Comment Letter O3

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VIA EMAIL
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Re: Jacumba Solar Energy Project Draft Environmental Impact Report PDS2014-MUP-14-041, PDS2014-ER-14-22-001 (SCH No. 2014091034)

Ms. Gungle:

On behalf of Backcountry Against Dumps and Donna Tisdale (collectively "Backcountry") we submit the following comments on the Jacumba Solar Energy Project ("Jacumba Solar" or the "Project"). The Draft Environmental Impact Report ("DEIR") for the 20 MW industrial-scale solar energy project (the " Project") fails to account for and address many of the Project's significant impacts, in violation of the California Environmental Quality Act ("CEQA"), Public Resources Code ("PRC") section 21000 et seq. Because the DEIR does not pass CEQA muster, this Project may not be approved as proposed. O3-1

I. The DEIR Omits Essential Information Regarding Project Impacts.

A. Water Demand

The DEIR lacks essential geotechnical information. For example, it omits analysis of the soil-moisture content at the Project site. *See e.g.* DEIR 3.1.2-10, 3.1.2-13 (geotechnical information required before grading permit issues but *not* before Project approval). The DEIR also presents incomplete information about water use during construction. It states that site preparation would require approximately 11.3 acre feet ("af") of water (or 0.4 af a day for 28 days), and that mass grading will require 38.4 af (or 0.96 af day for 40 days). DEIR 1-25, Table 1-4. But the DEIR does not state whether these estimates are based upon the soil-moisture content at the Project location. If not, they are unsupported speculation. Backcountry reminds the County that the water demand estimates for the East County Substation ("ECO Substation") were *vastly* inaccurate, due to an erroneous soil-moisture assumption that that project required approximately 60 million additional gallons of water (or approximately 184 additional acre feet). O3-2

Response to Comment Letter O3

Stephan C. Volker on behalf of Backcountry Against Dumps and Donna Tisdale June 1, 2015

O3-1 Comment noted. The County acknowledges the commenter's opposition to the Project as proposed. Specific responses to each of the commenter's issues are presented in detail below.

O3-2 The provided water demand for the Jacumba Solar Project is provided by the project engineers and based on current understanding of the construction requirements, which factor in, amongst other things, the known existing soil conditions including the moisture content, requirements of the equipment and installation, as well as the applicable regulations for dust suppression. Soil conditions including the moisture content are provided in the Krazan 2011 Geotechnical Engineering Investigation provided as Appendix 3.1.2-1 of the DEIR. A final Geotechnical Investigation would be developed as stated in the DEIR to determine final site design activities, it would not necessarily include soil moisture as that has been established and included in the Appendix 3.1.2-1 to the DEIR**.** Information regarding the moisture content of existing soil conditions is summarized on page 4 of Appendix 3.1.2-1 and soil profile logs, which identify the water content of each soil sample by soil types and

	depths, are provided in Appendix A of Appendix 3.1.2-1 of the DEIR. Even if commenter disagrees with this methodology and commenter were an expert in the field, the County's analysis is not speculative. It is based on expert analysis and the available facts. The fact that some experts disagree on methodology does not invalidate an EIR because the County is permitted to rely on the substantial evidence from its expert's opinion. When considering the adequacy of an EIR, a lead agency is entitled to weigh the evidence relating to the accuracy and sufficiency of the information in the EIR and to decide whether to accept it. The agency may adopt the environmental conclusions reached by the experts that prepared the EIR even though other may disagree with the underlying data, analysis, or conclusions. *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal*., 47 Cal 3d 376, 408 (1988); *State Water Resources Control Bd. Cases*, 136 Cal. App. 674, 795 (2006). Discrepancies in results from different methods for assessing environmental issues do not undermine the validity of the EIR's analysis as long as a reasonable explanation supporting the EIR's analysis is provided. *Planning & Conserv. League v. Castaic Lake Water Agency*, 180 Cal. App. 4th 210, 243 (2009). Therefore, a reviewing court will resolve any disputes regarding the adequacy of the EIR's analysis in favor of the lead agency if there is any substantial evidence in the record supporting the EIR's approach. See, e.g. *Laurel Heights Improvement Ass'n*

	v. Regents of Univ. of Cal., supra, 47 Cal. 3d at 409; *San Diego Citizenry Group v. County of San Diego*, 219 Cal. App. 4th 1, 11 (2013). Here, a reasonable explanation has been provided. The water demand estimate is based upon the available information on the construction requirements, the known existing soil conditions, the requirements of the equipment and installation, as well as the applicable regulations for dust suppression. Commenter is only speculating that soil moisture was not accounted for and cites an example of water estimates from another project that changed because the scope of that other project changed during the course of a state electricity regulatory agency's review of the project. See Response to Comment I4-16 for further discussion on this topic. The observed soil moisture content is one input required to estimate the quantity of water required to gain optimal moisture content for soil compaction. The analysis estimates an antecedent soil moisture of 0.6 percent based on the lowest soil moisture value obtained from six samples submitted for laboratory analysis. The analysis assumed that the optimum soil moisture to gain compaction is 9 percent and that the dry unit weight of on-site fill is 129 pounds per cubic foot. The water required to hydrate the soils and gain compaction is 39 gallons per cubic yard. This value was multiplied by a factor of 1.667 to account for evaporation during grading. Thus, 65 gallons per cubic yard was estimated to be required for

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See e.g. DEIR Appendix 1-1, Attachments to comment 12. This was likewise true for the soil-moisture estimates in the Draft Soitec Solar PEIR, which overestimated the moisture at the Rugged Solar location. *See, e.g.*, Soitec Final Program EIR, 9.0-17. Because the DEIR fails to provide vital soil-moisture information, Backcountry is unable to determine whether the DEIR accurately estimates the amount of water needed during Project construction. O3-2 Cont.

Without accurate information regarding construction water demands, it is also impossible to determine whether the DEIR accurately accounts for the emissions associated with water delivery, and whether the DEIR's conclusions that these emissions would have less than significant impacts are correct. *See e.g.* DEIR Appendix 3.1.1-1, pp. 44-45 & Table 3.1.1-8 (air quality), pp. 77-78 (greenhouse gas emissions). Thus the DEIR fails to follow the instructions of *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* ("*Vineyard*") (2007) 40 Cal.4th 412, 434: O3-3

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

(emphasis in original).

Finally, the DEIR fails to explain why the Project would use Jacumba Community Services District ("JCSD") water when Padre Dam Municipal Water District has so much unused recycled water. The recent rain in San Diego County is a mere drop in an almost empty bucket. It does not remedy either the precarious nature of the Jacumba area's water supplies, or the continuing drought. The DEIR should analyze the alternative of preserving the area's groundwater supplies – even of non-potable groundwater – and utilize the recycled water to the extent it currently exceeds existing demands. O3-4

B. Biological Resources

The DEIR fails to adequately address the Project's impacts on biological resources. It claims that after mitigation the Project will have *no* significant impacts on biological resources. *See e.g.* DEIR S-11 to S-22 (chart of impacts and mitigations). Yet the DEIR fails to accurately assess the Project's potentially significant impacts to plants and wildlife, including habitat, and O3-5

grading 180,000 cubic yards, which totals 11.74 million gallons or 36.0 acre-feet. Additional construction water demand is assigned for site preparation, daily dust control and use for concrete. The ECO project used substantially more water during construction because the volume of required grading increased during project construction not because of an underestimation of observed soil moisture content.

O3-3 Please refer to Response to Comment O3-2. The County supports the water demand analysis in the DEIR. Furthermore, consistent with the *Vineyard* case cited in the comment, the County has already noted the risk that JCSD may only be able to provide 100,000 gpd of non-potable water to the site for construction and discussed the alternative of obtaining the remainder of the water from Padre Dam Municipal Water District (PDMWD). It also included the significant foreseeable environmental effects of the PDMWD alternative, including the accounting for the truck trips from PDMWD in the event all of the Project's construction water needed to come from PDMWD. Likewise, the DEIR's air quality analysis is based in part on the traffic analysis, and therefore also takes into account air quality impacts related to truck trips from obtaining some or all of the water from PDMWD.

O3-4 Groundwater impacts were analyzed in three locations in the DEIR: Section 2.2.3 (Biological

	Resources), Section 3.1.4.3.4 (Groundwater Resources), and Section 3.1.8 (Utilities). Substantial evidence in the DEIR, Boundary Creek Groundwater Report and Flat Creek Groundwater Report demonstrate that there would be no significant impacts to groundwater resources if JCSD provides some of the Proposed Project's construction water supply. Substantial evidence demonstrates that JCSD has sufficient non-potable water supplies to serve the Project without creating significant adverse impacts to groundwater supplies. (DEIR, pp. 3.1.4-26 to 3.1.5-33; see also, RTC C1-4, 5, 7.) The JCSD non-potable groundwater supply well has a JCSD imposed limit of 100,000 gallons per day, rather than the availability of ground water in terms of maximum production as available from the groundwater basin. (DEIR, p. 3.1.4-27.) Beyond that limit recycled water would be provided by PDMWD. The DEIR considers that the water would come from either a mix of JSCD and PDMWD or entirely from PDMWD. Analysis including Air Quality (DEIR §3.1.1) and Traffic and Transportation (DEIR §3.1.7) are based on all water coming from PDMWD. Both water sources considered for the project construction activities would be non-potable sources. In response to the comment regarding why the Project would use JCSD water supplies when PDMWD has so

		much unused recycled water, the short answer is the Project would use JCSD non-potable water supplies where possible because there is substantial evidence that the supplies are available and JCSD is much closer to the Project than PDMWD. The reduced cost, lower air quality impacts from transporting construction water a shorter distance, and the opportunity to help provide JCSD another source of revenue to enhance services to its members are among the reasons non-potable water from JCSD is an attractive option.
	O3-5	The Project's potential impacts to biological resources and proposed mitigation measures are discussed and identified in Section 2.2, Biological Resources, of the DEIR and as further explained in the responses to comments O3-6 through O3-16. The County affirms that Section 2.2 of the DEIR accurately and adequately identifies potentially significant impacts to biological resources and, where required or desirable, provides feasible, enforceable, and effective mitigation measures. To the extent the commenter provides arguments to the contrary, even if the arguments are from experts, when considering the adequacy of an EIR, a lead agency is entitled to weigh the evidence relating to the accuracy and sufficiency of the information in the EIR and to decide whether to accept it. The agency may adopt the environmental conclusions reached by the experts that prepared the

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overstates the effectiveness of the Project's mitigation measures, in violation of CEQA. 14 Cal. Code Regs. ["CEQA Guidelines"] §§ 15126.2(a), 15126.4, 15144; *Vineyard*, 40 Cal.4th at 428; *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1355-1356. These deficiencies are discussed below.

O3-5 Cont.

1. Pseudo-Lake Effect Attracts Avian Species

The DEIR downplays the significant threat that the Project poses to avian species from the pseudo-lake effect. It fails to acknowledge that Jacumba Lake is a nearby water body which attracts important and special status species such as the tri-colored blackbird. It trivializes the Project's location along the Pacific Flyway in disclaiming any potentially significant impacts. DEIR 2.2-4-7 ("the locale is not considered to be a major contributor to the Pacific Flyway," and is not located near water bodies that would attract water-birds). But the Project's dangers to migrating waterfowl that would collide with the Project's planned 81,108 PV modules (as mounted on 2,253 fixed tilt racks) are not alleviated by either its location or design. *Id.* The DEIR fails to analyze ways to modify the Project's location and design to reduce its impacts on avians.

O3-6

Further, while the DEIR suggests that the Project "may not appear like water from above," it conducts no analysis to support this claim. Contrary to the DEIR's self-serving assumption, when viewed from above, the Project is likely to appear like shimmering wetlands to birds, potentially luring them to try to land on the trackers. This is true not only during the day, but also on clear nights, when the panels will continue to reflect the sky, moon, and stars. Indeed, the PV Desert Sunlight facility in Riverside County has attracted night-migrating birds and water birds, including the endangered Yuma clapper rail, even though the nearest water body is over 25 miles away, in many instances with deadly results.[1] The DEIR fails to distinguish this Project from Desert Sunlight and its tragic history of avian mortality. Additionally, the DEIR's proposed mitigation measure – monitoring and recording any impact *after* it occurs – does nothing to *prevent* such impacts. Therefore it cannot reduce the impact to a less-than-significant level without additional preventative measures as well as restorative actions. DEIR 2-2.100.

O3-7

[1] National Fish and Wildlife Forensics Laboratory, *Avian Mortality at Solar Energy Facilities in Southern California: A Preliminary Analysis*, Rebecca A. Kagan, Tabitha C. Viner, Pepper W. Trail, and Edgard O. Espinoza, pp. 1-3, 7-11, 24-25, available here: http://docketpublic.energy.ca.gov/PublicDocuments/09-AFC-07C/TN201977_20140407T161504_Center_Supplemental_Opposition_to_Motion.pdf (attached hereto as Exhibit 1).

EIR even though other may disagree with the underlying data, analysis, or conclusions. *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal 3d 376, 408 (1988); *State Water Resources Control Bd. Cases*, 136 Cal. App. 674, 795 (2006). Therefore, a reviewing court will resolve any disputes regarding the adequacy of the EIR's analysis in favor of the lead agency if there is any substantial evidence in the record supporting the EIR's approach. See, e.g. *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, supra, 47 Cal. 3d at 409; *San Diego Citizenry Group v. County of San Diego*, 219 Cal. App. 4th 1, 11 (2013).

O3-6 The commenter states the DEIR downplays the significant threat the Project poses to avian species from the pseudo-lake effect and states that the Project's proximity to Jacumba Lake and the Pacific Flyway is not appropriately considered. The comment also states the Project does not analyze ways to modify the Project's location or design to reduce impacts to avian species. As described herein, however, there is no evidence demonstrating that the Project creates a pseudo lake effect threat to avian species and therefore CEQA does not require alterations to the Project's location or design.

As described in DEIR page 2.2-34, the Proposed Project area is located within the Pacific Flyway for migratory

	avian species; however, the Proposed Project sites are located east of the main coastal migration route and west of the primary route between the Gulf of California and the Salton Sea. The potential effects of the pseudo-lake effect are discussed on pages 2.2-46 and 2.2-47 of the DEIR. The analysis acknowledges anecdotal evidence of wetland species colliding with or becoming stranded in solar fields, possibly because the solar arrays mimic water bodies that are attractive to birds. Little is known about the actual percentage of species and individuals that are negatively affected by glare or the pseudo-lake effect of PV arrays. The USFWS recognizes the lack of data on the effects of solar facilities on migratory bird mortality and has provided guidance on monitoring migratory bird mortalities at solar facilities (Nicolai et al. 2011). Accordingly, the experts that prepared the DEIR reviewed the available literature and found no credible evidence that the Project creates a significant pseudo lake effect threat to avians and therefore CEQA does not require alterations to the Project's location or design to mitigate an impact that is not significant or too speculative for evaluation. CEQA Guidelines 15126.4(a)(3) states, "[m]itigation measures are not required for effects which are not found to be significant." The CEQA Guidelines further specify that "if, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact." (CEQA Guidelines, §15145)

	When determining whether an EIR complies with applicable legal requirements, courts may not interpret CEQA or the CEQA Guidelines in a manner that would impose procedural or substantive requirements beyond those explicitly stated in the statute or the Guidelines. Pub. Res. Code §21083.1; California Oak Found. v Regents of Univ. of Cal. (2010) 188 Cal App 4th 227, 265; Western Placer Citizens for an Agric. & Rural Env't v County of Placer (2006) 144 Cal App 4th 890, 899; Martin v City & County of San Francisco (2005) 135 Cal App 4th 392, 402; Dry Creek Citizens Coalition v County of Tulare (1999) 70 Cal App 4th 20, 36; Los Angeles Unified Sch. Dist. v City of Los Angeles (1997) 58 Cal App 4th 1019, 1029; Chaparral Greens v City of Chula Vista (1996) 50 Cal App 4th 1134, 1145. Therefore, because there is no CEQA requirement to impose mitigation to reduce a speculative impact to avian species, it is within the County's discretion to simply require the applicant to monitor and record any avian mortalities without further analysis of whether that requirement is effective in mitigating an speculative impact to below a level of significance. CEQA Guidelines, §15145 simply informs the agency to "terminate the analysis." To clarify, for the sake of convenience and tracking project requirements, the County has placed this avian monitoring and reporting requirement in the MMRP, but does not rely on it for mitigation because there is no finding of a significant impact to avian species from the pseudo-lake effect. To

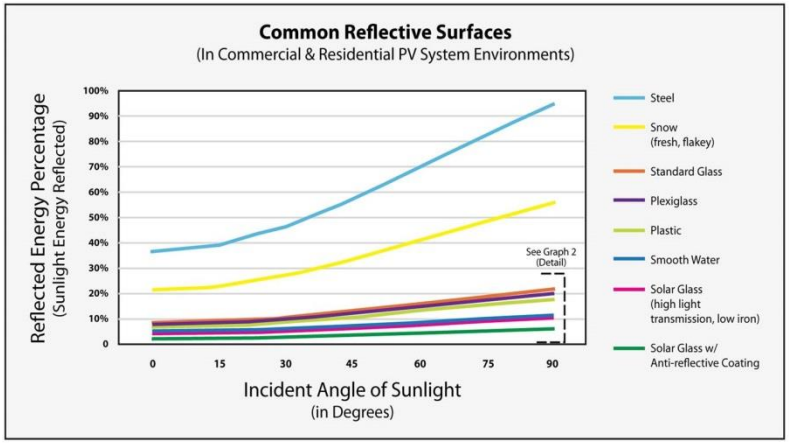
	the extent there will be any avian mortalities at the Project site, the County and the applicant are pleased to contribute to the data that can assist future decision makers in determining the cause of an avian mortality and setting a policy that is not based on speculation. Specific to tricolored blackbird – there is no suitable breeding habitat on site (this species breeds in freshwater marsh habitat), no perennial water resources (only intermittent water resources), very poor foraging habitat, and the lack of water bodies near the site that would result in use during migration. While the referenced Lake Jacumba does not show up on topographic maps, it is assumed that the commenter is referencing the pond located at the western edge of Jacumba Hot Springs. This area is buffered from the Project site by the existing Jacumba Hot Springs Community and a steep mountain and there are no other appropriate nesting resources to the east of the Project site. The species forages in grasslands and agricultural areas. Tricolored blackbirds often congregate into mixed flocks of other species of blackbirds and cowbirds during the non-breeding season – foraging widely across the landscape where suitable foraging habitat exists. This species has a low potential to occur on site for foraging purposes and no potential to nest on site. There is a very low potential for it to be directly impacted by the Project, and the County Biological

		Guidelines state that a biological resources report must address all sensitive wildlife species that occur or have a high probability of occurring on the site or on lands immediately adjacent to the site. As noted above, the species has a low potential to occur on site and on adjacent sites.
	O3-7	Please refer to Response to Comment O3-6. The commenter cites to a National Fish and Wildlife Forensic Laboratory study entitled "Avian Mortality at Solar Energy Facilities in Southern California: A Preliminary Analysis" as evidence that PV solar facilities are attracting and killing migratory and water birds even when not located near a water body. This study reviews three solar projects: Desert Sunlight, Genesis, and Ivanpah. Desert Sunlight is a photovoltaic solar facility; Genesis is a trough system with parabolic mirrors; and Ivanpah uses a solar flux system. It should also be noted that the Proposed Project would utilize a different solar technology than those associated with incidences of avian mortality linked to a pseudo lake effect, such as flat panel, solar trough, and power tower. The Proposed Project is unlike the recently publicized deaths associated with the Genesis project, which depends on heat generated by mirrors reflecting and focusing sunlight on a central focal point to power a generator, or the Ivanpah facility which utilizes the solar flux system.

	The Proposed Project instead would consist of typical PV panels, unlike other solar projects that have reported avian deaths, the Proposed Project will not have evaporation ponds, mirrors, or heliostats panels. Of these solar facilities, Desert Sunlight is the only photovoltaic facility with similar technology to the Project and is further cited by the commenter. The commenter references the Desert Sunlight facility in Riverside as evidence that PV solar facilities are attracting and killing migratory and water birds even when not located near a water body. The experts who prepared the DEIR reviewed the Desert Sunlight facility and its annual report on avian and bat mortality (Appendix B, Avian and Bat Mortality Solar Farm, Ironwood Consulting, Inc. n.d.), and still concluded that potential impacts to avian species were too speculative to evaluate or draw a conclusion that there was a significant environmental impact to avian species. Specifically, the Desert Sunlight project differs from this Proposed Project in that it is set in a wide open valley as opposed to the Proposed Project, which is backed up between a mountain and a large existing fence (International Border Fence). The Proposed Project would have solar units that are uniformly dark in color, coated to be non-reflective, and designed to be highly absorptive of all light that strikes their glass surfaces so they would not appear like water from above, as water displays different

properties by both reflecting and absorbing light waves. (See DEIR, p. 2.2-47.) Furthermore, the Desert Sunlight panels are close to one another, but the Proposed Project's panels are approximately 12.5 feet apart. This breaks up sky reflection from a single continuous surface to individual separate units and reduces the image of a continuous body of water. Included below is a chart demonstrating the low reflectivity of PV panels compared to other surfaces, including water (Common Reflective Surfaces).

The Desert Sunlight project is also situated between the Salton Sea and the Colorado River, where most of the birds in the Pacific Flyway migrate. In contrast, the Proposed Project is substantially smaller in size and located in a portion of the Pacific Flyway with low incidences of avian flight paths because it is located east of the main coastal migration route and west of the primary route between the Gulf of California and the Salton Sea. The Proposed Project site's location in the mountains away from the coast or Imperial Valley and not being situated between large bodies of water also reduces its potential to attract migratory bird species. (DEIR, p. 2.2-66.)



Graph 1 - Common Spectral Surfaces

All of these distinguishing characteristics references above led the experts who prepared the DEIR to conclude that it is too speculative to conclude the Proposed Project would have a significant impact on avian mortality generally or to be confused for a body of water.

Nevertheless, in an abundance of caution, and despite the lack of any significant environmental impact arising from pseudo lake effect, the Project will implement recommendations by the Avian Power Line Interaction Committee (APLIC) which generally will reduce the likelihood of electrocutions and avian collisions with Project structures (See M-BI-13). Recommendations provided by APLIC focus on preventing electrocution through design features on new structures. These design features include a minimum separation of 60 inches

2. Inadequate Quino Checkerspot Butterfly Surveys Cannot Support Conclusion of No Significant Impact

The DEIR fails to adequately address the Project's impacts on the endangered Quino checkerspot butterfly ("QCB"). It concludes that the Project is unlikely to impact the QCB. Yet according to the U.S. Fish and Wildlife Service's 2002 survey protocol for QCB, "[b]utterfly surveys may not be considered credible if . . . unfavorable weather such as drought limits [QCB] detectability."[2] The DEIR relies upon but fails to heed the 2002 protocol. Moreover, the more recent 2014 QCB Survey Guidelines stresses that "[b]ecause [QCB] adults may not emerge at detectable densities during low rainfall years due to extended larval diapause, lack of adult [QCB] observation(s) under such conditions may not be considered adequate evidence to conclude a particular site is unoccupied."[3] The DEIR acknowledges that the focused plant surveys would not be adequate due to drought conditions (DEIR 2.2-3 to 2.2-4) yet it relies on similarly compromised surveys for its QCB conclusions.

O3-8

The DEIR states that "[n]o Quino checkerspot butterfly adult nectar plants were observed within the Proposed Project areas" during protocol surveys. DEIR 2.2-23. Yet the survey field notes indicate that nectar plants *were* present during the surveys. *See* DEIR Appendix 2.2-1 Biological Resources Report, Appendix H Jacumba Solar Quino Checkerspot Butterfly Report ("QCB Report"), pp. 10-11 ("No QCB larval host plants were observed within the study area during the focused surveys. Table 5, QCB Larval Food and Adult Nectar Plants, includes the known and observed adult QCB nectar plants"); QCB Report, Appendix B, 2013 Jacumba Solar QCB Survey Field Notes (observing nectar sources). The compiled survey data included in the QCB Report does not tease out the locations of the observed adult nectar plants, but the attached field notes indicate that these species were observed within the survey polygons where solar panels are planned. *See* QCB Report, Appendix B, 2013 Jacumba Solar QCB Survey Field Notes. Indeed, the biologists observed that nectar plants were blooming in March, and drying out in April. *Id*. Thus, the QCB Report contradicts the DEIR's statement regarding adult nectar

O3-9

[2] U.S. Fish and Wildlife Service Quino Checkerspot Butterfly (Euphydryas editha quino) Survey Protocol Information (Feb. 2002), p. 6 (attached hereto as Exhibit 2, and available at http://www.fws.gov/ventura/docs/species/protocols/qcbf/qchksptbfly_survprotocols.pdf)

[3] U.S. FWS, Quino Checkerspot Butterfly Survey Guidelines (Dec. 15, 2014), p. 5 (attached hereto as Exhibit 3, and available at http://www.fws.gov/carlsbad/TEspecies/Documents/QuinoDocs/Quino%20Survey%20Guidelines_version%2015DEC2014.pdf)

between phase conductors or a phase conductor and grounded hardware, or covering (insulating) these features where adequate separation is not feasible (APLIC 2006). The APLIC guidelines also include appropriate siting and placement of lines to reduce the likelihood of collisions and/or installing visibility enhancement devices (APLIC and USFWS 2005). Additionally, in an abundance of caution, should an avian mortality occur at the site, the Project will implement a monitoring and reporting program to assist public agencies in determining the cause. (See M-BI-15). For clarification, the County does not rely on this requirement to mitigate a significant environmental impact because the County shares the expert's conclusion that it is too speculative to evaluate the impact or conclude there is a significant impact. Therefore, there is no need to include additional preventative measures or restorative actions as requested by the commenter.

O3-8 The Project's potential impacts to the Quino Checkerspot Butterfly are discussed and identified in Section 2.2, Biological Resources, of the DEIR. Between March and April 2013, focused surveys were conducted on the Proposed Project site for Quino checkerspot butterfly (see Appendix H of Appendix 2.2-1 of the DEIR). Table 2.21A of the DEIR, Schedule of Surveys for the Jacumba Solar and Gen-Tie Alignment Sites, and Table 2.2-1B of

	the DEIR, Schedule of Focused Quino Checkerspot Surveys for the Jacumba Solar and Gen-Tie Alignment Sites, list the dates, conditions, and survey focus for each survey performed. A jurisdictional delineation and vegetation mapping were conducted in summer/fall 2014 for the gen-tie site. As a preliminary matter, the DEIR's biological analysis is not inadequate based upon whether or not the biological experts conducted surveys according to a federal agency's protocol because the federal agency is not the lead agency. The biological expert is to focus on meeting the County's requirement. Lead agencies have discretion to determine the appropriate way to evaluate an environmental impact. Lead agencies are not required to use analytical methods recommended by regulatory agencies, and a lead agency's analysis and choice of methodology will be upheld if supported by substantial evidence. Courts have applied these general rules to the analysis of biological impacts. In reviewing the biological impact analyses in EIRs, for example, courts have held that lead agencies are not required to conduct all possible tests or exhaust all research methodologies in evaluating impacts. *Save Panoche Valley v San Benito County* (2013) 217 Cal App 4th 503, 524. Courts have also applied these general rules in resolving claims that a lead agency's analysis of biological resource impacts is inadequate because the lead agency did not

	follow recommendations of wildlife resource agencies. *North Coast Rivers Alliance v Marin Mun. Water Dist.* (2013) 216 Cal App 4th 614, 642; *California Native Plant Soc'y v City of Rancho Cordova* (2009) 172 Cal App 4th 603, 626. Similarly, a site-specific analysis by a lead agency's biologist was sufficient to support the agency's determination that loss of habitat would not be significant, notwithstanding the federal designation of the land as critical habitat. *Banning Ranch Conservancy v City of Newport Beach* (2012) 211 Cal App 4th 1209, 1233. Furthermore, there is no legal requirement that a lead agency preparing an EIR undertake a protocol-level survey for endangered species, and an agency may conclude that other survey methodologies, such as reconnaissance-level field surveys, are sufficient, provided that its choice of methodology is supported by substantial evidence. *Association of Irritated Residents v County of Madera* (2003) 107 Cal App 4th 1383, 1396. An agency is also not required to agree with suggestions from the Fish and Wildlife Service that a take might occur, and that a take permit should therefore be obtained. "CEQA neither requires a lead agency to reach a legal conclusion regarding 'take' of an endangered species nor compels an agency to demand an applicant to obtain an incidental take permit from another agency." 107 Cal App 4th at 1397.

	Nevertheless, the County believes that all field surveys were completed according to federal and County requirements, even if the commenter disagrees with the County's interpretation of those requirements. The survey's included directed searches and habitat assessments for the County list of potential special-status faunal and floral species. The entire Project site was surveyed by personnel qualified to perform biological surveys. Special-status biological resources were mapped and analyzed together with the Project plans (PDS2014-MUP-14-041). In addition, focused pre-construction surveys were conducted in 2015 in accordance with the December 2014 QCB Protocol Survey Guidelines. The latest survey results, which were negative for Quino checkerspot butterfly, are provided as part of the FEIR. As noted in the comment, under USFWS protocol, the USFWS *may* discount the survey results based upon the drought, but the USFWS comment letter does not discount the survey results, nor was any such feedback provided by the USFWS after the 45-day survey report was submitted to the USFWS in 2013 (see Appendix H of Appendix 2.2.1). Further, as explained on DEIR 2.2-4, where negative survey results are not conclusive or are not conducted, the County's guidelines provide additional guidance. (See Appendix 2.2.1). At the request of the lead agency, pre-construction surveys are included as part of the Project. For the

		purposes of the County tracking M-BI-17 will be included in the Mitigation Monitoring and Reporting Program (MMRP) and states that pre-construction surveys for Quino checkerspot butterfly shall be conducted within one year of construction. In accordance with this measure, pre-construction surveys were conducted in 2015 following the most recent published protocol for this species, dated December 2014 (USFWS 2014), and were negative. If additional pre-construction surveys are required, these shall be conducted during the flight season within one year from the start of construction. If Quino checkerspot butterfly are found, the applicant shall consult with the USFWS to ensure there is no take of the species. If take could occur, the applicant shall complete Section 7 consultation with the USFWS. Measure M-BI-17 will read as follows: "**M-BI-17** Within one year of construction, pre-construction surveys for Quino checkerspot butterfly shall be conducted in accordance with the most up to date protocol. If Quino checkerspot butterfly are found, the applicant shall consult with the USFWS to ensure there is no take of the species. If take could occur, the applicant shall complete Section 7 consultation with the USFWS."
	O3-9	Section 2.2 of the DEIR and Appendix 2.2.1 have been revised as follows: "no Quino checkerspot

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plant observations.[4] This conflict is not addressed. O3-9 Cont.

Further, both the 2002 and 2014 QCB survey guidelines require additional monitoring beyond the 5 weeks documented in the QCB Report. The 2014 guidelines state that the survey season begins the third week of February and ends the second Saturday in May. Exhibit 3, p. 2. It provides that "[i]f no Quino are detected during the first 5 weeks, surveys will continue to the end of the season or until a Quino is detected." *Id.* The 2002 guidelines likewise state that "[i]f butterflies are not detected during the first 5 surveys, weekly surveys should continue until the end of the flight season to maximize likelihood of detection of low-density populations." Exhibit 2, p.3. The 2002 guidelines set the flight season by a reference location; however the DEIR and its appendices contain *no mention of any reference data*, including any flight season reference information. Still, DEIR Appendix 2.2-1 states that the surveys occurred "during the 5-week flight season" (except the ones that happened on an extra 6th week due to weather), as if the flight season was perfectly aligned with the surveys. DEIR Appendix 2.2-1, p. 28. The QCB surveys should have followed the protocol guidelines, which mandate continuing to survey until the season is over. O3-10

The 2014 QCB survey guidelines state that (1) QCB "surveys shall not be conducted concurrently with any other focused survey (e.g. a . . . [QCB] host plant survey)." Exhibit 3, p. 2. The 2002 guidelines state that "protocol surveys should not be conducted concurrently with any other focused survey." Exhibit 2, p. 3. Yet the DEIR relies upon the observations made during the QCB protocol surveys *about the absence or presence of larval host plants* to conclude that QCB "has a low potential to occur in the Project area." DEIR 2.2-24. Any conclusive determination of larval host plant presence should not have been based on this focused QCB survey. The DEIR fails to address this issue. O3-11

As the DEIR admits, QCB has been observed in the vicinity of the Project site, including at the ECO Substation, where the Project's gen-tie will connect to the power grid, and the QCB has critical habitat less than 5 miles from the Project. DEIR 2.2-23, DEIR 2.2-119 (DEIR Figure 2.2-3). The DEIR's conclusions that QCB is unlikely to occur at the Project site, (DEIR 2.2-24), and that the Project will have no significant impacts on federally listed endangered species (DEIR 2.2-50), are therefore contradicted by the evidence and should be revised. O3-12

[4] The QCB Report also states "No QCB were observed during the *2012* focused survey." QCB Report, p. 8 (emphasis added). The QCB Report should explain whether this is a typographical error, as it is the only reference to a 2012 QCB survey.

~~adult nectar~~ larval host plants were observed within the Proposed Project areas". Please see response to comment O3-10 below regarding the protocol for QCB surveys.

O3-10 Please refer also to Response to Comment O3-8. The County believes QCB surveys followed USFWS protocol requirements, even though they are only required to meet County requirements. Contrary to the commenter's assertion, additional surveys are not "required" or "mandated" beyond 5 weeks per the 2002 protocol: surveys for Quino checkerspot butterfly should be conducted "once per week…for a minimum of 5 weeks throughout the flight season on non-consecutive days." As such, the Quino checkerspot butterfly surveys were conducted in accordance with the 2002 protocol. The reason the DEIR and the appendices do not mention reference data for the flight season is that the limits of the season are defined by the USFWS per the 2002 protocol and other factors, including the availability of host plants, and presence of other conspecifics (e.g., chalcedon checkerspots) which might signal an end to the Quino flight period. However, in 2013, the USFWS declined to define a specific flight season; therefore, biologists followed their professional judgement based on site conditions and observations of QCB at other locations. The 2013 surveys were in line with the observations of QCB throughout San

		Diego and Riverside County, as shared on the Quino Biologists United LinkedIn page, which described 2013 QCB sightings beginning in early March through mid-April, which are consistent with the 2013 surveys that began on March 14 and ended on April 19. For clarification, the surveys were properly conducted and timed, using the best available information regarding the flight season in the higher elevation east County areas. Additionally, the 2014 QBC protocol was issued in December of 2014. Consequently, the 2013 focused studies for the DEIR do not use the 2014 QBC protocol. Focused protocol surveys were conducted again in 2015 in accordance with the most current survey requirements dated December 2014 (USFWS 2014).
	O3-11	Please refer also to Response to Comment O3-8. No additional focused surveys were conducted simultaneously with Quino checkerspot butterfly surveys. The purpose of the 2002 USFWS's survey protocol statement that "surveys should not be conducted concurrently with any other focused survey (e.g., a coastal California gnatcatcher survey)" is not to preclude recording host and nectar plants for the butterfly. In fact, the 2002 survey protocol requires that the survey report include "a list of larval host plants, nectar plants, and plant communities observed on site" (USFWS 2002). As such, it is a commonly accepted practice to record all host and/or nectar

		plants during butterfly surveys and this does not invalidate the Quino survey results. Vegetation mapping was completed prior to conducting the Quino checkerspot butterfly surveys. Therefore, the County disagrees that the DEIR fails to address this issue.
	O3-12	Please refer also to Responses to Comments O3-8 through O3-11. The DEIR provides background data about other QCB locations in the area and where critical habitat exists. Commenter incorrectly states that there were QCB identified at the ECO Substation and that any Jacumba Solar Project transmission line route to the ECO Substation must necessarily create a significant impact to QCB or be present at the Jacumba Solar Project site. In fact, the QCB impacts identified with the ECO Substation project were located along a different ECO Substation transmission line at least three miles away and not the Jacumba Solar Project transmission line or the ECO Substation itself. Survey results for the ECO Substation, Jacumba Solar Project site and its transmission line were negative. The Project site is located over 3 miles from known species locations or critical habitat, so the Draft EIR accurately reflects the biological expert's opinion, backed by substantial evidence, that Quino checkerspot are unlikely to occur on site or be impacted by the Project. The DEIR has been revised to clarify the location of the closest QCB observation along the ECO transmission line.

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3. Fragmenting Habitats and Constraining Movement Corridors

The Project's solar panels are concentrated in the south and east portions of the Project area, next to the Mexican border. While the DEIR explains that the Project is designed to work with the existing wildlife movement corridors, and openings in the border fence, wildlife often do not follow the constraints and movement paths that humans intend. Further, this design will funnel wildlife into a narrowed passage, rendering animals more vulnerable to predation. The DEIR ignores these issues. O3-13

Peninsular bighorn sheep ("PBS") utilize the Project area, and have designated critical habitat just 2.6 miles away from the Project. The DEIR's claims of no PBS impacts ignores the proximity of the sheep to the Project site and the importance of habitat connectivity and migration corridors for their survival. While the DEIR claims that the Project site is not likely to provide "high-quality habitat," or "intermountain connectivity" between "occupied mountain ranges," the Project is in an essential area for PBS migrations. Emerging research conducted with scientists from the San Diego Zoo, among others, shows genetic flow between PBS populations on both sides of the border.[5] The Energia Sierra Juarez wind project, which is likely to impact Mexican populations of PBS, could also alter PBS movement patterns to the east of the Project, pushing PBS west as they try to cross into the United States. The Project's expansion of development at the border fence will further fragment the remaining wildlife movement corridors. By downplaying and discounting this impact, the DEIR fails to foster informed decisionmaking. O3-14

4. Special Status Plant Species

The DEIR fails to provide an adequate analysis of the Project's impacts on special status plant species. It discusses the temporary construction impacts to special status plant species as if these impacts will only occur "outside designated construction zones." DEIR 2.2-50; *see also* DEIR 2.2-52. But, as the DEIR admits, "no rare plant surveys were conducted for the Project site" and thus, it is equally probable that special status species will fall inside these zones. The Project will be grading and redistributing 180,000 cubic yards of earth. DEIR 1-10. The DEIR claims that the Project's construction impacts on special status plants will be mitigated to less than significant levels by temporary construction fencing, monitoring and documentation (DEIR 2.2-79 to 2.2-80, DEIR 2.2-82 to 2.2-83), compliance with a stormwater pollution prevention O3-15

[5] Ernest et al., *Genetic population structure of Peninsular bighorn sheep (Ovis canadensis nelsoni) indicates substantial gene flow across US–Mexico border* (April 2015) 184 Biological Conservation 218–228, abstract attached hereto as Exhibit 4, and available at http://www.sciencedirect.com/science/article/pii/S0006320715000087.

O3-13 Potential impacts to habitat connectivity and wildlife corridors are discussed in Section 2.2, Biological Resources, of the DEIR. As the commenter notes, the Project stays away from the gaps in the International Border Fence and is designed to work with existing wildlife movement. It provides a configuration that is condensed into one corner of the Project site and provides for conservation of large blocks of open space adjacent to existing BLM lands and provides for further buffering of a fence opening to the west of the Project site. Accordingly, there is substantial evidence to support the biological expert's opinion that the Project will not have a significant impact on wildlife movement. In contrast, the commenter provides no evidence to support that wildlife will be more vulnerable to predation. Moreover, commenter provides no evidence that if wildlife is more vulnerable to predation that it would occur at a level of significance.

O3-14 There is no evidence that bighorn sheep utilize the Project area or that the site is part of a migration corridor for the species. It is known that genetic connections between United States and Mexican populations of Peninsular bighorn sheep occur, the zone of movement is located east of the Project site in the area designated as critical habitat by the USFWS. The cited study only discusses the genetic exchange occurring across the border. It does not address the Project or relate to the potential for this Project area to contribute to genetic flow.

	O3-15	Potential impacts to special status plant species and proposed mitigation measures are discussed in Section 2.2, Biological Resources, of the DEIR. The Project properly analyzes impacts to special-status plant species. When conditions exist that do not allow for focused surveys (e.g., drought), the County is able to allow an alternative analysis method. Specifically, the County provides guidance for conducting surveys: "Section 2.2.2 – Content" of the *County of San Diego Report Format and Content Requirements: Biological Resources* provides specific information regarding literature review and field survey methodology (County 2010a, pages 7–9). As reported in the Biological Resources Report (Appendix 2.2-1 of the DEIR), Dudek follows the County's suggested literature review of 1) a soils map and 2) a database query of potential special-status species recorded in the 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) Plant Atlas were reviewed (SDNHM 2012). The County also describes methods for conducting field surveys in order to record and map biological resources. Moreover, the guidelines provide additional guidance

	in circumstances where field surveys were not conducted. Specifically, the guidelines state the following (County 2010a, page 8): In some cases, the Director of Planning and Land Use, Public Works, or Parks and Recreation may choose to postpone or suspend some seasonal focused surveys during a particular calendar year if inaccurate or inconclusive survey results are expected due to unsuitable environmental conditions, such as fires, floods, or droughts. In these cases, staff will work with Project applicants to determine the best course of action. Options may include one or more of the following, determined on a case-by-case basis: • Relying on previous year surveys • Resurveying the property the following year (assuming proper environmental conditions) • Using the County's Species Predictive Model to determine presence/absence (access to data from this model is coordinated through the Department of Planning and Land Use (DPLU) staff biologist) • Reviewing records from the CNPS, CNDDB, San Diego Plant Atlas, or other reliable sources Accordingly, the County properly used the species predictive modelling approach used on many Projects. The commenter appears to assume that the impact section on DEIR 2.2-50 assumes the analysis only

	addresses the potential Project impacts to special status plants outside the construction area. A complete reading of the special status plant impact analysis would include the Figure 2.2-6 referenced on DEIR 2.2-51, which shows suitable habitat for special status plants within the construction area of the Project. Furthermore, Table 2.2-2 referenced on DEIR 2.2-51 lists the acreage of suitable habitat within the impact foot print and clearly states in footnote 1 that it includes "direct impacts from access road, maintenance around gen-tie poles, solar site and fuel modification zone." Accordingly, the DEIR properly analyzed the potential impact to special status plants both inside the construction footprint and outside the construction footprint. Similarly, a complete reading of the mitigation measures shows that impacts to rare plant species within the construction area (Impact B-SP-2) are mitigated by M-BI-3 (preservation of the 180.4 acre on-site habitat preserve) and M-BI-16 (rare-plant preconstruction surveys with relocation of protected plant species to the on-site habitat preserve at specified mitigation ratios. The commenter speculates that the on-site habitat preserve "may" already be at its carrying capacity and therefore is not suitable habitat for construction area plant relocation citing to a 1998 publication entitled

plan (DEIR 2.2-81 to 2.2-82). But these mitigation measures will not prevent the construction-stage destruction of any special status species within the "designated construction zones." And the continued preservation of the open space portion of the Project cannot automatically replace or mitigate the loss of such species, despite the DEIR's claims to the contrary. Even with rare plant surveys and replacement ratios, the mitigation plans will concentrate replacement species more densely in already occupied territory. DEIR 2.2-90 to 2.2-92. It is a fundamental principle of conservation biology that habitat is usually fully occupied.[6] Consequently, while the Project's preservation of open space may be suitable for the special status species destroyed by Project construction and operation, such space may already be at its carrying capacity. The DEIR's failure to identify the special status species that would be harmed – and whose habitat would be destroyed – by construction, and to address ways to mitigate these impacts, is a fatal error.

O3-15 Cont.

5. Raptor Impacts and Loss of Foraging Habitat

The DEIR fails to adequately address the Project's impacts on raptors. Golden eagles have been observed over Jacumba the last two autumns.[7] These protected raptors rely upon open habitat to forage for appropriate prey, as do other local raptor species. The Project will impair approximately 111.5 acres of foraging habitat for raptors, including the golden eagles, prairie falcons and hawks observed in the Project area. *E.g.* DEIR 2.2-54. The DEIR claims that this impact can be successfully mitigated to a less than significant level because of the planned open space preserve portion of the Project. DEIR 2.2-54, 2.2-99; Appendix 2.2-1, p. 90. Thus the Project will take land that is currently undeveloped, and reduce that open space by roughly one third. Yet the DEIR claims that this *reduction* in foraging habitat is insignificant because the remaining onsite habitat will be preserved. But the impact of the Project will still be a *substantial overall reduction in habitat*. The DEIR's facile assumption that preserving the remaining lands will offset this reduction is plainly erroneous on its face. The Project will, *to the contrary*, reduce this habitat by one-third. And no further analysis is provided to address this plain error.

O3-16

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

[7] *See* Raftery, M, Golden Eagles Spotted in Jacumba Near Proposed Energy Sites, East County Magazine (Nov. 11, 2014), attached hereto as Exhibit 5, and available at http://www.eastcountymagazine.org/golden-eagles-spotted-jacumba-near-proposed-energy-sites, (last visited May 28, 2015); *See also* Jacumba Birding, documenting golden eagles sightings available at http://jacumbabirding.com/2013/10/21/golden-eagle-10-21-13/ and http://jacumbabirding.com/2014/11/03/november-3-2014-update-pics/)

"Ecology of North America". The Project's expert biologist reviewed this publication and notes that it does not contain any analysis for the specific area proposed for the on-site habitat preserve. In contrast, the Project biologist used modelling techniques to analyze the mitigation suitability of the on-site habitat preserve and finds that it is suitable for relocation purposes. Management measures for the habitat preserve ensure it will continue to serve as an effective preserve for plant an animal conservation efforts and mitigation measure M-BI-16 requires the applicant to provide annual monitoring reports for at least 5 years after replanting to demonstrate that the plants have been successfully established at the required mitigation ratio.

The methods employed for study and analysis are appropriate and consistent with County Guidelines and the mitigation measure is enforceable with appropriate mitigation ratios.

O3-16 The County disagrees with the commenter's assertion that the DEIR fails to adequately address impacts to raptors, including foraging habitat. As discussed in Section 2.1.1 of the DEIR, winter raptor survey/ assessments were conducted in December 2013 and January 2014; nesting raptor and foraging surveys were conducted from May through July 2014; and, golden eagle data was obtained through a variety of other studies conducted in the vicinity (also see

	response to comment F1-3). This level of effort is consistent with County guidelines. Indeed, the surveys completed by the Wildlife Research Institute (WRI) have been acknowledged by the USFWS as being valuable. That data is relevant with regard to the locations of nests in the vicinity. As noted previously, the County considers impact to eagle habitat within 4,000 feet of a golden eagle nest to be significant unless additional information proves otherwise (Guidelines of Significance E). The impact on golden eagle foraging was acknowledged on DEIR 2.2-54. The County acknowledged that impacts to approximately 111 acres of suitable foraging habitat was considered significant, but was mitigated through the implementation of Mitigation Measure M-BI-4 which sets aside and provides for management of approximately 180 acres of foraging habitat through a conservation easement. See DEIR 2.2-94 (Impact BI-W-6). This is consistent with the County guidelines for appropriate mitigation. Nevertheless, the commenter contends that conserving approximately two thirds of the property as an open space preserve that supports foraging does not mitigate the loss of one-third of the property to construction that *reduces* the existing foraging acres. Commenter contends that mitigation must result in an offset of this impacted one-third or else the DEIR is "plainly erroneous on its face."

	The law is contrary to commenter's viewpoint. Whether conservation easements compensate for valuable lands lost to solar development construction was recently settled in *Save Panoche Valley v San Benito County* (2013) 217 Cal App 4th 503. There the Court held the following: Save Panoche Valley challenges the EIR's agricultural impact analyses. The FEIR determined that construction of the Project will inevitably convert some prime agricultural land to nonagricultural uses. It is Save Panoche Valley's position that the proposed mitigation measures to protect the 13,000 acres of land in and around the Project site and to create agricultural conservation easements that would either cover 4,563 acres of rangeland or 285 acres of high quality cropland is inadequate. Save Panoche Valley argues that mitigation measures should minimize, rectify, reduce and eliminate impacts, which these measures fail to accomplish. We find no merit to Save Panoche Valley's arguments on this point. "Mitigation," as defined by the CEQA Guidelines, does not necessarily mandate that the County is tasked with creating new habitats. The CEQA Guidelines provide that mitigation can include: "(a) Avoiding the impact altogether by not

	taking a certain action or parts of an action. (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment. (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. (e) Compensating for the impact by replacing or providing substitute resources or environments." (CEQA Guidelines, § 15370.) Substantial evidence supports the Board's determination that the mitigation measures provided would satisfy this definition of "mitigation" under the CEQA Guidelines. The mitigation measures called for creation of conservation easements. It also mandated that Solargen would be required to dismantle the Project upon conclusion of its useful life, which would include disassembly of any structures and restoration of the lands. Restoration would include revegetation, and returning the agricultural soils to its original condition. These mitigation measures adequately address the potential impacts on agricultural resources, including the impact on grazing land, and adequately satisfy the requirements set forth under the CEQA Guidelines. Save Panoche

C. **Greenhouse Gas Emissions**

As discussed above, the DEIR appears to undercount the quantity of construction-stage greenhouse gas ("GHG") emissions because it does not account for all the necessary water for Project construction. But this is not the only flaw in the DEIR's GHG analysis. The DEIR concludes that, upon amortization, the Project's greenhouse gas emissions are below a significant level. However, the DEIR does not account for those emissions associated with producing the Project's components (or transporting those components from the manufacturer to the Project location) – so called "life-cycle" impacts. DEIR 3.1.3-11. O3-17

Further, by amortizing emissions, instead of accounting for them as emitted, the County has downplayed the significant cumulative impact of the GHG emissions associated with constructing the large-scale renewable energy developments that it has already recently approved. The emissions from each project have effects once they occur, and are cumulatively considerable. But the DEIR never examines the Project's construction-related GHG emissions at a cumulative level with other Projects because the County has declared that *none* of the emissions are cumulatively considerable if they are not significant on their own. *See e.g.* DEIR 3.1.3-17. But "[c]umulative impacts can result from individually minor but collectively significant projects taking place over a period of time." Guidelines § 15355(b). The DEIR's trivialization of these emissions allows all emissions to be treated as too minor to have collective significance, even when the contrary is true. This violates CEQA. *See Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-721. O3-18

The DEIR also assumes that the Project's 20 MW capacity will be used to *offset* greenhouse gas producing fossil–fuel based energy emissions. DEIR 3.1.3-15. Yet there is no demonstration that such an off-set will in fact occur, and it is instead likely that, if approved, the Project would become merely an additional power source, facilitating *additional* growth and *additional* GHG emissions. The DEIR's incomplete presentation of GHG emissions impacts precludes informed decisionmaking both by the agency and by the public, in violation of CEQA. *Kings County*, 221 Cal.App.3d at 712. O3-19

D. **Growth Inducing Impacts**

The DEIR fails to adequately address the Project's growth-inducing impacts. The addition of new energy sources without a demonstration that, in fact, the Project would replace existing electricity generation is a textbook example of an indirectly growth-inducing project. CEQA Guidelines § 15378(a),(c). The DEIR however, downplays the growth-inducing impacts of approving the Project, and declares that the Project will not have a significant impact on population or housing. DEIR 1-23, 3.2-1 to 3.2.2; CEQA Guidelines § 15378(a),(c). This conclusion is not supported by the facts in the DEIR, which as noted above, fails to demonstrate O3-20

Valley's insistence that the mitigation measures fail because there is no creation of additional agricultural lands to compensate for the ones utilized for the Project site are unsubstantiated. We are unaware of any case law that supports Save Panoche Valley's position. The goal of mitigation measures is not to net out the impact of a proposed project, but to reduce the impact to insignificant levels. (See *Banning Ranch Conservancy*, supra,211 Cal.App.4th at p. 1233.)

Likewise, there is substantial evidence to support the County's determination that a conservation easement on two-thirds of the land compensates for the loss of habitat on one-third of the land. Indeed a preserve protected by a conservation easement is actively managed to maintain its biological values, including its value as foraging habitat. Existing vacant land without a conservation easement is not protected and is subject to degradation of its biological value from many sources, including off-road vehicle use by trespassers and invasive species. Furthermore, Mitigation Measure M-AE-3 requires the applicant to decommission the Project at its conclusion.

O3-17 The comment states that the DEIR underestimates GHG emissions because it does not account for all of the necessary water for Project construction. For the reasons stated in Response to Comment O3-2, the

	County disagrees with this comment. The commenter further states that the DEIR underestimates GHG emissions because it fails to account for "emissions associated with producing the Project's components (or transporting those components from the manufacturer to the Project location) – so called "life-cycle" impacts." However, CEQA does not require a life-cycle analysis. Public Resources Code section 21151 provides that, in preparing an EIR, "any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical condition which exists within the area as defined by in Section 21060.5." (Emphasis added). Public Resources Code section 21060.5 refers to such "area" as "the physical conditions which exist within the area which will be affected by the proposed project..." (Emphasis added). The California Supreme Court interpreted these sections as requiring analysis of the local effects of a proposed project, and not requiring a life-cycle analysis of products that are the subject of a proposed project. (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155.) CEQA only requires analysis of impacts that are directly or indirectly attributable to the project under consideration. (CEQA Guidelines, Section 15064(d).) "Life-cycle" emissions would refer to emissions beyond those that could be considered indirect effects of a project as that term is defined in CEQA Guidelines section 15358. The California Natural Resources

Agency in the "Final Statement if Reasons for Regulatory Action. Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97" California Natural Resources Agency 2009) explains:

> "Moreover, even if a standard definition of the term lifecycle existed, requiring such an analysis may not be consistent with CEQA. As a general matter, the term could refer to emissions beyond those that could be considered indirect effects of a project as that term is defined by 15358 of the State CEQA Guidelines.
>
> Depending on the circumstances of a particular project, an example of such emission could be those resulting from the manufacture of building materials. CAPCOA White Paper, at pp. 50-51.) CEQA only requires analysis of impacts that are directly attributable to the project under consideration. (State CEQA Guidelines, 15064(d).) In some instances materials may be manufactured for many different projects as a result of general market demand, regardless of whether one particular project proceeds. Thus, such emission may not be caused by the project under consideration. Similarly, in this scenario, a lead agency may not be able to require mitigation for emissions

	that result from the manufacturing process. Mitigation can only be required for emissions that are actually caused by the project. (State CEQA Guidelines, 15126.4(a)(4).)" The project description does not include NextEra constructing a manufacturing facility for PV panels to supply this project with panels or NextEra contracting with a supplier to build a new PV manufacturing plant. Regardless of whether NextEra proceeds with this project, the panels are generally constructed in existing manufacturing plants as a result of general market demand for PV panels for a variety of projects, small and large around the state and throughout the world. Thus, the approval of the Project does not directly or indirectly cause the construction of a PV manufacturing plant. Operational GHG emissions from a new PV manufacturing plant in California would be best analyzed by the lead agency responsible for issuing discretionary permits for such a plant. Here, there is no new PV manufacturing plant proposed. Thus, the DEIR did not need to calculate the life-cycle GHG emissions associated with Project construction. In fact, one court has specifically rejected the claim that an EIR's GHG analysis must include a "life-cycle" analysis. (*Merced Alliance For Responsible Growth v. City of Merced* (2012 Cal. App. Unpub. LEXIS 8739).

	O3-18	This comment criticizes the methodology chosen by the County to conduct GHG emissions impact analysis because the County follows the common lead agency practice of amortizing construction-related GHG emission over the 30-year operational life of the Project to come to the annual GHG emissions figure. Commenter contends that the only permissible methodology allowed by CEQA is one that analyzes the impact of construction-related GHG emissions at the time they occur and anything less than this underestimates the Project's cumulative impact on GHG emissions, which commenter believes is significant. The facts and the law are contrary to commenter's viewpoint. First, the fact is that the GHG emissions of the Project are not underestimated because the construction-related GHG emissions are amortized over the 30-year life of the Project. The total GHG emissions during the 30 year life of the Project is the same regardless of whether one separates the construction related GHG-emissions from the operational GHG emissions. The DEIR accurately discloses what those emissions levels are in Tables 3.1.3-2 and Table 3.1.3-3. Second, the significance threshold selected by the County is based on a Project's average annual GHG emissions, not each year's GHG emissions. The screening threshold is typically applied to annual

	operational emissions and adding amortized construction emissions ensures that they are captured. In fact, if the County failed to amortize the construction-related GHG emissions when it calculated the average annual GHG emissions, it would be underestimating the Project's GHG emissions because the annual average would only reflect the annual operational GHG emissions. The County notes that air quality experts at the South Coast Air Quality Management District established the practice of amortizing the construction emission in order to make sure such emissions were accounted for in a GHG analysis. Indeed, Table 3.1.3-3 shows that the annual average GHG emissions would only be 112 metric tons of CO_2E without amortization and is 258 metric tons of CO_2E with amortization of construction- and decommissioning-related emissions. Amortizing the construction- and decommissioning-related emissions raised the annual average GHG emissions for the Project by 146 metric tons of CO_2E. This conservative estimate of 258 metric tons of CO_2E is closer to the annual average County screening threshold of significance of 900 metric tons CO_2E than 112 metric tons, but still does not exceed the threshold; therefore, the County properly concluded that the GHG impacts are less than significant. Commenter failed to recognize the fact that DEIR states in its conclusion that "[a]nnual operation GHG

	emission under the Proposed Project, *including annualized construction emissions*, would not exceed the County of San Diego's 900 MT CO_2E screening threshold." (DEIR Section 3.1.3.5). Commenter mistakenly concluded that the only analysis and conclusion that accounted for construction-related GHG emissions was in DEIR section 3.1.3.4.1 and that the DEIR "never examines the Project's construction-related GHG emissions at a cumulative level with other projects because the County has declared that *none* of the emissions are cumulatively considerable if they are not significant on their own." That is not true. Under the County's threshold of significance, a Project's emissions would be cumulatively considerable if (1) the annual average (with construction and operational) emissions exceed 900 metric tons CO2E and (2) the project could not demonstrate a 16-percent total reduction compared to unmitigated emissions. (See DEIR 3.1.3-13 and *San Diego County Recommended Approach for Addressing Climate Change* (San Diego County, January 2015). The County lawfully uses the 900 metric ton CO2E screening threshold for significance because it is a standard backed by substantial evidence. Experts at California Air Pollution Control Officers Association (CAPCOA) determined that the state could meet its GHG reduction goals if this screening threshold is used

	because 90 percent of the development projects exceed this threshold and requiring such high GHG-emitting projects to reduce their GHG emissions would lead to the state achieving its GHG emissions targets set forth in AB 32, the Global Warming Solutions Act. (*San Diego County Recommended Approach for Addressing Climate Change* at p. 1.) In doing so California would be doing its fair share toward stabilizing climate change. In short, the air quality experts at CAPCOA provided evidence the County is entitled to use to conclude that a project with an annual average of less than 900 metric tons CO2E is not cumulatively considerable. Under CEQA, a lead agency has broad discretion to determine what methodology it will use to analyze GHG impacts. (CEQA Guidelines Section 15064.4, subd. (a)(1) [lead agencies may "select the model or methodology it considers most appropriate"]; see also *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal. App. 4th 327, 336.) Finally, nothing in the CEQA Guidelines for "Determining the Significance of Impacts from Greenhouse Gas Emissions" states that CEQA is violated if the lead agency amortizes construction related GHG emissions and combines them with the operational emissions to come up with a higher annual average GHG emissions (CEQA Guidelines 15064.4). Instead, the CEQA Guidelines require the lead agency to exercise its careful judgement and to "make a good

		faith effort, based to the extent possible on scientific and factual data, to describe, calculate, or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency shall have discretion to determine, in the context of a particular project, whether to: (1) use a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use. The lead agency has discretion to select the model or methodology it considers most appropriate provided that it supports its decision with substantial evidence….(b) A lead agency should consider the following factors, among others, when assessing the significance of impacts from greenhouse gas emissions on the environment:…(2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project….” The fact that the commenter disagrees with County’s methodology for assessing this project’s greenhouse gas impacts does invalidate the methodology that the County determined in its careful judgement was appropriate and was supported by substantial evidence from air quality experts at CAPCOA, the South Coast Air Quality Management District and Dudek.
	O3-19	This comment says the DEIR assumes the Project will “offset” fossil fuel based energy emissions and then challenges that assumption, stating it is more likely the

	Project would actually become an *additional* source of GHG emissions. The commenter mischaracterizes the information presented in the DEIR. Section 3.1.3.3.2 of the DEIR states the Project will help achieve the goal articulated in Senate Bill X1 2 of having 33 percent of retail energy come from renewable source, and in doing so, the Project could *potentially* offset GHG emissions generated by fossil fuel power plants. While this assumption is logical, the DEIR does not state or assume that the Project *will* result in displacement of an existing fossil fuel power plant. Even the Project objectives are to "[d]evelop approximately 20 megawatts (MW) of renewable energy that can operate during *on-peak* power periods to *indirectly* reduce the need to emit greenhouse gases (GHGs) caused by the generation of similar quantities of electricity from either existing *or future* non-renewable sources." and to "[p]rovide a new source of energy storage that assists the state in achieving or exceeding the energy storage target of 1.3 gigawatts of energy by 2020, consistent with the terms of Assembly Bill (AB) 2514." The commenter states the County has provided an incomplete presentation of GHG emissions impacts that preclude informed decision-making in violation of CEQA because the DEIR fails to disclose that, if approved, the Project would become merely an additional power source, facilitating additional growth

	and additional GHG emissions, not an offset to fossil-fuel based energy emissions. First, it is important to clarify that the DEIR does not rely on the ability of the Project to shut down an existing fossil fuel power plant or displace the need to meet future energy demand to justify its GHG analysis. Instead, the DEIR's GHG analysis is based on its ability to demonstrate compliance with the GHG significance threshold the County has determined is applicable to comply with CEQA. The Project's increased GHG emissions are clearly identified in Table 3.1.3-2 and Table 3.1.3-3 and are well below the County's 900 metric ton CO_2E screening threshold. Furthermore, the Project is consistent with the State's plan that 33 percent of the energy portfolio be generated by renewable energy (33 percent RPS). The DEIR discloses that the 33 percent RPS target is Measure No. E-3 of the State's Climate Change Scoping Plan. Second, the Project *indirectly* achieves these goals because solar energy is a clean source of energy generated by a renewable resource (solar rays) instead of the burning of finite fossil fuels that emit GHGs into the air. Without the development of solar and other types of renewable energy in order to meet California's energy demands, greater amounts of power would need to be produced by fossil fuel

	generation sources to meet the same demand. However, solar projects provide intermittent energy and, without additional technologies, may need to be supplemented with either base load plants or peaker power plants, some of which are fossil fuel burning plants. Opponents of large scale solar development sometimes view this as a failure to displace fossil fuel generation, but such views ignore the clean energy produced by solar development during the day. As discussed in the Climate Change Scoping Plan, "For the purpose of calculating the reduction of greenhouse gases in this Scoping Plan, ARB is counting the emission avoided by increasing the percentage of renewables in California's electricity mix from the current level of 12 percent to the 33 percent goal as shown in Table 9" Table 9 shows a 21.3 million metric ton CO2E reduction in 2020 from the state's implementation of the 33 percent RPS, which is Measure E-3. Climate Change Scoping Plan (CARB 2008) at p. 46 and Table 9. The County is entitled to rely on the air quality experts at CARB to conclude that by assisting in providing the state with renewable energy, it is helping the state achieve the 33 percent RPS, which is part of the State's strategy for reducing 21.3 million metric tons of greenhouse gases. Furthermore, in this case, the Project's ability to displace fossil fuel based system and meet future energy demand that would otherwise be met with

	fossil-fuel based generation is even greater because the Project includes an additional technology in the form of an on-site electric energy storage system. The energy storage system allows energy produced at the plant to provide energy to meet consumer demands for electrical power during the evening when the solar rays cannot generate power. Accordingly, the combined solar energy and energy storage features of the Project are expected to meet the consumer demand that would otherwise be met with a base load or peaker power plant operating on fossil fuel. DEIR 3.1.3.4.2 explains, "AB 2514 establishes the ability for the CPUC to develop energy storage and targets for that storage which would help intermittent renewable energy production facilities such as wind and solar maintain a more continual energy supply and reduce the need for peaker plants that typically use fossil fuels" This response and rationale is also supported by energy and air quality experts at the California Public Utility Commission in a 2010 white paper entitled "Electric Energy Storage: An Assessment of Potential Barriers and Opportunities," (CPUC 2010). The paper explains, In the past, planners relied chiefly upon large dispatchable fossil fuel generators to provide electric energy. The energy from these facilities was transmitted over the bulk

	transmission system and ultimately consumed by end-use customers. However, this model is changing. California's current energy policies mandate the development of new types of renewable and distributed generation resources, such as wind and solar. These resources by their nature are intermittent and cannot be directly dispatched by system operators to meet customer load. Thus, if the state wants to properly plan for these new types of resources, the historic model of electric system planning must be re-thought. Since operators of the electricity grid must constantly match electricity supply and demand, intermittent renewable resources are more challenging to incorporate into the electricity grid than traditional generation technologies. Intermittent renewable technologies cannot be scheduled to produce power in specific amounts at specific times, creating additional challenges and costs to resource procurement. Moreover, as more intermittent resources are deployed to meet increasing Renewable Portfolio Standards ("RPS") requirements, the operational challenges will become greater. Specifically, since planners cannot control when renewable generation will occur, the generation can often occur at times when there is little need for that

	power. However, a promising new set of Electric Energy Storage ("EES") technologies appear to provide an effective means for addressing the growing problem of reliance on an increasing percentage of intermittent renewable generation resources. In the past, it was difficult, if not impossible, to store large amounts of electricity. There were two main barriers: economic (too expensive) and technological (inefficient, impractical). Recent advancements have been achieved and certain storage technologies have progressed through successful pilot and demonstration phases. As such, these technologies are poised to become commercially viable. EES offers California multiple economic and environmental benefits. By utilizing EES technologies to store intermittent renewable power, the state may reduce greenhouse gas emissions from carbon-based electricity production, avoid the need to build expensive new transmission lines and power plants to meet peak energy demand, increase system reliability and generate economic activity through the manufacturing and operation of these EES technologies. (CEC White Paper at pp. 1-2.)

		Accordingly, there is substantial evidence to support the indirect role the Project plays in reducing greenhouse gases.
	O3-20	The County disagrees with the commenter's assertion that the DEIR has not discussed the growth-inducing impacts of the Proposed Project in accordance with the requirements of CEQA. The Commenter cites CEQA Guidelines section 15378 as proof, but CEQA Guidelines section 15378(a) only defines a "Project" subject to CEQA to include ones that result in "reasonably foreseeable" indirect physical changes in the environment. (See also Pub. Resources Code, § 21065; CEQA Guidelines, §15064(d)(2), 15358(a)(2).) An environmental impact that is speculative or unlikely to occur is not reasonably likely. (CEQA Guidelines, § 15064(d)(3).) Commenter seeks proof in the EIR that the Project will replace an identified fossil-fuel plant. When the Project's electricity is direct feed into the regional grid, it will assist the state in meeting its RPS target of having 33 percent of electricity sold to retail customers come from renewable sources by 2020. The commenter suggests that the Project will not displace existing or future fossil fuel sources, but instead the project must assume that retail sales of electricity will grow such that renewable sources can provide 33 percent of the marketplace by 2020. The commenter provides no evidence in support of this statement and

	because 33 percent of the energy portfolio is such a large percentage, common sense supports the contrary; that 33 percent will be achieved through displacement of non-renewable sources more than through pure growth in the electricity market. See Response to Comment O3-19 regarding the evidence for how the Project indirectly reduces GHG emissions from fossil fuel sources. In evaluating the growth-inducing impacts of a Project, it is important to understand how courts have interpreted this requirement. The CEQA Guidelines require that an EIR discuss "the ways in which" the proposed project could foster growth directly or indirectly "within the surrounding environment." 14 Cal Code Regs §15126.2(d). Under this standard, an EIR is not required to provide a detailed analysis of a project's effects on growth or discuss speculative impacts beyond the surrounding area. A general analysis is sufficient. As the court explained in *Napa Citizens for Honest Gov't v Napa County Bd. of Supervisors* (2001) 91 Cal. App. 4th 342, 369: "Nothing in the Guidelines, or in the cases, requires more than a general analysis of projected growth." The particular growth that can be attributed to a project can be difficult to predict, given the large number of variables at play, including uncertainty about the nature, extent, and location of growth and the effect of

	other contributors to growth besides the project. As a result, the court in *Napa Citizens* concluded that it would not be reasonable to require the EIR "to undertake a detailed analysis of the results of such growth." 91 Cal. App. 4th at 369. The court held that the EIR had adequately addressed growth and housing because it included data on employment expected to be generated by the project and estimated the number of new residential units that would be needed to provide housing for them. 91 Cal. App. 4th at 371. Accordingly, the DEIR's growth inducing analysis in section 1.8 and Population and Housing section 3.2.3 identifies that the Project is expected to use local workers available in the San Diego and Imperial Counties for only a construction period of less than a year and that it would not employ permanent on-site workers once it is operational. This is evidence that the Project will not create the need for new housing for project-related workers. Contrary to commenter's claim that the EIR is inadequate unless the EIR analyzes the Project's indirect impacts to both local and regional growth, an EIR is not required to forecast and mitigate development described as induced regional growth. "Neither CEQA itself, nor the cases that have interpreted it, require an EIR to anticipate and mitigate the effects of a particular project on growth in other

that the Project's electricity generation will actually replace fossil-fuel generated electricity, in violation of CEQA. DEIR S-3 (project objective stating that the Project should "reduce the need to emit [GHGs] caused by the generation of similar quantities of electricity from either existing or future non-renewable sources" but not identifying those sources that will be replaced), 1-1 (same), 1-23 (summary conclusion that Project will not induce growth), 3.1.1-17 (same), 3.1.1-22 (same), 3.1.1-29 to 3.1.1-30 (same), 3.1.3-15 (potential reduction in GHG emissions "*if* the electricity generated by the solar facility were to be used instead of electricity generated by fossil-fuel sources," emphasis added), 3.1.3-16 (same), 3.1.3-18 (same for cumulative impacts); DEIR Appendix 3.1.1-1, pp. 42, 51, 79; *Kings County*, 221 Cal.App.3d at 712.

O3-20 Cont.

The Project removes an obstacle to growth by providing a new supply of available energy to power such growth. Yet the DEIR erroneously concludes that because the Project "does not include a residential or recreational component . . . [it] would not result in a direct impact to population and housing." DEIR 3.2-1. This completely ignores the indirect impact that energy generation will have, and the DEIR fails to explain why the Project's direct feed "into the regional electricity grid," rather than to support local electricity needs, will not *indirectly* induce growth. DEIR 3.2-1 to 3.2.2. Because the Project will remove an obstacle to growth and fails to demonstrate that the Project will only *replace* non-renewable energy sources, the DEIR's conclusion that there will be no growth inducing impacts is erroneous and must be withdrawn.

O3-21

E. Fire

The DEIR fails to adequately address the Project's impacts on wildfire risk and impairment of wildfire suppression. As the DEIR states, the "Proposed Project is located in an area classified as Very High Fire Hazard Severity Zone by the California Department of Forestry and Fire Protection (CAL FIRE)." DEIR 2.4-5. The DEIR further recognizes that the Project "would result in a **potentially significant impact** regarding" both "wildfire hazards" and "emergency responses." DEIR 2.4-37 (emphasis in original). But the DEIR fails to analyze at least two critical issues related to fire impacts. First, the DEIR fails to even mention in its impacts discussion the unique dangers and difficulties that electrical fires create. Electrical fires not only pose a significantly increased hazard to firefighters, they often require additional time and coordination (e.g., with the Project's electrical operations specialists) to suppress and extinguish the fire. Second, the DEIR fails to evaluate the chronic understaffing problems at both the Jacumba and Boulevard fire stations. The insufficient staffing has caused both fire stations to "go dark" on numerous occasions over the past few years, creating dangerous gaps in firefighting services. For example, Backcountry is informed that from January to the first half of October 2013, the Boulevard Fire Station was unmanned for at least 133 days, while the Jacumba Fire Station was unmanned for 15 days. Backcountry is also informed that the Boulevard Fire Station has been unstaffed for multiple days in April and May of 2015. The County must revise the DEIR to analyze these issues.

O3-22

areas." *Napa Citizens for Honest Gov't v Napa County Bd. of Supervisors* (2001) 91 Cal. App. 4th 342, 371. Such issues are best left to the time that the resulting development is proposed. 91 Cal. App. 4th at 371, 372 n8. The CEQA Guidelines require that an EIR discuss "the ways in which" the proposed project could foster growth directly or indirectly "within the surrounding environment." 14 Cal Code Regs §15126.2(d). Consistent with this holding and text of the CEQA Guidelines, Draft EIR section 3.2.3 correctly notes that the electricity generated by the Proposed Project would be fed directly into the *regional electricity grid* and would not serve or facilitate any *growth of the local population* directly (emphasis added). Therefore, the Proposed Project would not result in a substantial population increase across the Mountain Empire Subregion or the County of San Diego that would result in people in the area being displaced or requiring additional housing. Indeed, commenter appears to assume without evidence that the project proposes to sell its power to utilities that serve San Diego's population. There is no evidence in the record that power will be sold to such utilities."

O3-21 Please refer to Response to Comment O3-20.

O3-22 The County disagrees with the comment's assertion that the two identified issues related to fire hazards associated with the Proposed Project are not

	adequately discussed in the EIR. First, Section 2.4.3.3 of the DEIR discusses the potential for fire hazards. As stated on page 2.4-25 through 2.4-28 of the DEIR, a County-approved Fire Protection Plan (FPP) (included as Appendix 2.4-2 of the DEIR), compliant with the 2014 County Consolidated Fire Code and the County Building and Electrical Code, would include customized measures specific to the Proposed Project and related electrical hazards, including response and technical training for the local fire agencies that can easily be given to new firefighters rotating between local fire stations. The DEIR explains that the inverters and solar panels have a "low likelihood of causing fires," the risk of fire during the operational phase is minimal because the facility is unmanned, the facility will not utilize flammable heating oil that older generation facilities use, the Project will implement the extensive FPP measures to minimize the risk of fire and to optimize the opportunity for successfully responding to a fire in the unlikely event that one occurs, and the Project will provide funding to supplement equipment and personnel for local fire agencies emergency health services. As discussed in Comment C1-9 and 10 above, there are adequate fire fighting forces available to serve the Project, even when the Jacumba and Boulevard fire stations are not fully staffed. Please also see response to comments C1-9, 10, and 11. Substantial evidence

II. The DEIR Fails to Analyze an Adequate Range of Alternatives.

The DEIR fails to analyze an adequate range of alternatives. To comply with CEQA, the County must consider and describe in its EIR "a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." CEQA Guidelines § 15126.6(a); *Citizens of Goleta Valley v. Board of Supervisors* ("*Goleta*") (1990) 52 Cal.3d 553, 566 (EIRs "must consider a reasonable range of alternatives to the project . . . which (1) offer substantial environmental advantages over the project proposal" and (2) may be feasibly accomplished). An alternative may "not be eliminated from consideration solely because it would impede to some extent the attainment of the project's objectives." *Habitat and Watershed Caretakers v. City of Santa Cruz* ("*HAWC*") (2013) 213 Cal.App.4th 1277, 1304. "The EIR is required to make an in-depth discussion of those alternatives identified as at least potentially feasible." *Id.* at 1303 (emphasis and quotation omitted). O3-23

The DEIR here does not satisfy CEQA's alternatives requirement. The DEIR analyzes just two alternatives (as well as the required no project alternative) in detail, both of which are very similar to the proposed Project: a slightly reduced 15 MW alternative and a "north layout" alternative, which would simply move the proposed PV generating facilities to a different spot within the same 304-acre Project area. To comply with CEQA, the County must analyze in detail – and should adopt – an onsite distributed generation alternative that would not only be feasible and meet most of the Project objectives, but would also reduce the Project's significant environmental impacts, including "impacts to aesthetics, which remain [the sole] significant and unavoidable" impacts identified in the DEIR. DEIR S-6. O3-24

Onsite distributed energy projects such as rooftop solar PV have substantial environmental, aesthetic, economic and public safety benefits over offsite solar energy facilities on large tracts of undeveloped land such as Jacumba Solar.[8] They do not mar the landscape with massive, glare-producing and unsightly PV panels, or their associated powerlines, switchyards, operations and maintenance buildings, fences and other structures. They are much less likely to ignite catastrophic wildfires. They do not destroy wildlife habitat (see Section I(B) above), and O3-25

[8] As former California Public Utilities Commission ("CPUC") Commissioner John Bohn acknowledged, "[u]nlike other generation sources, [distributed generation] projects can get built quickly and without the need for expensive new transmission lines. And . . . these projects are extremely benign from an environmental standpoint, with neither land use, water, or air emission impacts." CPUC, "CPUC Approves Edison Solar Roof Program," Press Release, June 18, 2009, available here: http://docs.cpuc.ca.gov/PUBLISHED/NEWS_RELEASE/102580.htm.

demonstrates that the Project will not result in significant fire risks and the County is entitled to rely on such evidence even if commenter prefers a different threshold or different methodology.

O3-23 The County acknowledges the commenter's citation of the CEQA guidelines and related CEQA court cases. This comment is introductory in nature to this subsection of the comment letter and responses to specific environmental issues raised regarding alternatives are discussed in responses below.

O3-24 The County disagrees with the commenter's assertion that the DEIR did not consider a reasonable range of alternatives as required under CEQA. An agency is required by CEQA to consider a "reasonable range" of alternatives to a project "which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project." (CEQA Guidelines, §15126.6(a)) An agency need not consider "every conceivable alternative to a project" and may determine how many alternatives constitute a reasonable range. *Id.*; *Citizens of Goleta Valley v. Bd. of Sup.* (1990) 52 Cal.3d 553, 566.) The law does not require consideration of a particular number of alternatives to satisfy the requirement to study a reasonable range of alternatives. CEQA vests the lead agency with significant discretion when it comes to identifying a

	reasonable range of alternatives to study in an EIR, and permits the lead agency to reject proposed alternatives from more detailed analysis provided the process used to select the alternatives is briefly discussed in the EIR and the decision is supported by evidence in the record. (Pub. Res. Code, § 15126.6(c).) An alternative may be rejected from detailed analysis in an EIR if it fails to reduce or avoid the project's significant environmental effects, does not implement the basic project objectives, is not potentially feasible, or is facially unreasonable. (Pub. Res. Code, §15126.6(c); *Tracy First v. City of Tracy*, 177 Cal.App. 4th 912; see also *Mann v. Community Redevelopment Agency* (1991) 233 Cal.App.3d 1143; *Del Mar Terrace Conservancy, Inc. v. City Council* (1991) 10 Cal.App. 4th 712.) These criteria are not exhaustive, however, and other appropriate factors may be considered as well. (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal.App.3d 274.) The Draft EIR considered a reasonable range of alternatives and the comment provides no substantial evidence to the contrary. Three alternatives were fully considered: the Reduced 15 MW Project Alternative, North Layout Project Alternative and the No Project Alternative. (DEIR, Chapter 4.) An additional 5 alternatives were considered but rejected, including distributed generation alternatives. (*Id*.) Alternative locations were also considered. Please see Chapter 4 of the Draft EIR for a detailed discussion of the Project Alternatives.

	The commenter advocates for consideration of distributed generation energy projects over the Proposed Project. DEIR, Chapter 4.0 Alternatives, sub-section 4.2 (pp. 4-4, 4-5) considered a distributed generation system as suggested by the comment, and determined not to carry it forward as part of the reasonable range of alternatives to the proposed Project because it did not achieve the Project's goals. Distributed generation involves the development of a large number of geographically distributed small solar PV systems within existing developed areas, typically on the rooftops of residential and other facilities. Distributed generation is generally available for use on-site and does not deliver electricity to the grid as a utility-scale solar facility does or contain an energy storage component. (See DEIR pages 4-4 to 4-6). An alternative may be rejected from detailed analysis in an EIR if it fails to reduce or avoid the project's significant environmental effects, does not meet most of the basic project objectives, is not potentially feasible, or is facially unreasonable. (Pub. Res. Code, Section 15126.6(a) and (c). The DEIR does not conclude that a distributed generation alternative is technically and economically infeasible overall; instead, this alternative is not practicable or feasible here and does not satisfy most of the Project objectives. The distributed generation alternative was rejected from further consideration for several reasons. As

	explained in the DEIR, even assuming there are enough additional sites (approximately 4,450 sites based on the assumption that each site would generate 4.5 kW) within the County for installation of distributed PV to accomplish the Project's objective of generating utility-scale energy, this alternative cannot feasibly accomplish most of the Project's objectives. Distributed generation systems typically do not have an energy storage component and therefore would not meet the Project objective of contributing to the state's target of procuring 1.3 GW of energy storage by the end of 2020 (DEIR pages 4-6.) See also RTC C1-11 for a discussion of the special handling required for battery storage; it would be difficult to accommodate and manage these measures, such as a separate containment facility with fire suppression back up, in a residential or commercial rooftop facility. Second, the County has no authority over the installation of distributed PV generation systems outside of its jurisdiction and therefore there is no guarantee that action by the County to approve a distributed generation alternative would support the objective of assisting the State of California to meet its RPS goals. Third, for the same reason, there is no guarantee that a distributed generation alternative would support the goal of supporting the local economy by investing in the local community, creating local construction jobs and increasing property tax revenue.

	Furthermore, rooftop systems typically consist of less efficient fixed-tilt systems that may not be oriented optimally towards the sun, meaning that developers would need to attain more surface area for the project if constructed on a rooftop instead of on the ground. The transaction costs of convincing 4,450 building owners to grant the Applicant site control over 4,450 rooftops, the complexity of mobilizing construction crews across multiple projects including the transporting and deployment of construction materials in a less efficient manner make this type of alternative infeasible to implement within a reasonable period of time. The ability to acquire access and permission to use a large number of individual properties presents difficulties with respect to the build-out of the system within a timeframe that would be similar to that of the Proposed Project. It is unrealistic to assume that the Proposed Project could acquire access rights to numerous individual properties, and timely permit and construct sufficient small-to-medium scale solar facilities capable of generating utility-scale energy, within a reasonable timeframe. (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal. App. 4th 729 [alternative may be rejected from detailed consideration if as a practical matter such alternative is unlikely to be carried out within the reasonable future]).

		Although the distributed generation alternative would result in increased generation of renewable energy sources, at present, most rooftop solar is ineligible to contribute toward RPS. Additionally, current trading mechanisms by which distributed generation facilities could contribute to the RPS target are either impractical for small-scale systems or ineligible for utility participation. While a CPUC decision was issued authorizing the use of tradable renewable energy credits (CPUC Decision 10-03-021), the market is in its infancy, with limited activity. As a consequence, the lack of a market for tradable renewable energy credits means that no agreed mechanism currently exists to allow developers to purchase or trade small-scale distributed generation that could displace the development of utility-scale solar facilities which contribute to the RPS goals. Therefore, any market and consequently any distributed generation solution as an alternative to the Project would be speculative. Each of the reasons articulated above are independently sufficient to reject the distributed generation alternative from further consideration.
	O3-25	This comment suggests that a distributed generation alternative would actually be superior to the Proposed Project in terms of environmental, aesthetic, economic and public safety benefits over the proposed Project.

Ashley Gungle
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present a much smaller threat to wildlife (see Section I(B) above). They do not waste electricity due to conductor resistance and corona discharges along lengthy transmission lines.[9] Their reliability is far greater. And they are easier to upgrade as technology improves.

O3-25 Cont.

Furthermore, increasing onsite distributed generation would meet most – at least seven out of 8 – of the Project objectives listed in the DEIR. It would, particularly with onsite solar PV, provide "renewable solar energy that can operate during on-peak power periods to indirectly reduce the need to emit greenhouse gases." DEIR 4-2 (first objective). It would "promote the diversity of energy supply, decrease dependence of the United States on foreign energy supplies and improve United States security" just as well as, if not better than, utility-scale solar electrical generation plants like the Project. *Id.* (underlying goal of second objective). It would "[b]alance the development of [renewable energy] with the protection of resources" *even better* than the proposed Project by preventing *any* impacts to the "biological and cultural resources" on the Project site or other undeveloped backcountry areas, as discussed above. *Id.* (third objective). It would "improve[] local electrical reliability for the San Diego region by providing a source of local generation" that, even better than being located near the ECO Substation "and other recent regional transmission improvements," would be located *at the sites of electricity demand themselves*. *Id.* (fourth objective). It would assist in achieving California's "GHG emissions reduction objectives" and could also help in "achieving or exceeding the state's Renewable Portfolio Standard (RPS)" both indirectly[10] and directly.[11] *Id.* (sixth objective). It would likely

O3-26

[9] The U.S. Energy Information Administration estimates that California lost nearly *18 million* kilowatt-hours of electricity in 2010, due primarily to conductor resistance, corona discharges and other transmission and distribution line losses. Energy Information Administration, January 27, 2012, *State Electricity Profiles 2010*, DOE/EIA-0348(01)/2, at p. 30, available here: http://www.eia.gov/electricity/state/pdf/sep2010.pdf.

[10] If onsite distributed generation displaces electricity that would otherwise be purchased from the grid, the amount of RPS-eligible resources that must be purchased to achieve that 33-percent-renewables goal is reduced. This indirect displacement of non-renewable energy sources by onsite distributed generation is facilitated by recent legislation (AB 327 (Perea), signed into law in October 2013), which requires that San Diego Gas & Electric Company ("SDG&E") (the likely purchaser of the Project's generated power, and owner of the ECO Substation through which that power will be transmitted) must provide net metering "until such times as the large electrical corporation reaches its net energy metering program limit [607 MW] or July 1, 2017, whichever is earlier." Pub. Util. Code § 2827(c)(4)(B).

[11] The California Energy Commission has approved as RPS eligible some renewable energy credits associated with energy from customer-side distributed generation installations. *See* CEC, April 2013, "Renewables Portfolio Standard Eligibility Guidebook," Seventh Edition

Even assuming the comment is accurate, it does not address each of the independent reasons for the infeasibility of the alternative as discussed in Response to Comment O3-24.

O3-26 This comment states that a distributed generation alternative would meet seven out of the Project's 8 objectives. The County disagrees. The County analyzed whether the distributed generation alternative would meet the objectives of the Proposed Project and contrary to the beliefs set forth by the commenter, determined that the alternative would not meet Objectives 1, 2, 4, 5, or 8. (DEIR, pp. 4.0-5 - 4.0-6.) A summary of the distributed generation's consistency with project objectives is provided below.

<u>*Objective 1*</u>: *Develop approximately 20 MW of renewable solar energy that can operate during on-peak power periods to indirectly reduce the need to emit greenhouse gasses caused by the generation of similar quantities of electricity from either existing or future non-renewable sources to meet existing and future electricity demands*. The commenter states a distributed generation alternative meets this objective because it would provide "renewable solar energy that can operate during on-peak power periods to indirectly reduce the need to emit greenhouse gasses." However, a distributed generation project could not develop approximately 20 MW of renewable solar energy

	within a reasonable period of time and therefore cannot satisfy Objective 1. See also, RTC 03-24. <u>*Objective 2*</u>: *Develop a solar energy project that can meet the criteria to achieve the maximum federal solar Investment Tax Credit which is intended to decrease the cost of renewable energy generation and delivery, promote the diversity of energy supply, decrease dependence of the United States on foreign energy supplies and improve United States security*. The commenter states a distributed generation alternative meets this objective because it would promote diversity of the energy supply. However, a distributed generation project could not develop an equitable amount of renewable solar energy within a reasonable period of time. The distributed generation would take four to five or more years to realize in terms of an applicant obtaining site control over sufficient roof space under existing programs or in terms of investigating and creating a new County-level incentive program for distributive generation, which would require time to plan, time to gather public opinion, time to find funds in the County budget for staff to run the program, time to find funds in the County budget to support the financial incentive to give future applicants, and time to plan what reductions might be needed in other existing programs to create room in the budget for the incentive program, and time to balance whether the impacts of budget reductions in those existing programs

	are less desirable than any benefit from creating a new County-level distributive solar energy generation program. In contrast, the Proposed Project could be built within 6- 7 months and use the existing, already functioning federal solar Investment Tax Credit. Thus distributed generation program could not be implemented within and reasonable period of time and would not maximize federal solar Investment Tax Credit because the maximum credit expires in 2019. Therefore, a distributed generation project fails to satisfy Objective 2. *Objective 3*: *Balance the development of the solar energy facility with the protection of resources, which may include preservation of on-site biological and cultural resources and the establishment of a wildlife movement corridor.* The County agrees that a distributed generation project would preserve biological and cultural resources and the establishment of a wildlife movement corridor. *Objective 4*: *Develop a utility-scale solar energy project that improves local electrical reliability for the San Diego region by providing a source of local generation as near as possible to the East County (ECO) Substation and other recent regional transmission improvements*. The commenter states a distributed generation alternative meets this objective because it would improve local electrical reliability by

	providing a source of local generation at the site of electricity demand. However, a distributed generation project would not be a utility-scale energy project and therefore fails to satisfy Objective 4. Objective 5: *Provide a new source of energy storage that assists the state in achieving or exceeding the energy storage target of 1.3 gigawatts of energy by 2020, consistent with the terms of Assembly Bill (AB) 2514*. The commenter concedes a distributed generation project would not satisfy this Underlying Fundamental Project Objective. Objective 6: *Assist in directly achieving or exceeding the state's Renewable Portfolio Standard (RPS) and GHG emissions reduction objectives by developing and constructing California RPS-qualified solar generation, approved under Senate Bill (SB) X1 2, which established renewable energy targets of 20 percent total electricity sold to retail customers by the end of 2013, 25 percent by the end of 2016, and 33 percent of total electricity sold to retail customers by 2020.* The commenter states a distributed generation project indirectly meets this objective through net metering, available until SDG&E reaches its net energy metering program limit (607 MW) or July 1, 2017 and directly through potential RPS credits available to some customer-side distributed generation installations. However, a distributed generation project is not a RPS qualified project under

	SB X1 2 and reliance on net-metering to *indirectly* further the State's RPS until July 1, 2017 does not meet Project Objective 6. Furthermore, as discussed in RTC O3-24, most rooftop solar is ineligible for contribution to RPS and the market for renewable energy credits is not sufficiently developed to replace utility scale project. *Objective 7*: *Site solar power plant facilities in areas within the County of San Diego (County) that have excellent solar attributes, including but not limited to high direct normal irradiance (DNI), in order to maximize productivity*. Once again, the commenter ignores the component of the objective referring to solar power plant facilities. However, the County acknowledges that distributed generation facilities can be located in areas with excellent solar attributes, but it would not be able to require that installations be located where excellent solar attributes exist. As a result, an even greater number of distributed generation systems may be required to generate 20 MW as the Project would. *Objective 8*: *Develop a utility-scale solar facility within San Diego County supporting the economy by investing in the local community, creating local construction jobs, and increasing property tax revenue*. The commenter states distributed generation can support the local economy by investing in the local community, creating local construction jobs.

	However, as noted in RTC O3-23, the County cannot assure that distributed generation jobs would be filled by the local labor force. Rooftop solar also cannot contribute to the property tax revenues because homes are not reassessed for property tax purposes after installation of solar facilities pursuant to SB 871. Additionally, a distributed generation project would not be a utility-scale solar energy project and therefore fails to satisfy Objective 8. The County's elimination of the distributed generation alternative met the requirements of CEQA: "The EIR should also identify any alternatives that were considered by the Lead Agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the Lead Agency's determination. …Among the factors that may be used to eliminate alternatives from detailed consideration are (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts." (CEQA Guidelines § 15126.6(c).) The County eliminated the distributed generation alternative from further consideration because it would not meet most of the basic project objectives, was highly speculative, the technology was not within the control of the Applicant, and was technically and commercially infeasible. (Id. at pp. 4.0-4 - 4.0-6.) Furthermore, even assuming the comment is accurate, it does not address

increase "solar power" generation "facilities" such as rooftop solar in "areas within the County . . . that have excellent solar attributes." *Id.* (seventh objective). And it would "support[] the [County's] economy" by sustaining and creating local construction-type jobs (such as rooftop solar installation).[12] *Id.* (eighth and final objective). O3-26 Cont.

Thus, instead of assuming that the County must continue to approve electrical generation projects on scenic, undeveloped and biologically rich high desert lands in East County, the DEIR should analyze ways to increase *onsite* renewable energy generation on *already disturbed* lands, such as rooftop solar PV and small-scale wind turbines. O3-27

Contrary to its narrow focus on industrial-scale energy projects, the DEIR should address the many ways in which the County can improve its current policies, regulations and incentives regarding onsite distributed energy generation. For example, the DEIR should consider alternatives such as the creation of a local rebate program for installation of onsite PV systems, such as the program developed in San Francisco by the San Francisco Public Utilities Commission.[13] The DEIR should also address whether the County could improve its current Design Standards for County Facilities and Properties (as set forth in Board Policy G-15). Those standards require, among other things, that "new buildings over 5,000 square feet" be designed "with at least 2.5 percent of the estimated annual energy consumption supplied by an onsite renewable energy system." Policy G-15 at 4. But the County could do much better – it could greatly increase the onsite renewable energy percentage requirement, as well as apply that requirement to buildings smaller than 5,000 square feet. The DEIR should address this alternative. The County could also require battery storage where feasible to complement the onsite renewable energy generation systems and improve energy balance and reliability throughout the entire day and night. The DEIR should address this as well. The DEIR should also address whether the County could retrofit its *existing* buildings with onsite renewable energy O3-28

(attached hereto as Exhibit 6), available at: http://www.energy.ca.gov/2013publications/CEC-300-2013-005/CEC-300-2013-005-ED7-CMF.pdf.

[12] Wei *et al.*, January 2010, "Putting Renewables and Energy Efficiency to Work: How Many Jobs Can the Clean Energy Industry Generate in the US?," *Energy Policy*, 38:919-931, at p. 923, Figure 1 (attached hereto as Exhibit 7; calculating that solar PV produces 0.87 job-years per Gigawatt-hour).

[13] San Francisco's program is summarized on the U.S. Department of Energy's Database of State Incentives for Renewables and Efficiency website, available here: http://programs.dsireusa.org/system/program/detail/2888. The program is described in more detail on San Francisco's own website, available here: http://sfwater.org/index.aspx?page=133.

each of the independent reasons for the infeasibility of the alternative as discussed in Response to Comment O3-24. CEQA "does not require in-depth review of alternatives which cannot be realistically considered and successfully accomplished." *Id.* at 575; *Cherry Valley Pass Acres & Neighbors v. City of Beaumont*, 190 Cal.App.4th 316, 348 ("CEQA does not require analysis of every *imaginable* alternative"; emphasis in original; internal quotation omitted). Where a lead agency has "reasonably determined" that a particular alternative "cannot achieve the project's underlying fundamental purpose," it need not study that alternative in detail. *In re Bay-Delta, etc.*, 43 Cal.4th 1143, 1165; *Cherry Valley Pass Acres & Neighbors v. City of Beaumont*, 190 Cal.App.4th 316, 348.

O3-27 This comment states the County should find ways to increase on-8site renewable energy on already disturbed lands instead of assuming that the County must continue to approve electrical generation projects on undeveloped land in East County. The County does not "assume it must approve" electrical generation projects on undeveloped land in East County. The County analyzes the environmental impacts of applications for renewable energy projects that are submitted to the County, evaluates whether alternatives are feasible, and then its elected decision-makers make a policy decision on whether or not to grant approval having fully and independently considered the evidence

		in the record. Furthermore, this comment does not address each of the independent reasons for the infeasibility of the alternative as discussed in Response to Comment O3-24.
	O3-28	The County agrees that it is within the County's purview to incentivize or otherwise provide for the expansion of distributed generation through County policies on public building design standards, and the expenditure of County funds on local solar rebate programs or public building retrofits, but in the context of analyzing the alternatives to the proposed private utility scale solar project, they are infeasible because they cannot be implemented within a reasonable period of time, which is critical to maximizing the federal solar Investment Tax Credit The County would have to create a rebate program, identify if any public funds are available, and decide what other policy priorities would have to be sacrificed to fund a rebate program. In contrast, the Applicant's Project can achieve the project goals of generating 20 MW of power after a few months of construction without the loss of County funds and by maximizing the federal solar Investment Tax Credit. Likewise, increasing the on-site distributed generation power goal for public facilities cannot be implemented within a reasonable period of time to generate 20 MW. In contrast, the applicants project can achieve the

	project goals of generating 20 MW of power after a few months of construction without the loss of County funds and by maximizing the federal solar Investment Tax Credit. Similarly, the County cannot implement a program to retrofit existing buildings with renewable energy within a reasonable period of time. The County has identified no funds for such a program. Furthermore, it would duplicate AB 758, which requires the California Energy Commission to develop and implement a comprehensive program to increase energy efficiency in existing residential and nonresidential buildings. (Pub. Resources Code, § 25943(a)(1).) The CEC is in the process of developing an Existing Building Energy Efficiency Action Plan that identifies strategies to encourage energy efficient renovations for such existing commercial, residential and publicly owned buildings. No such regulations or policies are available yet and the cost to the County and building owners is not known. In contrast, the applicant's project can achieve the project goals of generating 20 MW of power after a few months of construction without the loss of County funds and by maximizing the federal solar Investment Tax Credit. With regard to the commenter's suggestion that on site renewable energy generation systems should be required to include battery storage, it should be recognized that energy storage devices are a relatively

systems. Going even further, the County could begin replacing its roads – or at least building new roads – with solar roads that generate energy directly.[14]

O3-28 Cont.

The DEIR purports to reject without detailed analysis a "distributed generation policy" alternative because, even though it "would result in a significant net reduction in project impacts as compared to the Proposed Project, it is outside the control of, and could not be implemented by, the Project Applicant, within a reasonable period of time." DEIR 4-5. The DEIR also asserts that the "alternative would not meet the Proposed Project objectives." *Id.* Both these excuses fail.

O3-29

First, "whether the proponent can reasonably acquire, control or otherwise have access to the alternative site" is *only one* of the many "factors that may be taken into account when addressing the feasibility of alternatives." Guidelines § 15126.6(f)(1). "*No one* of these factors establishes a fixed limit on the scope of reasonable alternatives." *Id.*; *Goleta*, 52 Cal.3d at 575 n. 7 ("We emphasize that . . . site ownership [and] jurisdictional borders are simply a factor to be taken into account and *do not establish an ironclad limit* on the scope of reasonable alternatives" (emphasis added)); *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1464-1465 (need for "an act of Congress" to enable use of an alternate project site "does not necessarily render the alternative infeasible"). Where an alternative – like the distributed generation policy alternative here – can be implemented by the lead agency without either the assistance or land ownership of the project proponent, it is irrelevant to the alternative's feasibility that it "is outside the control of, and could not be implemented by, the Project Applicant." DEIR 4-5.

O3-30

Second, as discussed above, an onsite distributed generation alternative, including policies, regulations and incentives like the ones proposed above, *would* meet most of the Project objectives. The County has narrowly construed the Project objectives in violation of CEQA to eliminate alternatives that cannot be implemented by the Project applicant.

O3-31

The DEIR also asserts that a "distributed solar photovoltaic alternative" is infeasible. DEIR 4-5, 4-6. It concludes that "[g]iven recent averages for rooftop solar installations, the sheer number of new installations required to deliver up to an additional 20 MW of solar electricity by 2016 render this alternative infeasible from a practical timing perspective." DEIR 4-6. This assertion is mistaken for at least two reasons. First, there is no stated Project objective "to deliver up to an additional 20 MW of solar electricity by 2016," so failure to meet that arbitrary deadline does not make a solar PV alternative infeasible. *Id.* Second, the DEIR's claim that at least 20 MW of additional solar PV capacity is unlikely to be built by 2016 is likewise mistaken.

O3-32

[14] For an overview of this emerging technology, visit http://www.solarroadways.com/intro.shtml.

new and evolving technology that is not readily available at the retail rooftop solar scale. They often come in large, heavy containers similar to a cargo shipping container that would be quite heavy, utilitarian in design, and dangerous to put on a residential rooftop or in a residential yard. In contrast, the applicant's project proposes perimeter security fencing and room for such energy storage facilities, including for containment devices and to provide the setbacks required to minimize fire risk.

With regard to replacing County road with solar road that generate energy directly, the comment states that this is an emerging technology. The process of obtaining bonds to finance such improvements would be difficult because lenders are reluctant to invest in emerging technologies. Even if raising the funds were possible, it would take a long time to raise them, create this new and replacement road program and implement it. In contrast, the applicant's project can achieve the project goals of generating 20 MW of power after a few months of construction without the loss of County funds and by maximizing the federal solar Investment Tax Credit.

O3-29 Please refer to Responses to Comments O3-24 and O3-26.

O3-30 Please refer to Response to Comment O3-26, O3-24, and O3-28. The lack of site control was only one of

		many reasons for rejecting a distributed generation alternative. Even assuming the comment is accurate, it does not address each of the independent reasons for the infeasibility of the alternative as discussed in Response to Comment O3-24.
	O3-31	Please refer to Response to Comment O3-26. Also, the project objectives are not overly narrow to eliminate alternatives that cannot be implemented by the Project applicant. A lead agency has broad discretion to formulate project objectives. (*California Oak Found. v Regents of Univ. of Cal*. (2010) 188 CA4th 227, 276 ["CEQA does not restrict an agency's discretion to identify and pursue a particular project designed to meet a particular set of objectives"].) "Although a lead agency may not give a project's purpose an artificially narrow definition, a lead agency may structure its EIR alternatives analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal." (*In re Bay-Delta Programmatic Envt'l Impact Report Coordinated Proceedings* (2008) 43 C4th 1143, 1166.) One of the purposes of project objectives is to facilitate considerations of project alternatives that could reduce environmental impacts as compared to the proposed project. The project's objectives are not artificially narrow such that they can only be implemented by the applicant, nor do they preclude informed decision making or consideration of a reasonable range of

		project alternatives as required by CEQA. (CEQA Guidelines, § 15126.6(a).) To the contrary and consistent with the requirements of CEQA, the project objectives describe the underlying purpose of the project and aid the lead agency in developing a reasonable range of alternatives to evaluate in the EIR and thus provide more exact information to the decision-makers and public. (CEQA Guidelines, § 15124(b); *Habitat & Watershed Caretakers v City of Santa Cruz* (2013) 213 Cal.App. 4th 1277, 1300 [project objectives must "illuminate" the underlying purpose of a project rather than just describe the nature of a project.)
	O3-32	Please refer to Response to Comment O3-24 and O3-26. The Project must achieve commercial operation by 2016 in order to maximize the federal solar Investment Tax Credit as contemplated by Underlying Fundamental Project Objective number 2. Regardless, a distributed generation alternative is infeasible because it is not capable of being implemented within a reasonable period of time. The term "feasible" is defined in Public Resources Code section 21061.1 as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." While it may be the case that many property owners will install distributed generation facilities on their homes and businesses in the next couple of years,

The DEIR states that the onsite distributed solar PV systems installed in SDG&E's service territory by the end of 2013 had a 235 MW capacity. But according to SDG&E's own calculations, as of April 30, 2015, there were already 388.1 MW's worth of distributed generation projects (including primarily solar PV projects, but also some other technologies) approved for net metering interconnection.[15] That is a greater than *150 MW* increase in less than a year-and-a-half. And there is still 197.4 MW of new capacity remaining to be added by July 1, 2017 before SDG&E hits its 607-MW net metering cap. The evidence thus demonstrates that it is not only feasible, but *likely*, that more than 20 MW of solar PV or other renewable onsite distributed generation capacity will be added by 2016, especially if the County adopts an onsite distributed generation alternative. The DEIR provides no concrete evidence to the contrary.

O3-32 Cont.

In sum, onsite distributed generation is not only feasible, it is environmentally and economically preferable to offsite energy generation facilities located on scenic and environmentally sensitive land like Jacumba Solar. The DEIR should therefore analyze this feasible and less-impactful alternative fully, rather than summarily dismiss it from consideration.

O3-33

CONCLUSION

The DEIR understates and downplays the Project's significant environmental impacts, and fails to sufficiently mitigate the impacts it does identify. And, the DEIR fails to address feasible alternatives that would provide the same or greater energy benefits at far less environmental cost. The County must overhaul the DEIR and the Project to address the deficiencies identified above.

O3-34

Respectfully submitted,

Stephan C. Volker
Attorney for Backcountry Against Dumps and Donna Tisdale

[15] SDG&E, "Overview - NEM Cap: Monthly AB 327 Net Energy Metering (NEM) Program Limit Report," April 30, 2015 (website printout attached as Exhibit 8 hereto), available here: http://www.sdge.com/clean-energy/net-energy-metering/overview-nem-cap

it is still infeasible as a project alternative for the applicant or the county to obtain site control and install 20 MW worth of distributed generation within a reasonable period of time.

O3-33 Please refer to Response to Comments O3-24 to 32.

O3-34 Comment noted. This comment concludes the letter and no further response is required.

O3-35 Comment noted. This comment provides a list of attached exhibits which are references cited throughout the comment letter. Individual responses are not provided for each exhibit as they were utilized in support of the detailed comments responded to above.

List of Exhibits:

Exhibit 1. Kagen et al., *Avian Mortality at Solar Energy Facilities in Southern California: A Preliminary Analysis*, National Fish and Wildlife Forensics Laboratory

Exhibit 2. U.S. Fish and Wildlife Service Quino Checkerspot Butterfly (Euphydryas editha quino) Survey Protocol Information (Feb. 2002).

Exhibit 3. U.S. FWS, Quino Checkerspot Butterfly Survey Guidelines (Dec. 15, 2014).

Exhibit 4. Ernest et al., *Genetic population structure of Peninsular bighorn sheep (Ovis canadensis nelsoni) indicates substantial gene flow across US–Mexico border* (April 2015) 184 Biological Conservation 218–228 (abstract).

Exhibit 5. Raftery, M, Golden Eagles Spotted in Jacumba Near Proposed Energy Sites, East County Magazine (Nov. 11, 2014).

Exhibit 6. CEC, April 2013, "Renewables Portfolio Standard Eligibility Guidebook," Seventh Edition.

Exhibit 7. Wei *et al.*, January 2010, "Putting Renewables and Energy Efficiency to Work: How Many Jobs Can the Clean Energy Industry Generate in the US?," *Energy Policy*, 38:919-931.

Exhibit 8. SDG&E, "Overview - NEM Cap: Monthly AB 327 Net Energy Metering (NEM) Program Limit Report," April 30, 2015

O3-35