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Via Overnight Mail and E-Mail

May 23, 2013

Planning & Development Services (PDS)
Project Processing Counter
Attn: Ashley Gungle, Project Manager
5510 Overland Ave, Suite 110
San Diego, CA 92123
ashley.gungle@sdcounty.ca.gov

Re: Ocotillo Wells Solar Major Use Permit (MUP) PDS2012-3300-12-004, Environmental Log No. PDS2012-3910-12-12-001; Proposed Mitigated Negative Declaration (MND)

Dear Ms. Gungle:

A1

I am writing on behalf of the Laborers International Union of North America, Local Union No. 89, and its members living in San Diego County ("LIUNA Local Union No. 89" or "LIUNA") concerning the County of San Diego's ("County") Proposed Mitigated Negative Declaration ("MND") prepared for the Ocotillo Wells Solar Project ("Project"). The Project is proposed to be located within the Desert Subregional Plan Area in the Ocotillo Wells area of the Unincorporated County of San Diego, adjacent to Imperial County.

We have prepared these comments with the assistance of Scott Cashen, M.S., an expert wildlife biologist who has expertise in the areas relevant to this MND. His comments and curriculum vitae are attached hereto as Exhibit 1 and are incorporated herein by reference in their entirety. In addition, we have obtained the consultation of Matt Hagemann, P.G., C.Hg., QSD, QSP, an expert hydrogeologist. His comments and curriculum vitae are attached as Exhibit 2 hereto and are incorporated herein by reference in their entirety. The County should respond to the expert comments separately.

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In particular, we ask the County to prepare an environmental impact report ("EIR") for the Project because:

1. The MND omits an accurate project description.

    a. The MND omits components of the Project, including the proposed upgrades at the El Centro Switching Station, detention basins and water filtration systems. The MND also contains inconsistent information on the proposed pesticide use at the Project site.

2. The MND fails to accurately establish the Project's environmental settings or "baseline" for biological resources and hazardous materials.

    a. The MND fails to conduct protocol-level plant surveys.
    b. The MND relies on insufficient burrowing owl surveys.
    c. The MND fails to disclose the occurrence of plants protected by the California Desert Native Plants Act.
    d. The MND fails to disclose the occurrences of Swainson's hawks and Lucy's Warblers at the Project site.
    e. The MND's air quality baseline fails to account for dust storms and sandstorms in the Project area.
    f. The MND fails to establish an accurate environmental setting for hazardous materials.

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3. There is a fair argument that the Projects may have significant unmitigated impacts, both individually and cumulatively, including:

    a. Significant and unmitigated emissions of particulate matter during construction.
    b. Significant and unmitigated impacts to ephemeral washes.
    c. Significant and unmitigated impacts to important biological resources, including:
        i. Species of special concern flat-tailed horned lizard and burrowing owl and their habitat.
        ii. Other important species of wildlife and phreatophytes.
        iii. Adverse impacts from the spread of non-native plants or weeds.

4. The MND fails to adequately analyze the Project's cumulatively considerable impacts in connection with other related past, present and foreseeable future projects in the Project's vicinity.

    a. The MND also fails to adequately analyze cumulative air quality and biological resources impacts.

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An EIR is required to analyze these and other impacts and to propose feasible mitigation measures to reduce the impacts to the extent feasible.

PROJECT DESCRIPTION

The Project involves the construction and operation of a 336-acre solar energy system on an approximately 440-acre site. The Project site is located within the Desert Subregional Plan Area in the Ocotillo Wells area of the Unincorporated County of San Diego, adjacent to Imperial County (APNs 253-390-57, -58.) The Project site is located approximately 0.4 mile east of Split Mountain Road and approximately three miles south of State Route 78 (SR 78).

The Project site is bordered directly to the south by the Anza Borrego Desert State Park. Anza Borrego Desert Park is the largest state park in California, spanning 600,000 acres and comprising one-fifth of San Diego County. The Park consists of the Colorado Desert ecosystem of the Sonoran Desert ecoregion and provides an important habitat for various wildlife and plants. The Project site is otherwise surrounded by vacant land.

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Four variations of photovoltaic (PV) and concentrated photovoltaic (CPV) technologies are being considered for this Project. Depending on the technology used, the Project is expected to have production capacity ranging from 42 MW to 54 MW. The MND presumes that the proposed development footprint would remain the same with any of the technology scenarios selected.

The Project's components include a substation with a development footprint of approximately 62,500 square foot (which would be dedicated to the Imperial Irrigation District), a switchgear yard with a development footprint of approximately 96,750 square foot, two 10,000 gallon water storage tanks, and an approximately 1,040 square foot storage building/control room with onsite septic system. The proposed private substation would be located in the northeast corner of the site, adjacent to the 92 kV "R-Line". The solar array is proposed to be connected to the "R-line" with a loop in, pursuant to an interconnection agreement with Imperial Irrigation District (IID). The "R-line" runs aboveground and ultimately connects to the existing San Felipe Substation, located approximately 2.1 miles to the northwest of the proposed point on interconnect on the Project site. A breakaway fence would surround the site to limit human access and to allow flood events.

In order to accommodate the Project, the El Centro Switching Station must be upgraded to a 250 mega-volt ampere (MVA) transformer.

STANDING

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LIUNA Local Union No. 89 is a non-profit labor organization with approximately 2,500 members living in San Diego County. LIUNA Local Union No. 89 members enjoy

the natural environment of San Diego County and the California desert areas in particular. LIUNA Local Union No. 89 members regularly travel to the region where the project is located to enjoy its peaceful repose and diversity and rarity of species of plants and animals. As members of the public, moreover, LIUNA members possess an ownership interest in public resources present in the regions of and surrounding the project, including but not limited to special status species occurring there and nearby.

Since these members live, work and recreate in the immediate vicinity of the Project site, they will suffer the impacts of a poorly executed or inadequately mitigated Project, just as would the members of any nearby homeowners association, community group or environmental organization. Local No. 89 members live and work in areas that will be affected by air pollution, loss of agricultural land, toxic chemical pollution, or other impacts generated by the Project. As construction workers, some of these members may be exposed to toxic chemicals in the soil and groundwater at the Project site during excavation and soil moving required for Project construction. LIUNA is interested in participating in a full and open CEQA process to ensure that all of the Project's impacts are mitigated to the full extent feasible. Finally, as the Court of Appeal stated, "in any event, unions have standing to litigate environmental claims." (*Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1198, citing, *International Longshoremen's & Warehousemen's Union v. Board of Supervisors* (1981) 116 Cal.App.3d 265.)

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Overall, LIUNA Local Union No. 89 strongly supports appropriate development of renewable energy. Renewable energy projects, however, must be carefully sited and designed so as to avoid unnecessary and damaging environmental impacts. They also must receive proper environmental review under CEQA. This is especially true given the recent "gold rush" of solar energy proposals in the southern California region.

Pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code ("PRC") Section 21000 *et. seq.*, LIUNA Local No. 89 submits the following comments in accordance with the County's public notice dated April 25, 2013 entitled "Notice of Intent to Adopt Mitigated Negative Declaration." We believe that under the circumstances presented here, CEQA clearly requires the preparation of an EIR. Accordingly, the County should decline to adopt the proposed MND.

LEGAL STANDARD

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As the California Supreme Court very recently held, "[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR." (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320 ["*CBE v. SCAQMD*"], citing, *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505.) "The 'foremost principle' in interpreting CEQA is that the Legislature

intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal.App.4th 98, 109 ["*CBE v. CRA*"].)

The EIR is the very heart of CEQA. (*Bakersfield Citizens*, *supra*, 124 Cal.App.4th at 1214; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return." (*Bakersfield Citizens*, *supra,* 124 Cal.App.4th at 1220.) The EIR also functions as a "document of accountability," intended to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (*Laurel Heights Improvements Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) The EIR process "protects not only the environment but also informed self-government." (*Pocket Protectors*, *supra,* 124 Cal.App.4th at 927.)

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An EIR is required if "there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment." (Pub. Resources Code, § 21080(d); see also *Pocket Protectors*, *supra,* 124 Cal.App.4th at 927.) In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 Cal. Code Regs., § 15371 ["CEQA Guidelines"]), only if there is not even a "fair argument" that the project will have a significant environmental effect. (Pub. Resources Code, §§ 21100, 21064.) Since "[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process," by allowing the agency "to dispense with the duty [to prepare an EIR]," negative declarations are allowed only in cases where "the proposed project will not affect the environment at all." (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.)

Under the "fair argument" standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency's decision. (CEQA Guidelines, § 15064(f)(1); *Pocket Protectors*, *supra*,124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-15; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The "fair argument" standard creates a "low threshold" favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 928.)

The "fair argument" standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

> This 'fair argument' standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency's decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

(Kostka & Zischke, *Practice Under CEQA*, §6.29, pp. 273-274.) The Courts have explained that "it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a ***preference for resolving doubts in favor of environmental review***." (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 928 [emphasis in original].)

As a matter of law, "substantial evidence includes . . . expert opinion." (Pub. Resources Code, § 21080(e)(1); CEQA Guidelines, § 15064(f)(5).) CEQA Guidelines demand that where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the environmental effects to be significant and prepare an EIR. (CEQA Guidelines § 15064(f)(5); Pub. Res. Code § 21080(e)(1); *Pocket Protectors*, *supra*,124 Cal.App.4th at 935.) "Significant environmental effect" is defined very broadly as "a substantial or potentially substantial adverse change in the environment." (Pub. Resources Code, § 21068; see also CEQA Guidelines, § 15382.) An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial." (*No Oil, Inc., supra,* 13 Cal.3d at 83.) In *Pocket Protectors*, the court explained how expert opinion is considered. The Court limited agencies and courts to weighing the admissibility of the evidence. (*Pocket Protectors*, *supra,* 124 Cal.App.4th at 935.) In the context of reviewing a negative declaration, "neither the lead agency nor a court may 'weigh' conflicting substantial evidence to determine whether an EIR must be prepared in the first instance." (*Id.*) Where a disagreement arises regarding the validity of a negative declaration, the courts require an EIR. As the Court explained, "[i]t is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project." (*Id.*)

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DISCUSSION

A. THE MND OMITS AN ACCURATE PROJECT DESCRIPTION.

The MND does not meet CEQA's requirements because it fails to include a complete and accurate project description. Such failure renders the MND's entire environmental impacts analyses erroneous and unreliable. An accurate and complete project description is essential to evaluate the potential environmental effects of a

A6 Cont.

proposed project. (*See, e.g. Laurel Heights*, *supra*, 47 Cal.3d 376.) Specifically, the MND fails to describe the necessary upgrades at the El Centro Switching Station as a component of the Project. The MND also fails to describe the Project's detention basins and water filtration systems. Such omissions skew the MND's impacts analyses by underestimating the extent of the Project's environmental footprint.

1. The Project Description in the MND Improperly Excludes the Necessary Upgrades at the El Centro Switching Station.

The MND acknowledges that upgrades to the El Centro Switching Station would be required to accommodate the Project. The existing El Centro Switching Station would be upgraded to a 250 mega-volt ampere (MVA) transformer. (MND, PD, p. 14.) However, the MND did not analyze the potential impacts of such upgrades as part of the environmental review process for the Project.

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Instead, the MND provides that the upgrades would occur as a part of a larger set of planned upgrades at the Switching Station whereby the Imperial Irrigation District (IID) would act as the lead agency under CEQA. (MND, PD, p. 14.) However, the 250 MVA transformer upgrades are part of the Project because the Project cannot deliver its generation to the grid absent the upgrades and the upgrades would not be necessary but for the Project. (*Id.*) These upgrades could result in new physical impacts to the environment, including but not limited to, potential impacts to biological resources and criteria pollutant emissions during construction.

Failure to include a component of the project in the project description can result in a failure to analyze the significant impacts that will be caused by that component. (See *Santiago County Water Dist. V. County of Orange* (1981) 118 Cal.App.3d 818.) Regardless of whether the upgrades will be studied in a separate EIR by the IID, the environmental footprint of the 250 mega-volt upgrades for this Project should be analyzed in combination with all of the Project's potential impacts.

2. The MND Fails to Identify and Describe the Project's Detention Basins.

A8

The Biological Resources Report ("BRR") indicates that silt settling basins may be installed at the Project site. (MND, BRR, p. 3-13.) However, neither the Initial Study nor the MND describes any such detention basin as a component of the Project. According to Mr. Cashen:

> It appears the presence of detention basins may have been used to support the conclusion that "water and associated runoff used during operation and maintenance activities will be contained within the proposed project footprint, and long-term indirect impacts associated with altered hydrology are not expected."[1]

[1] BRR, p. 2-6.

A9

> The County must identify whether detention basins will be installed at the Project site. If basins *will not* be installed, the County must identify how water "will be contained within the proposed project footprint." If basins *will* be installed, the County must identify the number, size, dimensions, and configuration of the basins so that their effect on the environment (e.g., hazard to wildlife) and ability to trap water and retain sediment can be evaluated.

(Exhibit 1, pp. 2-3.)

3. The MND Fails to Describe the Project's Water Filtration System.

A10

The Project Description provides that "[i]f it is determined that water from either the proposed or existing wells is too hard to be utilized for panel washing, a filtration system would be used to treat the water." (MND, PD, p. 11.) However, the MND and its supporting documents fail to describe and analyze such water filtration system as a component of the Project. Water filtration systems remove salts and other substances (e.g., chemical and biological agents) from "raw" water, which are then discharged in wastewater as a byproduct. (Exhibit 1, p. 3.) The IS/MND fails to identify how wastewater from the water filtration system will be treated, contained, or properly disposed of. (*Id.*) If released into the surrounding environment, wastewater from the Project's water filtration system could be toxic to vegetation and wildlife, and it could contaminate ground and surface water supplies. (*Id.*) Therefore, the County must prepare an EIR to describe the water filtration system as a component of the Project and fully analyze the potential impacts from the system.

4. The MND Provides Inconsistent Information on Pesticide Use.

A11

The MND provides inconsistent information on whether pesticides will be used at the Project site.[2] (Exhibit 1, p. 3.) The County must disclose and analyze the potential adverse effects of any pesticide use (including herbicides and rodenticides), if any, at the Project site.

B. THE MND FAIL TO ACCURATELY ESTABLISH THE PROJECT'S ENVIRONMENTAL SETTINGS OR "BASELINE."

A12

CEQA requires that an Initial Study include a description of the project's environmental setting or "baseline." (CEQA Guidelines, § 15063(d)(2).) The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. (*CBE v. SCAQMD*, *supra*, 48 Cal.4th at 321.) CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency's environmental review under CEQA:

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[2] BRR, pp. 2-2 and 2-6.

A12 Cont.

> ...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

(*See*, *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124-125 ("*Save Our Peninsula*").)

Here, the MND is inadequate because it failed to establish accurate environmental settings for the Project.

1. The MND Fails to Establish Accurate Environmental Settings for Biological Resources.

A13

Establishing an accurate baseline is the *sine qua non* to adequately analyzing and mitigating the significant environmental impacts of the Project. (See CEQA Guidelines, § 15125(a); *Save Our Peninsula*, *supra,* 87 Cal.App.4th at 121-123.) Unfortunately, the DEIR's failure to investigate and identify the occurrences of sensitive biological resources at the Project site resulted in a skewed baseline. Such skewed baseline ultimately "mislead(s) the public" by engendering skewed and inaccurate analyses of environmental impacts, mitigation measures and cumulative impacts for biological resources. (See *San Joaquin Raptor Rescue Center, supra,* 149 Cal.App.4th at p. 656; *Woodward Park Homeowners,* 150 Cal.App.4th 683, 708-711.)

a. The MND Fails to Conduct Protocol-Level Plant Surveys.

A14

According to Mr. Cashen,

> The Project area experiences a bimodal rainfall pattern such that some of the special-status plant species that have the potential to occur in the Project area may only be identifiable after late summer/early fall monsoonal rains.[3] Survey protocols issued by the California Department of Fish and Wildlife ("CDFW"), the Bureau of Land Management ("BLM"), and the California Native Plant Society ("CNPS") describe the need for spring *and* fall surveys to document the presence of special-status plant species at sites where plants bloom during different times of year (e.g., spring and summer/fall).[4]

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[3] *See CNPS list available at:* http://www.cnps.org/cnps/rareplants/pdf/desert-fallsummer_flower_021210.pdf.

[4] Bureau of Land Management. 2009. Survey Protocols Required for NEPA/ESA Compliance for BLM Special Status Plant Species. *See also* CDFG. 2009. Protocols for

Focused rare plant surveys were not conducted at the Project site due to the lack of rainfall and annual plant growth.[5] According to the BRR, "focused plant surveys conducted in the spring of 2012 likely would not have been adequate for documenting representative annual plant species on the project site, and negative survey results for special-status species would not be conclusive."[6] As a result, the Applicant's consultant elected to not conduct *any* focused plant surveys, and to limit biological surveys primarily to the summer months. The BRR correctly states: "[s]urveys generally were conducted in summer, which does not provide favorable conditions for detecting and identifying annual plant species that bloom in the spring, fall, or winter in response to fall and winter rains. Only the habitat assessment for special-status wildlife species was conducted outside the summer months."[7]

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In lieu of survey data, the BRR and IS/MND rely on the opinion of the Applicant's consultant to identify the potential for various special-status plant species to occur on the Project site. According to the BRR, the consultant first developed a list of potentially occurring plants based on plant records in the California Natural Diversity Database ("CNDDB"), CNPS database, or San Diego Plant Atlas within the nine topographic quadrangles surrounding the Project site.[8] The consultant then subjectively determined the potential for each species to occur on the site based on its known range, habitat associations, preferred soil substrate, life form, elevation, and blooming period.[9] For special-status plants with a high or moderate potential to occur, "habitat suitability models were generated in order to assess impacts. Habitat suitability is primarily based upon habitat information provided by CNPS (2012). The habitat requirements for each of the special-status plant species were compared with the project-specific vegetation community maps to identify the location and acreages of suitable habitat for each special-status species present on site."[10] The aforementioned approach is not an acceptable way to establish existing conditions, evaluate Project impacts, and formulate mitigation.

Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. Available at: http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html#Plants.

[5] BRR, p. vii.
[6] BRR, p. 1-11.
[7] BRR, p. 1-15.
[8] BRR, p. 1-11.
[9] *Ibid.*
[10] *Ibid.*

A16

First, the "list approach" implemented by the Applicant's consultant is not an accepted technique for disclosing and analyzing the impacts of a project. Indeed, CDFW specifically advises against the "list approach" for botanical inventories. Its survey guidance states:

> This list [of special-status plants with potential to occur within a particular region] can serve as a tool for the investigators and facilitate the use of reference sites; however, special status plants on site might not be limited to those on the list. Field surveys and subsequent reporting should be comprehensive and floristic in nature and *not restricted to or focused only on this list*..."Focused surveys" that are limited to habitats known to support special status species or are restricted to lists of likely potential species are not considered floristic in nature and **are not adequate** to identify all plant taxa on site to the level necessary to determine rarity and listing status.[11]

It is especially problematic that Project biologists focused their surveys on plant species that have been previously recorded in the Project region because (a) there is a general lack of botanical survey data for the Project region (especially after rains in late summer and fall), and (b) surveys in the Desert Floristic Province often yield completely unexpected results.[12] Based on my review of the available literature, and through consultation with recognized experts on desert plants, additional special-status species other than those considered by the Applicant's consultant have the potential to occur on the Project site.

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Second, the Applicant's consultant failed to consider all sources of data in developing its list. These sources include the California Consortium of Herbaria, California Department of Parks and Recreation, San Diego Natural History Museum, survey reports conducted for other projects in the region, and botanists with recognized expertise in desert plants (e.g., Dr. Bruce Pavlik and Dr. James Andre, among others). This issue is confounded by the BRR's failure to establish the qualifications of the individual(s) that subjectively determined the potential for each special-status species to occur on the Project site.

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Third, the BRR states: "habitat suitability models were generated in order to assess impacts. Habitat suitability is primarily based upon habitat

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[11] CDFG. 2009. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. Available at: http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html#Plants. [emphasis added].

[12] Dr. James Andre, Director of the Sweeney Granite Mountains Desert Research Center for the University of California personal communication with Scott Cashen, 2012 July 21.

A18 Cont.

information provided by CNPS (2012)."[13] The BRR does not provide the habitat suitability models such that they can be independently evaluated. Nevertheless, if the models were based on habitat information provided by the CNPS Inventory of Rare and Endangered Plants (i.e., CNPS 2012), they provide little value in predicting plant presence or assessing Project impacts. Indeed, the information provided in CNPS's Inventory of Rare and Endangered Plants is limited to general habitat (e.g., Sonoran desert scrub) and soil (e.g., gravelly) associations.

A19

Fourth, false conclusions may occur when a species' potential to occur at a given location is based on its known range (i.e., elevation and geographic distribution). This is especially true in the Desert Floristic Province, where plant presence and distribution is poorly known. Surveys have resulted in numerous unexpected plant discoveries throughout the desert—including at development sites near the Project (e.g., Ocotillo Wind, Imperial Valley Solar).

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Fifth, the BRR discounts the potential for some species to occur on the Project site based on the Project site's proximity to documented occurrences.[14] Both the CNPS and CNDDB caution against this approach. The CNPS Inventory states:

a. As with counties, this is positive siting information - when we indicate that a plant has been reported from an area on a topographic quad, it is based on hard data. In no way does this imply that a plant does not occur on a topographic quad we have not listed; rather, it may be there but botanists have yet to find it.
b. Quad data is not available for all List 3 and 4 plants. For those that do contain this data, it has not been quality controlled and is potentially incomplete, inaccurate, and/or out of date. Please use caution when referencing this information. We are currently working hard to maintain this data and hope to provide accurate and up to date information in the near future.[15]

A21

Due to the issues described above, the IS/MND lacks reliable information on existing conditions, and it is not possible for the County to rule out the potential for the Project to have an unmitigated, significant impact on special-status plant species.

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[13] *Ibid.*
[14] BRR, Table C-1.
[15] California Native Plant Society (CNPS). 2013. Inventory of Rare and Endangered Plants (online edition, v8-01a). Glossary of Terms and Field Descriptions. California Native Plant Society. Sacramento, CA. Accessed on May 20, 2013. Available at: <http://www.rareplants.cnps.org/glossary.html#quads>.

(Exhibit 1, pp. 3-6.)

b. The MND Fails to Provide an Accurate Baseline for Burrowing Owls.

According to Mr. Cashen, the burrowing owl surveys the MND relies on do not comport with the CDFW guidelines. As such these surveys were insufficient to establish an accurate baseline for burrowing owls in and around the Project area:

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> The BRR states a focused survey and habitat assessment was conducted for the burrowing owl.[16] This statement is misleading. The "focused" survey was limited to 3.75 hours, during which time two biologists walked along *one* 10-meter (33-foot) meandering transect.[17] The survey techniques were not consistent with those recommended in guidelines issued by the CDFW, and the survey effort was not even close to the minimum level of effort recommended by CDFW.[18]

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> The BRR indicates "[a] burrowing owl was observed in the project site during a site visit."[19] Contrary to the County's requirements, the BRR does not identify when the owl was observed (i.e., time of year), where it was located (e.g., outside a burrow), or what it was doing (e.g., its behavior).[20] In addition, although the BRR states a focused habitat assessment was conducted for the burrowing owl, it fails to provide information essential to evaluating the extent and quality of burrowing owl habitat on the site. This information includes the abundance and distribution of (a) burrows; (b) prey resources; and (c) the host species that create and maintain burrows for burrowing owls. The lack of this information precludes the ability to make any inferences on burrowing owl use of the site (e.g., breeding or non-breeding), and thus, on Project impacts to the species.

A24

> A single "focused" survey (that included searching for three additional species) along one transect is insufficient for documenting the abundance, distribution, demographics, and behavior of burrowing owls at the Project site. Burrowing owls can be difficult to detect due to their cryptic coloration, extensive use of burrows, and tendency to flush (fly away) when approached.[21] As a result,

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[16] *Ibid*, p. vii.
[17] *Ibid*, Table 2 and p. 1-12.
[18] CDFG. 2012. Staff Report on Burrowing Owl Mitigation. Available at: www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf.
[19] BRR, p. 1-27.
[20] County of San Diego. 2010 Sep 15. Report Format and Content Requirements (4th Rev.) – Biological Resources, Appendix A, p. 15. Available at: <http://www.sdcounty.ca.gov/pds/docs/Biological_Report_Format.pdf>.
[21] Klute DS, LW Ayers, MT Green, WH Howe, SL Jones, JA Shaffer, SR Sheffield, TS Zimmerman. 2003. Status assessment and conservation plan for the western Burrowing Owl in the

A24 Cont.

burrowing owl researchers and the CDFW have concluded that four independent surveys are necessary to provide reliable information on the presence of burrowing owls.[22] Data from the four surveys is essential to avoiding, minimizing, and properly mitigating Project impacts. These data must be thoroughly vetted by the public, resource agencies, and decision makers during the CEQA review process; they cannot be deferred to the 30-day period preceding Project development when impacts are imminent. Indeed, survey and mitigation guidance issued by the California Burrowing Owl Consortium ("CBOC") states: [t]here is often inadequate information about the presence of owls on a project site until ground disturbance is imminent. When this occurs there is usually insufficient time to evaluate impacts to owls and their habitat. The absence of standardized field survey methods *impairs adequate and consistent impact assessment during regulatory review processes, which in turn reduces the possibility of effective mitigation*.[23]

A25

In addition, the CDFW has stated: "[a]ny new burrowing owl colonizing the project site after the CEQA document has been adopted may constitute changed circumstances that *should be addressed in a re-circulated CEQA document*."[24] Because the Applicant's consultant never made an attempt to establish burrowing owl occupancy at the Project site, any burrowing owls occupying the site when the pre-construction surveys are conducted would constitute changed circumstances that should be addressed in a re-circulated CEQA document.

A26

To ensure an adequate impact assessment; develop clear and effective avoidance and minimization measures; and formulate appropriate mitigation measures, the County must require surveys that adhere to the guidelines provided in the CDFW's 2012 Staff Report on Burrowing Owl Mitigation.[25] Indeed, County guidelines require burrowing owl surveys that adhere to CDFW guidelines.[26] It is not possible to effectively assess the extent of Project impacts on burrowing owls until surveys that adhere to CDFW guidelines have been conducted.

United States. Bio Tech Pub FWS/BTP-R6001-2003. Washington: US Fish and Wildlife

[22] *See Appendix D In:* CDFG. 2012. Staff Report on Burrowing Owl Mitigation. Available at: www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf.

[23] *See p. i In:* The California Burrowing Owl Consortium. 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. Available online at: http://www.dfg.ca.gov/wildlife/species/docs/boconsortium.pdf. [emphasis added].

[24] *See p. 10 In:* CDFG. 2012. Staff Report on Burrowing Owl Mitigation. Available at: www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf. [emphasis added].

[25] *Ibid,* p. 1 and Appendix D.

[26] County of San Diego. 2010 Sep 15. Report Format and Content Requirements (4th Rev.) – Biological Resources, Appendix A, p. 15. Available at: < http://www.sdcounty.ca.gov/pds/docs/Biological_Report_Format.pdf>.

c. The MND Fails to Disclose the Project's Impacts to Plants Protected by the California Desert Native Plants Act.

According to Mr. Cashen, the MND fails to disclose, address or mitigate the Project's impacts to plants projected by the California Desert Native Plants Act:

> Several plant species that are protected by the California Desert Native Plants Act are known to occur on the Project site.[27] These include:
>
> Smoke tree (*Psorothamnus spinosus* = *Dalea spinosa*)
> Mesquite (*Prosopis glandulosa* var. *torreyana*)
> Catclaw acacia (*Senegalia greggii* = *A. greggii*)
> Wiggins' cholla (*Cylindropuntia echinocarpa*)
> Ocotillo (*Fouquieria splendens* ssp. *splendens*)
> Desert ironwood (*Olneya tesota*)
> Palo verde (All species of the genus *Cercidium*)[28]
>
> The IS/MND does not disclose this information or provide information pertaining to the abundance and distribution of the aforementioned species on the Project site. The IS/MND also does not establish a mechanism that ensures the Project will comply with the California Desert Native Plants Act.

A27

(Exhibit 1, p. 6.)

d. The MND Fails to Disclose the Swainson's Hawk's Use of the Project Site.

A28

It is well-established that Borrego Springs, which is near the Project site, is a major stopover on the Swainson's Hawks' 6000-mile spring migration from Argentina to their breeding grounds to the north.[29] The MND, however, fails to adequately disclose the value of the Project area for Swainson's hawks. Mr. Cashen explains:

> According to the BRR, the Swainson's hawk has not been recorded in the vicinity of the Project site. The BRR defines "recorded in the vicinity" as a record in the CNDDB associated with the Borrego Mountain SE 7.5-minute topographic quadrangle.[30] It is inappropriate for the Applicant's consultant to rely on CNDDB

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[27] California Food and Agriculture Code Section 80071-80075. *See also* BRR, Appendix A.
[28] Although not listed on the Cumulative List of Plant Species (BRR, Appendix A), the BRR indicates palo verde is present on the project site (BRR, pp. 1-28 and D-34).
[29] http://www.parks.ca.gov/?page_id=638
[30] BRR, Table D-1, footnote 2.

records to derive conclusions pertaining to the occurrence of Swainson's hawks in the Project area. First, as the BRR acknowledges, Swainson's hawks do not nest in San Diego County.[31] The CNDDB is limited to records of Swainson's hawk nest sites; it does not track roost sites or other locations where Swainson's hawks have been detected away from the nest site. Second, the Project site is located approximately 1.6 miles from the boundary of the Borrego Mountain SE quadrangle. This is a biologically insignificant distance, and it should not be used as the basis for reporting the various species that occur in the Project "vicinity," or the "factual basis for determination of occurrence potential" as was done for all species in the BRR.[32]

A28 Cont.

Thousands of Swainson's hawks are detected each spring at the Borrego Valley Hawkwatch site.[33] These birds migrate through Borrego Valley, and many roost and forage in the area before continuing their flight to northern breeding grounds. To the best of my knowledge, no one has investigated whether a substantial number of Swainson's hawks also migrate through Ocotillo Wells.

The Applicant's consultant devoted minimal effort to investigating the potential role of the Project site as a roosting and/or foraging site for Swainson's hawks. Winter raptor surveys for the Project were conducted on 23 Dec 2011, 14 Jan 2012, and 5 Feb 2012.[34] The timing of those surveys was inappropriate for detecting Swainson's hawks. The timing of Swainson's hawk migration is generally acute, and Swainson's hawks exhibit less interannual and regional variation in their migration timing than most other species.[35] Because the Borrego Valley Hawkwatch site is located near the Project site, one can assume the timing of Swainson's hawk migration is very similar between the two sites. Ten years of data from the Borrego Valley Hawkwatch site indicate the peak migration period for Swainson's hawks occurs between the second week in March and the first week in April; very few Swainson's hawks are detected before February 15th or after April 15th in any given year.[36] Data from the Hawkwatch site are consistent with data maintained by Audubon and the Cornell Laboratory

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[31] *Ibid*, Table D-1.
[32] *Ibid.*
[33] Data available at: <http://hawkcount.org/>
[34] BRR, Table 2.
[35] Goodrich LJ, JP Smith. 2008. Raptor migration in North America. Pages 37–153 in KL Bildstein, JP Smith, E Ruelas Inzunza, RR Veit (Editors), State of North America's Birds of Prey. Series in Ornithology 3. Nuttall Ornithological Club, Cambridge, MA, and American Ornithologist's Union, Washington, DC.
[36] Borrego Valley Hawkwatch 2003 to 2012 dataset. Available from: Joe Hopkins, Environmental Scientist, Colorado Desert District, California State Parks, Borrego Springs, California.

of Ornithology.[37] As a result, Swainson's hawks are virtually non-existent in the region during the times of year that the Applicant's consultant conducted its raptor surveys.

A28 cont.

Raptors avoid migrating over large expanses of water (when possible) because it is energetically costly. In addition, whereas some raptor species tend to follow mountain ridges during migration, "soaring" species such as the Swainson's hawk do not. Swainson's hawks use thermal-soaring more than ridge updrafts during migration, which is why they have a propensity to migrate through valleys and grassland ecosystems.[38] Indeed, soaring, open-country migrants such as the Swainson's hawk and turkey vulture tend to avoid mountains during migration. Where mountain ranges converge, migrants seek an efficient route through the mountains. Because the Project site is located in a valley (i.e., Lower Borrego Valley) between the Salton Sea (to the east) and the Vallecito Mountains (to the west), one can infer that a substantial number of Swainson's hawks may migrate through the Project area. The County does not have the information needed to disclose, analyze, and mitigate Project impacts to the Swainson's hawk until the Project site's function to migrating Swainson's hawks has been established.

(Exhibit 1, p. 10-11.)

e. The MND Fails to Disclose the Project's Mitigation for Impacts to All Sensitive Vegetation Communities on the Project Site.

A29

According to Mr. Cashen,

The BRR indicates "all special-status vegetation communities in the project area could be impacted."[39] However, it fails to identify those vegetation communities. Based on the species list provided in the BRR, aerial imagery available through Google Earth, and my knowledge of the local area, several sensitive vegetation communities that were not disclosed in the IS/MND may be present on the Project site. These include communities within the following alliances: (a) *Parkinsonia florida - Olneya tesota* (Blue palo verde - Ironwood woodland); (b) *Prosopis glandulosa* (Mesquite bosque, mesquite thicket); and (c) *Psorothamnus*

[37] eBird. 2011. eBird: An online database of bird distribution and abundance [web application]. Version 2. eBird, Ithaca, New York. Available: http://www.ebird.org. (Accessed: 2012 Sep 6).
[38] Goodrich LJ, JP Smith. 2008. Raptor migration in North America. Pages 37–153 in KL Bildstein, JP Smith, E Ruelas Inzunza, RR Veit (Editors), State of North America's Birds of Prey. Series in Ornithology 3. Nuttall Ornithological Club, Cambridge, MA, and American Ornithologist's Union, Washington, DC.
[39] BRR, p. 2-7.

spinosus (Smoke tree woodland). In particular, Google Earth imagery suggests several mesquite bosques are located within areas that would be impacted by the Project (Figures 1 and 2).

A29 Cont.

Figure 1. Small-scale image of the Project site. Yellow pins depict approximate corners of the property.

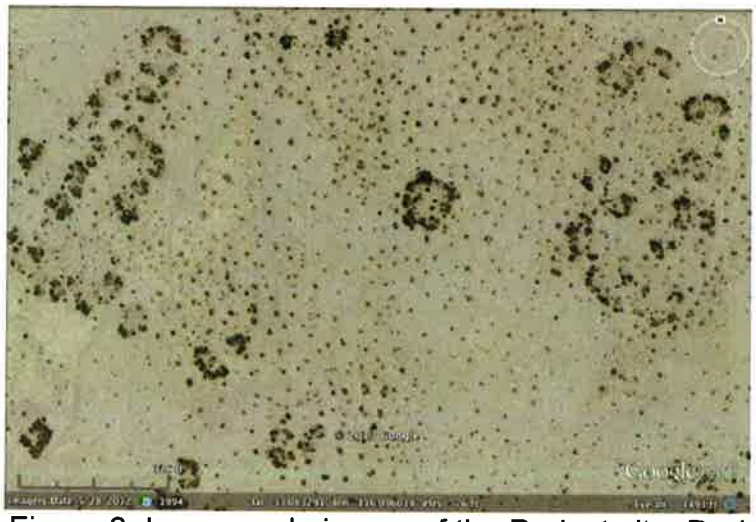

Figure 2. Large-scale image of the Project site. Dark circles of vegetation appear to be mesquite bosques.

(Exhibit 1, pp. 6-8.)

A 30

f. The MND Fails to Disclose the Potential for Lucy's Warbler to Nest on the Project Site.

According to Mr. Cashen,

A30 Cont.

> The Lucy's warbler is a USFWS Bird of Conservation Concern, a CDFW Species of Special Concern, and County Group 1 species.[40] The BRR indicates the Lucy's warbler has a moderate potential to nest on the Project site.[41] However, focused surveys were not conducted to determine whether Lucy's warblers do indeed nest on the Project site.
>
> The Lucy's warbler is an extremely rare species. It has been confirmed nesting at only one site in San Diego County, and at only two additional sites in California.[42] According to the San Diego County Breeding Bird Atlas, breeding Lucy's warblers (in San Diego County) are confined to the mesquite bosque on the floor of the Borrego Valley.[43] The presence of a Lucy's warbler nest on the Project site would be an ecologically significant occurrence that would not be mitigated by the mitigation proposed in the IS/MND. As a result, focused surveys for Lucy's warbler nest sites must be conducted before the County can make any conclusions pertaining to the significance of Project impacts to the species.

(Exhibit 1, p. 12.)

A31

Based on the MND's errors described above, the Project site's value for important species has been understated. As a result, the MND uses a skewed baseline to analyze and mitigate the Project's potential impacts to biological resources. The MND's use of a skewed baseline raises a fair argument that the Project may result in potentially significant impacts to biological resources.

g. The MND's Air Quality Baseline Fails to Account for the Extremely Arid Conditions and the Prevalence of Dust Storms and Sandstorms in the Project Area.

A32

The Project site and the surrounding areas are located in the Colorado Desert and are characterized by extremely arid and dusty conditions. According to Mr. Hagemann, sandstorms and dust storms are prevalent in the Project area. (Exhibit 2, p. 4.) These sandstorms and dust storms adversely impact air quality in the San Diego County Air Basin and the adjacent Salton Sea Air Basin and will be compounded with PM2.5 and PM10 emissions during Project construction. (*Id.*) However, the MND fails to adequately characterize the Project's environmental settings by ignoring the distinctive desert conditions of the Project area.

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[40] BRR, p. 1-28.
[41] *Ibid.*
[42] San Diego County Breeding Bird Atlas. Available at: <http://sdplantatlas.org/ge_files/pdf/Lucy's%20Warbler.pdf>. *See also* California Natural Diversity Database, Biogeograhic Data Branch, Department of Fish and Wildlife. 2013 Apr 2 (Version 3.1.0).
[43] *Ibid.*

A33 The MND's failure to account for the occurrences of desert storms and sandstorms in the Project area casts doubt on the efficiency of the mitigation measures proposed to address PM2.5 and PM10 construction emissions in the MND. (Exhibit 2, p. 3; IS, p. 23.) Based on these conditions, it is unlikely that watering twice daily during construction would be as efficient at mitigating PM2.5 and PM10 emissions as the MND concludes. (Exhibit 2, P. 3; IS, p. 23.)

A34 Moreover, the MND anticipates that the solar panels would be washed four times a year. (MND, PD, p. 11; IS, p. 38.) However, the anticipated water use for panel washing does not take into account the potential for dust storms and sandstorms which may require additional washings, resulting in further impacts on stormwater, drainage, and water supply. (Exhibit 2, p. 4.)

A35 To make matters worse, the usually dusty conditions in the Project area are aggravated by the particulate matter emissions associated with the operation of Ocotillo Wells SVRA a mere 3.5 miles away. (Exhibit 2, p. 4.) As discussed in full in Part D.2., *infra,* the MND fails to account for the air quality impacts from Ocotillo Wells SVRA.

A36 As a result of a skewed baseline, the MND's analysis of particulate emissions during Project construction and the proposed mitigation measures to address such impacts are inadequate and speculative. An EIR must be prepared to establish a baseline that accurately reflects the existing desert conditions at the Project area.

2. The MND Fails to Establish Accurate Environmental Settings for Hazardous Materials.

A37 The Initial Study concludes that the Project will have no hazards impacts. (IS, pp. 31-35.) However, such conclusion lacks any basis in evidence. In fact, the County never conducted any Phase I Environmental Site Assessments (ESAs) to establish a hazardous materials baseline for the Project. Without establishing an accurate baseline, the Initial Study cannot conclude that there will be no significant impacts relating to hazardous materials.

Mr. Hagemann states:

> The MND failed to include the results of any Phase I Environmental Site Assessments (ESAs) in the Hazards and Hazardous Materials section. Developers routinely prepare Phase I ESAs to identify hazardous waste issues that may pose a risk to the public, workers, or the environment and which may require further investigation, including environmental sampling and cleanup.
>
> Phase I ESAs are conducted to identify conditions indicative of releases of hazardous substances and involve a review of all known sites in the vicinity of the subject property that are on regulatory agency databases

undergoing assessment or cleanup activities, an inspection, and interviews with people knowledgeable about the property. Standards for performing a Phase I ESA have been promulgated by the US EPA and are based in part on American Society for Testing and Materials Standard E1527-05.[44]

A37 cont.

Phase I ESAs conclude with the identification of any "recognized environmental conditions" (RECs) and recommendations to address such conditions. A REC is the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property.[45] RECs that may reflect uses of the Project site include:

- Mines;
- Industrial contamination or releases from nearby contaminated facilities;
- Debris; and
- Illegal drug manufacturing.

The IS states that 20,000 cubic yards of soil will be disturbed during grading (p. 26), thereby potentially exposing construction workers to soil contaminants that may be absorbed to dust particles and through dermal contact with the soil. A DEIR needs to be prepared to include a Phase I ESA that would properly disclose all potential hazardous materials conditions that might pose a risk to workers during construction.

(Exhibit 2, p. 2.)

Without an accurate baseline, the Project's potential hazardous materials impacts cannot be fully ascertained. Especially in light of the large amount of soil that will be disturbed during construction, a Phase I ESA is necessary to establish an accurate hazardous materials baseline for this Project. In that way, any RECs can be identified and avoided during construction in order to protect the health and safety of the construction workers on the Project.

A38

C. AN EIR IS REQUIRED BECAUSE THE PROJECT WILL HAVE SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS.

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[44] http://www.astm.org/Standards/E1527.htm
[45] Ibid.

A38 Cont.

An EIR is required whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment. (*CBE v. SCAQMD*, *supra*, 48 Cal.4th at 319-320; Pub. Resources Code, § 21080(d); see also *Pocket Protectors*, *supra,* 124 Cal.App.4th at 927.) As detailed in the following sections, there is a fair argument, supported by substantial evidence that the Project may result in significant impacts to air quality, biological resources, and hydrological resources. Therefore, the County is required to prepare an EIR to evaluate the Projects' impacts and propose all mitigation measures that are necessary to reduce those impacts to a less than significant level.

1. Substantial Evidence Supports a Fair Argument that the Project Will Result in Significant, Unmitigated Emissions of Particulate Matter During Construction.

A39

The MND's Air Quality Assessment ("AQA") admits that unmitigated impacts from construction emissions of PM10 and PM2.5 will be significant – 789.80 lbs/day for PM10 (almost 700 above the significance threshold of 100 lb/day) and 170.06 lbs/day for PM2.5 (125 more than the significance threshold of 55 lb/day). (MND, AQA, Table 4.1.) Especially where, as here, the air basin where the Project is located (San Diego County Air Basin) is in non-attainment for the State PM10 and PM2.5 standards, the Project's addition of these PM10 and PM2.5 emissions are all the more significant. (*Id.*, p. 12.)

The MND then concludes that with mitigation, which includes watering disturbed areas and roadways twice a day combined with dust suppressants, such significant emissions impacts would fall below the thresholds of significance. (*Id.*, Table 4.1.) For PM10, the MND concludes that mitigations would reduce the emissions from 789.80 lbs/day to 67.73 lbs/day. (*Id.*) As for PM2.5, the MND concludes mitigation measures would reduce the emissions from 170.06 lbs/day to 19.27 lbs/day. (*Id.*)

A40

However, based on the MND and supporting documents, it is unclear how these mitigation measures will successfully reduce the PM emissions to below the thresholds of significance. Mr. Hagemann points out that the effectiveness of the proposed mitigation measure of watering twice a day was exaggerated, especially given the extreme arid nature of the Project Site:

> The Air Quality Assessment uses control efficiencies established by South Coast Air Quality Management District CEQA air quality handbook and which are recommend for use with the URBEMIS 2007 air quality model. The CEQA handbook states that watering twice daily can reduce PM10 from 34% to 68%; however, the air quality consultant utilized a 51% efficiency, the average of the two values.
>
> I believe use of the average of the two values is not appropriate given the extremely arid nature of the Project site. Instead, because of rapid evaporation rates, efficiencies in dust reduction would more likely be on

> the low end of the range, i.e., 34%. The URBEMIS Model should be re-run using the lower efficiency rates to calculate emissions following construction mitigation measures. Estimates generated with use of the recommended value for dust reduction (34%) may indicate PM10 and PM2.5 emissions in excess of the San Diego County thresholds.

(Exhibit 2, p. 3.)

As noted by Mr. Hagemann, the MND's use of an average 51% efficiency of the proposed mitigation measures to address the significant PM emissions was arbitrary and resulted in improperly underestimating the unmitigated PM emissions during Project construction. Thus, there is substantial evidence to support a fair argument that the PM emissions, particularly PM10, cannot be mitigated to a level of insignificance. Therefore, the County must prepare an EIR to address these significant impacts.

A40 Cont.

Moreover, the MND fails to specify the type of dust suppression additives to be used in conjunction with watering the disturbed areas and roadways. (MND, p. 27; IS, pp. 16-17.) The MND merely requires the Applicant to use magnesium chloride "or another County approved dust suppression additive." (*Id.*) Not only does this failure cast further doubt on the effectiveness of the watering as a mitigation to address PM emissions, but can also have a correlated impact on biological resources. (Exhibit 1, p. 2.) As discussed in full in Part C.3.f, *infra*, dust suppressants could contain toxic chemical contaminants which could adversely affect terrestrial animals. (*Id.*)

In light of the uncertain effectiveness of the proposed mitigation measures, Mr. Hagemann opines that additional mitigation to curtail particulate matter emissions should be incorporated in an EIR:

> If PM10 and PM2.5 estimates exceed thresholds, additional mitigation should be considered in a DEIR. The Air Quality Assessment only considered the following mitigation measures (p. v):
> - Apply water during grading/grubbing activities to disturbed areas and roadways at least two times daily and use magnesium chloride or another County approved dust suppression additive to reduce dust;
> - Reduce all construction related traffic speeds onsite to below 15 miles per hour; and
> - Installation of wheel shakers at entry/exit points.
>
> Additional mitigation measures (listed below), routinely considered in other CEQA projects, should be considered in a DEIR:
> - All equipment shall be turned off when not in use. Engine idling of all equipment shall be minimized;
> - Restrict construction or material handling operations during periods with high winds, such as a threshold of 30 miles per hour. Enhance surface water sprays as an option;

- Require the use of high quality (low sulfur) diesel fuel in all diesel-fired construction or operational engines. Maintain all engines in satisfactory operating conditions;
- All hauled materials should be wetted while being loaded into dump trucks and covered to reduce dust emissions); and
- A wheel-washing system to remove bulk material from tires and vehicle undercarriages before vehicles exit Project property.[46]

A40 Cont.

(Exhibit 2, pp. 3-4.)

Based on the information contained in the MND, supporting documents, and expert opinion, there is a fair argument, supported by substantial evidence, that the Project may result in significant impacts to air quality. LIUNA is concerned about the adverse health effects to construction workers from exposure to significant and unmitigated emissions of PM10 and PM2.5 during construction. Therefore, an EIR must be prepared to analyze and mitigate the significant emissions of both PM10 and PM2.5 during Project construction.

2. Substantial Evidence Supports a Fair Argument that the Project Will Have Significant, Unmitigated Impacts on Ephemeral Washes.

A41

The Initial Study admits that the construction and operation of the Project would result in impacts to jurisdictional non-wetland waters. (IS, p. 20.) However, the MND, the Initial Study, and the supporting documents fail to adequately analyze the Project's potential impacts on ephemeral washes and the need to submit the required Report of Discharge to the Regional Water Quality Control Board prior to construction.

According to Mr. Hagemann,

> The Project involves approximately 20,000 cubic yards of soil that will be disturbed by grading (IS, p. 26). Project grading and placement of supports for solar panels may Impact waters under the jurisdiction of the U.S. Army Corps of Engineers, Regional Water Quality Control Board, and California Department of Fish and Wildlife (IS, p. 20).
>
> The IS states the Project would result in impacts to 0.64 acres of jurisdictional non-wetland waters, 0.53 acres of which would be considered significant (p. 20). The IS states that the applicant would be responsible for obtaining all appropriate permits from the Army Corps of Engineers, Regional Water Quality Control Board, and California

[46] http://www.co.kern.ca.us/planning/pdfs/eirs/northsky_jawbone/DEIR/Subsections/4.3-4.pdf;and http://www.blm.gov/pgdata/etc/medialib/blm/mt/field_offices/miles_city/seis/airquality.Par.45969.File.dat/APP_B_Mitigation_Measures.pdf

Department of Fish and Wildlife and obtaining all appropriate mitigation for these impacts (IS, p. 20). However, the IS/MND and the supporting documents do not provide maps of the drainage areas that will be affected and do not describe impacts to the drainages from grading and construction, including placement of fill, road construction and construction of foundations for panel support, all activities which could lead to degradation of state jurisdictional waters.

Project construction in ephemeral washes (road crossings, placement of panel poles, trenching) may be within waters of the State and may not conform to [the] Basin Plan for the Colorado River Regional Water Quality Control Board. According to the Porter-Cologne Water Quality Act (Section 13000), any waste discharges resulting from placement of fill or construction activities within ephemeral drainages that are considered Waters of the State require a Report of Waste Discharge.

A41 Cont.

A DEIR should be prepared to include a Report of Waste Discharge, as submitted to the Regional Water Quality Control Board for approval. The Report of Waste Discharge should be prepared to disclose discharges of sediment resulting from construction of the project, measures taken to mitigate the discharges, and a discussion of the potential for the construction of the Project construction to cause or contribute to an exceedance of surface water standards set in the Colorado River Basin Plan, established to preserve and protect the quality of state waters.[47]

(Exhibit 2, pp. 1-2.)

Pursuant to Mr. Hagemann's recommendations, the County must analyze the Project's significant impacts to ephemeral washes on the Project site and prepare a Report of Waste Discharge to submit to the Regional Water Quality Control Board for approval.

3. Substantial Evidence Supports a Fair Argument that the Project Will Have Significant, Unmitigated Impacts to Biological Resources.

A42

a. The MND Fails to Adequately Analyze and Mitigate Impacts to the Flat-Tailed Horned Lizard and its Habitat.

According to Mr. Cashen, the Project's unanalyzed impacts to Species of Special Concern and a County Group 1 species, the flat-tailed horned lizard, will be significant:

[47] Water Quality Control Plan Colorado River Basin – Region 7. http://www.waterboards.ca.gov/coloradoriver/publications_forms/publications/docs/basinplan_2006.pdf

The flat-tailed horned lizard ("FTHL") has lost at least 49% of its historic habitat, and its rangewide population is now limited to six, primarily disjunctive, populations.[48] Due to widespread habitat loss, fragmentation, and degradation, the FTHL has been a candidate for listing under the Endangered Species Act.[49] The FTHL is currently listed as a CDFW Species of Special Concern and a County Group 1 species.

The IS/MND provides no analysis of Project impacts to the FTHL, and the analysis provided in the BRR is limited to the statements that: (a) the Project would impact 330.3 acres of suitable habitat for the FTHL and Colorado Desert fringe-toed lizard ("CDFTL"); and (b) the loss of individual reptiles (i.e., FTHL and CDFTL) from construction-related activities would be considered significant, absent mitigation. These statements do not sufficiently disclose Project impacts to the FTHL and its habitat.

A42 Cont.

Indirect Impacts to Existing Habitat

The proposed Project site is within an area that is relatively undisturbed and that provides continuous connectivity of natural community types. The Project would be located in the middle of this undisturbed landscape. Placing the Project in the proposed location would cause considerable fragmentation to FTHL and CDFTL habitat, especially because the application of soil stabilizers at the Project site would eliminate the habitat element (i.e., loose sand) that is essential to both species.

Two studies have examined the response of FTHL to boundary processes between natural and anthropogenic desert landscapes (i.e., the edge effect). Both studies concluded a significant adverse edge effect on FTHLs. Specifically, Barrows et al. (2006) concluded "the only aeolian sand species that demonstrated an unambiguous negative response to the anthropogenic habitat edges was the flat-tailed horned lizard,"[50] and Young and Young (2000) concluded "[d]istance to disturbance was found to be a highly significant factor in whether or not flat-tailed horned lizards were present. Probability of presence increased significantly with increasing distance from disturbance, indicating a negative indirect effect

[48] Flat-tailed Horned Lizard Interagency Coordinating Committee. 2003. Flat-tailed horned lizard rangewide management strategy, 2003 revision. 80 pp. plus appendices.
[49] *Ibid.*
[50] Barrows CW, MF Allen, JT Rotenberry. 2006. Boundary processes between a desert sand dune community and an encroaching suburban landscape. Biological Conservation 131:486–494.

to at least 450 m away from agricultural or urban areas."[51] Incredibly, although the literature is unequivocal about adverse edge effects on the FTHL, the IS/MND provides no analysis of this significant impact.

Heightened Depredation

FTHL predators include the common raven, loggerhead shrike, American kestrel, and round-tailed ground squirrel. The Project has the potential to indirectly impact FTHLs by leading to an increase in FTHL predators through the provision of perches and supplemental food and water resources. The IS/MND lacks any measures to mitigate heightened predation by FTHL predators that benefit from the Project.

A42 Cont.

Relocation Strategy

FTHLs are likely to be killed by the Project despite efforts to salvage them prior to Project construction. FTHLs are notoriously difficult to detect, and many of the FTHLs that remain within the construction area after the clearance surveys have been completed will be subject to being crushed during grading, clearing, grubbing, and trenching. The presence of a biological monitor onsite during construction would reduce, but not eliminate, mortality due to the inherent difficulty in detecting and capturing FTHLs.

Translocation studies suggest lizards that are captured, handled, and moved may experience high mortality.[52] The IS/MND does not ensure mortality associated with translocation will be minimized because it does not identify translocation sites, the habitat suitability of those sites, and the monitoring that will accompany translocation.

(Exhibit 1, pp. 13-15.)

In spite of the significant impacts to the flat-tailed horned lizard, the proposed mitigation measures in the MND are inadequate. Mr. Cashen explains:

Arguably, the most significant biological resources impact of the Project would be the direct loss of 330.3 acres of suitable and occupied flat-tailed

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[51] Young KV and AT Young. 2005. Indirect effects of development on the flat-tailed horned lizard. Final Report submitted to Arizona Game and Fish Department, Yuma. pp.11

[52] Dodd CK Jr., RA Seigel. 1991. Relocation, repatriation, and translocation of amphibians and reptiles: Are they conservation strategies that work? Herpetologica 47(3): 336-350.

horned lizard habitat.[53] The Applicant has proposed the Yaqui Pass property (in-part) as mitigation for Project impacts to the species and its habitat. Although flat-tailed horned lizards were not detected during surveys of the Yaqui Pass property, and although fine sand habitat is limited at the site, the Applicant suggests there is moderate potential for the species to occur there because the property is "within range and habitat for [the] species."[54] This conclusion is not substantiated.

A42 Cont.

First, according to the CDFW, fine sand is a critical habitat element for the flat-tailed horned lizard.[55] The lack of fine sand at the Yaqui Pass property reduces the potential for occupancy by flat-tailed horned lizards. At a minimum, only those portions of the property that provide suitable substrates for flat-tailed horned lizards should be counted towards compensatory mitigation for the species.

Second, the Yaqui Pass property is not necessarily within the range of the species, as suggested by the Applicant. Indeed, database records and information provided in the Flat-tailed Horned Lizard Rangewide Management Strategy suggest the property is west of the species' range.[56] Surveys documenting the presence of flat-tailed horned lizards must be conducted before the County accepts the Yaqui Pass property as mitigation for Project impacts to the species.

Third, the IS/MND lacks any mitigation for the hundreds of acres of flat-tailed horned lizard habitat that will be indirectly impacted by the Project.[57] Indeed, the IS/MND has no basis to defer to the proposed habitat compensation in justifying less than significant *indirect* impacts to the flat-tailed horned lizard (and other sensitive biological resources) because the proposed habitat compensation was calculated to meet the requirements for *direct* impacts only (at a 1:1 ratio).

(Exhibit 1, p. 23.)

Based on Mr. Cashen's opinion, there is a fair argument, supported by substantial evidence, that the Project will result in significant, unmitigated impacts to

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[53] BRR, p. 2-12.
[54] OSMI, Table 2.
[55] California Natural Diversity Database, Biogeograhic Data Branch, Department of Fish and Wildlife. 2013 Apr 2 (Version 3.1.0).
[56] *Ibid. See also* Flat-tailed Horned Lizard Interagency Coordinating Committee. 2003. Flat-tailed horned lizard rangewide management strategy, 2003 revision, Figure 2.
[57] *See* Young KV and AT Young. 2005. Indirect effects of development on the flat-tailed horned lizard. Final Report submitted to Arizona Game and Fish Department, Yuma. 11 pp.

A42 Cont.

special-status species, flat-tailed horned lizards. An EIR must be prepared to address these significant impacts and properly analyze measures to mitigate such impacts to a less than significant level.

b. The MND Fails to Adequately Analyze and Mitigate the Project's Potentially Significant Impacts to Burrowing Owls.

Mr. Cashen concludes that the MND fails to adequately mitigate the Project's impacts to burrowing owls. He explains that:

A43

> Burrowing owls have the potential to occur on and adjacent to the Project site. The County's proposed mitigation for Project impacts to burrowing owls includes a pre-construction survey, establishment of buffer zones around active burrows, and the exclusion of owls from their burrows during the non-breeding season (which in itself is a potentially significant impact).[58] Whereas these measures may reduce the potential for take, they do not eliminate it. Moreover, surveys and the possible eviction of owls do not mitigate the potentially significant impacts associated with habitat loss and the displacement of owls off the Project site. Because the County does not require any other mitigation specific to the burrowing owl, it does not have the basis to conclude Project impacts to the species would be mitigated to a less-than-significant level.
>
> As described in the subsequent sections, the burrowing owl mitigation proposed in the IS/MND is not consistent with CDFW's Staff Report on Burrowing Owl Mitigation.
>
> *Pre-construction survey-*
>
> The MND requires a pre-construction survey for burrowing owls no more than 30 days prior to initiation of ground-disturbing activities.[59] This condition is not consistent with CDFW guidelines, which recommend an initial preconstruction survey within the 14 days prior to ground disturbance, followed by a subsequent survey within 24 hours prior to ground disturbance.[60] As CDFW's 2012 Staff Report acknowledges, "burrowing owls may re-colonize a site after only a few days."[61] As a result, a single pre-construction survey up to 30 days in advance of construction is insufficient to avoid and minimize take of burrowing owls.

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[58] IS/MND, pp. 11 through 14.
[59] *Ibid.*
[60] CDFG. 2012. Staff Report on Burrowing Owl Mitigation. Available at: <www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf>, pp. 29-30.
[61] *Ibid*, p. 30.

Furthermore, the "take avoidance" (i.e., pre-construction) surveys for burrowing owls are not a substitute for the four surveys required to assess Project impacts and formulate appropriate mitigation. The County must require the Applicant to conduct the protocol surveys described by CDFW, and the results of those surveys need to be released in a revised CEQA document.[62]

Buffers-

A43 Cont.

The IS/MND requires a 300-foot buffer around any burrows occupied by burrowing owls.[63] This default standard is not consistent with CDFW guidelines. CDFW indicates that indirect impacts and appropriate mitigation should be determined through site-specific analyses that incorporate the wide variation in natal area, home range, foraging area, and other factors influencing burrowing owls and burrowing owl population persistence in a particular area.[64] Specifically, CDFW guidelines indicate buffers may need to be up to 500 meters, depending on the level of disturbance.[65]

Burrow exclusion-

In accordance with CDFW guidelines, burrowing owls should not be excluded from burrows unless or until the Applicant:

1. develops a Burrowing Owl Exclusion Plan that is approved by the CDFW;
2. secures off-site compensation habitat and constructs artificial burrows in close proximity (< 100 m) to the eviction sites;
3. mitigates the impacts of temporary exclusion according to the methods outlined by CDFW;
4. conducts site monitoring prior to, during, and after exclusion of burrowing owls from their burrows; and,
5. documents burrowing owls using artificial or natural burrows on an adjoining mitigation site.[66]

Habitat compensation-

Although the IS/MND requires the Applicant to provide compensatory mitigation, it does not require the compensatory mitigation to provide any

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[62] *Ibid*, Appendix D.
[63] IS/MND, p. 13.
[64] CDFG. 2012 Mar 7. Staff Report on Burrowing Owl Mitigation. Available at: www.dfg.ca.gov/wildlife/nongame/docs/BUOWStaffReport.pdf. p. 12.
[65] *Ibid*, p. 9.
[66] *Ibid,* pp. 10 and 11.

benefits to the burrowing owl. CDFW's 2012 Staff Report on Burrowing Owl Mitigation states:

> the current scientific literature supports the conclusion that mitigation for permanent habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal, presence of burrows, burrow surrogates, presence of fossorial mammal dens, well drained soils, and abundant and available prey within close proximity to the burrow.[67]

I concur with the CDFW in this regard, especially given the continued decline of the species throughout most of the state.[68]

A43

(Exhibit 1, pp. 19-20.)

Cont.

Additionally, the MND's proposed use of eviction as a way to mitigate impacts to burrowing owls could in effect cause additional adverse impacts to burrowing owls. According to Mr. Cashen,

> The Project may involve the eviction of burrowing owls from their burrows.[69] Consistent with CDFW guidelines, passive relocation is a potentially significant impact under CEQA that must be analyzed.[70] Specifically, the temporary or permanent closure of burrows may result in: (a) significant loss of burrows and habitat for reproduction and other life history requirements; (b) increased stress on burrowing owls and reduced reproductive rates; (c) increased depredation; (d) increased energetic costs; and (e) risks posed by having to find and compete for available burrows.[71] The County must disclose and thoroughly analyze the impacts associated with evicting burrowing owls from the Project site.
>
> The need for full analysis of potential impacts from passive relocation (i.e., eviction) is further supported by research that indicates most translocation projects have resulted in fewer breeding pairs of burrowing owls at the mitigation site than at the original site, and that translocation projects generally have failed to produce self-sustaining populations.[72]

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[67] *Ibid,* p. 8.
[68] *Ibid. See also* Wilkerson RL and RB Siegel. 2010. Assessing changes in the distribution and abundance of burrowing owls in California, 1993-2007. Bird Populations 10: 1-36.
[69] IS/MND, p. 13.
[70] CDFG. 2012. Staff Report on Burrowing Owl Mitigation, p. 10.
[71] *Ibid.*
[72] Smith BW, JR Belthoff. 2001. Burrowing owls and development: short-distance nest burrow relocation to minimize construction impacts. J. Raptor Research 35:385-391.

A43 Cont.

> Investigators attribute the limited success of translocation to: (a) strong site tenacity exhibited by burrowing owls, and (b) potential risks associated with forcing owls to move into unfamiliar and perhaps less preferable habitats.[73]

(Exhibit 1, pp. 11-12.)

c. The MND Provides Inadequate Compensatory Mitigation for Potentially Significant Impacts to Biological Resources.

A44

The MND fails to ensure adequate compensatory mitigation for the Project's potentially significant impacts to the flat-tailed horned lizard, rare plants, and other sensitive biological resources. Mr. Cashen states:

> The IS/MND does not ensure that the compensatory mitigation identified in the IS/MND would mitigate impacts to all special-status species affected by the Project. Without substantial, meaningful, and enforceable mitigation, the Project will contribute to the continued decline of the FTHL, rare plants, and other sensitive biological resources.

Evaluation of Proposed Mitigation Sites

A45

The Applicant proposed two options to meet its off-site mitigation requirements. Option 1 consists of a property in Imperial County. Option 2 consists of two properties located near the community of Borrego Springs. Property 1 is referred to as the "San Diego" property, whereas Property 2 is referred to as the "Yaqui Pass" property.[74] The MND requires the Applicant to provide off-site mitigation in the form of 227.6 acres of Sonoran Creosote Bush Scrub in northeastern San Diego County.[75] The Applicant's Mitigation Option 1 is located in Imperial County. Therefore, my comments assume the County has concluded it will not accept Mitigation Option 1, and I address Mitigation Option 2 only.

A46

The IS/MND includes the Applicant's evaluation of the proposed off-site mitigation properties. The methods that were used to evaluate the properties were reported as:
To determine whether the off-site mitigation areas would provide commensurate biological function and value for each significantly impacted biological resource, an evaluation of the biological resources for each site were compared and a determination was made about whether the off-site mitigation options have potential to support special-status

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[73] *Ibid.*
[74] OSMI, Table 1.
[75] MND, p. 3.

A46 Cont.

species. The elevation, soils, and vegetation communities were compared for the proposed project site and for both of the off-site mitigation options.[76]

Based on this evaluation, the Applicant concluded "[t]he majority of plants have the same potential to occur in the off-site mitigation parcels when compared to the proposed project site, except Harwood's milkvetch (*Astragalus insularis* var. *harwoodii*), which is found at a slightly lower elevation range than these off-site parcels. Similarly, the majority of the wildlife species have the same potential to occur in the off-site mitigation parcels when compared to the project site."[77] These are not reliable conclusions.

First, the Applicant's consultant conducted biological surveys at the 203-acre Yaqui Pass property.[78] It is unclear why the Applicant's evaluation did not rely on empirical data collected from those surveys, but instead relied on simple comparisons of the elevation, soils, and vegetation communities among sites. Wildlife and plant habitat relationships are complex, and they cannot be reliably predicted by the three variables used in the Applicant's evaluation. Undeniably, empirical survey data collected at the Yaqui Pass site enable much more reliable predictions. Contrary to the Applicant's conclusion, those data suggest none of the focal plant species, and only four of the focal wildlife species, occur at the Yaqui Pass site.[79]

Compensatory Mitigation Does Not Fulfill County Requirements

A47

The County has established mitigation requirements for Group I animal species and for List A and List B plant species. The mitigation proposed in the IS/MND does not fulfill those requirements.

For animal species, County requirements state:

Species-based mitigation shall be provided for Group I animal species. The report shall determine whether the mitigation site directly benefits the species (presence verified) and provides greater benefit to the species than that impacted. The report shall propose mitigation measures above normal habitat mitigation and may propose occupation by an equal or greater number of Group I individuals. The report must propose adequate

[76] OSMI, p. 2.
[77] *Ibid*, p. 7.
[78] Dudek. 2008. Existing Conditions Biological Resources Report for The Ranch at Yaqui Pass – Viking Ranch Project.
[79] *Ibid*, Appendices A and B. *See also* OSMI, Table 2.

mitigation which may include preservation and management of the mitigation site, construction limitations during breeding season, and measures to minimize edge effects.[80]

For plant species, County requirements state:

A47 Cont.

Species-based mitigation shall be provided for List A and List B plant species. Mitigation at a 2:1 or 3:1 ratio for A-listed species shall be provided, depending on the sensitivity of the affected population. Mitigation at a minimum ratio of 1:1 shall be provided for B-listed species. For annual plant species and geophytes, the report shall define impacts and mitigation in terms of the species' "likely limits of occurrence" (LLO) and confirmation of the species presence on the mitigation site (refer to *Section 1.3* for methods of measurement).[81]

Several Group I animal species were documented occurring on the Project site.[82] In addition, the Applicant did not conduct focused plant surveys, but instead assumed several List A and List B plant species are present on the Project site.[83] Consequently, mitigation imposed by the County must meet the aforementioned requirements.

(Exhibit 1, pp. 21-23.)

d. The MND Fails to Analyze and Mitigate the Project's Impacts Due to Avian Mortality.

A48

According to Mr. Cashen,

One hundred million to 1 billion birds are killed annually by daytime window collisions at low-level structures in the U.S. alone.[84] The visual system of birds is simply not capable of perceiving glass as a physical obstacle.[85] Dead waterbirds have been detected at solar facilities,

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[80] County of San Diego. 2010 Sep 15. Report Format and Content Requirements (4th Rev.) – Biological Resources, p. 15. Available at: < http://www.sdcounty.ca.gov/pds/docs/Biological_Report_Format.pdf>, pp. 16 and 17. [emphasis added].
[81] *Ibid,* p. 16. [emphasis added].
[82] OSMI, Table 2.
[83] *Ibid.*
[84] Evans Ogden LJ. 2002. Summary Report on the Bird Friendly Building Program: Effect of Light Reduction on Collision of Migratory Birds. Special Report for the Fatal Light Awareness Program (FLAP). Available at: http://www.flap.org/.
[85] Klem D Jr. 2009. Preventing Bird-Window Collisions. The Wilson Journal of Ornithology 121(2):314–321.

apparently because the solar panels reflect the sky, which the birds mistook for water. The IS/MND fails to disclose, analyze, or provide mitigation for the potentially significant collision threat that the Project poses to birds.

Whereas the extent of the threat remains unknown, solar arrays present a collision hazard to birds. As a result, the USFWS has developed monitoring methods to examine take at solar power facilities, and the California Energy Commission has been requiring all recently licensed solar projects to conduct a Bird Monitoring Study to monitor the death and injury of birds from collisions with solar facility features.[86] In addition, Klem (2009) discusses several techniques (e.g., UV-reflective coverings) that enable birds to avoid collision.[87] These are feasible mitigation measures that should be required of the Project.

A48 Cont.

(Exhibit 1, pp. 12-13.)

Biologists have long documented avian collision risks associated with solar PV panels and their support structures. (E.g. Exhibit 3, Shawn Smallwood's comments on Imperial Valley Solar Company 2 Project regarding avian collision risk, pp. 7-9 [Smallwood calculated that the 30 MW project would result in 324 bird fatalities a year].) In light of this substantial evidence, there is a fair argument that the Project will have significant impacts on birds due to collision risks. The County must prepare an EIR to analyze and mitigate Project's impacts on birds.

e. The MND Fails to Analyze and Mitigate the Project's Impacts Associated with the Proposed Fencing.

A49

According to Mr. Cashen,

The Project site would be surrounded by a 6-foot high chain-link fence that would include one foot of two-strand barbed wire along the top.[88] In addition, the MND requires barbed wire to be strung at heights of 15" and 30" along the lizard barrier fence, and a third barbed wire to be strung above the lizard fence.[89] The IS/MND does not explain why barbed wire needs to be strung along the lizard fence.

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[86] USFWS, Pacific Southwest Region. 2011May 2. Monitoring Migratory Bird Take at Solar Facilities: An Experimental Approach. *See also* California Energy Commission. 2010 Jul. Supplemental Staff Assessment for the Calico Solar Project. p. C.2-230
[87] Klem D Jr. 2009. Preventing Bird-Window Collisions. The Wilson Journal of Ornithology 121(2):314–321.
[88] Project Description, p. 8.
[89] IS/MND, p. 9.

Barbed-wire fencing poses a mortality hazard to sensitive species that occur in the Project area, including the burrowing owl, prairie falcon, and bighorn sheep.[90] The IS/MND does not disclose or provide mitigation for this hazard.

A49 Cont.

Feasible mitigation-

The Project's security fence should be designed to minimize hazards to wildlife. The County needs to work with the Applicant and wildlife resource agencies to develop a "wildlife-friendly" fence design that also provides site security. Such designs are feasible. At a minimum, the top most wire of the perimeter fence should be smooth, and barbed wire should not be installed along the lizard fence.

(Exhibit 1, p. 13.)

f. The MND Failure to Specify the Type of Dust Suppressants to be Used Could Adversely Impact Biological Resources.

The MND fails to specify the type of dust suppression additives to be used in conjunction with watering the disturbed areas and roadways. (MND, p. 27; IS, pp. 16-17.) But the selection and use of any dust suppression additives could have adverse impacts to biological resources especially as such additives could contain toxic chemical contaminants which could adversely affect terrestrial animals. According to Mr. Cashen:

A50

The Project involves the use of soil stabilizers (also known as soil binders, dust suppressants, or dust palliatives) to control fugitive dust and erosion at the Project site.[91] The majority of soil stabilizers are made from waste products from the manufacturing industry and many contain chemicals that are toxic to plants and animals.[92] The chemical properties, particularly toxic contaminants, can vary significantly depending on the type of soil stabilizer (and manufacturer).[93] The IS/MND fails to identify the specific soil stabilizer(s) that may be used at the Project site, although it requires the Applicant to use magnesium chloride "or another County approved dust suppression additive." The IS/MND does not identify the "other" dust suppression additives that have been approved by the County, or the process for approving a proposed additive. This precludes

[90] Allen GT. 1990. A Review of Bird Deaths on Barbed-Wire Fences. Wilson Bulletin. 102:553-58.
[91] MND, p. 27.
[92] U.S. Environmental Protection Agency. 2004 Mar. Potential Environmental Impacts of Dust Suppressants: Avoiding another Times Beach. In: An Expert Panel Summary, May 30-31, 2002, Las Vegas, Nevada. Available at: http://www.epa.gov/nerlesd1/cmb/pdf/dust.pdf
[93] *Ibid.*

the ability to evaluate the potentially significant adverse effects associated with the use of soil stabilizers at the Project site.

A50 Cont

Application of soil stabilizers, especially magnesium chloride, has been associated with the browning of trees along roadways and stunted vegetation growth in forestlands.[94] Soil stabilizers have also caused sickness and adverse reproductive effects in terrestrial animals.[95] The County must identify the specific dust suppression additives that may be used at the Project site so that the potentially significant adverse effects associated with use of those additives are properly disclosed, analyzed, and mitigated.

(Exhibit 1, p. 2.)

g. The MND Fails to Analyze and Mitigate Potentially Significant Impacts to Biological Resources Associated with Decommissioning.

Mr. Cashen provides that,

A51

The MND requires the Applicant to prepare a Decommissioning Plan "to ensure removal of the Solar Energy System and conversion of the site back into a use that is compatible with the surrounding properties."[96] Because decommissioning is an anticipated phase of the Project, the County must describe the decommissioning activities and identify the minimum standards for site conditions once decommissioning has been completed.

Sensitive biological resources have the potential to colonize (or re-colonize) the Project site prior to decommissioning. Decommissioning activities have the potential to directly impact sensitive species and their habitat, and indirectly impact sensitive species through disturbance, fugitive dust, and the spread of invasive plants (among other potential impacts). Because the Project has the potential to impact sensitive biological resources during decommissioning, the County must require pre-decommissioning surveys that adhere to the current CDFW and USFWS guidelines at the time of decommissioning.

Returning the Project site to its pre-development conditions (if that is indeed the objective) would require a dedicated effort that removes any degrading factors (e.g. soil erosion or contamination), and repairs the

[94] *Ibid.*
[95] *Ibid.*
[96] IS/MND, p. 32.

physical and/or chemical environment (as needed). Restoration would likely require loosening the soil (e.g., through deep ripping), and perhaps measures to restore soil fertility.

It is well established that it may take hundreds, if not thousands of years, for desert vegetation and soil crusts to recover following disturbance.[97] In some instances it may take decades for recovery even to begin.[98] The IS/MND fails to identify any success criteria or monitoring activities for revegetation of the Project site following decommissioning.

A51 Cont

The length of time that a soil stabilizer is effective varies according to variables such as the type of product, soils, weather, application rate, and traffic conditions. However, many manufacturers advertise that their products will be effective for 6 to 24 months.[99] Nevertheless, soil stabilizers are not effective indefinitely. The IS/MND fails to identify how water and wind erosion will be mitigated after the Project is decommissioned (i.e., when the soil stabilizers are no longer effective).

Due to the aforementioned issues, it is my professional opinion that decommissioning of the Project could result in severe erosion and unmitigated effects on the environment.

(Exhibit 1, pp. 15-16.)

h. The MND Fails to Require All Feasible Mitigation Measures Relied on by the Biological Resources Report.

A52

According to Mr. Cashen, the BRR recommends several feasible mitigation measures that were ultimately omitted from the MND. For example, MM-2 in the BRR identifies several BMPs that should be implemented to avoid and minimize Project impacts. (MND, BRR, pp. 3-13~3-14.) The omission of these BMPs (and other mitigation measures recommended in the BRR) from the MND is problematic because the BRR refers to the BMPs to justify the conclusion that Project impacts would be

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[97] Lovich, J. E., and D. Bainbridge. 1999. Anthropogenic Degradation of the Southern California Desert Ecosystem and Prospects for Natural Recovery and Restoration. Environmental Management Vol. 24, No. 3, pp. 309–326. *See also* Belnap J, D Eldridge. 2001. Disturbance and Recovery of Biological Soil Crusts. Chapter 27 In: Belnap J, OL Lange (eds). Biological Soil Crusts: Structure, Function, and Management. Ecological Studies, Vol. 150. Springer-Verlag.

[98] *Ibid.*

[99] U.S. Environmental Protection Agency. 2004 Mar. Potential Environmental Impacts of Dust Suppressants: Avoiding another Times Beach. In: An Expert Panel Summary, May 30-31, 2002, Las Vegas, Nevada. Available at: http://www.epa.gov/nerlesd1/cmb/pdf/dust.pdf.

A52 Cont

mitigated to a less-than-significant level. (Exhibit 1, p. 18.) The measures identified in the BRR are feasible, and they should be incorporated into the County's mitigation requirements in the actual MND.

i. The MND Fails to Analyze and Mitigate Potential Impacts to Phreatophytes.

According to Mr. Cashen,

A53

A "phreatophyte" is a deep-rooted plant that obtains a significant portion of the water that it needs from the phreatic zone (zone of saturation) or the capillary fringe above the phreatic zone.[100] Several phreatophytes occur on the Project site, including: mesquite, ironwood, palo verde, willow, catclaw acacia, smoke tree, and *Tamarix* spp.).[101]

Phreatophytic vegetation is sensitive to changes in the local water table. Significant groundwater level declines in the Borrego Valley have caused high levels of mortality to mesquite and other phreatophytes. Although the IS/MND acknowledges the Project would result in groundwater drawdown, it provides no analysis of the potential effects (including cumulative effects) on phreatophytic vegetation and the species that use that vegetation as habitat. These effects are potentially significant. For example, the San Diego Breeding Bird Atlas reports: "[w]ith further development of the Borrego Valley and overdraw of the water table, the mesquite bosque, a habitat unique in San Diego County, could be killed and Lucy's Warbler extirpated."[102]

(Exhibit 1, p. 16.)

j. The MND Fails to Analyze and Mitigate Potential Impacts Associated with Weeds.

A54

According to Mr. Cashen,

The BRR correctly identifies the potential for the Project to introduce, or facilitate the spread of, non-native plant species ("weeds"). It also correctly identifies the potentially significant adverse impacts that weeds have on native species and ecosystems. Whereas the BRR identifies weed control treatments as a mitigation measure, the MND does not

[100] Wikipedia contributors. Phreatophyte [Internet]. Wikipedia, The Free Encyclopedia; 2013 Mar 14 [cited 2013 May 18]. Available at: <http://en.wikipedia.org/wiki/Phreatophyte>.
[101] BRR, Appendix A.
[102] Available at: <http://sdplantatlas.org/ge_files/pdf/Lucy's%20Warbler.pdf>.

identify weed control as a required mitigation measure. In addition, the weed control mitigation measures described in the BRR are too vague to be evaluated. Specifically, the BRR does not identify:

1. Baseline conditions pertaining to the abundance, distribution, and composition of weed species on the Project site.
2. The measures that will be implemented to prevent weed species from being introduced to the Project site (e.g., equipment washing).
3. The weed species that will be subject to weed management measures, and the management objectives for each species (e.g., eradication versus control).
4. Where weed management and monitoring measures will be implemented, including the extent of a buffer zone surrounding the Project footprint.
5. The timing, frequency, and duration of the suite of weed management measures that might be implemented for the Project.
6. The methods (including the timing, frequency, and duration) for weed monitoring efforts at the Project site.
7. Success criteria for the weed mitigation program.
8. The reporting requirements and enforcement mechanism.

These issues need to be addressed in a comprehensive Weed Management Plan that is vetted by the public, resource agencies, and biologists prior to a decision on the Project.

(Exhibit 1, pp. 18-19.)

A54 Cont

D. THE MND IGNORES THE PROJECT'S CUMULATIVELY CONSIDERABLE IMPACTS.

A55

The County fails to consider the cumulative impacts of the Project in connection with other related past, present and future projects in the vicinity. An agency must make a "mandatory finding of significance" and may not issue a negative declaration if a proposed project will have "impacts that are individually limited, but cumulatively considerable." (Pub. Resources Code, § 21083; CEQA Guidelines, § 15355.) "Cumulatively considerable means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (CEQA Guidelines, Appendix G, Section XVII; CEQA Guidelines, section 15130(a).) "Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (CEQA Guidelines, § 15355(a).) "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." (CEQA Guidelines, § 15355(a).)

"The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (*CBE v. CRA*, *supra*, 103 Cal.App.4th at 117; see CEQA Guidelines, § 15355(b).)

A55 Cont.

As the court stated in *CBE v. CRA*:

> Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

(*CBE v. CRA, supra*, 103 Cal.App.4th at 114.)

1. The MND Fails to Analyze the Project's Cumulative Impacts in Sufficient Detail.

A56

The MND and its supporting documents fail to adequately analyze the potential cumulative impacts of the Project. Rather than considering and analyzing each past, present and probable future project in sufficient detail, the Initial Study merely lists 13 "past, present and future projects" with scant information. It only provides the project names and permit/map numbers. (IS, p. 57.) In fact, it is impossible to distinguish from this list which projects are past, present or future projects. Without adequate information, it is impossible for the County to conclude that there is no substantial evidence to support a fair argument of significant cumulative impacts. The Initial Study then provides:

> Per the instructions for evaluating environmental impacts in this Initial Study, the potential for adverse cumulative effects were considered in the response to each question in sections I through XVIII of this form. In addition to project specific impacts, this evaluation considered the projects potential for incremental effects that are cumulatively considerable. As a result of this evaluation, there were determined to be potentially significant cumulative effects related to biological resources, cultural resources, groundwater resources, air quality, transportation and noise. However, mitigation has been included that clearly reduces these cumulative effects to a level below significance. This mitigation includes onsite open space, offsite mitigation, open space signage, Resource Management Plan (RMP), biological monitoring, lizard survey, fencing and removal strategy, pre-construction surveys for desert kit fox and burrowing owl, temporary fencing, resource avoidance, artifact curation, grading monitoring, groundwater reduction measures, grading requirements for air quality, payment of the TIF and noise

A56 Cont.

reduction measures. As a result of this evaluation, there is no substantial evidence that, after mitigation, there are cumulative effects associated with this project. Therefore, this project has been determined not to meet this Mandatory Finding of Significance.

(IS, pp. 57-58.)

A57

This analysis suffers from several defects. First, it fails to "define the geographic scope of the area affected by the cumulative effect[s] and provide a reasonable explanation for the geographic limitation used" in violation of CEQA Guideline Section 15130(b)(1)(B)(3). Although some of the MND's supporting documents define the geographic scope of the cumulative impacts analyses, they fail to provide reasonable explanations for the different geographic scopes used for each impact.

A58

Next, the Initial Study's conclusion that the implementation of mitigation measures would reduce the Project's contribution to any cumulative impact misconstrues the cumulative impacts analysis requirement under CEQA. (IS, pp. 57-58; *e.g.* IS, pp. 19, 21.) Even assuming that the proposed mitigation measures could reduce the Project's significant impacts to a less than significant level, the incremental impact of this Project when added to other related past, present, and reasonably foreseeable future projects could nevertheless be considerable. (*CBE v. CRA*, *supra,* 103 Cal.App.4th at 117.)

A59

Accordingly, the MND should have analyzed whether the Project's incremental impacts, when added to other related past, present and reasonably foreseeable future projects, could result in cumulatively considerable impacts. Here, the MND's cumulative impacts analyses fail to comport with CEQA and miss the mark entirely.

2. The MND's List of Related Past, Present and Foreseeable Future Projects in the Project's Vicinity is Underinclusive.

A60

The Initial Study's list of related past, present and future projects is also underinclusive. First, it only includes one renewable energy project in the Project's vicinity. The number of past, present and foreseeable future renewable energy projects in Southern California is quite extensive, especially given the "gold rush" of renewable energy projects in California. Therefore, related renewable energy projects in the Project's vicinity should have been considered in the cumulative impacts analyses. Especially since the Project site is located on the border of San Diego and Imperial Counties, the MND should have also included related projects in both counties.

There are at least 100 related past, present and future renewable energy projects that, in combination with the Project, could result in cumulatively considerable impacts near the Project site. For example, the EIR for the Ocotillo Wind Energy Facility near the Project site provided a much more extensive list of related projects. (Exhibit 2, Attachment A, Cumulative Projects List, Ocotillo Wind Energy Facility FEIR, p. 4.1-

6~4.1-23.) To the extent that the combination of the Project and these related past, present and future projects could result in cumulative impacts, the County should have analyzed some, or all, of them in the MND.

Additionally, there are other related non-renewable energy projects which should have been analyzed in the MND. Most glaringly, the MND fails to analyze the cumulative impacts of the Project and Ocotillo Wells State Vehicular Recreation Area (SVRA). The MND acknowledges that Ocotillo Wells SVRA is located 3.5 miles north of the Project site and is also located adjacent to the Anza-Borrego Desert State Park. (MND, Project Description ("PD"), p. 5.) The Ocotillo Wells SVRA, which spans 85,000 acres, is dedicated to off-road recreational purposes and is a motorcycle, four-wheel drive, all-terrain vehicle, and dune buggy use area. The use of off-road-vehicles on Ocotillo Wells SVRA creates significant air quality impacts and impacts to biological resources on and near the area. But the MND ignores the Ocotillo Wells SVRA entirely.

A61

Moreover, there are other related past and present projects that may, together with the Project, contribute to cumulatively considerable impacts. The MND acknowledges that the Ocotillo Airport and U.S. Gypsum Company Mine Quarry is located in the Project's vicinity. (MND, BRR, p. 3-10.) These projects, together with the Ocotillo Wells SVRA, have had a severe effect on the landscape and associated biological resources in the Project area. (Exhibit 1, p. 17.) However, the potential cumulative impacts from these related projects were not analyzed in the MND.

The MND's failure to adequately analyze the Project's incremental impacts in combination with all related past, present and foreseeable future projects violates CEQA. The purpose of CEQA is to inform decision makers and the public about the potential, significant environmental effects of a project. (CEQA Guidelines, § 15002(a)(1).) "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

3. The MND Fails to Adequately Analyze Cumulative Air Quality Impacts.

A62

The MND's cumulative air quality impacts analysis is inadequate. It provides that there are no cumulative or nearby construction projects which may contribute to cumulative emissions but does not provide any evidence to support such a conclusory statement. (MND, AQA, pp. vi, 24.) The MND also does not explain what "nearby" projects were considered in its cumulative impacts analysis. Mr. Hagemann agrees that the MND fails to consider specific projects which may cumulatively impact air quality. (Exhibit 2, p. 4.) In addition, mere recitations that this Project is "a renewable non-combustive energy project" and is expected to comply with the County's Regional Air Quality Strategy (RAQS) do not constitute sufficient cumulative impacts analysis. (MND, AQA, at p. vi.)

A62 cont.

As previously discussed, the Project's incremental air quality impacts, coupled with the significant PM10 and PM2.5 emissions from the Ocotillo Wells SVRA, could be cumulatively considerable. (Exhibit 2, p. 4.) It has been observed that on holiday weekends, the entire desert basin around this 80,000 acre "open area" is filled with a purple haze of mixed air pollution, dust, and vehicle-exhaust particulates, which affects air quality in the area.[103] The County must analyze the increased air quality impacts of the Project when viewed in connection with the existing emissions from the SVRA before it could conclude that there will be no cumulative air impacts.

Moreover, while the MND acknowledges that the proposed Split Mountain solar project is located in the Project's vicinity, it fails to analyze the Project's incremental air quality impacts in connection with the Split Mountain solar project. (Exhibit 2, p. 4.) In another part of the MND, the MND admits that the proposed Split Mountain solar project is within 4 miles of the Project site. (MND, Visual Resources and Aesthetics Analysis ("VRAA"), p. 90.) But the MND's cumulative air quality impacts analysis omits any discussion of the potential impacts of this Project in addition to the Split Mountain solar project nearby. (MND, AQA, pp. vi, 24.)

Furthermore, as discussed above, the MND omits analysis of other related past, present and future projects in the Project site's area which, in connection with the Project's incremental impacts, could result in considerable cumulative air impacts.

4. The MND Fails to Analyze and Mitigate Cumulative Biological Impacts.

A63

The MND's analysis of potential cumulative biological impacts is also inadequate. First, the MND curiously limits the cumulative project boundary to a 5 mile radius around the Project site, without any explanation or evidence, on how and why the 5 mile radius was chosen. (CEQA Guidelines, § 15130(b)(1)(B)(3); *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 907.) The MND's analysis of several projects within the 5 mile radius is also inadequate, as it fails to identify the specific locations of those projects in relation to the Project site. According to Mr. Cashen, such failure precludes the ability to analyze several potentially significant cumulative impacts (e.g., to wildlife movement). (Exhibit 1, p. 17.) As such, the lack of sufficient detail in the MND's cumulative impacts analysis further discredits the MND's conclusion that "[i]t is unlikely that this project will impact any core wildlife corridors because it is located near some rural residential areas and is bordered by Split Mountain Road." (MND, BRR, p. 6-4.)

Second, according to Mr. Cashen, the MND and its supporting documents fail to identify the Project's cumulative impacts to sensitive biological resources. Such analysis in the MND, or lack thereof, does not conform to the County's own requirements, which provide:

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[103] http://sanfranciscobay.sierraclub.org/yodeler/html/2009/09/article16.htm

A62 Cont.

> The [cumulative impacts study] area should be defined by considering the following factors and others, as appropriate: land use, MSCP or HCP boundaries, species ranges, habitats, site conditions, topography, natural history of the species, best available scientific literature, etc., using best professional judgment. Analyze the significance of the cumulative impact to special status species, including raptor foraging habitat. The consultant shall determine whether the project makes a cumulatively considerable contribution to special status species, based on a project-specific analysis and the factors described above.[104]

(Exhibit 1, p. 17.)

A63

Next, the BRR acknowledges that Split Mountain solar project site is within 5 miles of the Project site. (MND, BRR, 5-1.) However, the BRR makes multiple unsubstantiated assumptions about the potential cumulative impacts from the Project coupled with the Split Mountain solar project. While acknowledging that the Split Mountain solar project is proposed on 100 acres of Sonoran creosote bush scrub, the BRR fails to analyze cumulative impacts of the Project and the Split Mountain solar project on such special status species because environmental documents for the Split Mountain solar project are not available yet. (MND, BRR, pp. 3-10; Exhibit 1, p. 17.) This is not a defensible reason for omitting an attempt to conduct cumulative impacts analyses. At a minimum, the County should know the proposed project's location and the general resources that are present at that location. (Exhibit 1, p. 17.) Based on these conclusory statements, it is clear that the MND did not actually analyze the potential cumulative impacts of the Project in combination with the Split Mountain solar project nearby.

A64

Also, Mr. Cashen notes that the MND fails to establish the regional context for most of the species that occur (or have the potential to occur) in the Project area such that the relative severity of Project impacts to the regional (or local) population can be evaluated. He explains,

> For example, as discussed previously, Project impacts to occupied nesting habitat for the Lucy's warbler (a California Species of Special Concern) would be severe because only one other Lucy's warbler nest site has been located in San Diego County. However, impacts to occupied nesting habitat for the loggerhead shrike (also a California Species of Special Concern) would be much less severe because the species is widespread throughout the region.

(Exhibit 1, p. 18.)

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[104] County of San Diego. 2010 Sep 15. Report Format and Content Requirements (4th Rev.) – Biological Resources, p. 15. Available at: < http://www.sdcounty.ca.gov/pds/docs/Biological_Report_Format.pdf>.

A65

Finally, as discussed above, the proposed implementation of mitigation measures does not provide an "out" for the County to avoid conducting cumulative impacts analyses and conclude that there would be no cumulative impacts. The MND repeatedly concludes that the implementation of mitigation measures would reduce the Project's contribution to any cumulative biological impact. (IS, pp. 19, 21.) But the MND improperly misconstrues the cumulative impacts analysis requirement under CEQA. Even if the Project may be able to mitigate all of its potentially significant impacts to a less than significant level, any incremental effect of this Project when added to other related past, present, and reasonably foreseeable probable future projects could result in cumulative impacts. (*CBE v. CRA*, *supra,* 103 Cal.App.4th at 117.) Thus, the MND should have analyzed if the Project's incremental impacts, when added to other related past, present and reasonably foreseeable future projects, could be cumulatively considerable.

A66

The County must revise its cumulative impacts analysis to include all related past, present and future projects near the Project site. The County must also actually analyze how the incremental impacts from this Project, compounded with the related past, present and future projects, could be cumulatively considerable.

CONCLUSION

A67

For the foregoing reasons, the MND for the Project should be withdrawn, an EIR should be prepared, and the draft EIR should be circulated for public review and comment in accordance with the requirement of CEQA. Thank you for considering our comments.

Sincerely,

Richard Drury
Cathy D. Lee
Lozeau Drury LLP

Responses to Letter A, Laborers International Union of North America, Local Union No. 89 (represented by Lozeau Drury LLP)

A1	This comment is introductory in nature and does not raise a significant environmental issue for which a response is required.
A2	The County does not agree that an Environmental Impact Report is needed for the Project. A thorough environmental analysis has been conducted and all potentially significant impacts will be mitigated to below a level of significance.
A3	This is a summary of the comments which are provided in greater detail in the body of the letter. Each of the specific issues raised is addressed in subsequent responses.
A4	The County generally agrees with the description provided in this comment with one exception: the Project site is not surrounded by vacant land. Many off-road vehicle enthusiasts store their vehicles, and in some cases also own residences, near the site. They recreate in nearby Ocotillo Wells Off Highway Vehicle (OHV) park, and sometimes through the Gildred property. In addition, the Bureau of Land Management (BLM) owns significant acreage near the project site. The area is characterized by a diversity of land uses.
A5	The County acknowledges that the commenter has interest in the Project and appreciates the comments provided. The County does not agree with assertions that the Project will generate or cause air pollution, loss of agricultural land, toxic chemical pollution, or other impacts. The commenter's assertion that the Project will result in significant, unmitigated air quality impacts is addressed in responses to comments A39-A40 and A61. The commenter presents no evidence that the Project site has ever been used as agricultural land, or that the construction of the Project would have a significant impact on agricultural land. Concerns that the Project will generate toxic chemical pollution are addressed in responses to comments A40 and A50 below. The commenter also argues (without evidence) that there may be toxic chemicals in the soil or groundwater at the Project site, which its members could be exposed to during construction. The County has no evidence that toxic chemicals exist in the soil or groundwater at the Project site. This concern appears to be based on speculation. As noted in response to comment A2 above, the County does not agree that preparation of an EIR is required. The County's decision to move forward with the proposed MND is based on all of the evidence in the record.
A6	The comment addresses the legal standard of review under the California Environmental Quality Act (CEQA). No response is necessary.
A7	The County does not agree with this comment. The Initial Study (IS) states that the Project would be required to upgrade a 250 mega-volt ampere (MVA) transformer at the El Centro Switching Station within the existing disturbed footprint of the station

	(Page 2). Contrary to the comment, this minor equipment upgrade would not result in any environmental impacts. There will be no impact to biological resources because the upgrade would occur within the existing disturbed footprint of the station. Furthermore, this upgrade would not impact air quality because it would not result in the emission of significant levels of criteria air pollutants. For example, the upgrade would not require any grading, or involve the extended use of construction equipment. It should be noted that CEQA recognizes two categorical exemptions for equipment upgrades of this type, including CEQA Guidelines Sections 15301(b) and 15302(c).
A8	The use of silt detention basins is not proposed as part of the Project. Mitigation measure MM-2(4) of the Biological Resources Report (BRR) has been revised accordingly (see Dudek's *Response to Comments for the Ocotillo Wells Solar Major Use Permit Letter Report* dated September 23, 2013) (Biological Letter Report). The Project is not considered to be a "Priority Development Project" by the County [County of San Diego Watershed Protection, Stormwater Management, and Discharge Control Ordinance (WPO) Section 67.802(w)] and is not subject to hydromodifcation requirements. Consistent with County requirements, a Hydrology and Hydraulics Study and a Minor Stormwater Management Plan (SWMP) (available under separate cover) were prepared for the Project to analyze the land area affected by the proposed development within the Major Use Permit boundary.
A9	As noted in Response to Comment A3 above, no silt detention basins are proposed as part of the Project. No silt detention basins are required to retain water and associated runoff used during operation and maintenance activities because panel washing is the primary water-dependent activity, and panel washing activities will not result in any runoff. Furthermore, the Project would not require silt detention basins because the Project would not alter the hydrology of the Project site. The Project would result in a minimal increase in the amount of impervious surface area onsite (from 0.04 to 0.63 percent) and would therefore not substantially interfere with or increase existing runoff rates or volume.; refer to the Minor Stormwater Management Plan (SWMP) dated September 28, 2012. Additionally, only minor grading and removal/compaction activities are required within the development area to allow for installation of the solar panels and supporting equipment, resulting in limited disturbance to existing onsite drainage quantities or patterns. All stormwater would be allowed to sheet flow across the property, as it does currently, following Project construction. Further, break-away fencing would be installed along the boundary of the proposed development area to ensure that floodwaters remain unobstructed during a flood event. Additionally, construction stormwater best management practices (BMPs), post-construction BMPs, and low impact development (LID) BMPs will be implemented to reduce the potential for onsite or offsite erosion and/or adverse effects on downstream waters to occur, as discussed in the Hydrology and Hydraulics Study and Minor SWMP.
A10	Contrary to the comment, an EIR is unnecessary to analyze potential impacts associated with the Project's routine panel washing activities because no impacts associated with panel washing will occur.

	Deionized water will be used to periodically wash the solar panels. If groundwater is too hard to be utilized for routine panel washing without filtration, the Project will employ a filtration system that would consist of a light truck-mounted reverse osmosis (RO) unit having a 90% recovery rate. The RO unit can produce three gallons per minute (gpm), or 1,440 gallons per day (gpd), of filtered water. For the proposed Project, a total of six RO trucks on a 20 work-day work schedule would therefore be required to wash the panels each quarter. This assumes a worst-case scenario of 168,489 gallons of estimated water usage per quarter. The RO units with a 90% recovery rate would produce approximately 16,851 gallons of brine wastewater per quarter, or 842.5 gpd. The brine wastewater would be collected and stored onsite within a 10,000 gallon reservoir, and would be trucked offsite via a truck mounted with a 5,000 gallon tank as needed. The brine wastewater would be disposed of at either the City of San Diego's Wastewater Pumping Station No. 1 or No. 2, located on East Harbor Drive in the City of San Diego. A total of four round-trip truck trips per quarter, 16 round-trip truck trips per year, would be required to dispose of the brine wastewater generated by routine panel washing for the Project. Therefore, runoff from panel washing would not occur, as all brine wastewater would be collected onsite and ultimately disposed of at an offsite location.
A11	The use of herbicides, pesticides, or rodenticides is not proposed at the Project site.
A12	The comment addresses the legal standard of review under the California Environmental Quality Act (CEQA). No response is necessary. See responses to comments A14-A37 for detailed responses to the assertion that the Mitigated Negative Declaration (MND) fails to establish an accurate environmental setting for the Project.
A13	The comment addresses the legal standard of review under the California Environmental Quality Act (CEQA). No response is necessary. See responses to comments A14-A37 for detailed responses to the assertion that the Mitigated Negative Declaration (MND) fails to establish an accurate environmental setting for the Project.
A14	The Project site is in an area that experiences bimodal rainfall pattern with typical rainfall resulting from winter and summer storms, although rainfall patterns at the Project site also vary from year to year such that late summer / early fall monsoonal rains do not occur every year. The Biological Letter Report provides specific rainfall information for the project site during 2011/2012 and 2012/2013, as well as additional information regarding the protocols reviewed and used. The Biological Letter Report notes that while summer rains are important in keeping desert plants alive, the winter rains are responsible for bringing forth the spring wildflowers, which are the focus of the surveys. A summer pass is typically done to conform with the standard protocols (i.e., *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFG 2009)), but summer rains are not guaranteed, particularly in the desert environment. Because the spring reference population check revealed no annuals growing in the reference check area or in the wash on site, and the Anza-Borrego Desert State Park

	noted very little annual blooms that spring, the summer surveys were also cancelled. The County has taken the approach of reviewing available literature and records to assist with the baseline analysis. The County has the ability to postpone or suspend some seasonal focused surveys on a case-by-case basis and provides guidance for additional options (County 2010a, page 7-8). Therefore, while it is always preferable to conduct field surveys, the alternative method was determined to be the best course of action per the County's guidelines. The commenter cites survey protocols from the California Department of Fish and Wildlife (CDFW), Bureau of Land Management (BLM), and California Native Plant Society (CNPS). While the County always takes other resource agency and local organization recommendations into consideration, it is the County's Guidelines that apply for determining how to adequately survey for special-status plant species on project sites.
A15	The comment states that the approach taken to establish the existing conditions, evaluate project impacts, and formulate mitigation is not an acceptable approach. However, the approach described in the BRR is accepted under the County's guidelines, which are described on page 3 of the Biological Letter Report. During Spring and Summer/Fall survey periods in both 2012 and 2013, drought prevented protocol surveys from providing information about sensitive plant species that may exist on the Project site. As explained in further detail in the Biological Letter Report prepared by Dudek, the County developed an adequate approach to establishing a baseline of sensitive plant species that may occur on the Project site, which accounted for the drought conditions that existed in 2011/2012 and 2012/2013. To develop the baseline, Dudek relied on 1) the California Natural Diversity Database (CNDDB) (CDFG 2012); 2) California Native Plant Society(CNPS) *Inventory of Rare and Endangered Plants* (CNPS 2012); San Diego Natural History Museum's Plant Atlas (SDNHM 2012); and the plants identified in the County's Pre-Application Summary Letter (County of San Diego 2011b). Additionally, the assertion that the approach taken to establish existing conditions with respect to special status plant species on the Project site, evaluate Project impacts, and formulate mitigation is inadequate is addressed in responses to comments A16-A21 below.
A16	The County does not agree with this comment. Please see also response to comment A15 regarding the technique for disclosing and analyzing impacts of a project. The commenter misquotes the 2009 California Department of Fish and Game (CDFG, now CDFW) *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFG Protocol), to give the impression that the CDFG Protocol disagrees with the methodology used in the BRR. In fact, it does not.

	The CDFG Protocol suggests compiling "relevant botanical information in the general project area to provide a regional context for the investigators," and developing "a list of special status plants with the potential to occur within these vegetation types," as was done here. CDFG Protocol, at 3. While the CDFG Protocol states that "[f]ield surveys and subsequent reporting should be comprehensive and floristic in nature and not restricted to or focused only on this list," the CDFG Protocol explicitly acknowledges that creation of such a list is an essential starting place for the analysis. *Id.* Furthermore, the CDFG Protocol recognizes the potential for site conditions, including drought, to result in a negative survey. The CDFG Protocol explains, "[a]dverse conditions may prevent investigators from determining the presence of, or accurately identifying, some species in potential habitat of target species. Disease, drought, predation, or herbivory may preclude the presence or identification of target species in any given year. Discuss such conditions in the report." CDFG Protocol, at 4. The CDFG Protocol also suggests visits to a "nearby reference site" to substantiate negative findings. CDFG Protocol, at 5. In fact, the CDFG Protocol provides no further discussion as what should be done when drought conditions persist year-after-year, except to suggest "surveys over a number of years . . . ." *Id.* at 4. Nothing in the CDFG Protocol conflicts with the approach developed pursuant to the County Guidelines and approved by the County in response to multiple year drought conditions experienced at the Project site. Finally, the commenter asserts that additional special-status species other than those considered have potential to occur on the Project site based on his "review of the available literature, and through consultation with recognized experts on desert plants…" However, the commenter does not identify any additional species with the potential to occur on the Project site. Without such information, it is impossible to assess the likelihood of such species occurring on the Project site, or the impacts associated with that potential. Accordingly, without additional information, the potential for additional special status plant species to occur on the Project site is regarded by County staff as speculation.
A17	The methods utilized for considering relevant sources of data for developing a list of potential special status plant species to occur on the Project site are described in the BRR and supplemental information provided by the Biological Letter Report (see pages 2-3). The sources used by Dudek follow the CDFG Protocol, and include additional resources, including: San Diego Natural History Museum Plant Atlas (SDNHM 2012), California Native Plant Society (CNPS 2012), and plants listed on the County of San Diego's Pre-Application Summary Letter (County 2011b). The methods also follow those suggested in the County's survey method guidelines (County 2010a). Therefore, all suggested resources were reviewed in order to develop a species list, establish a baseline, and assess potential impacts to special-status plant species. Additional resources are neither required by the County, nor would they likely provide additional species not already analyzed. The comment does not specify any additional plants that have potential to occur on the project site but were not addressed

	The resume of the botanist who prepared the list of special status plant species with potential to occur at the Project site and analyzed special-status species is included as an Appendix to Dudek's *Response to Comments for the Ocotillo Wells Solar Major Use Permit Letter Report*. The botanist is a County-approved CEQA consultant for biological resources (County 2011a), and is an expert in desert plant species. Furthermore, Dudek is familiar with the project site and its vegetation communities, soils, and overall environment based on multiple site visits and surveys. Therefore, generalities used to describe the site or reference to experts who have not conducted site-specific surveys are regarded as cursory evaluations. Additionally, the experts provided by the commenter – Dr. Bruce Pavlik and Dr. James Andre –are not County-approved CEQA consultants for biological resources (County 2011a). The information in the record meet's the County's standards for biological surveys and analysis.
A18	As the commenter notes, Dudek determined habitat suitability using the habitat types, soils, elevation, and known population ranges documented in CNPS. Final determination of potential to occur was supplemented by additional resources, including the Jepson Flora Project (University of California, Berkeley 2012) and species records listed in resources described on pages 3-5 of the Biological Letter Report. Although the County does not require the publication of modeling data associated with Biological Resources Reports, the basis for the habitat suitability model is provided as Appendix B of the Biological Letter Report. The methods used by Dudek are consistent with literature review recommended in the *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFG 2009) and described in the County's Report and Format Guidelines (County 2010a), as well as the botanist's knowledge and familiarity with the project site. Therefore, the habitat suitability is appropriate in predicting plant presence and assessing project impacts. Documentation of California Department of Fish and Wildlife (CDFW), California Natural Diversity Database (CNDDB), and U.S. Fish and Wildlife Service (USFWS) geographic information system (GIS) records for the project vicinity (County 2010a). Additionally, plant records available in the San Diego Natural History Museum's (SDNHM's) Plant Atlas were reviewed (SDNHM 2012). Prior to conducting the reference population check and in preparation of the spring survey pass, Dudek reviewed the *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFG 2009), which recommends consulting CNDDB and a Biogeographic Information and Observation System (BIOS) for known occurrences of special-status plants and natural communities. The CNDDB (CDFG 2012a); California Native Plant Society (CNPS) (CNPS 2012); and the plants identified in the County's Pre-Application Summary Letter (County 2011b) were reviewed. The BIOS results were reviewed but

	no additional species were found (CDFG 2012b).The resources used to prepare the potential to occur table and the analysis methods are clearly described and adequate to determine an environmental baseline under the California Environmental Quality Act (CEQA) and the County of San Diego's guidelines (County of San Diego 2010a-b).
A19	The County acknowledges the concern regarding false conclusions. The elevational distribution / geographic range of species generated for the Project was based on the floristic provinces and ecoregions (Jepson Flora Project 2012) and elevation ranges and distribution in CNPS (2012). The Jepson Flora Project is a comprehensive resource for California plant species. As noted on the Jepson Herbarium website, "the Jepson Flora Project brings together all of the floristic references and data of the Jepson Herbarium. Resources of the Flora Project are directly linked to the Consortium of California Herbaria, CalPhotos, the California Native Plant Society, California Exotic Pest Plant Council, USDA-Plants database, and many other external sites." (http://ucjeps.berkeley.edu/jepsonflora/index.html) Therefore, the plant distribution within the desert regions of the California Floristic Province (which typically includes the Desert Province and southern Great Basin Province (Baldwin et al. 2002)), is based on multiple resources and herbarium collections and is widely adopted by botanists. The commenter does not provide any source for its comment that "plant presence and distribution is poorly known", nor does the commenter specify particular plant species that may have potential based on "numerous unexpected plant discoveries", but were not addressed. Without such information, it is impossible to assess the likelihood of such species occurring on the Project site, or the impacts associated with that potential. Accordingly, without additional information, the potential for unexpected special status plant species to occur on the Project site is regarded by County staff as speculation and cannot be analyzed.
A20	The commenter correctly notes that there are limitations in the CNPS Inventory of Rare and Endangered Plants. Those limitations were taken into account when the BRR was prepared, and that is a key reason why other resources beyond the CNPS Inventory were considered when determining the likelihood for special status plant species to occur on the Project site. See Response to Comment A15-A19 for information regarding the methods and resources used to establish the list, including resources in addition to CNPS.
A21	As described in responses to comments A14-A20, and pages 1-5 of the Biological Letter Report, the Initial Study and MND established existing conditions for special status plant species based on substantial evidence and in accordance with the survey methods described in the County's Report and Format Guidelines (County 2010a) and in meetings between County staff and Dudek. Moreover, the methodology used does not conflict with the CDFG Protocol. Speculation that additional special status species not identified in the baseline might occur on the Project site is not compelling evidence for County staff.

	It should also be noted that Condition 1 (biological easement) and Condition 2 (off-site mitigation) would mitigate the risk of impacting special status plant species that may occur but are not expected to occur, and Conditions 5, 17, and 20 (biological monitoring) adequately mitigate the risk of the Project impacting special status plant species that may occur outside of the development area.
A22	Modified burrowing owl survey methods were discussed during Project scoping meetings. Since burrowing owl populations occur over a broad area across North America and may move throughout their entire range during a single breeding season, a negative focused survey during one season does not mean that they could not show up in another season if suitable open habitats occur. Burrowing owls are known to move between seasons, and use of burrows vacillates frequently. Accordingly, an alternative survey methodology was discussed, and County staff determined that it would be best to address potential impacts to burrowing owl by requiring pre-construction surveys and avoidance or passive relocation if found to be present – regardless of the results of the initial project survey. The County has the jurisdiction and ability to allow for modifications to standard survey requirements with adequate justification. In this case, burrowing owls have a high potential to occur and, regardless of whether or not this species was observed during focused surveys, pre-construction surveys would be required. If burrowing owls are located during pre-construction surveys, mitigation and avoidance measures will be implemented. Additional surveys were therefore deemed to be unnecessary. Further, burrowing owls are not a federally or state listed species. The methods described above, as well as the assessment of this species' potential to occur on site provides the County with the information to assess potential impacts and mitigate potential impacts through pre-construction surveys. The "Staff Report on Burrowing Owl Mitigation" (CDFG 2012) (CDFG Staff Report) presents staff recommendations. It is a reference, not a requirement. As noted above, the survey was conducted using County-approved methods. The BRR and MND note that a burrowing owl was observed proximate to the Project site, and do not dispute the potential of this species to occur onsite. No burrowing owls were observed during other surveys, including flat-tailed horned lizard surveys, which were used to document anecdotal observations of all special-status species. Based on Dudek's familiarity with the site and burrowing owls in desert environments, as well as the results of the surveys described in the BRR and relevant literature research described in Section 1.3 of the BRR, the environmental baseline established for burrowing owl is adequate to analyze potential impacts and provide mitigation measures. Despite the fact that no burrowing owls have ever been documented on the Project site, the MND/IS assumes, in an excess of caution, that a burrowing owl will have a chance of occurring anywhere onsite where suitably-sized burrows may occur, and applies the County's Burrowing Owl Strategy accordingly as well as the CDFG Staff

	Report. See MND, Condition 8. This condition applies the same adaptive mitigation measures that would be employed if burrowing owls had been identified on the Project site. If any burrowing owls are found to occupy the site during pre-construction surveys, the actions described in MM-14 (as revised) shall be implemented (see Biological Letter Report). These measures include the following: (1) pre-construction surveys, (2) avoidance of grading and construction within buffer areas of burrowing owl during the breeding season, (3) development of a Burrowing Owl Mitigation and Monitoring Plan that is approved by the County and CDFW that includes protection in place, avoidance, passive relocation, and other measures to ensure protection of burrowing owl through construction and during the operations and maintenance phases of the Project.
A23	The single burrowing owl that was observed from the project site was seen by a project manager unfamiliar with the area during a site visit, and, therefore, the individual burrowing owl could not be positively located or identified. No burrowing owls were observed during wildlife surveys, as described in Section 1.3.4 of the BRR. Further, the individual owl was observed off-site on BLM lands, not on the Project site. The project site is not located near known breeding records or winter records for burrowing owl (see page 8 of Biological Letter Report). The project site is low in vegetative structure. Potential prey species for the burrowing owl in this area includes white-tailed antelope squirrel (*Ammospermophilus leucurus*) and kangaroo rat species (*Dipodomys* sp.), as well as lizards and other small prey species. Unitt (2004) notes that round-tailed ground squirrels (*Spermophilus (Xerospermophilus) tereticaudus*) probably provide burrowing owl's burrows in the Borrego Valley. No round-tailed ground squirrels were observed during the surveys and burrows overall were low based on the observations made during the flat-tailed horned lizard surveys. The project site and immediately surrounding areas are not known to support breeding pairs of burrowing owl. Overall, the project site is relatively poor quality compared to their preferred habitats which have more grass or low-growing shrub diversity, potential prey base, and available burrows. The County has included all available biological information to allow for meaningful evaluation by the public. And, as noted in response to comment A22 above, the potential for burrowing owl to occur on or near the site has been acknowledged and appropriate avoidance and mitigation measures have been applied.
A24	See response to comment A22.
A25	The comment cites CDFW's opinion as to whether the discovery of a burrowing owl after a CEQA document has been adopted should mean the CEQA document is recirculated for public review. CEQA Guidelines provide sufficient guidance as to when a CEQA document needs to be recirculated (§15073.5) or new environmental review is necessary (§15162) ; and the County always adheres to these guidelines. In

	this case, burrowing owl surveys were conducted to determine whether burrowing owls occupy the Project site and to assess the suitability of the Project site as burrowing owl habitat. See also responses to comments A22-A23.
A26	See responses to comments A22-A24.
A27	Comment acknowledged. The intent of the California Desert Native Plants Act (CDNPA) is to prevent unlawful harvesting on both public and privately-owned lands. The CDNPA does not prohibit a private landowner from lawfully clearing his/her land in the course of developing a project. *See* Cal. Fish & Game Code § 80117(c). Even if a plant species protected by the CDNPA occurred onsite, the CDNPA would not apply to the Project because the applicant will not offer those plants for sale or transport them offsite. Accordingly, no mechanism to ensure compliance with the CDNPA is necessary.
A28	The BRR determined that the Swainson's hawk has the potential to forage at the Project site based on its migration patterns, and concluded that the Project would impact 330.3 acres of suitable habitat. (BRR, at pages 2-11.) As the comment notes, the BRR defines "vicinity" as a record in the CNDDB associated with the Borrego Mountain SE 7.5-minute topographical quadrangle. As described in Section 1.3.1 of the BRR, multiple resources were used to review available records and regional information, including the USFWS occurrence data (USFWS 2012), CNDDB, and the San Diego Bird Atlas (Unitt 2004), as well as Dudek's wildlife biologists' knowledge of the region. Therefore, the statement that the Swainson's hawk is "not recorded in the vicinity" is just one piece of information provided for this species. As noted in the BRR, Swainson's hawk has potential to migrate through the area during its annual migration. Dudek reviewed the San Diego Bird Atlas for additional information regarding Swainson's hawk use near the project site. Additional information from the Borrego Valley Hawkwatch is provided in the Response to Comments Biological Letter Report. While no project-specific bird use surveys have been conducted for the Ocotillo Solar project, the project site is located west of the Borrego Valley migration corridor where detailed observations of these birds have been taken during their peak migration months in the region (February to April) (Hopkins 2013). Since 2004, during the month of March observers have seen an average of 3,172 Swainson's hawks per year and an average of 4,489 Swainson's hawks per year over the last 3 years (Hopkins 2013). The USFWS has developed land based guidelines for renewable energy projects that are specific to wind type energy sources. Solar farms are not treated similarly, and are analogous to a low-intensity industrial project. Therefore, additional information regarding the specific estimate of Swainson's hawks migrating over the project site is not required in order to establish a baseline and analyze potential impacts to Swainson's hawk. Further, the BRR states that Swainson's hawk likely migrates through the area based on the studies conducted at Anza-Borrego Desert State Park (see Appendix D, at page D-9). Additionally, the number of Swainson's hawks migrating through the area does not change the impacts analysis for Swainson's hawk, which concludes that there are no

	impacts to listed species in accordance with the County's Guideline 4.1.A; and that the impacts to foraging habitat for raptors is a significant impact per County Guideline 4.1.F (see BRR at page 3-7). The Initial Study found this to be a significant impact. Mitigation provided for impacts to foraging habitat are through on-site and off-site open space preservation at a 1:1 ratio. See Initial Study at 18-19; and BRR, at 3-15 and 3-26. Overall, the information provided to the County by Dudek, as well as County biologists' own knowledge of Swainson's hawks in San Diego County, was adequate to disclose, analyze, and mitigate Project impacts to Swainson's hawk.
A29	Section 1.3.3 of the BRR (see page 1-10) describes the methods used for mapping the vegetation communities on the project site, which included mapping all vegetation communities in the field and within 100 feet of the project boundary, as required per the County guidelines (County 2010a).Section 1.4.2 of the BRR (see page 1-18) describes the resources used to establish which vegetation communities are considered special-status: "The status of vegetation communities in the Project area was determined using Holland (1986), as modified by Oberbauer (2008), and the County's Guidelines for Determining Significance and Report Format and Content Requirements (2010a)." Contrary to the commenter's statement that the special-status vegetation communities are not identified in the BRR, Section 1.4.3 of the BRR, on page 1-18 specifically states, "Sonoran creosote bush scrub is considered special-status based on mitigation recommendations of the County (2010b)." In Section 1.4.3.1, at the end of the paragraph, it states, "Sonoran wash scrub is considered special-status based on mitigation recommendations of the County (2010b)." In Section 1.4.3.2, at the end of the paragraph, it states, "Developed land has very little ecological importance and is not considered a special-status community." The comment asserts that several "sensitive" vegetation communities not disclosed in the IS/MND may be present onsite. First, the vegetation communities referenced by the commenter are not in conformance with the County's vegetation classification system. County guidelines state that vegetation communities shall reference the "modified Holland code classification system as modified by Oberbauer . . . ." (County 2010a). Second, none of the vegetation communities mentioned by the commenter occur on site due to lack of sufficient cover and species within those communities. Third, the Google Earth imagery provided by the commenter is outside of the project boundary; specifically, the commenter provides Figure 2, a "large-scale image of the Project site", which is in fact a view of an area northwest of the Project site. Regardless, based on ground-level surveys that were field-checked by County staff, the BRR confirms that these "dark circles of vegetation" that "appear to be mesquite bosques" do not occur on site. Finally, the commenter does not appear to have any personal knowledge of the project site.
A30	With respect to Lucy's warbler, the BRR states: "There is some suitable habitat in scattered palo verde trees and mesquite in the Sonoran Desert wash vegetation community, and this species has moderate potential to nest on site." BRR, at 1-29.

	Based on this statement, the commenter asserts that focused surveys should be conducted for Lucy's warbler to determine if it actually nests on the Project site. Only one mesquite was observed on site and a few palo verdes. While it is unlikely that this species nests on site due to the lack of dense mesquite bosques it prefers, and the project site is outside of its known breeding areas, the BRR takes a conservative approach and does not discount the possibility of it occurring on site. The Lucy's warbler is not a listed species and there are no state or federally developed survey protocols for the species. Instead, it is typical for anecdotal detections and habitat assessments to form the basis of presence on a site. No Lucy's warbler were detected during surveys of the Project site. BRR, at 1-29. Accordingly, the County concurred that focused surveys for this species are not required.
A31	See responses to comments A13 through A30 refuting the commenter's assertion that the MND failed to properly establish the environmental baseline.
A32	Condition 24 provides measures to reduce particulate emissions during project construction. Under Condition 24, water would be applied during grading / grubbing activities to all disturbed areas at least two times daily, and a soil binding agent approved for dust suppression would be used to reduce dust. Furthermore, water and a soil binding agent would also be applied to all onsite roadways. All construction related traffic speeds would be below 15 miles per hour. Per the Exhibit 2, p.4 citation, Mr. Hagemann states that sandstorms and dust storms indicate "the need to aggressively mitigate construction emissions from the Project." Contrary to the commenter's suggestion, however, construction will not proceed during dust storms and sandstorms. The project would be conditioned to terminate grading during winds exceeding 25 miles per hour.
A33	See response to comment A32. Watering twice daily and using magnesium chloride (or other County-approved dust suppression additives) is an accepted mitigation measure to reduce particulate matter emissions within the County of San Diego, and has an average reduction in emissions from between 34% to 68% (CEQA Air Quality Handbook, South Coast Air Quality Management District (SCAQMD)). The URBEMIS model default setting for this mitigation measure estimates emissions would be reduced by as much as 55%; however, the County of San Diego recommended modifying this setting to 51% to be conservative, which is the figure used for the Project. Based on conversations with grading construction firms, in areas with desert climates like the Project site, watering is done to help increase the moisture content of the soil to help not only with dust control, but also to loosen the soil to make it easier to grade. With this additional watering it is even more reasonable to conclude that this mitigation measure will reduce dust emissions by 51%. To address the concerns addressed by the commenter, Ldn Consulting re-ran the models using an efficiency reduction of only 34% which is the low end of the reduction range reported by SCAQMD. The results of this analysis are provided in the Air

Quality Comment Review letter dated August 5, 2013, prepared by Ldn Consulting, attached to these Responses to Comments. As documented in Table 1 below, fugitive dust emissions were still found to be less than significant by the County of San Diego even assuming a particulate matter emissions reduction of only 34%.

See Response to Comment A40 for additional information.

Table 1: Mitigated Emissions Using a 34% Wetting Control Efficiency

Year	ROG	NO_x	CO	SO_2	PM_{10} (Dust)	PM_{10} (Exhaust)	PM_{10} (Total)	$PM_{2.5}$ (Dust)	$PM_{2.5}$ (Exhaust)	$PM_{2.5}$ (Total)
2013 (lb/day) Unmitigated	17.69	159.37	106.84	0.13	782.70	7.10	789.80	163.53	6.53	170.06
2013 (lb/day) Mitigated	17.69	159.37	106.84	0.13	81.48	7.10	88.58	17.09	6.53	23.62
Significance Threshold (lb/day)	75	250	550	250	-	-	100	-	-	55
SDAPCD Impact?	**No**	**No**	**No**	**No**	**-**	**-**	**No**	**-**	**-**	**No**

A34

Contrary to the commenter's assertion, the Project estimate that solar panels would be washed four times per year is a conservative estimate that was based on prior experience within a desert setting, where sandstorms and dust storms are prevalent. Accordingly, washing panels at a frequency greater than four times per year would not be expected.

As stated in the Project Description, estimated water demand for Project operation is approximately 1.95 to 2.91 acre-feet per year (AF/YR). This amount has been calculated based upon water use demands of similar projects located within a desert environment where sandstorms and dust storms naturally occur and is considered to be a conservative estimate. It is not anticipated that additional washing of the panels will be required. The Project will be conditioned by the County for use of a maximum of 2.91 AF/year (worst-case scenario of the four solar technologies) for operation/maintenance to ensure that project water use does not adversely affect local water supplies. Further, water used to wash the panels will infiltrate into the ground surface and will not cause impacts on storm water or drainage patterns. As applicable, storm water runoff and treatment would be adequately handled through the implementation of onsite best management practices (BMPs) and/or other design measures and would not result in or require significant changes to existing offsite storm drain facilities.

A35

Particulate matter emissions are not expected to aggravate operational conditions at

	the Project site because the Ocotillo Wells State Vehicular Recreation Area (OWSVRA) is located several miles from the Project site. Furthermore, the comment provides no evidence that particulate matter emissions from the OWSVRA are expected to impact pollutant concentrations at the Project site. It should be noted: Low-level particles such as those generated at the OWSVRA are likely to deposit to the ground, horizontally impact on nearby obstructions, or rapidly disperse within a short distance from the point of emissions. For instance, it was found that rapid attenuation of PM10 concentrations was noticed downwind of unpaved roads. It was found that approximately 90% of the PM10 was attenuated within only 50 meters from the roadside (Source: Reconciling Urban Fugitive Dust Emissions Inventory and Ambient Source Contribution Estimates: Summary of Current Knowledge and Needed Research – May 2000). Therefore, impacts from the OWSVRA are not expected. See also response to comment A60 for a response regarding the cumulative air quality analysis.
A36	The County does not agree with this comment. Please see responses to comments A32-A35 for responses to the assertion that the analysis of particulate emissions is inadequate and speculative.
A37	The applicant currently owns the entire Project site, and has owned and controlled all access to the majority of the Project site for approximately 50 years. The applicant has substantiated that no mines, industrial contamination, debris, illegal drug manufacturing, or other activities that could generate hazardous materials have occurred on the Project site. The applicant asserts that regular inspections of the property have revealed no such illicit uses. For the small portion of the Project site that the applicant recently purchased, a Phase I ESA was prepared prior to purchase, which revealed no Recognized Environmental Conditions (RECs). Furthermore, the Initial Study explains that a search was performed in a number of databases that list properties where a hazardous material release has occurred, and that the Project site "is not included in any of the following lists or databases: the State of California Hazardous Waste and Substances sites list compiled pursuant to Government Code Section 65962.5., the San Diego County Hazardous Materials Establishment database, the San Diego County DEH Site Assessment and Mitigation (SAM) Case Listing, the Department of Toxic Substances Control (DTSC) Site Mitigation and Brownfields Reuse Program Database ("CalSites" Envirostor Database), the Resource Conservation and Recovery Information System (RCRIS) listing, the EPA's Superfund CERCLIS database or the EPA's National Priorities List (NPL)." Initial Study, at 32. Accordingly, the commenter is mistaken that the Initial Study lacks sufficient evidence to conclude that the Project will have no impact with respect to creating a significant hazard to public health or the environment because of the applicant's long ownership of the property, the negative results in the database search, and the lack of any evidence of hazardous materials contamination at the Project site. Nevertheless, a Phase I Environmental Assessment (Phase I ESA) was completed for

	the project site (see Ninyo & Moore, August 16, 2013). The Phase I ESA concluded: "[w]e have performed a Phase I ESA, in conformance with the scope and limitations of the ASTM Practice E/1527-05, of the property (APNs 253-390-57-00 and -58-00) located at Split Mountain Road, Borrego Springs, California . . . [t]his assessment has revealed no evidence of recognized environmental conditions (RECs) in connection with the site." (Phase I ESA at 16-17).
A38	The County does not agree that substantial evidence has been provided in support of a fair argument. County staff has carefully evaluated potential impacts and included mitigation and avoidance measures to ensure that potentially significant impacts from the Project remain less than significant as described in the Initial Study in sections III. Air Quality, IV. Biological Resources, and IX. Hydrology and Water Quality. Therefore, an EIR is not required. See also responses to comments A-39 to A-40 (Air Quality); A-41 (Hydrology and Water Quality); and A-42 to A-54 (Biological Resources).
A39	The County does not agree with this comment. The Project's construction PM10 and PM2.5 emissions will not be significant after appropriate mitigation as demonstrated in the MND.
A40	See Response to Comment A33. Contrary to the commenter's assertion, even if particulate emissions reduction from watering disturbed areas and roadways is only 34%, the Project's air quality impacts would still be less than significant. (Air Quality Comment Review letter). Using an average emissions reduction of 51% is not arbitrary, but rather is an industry standard within the County and other jurisdictions. This is largely due to the fact that County requires the site to be thoroughly wet each time per the grading ordinance. Also, the contractor would be required to add a County-approved dust suppressant such as magnesium chloride or other County-approved additive to unpaved roadways that further reduces particles from becoming airborne. This mitigation strategy is used to increase the effectiveness of wetting the materials and stabilizing inactive areas. As mentioned though, for purposes of demonstration, even assuming the lowest emissions reduction percentage, no significant air quality impact would occur. It was shown within the Air Quality assessment that the mitigation measures required would adequately reduce emissions to levels below significance. Mitigation methods to reduce impacts are shown within the URBEMIS model in the Project's Air Quality report. Actual construction operations would also be periodically monitored by the SDAPCD. As part of the grading operations, the Project would be required to follow all SDAPCD Rules, including standards 1 and 2 within Rule 55, which states no visible dust plumes will be allowed for more than 3 minutes within a 60 minute period and Track-Out/Carry-Out emissions will be minimized such that track-out dust is sufficiently removed. Requirements of Rule 55 are independent of required mitigation measures identified within the MND / IS. Any additional mitigation requirements from the SDAPCD or from Project best management practices (BMPs) would further reduce PM emissions, but are not considered in the MND / IS in order to analyze a

	worst-case scenario under CEQA. Finally, the commenter is incorrect that the MND fails to specify the type of dust suppression additives to be used in conjunction with watering. The MND requires the Applicant to use magnesium chloride, unless the County approves the use of a different dust suppression additive. Magnesium chloride is an approved additive derived from sea water. Application rates would be applied per manufacture recommendations limiting biological impacts to a minimum. Mitigation measures beyond those identified within the report were not included within the air quality models. Should additional "Best Management Practice" measures be applied, additional reductions can be expected.
A41	The County does not agree with this comment. All Project impacts to ephemeral washes under the jurisdiction of the U.S. and state are described, properly assessed and mitigation requirements are described in the BRR and MND / Initial Study. A map showing the drainage areas that would be affected is included as Figure 6 in the BRR (at 2-3). Impacts to the drainages from grading and construction, including placement of fill, road construction, and foundations for panel support, as well as all activities that could lead to degradation to state and federal jurisdictional waters are described in Section 4.2.2 (at 4-4) and 5.2.1 (at 5-1) of the BRR. Mitigation measure MM-15 of the BRR describes the permit process required to mitigate for these impacts. The MND has been revised to include mitigation measure 2(A)(3) which requires permits through the U.S. Army Corps of Engineers (ACOE), California Department of Fish and Wildlife (CDFW), and a water quality certification from the Colorado River Basin Region of California Regional Water Quality Control Board (RWQCB). When the project obtains its Clean Water Act Section 404 permit, a complementary Clean Water Act Section 401 certification will be obtained from the RWQCB. That 401 water quality certification will include information on the discharges of sediment during construction, mitigation measures, and a discussion of the potential for construction of the Project to cause/contribute to an exceedance of surface water standards. The commenter references the Porter-Cologne Act, waters of the state, and whether the project requires a waste discharge requirement (WDR). As stated in the State Water Resources Control Board Water Quality Order Number 2004-0004, "To the extent they are determined to fall within federal jurisdiction, it is likely that the SWRCB and RWQCBs will continue to regulate dredged or fill discharges primarily through their authority under section 401 of the CWA. Therefore, these General WDRs do not apply to discharges to federal waters that are subject to sections 401 and 404 of the CWA." (http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf) Because these waters are considered both waters of the U.S. and the state, a 401 certification will be obtained, instead of a WDR.

	Conformance with the Water Quality Control Plan for the Colorado River Basin (Region 7) is done through the Section 401 process, including the completion and conformance to conditions stated in the Colorado River Basin's Section 401 Water Quality Certification Application Form.
A42	The IS/MND discloses impacts to suitable habitat for flat-tailed horned lizard (at 20-21). The BRR analyzes impacts to County Group 1 species, including flat-tailed horned lizard, per the County's Significance Criteria listed in 4.1 "Special Status Species" (County 2010b) (BRR, at 3-4 through 3-5). The analysis of loss of habitat and loss of individuals is in accordance with criterion 4.1(B) (County 2010b), and sufficiently discloses direct impacts to the flat-tailed horned lizard. Contrary to the commenter's assertion that indirect impacts were not addressed, indirect impacts to flat-tailed horned lizard are described in Sections 2.3.3 and 2.3.4 (BRR, at 2-13 through 2-15) and the significance is analyzed in Section 3.2.8.2 (BRR, at 3-8 through 3-9). The commenter references several documents, including a study by Barrows and Rottenberry (2006), which studied edge effects on flat-tailed horned lizards in the Coachella Valley. The study explored three potential causal hypotheses to explain the edge effects on flat-tailed horned lizards: 1) invasive exotic ants; 2) road avoidance and road associated mortality; and 3) enhanced predation from avian species. The Biological Letter Report provides specific responses to these concerns, which will not occur in connection with the project. First, invasive exotic ants are not expected to be an issue based on the arid environment, distance from urban/suburban environments from the Project site, and the lack of any landscaping planned as part of the project. Second, the road avoidance and road-associated mortality was associated with wider paved roads, which do not occur on the Project site, and potential mortality is mitigated through MM-2 (BRR at 3-13 and 3-14), which requires reduced speeds on all roads and rights of way accessing construction sites. Third, enhanced predation from avian species is described in Section 2.3.4 (BRR, at 2-13 through 2-15) and is mitigated through MM-2, which describes species trash requirements to minimize attracting and supporting populations of species that do not naturally occur there. Additional potential indirect impacts are also described in the BRR in the sections described above, including habitat fragmentation, increased human activity, and altered fire regime and hydrology. To summarize, the BRR does provide an description and analysis of indirect impacts to flat-tailed horned lizard, and provides a suite of mitigation measures for these potential impacts. Mitigation measures were prepared in accordance with the County's Report and Format Guidelines Mitigation Measures and Design Considerations and Attachment D – Typical Mitigation Measures (County 2010a). Even though flat-tailed horned lizard was not found throughout the project site or proposed impact area, mitigation for flat-tailed horned lizard includes all impacts to native habitat. Additional mitigation measures provided in the BRR and MND that are consistent with the County's guidelines include monitoring, breeding season avoidance, obtaining federal and state

	permits, restrictions on lighting and noise, and preparation of a resource management plan. Furthermore, the mitigation measures also include measures from the County's Conditions of Approval Manual. Although the commenter does not recognize the Imperial County mitigation parcel, it is viable and the preferred mitigation option which provides suitable habitat similar to the project site. Its location adjacent to the project site and Anza-Borrego Desert State Park make any translocation measures feasible. Specifically, the off-site mitigation site meets the criteria described in Attachment D of the County's Report and Format Guideline's (County 2010a), which state that off-site mitigation must be "the same habitat type and/or comparable in biological function; to the extent feasible, must be located in the same ecoregion as the proposed project"; and "the land must have equal or greater habitat value as the impacted resource, high or very high habitat value, and long-term viability". The Imperial County parcel meets all of those criteria. In addition, the letter report demonstrates how the Project does not conflict with the goals of the Flat-tailed Horned Lizard Rangewide Management Strategy (Flat-tailed Horned Lizard Interagency Coordinating Committee 2003). The preservation of a large, contiguous block of suitable habitat for flat-tailed horned lizard indeed is appropriate and adequate mitigation to compensate for habitat loss.
A43	See response to comment A22. The BRR concludes that although a burrowing owl was observed once on an adjacent parcel, no burrowing owls have ever been observed on the Project site. Biological Letter Report at 8; BRR, at 3-9. Accordingly, although the Project site is not occupied burrowing owl territory, mitigation to avoid the potential for take was provided to ensure that no burrowing owl would be inadvertently impacted. The commenter relies on the CDFG Staff Report to assert that Condition 8, Burrowing Owl Pre Grading Survey mitigation measure, is insufficient to avoid and minimize take of burrowing owls. The CDFG Staff Report is not binding on the County. In fact, the County has developed its own burrowing owl mitigation measures, as contained in the County of San Diego Report Format and Content Requirements, Biological Resources, Attachment A, "Strategy for Mitigating Impacts to Burrowing Owls in the Unincorporated County." The commenter incorrectly describes the CDFG Staff Report when he asserts that it "recommends an initial preconstruction survey within the 14 days prior to ground disturbance." In fact, the Staff Report recommends the opposite, calling for "an initial take avoidance survey *no less than 14 days* prior to initiating ground disturbance activities . . . ." CDFG Staff Report, at 29 (emphasis added). This recommendation indicates that it would be appropriate to do a burrowing owl survey no sooner than 14 days prior to initiating ground disturbance activities, and does not express an opinion as to whether a survey conducted within 30 days of ground disturbance would be inappropriate.

Furthermore, the commenter is also incorrect that the CDFG Staff Report recommends a final survey within 24 hours prior to ground disturbance. To the contrary, the CDFG Staff Report indicates that such a survey would *only be* recommended in the event that "[t]ime lapses between project activities" occur, raising the possibility of re-colonization after the initial ground disturbing activities are completed. CDFG Staff Report, at 30. Accordingly, the pre-construction survey mitigation provided in the MND does not conflict with the Staff Report and CDFW's recommendations.

With respect to the need to do additional focused surveys to identify whether burrowing owls may occur on the Project site, see response to comment A22 and A23.

Contrary to the commenter's assertion, the 300-foot buffer around any occupied burrow established by Condition 8 does not conflict with the CDFG Staff Report's recommendations for three reasons. First, the Staff Report itself recognizes "a need to standardize management and disturbance mitigation guidelines." CDFG Staff Report, at 9. Condition 8 does exactly that. Second, the default buffer values described in the CDFG Staff Report apply to nesting sites, not simply to occupied burrows. *Id.* at 9. Finally, the CDFG Staff Report ultimately recognizes that the degree of buffer established is up to local resource managers. "Based on existing vegetation, human development, and land uses in an area, resource managers may decide to allow human development or resource extraction closer to these area/sites than recommended above." *Id.* at 9. By challenging the 300-foot buffer established by Condition 8, the commenter is essentially challenging the County's Burrowing Owl Strategy, adopted in September 2010.

The County's Burrowing Owl Pre-Grading Survey specifically references the Burrowing Owl Strategy in the measures taken if burrowing owls are found on site during pre-construction surveys. These requirements have been included in the MND, Condition 8:

> "If owls are present, based on Section 3.4.1.2 of the Burrowing Owl Strategy, the following shall be required:
>
> h. If the owl is using a burrow on the site and it is not the breeding season, the *owl may be evicted as described in section 4.5.4 of the Burrowing Owl Strategy* after a qualified burrowing owl biologist has ensured, by using a fiber optic camera or other appropriate device that no eggs or young are in the burrow. Eviction requires written concurrence from the USFWS and CDFW prior to implementation."

MND, at 13-14 (emphasis added).

Additionally, MM-14 in the BRR has been revised to include additional language regarding the Burrowing Owl Mitigation and Management Plan (prepared in accordance with the CDFG Staff Report) specifications, which includes:

- Setbacks, consistent with the existing conditions described in MM-8;

	• A description of shelter in place and its purpose to minimize impacts to burrowing owl while allowing existing burrows to remain intact; • A plan for excavation of inactive burrowing owl burrows, as appropriate; • A passive relocation plan; • Additional measures to ensure protection of burrowing owl through construction and during operation and maintenance phases of the project; and • On-site and off-site mitigation plan for impacts to burrowing owl (if they occur). The CDFG Staff Report states that "eviction of burrowing owls is a potentially significant impact under CEQA." Eviction of burrowing owls is not specified in the BRR, and the MND language simply states, "The written and signed pre-grading survey report must follow within 14 days of the survey or burrowing owl eviction… ." MND at 12. However, the measure goes on to provide specific measures for burrowing owls if they are found : "If the owl is using a burrow on the site and it is not the breeding season, the *owl may be evicted as described in section 4.5.4 of the Burrowing Owl Strategy* . . . ." MND at 13 (emphasis added). While the project does not anticipate the need for eviction or passive relocation based on the lack of burrowing owl observations, it is an option under MM-14, and measure 2(9) of the MND. The existing language in the MND, as well as the requirements in MM-14 (BRR at 3-26, 3-27) demonstrate conformance with the Staff Report and require adequate surveys, monitoring, and mitigation to ensure there are no short-term or long-term loss of burrowing owls. The proposed on-site and off-site mitigation lands are described in MM-4 (BRR at 3-15 through 3-17). As described in Response to Comment A37, the Imperial County parcel provides same habitat type and/or comparable in biological function as the Project site, and securing a large, undeveloped contiguous parcel benefits multiple species, including burrowing owl because it provides foraging and burrowing opportunities for this species. Therefore, these measures ensure there are no long-term impacts associated with habitat loss and fragmentation.
A44	The County does not agree with this comment. The Project would ensure adequate compensatory mitigation for the impacts to the flat-tailed horn lizard (FTHL), rare plants, and other sensitive biological resources. See responses to comments A45-A47.
A45	This comment outlines the mitigation options. It should be noted that appropriate mitigation may be proposed in Imperial County for impacts in San Diego County. Although the commenter does not recognize the Imperial County off-site mitigation, it is a viable and preferred mitigation option that provides suitable habitat similar to the Project site. Its location adjacent to the Project site, as well as the adjacency of the Anza-Borrego Desert State Park, make any translocation measures feasible. Both the mitigation site and the project are included in the planning area for the DRECP Interim Mitigation Strategy, affording comprehensive conservation planning on a 5-county basis. The Imperial County mitigation parcel will be suitable for these species and other biological resources because the mitigation land selected is the same habitat types and will either have the potential to be or already be occupied by the sensitive biological resources or species

A46	Appendix E of the BRR (*Evaluation of Off-Site Mitigation Parcels for the Ocotillo Wells Solar Project*) includes a detailed comparison of the Project site's biological resources with both the proposed Imperial County and San Diego County mitigation parcels. It compares the potential to occur for special-status plant and wildlife species that were analyzed in the BRR and Initial Study. Contrary to the commenter's assertion, it analyzes species' potential to occur using empirical data collected for the Yaqui Pass parcel. It should be noted that species are generally not determined to be absent when they are not observed; rather, their potential to utilize habitat is still analyzed with respect to their known range and habitat preferences. In this case, even where a wildlife species was not observed on the Yaqui Pass parcel, the species' potential to occur was presented (similar to the BRR and Initial Study). Therefore, the County does not agree with the assumed conclusion in the comment: that none of the focal plant species and only the four wildlife species listed in Table 2 of the Appendix E to the BRR occur on the Yaqui Pass site.
A47	As described in the BRR (at 2-11 and 2-12), County Group 1 or Species of Special Concern (SSC) species that have potential to occur either as residents, breeding, foraging, or fly over during migration include turkey vulture, golden eagle, burrowing owl, sharp-shinned hawk, long-eared owl, Swainson's hawk, prairie falcon, Lucy's warbler, and loggerhead shrike. Impact analysis and subsequent mitigation measures are based on their potential to occur on site during a particular stage of their phenology (e.g., nesting or wintering) and are based on the County's guidelines for determining significance. As the commenter notes, the County Guidelines state that "species-based mitigation shall be provided for Group 1 animal species" and that several Group 1 animal species were documented on the project site. The BRR lists species-specific mitigation measures for flat-tailed horned lizard (MM-5 and MM-6), burrowing owl (MM-8 and MM-14); impacts to individual loggerhead shrikes and/or turkey vultures are mitigated through MM-8. The BRR includes several additional measures to avoid and minimize direct and indirect impacts to these species as well (refer to Section 3.4 of the BRR for the complete species-specific mitigation measures). The MND provides mitigation measures 6 through 10 for wildlife species in Section 2(A). These measures meet the County's requirements for wildlife mitigation because they are measures "above normal habitat mitigation" and "include preservation and management of the mitigation site, construction limitations during breeding season, and measures to minimize edge effects" (County 2010a). For plants, the County agreed that a habitat-based mitigation ratio was acceptable to mitigate for impacts to potentially-occurring special-status plant species. The habitat preservation is discussed in MM-4 of the BRR. Additionally, the Imperial County mitigation parcel meets the County's criteria for off-site mitigation because it is "the same habitat type and/or comparable in biological function; to the extent feasible, must be located in the same ecoregion as the proposed project; and "the land must have equal or greater habitat value as the impacted resource, high or very high habitat value, and long-term viability" (County 2010a). Table 5 (BRR at 3-3 and 3-4) describes the impacts to suitable habitat for County List

	A or B plant species with high potential to occur. Additionally, the Natural Community Conservation Program (NCCP), which includes both the project site and proposed mitigation areas, provides for variance from the rigid application of mitigation ratios. While species-specific, in-kind mitigation may be appropriate in many circumstances, in the NCCP program, considerations such as preserve configuration, contiguity with adjacent preserve areas, buffers and edge effects, wildlife movement, narrow endemic protection and other habitat conservation planning factors are taken into account. Furthermore, due to the preponderance of publically-owned land in the eastern half of San Diego County (~75%) the high quality of the baseline preserve derives from the fact that so much of the land in the area is public and the private land is frequently a working landscape like a cattle ranch. There is little human development of the scale to affect most species in the project area, and as the commenter's own expert asserts, frequently a solar field may be recolonized. Note that the NCCP preserve planning standard in San Diego County generally anticipates a 2:1 ratio between preserved and developed, a ratio that is already far exceeded by current conditions with or without the Project. All of the mitigation options not only satisfy the County's mitigation requirements, but also meet the conservation planning goals of the NCCP, such as contributing to the completion of a landscape-level, interconnected matrix of preserved land designed to conserve a list of the most sensitive or otherwise important species, both listed and unlisted. Also, see Response to Comment A41.
A48	As the commenter notes, dead water birds have been found at solar facilities (see Biological Letter Report at 15-17). The commenter's assertion that water birds found dead "apparently because the solar panels reflect the sky, which the birds mistook for water" is speculative and cannot be analyzed. Further, there is currently insufficient research to assess the magnitude or likely risk associated with such events. In addition, as explained in the Biological Letter Report at 15-17, based on the Project site's distance from large water bodies and agricultural areas, typical avian migration patterns, and lack of data to analyze these effects, glare and pseudo lake-effect are not expected to result in significant impacts to migrating or local avian species.
A49	The Flat-tailed Horned Lizard Rangewide Management Strategy, 2003 Revision specifies the exact measures included in the MND for fencing (see Appendix 7, Fencing and Removal Survey Protocols, at 102). The MND incorporates the exact language from the Strategy. The commenter's proposal that barbed wire not be installed along the lizard fence conflicts with the relevant provisions included in the conservation measures espoused in the Rangewide Management Strategy developed with the cooperation of California, Arizona, and Federal wildlife agencies. Additionally, sensitive species such as the bighorn sheep are not anticipated to occur within the project area, and barbed wire would not pose a risk of harm to avian species.
A50	The MND requires the applicant to use magnesium chloride as a dust suppressant, unless the County approves the use of another dust suppression additive. MND, Condition 24. Magnesium chloride is derived from seawater evaporation or from industrial

	byproducts. These products stabilize the soil surface by absorbing moisture from the atmosphere. The reference cited by the commenter documents that in a comparison of dust suppression additives, magnesium chloride "presented the lowest number of contaminants with concentrations greater than the control." U.S.E.P.A., Potential Environmental Impacts of Dust Suppressants, at 15. Furthermore, while the commenter is correct that magnesium chloride "has been associated with the browning of trees along roadways and stunted vegetation growth in forestlands," the commenter failed to include the report's clarification that the "[e]ffects [of magnesium chloride] vary, because different plants have different tolerances." *Id.* at 16. Due to the arid desert environment, plants located on the Project site are typically known to have a higher tolerance of salts. Further, onsite vegetation will be removed within the solar field during the construction phase. Ongoing maintenance would involve maintaining any onsite vegetation that does grow back to a 6-inch stubble. For dust control purposes, a non-toxic, biodegradable, permeable soil-binding agent or permeable rock material would be applied to all disturbed or exposed surface areas as follows: (a) a permeable soil-binding agent suitable for both traffic and non-traffic areas shall be used. These agents shall be biodegradable, eco-safe, with liquid copolymers that stabilize and solidify soils or aggregates and facilitate dust suppression; or, (b) alternatively, a permeable rock material consisting of either river stone decomposed granite or gravel could be placed in a thin cover over all exposed surface area in-lieu of the binding agent referenced above.
A51	Condition 30 does not require that the Project site be returned to its pre-development condition. Rather, the intent of the condition is to prepare a Decommissioning Plan that ensures removal of the solar farm, and "conversion of the site back into a use that is compatible with the surrounding properties." MND, at 32. The Ocotillo Wells Solar Project has an anticipated life of 25 years or more. Accordingly, it is speculative to determine at this point in time what use would be "compatible with the surroundings properties," and it is appropriate to provide the flexibility to the Director of County Planning and Development Services to determine what uses would be appropriate at that future point in time. It should be noted that the Project is a utility scale energy generation facility with no expectation of anything being there, let alone sensitive or rare species. Erosion control measures comply with local and state regulations.
A52	The comment identifies mitigation measures in the BRR that were absent from the MND. After review of these documents, it appears the commenter is alluding to MM-10 and MM-12, in addition to the commenter's explicit reference to BMPs in MM-2. These measures have been included as design elements and conditions of approval for the MUP and will be in the form of decision prepared for the Planning Commission.
A53	As described in response to comment A32, there are no mesquite bosques on the Project site, nor are there any vegetation communities dominated by phreatophytes on the Project site. There are a few phreatophytes that are known to have deep root systems (see Biological Letter Report) for more details. Specifically, phreatophytes found on the project site that are known to have a deep tap root include honey

	mesquite desert ironwood, and palo verde. While phreatophytes are both highly adapted to low groundwater tables in desert conditions, and can be affected by moderate groundwater decreases, the proposed project is not expected to have a high enough water demand to reduce the groundwater table that would adversely affect these species. Further, none of the phreatophytes that occur on site are considered special-status, as defined in Section 1.4.6 of the BRR, and impact analysis to individual phreatophytes are not required under CEQA.
A54	As specified in MM-12 of the BRR, the weed control measures are consistent with the County of San Diego's agricultural commission and in consultation with California Pest Control Advisors (PCA) and the California Invasive Plant Council (Cal-IPC). Please also see response to A52 above. The BRR's weed control measures specified in MM-12, and incorporated into the project as design elements and a condition of approval, are consistent with the County of San Diego's agricultural commission and were formed in consultation with California Pest Control Advisors (PCA) and the California Invasive Plant Council (Cal-IPC).
A55	The comment addresses the legal standard of review under CEQA. No response is necessary. Please see response to comments A56-A66 addressing the commenter's assertion that the County failed to consider the cumulative impact of the Project in connection with other related past, present, and future projects in the vicinity.
A56	San Diego County CEQA Guidelines do not require the further delineation of past, present, and future projects beyond the name and project identification number. It should be noted that since MND has been circulated, the proponents of the Split Mountain Solar have decided to forego completing the project. Subsequently, there are very few projects of any kind proceeding in the vicinity of the project area.
A57	The geographic scope of the cumulative analysis meets County of San Diego requirements because the cumulative analysis sections in each of the individual technical reports for biological resources, cultural resources, groundwater resources, air quality, transportation, and noise defines and explains the rationale behind the scope of the cumulative impact analysis. For example, in the Visual Resources/Aesthetics Analysis, the cumulative analysis is found on page 57 with geographic distances varying depending on topography. No cumulative analysis for groundwater resources was necessary or required by the county. The site specific hydrogeologic assessment (Revised Preliminary Hydrogeologic Assessment, Ocotillo Wells Solar Project dated March 19, 2013) indicates that 1) the site has not been subject to groundwater level decline based on onsite measurements recorded in the mid-1980s and in 2011 and therefore has not likely been affected by other groundwater users in the area, 2) groundwater inflow to the site is expected to be much greater than the planned groundwater use that will be used to support operations and maintenance (O&M), and 3) groundwater drawdown calculations over the course of five years of pumping to support O & M show less than a foot of drawdown off-site. For noise, there are no cumulative impacts because no noise will

	be above the County of San Diego thresholds at the property lines or either in operations or construction. For biological resources, the analysis is found in Section 6.3 and indicates a 5-mile radius, or roughly a circle of 50,000 acres; due to the dearth of nearby projects this area is larger than normally used. Also, generally the more sparsely developed an area, the wider the radius for cumulative analysis. Traffic impacts did not rise to a level of significance and therefore no cumulative analysis was completed. Higher level cumulative studies are only typically required for a broader environmental analysis and are not completed for a technical study unless specific circumstances dictate otherwise, the County did not find that to be the case with this project thus a cumulative study was not needed or done. For the Air Quality study, "near vicinity" extends out five miles from the project site. The scope of a typical air quality study looks 830 meters out from a project, which is the point of the maximum plume of intensity for health risks, doubles that distance, and will then typically extend that to encompass the area included in a traffic study. A traffic study was not required for this project, so five miles was chosen in an excess of caution.
A58	Contrary to the commenter's assertion, the Initial Study accurately concludes that the project will not have any impacts that are individually limited, but cumulatively considerable, with mitigation incorporated. IS, 57. Although the commenter takes issue with some of the discussion in support of that finding, the comment does not identify any cumulative impact that it alleges is not mitigated below a less than significant level.
A59	The County does not agree with this comment. See responses to comments A55-A58.
A60	The County does not agree with this comment. The County is required to evaluate potential cumulative impacts to environmental resources from other past, present, and probable future projects. It is not required to assess potential impacts of similar project types (i.e., renewable energy projects) in Southern California. There is no substantial evidence to suggest that another renewable energy project outside the vicinity of the proposed Project will result in incremental effects that would be considerable when combined with the Project's potential impacts. See also response to comment A35 with regard to the projects potential cumulative impacts to the OWSVRA. The project's cumulative analysis used a 5 mile radius for its review of potential discretionary permits. This radius yielded an additional 4 projects all located to the Northwest of the project site. Of the 4, the closest project that was found (Split Mountain MUP PV, Power Plant) is no longer a viable project. The project is located approximately 5 miles from Ocotillo Wells and the OWSVRA. Any impacts this project has cannot be considered relevant to projects outside of that area.
A61	The closest cumulatively considerable discretionary construction project is the Gramcko MUP, which is a minor deviation to an existing MUP over two (2) miles away from the Project. Based on the Project's SCREEN3 modeling, dated March 3, 2013,

	emissions from the Project would be greatest at the point of maximum exposure which is roughly 830 meters away or about ½ mile away. [Air Quality Assessment for the Ocotillo Wells Solar Project] Beyond this point, emissions further dilute into the existing ambient environment. Since the nearest cumulatively considerable construction project is over four times farther than the point of maximum exposure, the reasonably foreseeable project is not within a proximity considered relevant for cumulative analysis. (Air Quality Assessment for the Ocotillo Wells Solar Project) The existing Ocotillo Wells SVRA site is over three miles away from the Project which is over six times the distance as the point of maximum exposure. Taking into consideration that over 90% of the PM10 was attenuated within only 50m (see response to comment A35), it is reasonable to conclude that the project is outside any reasonable proximity to create cumulative impacts. (Air Quality Assessment for the Ocotillo Wells Solar Project) Also, the Project will not create significant traffic emissions nor add trips to intersections having classifications of LOS E or F. Refer also to the Air Quality Report, dated March 3, 2013, prepared by Ldn Consulting, Furthermore, if the OWSVRA project is exceeding air quality thresholds it would be up to SDAPCD or ICAPCD (depending on where the impact occurs) to enforce compliance with corresponding district regulations. The Project would not generate direct impacts to operations or construction and is outside any cumulatively considerable boundaries as discussed in response to comment A61 so would therefore not generate any significant impacts. The Project is also outside any relevant proximity for cumulative air quality impacts to exist (see response to commentA61). The Project does not create any direct impacts to air quality and since it is outside a relevant proximity for incremental cumulative air quality mixing, no impacts exist. The analysis considered all reasonably foreseeable projects identified by the County of San Diego. A map showing general locations of these projects is attached to these responses. As noted above, the Split Mountain Solar Project's application has been withdrawn from the County. See response to comment A56.

A62	The County does not agree with this comment. County staff carefully evaluated the project's potential effects, including effects to wildlife movement, in combination with other past, present, and probable future projects in the region. To date, there has been no evidence in light of the whole record that a cumulatively considerable impact may result. The MND's analysis of potential cumulative biological impacts is more than adequate for several reasons. First, the Project analyzes cumulative impacts under the County's CEQA Guidelines for other projects within a 5-mile radius around the project site. The County's Guidelines state that a study area must be defined in consultation with County staff. (County of San Diego Report Format and Content Requirements, Biological Resources, Section 3.3 (2010)). Because the Project site has relatively low diversity in environmental conditions (vegetation communities, soils, topography, etc.), a 5-mile radius cumulative study area was chosen because it represented similar environmental conditions. Based on this information, the area chosen was effective in analyzing the land use, species' ranges, habitats, site conditions, topography, and natural history of species, per the County's guidelines and meetings between County staff and the applicant. See also responses to comments A57 and A60.
A63	Since the Split Mountain solar project is no longer proposed, the issues raised in the comment are no longer a concern and further response is not needed.
A64	The County does not agree with this comment. See response to comment A62.
A65	The County does not agree with this comment. See response to comment A58.
A66	The County does not agree with this comment. The County's cumulative impacts analysis includes all related past, present, and future projects near the Project site. See responses to comments A55-A65.
A67	The County does not agree with this comment, as addressed in the responses to this letter.