, according to County of San Diego HHS, there were no cases of coccidioidomycosis from 2008 to 2014 reported in zip</p>
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DPEIR. DPEIR 3.1.3-3 to 3.1.3-14. Yet the DPEIR details few if any efforts by the County to institute concrete and verifiable measures to reduce greenhouse gas (“GHG”) production.

The DPEIR’s reliance on the Climate Action Plan (“CAP”) invalidated by Judge Taylor in *Sierra Club v. County of San Diego*, 37-2012-00101054-CU-TT-CTL (appeal pending in 4th DCA, case no. D064243) (attached hereto as Exhibit 27), to mitigate the Project’s impacts violates CEQA. Judge Taylor rightly invalidated the CAP because it “should have been the subject of a supplemental EIR instead of an addendum to the PEIR that concluded the CAP is within the scope of the PEIR.” *Id.* at Minute Order, p. 7. Because no supplemental EIR was completed, there was no review of the CAP to determine whether it “met the necessary GHG emission reductions,” as “the CAP is merely hortatory and contains no enforcement mechanism for reducing GHG emissions.” *Id.*

Furthermore, the CAP failed to meet the requirements of a mitigation measure adopted by the County in order to mitigate GHG emissions from County operations. *Id.* The CAP only contains recommendations and thus cannot assure that the County will meet “GHG emission reduction goals and targets.” *Id.* As Judge Taylor ruled, “[t]here is no time for ‘building strategies’ or ‘living documents;’ as the PEIR quite rightly found, enforceable mitigation measures are necessary now.” *Id.* Without “detailed deadlines” or “enforcement mechanisms for reducing GHG emissions,” the CAP “does not comport with the requirements of Mitigation Measure CC-1.2, and thus violates CEQA.” *Id.* at 7-8.

An EIR may not rely upon a plan such as the CAP that has been invalidated, or was never adopted. *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 951 (water agency’s reliance upon draft general plan, when prior general plan was invalidated, was improper); *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, 1375-1376, (tiered EIR could not rely on a prior EIR that had been decertified); *California Oak Found. v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1236 (CEQA did not allow reliance on decertified EIR). Yet the DPEIR relies extensively on the CAP. DPEIR 3.1.3-14, 3.1.3-37 to 3.1.3-42. In fact, the DPEIR’s determination that “impacts would be considered **less than significant**” is largely based on its determination that various elements of the Project “comply with the goals and objectives of the state and the CAP.” *Id.* (emphasis in original). The DPEIR’s reliance upon compliance with the CAP to satisfy its CEQA duties is a fatal flaw. The County should address the significance of GHG emissions without reference to invalidated planning documents.⁵¹

The DPEIR’s reliance on “900 metric tons (MT) of carbon dioxide equivalent (MTCO₂E) per year” as a valid threshold for its significance determination is never adequately explained.

⁵¹ Once the County has approved a valid CAP, or an equivalent replacement for the invalidated strategic GHG reduction analysis contained in the CAP, the County must offer a comprehensive analysis of how the Project is consistent with the new CAP or analysis.

O10-87
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codes 91905 (Boulevard), 91934 (Jacumba Hot Springs), 91906 (Campo), and 91962 (Pine Valley) (County of San Diego 2014b, 2014c).

The commenter includes a quote from a magazine article that states that using water as dust-suppression “can cause more cocci to bloom in the following dry season.” This statement conflicts with information made available to the public by the California Department of Public Health and California Department of Industrial Relations regarding measures to implement at worksites to reduce worker exposure to Valley Fever. A 2013 Hazard Evaluation System and Information Service (HESIS) Fact Sheet entitled, “Preventing Work-Related Coccidioidomycosis (Valley Fever)”, prepared by the California Department of Public Health recommends implementation of dust control measures including regular application of water during soil disturbance activities to reduce worker exposure to Valley Fever (California Department of Public Health 2013). Furthermore, measures to minimize fugitive dust are included in the DPEIR (PDF-AQ-1). PDF-AQ-3 was included in the DPEIR but has since been incorporated as a condition of project approval for the Proposed Project in the FPEIR. Consistent with recommendations of the California Department of Public Health, regular application of water and/or application of nontoxic soil binding agents would be

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DPEIR 3.1.3-17. The DPEIR references a white paper published by the California Air Pollution Control Officers Association ("CAPCOA White Paper"),⁵² but fails to comply with CEQA Guidelines §15064.7(b), which requires that if thresholds of significance are adopted as part of an environmental review process they must be adopted by ordinance, resolution, rule, or regulation, developed through a public review process, and be supported by substantial evidence. None of that is present in the CAPCOA White Paper, which primarily concerns projects that do not involve stationary sources. CAPCOA White Paper, p.18. Furthermore, according to the CAPCOA White Paper,

While many public agencies adopt regulatory standards as thresholds, the standards do not substitute for a public agency's use of careful judgment in determining significance. They also do not replace the legal standard for significance (i.e., if there is a fair argument, based on substantial evidence in light of the whole record that the project may have a significant effect, the effect should be considered significant) (CEQA Guidelines §15064(f)(1). Also see *Communities for a Better Environment v. California Resource Agency* 103 Cal. App. 4th 98 (2002)). In other words, the adoption of a regulatory standard does not create an irrebuttable presumption that impacts below the regulatory standard are less than significant.

CAPCOA White Paper, p. 11. The DPEIR fails to do this; the County's analysis must be revised to show why it concluded that 900 MTCO₂E represents a threshold beneath which no further analysis and mitigation is required.⁵³

While the DPEIR acknowledges that the Global Warming Solutions Act of 2006 ("AB 32") requires a statewide reduction in GHG emissions to 1990 levels by 2020, it fails to explain the analytical leap between the concrete numbers required by AB 32 and the DPEIR's rabbit-hole reference to whatever "the Interim Guidance indicates that the project needs to demonstrate [so] that it would not impede" AB 32's implementation. DPEIR 3.1.3-7 to 3.1.3-8, 3.1.3-17. The DPEIR's cryptic reference fails to explain what – if any – connection this Project's reduction of

⁵² Cited at DPEIR 5-23.

⁵³ The DPEIR refers to several significance threshold tables, as well. It is unclear where Table 3.3.1-3 is to be found, but Table 3.1.3-3 – possibly the table the DPEIR intended to refer to – contains nothing but an extrapolation based on the arbitrary 900 MTCO₂E threshold chosen without rational explanation or proper CEQA process. DPEIR 3.1.3-17. Additionally, the DPEIR refers to "Interim Guidance," but fails to explain what document is being referred to. *Id.* These comments will proceed under the assumption that "Interim Guidance" refers to *DPLU Interim Approach to Addressing Climate Change in CEQA Documents* (County of San Diego 2010a), or in the alternative, that "Interim Guidance" refers to something similar to the Interim Approach. See DPEIR 3.1.3-16 to 3.1.3-17.

O10-87
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O10-88

implemented to suppress fugitive dust during grubbing, clearing, grading, trenching, and soil compaction (see DPEIR, Chapter 2.2 Air Quality, subsection 2.2.3.2). In addition, water would be applied to all active construction areas, unpaved access roads, parking areas, and staging areas as necessary to minimize fugitive dust (PM₁₀) and to comply with County Code Section 87.428 (Grading Ordinance). Furthermore, during operations, a variety of measures will be employed to control dust, including annual application of nontoxic soil binding agents (see DPEIR, Chapter 2.2 Air Quality, subsection 2.2.3.2).

According to the County of San Diego HHS, there have been no reported cases of coccidioidomycosis from 2008 to 2014 in the project area and surrounding communities. Also, because the Proposed Project would employ measures to minimize fugitive dust during construction and operations, the Proposed Project would have a less than significant impact on human health because it would not cause or contribute to a significant increase in Valley Fever infections. In addition, applicable regulations regarding hazards (including Valley Fever) protection and exposure are included in Title 8 of the California Code of Regulations. For example, Section 342 requires employers to immediately report to the nearest District Office of the Division of Occupational Safety and Health any serious injury or illness, or death, of an

employee occurring in a place of employment or in connection with any employment (8 CCR 342). Furthermore, Section 3203 requires that every employer establish, implement and maintain an effective Injury and Illness Prevention Program (Program) (8 CCR 3203(a)). The Program must include procedures for identifying and evaluating workplace hazards including scheduled periodic inspections to identify unsafe conditions and work practices (8 CCR 3203(a)(4)). Section 5141 requires that harmful exposures be prevented by engineering and/or administrative controls whenever feasible (8 CCR 5144(a)(1)). When effective controls are not feasible, Section 5144 requires that respirators shall be used and provided by the employer when such equipment is necessary to protect the health of the employee (8 CCR 5144(a)(2)). The primary purpose of Section 5144 is to prevent atmospheric contamination and control occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors. When such measures are necessary to protect the health of an employee, the employer shall be responsible for the establishment and maintenance of a respiratory protection program (8 CCR 5144(a)(2)). The requirements of the respiratory protection program are outlined on California Code of Regulation Title 8, Section 5144 (c).

	<p>O10-86 The first sentences of this comment summarize the grading activities of the Proposed Project and do not raise a significant environmental issue for which a response is required.</p> <p>As stated above in response to comment O10-85, there have been no reported cases of coccidioidomycosis in the project area from 2008 to 2014. Furthermore, no data or documentation has been provided by the commenter to substantiate the claim that <i>coccidioides immitis</i> naturally occurs in Proposed Project areas soils. Without substantial evidence supporting the claim that <i>coccidioides immitis</i> occurs in Proposed Project area soils, it would be too speculative to conclude that the Proposed Project's soil-disturbing activities could potentially result in increased incidences of coccidioidomycosis in the Proposed Project area. However, as stated in response to comment O10-85 above, measures to minimize fugitive dust (PDF-AQ-1) are included in the DPEIR and would be implemented during construction and operations. PDF-AQ-3 was included in the DPEIR but has since been incorporated as a condition of project approval for the Proposed Project in the FPEIR. Consistent with recommendations of the California Department of Public Health to reduce worker exposure to coccidioidomycosis (Valley Fever), water and/or a nontoxic soil binder would be regularly applied to suppress fugitive dust during grubbing, clearing, grading, trenching, and soil compaction, and</p>
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GHG emissions to “33% below projected Business As Usual (BAU)” has to AB 32’s mandated 1990 levels by 2020. DPEIR 3.1.3-17. First, the DPEIR’s abstruse reference is insufficient under CEQA. Rational decisionmaking must be based on thorough analysis with the opportunity for public comment. No such process is present here. Second, the Project has not been studied as part of the County’s GHG inventory because it *has not yet been built*, so any reduction in “Business As Usual” is still a net *increase* in GHG levels. The County must explain how a net increase in GHG levels does not impede the goals of AB 32, preferably by listing concrete corresponding reductions in GHG emissions from other sources.

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 O10-88
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The DPEIR’s calculation of construction impacts also fails to connect the dots to its conclusions. The DPEIR briefly notes that construction impacts will be “annualized over the 30-year life of” its various projects without explaining why such amortization is an appropriate means of GHG emission calculation. DPEIR 3.1.3-19 to 3.1.3-20. Construction emissions will actually occur *during construction*, not 30 years later. AB 32 mandates 1990 levels by 2020, not more than a decade later. The County must explain why a 30-year amortization is superior to a calculation that measures emissions as they occur.

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 O10-89

The DPEIR states that while the Project will produce some GHGs through construction and operation, it “would provide a potential reduction of 81,334 MTCO₂E per year if the electricity generated by the Tierra del Sol solar farm were to be used instead of electricity generated by fossil fuel sources.” DPEIR 3.1.3-25; *see also* DPEIR 3.1.3-29 to 3.1.3-30, 3.1.3-32, 3.1.3-35, 3.1.3-37 to 3.1.3-41. Yet the DPEIR contains no guarantee that the Project’s generation will *replace* existing fossil fuel sources. Indeed, the possibility remains that the Project will *supplement* these existing sources, and thus provide *no reduction* in GHG emissions. The County must analyze all of the Project’s potential GHG emission sources and compare the total emissions per expected kilowatt-hour (averaged over the expected life of the Project) to the other energy sources the County implies will be displaced. In the absence of specific displacement scenarios, it is misleading to include this discussion in the DPEIR because there is no explanation of the rational basis for the numbers utilized. Because they are misleading, and because they are not considered as a part of the County’s significance determination,⁵⁴ the County must replace them with concrete displacement scenarios based on substantial evidence or remove them from its analysis.

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 O10-90

⁵⁴ Though the DPEIR includes the disclaimer that this displacement “is not considered in the significance determination” (DPEIR 3.1.3-25, 3.1.3-30), it nonetheless repeatedly cites a “net reduction in GHG emissions” as a result of such displacement in its CEQA compliance rationales. DPEIR 3.1.3-37 to 3.1.3-41. This is misleading and unacceptable under CEQA. Any GHG displacement numbers must be explained so that the public and decision makers know what they are based on. With no concrete plans to displace existing GHG emissions, the DPEIR’s displacement numbers are nothing more than tantalizing baubles bereft of substantial evidence.

annually during operations (see DPEIR, Chapter 2.2 Air Quality, subsection 2.2.3.2). Water and/or a nontoxic soil binder would be applied to all active construction areas, unpaved access roads, parking areas, and staging areas as necessary to minimize fugitive dust and to comply with County Grading Ordinance. Due to the very low occurrence of Valley Fever in southeastern San Diego County and measures the Proposed Project would employ to minimize fugitive dust during construction and operations, the Proposed Project would have a less than significant impact on human health because it would not cause or contribute to a significant increase in Valley Fever infections.

In response to this comment, preliminary grading quantities have been added to the project description. These revisions to the DPEIR are presented in ~~strikeout~~/underline format; refer to Section 1.2.1.1. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

O10-87 The first paragraph of this comment is introductory in nature and does not raise a significant environmental issue for which a response is required.

The second paragraph of this comment relates to the DPEIR discussion of the County of San Diego Climate Action Plan (CAP). The commenter states that the

	<p>DPEIR relies on the CAP to “mitigate the Project’s impacts.” The discussion on page 3.1.3-37 and 3.1.3-38 is an evaluation of whether “the project would conflict with an applicable plan, policy, or regulation adopted to reduce greenhouse gas emissions.” The point of this discussion is the Proposed Project’s consistency with the goals of the CAP, along with state measures to achieve the Renewable Portfolio Standard of 33% by 2020. It is not intended to demonstrate that such consistency would mitigate the Project’s GHG emissions. The significance evaluation of the Project’s GHG emissions is found in Section 3.1.3.3.1, which concluded that the emissions would be less than significant. Accordingly, no mitigation of the Proposed Project’s GHG emissions would be required.</p> <p>The third paragraph of this comment summarizes points made in the San Diego Superior Court decision regarding the CAP. The County acknowledges this comment, which does not raise a significant environmental issue relative to the DPEIR by itself. On October 29, 2014, the Court of Appeal affirmed the Superior Court’s decision. As indicated below, the absence of an adopted CAP does not affect the analysis.</p> <p>The fourth paragraph of this comment suggests that the DPEIR “relies extensively” on the CAP, citing several pages in the DPEIR. The discussion on page 3.1.3-14 simply provides a summary of the CAP as part of the</p>
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regulatory setting in Section 3.1.3.2. The analysis on pages 3.1.3-37 to 3.1.3-42 is related to whether “the project would conflict with an applicable plan, policy, or regulation adopted to reduce greenhouse gas emissions.” The DPEIR concludes that no conflict would exist; therefore, with respect to this threshold, the impacts would be considered less than significant. If the analysis were reevaluated based on the absence of an adopted CAP, the conclusion would remain the same because no conflict with an applicable plan, policy, or regulation would exist.

The fifth and following paragraphs of this comment challenge the use of the screening threshold of 900 metric tons (MT) of carbon dioxide equivalent (MTCO₂E) per year. The County’s Interim Approach to Addressing Climate Change In CEQA Documents (May 7, 2010) (“Interim Approach”) provides recommended components of a climate change analysis, and recommends a guideline for determining significance of climate change impacts. The County does not agree with the assertion that this schedule must be formally adopted. The reference to the California Air Pollution Control Officers Association’s “white paper” was intended to explain the source of the screening threshold in the County’s guidance, which represents the approximate GHG emissions of fifty (50) residential units. The discussion was not intended to state that the “white paper” was

	<p>the sole source of this threshold. The commenter is incorrect that the GHG threshold must be adopted. Consistent with Guidelines Section 15064.7(a), the court in <i>Save Cuyama Valley v. County of Santa Barbara</i> (213 Cal.App.4th 1059), found that "... CEQA only requires that a threshold be formally adopted if it is for 'general use'—that is, for use in evaluating significance in <i>all future</i> projects." (Emphasis added.) The guidance that was relied on for this DPEIR was interim guidance, which would be replaced with a final threshold at a later date. Accordingly, the relevant section of the CEQA Guidelines is Section 15064.7(a).</p> <p>The commenter also notes that the relevant "interim guidance" is unclear. In response to this comment, the DPEIR has been revised to clarify the appropriate guidance as well as the status of the <i>Guidelines for Determining Significance and Report Format and Content Requirements: Climate Change</i>. These revisions to the DPEIR are presented in strikeout/<u>underline</u> format; refer to Section 3.1.3.3. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.</p> <p>It should be further emphasized, as stated in Section 3.1.3.3.1 of the DPEIR, that the Tierra del Sol and Rugged solar farms both have been certified as</p>
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	<p>Environmental Leadership Projects under the Jobs and Economic Improvement through Environmental Leadership Act (AB900) which, as a prerequisite, requires that projects would not result in any net additional GHG emissions pursuant to PRC Section 21183(c); see Appendix 3.1.3-3 of the DPEIR. To ensure the Tierra del Sol and Rugged solar farms would result in a zero net increase in GHG emissions, the applicants have committed to obtain voluntary carbon offsets or GHG credits from a qualified GHG emission broker to offset total projected construction and operational GHG emissions as stated in the AB 900 Application for the Soitec Solar Energy Project (attached as Appendix 3.1.3-3 of the DPEIR). In fact, the Proposed Project would offset GHG emissions, in accordance with project objective 5.</p> <p>O10-88 The County disagrees with the commenter’s assertion that the DPEIR’s analysis of impacts associated with greenhouse gas (“GHG”) emissions and reference to reducing GHG emissions to 33% below projected Business as Usual (“BAU”) under the County’s <i>DPLU Interim Approach to Addressing Climate Change in CEQA Documents</i> is “abstruse” and insufficient under CEQA. The DPEIR explains the County’s climate change analysis screening criteria provided in the <i>Interim Approach</i>, including the requirement that a project must demonstrate how its overall GHG emissions would be reduced to 33% below projected</p>
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BAU to demonstrate that the project would not impede the implementation of AB 32, if the project's emissions exceed the *Interim Approach's* screening threshold of 900 MTCO₂E per year. The *Interim Approach's* connection between a 33% reduction below BAU and ensuring that the successful implementation of AB 32 is explained at DPEIR section 3.1.3.3 and in more detail in the *Interim Approach*, which is incorporated into the DPEIR by reference. The 33% reduction target is based on the *San Diego County Greenhouse Gas Inventory: An Analysis of Regional Emissions and Strategies to Achieve AB 32 Targets* prepared by the University of San Diego and the Energy Policy Initiatives Center (EPIC) in September 2008. This regional inventory found that San Diego County would need to reduce emissions by 14 MMT CO₂E, or 33% below projected BAU levels in 2020. This reduction was not applied relative to existing GHG emissions in the County. Rather, it was a reduction from the projected future level to return to the 1990 level by 2020. Thus, a facility or land use does not need to be a current source of GHG emissions for this threshold to be applied. GHG reductions will come from existing and future uses, such that a zero net increase threshold would not be applied to future uses as the commenter suggests. This approach was subsequently replaced by the updated guidance discussed below.

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For the DPEIR to be sufficient, the County must do more than just calculate GHG emissions from construction activities, construction-related vehicle traffic, and employee vehicle use during Project operation, which is all the DPEIR indicates will be done. DPEIR 3.1.3-18 to 3.1.3-20 (Tierra del Sol), 3.1.3-25 to 3.1.3-26 (Rugged), 3.1.3-30 to 3.1.3-31 (LanEast), 3.1.3-33 (LanWest). The County must also assess the Project's substantial *embedded* greenhouse gas emissions such as those emissions associated with production of the materials used to construct the Project, like photovoltaic panels. For instance, the Tierra del Sol calculations do not take into account the substantial GHG emissions associated with concrete production. DPEIR Appendix 3.1.3-1, p. 33 (concrete to be generated at the Rugged batch plant, so not calculated as part of Tierra del Sol emissions). One of the major shortcomings in the DPEIR's global warming analysis is that it leaves out GHG emissions that occur due to manufacturing and transport of Project components and construction materials. By only addressing on-site construction and operation impacts, the DPEIR underestimates the Project's GHG emissions. Instead, it should include a full life-cycle analysis of those emissions.

O10-91

Nor does the DPEIR consider the GHG impacts associated with constructing temporary housing, even though this housing is cited as a rationale for reducing GHG emissions through shorter vehicle trips. DPEIR 3.1.3-20, fn. 6. Furthermore, DPEIR fails to compute the change in GHG emissions from the soil on the Project site resulting from the Project's conversion of the land from grazing, agricultural production, and other lower-intensity rural uses to the proposed industrial-scale CPV facilities. Detailed analysis of offsets is also omitted, though they are cited as resulting in the absence of a "net-increase in GHG emissions following implementation of" Project components. DPEIR 3.1.3-23. CEQA does not allow the unfounded assumption that offsets will reduce GHG emissions; instead the County must analyze where these offsets are coming from and how effective they are.

O10-92

The DPEIR fails to precisely address operational GHG impacts, and its conclusions are not explained. Thus decisionmakers and the public cannot understand how the DPEIR got from point A to point B. For instance, the DPEIR uses Bell 206 helicopters to calculate emissions but never states that this is the type of helicopter that will be used during Project operations, or provides any other rationale. DPEIR 3.1.3-21. Additionally, the DPEIR assumes that LanEast and LanWest will stay below the arbitrary 900 MTCO₂E significance threshold established by the County, but fails to indicate any rationale for why this is so. DPEIR 3.1.3-31, 3.1.3-33. The County must correct these omissions.

O10-93

The DPEIR's cumulative impact analysis is equally undeveloped. The DPEIR's description of the geographic extent of the Project states that it should be "primarily contingent upon the area over which lead agencies have authority. As such, the geographic extent for the purposes of the Proposed Project is the southeastern corner of the San Diego Air Basin." DPEIR 3.1.3-40. This is insufficient. The County must explain why it selected the southeastern corner of San Diego County's air basin, instead of the entire basin or county. *Kings County*, 221 Cal.App.3d at 723-724. The County must also correct the DPEIR's failure to detail concrete

O10-94

See Response O10-87 for information related to the Court of Appeal's decision in *Sierra Club v. County of San Diego*.

The County disagrees with the commenter's assertion that no process is present for public comment on the analysis done with respect to GHG emission impacts. The analysis of GHG emission impacts associated with the Proposed Project was presented for public comment in the DPEIR in accordance with CEQA (California Public Resources Code, Section 21091(a); DPEIR, p. 1.0-37). The underlying technical reports on which the DPEIR analysis relies, *Greenhouse Gas Analysis, Tierra del Sol Solar Farm Project* and *Rugged Solar LLC Project Climate Change and Greenhouse Gas Emissions Analysis*, were likewise available for review and public comment as Appendices 3.1.3-1 and 3.1.3-2 of the DPEIR, respectively (see DPEIR, p. 3.1.3-1).

The County disagrees that the Proposed Project will have a net increase in GHG levels. As a prerequisite to the certification of the Rugged and Tierra del Sol solar farms as an Environmental Leadership Project under the Jobs and Economic Improvement through Environmental Leadership Act (AB 900), the Proposed Project must not result in net GHG emissions (DPEIR, Section 3.1.3.3.1, Appendix 3.1.3-3; California Public Resources Code, Section

	<p>21183(c)). The County has calculated the total annual GHG emissions for the Proposed Project, incorporating both operational and construction emissions (see DPEIR, Section 3.1.3.3.1). These emissions will be fully offset with voluntary carbon offsets, which represent real and quantifiable GHG emissions reductions from other sources (DPEIR, Section 3.1.3.3.1, Appendix 3.1.3-3).</p> <p>With no net increase in GHG emissions, the Proposed Project has not undertaken a calculation of GHG emissions reductions by 33% of BAU, so comments related to the insufficiency of that showing are not relevant. The DPEIR determined that the Rugged and Tierra del Sol solar farms individually would have emissions below the <i>Interim Approach</i> screening threshold of 900 MTCO₂E per year, but the Proposed Project as a whole would bypass this threshold (DPEIR, Section 3.1.3.3.1). With the increase in emissions fully offset, however, the County is not required to undertake an evaluation of GHG emission reductions from BAU in accordance with the <i>Interim Approach</i> (DPEIR, Section 3.1.3.3.1).</p> <p>The County disagrees with the commenter's assertion that the County must provide a list of GHG emission reductions from other sources. Neither CEQA, nor AB 32, require that the County provide a list of GHG emission reductions to demonstrate that the goals of AB</p>
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	<p>32 will not be impeded. To the extent the commenter is implying that the provision of voluntary carbon offsets is insufficient to demonstrate a reduction in GHG emissions, the applicants have committed to obtain carbon offsets for the Proposed Project from a qualified broker (DPEIR, Section 3.1.3.3.1, Appendix 3.1.3-3). The carbon offsets will originate with a reputable carbon offset registry, which rigorously verifies that GHG reductions have occurred prior to the issuance of carbon offsets for those reductions.</p> <p>O10-89 The County does not agree with the assertion provided in this comment. Regarding construction emissions, the County’s 2010 interim guidance (County of San Diego 2010) issued for analyzing GHG emissions under CEQA states that construction emissions should be “amortized” or annualized over the expected life of the project, and then added to the estimated operational emissions. This is an appropriate approach for analyzing and accounting for construction emissions because GHG emissions, once emitted into the atmosphere, can remain in the atmosphere for an extended period of time (in some cases thousands of years, depending on the type of greenhouse gas). Therefore, to capture the construction emissions as part of the Proposed Project, which would remain in the atmosphere long after the Proposed Project is constructed and fully operational, it is appropriate to add these construction emissions to the estimated</p>
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	<p>operational emissions. For this reason, capital improvement projects and other infrastructure-related projects that generate GHG emissions commonly “amortize” or annualize construction emissions over the foreseeable life of the project.</p> <p>O10-90 The commenter questions statements in the DPEIR regarding the potential GHG reductions that could occur if the electricity produced by the Proposed Project were used instead of electricity generated by fossil fuel sources. The DPEIR does not make a commitment that the Proposed Project would replace any particular fossil fuel generation, and as acknowledged by the commenter, this potential reduction was not considered in the significance determination. Moreover, as stated in the response to comment O10-87, the Tierra del Sol and Rugged solar farms have been certified as an Environmental Leadership Project under AB 900, and the applicants have committed to obtain voluntary carbon offsets or GHG credits from a qualified GHG emissions broker to offset total projected construction and operational GHG emissions. Neither the County nor the applicants have control over how the solar-generated electricity from the Proposed Project would be used by the receiving utility, which can change from day to day depending on demand. For these reasons, the County does not see a valid reason to provide “concrete displacement scenarios” as requested by the commenter. See also response O10-8.</p>
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	<p>O10-91 The commenter is incorrect that a CEQA analysis must evaluate the embedded GHG emissions, which may include the production of materials to construct the Proposed Project, such as the trackers. Further, the DPEIR adequately evaluated the emissions associated with production of concrete for the Tierra del Sol and Rugged solar farms. With respect to GHG emissions associated with manufacturing of project components (e.g., trackers), the California Natural Resources Agency’s <i>Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97</i> (Final Statement of Reasons) discusses the need for evaluating so-called lifecycle emissions (CNRA 2009b, p. 71.) The CNRA chose to delete the word “lifecycle” from Appendix F of the CEQA Guidelines because there is no existing regulatory definition of lifecycle, such emissions may not be caused by the project under consideration, and a lead agency may not be able to require mitigation for emissions that result from the manufacturing process, among other reasons. While the Final Statement of Reasons acknowledges that there may be situations where such manufacturing-related GHG emissions may be associated with indirect effects of the project, the County does not believe there is substantial evidence to conclude that the manufacture of the CPV trackers or other project components would not occur if not for the Proposed Project because manufacturing</p>
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GHG displacement of “fossil-fuel-fired power plants” as part of its analysis of cumulative impacts. DPEIR 3.1.3-40.

For all these reasons, the DPEIR’s global warming analysis precludes informed decisionmaking both by the agency and by the public, in violation of CEQA. *Kings County*, 221 Cal.App.3d at 712.

J. GROWTH INDUCING IMPACTS

The Project is designed to generate 168.5 MW of solar energy to be supplied to SDG&E for distribution to end users. DPEIR 1.0-1 to 1.0-2. Yet, the DPEIR claims that the Project will “not induce substantial population growth.” DPEIR 1.0-39. By increasing the amount of available energy, the Project will facilitate the expansion of SD&E’s service areas, and allow the utility to sell energy to more customers and at higher amounts. Without a reduction in non-renewable energy to offset the energy generated by the Project, the DPEIR’s claim that this will not facilitate or induce growth is unfounded.

IV. INADEQUATE ALTERNATIVES

CEQA requires EIRs to “describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” Guidelines § 15126.6(a). Alternatives that would lessen significant effects should be considered even if they “would impede to some degree the attainment of the project objectives, or be more costly.” *Id.* § 15126.6(b); *California Native Plant Society v. City of Santa Cruz* (“CNPS”) (2009) 177 Cal.App.4th 957, 991. The range of alternatives considered must “foster informed decisionmaking and public participation.” Guidelines § 15126.6(a); *CNPS*, 177 Cal.App.4th at 980, 988. Alternatives may only be eliminated from “detailed consideration” when substantial evidence in the record shows that they either (1) “fail[] to meet most of the basic project objectives,” (2) are “infeasibl[e],” or (3) do not “avoid significant environmental impacts.” Guidelines § 15126.6(c).

The DPEIR here fails to analyze a reasonable range of alternatives and impedes, rather than fosters, informed decisionmaking and public participation for at least three reasons. First, the DPEIR *entirely fails* to analyze the Calxico (Imperial County) alternative despite evidence that the entire Project may be developed there. Second, the DPEIR dismisses from detailed consideration the distributed generation alternative without adequate reasons or support. Third, the DPEIR improperly designates Alternative 7 as the environmentally superior alternative without adequate support.

↑ O10-94 Cont.
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of CPV trackers may still occur for other potential sites or projects despite whether the Proposed Project is built.

As the commenter points out, the emissions associated with production of concrete for both the Tierra del Sol and Rugged Solar Farms was associated with the Rugged project site because the concrete batch plant, including a diesel-powered engine, would be located there. The GHG emissions associated with the transport of concrete ingredients to the concrete batch plant have also been quantified in the DPEIR. The emissions associated with the concrete delivery trucks providing concrete to the Tierra del Sol solar farm were assigned to that solar farm. Accordingly, all of the GHG emissions associated with the two solar farms have been accounted for properly.

The County does not agree with the assertions provided in this comment. The DPEIR does not state that temporary housing would be constructed for construction worker crews. If temporary housing were required, construction workers would be housed in motels or hotels or another form of existing accommodations in nearby communities; therefore, because no temporary housing would be built, there are no GHG emissions associated with the construction of temporary housing associated with the Proposed Project.

Regarding GHG emissions from soil conversion, the Proposed Project would not convert the use of the soil nor would it modify properties of the on-site soils. See response to comment C2-84 for further details regarding carbon sequestration associated with removal of vegetation.

As stated in Response O10-87, the applicants have committed to obtain voluntary carbon offsets or GHG credits from a qualified GHG emission broker to offset total projected construction and operational GHG emissions as stated in the *AB 900 Application for the Soitec Solar Energy Project* (attached as Appendix 3.1.3-3 of the DPEIR). It should be noted that although the Rugged and Tierra del Sol Solar Farms would be certified under AB 900, and the Proposed Project has committed to offsetting its GHG emissions pursuant to Objective 5 and would result in a zero net increase in GHG emissions, the purchase of carbon offsets was not required for the Proposed Project as mitigation and was not accounted for in the quantitative analysis of GHG emissions. This commitment has been made as part of the Proposed Project to the State of California for purposes of the AB 900 certification and to the County, and the California Air Resource Board and the County are satisfied that these credits will be provided (see the applicants' AB 900 Certification, p. 5 (outlining where GHG could be obtained)). Furthermore, California Public Resources Code,

	<p>Section 21183(c) provides the requisite standard necessary to show that net GHG emissions will be offset. Accordingly, there is no requirement under CEQA to demonstrate the source of these credits.</p> <p>O10-93 The County does not agree with the assertions provided in this comment. In absence of project-specific information, valid assumptions were made regarding the types of equipment that would be utilized during construction and operation of the Proposed Project. Regarding helicopter operations, the size and type of helicopter that would be utilized was generally known; however, in the absence of a specific model type, the Bell 206 model was chosen as the best representative model that would likely be used for the Proposed Project. The County has made a good faith effort to estimate emissions and make the most accurate assumptions possible when conducting the analysis, which is an adequate approach under CEQA.</p> <p>Regarding the LanEast and LanWest facilities, these facilities would be smaller in size and scale when compared to the Tierra del Sol and Rugged Solar Farms. Combined, the LanEast and LanWest Solar Farms would be approximately 35.6% of the Rugged Solar Farm in MW generation, and 32% in acres (DPEIR, pp.1.0-4 to 1.0-5). Construction of these facilities would use similar equipment fleets and construction methods, but would require fewer pieces</p>
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	<p>of equipment and a shorter construction time period to complete (DPEIR, p. 3.1.3-30). As such, when compared to the Tierra del Sol and Rugged Solar Farms, these facilities would result in less GHG emissions.</p> <p>O10-94 The southeastern corner of the San Diego Air Basin was indicated as the geographic extent for the GHG analysis to be consistent with that for the air quality analysis in Chapter 2.2. However, GHG impacts are recognized as exclusively cumulative impacts; there are no non-cumulative GHG emission impacts from a climate change perspective (CAPCOA 2008). This approach is consistent with that recommended by the CNRA, which noted in its Public Notice for the proposed CEQA amendments that the evidence before it indicates that in most cases, the impact of GHG emissions should be considered in the context of a cumulative impact, rather than a project-level impact (CNRA 2009a). Similarly, the <i>Final Statement of Reasons for Regulatory Action on the CEQA Amendments</i> confirm that an EIR or other environmental document must analyze the incremental contribution of a project to GHG levels and determine whether those emissions are cumulatively considerable (CNRA 2009b). Accordingly, the precise geographic extent of the analysis is not critical to the evaluation of whether the project impact with respect to GHG emissions is significant. See also the response to</p>
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	<p>comment O10-90 regarding the commenter’s repeated request to provide detailed plans for displacing electricity generated by fossil-fuel-fired power plants.</p> <p>O10-95 This comment concludes comments regarding Global Warming and does not raise a significant environmental issue for which a response is required.</p> <p>O10-96 The County disagrees with the commenter’s assertion that the Proposed Project will have growth-inducing impacts. The DPEIR’s conclusion that the Proposed Project will not induce substantial population growth as a result of generating 168.5 MW of solar energy is supported by substantial evidence.</p> <p>The Proposed Project does not include a Power Purchase Agreement (PPA) with any investor-owned utility (IOU). Whether the Proposed Project has or does not have PPAs is not an environmental issue for which a response is required.</p> <p>The California Public Utilities Commission (CPUC), must approve any PPA that an investor-owned utility (IOU) proposes to enter into (California Public Utilities Code, Section 399.13). In determining whether to approve a PPA, the CPUC would consider whether the energy supplied is necessary to meet an IOU’s obligations under California’s 33% RPS (California Public Utilities Code, Section 399.15). The IOU must also obtain the approval of the CPUC to</p>
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A. THE DPEIR FAILS TO ANALYZE THE CALEXICO (IMPERIAL COUNTY) ALTERNATIVE.

The DPEIR fails to analyze a *single* out-of-county alternative. Yet, as discussed above in section II.A, recent evidence suggests that the entire Project may now be developed in *Imperial County*. On January 16, 2014, the California Public Utilities Commission adopted Resolution E-4637, which approves amendments to “the long-term power purchase agreements . . . between [SDG&E] and Tierra del Sol Solar Farm, LLC, LanWest Solar Farm, LLC, LanEast Solar Farm, LLC, and Rugged Solar, LLC.” Exhibit 1 at p. 1 (Resolution E-4637). Among other things, the amendments “result in . . . new site location [and] new interconnection point” for the projects in Imperial County, California. *Id.* The “new project sites” would be located “near Calexico, Imperial County, California,” and would interconnect at the Imperial Valley Substation. *Id.* at 2. CEQA requires the County to fully analyze the Calexico site as a Project alternative, if not as the proposed Project itself, which it appears it may now be.

O10-99

The DPEIR asserts that under CEQA Guidelines section 15126.6(f)(1) “alternative locations only need be considered if the project proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent).” DPEIR 4.0-7. Because, the DPEIR continues, the “Proposed Project applicants do not own or have the ability to easily acquire other sites within San Diego County [besides the Los Robles site] that meet [the Project] objective[s],” no “other alternative location[s] [are] further considered in this EIR.” *Id.* at 4.0-7 to 4.0-8. The DPEIR is wrong for two reasons, and its out-of-hand dismissal of all alternative locations besides the Los Robles site violates CEQA.

First, the DPEIR grossly misstates the CEQA Guidelines. The Guidelines do *not* provide that agencies are free to ignore alternative locations in their EIRs so long as “the project proponent can reasonably acquire, control or otherwise have access to the alternative site,” as the DPEIR asserts. *Id.* at 4.0-7. To the contrary, that is only *one* of the “factors that *may* be taken into account when addressing the feasibility of alternatives.” Guidelines § 15126.6(f)(1) (emphasis added). As section 15126.6(f)(1) makes clear, “[n]o one of these factors is a fixed limit on the scope of reasonable alternatives.” *Id.* (emphasis added). And where, as here, the project applicants *themselves* are considering – if not likely to adopt – alternative locations that “already have all of the required major permits,” the “alternative site” factor is *no limit at all*. Exhibit 1 at p. 2 (Resolution E-4637).

O10-100

Second, as discussed above in section II.A, the County is not justified in limiting the project description, project objectives and scope of alternatives to San Diego County. The potential relocation of the Project to Imperial County renders the entire DPEIR and CEQA process to date obsolete. *County of Inyo*, 71 Cal.App.3d at 193. The County must accordingly (1) amend the Project location description to include Calexico (Imperial County), (2) remove the San Diego-specific Project objectives, including objectives 2 and 4 (DPEIR 1.0-1), and (3) describe and fully analyze the environmental impacts of the Calexico alternative and any other

O10-101

procure additional non-renewable generation capacity. The CPUC has a biennial process called the Long Term Procurement Plan Proceeding in which it examines utility capacity needs and authorizes utilities to procure additional generation capacity if needed. In determining whether to authorize a utility to procure additional capacity, the CPUC assumes that the utility will meet its 33% RPS obligation, and only authorizes the procurement of additional capacity if it concludes that additional capacity is needed to meet projected load (see CPUC Decision D.14-03-004). Thus, energy demand, as determined by the CPUC, with input from the California Energy Commission, drives generation procurement; procurement does not drive an increase in either utility customers or energy consumption.

Nor would an increase in available generation capacity within the San Diego region increase the number of customers that SDG&E is authorized to serve. As a public utility, SDG&E already must serve all customers within its service territory (CPUC Decision 95-12-063; see also California Public Utilities Code, Section 451). Increased generation capacity also does not permit an IOU to expand its service territory—for example, SDG&E’s service territory is defined under tariffs approved by the CPUC, and SDG&E is not permitted to serve customers outside that defined service territory (see SDG&E Electric Tariff Book, Preliminary Statement and Map of Territory Served).

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out-of-county alternatives. After revising the DPEIR with that “significant new information,” the County must recirculate it. PRC § 21092.1; *Laurel Heights II*, 6 Cal.4th 1112 at 1126-1132.

B. THE COUNTY MUST ANALYZE THE DISTRIBUTED GENERATION ALTERNATIVE IN DETAIL.

In their October 10, 2013, Scoping Comments, Conservation Groups urged the County to adopt as an alternative to the proposed Project the development of non-fossil fuel distributed generation projects near demand centers in already-disturbed areas. Conservation Groups also demonstrated in their comments that a distributed generation alternative is not only feasible, it is better for the environment and the economy than remote, industrial-scale generation projects like Soitec Solar. Many other commenters on the Project have likewise voiced their support for and demonstrated the feasibility and benefits of a distributed generation alternative. Nonetheless, the DPEIR fails to analyze distributed generation as an alternative.

The DPEIR proposes a distributed generation policy alternative under which “distributed generation including but not limited to residential and commercial roof-top solar panels, biofuels, hydrogen fuel cells, and other renewable distributed energy sources would be installed throughout San Diego County in place of the Proposed Project.” DPEIR 4.0-4. Yet while the DPEIR admits that “this alternative, including rooftop solar, would result in a *significant net reduction in project impacts* as compared with the Proposed Project,” it dismisses the distributed generation alternative without any detailed analysis. *Id.* (emphasis added).

The DPEIR provides six excuses for not analyzing the distributed generation alternative. To wit, the DPEIR asserts that

1. The alternative “is outside the control of, and could not be implemented by, the project applicant” (DPEIR 4.0-4);
2. The “alternative would not meet Objective 2 since it would not create utility scale solar energy facilities (*id.*);
3. The alternative would not “meet Objective 1 of assisting in achieving the state’s [Renewables Portfolio Standard (“RPS”)] and GHG reduction objectives of obtaining 33% of electricity from renewable resources by 2020” (*id.*);⁵⁵
4. The “alternative would not meet Objective 5 because distributed energy installers are not required to offset GHG emissions for installation of each system” (DPEIR 4.0-5);
5. The “alternative would not commit to an investment of at least \$100 million in economic development through the creation of high-wage, highly skilled jobs

⁵⁵ Under the RPS, which was formally codified in April 2011 by Senate Bill X1-2 (Skinner), all electricity retailers in the state – including investor-owned utilities like SDG&E – must supply at least 33 percent of their retail sales from “renewable” energy by 2020.

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O10-102
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Where a project acts as a catalyst for further development and growth, CEQA requires the evaluation of the environmental impacts of that development (*City of Antioch v. City Council of the City of Pittsburg* (1986) 187 Cal. App. 3d 1325, 1337). Here, the inverse is true. Forecasted electricity demand and the state’s statutory obligation to procure energy to meet 33% of its energy demand from renewable resources are the catalyst for the Proposed Project (see DPEIR, 1.0-31 to 1.0-32; California Public Utilities Code, Section 399.15).

The County disagrees with the commenter’s assertion that the Proposed Project must show a reduction in non-renewable energy to offset the energy generated by the Proposed Project. However, the commenter is referred to response O10-8 (demonstrating that Scoping Plan anticipates a 21 MMTCO₂e reduction in GHG emissions by 2020 due to implementation of the RPS.)

As the Proposed Project will not have a growth-inducing impact for the reasons outlined above, there is no requirement for the DPEIR to demonstrate a reduction in non-renewable energy. In addition, the dispatch of generation from the Proposed Project would be governed by the California Independent System Operator (CAISO), the California grid operator, the IOU offtaker for the power and the terms of any PPA between the IOU and the applicants. Generally, the CAISO must dispatch generation

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- (Objective 6)" (*id.*); and
6. A distributed solar photovoltaic ("PV") alternative is "infeasible from a technical and commercial perspective" (*id.*).

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 O10-102
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All six of the DPEIR's excuses fail, as discussed in turn below.

1. The County Is Not Limited by the Project Applicant's Access to or Control over Land and Resources.

The DPEIR concludes that because the distributed generation alternative "is outside the control of, and could not be implemented by, the project applicant," it is infeasible and need not be analyzed. DPEIR 4.0-4. Wrong.

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 O10-103

As discussed above, "whether the proponent can reasonably acquire, control or otherwise have access to the alternative site" is *only one* of the many "factors that may be taken into account when addressing the feasibility of alternatives." Guidelines § 15126.6(f)(1). "No one of these factors establishes a fixed limit on the scope of reasonable alternatives." *Id.*; *Citizens of Goleta Valley v. Board of Supervisors* ("Goleta") (1990) 52 Cal.3d 553, 575 n. 7 ("We emphasize that . . . site ownership [and] jurisdictional borders are simply a factor to be taken into account and *do not establish an ironclad limit* on the scope of reasonable alternatives" (emphasis added)); *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1464-1465 (need for "an act of Congress" to enable use of an alternate project site "does not necessarily render the alternative infeasible").

Where an alternative – like the distributed generation policy alternative here – can be implemented by the lead agency without either the assistance or land ownership of the project proponent, it is irrelevant to the alternative's feasibility that it "is outside the control of, and could not be implemented by, the project applicant." DPEIR 4.0-4. It is within the County's constitutional purview to adopt a distributed generation policy incentivizing or otherwise providing for expanded distributed generation installation. Cal. Const. art. X, § 7 ("A county . . . may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws"). It does not need Soitec Solar to do so.

2. Distributed Generation Would Increase Local Generation and Preserve Grid Reliability.

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 O10-104

Project Objective 2 is to "[c]reate utility-scale solar energy in-basin to improve reliability for the San Diego region by providing a source of local generation." DPEIR 1.0-1. The DPEIR dismisses the distributed generation because it "would not meet Objective 2 since it would not create utility scale solar energy facilities." *Id.* at 4.0-4. But because Objective 2 is unreasonably narrow, it may not be used to eliminate alternatives.

sufficient to meet load. IOUs generally have several incentives to dispatch renewable generation before dispatching gas fired resources. For example, SDG&E's current pro forma PPA for renewable resources states the SDG&E can only curtail energy deliveries from a renewable project for up to 5% of the contract quantity per year, and SDG&E must pay the generator for the quantity it could have delivered but for the curtailment (see CPUC Decision 13-11-024 (conditionally accepting SDG&E's 2013 RPS Procurement Plan)). Further, SDG&E is obligated to meet a certain percentage of its load through renewable energy pursuant to California's 33% RPS, and curtailing renewable projects, as opposed to non-renewable resources, inhibits its ability to comply with that statutory mandate (California Public Utilities Code, Section 399.15.) Therefore, available renewable generation would generally be dispatched before available non-renewable generation, thereby offsetting traditional fossil-fuel fired generation.

O10-97 The commenter provides several quotations from the CEQA Guidelines and from a California Court of Appeal decision related to the analysis of alternatives under CEQA. The County notes that the commenter provides only selective quotations and paraphrases the requirements of CEQA related to the analysis of alternatives to support the commenter's assertions that the DPEIR's analysis of alternatives is inadequate. The

	<p>County disagrees with the commenter’s assertions, as explained further in responses to O10-98 to O10-116 and common responses ALT1, ALT2, and ALT3.</p> <p>O10-98 The County disagrees with the commenter’s assertion that the DPEIR fails to analyze a reasonable range of alternatives and impedes informed decision making and public participation. The commenter outlines three arguments related to the County’s analysis of alternatives. Each of these reasons is addressed below in the responses to comments O10-99 to O10-116.</p> <p>O10-99 The County disagrees with the commenter’s assertion that CEQA requires the County to analyze the Imperial County site near Calexico as an alternative to the Proposed Project or as the Proposed Project itself. The Calexico site already is slated for an approved solar project. Soitec is not the applicant for this project. Accordingly, it would be infeasible to consider the site as an alternative for the Proposed Project. See common response ALT1 and the response to comment O10-7 for further details CEQA does not compel the analysis of any particular alternative site, but recognizes lead agency discretion in this regard, and provides that the lead agency shall publicly disclose its reasoning (14 CCR 15126.6(a)).</p> <p>O10-100 The County does not agree with the assertion that the County grossly misstates the CEQA Guidelines, nor that the County improperly ignored alternative</p>
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"The case law makes clear that . . . overly narrow objectives may unduly circumscribe the agency's consideration of project alternatives." Remy *et al.*, "Guide to CEQA," 11th ed. (2007) at p. 589. That is exactly what happened here. The DPEIR uses the "utility-scale" generation limitation in Objective 2 to dismiss the distributed generation alternative. Yet the "utility-scale" limitation *impedes* rather than *fosters* the three primary and beneficial goals within Objective 2, *i.e.* to (1) promote "solar energy"(2) in the San Diego "basin" to (3) "improve reliability for the San Diego Region." DPEIR 1.0-1.

While the distributed generation alternative would not result in "utility-scale" electrical generation, it would meet all three of Objective 2's primary goals. First, the distributed generation alternative would promote "solar energy" by "including rooftop solar." DPEIR 4.0-4. Second, it would create "in-basin" generation by "install[ing] throughout San Diego County" distributed generation "including but not limited to residential and commercial roof-top solar panels . . . and other renewable distributed energy sources." *Id.* Indeed, because distributed generation alternative would be produced on the same site as the electrical demand, it would result in *even more local* than the Soitec Project. Third, as discussed below in section IV.B.6, it would preserve local reliability and create no imbalances in the grid system.

Because the "utility-scale" generation limitation in Objective 2 is unduly restrictive, and because the distributed generation alternative would achieve all three of Objective 2's core goals, the County may not dismiss the alternative for "not meet[ing] Objective 2." DPEIR 4.0-4.

3. The Distributed Generation Alternative Would Assist California in Achieving Its RPS and Greenhouse Gas-Reduction Goals.

The DPEIR concludes that the distributed generation alternative would not "meet Objective 1 of assisting in achieving the state's RPS and GHG reduction objectives of obtaining 33% of electricity from renewable resources by 2020." DPEIR 4.0-4. The DPEIR offers two reasons for its conclusion. Both are misplaced and fail to support the DPEIR's conclusion, as discussed in turn below.

a. Increased Distributed Generation Will Assist SDG&E in Achieving Its RPS Goals.

The DPEIR's first rationale for why the distributed generation alternative would not meet assist in "achieving the state's RPS and GHG reduction objectives" is that "[a]lthough the [distributed generation] alternative would result in increased generation of renewable resources , at present most rooftop solar is ineligible to contribute towards the RPS." DPEIR 4.0-4. But the DPEIR ignores the fact that even though rooftop PV and other distributed generation sources are not directly RPS-eligible, they have a *major* impact on the quantity of RPS procurement necessary to meet the RPS target of 33 percent renewables by 2020. If distributed generation displaces electricity that would otherwise be purchased from the grid, the amount of RPS-eligible



locations as infeasible based only on the applicant's inability to acquire, control, or otherwise have access to alternative sites. See common response ALT1 and the responses to comments O10-07 and O10-99.

O10-101 The County disagrees with the commenter's assertion that the project description, project objectives, and scope of alternatives are unjustifiably limited to San Diego County and the commenter's characterization of the potential relocation of the Proposed Project to Imperial County.

As provided in the responses to comments O10-07 and O10-99 and common response ALT1, the County has not unduly limited the scope of alternatives and the Proposed Project has not changed as a result of the separate action of the CPUC on PPAs entered into between SDG&E and the applicants. For these reasons, it is not required or appropriate under CEQA for the County to amend the project description to fundamentally change the project proposed by the applicants and site the project in Imperial County, nor for the County to change project objectives 2 and 4. Additionally, for the reasons set forth in response O10-99, the County is not required to analyze the Calexico site or any other sites outside of the County as alternatives to the Proposed Project.

O10-102 The County acknowledges the commenter's preference for distributed generation energy projects

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resources that must be purchased to achieve that 33-percent-renewables goal is reduced.

By way of example, recent legislation (AB 327 (Perea), signed into law in October 2013) has greatly expanded the net energy metering “pie” through the middle of 2017. AB 327 states that SDG&E must provide net metering “until such times as the large electrical corporation reaches its net energy metering program limit [607 MW]⁵⁶ or July 1, 2017, whichever is earlier.” Cal. Pub. Util. Code § 2827(e)(4)(B).

There was 123 MW of net-metered PV in SDG&E’s⁵⁷ territory at the end of 2012. DPEIR 4.0-5. The increase in rooftop, net-metered PV in SDG&E territory between the end of 2012 and mid-2017 will be: 607 MW – 123 MW = 484 MW. Assuming this PV has a composite annual capacity factor of 20 percent, the additional 484 MW of net-metered PV will produce 484 MW × 8,760 hr/yr × 0.20 = 847,968 MW-hr/yr of solar energy.

This means that SDG&E will require 847,968 MW-hr/yr less from the grid due to the expansion of rooftop PV. This also means that SDG&E will require 279,829 MW-hr/yr – 33 percent of 847,968 MW-hr/yr – less of RPS-eligible project capacity. This reduction in need for RPS-eligible project capacity is almost enough by itself to offset the 341,339 MW-hr/yr in RPS-eligible generation that the Soitec Project will produce.

The annual output of 168.5 MW⁵⁸ of Soitec Project capacity, assuming an annual capacity factor of 25 percent, would be: 168.5 MW × 8,760 hr/yr × 0.25 = 369,015 MW-hr/yr. The California Energy Commission (“CEC”) estimates annual average transmission losses in California of approximately 7.5 percent. Adjusting for this percentage of transmission losses, the Project would produce net solar energy at the distribution level of: 369,015 MW-hr/yr × (1 – 0.075) = 341,339 MW-hr/yr.

The amount of RPS benefit from the non-speculative addition of 484 MW of new rooftop PV by mid-2017 in SDG&E territory is close, at 279,829 MW-hr/yr, to the 341,339 MW-hr/yr of solar power that would be produced by the Soitec Project’s 168.5-MW capacity. Also, assuming that (at least) the average annual rooftop PV installation rate in SDG&E territory of 80 to 100

⁵⁶ SDG&E’s net metering program limit is 606.7 MW, as calculated and discussed on SDG&E’s own website: <http://www.sdge.com/clean-energy/net-energy-metering/overview-nem-cap> (a screenshot of which is attached hereto as Exhibit 28). See also Energy Policy Initiatives Center – U. of San Diego, PV Forecast for City of San Diego CMAP, Draft for Discussion 10-22-13.

⁵⁷ SDG&E is the utility to whom the Project’s generated electricity will be sold, pursuant to a power purchase agreement approved by the CPUC. Exhibit 1 at pp. 1-2.

⁵⁸ Note that this 168.5 MW in nameplate capacity is a *best-case scenario*. Depending on many factors, including which of the four proposed Soitec projects get approved and built, the Project’s nameplate capacity may actually be much less.

O10-106
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O10-103

over the Proposed Project; see common response ALT2. The Project being considered by the County are solar farms to be developed and operated by private entities, not a distributed generation program, which would be a policy-based initiative proposed by a governmental entity, not the applicants.

The comment summarizes the commenter’s arguments related to the distributed-generation alternative. Each of these specific arguments is addressed in the responses to comments O10-103 to O10-115.

See common response ALT2. The County disagrees with the commenter’s assertion that the distributed-generation alternative was rejected because it could not be implemented by the applicants. While it is true that the applicants could not implement the distributed-generation alternative, that alternative was eliminated from consideration because it did not meet most of the Proposed Project objectives (DPEIR, pp.4.0-5 to 4.0-6) and was technically and commercially infeasible. The County agrees that it is within the County’s purview to incentivize or otherwise provide for the expansion of distributed generation through County policies. Nevertheless, as indicated in common response ALT2, the DPEIR is not analyzing such a project; the DPEIR is evaluating the potential impacts of the Proposed Project as proposed by the applicants, as defined in Chapter 1.0 of the DPEIR. It is irrelevant to the

	<p>Proposed Project and the County’s evaluation of its impacts whether the County could implement a broader policy relating to distributed generation without the assistance of the applicants.</p> <p>O10-104 The distributed-generation alternative is not eliminated from further consideration based solely on its failure to meet Objective 2 of the Proposed Project. Rather, as explained in common response ALT2 and Chapter 4.0, this alternative was eliminated based on its failure to meet most of the basic objectives of the Proposed Project and its infeasibility. This is sufficient to meet the requirements of CEQA. The County has evaluated the distributed generation alternative in the context of the Proposed Project as defined in the DPEIR and its objectives.</p> <p>The County disagrees with the commenter’s assertion that Objective 2 is impermissibly narrow such that the County’s consideration of alternatives has been unduly circumscribed. The County maintains that an objective that identifies utility scale solar production is broad in scope, rather than narrow, as it allows for a considerable range of solar installations. The County also disagrees with the commenter’s assertion that creating utility-scale solar energy will impede rather than foster the promotion of solar energy in San Diego and to improve reliability in the San Diego region. A utility-scale solar facility, such as the Proposed Project, creates solar energy, and would improve</p>
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MW⁵⁹ is maintained through 2020, these rooftop solar additions will reduce SDG&E's 2020 RPS procurement need by substantially more than the Soitec Project's 168.5-MW maximum nameplate capacity.

Furthermore, the DPEIR entirely ignores the fact that large-scale RPS-eligible commercial rooftop projects have been developed in California and can readily be developed in SDG&E's service territory and count directly towards its RPS-eligible project capacity. The first utility project of this type was Southern California Edison's 250-MW warehouse rooftop project approved by the CPUC in June 2009. In voting for the approval of the project, former CPUC Commissioner John Bohm stated that "[u]nlike other generation sources, [distributed generation] projects can get built quickly and without the need for expensive new transmission lines. And . . . these projects are extremely benign from an environmental standpoint, with neither land use, water, or air emission impacts."⁶⁰

b. CPUC Decision 11-01-025 Lifted the Stay on the Eligibility of Net-Metered Rooftop PV as Tradeable Renewable Energy Credits for RPS Compliance.

The DPEIR's second rationale for why the distributed generation alternative would not meet assist in "achieving the state's RPS and GHG reduction objectives" is that

current trading mechanisms by which distributed generation facilities could contribute to the RPS target are either impractical for small-scale systems or ineligible for utility participation. While a CPUC decision was issued authorizing the use of tradable renewable energy credits (RECs) (CPUC Decision 10-03-021), the decision was stayed, and so the market has yet to be defined and is not yet active.

DPEIR 4.0-4.

The DPEIR's rationale is outdated and wrong. The CPUC lifted its stay on D.10-03-021 *more than three years ago* in Decision 11-01-025.⁶¹ And the CEC subsequently approved as RPS eligible (at least some) RECs associated with energy from customer-side distributed

⁵⁹ This is the rate necessary to achieve the 607-MW allocation of total installed rooftop PV between 2013 and mid-2017.

⁶⁰ CPUC, "CPUC Approves Edison Solar Roof Program," Press Release, June 18, 2009, available at: http://protectourcommunities.org/wp-content/uploads/2009/07/cpuc_pressrelease_sceurbanpv.pdf.

⁶¹ D.11-01-025 is attached hereto as Exhibit 29, and available online at: http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/129517.pdf.



reliability in the San Diego basin. San Diego Gas & Electric (SDG&E) and other investor-owned utilities (IOUs) need to procure utility-scale solar energy facilities in order to meet CPUC requirements to obtain sufficient local and system generation capacity to ensure that they can serve load, referred to as resource adequacy (RA) requirements. Due to limitations associated with the electric distribution grid, distributed generation has a very limited ability to provide capacity to meet RA requirements. Additionally, utility scale solar facilities can be optimally oriented towards the sun, whereas most residential and commercial rooftops are not optimally oriented towards the sun. The costs of utility scale solar facilities are much less per watt than distributed solar due to the maximization of fixed costs. (8minuteenergy Solar White Paper). Utility scale solar can include built in storage capacity that provides power even when the sun is not shining. Revisions to the DPEIR in response to this comment are presented in ~~strikeout~~/underline format; refer to FPEIR Section 4.2. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

Furthermore, even if Objective 2 were rewritten as the commenter suggests, however, the County would have eliminated the distributed generation alternative for all of the reasons outlined in common response ALT2 and

	<p>the response to comment O10-102.</p> <p>O10-105 The distributed generation alternative is not eliminated from further consideration based solely on its failure to meet Objective 1 of the Proposed Project. The County disagrees with the commenter’s assertion that the County’s conclusion that the distributed generation alternative would not meet Objective 1 of the Proposed Project is unsupported. The commenter’s specific arguments are addressed in the responses to comments O10-106, O10-107, and O10-108.</p> <p>O10-106 The commenter assumes that the electricity generated by the Proposed Project would be delivered to SDG&E. As noted in the response to comment O10-96, the Proposed Project does not include a Power Purchase Agreement (PPA) with any investor-owned utility (IOU). Whether the Proposed Project has or does not have PPAs is not an environmental issue for which a response is required. It is also outside the control of the County to approve the acquisition of energy from distributed generation sources by investor-owned utilities, such as SDG&E.</p> <p>The County disagrees with the commenter’s argument that displacing electricity that would otherwise be purchased from the grid is as effective at helping the state meet its RPS goals as producing RPS-eligible resources.</p>
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The commenter contends that displacing electricity that would otherwise be purchased from the grid will reduce the amount of RPS-eligible resources that must be purchased to meet the 33% requirement by 2020. The commenter offers no evidence, however, that taking this approach will relieve the IOUs from any further obligation to procure RPS-eligible resources.

The commenter does not account for the recent decision to permanently close the San Onofre Nuclear Generating Station (SONGS) and the need for Southern California Edison (SCE) and SDG&E to replace over 2 gigawatts of generating capacity (CPUC 2014, p. 2).

The commenter offers no support, or even an explanation, of whether additional distributed generation would entirely offset the need for utility-scale solar to meet RPS obligations. In fact, the CPUC incorporates assumptions concerning the amount of future distributed generation in its calculations of need for new RPS resources and for local capacity resources (see CPUC 2013a). Despite assuming that additional distributed generation would appear as a result of the growth of net metering, the CPUC recently found that up to 800 MW of additional local capacity generation resources were needed in SSDG&E's service territory, including at a minimum an additional 175 MW of "preferred resources," which includes renewable generation (CPUC 2014, pp. 143-144).

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generation installations.⁶² In practical terms, this means that the entire 484 MW of rooftop PV to be added by mid-2007 can be converted into RPS capacity through the sale of the RECs associated with the rooftop PV capacity to SDG&E.

4. The Distributed Generation Alternative Would Reduce Greenhouse Gas Emissions.

The DPEIR asserts that the distributed generation “alternative would not meet Objective 5 because distributed energy installers are not required to offset GHG emissions for installation of each system.” DPEIR 4.0-5. But the DPEIR ignores the forest for the trees. As the DPEIR itself acknowledges, the distributed generation alternative would significantly reduce greenhouse gas emissions by “increas[ing] generation of renewable energy sources,” and would “result in a significant net reduction in [overall] project impacts as compared with the Proposed Project.” *Id.* at 4.0-4.

That the County decided to not include any measures in the distributed generation alternative to offset the greenhouse gas emissions from “distributed energy installers,” for example, does not change the fact that the alternative would result in significant greenhouse gas emissions reductions. *Id.* at 4.0-5. Furthermore, the DPEIR provides *no evidence whatsoever* demonstrating that the County could not adopt mitigation measures along with the distributed generation alternative to offset the greenhouse gas emissions resulting from implementation of the alternative. BLM’s unsupported and myopic excuse fails.

5. The Distributed Generation Alternative Would Produce a Substantial Investment in Economic Development through the Creation of High-Wage, Highly Skilled Jobs.

The DPEIR concludes that the distributed generation “alternative would not commit to an investment of at least \$100 million in economic development through the creation of high-wage, highly skilled jobs (Objective 6).” DPEIR 4.0-5. This excuse for dismissing the alternative fails, just like all the others.

Distributed rooftop PV projects generation good jobs at an equal or greater rate than the construction and operation of the Soitec Project would. Using the numbers and formulas from a 2010 peer-reviewed study of the employment potential of renewable energy in United States, the construction of 168.5 MW of local PV would produce about 260 job-years of activity.⁶³

⁶² See CEC, April 2013, “Renewables Portfolio Standard Eligibility Guidebook,” Seventh Edition (attached hereto as Exhibit 30), available at: <http://www.energy.ca.gov/2013publications/CEC-300-2013-005/CEC-300-2013-005-ED7-CMF.pdf>.

⁶³ Wei *et al.*, January 2010, “Putting Renewables and Energy Efficiency to Work: How Many Jobs Can the Clean Energy Industry Generate in the US?,” *Energy Policy*, 38:919-931, at p. 923, Figure 1 (attached hereto as Exhibit 31). Assume 168.5 MW of PV produces 295 GWh per year

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Furthermore, contrary to the commenter’s assertion, AB 327 did not expand the net metering “pie.” AB 327 clarified net metering limits already established pursuant to prior legislation, and further set a sunset date of July 1, 2017 for the current net metering program, regardless of whether the previously-established caps were met. Revisions to the DPEIR in response to this comment are presented in ~~strikeout~~ underline format; refer to FPEIR Section 4.2. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

The commenter provides an example of a 250 MW warehouse rooftop solar project within the service territory of SCE, but provides no evidence in support for its statement that such projects “can readily be developed”. With respect to larger scale rooftop solar (greater than 1 MW), while it is possible for such larger scale distributed generation resources to be used to meet the state’s RPS goals, it is speculative whether the CPUC would approve acquisition of additional distributed generation in San Diego County, or whether up to 168.5 MW of distributed generation could reach commercial operation prior to 2020. SDG&E has recommended that the CPUC not extend the Renewable Auction Mechanism (RAM) program. (SDG&E Draft 2014 Renewables Portfolio Standard

Procurement Plan at 24.) As an example of the difficulty in implementing distributed generation projects, SDG&E has sought since 2010 to implement up to 26 MW of utility-owned solar PV generation under its CPUC-approved Solar Energy Project. As of February 2014, however, SDG&E had only 8.8 MW under development and had abandoned further projects because they were unlikely to meet an April 2016 deadline for commercial operations due to unexpectedly lengthy permitting processes. (CPUC, SDG&E Annual Compliance Report on Solar Energy Project (Feb. 2014).) Revisions to the DPEIR in response to this comment are presented in ~~strikeout~~ underline format; refer to FPEIR Section 4.2. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

O10-108 In response to this comment, the County has made revisions and clarifications to the DPEIR to reflect CPUC Decision 11-01-025. These revisions to the DPEIR are presented in ~~strikeout~~/underline format; refer to FPEIR Section 4.2. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.

	<p>The commenter assumes that the electricity generated by the Proposed Project would be delivered to SDG&E. As noted in the response to comment O10-96, the Proposed Project does not include a Power Purchase Agreement (PPA) with any investor-owned utility (IOU). Whether the Proposed Project has or does not have PPAs is not an environmental issue for which a response is required.</p> <p>The County disagrees with the commenter’s assertion that the current eligibility of some RECs from distributed generation means “in practical terms” that the entire 484 MW of rooftop solar that could be procured by SDG&E under AB 327 can be converted into RPS capacity through the sale of RECs. There are a number of practical and regulatory limitations that inhibit the use of distributed generation RECs for RPS compliance. First, distributed generation solar energy systems must report generation to the Western Renewable Energy Generation Information System (WREGIS), and must use a meter that has an independently-verified accuracy rating of 2 percent or higher, before any RECs associated with the distributed generation can count toward a utility’s RPS (CEC 2013, p. 41). Furthermore, Senate Bill SBx1-2, which established the current 33% RPS, set significant limits on the use of unbundled RECs for RPS compliance. The CPUC implemented those limitations in Decision 11-12-052. SDG&E can meet only 15% of its RPS obligation through unbundled RECs from</p>
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6. Distributed Solar PV Is Feasible.

The DPEIR’s final excuse for dismissing the distributed generation alternative from detailed consideration is that distributed solar PV is “infeasible from a technical and commercial perspective” because (1) a large “number of new [distributed PV] installations [would be] required to deliver up to an additional 168.5 MW of solar electricity by 2020 (Objectives 1 and 7),” and (2) “[a]s yet undefined technical hurdles associated with high levels of PV development exist that create imbalances in the grid system.” DPEIR 4.0-5. Both rationales for infeasibility are wrong.

First, as discussed above in section IV.B.3.a, at least 484 MW of new rooftop PV will be added in SDG&E territory by mid-2017, which would reduce the need for RPS-eligible project capacity by nearly the same amount – 279,829 MWh/yr – as the Soitec Project would add in RPS-eligible capacity – 341,339 MWh/yr. Furthermore, the DPEIR is mistaken in its assumption that the distributed generation alternative would only add generation capacity in the form of very-small-scale “domestic systems.” DPEIR 4.0-5. As discussed above in section IV.B.3.a, large-scale RPS-eligible commercial rooftop projects have been developed in California – like Southern California Edison’s 250-MW warehouse rooftop project – and can readily be developed in SDG&E’s service territory.

Second, replacing the Soitec Project’s capacity with rooftop PV capacity would create no imbalances in the grid system. SDG&E has an ambitious smart grid deployment plan intended in part to permit the absorption of ever greater amounts of distributed rooftop solar with no impacts on grid reliability.⁶⁴ The installation of 607 MW of net-metered local solar capacity in SDG&E territory by mid-2017 will represent only about 13 percent of the typical SDG&E summer peak load of approximately 4,500 MW. Daytime distributed generation solar inputs of less than 30 percent in aggregate are considered to presumptively have no impact on grid reliability.⁶⁵ The reason is that at his relatively low level of PV penetration, there is little or no possibility of backflow through the electric distribution system to the transmission system.

In sum, all six of the DPEIR’s excuses for dismissing the distributed generation alternative without detailed analysis fail. Because the distributed generation alternative is feasible, would “result in a significant net reduction in project impacts as compared with the Proposed Project,” and would meet many if not all of the Project objectives, CEQA requires that the County fully analyze the alternative. DPEIR 4.0-4 (quote); Guidelines § 15126.6(b); CNPS,

(168.5 MW x 8,760 hr/yr x 0.20 x 1 GWh/1,000 MWh). PV produces 0.87 job-years per GWh. Therefore, 0.87 x 295 = 257 job-years.

⁶⁴ SDG&E Smart Grid Deployment Plan 2011-2020, June 2011, available at: <https://www.sdge.com/sites/default/files/regulatory/deploymentplan.pdf>

⁶⁵ Powers, March 2012, *Bay Area Smart Energy 2020*, Chapter 11 (attached hereto as Exhibit 32), available at

O10-112

O10-113

O10-114

O10-115

2014 to 2016, and only 10% of its RPS obligation after 2017 can be met with unbundled RECs. Finally, in significant part due to the transaction costs associated with having net-metered distributed PV participate in the REC market, including reporting and metering costs, and the costs of engaging in a multitude of small transactions, no viable market for such unbundled RECs has yet developed (see Crossborder Energy 2013, p. 20). Therefore, the likelihood of distributed generation contributing to SDG&E’s 33% RPS obligations in the same manner as the Proposed Project is slim. See response to comment O10-107.

O10-109 The commenter inaccurately paraphrases the DPEIR’s statements related to distributed generation’s potential to reduce GHG emissions, particularly in comparison with the Proposed Project. The DPEIR does not, as the commenter states, “acknowledge [that] the distributed generation alternative would significantly reduce greenhouse gas emissions by ‘increas[ing] [sic] generation of renewable energy sources.” While the DPEIR provides that rooftop solar would result in a significant net reduction in impacts, to the environment overall, compared with the Proposed Project, this does not go to whether rooftop solar would “significantly reduce” GHG emissions over the Proposed Project (DPEIR, Section 4.2). Please refer to common response ALT2 regarding distributed generation energy projects.

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177 Cal.App.4th at 991.

C. THE DPEIR IMPROPERLY DESIGNATES ALTERNATIVE 7 AS THE ENVIRONMENTALLY SUPERIOR ALTERNATIVE WITHOUT ADEQUATE SUPPORT FOR THIS CONCLUSION.

“An EIR’s discussion of alternatives must contain analysis sufficient to allow informed decision making.” *Laurel Heights I, supra*, 47 Cal.3d at 403. The DPEIR lacks this analysis. As discussed above, the DPEIR improperly designates Alternative 7 as the environmentally superior alternative without adequate support. Neither the DPEIR nor its Appendices reveal site surveys, geotechnical investigations, groundwater investigations, glare analysis, or any other detailed investigation that would allow the County to examine whether relocating LanEast, LanWest, and Tierra del Sol to the Los Robles site would, in fact, reduce any project impacts. Without filling these important data gaps, the County cannot conclude that this site is superior. *Laurel Heights I*, 47 Cal.3d at 404. The DPEIR’s unsupported conclusions fly in the face of CEQA’s informational mandate.

V. INADEQUATE MITIGATION MEASURES CANNOT CURE THE ENVIRONMENTAL HARMS OF THE PROJECT.

The County has a duty to fully consider feasible alternatives and mitigation measures and to “not approve [this] project[] as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of [this] proposed project[.]” PRC §§ 21002; 21002.1(b); 21081(a),(b); CEQA Guidelines §§ 15091; 15093. CEQA mandates that “[a]ll phases [and components] of a project must be considered when evaluating its impact on the environment.” CEQA Guidelines § 15126. The DPEIR’s selective analysis – and its conclusions based thereon – stymie CEQA’s informational goals and violate CEQA’s mandate that EIRs “be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.” CEQA Guidelines § 15151.

The mere preparation of reports is insufficient to satisfy this requirement. For example, one project design feature (“PDF”) requires only the preparation of reports on GHG emissions without any concrete requirement that reported emissions comply with a set standard. DPEIR 3.1.3-41 (PDF-GHG-1). In doing so, the DPEIR fails to document significant impacts and mitigation measures to address them, rather deferring such analysis to the future. When an agency preparing an impact report is required to examine future events that may be difficult to forecast, the agency “must use its best efforts to find out and disclose all that it reasonably can.” CEQA Guidelines § 15144; *Planning and Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 242. The uncertainty this builds into the DPEIR renders

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O10-110 The County disagrees with the commenter’s assertion that a distributed-generation alternative would result in significant GHG emissions reductions compared to the Proposed Project. See the response to comment O10-109.

The commenter contends that the County should evaluate a new alternative that relies on distributed generation and requires all GHG emissions associated with the alternative to be offset. CEQA only requires that an EIR describe a range of reasonable alternatives to the project in order to permit a “reasoned choice” (14 CCR 15126.6(f); *see also Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1265). There is no duty under CEQA to create hypothetical mitigation measures that might be applied to alternatives. The DPEIR presents a reasonable range of alternatives such that consideration of the commenter’s proposed alternative is unnecessary. Furthermore, an EIR need not consider an alternative whose implementation is remote and speculative (14 CCR 15126.6(f)(3)).

The County disagrees that a distributed generation alternative that requires all GHG emissions to be offset is a feasible alternative, and the commenter has provided no evidence that such an alternative is feasible. The Proposed Project will offset its GHG emissions by purchasing carbon offsets; see DPEIR

	<p>Section 3.1.3. The commenter provides no evidence that it would be feasible to require the purchase of carbon offsets for a distributed generation alternative as the Proposed Project has committed to do. Revisions to the DPEIR in response to this comment are presented in strikeout <u>underline</u> format; refer to FPEIR Section 4.2. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.</p> <p>O10-111 The commenter’s calculation of job activity associated with the installation of 168.5 MW of rooftop solar assumes sufficient technical and commercial feasibility regarding that level of distributed generation. First, based on the speculative nature of the distributed generation alternative, the extent to which the distributed generation alternative would generate economic development is unknown because the CPUC has already called for substantial distributed generation energy generation and it is unclear whether it will call for more. Second, unlike the Proposed Project, the distributed generation alternative would not be required to pay prevailing and living wages. Thus, the DPEIR discusses how such an assumption is highly speculative (DPEIR, Section 4.2; see also common response ALT2 and the response to comment O10-106). An EIR need not consider an alternative whose implementation is remote and speculative (14</p>
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	<p>CCR 15126.6(f)(3)). Revisions to the DPEIR in response to this comment are presented in strikeout <u>underline</u> format; refer to FPEIR Section 4.2. The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.</p> <p>O10-112 The commenter summarizes the arguments presented in comments O10-113 and O10-114. Refer to the specific responses to these comments.</p> <p>O10-113 Refer to responses to O10-106 and O10-107 related to the inaccurate presumption that at least 484 MW of rooftop solar “will be added in SDG&E territory by mid-2017” and that a 250 MW warehouse rooftop solar project is feasible, and to revisions to Section 4.2 of the DPEIR. The commenter has presented no evidence that a “larger-scale RPS-eligible commercial rooftop project [] ... can readily be developed in SDG&E’s service territory.”</p> <p>O10-114 The DPEIR explains the numerous reasons that the distributed generation alternatives was found infeasible, including anticipated technical hurdles related to a high penetration of distributed PV (DPEIR, Section 4.2). Please also refer to common response ALT2 regarding distributed generation energy projects for further details.</p>
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	<p>O10-115 The County disagrees with the commenter’s assertion that the distributed-generation alternative is feasible and would meet many, if not all of the Proposed Project objectives. The County also disagrees with the commenter’s assertion that the DPEIR’s rationale for excluding the alternative is flawed and that the County must fully analyze the alternative. Refer to common response ALT2, the responses to comments O10-103 through to O10-114, and revisions to Section 4.2 of the DPEIR presented in strikeout <u>underline format</u>. Additionally, the County is mindful that the scope of the alternatives to be discussed is subject to the rule of reason (14 CCR 15126.6(a)). The changes do not raise important new issues about significant effects on the environment. Such changes are insignificant as the term is used in Section 15088.5(b) of the CEQA Guidelines.</p> <p>O10-116 The County disagrees with the commenter’s assertion that the DPEIR has improperly designated Alternative 7 as the environmentally superior alternative. The DPEIR compared Alternative 7 to each of the areas for which the Proposed Project would have potential significant impacts; see common response ALT3 for further details.</p> <p>The County also disagrees with the commenter’s assertion that the examination of the Los Robles site cannot be accomplished without a number of site-specific surveys and investigations. There is no</p>
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impractical the informational goals of CEQA. The Revised DPEIR must remedy this deficiency by mandating concrete requirements for the mitigation of significant impacts from future projects.

The DPEIR relies upon future compliance with management plans to mitigate significant impacts, introducing the very uncertainty in decisionmaking that CEQA was designed to avoid. Merely ensuring that a traffic control plan will be prepared at some future date does nothing for present day decisionmakers and the public, especially in the eventuality that a future traffic control plan produces significant impacts to other categories of resources. DPEIR 7.0-41 to 7.0-42. Similarly, the DPEIR calls for implementation of a Glare Study and states that “[i]f potential visual resource impacts associated with project-generated glare are identified, then measures shall be identified to reduce impacts.” DPEIR 7.0-2 (PDF-AE-5).⁶⁶ Other deferred plans, reports, and studies include site specific air quality technical reports for LanEast and LanWest (DPEIR 7.0-2 to 7.0-3), Resource Management Plans (DPEIR 7.0-6 to 7.0-7), Stormwater Pollution Prevention Plans (DPEIR 7.0-8 to 7.0-9), final biological monitoring reports (DPEIR 7.0-9 to 7.0-10), Fugitive Dust Control Plans (DPEIR 7.0-10 to 7.0-11), final Fire Protection Plans (DPEIR 7.0-12), Nesting Bird Management, Monitoring, and Reporting Plans (DPEIR 7.0-12 to 7.0-14), groundwater monitoring programs (DPEIR 7.0-15 to 7.0-19), Revegetation Plans (DPEIR 7.0-20), grading monitoring programs (DPEIR 7.0-22 to 7.0-30), Archaeological Treatment Plans (DPEIR 7.0-31), Cultural Treatment Plans (DPEIR 7.0-31), Helicopter Noise Control Plans (DPEIR 7.0-33, 7.0-35 to 7.0-36), Construction Management Plans (DPEIR 7.0-33), Blasting Plans (DPEIR 7.0-34 to 7.0-35), Site-Specific Noise Technical Reports (DPEIR 7.0-36), geotechnical studies (DPEIR 7.0-38 to 7.0-39) and final Construction Fire Prevention Plans. DPEIR 7.0-39 to 7.0-40. Deferring this analysis until *after* the County has completed the CEQA process and approved the Project could pose impacts that were never evaluated, thus violating CEQA.

The DPEIR defers critical decisionmaking on mitigation. Instead of determining whether “the significant and unmitigated effects associated with aesthetics and air quality can be reduced” the DPEIR instead defers this decision to the Board. DPEIR S.0-72. This is insufficient. The DPEIR itself must determine the extent of these effects and what mitigation measures might be available to reduce those effects, even if those mitigation measures would not reduce the effects below the threshold of significance. *Id.* CEQA’s informational purpose is not served by an impact report that neglects a final conclusion about the feasibility of mitigation measures. This information is critical both to the Board, as the decisionmaking body, and to the public’s ability to comment. *Laurel Heights I, supra*, 47 Cal.3d at 403.

⁶⁶ Indeed, the Glare Study included as Appendix 2.1-3 and used to analyze the Project’s significant glare impacts is merely a *draft*.

O10-117
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O10-118

O10-119

ironclad rule on the level of detail required in analyzing an alternative: however, the degree of specificity will correspond to the degree of specificity involved in the underlying activity described in the DPEIR (14 CCR 15126.6(a); *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 746). See common response ALT3 for further details.

O10-117 The County disagrees that the DPEIR’s analysis is selective in a way that stymies CEQA’s informational goals and violates the mandate of CEQA.

The County generally agrees with the commenter that the “mere” preparation of reports can be insufficient to satisfy the mitigation requirements of CEQA. However, the DPEIR requires not only the preparation of reports and plans as mitigation for several potential significant impacts of the Proposed Project, but also requires specific performance criteria, as well as the review and/or approval of the reports by the governmental agency with jurisdiction and the implementation of requirements within the reports. Please refer to the response to comment O10-118 for those mitigation measures and project design features that will be implemented based on specific performance criteria.

It is sufficient to cite to plans that will be developed in the future, because each of these plans will be

	<p>developed in accordance with specific performance criteria and will detail the specific measures that will be implemented (14 CCR 15126.4(a)(1)(B)). “When a public agency has evaluated the potentially significant impacts of a project and has identified measures that will mitigate those impacts, the agency does not have to commit to any particular mitigation measure in the EIR, as long as it commits to mitigating the significant impacts of the project. ... ‘[F]or [the] kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process ... the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of such approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated’” (<i>North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors</i> (2013) 216 Cal. App. 4th 614, 629, 630).</p> <p>Related to the specific PDF targeted by the commenter, PDF-GHG-1 requires that site-specific GHG reports be prepared for the LanEast and LanWest solar farms before the County issues project-specific permits for the facilities (DPEIR, Section 3.1.3). The reports must be prepared in accordance with County requirements and be approved by the</p>
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	<p>County prior to the County’s certification of any project-specific environmental review document (DPEIR, Section 3.1.3). The DPEIR explains that the LanEast and LanWest solar farms are being analyzed at a programmatic level and the detail necessary to prepare a quantitative analysis for project-level GHG reports is not yet available (DPEIR, Section 3.1.3). However, based on the size and scale of the LanEast solar farm in comparison to the Tierra del Sol and Rugged solar farms analyzed, and the activities that would be required for construction, construction-related GHG emissions are not expected to exceed the County’s screening level thresholds. PDF-GHG-1 would ensure that the LanEast and LanWest components must prepare greenhouse gas technical reports when project-specific information is available and prior to issuance of a Major Use Permit. It should also be noted that CEQA Guidelines Section 15168 does not mandate a particular level of environmental review for program level EIRs. If a subsequent activity would have effects that were not examined in the program EIR, then a new Initial Study would need to be prepared leading to either an EIR or Negative Declaration. Additionally, as indicated in CEQA Guidelines Section 15168(4), where a subsequent activity involves site specific operations, an evaluation must be prepared to determine whether environmental effects were covered in the program EIR.</p>
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The DPEIR thus improperly defers specification of numerous mitigation measures until after the completion of environmental review in violation of CEQA. “[M]itigation measure[s] [that do] no more than require a report be prepared and followed” do not provide adequate information for informed decisionmaking under CEQA. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794; CEQA Guidelines § 15126.4(a)(1)(B). The Revised DPEIR must address this deficiency by completing its reports, plans, and studies before any final decision is made.

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 O10-119
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Compounding the confusion that reliance on future compliance with management plans and deferring critical decision making injects into the CEQA process is the DPEIR’s insistence on avoiding mitigation measures in favor of what it terms “Project Design Features.” See, e.g., DPEIR 1.0-29 to 1.0-30 (PDFs are intended “to reduce or avoid the potential for environmental effects . . . [and] would be made conditions of the Proposed Project to ensure these features are incorporated into the project design”). For example, the DPEIR lists wetting down dusty construction sites as a PDF rather than as a mitigation measure for otherwise significant air quality impacts. DPEIR 7.0-2 to 7.0-5. As a result, the DPEIR foregoes discussion of the harms associated with construction dust in the PDF section addressing ground wetting, resulting in counterintuitive segmentation of the harm from the mitigation measure that addresses it. See, e.g., DPEIR S.0-9 to S.0-71 (table listing significant impacts and mitigation measures, but omitting any PDFs). It is unacceptable under CEQA for the County to assume that mitigation will be sufficient without a comprehensive understanding of the significance of the impacts that the mitigation measures are meant to address. Thus, PDFs are not a replacement for mitigation measures under CEQA, and to the extent the DPEIR uses the term PDF interchangeably with mitigation measures, it frustrates the informational purposes of CEQA.

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 O10-120

Finally, there are components missing from the list of mitigation measures and PDFs in Chapter Seven of the DPEIR. For instance, no mitigation measures are listed under population and housing (DPEIR 7.0-43), yet temporary worker housing is listed as a reason why GHG emissions from transportation to and from the Project site would be reduced. DPEIR 3.1.3-20, fn. 6. And, as discussed above, the groundwater limits and the requirements that the Project be properly grounded should also be included as enforceable mitigation measures.

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 O10-121
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 O10-122

In light of the current County GHG thresholds of 2,500 MT CO₂E per year applied to a project’s operational emissions (see the response to comment O10-88 and DPEIR Section 3.1.3), the estimated operational emissions for the Tierra del Sol solar farm (422 MT CO₂E per year) and Rugged solar farm (586 MT CO₂E per year), and the smaller generation capacity of LanEast and LanWest, it is unlikely that the operational GHG emissions for the latter projects would exceed the County’s GHG threshold. Therefore, the DPEIR has not improperly deferred analysis either of impacts or the adequacy of associated mitigation measures. It should also be noted that the applicants have committed through the AB 900 certification to provide GHG offsets for the operational *and* construction emissions for the Tierra del Sol solar farm and Rugged solar farm (see DPEIR p. 1.0-1 (Objective 5), DPEIR Section 3.1.3, and Appendix 3.1.3-3), which would further reduce total operational GHG emissions from the Proposed Project.

O10-118 The County disagrees with the commenter’s assertion that future compliance with management plans will not adequately mitigate significant impacts. Refer to response O10-117 regarding compliance with the mitigation requirements of CEQA through the commitment to devise measures in the future that that will satisfy specific performance criteria articulated at the time of approval. This approach is consistent with

	<p>CEQA Guidelines Section 15126.4(a)(1)(B), and the rule generally established by <i>Sacramento Old City Ass'n. v. City Council</i> (1991) 229 Cal. App. 3d 1011. The use of ongoing compliance programs and plans during the implementation of the Project is also the most efficient and certain way to coordinate, ensure, and cross-check mitigation for long-term projects like the solar farms. The DPEIR's project design features and mitigation measures adequately describe performance criteria and requirements for each of the plans. Mitigation Measures M-BI-PP-1, M-BI-PP-2, M-BI-PP-3, M-BI-PP-4, M-BI-PP-5, M-BI-PP-10, M-BI-PP-15, M-BI-R-1, M-CR-PP-1, M-CR-PP-3, M-N-TDS-2, M-N-TDS-3, M-N-TDS-4, and M-N-TDS-5 and project design features PDF-GE-1 and PDF-HZ-2 either specifically refer to County Report and Format Guidelines, County ordinances or standards, or list specific performance criteria that will ensure implementation of the measures is enforceable. Mitigation measures M-AQ-LE-2, M-AQ-LW-2, M-BI-PP-8, M-N-LE-1, and M-N-LW-1 and project design features PDF-AE-5, PDF-GHG-1, and PDF-TR-1 include performance criteria/requirements for the plans; however, in response to this comment, the County has made revisions to the DPEIR to further clarify the specific County guidelines or requirements with which the plans will conform. These revisions to the DPEIR are presented in strikeout/<u>underline</u> format; refer to DPEIR Chapter 7.0.</p>
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The DPEIR thus improperly defers specification of numerous mitigation measures until after the completion of environmental review in violation of CEQA. “[M]itigation measure[s] [that do] no more than require a report be prepared and followed” do not provide adequate information for informed decisionmaking under CEQA. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794; CEQA Guidelines § 15126.4(a)(1)(B). The Revised DPEIR must address this deficiency by completing its reports, plans, and studies before any final decision is made.

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 O10-119
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Compounding the confusion that reliance on future compliance with management plans and deferring critical decision making injects into the CEQA process is the DPEIR’s insistence on avoiding mitigation measures in favor of what it terms “Project Design Features.” *See, e.g.,* DPEIR 1.0-29 to 1.0-30 (PDFs are intended “to reduce or avoid the potential for environmental effects . . . [and] would be made conditions of the Proposed Project to ensure these features are incorporated into the project design”). For example, the DPEIR lists wetting down dusty construction sites as a PDF rather than as a mitigation measure for otherwise significant air quality impacts. DPEIR 7.0-2 to 7.0-5. As a result, the DPEIR foregoes discussion of the harms associated with construction dust in the PDF section addressing ground wetting, resulting in counterintuitive segmentation of the harm from the mitigation measure that addresses it. *See, e.g.,* DPEIR S.0-9 to S.0-71 (table listing significant impacts and mitigation measures, but omitting any PDFs). It is unacceptable under CEQA for the County to assume that mitigation will be sufficient without a comprehensive understanding of the significance of the impacts that the mitigation measures are meant to address. Thus, PDFs are not a replacement for mitigation measures under CEQA, and to the extent the DPEIR uses the term PDF interchangeably with mitigation measures, it frustrates the informational purposes of CEQA.

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 O10-120

Finally, there are components missing from the list of mitigation measures and PDFs in Chapter Seven of the DPEIR. For instance, no mitigation measures are listed under population and housing (DPEIR 7.0-43), yet temporary worker housing is listed as a reason why GHG emissions from transportation to and from the Project site would be reduced. DPEIR 3.1.3-20, fn. 6. And, as discussed above, the groundwater limits and the requirements that the Project be properly grounded should also be included as enforceable mitigation measures

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 O10-122

O10-119 The County disagrees with the commenter’s assertion that the DPEIR improperly defers critical decision making on mitigation, particularly with respect to significant and unavoidable impacts. The DPEIR is not a decision making document. Rather, the DPEIR is an informational document that will inform County decision makers and the public generally about the potential significant effects of the Proposed Project, identify possible ways to minimize these significant effects, and describe reasonable alternatives to the Proposed Project (DPEIR, Section 1.5).

The comment offers only a critique of section 5.4 of the DPEIR summary section, and raises no questions with regard to the assessment of individual mitigation measures, either for aesthetics or air quality. Section 5.4 is simply informational, and is intended to provide a general guide for the reader to the County’s CEQA consideration processes.

Lastly, the County disagrees with the commenter’s assertion that the County has not met the informational requirements of CEQA related to significant and unavoidable impacts. The DPEIR has analyzed the extent of these impacts and has included feasible mitigation measures to reduce impacts. Refer to DPEIR Section 2.1.3 related to aesthetics impacts AE-LE-LW-1, AE-LE-LW-2, AE-LE-LW-3, AE-TDS-1, AE-TDS-2, AE-TDS-3, AE-TDS-4, AE-R-1, AE-R-2, AE-R-3, AE-PP-1, AE-PP-2, AE-PP-3, AE-CUM-PP-

	<p>1, AE-CUM-PP-2 and DPEIR Section 2.2.3 related to air quality impacts AQ-LE-1, AQ-LW-1, AQ-LE-2 AQ-LW-2, AQ-PP-1 and AQ-PP-2.</p> <p>The County disagrees with the commenter’s assertion that the specification of mitigation measures has been improperly deferred, as deferred mitigation applies to circumstances in which an assessment and determination regarding mitigation is postponed until a point in time after certification of the environmental document and approval of the project. Refer to the responses to comments O10-117 and O10-118.</p> <p>O10-120 The County determines whether an impact of the Proposed Project is potentially significant by first analyzing the characteristics of the Proposed Project that could contribute to the impact or could reduce the impact. The characteristics of the Proposed Project that would tend to decrease or even avoid a potential impact are termed “project design features” (PDFs) (DPEIR, Section 1.2.1.3). Project design features are characteristics of the Proposed Project that will be implemented regardless of whether the impact is found to be significant or less than significant (DPEIR, Section 1.2.1.3). To ensure their implementation, all project design features are made conditions of the Proposed Project (DPEIR, Section 1.2.1.3). If, in taking into account all aspects of the Proposed Project, including project design features, the DPEIR concludes that the Proposed Project will have a</p>
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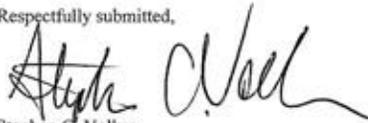
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VI. CONCLUSION

The County's DPEIR is disorganized, incomplete, and confusing. The DPEIR severely understates and ignores the Project's significant environmental impacts, and any purported benefits of the Project cannot outweigh its environmental harms. The County must overhaul the DPEIR to address the significant deficiencies identified above.

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Respectfully submitted,



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significant impact, the County is required under CEQA to consider and implement all feasible mitigation measures that would reduce the impact to less than significant (California Public Resources Code, Sections 21002, 21081(a)). If the DPEIR determines that the Proposed Project (including any project design features) will have a less-than-significant impact, the County is not avoiding the provision of an analysis regarding the sufficiency or feasibility of project design features. The County analyzed each potential environmental impact of the Proposed Project. This analysis necessarily includes any inherent design features that would tend to lessen impacts, whether the County refers to these Project characteristics as project design features or not. Therefore, the County is not short-circuiting an analysis of whether mitigation is sufficient or feasible.

The County disagrees with the commenter's assertion that the incorporation of PDF-AQ-1, related to the minimization of fugitive dust during construction in accordance with County Code Section 87.428, violates CEQA because the DPEIR does not analyze the sufficiency of these requirements to minimize fugitive dust. First, the implementation of the fugitive dust control measures of PDF-AQ-1 are required under the County Code and must be implemented regardless of whether the County determines they are sufficient to control fugitive dust impacts or whether PDF-AQ-1 is

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LIST OF EXHIBITS

- List of exhibits in order of appearance in the comment letter
- ▶ **Exhibit 1:** CPUC, January 16, 2014, Resolution E-4637
 - ▶ **Exhibit 2:** SDG&E, October 1, 2013, East County Substation Project Minor Project Refinement Request Form, Request # 8
 - ▶ **Exhibit 3:** Impacts of Soitec Solar Projects on Boulevard and Surrounding Communities
 - ▶ **Exhibit 4:** Precipitation data from weather station KCZZ in Campo and from the Mt. Laguna Observatory in Mt. Laguna, as accessed via www.wunderground.com
 - ▶ **Exhibit 5:** CPUC, December 19, 2013, Letter to Nazar Najor of Live Oak Springs Water Company re: Rejection of Advice Letter 28
 - ▶ **Exhibit 6:** Plea Agreement, *United States of America v. Duke Energy Renewables, Inc.*, Case No. 213-cr-00268-KHR (D. Wyo., Filed 11/07/13)
 - ▶ **Exhibit 7:** County of San Diego, Land Use and Environmental Group, *Guidelines for Determining Significance and Report Format and Content Requirements: Biological Resources*, Fourth Revision, September 2010
 - ▶ **Exhibit 8:** California Native Species Field Survey Form, December 1, 2013
 - ▶ **Exhibit 9:** 2010 United States Fish and Wildlife Service *Interim Golden Eagle Inventory Monitoring Protocols; and Other Recommendations*, Pagel, J.E., D.M. Whittington, and G.T. Allen, 2010, Division of Migratory Bird Management
 - ▶ **Exhibit 10:** *Golden Eagle Territories in the Iberdrola – Tule Wind Project Vicinity*, Map, May 2010
 - ▶ **Exhibit 11:** USFWS, Pagel, Joel E., January 21, 2010, *Memo about the Tule Wind Project*
 - ▶ **Exhibit 12:** Grubb, Teryl G., 2010, *Golden Eagle Indifference to Heli-Skiing and Military Helicopters in Northern Utah*, *The Journal of Wildlife Management*, 74(6): 1275-1285
 - ▶ **Exhibit 13:** National Bald Eagle Management Guidelines (2007)
 - ▶ **Exhibit 14:** Photographic evidence of an egret between the Rugged site locations
 - ▶ **Exhibit 15:** California Natural Diversity Database, data for Live Oak Springs Quadrangle (3211663) and Tierra del Sol Quadrangle(3211653)
 - ▶ **Exhibit 16:** Manville, *Anthropogenic-related Bird Mortality Focusing on Steps to Address Human-cause Problems – a White Paper for the Anthropogenic Panel*, International Partners in Flight Conference, August 27, 2013
 - ▶ **Exhibit 17:** Farboud *et al.*, 2013, “‘Wind Turbine Syndrome’: Fact or Fiction?,” *The Journal of Laryngology & Otology*, 127(3):222-226
 - ▶ **Exhibit 18:** Tule Wind Project FEIS section D.8
 - ▶ **Exhibit 19:** Excerpts from HDR Engineering, Inc., February 2011, “Tule Wind Project Draft Noise Analysis Report”
 - ▶ **Exhibit 20:** Salt & Kaltenbach, 2011, “Infrasound from Wind Turbines Could Affect Humans,” *Bulletin of Science, Technology and Society*, 31(4): 296-302
 - ▶ **Exhibit 21:** Roberts & Roberts, 2013, “Wind Turbines: Is There a Human Health Risk?,” *Journal of Environmental Health*, 75(8): 8-17
 - ▶ **Exhibit 22:** Salt *et al.*, 2013, “Large Endolymphatic Potentials from Low-Frequency and

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a condition of the Proposed Project. Moreover, the effect of implementing PDF-AQ-1 is analyzed in the DPEIR. Specifically, the County calculates that the requirement to apply water three times per day to suppress fugitive dust will reduce particulate matter by approximately 61% over grading activities without any watering, to approximately 101.99 pounds per day as the maximum estimated particulate matter levels for the Proposed Project (DPEIR, Section 2.2.3.2). This impact is then analyzed against the significance guidelines to determine level of significance; as the Proposed Project will exceed the significance threshold of 100 pounds per day, the DPEIR concludes that this is a potentially significant impact (AQ-PP-2; see DPEIR, Section 2.2.3.2). Thus, the County ultimately concluded that the Proposed Project will have a significant impact regarding particulate matter emissions during construction and that no additional feasible mitigation is available to reduce the Proposed Project’s maximum potential construction emissions from 101.99 pounds per day to below 100 pounds per day (DPEIR, Section 2.2.7). The project design feature has not acted as a replacement for a mitigation measure or frustrated the informational purpose of CEQA in disclosing and evaluating potential feasible mitigation measures.

O10-121 The County disagrees with the commenter’s assertion that a mitigation measure related to temporary worker

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- Infrasonic Tones in the Guinea Pig," *The Journal of the Acoustical Society of America*, 133(3): 1561-1571
- **Exhibit 23:** Salt & Lichtenhan, 2012, "Perception-Based Protection from Low-Frequency Sounds May Not Be Enough," presented at InterNoise 2012 in New York City, New York, August 19-22, 2012
 - **Exhibit 24:** Salt & Hullar, 2010, "Responses of the Ear to Low Frequency Sounds, Infrasound and Wind Turbines," *Hearing Research*, 286: 12-21
 - **Exhibit 25:** picture of the glare from Soitec's experimental CPV tracker at the campus of the University of California, San Diego
 - **Exhibit 26:** Goodyear, January 20, 2014, "Death Dust: the Valley Fever Menace," *New Yorker*
 - **Exhibit 27:** *Sierra Club v. County of San Diego*, 37-2012-00101054-CU-TT-CTL (appeal pending in 4th DCA, case no. D064243)
 - **Exhibit 28:** SDG&E, "Overview – NEM Cap," webpage, <http://www.sdge.com/clean-energy/net-energy-metering/overview-nem-cap>, last accessed March 1, 2014
 - **Exhibit 29:** CPUC, January 14, 2011, Decision 11-01-025
 - **Exhibit 30:** CEC, April 2013, "Renewables Portfolio Standard Eligibility Guidebook," Seventh Edition
 - **Exhibit 31:** Wei *et al.*, January 2010, "Putting Renewables and Energy Efficiency to Work: How Many Jobs Can the Clean Energy Industry Generate in the US?," *Energy Policy*, 38:919-931
 - **Exhibit 32:** Powers, March 2012, *Bay Area Smart Energy 2020*, Chapter 11

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housing is required. The County also disagrees with the commenter's assertion that temporary worker housing is listed as a reason why GHG emissions from transportation to and from the Proposed Project would be reduced. The DPEIR estimates GHG emissions related to the use of motor vehicles associated with operation of the Proposed Project, including from worker trips by personal vehicles (DPEIR, Section 3.1.3). The DPEIR conservatively estimates that worker trips would originate in larger population centers such as Alpine and El Centro, 45 miles away, but realistically takes into account that workers could be commuting from local communities. The average commuting distance is therefore conservatively calculated as 35 miles one way. The Proposed Project does not propose to build either temporary or permanent worker housing, and indeed there is no indication that this is necessary, given the estimated number of permanent employees— up to 31—and the availability of housing (DPEIR, Section 3.2.3). The provision of local housing (temporary or permanent), with its own suite of potential environmental effects, is not offered for the Project as a mitigation measure to ensure that employees have shorter commutes. To the contrary, the DPEIR conservatively estimates GHG emissions associated with worker commutes and does not assume commuting distances from local housing.

	<p>The other “components” the commenter asserts are missing from the list of mitigation measures and project design features are not specified; therefore, no further response is provided.</p> <p>O10-122 Refer to the response to comment O10-20 related to limits on pumping groundwater and the response to comment O10-72 related to grounding of electrical equipment.</p> <p>O10-123 The County does not agree that the DPEIR is disorganized, incomplete and confusing. In conformance with CEQA, the DPEIR evaluated the whole of the action and analyzed each environmental subject area with regard to potential adverse effects. The DPEIR is consistent with the County’s EIR Format and General Content Requirements, dated September 26, 2006. The County has addressed the commenter’s specific comments regarding the DPEIR in response to comments O10-1 through O10-122.</p> <p>O10-124 The County acknowledges the list of exhibits. This information will be included in the FPEIR for review and consideration by the decision makers.</p> <p>References</p> <p>8 CCR 342. Reporting Work-Connected Fatalities and Serious Injuries.</p>
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	<p>8 CCR 3203. Injury and Illness Prevention Program.</p> <p>8 CCR 5144. Respiratory Protection.</p> <p>14 CCR 15000–15387 and Appendices A–L. Guidelines for Implementation of the California Environmental Quality Act, as amended.</p> <p>Bookhout, T.A., Editor. 1994. Research and management techniques for wildlife and habitats. Fifth ed. The Wildlife Society, Bethesda, Md. 740pp.</p> <p>California Department of Public Health. 2013. <i>Preventing Work-Related Coccidioidomycosis (Valley Fever)</i>. Hazard Evaluation System & Information Service Fact Sheet. June 2013.</p> <p>CAPCOA (California Air Pollution Control Officers Association). 2008. <i>CEQA & Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act</i>. January 2008.</p> <p>CARB (California Air Resources Board). <i>Climate Change Scoping Plan</i>. May 11, 2009.</p> <p>CEC (California Energy Commission). <i>Renewables Portfolio Standard Eligibility Guidebook</i>, 7th ed. April 2013.</p> <p>CDFG. 2012. <i>RareFind</i>. Version 3.1.0. California Natural Diversity Database (CNDDB). Accessed April 2012.</p>
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	<p>CNRA (California Natural Resources Agency). 2009. Notice of Public Hearings and Notice of Proposed Amendment of Regulations Implementing the California Environmental Quality Act. Sacramento, California: CNRA. http://www.ceres.ca.gov/ceqa/docs/Notice_of_Proposed_Action.pdf.</p> <p>CNRA. 2009b. Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97. December 2009.</p> <p>County of San Diego. 2006. <i>County of San Diego Environmental Impact Report Format and General Content Requirements</i>. County of San Diego Land Use and Environment Group, Department of Planning and Land Use, Department of Public Works. September 26, 2006.</p> <p>County of San Diego. 2008. 2007 Communicable Disease Report. Health & Human Services Agency, Public Health Services, Community Epidemiology. October 2008.</p> <p>County of San Diego. 2010. <i>Industrial Use/East Otay Mesa Specific Plan – DPLU Interim Guidance for Greenhouse Gases (GHG) Analysis</i>. May 7, 2010.</p> <p>County of San Diego. 2013. <i>Guidelines for Determining Significance and Report Format and Content Requirements: Climate Change</i>. November 7, 2013. http://www.fws.gov/cno/es/recovery.html, Accessed on April 4, 2014.</p>
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	<p>County of San Diego. 2014a. Reportable Diseases and Conditions by Year, 2009-2013. Health & Human Services Agency, Public Health Services. June 11, 2014.</p> <p>County of San Diego. 2014b. 2008-20014 San Diego County Coccidioidimycosis Rates. Health & Human Services Agency, Public Health Services, Epidemiology and Immunization Services Branch. September 12, 2014.</p> <p>County of San Diego. 2014c. Personal communication between J. Yen (Health & Human Services Agency, Public Health Services, Epidemiology and Immunization Services Branch) and J. Saunders (Dudek). September 12, 2014.</p> <p>CPUC. 2013a. Revised Scoping Ruling in Rulemaking 12-03-014. May 21, 2013.</p> <p>CPUC. 2013b. <i>Biennial Report on Impacts of Distributed Generation</i>. Prepared in Compliance with AB 578 by Black & Veatch for the CPUC. March 18, 2013.</p> <p>CPUC. Decision 14-03-004: “Decision Authorizing Long-Term Procurement for Local Capacity Requirements Due to Permanent Retirement of the San Onofre Nuclear Generating Station.” March 13, 2014.</p> <p>CPUC (California Public Utilities Commission), California Energy Commission, and California Independent System Operator Corporation. 2013. <i>Draft Preliminary Reliability Plan for LA Basin and San Diego</i>. August 30, 2013.</p>
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	<p>Crossborder Energy. 2013. <i>Evaluating the Benefits and Costs of Net Energy Metering in California</i>. January 2013.</p> <p>USFWS (U.S. Fish and Wildlife Service). 2000. <i>Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California</i>.</p>
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