From:	Donna Jones
To:	Harris, Susan
Cc:	Jeffrey Osborne
Subject:	JVR Solar Farm DEIR Comment Letter
Date:	Monday, December 07, 2020 3:49:41 PM
Attachments:	HumanKindCommentLettertoDEIR.pdf

Hello Ms. Harris,
Attached please find a comment letter to the JVR Farm DEIR on behalf of We are Human Kind LLC and let me know if you have any questions.

Thank you!
Donna

Donna D. Jones
Donna Jones Law
2247 San Diego Avenue
Suite 130
San Diego CA 92110
619-786-6808 (office)
619-933-3008 (cell)
donnajoneslaw.com

DONNA JONES LAW

Phone: 619-786-6808
Mobile: 619-933-3008
donna@donnajoneslaw.com

December 7, 2020

VIA EMAIL

Ms. Susan Harris
Planning and Development Services
County of San Diego
5510 Overland Avenue, Suite 310
San Diego, CA 92123
Susan.Harris@sdcounty.ca.gov

Re: JVR Energy Park (Log No. PDS2018-MUP-18-022) SCH No. 2019039044

Dear Ms. Harris:

We submit this comment letter on behalf of our client, We Are Human Kind, LLC (Human Kind). Human Kind is the new owner of the Jacumba Hot Springs Resort, a unique destination resort with therapeutic mineral springs, a history of visits from the Hollywood elite and a serene spot for a wellness retreat. Visitors have come here for decades to find health and happiness and to partake of the desert beauty. The JVR Energy Project (Project) would change that, and the impacts from the environmental impacts the Project would cause to this community have not been adequately analyzed in this Draft Environmental Impact Report (DEIR).

The Jacumba Hot Springs Resort was founded in decades ago with the goal of being a wellness destination where one could relax, soak in the therapeutic mineral waters, and enjoy the desert environment. The entrance to the resort today is a beautiful one, of unspoiled nature. This Project would destroy the character of the Jacumba Hot Springs community, impacting the habitat and the people and wildlife that call it home, or enjoy coming to visit this unique corner of the world. They come to Jacumba Hot Springs to visit, live, and work in order to see nature, not acre upon acre of industrial solar farm. If the Project is approved, the surroundings will be forever changed from one of a desert landscape to that of an industrial one. The Project would destroy the community's rural, tranquil character and make it difficult if not impossible for guests at the Jacumba Hot Springs resort and residents of the community to enjoy the peace and tranquility they came here to experience. There are many places that a solar farm can be placed that would have less impacts on the environment and on the existing community, and there are few places it could be located that would create as much harm as the location currently proposed. It is vital to the Jacumba Hot Springs Resort's continued success that the surrounding area remains rural. The Project would change that, fundamentally altering the community character of Jacumba Hot Springs. The aesthetic impact of turning a beautiful wilderness and agricultural area into a large-scale industrial solar farm cannot be fully mitigated. This Project threatens to turn a rural community into no more than a dumping ground for energy projects. There are few areas remaining in this County that can offer this environment, and the mineral

springs that are the core of the Jacumba Hot Springs Resort cannot be moved to another location – this Project can. And, in addition to impacting the residents and the visitors to Jacumba, and placing an incompatible use on land planned for Village and a mix of residential and related uses, the Project would also make the area less enticing for wildlife, including many threatened or listed endangered species and many species of special concern. The loss of more than 600 acres of habitat and wildlife connectivity could end up driving out the wildlife that has long been part of the community's character.

The Notice of Preparation (NOP) in describing the Project said it would be seeking a General Plan Amendment and Rezone, since the Project site is currently designated and zoned for Specific Plan and Village and envisions housing and associated uses and not industrial solar farms. The DEIR's explanation that the NOP for the Proposed Project included a General Plan Amendment and a Rezone but no longer does, because no changes are being sought, does not adequately explain the situation. At a minimum the information about the County's ordinance allowing this type of project where findings can be met regardless of the General Plan designation and zoning would be helpful to walk the reader step-by-step through how this major decision was made. A General Plan Amendment and Rezone are thorough and important land use decisions that carry a substantial amount of analysis and work to complete, because of their importance. The public were led to believe that such work and analysis would be required in this case, based on the inconsistent General Plan designation and zoning and the statements made in the NOP. The DEIR is deficient in not fully explaining what has changed since the time of the NOP that allows avoidance of the General Plan Amendment and Rezone process and substitutes instead merely an MUP.

A. <u>The DEIR Fails to Adequately Explain the Project's Purpose and Need</u>

One of the project objectives is to achieve "up to 90 megawatts (MWs)." The DEIR then uses this supposed need for a minimum of 90 MWs (not "up to," as the objective actually states) to reject every alternative as being unable to achieve project objectives. But nowhere does the DEIR explain why there is a need for a 90 MW utility-scale solar farm. The DEIR in Table 1-4 shows that there are five other renewable energy developments proposed with 10 or so miles of the Project site, including Tule Wind Farm (176 MW from wind power), Rugged Solar (74 MW), Boulevard Solar (60 MW), Cameron Solar (1.7 MW), and Torrey Wind (126 MW). The DEIR should explain what the electrical generation need in the region is today, and what are the sources of power. There are essential questions that must be answered in the DEIR, without which vital information needed to determine whether this Project is appropriate in this location or needed at all, including: What are the current renewable energy production levels in San Diego County as compared to what is needed under the Regional Portfolio Standard goals set up by the State of California? How much of that already is being provided by the already existing facilities in Jacumba Hot Springs, Borrego and other parts of San Diego County? Is all the power produced in San Diego County used by local residents, or are local residents and resources bearing the environmental burden to produce electricity for residents of other counties?

B. <u>The Range of Alternatives Is Insufficient And Feasible Mitigation Measures Were Ignored</u>

CEQA makes clear that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." Cal. Pub Res. Code § 21002. The County is required by CEQA to prepare an EIR that provides the public with all feasible ways in which the significant effects of the project may be minimized and to address alternatives to the project. *See, e.g., Cal. Oak Foundation v. Regents of the University of California* (2010), 188 Cal. App. 4th 227, 260. That has not, unfortunately, occurred here. Instead, alternatives are dismissed for failure to meet an unsupported 90 MW energy generation threshold even where they meet most of the basic project objectives and lessen or avoid significant impacts. Feasible mitigation such as attractive fencing and sufficient landscaping have not been required. Adequate buffers sufficient to avoid significant impacts are rejected. All of this and more, discussed below, must be remedied and the DEIR recirculated.

C. Recirculation is Required

Recirculation of the DEIR is "required when the information added to the EIR changes the EIR in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible project alternative or mitigation measure that would clearly reduce such an effect and that the project's proponents have declined to implement." *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1120. There is significant public concern that the County conduct further analysis of reasonable and feasible alternatives, as well as additional analysis of the impacts from inconsistencies with land use policies, the failure to require reasonable and feasible mitigation measures, and more. As a result, recirculation is required. *See, e.g., Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors* (2001) 87 Cal. App. 4th 99, 130.

D. The EIR Omitted Cumulative Projects

Cumulative impacts must take into the account the various projects that have already been approved in the area. Since the General Plan does not assume much growth in the Jacumba Hot Springs area and instead focuses on land development and not energy development, the summary of plans approach is not appropriate for the analysis of many of the impact areas. Instead, the list of projects approach must be used, for example, in the cumulative aesthetics analysis. It should include a map showing all of the energy projects that currently exist in the Project area and the Jacumba Hot Springs and surrounding communities. Note that the Jacumba Solar and East County Substation should be listed in Table 1-4 as they are a past and present project in the area. These inclusions are required to ensure the public is adequately informed about the Project's potential cumulative impacts with other projects in the area.

E. Project Description

There is no substantial evidence supporting the Project's design needing to be 12 feet high, or that the solar panels need not be fully screened from view. The Project is proposing solar PV modules that, at their highest

point, would be 12 feet above the ground surface. Moreover, final elevations for the PV module arrays are to be determined during the engineering and permit process, which is a deferral. Is it possible they could be even higher? Even with 12-foot high PV modules, a seven-foot perimeter fence and landscaping could screen at most only the lower 2/3 of the units from view. That does little if anything to mitigate the impacts. If the PV modules were instead only six to eight feet above the ground, the fence and landscaping would have a chance of concealing them. The Borrego Solar Farm in San Diego County proposed to use single axis-trackers which at the *highest* point would be about 6 to 8 feet above the ground occurring during the morning and evening hours when the panels are tilted to face the rising or setting sun. Why, then, must this Project's PV module arrays be taller than those that worked for the Borrego Solar Farm? The DEIR does not explain, and it must. At a minimum, the DEIR should add an alternative that lowers the maximum height of the PV modules to a no more than seven feet, so that they could be screened from view. If the purpose of needing to go higher for the Project than works for the Borrego Solar Farm is to produce more power, then seven-foot high modules should be integrated into the DEIR's Project Alternatives chapter so the public and decision-makers can understand how much less power would be produced by the lower units.

The DEIR must also explain whether the swing gate proposed along Old Hwy 80 would include slats to conceal the interior of the site. A 24-foot driveway with security access would prevent landscape screening and offer a visual opening in the very fence that is proposed to offset visual impacts to this scenic highway. This hardly would mitigate the aesthetic impacts of the Project. Similarly, the proposed perimeter fence around the Project would not serve to mitigate the aesthetic impacts of the Project but would create impacts of its own, which the DEIR must also analyze. As described in the DEIR, the proposed fencing would resemble a fence surrounding a prison, being made of chain link with a foot of wrapped razor wire. The tan slats proposed would not conceal the PV modules and would not change the character of the fence but would merely prevent residents and visitors from viewing into the site . That may benefit the Project, but it would have no mitigating effect on the *impacts* of the Project, which is the point of the CEQA analysis, after all. The fencing facing the Jacumba Hot Springs community and along Old Highway 80 must be designed to be rural in character, to match the rural, small-town community the Project is impacting. Wooden or wood-looking fencing should be used to reinforce the rural character of the community, not further destroy its character through the use of industrial fencing.

Similarly, landscaping around the perimeter facing Jacumba Hot Springs and Old Highway 80 as proposed in the DEIR is wholly inadequate to accomplish mitigation of aesthetic impacts. At a minimum the landscaping must include mature oak trees-- which are recognized as a community resource in the Mountain Empire Subregional Plan. Putting in saplings and expecting them to grow to maturity in 10 years is unacceptable. Oaks are slow-growing trees and will not achieve a mature stature for 50+ years, long after the Project is gone. Certainly saplings would not serve the purpose of mitigating the aesthetic impacts, at least not for decades to come. The mitigation measure should require at least large 36-inch box trees along the entirety of the Project edge with to the community. Only then would the landscape help to lessen the significant impacts and to further reinforce the rural character of Jacumba Hot Springs and Old Highway 80 recognized by the County General Plan and Mountain Empire Subregional Plan. In addition, all installed landscaping must be permanently irrigated to prevent it from

dying off over time. It is unclear what if any irrigation is proposed or, for that matter, what pesticides and herbicides would be expected to be used to maintain landscaping and growth under the solar panels. That must also be addressed and added into the DEIR prior to its recirculation.

Another flaw in this section of the DEIR is its discussion of the dust control measures -- the Project Description discusses dust control measures only for construction sites. The DEIR is required to also address what would happen after construction is complete is to prevent the dust production over the long-term use of the property for solar energy. Given the heat and winds in the area, there should be regular applications of soil binding agent to maintain dust control over the useful life of the project. Otherwise, the entire community of Jacumba and its buildings will be coated in dust every time there is a Santa Ana event. And with climate change, Santa Ana events will be occurring more and more often.

The DEIR also must explain the source of the water that would be required to fill 5-10,000-gallon tanks, panel washing, landscape irrigation, etc. The DEIR recognizes that the Jacumba Hot Springs community is totally dependent on groundwater, but it is unclear if any consideration has been given not just for the existing community needs but also for the future water needs of Jacumba Hot Springs using the population forecast for the area, not just the 2010 census data. That information is essential to include.

In the Environmental Setting section, the DEIR notes that the population of Jacumba Hot Springs from 10 years ago was 561 persons, as if to imply that because there are not a lot of people in the community, it is acceptable to approve the a project such as this one, that devastates the community character and drives people out of the area. Are census data regularly cited in County EIRs and, if so, what is the purpose of that information? If the rationale for pushing unattractive projects into an area is that the population there is low, that should be noted.

Cumulative impacts must take into the account the various projects that have already been approved in the area. Since the General Plan does not assume much growth in the area and focuses on land development, not energy development, the summary of plans approach is not appropriate for the Aesthetics analysis. Instead, the list of projects approach must be used in the cumulative aesthetics analysis, including showing a map of all of the energy projects that currently exist in the project area and Jacumba Hot Springs community. Note that the Jacumba Solar and East County Substation should be listed in Table 1-4 as they are a past and present project in the area. Moreover, the aesthetics cumulative impacts discussion fails to conclude whether the Project's individual contribution is cumulatively considerable. It only identifies whether the Project, along with other projects, results in a cumulatively considerable impact. Assuming the Project's contribution is cumulatively considerable, which surely it is based on the visibility from public roads alone, the required discussion of mitigation measures is missing. This does not satisfy CEQA.

F. <u>The Aesthetics Analysis is Deficient</u>

The DEIR's aesthetics impact section finds a number of significant impacts, but rather than much in the way of facts or analysis, it instead gives the reader mostly conclusory statements. *See, e.g., Al Larson Boat Shop v. Bd. Of*

Harbor Commissioners (1993) 18 Cal. App. 4th 729, 739 ("In general '... the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions ....'"). There is not sufficient detail provided to enable the public to fully understand the Project's aesthetic impacts; rather, the analysis is based more on hopes and assumptions. For example, there is no functional landscape plan or even a list of anticipated plants to be used, other than statements such as in M-AE-5 of the landscaping mitigation to include "drought tolerant trees (approximately 18 feet tall 10 years after planting) with native and/or drought tolerant shrubs and ground covers ...." In addition to there being no specific plant list included in the DEIR, the public (and decision-makers) have no information to support the visual simulations. There is no certainty that the descriptions of the visual simulations would be what actually is built – what is the enforcement mechanism? Where is the assurance that the visual representations made in the simulations will occur?

There is no information regarding the landscaping at installation versus at maturation or how long that maturation would require. As mentioned above, oak trees grow very slowly, not maturing for 50+ years (longer than the Project lifetime) – yet there is no analysis or discussion of the aesthetic impacts that will occur during the decade or more it takes for such trees to achieve sufficient growth to accomplish any mitigation. Because the DEIR lacks sufficient details, the reader cannot have faith in the DEIR's conclusions. Absent criteria to depend upon such as a landscape plan that specifies the plant types and sizes at installation, and visuals of installation versus maturation, along with information as to how long it would take the plants to attain that mature state, the DEIR is inadequate.

As mentioned above in the Project Description section, the General Plan does not assume much growth in the Jacumba Hot Springs area other than on the Project site, and instead focuses on land development and not energy development. As a result, the summary of plans approach is not appropriate for the DEIR's Aesthetics analysis. Instead, the list of projects approach must be used in the cumulative aesthetics analysis, including showing a map of all of the energy projects that currently exist in the project area and Jacumba Hot Springs community. The DEIR must revise its cumulative analysis for Aesthetics and recirculate the DEIR with this essential information – made even more vital given the number of significant impacts the DEIR has uncovered for Aesthetics.

The County General Plan defines scenic corridors as "a freeway, highway, road or other vehicular right-of-way along a corridor with considerable natural landscape and a high aesthetic value." The DEIR states that both I-8 and Old Highway 80 are designated as County Scenic Highways within this area, and yet, the Project would be allowed to cause significant impacts to these corridors that are irreparable and unmitigated. The County admits in its General Plan that it has been unable to conduct corridor studies along the County Scenic Highway System because of lack of funding. Because the County has been unable to fund the analysis required to establish formal protection to the scenic resources that contribute to these corridors being recognized as scenic, the natural landscape and aesthetic values recognized by the County's very own General Plan would be eliminated in the name of alternative energy development. This is unacceptable.

The DEIR rationale for allowing significant and unmitigated impacts to aesthetics --that the Project would not prevent the County from designating the area as scenic in the future – is illogical. If the aesthetics of the Project

site and surrounding community are irreversibly altered by the Project, the County would then reject any consideration for identifying scenic resources in this area for protection, since the scenic value already had been damaged by this Project. Moreover, this logic does not reflect the significance determination thresholds that the County relies on for assessing impact to visual resources. Specifically, the thresholds ask if a Project would:

a. Introduce features that would detract from or contrast with the existing visual character and/or quality;
b. Remove or have a substantial adverse change of one or more features that contribute to the valued visual character or image of the neighborhood, community, or localized area;
c. Substantially obstruct, interrupt, or detract from a valued focal and/or panoramic vista; or
d. Not comply with applicable goals, policies or requirements of an applicable County Community Plan, Subregional Plan, or Historic District's Zoning.

Not being able to designate an area scenic does not fall into the County's criteria, and hence is an improper basis for use in the DEIR. If not being able to designate the Project area as scenic in the future is an impact, then the County should not approve the Project, as to do so would allow it to destroy the very resources that permitted I-8 and Old Highway 80 to be designated as scenic highways in the first place.

Moreover, introducing this solar facility adjacent to a small rural town would result in a "noticeable" change in the visual character of the community. This utility-scale solar development would permanently change the character of the local highways and envelop the entire small town on three sides with an industrial energy facility on land the General Plan anticipates becoming a Village to be developed with housing through a Specific Plan. The DEIR does not do enough to compensate for this dramatic and permanent change in the residential character of the Jacumba Hot Springs community. The mitigation measures do not provide any visual relief or restore the community character lost by the Project's approval. The buffers to the community that the DEIR proposes are too small to be effective, and address only the visibility of the internal development and not the permanent changes in community character. The DEIR has made no attempt to respect the rural character of the community by requiring incorporation of a buffer into the Project based on the Project's visibility from the community, or to require integration of the Jacumba Hot Springs community character traits, such as wooden fencing and large landscape buffers, into the project design. In fact, nothing about the landscaping and fencing reflects the community character that would be destroyed by the Project. According to the DEIR, the PV modules will be 45-60 feet from the fence line and the upper portions of the solar panels would be visible to residents in Jacumba Hot Springs as well as to travelers along local scenic highways. The DEIR must provide for mitigation or alternatives that require project site layout be redesigned and more mitigation addressing land use compatibility and visual character added before it can conclude that impacts are mitigated to the extent feasible, as required by CEQA.

Environmental context plays a key role in determining if there is an aesthetic impact. *See* 14 Cal. Code Regs §15064(b). It is clear that "[a]n activity which may not be significant in an urban area may be significant in a rural one." *Id.*; *see also Olmsted Citizens for a Better Community v. United States*, 793 F.2d 201, 206 (8th Cir. 1986) (distinguishing aesthetic impacts in a "pristine wilderness area" from those in "an urban city block".) Inconsistency with a general plan also indicates a significant aesthetic impact may exist and, as discussed below, the Project is

inconsistent with the General Plan (but is allowed with an MUP nonetheless, due to a special County ordinance), as well as being inconsistent with a number of general plan policies. *See Preserve Poway v. City of Poway* (2016) 245 Cal. App. 4th 560, 578 (projects not consistent with "*existing* zoning and all other land use regulations" are more likely to have significant aesthetic impacts). Because the Project is not consistent with the existing zoning, but rather is relying on a County ordinance that allows off-site solar facilities to be located in any zone with a Major Use Permit to permit the development, the language of is highly relevant and reinforces the findings of significant aesthetic impacts that should and could be further mitigated. Allowing the Project without requiring a rezone or General Plan amendment does not mean the Project is consistent with the underlying zoning and plan designations, only that the County has previously determined for unrelated reasons that it will allow this type of project in any zone, because of its desire to encourage such projects. That exception to the zoning that is allowed by the off-site solar ordinance does not allow the DEIR to characterize the Project as being consistent with the underlying zoning – clearly it is not. As a result, the DEIR must be revised to take the Project's stark inconsistency with the underlying zoning into account in the community character analysis section of the DEIR.

Impact to "community character" is cognizable under CEQA to the degree a project is visually out of character with the surrounding community or will otherwise physically change the community. *Preserve Poway*, 245 Cal. App 4th at 578. ("[A] social or economic change related to a physical change may be considered in determining whether the physical change is significant."); *see also* 14 Cal. Code Regs. §15382; *City of Pasadena v. State of California* (1993) 14 Cal. App. 4th 810, 829. There are numerous impacts to community character resulting from the proposed Project, as it is completely visually out of character with the surrounding community and would physically change the community. Those impacts must be analyzed and disclosed.

The Jacumba Hot Springs community prides itself on its rural character. Its residents specifically sought out this as the area in which to live because of its rural, mountain desert nature, look and feel. Yet now they are confronted with living in an industrial solar farm complex and with this and the other recent energy projects that have been sited in this area, approval of this Project will make clear that the County does not care about the Jacumba Hot Springs community as a residential area, a destination resort or as anything other than a place to put its energy projects. And for a business like Jacumba Hot Springs Resort which has no ability to be anywhere other than here is especially devastating and has not been discussed in the DEIR. A tranquil environment is essential to the current and anticipated Jacumba Hot Springs Resort experience, and that would be elusive if this Project were to move forward. No longer would guests driving to the property, or residents headed home, have the feeling of traveling down into a pristine rural area. Instead, they would be traveling alongside acres of monolithic solar panels and industrial machinery. Visual changes could also make the area less attractive to wildlife and that plus the general loss of habitat and habitat fragmentation could drive the wildlife that are an essential part of the community aesthetic out to other areas.

Although reference is made to the De Anza resort, the DEIR fails to even mention much less analyze the impacts of the Project on the Jacumba Hot Springs resort, its neighbor. It is vital to the success of Jacumba Hot Springs resort that the area surrounding the mineral springs remain rural in character, yet that would be

fundamentally changed by the proposed Project. Jacumba Hot Springs cannot simply pick up and move. The surrounding agricultural land and rural mountainous terrain are part of the resort experience and the ingrained character of this business which has been in this location for decades, not to mention its mineral springs and historic connotations. A massive solar farm is clearly out of character with the surrounding undeveloped mountainous terrain and agricultural land uses located at the Jacumba Hot Springs Resort's property, as evidenced by the number of significant unmitigated impacts the DEIR finds for this issue. More mitigation is required to address these significant impacts.

G. The Analysis of Impacts to Agriculture Are Flawed

The Project site has been used for dairy and agricultural operations for many years – at least since the 1950s. The DEIR states that it was used for agriculture from at least 1954 to sometime before 1980, and then again from at least 2002 through at least 2012. The DEIR states that the land "may" have been fallow between 1980 and 2002, although it does not provide evidence supporting that conclusion. The Project site historically was 34% Department of Conservation Farmland Mapping and Monitoring Program (FMMP) Important Farmland: 35.3 acres of Farmland of Local Importance, 275 acres of Prime Farmland, 143.4 acres of Farmland of Statewide Importance, and 4.3 acres of Unique Farmland. The DEIR states that currently, portions of the Property remain designated as Farmland of Local Importance, Farmland of Statewide Importance, Prime Farmland and Unique Farmland. Rather than giving corresponding percentages as it had in the preceding paragraph, however, the DEIR instead simply cross-references Figure 3.1.1-2, making it more difficult to make the comparison. The DEIR then states that "most" of the Project site is "Other Land," not meeting the FMMP category criteria, and that no farmland designations exist on "those" portions of the project site. Which portions? How much land does that comprise? This was farmland until at least 2012 – the DEIR needs to provide more explanation as to why this land was so "important" and "unique" but no longer is even though no development on it has occurred. Just because the land is not currently being farmed does not mean it should lose its value as farmland – after all, the DEIR in its discussion of the property's history explains that after laying fallow for what is presumed to be more than 20 years the land was farmed again, for another decade. The DEIR also fails to give adequate information on the small ranch operations that are "scattered" throughout the Project "region" –no detail is given as to the size of those operations, or where they are located. Is large is this "region" and how close is it to the Project site?

The Project site is Sunset Climate Zone 13 on the County's Area Climates and Generalized Western Plant Climate Zones ("Sunset Zones") map (County of San Diego 2006) and Zone 13 includes "the most extensive agricultural uses in the Borrego Valley." DEIR at 3.1-1-4. This is further reason why the Project site's value as agricultural land is more important that the DEIR gives it credit for. The DEIR rejects the State's California Agricultural Land Evaluation and Site Assessment Model referenced in the State CEQA Guidelines as the method for assessing the relative value of agriculture and farmland and instead uses a special County Local Agricultural Resources Assessment (LARA) Model, which takes into account factors such as climate and soil quality, surrounding land uses and slope. DEIR at 3.1.1-11. In the County's LARA model, "[a] significant impact to important agricultural resources would result if the project Site has important agricultural resources as defined by

the and the project would result in the conversion of agricultural resources that meet the soil quality criteria for Prime Farmland or Farmland of Statewide Importance, as defined by the FMMP."

Despite the fact that the Project site has for decades been in agricultural use, is in the Climate Zone that has the most extensive agricultural uses in the area, has soil that supports irrigated cropland (34.44%), produces grain, citrus, olives, truck crops and deciduous fruits (2.22%) and Reiff soils, which also support agricultural use, most of which are on flatter portions of the property, it somehow nevertheless concludes that the Project would not have a significant impact on agriculture. Under the County Guidelines, lands that would have Prime or Statewide designation and have been improved for irrigation but are now idle are considered Farmland of Local Importance. According to the DEIR, the project site has 35.3 acres of Farmland of Local Importance, 275 acres of Prime Farmland, 143.4 acres of Farmland of Statewide Importance, and 4.3 acres of Unique Farmland. DEIR at 3.1.1-3. It also notes that irrigated crop farming operations occurred on the site. DEIR at 3.1.1-4. Moreover, the DEIR points out several General Plan policies that show the goal of protecting and preserving agricultural lands, DEIR at 3.1.1-8, as well as the applicable Mountain Empire Subregional Plan that covers Jacumba and has as its agricultural goal: "[e]ncourage the expansion and continuance of agricultural uses in the subregion." DEIR at 3.1.1-10.

The overwhelming evidence supports a finding of a significant impact -- the historic use of the property for agriculture for decades, the Prime Farmland and Farmland of Statewide Importance soils, and the rankings of all the various factor. The only countervailing factor is a rezone to Specific Plan for a Specific Plan that never occurred, and thus the DEIR is able to take advantage of a factor in the LARA model that considers the project site's zoning. It is hard to understand how, despite the fact that is zoning on the property that would allow other types of uses, the DEIR could conclude that impacts to Agricultural Resources are anything other than significant and unmitigated, especially given that the current zoning has been on the property for more than 20 years and yet not one home or other type of development has been approved and instead the land has either been actively farmed or ranched or has been fallow agricultural land.

This Project would convert land with soils for Farmland of Statewide Importance and Farmland of Local Importance and Unique Farmland to non-agricultural use and would induce growth of other solar and other types of energy projects here, near the Sunrise Powerlink--further creating a fundamental change to the land uses in the area that are certain to induce conversion of agricultural land to energy-related uses and change forever the character of the community and its long history of agriculture. As a result, a significant impact from the Project is likely to occur. In addition, the DEIR in the biological resources section notes that the portion of the proposed East County MSCP on which the Project would be located is mapped in the East County MSCP as "Agriculture or Natural Upland outside Focused Conservation Area," with a small portion also mapped as "Other Pubic/Semi-Public Lands." That the MSCP maps it as agricultural should also be taken into account in the analysis of the Project's impacts to agricultural resources. See DEIR at 2.3-34.

H. The Air Quality Analysis is Flawed

The DEIR's conclusion that it does not conflict with or obstruct the implementation of the RAQS and/or applicable portions of the SIP is flawed. Its conclusion relies on the assumption that the project is consistent with the underlying zoning. It is not. The Project site is zoned for Specific Plan, the Project is not a Specific Plan. Other portions of the property are zoned for Multiple Rural Use and still other portions are zoned for various densities of residential – none of which the Project proposes. The analysis must be revised to reflect the inconsistency of the Project and the underlying zoning and note that despite the conflict with existing zoning, the Project is allowed only due to a special County ordinance that allows this type of project in any zone.

In addition the DEIR's assumption that projects that would be consistent with the underlying zoning (unlike the proposed Project) would generate 18,443 average daily trips is unrealistic and by assuming full and maximum build-out despite the record of development approvals in East County over the past decade creates an unfair comparison of an unrealistically high assumption for the underlying zoning compared to the Project. Moreover, there is an internal inconsistency in assuming build-out of the underlying zoning in one paragraph, when in the previous paragraph the DEIR concludes that the proposed Project is consistent with the underlying zoning. This is an internal inconsistency.

I. The Biological Resources Section is Inadequate Under CEQA

The Project site is located in an area of important habitat, home to protected species of wildlife and plant life, and serves as an important wildlife corridor. The Project site current serves as a stepping stone between east and west, offering drainages and ridgelines known to support wildlife movement. It includes important habitat for the many species which have been observed on-site, yet the Project threatens to fragment this important core habitat area and sever these wildlife connections.

The Project site is part of the draft East County MSCP (MSCP East). While specific features of the MSCP East have not been implemented and may not be relied upon to avoid analysis of biological impacts, development proposals should conform to the MSCP East's underlying principles. The Project site's mapping for the MSCP East suggests that the Project site has regional conservation value.

An independent science advisor's report, titled "Report of the Independent Science Advisors on the San Diego East County MSCP (NCCP/HCP)/Part I: Recommendations Following the Workshop, February 2-3, 2006/Reed F. Noss (Lead Advisor), Paul Beier, Robert Fisher, Brian Foster, Jeffrey D. Opdycke, Esther Rubin, Drew Stokes, and Kathy S. Williams (March 31, 2006) "(MSCP East Study") was prepared for the MSCP East. This MSCP East Study states: "Bats are an example of a taxonomic group that is biologically important in the County, but whose distribution and conservation status are poorly known. Hence, they are a problematic group from the standpoint of selection of species for coverage. Appendix B discusses some of the key conservation and coverage issues with respect to bats in the East County Plan Area." Speaking of bats, the MSCP East Study pointed out that there are bat roosts on public and private lands adjacent to or within property within the MSCP East Plan Area, and among the known examples of significant bat roosts occurring on public lands adjacent to (and agency/privately owned

structures within) the planning area that are currently not protected or otherwise managed for and that roosts support bat populations that have ranges at least partially encompassed by the planning area yet are vulnerable because the roosts fall outside the planning area or are in a structure owned or managed by a potentially non-participating agency (or private land holder) within the Plan Area include the Old Hwy 80 bridge in Jacumba Hot Springs.

The MSCP East Study found that there is a general lack of information about any given bat species' current population status in the MSCP East planning area, and that "[t]here have never been accurate historical estimates of abundance of any bat species in the area, and there are no current estimates. However, based on recent USGS bat surveys, it appears that the coastal form of the pallid bat (*Antrozous pallidus*) has suffered a range contraction (and probable associated population decline) in western San Diego County that is disproportional to other species, based on comparisons to survey work conducted in the 1930s and 1940s by Phillip Henry Krutzsch." This is in part because the "Pallid bats have a specialized diet [of insects] that are captured from off of the ground. ... Useful pallid bat foraging grounds in San Diego County appear to be limited to low-gradient, sparsely vegetated areas such as grasslands, oak savannahs, broad riparian terraces (both wooded and non-wooded), and open scrubby environments (e.g., coastal sage scrub)." It goes on to note that while some "human land-use activities may be compatible with pallid bat foraging needs (e.g., ranching, fallowed agricultural fields)," most are likely not. The Project proposes to change fallowed agricultural lands that are compatible with the pallid bat foraging needs into a field of solar panels, that are not. That constitutes a significant impact that was not and needs to be analyzed in this DEIR.

In addition, the MSCP East Study states that pallid bat colonies seem to prefer to roost in man-made structures, yet the proposed Project would demolish the 20 existing buildings and structures on the property which today may serve as ideal roosting locations for this species. The locations to be destroyed are described in the study as being where "activities critical to [the bats'] existence take place (resting, nursing, thermoregulating, socializing, avoiding predators, avoiding extreme weather conditions, etc.)." In addition, "pallid bats do not take well to the standard-design artificial bat houses, so most past and current bat-roost enhancement or mitigation activities have failed to properly accommodate pallid bats." M-BI-6 does not sufficiently mitigate for the impact to existing pallid bat roosting structures. The mitigation measure proposes only to limit the time period during which the 20 extant buildings and structures would be demolished so that the destruction does not occur during the general bat maternity roosting season, and to require a replacement such as a bat box from a reputable vendor. But the study for the MSCP East, as noted above, stated that pallid bats do not take well to artificial bat houses, and that is why using such boxes to mitigate for impacts caused by demolishing existing structures within a pallid bat's habitat area have failed. This is the same mitigation as proposed in the DEIR, yet the expert pallid bat studies done for the MSCP East are substantial evidence that such measures would not in fact mitigate for the impacts. The DEIR's conclusion that the mitigation would reduce to less than significant the significant long-term direct impacts to maternity bat roost sites is wrong; substantial evidence supports the conclusion that the impact would remain significant and unmitigated based on expert's studies of bat roosting behaviors. The only proven

mitigation is avoidance – leave the structures in place, and work around them. Because there is a significant unmitigated impact not disclosed in the DEIR, the DEIR must be recirculated.

The DEIR's conclusion that the permanent impacts to pallid bat would be less than significant due to the "large amount of habitat within the region" is unsupported. The experts, including in the MSCP East Study, have concluded that in fact the pallid bat "has suffered a range contraction" that is not only significant but is "disproportional to other species." This comes in part from the pallid bat's foraging, the habitat for which in San Diego County already is limited (a limitation not discussed in the DEIR). The Project would convert a habitat that is conducive to the pallid bat's survival (fallow agriculture) into one that is not. Given that the experts have concluded that the pallid bat's habitat already is in serious decline, and not the "large amount" stated in the DEIR's Table 2.3-3, that conclusion is unsupported, incorrect, and must be revised to show a significant and unmitigated impact, with recirculation therefore required. The DEIR concedes that there was a known CNDDB occurrence of the pallid bat in an area that overlapped the Project's eastern boundary, DEIR at 2.3-22, along with "records of pallid bats roosting in a bridge in Jacumba in 2014." *Id.* It also notes that the species "has a high potential to occur" on the Project site, but then does an inadequate job of accurately describing the impacts this Project would cause to the pallid bat, both due to removal of its habitat and removal of its favored roosting spots.

Under the East County MSCP Planning Agreement, projects proposed in the MSCP East, like the proposed Project, must comply with the goals and interim process outlined in the Planning Agreement even though the MSCP East has not yet been approved. The Interim guidelines state that where, as here, a Project would impact "proposed Covered Species or their habitat based on current biological surveys, the NCCP/4(d) findings shall be considered and preserve design principles shall be applied to the project...". Those principles include many regarding on-site open space being used as mitigation, as is proposed to occur here. First, the on-site open space must provide a long-term biological benefit, must protect habitat of equal or greater value as that being impacted, should contribute to regional conservation efforts, should not reduce the biological diversity found on the site, should maintain habitat connectivity between areas of high-quality habitat, and should minimize edge effects and habitat fragmentation by, among other things, establishing buffers, providing fencing and/or permanent signs, and limiting trails and/or lighting. *See* Planning Agreement, Exhibit B. The Project proposes as its biological impact mitigation, M-BI-3, to provide an on-site biological open space easement on "*up to* 435.00 acres." DEIR at 2.3-103. What is the actual amount of acreage that will be included in that open space easement? In addition, the open space easement being used as the primary mitigation states that a "50 to 100 foot opening" be included in the perimeter fence to allow for wildlife movement, but there is no evidence that 50 feet of opening would suffice. Moreover, the fact that what is now open would with mitigation have an opening of only 50 (or up to 100 feet) is not sufficient to guarantee the connectivity will be maintained. In addition, there is no explanation for why the flexibility to have a minimum 50-foot opening rather than requiring a 100-foot opening has been allowed. Given that the opening is allowed to be as small as 50 feet, then the DEIR should assume that is the width of the one opening required. This is far short of what is required to assure that connectivity will be maintained. Thus, the Project would be inconsistent with the Planning Agreement because it would fragment the existing open space into something less than half the existing size, creating a barrier with only a 50-foot opening in the fence.

In addition, while the DEIR discusses the preservation of east-west connectivity, it fails to adequately identify and mitigate for impacts to north-south connectivity. The DEIR also ignores corridor redundancy, which is especially important for large predators. Increasing energy projects in this area increase the importance of maintaining connectivity across the Project site, as does the focus on completing the Border Fence, which would cut off the small existing connectivity for wildlife that exists today.

The surveys are also unreliable as they were conducted in 2018, a serious drought year. According to the California-Nevada Climate Applications Program, "Water year 2018 (covering October 2017 through September 2018) was drier than normal almost all the California and Nevada region ... [m]uch of the southern region in CA and NV received less than 50% of average precipitation. Such low values are typically seen in Southern California less than 1 year in 20. Several stations had extreme dryness comparable to the lowest seen in the observed record, including Miramar, Julian, San Gabriel, La Crescenta, and Santa Ana..." Surveys conducted in such a record drought year result in undercounting of species and therefore additional surveys should be performed for all protected species and habitat that could occur in and around the Project site.

Regarding wildlife corridors and connectivity, the MSCP East Study states: "we expect that the East County contains no more than a dozen potential linkage areas relevant to this Plan. One obviously important area for connectivity is along the US-Mexico border, where at least two north-south corridors will probably be needed: one for desert species in the eastern planning area, and one for chaparral-semidesert species in the Campo area. Additionally, there are at least four watershed connections between Tecate and the Imperial County line that need to be maintained between the US and Mexico to maintain hydrological functioning and habitat quality for potential covered species. Development of border fences and other features might impact these processes." This project would add to that cumulative impact to wildlife corridors, along with from projects such as the Sunrise Power Link transmissions line, the Jacumba substation, the international border project, and more.

J. <u>The DEIR's Cultural Resources Is Inadequate</u>

The Cultural Resources discussion in the DEIR states that the Project area "supports a *limited* range of habitats and biological communities," yet the Biological Resources discussion demonstrates that is not the case. In fact, there are a variety of habitats on this site, along with a wide range of biological communities. The DEIR's mischaracterization of the environment, habitat and biological communities in the Cultural Resources section must be revised. This same discussion then states which animals "may" be common in the area – but the animals that are and may inhabit or forage or otherwise use the Project site and surrounding area are already discussed in the Biological Resources section, and should be more accurately described in the Cultural Resources section as well, rather than having a reader interested in only the cultural resources section forced to guess as to what animals "may" be common or know to be present in the area.

The Kwaaymii Laguna Band of Mission Indians have stated that Jacumba Hot Springs is a sacred area for the tribe. There were 37 archaeological sites and 26 archaeological isolates surveyed and evaluated, and the DEIR states that the Project would "avoid sensitive cultural resources or significant portions of resources." What are

the impacts that will occur to those sites in which Dudek states that "significant" portions will be avoided? How much of those sites will be impacted by the Project?

The demolition of all 20 of the Mountain Meadow Dairy and Creamery complex structures is inconsistent with General Plan **Goal COS-8: Protection and Conservation of the Historical Built Environment**, because it is inconsistent with General Plan **Policy COS-8.1: Preservation and Adaptive Reuse**, which encourages the preservation and/or adaptive reuse of historic sites, structures and landscapes. These buildings represent an important part of the history of Jacumba Hot Springs as a farming community. Moreover, the dairy facility was one of the only large dairy product organizations in San Diego's southwest region that both produced and distributed its own milk. Yet the DEIR dismisses this, simply because it found "no indication that this had a large-scale effect on the broad patterns of history." It is unclear how much research and effort were put into determining the dairy's impacts but holding it to a standard of being important and historic only if it had a "large scale" on the "broad patterns" of history is too strict a test. In the context of Jacumba Hot Springs, this dairy was well-known and as one of the only large dairy product organizations of its kind, well qualifies as an historic resource. Not only that, but the Mountain Meadow Dairy and Creamery invented a more a sanitary milk bottle top in 1933, and the invention might well have occurred in the very buildings to be demolished by the Project. Moreover, the buildings and overall dairy embody the distinctive characteristics of a type and period in the area's history.

K. Hazards and Hazardous Materials

a. The Jacumba Airport's Use Primarily For Gliders Presents Hazards Not Typically Addressed by the FAA and Not Adequately Mitigated In the DEIR

Most of the Project site is within the Jacumba Airport AIA, and a portion of the Project site is within Review Area 1 is within safety Zones 2, 4 and 5. The DEIR notes that the Jacumba Airport is mainly used as a glider facility by single-engine aircraft and sailplanes yet analyzes it for purposes of hazards as if it were a typical fixed-wing airport. For example, the DEIR states that potential glare visible from the proposed Project would be limited to the Jacumba Airport Runway 7 approach during the afternoon in the winter for less than one hour per day, but the DEIR's analysis is limited to the approaches used by fixed-wing aircraft, and not the various approaches and landings used by gliders. Because of its primary use being for gliders, the DEIR's reliance on the Federal Aviation Administration ("FAA") report titled Technical Guidelines for Evaluating Selected Solar Technologies on Airports (FAA Solar Guide) is flawed. The FAA and its guidelines are largely concerned with fixed-wing aircraft and the DEIR's analysis of the flight path that would be used by such airplanes is wholly inadequate to address or analyze the impacts that would be caused from the Project to the sailplanes and gliders that are the primary users of the facility. Policy S-15.3 Hazardous Obstructions within Airport Approach and Departure from the County's General Plan touches on the issue, by referencing not only airport approach and departure areas but also "known flight patterns" in its policy of restricting development of potentially hazardous obstructions or other hazards to flight

within the airport approach and departure area. This Project is an obstruction within the Jacumba Airport's approach and departure area, along known flight patterns typically used by gliders.

Solar farms are not addressed in the Table JAC-2, which compares the land use to the Safety Zone to determine if the use is incompatible, conditional or compatible with the airport use. The DEIR therefore resorts to comparing the fields of solar arrays to a cell phone tower or wind turbines. Those are not comparable. There is significant space between cell phone towers, and wind turbines. In contrast, the solar panels essentially fill the area, with little space between. Moreover, there is no glare resulting from a cell phone tower or a wind turbine, whereas solar panels do create glare. The comparison relied upon by the DEIR is therefore flawed. In calculating the lot coverage, the DEIR uses a County definition that was not designed for a solar panel type of development, and then bases its analysis on the County's belief that 8.45 to 15.21 acres are covered in Zone 2. On what is the County basing its belief? The DEIR does not disclose that important piece of information. If lot coverage were measured by grouping the solar panels together it would greatly exceed the allowed 50% of lot coverage; by using the definition that may or may not fit the situation, and based on a belief the support for which is not provided, it manages to squeak out a coverage of "between 25% and 50%" which is at the upper limit of what is allowed.

Another safety hazard that may work for a typical development but does not for a solar farm development is the requirement that a project site of 10 or more acres must provide at least one area of open land (0.5 acres) per 10 acres, to allow light aircraft to have controlled emergency landings. A fixed-wing airplane flown by a competent pilot may be able to steer his or her aircraft to that 0.5 acre of open land located between development, but a glider has much more difficulty in fine-tuning their landing and does not have a fixed flight path. No analysis is provided in the DEIR as to how the open space should be adjusted to address the fact that the primary traffic at the Jacumba Airport is from gliders; that information must be added, and the DEIR recirculated with the added discussion and analysis.

In addition, local terrain can have a considerable effect on the wind that is the driver of gliders. Wind blowing over and around obstacles can be gusty and chaotic, creating emergency situations. Adding rows and rows of solar arrays, otherwise known as obstacles, may create havoc with the winds in the area and have a significant impact on the glider operations at the airport.

As the DEIR notes, the Project has the potential to be considered an "Other Flight Hazard" due to the potential for glare and glint from the PV panels and its proximity to the airport. The Solar Guide the FAA has published notes that glare and glint are not the only potential issues; solar energy also introduces issues like communication systems interference. The Solar Guide points out that potential glare and glint caused by parabolic troughs and heliostats might cause temporary loss of vision to pilots on arrival or departure. In addition, it notes that Electromagnetic interference with on- and off-airport radar systems that may pick up a false signal from the metal components of the mirrors with impacts that can vary based on solar tracking activity, and thermal plumes emitted by the power tower that produce unexpected upward moving air columns into navigable air space.\

The amount of light reflected off a solar panel surface depends on the amount of sunlight hitting the surface, its surface reflectivity, geographic location, time of year, cloud cover, and solar panel orientation. As illustrated on Figure 16, flat, smooth surfaces reflect a more concentrated amount of sunlight back to the receiver, which is referred to as specular reflection. The more a surface is polished, the more it shines. According to the FAA Solar Guide, although solar PV and SHW panels are constructed of dark, light-absorbing materials and covered with an anti- reflective coating designed to maximize absorption and minimize reflection, their glass surfaces also reflect sunlight to varying degrees throughout the day and year. "The amount of reflected sunlight is based on the incidence angle of the sun relative to the light-sensitive receptor (e.g., a pilot ...). The amount of reflection increases with lower incidence angles. In some situations, 100% of the sun's energy can be reflected from solar PV and SHW panels. Because solar energy systems introduce new visual surfaces to an airport setting where reflectivity could result in glare that can cause flash blindness to those that require clear, unobstructed vision, project proponents should evaluate reflectivity during project siting and design." FAA Solar Guide at 39. Yet despite that recommendation, the analysis of glare and glint is postponed until after Project approval, through a noticing potentially not begun until 45 days prior to actual construction. That is too late. Rather than discussing this impact and finding it significant and exploring mitigation, however, the DEIR improperly defers analysis by punting to a requirement that the Project "notify" the FAA of its proposed construction at least 45 days prior to the start to minimize adverse impacts to aviation safety. That analysis should take place now, with a discussion of if the panels will cause glare or glint that may impact the gliders using the airport (as well as the other planes that may use it), not at some time after project approval and before construction. At that point, there is a limit to what can be done if plans are already approved for the solar farm and yet there is no realistic mitigation or solution for the glare and glint that is almost certain to be caused.

b. Chemical Use

The DEIR states that silicone in "some" panels "may" be infused with "trace" amounts of chemicals "such as" boron or phosphorous. But it concludes with no analysis or evidence that "the small amounts of these chemicals would not pose a hazard" if released on panel failure. That is insufficient. How many of the panels include the silicone, and why would some panels contain it and others not? How much is considered a "trace"? How does the public know if the panels are infused with this silicone or not? What are the chemicals that may be released? Boron? Phosphorous? Something else? On what basis does the DEIR conclude that this possible release would not pose a hazard? What types of events cause panel failure – fire, earthquake, normal wear and tear, something else? There are too many unknown in this one conclusory statement, leaving readers without confidence and assurance that all will be safe.

In addition, the DEIR does not adequately address the chemical herbicide use that would be necessitated to remove vegetation from around the foundation of the towers and the base of the solar panels. This application of herbicides may increase the potential for groundwater contamination and the soils containing the pesticides and herbicides will be blown in the direction of the town and its residents during Santa Ana events, which occur every year and, due to Climate Change, are occurring more frequently.

c. Decommissioning Hazards

The DEIR is vague when discussing recycling or reclamation upon decommissioning. It states that "most" of the components "could be recycled or reclaimed," but does not specify how many or which cannot, or if there is to be a requirement that those that can be recycled and reclaimed will be, only that it is possible to do so. There is no discussion of how any hazardous components of the PV panels would be properly disposed, and there needs to be.

L. Significant Irreversible Environmental Changes

The DEIR's discussion of Significant Irreversible Environmental Impacts fails to note that the Project would cut off significant biological corridors and thereby render species movement impossible or at least much more difficult in the region. It ignores the corridor redundancy that is important for larger mammals. Moreover, it fails to analyze the impacts that would result from opening up the Project site for development as an industrial solar farm – it would open up the entire rural back country even more than has already been done, making it a haven for energy projects and a place to avoid for everyone else. This Project, and the projects it will induce to come to the area, will fundamentally change the nature of this area much more than 35 years – it will be changed forever.

M. Hydrology and Water Quality

a. The Project area is Groundwater Dependent.

Water service in the Project area is exclusively groundwater wells, and groundwater is the primary source of water supply for all land uses in the Project area, with most residences relying on Jacumba Community Services District (JCSD) groundwater wells for their source of water. In listing the uses in the Project area that rely upon the JCSD, the DEIR omits entirely the Jacumba Hot Springs Resort, which is also dependent for the water that serves its resort and its visitors on JCSD groundwater. No groundwater management agency oversees groundwater management in the Jacumba Valley Groundwater Basin upon which Jacumba Hot Springs Resort, the Jacumba residents, other Jacumba businesses and, if approved, this Project, rely.

The DEIR ignores significance thresholds related to groundwater overdraft conditions and finds them inapplicable because the Jacumba Valley Groundwater Basin "has not been demonstrated to be in overdraft condition." It is unclear what "has not been demonstrated" means – is it just that the Basin has been studied and found not to be in overdraft, or is the condition unknown but no overdraft is therefore simply assumed? Even if the basin is not currently in overdraft, the DEIR must analyze and confirm that the Project would not send the basin into overdraft, given that the JCSD relies solely on groundwater as its source of water supply and must supply the entire community of more than 239 homes and commercial properties.

Desert basin wells such as this one in Jacumba Hot Springs may be capable of yielding in excess of 1,000 gpm, and recharge rates can be extremely low, making it is easy to pump more water from the basin than is naturally recharged. Excessive pumping that exceeds the rate of recharge results in a groundwater overdraft situation, which is not sustainable for long-term groundwater use. This is what occurred in Borrego Valley and could happen in Jacumba Hot Springs if users are not careful.

In addition, the DEIR does not discuss the impacts of climate change on rainfall – already below 10 inches per year. It is likely that climate change will cause more years of drought, and more severe drought, meaning less recharge. That aspect needs to be discussed in the DEIR as well.

b. The Solar Panels Are Impervious Surfaces

In section 2.7.4.1 the DEIR discusses impervious areas created by the Project, but improperly limits the new impervious surfaces associated with the Project to approximately 1.9 acres, counting only the proposed tracker pile areas, skid platforms, battery energy storage areas and substation and switchyard pads but failing to take into account the acres and acres of solar panels themselves. Far from being less than two acres, the impervious surfaces would be more than 600 acres with the Project. This is a significantly larger impervious area than is analyzed in the DEIR, and likely would result in an increase in stormwater runoff when compared to existing conditions (open space and fallow agriculture) dur to the introduction of more than 600 acres of impervious surfaces within the Project site. As a result, the DEIR is deficient. The analysis must be added to the DEIR and the document recirculated to determine the impacts from this significant increase in impervious surfaces as well as the erosion that may be caused by the rain being diverted by the panels and falling from the edge of each panel.

According to the expert engineers specializing in this area at the consulting firm of Kennedy Jenks, stormwater runoff from solar PV facilities is generated primarily from rain that falls on access roads, inverter pads, *and solar PV panels themselves*. Water that falls on solar PV panels runs down the panel to the dripline, and eventually falls to the underlying surface, potentially causing localized erosion and/or scour. The primary factors that influence the potential for erosion and/or scour are shown on Figure 1. Some of the water falling on solar PV panels will infiltrate and some may run-off downslope and eventually to a collection basin or off site. They site to a 2011 study published by the American Society of Civil Engineers that if the ground cover under solar PV panels is gravel or bare ground, resulting from design decisions or lack of maintenance, the peak discharge may increase significantly. In addition, the study found that the kinetic energy of the sheet flow from the panels was greater than that of the rainfall, which could cause erosion at the base of the panels. Elevated ground-mount solar PV arrays have the potential to alter the volume, velocity, and discharge pattern of stormwater runoff at a site during and after construction. According to State of Minnesota Stormwater Manual, sites can expect a 15 – 50% increase in volume due to the installation of solar PV panels. Additionally, a solar PV development site stripped of vegetation may result in erosive stormwater flows. All of this must be taken into account, analyzed, and the impacts determined and mitigated and added to the discussion in the DEIR.

Additionally, no flood hazard analysis has been conducted by FEMA for the Project site, so no federally established flood risk has been determined. The perimeter fencing was determined to be the only Project element that may alter drainage patterns or block or redirect flood flows, but the location of the opening in the fencing for the wildlife crossing is not addressed. Will that opening be in a location that could impact the way in which the fencing potentially blocks or diverts flows? The DEIR should disclose and discuss.

c. Deferral of Mitigation

The DEIR defers actual mitigation measures to development of a Storm Water Pollution Prevention Plan (SWPPP), to be developed as part of the grading permit for the Project. The DEIR should find the impacts from the increased storm water flows will be significant and then disclose the mitigation measures proposed to address the significant impact, so that the Project conditions will be enforceable as Project requirements and not rely on a "trust me" approach not permitted under CEQA. Because specific storm water mitigation measures have not been provided in the DEIR, it is impossible to determine the adequacy of those mitigation measures to control pollutants leaving the site, including the pesticides that will be used in the ongoing vegetation management as well as materials that will be in use during construction and decommissioning.

N. The Land Use Section Ignores The Project's Inconsistencies With Many General Plan and Subregional Plan Goals and Policies, and the Impacts That Derive From Those Inconsistencies.

The DEIR's analysis of the Project's compliance with the Guiding Principles of the General Plan is conclusory without providing substantial evidence upon which to base those conclusions. In addition, in many cases its conclusions are wrong. Far from being consistent with many of the policies listed in the DEIR, the Project is inconsistent with many of those County General Plan policies. The following policies noted in the Land Use chapter of the DEIR represent the most egregious conflicts that should prevent the County from being able to approve and make findings for a Major Use Permit:

a. **Policy LU-1.9 Achievement of Planned Densities.** Recognizing that the General Plan was created with the concept that subdivisions will be able to achieve densities shown on the Land Use Map, planned densities are intended to be achieved through the subdivision process except in cases where regulations or site-specific characteristics render such densities infeasible.

The inconsistency between the Project, which would not allow any development of any of the residential density planned for the site, and LU-1.9, which states that the County plans that planned densities are intended to be achieved, must be discussed in the DEIR and the DEIR recirculated to include that discussion and any significant impacts that may result.

b. **Policy LU-2.6: Development near Neighboring Jurisdictions.** Require that development in the proximity of neighboring jurisdictions retain the character of the unincorporated community and use buffers or other techniques where development in the neighboring jurisdiction is incompatible.

The Project is inconsistent with County policy LU-2.6. Inadequate buffers have been proposed for the Project. A 75-foot buffer between a utility-scale energy development and a small rural community is insulting and offensive and a wholly inadequate effort to mitigate for a significant impact. Even the 300-foot buffer contained in the Community Buffer Alternative does not substantially reduce or eliminate impacts to visual character or human health as admitted in the DEIR. As mentioned in the discussion of the inadequacy of the DEIR's alternatives section, an alternative that substantially reduces or eliminates the significant impacts to aesthetics is required.

To comply with County policy LU-2.6, a much greater buffer must be integrated into the Project design -- one that is based on science and not arbitrary distances that suit the ambitious objectives of the applicant and are ineffective at reducing the Project's impacts. A buffer that takes into account the visibility of the project, as depicted in Figure 2.1-7, must be incorporated into the project. The buffer would avoid all areas identified as "visible as modelled." Only then is the buffer based in science and not based on an arbitrary definition by the applicant. Also, the Project's edge design must reflect and reinforce the rural character of the community that is being destroyed by this Project. Suggestions on fencing and landscape design are provided above under Aesthetics and must be made conditions of project approval.

b. **Policy LU-2.8: Mitigation of Development Impacts**. Require measures that minimize significant impacts to surrounding areas from uses or operations that cause excessive noise, vibrations, dust, odor, aesthetic impairment and/or are detrimental to human health and safety.

The Project is inconsistent with County policy LU-2.8. The project features and mitigation identified in the DEIR that address dust, aesthetics and human health and safety do not reduce the Project impacts to less than significant levels. There are 11 significant and unavoidable impacts to aesthetics alone and the mitigation only addresses the visibility of the internal structures and not the loss of rural character that will prevail upon Project implementation. More must be required by the County to redesign and mitigate the impacts of this industrial-scale energy development which will wrap around the Jacumba Hot Springs community, ruin its rural character and overpower its residents.

c. **Policy LU-4.6: Planning for Adequate Energy Facilities**. Participate in the planning of regional energy infrastructure with applicable utility providers to ensure plans are consistent with the County's General Plan and Community Plans and minimize adverse impacts to the unincorporated County.

The Project is inconsistent with County policy LU-4.6. Nothing about this Project minimizes adverse impacts to the Jacumba Hot Springs community and therefore the project is not consistent with the County General Plan and the Mountain Empire Subregional Plan. There are no buffers and no consideration for the rural character that both of these plans recognize as an asset of the Jacumba Hot Springs community. The DEIR is using the fact that the area is already degraded by energy development and infrastructure to justify the various impacts of this Project on the Jacumba Hot Springs community. Planning for energy development is one thing but not to the detriment of County residents and resources.

d. **Policy LU-5.3: Rural Land Preservation.** Ensure the preservation of existing open space and rural areas (e.g., forested areas, agricultural lands, wildlife habitat and corridors, wetlands, watersheds, and groundwater recharge areas) when permitting development under the Rural and Semi-Rural Land Use Designations.

e. **Policy LU-10.2: Development—Environmental Resource Relationship.** Require development in Semi-Rural and Rural areas to respect and conserve the unique natural features, and rural character, and avoid sensitive or intact environmental resources and hazard areas.

The Project is inconsistent with County policies LU-5.3 and LU-10.2. A portion of the site is designated for General Rural use. The Project does not preserve the area in open space, nor respect or conserve the natural features or character of the area.

f. **Policy COS-10.1: Siting of Development.** Encourage the conservation (i.e., protection from incompatible land uses) of areas designated as having substantial potential for mineral extraction. Discourage development that would substantially preclude the future development of mining facilities in these areas. Design development or uses to minimize the potential conflict with existing or potential future mining facilities. For purposes of this policy, incompatible land uses are defined by SMARA Section 3675.

The Project is inconsistent with County policy COS-10.1. Development of the Project would result in a permanent loss of over $12,500,000 of mineral resources value. The design of the Project does nothing to offset or mitigate for this impact.

g. **Policy COS-11.1: Protection of Scenic Resources.** Require the protection of scenic highways, corridors, regionally significant scenic vistas, and natural features, including prominent ridgelines, dominant landforms, reservoirs, and scenic landscapes.

The Project is inconsistent with County policy COS-11.1. As noted in the DEIR, the Project will cause irreparable loss and damage to the scenic resources visible from County-designated scenic corridors along I-8 and Old Highway 80. In particular, the scenic landscapes visible from these corridors would never be the same and the mitigating measures are wholeheartedly inadequate at reducing the impacts to the extent feasible. It should be County's responsibility to protect the very resources that policies are intended to preserve, and the DEIR should recognize this as a significant impact and look for mitigation to lessen or avoid that impact.

h. **Policy COS-11.3: Development Siting and Design**. Require development within visually sensitive areas to minimize visual impacts and to preserve unique or special visual features, particularly in rural areas, through the following:

- Creative site planning
- Integration of natural features into the project
- Appropriate scale, materials, and design to complement the surrounding natural landscape
- Minimal disturbance of topography
- Clustering of development so as to preserve a balance of open space vistas, natural features and community character

- Creation of contiguous open space networks.

The Project is inconsistent with County policy COS-11.3. There has been no attempt in the DEIR to require the Project to conform with any of the siting and design elements that are outlined in this policy. Instead, the entire Project site is simply covered in linear modules and roads all the way up to the edges of the property where the industrial energy development will be within 75 feet of rural Jacumba Hot Springs. In no way does the Project design or its feeble attempt at painting its visibility away through mitigation take into account any of the visual character or unique visual features of the rural community it will destroy. Scientifically based buffers, alternative design features, and operational changes must be made to the Project in order to conform with this policy and not result in impacts to the environment. The Project would be a very unattractive vista of row upon row of solar panels, with other associated energy-related equipment scattered about.

The DEIR attempts to justify its finding of consistency by asserting that even through Old Highway 80 from the Central Mountain Subregion to Interstate 8 is designated a scenic corridor, and the solar facility would be visible from portions of I-8 and Old Highway 80, and even though the Project would substantially alter the existing quality of the views and would reduce existing visual quality, there is no inconsistency because the Project site and its surroundings have not been designated officially as having "significant" scenic value. The Policy COS-11.1 does not state that it is intended to apply only if a scenic vista or highway or corridor has been officially designated as having a "significant" scenic value. Moreover, the policy also addresses impacts to things such as "scenic landscapes," such as the existing Project site. Moreover, the minimal and unattractive fencing and the minimal landscaping proposed as part of the Project would do little to hide the unattractiveness of the Project, which would stick out like the proverbial sore thumb. The solar panels, at least as currently envisioned and proposed to be mitigated, would not be screened from view.

i. **Policy COS-18.1: Alternate Energy Systems Design**. Work with San Diego Gas and Electric and non-utility developers to facilitate the development of alternative energy systems that are located and designed to maintain the character of their setting.

The Project is inconsistent with County policy COS-18.1. As presented in the DEIR, the industrial-scale energy development has put no effort into maintaining the character of the Jacumba Hot Springs community. A redesign of the Project that reflects the intent of this policy must be integrated into the DEIR.

j. **Policy COS-18.3: Alternate Energy Systems Impacts.** Require alternative energy system operators to properly design and maintain these systems to minimize adverse impacts to the environment.

The Project is inconsistent with County policy COS-18.3. The DEIR identifies 11 separate impacts to aesthetics alone, all of which are left unmitigated. The mitigation that is proposed does not address the changes in rural character that are unsurmountable given the current project design. The DEIR should be revised to incorporate a new design that takes into consideration the impacts it would not on the community of Jacumba Hot Springs and users of I-8 and Old Highway 80 and integrate all mitigation to the extent feasible, as required by CEQA.

In addition, the Project is inconsistent with the Scenic Highways goal of the Mountain Empire Subregional Plan, which protects the scenic resources of the community. Complete disregard for this policy should not be permitted by the County and the DEIR must be revised to incorporate the buffers, fencing and landscape treatments needed to demonstrate compliance with this County policy.

Based on the stated significance determination threshold of *causing a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect*, the Project cannot be approved as proposed. Contrary to the conclusions reached in the DEIR, there are significant and unavoidable impacts to land use policy based on the inconsistencies and conflicts raised in the above comments and the physical impacts to the environment caused by those inconsistencies that must be addressed in the DEIR. It is both misleading and incorrect for the DEIR to state that the Project is consistent with County policies that the Project so egregiously does not conform with. As an information document, the DEIR does a disservice to those who read it and to the County decision-makers who intend to use it to inform their MUP process. Downplaying these conflicts with land use policy sweeps under the rug the Project's physical impacts to the rural character of the County residents in Jacumba Hot Springs.

The DEIR also is inconsistent with General Plan **Guiding Principle 1: Support a Reasonable Share of Projected Regional Population Growth.** In contrast to that guiding principle, the Project would take away the housing planned for the area. What does this do to the County's ability to meet its Regional Housing Needs Assessment (RHNA)? The County's Housing Element designates the Project site as Village, and it is currently zoned to provide housing opportunities. Yet this Project would preclude that housing from being built. The DEIR fails to account for the impact that will be caused to the County's ability to provide housing and therefore the Project's inconsistency with the County General Plan Housing Element and assumptions therein. The proposed Project site is currently designated as Village and for Specific Plan with a significant number of residential units, including approximately 2,500 multi-family units which would be more affordable than the typical County single-family home. The County must provide adequate housing in its RHNA update and presumably has been relying on the Village designation on the Project site to help accomplish that. With approval of this Project, that would no longer be available.

The existing General Plan is balanced and distributes housing throughout the County; approval of this Project would result in an imbalance, replacing property for housing with rows and rows of solar panels and associated equipment instead. This would trigger the need to find housing density elsewhere in the County, on land not currently designated or zoned for it. The DEIR must discuss how it will rebalance the housing with the approval of this Project which removes the planned housing from this area for a minimum of 38 years and likely permanently.

Even if there is no adopted Specific Plan in the area, the Land Use section still fails in its efforts to analyze and disclose the land use impacts of this Project. For example, as the DEIR explains, the County General Plan's Land Use Element's Regional Category for the majority of the Project site is Village. The Regional Categories establishes a hierarchy for the overall structure and organization of development in an area, and the Regional Category here is Village. The General Plan explains that category as follow: "The Village category identifies areas where a higher intensity and a wide range of land uses are established or have been planned. Typically, Village areas function as

the center of community planning areas and contain the highest population and development densities. Village areas are typically served by both water and wastewater systems. Ideally, a Village would reflect a development pattern that is characterized as compact, higher density development that is located within walking distance of commercial services, employment centers, civic uses, and transit (when feasible)." General Plan at 3-7. If with nothing more than an MUP a solar farm can replace more than 1,000 homes planned for a Village, where are those houses planned for this area being reallocated, and does that cause an inconsistency with the Housing Element? The General Plan Land Use section at 3-5 states that "The Land Use Element is closely related to the Housing Element in that the Land Use Map must provide sufficient capacity to meet goals of the State Housing Law including the Regional Housing Needs Assessment. It establishes the distribution of residential growth and densities appropriate for a range of housing types and affordability." The Land Use Element assumes Village on the site, with a Specific Plan calling for more than 1,000 homes. That is not what the Project proposes. This same issue is also addressed in Policy LU-1:1, which the DEIR ignores.

In addition, it is far from clear whether the Project even can qualify to be sited here under the off-site solar ordinance. The County Zoning Ordinance states that major impact services and utilities such as the Project may be conditionally permitted in any zone "if it is determined that public interest supersedes the usual limitations placed on land use and transcends the usual restraints of zoning for reasons of necessary location and community-wide interest." Zoning Ordinance §1350 (County of San Diego 2014). That is not the case here., and the DEIR should discuss this. While it is true that renewable energy is generally encouraged, the Project site is not a "necessary location" for a 638-acre solar farm. There are numerous locations in which such a solar farm could be located, thus the requirement that the location be deemed "necessary" cannot be met. Similarly, the community-wide interest is not in siting this solar farm but in the opposite. The community's interest is in creating a jewel of the backcountry, with appropriate housing and commercial uses that maintain the rural setting. It is not in seeing a huge industrial solar farm as their immediate neighbor. The DEIR must analyze the impacts resulting from the inability to make the appropriate findings, or the generous stretching of the language required to attempt to find consistency that would otherwise be required. Even if it is possible to override the zoning and, with a Major Use Permit, place a major utility on the Project site without first approving a General Plan Amendment, it seems impossible to conclude that the Project, which would cover more than 600 acres of the site, with most of the remainder being left in open space, can in any way be found consistent with the Village designation. It has one land use, not a "wide range." It will not be accessible to the community in any respect, thus hardly functioning as "the center of community planning areas." It will have no residents – the opposite of a designation that is to contain "the highest population and development densities." Whether or not it is walkable to various services is irrelevant, because there would be no one on the Project site needing or desiring to walk to any services. It is the opposite of what the Village designation is intended to create, and in no way consistent with that designation. This inconsistency is currently ignored in the DEIR, and the mere fact that it is apparently possible to ignore the planning designation and zoning and plop an inconsistent use down on the entirety of the site may be allowed under the County code, but at a minimum the impacts of doing that much be discussed, and yet here are ignored.

The Project also is inconsistent with Guiding Principle 8: **Preserve Agriculture as an Integral Component of the Region's Economy, Character, and Open Space Network.** The property site is currently open space and fallow agricultural that has historically been used for agriculture – a use that would be prohibited with the Project. That is inconsistent with this guiding principle.

The DEIR overlooks goals and policies of the Jacumba Subregional Group Area, ignoring the background information of that document. There, the plan describes the health and relaxation benefits of the natural hot springs and the world-class hotel that developed into a top destination visited by the foremost movie stars and celebrities of the time, who regarded Jacumba Hot Springs as a prime destination for relaxation. It explains that Jacumba's hotel has continued to attract visitors and has acquired rights in the spring and to open a spa, all of which is planned to bring the resort back to and even exceeding the destination wellness resort and spa of the past. The Jacumba Subregional Plan not only addresses the fact the Jacumba Hot Springs resort has plans to bring back the area's destination resort statute, but also reminds the public that "County planning documents have long incorporated plans for the revitalization and growth of the Jacumba area. Adopted county plans envision future development of the Ketchum Ranch and call for Jacumba to once again become a thriving country town." *See* Mountain Empire Subregional Plan (Jacumba) at 2. The DEIR ignores this language and the significant land use impacts resulting from the proposed Project. The Project ignores the County plans for the area and develops Ketchum Ranch not as a thriving country town but as an unpopulated sea of industrial solar panels. That is decidedly not the vision for the property or the community, and that inconsistency and the significant and irreversible impacts the Project will have on these plans must be discussed in the DEIR. The DEIR's conclusion that the Project is consistent with the policies in the Mountain Empire Subregional Plan is unsupported and unsupportable. As discussed above, Jacumba Hot Springs is not going to become the jewel of the backcountry when its front door is an industrial solar farm. It is not consistent with the Jacumba Airport ALCUP, because it creates glare and glint that will create dangerous situations for the glider pilots who frequent the airport and who are not limited to certain flight paths or patterns.

The DEIR's discussion of the California-Baja California Border Master Plan also is inadequate. The DEIR points out that the Project site is within the study's Focused Study Area, yet it fails to discuss the ways in which this Project could impact the ability to complete that long-planned Master Plan. The DEIR has a conclusory statement that the Border Master Plan "is in early conceptual planning stages" and, since it is characterized as being in "early planning stages" and lacking funding, the DEIR summarily concludes that there therefore is no conflict. The Border Master Plan has been in the works for years – it is hardly in its "early" stages. Obviously coordinating international border crossings requires time, but that does not mean that it should be ignored and summarily dismissed as irrelevant simply because it is not yet complete or funded. The California-Baja California Border Master Plan is a binational effort to coordinate planning and delivery of projects at land port of entries and the transportation infrastructure serving them. The California Department of Transportation (Caltrans), in partnership with the Secretariat of Infrastructure and Urban Development of Baja California (Secretaría de Infraestructura y Desarrollo Urbano del Estado de Baja California or SIDUE in Spanish) and the U.S./Mexico Joint Working Committee (JWC), retained the SANDAG Service Bureau to assist in the development of the Plan. The California-Baja California

Border Master Plan was envisioned by the JWC as a pilot project between border states. Based on the outcomes of this pilot binational planning process, the California-Baja California approach could be expanded to other border states and customized to address their needs, resulting in a master planning process for the entire U.S.-Mexico border. There is a lengthy, carefully crafted international plan that sets forth the goals, and long-term objectives, funding sources and other details. Such an important document does not deserve to be dismissed simply because it has not yet come to fruition. The impacts of the Project on the Border Master Plan must be discussed in the DEIR.

O. There DEIR Fails To Include A Reasonable Range of Alternatives, Or To Have An Adequate Basis for Rejecting Certain Alternatives

CEQA requires that a draft EIR include a discussion and evaluation of "a reasonable range of alternatives to the project, or to the location of the project, which would feasibly obtain most of the basic project objectives but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." 14 Cal. Code Regs. §15126.6(a). CEQA requires the lead agency – here, the County – to identify a range of feasible alternatives, including alternative sites, that could "substantially lessen any significant effects that the project would have on the environment," and to discuss the comparative environmental effects of the project and the alternatives. *Id.* §15021(a)(2); *Mountain Lion Foundation v. Fish and Game Comm'n* (1997) 16 Cal.4th 105. Alternatives that may avoid or lessen the project's impacts must be analyzed thoroughly, even if they would impede attainment of project objectives to some degree or be more costly. 14 Cal. Code Regs. §15126.6(b). These alternatives should not merely be variations on the design that the applicant hopes to implement, but also should be designed to lessen or avoid one or more of the project's impacts. The DEIR should be revised to consider additional alternatives that reduce or avoid significant impacts and particularly fit better into the community character and aesthetic, while also doing its part to meet the County's housing needs.

The DEIR evaluated only three alternatives, one of which was the No Project Alternative. And the Project's impacts would be the same under both the Community Buffer and the Reduced Project alternatives, so should hardly count as two separate alternatives. As a result, the DEIR must be revised to include a reasonable range of alternatives that substantially lessen or avoid one or more of the Project's significant impacts. Those additional alternative must be addressed in detail, rather dismissed as rejected alternatives. Three is not, by any measure, a reasonable range, especially when two of them result in identical impacts. In the Newland Sierra DEIR, for example, the County evaluated eleven alternatives.

The DEIR also fails to adhere to CEQA's requirement to design an alternative intended to reduce or avoid a significant impact; instead, the alternatives seem designed only to fail. Reasonable alternatives were not considered, including, as discussed above, an alternative with shorter solar PV modules similar to those at the Borrego Solar Farm. A maximum height of seven feet would allow the perimeter fencing and landscaping to hide the PV modules from view, and this alternative needs to be added to the Alternatives analysis. As a result, the

DEIR is inadequate under CEQA. The analysis of alternatives also is flawed by the DEIR's failure to recognize the significant impacts to land use and planning, an area which also has impacts from the Project, as discussed above.

CEQA requires that the lead agency analyze the impacts of the no project alternative, "projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community service." 14 Cal. Code Regs. §15126.6(e)(3)(C). In doing so, the agency should "identify the practical result of the project's non-approval." 14 Cal. Code Regs. §15126.6(e)(3)(B). However, the DEIR does not provide an accurate portrayal of the development that would or could be developed under the existing general plan designation in its No Project alternative. The site plan in the No Project Alternative was designed to maximize impacts, unreasonably disregarding strategies and regulatory structures that would need to be applied were that actually to be proposed, and which would lower the impacts of such development.

The rejection of the Energy Efficiency Ordinance Alternative on grounds that it would require too long for demand to offset 90 megawatts (MW) of energy is a strawman argument. CEQA does not require that alternatives meet all of a project's objectives, only that they feasibly meet most of a project's basic objectives. The project set an objective of have a capacity of "up to" 90 MWs of energy as one of seven detailed objectives. The Project objective is not a minimum of 90 MWs, and even if it were, CEQA does not require that to be feasible an alternative must meet all of a project proponent's detailed wish list. This "up to 90 MWs" object has been misused as a basis for rejecting many of the alternatives, with a focus on the length of time that particular alternative would require to reach 90 MWs. The alternatives do not have to achieve that specific number of megawatts, just have the ability to achieve the basic objective of achieve energy savings.

The DEIR's reliance on an idea that all project alternatives must meet the magical 90 MW number in rejecting any and all alternative locations is unsupportable. As discussed above, an alternative does not have to accomplish 90 MWs of solar energy generation and storage. It also does not have to be in locations "in close proximity to existing transmission lines with capacity to convey the energy generated," as that would push all such projects adjacent to the Sunrise Powerlink and lead inevitably to the problem of the County dumping all such projects in this area that already has been impacted by the Sunrise Powerlink itself, and the projects that already have claimed a spot near that transmission line. The solar facility does not have to be "in close proximity" to the high-voltage power line, as a dedicated transmission line, or generation tie, may be built to tie in. There is cost involved in building a dedicated transmission line to tie in, but there are costs to the community without it -- of being forced to see their rural community transformed into transmission lines and energy projects wholly inconsistent with the landscape and the community's goals and policies and reason for being. The cost should rightfully be placed on the developer seeking the approval to impact the community and not on the community itself.

Moreover, the Energy Efficient alternative would meet that goal, it just would take longer to accomplish that. An EIR for a master planned community with a project objective of developing up to 5,000 homes would not properly be rejected as infeasible because it looked at an alternative for 3,000 homes, for example. The objectives in this case have been carefully crafted to enable rejection of any alternative that does not entail building a

monster industrial solar farm, but the essence of the basic project objectives is to help achieve energy and greenhouse reduction targets in the County, and the Energy Efficiency Ordinance Alternative would accomplish that, while also avoiding the Project's impacts. "A lead agency may not give a project's purpose an artificially narrow definition," as the court in *North Coast Rivers Alliance v. Kawamura* (2016) 243 Cal. App. 4th 647, 668 made clear (citation omitted).

The *North Coast Rivers Alliance* court found fault with an EIR that rejected as infeasible an alternative because it did not achieve the project goal of eradication, because it confused the project objective of achieving eradication with the overall basic project goal of protecting the state's native plans and crops from damage.

> The EIR did not decline to study control as an alternative to eradication on the ground a control program would not lessen the environmental effects. Rather, the EIR declined to evaluate a control program as an alternative on the ground it would not achieve the stated goal of eradication. However, this position confuses the CEQA project, objectives, and purposes.
>
> The objective of the program was to protect California's native plants and agricultural crops from damage. That the DEIR defined the program "objective" as "eradication" was an improper "artificially narrow" definition (Bay-Delta, supra, 43 Cal.4th at pp. 1163-1166), as is apparent from the DEIR's distinction between "objective" and "purpose" and relegation of plant/crop protection to a "purpose" as opposed to an "objective."
>
> ....
>
> Thus, the EIR purports to view eradication as the "objective" and protection of crops/plants as the "purpose." However, " 'The statement of objectives should include the underlying purpose of the project.' " (citations omitted.)

This DEIR has the same concern as was addressed in the North Coast Rivers Alliance case – here, the DEIR views the objective as an artificially narrow need to achieve 90 MWs of energy, and then reject every alternative that cannot met that narrow standard. That is not how CEQA envisions the alternatives analysis to be done.

The Community Buffer alternative is another strawman as current presented in the DEIR. What is the basis for determining that 300-feet is an adequate buffer? There is no specific scientific or rationale for using a distance of 300 feet. The DEIR must provide this information. The Project would result in 11 significant and unavoidable impacts to aesthetics. Therefore, aesthetics is the primary topic that should inform the definition of this alternative, not some arbitrary buffer that is not linked to the significant and unavoidable physical impacts of the Project on visual character and scenic viewsheds. Moreover, none of the Project impacts would be substantially reduced by this alternative. Therefore, after the Project is redesigned to minimize its impacts on aesthetics, land use policy and mineral resources, an updated analysis of a real community buffer alternative must be integrated into the DEIR, as required by CEQA. Generating 7.7 MW less that the maximum desired by one of the project

objectives is not a compelling argument or reason for rejecting the alternative unless the DEIR provides more background on how much existing energy production relies on alternative sources, how much is projected to be operational based on current projects underway, and how much is needed in the County to achieve the RPS goals outlined by the State. Just because the applicant realizes less profit from energy production is not an adequate basis for rejection of an alternative as infeasible.

An alternative with a buffer to avoid visibility from the community and the entrances to and from the community could lessen the impacts, but the buffer alternative as presented in the DEIR is not it. There is no reason there would need to be a Southwest Corner Expansion. A solar farm with a buffer large enough to avoid the significant aesthetic impacts and land use and planning impacts may be able to achieve most of the basic project objectives, and the DEIR's insistent focus on 90 MWs is simply an alternative set up to fail, and not a serious attempt to consider an alternative that would lessen significant impacts while achieve most of the basic project objectives.

The Reduced Project Alternative is also fatally flawed. By definition, this alternative avoids impacts to the northern portion of the site, which in no way addresses the community character impacts that are significant and unavoidable to Jacumba Hot Springs. The DEIR wrongly places more importance on views from I-8 than on impacts to County residents in Jacumba Hot Springs who will have this industrial-scale energy development literally in their backyards, next to their park, and along their only access to the area. None of the Project impacts would be substantially reduced by this alternative. Therefore, after the Project is redesigned to minimize its impacts on aesthetics, land use policy and mineral resources, an updated analysis of a real Reduced Project Alternative must be integrated into the DEIR, as required by CEQA. Generating 22 MW less than the maximum megawatts desired by the Project applicant is not a compelling argument or reason for rejecting the alternative unless the DEIR provides more background on how much existing energy production relies on alternative sources, how much is projected to be operational based on current projects underway, and how much is needed in the County to achieve the RPS goals outlined by the State. Until the County can explain why a 90 MW facility is necessary, the reason for rejected a Reduced Project cannot be established.

A new Reduced Project Alternative is required. A new alternative that avoids all energy development south of the SDG&E easement must be integrated into the DEIR. Using similar reasoning as the current Reduced Project, a second Reduced Project Alternative would allow the readers and decision-makers to understand the implications of not developing the Project immediately adjacent to Jacumba Hot Springs. Such an alternative would substantially lessen the Project's impacts on the character of the Jacumba Hot Springs community, which is the purpose of an alternative analysis.

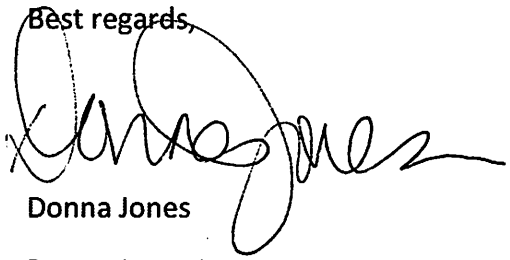
The DEIR should provide more information to the public on what the "number of alternative locations" that were supposedly screened for their capacity to meet the objectives, and how many were rejected simply because they were not ideally located as close as possible to existing SDG&E transmission infrastructure. Again, the alternative locations are not required to meet every detailed project objective but only most of the basic project

objectives. It is hard to understand how there is not alternative property upon which a solar farm could feasibly be built that would not have the impacts this location presents.

The No Project alternative is deficient in at least two respects: first, it is written so that it is difficult for a reader to understand the true No Development No Project Alternative, with the No Development and the Buildout No Project alternatives sharing space under each heading it is hard to get an accurate picture of what the No Development No Project alternative would truly achieve. It should be separated as a standalone. Second, the Building No Project Alternative is unrealistic and needs to take into account not only the reasons this development could not be achieved after many years of effort, but also how current rules and regulations would constrain such development and prevent many of the impacts assumed to occur in this alternative from ever being considered or accepted if such a project actually were to be proposed. Although the DEIR purports to study No Build as an alternative, in order to overestimate the impacts that would result from not approving the Project the DEIR quickly turns to envisioning a scenario that would never be possible, purporting to build out a Specific Plan that after two multi-year attempts has never been able to attain approval and has not been seriously pursued for more than a decade even after many years spent attempting to get approval for the development that the DEIR assumes would and could be built under the No Project Alternative. The DEIR paints a false picture of the development that could occur under the existing general plan land use designation. That theoretical development has been designed to maximize impacts while unreasonably disregarding strategies and regulatory structures that would need to be applied and which would lower the potential impacts of the development under the existing General Plan land use designations. No substantial evidence supports the DEIR's analysis of the No Project alternative, only conclusory statements and assumptions not based on reality. Build out to the maximum extent allowed under the existing General Plan designations is not feasible, as evidenced by the fact the developers who worked for years to achieve something under those existing designations came up empty, and constraints on what development could actually be achieved have only gotten more stringent since the EIR for development under the existing General Plan designations was last circulated, more than two decades ago.

For the above reasons, the DEIR is inadequate under CEQA and must be revised and recirculated.

Best regards,



Donna Jones

Donna Jones Law