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The County admits that “[f]uture development associated with approved, proposed, and reasonably foreseeable projects within Imperial County would have an unknown and unquantifiable impact on special status species, biologically sensitive habitats, and potential jurisdictional wetlands and waters of the United States.”<sup>24</sup> Despite acknowledging the inability to quantify impacts from future individual projects on sensitive species, the County makes a finding that the implementation of “cookie-cutter” mitigation measures BIO-1a through BIO-4 would mitigate impacts to biological resources associated with development of future renewable energy facilities under the proposed Project to a level “less than significant.”<sup>25</sup> The County’s findings in every section of the PEIR pertaining to biological resources lacks substantial evidence. Without knowing the type, size, scope, and configuration of future individual projects, along with the precise location within the County, impacts to biological resources from these future individual projects are unknown and cannot be known at this time. Likewise, the County has no basis to conclude that the proposed mitigation measures for future, unidentified impacts would reduce those unknown impacts to less than significant. Consequently, the PEIR lacks substantial evidence to support its findings on impacts to biological resources and future individual renewable energy projects will necessitate project-specific analysis regarding impacts to biological species.

Comment  
15-9

We agree with the PEIR that the construction and decommissioning of future renewable energy facilities developed under the proposed Project would likely involve the use of hazardous materials. These hazardous materials include fluids for onsite maintenance of construction vehicles and equipment (e.g., gasoline, diesel fuel, lubricating oils, hydraulic fluids, glycol-based coolants, and spent lead-acid storage batteries), chemical materials for the maintenance of equipment or application of corrosive-control protective coatings (e.g., paints, solvents, coatings), and debris from construction-related activities (e.g., lumber, stone, brick).<sup>26</sup> Additionally, the construction and decommissioning of specific types of future solar facilities may involve spent heat transfer fluids, dielectric fluids, thermal energy storage salts, and steam amendment chemicals.<sup>27</sup> Because specific development proposals for future individual projects are not yet developed, the County correctly stated that “construction-related impacts regarding release of hazardous materials

Comment  
15-10

<sup>24</sup> Draft PEIR, p. 4.4-43.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*, at 4.8-6, 7.

<sup>27</sup> *Id.*

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cannot be accurately determined at this stage in the planning process.”<sup>28</sup> Likewise, the County correctly found that operational impacts regarding the release of hazardous materials into the environment cannot be estimated at this time but are potentially significant.<sup>29</sup> Despite the County’s acknowledgement that hazardous materials are present throughout the County and that construction-related impacts regarding release of hazardous materials cannot be accurately determined at this stage in the planning process, the County again erroneously made a finding that potential impacts related to hazardous materials will be “less than significant” after the implementation of mitigation measures HAZ-1a and HAZ-1b.<sup>30</sup> The County cannot determine whether mitigation measures would be effective at reducing significant impacts related to hazardous material when the location, design, and size of subsequent individual renewable energy projects and their potentially significant impacts remain entirely unknown at the programmatic level. Therefore, the County’s findings lack substantial evidence. Subsequent individual project-level analysis is necessary before the County can make any findings with respect to impacts from hazardous materials.

Comment  
15-11

We agree with the County that the construction of individual renewable energy facilities associated with the Project could impact directly or indirectly water quality of both local surface water and groundwater resources.<sup>31</sup> Construction activities that could impact water quality include “land disturbance-related soil erosion and sedimentation; fuel and chemical spills; storage and potential treatment of wastewater; and the potential application of pesticides, herbicides, and dust suppressant chemicals.”<sup>32</sup> Furthermore, “surface water quality could be adversely affected in areas hydraulically downstream and downwind from disturbed areas, including staging areas, construction sites, access roads, soil piles, foundation excavation, trenching, and borrow pits.”<sup>33</sup> And as the PEIR also acknowledges, “[s]ediments from these disturbed areas can be transported by wind or water to adjacent water bodies . . . and degrade water quality through the addition of sediments, dissolved solids, metals, and organics.”<sup>34</sup> Although the PEIR discloses that the water sources likely to be used for individual projects includes local groundwater, surface water bodies, or recycled water, it notes that the source

Comment  
15-12

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<sup>28</sup> *Id.*

<sup>29</sup> Draft PEIR, p. 4.8-8.

<sup>30</sup> *Id.*

<sup>31</sup> Draft PEIR, p. 4.9-19 – 25.

<sup>32</sup> *Id.* at 4.9-26.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

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ultimately used will depend upon the availability of those resources and the location of the specific individual project's water needs.<sup>35</sup> Since the type, location, design and construction plan for future individual renewable energy projects is now unknown and cannot be known at this stage of the planning process, the individual water needs and the associated impacts to water resources is entirely speculative at this time. Moreover, the availability of water resources and individual project-level impacts on those resources has not been analyzed, nor can it, without the precise location of future projects and their respective water demands. Accordingly, we recommend that the County find that the Project's impacts to water quality are potentially significant, that the extent of the impacts cannot be known at this time and that future, individual projects must undergo project-level environmental review when individual project-level details are known..

Comment  
15-12  
(continued)

CEQA requires the County to either conduct the detailed environmental review now, or conduct the detailed review later in an environmental review document that is circulated to the public for review. Because subsequent individual project-level details are mostly unknown and cannot be known at this time, the County cannot meaningfully evaluate individual project-level impacts at the programmatic level of review. The County also cannot determine the cumulative impacts from future renewable energy facilities when the number, type of, and exact location of these projects remains entirely unknown at this time. Consequently, the County should conclude that impacts in the various resource areas are potentially significant, that the extent of the impacts cannot be known at this time and that future, individual projects must undergo project-level environmental review when individual project-level details are known. We appreciate the County's hard work analyzing the Project's potential environmental impacts associated with subsequent renewable energy development in Imperial County. Our comments are intended to underscore the importance of analyzing potential impacts only where feasible and where enough known information exists to adequately do so.

Comment  
15-13

Comment  
15-14

Sincerely,



Adam J. Regele

AJR:clv

<sup>35</sup> *Id.* at 4.9-21.  
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## Response to Comment Letter #15: Adams Broadwell Joseph & Cardozo

Comment 15-1: Thank you for your comments on the Imperial County General Plan *Renewable Energy and Transmission Element* Update Draft PEIR. We have provided responses to your specific comments below.

Comment 15-2: Thank you for expressing your support for the Draft PEIR. As described in the Draft PEIR, the proposed Project would be implemented on a “project-by-project” basis based on County approval of individual renewable energy projects. Consequently, project specific environmental impacts and corresponding mitigation measures cannot be evaluated at this time. Future renewable energy facilities developed under the proposed Project would have to evaluate potential impacts on environmental resources during the project’s required environmental review phase. The environmental review of future renewable energy facilities developed under the proposed Project would allow for site-specific analysis based on project design to determine whether projects would result in significant impacts and if mitigation measures presented in the Final PEIR, and possibly additional project specific mitigation measures, would reduce those impacts to a level less than significant.

However, the necessity for project specific environmental impacts and corresponding mitigation measures does not preclude the County from making a determination that the proposed Project would reduce impacts to a level less than significant for many environmental categories at the programmatic level. The Draft PEIR presents a programmatic analysis of environmental impacts that provides a framework for future analysis to be conducted for future renewable energy facilities developed under the proposed Project. The Draft PEIR also presents mitigation measures for future renewable energy facilities to implement in order to reduce impacts to a level less than significant. These mitigation measures also provide direction for future projects to develop additional mitigation measures beyond what is presented in the Final PEIR based on project specific characteristics if necessary to reduce impacts to a level less than significant. Therefore, the mitigation measures presented in the Final PEIR, including direction to develop additional mitigation based on project specific characteristics if necessary, provides adequate mitigation for the County to make a determination that impacts would be reduced to a level less than significant at the programmatic level.

Comment 15-3: The County determined that impacts related to aesthetics would remain significant and unavoidable due to the potential for the proposed Project to introduce renewable energy structures that may alter the existing visual landscape. As described in section 4.1.4 of the Draft PEIR:

“...[t]he ongoing presence of equipment, structures, fencing, roads, and other elements that would be required to operate future renewable energy facilities developed under the proposed Project could have a long-term impact on the visual character of the site. Areas of continued surface and vegetation disturbance and the presence of structures would create visual contrast in form, line, color, and texture compared to pre-project conditions...”

Section 4.1.4 of the Draft PEIR goes on to provide additional details of potential aesthetics impacts associated with future renewable energy facilities that may be developed under the proposed Project. Although the Draft PEIR presents aesthetics mitigation measures, the potential remains for some future renewable energy facilities to result in aesthetics impacts that cannot be mitigated to a level less than significant. It should be stressed that the conclusion presented in the Draft PEIR does not mean that all future renewable energy facilities would result in aesthetics impacts that would remain significant and

unavoidable. Some future renewable energy project may be able to reduce impacts to a level less than significant. The Draft PEIR is simply stating that impacts related to aesthetics would remain significant and unavoidable at the programmatic level due to the potential to introduce some renewable energy structures that may alter the existing visual landscape.

Comment 15-4: The Draft PEIR determined that impacts related to agricultural resources could be reduced to a level less than significant through implementation of mitigation measures AG-1a through AG-3. The proposed Project would be implemented on a “project-by-project” basis based on County approval of individual renewable energy projects. Consequently, project specific environmental impacts and corresponding mitigation measures cannot be evaluated at this time. Future renewable energy facilities developed under the proposed Project would have to evaluate potential impacts on agricultural resources during the project’s required environmental review phase. The environmental review of future renewable energy facilities developed under the proposed Project would allow for site-specific analysis based on project design to determine whether projects would result in significant impacts on agricultural resources and if Mitigation Measures AG-1a through AG-3, and possibly additional project specific mitigation measures, would reduce those impacts to a level less than significant.

However, the necessity for project specific environmental impacts and corresponding mitigation measures does not preclude the County from making a determination that the proposed Project would reduce impacts to a level less than significant at the programmatic level. The Draft PEIR presents a programmatic analysis of environmental impacts that provides a framework for future analysis to be conducted for future renewable energy facilities developed under the proposed Project. The Draft PEIR also presents mitigation measures for future renewable energy facilities to implement in order to reduce impacts to a level less than significant. Furthermore, future projects may be required to develop additional mitigation measures beyond what is presented in the Final PEIR based on project specific characteristics if necessary to reduce impacts to a level less than significant. Therefore, the mitigation measures presented in the Final PEIR and additional mitigation that may be developed based on project specific characteristics if necessary, provide adequate mitigation for the County to make a determination that impacts on agricultural resources would be reduced to a level less than significant at the programmatic level.

Comment 15-5: The proposed Project would be implemented on a “project-by-project” basis based on County approval of individual renewable energy projects. Consequently, project specific environmental impacts and corresponding mitigation measures cannot be evaluated at this time. Future renewable energy facilities developed under the proposed Project would have to evaluate potential impacts related to air quality during the project’s required environmental review phase. The environmental review of future renewable energy facilities developed under the proposed Project would allow for site-specific analysis based on project design to determine whether projects would result in significant impacts related to air quality and if Mitigation Measures AQ-1a through AQ-2b, and possibly additional project specific mitigation measures, would reduce those impacts to a level less than significant.

However, the necessity for project specific environmental impacts and corresponding mitigation measures does not preclude the County from making a determination that the proposed Project would reduce impacts to a level less than significant at the programmatic level. The Draft PEIR presents a programmatic analysis of environmental impacts that provides a framework for future analysis to be conducted for future renewable energy facilities developed under the proposed Project. The Draft PEIR also presents mitigation measures for future renewable energy facilities to implement in order to reduce impacts to a level less than significant. Furthermore, future projects may be required to develop

additional mitigation measures beyond what is presented in the Final PEIR based on project specific characteristics if necessary to reduce impacts to a level less than significant. Therefore, the mitigation measures presented in the Final PEIR and additional mitigation that may be developed based on project specific characteristics if necessary, provide adequate mitigation for the County to make a determination that impacts related to air quality would be reduced to a level less than significant at the programmatic level.

Comment 15-6: The determination that renewable energy facilities other than geothermal would not result in operational impacts related to odor was based on the characteristics of these technologies. For instance, solar and wind technologies that are operating properly do not give off emissions or generate discharges that would result in odors. Therefore, the County was accurate and consistent with CEQA in determining that only geothermal renewable energy facilities would have the potential to generate odor impacts.

Comment 15-7: The cumulative impact analysis for air quality is consistent with CEQA. The proposed Project provides a framework for development of future renewable energy facilities and presents mitigation measures that future project's would be required to implement in order to be permitted by the County of Imperial. As described in the Draft PEIR, the proposed Project would be implemented on a "project-by-project" basis based on County approval of individual renewable energy projects. Therefore, the County would have the opportunity to review each future renewable energy facility developed under the proposed Project and would not grant approval to a future project if it was determined that it would result in a cumulative impact related to air quality.

Comment 15-8: The Draft PEIR accurately states that the proposed Project would "...displace power currently produced by carbon-based fuels that would otherwise be used to meet regional demand for electricity..." First, it is important to clarify that the Draft PEIR does not rely on the ability of the proposed Project to shut down an existing fossil fuel power plant or displace the need to meet future energy demand to justify its GHG analysis. Instead, the EIR's GHG analysis is based on its ability to demonstrate compliance with the applicable CEQA GHG significance thresholds.

Second, the Project indirectly achieves these goals because renewable energy is a clean source of energy instead of the burning of finite fossil fuels that emit GHGs into the air. Without the development of renewable energy in order to meet California's growing energy demands from a growing population, greater amounts of power would need to be produced by fossil fuel generation sources to meet the same demand. However, renewable energy projects (e.g. solar and wind) provide intermittent energy and, without additional technologies, may need to be supplemented with either baseload plants or peaker power plants, some of which are fossil fuel burning plants. Opponents of renewable energy development sometimes view this as a failure to displace fossil fuel generation, but such views ignore the clean energy produced by renewable facilities. In this case, future renewable energy facilities to be developed under the proposed Project would be able to displace fossil fuel based systems and meet future energy demand that would otherwise be met with fossil fuel based generation because they would include an additional technology in the form of on-site energy electric energy storage systems. For example, the energy storage systems of future solar facilities would allow energy to provide energy to meet consumer demands for electrical power during the evening when the solar panels cannot generate power. Accordingly, the combined solar energy and energy storage features of the future solar facilities would meet the consumer demand that would otherwise be met with a baseload or peaker power plant operating on fossil fuel.



This response and rationale is also supported by energy experts at the California Public Utility Commission in a 2010 white paper entitled “Electric Energy Storage: An Assessment of Potential Barriers and Opportunities,” (CPUC 2010). The paper explains:

“...In the past, planners relied chiefly upon large dispatchable fossil fuel generators to provide electric energy. The energy from these facilities was transmitted over the bulk transmission system and ultimately consumed by end-use customers. However, this model is changing. California’s current energy policies mandate the development of new types of renewable and distributed generation resources, such as wind and solar. These resources by their nature are intermittent and cannot be directly dispatched by system operators to meet customer load. Thus, if the state wants to properly plan for these new types of resources, the historic model of electric system planning must be re-thought. Since operators of the electricity grid must constantly match electricity supply and demand, intermittent renewable resources are more challenging to incorporate into the electricity grid than traditional generation technologies. Intermittent renewable technologies cannot be scheduled to produce power in specific amounts at specific times, creating additional challenges and costs to resource procurement. Moreover, as more intermittent resources are deployed to meet increasing Renewable Portfolio Standards (‘RPS’) requirements, the operational challenges will become greater. Specifically, since planners cannot control when renewable generation will occur, the generation can often occur at times when there is little need for that power. However, a promising new set of Electric Energy Storage (‘EES’) technologies appear to provide an effective means for addressing the growing problem of reliance on an increasing percentage of intermittent renewable generation resources.

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

Comment 15-9: The proposed Project would be implemented on a “project-by-project” basis based on County approval of individual renewable energy projects. Consequently, project specific environmental impacts and corresponding mitigation measures cannot be evaluated at this time. Future renewable energy facilities developed under the proposed Project would have to evaluate potential impacts on biological resources during the project’s required environmental review phase. The environmental review of future renewable energy facilities developed under the proposed Project would allow for site-specific analysis based on project design to determine whether projects would result in significant impacts on biological resources and if Mitigation Measures BIO-1a through BIO-4, and possibly additional project specific mitigation measures, would reduce those impacts to a level less than significant.

However, the necessity for project specific environmental impacts and corresponding mitigation measures does not preclude the County from making a determination that the proposed Project would reduce impacts to a level less than significant at the programmatic level. The Draft PEIR presents a programmatic analysis of environmental impacts that provides a framework for future analysis to be conducted for future renewable energy facilities developed under the proposed Project. The Draft PEIR also presents mitigation measures for future renewable energy facilities to implement in order to reduce impacts to a level less than significant. Additionally, mitigation measures BIO-1b and BIO-1f have been revised to provide more direction for development of future renewable energy facilities as follows:

**“BIO-1b: Conduct Surveys for Special Status Animal Species.** As a requirement of an application for a future renewable energy facility, surveys for special status animal species shall be conducted by qualified and agency-approved biologists to determine the presence or absence of sensitive animal species within the footprint of a future renewable energy project. Required surveys for special status animal species may include, but are not limited to, American badgers, burrowing owl, flat-tailed horned lizard, golden eagle, mountain plover, prairie falcons, Swainson’s hawk, and Yuma Ridgway’s rail, among others. Any special status mammal, reptile, and amphibian species detected during surveys shall be passively relocated to areas outside the construction zone and prevented from reentering the future project area with the installation of silt fencing or other exclusion fencing. All fencing shall be periodically monitored and maintained for the duration of construction. Passive relocation shall only be done in the nonbreeding season in accordance with guidelines and consultations with resource agencies. This Depending on which special status species are present within the project boundaries, passive relocation measures may include covering or excavating all burrows or dens and installing one-way doors into occupied burrows. This would allow any animals inside to leave the burrow but would exclude any animals from reentering the burrow. The burrows shall then be excavated and filled in to prevent their reuse. Other types of relocation measures may be required, depending on which special status species are present within the project boundaries.

“If direct impacts to special status species cannot be avoided, an agency-approved biologist shall prepare a species-specific Mitigation and Monitoring Plan that would detail the approved, site-specific methodology proposed to minimize and mitigate impacts to each species. Passive relocation, destruction of burrows, construction of artificial burrows, etc. shall be completed only upon prior approval by and in cooperation with CDFW and/or USFWS.”

**“BIO-1f: Additional Project Mitigation:** Additional biological mitigation may be required based on the renewable energy technology to be developed at specific project locations. Project proponents for future renewable energy facilities would be required to evaluate how specific renewable energy facilities may impact sensitive species and how to mitigate impacts through site design and/or mitigation and monitoring activities. Such mitigation may include, but is not limited to, developing strategies to reduce impacts to avian species related to a possible ‘lake-effect’ associated with solar energy facilities and strategies to reduce the possibility for bird-strikes associated with wind energy facilities, if warranted. Project-specific mitigation and monitoring for future renewable energy facilities may include, but would not be limited to, a Bird and Bat Conservation Strategy



based on the type of renewable energy technology to be utilized for a future renewable project.”

Furthermore, future projects may be required to develop additional mitigation measures beyond what is presented in the Final PEIR based on project specific characteristics if necessary to reduce impacts to a level less than significant. Therefore, the mitigation measures presented in the Final PEIR and additional mitigation that may be developed based on project specific characteristics if necessary, provide adequate mitigation for the County to make a determination that impacts on biological resources would be reduced to a level less than significant at the programmatic level.

Comment 15-10: The proposed Project would be implemented on a “project-by-project” basis based on County approval of individual renewable energy projects. Consequently, project specific environmental impacts and corresponding mitigation measures cannot be evaluated at this time. Future renewable energy facilities developed under the proposed Project would have to evaluate potential impacts related to hazardous materials during the project’s required environmental review phase. The environmental review of future renewable energy facilities developed under the proposed Project would allow for site-specific analysis based on project design to determine whether projects would result in significant impacts related to hazardous materials and if Mitigation Measures HAZ-1a through HAZ-1b, and possibly additional project specific mitigation measures, would reduce those impacts to a level less than significant.

However, the necessity for project specific environmental impacts and corresponding mitigation measures does not preclude the County from making a determination that the proposed Project would reduce impacts to a level less than significant at the programmatic level. The Draft PEIR presents a programmatic analysis of environmental impacts that provides a framework for future analysis to be conducted for future renewable energy facilities developed under the proposed Project. The Draft PEIR also presents mitigation measures for future renewable energy facilities to implement in order to reduce impacts to a level less than significant. Furthermore, future projects may be required to develop additional mitigation measures beyond what is presented in the Final PEIR based on project specific characteristics if necessary to reduce impacts to a level less than significant. Therefore, the mitigation measures presented in the Final PEIR and additional mitigation that may be developed based on project specific characteristics if necessary, provide adequate mitigation for the County to make a determination that impacts related to hazardous materials would be reduced to a level less than significant at the programmatic level.

Comment 15-11: See response to comment 15-10 above.

Comment 15-12: The proposed Project would be implemented on a “project-by-project” basis based on County approval of individual renewable energy projects. Consequently, project specific environmental impacts and corresponding mitigation measures cannot be evaluated at this time. Future renewable energy facilities developed under the proposed Project would have to evaluate potential impacts related to hydrology and water quality during the project’s required environmental review phase. The environmental review of future renewable energy facilities developed under the proposed Project would allow for site-specific analysis based on project design to determine whether projects would result in significant impacts related to hydrology and water quality and if Mitigation Measures HYDRO-1a through HYDRO-3, and possibly additional project specific mitigation measures could reduce those impacts to a level less than significant.

However, the necessity for project specific environmental impacts and corresponding mitigation measures does not preclude the County from making a determination that the proposed Project would reduce impacts to a level less than significant at the programmatic level. The Draft PEIR presents a programmatic analysis of environmental impacts that provides a framework for future analysis to be conducted for future renewable energy facilities developed under the proposed Project. The Draft PEIR also presents mitigation measures for future renewable energy facilities to implement in order to reduce impacts to a level less than significant. Furthermore, future projects may be required to develop additional mitigation measures beyond what is presented in the Final PEIR based on project specific characteristics if necessary to reduce impacts to a level less than significant. Therefore, the mitigation measures presented in the Final PEIR and additional mitigation that may be developed based on project specific characteristics if necessary, provide adequate mitigation for the County to make a determination that impacts related to hydrology and water quality would be reduced to a level less than significant at the programmatic level.

Comment 15-13: The proposed Project would be implemented on a “project-by-project” basis based on County approval of individual renewable energy projects. Consequently, project specific environmental impacts and corresponding mitigation measures cannot be evaluated at this time. Future renewable energy facilities developed under the proposed Project would have to evaluate potential project-level and cumulative environmental impacts during the project’s required environmental review phase. The environmental review of future renewable energy facilities developed under the proposed Project would allow for site-specific analysis based on project design to determine whether projects would result in significant impacts and if mitigation measures presented in the Final PEIR, and possibly additional project specific mitigation measures, would reduce those impacts to a level less than significant.

However, the necessity for project specific environmental impacts and corresponding mitigation measures does not preclude the County from making a determination that the proposed Project would reduce impacts to a level less than significant at the programmatic level. The Draft PEIR presents a programmatic analysis of environmental impacts that provides a framework for future analysis to be conducted for future renewable energy facilities developed under the proposed Project. The Draft PEIR also presents mitigation measures for future renewable energy facilities to implement in order to reduce impacts to a level less than significant. Furthermore, future projects may be required to develop additional mitigation measures beyond what is presented in the Final PEIR based on project specific characteristics if necessary to reduce impacts to a level less than significant. Therefore, the mitigation measures presented in the Final PEIR and additional mitigation that may be developed based on project specific characteristics if necessary, provide adequate mitigation for the County to make a determination that project-level and cumulative environmental impacts for all environmental categories in the CEQA Checklist except Aesthetics would be reduced to a level less than significant at the programmatic level.

Comment 15-14: Thank you for your comments on the Imperial County General Plan *Renewable Energy and Transmission Element Update* Draft PEIR.

## 16 – Law Offices of Stephan C. Volker

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February 25, 2015

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**RECEIVED**  
**MAR 03 2015**  
IMPERIAL COUNTY  
PLANNING & DEVELOPMENT SERVICES

**Re: Comments of Backcountry Against Dumps, Donna Tisdale, Carolyn Allen, and Michael Abatti on Imperial County's Draft Programmatic Environmental Impact Report for the Alternative Energy and Transmission Element Update to Its General Plan**

On behalf of Backcountry Against Dumps ("Backcountry"), Donna Tisdale, Carolyn Allen, and Michael Abatti (collectively "Concerned Farmers and Conservationists") we submit the following comments on Imperial County's (the "County's") Draft Programmatic Environmental Impact Report for the Renewable Energy and Transmission Element Update ("DPEIR"). These comments expand upon the scoping comments submitted collectively by Backcountry, Backcountry Resource Advocacy Group, Donna Tisdale and Carolyn Allen on August 22, 2014 ("Backcountry's Scoping Comments"), and the separately submitted comments of Donna Tisdale and Backcountry.

The County's proposed Renewable Energy and Transmission Element ("Energy Element" or "Project") would amend the Imperial County General Plan ("General Plan") by expanding the type and location of renewable energy projects allowed in the County. This General Plan amendment has been funded by the California Energy Commission ("CEC") (DPEIR 1-1), and prompted by the *ongoing* Desert Renewable Energy Conservation Plan ("DRECP") process. DPEIR 2-2. Concerned Farmers and Conservationists attach as Exhibit 1 to this comment Backcountry and Donna Tisdale's February 23, 2015 comments to the CEC pointing out the many deficiencies of the DRECP's Draft Environmental Impact Statement/Environmental Impact Report.

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As discussed below, the Project creates conflicts within the General Plan. Further, the County's DPEIR does not conform to the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code ("Pub. Res. Code") section 21000 *et seq.*<sup>1</sup>

Comment  
16-1  
(continued)

# **I. THE PROPOSED PROJECT IS INCONSISTENT WITH THE IMPERIAL COUNTY GENERAL PLAN**

"Under state law, the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements." *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806. Here, the proposed General Plan amendment and associated implementation ordinance are inconsistent with the General Plan's existing provisions, and therefore the County's approval of the Project would violate the Planning and Zoning Law. Government Code § 65300.5 ("the Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency"); *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97 ("a general plan must be reasonably consistent and integrated on its face"); *Sierra Club v. Kern County* (1981) 126 Cal.App.3d 698, 704 ("Since the general plan was internally inconsistent, the zoning ordinance under review . . . could not be consistent with such plan and was invalid when passed."); *Neighborhood Action Group v. County of Calaveras ("Neighborhood")* (1984) 156 Cal.App.3d 1176, 1184.

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The General Plan's Land Use Element specifically *forbids* the industrial-scale solar and wind energy projects that the Project would purport to allow via the Energy Element amendment and its implementation ordinance on County farmland. DPEIR 4.2-6 (Table 4.2-2 showing that 41,782.98 acres of Department of Conservation-designated "Important Farmland" would be open to development for solar and wind renewable energy projects, as well as geothermal energy projects). The Land Use Element directs that lands designated as "Agriculture" may not be developed with uses that do not preserve and protect agricultural production and related activities. It states in pertinent part as follows:

<sup>1</sup> Concerned Farmers and Conservationists note that, contrary to the DPEIR's discussion on pages 4.1-2, 4.10-1, 4.15-3, and 4.17-1, CEQA is a state law. Pursuant to CEQA, the Resources Agency has promulgated regulations that govern public agencies' compliance with CEQA. 14 Cal. Code Regs. ["CEQA Guidelines"] § 15000, *et seq.* These regulations are afforded "great weight" unless they conflict with their implementing statutes. *Laurel Heights Improvement Assn. v. Regents of the University of California ("Laurel Heights I")* (1988) 47 Cal.3d 376, 391 fn 2.

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**1. Agriculture.**

This category is intended to preserve lands for agricultural production and related industries including aquaculture (fish farms), ranging from light to heavy agriculture. Packing and processing of agricultural products may also be allowed in certain areas, and other uses necessary or supportive of agriculture. . . .

*Where this designation is applied, agriculture shall be promoted as the principal and dominant use to which all other uses shall be subordinate. Where questions of land use compatibility arise, the burden of proof shall be on the non-agricultural use to clearly demonstrate that an existing or proposed use does not conflict with agricultural operations and will not result in the premature elimination of such agricultural operations. No use should be permitted that would have a significant adverse effect on agricultural production, including food and fiber production, horticulture, floraculture, or animal husbandry. . . .*

Imperial County General Plan, Land Use Element (Revised 2008), page 48 (emphasis added); *see also id.*, page 49 (“Industrial uses are *not permitted* except those directly associated with agricultural products and processes,” though “[g]eothermal plants may be permitted with a conditional use permit subject to zoning and environmental review” (emphasis added).

It is clear from the foregoing language that lands designated as “Agriculture” in the General Plan must be used *only* for agriculture and related industries that support agricultural production (or at least do not interfere with it). Yet the Project would allow on designated farmland massive industrial-scale energy projects that would *eliminate all agricultural operations* on these protected farmlands.

It is undisputed that at least the utility-scale solar energy projects allowed by proposed General Plan revision and implementation ordinance “would likely convert all Important Farmland within the project areas to nonagricultural uses.” DPEIR 4.2-6. And as the California Department of Conservation has determined in both the Williamson Act and CEQA contexts, and reiterated in its November 1, 2011, and July 16, 2010 letters (attached as Exhibits 10 and 11, respectively, to Backcountry’s Scoping Comments) to the Imperial County Planning and Development Services Department regarding solar projects proposed for lands designated for Agriculture on the County General Plan, commercial solar uses are *completely incompatible* with agricultural uses. Indeed, the County *itself* admits in the DPEIR that the “temporary conversion of 16,790 acres of agricultural land to nonagricultural uses” by “[t]wenty-five of the existing, proposed, and reasonably foreseeable projects” in the County (many of which are solar energy projects) is a “significant cumulative effect on agricultural resources.” DPEIR 4.2-13.

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Furthermore, as discussed below in Section II(D)(1), the developments allowed by the Project would impede agricultural operations on *surrounding* lands. This has already been demonstrated in southwestern Imperial County by the increasingly rapid conversion of farmland to non-agricultural uses in areas surrounding existing solar energy facilities, as more and more industrial-scale electrical generation projects are proposed and built there.

Comment  
16-2  
(continued)

In sum, because (1) the proposed General Plan amendment would render the General Plan internally inconsistent, and (2) the proposed implementation ordinance would allow non-agricultural uses, including industrial-scale solar energy projects, that the Land Use Element currently prohibits on designated agricultural land, the Project is inconsistent with the General Plan and may not be approved. Government Code § 65300.5; *Concerned Citizens of Calaveras County*, 166 Cal.App.3d at 97; *Sierra Club v. Kern County*, 126 Cal.App.3d at 704; *Neighborhood*, 156 Cal.App.3d at 1184.

## II. THE DPEIR DOES NOT COMPLY WITH CEQA

### A. Reliance on the Draft DRECP

The County has used the Draft DRECP and EIR/EIS to shape the Project and its only alternative (aside from the No-Project Alternative). DPEIR ES-1, 2.2 to 2-3, 5-7 to 5-15. In addition, the County has relied upon the Draft DRECP and EIR/EIS as if it is a final document. The DPEIR improperly incorporates, tiers from, and otherwise relies upon this Draft DRECP and EIR/EIS as a substitute for County decisionmaking and analysis.

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The County's use of the Draft DRECP and EIR/EIS to shape the Project's alternatives and for growth forecasts is improper. In this way, the County's DPEIR is similar to the EIR set aside in *County of Amador v. El Dorado County Water Agency* ("*County of Amador*") (1999) 76 Cal.App.4th 931, 949. There, a water district used growth projections from a *draft* general plan to establish the projected water demand justifying its project. *Id.* By acquiring consumptive water rights to meet the growth projected by the *draft* general plan, the water agency removed a barrier to growth and frustrated CEQA decisionmaking. *Id.* Here, the County has not waited for the DRECP process to be finalized and has instead relied upon the Draft DRECP EIR/EIS to inform the scope and scale of its own Project and alternatives. ES-1, DPEIR 2-2; DPEIR 5-7 to 5-15. Yet the Final DRECP and EIR/EIS may contain dramatically different alternatives or conclusions from the draft currently under review.

In addition to using the Draft DRECP and EIR/EIS to shape the Project and its alternatives, the DPEIR incorporates and relies upon the Draft DRECP and EIR/EIS in many other respects. It relies upon the Draft DRECP EIR/EIS to establish the regulatory and environmental setting for the DPEIR's evaluation of the Project's impacts on biological and



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cultural resources. DPEIR 4.4-4 to 4.4-5, DPEIR 4.4-6 (referring readers generally to the six-volume Draft DRECP and EIR/EIS “[f]or a detailed description of each of the vegetation communities”), DPEIR 4.5-12 (cultural resources documented generally in Draft DRECP and EIR/EIS). The DPEIR also relies upon the Draft DRECP and EIR/EIS’s determinations that particular special status species are “adequately conserved.” DPEIR 4.4-25 and Table 4.4-4, DPEIR 4.4-33 and Table 4.4-5. Additionally, when considering whether the Project would “[c]onflict with the provisions of an adopted Habitat Conservation Plan, Natural Communities Conservation Plan, or other approved local, regional, or State habitat conservation plan” the DPEIR discusses the Project’s compliance with the *Draft* DRECP. DPEIR 4.4-44, 4.10-12 to 4.10-13. Further, the DPEIR extensively relies upon the Draft DRECP and EIS/EIR for its discussion of noise impacts DPEIR (4.12-7 to 4.12-9), and for mitigation measures for mineral resources and traffic. DPEIR 4.11-7, 4.16-9.

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(continued)

In all instances, the DPEIR fails to reasonably inform the reader of the portion of the six-volume Draft DRECP and EIR/EIS on which it relies, either by page or by section citation. Thus, the reader must search thousands of pages in order to find the relevant information. Further, agencies with subject-matter expertise and other interested organizations and individuals had not yet provided public comment on the Draft DRECP and EIR/EIS when the County decided to incorporate and rely upon its analysis and conclusions. Absent this essential feedback, it is possible that the data relied upon and incorporated in the DRECP and EIR/EIS, and thus the DPEIR, is erroneous, outdated, or incomplete. By vaguely incorporating, relying upon and tiering from a document that has not been finalized or certified as complete, the County has failed to comply with CEQA. CEQA Guidelines §§ 15150, 15152; *County of Amador*, 76 Cal.App.4th at 949.

#### **B. Project Description and Objectives**

“An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. While the Imperial County website includes the text of the draft implementation ordinance and the draft Energy Element, the DPEIR fails to refer the reader to these documents. Further the DPEIR does not include either in its Appendix or as a reference. *See* DPEIR 7-9 to 7-11. The DPEIR briefly summarizes the goals and objectives of the Energy Element, and mentions the implementation ordinance in passing, but neither is sufficient to inform the public as to *what* the Project is. *See* DPEIR 2-8 to 2-12. Without more, the DPEIR’s Project description is incomplete.

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16-4

As various scoping comments made clear, the County has established objectives that supply energy to outside users at the expense of County residents and resources, without establishing that the County needs to do so. While the County presents the proposed Project as

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benefitting the County, most of these benefits are *not* local benefits at all. DPEIR 2-1 to 2-2. Instead, they continue to elevate outside interests over the County's internal interests. *Id.* By moving forward with this Energy Element, and by opting to favor industrial-scale energy generation for the benefit of out-of-County users, the County has done its residents a disservice.

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### C. Alternatives

CEQA requires than an EIR "describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." CEQA Guidelines § 15126.6(a); *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566 (EIRs "must consider a reasonable range of alternatives to the project . . . which (1) *offer substantial environmental advantages* over the project proposal" and (2) may be feasibly accomplished (emphasis added)). *Laurel Heights I*, 47 Cal.3d at 404. An alternative may "not be eliminated from consideration solely because it would impede to some extent the attainment of the project's objectives." *Habitat and Watershed Caretakers v. City of Santa Cruz ("HAWC")* (2013) 213 Cal.App.4th 1277, 1303 (emphasis and quotation omitted). Furthermore, an agency may not approve a Project where there are "feasible alternatives . . . available which would substantially lessen the significant environmental effects" of that Project. Pub. Res. Code § 21002. Yet here, the DPEIR fails to meet these requirements in at least two ways.

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First, the DPEIR fails to consider *any* alternative that would not convert agricultural land to energy development, such as distributed generation. DPEIR 5-1 to 5-16. As discussed above, Imperial County agriculture is immensely important as the predominant driver of the County's economy, the County's cultural lifeblood, a bastion of wildlife habitat and ecosystem services, and a vital source of farm goods for the entire nation. But the future prosperity of County agriculture is far from assured. One of the biggest threats to the long-term viability of County agriculture is the ongoing and rapid conversion of farmland to industrial use by utility-scale electrical generation projects and related industrial facilities. Indeed, as the DPEIR admits, "future development of renewable energy facilities in the proposed overlay zones would convert Important Farmland to nonagricultural uses and result in a significant impact." DPEIR 4.2-6. Yet the DPEIR entirely fails to consider an alternative that does *not* propose "future development . . . [that] would convert Important Farmland to nonagricultural uses." *Id.*; DPEIR 5-1 to 5-16.

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Utility-scale electrical generation projects – particularly wind and solar energy projects – are almost invariably incompatible with agricultural uses. For example, they generally require the cessation of all agricultural production on the project site, while at the same time causing substantial loss of fertile topsoil and thereby reducing the likelihood that the site could ever be used again for commercial agriculture. As the California Department of Conservation has

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determined multiple times with respect to commercial solar energy generation projects in Imperial County, including in its November 1, 2011, and July 16, 2010 letters (Exhibits 10 and 11 to Backcountry's August 22, 2014 Scoping Comments) to the Imperial County Planning and Development Services Department, "the construction of a solar facility that removes and replaces agriculture on agricultural lands [has] a significant impact on those agricultural lands, including grazing land." Exhibit 11 to Backcountry's August 22, 2014 Scoping Comments at 2 (quote); DPEIR 4.2-6 (determination that Project's conversion of Important Farmland to nonagricultural uses is a significant impact).

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Distributed energy projects such as rooftop solar photovoltaic ("PV") have substantial environmental, aesthetic, economic, and public safety benefits over remote, industrial-scale solar energy facilities. They preserve precious agricultural land. They do not mar the landscape with massive wind turbines or glare-producing and unsightly solar panels, or their associated powerlines, substations, and industrial operations and maintenance buildings. They are much less likely to ignite catastrophic wildfires. They do not displace agriculture and wildlife habitat. They present a much smaller threat to wildlife. They do not waste electricity due to conductor resistance and corona discharges along lengthy transmission lines.<sup>2</sup> Their reliability is far greater. And they are easier to upgrade as technology improves.

Furthermore, the Imperial Irrigation District ("IID") already has a number of programs encouraging the development and use of distributed generation, including the PV/Solar Solutions Incentive Program, the Net Energy Metering Program, the Distributed Generation Program and the Feed-in Tariff (FIT) Program.<sup>3</sup> Through this Energy Element update process, the County should attempt to build on IID's programs and encourage even more distributed generation development and use.

There are many available options for Imperial County to incentivize installation and operation of distributed generation alternatives. The County could start by outfitting its own

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

<sup>3</sup> More information on those programs is available here: <http://www.iid.com/index.aspx?page=581>

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infrastructure with renewable energy generation systems, such as rooftop solar or solar roads.<sup>4</sup> The County could also adopt a local loan program to help property owners in the County finance PV installations on their properties, pursuant to Streets and Highways Code section 5898.20 *et seq.* An example of this type of program is Sonoma County's Property Assessed Clean Energy financing program.<sup>5</sup> Imperial County could also institute a local rebate program for installation of PV systems, such as the program developed by the City and County of San Francisco that gives money directly to qualifying PV system purchasers for residential, commercial and other non-residential PV installations.<sup>6</sup> These and many other types of PV incentivization programs Imperial County could adopt are conveniently outlined on the CleanEnergyAuthority's website on "California Solar Rebates and Incentives."<sup>7</sup>

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(continued)

Despite the multitude of options available to the County to promote distributed generation, the DPEIR fails to consider it, or any other alternative that does not convert farmland to nonagricultural uses. DPEIR 5-1 to 5-16. Concerned Farmers and Conservationists are staunch advocates of local solutions to reduce greenhouse gas emissions and stem global warming. However, remote utility-scale renewable energy generation is not the best answer to this problem. It is inefficient and fraught with environmental impacts. In order to protect the County's agricultural resources and economy, as well as its biological resources and ecology, the DPEIR must consider distributed generation alternatives that harness the County's renewable energy resources. The County's failure to do so prevents the public and decisionmakers from understanding its benefits in relation to the Project, in violation of CEQA. Pub. Res. Code §21002; CEQA Guidelines §15126.6(a); *Vineyard Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* ("Vineyard") (2007) 40 Cal.4th 412, 428; *Berkeley Keep Jets Over the Bay v. Board of Port Commissioners* ("Berkeley Keep Jets") (2001) 91 Cal.App.4th 1344, 1355-1356.

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<sup>4</sup> For an overview of this emerging technology from Solar Roadways, Inc., visit <http://www.solarroadways.com/intro.shtml>.

<sup>5</sup> Sonoma County's program is summarized on the U.S. Department of Energy's Database of State Incentives for Renewables & Efficiency website, available here: [http://www.dsireusa.org/incentives/incentive.cfm?Incentive\\_Code=CA188F&re=1&ee=1](http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=CA188F&re=1&ee=1) (last accessed June 6, 2014).

<sup>6</sup> San Francisco's program is summarized on the U.S. Department of Energy's Database of State Incentives for Renewables & Efficiency website, available here: [http://www.dsireusa.org/incentives/incentive.cfm?Incentive\\_Code=CA168F&re=1&ee=1](http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=CA168F&re=1&ee=1) (last accessed June 6, 2014).

<sup>7</sup> <http://www.cleanenergyauthority.com/solar-rebates-and-incentives/california/> (last accessed June 6, 2014).